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Non-lege artis, liability in medicine from the perspective of criminal and civil law

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Abstract

The authors in this paper address the specificity of criminal and civil liability for healthcare professionals and healthcare institutions, particularly concerning errors that may occur during healthcare provision. In practice, situations may arise where a healthcare professional fails to diagnose a patient promptly or correctly, or a bribe is accepted for a medical procedure. However, it is necessary to reflect on the issue of legal liability and the criminalisation of the healthcare profession, as well as whether every error in diagnosis constitutes an act of *non-lege artis*. The study also examines the nuances of legal liability in cases where healthcare professionals operate within ambiguous circumstances, emphasising the importance of expert evidence to evaluate adherence to medical standards. Furthermore, it explores the criminalisation of healthcare errors, questioning whether current legislative frameworks adequately differentiate between professional negligence and intentional misconduct. By analysing civil and criminal liability, the paper provides a comprehensive perspective on how healthcare professionals can navigate their responsibilities while minimising legal risks.

Keywords: lege artis, criminal liability, criminalisation, healthcare worker, civil liability

1. Introduction

Medicine is a very dynamic and developing sector. It is progressing and attracting the attention of healthcare providers and medical lawyers. Every day, medical professionals encounter problems in the provision of health care that are not caused by and do not arise from isolated medical acts, which are various examinations, diagnoses or therapies from time to time. Almost every health-related act by a health professional related to the provision of health care may be associated with some risk of harm to the life or health of the patient. The term lege artis or *non-lege* artis has been frequently used in recent years, not only in professional discussions but also in ordinary lay conversations. Further, in very simplified terms, lege artis refers to conduct in the context of healthcare provision that reflects compliance with the essential obligations of healthcare providers to preserve the fundamental rights of healthcare recipients and, thus the right to the protection of life and health. Where a healthcare provider breaches or neglects these obligations, resulting in harm or damage to the rights of the recipient of healthcare, the healthcare provider shall be liable for the harm caused. That harm may be assessed from the point of view of public law in the sense of criminal liability and equally from the point of view of private law in the sense of civil liability. A further understanding of the different types of liability is an elementary prerequisite for making a claim for the damage suffered and for deriving an adequate

sanction if it is established that the damage was causally linked to the unlawful conduct of the healthcare provider.

2. Legal liability in medicine and non lege artis procedure as a prerequisite for legal liability

Among the primary duties of health care providers is to act lege artis, and thus with due professional care, in the practice of the health care profession. This duty serves the proper exercise of the profession. Such a duty does not apply only to health professionals. The duty to exercise due professional care is a duty of all liberal professions and is governed by the law of the profession concerned. According to the literature, in order to define the concept of lege artis, it is necessary to take into account the knowledge which is the content of the teaching in all medical schools and all the knowledge which is contained in professional publications. Also important for the definition are recommended national or even international practices **[1]**. Pursuant to Section 4(3) of Act No 576/2004 Coll. on health care, services related to the provision of health care and on amendment and supplementation of certain acts, the provider's obligation to provide health care correctly can be found, and thus it is valid that "*health care is provided correctly, if all medical procedures are carried out to correctly determine the disease with the provision of timely and effective treatment with the aim of curing the person or improving the person's condition, taking into account the current knowledge of medical science and in accordance with standard procedures for the performance of prevention, standard diagnostic procedures and standard therapeutic procedures, taking into account the individual condition of the patient"***[2]**. The lege artis procedure will continually be assessed on an individual basis. This is particularly so because the fundamental principle of expert evidence is to determine the doctor's procedure *ex-ante*, rather than *ex-post*, and thus in the light of the options available to the doctor when the procedure was carried out **[3]**. According to the opinion of the Supreme Court of the Slovak Republic **[4]**, it is expressly excluded that the so-called "*ex-post* analysis" should be applied and carried out when determining the question of whether there has been malpractice on the part of a healthcare provider in the area of healthcare provision; the procedure of the healthcare provider must be assessed "*ex-ante*", i.e. based on the knowledge available to the healthcare provider at the time of its provision. In healthcare, every medical procedure involves a certain amount of risk, particularly for the patient. Legal liability is a kind of obligation on the part of the subject to endure the adverse consequences imposed on him by objective law for his unlawful conduct **[5]**. When legal liability in medicine arises, i.e. when the legal liability of health care providers arises, it is necessary to examine the fulfilment of the individual prerequisites for the liability to arise. These prerequisites must be fulfilled to speak about the emergence of legal liability for a health care provider, either a health care professional or a health care institution.

The prerequisites for legal liability are:

- an illegal act, i.e. an act that is contrary to applicable law,
- the existence of a harmful consequence on the part of the patient,
- a causal link between the unlawful conduct of the healthcare provider and the harmful consequence suffered by the patient,
- fault, but only in the case of subjective liability.

Above, we defined the duty to provide health care under the Health Care Act properly. Compared to damage to property, this damage can only occur to living persons with no passage to legal successors. Damage **[6]**. Thus, if a healthcare professional breaches such a duty, such contra *legem* conduct will result in legal liability. Improper healthcare provision will give rise to the legal liability of the healthcare provider and, therefore either the healthcare professional or the healthcare facility. If a particular procedure was *non-lege artis*, it would result in the civil liability of the health care facility or civil liability of the private health care worker, labour liability of the health care worker as an employee of the health care facility, disciplinary liability of a member of the relevant chamber, administrative liability

towards the administrative body, and even criminal liability when the facts of a criminal offence are fulfilled **[5]**.

3. Criminal liability of a healthcare provider and a healthcare professional regarding the offence of accepting a bribe

In the conditions of the Slovak Republic, the perpetrator of a criminal offence may be a natural or legal person **[7]**. Following the adoption of Act No. 91/2016 Coll. on Criminal Liability of Legal Persons, from 1 July 2016, a legal person - a healthcare provider - may also be criminally liable under the conditions set out in a special regulation **[8]**. A health care provider may only commit criminal offences exhaustively defined in a special regulation - the Act on Criminal Liability of Legal Persons. Based on statutory criteria, the subject is the perpetrator who conditions his liability. The perpetrator, therefore, must fulfil all the elements of the offence or attempt to do so. A natural person may be the perpetrator of a criminal offence if, at the time of the commission of the act, he or she was of sound mind, over 14 years of age (15 years of age in the case of certain offences), of sound mind and morals and, where applicable, fulfilled the unique characteristics set out in Act No 300/2005 Coll. on the Criminal Code (hereinafter referred to as the 'Criminal Code') (special or specific subject). Only a healthcare professional can be criminally liable for criminal offences related to damage to a patient's health, as these offences can only be committed by a natural person. It should be said that medical practitioners are subject who, in the exercise of their activity, are often punished by the Criminal Code with a more severe criminal rate, namely for violating duties in performing their tasks within the scope of their employment. Under section 138(h) of the Criminal Code, the more serious mode of conduct is defined as the commission of an offence by breaching an important duty arising out of the offender's employment, position or office or imposed on him by law. "A breach of an important duty within the meaning of (the above provision) cannot be mechanically regarded as a breach of any regulation or obligation, but only a duty the breach of which substantially increases the degree of danger of the offence to society, e.g. by resulting in danger to human life or health. To find that there has been a breach of an important duty imposed by law, the court must find that there is a causal link between the breach of such a duty and the consequence of the offence **[9]**." The fundamental role of criminal law is to protect the social interests defined in the Criminal Law, particularly the protection of life and health. In the exercise of their profession, doctors are often challenged by patients for failing to fulfil the duties imposed on them by law or expected of them by the patients themselves in the provision of health care. Should it be established in criminal proceedings that a doctor has breached an essential professional duty within the meaning of the above provision, this may amount to a more serious offence. Various offences may be encountered in providing health care and exercising the profession, whether as a health care professional or as a doctor, but the primary offences are those involving life and health **[10]**. The assessment of the issue and the evaluation of the procedure *de lege artis medicinae* or *non de lege artis medicinae*, respectively, and thus whether a particular action of a health professional was professionally correct or incorrect and erroneous, is a professional question and is intended for forensic experts and, consequently, for the decision of public authorities. However, even in the case of expert reports, care must be taken to ensure that the expert report is adequately prepared. Experts must prepare such expert opinions, and their expertise must be guaranteed by the relevant professional organisation **[11]**. In addition to life and health offences, a health professional may also commit corruption offences. In practice, a situation often arises where a patient comes to a doctor, either for a medical examination or with a health problem, and wants to give a selfless gift to the doctor or nurse (whether as a sign of thanks, respect or satisfaction with the health professional). Suppose a patient gifts a health care professional in the context of the provision of

health care (whether after a check-up or before a medical procedure). In that case, the situation may go in a completely different direction for both parties from the intention with which the attention was given.

For the Slovak Criminal Code **[7]**, a bribe is a thing or other benefit of a pecuniary or non-pecuniary nature to which there is no legal claim. However, no legal provision in the Slovak Republic regulates and does not distinguish whether the patient and/or the doctor considered the provision of a sure thing (whether chocolate, moonshine, ducks or embroidered carpets) as a gift or a thank you, or whether either of the parties expected a certain kind of service or consideration. Thus, any undue advantage received by the person being bribed, which they are not legally entitled to, can be construed as a bribe. The amount of the bribe (or its form and nature) is irrelevant to the fulfilment of this characteristic, but only because the persons are not entitled to this type of consideration. This is mainly a financial or other material advantage or consideration (in the case of health professionals, primarily negligible amounts).

As far as the gift is concerned, the essential feature of the gift is that it is gratuitous. The gratuitousness of the donation is mentioned as a conceptual feature in the Slovak legal regulation of the donation contract, i.e. in the Civil Code **[12]**. The gratuitousness of the donation consists of the transfer of property value by the donor to the donee without any consideration from the donee.

The common feature of both a bribe and a gift is that both have no legal entitlement. There is no legal right to something, so it cannot be enforced through a public authority. While there is no legal entitlement to either a gift or a bribe, the difference can be seen in the fact that in giving a bribe, a person expects some undue advantage (in our case, an earlier appointment for an examination, an extension of 'sick leave', etc.). In the case of a gift, the person of the donor does not expect any consideration from the person of the donee, as the characteristic of gratuitousness would not be fulfilled. There is no legal provision in the Slovak Republic which regulates whether a doctor considers the provision of a specific thing to be a gift or a token of gratitude.

In the conditions of the Slovak Republic, *"The provider may not make the provision of health care conditional upon payment in excess of the specified deductible of the insured under this Act and the regulations issued to implement it, or upon any other consideration."* This is the wording of Section 44(2) of the Act on the Scope of Health Care Reimbursed by Public Health Insurance and on Reimbursement for Services Related to the Provision of Health Care **[13]**.

In the Czech Republic, legislation **[14]** provides that a donation to a person who operates or is employed by a healthcare facility is invalid if it was made while the donor (patient) was in the facility's care or otherwise receiving its services. In other words, after discharge, you can give a doctor a gift of, for example, moonshine, a bunch of radishes, or a painting by a well-known painter. Regarding criminal liability for corruption in a healthcare institution, Criminal Law provides for accepting a bribe and the offence of bribery. Both offences in the patient-doctor relationship in the provision of health care are related to the procurement of a matter of general interest. The provision of health care and services related to the provision of health care is also considered a matter of general interest.

The decision on medical care is a procurement of general interest. For example, suppose a doctor accepts some consideration - i.e. a bribe - in return for a decision to extend hospitalisation, prolong sick leave, etc.. In that case, he/she may be guilty of accepting a bribe under section 329 of the Criminal Code **[7]**.

For the Criminal Law **[7]**, a matter of general interest is defined as "an interest transcending the individual rights and interests of an individual which is important in terms of the interests of society" s 131(1). It is any activity connected with the performance of a task that touches on a matter of general interest, and it may not only be the interests of society in the public sector but also in the private sector.

The provision of health care is also considered to be a matter of general interest, as it is an activity that is in the interest of society, which is guaranteed by the Constitution of the Slovak Republic **[15]**, is

free of charge, and is covered by public health insurance. It does not matter in principle what medical procedure is involved.

It can be argued that health and the associated free provision of health care is one of the most important values of society, in the preservation and protection of which not only the individual whose health is directly at stake, but also society as a whole, has an interest. Health care is a very precious resource, which is provided by educated professionals. If a patient were to make a gift to a healthcare professional before receiving healthcare, there is a likelihood of criminal liability for both the patient and the healthcare professional and, in particular, the question of why the gift was made and whether, by chance, the patient was not seeking some undue advantage by it.

However, a health professional should not accept gifts from patients even after performing a specific medical procedure. It is likely that in such a case the patient no longer expects any undue advantage, since the medical act has already been performed, but this does not play any role from a criminal law point of view. This is mainly because it is the provision of health care which is considered to be a matter of public interest. Both of these actions can be assessed as criminal.

Therefore, even any consideration of any value and on an ad hoc basis even after the intervention has been carried out is likely to be treated as a criminal offence due to the wording used in section 329 and section 333 of the Criminal Code **[7]**.

To fulfil the facts of this offence, it is necessary to prove the relationship (connection) between the bribe and the activity which falls within the field of procurement of a matter of general interest (provision of health care). However, whether the facts of the offence (whether bribe-taking or bribery) would be fulfilled in a particular case would be a matter of proof. In practice, however, it is also necessary to look at the "bribe“. There is no gift as a gift; there is no bribe as a bribe. In a case where a doctor accepts a bribe without any circumstance, it can be said that such an offender will be given a higher sentence. However, there is always a possibility of taking into account the punishment imposed on the offender in case of regret.

When deciding on the punishment for the crime of corruption (mentioned above) for doctors, we most often encounter the imposition of a suspended sentence, a ban on activity and a fine. This is also evident from the many well-publicised cases of doctors (e.g. prolonged hospitalisation for a painting by a famous painter and a few bottles of moonshine, or a few thousand euros, chocolates and ducks for the provision of "better" care). However, no indictment has yet been filed for accepting candy, even though it is true that law enforcement authorities are obliged to investigate every crime.

In the opinion of the authors, when deciding on guilt and punishment, the court should take into account, in addition to the facts that are typically taken into account by the court, whether the doctor conditioned the provision of medical care with a gift/bribe, i.e. the seriousness of the criminal activity, whether the bribe was solicited or not, whether it was self-pay or not, or whether expert evidence should be taken, whether, for example, the prolongation of incapacity for work or hospitalisation is a lege artis procedure (the above are only examples of many). Alternatively, consider the possibility of applying the institute of adequate contrition to this offence, as in the case of the offence of bribery, or using the material corrective to 'less serious cases'.

However, it is still the case that anything of any value and of any timing in the provision of any "gift" from a patient to a physician in the course of providing medical care is construed as a bribe. So even the receipt of a small box of chocolates can give rise to criminal liability. On the other hand, however, in the conditions of the Slovak Republic, the principle of ultima ratio and the principle of subsidiarity of criminal repression apply.

In what follows, we look at medical liability under civil law. To conclude this section, it should be noted that only a healthcare professional can be criminally liable for offences related to (not only) harm

to a patient's health, when these types of offences can only be committed by a natural person. The criminal liability of legal persons is limited. However, this is not the case in the Czech Republic. In the Czech Republic, Act No. 418/2011 Coll., on the criminal liability of legal persons and proceedings against them, as amended until 30 November 2016, this Act contained an exhaustive list of offences that a legal person (health care institution) could commit. However, similarly to the conditions in the Slovak Republic, this regulation did not contain criminal offences that could be committed by a healthcare provider in direct connection with the provision of healthcare to patients, and thus criminal offences whose object would be the protection of life and health. The amendment to Act No 183/2016 Coll. introduced a negative list of offences that a legal entity as a healthcare provider cannot commit. Thus, as of 1 November 2016, a legal entity may commit all criminal offences except those defined in section 7 of the aforementioned Act on Criminal Liability of Legal Entities. Concerning the area of health care provision, a health care provider as a legal person is criminally liable for all offences against life and health of the district of the offence, including manslaughter, murder of a newborn child by the mother and participation in suicide. The reverse calculation, therefore, indicates that in the Czech Republic, a health care provider as a legal person may commit the offences of manslaughter, failure to provide assistance, spreading a contagious human disease, unlawful termination of pregnancy with or without the consent of the pregnant woman, illegal removal of tissues and organs, grievous bodily harm, bodily harm, failure to assist and, last but not least, homicide.

In most civil liability, as opposed to criminal liability, it is the medical establishment, not the doctor, who is liable. The imposition of criminal liability affects the integrity of the health professional and constitutes an impediment to the exercise of the profession, resulting in the imposition of a penalty. In contrast, in civil proceedings, no penalty is imposed, damages are mainly decided, and no impediment to the exercise of the profession is established **[16]**. In conclusion, it should be noted that, in the event of an acquittal, this does not mean that a claim for damages will not be brought against the doctor.

4. Liability in medicine under civil law

From a legal-theoretical point of view, liability can be defined as the obligation of the person concerned to bear the consequences of his or her unlawful conduct. This consequence can be called, without any doubt, a sanction as a consequence of the illegal state of affairs which has arisen. However, legal liability in medicine is a particular category. In addition to the field of criminal or constitutional law, it is also strongly reflected in the field of civil law. In the context of liability in the field of medical law, the emphasis can be placed on the provision of healthcare and the associated obligations that healthcare institutions and healthcare professionals must comply with. Under Act No 40/1964 Coll., Civil Code **[12]**, the Civil Code applies to the cases in question since there is no specific statutory regulation of liability in healthcare services. We distinguish several types of liability, which also find their place in medicine. In this context, it is necessary to bear in mind certain specific features which relate to the provision of healthcare or are directly related to the acts carried out in its provision.

An important question to answer in the context of health care liability is which entity is liable for the harm caused by the provision of health care. It is, therefore, necessary to distinguish whether the provision of healthcare by an individual is in the context of the independent provision of healthcare (under a licence granted by a municipality) in private practice or the context of a healthcare establishment. In the former case, therefore, we can speak of the personal civil liability of a particular healthcare provider as a natural person. In the second case, on the other hand, it is the liability of the healthcare institution, which is party to a civil relationship with the injured party or the survivor, as the case may be. Although the liability lies with the healthcare establishment, the healthcare establishment

can claim damages against a specific employee. This is a recourse claim under Section 219 of Act No 311/2001 Coll. on the Labour Code.

To talk about liability, the statutory conditions must be met, i.e., there must be an unlawful act (*non lege artis*), some injury or damage must have occurred. There must be a causal nexus between the above, i.e., a causal link between the unlawful act and the occurrence of the damage for cases of strict liability **[17]**. In the case of subjective liability, a further condition must be fulfilled, i.e. there must be a culpable act. In the context of the provision of health care, wrongful conduct means an act or omission by a health care provider which is contrary to the law, i.e. it can be understood as a contradiction between the doctor's conduct and how he ought to have acted and acted under the law (lege artis). Further, the illegality may be manifested in the lack of information to the patient about the state of health, about the medical procedure performed (in the context of informative consent) or, for example, in the breach of the obligation of confidentiality about the patient's state of health. Damage or, more precisely, harm is understood as damage to one's property, i.e. material damage, or damage to other legally protected interests, i.e. immaterial damage. In the context of the provision of health care, the aforementioned immaterial damage comes into play in most cases. Still, nothing excludes the occurrence of material damage (liability for damage to things brought in or put away). Causation in that context is the causal link between, on the one hand, the act or duty of the doctor and, on the other hand, the occurrence and existence of the injury. As stated above, Culpability is examined only in the context of subjective liability, and the assessment of culpability must be based on objective criteria, i.e. in the context of the provision of health care, the specific knowledge and skills of the doctor are continually assessed **[18]**.

The Civil Code regulates the individual facts of civil liability, which can also be implemented in health care in the event of injury or damage.

Everyone is liable for the damage caused by breaching a legal obligation (section 420(1) of the Civil Code). In the context of the provision of health care, this is, therefore a breach of a duty which will hurt the patient's health and also results from an interference with the personal rights of the patient and his or her close relatives, such as the survivors. In the context of general liability for damages in the provision of health care, these are mainly cases of breach of the duty to provide care lege artis; in other words, it is an act *non lege artis* on **[16]**. *Non lege artis* conduct can be regarded as a defective procedure in the provision of healthcare, and the errors mentioned above are most often the result of a culpable wrongful act of the doctor as a healthcare provider. Examples of such errors include misdiagnosis of the patient, error in therapy, inadequate or absent instructions to the patient or insufficient provision of healthcare. In the above cases, the liable party for the harm suffered will be either the private doctor or the healthcare institution whose employee (doctor or other healthcare professional) caused the damage to the patient. According to Section 4(3) of the Health Care Act, 'health care is provided adequately if all medical procedures are carried out to correctly diagnose the disease with the provision of timely and effective treatment to cure the person or improve the person's condition, taking into account the current knowledge of medical science and following standard procedures for prevention, standard diagnostic procedures and standard therapeutic procedures, taking into account the individual condition of the patient **[2]**. The question arises here since medical science can constantly evolve when specific procedures will be standard or outdated. To this end, the Ministry of Health of the Slovak Republic issues standard diagnostic and therapeutic procedures **[2]**. The fundamental prerequisite for the liability of the entities above is the infliction of harm to the patient during the provision of health care by these entities. A healthcare institution or a private physician may be exculpated, i.e. they may be exempted from liability if they prove that they did not cause the harm suffered by the patient. According to the Civil Code, those who prove they did not cause the damage are exempt from liability **[12]**. It is generally held that to succeed in an action for exculpation, it is necessary to prove that the fault was not attributable to the

healthcare providers. Still, there are also opinions that the essential prerequisite for an exculpation is that the health care institution or private physician responsible for providing health care exercised all due care that could have been required in the circumstances **[18]**.

Another harm or damage that may occur to the patient during care provision is the damage caused by interference with the patient's rights. A natural person has the right to protect his or her personality, in particular life and health, civil honour and human dignity, as well as privacy, his or her name and expressions of a personal nature (Article 11 of the Civil Code) **[12]**. In civil law, the principle applies that a threat to, or possible violation of, even one aspect of a person's personality constitutes a threat to his or her personality as such. The protection under the Civil Code covers a separate threat to a right and a violation of that right. Section 11 of the Civil Code contains a general clause protecting the personality of the individual, which provides that the law does not protect against any interference but only against unjustified interference. The provisions of § 11 et seq. of the Civil Code allow for civil protection also against such health threats which do not yet manifest themselves in the form of property damage **[19]**. The harm mentioned above may arise to the patient, for example, from the failure to provide proper instructions regarding media coverage of a particular patient's serious illness or other information concerning the patient's health condition.

Section 415 of the Civil Code regulates the so-called general preventive liability, the content of which is the obligation of natural persons to act in such a way as to prevent the occurrence of damage to health and property. This obligation also applies to healthcare institutions or private healthcare providers. It can be expected that if a healthcare institution or a doctor neglects his or her preventive duties to prevent damage from occurring, the injured patient has the right to claim compensation for the damage suffered. Thus, in the present case, there may not even have been a breach of duty in maintaining the principle of *lege artis medicinae*, i.e. there may be no personal injury to the patient. Violating the preventive duty on the part of the healthcare provider is grounds for damages. This means that it is reasonably sufficient if the provider's breach of the preventive duty consists of the fact that the head of the department or hospital management is aware that unqualified medical staff are working in the department and providing unprofessional medical care.

In contrast, the head of the department or the hospital management tacitly tolerates this fact. It has yet to remedy the serious deficiencies resulting in the medical staff's lack of erudition and professional competence **[5]**. In the context of the decision-making activity of the Czech courts, reference may be made to the decision according to which a breach of the general preventive duty of the attending medical staff may also occur if the patient causes injury to his or her health by his or her actions while unconscious, provided that there were specific circumstances for which the medical staff should have kept continuous supervision over the patient precisely because of the possibility that the patient might perform an unforeseeable act leading to injury to his or her health **[20]**.

A breach of duty by a health care provider may also result in harm from using a device, instrument, medicine, or other thing by the provider in the provision of health care, which may result in damage. That liability arises directly from the Civil Code **[21]**. It is this type of liability that is of great importance in the provision of healthcare since medicine is a field that is constantly evolving, concerning the technical equipment used in the provision of healthcare and individual medical interventions, which entail specific risks since they interfere with the body. It arises only when the damage occurs due to the property of an object, not due to the property or illness of a person **[22]**. This type of liability must be carefully distinguished from liability for damage caused by medical malpractice since the essence of liability for damage, in this case, is the use of an instrument or object which results in damage or injury. In other words, in this fact, liability for the result is involved, where it is not decisive whether there has been professional misconduct, i.e. an act *non de lege artis medicinae* on the part of the health

professional. Still, in this fact, the unlawful state of affairs has arisen due to the medical act's use of an instrument, medicine, or other thing connected with the provision of the medical act **[5]**. Ultimately, the instrument or thing used may not have been defective, but the nature of the instrument or thing caused the patient to suffer harm.

In addition to the above types of liability, the health facility may also be liable for damage caused to items brought in or left behind. However, that liability does not relate directly to the provision of health care. Still, it does relate to services connected with it, particularly services associated with the operation of the health care establishment. That is to say, where the operation of a healthcare establishment involves storing goods, the establishment's operator shall be liable to the patient for damage to goods brought into the establishment and goods deposited in a place designated for that purpose. However, the law provides for the possibility of liberation if the damage would otherwise have occurred (section 433(2) of the Civil Code) **[12]**.

Conclusion

If a health professional acts and acts *lege artis*, and thus consistently fulfils his or her duties in the performance of medical acts and in the exercise of his or her profession, there can be no question of incurring legal liability. However, in practice, situations may arise in which specific misconduct occurs. They, therefore, may give rise to legal liability, in particular civil and criminal liability and the criminalisation of the exercise of the medical profession. In this respect, emphasis should be placed on adequately conducted expert reports since the medical experts are qualified to assess and answer whether a particular medical practitioner's conduct was lege artis. However, in this article, we have not addressed the issue of the institution of patient-informed consent as a possible protection for the health care professional. However, it is also necessary to consider whether the health care provider's legal protection in the Slovak Republic's conditions is sufficient. The institution of informed consent, or negative reversal, should be regulated in more detail by legislation to protect the healthcare worker and the patient. It is, in fact, essential evidence that the treating health professional has acted lege artis, even though he has not treated the patient and that he has made the necessary efforts to be able to treat the patient, but that the patient has nevertheless refused the proposed medical treatment. At the same time, it should be emphasised that almost all doctors and health professionals practise their profession responsibly and do not intend to harm anyone.

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