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A COMPARISON OF NO-FAULT COMPENSATION SCHEMES IN THE HEALTH CARE SECTOR

Today, in the comparative law, there are various legal instruments: regulation and liability rules that are used in cases of medical malpractice and compensation of damage for the injured (patients and their family). The compensation mechanisms related arising from the traditional tort law is the compensation in accordance with the fault liability rules and the strict liability rules. Although both rules are applied, on the bases of the theoretical literature it is not easy to provide a clear answer to the question whether medical malpractice should be governed by negligence or a strict liability rule.

In the health care sector most of the legal systems stick to this traditional system of compensation i.e. fault-based or strict liability of the health care provider still prevails. But, some countries have established some variety of – as it is commonly referred to- a no—fault compensation system.

Currently there are five countries with a no-fault compensation system that covers most or all of the healthcare system that have been operational for some time: New Zealand, Norway, Sweden, Finland and Denmark. The system has been introduced in two more countries: France and Iceland, and the case with Belgium is that it is at an advanced stage of this process. All operational no-fault compensation systems come in different shapes and sizes, but what is in common for all is that they are mandatory and they refer to the entire health care system. In other countries no-fault compensation schemes can be found as voluntary or compulsory, but only for specific areas of the health care system.

This paper aims to show, only briefly, the traditional tort law system that applies to the liability of medical practitioners and healthcare institutions for the damage suffered in the health care sector, and then to focus on the no-fault compensation system through a legal

comparative analyses. The main goal is to come to a conclusion about the advantages and disadvantages of system of this kind, as well as to compare it with the traditional tort law system and to place both systems in the health care system in the modern world.

Key words: No-fault compensation system; Health care sector; Liability; Fault; Strict liability.