FROM THE IUSTORIA BLOG

“It Would Have Happened Anyway”: After a Medical Error, the Hospital Must Prove It, Not the Patient

> *The hospital admits an error but says the patient would have lost the leg anyway. In July 2026 the Supreme Court reaffirmed that the hospital must prove it. What that means.*

IUSTORIA TEAM

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After surgery, a patient waits all morning for an examination he should have had straight away. By evening there is a second operation, then complications and, in the end, permanent damage. In court, the hospital does not deny that it was late. What it argues is that the outcome would have been the same: the injury was severe, the disease advanced, the chances slim. When the experts disagree, the result for the patient tends to be harsh. The court says the patient has not proved that it was the hospital's error that made the difference, and dismisses the claim.

In its judgment of 24 July 2026, file no. 25 Cdo 1330/2025, the Supreme Court reiterated that this is not how the burden of proof is allocated. If the patient proves an error that could by itself have caused the harm, it is the hospital that has to prove its claim that "it would have happened anyway".

The decision concerns the amputation of a leg. The rule it rests on, however, applies wherever a patient proves an error that could by itself have caused the harm. We look at exactly what the court said, where the rule's limits lie and what to do differently before a claim is brought.

What the case was about

In November 2012, a man was seriously injured at an event organised by the police when an anti-tank missile exploded of its own accord. Among other injuries, the artery below his knee was severed. He was operated on in hospital the same day, and the severed section of the artery was replaced with a vein graft. Straight after the operation, however, it was unclear whether there was a pulse in his leg.

At 9.45 am the next day, a doctor measured low oxygen levels in the limb and ordered an ultrasound scan of the artery. The scan was not done until 3.35 pm, and it showed that the artery was blocked again. The second operation began at 6.30 pm. The surgeons managed to reopen the artery, but the tissue was already dying, an infection set in and the leg was eventually amputated above the knee. The man sued the hospital for more than CZK 103 million: for pain, for the impairment of his social and working life (*ztížení společenského uplatnění*), lost earnings, medical costs, care provided by his family and non-pecuniary harm.

The courts at both levels agreed that the post-operative care had fallen short of proper practice. The District Court for Prague 6 issued an interlocutory judgment (*mezitímní rozsudek*) holding that the claim was well founded in principle. The Municipal Court in Prague, however, dismissed the action. The experts disagreed: one took the view that with a timely second operation the leg would almost certainly have been saved, while the institute that prepared a review expert opinion stated that a causal link could not be proved. In the institute's view, the tissue death may also have been caused in part by damage from the injury itself and by the lack of blood supply before the first operation, which according to the appellate court lasted roughly five hours. From this, the appellate court concluded that the patient had not proved that the hospital's error was the decisive cause of the amputation.

What the Supreme Court said

The Supreme Court set aside the appellate court's judgment and sent the case back to it. It began by restating the general rules. A causal link is not presumed; it has to be proved. The error must be at least one of the causes without which the outcome would not have occurred. And a provider is not liable where even proper treatment would not have prevented the permanent damage to health (paragraphs 11 and 12).

Straight after that, however, the court pointed to two things that help patients. The first is that in medical disputes, the case law accepts expert conclusions framed in terms of probability, because biological processes are complex, and that "one cannot always insist on one hundred per cent proof of a causal link" (paragraph 12).

The second is the allocation of the burden of proof. In disputes with a hospital, as elsewhere, each party must prove the facts from which it derives consequences favourable to itself. From this the court concluded: "If the tortfeasor asserts that the harm was caused wholly or partly by circumstances for which it is not responsible, or that the illness was already so advanced that even correct diagnosis or treatment could not have prevented it, it is required to prove those assertions" (paragraph 13).

The court applied this to the case as follows. The lack of blood supply after the first operation lasted at least roughly ten hours, which is longer than the time after which nerves, muscles and skin demonstrably begin to die irreversibly. The hospital's error could therefore by itself have made the amputation necessary. If the hospital claims that it is not liable for the outcome, "it is for it to prove that the predominant (or only) cause of the harm was some other circumstance over which the defendant had no influence" (paragraph 14). The appellate court had done the opposite by requiring the patient to prove that the hospital's error was the only or predominant cause (paragraph 15).

In closing, the Supreme Court also referred to the Constitutional Court judgment (*nález*) of 13 November 2024, file no. III. ÚS 176/24 (paragraph 19). In that judgment, the Constitutional Court criticised the courts for asking the wrong question. They should not have examined whether the patient would have made a full recovery with proper care, but "what state of health the original claimant could have been in had his treatment been started correctly and in time" (paragraph 36 of the judgment).

This is not a shift in the case law: the Supreme Court says that the appellate court departed from the case law of both the Supreme Court and the Constitutional Court (paragraphs 6 and 15). Moreover, the judgment has not been published in the Collection of Court Decisions and Opinions, and it was issued by a single panel. Nor is the dispute over yet. The Municipal Court must now decide again, and the hospital will have the chance to prove an alternative cause (paragraph 19). The case has been running since 2014. Because of the date of the injury, the courts assessed it under the old Czech Civil Code of 1964, but the rule on the burden of proof does not depend on its wording. The Supreme Court derived it from the general allocation of the burden of proof in civil proceedings (paragraph 13) and stated that there is no special concept of causation for medical disputes (paragraph 11).

What the patient must prove and what the hospital must prove

The decision does not reverse the burden of proof entirely. The patient must still prove three things. First, the error: a patient has the right to health services of a proper professional standard (*náležitá odborná úroveň*; Section 28(2) of the Czech Health Services Act), meaning services provided in line with the rules of science and recognised medical practice (Section 4(5)), and the provider has a duty to provide them that way (Section 45(1)). Second, the harm to health. Third, that the error was in itself capable of causing that harm. Only then is it the hospital's turn.

The rule from judgment 25 Cdo 1330/2025 does not come into play on its own. The hospital has to prove that the outcome would have been the same only once the patient has proved the error and that it could by itself have caused the harm. Without the medical records and an expert assessment, the patient will not get that far. A claim built only on the feeling that "something went wrong" will fail before the question of the burden of proof even arises.

The hospital is then not liable for the part of the consequences that the injury or illness would have caused on its own. But it is again the hospital that must prove that part of the consequences is down to the injury or illness (paragraph 13). The court has to distinguish which consequences are linked to the error and which to the original event (paragraph 12). In practice, this means that even a successful patient may not be compensated for everything that has happened to them, only for what the error took from them.

And what if a causal link with the health outcome cannot be proved at all? Even then, the patient may have a claim. Care that falls below the proper professional standard and reduces the patient's chance of survival or recovery may in itself amount to an interference with their personality rights (judgment III. ÚS 176/24, paragraph 34). Under the current Civil Code, such an interference is redressed by appropriate satisfaction under Section 2951(2) (Supreme Court judgment of 30 March 2022, file no. 25 Cdo 3332/2020). This is a different claim from compensation for harm to health. It has to be expressly asserted in the action, and the patient's survivors are not entitled to it. The loss of a chance alone, however, is no substitute for proving a causal link with the harm to health; the Supreme Court rejected that in the same judgment, referring to a judgment of its Grand Chamber.

What to do differently

Request a copy of your medical records straight away. A patient may inspect the records and have copies made (Section 65(1) of the Health Services Act). If the patient does not make a copy on the spot, the provider makes one within 30 days of the request (Section 66(1)) and may not charge for the first copy (Section 66(3)). Ask for everything, including the nursing notes and the records of examinations. In the case described, the outcome turned on hours and minutes written in the records.

Write down your own timeline. When you reported pain, who came, what they told you, who else was there. Your family's memories fade quickly, and the records capture only what someone wrote in them.

Consider a complaint. It is filed with the provider, which must deal with it within 30 days, with the option of a reasoned extension by a further 30 days (Section 93(1) and (3)). Disagree with how it was dealt with? Within 60 days of receiving the response, you can complain to the competent administrative authority (Section 93(2)), which for most providers is the regional authority (Section 15(1)). The authority appoints an independent expert if the complaint alleges improper treatment or harm to health and is not manifestly unfounded (Section 94(3)). If an independent expert committee is set up, it states in its record whether proper professional practice was followed and, if not, also whether there is a causal link with the harm, provided the facts established allow it (Section 95(5)). The patient can thus obtain an expert opinion even before going to court. If the provider does not deal with the complaint in time, you can turn to the administrative authority directly (Section 93(2)). Allow for the time it takes, though: with an independent expert, the authority has 90 days to deal with the complaint, with a committee 120 days, and it can extend either period by a further 60 days (Section 94(1)). The complaint procedure is not a proceeding on the claim for compensation, so it does not stop the limitation period. The period stops running when you bring the claim before a court (Section 648 of the Civil Code), or when you agree with the provider or its insurer to negotiate the claim out of court. It then does not run until one of the parties expressly refuses to continue the negotiations (Section 647). The law does not require such an agreement to be in writing, but have it confirmed by email or letter so that you can prove it. For the court, the opinion of the expert or the committee is one piece of evidence, which it weighs at its own discretion (Section 132 of the Czech Code of Civil Procedure).

Ask the expert the right questions. The question is not whether you would have made a full recovery with proper care. It is what state you would be in if the treatment had been carried out correctly and in time, and whether the error could by itself have caused the harm. If the hospital claims another cause, it is up to the hospital to prove it.

Watch the limitation period. The claim becomes time-barred three years after you learned, or ought to and could have learned, of the harm and of who is liable for it (Section 619(2), Section 620(1) and Section 629(1) of the Civil Code). The ten-year objective limitation period does not apply to harm to health (Section 636(3)). Exactly when the period starts to run is covered in our guide to limitation of damages claims (in Czech).

Bring the claim against the provider. The provider must be insured against liability for harm caused in connection with the provision of health services (Section 45(2)(m) of the Health Services Act). However, the injured party has a direct claim against the provider's insurer only where the law or the insurance contract provides for one (Section 2861(2) of the Civil Code), which is why the claim is asserted, and the action brought, against the provider. The insurer stays in the background; in the case described, it joined the proceedings as an intervener on the hospital's side.

The hospital says the outcome would have been the same? Then the hospital has to prove it. Your job is to prove the error and that it could by itself have caused the harm, and then to be able to challenge the evidence the hospital relies on to show another cause.
Request a copy of the records in writing and straight away. The first copy is free, and the provider must make it within 30 days.

Before commissioning an expert report, draw up the questions in line with judgment III. ÚS 176/24: what state the patient would be in with correct and timely treatment, not whether they would have made a full recovery.

How much, and for whom

For an injury to health, compensation covers pain and other non-pecuniary harm and, if the injury has become an obstacle to a better future, also the impairment of social and working life (Section 2958 of the Civil Code). In addition, the costs of health care are reimbursed, as is loss of earnings, both during incapacity for work and afterwards (Sections 2960, 2962 and 2963). How compensation for pain and for the impairment of social and working life is calculated under the Supreme Court's Methodology (*Metodika Nejvyššího soudu*) is explained in our guide to personal injury (in Czech).

If the patient died or suffered particularly serious harm to health, the spouse, parents, children and other persons close to the patient also have a claim of their own to compensation for mental suffering (Section 2959 of the Civil Code). The base amounts the courts start from are covered in our guide for bereaved relatives (in Czech). Their dispute, too, turns on the same question: whether the error could have caused the death or the harm to health, and who has to prove that it would have happened even without it.

At a glance

Question	Answer	Provision
What the patient must prove	The error, the harm and that the error could by itself have caused the harm	Section 4(5) and Section 45(1) of the Health Services Act; 25 Cdo 1330/2025, paragraph 14
Who proves that the outcome would have been the same	The hospital	25 Cdo 1330/2025, paragraphs 13 and 14
Must the link be one hundred per cent certain	Not always; a probabilistic expert conclusion is also acceptable	25 Cdo 1330/2025, paragraph 12
What to ask the expert	What state the patient would be in with correct and timely treatment	III. ÚS 176/24, paragraph 36
Copy of the medical records	Within 30 days, first copy free	Section 65(1), Section 66(1) and (3) of the Health Services Act
Complaint	To the provider, then within 60 days to the administrative authority; does not stop the limitation period	Sections 93 and 94 of the Health Services Act; Sections 647 and 648 of the Civil Code
Limitation	Three years from knowledge of the harm and of the person liable; no ten-year objective period	Sections 619, 620 and 629, Section 636(3) of the Civil Code

The hospital admits the delay but says the outcome would have been the same? We will go through the records with you, draw up the questions for the expert and work out what you can claim and by when. We handle claims for harm to health as part of our dispute resolution practice. Get in touch.

Conclusion

Judgment 25 Cdo 1330/2025 does not bring a new rule. It does, however, restate one that tends to get lost in practice: the patient should not have to bear the uncertainty that the hospital brings into the dispute with its own alternative cause. Anyone who proves an error, and that it could by itself have caused their harm, no longer has to rule out every other possibility.

None of this makes disputes over treatment errors any shorter or cheaper. What decides them is still the medical records, well-framed questions for the expert and time limits that have been met.

Sources

- Act No. 89/2012 Coll., the Civil Code, Sections 619, 620, 629, 636, 647, 648, 2861, 2951, 2958, 2959, 2960, 2962 and 2963 (as in force on 6 November 2026).
- Act No. 99/1963 Coll., the Code of Civil Procedure, Section 132.
- Act No. 372/2011 Coll., on Health Services and the Conditions of Their Provision, Section 4(5), Section 15(1), Section 28(2), Sections 45, 65 and 66 and Sections 93 to 95 (as in force on 6 November 2026).
- Act No. 40/1964 Coll., the Civil Code, as in force until 31 December 2013, Section 420 (the law under which the case described was assessed).
- Supreme Court judgment of 24 July 2026, file no. 25 Cdo 1330/2025.
- Constitutional Court judgment of 13 November 2024, file no. III. ÚS 176/24.
- Supreme Court judgment of 30 March 2022, file no. 25 Cdo 3332/2020.

This article is for information only and does not constitute legal advice. It reflects the law as at the date of publication; whether an error in treatment caused a specific harm is always for the court to decide, on the basis of the medical records and the expert report in the case in question.

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