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ANALYSIS OF ESTONIAN REPUBLIC SYSTEM OF MEDICAL MISTAKES PROVING AND IT IS COMPARISON WITH CORRESPONDING SYSTEM OF FINNISH REPUBLIC

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ABSTRACT

This dissertation analyses the Estonian system of proving medical mistakes and finds legal problems in this system, and then proposes how to approach these problems by comparing it with the Finnish system of proving medical mistakes and focusing on the patient insurance system in Finland. The thesis also defines the terms of medical mistake and explores the methodology for identifying medical mistake. The whole system of proving medical mistake is carefully analysed by highlighting the main factors such as the legal regulation of the relationship between patients and medical personnel, tort liability, the burden of proof and subsequently compensation for medical mistakes and judicial practice. In addition to this identification of the preconditions and reasons for medical mistakes in Estonia, all this is done on the basis of scientific articles and texts of various experts from Estonia as well as foreign authors who are related to the Finnish and Estonian system of proving medical mistakes. The research of this dissertation can demonstrate what the main problems of the legal framework and other factors related to the system are and suggest possible solutions to these problems.

Keywords: Burden of proof, insurance system, medical mistake, medical mistake proving system, tort liability

LIST OF ABBREVIATIONS

CCP	Code of Criminal Procedure
EPA	Estonian Patient Advocacy
EHIF	Estonian Health Insurance Fund
EPU	Estonian Patients Union
HiT	The Health Systems in Transition
LOA	Law of Obligations Act
NHP	National Health Plan
OECDO	Organisation for Economic Co-operation and Development

INTRODUCTION

Treating people is a very broad area of work that involves many decisions and a variety of different treatments on which the patient's future may depend. All people are individual, each person reacts differently to medications and treatments. Each patient needs a different approach.

Accompanying this is the insufficient study of diseases, various problems associated with swift diagnosis and determination of the exact diagnosis and method of treatment. Even applying the same methods of treatment, can lead to completely different results - to a complete cure, to the creation of some definite positive dynamics, or, on the contrary, to the deterioration of the patient's health.

For society, the problem of proving medical mistakes is being created. Medical liability and the resulting lawsuits thus become a fact of life in the life of every practicing physician. Medicine is a victim of its own success, and this is due to the fact that society is aware of the various significant successes and advances in medical technology through different publicity and modern information-sharing technologies. This creates the expectation of completely new methods and obligatory best results with respect to examples, including even virtually impossible treatment solutions. Consequently, the creation of new technologies and methods in medicine generates new lawsuits related to medical mistakes, which require a certain knowledge and experience in analyzing and evaluating a certain case.[1]

The medical provider is entrusted with a high degree of responsibility due to the unpredictability of medical activity. Medicine is not an accurate science, thereby creating the inevitability of possible undesirable outcomes, which therefore create those particular medical mistakes. Such mistakes may be temporary, or they may be long-lasting, remaining with the patient for life. The

[1] Ferrara, S.D., Baccino, E., Bajanowski, T., Boscolo-Berto, R., Castellano, M., De Angel, R., Pauliukevičius, A., Ricci, P., Vanezis, P., Nuno Viera, D., Viel, G, Villanueva, E. (2013). *Malpractice and medical liability. European Guidelines on Methods of Ascertainment and Criteria of Evaluation.* Retrieved from https://www.uems.eu/__data/assets/pdf_file/0005/19616/Item-3.2.7-European_Medico_legal_Guidelines.pdf, 25 February 2022.

problem with the unpredictability of medical activity is determining the very conditions under which a medical organization, in particular the treating physician, is truly guilty and responsible for committing a medical mistake and thereby worsening the patient's health. The process of proving medical mistakes is as complex as the process of treating the patient. In proving medical mistakes, it is crucial to distinguish between the inevitability of any consequences of medical treatment and the wrongful infliction of harm to the patient's health by the medical institution and the medical practitioner in particular. The complexity of proving medical mistakes consists in the fact that under normal delicate conditions of responsibility it is customary to consider only a direct causal link, in the case of medical treatment we are faced with an indirect causal link in addition to the direct one, which is much more difficult to determine, and such an indirect part is inherent in the judicial practice of proving medical mistakes.[2]

The research question of the thesis appears to be as follows: "What are the main legal problems regarding Estonian system for proving medical mistakes?". The thesis will analyze the Estonian proving system of medical mistakes and judicial practice and compare it with the Finnish one, as an alternative solution to the insurance-related problems faced by the system in Estonia. The goal to be achieved as a result of the research is to identify and propose solutions to problems, using an alternative system, associated with the Estonian system of proving medical mistakes.

The thesis uses methods of theoretical analysis, which is a qualitative approach. Therefore, the author initially uses the method of analysis, highlighting and investigating parts of the phenomenon, such as court practice, statistical data, stages of proving of medical mistake, compensation for damages. The author then analyzes the alternative system based on its statistics and approach, then uses a comparative method to compare the two systems and find solutions to the problems. The thesis is therefore a qualitative research which fundamentally involves the analysis and collection of primary source data.

The structure of the thesis begins with an introductory chapter, which is devoted to the definition of the term medical mistake, the next chapter is devoted to an overview of the system of proving of medical mistakes in Estonia and the identification of the problems faced by the system. The

[2] Luil, O.J., Kratenko, M. (2020). *Возмещение вреда, причиненного вследствие ненадлежащего медицинского вмешательства: сравнительный анализ опыта РФ и Эстонии.* Retrieved from https://zakon.ru/publication/igzakon/8286, 25 February 2022.

third chapter presents an analysis of the system of proving of medical mistakes in Finland and focuses on their insurance system and compares it with the Estonian one as an alternative, and the concluding chapter discusses options for solving the problem in the Estonian system of medical mistakes proving.

1. FUNDAMENTALS OF MEDICAL MISTAKES

The accuracy and correctness of the definition of terms is essential to finding and solving problems that participants in the process of proving medical mistakes might be confronted with. It is a standard situation when society classifies certain things by certain concepts in order to be able to distinguish things from one another. The correct definition of the term medical mistake and finding the correct method of detecting it is the key to solving the problems that are associated with the system of proving medical mistakes.

Medicine and treatment are solely designed to help people in need of some kind of treatment. It is very important to observe patient safety in the process of this treatment, which consists of protecting the patient from unnecessary harm, or creating potential harmful effects of medical care.[3]

Patient safety is not only about medical personnel, it is also about financial planning, policy, health care organization, and work culture. Preventing medical mistakes, therefore, is not just about ensuring proper patient safety, but also about the right quality of care and the initial health status of those patients. Therefore, if we consider solely medical mistakes, the possibility is that the context, which is the beginning and the foundation of such mistakes, will be missed.

It is extremely important to understand that in the interaction of medicine, it is necessary to establish the evaluation of the quality of medical professionals based on the classification of medical professionals themselves, without taking into account the legal and social classifications. This is because the classification of the legal profession is based solely on the part that leads only to legal liability, meaning causing death or serious injury to the patient, thereby calling any deterioration of patients' health - medical malpractice. This is not a correct approach to the definition of medical mistake, since a patient's impairment can be the result of failed treatment, a complication of treatment, or unavoidable side effects, all of which are not directly or indirectly

[3] Official Journal of the European Union (2019). *COUNCIL RECOMMENDATION of 9 June 2009 on patient safety, including the prevention and control of healthcare associated infections*. Retrieved from https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32009H0703%2801%29, 26 February 2022.

related to medical malpractice. Also, the disadvantage of focusing on consequences is that it may be overlooked in any case where the patient's health may not have deteriorated so severely that it would have been noticeable from the outside, or the patient may have been aware of it.[4]

1.1. Determination of the term medical mistake

Medical mistake can include many different concepts and factors. It may be a good faith misconception by the treating physician, which may have no corpus delicti, and which was caused by certain factors, such as medical imperfections, in the aftermath. A mistake can be a deviation from a certain norm, and it does not matter whether the deviation caused a deterioration of health or, on the contrary, a benefit to health.

Constrained by certain frameworks, a medical mistake can be a failure to execute a specific treatment plan by the medical staff, or the use of an unsuitable treatment plan, or all inaction on the part of the treating personnel. The consequence is an adverse event, or an unintended negative event for the patient on the part of the treating physician. The term medical mistake does not imply a deliberate mistake.[5] The system of proving medical mistakes encounters a problem where it is extremely difficult to determine whether the harm to a patient's health was caused by a medical intervention, or the patient himself contributed to the deterioration of his health. This creates difficulties in defining the term medical mistake itself.[6]

Medical mistakes include not only active human mistakes, which in turn are difficult to foresee, but must often be identified through systemic deficiencies. Medical mistakes bring with them adverse consequences for the patient's health, which are caused by procedural complications. In turn, procedural complications may constitute any deviations from the normal expected outcome of medical treatment. Procedural complications may take different forms, such as death of a patient or any deviation from the norm with the resulting uncomfortable situation. Therefore, procedural complications result in a medical mistake, so a medical mistake is a mistake in the treatment of a

[4] Nõmper, A., Kiivet, R. A., Tammepuu, K. (2019). *Ettepanek: vähendada tervishoiutöötaja vastutust patsiendikindlustuse loomiseks.* Retrieved from https://juridica.ee/article_full.php?uri=2019_1_ettepanek_v_hendada_tervishoiut_taja_vastutust_patsiendikindlustuse_loomiseks, 26 February 2022.

[5] Grober, E.D., Bohnen J. M. A. (2005). Defining medical error. *Canadian Journal of Surgery*, 48 (1), 39-44.

[6] Antsov, E. (2016). *Me teeme vigu. Academia. ENS teataja*. Retrieved from https://www.academia.edu/35534179/ENS_teataja_Eva_Antsov_Me_teeme_vigu_20_03_2016_docx, 27 February 2022.

disease, this mistake is in the method, tactics of treatment, and timing of the treatment.[7] Consequently, a deviation from the norm, due to the actions or omissions of the attending medical doctor, which results in a deterioration of the patient's health, is a medical mistake. One of the main criteria of medical mistake will be the conscientious or deliberate mistake of the doctor, which results from certain objective conditions, and a large number of additional factors are involved.

1.2. Methodology for identifying medical mistake

In order to identify the existence of a medical mistake, or a violation of the rules for providing medical treatment, it is necessary to use definitions in order to correctly qualify deviations from the standard. The international medical community has classified mistakes into 3 classifications. The first classification is the real mistake, which is either an omission or a commission, this mistake is a violation of a universal or epidemiological law, based on a scientific basis, or a violation of consolidated rules, based on experience and competence. The second mistake is a quasi-mistake, which is connected with the general absence of any scientific knowledge of a certain question at the time of certain events, or all connected with some unpredictable result and inevitable event. The third mistake is the deliberate commission of a mistake on the part of medical personnel. Medical personnel deliberately made a mistake in relation to the patient, applying diagnostic or therapeutic procedures solely for the purpose of ex adiuvantibus, thereby causing deliberate harm to the patient's health. To determine medical mistake, the medical-legal expert must first determine whether the causes and background of such mistakes are related to non-compliance, or whether there are in fact reasons that would justify the actions of medical personnel. To identify medical mistakes, the medical-legal expert must use the ex-post evaluation methodology, or judgment. Use the same criteria and characteristics that the medical personnel had at the time of the possible medical mistake, consider certain characteristics of the medical personnel, and use the same technical and instrumental equipment. Such an ex-ante evaluation must take absolutely all aspects into account. In the case that we encounter an excusable mistake, the medical-legal expert is obliged to provide a technical definition and description. In order to evaluate the damage that has been caused by a proven medical mistake, the medical-legal expert

[7] Nõmper, A., Kiivet, R. A., Tammepuu, K. (2019), *supra nota* 10.

must quantify the temporary or permanent biological damage that has been caused by the mistake or non-compliance.[8]

In the methodological aspect, when establishing and creating a legal analysis over medical mistake, there is an essential clash with the fact that a clear normative definition of professional mistakes on the part of the medical professional is important. It is based on a clear definition of medical mistake and based on the boundaries that have been established during the treatment by the medical staff, as well as the definition of norms and the difference of deviation from norms, that the existence of medical mistake can be determined.

One of the conditions of general tort liability is, in particular, the guilt of the offender. Guilt-based liability and strict, designated liability are among the most important forms of liability, which in turn cannot be polar opposites, they in turn complement each other. Determining the guilt of a medical professional who has caused possible harm is based on how much the medical examiner must fully immerse himself in all the parameters and characteristics in order to determine the exact amount of guilt.[9]

In the modern world, the authority of the physician is based primarily on his professional qualifications, with the competence of the patient rooted, in turn, in the construction of a certain informed consent procedure. From this it follows that the modern process of providing medical care resembles a scientific activity rather than a relationship with a paternalistic legal element, thus forming not a double medical contract, which is the basis of the relationship between the patient and the representative of medical services, but this creates a situation that accumulates on medical activity, including multilateral dimensions and, in addition, joint decision-making, along with many lines of internal communication.[10]. This is important to note, and understand, when determining medical mistakes.

[8] Ferrara, S.D., Baccino, E., Bajanowski, T., Boscolo-Berto, R., Castellano, M., De Angel, R., Pauliukevičius, A., Ricci, P., Vanezis, P., Nuno Viera, D., Viel, G, Villanueva, E. (2013), *supra nota* 6.
[9] Lahe, J. (2013). *The Concept of Fault of the Tortfeasor in Estonian Tort Law: A Comparative Perspective.* Review of Central and East European Law, 38 (2), 141−170.
[10] Bach-Golecka, D. (2021). Compensation Schemes and Extra-Judicial Solutions in Case of Medical Malpractice. A Commentary on Contemporary Arrangements, *Springer*, 53.

2. THE ESTONIAN SYSTEM OF PROVING MEDICAL MISTAKES

The rights of the people to health care and social security are defined in § 28 of the Constitution of the Republic of Estonia. In the most primary form, the rights of patients are guaranteed by § 16 of the Constitution of the Republic of Estonia.[11] Under the condition that a medical mistake has resulted in a threat to the patient's health, the patient has the right to appeal to the Estonian court against the health care provider or the service provider.
The state is obligated to provide social rights for people, because social goods consist in the right of a person to receive benefits.

There are two main organizations in Estonia that are dedicated to protecting patients' rights. The Estonian Patient Advocacy Association and the Patients' Rights Association. These organizations provide consultations in case of conflicts between patients and medical institutions or medical doctors, in particular.[12] However, these organizations are non-profit and non-governmental.

There are government organizations that are patient right protectors, their task is to control and ensure the rights of patients in case a patient would like to submit an application or a complaint in case of a medical mistake. The Estonian Health Insurance Fund checks the implementation of the health service contract, including the issues of queues and health care financing. The Health Board, which assesses compliance with the law in the provision of health services. Patients have the right to appeal to the Ministry of Social Affairs and to the expert committee on the quality of health care services established by the Ministry.[13] The problem is that these organizations have no right to force the medical institution to compensate any damage to the patient who suffered from the provision of medical services.

[11] Madise, Ü., Kalmo, H., Mälksoo, L., Narits, R., Raidla, J., Vinkel, P. (2017). Eesti Vabariigi põhiseadus kommenteeritud väljaanne, *Juura*, 196-389.
[12] Sõritsa, D., Lahe, J. (2021). *Compensation for Damages in the Cases of Medical Malpractice: Estonian Perspective. In: Compensation Schemes for Damages Caused by Healthcare and Alternatives to Court Proceedings,* Springer, 173
[13] *Ibid.*

The regulatory framework that is responsible for the Estonian health care system and in particular the proving of medical mistakes in Estonia is contained in five main legislative acts: the Health Insurance Act (2002) followed by the Health Services Organization Act (2002), followed by one of the first laws the Public Health Act (1995), then the Medicinal Products Act (2005), and the Law of Obligations Act (2002). It is important to note that the main entities that regulate the health care system in Estonia are the Parliament, the Government, and the Ministry of Social Affairs, and of course the agencies as well as the Health Insurance Fund. In this case, the Ministry of Social Affairs plays an important role in the system of proving of medical mistakes, as it regulates and manages the health care system on the state level. Acts that concern health care come into effect thanks to the government and the Ministry of Resolutions. The most basic political document in the field of health care is the National Health Plan (NHP). Patients are represented by working groups and commissions of the Ministry of Social Affairs, as well as members of the supervisory board of the Estonian Health Insurance Fund (EHIF). The management of the health care system itself is based on regulation and contractual relations.[14]
The Estonian system of proving medical mistakes is based primarily on court proceedings as well as out-of-court proceedings, with inherent contractual and tort liability on the part of the medical institution.

Medical service in Estonia operates on the basis of a certain contract, which is concluded between the patient and the party that provides the medical service. The medical service must conform at least to the general level of medicine, it is at the time the service is rendered that the service must be rendered thoroughly. The system of proving medical mistakes in Estonia is based on the Expert Committee on the Quality of Medical Care, which operates under the Ministry of Social Affairs. Formal complaints are submitted to the Expert Committee if the complaint cannot be resolved without the use of this system between the patient and the health care provider. The Commission of Experts of the Ministry of Social Affairs acts as an independent adviser to all patients who lodge complaints, but the decisions of the Commission are not legally binding. The Commission can find a health care provider guilty of medical mistake, which means that they have not performed their duties to the patient in good faith, thereby causing harm to the patient's health. The patient has the right to have his or her medical malpractice case taken to court, and the Board of Health has the right to fine or revoke certain licenses of a provider who provides medical services.[15]

[14] Habicht, T., Reinap M., Kasekamp, K., Sikkut, R., Aaben, L., Van Ginneken, E. (2018). *Estonia Health system review.* Copenhagen, Denmark: European Observatory, 20.
[15] *Ibid.*

The Estonian Supreme Court has ruled on certain standards that health care providers must follow. The standard of care must be proportionate to the conduct of an educated as well as an experienced medical provider in a certain area of a similar situation. In other words, to assess the circumstances that caused the breach of contractual obligations, it is necessary to determine how an educated and experienced physician behaved in the same circumstances. If an educated and experienced physician in the relevant field would have acted in the same manner as the defendant, then medical mistake or misdiagnosis is excusable.[16]

If a patient finds a specific violation of the Health Services Act, he or she has the right to file a complaint with the Board of Health, which has the right to initiate specific proceedings on the matter. This is followed by legal action, which may be in the form of a civil or criminal action.[17] Furthermore, there is an alternative way of resolving disputes without using the Estonian court system, using an alternative procedure out of court. If this does not lead to a satisfactory outcome, patients have the option of suing the medical institution or a particular employee in civil or criminal proceedings. An alternative dispute resolution option is arbitration, which takes place in a court of arbitration.[18] Therefore, patients who are victims of medical mistakes have a choice.

2.1. Legal regulation of relations

In Estonia, the legal relationship between the patient and the health care provider is based on a contract for the provision of health care services. The Law of Obligations Act (LOA) consists of special provisions that in turn regulate the contractual relationship between the patient and the health care provider.[19] Under the terms of this contract, a health care provider is obligated to provide health care services to another person based on LOA § 758. A provider who provides health care services is responsible for possible mistakes in his activities that may result in a negative outcome for the patient pursuant to LOA § 770.

The specific peculiarity of Estonian law is that both the legal entity, which is the executor of medical persons, and the employees, as individuals, who provide medical care directly, according

[16] Sõritsa, D. (2015). The Health-Care Provider's Civil Liability in Cases of Wrongful Life: An Estonian Perspective. *Juridica International*, 23, 43−51.
[17] Nõmper, A. (2012). Eesti võlaõigusseaduse 10 esimest aastat: arsti vastutus vajab reformi. *Eesti Arst,* 91(7), 376–378.
[18] Sõritsa, D., Lahe, J. (2021), *supra nota* 13, 163-165.
[19] Sõritsa, D. (2015), *supra nota* 15.

to LOA § 758 (2), are liable to the injured party. At the time of personal liability, it is crucial to determine what the contractual relationship and role was with the employee who provided the medical services. Only if the provider meets certain criteria of personal liability under the law will the provider and the employee be jointly and severally liable under LOA §65 (2), and thus the patient has the right to choose against whom and to what extent they wish to sue for medical malpractice.[20]

Based on the terms of the contract, the provider of medical services cannot give guarantees to the patient who orders medical services, the provider only gives an obligation to use all necessary opportunities in order to provide the necessary process of treatment.[21] At the same time a medical employee can be held criminally or civilly liable for committing any medical mistakes.[22] Therefore, the blame is essentially shared by all who provide health care services, while not providing guarantees, nonetheless being nonpartisan with respect to the medical provider.

The liability of the provider of health care services for defects of treatment is determined solely by contract. However, in the case of damage to life, health, or a violation of a patient's rights during the provision of medical services, the customer has the possibility to appeal to certain rules of delictual liability according to LOA § 1044. The injured party has the option of choosing the type of liability. However, the provider of health care services cannot be held liable in the absence of any bodily injury or harm to health or life.[23] Every medical operation result in some form of bodily injury. This can occur even in cases where surgery is necessary to save the lives of patients.[24] However, there are medical services that do not result in bodily injury, for example, if the medical mistake is the patient's dissatisfaction with the result of treatment, or the violation of privacy, sensitive liability cannot be used.

According to LOA § 759, a contract for medical services automatically becomes a contract after the commencement of the provision of those particular medical services. The contract for medical services is one of those contracts under LOA § 770 in which the very liability for breach of which depends solely on guilt under the law. Guilt, therefore, is not a decisive factor in examples of

[20] Nõmper, A., Sootak, J. (2007). Meditsiiniõigus, *Juura*, 130-136.
[21] Luil, O.J., Kratenko, M. (2020), *supra nota* 7.
[22] Sootak, J., Elkind, E., Parmas, A., Pikamäe, P., Randma, P. (2018). Karistusõigus. Üldosa. *Juura*, Õigusteabe AS, 102.
[23] Luil, O.J., Kratenko, M. (2020), *supra nota* 7.
[24] Samson, E. (1997). Meditsiiniõiguse traditsioonilised ja uued probleemid, *Juridica*, 61-63.

health care provider liability, the strict liability of the health care provider will not lead to a different result than solely liability for fault, thus is problematic. In this way, guilt becomes a necessary condition of health care provider contractual liability nonsensical. Determining guilt in the context of agency contracts is a problem, because of this there are problems about proving medical mistake, since the contract for the provision of medical care is also an agency contract.[25]

Under LOA §763 (1), a health care provider has the option to deviate from usual methods of treatment, but only if the usual, generally accepted methods would not be as effective as the alternatives, the patient must be informed about the nature of such methods, as well as the consequences that may possibly result from such methods. The law allows for deviation from the general standards of care under LOA §762, the health care provider must also refer the patient to an alternate examiner to evaluate the deviation from the general standards of care. However, if it is determined that the deviation from the procedural standard of care was unreasonable, the provider will not be at fault unless there is a case of form-majeure under LOA §103 (2). Because there is considerable rarity in such circumstances, provider culpability is established if medical mistake is found to have occurred.[26]

From the general rule, too, contractual liability in Estonia is of a strict nature. The legislator can establish a certain rule, when a provider of medical services will be liable only for a culpable violation of strictly his duties, for mistakes in diagnosis and treatment.[27]

2.1.1. Burden of proof

Patients who have suffered from medical mistakes have the opportunity to sue for damages in criminal and civil proceedings. One of the main conditions for filing a civil suit is precisely that the factual circumstances of the case, which are the grounds for the case, actually coincide with the facts of the criminal offense for which the proceedings may be pending. The criminal process makes it easier for the victim of a medical malpractice to obtain any compensation, because in the case of a criminal suit the burden of proving the factual circumstances that were the causes of

[25] Ingeri, L-T., Pormeister, K. (2014). Kas süü tervishoiuteenuse osutaja lepingulise vastutuse eeldusena on iseseisev või sisutühi kontseptsioon? *Juridica*, 10, 762−780.
[26] Sõritsa, D. (2015), *supra nota* 16.
[27] Nõmper, A. (2002). Arsti vastutus I, *Eesti Arst*, Vol. 81(1), 48.

action is on the prosecutor.[28] This practice is common and not inherent in medical mistake proceedings.

Based on Code of Criminal Procedure (CCP) § 230 (1), each litigant has the burden of proving the facts that form the basis of any claims and defenses, unless otherwise provided by law.[29] It is important to note that the burden of proof is on the patient under LOA § 770 (3), which is the basis of contractual liability in medical institutions. In the case of a medical institution's tort liability, the patient, who is the victim of a medical mistake, must prove the fact that the harm was caused under the patient's legal right, as well as the causal link that links the breach of duty by the medical institution and the resulting damage.[30]
However, in Estonian law there are certain tools that can help the injured party by shifting the burden of proof, which can occur in two cases. Firstly, it can be shifted when the medical services that have been provided have not been documented in accordance with LOA § 770 (3). Secondly, the burden of proof may be shifted to the health care provider if there was a diagnostic or treatment mistake which caused the patient to develop a health disorder that could have been avoided with normal treatment, so it is presumed that the health damage was due to the mistake. The patient, though, must first prove the fact that there was a mistake, and prove the fact that the mistake would not have occurred if the treatment had been correct.[31]

The presumption, which refers to causation, in the case of any harm resulting from medical mistake or misdiagnosis can be applied both in the case of contractual and in the case of tortious liability.[32]

The medical establishment proves a deviation from the recommendations that were directed for treatment only if the patient, who was the victim of a medical mistake, has proven a general level that applies to the medical science that applies specifically to the patient's particular condition.[33]

Nevertheless, in a situation where a medical professional has done everything in his power with the use of proper arguments, it will be extremely difficult for a patient who encountered a medical mistake to prove the fact that his health damage was caused specifically by the actions of the

[28] Sõritsa, D., Lahe, J. (2021), *supra nota* 15, 170-171.
[29] Decision in case no 3-2-1-171-10 pf the Civil Chamber of the Supreme Court of 8 April 2011.
[30] Sõritsa, D., Lahe, J. (2021), *supra nota* 15, 170-171.
[31] *Ibid.*
[32] Sõrista, D. (2012). *Tervishoiuteenuse osutaja deliktiõiguslik vastutus* (Master's thesis) University of Tatru, Tartu.
[33] Nõmper, A. (2011) Lisandusi Riigikohtu lahendile 3-1-1-79-10, *Juridica 2*, 162-164.

medical professional. Thus, the causal link that exists between the medical worker's violation and the harm suffered by the patient will not be obvious, as the medical employee will be able to argue that even in the absence of violations on his part, the final result of treatment would have been exactly the same as it actually is. In this regard, the liability regime could make it easier for the patient to prove medical mistake.[34] However, without a liability regime, it creates an extremely weak position for patients who are affected by medical mistakes, because the burden of proof is often on them.

2.1.2. Compensation for medical mistakes and court practice

In Estonia, patients are compensated through the mechanism of clean compensation, regardless of whether the damage is compensated through criminal or civil proceedings.[35] This creates a certain fairness to the party who has suffered harm from medical mistakes. This compensation is based on LOA §127 (1). The problem, however, is that there are certain limitations that make it impossible to provide full compensation for damages.

According to LOA §127 (2) harm cannot be compensated if the prevention of harm was not the purpose of the obligation, or the protective provision, which in turn was a complaint to the Board of Health about a violation of the law in providing medical services, or dissatisfaction with the medical services provided by family physicians. In order to obtain an expert opinion, which determines whether a mistake has occurred or not, the patient must apply to the expert commission, which is responsible for the quality of medical services, they in turn provide the patient with an opinion, which defines the services that have been provided. The commission's opinion can be considered reliable, and the commission can compensate the patient.[36] In this way, the patient has the possibility of receiving compensation without filing a lawsuit in court.
There are also health insurance payments in Estonia, and they in turn are divided into two types. The first type is used to provide medical services, the other is for benefits in case of temporary incapacity for work.

But in Estonia there is no system of compulsory insurance for medical doctors, so in case a patient's claim is filed against the doctor and not against the provider of medical services, the doctor has a motive to hide his mistakes, as compensation for harm, i.e., compensation for medical mistakes,

[34] Nõmper, A., Sootak, J. (2007), *supra nota* 16.
[35] Sõritsa, D., Lahe, J. (2021), *supra nota* 15, 171.
[36] *Ibid.,* 172.

has a direct impact on their financial situation. This is confirmed by the statistics related to claims about the quality of medical care in Estonia and some neighboring countries, where liability insurance for medical mistakes exists and is mandatory.[37]

The absence of compulsory insurance makes it difficult to obtain compensation and reduces the amount of litigation related to medical mistakes in Estonia.

In 2017, the Healthcare Quality Expert Commission reviewed 191 patient complaints, 41 (21%) of which were related to malpractice by treating staff, of which 27 (66%) were related to physician mistakes. However, the total number of complaints has increased significantly since 2004, especially in 2016 and 2017.[38] Compared to neighboring countries, Estonia has a very low rate of complaints and compensation for medical mistakes.

In Estonia, the number of court cases involving medical malpractice is extremely small. The main reasons for this are the difficulty of proving medical mistakes, as well as the cost of filing a lawsuit in court. The cost of litigation is also greatly influenced by the amount of compensation that a patient who has suffered from medical mistake can potentially receive. It is important to note, however, that court practice in Estonia shows that the amount awarded by the courts for medical mistakes in Estonia is small.[39]

There are positive trends, however, in comparing the regulation of physician liability before and after the LOA went into effect, the number of cases that involved liability for medical mistakes increased. Before the LOA, the number of cases was at a low level. However, the number of medical mistake cases remained at a low level. The expert committee in charge of medical mistake quality in 2011 identified about 30 medical mistakes. The low number of medical malpractice cases can be explained by the fact that the parties often use alternative dispute resolution rather than the mechanisms of the court system. Another important factor is that it creates a certain difficulty for patients to prove substandard care or medical mistakes in court. Because the lack of access to justice due to high prices and the difficulty of proving a claim are of a permanent nature.[40] In the absence of change, there is no likelihood of expecting any change.

[37] Luil, O.J., Kratenko, M. (2020), *supra nota* 7.
[38] Habicht, T., Reinap M., Kasekamp, K., Sikkut, R., Aaben, L., Van Ginneken, E. (2018), *supra nota* 14, 49.
[39] Nõmper, A. (2012), *supra nota* 17.
[40] *Ibid.*

2.2. Problems of the Estonian system of proving medical mistakes

The precise formulation of the problem is the foundation for finding and solving the problem.
In addition to the problems outlined above, Estonia's current system for proving medical mistakes has three additional shortcomings. The first drawback is the lack of a liability insurance system, which does not provide adequate protection for patients who have suffered from medical mistakes. The second disadvantage is that the system is not conducive to documenting medical mistakes, because if it were, the amount of responsibility and culpability would increase. The third reason is that a system that records, analyzes, and prevents medical mistakes does not fulfill its responsibilities.[41]

The current system for proving medical mistakes in Estonia is not conducive to improving the quality of healthcare in Estonia and the provision of medical services in particular. The system is based on the fact that it directs appeals and complaints to the court, which in turn sets precedents for concealing mistakes on the part of the health care provider and treating physicians, as well as the struggle to identify the offender on the part of the provider.[42]

The high responsibility of the physician plays one of the key roles in the problem of the system of proving medical mistakes in Estonia. In addition, the system faces legal problems, such as the difficulty in assessing the correctness of actions on the part of the provider of medical services, the difficulty in proving violations related to harm relative to certain standards, and the high dependence on expert opinion for the possibility of obtaining compensation in cases of medical mistakes.

The system of professional liability in Estonia, which is currently in place, focuses on finding the culprit. Estonian mandatory law provides that in the case of a medical mistake, the doctor will be held personally liable - this in turn is an exception, because often in the case of an employee's violation, the employer must be held liable. The system provides for the fact that the perpetrator is determined by filing a civil or criminal action in prison, thereby placing the defendant in the position of a defender, so that in this case the medical institution or the employee who provided

[41] Nõmper, A. (2017). Meditsiiniõiguslik tagasivaade 2016. aastale ehk veel kord arsti vastutusest, *Eesti Arst*, 96(3), 175–177.
[42] Nõmper, A. (2012), *supra nota* 17.

the medical services is known to be guilty.[43] Such a structure encourages the deliberate concealment of medical mistakes.

The Estonian health insurance financing system is not at a sufficiently acceptable level and decent health care is still not fully accessible to certain individuals in the long term.[44]

The Estonian health insurance system, based on international opinion, is negative due to the fact that the financing of health insurance is based on solidarity, this principle of solidarity is unstable, so it needs to be reformed by the state.[45]

In the Estonian system, there are certain rules for redistributing the burden of proof of medical mistakes for patients affected by them, but these rules are extremely limited in scope and insufficient to fix the system.

[43] Siim, N. (2013). Meditsiiniõiguse ekspert: Eesti praegune kutsealase vastutuse süsteem on keskendunud süüdlase otsimisele, *Eesti Arst*, 92(10), 549-551
[44] Tavits, G. (2011). International Standards for Social Security and Their Fulfillment in Estonia: Changes in Pension and health Insurance and Their Constitutionality. *Juridica International*, 18, 27−44.
[45] *Ibid.*

3. THE FINNISH SYSTEM OF PROVING MEDICAL MISTAKES

The Finnish health care system is a very favorable example, as the system is highly respected. The system has undergone reforms which have increased its efficiency.[46] Importantly, however, this was not something that immediately happened; the Finnish government has been trying to reform the health care system as a whole for decades. The current Finnish government has been able to introduce legislation in 2020, so there will be a reform in 2023 that will increase the efficiency of healthcare in addition to the current system. Finland is well positioned to improve the system through structural reforms that, in addition to increasing the overall efficiency of the health care system, also increase the efficiency of coordination, in particular.[47]

According to various indicators, the health of the Finnish population has improved significantly over the past few decades. The efficiency of health services has improved. Life expectancy has increased over the past three decades.[48] Finland was the first country in Northern Europe to regulate the rights of patients, which consisted of legally prescribed, ethical rules that health care professionals had to follow when treating patients.[49]

Access to care, treatment outcomes, range, and coverage of services, as well as prevention and the system of evidence of medical mistakes is a suitable example for comparison with the Estonian one and a demonstration of possible choices in the direction of the development of the Estonian system.

The difference between the Estonian and Finnish systems is that the Finnish system is based on three parallel systems. These three parallel systems differ in their financing, e.g., the basic system is fundamentally financed through taxes of the system, which in turn is managed by the

[46] Richard, B. Saltman, J. T. (2016). Health reform in Finland: current proposals and unresolved challenges. *Cambridge University Press*, 11 (3), 1.
[47] Tynkkynen, L. K., Pulkki, J., Tervonen-Goncalves, L., Schön, P., Burström, B., Keskimäki, I. (2022). Health system reforms and the needs of the ageing population—an analysis of recent policy paths and reform trends in Finland and Sweden. *European Journal of Ageing.*
[48] Vuorenkoski, L., Mladovsky, P., Mossialos, E. A. (2008). *Finland: Health System Review, Health Systems in Transition Series. Brussels: European Observatory on Health Systems and Policies*, 10.
[49] Pahlman, I. (1997). Patsiendi õigused Soomes, *Juridica*, 66-67.

municipalities as well as the district hospitals. The municipal system, whose funding comes from taxes linked to municipal taxes. The municipal health care system provides basic health care to all those in need, in turn guaranteeing universal care. There is also a private system, which is financed by out-of-pocket expenses and private investment, as well as by national health insurance. A third system is the occupational system, which is aimed at employees and financed by the employer, as well as by the national health insurance scheme.[50]

In Finland, patients make annual complaints, such as those related to imaging. After 2005, the number of patient complaints about their injuries began to increase, and the number of complaints lodged each year has almost doubled. One possible reason for this is a change in patient safety culture.[51]

3.1. Insurance in the Finnish system of proving medical mistakes

The Finnish national patient insurance system is based on the Patient Injury Act in Finland. This act protects the rights of medical staff and patients. According to the act, a patient has the right to apply for compensation for a medical mistake if he or she has been harmed because of treatment. [52] The benefit of the system is that there is no tort liability.

The foundation in Finland at the moment is the insurance system, which is based on the principle of avoidability. This is the basic principle of the system of tort liability. The patient under tort liability is compensated if it can be proven that the harm was caused by negligence.[53]

The Finnish health insurance system is compulsory for medical practitioners and others who provide health care services. The Finnish health insurance system also covers other health care professionals. The system works the same way for every patient. If there is no insurance and no health care provider, the patient will still be compensated for a medical mistake.[54] Finland uses an

[50] Keskimäki, I., Tynkkynen, L-K., Reissel, E., Koivusalo, M. (2019). Finland: Health System Review. Health Systems in Transition. *European Observatory on Health Systems and Policies.*
[51] *Ibid.*
[52] Tarkiainen, T., Turpeinen, M., Haapea, M., Liukkonen, E., Niinimäki, E. (2021). Investigating errors in medical imaging: medical malpractice cases in Finland. Retrieved from https://insightsimaging.springeropen.com/articles/10.1186/s13244-021-01011-8#ref-CR8, 4 March 2022.
[53] Kessler, D.P. (2011), Evaluating the medical malpractice system and options for reform. *J. Econ Perspect.* 93–110.
[54] Nõmper, A., Kiivet, R. A., Tammepuu, K. (2019), *supra nota* 10.

information and compensation methodology in its system. The management and decision related to notification of any injuries or mistakes by patients goes to the Finnish Patient Insurance Centre, which is able to assist both the public and the private sector in turn.[55]

3.2. Compensation for medical mistakes and court practice

There is no compensation for a minor medical mistake in Finland. An injury can be considered minor if it causes mild pain.[56]

Compensation rates are about 30% of the total. One reason for these low rates in Finland is that the law requires a direct link between the failure to perform the duty and the harm caused. In medicine, it is often difficult to distinguish which adverse events and mistakes are related to the examination itself and which are related to the accompanying treatment.

The procedure for filing a medical malpractice claim consists of two steps. First, it is necessary to determine whether a particular patient's traumatic injury is compensable, that is, whether it could have been avoided. To begin with, a lawsuit is registered, this lawsuit is filed free of charge. Next, comments are solicited from all parties involved in the case, and finally, an expert medical opinion is prepared. In 2016, 30% of patients' medical mistake compensation claims were successful. At the second stage, the amount of compensation is determined and paid to the patient. The main advantages of the Scandinavian insurance system used in Finland related to professional liability are its simplicity and quick resolution of complaints. For the patient, filing a complaint is free, the procedure is fast, the amounts of compensation are fair and easily predictable (based on a published table).[57]

In 2011, the Finnish system conducted a study and found that patients were entitled to compensation in 2,190 cases. Assuming that most of the claims could have originated in hospitals rather than personally with general practitioners, it is worth comparing the figures, which are related to the number of hospitalizations per year. According to the Organisation for Economic Co-operation and Development (OECD), this number was 227,633 in Estonia and 984,547 in

[55] Tarkiainen, T., Turpeinen, M., Haapea, M., Liukkonen, E., Niinimäki, E. (2021), *supra nota* 24.
[56] *Ibid.*
[57] Nõmper, A., Kiivet, R. A., Tammepuu, K. (2019), *supra nota* 10.

Finland, thus 4.3 times less in Estonia than in Finland.[58] Considering the number of hospitalisations per year in Estonia and Finland, however, the fact that the Finnish population is about 4 times larger than in Estonia.[59] Therefore a conclusion can be produced, which would be that technically the difference in numbers between Finland and Estonia is not great.

The establishment of a patient insurance system similar to the Scandinavian model, in particular the example of Finland, will be accompanied by a reduction in the criminal liability of the medical doctor, as certain procedural guarantees will be provided to the doctor in the case of self-reporting of a medical mistake. Taking the Finnish model of the system for proving medical mistakes as an example, the rates of compensation must be fair and take into account Estonian court practice. If such regulations are not followed, the Estonian system of proving of medical mistakes may face a lack of change and the continued use of the court.[60]

By the example of Finland Estonia can change the order of personal contractual liability, which is used for the medical employee, which in practice does not benefit the improvement of the system of the medical institution and the proving of medical mistakes but focuses on the punishment of a certain employee.[61] The basis for such changes can be taken from the Finnish practice of proving medical mistakes.

[58] Nõmper, A. (2012), *supra nota* 16.
[59] Official Statistics Finland (2022). Population structure. Retrieved from: https://www.stat.fi/til/vaerak/index_en.html, 25 April 2022.
[60] Nõmper, A., Kiivet, R. A., Tammepuu, K. (2019), *supra nota* 10.
[61] *Ibid.*

4. PROBLEM SOLUTIONS IN THE ESTONIAN SYSTEM OF PROVING MEDICAL MISTAKES

The main problem of proving a medical mistake in Estonia is the burden of proof and the sense of responsibility on the part of the institution that provides medical services. Prospects for solving disputes related to medical mistakes, it should be noted that the compulsory insurance system, which has spread in Scandinavian countries, is the key to solving the problems of the proving of medical mistakes system in Estonia. This solution is being discussed at the legislative level in Estonia.

Mandatory insurance is not only an alternative and more feasible and affordable option to provide compensation to patients who have been harmed by medical services as well as the common injured, it is also an option that will increase the amount of data on such incidents, creating opportunities for medical professionals to report them and making discussion broader among independent professionals.[62] This way the system of proving medical mistakes and the entire health care system will be fully developed.

However, liability insurance does not have to be compulsory in case it is possible to put together a system that will balance prevention of losses and mitigation of consequences, liability insurance may not be compulsory. Finland's system creates a separate extrajudicial system of compensation through insurers, so liability insurance should not be mandatory.[63]

On February 14, 2017, the Estonian Ministry of Social Affairs announced that it will submit for approval the beginning of development of a project that will affect the creation of health care provider liability insurance. This is a law on patient insurance. The intention is to create a new system that will save patients from having to file a civil or criminal lawsuit in order to receive compensation for a medical mistake. This bill should affect not only patients, but also medical workers, to motivate them to regularly analyze the cases of violation and creation of unfair work.[64]

[62] Luil, O.J., Kratenko, M. (2020), *supra nota* 7.
[63] Siim, N. (2013), *supra nota 22,* 549-551.
[64] Sõritsa, D., Lahe, J. (2021), *supra nota* 16, 176-177.

Because of this draft law, receiving compensation under the new system will not deprive the patient, if he or she wishes, of the right to file a civil or criminal lawsuit in court. Based on the new system, a patient who has suffered from medical services will only need to submit an application to the appropriate organization, and that organization will collect evidence and documentation. In court, the burden of proof is on the patient.[65] This makes things much easier for the patient in the area of evidence and the financial aspect.

The Estonian Ministry of Social Affairs has prepared a project in 2019, which aims to establish the insurance liability of a health care provider or a medical institution. The objective of the project is to introduce insurance in the Estonian system that is based without proof of guilt, thereby compensating for the damage caused to the patient. The difference from the current system of compensation for damages to patients is that in the proposed system, compensation will not depend on whether the health care provider is at fault or not, the only important thing is to prove that the damage to the patient could have been avoided. In addition to this, in the 2019 draft there is the creation of a fund that will relate to health insurance in order to provide a uniform and efficient way of compensating patients.[66]

The main obstacle to passing a bill on patient insurance is whether insurance should be through private insurers, or whether insurance should be compulsory, and thus insurance would be a government agency.[67]

The Constitution of the Republic of Estonia, § 28 (1), does not prescribe that health insurance must apply to all people. The Estonian health insurance system is based on the Bismarck Model which means that the system is based from the very beginning on the fact that health insurance is provided only to those people who finance the insurance system in question.[68] In Estonia, there is no clear decision about the universal right to health care.

[65] Nõmper, A. (2017), *supra nota* 21, 177.
[66] Lääne, L.L., Harkmaa, P.L., Andersone, I., Leitens, G., Kirklytė, I., Žigutė, E., Golovnitskaya, M., Budchanka, Y. (2020). *How do the Baltics and Belarus address risks caused by medical treatment?* Retrieved from: https://www.sorainen.com/publications/how-baltics-and-belarus-address-risks-caused-by-medical-treatment/. 27 April 2022.
[67] Sõritsa, D., Lahe, J. (2021), *supra nota* 15, 177.
[68] Tavits, G. (2011), *supra nota* 22, 33.

CONCLUSIONS

The main purpose of the system of proving of medical mistake is to help not only the patients to get a fair decision, but also the doctors and medical staff to get a fair decision so that the mistakes that have been made during treatment or the consequences of treatment are really related to their activities. The system of proving medical mistakes must deal with the problems in society that arise in connection with treatment and avoid them in the future. This is an extremely broad and complex area, as using the same treatment methods can lead to completely different results in the end.

At the heart of the system of proving medical mistakes is the accuracy and correctness of the definition of terms, which in turn redefines the solutions to the problems faced by those involved in the process of proving medical mistakes. Then there is the methodology for identifying medical mistakes, which are also extremely important in this process.

The research question of the thesis is what are the main legal problems regarding Estonian system for proving medical mistakes? Based on the analysis of the system and academic sources, the answer to this question is that the current system in Estonia has created conditions that do not encourage medical employees to report any medical mistakes, as the responsibility for a medical mistake lies first and foremost with the same medical employees who provided the treatment.[69] And if they do report, the burden of compensation for damages to the patient is borne solely by the health care provider. This creates an environment in which it is impossible to analyse cases of medical mistakes, or to develop system and train medical personnel so as to avoid such mistakes in the future. The patients, in turn, find it extremely difficult to obtain compensation.

After analysing the Estonian system of proving medical mistakes and finding problems in this system, and then comparing it with the Finnish system, the goal of the thesis could be fulfilled,

[69] Lääne, L.L., Harkmaa, P.L., Andersone, I., Leitens, G., Kirklytė, I., Žigutė, E., Golovnitskaya, M., Budchanka, Y. (2020), *supra nota* 28.

which was to be achieved as a result of the research. The goal of the thesis was to identify and propose solutions to problems, using an alternative system, associated with the Estonian system of proving medical mistakes. The Estonian government has found a solution in the form of adopting a system that works in Finland. The system in Finland is based on the fact that compensation for medical mistakes made by medical personnel is handled by a specially created fund. Such a fund facilitates the situation related to compensation and does not expose physicians who may commit a medical mistake to financial risk, as the burden of compensation does not fall on them.

Estonia's compulsory law, which provides for the personal liability of doctors, is an exception, and determining guilt through civil or criminal action creates an environment in which the person providing medical services is known to be guilty, and as mentioned, such a structure encourages the deliberate falsification of mistakes.[70]

The proposal to establish compulsory insurance for health care professionals and health care institutions would be a major key to solving the problems that exist in the system for proving medical mistakes. The current system requires patients to go to court to prove medical mistakes, but the new system that is in place in Finland will change this. In the new system, people who have suffered from malpractice will be able to claim compensation from insurance companies, which in turn will conclude a contract with the doctor or medical institution, and doctors and medical personnel will have no problem reporting malpractice.

[70] Siim, N. (2013), *supra nota* 22.

LIST OF REFERENCES

Scientific Books:

1. Habicht, T., Reinap M., Kasekamp, K., Sikkut, R., Aaben, L., Van Ginneken, E. (2018). Estonia Health system review. Copenhagen, Denmark: European Observatory, 20.

Scientific Articles:

2. Antsov, E. (2016). Me teeme vigu. Academia. ENS teataja. Retrieved from https://www.academia.edu/35534179/ENS_teataja_Eva_Antsov_Me_teeme_vigu_20_03_2016_docx, 27 February 2022.

3. Bach-Golecka, D. (2021). Compensation Schemes and Extra-Judicial Solutions in Case of Medical Malpractice. A Commentary on Contemporary Arrangements, Springer, 53.

4. Ferrara, S.D., Baccino, E., Bajanowski, T., Boscolo-Berto, R., Castellano, M., De Angel, R., Pauliukevičius, A., Ricci, P., Vanezis, P., Nuno Viera, D., Viel, G, Villanueva, E. (2013). Malpractice and medical liability. European Guidelines on Methods of Ascertainment and Criteria of Evaluation. Retrieved from https://www.uems.eu/__data/assets/pdf_file/0005/19616/Item-3.2.7-European_Medico_legal_Guidelines.pdf, 25 February 2022.

5. Grober, E.D., Bohnen J. M. A. (2005). Defining medical error. Canadian Journal of Surgery, 48 (1), 39-44.

6. Ingeri, L-T., Pormeister, K. (2014). Kas süü tervishoiuteenuse osutaja lepingulise vastutuse eeldusena on iseseisev või sisutühi kontseptsioon? Juridica, 10, 762−780.

7. Keskimäki, I., Tynkkynen, L-K., Reissel, E., Koivusalo, M. (2019). Finland: Health System Review. Health Systems in Transition. *European Observatory on Health Systems and Policies.*

8. Kessler, D.P. (2011). Evaluating the medical malpractice system and options for reform. *J. Econ Perspect.* 93–110.

9. Lahe, J. (2013). The Concept of Fault of the Tortfeasor in Estonian Tort Law: A Comparative Perspective. Review of Central and East European Law, 38 (2), 141−170.

10. Luil, O.J., Kratenko, M. (2020). Compensation for harm caused by inappropriate medical intervention: a comparative analysis of the Russian and Estonian experience. (Возмещение вреда, причиненного вследствие ненадлежащего медицинского вмешательства:

сравнительный анализ опыта РФ и Эстонии). Retrieved from https://zakon.ru/publication/igzakon/8286, 25 February 2022.

11. Madise, Ü., Kalmo, H., Mälksoo, L., Narits, R., Raidla, J., Vinkel, P. (2017). Eesti Vabariigi põhiseadus kommenteeritud väljaanne, Juura, 196-389.

12. Nõmper, A. (2002). Arsti vastutus I, Eesti Arst, Vol. 81(1), 48.

13. Nõmper, A. (2011) Lisandusi Riigikohtu lahendile 3-1-1-79-10, Juridica 2, 162-164.

14. Nõmper, A. (2017). Meditsiiniõiguslik tagasivaade 2016. aastale ehk veel kord arsti vastutusest, Eesti Arst, 96(3), 175–177.

15. Nõmper, A., Kiivet, R. A., Tammepuu, K. (2019). Ettepanek: vähendada tervishoiutöötaja vastutust patsiendikindlustuse loomiseks. Retrieved from https://juridica.ee/article_full.php?uri=2019_1_ettepanek_v_hendada_tervishoiut_taja_vastutust_patsiendikindlustuse_loomiseks, 26 February 2022.

16. Pahlman, I. (1997). Patsiendi õigused Soomes, Juridica, 66-67.

17. Richard, B. Saltman, J. T. (2016). Health reform in Finland: current proposals and unresolved challenges. Cambridge University Press, 11 (3), 1.

18. Samson, E. (1997). Maditsiiniõiguse traditsioonilised ja uued probleemid, Juridica, 61-63.

19. Siim, N. (2013). Meditsiiniõiguse ekspert: Eesti praegune kutsealase vastutuse süsteem on keskendunud süüdlase otsimisele, Eesti Arst, 92(10), 549-551.

20. Sootak, J., Elkind, E., Parmas, A., Pikamäe, P., Randma, P. (2018). Karistusõigus. Üldosa. Juura, Õigusteabe AS, 102.

21. Sõritsa, D. (2015). The Health-Care Provider's Civil Liability in Cases of Wrongful Life: An Estonian Perspective. Juridica International, 23, 43−51.

22. Sõritsa, D., Lahe, J. (2021). Compensation for Damages in the Cases of Medical Malpractice: Estonian Perspective. In: Compensation Schemes for Damages Caused by Healthcare and Alternatives to Court Proceedings, Springer, 173.

23. Tarkiainen, T., Turpeinen, M., Haapea, M., Liukkonen, E., Niinimäki, E. (2021). Investigating errors in medical imaging: medical malpractice cases in Finland. Retrieved from https://insightsimaging.springeropen.com/articles/10.1186/s13244-021-01011-8#ref-CR8, 4 March, 2022.

24. Tavits, G. (2011). International Standards for Social Security and Their Fulfillment in Estonia: Changes in Pension and health Insurance and Their Constitutionality. Juridica International, 18, 27−44.

Estonian legislation

25. Code of Criminal Procedure, RT I 27.12.2021.

26. Law of Obligations Act, RT I, 01.04.2022.

27. The Constitution of the Republic of Estonia, RT I, 30.12.2020.

Estonian court decisions

28. The Civil Chamber of the Supreme Court decision, 08.04.2011, no 3-2-1-171-10.

Other Sources

29. Lääne, L.L., Harkmaa, P.L., Andersone, I., Leitens, G., Kirklytė, I., Žigutė, E., Golovnitskaya, M., Budchanka, Y. (2020). *How do the Baltics and Belarus address risks caused by medical treatment?* Retrieved from: https://www.sorainen.com/publications/how-baltics-and-belarus-address-risks-caused-by-medical-treatment/. 27 April 2022.

30. Nõmper, A. (2012). Eesti võlaõigusseaduse 10 esimest aastat: arsti vastutus vajab reformi. Eesti Arst, 91(7), 376–378.

31. Nõmper, A., Sootak,J. (2007). Meditsiiniõigus, Juura, 130-136.

32. Official Journal of the European Union (2019). COUNCIL RECOMMENDATION of 9 June 2009 on patient safety, including the prevention and control of healthcare associated infections. Retrieved from https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32009H0703%2801%29, 26 February 2022.

33. Official Statistics Finland (2022). Population structure. Retrieved from: https://www.stat.fi/til/vaerak/index_en.html.

34. Sootak, J., Elkind, E., Parmas, A., Pikamäe, P., Randma, P. (2018). Karistusõigus. Üldosa. Juura, Õigusteabe AS, 102.

35. Sõrista, D. (2012). Tervishoiuteenuse osutaja deliktiõiguslik vastutus (Master's thesis) University of Tatru, Tartu.

36. Tynkkynen, L. K., Pulkki, J., Tervonen-Goncalves, L., Schön, P., Burström, B., Keskimäki, I. (2022). Health system reforms and the needs of the ageing population—an analysis of recent policy paths and reform trends in Finland and Sweden. *European Journal of Ageing.*

37. Vuorenkoski, L., Mladovsky, P., Mossialos, E. A. (2008), Finland: Health System Review, Health Systems in Transition Series. Brussels: European Observatory on Health Systems and Policies, 10.

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