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Procedures before the regional medical malpractice tribunal

Summary

On 28 April 2011 the Polish Sejm adopted an amendment to *the Act on rights of patients and Patient's Right Defender* and to the *Act on compulsory insurances, Insurance Guaranty Fund and the Polish Bureau of Motor Insurers*. As an effect of that amendment a new chapter was introduced: "The Principles and Procedure of fixing damages and compensation in the event of a medical malpractice", which sets out an alternative to the existing procedures manner of pursuing by patients damages and compensation in the event of a medical malpractice. The new procedure provides for seeking damages before the regional medical malpractice tribunal. However, the Act does not specify the character of such proceeding, whether it be civil or administrative, nor indicate the exact type of civil or administrative track. And yet, this is necessary since the considered procedure lacks of overall regulation.

The paper presents a new institution introduced to the Polish legal system and attempts to conclude (on the grounds of the subject and principles of the considered procedure) whether this institution is a part of the public or private law thus if it is a civil or administrative procedure. An analysis of the regulations as well as opinions of the jurisprudence and jurisdiction lead the author to the conclusion that the procedure before the medical malpractice tribunal - aiming to establish whether a medical malpractice has occurred, and to fix the amount to be paid in damages and compensation - is a new type of a civil procedure and not a type of an administrative procedure.

The author also indicates that the new procedure, being a type of an extrajudicial civil procedure in which the provisions are formed on the grounds of the fundamental rules stipulated in the Polish Code of Civil Procedure, is the most certain way to avoid any doubts as to the methods and consequences of the procedure in question. It is a procedure the subject of which is to resolve the existence of a lawmaking fact ("the medical malpractice"), as an effect of which an enforcement title, within the meaning of the Polish Civil Code provisions, may be given.

Keywords: responsibility, cases of medical malpractice, regional medical malpractice tribunal, infringement of patients' rights.