

Criminal liability for non lege artis procedure in the provision of health care

Abstract

The main objective of this thesis is to define the prerequisites and conditions for incurring criminal liability for non lege artis procedure in the provision of health care. With the help of the analysis of legal regulations, legal literature and also extensive jurisprudence, the other aim of this thesis is to examine the definition of the concept of non lege artis as such, the consequences for this procedure in the level of criminal law, and also the aim is to analyze the individual criminal offences that can be committed in connection with the non lege artis procedure in the provision of health care, and these would be complemented in practical terms by extensive jurisprudence. Last but not least, the thesis deals with an essential part of criminal proceedings, which is called evidence focusing on the non lege artis procedure. The method used to elaborate this thesis was mainly analysis, deduction, description and comparison, namely comparison with Slovak, English and Spanish legislation.

The thesis is divided into four parts, which are further divided into chapters or subchapters that develop the topic of each part in detail.

The first part deals generally with the concept of non lege artis. Through legislation, literature and jurisprudence, this chapter provides various definitions of the term, with the aim of providing a comprehensive interpretation. The analysis is also supported by foreign legislation, which serves to compare the concept with a subsequent generalization of the differences and correspondences of foreign legislation with Czech legislation.

The second part of the thesis focuses on the criminal liability for non lege artis procedure, specifically on the prerequisites and conditions for its occurrence. Subsequently, the focus is shifted to the description of the factual basis of a criminal offence while the aim is also to link the general prerequisites with the topic of health care and non lege artis procedure. The second part also contains a discussion of the conditions excluding the illegality of an act, with an emphasis on those relating to the field of health care. The second part concludes with a reflection on the ultima ratio principle and its subsequent analysis.

In the third part, offences related to non lege artis procedure in the provision of health care are selected for description, accompanied by specific examples from jurisprudence.

The thesis concludes with a fourth part dealing with the procedural aspect of the topic discussed, namely criminal proceedings with a focus on the process of evidence. Specifically, this section

discusses the right to an effective health care investigation as a certain necessary standard. Subsequently, attention is focused on selected proper evidence, with an emphasis on expert statement. The last part concludes with a summary of the role of the victim in criminal proceedings of this type, particularly with regard to the possibility of claiming damages, non-pecuniary harm or the release of unjust enrichment.

The conclusion of the thesis summarizes the objectives set out in the introduction to this thesis and provides a statement as to whether these objectives have been met, both the stated main objective and the sub-objectives identified within the individual parts and chapters of this thesis.