

## **Abstract – Compensation for damage to health: a comparison of Czech and German legislation**

This diploma Thesis deals with the theme of compensation for damage to health in Czech and German legislation, which was one of the inspirations during the creation of the Czech Civil Code. The aim of this study is to explore the issue of civil compensation for damage to health (and in the case of death) with an emphasis on medical-legal relations arising from the provision of health care, in both these legal systems. This study is divided into three parts. In the first is examined the legislation of Czech Republic, in the second the German one. The third section briefly summarizes the differences and the congruent aspects of both legislations, supplemented by suggestions for possible changes and improvements of the Czech law *de lege ferenda*.

The area of compensation for damage to health is strictly bond with the civil liability, therefore the study deals with this issue as well. Within the Czech law, both of these areas have undergone a fundamental change with the entry into force of the new Civil Code on January 1, 2014. By the civil liability the unified conception of tort was left and now contractual and tort liability is distinguished, also the whole conception of civil liability tends to active and not penalty approach. Fundamental change also occurred in decision making practice of the Supreme Court, which accepted the principle of probability in proving causation in the liability for personal injury. In compensation for damage to health is essential shift the cancellation of compensation regulation and allowing greater freedom of courts in awarding compensation for the damage to health. Even the German legislation has changed in previous years. The relation between the provider of health care and the patient used to be regulated just by judicature, but with regard to greater legal certainty for both parties the Patients Rights Act was adopted and it established the contract for the provision of health care the in German Civil Code (BGB).

With the adoption of the Civil Code has come the Czech law significantly closer to the German legislation. As in the Czech law, even in Germany distinguishes contractual and tort liability, but the very notion of the concept of liability is different in the German doctrine. In the area of compensation for non-pecuniary damage to health German courts decide on a discretion basis, Czech courts have a methodology of the Supreme Court to rely on.