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HEALTHCARE IN THE CONTEXT OF CONTRACTUAL OBLIGATION OF RESULT — CHALLENGES AND QUESTIONS[1]

1. INTRODUCTION

The relationship between a healthcare provider (for instance, a physician) and a patient is — at least to some extent and without undue exaggeration — marked by a degree of vagueness. It appears that this relationship is still often viewed through the lens of public law rather than private law. In light of similar historical developments, this ambiguity is probably relevant both to the situation in the Czech Republic and in Poland.

In the Czech legal system, this approach has been gradually changing, mainly due to the recodification of private law, which took the form of the 'new' Civil Code and came into effect on 1 January 2014. Healthcare is now provided on the basis of a special type of contract (healthcare contract), which is concluded between two private-law entities (subjects). However, the performance of such a contract affects the integrity of the person, giving rise to a number of specific factors that must be addressed, particularly within the framework of public law. The private- and public-law aspects of this contractual relationship are therefore inextricably linked. Con-

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[1] This contribution is based on an article published in the Czech professional journal Právní rozhledy (M. Příkazská: *Smlouva o dílo – může najít uplatnění při poskytování péče o zdraví?*, Právní rozhledy 2025, No. 7–8, pp. 211–219). The extended version will also form part of the planned monograph to be published in the Czech Republic in 2026. While the present text coincides in its central assumptions with the aforementioned contributions, it has been formally revised and partly substantively adapted for the purposes of this journal issue.

sidering commercial law, one can likewise speak of a form of extensive regulation of business activity in the provision of healthcare services. It is thus unsurprising that legal relationships between healthcare providers and patients are accompanied by several challenges relating to law interpretation and application.

These questions become increasingly relevant in light of rapid technological developments and advances in medical science, but they often extend beyond the realm of law alone. Continuous medical and technological innovation has been so fast-paced that procedures once considered virtually unimaginable are now widely implemented and, in many cases, routine. The impact of these technological developments must therefore be taken into account, as they enable greater precision in some types of treatment or medical procedures. Moreover, technological advancements significantly increase the likelihood of achieving a successful therapeutic outcome.

These developments also impact the requirements for the legal assessment of individual cases, as the scope of possible contractual performance continues to change. Consequently, a range of new questions arises. What are the limits of what is feasible? Where are the boundaries of ethical acceptability? What factors can motivate a patient to request a particular healthcare service? Are all healthcare services equivalent? And if there are differences among individual categories of healthcare services, what is the significance of these distinctions from the legislative perspective?

The article focuses on the contractual basis of the relationship between healthcare providers and patients. In Czech legal literature, the previously largely neglected private-law context of the relationship between a physician (as a healthcare provider) and a patient has in recent years attracted increasing scholarly attention.

2. HEALTHCARE CONTRACTS — CONCEPTUAL AND LEGAL AMBIGUITIES

In the Czech Republic, two basic branches of law regulate the provision of healthcare.

Public-law regulation of healthcare in the Czech legal system is found in the Act No. 372/2011 Coll. on healthcare services and conditions for their provision (hereinafter the Health Services Act or HSA). Under private law, healthcare is regulated by the Act No. 89/2012 Coll., the Civil Code (hereinafter the Civil Code or CC).

The recodification of private law in the ‘new’ Civil Code dispelled any doubts as to the nature of the relationship between a healthcare service provider (hereinaf-

ter the 'provider'[2]) and a patient, notably the question of whether the relationship is governed by private or public law. At present, it is beyond dispute that it is a private-law contractual relationship, although with elements of public-law regulation, as is the case with other contractual contexts, for instance, contracts concluded in the field of energy supply. A healthcare contract (Section 2636 et seq. CC)[3] was established as a special contract type, and thereby this legal relationship was given a clear private-law status[4]. It is therefore a private-law (contractual) relationship between equal partners (the provider and the patient). However, new challenges and questions have emerged.

It is not entirely clear what exactly the provider's obligation consists of, especially with regard to technological advancement in the field of medicine and medical science. Arguably, the most pressing question concerns the detailed content of the obligation between the provider and the patient, and the possibility — especially in view of the ever-expanding potential of medicine — to define all variants of this contractual relationship as a single contract type (healthcare contract)[5]. The answer is key to deciding what constitutes the fulfilment of the contract between the contracting parties.

It is generally agreed in Czech legal literature that a healthcare contract obliges the provider to make effort rather than to guarantee a result[6]. As a consequence, in the vast majority of cases (where the provider's performance of a healthcare service lies in 'treatment' not in 'cure'[7]), it can be concluded that the provider has an obligation of means and not an obligation of result.

It was debated in the past whether a contract for work could be applicable in this case. However, the fundamental difference between the two contract types (namely, the contract for work and the healthcare contract) is that under the first the provider is obligated to achieve a specified result.

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[2] In the text a uniform term 'provider' is also used to mean a person providing healthcare service, i.e. physicians or dentists but also legal entities that are defined as providers in the Health Services Act and render healthcare services through persons qualified to practice the medical profession pursuant to Section 11(3) HSA.

[3] Czech legal literature also recognizes the establishment of this contract type. See e.g. T. Doležal: *Poskytování zdravotních služeb po nabytí účinnosti nového občanského zákoníku*, Časopis zdravotnického práva a bioetiky 2013, No. 2, p. 70.

[4] T. Doležal: *Commentary on § 2636* (in:) M. Hulmák *et al.*: *Občanský zákoník VI. Závazkové právo. Zvláštní část (§ 2055–3014). Komentář*, Praha: C.H. Beck 2014, p. 1148.

[5] Debates regarding the type of contract concluded between the patient and the provider (physician) date back to ancient Greece and Rome. For a more detailed historical background, see T. Doležal: *Vztah lékaře a pacienta z pohledu soukromého práva*, Praha: Leges 2012, pp. 63–73.

[6] In particular, see: T. Doležal: *Commentary on § 2639* (in:) M. Hulmák *et al.*: *Občanský zákoník VI. Závazkové právo. Zvláštní část (§ 2055–3014). Komentář*, Praha: C.H. Beck, 2014, p. 1159; T. Holčapek (in:) P. Šustek, T. Holčapek *et al.*: *Zdravotnické právo*, Praha: Wolters Kluwer ČR 2016, pp. 299–300; M. Povolná: *Commentary on § 2637* (in:) J. Petrov, M. Výtisk, V. Beran *et al.*: *Občanský zákoník. Komentář*, Praha: C.H. Beck 2019, p. 2814.

[7] These two concepts have different consequences when it comes to the fulfilment of an obligation established under contract. See T. Doležal: *Commentary on § 2639…*, *op. cit*., p. 1159.

Bearing this in mind, this discussion follows current conclusions in the Czech legal scholarship (presented primarily by Tomáš Doležal)[8], which generally deem the contract for work unsuitable for the provision of healthcare services, barring exceptional cases in which the legal regime of the contract for work may be applicable[9].

A closer look reveals that it is a matter of balancing two opposing values (interests). On the one hand, it seems reasonable to protect the provider from too strict and disproportionate liability for result, as the provider cannot guarantee the desired outcome due to the uniqueness of each human organism[10]. On the other hand, it appears equally reasonable to protect the patient as the weaker party. In this context, it would be rather simplistic to conclude that the provider should never bear the risk related to a healthcare contract being properly fulfilled, if we mean the result to which the effort is directed (because it is an obligation of means). Alternatively, the whole question can be reversed: Is it fair and reasonable for the patient to always bear the risk of not achieving the desired result? From the point of view of the procedural enforceability of liability claims for defects (in the case of legal regulation of a contract for work), the patient may have a different (often more advantageous) position than in a situation where they claim compensation for damage (as discussed below)[11].

Thus, from the patient's perspective (who is *eo ipso* a consumer)[12]. it seems that treating all services provided in the field of healthcare as the healthcare contract

[8] Doležal regards the possible application of the contract for work as exceptional and accepts two assumptions: (i) a certain performance meets the definition of a work according to Section 2587 CC; and (ii) this performance is not influenced by the special nature of the human organism. See T. Doležal: *Vybrané právní aspekty spojené se smluvním charakterem poskytování zdravotních služeb*, Časopis zdravotnického práva a bioetiky 2014, No. 3, p. 77.

[9] Czech legal commentary in this regard is also based on German legal scholarship. For example, it is claimed that the application of the contract for work in general to contracts relating to dental treatment is not possible, but on the other hand, certain elements of the contract for work cannot be ignored (prosthetics is explicitly mentioned). For further discussion, see B. Kern, M. Rehborn: *7. Kapitel. Die Rechtsbeziehungen zwischen Arzt und Patient: § 42 Der Arztvertrag* (in:) A. Laufs, B. Kern, M. Rehborn *et al.*: *Handbuch des Arztrechts*, C.H. Beck 2019, Marg. 24 and 25, https://beck-online.beck.de/?vpath=bibdata%2Fkomm%2FLauKeHdbArztR_5%2Fcont%2FLauKeHdbArztR%2Eglsect42%2EglII%2Egl1%2Ehtm (accessed: 29.04.2025).

[10] For other conclusions by Doležal, according to whom the provider cannot be overburdened and required to bear unreasonable risks, which are fundamentally associated with interference with the integrity of the person, see T. Doležal: *Vybrané právní aspekty…*, *op. cit*., p. 77 and literature cited therein.

[11] Compensation for damage (or liability and responsibility in general) in the healthcare sector is a very complex issue and attracts the attention of a number of authors. In Czech legal literature, see e.g. J. Stolínová, J. Mach: *Právní odpovědnost v medicíně*, Praha: Galén 2010; also the whole chapter T. Doležal in J. Těšinová, T. Doležal, R. Policar: *Medicínské právo*, Praha: C.H. Beck 2019, p. 369 et seq., especially pp. 427–446.

[12] For conclusions on the issue of the patient as a consumer in Czech legal literature, see e.g. A. Valuš: *Civilní spory mezi lékařem a pacientem při poskytování zdravotní péče*, Praha: Leges 2014, p. 19. For more recent commentary, see e.g. T. Doležal: *Smlouva o péči o zdraví — problematické aspekty jejího uzavření a ukončení při poskytování zdravotních služeb*, Časopis zdravotnického práva a bioetiky 2024, No. 2, pp. 3–4. Similarly, the legal commentators agree that the provider will have the status of an entrepreneur. For further argumentation, see A. Valuš: *Civilní spory…*, *op. cit*., p. 20; T. Holčapek: *Ochrana příkazce a ošetřovaného v rámci smluvní péče o zdraví* (in:) J. Dvořák *et al.*: *Soukromé právo 21. století*, Praha: Wolters Kluwer ČR 2017, p. 140; T. Doležal: *Vybrané právní aspekty…*, *op. cit*., p. 71.

(i.e. as an obligation of means) is not an ideal solution. The protection of the consumer as the weaker party would be better served if the contract in the field of healthcare were divided into separate parts. Depending on the nature of a specific performance, individual partial services would be then governed either by the healthcare contract or the contract for work. In the Czech legal system, such a solution corresponds to the concept of a mixed contract. It appears that Czech legal scholars actually reach (albeit rather tacitly) the same conclusion[13].

3. DOES CZECH CONTRACT LAW ADEQUATELY ADDRESS THE DIVERSE RANGE OF SERVICES PROVIDED IN HEALTHCARE?

Technological developments, as well as advances in medicine, are constantly pushing the boundaries of what is possible as a performance under contract. From the contract-law perspective, two types of services provided in the field of healthcare can be distinguished.

The first group of services (traditional, 'core' medicine) includes those in the field of healthcare that consist in 'curing', i.e. maintaining or improving someone's health. In this respect, one party is still a patient in the original sense of the word, and the task of the provider (physician) is to try to alleviate suffering (pain, discomfort) or to try to improve the patient's state of health with regard to the future prognosis. The patient cannot be guaranteed a specific result, for example, that the surgery will be successful and they will be 'cured'. There seems to be a consensus that the provision of healthcare services is, in most cases, governed by the healthcare contract, under which — unless the parties agree otherwise — the provider undertakes an obligation of making a certain amount of effort (an obligation of means). This, however, does not exclude the applicability of the contract for work, although it would be an exception.

The other group includes services, the provision of which is usually unnecessary from the point of view of the patient's health. In other words, the patient is in the position of a client (consumer) and the provider makes the marketing presentation in such a way that it can arouse the patient's expectation of a guaranteed result. For the time being, Czech law of obligations does not deal closely with this group of services and instead focuses on a uniform legal assessment of all services pro-

[13] In particular, T. Doležal: *Vybrané právní aspekty…*, *op. cit*., especially p. 76; F. Melzer, P. Tégl: *Glosa: K rozsudku NS ve věci smluvní odpovědnosti poskytovatele zdravotní péče a konkurence smluvních a deliktních nároků*, Advokátní deník (online), 3.12.2020, https://advokatnidenik.cz/2020/12/03/glosa-k-rozsudku-ns-ve-veci-smluvni-odpovednosti-poskytovatele-zdravotni-pece-a-konkurence-smluvnich-a-deliktnich-naroku/ (accessed: 29.06.2025).

vided in the field of healthcare. However, this can unintentionally lead to adverse consequences from the patient's (consumer's) perspective.

By way of illustration, two different situations may be envisaged in which the type of contract concluded by the parties becomes relevant. One may imagine a person interested in having a tattoo who visits a tattoo studio. The tattoo artist (as the service provider) departs from the tattoo template and the final result does not correspond to what has been previously agreed (for instance, there is an extra line in the ornamental design). In the Czech legal environment, one would probably qualify the legal relationship between the contracting parties as a contract for work, i.e. an obligation of result. If the agreed result is not delivered, it automatically means that the performance is defective. The client (consumer) thus has a liability claim for defects. For example, they could demand a reduction in the price, or removal of the defect, if this falls within the provider's capabilities (if a laser is available to remove the excess line). In addition, the client is entitled to compensation for damage, which may consist of the costs incurred to have the unwanted part of the tattoo removed by a specialist.

Another case, which can be compared with the above example, involves a client seeking an aesthetic procedure, like lip augmentation, performed by a physician specializing in aesthetic (cosmetic) medicine, for instance, a corrective dermatologist. After a certain period of time necessary for the aesthetic procedure to 'settle in', it turns out that the lip is asymmetrical (probably due to an inappropriately chosen injection site), which is undesirable for the client. In the Czech legal environment, according to the majority opinion, such a contract will be qualified as a healthcare contract, which obliges the healthcare provider only to make effort (and, of course, provide professional care). If the obligation were one of result (because a contract for work also applies in part to the aesthetic procedure), the client (patient) could request a price reduction or free removal of the defect in accordance with the legal regulation of liability for defects in the case of contract for work (i.e. a corrective procedure to achieve the symmetrical effect). In such a case, the incurred costs would not be borne by the client (patient) but by the provider. A similar situation can also occur in dental practice, for example, in the case of a dental filling performed in a manner inconsistent with the required standard of professional care (such as when a dentist overlooks an early-stage cavity and applies a dental filling that subsequently has to be replaced).

In the case of a healthcare contract, which is a contract of means, the patient would not be entitled to liability for defects in the legal regime of a contract for work, but typically (in practice) to a claim for damages in general. However, such claims are procedurally more difficult to enforce in the Czech legal environment. For the procedural enforcement of a claim based on liability for defects in the case of the contract for work, the provision of Section 2615(2) CC is particularly important in the Czech legal system. This provision refers to an analogous application of

liability for defects in the context of a purchase contract, including special rules governing B2C transactions. Section 2161(5) CC is relevant here, as it provides that where a defect becomes apparent within one year from the moment the work has been taken over (received), the subject matter of the contract is considered to have been defective upon receipt (the moment of delivery), unless the nature of the subject matter of the contract (the character of the goods/work) or the nature of the defect precludes this. A rebuttable presumption that the item (similarly, the work) was defective already upon receipt would significantly strengthen the patient's position as a consumer when asserting claims based on liability for defects. This means that in many cases it is sufficient for the consumer to claim and prove that the work has a particular defect and that this defect has become apparent within one year from the moment the work was taken over (which, in most cases, coincides with the completion of the work). Therefore, it is crucial to establish the existence of the defect during this period.

It is then possible to assert any of the statutory claims within the framework governing liability for defects in accordance with the legal regulation of liability for defects in the case of a contract for work. Such claims may include, in particular, a price reduction, repair at no cost, or rescission of the contract (Sections 2106 and 2107 CC in general, or Section 2171 CC in the case of B2C relationships). Where liability for defects applies, Section 2108 CC (or 2173 CC in the case of B2C relationships) is also of particular relevance since it lays down (in simplified terms) the principle that the consumer is not obliged to pay the portion of the price which can be reasonably regarded as equivalent to the price reduction the consumer is entitled to under liability for defects.

If, on the other hand, the patient as a consumer would like to claim compensation for damage, no reversal of the burden of proof applies, and the consumer bears the burden of alleging and proving all the elements of liability for damage. In particular, difficulties arise in establishing whether the provider has breached its obligation to exercise due professional care, and in determining and quantifying the precise extent of the damage suffered. Although in Czech contract law liability for damage arising from the breach of contractual obligations is based on an objective principle — such that fault need not be proven (Section 2913 CC) — it will nonetheless typically be challenging for the consumer, acting as the claimant, to quantify the damage, to establish a breach of the provider's contractual duty, or to demonstrate a causal nexus between the breach and the resulting damage. This approach differs, for example, from the German legal framework, where Section 630h of the German Civil Code (BGB) provides several examples of rebuttable presumptions in the context of healthcare (medical malpractice) disputes, including compensation for damage. These presumptions primarily relate to the existence of the causal nexus.

Consequently, in practice, patients experiencing the effects of unsuccessful cosmetic procedures have those 'repaired' by other providers at their own expense. In the Czech legal environment, the assessment of the aforementioned legal issue

was also particularly relevant, as the nature of aesthetic procedures was not entirely clear. Following the most recent amendment (effective as of 1 January 2026), this issue has been explicitly resolved in the Health Services Act, Section 2(4)(d). Currently, even aesthetic procedures may be provided exclusively by persons possessing appropriate medical qualifications[14]. However, uncertainty may persist as to what may in fact be considered an aesthetic medical service.

4. WHY IS THE CONTRACT FOR WORK AN INAPPROPRIATE LEGAL FRAMEWORK IN THE HEALTHCARE CONTEXT?

In Czech legal literature, which is largely influenced by German scholarship, several arguments have been advanced that, generally, exclude the application of the legal rules governing the contract for work to healthcare services. These arguments relate to situations where the healthcare provider and the patient have not agreed on any specific outcome. Nevertheless, in most cases, it is possible for the provider to assume a contractual obligation of result extending beyond the requirements of statutory regulation[15].

The first question is whether the contract for work can be concluded in connection with an intervention in the human body. In Czech legal literature, a dominant opinion holds that the provision of a healthcare service can never constitute an obligation under the contract for work, since such a service inherently involves an intervention in the human body or its part[16]. It is argued that a fundamental distinction must be drawn between a person (the human body and its parts) and a thing, since, according to Section 2587 CC, a 'work' is understood as the production of a thing. As a person (or a part thereof) is not a thing[17], it is then concluded that the contract for work cannot govern the provision of healthcare services, including those in the field of plastic surgery.

One can certainly agree with the proposition that a person, or a part thereof, is not a thing[18]. However, this alone does not constitute a decisive argument against applying the contract for work. The provision of healthcare services may still be considered a performance (work) producing a different kind of result, in accordance with Section 2587 CC[19]. In a broader context, it is worth noting that other business activities

[14] See *infra* footnote 36.

[15] The provider's motivation for such decision may be, e.g. to gain some competitive advantage. T. Holčapek: *Ochrana příkazce…*, *op. cit*., p. 143.

[16] J. Svejkovský, L. Řípa *et al.*: *Právo ve zdravotnictví*, Praha: C.H. Beck 2021, p. 61.

[17] *Ibidem*, p. 61.

[18] See e.g. the conclusion and analyses in R. Policar in J. Těšinová, T. Doležal, R. Policar: *Medicínské právo…*, *op. cit*., p. 258 et seq.

[19] See O. Kubát: *Commentary on § 2586* (in:) J. Petrov, M. Výtisk, V. Beran *et al.*: *Občanský zákoník. Komentář*, Praha: C.H. Beck 2019, p. 2751.

that involve parts of the human body are nevertheless governed by contracts for work. One can consider, for instance, services such as hairdressing, manicure, pedicure, permanent make-up, or tattooing. While these services do not involve healthcare within the meaning of Section 2636 CC, entrepreneurs who provide them work on parts of the human body and effect modifications. It is in principle undisputed that the result of such activities qualifies as a performance under the contract for work[20].

One can also agree with another argument that arises in the discussion. It is generally acknowledged that, due to the individuality of the human body, the provider cannot guarantee the specific result, and liability for defects under the contract for work would therefore impose a disproportionately strict burden on the provider[21]. Yet it is worth asking whether such reasoning can be applied to all healthcare services. As already mentioned, the situation can be compared with cases where services are provided on the human body outside the field of healthcare. In these instances, the individuality of the human body means that the desired result cannot always be guaranteed. Nevertheless, it is usually accepted that the provision of such services constitutes work, and thus the corresponding legal provisions in the Civil Code apply. If a client has particularly fine hair, can a hairstyle or haircut with the desired volume be truly guaranteed? Can it always be ensured that the selected hair colour will adhere uniformly? In the context of hairdressing and barbering services, defects in the work may include, for example, asymmetrical haircuts, uneven hair colour application, insufficient attachment of hair during lengthening or thickening, or resulting hair loss[22].

The argument advanced in Czech legal literature to protect the healthcare provider finds, therefore, partial application in the above business sectors. However, it seems that all services provided in the field of healthcare are generally considered healthcare contracts (contracts of means), whereas other services involving the human body are consistently treated as contracts for work (contracts of result)[23]. This gives rise to a considerable disparity in the legal treatment of various business sectors. One cannot ignore the fact that the degree of risk that the desired result will not be achieved is certainly different across the areas mentioned. Nevertheless, this comparison raises the question of whether it can be justified that a provider of (some specific business-oriented) healthcare should not be responsible for the result, while entrepreneurs in other, comparable sectors should essentially be held liable for the result under the legal framework governing contracts for work.

[20] At least during research done when working on this text, no doubts in this regard were noted in Czech legal literature.

[21] The already mentioned argument is discussed in greater detail in T. Doležal: *Vybrané právní aspekty…*, *op. cit*., p. 77; and e.g. in T. Holčapek: *Ochrana příkazce…*, *op. cit*., p. 139, footnote 65 therein, and further p. 143.

[22] In addition to what can be understood as defective performance (performance under the contract for work), the consumer may also suffer damage, e.g. damaged hair as a result of burns.

[23] For further discussion of this issue, see O. Kubát: *Commentary on § 2587* (in:) J. Petrov, M. Výtisk, V. Beran *et al.*: *Občanský zákoník. Komentář*, Praha: C.H. Beck 2019, pp. 2751–2752. In this commentary, a hairstyle fashioned by a hairdresser is explicitly mentioned as an example of the result of an activity carried out based on the contract for work.

In a broader context, the situation in healthcare seems similar to that in many other business sectors. There are procedures whose outcome cannot be guaranteed because they depend on a multitude of factors. For instance, if a person undergoes knee surgery, the physician can scarcely guarantee with near certainty that the patient will regain full mobility. It would be unreasonable to hold the physician liable for an unsuccessful outcome, even if all standards of due professional care are fully observed. On the other hand, it is undeniable that certain healthcare services exhibit a markedly different likelihood of 'failure'. Indeed, the expected result is highly probable in such cases, provided that the established standards of care are met.

Examples include most prosthetic interventions or dental fillings, and some procedures in the field of aesthetic medicine. Extreme as they may seem, these examples illustrate the considerable diversity of services provided in the field of healthcare. The range of services offered and requested is extensive, reflecting the continually expanding possibilities of medical care and the advances in medical science. Hence the question of whether all healthcare services can be appropriately classified under a single type of contract.

It seems that the decisive factor lies in the closer examination of the extent to which the human organism influences the performance of a particular medical procedure. In Czech legal literature, the absence of a determining influence of the specific nature of the human organism on the performance is understood as one of the two prerequisites for the possible application of the legal regime governing contracts for work[24]. However, the human organism will almost always play some role in the performance under contract. Be that as it may, it remains open to question whether this circumstance is in fact pertinent to determination of whether or how to apply the legal regime governing contracts for work. It is indisputable that any contract whose performance is directed towards the future necessarily entails a certain degree of risk[25]. The crucial issue, therefore, centres on assessing the significance of this risk for a particular procedure, which is linked to the probability that the specific characteristics of the human organism will influence the achievement of the desired result. If, provided that all standards of professional care are observed, the intended result occurs with near certainty, the fact that the result cannot be absolutely guaranteed should not constitute an obstacle.

In Czech legal literature, doubts regarding the application of the legal regime governing contracts for work are voiced mainly in connection with the technical manufacture of prostheses[26] or the laboratory analysis of samples of human tissue (for

[24] T. Doležal: *Vybrané právní aspekty…*, *op. cit*., p. 77. Doležal regards the possible application of the contract for work as exceptional; for the application conditions, see *supra* footnote 8.

[25] As stated by R. Šimek: *Commentary on § 2756* (in:) F. Melzer, P. Tégl *et al.*: *Občanský zákoník § 2716–2893. Velký komentář*, Praha: C.H. Beck 2021, p. 145.

[26] T. Doležal: *Vybrané právní aspekty…*, *op. cit*., especially p. 76, in particular footnote 49, and further the German commentary and case law analysed therein.

instance, blood)[27]. However, German legal scholarship explicitly states that in some cases the contract for work can be considered for cosmetic procedures and laboratory tests. Moreover, it discusses prosthetic dentistry in this context, although it tends to conclude that the contract for work would only be appropriate in individual cases[28]. It is argued that the obligation to achieve a specific result may be valid where relevant activity is performed outside the human body, in controllable conditions and by means of technologically unambiguous procedures[29]. In the case of procedures carried out extracorporeally, any specific reaction of the human organism during the performance under the contract for work is practically eliminated. Similarly, German legal commentaries are primarily based on the premise that the human body is, in general, not controllable, and therefore, given the specific nature of medical performance, the physician cannot undertake to achieve or guarantee a particular result[30].

In any case, the mere fact that an activity directly involves the human body does not necessarily exclude the application of the contract for work. Rather, the above discussion suggests that there is no clear-cut answer to this problem, since it falls within what is called a 'grey zone' that merits more detailed examination.

Finally, another argument advanced in Czech legal literature concerns the nature of the performance in the field of healthcare. It is asserted that the 'nature'[31] of the performance is key to the possible application of the contract for work. Healthcare services corresponding in nature to performance under the contract for work are rather exceptional. Therefore, the question that should be asked is which healthcare services could correspond in nature to performance under the contract for work, and whether such services share any common characteristics at all.

5. DIVERSITY OF HEALTHCARE SERVICES: DO DIFFERENT SERVICES REQUIRE DISTINCT LEGAL REGULATION?

Where a patient requests a healthcare service aimed at improving or maintaining health, the obligation is one of treatment or cure. However, legal qualification of such relationships is generally highly complex. Overall, it may be concluded that

[27] T. Holčapek: *Ochrana příkazce…*, *op. cit*., p. 139, footnote 65 therein, and further p. 143.

[28] J. Busche: *Commentary on § 631 BGB* (in:) M. Henssler *et al.*: *Münchener Kommentar zum Bürgerlichen Gesetzbuch*: *Band 6. Schuldrecht — Besonderer Teil III*, C.H. Beck 2023, Marg. 125 and 126–128, https://beck-online.beck.de/?vpath=bib-data/komm/MuekoBGB_9_Band6/BGB/cont/MuekoBGB.BGB.p631.glH.glIII.gl1.htm, and https://beck-online.beck.de/?vpath=bib-data/komm/MuekoBGB_9_Band6/BGB/cont/MuekoBGB.BGB.p631.glH.glIII.gl2.htm (accessed: 15.05.2025).

[29] T. Holčapek: *Ochrana příkazce…*, *op. cit*., p. 143.

[30] J. Busche: *Commentary on § 631 BGB…*, *op. cit*., Marg. 124 and 125, https://beck-online.beck.de/?vpath=bibdata%2Fkomm%2FMuekoBGB_9_Band6%2FBGB%2Fcont%2FMuekoBGB%2EBGB%2Ep631%2EglH%2EglIII%2Egl1%2Ehtm (accessed: 15.05.2025).

[31] T. Doležal: *Vybrané právní aspekty…*, *op. cit*., p. 76.

the legal framework governing the contract for work is inapplicable in this context. In view of the above, this primarily pertains to cases where the achievement of the desired result cannot be guaranteed. Physicians can influence the outcome only to some extent, even when they adhere to the applicable standards of professional care. Part of their duty in such cases is directed toward preventing an immediate threat to the patient's life and health, typically within the domain of urgent or acute care. However, the parties to the contract may agree that the provider assumes also responsibility for the result.

On the other hand, it cannot be ignored that especially the outpatient sector of some medical branches closely resembles regular business, particularly with respect to marketing strategies, investments in technology, or the emphasis on satisfying clients (consumers), who are provided with comprehensive services and comfort. This includes, for instance, premises where healthcare services (as business activities) are delivered, managerial decisions regarding allocation of responsibilities within the staff structure, and the presentation of services on social media. Experts note that some fields, such as cosmetic surgery, are often perceived by individual providers as highly lucrative, since 'a feeling of easily attainable well-being prevails'[32]. When a particular procedure is performed by a profit-driven and/or inexperienced provider, it is unsurprising that the quality of the service may be adversely affected.

In this context, it is again possible to highlight the conclusions presented by Doležal, which draw upon German legal literature[33]. It is argued that some medical interventions are on the borderline between the healthcare contract and the contract for work, such as dental procedures, cosmetic procedures or surgeries, and the implantation of artificial organs or other body parts[34]. These medical interventions share, among other things, a feature that an average observer might reasonably regard the achievement of a specific result as highly probable[35].

In view of the above, it may be concluded that there is a distinct group of services in the healthcare sector that is characterized by specific features. In particular, given the nature of the performance and the level of risk involved, the obligation to achieve a defined result may be considered reasonable. It is in this group of services that the (partial) application of the legal framework governing contracts

[32] J. Měšťák (in:) R. Ptáček, P. Bartůněk, J. Mach: *Informovaný souhlas. Etické, právní, psychologické a klinické aspekty*, Praha: Galén 2017, p. 111.

[33] For further discussion, see A. Laufs, W. Uhlenbruck: *Handbuch des Arztrechts*, Munich: C.H. Beck 2002, p. 353 et seq., cited in T. Doležal: *Vybrané právní aspekty…*, *op. cit*., p. 73.

[34] This source also mentions other borderline procedures, in particular, sterilization, castration and sex change, artificial abortion or artificial insemination. However, the text does not address these specific cases in greater detail, because the legal regime governing the contract for work cannot be applied to them, due to their character, which does not correspond to the nature of business-oriented services (as a conceptual shorthand for the purposes of this text). The character of business-oriented services in the field of healthcare is discussed in detail further in the text. For the citation, see the previous footnote. It should be also emphasized that professional assessment of whether there is a high probability of achieving the desired result can be properly made by physicians.

[35] T. Doležal: *Vybrané právní aspekty…*, *op. cit*., p. 73.

for work (and the corresponding responsibility for achieving the result) appears justifiable. For the purposes of this article, these services may be referred to as 'business-oriented healthcare services'. However, this term is intended merely as a conceptual shorthand; it certainly does not imply that all business-oriented healthcare services are appropriately subject to the legal regime governing contracts for work. The applicability of a contract for work depends on a number of circumstances, and the aim of this article is to elucidate some of the relevant aspects.

In addressing the question of whether the contract for work may be applied, the following considerations can be taken into account. These may help determine whether the nature of a particular healthcare service could justify the application of such a contractual framework. However, they do not constitute clear-cut criteria; rather, they function as indicative factors whose relevance should be assessed in light of the specific circumstances of each case. Continued discussion of these issues is therefore desirable, and any extension in the application of the legal regime of the contract for work should be approached with caution. In the field of healthcare, the application of the legal regime governing contracts for work should remain exceptional.

(a) What exactly do patients request of providers? Do they ask the providers for some 'extra' service?

Business-oriented healthcare services (as a conceptual shorthand for the purposes of this text) can be considered a specific 'extension' of traditional healthcare provision. The purpose of this specific form of healthcare is to offer solutions that seek to align the patient's aesthetic conceptions of their own body more closely with physical reality. Rather than providing a direct therapeutic benefit, such services primarily aim to exert a positive influence on the patient's attitude to their body. In this context, the ongoing debate (along with the most recent amendment to public regulation under the Health Services Act)[36] in the Czech legal environment about the inclusion of purely aesthetic medical procedures within health services (thereby bringing them under the regime of the Health Services Act) is of considerable importance. At present, the issue has been resolved at the legislative level: with effect from 1 January 2026, even aesthetic procedures performed without a medical indication are classified as health services and, as such, fall within the regulatory framework of the Health Services Act.

At the same time, it is necessary to emphasize the temporal dimension of healthcare provision. Business-oriented healthcare services can typically be provided over a longer period, as they do not have an immediate impact on the patient's health. Furthermore, patients generally have a broader range of providers to choose from.

[36] For further details, including an overview of developments preceding the amendment, see *Novela zákona o zdravotních službách reaguje na nové odborné potřeby*, Advokátní deník (online), 9.09.2024, https://advokatnidenik.cz/2024/09/09/novela-zakona-o-zdravotnich-sluzbach-reaguje-na-nove-odborne-potreby/ (accessed: 29.06.2025).

(b) Does the provision of healthcare have a direct impact on the quality of the patient's health?

The basic premise of business-oriented healthcare services is that the patient cannot be regarded as 'ill' or 'suffering' in the sense of experiencing pain, and the expected result of the requested healthcare service does not consist in the maintenance or improvement of the patient's health (in the narrow sense of physical health). Therefore, such notions as 'treatment' or 'cure' are not applicable in this context.

Medical procedures of primarily aesthetic nature may, of course, have secondary effects on the patient's health, particularly with regard to psychological well-being. However, the improvement or maintenance of health is not their primary objective. It can, therefore, be argued that their impact on the patient's health (n the narrow sense of physical health) is largely 'indirect' rather than immediate.

(c) Is the contractual result of the performance readily achievable and controllable when professional standards of care (*lege artis*) are met?

Medicine is undoubtedly a field in which the protection of certain highly sensitive values must be ensured. At the same time, with due regard to the requirements of public interest, it is necessary to allow physicians and dentists to practise their profession independently and without fear of disproportionate sanctions. Nevertheless, even within the medical sphere, certain forms of healthcare (and corresponding results) may be, in principle, predictable when standards of professional care are observed. It is, therefore, necessary to consider situations where the occurrence of the expected (agreed) result is highly probable, as long as the healthcare provider complies with those standards. In relation to specific medical procedures, a key issue is the extent to which the uniqueness of the human body (organism) plays a decisive role in achieving the agreed result. This is all the more significant where the provider's contractual counterparty is a person acting in the capacity of a consumer. However, the conclusion that a sufficient degree of probability exists does not mean that the result must in every case, as contractual relationships entail a certain level of risk[37].

In this regard, one can envisage, for example, certain medical procedures in the fields of dentistry (such as prosthetic treatments or dental fillings) and aesthetic medicine (including selected cosmetic interventions, like wrinkle or lip fillers). However, in the context of aesthetic medicine, such cases will typically be limited to routine and less invasive interventions, as procedures in the broader field of plastic or aesthetic medicine generally tend to be more complicated.

While this question is highly complex and open to debate, even preliminary considerations along these lines may contribute to clarifying whether the potential application of the legal framework governing contracts for work could be appropriate.

[37] R. Šimek: *Commentary on § 2756…*, *op. cit*., p. 139.

(d) What role do providers' marketing communications (implying that they offer more than 'mere' best effort) play in shaping patients' expectations?

Providers of business-oriented healthcare services typically direct their marketing communications toward clients for whom, beside functional considerations, an aesthetic outcome is of particular importance (or who may seek the service exclusively for aesthetic reasons, as is often the case with some aesthetic surgery services).

Accordingly, the marketing presentation itself can be of considerable significance, insofar as the providers of business-oriented services actively shape and generate expectations of a particular result among prospective consumers.

For instance, providers, particularly in the field of cosmetic surgery, often present examples of their work (the results) on their websites, typically through photographs depicting the 'before' and 'after' states. An average consumer interested in such services may interpret this form of presentation as implying that the showcased results of a service are guaranteed, which has implications within the law of obligations[38].

(e) Does the patient bear the cost of the chosen healthcare option (in whole or in part)?

Business-oriented healthcare services in the Czech Republic may also differ from other forms of healthcare services in the manner in which service fees are paid. The majority of such services are not covered by public health insurance; accordingly, patients are required to bear the cost of the service, at least in part, themselves. This may be relevant to the potential resolution of some liability claims for defects, for example, through a reduction in the price.

However, it should be emphasized that this aspect is highly variable and misleading, as it is often driven by political decision-making. Therefore, it cannot serve as a distinguishing factor from which conclusions about the applicability of a particular contractual type may be drawn. At most, it may be noted that in some areas of healthcare services this aspect arises more frequently than in others, which may, in turn, bear some relevance to the question of whether the application of the legal framework governing the contract for work is appropriate in a given context.

6. CONCLUSION

The article seeks to examine in greater detail whether certain healthcare services may be governed by the legal framework of a contract for work. Histori-

[38] This may be important, e.g. when deciding what the contracting parties have actually intended. Doležal further argues that German scholarship resolves this 'mismatch' between expectations precisely by the different qualification of a contract type; see T. Doležal: *Commentary on § 2639…*, *op. cit*., p. 1159.

cally, Czech legal scholarship has advanced various arguments on this issue that appear to preclude the application of this contractual regime within the healthcare sector. Given the diversity of healthcare services, it is difficult to deny that individual areas of healthcare differ to such an extent that providers can exercise varying degrees of influence over the risks associated with interventions in the human body, the predictability of specific healthcare outcomes, and the likelihood of achieving the intended result. Apart from the question of whether the scope of a provider's liability for a particular performance is appropriate, the legal relationship can also be assessed from the perspective of the patient, who has the position of a consumer, and therefore is the weaker party to this relationship.

The article builds upon discussions in Czech legal literature (inspired by German legal scholarship) and seeks to approach healthcare from an alternative, business-oriented perspective. Its aim is to delineate a category of healthcare services that can be more appropriately characterized as akin to contracts for work. This distinct subset of legal relationships between providers and patients, exhibiting numerous specific features when compared with healthcare services in general, is referred to in this article as 'business-oriented healthcare services'. This is a conceptual shorthand intended to demonstrate that certain specific categories of healthcare services require a differentiated legal approach. However, this categorization certainly does not mean that the legal framework governing contracts for work should be applied to all healthcare services that are primarily business-oriented.

The article's objective has been to identify factors that can be taken into account when assessing the appropriateness of applying the legal framework of the contract for work in the field of healthcare. However, it should be borne in mind that these factors do not constitute criteria on which such an assessment can be conclusively based. Rather, they are relevant factors that may indicate the likelihood of whether the legal regime governing contracts for work is applicable in a given case. This article thus aims to delineate situations in which the nature of a particular healthcare service could justify the application of this contractual regime. It can be concluded that the contract for work in healthcare remains an exceptional solution and requires a comprehensive assessment of all relevant circumstances.

The law of obligations, at least within the context of the Czech legal system, has not yet fully recognized this specific category of healthcare services, nor has it addressed the implications of technological advances in healthcare. Nevertheless, new developments present new opportunities for contract law, and the main challenge lies in determining how the legal framework can adequately respond to these emerging issues, which are subject to considerable debate. Although this article focuses primarily on Czech law, a number of the questions raised and conclusions reached therein has a broader relevance and may serve as a basis for discussion in other legal systems as well.

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MONIKA PŘÍKAZSKÁ

HEALTHCARE IN THE CONTEXT OF CONTRACTUAL OBLIGATION OF RESULT — CHALLENGES AND QUESTIONS

S u m m a r y

The article examines the contractual relationship between a healthcare provider and a patient from the perspective of private law. It builds upon current debates among legal scholars and commentators, and addresses the ongoing transformation of healthcare provision. Particular attention is devoted to the resulting implications and questions regarding the content of contractual obligations between the provider and the patient, taking into account the patient's position as a consumer.

Key words: consumer, effort, liability for defects, healthcare, contract for work, healthcare service, patient, result.