

Medical Liability in the First Period of Independence of Latvia (1918–1940)

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The aim of the paper is to investigate the development of medical law and jurisprudence in the Republic of Latvia during its First Period of Independence (1918–1940), with a particular focus on the liability of doctors for instances of negligence that occurred during the fulfillment of their professional duties. The author seeks to identify the main routes of the emergence of medical liability in the Republic of Latvia, the influence of the laws and legal precedents on the adoption of national legislation relating to medical liability, and the development of case law relating to medical malpractice by Latvian courts during the First Period of Independence.

Keywords: medical malpractice, criminal law, Latvian law, medical law, First Independence of Latvia.

Medicininė atsakomybė pirmuoju Latvijos nepriklausomybės laikotarpiu (1918–1940)

Darbo tikslas – ištirti medicinos teisės ir jurisprudencijos raidą Latvijos Respublikoje pirmuoju nepriklausomybės laikotarpiu (1918–1940 m.), ypač atsižvelgiant į gydytojų atsakomybę už aplaidumą vykdant savo profesines pareigas. Autorius siekia nustatyti pagrindinius medicininės atsakomybės atsiradimo būdus Latvijos Respublikoje, įstatymų ir teisinių precedentų įtaką priimant nacionalinius teisės aktus, susijusius su medicinine atsakomybe, bei susijusios su medicininiumi aplaidumu teismų praktikos raidą pirmuoju Latvijos nepriklausomybės laikotarpiu.

Pagrindiniai žodžiai: medicininis aplaidumas, baudžiamoji teisė, Latvijos teisė, medicinos teisė, pirmasis Latvijos nepriklausomybės laikotarpis.

Introduction

The contemporary medical law of Latvia is built upon a system of legislation, bylaws and court jurisprudence. As most of the Eastern European states, the Republic of Latvia has a patient's rights law ("*Pacientu Tiesību Likums*" in Latvian), enacted in 2009, which protect such rights of the patient as medical confidentiality, consent to medical treatment, access to medical records, and the right to refuse treatment. At the same time, such rights are mainly influenced by the Oviedo Convention (1997), and the explanation of the real scope of the patient's rights was provided by the Senate relatively recently. For instance, the rules regarding medical confidentiality have been expounded by the Senate in a 2020 judgment, where a man sued the hospital for giving out his medical records to the state police on their

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own initiative (he had consumed drugs shortly before being hospitalized) (*Senata Administratīvo lietu...*); the principles of informed consent were elaborated in the Senate judgments of 2013 (relating to compulsory psychiatric treatment) (*G.D. pret Valsts...*, para. 8.5, p. 11) and 2020 (bowel resection operation without a sufficient clarification of its possible negative effects and alternative ways of treatment, though the patient had a strong will to undergo the said operation himself) (*A. pret. AS., EZRA-SK Rīgas...*). However, it is quite apparent that all the aforementioned patient's rights have a rich and long history. Do these patient's rights have their legacy in the First Period of Independence of Latvia? Yes, to a certain extent they do. Did the First Senate¹ rule on medical malpractice cases, abortions, and failure to provide medical assistance? Yes, it repeatedly did. So did the lower courts of Latvia in 1918–1940.

However, such a legacy is mainly undiscovered and underinvestigated – the same could be held in respect with the scholarship of the neighboring Baltic States. Even A. Jākobsons, one of the founders of Latvian medical law, discussing the doctor's penal liability under the 1933 penal law (Art. 218 and 219), has not mentioned a single case adjudicated by the First Senate, despite naming judgments from other jurisdictions (Jākobsons, 1936, p. 8–15). A custom search of such cases in the Latvian State Historical Archives has shown that over 20 medical malpractice cases were adjudicated in the court district of Riga encompassing justices of peace (Lat. “*Miertiesnesis*”), district courts (Lat. “*Apgabaltiesa*”) and the chamber of justice, the single acting appellate court for the district courts in 1918–1940 (Lat. “*Tiesu palata*”) in the period of 1918–1940²; however, not all court documents were well-preserved and survived in decent shape for over 90–100 years. Meanwhile, the materials and originals of the criminal complaints lodged by aggrieved parties (i.e. in the cases of *Mejis* (1926), *Adamson* (1929), and some others), were well-preserved and thus are discussed in the paper below. The archival search of the author has shown over a hundred of very typical cases relating to illegal abortions – some of these had went to the Senate, which gave proper guidelines for the lower courts for determining the fault of the physician as well as the patient desiring to undergo abortion upon her own will.

In more contemporary legal scholarship, the doctoral thesis of L. Mazure relating to the concept of a “patient's will” discusses no judgments from the First Period of Independence of Latvia, but the author gives an extensive review of the history of medical law and the issue of patient consent to medical treatment (Mazure, 2011, p. 28–41). Would it mean that medical malpractice lawsuits were hardly ever brought before the Latvian courts during the First Period of Independence? Not at all. Let us see, what I have found out.

1. Research aims and methods

The main *aim* of the research is to investigate the development of medical law in the legal system of Latvia during the period of its first independence, embracing the period of 1918–1940, and to compare the approaches to the patient's rights in modern and oldtime law of Latvia. The given aim is achieved by discovering and selecting the judgments, reflecting the position of the courts in respect with violation of the patient's rights. The majority of discovered judgments were adjudicated by the Senate, while

¹ For the matter of brevity, to distinguish the Senate of the Republic of Latvia, which is currently the cassational court of the state, and the Senate, which operated in 1918–1940, I will designate the latter as the “First Senate,” as Latvian lawyers often call it.

² If the case was submitted to the justice of peace, then the district court was the appellate court for the case. If the case was heard at the district court as a trial court, than the Trial chamber was the appellate court. The Senate was the court of cassation. It did not review the factual part of the case, reviewing the case only for material (a wrong application of the law) or procedure errors.

the inclusion of a lower court judgment mainly depended upon the physical subsistence of the court materials, available for discovery: unfortunately, not all judgments of the lower courts survived, and thus the existing ones are very valuable artifacts. Most of the judgments were collected from the “LVVA” (*Latvijas Valsts Valdības Arhīvs* – the Latvian State Historical Archive) and their subsidiary libraries in Riga, as well as the Latvian State National Library (*Latvijas Nacionālā Bibliotēka*), which possesses the judgment volumes of the First Senate’s civil, administrative and criminal cassational departments. The reports of the lower courts were discovered by working with archival fund descriptions by the author, and subsequently requested, processed and translated. Apart from judgments, the author also pays attention to the Latvian scholarship legacy, involving the works of K.V. (1932), N. Valters (1933), A. Jākobsons (1936), and the comments of P. Minks & J. Lauva (1936) in respect with the provisions of the Latvian criminal code (1933).

The *research method* applied in the article is historical-legal. Not much legacy to comparative-legal approach is attributed, as the paper is entirely focused on Latvian law. At the same time, cases from other jurisdictions are featured to display the routes of the emergence of Latvian medical law in the period of First Independence. The cases from other jurisdictions, which are occasionally utilized in the article, are illustratively placed in order to compare a separate aspect valuable for the discussion – for instance, the occurrence of medical malpractice cases in a featured jurisdiction. Another research method, synthesis, is used to generalize the principles assembled by the First Senate while expounding the provisions of criminal law attributed to the liability of physicians for causing damages to the patients by careless behavior, non-admission to medical institutions, or negligent treatment. As mentioned above, the research is based upon original material, which remained mainly undiscovered even in the legal scholarship of the 1930s and required substantial effort to work with. The jurisprudence of the First Period of Independence of Latvia (1918–1940) has never been the subject of modern legal research before and has never been generalized or systemized by any scholar, which provides additional significance to this particular study, which is likely to be the first of its kind in respect with the time fragmentation, which is investigated upon. The author has found no legal scholarship dealing with studies of the period of the First Independence in the two other Baltic States (Estonia and Lithuania) concerning medical law. However, medical jurisprudence from the previously mentioned period in the Baltic States could be a subject of a separate research, requiring extensive work with archives and specialized literature. The given paper provides an analysis of the case law of the First Senate, as well as several selected judgments from the lower courts of Latvia, involving medical malpractice in the time period of 1918–1940. Since the archival funds are gradually discovered, the author expects a sequel paper devoted to the jurisprudence of lower Latvian courts in the period of 1918–1940 as well.

2. Doctrinal and jurisprudential routes of Latvian medical law before 1918. Medical law scholarship in 1918–1940

Latvia gained its independence in 1918, and the routes of Latvian medical law were apparently under the impact of former jurisdictions before a firm body of medical jurisprudence was formed during the First Period of Independence. What were those routes? Jākobsons (1936) addresses two of them, despite referring to more cases and draft laws: these were the judgments of the Russian Senate’s Criminal Cassational Department in the case of *Dr. Modlinskiy* (1902) and the early jurisprudence of the Supreme Court of Germany (named ‘Reichsgericht’ those days). It should be denoted that Jākobsons mainly discussed the problem of the patient’s consent to medical interventions in the embrace of medical negligence; so did an author named “K.V.”, who wrote a short paper in *Jurists* (1932) asking whether the

doctor may operate on a patient without their consent when the operation involves a potential threat to the sick – K.V. concluded that a doctor may not do so, and proposed to amend the Criminal Code with a provision punishing unconsented medical interventions. We will turn to K.V.'s conclusions later; let us discuss the judgments that could be considered the routes of Latvian medical law in 1918–1940.

The case of *Dr. Modlinskiy* (1902) was a criminal trial against surgeon Peter Modlinskiy who operated in a private clinic. In early 1900, a young woman (legally a minor according to the laws of those days) named Chernova came to the premises of the defendant's clinic in order to remove a tumor in her neck. The surgeon found a cyst tumor near the young woman's abdomen, and judged he had to remove it as well, not asking the consent of the victim's mother and father, conducting a laparotomy – a surgical operation with a high mortality rate as of the beginning of the 20th century. Unfortunately, Chernova did not survive the procedure.

During the extraction of the tumor, a part of its contents floated to the abdomen cavity; although it was not directly established that this brought about the patient's death, the expert conclusion was firm in finding that the death was caused by Modlinskiy's procedure, which was carried out without Chernova's consent. Chernova's condition quickly deteriorated within the next few days. It was suspected that the patient had peritonitis (which was later confirmed), and the defendant conducted a second laparotomy, but Chernova died the next day after the said operation due to coronary complications (1902 g. 19 nov., *Po dielū doktora meditsyny...*, p. 84–86). The circuit court and the trial chamber (this was the name of court of appeals at that time) found that the patient's death was caused by the operation; no urgent need to conduct such medical intervention did exist (despite that there was no doubt of the existence of a cyst in the abdomen, it was not a medical emergency). Such a procedure required the patient's consent (especially considering this was a procedure that could either cause substantial harm to the patient or which has a substantial mortality rate); moreover, the defendant was not asked to perform it. Therefore, the defendant was convicted, and his appeal in cassation was also dismissed (1902 g. 19 nov., *Po dielū doktora meditsyny...*, p. 89–90).

K.V. (1932), mentioning a situation when the patient is operated on without their consent, also discusses this judgment and mainly reiterates the outcomes of the *Modlinskiy* case (1902), stating that a physician's profession is subject to the same rules as any other lawful activity, one of the basic rules of which is that the person's (i.e. patient's) inviolability of the body may not, without their consent, be violated, and that their body's natural functions cannot be interfered with (in the original court report, the Court said that the following means not a slight medical intervention, but “such a modification of the organism, which threatens the health, a loss of an organ or its ability to function, or demise”) (1902 g. 19 novembra, *Po dielū doktora meditsyny...*, p. 89). Next, K.V. speaks on the following issues of the patient's consent:

- 1) “If there is no obligation to submit to a doctor's prescription, then the doctor's right to perform the operation cannot be recognized without the patient's consent or permission expressed in this way or presumed on sufficient grounds”;
- 2) “By turning to a doctor for help, the patient does not lose the right to dispose of his or her personal, natural rights and does not become fully available to a doctor, even though the doctor has acquired the privilege of treatment on the basis of his or her knowledge” (K.V., *Vai ārstam ir...*).
- 3) Concerning cases of an emergency: “There is no doubt that in such cases, when the patient is in a very difficult condition and unconscious, in the absence of relatives, there will be obstacles to obtaining permission for the operation, which, according to the doctor, is necessary to save their life. In such cases, of course, the doctor may presume the existence of a permit”.

- 4) Concerning the extension of the surgical procedure: “[...] if, at the time of removal of an operation for which the consent of the patient or his/her relatives was obtained, it turns out that additional surgery is required in another organ or in other amounts, the authorization shall be presumed”. It is not definite whether K.V. meant the situation in Dr. Modlinskiy’s case, where there was no actual “extension” of the operation, as usually such an “extension” means an additional medical intervention in the course of a consented medical intervention – during which the patient is unconscious and cannot give their consent. A Canadian judgment, *Marshall v. Curry* (1933) is pretty much to the point here (further comment on the case, see: Macdonald, 1933, p. 506–510). At some point, it could only be a theoretical allegation of Mr. K.V. He also pointed out that the Ministry of Justice had elaborated amendments to the Penal Code on basis of the said judgment, the original text of which is presented as follows³:

“[Article] 195 1. A doctor who has treated a patient without his or her consent, except in cases of involuntary treatment provided by law or a binding provision, shall be punished: with temporary detention for not more than one week, or with a fine of not more than twenty-five [Latvian] lats. A doctor who has treated an incapacitated patient without the unanimous consent of his, or her parents, or surrogates, shall be punished with the same penalty and on the same grounds, provided that the doctor’s intervention did not take place out of compassion for the patient.

[Article] 195-2. A doctor or midwife, who carelessly, unjustly or negligently performed [the duties of] her profession, shall be punished: with arrest or a fine, not higher than five hundred [Latvian] lats. If the patient died or his health has been damaged because of improper treatment, the offender shall be punished on the basis of Art. 464 (2) or the Art. 474 (2) of the Penal Code, as the case may be. In addition, the court may deprive the guilty person of the doctor’s or midwife’s diploma as long as she fails a new test”.

The text of legislative amendments and the passages of K.V.’s article led me to arrive on a number of interesting thoughts. K.V. mentioned that the issue of patient’s consent had never been resolved in Latvian criminal law. My Senate books do not hint on any medical malpractice case directly dealing with this question. For instance, in the case of *Londenberg*, the Senate mentions that an abortion was made upon the pregnant woman’s consent, which was neither doubted nor discussed by the courts of all three instances (1926 g. 28 sept. spr. *Londenberga...*, p. 306). Next, what circumstance caused the Latvian Ministry of Justice to turn to this issue? Could that be an ongoing criminal trial against a physician, who conducted an unconsented surgery (or other medical intervention), causing the patient substantial damage? If so, what judgment was it? My ongoing archival research upon the funds of the lower courts in the period before 1933 still does not reveal any judgments bearing such case circumstances, though medical malpractice cases were definitely found. Jakobsons also mentioned Art. 57 of the 1926 Draft Transfer Law of the First Czechoslovakian Republic, which prohibited providing medical interventions without the consent of the patient (Jākobsons, 1936, p. 11). Was the aforesaid draft law impacted by a distinct court case that was heard by the Supreme Court of First Czechoslovakian Republic? Having checked over a dozen of medical malpractice cases of the said court, I found no judgments, directly related to informed consent; however, there was a case featuring a dispute on the remuneration of the treatment costs between a land fund with a father of a minor patient, who was transferred a to a specialized infirmary because of the fact he was suffering from a contagious

³ The translation is stylistically edited.

disease, which was done without the consent of the parent, though the fact of the unconsented transfer was not disputed (*Nejvyšší soud Československé republiky*, Rozh. ze dne 18...). A civil case from early 1926 featured a lawsuit by a female patient against a physician for not warning her on the possibility of burns during diathermic treatment, who had previously guaranteed the woman that the treatment should be harmless. However, the physician was found to be not in fault for the patient's burns, and the guarantee from his side was not accounted to be a "harmful" one, since the type of treatment (i.e. diathermy) was well-known and well-experienced in the 1920s (*Nejvyšší soud Československé republiky*, Rozh. ze dne 12...). It is remarkable, however, that in the First Czechoslovakian Republic, medical personnel could be subject to criminal responsibility under Art. 335, 356–358 of the Criminal Code (which, in fact, was the still acting Criminal Code of Austria-Hungary of 1852, depending on the circumstances and the type of the doctor's specialty), as well as Art. 1299-1300 of the Civil Code, in case the negligence was moderate and did not cause severe danger to the plaintiff.

At the same time, it was strange to see that the Eastern European legislature did not anyhow consider a well-developed body of case law relating to the patient's will an autonomy, originating from France and Belgium. French legislators never imposed specific liability on doctors (i.e. Art. 1382 of the Belgian and French Civil Code covered all issues as to negligence while performing professional duties), and even such procedures as unconsented, fatal experiments on human-beings were viewed by the French courts in light of this provision (*Consorts Chavonin c. K...* (first instance); *L. c. Consorts Chavonin...* (appeal)), despite that in the 19th century, an unauthorized medical experiment without a curative goal, performed solely for the needs of scientific research, constituted a battery (Art. 311 of the Criminal Code), which is distinctly shown in the Antiquaille Hospital Case (*Min. publ. c. Guyenet et Gailleton...*). However, vasectomy was not within either the concept of the patient's will to undergo certain surgical operations or the civil responsibility for an unconsented operation, but was considered a crime for body mutilation, as it was displayed by the Cour de Cassation's decision of July 1, 1937 in the case of *Bartosek, Harel and Prevotel*. If we take into account the jurisprudence of the Supreme Court, then we may notice that in most cases the doctor's civil liability was based upon Art. 1299 of the Civil Code (as it already was in the late Austria-Hungary)⁴, which also differs from Latvian approach. Therefore, the approach for the misdemeanors conducted by physicians is likely to be in more concordance with the Polish penal law of the 1920s, where medical malpractice invoked penal liability (*Sąd Apelacyjny w Toruniu...*)⁵. At the same time, in several occasions, the hospital sickness funds (Pl. 'Kasa Chorych') could also be sued in a civil action for: 1) entrusting activities requiring far-reaching specialization to a wrong doctor (i.e. major surgery) to a physician of a different specialty; 2) limitation of the physicians in the choice of medical and technical measures, or concerning the duration of medical treatment, which could have its consequences; 3) defective organization of the doctor's work from the insurance fund, such as non-professional supporting staff. Apart from the aforementioned cases, the responsibility of faulty treatment procedures shall be born by the doctor, who either performed such treatment, or recommended it (*Orzeczenie Sądu Najwyższego z dnia...*).

⁴ In the 19th century, the Austro-Hungarian courts rendered judgments relating to liability of physicians on basis of Art. 335 and 356–357 of the Criminal Code. There were not many cases of the K.K. Oberster Gerichtshof preserved relating to medical malpractice, but the early cases showed that the malpractice, for which the doctors were punished, was usually severe, like causing the patient's death by negligent acts, or an omission to provide medical assistance to the sick, resulting in the patient's death, see: K. K. Oberster Gerichtshof, Entsch. v. 27 Januar...; K. K. Oberster Gerichtshof, Entsch. v. 2 Juni...; K. K. Oberster Gerichtshof, Entsch. v. 6 Februar...; K. K. Oberster Gerichtshof, Entsch. v. 12 Sept... (notice it was a libel action against a physician, lodged by an another physician, where the defendant accused the complainant in negligence, claiming he hadn't properly administered medical treatment to a 15-year-old wounded factory worker, who later died). However, the 1915 judgment was a civil claim, based upon Art. 1299 of the Civil Code.

⁵ Criminal liability upon Art. 230 of the Criminal Code.

Now, let us turn to the contemporary Senate's jurisprudence. In the judgment No. SKC-216/2013, involving a dispute relating to involuntary psychiatric treatment, the Senate announced a number of principles on informed consent. They are provided as follows:

- 1) the [medical] treatment is legitimate with the patient's consent except for involuntary treatment, where the imperative nature is marked;
- 2) the consent is conditional on basis of:
 - a) ability to express the patient's will;
 - b) the patient's awareness;
 - c) the patient's voluntary nature;
- 3) Consent is not a sufficient condition for [medical] treatment (when it cannot be performed only upon the patient's subjective will) (*G.D. pret Valsts...*, p. 11 / para. 8).

If we carefully look at the proposed Art. 195-1 of the Penal Code (which became Art. 218 of the 1933 Penal Code, repealing the 1903 one) both clauses mention the so-called “involuntary” treatment. Did the Senate consult the paper by K.V.? The current Latvian legislation does not prohibit unconsented operations under the Penal Code; it is subject to civil liability for negligence (*A. pret. AS „EZRA-SK Rīgas...*). Upon *Jākobsons* (1936), who discussed the issue of unconsented surgery, cases in its respect, as well as legislative elaborations in order to penalize unconsented surgery already existed in Central and Eastern Europe in the 1920s and early 1930s (*Jākobsons*, 1936, pp. 9–25). The 1929 project of the Criminal Code only contained Articles 195–196 relating to the liability of medical practitioners, though no reference was actually made neither to ordinary malpractice, nor to unconsented surgery. Art. 195 of the Criminal Code project proceeded as follows: “[The one], who does not have the right to engage in medical treatment, or who has been deprived of this right, and who has treated [the patient(s)] with deadly or coercive substances, or means, or has treated a person in a hypnotic state, is punishable by: [a] temporary detention for not more than three months or – a fine not exceeding three hundred lats” (*Sodu likumu projekts...*, p. 42). The formula of Art. 195 seemingly refers to the case of *Gaužen* (1924 g. 14 okt. *Gaužena...*), whereas Art. 196 relates to the liability of midwives who are not able to call a doctor for assistance in the following terms: “A midwife who, without a noteworthy reason, has not fulfilled the obligation to recall a maternity doctor in cases specified by law, shall be punished: with detention for a period not exceeding three months or with a fine not exceeding three hundred lats”. In 1934, a case relating to negligence within a child delivery was dealt with the investigating judge of Riga district court of Valmiera circuit, but it was terminated for absence of crime (*Zuzannas Aunins apsudzību...*). A similar case was heard by the Supreme Court of the First Czechoslovakian Republic in 1923 (*Nejvyšší soud Československé republiky, Rozh. ze dne 19...*).

Therefore, it could be deduced that the issue of unconsented surgery arose no earlier than in 1929, but at what point was it deemed suitable to amend the Code in 1932 (as stated by K.V.) on the basis of a thirty-year-old judgment, which had plenty of “younger” analogues? The commentary by Mincs and Lauva, which included the First Senate's judgments, also did not cite a single judgment on Art. 218–219 of the 1933 Criminal Code of Latvia (Mincs & Lauva, 1936, p. 116–118). We may suggest that the legislature and the Ministry of Justice were aware of a case heard before a lower-instance (probably an appellate) court, relating to the issue of an unconsented medical intervention, but the judgment, regardless of its outcome, was not appealed to the Senate. Since the then-existing case law publications seldom featured any court cases but of the Senate, it is not a surprise that the possible progenitor case of Latvian informed consent was “lost”. At the same time, my search in the LVVA funds is ongoing, and I still hope to find the appropriate judgments of the lower courts affirming that

a case on unconsented medical intervention was actually heard before a Latvian court within the First Period of Independence.

Now let us turn to the second authority, coming from the German Supreme Court (Reichsgericht) in 1894. The XIX century court jurisprudence of the European states feature that a case on unconsented surgery was adjudicated by the appellate court of Braunschweig, Germany in 1893 (*OLG zu Braunschweig...*), a 1882 judgment from the criminal court of Basel, Switzerland (*In Sache des Karl Schulze...*), the case of Dechamps in Belgium in 1889–1890 (Dechamps c. Demarche) and the Antiquaille Hospital Case in 1859 (*Min. Publ. c. Guyenot et Gailleton...*). Since the 1894 judgment was rarely dealt with in academic literature, let me introduce the facts and the judgment itself upon the original. A 7-year-old girl, who was the patient in the case, was admitted to a hospital, suffering from a tubercular suppuration of her tarsal bones. The surgeon (the defendant) tried to halt the progression of the disease, claiming that in order to stop it, a bone resection was necessary. However, the girl's father repeatedly opposed the said operation while negotiating with the hospital staff, desiring to take the child back home. However, the operation was performed, and the surgeon did not succeed in it, despite all his efforts. After a month, the girl's foot was amputated, as the subsequent deterioration of its condition gave physicians no other choice. After the amputation of the foot, the tubercular symptoms did not reappear any more, and the minor patient began to regain her health and strength, despite being apparently crippled. The surgeon was subsequently prosecuted but eventually acquitted; however, the prosecutor's office appealed together with the patient's father as a co-plaintiff (civil party), and after considering the facts of the case, the Supreme Court found the defendant to be guilty, remanding the case. The defendant surgeon was charged with assault (Art. 223 of the German Criminal Code, or *Strafgesetzbuch* in German). A valuable quote concerning the necessity of the patient's will is provided as follows: "And with the moment of such a refusal [to undergo a surgical operation] by the sane patient or his legal representative, the doctor's authority to treat and mistreat a certain person for healing purposes also expires. Consequently, the doctor who deliberately commits physical abuse for healing purposes, without being able to derive his right to do so from an existing contractual relationship or the presumptive consent, the presumed commission of legitimate persons, acts unjustifiably, i.e. unlawfully, and is subject to the norm of §223 [of the Criminal Code] which prohibits such offenses" (*Reichsgericht*, III Strafsenat...). Interestingly, after the case was heard by the lower court after the Supreme Court had remanded it, the doctor was acquitted.

Apart from the two judgments discussed above, Jākobsons (1936) also addressed his view on several Austrian judgments. However, owing to a very specific referencing, it is nearly impossible to identify the judgments he referred to, so I decided to conduct a custom search in respect with the judgments from this country. The early criminal law reports of the *K.K. Oberster Gerichtshof*⁶ suggested that the doctors (usually, the surgeons) could be held criminally liable for the death of their patient, the court had to establish a causal link between the death of the patient and the doctor's neglect to treat him, or his negligence in treatment, which caused death (*K. K. Oberster Gerichtshof*, Entsch. v. 21 Juli...; *K. K. Oberster Gerichtshof*, Entsch. v. 27 Januar; *K. K. Oberster Gerichtshof*, Entsch. v. 2 Juni; *K. K. Oberster Gerichtshof*, Entsch. v. 6 Februar...). Ordinary negligence, which caused damage to the patient, could be established on basis of Art. 1299 of the Civil Code (*Allgemeine Bürgerliche Gesetzbuch*, often abbreviated as *ABGB*), and the same principle was applied in civil cases as well (*K. K. Oberster Gerichtshof*, Entsch. v. 7. Sept...). One 1915 decision is worth being discussed. The facts of the case

⁶ The full name of the court is "*Oberster Gerichts-und Kassationshof*", but mainly the court reports refer to it as "*Oberster Gerichtshof*" or "*K.K. Oberster Gerichtshof*".

No. 7557 or Rv I 448/15⁷ were the following: the plaintiff, a solicitor's wife, had issues with knock knees (*genu valgum*) since childhood, and desired to have a corrective operation, placing herself under the care of surgeon Dr. B. (the defendant) to operate her in an unspecified clinic in Vienna⁸; however, the said operation was unsuccessful, despite all efforts of the doctors. So, the plaintiff demanded compensation for an unsuccessful operation, claiming that instead of knock knees, she appeared to have bow legs, and “was permanently disfigured and could move with difficulty”. She did not contest that the operation was performed skillfully and upon the well-established rules of medical science; it was fully affirmed by a medical expert conclusion that the surgical methods applied by the surgeon are used frequently, while the operation itself was performed skillfully and aseptically. Plaintiff alleged Dr. B's fault in the following: 1) Dr. B did not examine her properly at the first consultation and [she] did not understand the possible consequences of the operation; 2) alleged negligent and improper hospital treatment, and finally, 3) the failure to perform a new operation in due time or to point out the necessity of an operation in due time. The court of the first instance of Vienna dismissed her action, finding that: a) Dr. B did not assure plaintiff A. that the operation was one of the easiest, but on the contrary, by describing the operative process involved, made her sufficiently aware of the dangers of it; the prospect of a favorable success and the confidence in the skill of the Viennese surgeons led plaintiff to abandon all doubts and submit to the operation; b) Neither Dr. B, or his assistant, Dr. C., could be found to be negligent. The mere fact that the said operation was not very successful does not entirely mean that the doctors neglected the established rules of medical art. Moreover, despite the result of the operation was not ideal, the improvement of A's condition was virtual: “In addition, there is the fact that the end result cannot be described as a bad one; that the mobility of the feet is good, the variety that has occurred is not a disturbing one, there is no difference in length of the legs, the knees are approximated except for a small space between them, the knee joints are perfect can be stretched and bent beyond a right angle, [plaintiff] A. can walk without a cane, run her household without problems, and even do individual business transactions; finally comes the fact, that an improvement in her condition is possible in the future”. The court found that no fault from the side of the doctor was established, nor damage was shown, nor a causal link between the acts and events was found. The court of appeals of Vienna upheld this decision. Concerning the duty of the doctor to inform the patient on the possible dangers of the operation, the following was said: “[...] In any case, the fault of Dr. B could not be found [in the aspect] that he did not specifically draw attention on the possibility, that the success of the osteotomy to be performed, could be impaired by a damaging displacement; because not only did the expert declare that Dr. B. by having made the plaintiff A. aware of the danger of the operation in

⁷ All Austrian case reports are anonymized and referred in sophisticated codes, which are not easy to be comprehended, which often makes the case search complicated. Occasionally the cases may be traced by tables in the end of the judgment volumes, where the judgments are aligned upon the applicable provisions of the Civil Code. The Austrian-Hungarian case law legacy mainly consists of the case law of the *Oberster Gerichtshof*, though occasional lower court judgments could be found in legal periodicals. Austrian lower court judgments from the time of the Austrian-Hungarian Empire were also referred to in codes, which could be easily deduced from the reference to the impugned judgment number by the *Oberster Gerichtshof*. However, the lower courts in the cities under the jurisdiction of the Austrian-Hungarian Empire could have alterations in referring the cases, for instance, in the referencing numbers, or the case materials included the names of the litigating parties. The original case materials originating from the Austrian-Hungarian Empire are usually found in state historical archives, and are usually free for examination for legal researchers and historians. The archival funds also have descriptions of the cases contained in it, so the researcher may find the necessary case by consulting the description of the fund.

⁸ The places, where the case facts occurred, were also anonymized. The case report (*K. K. Oberster Gerichtshof, Entsch. v. 7. Sept...*), however, discloses that all facts from the case happened in Vienna.

general, he had fulfilled his duty; but it is evident even without special consideration of the report, that it cannot be the doctor's responsibility to give the patient [facts concerning] all possibilities, which may occur as a result of the planned operation, [and] to draw [his] attention to this, if only because the patient lacks the knowledge to understand and understand the necessary information".

The Supreme Court, too, agreed with such a resolution. The Oberster Gerichtshof claimed that there is no fault of Dr. B in the mere fact that the operation was not that successful. The Oberster Gerichtshof affirmed that Dr. B. did not claim the operation was an easy one, made the patient aware of the possible dangers of it, and carried it out skillfully and upon all the rules of the medical art, but Dr. B. could not be responsible for the success of the operation; the Supreme Court concluded that the damage to plaintiff A. was not due to the fault of Dr. B., dismissing the appeal (*K. K. Oberster Gerichtshof, Entsch. v. 7. Sept...*).

These were the main sources cited in the scientific works, all of which could be the doctrinal progenitors for the emergence of Latvian medical jurisprudence. Most of them are connected with the expression of a patient's will – a core issue in medical law and contemporary bioethics, which is currently an inalienable principle in these fields.

3. The court practice relating to medical law in Latvia (1918–1940)

3.1. Medical law in the other Baltic States

In 1930, the Civil Cassational Department of the Latvian Senate dealt with a case where a doctor litigated with a hospital for terminating his employment contract, which was terminated based upon his negligent behavior. Assessing the plaintiff's behavior, the Senate held: "The Trial Chamber⁹ had to take into account the highest moral quality required of a doctor; he should not be guided by any formal rules on the duties of a general practitioner, but by a love of fellow human beings and, additionally, by a social consciousness" (1930 g. 27 marta spr. Nr. 65...). In this judgment, the Senate acknowledged the high moral standard applied for physicians and their responsibilities. It is not, however, known for what reason medical malpractice litigation was relatively seldomly spotted in court reports within the First Period of Independence of Latvia (1918–1940), but the existing artifacts of such – brought before the Senate or the lower courts of Latvia – are considerable. For instance, when comparing the preserved case law of the Estonian Riigikohus during the First Period of Independence of Estonia (1918–1940), I have not found a single case on medical malpractice brought before it. There were administrative claims, however, not directly related to medical malpractice, but otherwise involving medical institutions. For instance, in 1925, an ex-serviceman named Hendrik Putnik, formerly a captain of the Estonian Defence Forces, suffering from an aortic aneurysm and arteriosclerosis, had applied for a pension as an ex-serviceman but was refused: the decision of the Minister of War of 18.04.1925 denied him the requested pension. However, plaintiff managed to prove that the ailment he was suffering from was contracted within his military service before the medical committee, and the Riigikohus annulled the Minister's decision, remitting for a new one (20 okt. 1925 a., *Hendrik Putniku...*). Administrative appeals against various ministry decisions relating to the payment of costs for medical treatment, i.e., involving foreign doctors or purchasing foreign medical equipment, could also be found in the practice

⁹ The Trial Chamber ("*Tiesu Palāta*" in Latvian) was a court of appeal in the Republic of Latvia in 1918–1940. Currently, the appellate courts are called "Apgabaltiesa" in Latvian, or a "regional court". The name "Apgabaltiesa" was a name of a district court during the Period of First Independence of Latvia.

of Estonian Riigikohus (8 nov. 1929 a., *Jaan Timuski...*). Citizens also used to litigate in order to be released from necessity to pay for medical treatment, depending on the disease (i.e. a contagious one), and the success of an administrative complaint against the decision of a city council (i.e. that it may not release a citizen from paying the costs for being treated in a hospital) was variable, but mainly depended upon the legislation (i.e. the Public Health Law) and the issues of the possibility of recovery of treatment costs, or the release from payment, in diverse situations (30 jan. / 10 veeb. 1931 a. *Ella Tuling'i...*). At such point, it cannot be claimed for sure that either the doctors were diligent in their medical duties, and medical negligence claims arose only before the justices of peace (if there were such), or the patients themselves were more interested in obtaining a compensation for treatment costs, no matter the quality of the treatment. The texts of the Riigikohus judgments (i.e. Putnik, Timusk, Tuling etc.) do not mention any facts concerning the *quality* of the treatment, or whether the patient alleged that it was negligent – either they were happy (at least, let us say, satisfied with the mere fact of the possibility for medical treatment), or they were more interested to recover the costs of the treatment, not intending to sue a hospital for malpractice (even if it actually occurred). The Chief Lithuanian Tribunal (operating in 1918–1940) also had a number of cases in relation to medical law, and upon 3 of them, we may assume that there was some litigation relating to the obligation to treat poor patients between different state institutions, which could be responsible for them¹⁰. For instance, in judgment No. 22 (1939), the Chief Lithuanian Tribunal held that the municipality should repay the maintenance of a person confined in a psychiatric hospital, who stayed and died in its premises (20.III.1939, Spr. 22, *Valstybinės Psichiatriinės...*). The abovementioned cases belonged to the civil cassational judgments, and the criminal cassational judgments are still under search at the time of composition of the given paper.

3.2. Civil claims before the Latvian Senate

The liability of physicians, based both upon the 1903 Criminal Code (1903 Sodū Likums), as well as the new Criminal Code (Art. 218–219) (Mincs & Lauva, 1936, p. 116–118) adopted in 1933, was an illustration that the duty of physicians to provide medical assistance was imperative (not mentioning that before 1933, general provisions of professional negligence could apply (1929 g. 30 apr. spr. *Betaka....* See additionally: 1924 g. 16 febr. Spr. *Goldringa...¹¹*)), and that negligence or any other doctor's faults could be prosecuted, including the abortion of a living fetus performed without medical indication¹². However, a number of civil claims relating to medical law and medical malpractice could

¹⁰ See the following cases: 20.III.1939, Spr. 21 *Šiaulių Miesto...*; 20.III.1939, Spr. 22, *Valstybinės Psichiatriinės...*; 20.III.1939, Spr. 23, *Alfonso Jurevičiaus...* The decisions of the Chief Lithuanian Tribunal (1918–1940), the Supreme Court of the Republic of Lithuania, are collected in various case book series dating 1920s and 1930s, and are contained in the archives of the town of Vilnius. They had never been digitized priorly to 2021 until my initiative altogether with Professor Jevgenij Machovenko (Vilnius University), when the first excerpts from the said case books were customly digitized at the Library of Vilnius University. The first part of the case reports involved around forty decisions from 1924–1927 relating to the use of customary law in the court jurisprudence, including the key “*Judgment No. 743*”, which was, in fact, a heritage dispute between a brother of a deceased man, who died without ancestors, and his widow. The trial court granted 6/7 of non-movable property to the brother, but left it in a lifelong possession of the deceased man's widow on basis of a custom, common for peasantry. Plaintiff was dissatisfied with the trial court judgment, and lodged an appeal, which was upheld. The widow lodged an appeal in cassation claiming that such custom definitely exists and acting upon it is admissible upon the applicable law. The Chief Tribunal overturned the appellate court's judgment, remitting the case to the appellate court and gave directions how and when customs could be applied in jurisprudence. See: 01.IX.1927, Spr. Nr. 743, *Byloje Ameriko...*

¹¹ hereinafter – “1919–1928 Kopojums”.

¹² A reference of judgments of the First Senate relating to abortions I provide herewith: 1922 g. 21 marta spr. *Len-des...*; 1923 g. 16 okt. *Lidke...*; 1924 g. 29 nov. spr. *Bekera...*; 1924 g. 29 nov. spr. *Davja...*; 1926 g. 28 sept. spr. *Londenberga...*; 1927 g. 28 janv. spr. *Cerbulā...*; 1927 g. 27 sept. spr. *Šaršums...*; 1928 g. 30 marta. *Sternbergs...*

also be spotted – some did not involve medical malpractice directly¹³, and some involved a claim for an indemnity against the city resulting from a municipal hospital staff's negligence, which were also the co-defendants (1937 g. 25 nov. / 16 dec., Spr. N. 10, *Senāts*...). The hospitals and the institutions governing them could also sue to recover costs for the treatment from the establishment (i.e. a parish, a fund for the poor, etc.), which could reimburse the costs for the patient's treatment (1924 g. aprīļa mēneša 30 dienā, Spr. N. 35, *Limbazu*...; 1930 g. 30 apr. 1930, Spr. N. 25, *Pilnvarotās*...), or directly from the patient (1939 g. 5 jul., spr. Nr. 39/573, *kasācijas sūdzību*...). The patients occasionally sued to recover the treatment costs from the municipalities with variable success – however, usually such claims did not contain any allegations in hospital malpractice (1940 g. 18 marta, spr. Nr. 7, *adv. J. Ķuža*...). The First Senate's Administrative Cassational Department also ruled in disputes instituted by sickness funds concerning the legitimacy of ministerial orders to pay out money to certain citizens (1924 g. 1 oct. spr. Nr. 49, *Jelgavas*...), as well as in disputes relating to compensation of treatment costs for the poor, or anyhow otherwise socially disadvantaged people, who were treated not in the circuit of their city or region: hospitals from another city could admit them, but the town authorities would usually claim to reimburse the treatment costs from the authority responsible for the patient (1930 g. 12 marta, spr. Nr. 23, *Ventspils*...). Indeed, a “patient representative” could exist those days (1930 g. 30 apr. 1930, Spr. N. 25, *Pilnvarotās*...), but it was either a charity institution or another instance being in charge for a certain citizen owing to peculiar circumstances (a good example would be the judgment of *White Star Line and White Star Dominion v. City of Riga* (1930)), or *Re: Aleksandrs Berči (Ventspils municipality complaint against the Decision of the Ministry of Welfare)* (1930). The First Senate also ruled in cases relating to the employer's inability to fulfill its obligations to manage the treatment of its employee, causing them pecuniary damage: for instance, in the case of *Kalniņš v. Cesvaine Dairy Society* (1934), an employee sued his employer for not registering him in a hospital sickness fund – the employee suffered from a stroke and was incapable to work, and the failure to register him at the said fund caused plaintiff substantial pecuniary damage for hospital treatment, transportation and visits to the doctor (defendant's appeal in cassation was dismissed) (1934 g. 21 martā, Spr. Nr. 23, *Cesvaines*...). In case a citizen attempted to recover damages from improper or careless treatment, they would rather file a criminal complaint against the physician whom they blamed to be negligent¹⁴. So, let us examine the several outstanding cases adjudicated by the civil and administrative cassational departments of the First Senate.

In 1924, the First Senate dealt with a very unusual case on medical malpractice, where the patient was... a horse! Plaintiff sought compensation in a lawsuit for damages because of the death of his horse, which was negligently treated by defendant; defendant was a veterinary physician, who operated a sick horse, which tragically died 7 weeks after the operation. Defendant denied his fault, claiming that 1) he performed the operation correctly, 2) he did not undertake the treatment of the horse, but gave the usual appropriate measures for the care of the horse, 3) he did not assume any guarantee or risk of the concluding result of the operation. The regional court established his fault, as “the defendant's reckless or negligent conduct had been established, through which he had caused the ordinary damage and for which he was liable”. The court below established a causal link between the defendant's operation and the death of the horse. Defendant appealed against the regional court's judgment, but unsuccessfully.

¹³ For instance, in one of the Senate's cases, a venereologist's rent agreement was terminated, as he strongly neglected to provide necessary conditions for his patients: 1925 g. 17 dec. spr. Nr. 157, *Amālijas*...

¹⁴ Not accounting *Grzibovskys*, who chose to recover damages from the city (to be paid to him as a pension), usually the citizens wrote a criminal complaint against a doctor, and joined the proceedings, as a civil plaintiff, usually claiming up to 1000 LVL redress. See, for instance, *Ziberg pret Dr. Adamson*...

The basis of the claim for damages, according to the First Senate, is a non-performance of a service contract (1924 g. 22 okt. spr. Nr. 60, *Jazepa Megna...*).

In 1929, the First Senate handed down a judgment relating to pharmaceutical law and freedom of press. A citizen named Čunčiņš instituted a complaint where he alleged the illegitimacy of a then-newly established order of the Ministry of Welfare (1929. g. Vald. Vēstn. Nr. 209 (1929 g. 16 septembra), which prohibited advertising diverse medicinal goods without the authorization of the Pharmaceutical Board of the Department of Health of Latvia. The First Senate did not find any illegitimacy of the 1929 order, finding that it complies with Medical Treatment Law (*Ārstniecības likums*), and did not violate the provisions of the Press Law (*Preses likuma*), as the freedom of press existed within the boundaries of law. The First Senate (Administrative Cassational Department) hereinafter rejected his complaint (1929 g. 16 dec. spr. Nr. 68, *Kārļa Čunčiņa...*).

In *White Star & Dominion Line v. City of Riga* (1930), representatives of the city of Riga (with Janis Kuzis¹⁵ heading as plenipotentiary for the city) demanded a 1036 l¹⁶ compensation for the treatment of the children of migrants (probably the migrants that were brought to Latvia in early 1920s and supervised by the *White Star & Dominion Line*), who fell ill with scarlet fever and were treated in late 1924 and early 1925. The Senate found the claim of City of Riga to be unfounded. In 1922, the City Council of Riga adopted the compulsory rules for contagious disease control (Regulation of 6 November 1922) (*Valdības Vestnesis* (1922): No. 253, 256, 257), upon which the City of Riga had the obligation to treat all patients contracted with contagious diseases (whereas scarlet fever as well as diphtheria were mentioned directly) free of charge, regardless of the fact whether the patients applied for medical treatment upon their own will, or were hospitalized. Moreover, White Star & Dominion Line contracted to recover all the medical expenses with the Ministry of Internal Affairs, which, as of the First Senate, apparently did not create any rights for the City of Riga, which was not a contracting party, and did not relieve the City of Riga from its obligation to treat patients suffering from scarlet fever (1930 g. 30 apr., Spr. N. 25, *Pilnvarotās...*).

In an unnamed case from 1930 (simply referred as Judgment no. 65 in Volume VI of Senata Civilā Kasācijas Departamenta Izvilkumi, or Extracts from the Senate's Civil Cassational Department), a doctor litigated with his employer (seemingly, it was a hospital, though not pronounced directly) for terminating his employment contract. The reason for this was plaintiff's (he filed the appeal in cassation) impious behavior and negligence towards his patients. The Trial Chamber found that the testimony of the patients, the midwife working with him, and the expressions of plaintiff himself did not establish the fault of the doctor, but the Senate overturned its decision. Having announced a notorious sentence concerning the high moral standards applied to the job of a general practitioner, the Senate found that: it is not admissible for a doctor to refuse providing medical assistance without examining a patient, merely finding that medical assistance is not necessary, or because it was "not known" whether a midwife actually would necessitate his help; he offered snacks to the patients at the doctor's office and refused to see a patient claiming to have dinner with a "notorious" person, and he drank alcohol so as the patients could see him consuming it – the given circumstances made the Senate find the doctor's behavior was intolerable, especially in the view he was a general practitioner: "This is the person, which the local residents of the parish are forced to turn in case of illness [...]", and stated that the Trial Chamber had to assess and discuss "whether the

¹⁵ Janis Kuzis (1881–1952) was a Latvian lawyer, sworn advocate and 1st class secretary, residing in Riga. He used to live in Riga. In the 1920s and 30s he acted as a plenipotentiary representative for the city of Riga (Lat. *Rīga pilsētu pilnvarnieks*) in various civil disputes, which were frequently heard in the Senate.

¹⁶ Latvian Lat, a currency in Latvia during the First Period of Independence (1922–1940) and was re-enacted in 1993 before it was replaced with Euro.

plaintiff's conduct complied with the professional, moral and social requirements which the public may have against the doctor who undertakes to perform the duties of a public doctor...”, vacating the Trial Chamber's judgment (1930 g. 27 marta, spr. Nr. 65. (4188)...). In 1925, a venereologist litigated against his landlord, who terminated his rent agreement owing to the fact he neglected to provide adequate conditions for his patients, and was negligent to keep the premises clean; his appeal in cassation was rejected (1925 g. dec. 17, Spr. Nr. 157 Jēkaba...).

The case of *Vaclav Grzibovsky v. City of Riga* (1937) featured a lawsuit against the city of Riga and other parties for negligence causing damage to plaintiff, the patient, represented by sworn solicitor Jakovļevs in the Senate. The facts were quite intriguing, and involved a case of substantial medical malpractice. In late September 1933, a bus overran plaintiff's leg. A police officer assisted him and took the man to the Riga City Hospital No. II, but the hospital doctor K. Rudzītis refused to provide him medical care, and the doctor K. Dolietis refused to admit plaintiff to the hospital. It was known that the hospital staff were employees of the Latvian University. As time went, the plaintiff's state of health deteriorated. On October 19, 1933, plaintiff entered Riga City Hospital No. I (Bruninieku st. 4, Riga), where he was ordered to have his leg amputated, but he refused. On November 3, 1933, he was discharged from Riga City Hospital No. I, but on the next day (November 4, 1933), plaintiff entered the hospital of the Russian Medical College. That evening, his left foot was amputated, with the entire leg being amputated in the course of a few days. As a result, plaintiff lost 75% of his working capacity. Therefore, the plaintiff requested to recover from the defendants the City of Latvia, the University of Latvia, doctors K. Rudzītis, K. Dolietis, P. Meķis (doctor from the hospital sickness fund, who allegedly treated him negligently) and Riga Central Sickness Fund jointly and severally in favor of the claimant LVL 111 per month.

The Trial Chamber upheld the claim against the City of Riga, but dismissed the action against other defendant parties, joining the motives of the regional court. As of the facts, it was established that after the accident, plaintiff was driven to Riga City Hospital No. II, where the doctors K. Rudzītis and K. Dolietis superficially examined the leg, finding that hospitalization was not necessary. On the next morning, plaintiff was again taken to the hospital, but was not admitted once more. Later, the plaintiff had been hospitalized at the Russian Medical College hospital, where he was diagnosed with a gangrene and where the leg was subsequently amputated, due to which he lost 75% of his working capacity. The City of Riga was held liable owing to the fact it did not fulfill its public-legal obligation to provide medical assistance to the population. Defendant City of Riga, through its representative, did not deny such an obligation, but referred to an agreement concluded between it and the University of Latvia, after which the latter took Riga City Hospital No. II into governance. Therefore, held the defendant, the legal responsibility for plaintiff's non-admission to the hospital should be of the University. The Senate, however, negatively assessed such argument, denying it as follows: “Once the provision of medical care is a public-legal obligation, then on the one hand the city cannot be released from such an obligation by concluding a contract with a third party, and on the other hand, the plaintiff has neither the obligation nor the right to request medical assistance from the city subordinate, the respective hospital staff of the last service”. Therefore, concluded the Senate, the Trial Chamber could find that the claim against the University of Latvia and the doctors had no legal basis, but is justified in respect with the City of Riga. Since the plaintiff also filed an appeal in cassation against the decision of the Trial Chamber, it was also dismissed, as the defendant's. As it was held before, the Senate held there was no legal basis for the claim against the doctors and the University of Latvia. With regard to the possible liability of other defendants, it was already established by the appellate court that it did not exist. Thus, both appeals in cassation were dismissed.

3.3. Criminal cases involving the liability of physicians before the Senate in 1918–1940

The liability of medical practitioners, imposed by the law, was criminal in the times of the First Independence of Latvia. The most frequent reason for prosecution was an abortion, which was illegitimate unless there were firm medical reasons to conduct it; persons inducing a woman to undergo an abortion could also be held liable upon Art. 466 of the Criminal Code (until 1933) and 439–440 (1933–1940) – even if they were not physicians, but, for instance, their relatives (1923 g. 16 okt. spr. *Lidke...*). At the same time, the circumstances of each abortion had to be assessed by the courts, and the physician usually had a certain discretion in deciding whether the abortion is necessary upon a firm medical indication, mainly relating to the mother's health condition, which could be morbid (1926 g. 28 sept. spr. *Londenberga...*). The fetus definitely had to be alive in order for the abortion to become a crime, and the abovesaid fact had to be proven by various documentary evidence, witness testimony and expert conclusions (1928 g. 30 marta spr. *Sternbergs...*). In the case of *Londenberg* (1926), the Senate held that the abortion becomes criminally punishable when “[...] the health condition of the pregnant woman in a particular case was such, which would make childbirth possible” (1926 g. 28 sept. spr. *Londenberga...*). Four years earlier, the First Senate set out two criteria for the invalidity of the offense in extracting the fetus: 1) if it had previously been lifeless at the time of its removal (i.e. abortion); 2) if it could not at all have been born alive (1922 g. 21. marta spr. *Lendes...*). In 1939, the crime of abortion was ranked as the 9th of the 11 most frequent crimes throughout the criminal cases heard before the regional courts of Latvia, according to the reports of the prosecutor's offices¹⁷. In 1939, the quantity of abortion-related cases heard before regional courts could vary from 5 to 28 per year (Skādulis, 1940). Six more cases were reported in the first trimester of 1940 (V.V. 1940). After the 1933 Criminal Code was enacted, P. Mincks proposed to amend the provisions regarding the abortion, allowing women to apply for a legitimate abortion (Mincks, 1936). The existing case law proves that considerable judicial scrutiny was required in order to prove the doctor's fault, which often made these cases fall apart owing to insufficient evidence, as in the case of *Londenberg* (1926) or *Sternbergs* (1928). The 1933 Penal Code made a clarification (Art. 438–440) concerning the limits of a legitimate abortion. Firstly, the abortion was considered legitimate when the birth of the child could endanger its mother (it was apparently in the discretion of the doctors to assess it primarily). Next, it was also non-punishable when there was a strong predisposition the baby could be born physically or mentally impaired (the question of how could the midwife define it upon the first trimester – the legitimate term of terminating the pregnancy upon Art. 440 of the 1933 Penal Code, especially taking into account the technologies of the 1930s – is a very rhetorical question), if the fetus was conceived under conditions of Art. 497–502 of the Penal Code, and in cases where the birth of the child could “cause serious harm to the mother or the family” (1933 g. 24 aprils. *Sodu likums...*, p. 137). As we can deduce from the said provisions, such circumstances of a legitimate abortion were relatively broad and thus depended upon the interpretation of the case facts by courts, whether a certain doctor, midwife or the pregnant woman herself committed an illegal abortion or not.

Abortions were the most common crime the doctors were blamed for. The First Senate had enough decisions relating to abortions, the most outstanding of which were the case of *Londenberg* (1926) and *Sternbergs* (1928). All of the said judgments reveal that cases against physicians frequently “fell apart” owing to a lack of evidence – mainly the lower courts did not clearly establish that the fetus was alive, or that the medical indications to conduct the abortion did not exist, or the experts could not define

¹⁷ Skādulis, 1940. According to this source, the total number of abortion cases referred to regional courts was 277 per year.

the pregnancy period precisely etc., which was not surprising owing to the real stage of development of medical technologies. A later case of *Vembris* (1940), adjudicated by the Senate, where the accused was the civil partner of a pregnant woman, who made her undergo an abortion, also represented a typical rural drama, where young people were scared of responsibility for a future child. However, the young woman intimated the child could be born morbid, or mentally impaired (the reader of the judgment may presume she was not really against conducting the abortion), and the young man, who was the accused in the case, could not be explicitly blamed for inducing her to undergo the abortion (which was a chemical one, in fact), and thus the case was remanded for reconsideration (1940 g. 27 janvara spr. *Vembra...*).

The case of Londenberg featured a lengthy criminal trial against a physician from Jelgava, Mr. Londenberg, for an allegedly illegal abortion. The facts, upon the minutes of the Senate report of the case, were the following. Londenberg, a physician operating in the city of Jelgava, aged 56, performed an abortion on a pregnant woman (referred as “T” in the case report) between 3 and 8 October 1924 in his cabinet; the operation was done with the patient’s consent, and the fetus was surgically removed using metallic surgical appliances. For this act, the Trial Chamber sentenced Londenberg to three years of imprisonment, inhibiting Londenberg to practice medicine for two years after serving his sentence. Londenberg claimed he had not done the abortion, and it was conducted by someone else, and the only thing he did is that he gave opium to stop the patient’s bleeding. The lower courts were not sure at what date the abortion actually took place, but seemingly it was on the 8th of October. Londenberg also replied that in fact, he only assisted in removing the consequences of the abortion, and since it was the woman’s first pregnancy, it was likely not to be completed in one session. Such a procedure, said Londenberg, would have caused longitudinal ruptures of the cervix, which was not documented in fact. He also claimed that the lower court expert made wrong conclusions, and was not actually a qualified gynecologist. The medical experts interviewed by the Trial Chamber stated that on the first three months of the pregnancy, the abortion could be conducted without a cervical rupture in theory, but it was initially declared that the woman was already in the fourth month of her pregnancy (despite the woman herself believed it was only the third one). According to the minutes of the Trial Chamber report, there was no uniform view between the experts when the abortion actually took place. The witness testimony of a nurse, who cared for the woman in October, revealed that there were no bloodstains on her laundry, and that would be sufficient, had blood-soaking bandages not been used by the medical personnel (which, seemingly, was not clearly established). The Court came to a conclusion that the abortion took place on October 8 because the relatives of the woman observed her as “completely weak” on that date. However, the report also disclosed that the experts were unable to give a conclusive answer regarding the date. The Senate also denoted that not all abortions are illegal, and in some cases, when there is a risk to the woman’s health, it is legitimate; the Senate held that the true ability of the woman to (safely) deliver a child should ideally be certified by a medical council. However, there may be some cases when it is impossible due to the urgency of the situation: even non-compliance with the Medical Regulations by the doctor under certain circumstances (highly likely that the Senate meant acute conditions) would not render him an offender. The Senate considered that the woman in the case was, in fact, very sick. She suffered from lues pharyngis (throat syphilis), and both of her parents had died of pulmonary tuberculosis. The Senate held that many circumstances had not been assessed properly to claim that the defendant was actually guilty, and so decided to set aside the judgment (1926 g. 28 sept. spr. *Londenberga...*).

In the case of *Sternbergs*, the accused was a midwife, prosecuted for an allegedly illegal abortion (the mere fact of conducting the abortion was never denied) to a woman. Sternbergs appealed, claim-

ing that the regional court did not establish the fact that the fetus was alive at the moment when the abortion took place – as it is not punishable to extract a dead fetus: obviously, a dead fetus cannot be “killed” in the sense of Article 466 of the Penal Code (acting 1918–1933). In essence, the court cannot determine such a medical fact without special expert evaluations, and the appellant asked to examine the question by summoning an expert gynecologist at his own expense. Defendant claimed that the *historia morbi*¹⁸ (medical history) also did not reveal whether the woman was actually pregnant. The Trial Chamber upheld the decision of the regional court, not paying much attention to determining the fact whether the fetus was alive or not. The Senate found that the courts, while examining abortion cases, should clarify whether the fetus was alive or dead at the time of the abortion, while the cassational court denoted that fetuses could die of various different reasons – but such conclusions should be reached upon the opinions of medical experts. Thus, it held that the lower court must not deny the request of the accused to examine the given circumstances of the abortion, and a correct adjudication of the case is “inconceivable” without determining the necessary facts, i.e. the fact whether the fetus was dead or alive. The Senate quashed the judgment and remanded it for re-consideration (1928 g. 30 marta spr. *Sternberga...*).

Under Art. 497 of the then-acting Criminal Code, the doctor could be held liable for failure to provide medical assistance, but on practice, this provision was applied to any medical negligence. Herein, the Senate also emphasized that the assessment of individual case circumstances is very significant to define whether the doctor could be held liable, and upon the preserved jurisprudence, only when the patient’s health was in a dangerous condition (1924 g. 16 febr. spr. *Goldringa...*; 1929 g. 30 apr. spr. *Betaka...*). Upon the excerpts of the First Senate’s judgments, in case the patient was not unconscious or had no otherwise urgent health condition, the court would not find the doctor’s fault in non-admission of the patient (1929 g. 30 apr. spr. *Betaka...*). Doctors could be also punished under Art. 195 of the Penal Code (the 1903 edition) for administering life-dangerous medicines to patients, or acting under various means of coercion (1924 g. 14 okt. spr. *Gaužena...*). Art. 217 of the 1933 Criminal Code provided criminal liability (mostly, it was imposed as a fine up to 500 LVL) for those violating the rules of public health. It was a very general provision (i.e. it could also include breach of sanitary rules), and Mincs (1939) mentioned that it was frequently (and mainly) applied against violations of quarantine measures, where additional restrictions were provided to combat spread of contagious diseases (Mincs, 1939, p. 131). In early 1940, a woman was convicted of this crime, though it was not mentioned for what act precisely, but attempted to impugn the judgment of 1936 convicting her. However, she failed to file an appeal in cassation in late 1939 in a fifteen-day term. She filed a request to the court to renew her period in lodging an appeal in cassation, claiming she was unable to do it earlier, and explained her delay in the fact she had an onset of menstruation, which was due to a more severe ailment and which was documented by a district doctor (according to her plea). The evidence had displayed that she was really suffering from a tumor located near the uterus and had an overall sagging of abdominal organs (as of 1937). However, the court did not consider the said facts from the medical certificates to be sufficient to affirm that she was unable to file an appeal in cassation (*Miles Vincis lūgumu...*). The Senate affirmed this judgment, leaving the decision unchanged (*Miles Vincis blakus...*).

¹⁸ “*Historia morbi*” is a Latin phrase used by Latvian courts (1918–1940) dealing with various civil and criminal cases (and medical malpractice cases in particular), literally meaning “History of illness”, or more commonly, “Medical record”, or “Hospital record”, as on practice, it featured the patient’s stationery treatment in a hospital. The “*historia morbi*” could be usually found in a folder of a court case in the archives.

3.4. Notable lower court judgments

The court judgments dating 1918–1940 were not officially published apart from small excerpts and are not generally accessible except through the archives where they are kept. The Senate's judgments were reported in special editions and legal newspapers, while the judgments of the appellate courts could rarely be found there, if any. A certain number of cases involving the liability of doctors was discovered in the LVVA archives in the fund of Riga District Court prosecutor's office, embracing the judgments from various district courts. The criminal trials against doctors and other hospital personnel or any private practitioners (i.e. dentists) included medical negligence, failure to provide necessary medical assistance (with various consequences), severe misconduct while providing medical services, and abortions. The Senate and LVVA funds including Riga Regional Court's Criminal Division and the Trial Chamber included around 20 cases on medical malpractice in the period of 1925–1939, the most notable of which are hereby presented in the paper¹⁹.

The case of *Dr. Mejis* (1924–1926) was a trial against a doctor who refused to provide medical care to a woman in labor. The circumstances of this case were next. A woman named Veronika Anspaka gave birth to a child in the corridor of an unspecified house in or near the city of Riga. She was sent to the First Hospital (seemingly, the court report presumes the First Hospital of Riga on 4 Bruninieku St.). Defendant was a doctor at the maternity home (department No. 21) and refused to provide the woman with necessary after-labor medical care. The woman, despite her condition, the baby, and one unspecified escorting person went to the III Riga Police Department to ask for help. The policemen brought the mother to the same hospital, but Mejis refused again, even in the presence of policemen. It was later clarified in the court report that even the doctor on duty told Mejis to accept the patient, but he refused notwithstanding anything. It was not disclosed whether the woman's condition deteriorated due to these facts, but she apparently survived and lodged a complaint alleging Mejis is guilty of violating Art. 492 (2) of the Criminal Code. The justice of peace, which started investigating on the case, found that Mejis was not a doctor at the First Hospital of Riga, but was an official of it, and thus, provided he was guilty, he was guilty of a different offence, but not medical malpractice. What was the qualification of the alleged offence (the justice of peace cited Division 37 of the Penal Code of 1903), the judge did not state at all, and did not send the case folder to the prosecutions' office. The telephonogram with the hospital director revealed that Mejis, in fact, was a doctor, not an official. He was an assistant at the maternity home and was a specialist in gynecological diseases. The justice of peace still believed that Mejis was a hospital official, and one witness claimed it was true. The justice of peace also did not believe the aggrieved party, and he thought that Mejis could be only at fault for not accepting V. Anspaka, whereas she could have asked other doctors for help. When the case went to the Riga Regional Court, it returned the case to the Regional Court's district investigative judge, who, after having heard a medical expert commission, and having found that the hospital beds were spared for women before birth, but not after it, and having found that the hospital isolator had no spare beds, decided to terminate the case (*Artura Meija ...*).

The case of *Ziberg v. Adamson* was a trial against a dentist, who treated a factory worker and whose "treatment" made the poor man's condition even worse. Ziberg, a workman at a cellulose factory in the town of Sloka, once had trouble with his teeth. He went to the dentist Dietrich Adamson, a doctor of the Sloka Slimo Kase (hospital insurance fund), knowing that there were plenty of rumors relating to Dr. Adamson, who was known to be negligent with his patients, never maintaining dental appliances

¹⁹ I am very grateful for the translation of these cases to my scientific supervisor, Dr. iur, Ass. Prof., sworn solicitor, Tatjana Jurkeviča.

clean and not washing his hands or disinfecting them. When Ziberg paid a visit to Dr. Adamson, he assured himself that the rumors were, in fact, true. Adamson examined his tooth and said that it has to be extracted; he went to a wardrobe and took out a pair of pincers, which Ziberg noticed were dirty and covered with strange dots on their surface. Next, Adamson wiped the ends of the pincers and extracted Ziberg's sick tooth, which was, according to his complaint, a very painful procedure. On the following day, Ziberg's cheek swelled up, and he felt difficulties in moving his jaw. He again asked for help of the factory doctor. Then, Ziberg's body temperature began to rise, and within a short period of time the complainant became so sick that he had to be hospitalized at the Riga Red Cross Hospital, where he underwent several surgical procedures and was later transferred to a dental institution for an outpatient treatment, where Ziberg continued treatment at the moment of lodging his complaint against Dr. Adamson. Ziberg desired to clarify in percentages what amount of working incapacity he suffered, but the doctors could not tell him an exact number; despite this, Ziberg believed he lost 50% of his working capacity and was disfigured (though in the complaint he does not mention how) because of Adamson's negligence. Ziberg also mentioned that Adamson was careless not to foresee all the consequences of ignoring the necessary precautions of dental treatment. He also mentioned that Adamson caused a lot of harm not only to him, but to a multitude of other patients, and some of them died because of his reckless treatment. Adamson was put on trial, bearing a procedural status of an accused. However, the defendant died, and the case was terminated (*Ziberg pret Dr. Adamson...*).

In the case of *Traub-Bins v. Bertuls-Ziemels* (1931), complainant was a prisoner of the Riga Central Prison suffering from a toothache, and blamed a prison dentist, a woman, for a very clumsy fulfillment of her duties. According to the text of the Trial Chamber's judgment, his name was Vulfs. The text of his complaint, made in handwriting in a somewhat comic style, is the main source for discovering the circumstances of the case. Vulfs agreed with an unnamed dentist woman (her surname appeared in the court judgment) to seal his tooth, and she did the work, but according to him, she was very careless during the procedure, disregarding any measures of precaution and not giving him water to rinse out the tooth fragments. Vulfs believed he had swallowed the fragments, and he thought it caused acute pains in his duodenum, because of which he was nearly unable to eat anything for two weeks. *Vulf to Vulfs* that his inmates A. Straupman and A. Yakush, as well as the prison medical assistant, could approve his statements. However, the treatment of his tooth progressed, and despite an acute pain in his tooth, the dentist continued sealing his tooth. The seal was so bad, claimed Vulfs, that he spat fragments of the seal on the following day during a walk and during his meal, which was also witnessed by his fellow inmates and a medical assistant. Vulfs met the dentist and showed her the seal fragments, but she only replied, that these were probably the fragments from the sides of the tooth, but not the fragments from a clumsy seal. Vulfs kept the fragments of the seal, and claimed that he had not only spent the money for treatment in vain (he paid 12 Lats), but sustained a lot of damage to his health, and swore he could give the seal fragments to investigating authorities. Later, as he held, when he further contacted the dentist, she refused to treat his teeth. In October 1931 (according to the complaint to the Trial Chamber), Vulfs received an answer from the Riga Regional Court's prosecution office, upon which his claim was dismissed, and desired to impugn this decision at the Trial Chamber. The Trial Chamber held, that Vulfs actually insisted that the dentist treat his teeth not in accordance with the general rules, but entirely as he wished; and thus, the subsequent refusal of the dentist to treat his teeth contained nothing unlawful, and so Vulfs's complaint had to be dismissed (*Traub-Bins pret Bertuls-Ziemels...*).

In the case of *Martinsons v. Civiane* (1933-35), the complainant was a school teacher in the town of Yurkalne. In December 1933, he came to defendant to ask to prescribe for a pair of glasses, who prescribed him a pair of glasses (for which he paid 6 LVL, according to the list of costs Martinson had

submitted in the complaint) tolling 1,5 Dptr., whereas Martinsons did not feel that his healthy eye was tired during the first days he wore the glasses. In a half of a year, Martinsons's eyesight went worse, and he went to one Dr. Janson, who found that his left eye needs an eyeglass of 2.0 Dptr. The complainant stated that he blamed Civiani for damage to his eyesight; he also found that his damage to eyesight considerably affected his possibility to work as a school teacher. He also claimed, that Civiane did not act with due diligence while selecting the correct eyeglass when Martinsons came to him. Martinsons was questioned by the investigating judge and was asked a number of additional questions relating to the case, i.e. when and for what reasons did he apply for Civiane's assistance, did he wear any glasses before, whether complainant had the eye recipes (Martinsons submitted the recipe of Dr. Janson), could he submit the eyeglasses as evidence, could complainant come to Riga for a forensic expertise, and did he wish to file a civil action (the complaint was filed for an alleged violation of Art. 219 of the Criminal Code). After examining the facts of the case, the investigating judge found out, that there was no evidence of the doctor's negligence, and Martinsons did not feel himself uncomfortable after having worn the glasses after they had just been prescribed (*Hermana Martinsons...*)

In *Kurts v. Cilinski* (1934), complainant suffered a hand injury while working on a machine in December 1933, and defendant, a district doctor, was the one who provided him first aid. The main facts of the case are presented on basis of witness testimony protocols. Ermanis Kurts, complainant, was treated in Valka City Hospital from January, 3 to February 28, 1934. The hospital director (who was the witness), talked to Kurts, who explained to him that he had injured his fingers of his left hand (II, III and IV finger) while he was working on a machine, and Dr. Cilinkis, a district doctor, had provided him with first medical aid, and had visited Kurts for a couple of times before the holidays. After the holidays, the health condition of Kurts had deteriorated, the body temperature rose to 38.5 °C, and the palm of his left hand was swollen, very pinched, the injured fingers were swollen under the tendons, and the underarm glands were swollen as well. The hospital director, the witness, claimed that nothing suggested that Cilinski acted negligently while treating Kurts. When the witness talked to Kurts, he told that had he came to the hospital earlier, he would have had much better chances to recover, and said that Kurts's condition was deplorable. He also mentioned that the condition could deteriorate because of infected wounds – which was also approved by the second witness. The second witness was a doctor in Valmiera. He claimed that Kurts's hands were unsterile at the time of the injury, and Kurts may have suffered an inflammation of the wound with a subsequent phlegmon, despite the fact he sought for medical assistance immediately after the injury. The phlegmon of the Kurts's left hand, upon the view of the second witness, was not a consequence of Cilinski's negligence, but because of the fact that Kurts's left hand was unsterile after the injury, the blade of the machine was unsterile as well, and Kurts used an unsterile cloth as a dressing. The investigating judge concluded, that the phlegmon on the complainant's hand was attributed to Kurts himself, and so, there was no guilt from the side of the district doctor (*Ermana Kurta...*).

In the case of *A. Miller and others* (1935), a man named Peter Miller and his wife Anna were prosecuted for an abortion, which, firstly being a crime in itself under the established facts (i.e. it was not legitimate by medical and related reasons), also caused the death of the pregnant woman. It was not stated whether the Millers were actually professional doctors, or were merely a couple of amateur "obstetricians", which was not a rare phenomenon in rural Central Europe back in the early 20th century. The facts relating to the abortion were quite simple, yet they could sound quite barbarous for the contemporary reader: in April 1935, a woman named Natalija Recherts repeatedly visited the house of the Millers, who lived in Lauči, Skulte parish, already on the 5th month of her pregnancy. The Millers inserted a solid-body object into Recherts's uterus, using it to pierce the uterine membrane; this resulted

in the death of the fetus. However, soon the woman died as well. Upon the investigation of an expert, a Riga district doctor named Alfrēds Vitols, the woman died because of general blood poisoning, which could have resulted from the insertion of a sharp solid body object into her uterus, such as a special wooden stylus used for preterm birth; the examination also revealed that Recherts's pregnancy was terminated on the 5th month. The investigating judge has determined that Millers acted upon the request of the woman, and their acts resulted both in killing her fetus, and causing the woman's demise as well. Thus, they were convicted under Art. 49, Art. 437 (p. 1) and Art. 439 (p. 1) (*Annas Millers un...*).

The case of *Kovalenoks v. Dr. Akerman* also featured a complaint of a prisoner against a prison doctor. Having no comic circumstances, such as the case of Vulfs (1931), it featured the following facts. Gerasims Kovalenoks, a prisoner of Cesis Prison (it was not stated for what reason he was convicted) was very unhappy with his fate, as he was suffering from the inflammation of the sciatica for over three years. From December 1937 to April 1938, the prison physician Dr. E. Akerman repeatedly treated Gerasims, releasing him from work and prescribing medication, yet G. Kovalenoks still repeatedly complained to the prison officials and blamed Akerman for negligent care. Finally, Kovalenoks expressed his desire to be transferred to Riga Central Prison hospital, which was fulfilled by the officials. Nevertheless, Gerasims Kovalenoks managed to lodge a complaint in order to institute criminal proceedings against Akerman. Upon the condensed court report, the Riga Regional Court prosecutor refused to start criminal proceedings, and Gerasims lodged a complaint about the refusal of the prosecutor to institute criminal proceedings against Dr. Akerman to the Trial Chamber. However, after verifying the facts of the case, the Trial Chamber did not find that Dr. Akerman demonstrated any negligent behavior towards Kovalenoks, and dismissed his complaint. The Riga Trial Chamber judgment was rendered in early 1939 (*Kovalenoks pret. Dr. Akerman...*).

Conclusions

The given paper is the first of its kind to deal with the issue of the development of medical law during the First Independence of Latvia (1918–1940). It covered the issues of legislation and case law, as well as the historical routes of medical law, which may have impacted the emerging medical law of Latvia during the 1920s and 1930s. Very few academic publications during the period of First Independence of Latvia were devoted to the discussion of legal aspects of doctors' and hospitals' legal liability, which made the research even more complicated. The materials, provided in the given article, were mostly extracted from Senate court reports and the Latvian State Historical Archives, though much of this heritage still remains underinvestigated, or is ultimately lost due to age and other circumstances. The discovered case law shows that the most frequent violations by doctors were either illegitimate abortions, or negligence in administering medical assistance, punishable under Art. 497 of the Penal Code (up to 1933) and Art. 219 (in 1933–1940). Unfortunately, no cases were found relating to the application of Art. 218 of the a Penal Code (unconsented medical intervention), or an unauthorized disclosure of medical information. The reasons for this are unknown, but the author assumes that either the patients were not striving to institute criminal proceedings for such violations had they actually occurred, or the doctors were diligent enough not to disclose or sell such information elsewhere. It is also worth questioning for what reason was medical liability so rarely encountered in the legal scholarship of the Baltic States. A brief examination of the case law of the Estonian and Lithuanian supreme courts has showed very few cases related to medical liability (e.g. in comparison with the Latvian Senate), but it could be explained by the reason that not every complainant would desire to litigate for a long time to receive redress because of the hospital's negligence, and such cases could not thereby reach the cassational courts. Thus, many court judgments

may be undiscovered to date, as the court reports of the Baltic States were usually confined to the casational judgments, and the answer to how much medical malpractice cases existed in the period of the Lithuanian Republic (1918–1940) and Estonia in 1918–1940 lies within the archive materials, as of yet undiscovered and requiring the efforts of research.

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Medical Liability in the First Period of Independence of Latvia (1918–1940)

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S u m m a r y

The given paper is devoted to the emergence, the routes and further development of Latvian medical law, aiming to display its development in the Latvian First Period of Independence (1918–1940). The Latvian legal scholarship seldomly considers the First Period of Independence; however, it possesses a multitude of unique features, which are nearly undiscovered, especially in the field of medical law. A very limited accessibility of Latvian doctrine and jurisprudence originating from the period of 1918–1940 makes the old legal legacy practically untouched, and thus most branches of the law of Latvia are considerably underinvestigated in terms of their respective routes in the First Period of Independence, or even before it. This paper is a courageous attempt to discover the actual routes of Latvian medical law, and to find a connection between the present-day medical law and its historical legacy. Very few sources in respect with medical law of the First Independence of Latvia do exist, and many materials of the given article were extracted from digitized court reports, old scientific literature, as well as Latvian state historical archives, which possess the case materials on medical malpractice originating from district and appellate courts, heard and adjudicated between 1918 and 1940.

Medicininē atsakomybē pirmoju Latvijos nepriklausomybēs laikotarpiu (1918–1940)

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S a n t r a u k a

Straipsnyje pateikiama Latvijos medicinos teisēs atsiradimo ir tolesnēs raidos apzvalga, siekiant apibūdinti jos vystymąsi pirmoju Latvijos nepriklausomybēs laikotarpiu (1918–1940). Latvijos teisēs moksle retai kalbama apie pirmąjį šalies nepriklausomybēs laikotarpį, nepaisant to, kad jis turi daug unikalijų bruožu, beveik neatskleistų, ypač medicinos teisēs srityje. Labai ribotas yra 1918–1940 m. Latvijos doktrinos ir jurisprudencijos prieinamumas, senasis palikimas beveik nepaliestas tyrėjų, dauguma Latvijos teisēs šakų pirmoju nepriklausomybēs laikotarpiu ir ankstesniais laikais nėra pakankamai iširtos. Šis darbas yra mėginimas atskleisti Latvijos medicinos teisēs ištakas, raidą ir šių dienų medicinos teisēs ir jos istorinio palikimo ryšį. Pirmojo Latvijos nepriklausomybēs laikotarpio medicinos teisēs šaltinių yra labai mažai. Daug šio straipsnio medžiagos buvo paimta iš suskaitmenintų teismų ataskaitų, senosios mokslinės literatūros, taip pat Latvijos valstybinių istorijos archyvų, kuriuose saugoma 1918–1940 m. apygardos ir apeliacinēs instancijos teismų išnagrinetos bylos dėl netinkamos medicinos praktikos.

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