ON SOME ISSUES OF PROVIDING URGENT HEALTH CARE IN THE BORDER AREA OF THE CZECH REPUBLIC AND THE FEDERAL REPUBLIC OF GERMANY IN THE LIGHT OF THE CURRENT NATIONAL AND INTERNATIONAL REGULATIONS

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Abstract: *The article is aimed at providing health services with a cross-border element. Closer attention is paid to cross-border cooperation in the field of emergency medical services on the Czech-German border. The legal regulation in this area was significantly modified together with the adoption of the Framework Agreement between the Czech Republic and the Federal Republic of Germany on cross-border cooperation in the field of emergency medical services. This agreement is aimed at strengthening and streamlining cooperation in the provision of urgent pre-hospital care. In addition to the initial definition of the issue, the article focuses mainly on the issue of so-called transfer of patients at the border and on the possibility of choosing a patient among the providers of emergency medical services, respectively downstream providers of acute inpatient care. The issue will be outlined in more detail, especially from the perspective of the Czech emergency medical service. In all cases, these are procedures that arouse the long-term interest of the professional and lay public.*

Keywords: *health care, emergency medical service, cross, border cooperation, transfer of patients, pre-hospital emergency care*

I. ENTRY DEFINITION

In the border area of the Czech Republic and Germany, a number of controversial situations occur during cross-border interventions of emergency medical services, which have long attracted the attention of the professional public from the ranks of lawyers, doctors and paramedics. Many mechanisms of cooperation of emergency medical services are also perceived negatively by the general public – i.e. on the part of potential recipients of such medical services.

All such situations are characterized by one of the variants of the cross-border element. It is linked either to the patient's person or to the position of the emergency medical service's outreach group. In the case of a patient, these are most often situations where a German (or Czech Republic) national needs to provide urgent medical assistance during their stay in the Czech Republic (or Germany). It is usually located in a place not too far from the common border of both states. The intervening unit of the emergency medical service most often forms a cross-border element when crossing the border and operating in the territory outside its home state.

In the following explanation, more attention will be paid to the phenomenon of so-called transfer of patients between the Czech and German emergency services, so to speak, directly "on the borders" of both countries and the possible transport of patients

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by the Czech emergency services from the Czech Republic to medical facilities in Germany. The contribution is conceived primarily from the point of view of Czech legislation and is based on the position and possibilities of the Czech emergency medical service.

II. LEGAL GROUNDING OF THE ISSUE

The operation of the emergency medical service in the Czech Republic is generally enshrined in national legislation. Its basis is contained in Act No. 374/2011 Coll., on the ambulance service. Of course, Act No. 372/2011 Coll., on health services, is also an important regulation. This Act shall apply to the provision of emergency medical services, unless otherwise provided in the Act on Emergency Medical Services. Both of these regulations are basically of a public nature. Only the provision of emergency medical services in the Czech Republic is regulated in them.[1] The cross-border operation of the Czech ambulance service in Germany, as well as the operation of the German ambulance service in the Czech territory, is regulated by the *Framework Agreement between the Czech Republic and the Federal Republic of Germany on cross-border cooperation in the field of ambulance service* (hereinafter the "Framework Agreement"). This agreement was signed on 4 April 2013 and entered into force on 18 July 2014. It was published in the Collection of International Treaties under No. 53/2014 Coll.[2] The adoption of the Framework Agreement was affected by the increasing movement of persons between the two countries. The aim was to create a basic legal framework for cross-border cooperation in the field of emergency medical services. The main motive was to facilitate access to this health service in the border area, while striving to continuously improve the quality and availability of health care. Within the limits defined by the Framework Agreement, the subject of the regulation is to be further developed by agreements on cross-border cooperation at the regional level. These arrangements are concluded on the German side by the federal states adjacent to the common border – i.e. Bavaria and Saxony – on the Czech side by the individual border regions.

The Framework Agreement was thus supplemented by the Agreement on Cross-Border Cooperation of Emergency Medical Services agreed on the one hand by the Ministry of the Interior, Construction and Transport of the Free State of Bavaria and the Pilsen, Karlovy Vary and South Bohemian Regions on the other, agreed on 3 October 2016 (*hereinafter also the Cooperation Agreement*) and the Agreement on Cross-Border Cooperation of Ambulance Services Arranged for the Czech-Saxon Border between the Ministry of the

[1] Of course, a number of other regulations also affect the functioning of the emergency medical service, from the regulation of the requirements for the professional competence of members of field groups or the definition of the rules for financing this medical service to the regulation of health insurance. Although, for example, the issue of health insurance and compensation for cross-border interventions by the ambulance service is directly related to the topic, they will remain out of focus in the interpretation presented here, as they do not have a direct impact on answering the above questions.

[2] A similar agreement was concluded between the Czech Republic and Austria. Specifically, it is a Framework Agreement between the Czech Republic and the Republic of Austria on cross-border cooperation in the field of emergency medical services (No. 15/2017 Collection of International Treaties).

Interior of the Free State of Saxony and the Karlovy Vary, Ústí nad Labem and Liberec Regions on 25 November 2015.[3]

The framework agreement has the nature of a bilateral convention of a framework nature. It is a promulgated international agreement, the ratification of which was approved by the Parliament and by which the Czech Republic is bound. In the sense of Article 10 of the Constitution, it is therefore part of the legal order of the Czech Republic. The relationship between the regulation of the Framework Agreement and the national regulation of the emergency medical service is defined in Article 10 of the Constitution of the Czech Republic. If an international agreement provides otherwise than by law, the international agreement shall apply. The Framework Agreement therefore has priority in so far as it overlaps with the Czech national regulation of the functioning of the emergency medical service.[4] In this context, it should be noted that the enshrinement of the Framework Agreement is different in the German legislation. The Treaty has been ratified here only in the form of an administrative agreement within the meaning of Article 59 (2), second sentence, of the Federal Constitution. This is a fundamental difference in comparison with the Czech legislation. In German law, the Framework Agreement has less legal force. It has no immediate precedence over federal and state laws. This ultimately means that the provisions of the Framework Agreement must always be interpreted in such a way that they do not conflict with German national law (federal and state).[5] The different enshrinement of the Framework Agreement in the structure of Czech and German law, of course, often leads to significantly different interpretations of this agreement in both states and to different immediate application effects (for some manifestations of this difference, see below).

Of course, the issue of European Union law also affects the issue of cross-border provision of health services.[6] Organization of health care provision, however, the cross-border provision of emergency medical services is not the subject of its closer attention. This is, moreover, Article 168 of the Treaty on the Functioning of the EU / TFEU, according to which: *"… The Union shall encourage and support cooperation between States in this field. In particular, it shall aim to encourage cooperation between Member States aimed at*

[3] In the following interpretation, for the sake of simplification of the interpretation and almost complete substantive agreement of both arrangements, only the Agreement affecting the area of the Czech-Bavarian borderland will be referred to.

[4] In this context, it should be recalled that this is an application priority. In the case of a court decision, the judge is bound by law and an international agreement (Article 95 para. 1 of the Constitution of the Czech Republic). If there is a conflict of content between them, he is obliged to proceed in accordance with Article 10. However, it is clear that the application priority of an international agreement comes into play only if there is a real conflict between specific legal rules – MIKULE, V., SUCHÁNEK, R. In: V. Sládeček – V. Mikule – R. Suchánek – J. Syllová. *Constitution of the Czech Republic*. 2nd edition. Prague: C. H. Beck, 2016, p. 121.

[5] International agreements of the Federal Republic of Germany are concluded as administrative agreements, which do not regulate political relations or require a law for its national implementation. – cf. closer to HEUN, W. In: H. Dreier. *Grundgesetz-Kommentar. Band II. 3. Layout.* Tübingen: Mohr Siebeck, 2015, Art. 59 Rn. 48. Such agreements may be concluded by administrative bodies, in particular governments and ministries, without the involvement of the legislature. In the latter case, the consent of the Federal Minister for Foreign Affairs is required.

[6] Mention should be made in particular of Directive 2011/24 / EU of the European Parliament and of the Council of 9th March 2011 on the application of patients' rights in cross-border healthcare.

improving the complementarity of their health services in border areas…". However, it does not establish this adjustment. After all, the adoption of the Framework Agreement on a bilateral basis is clear evidence of this approach. In the light of the foregoing, it is clear that the solution to the problems set out in the introduction must necessarily be based on a consistent interpretation of international and national rules. It should be noted at the outset that, although the Framework Agreement may in principle take precedence over domestic national law in the context of Czech law, it is necessary to base the interpretation primarily on national legislation. It gives a basic general legal framework for the functioning of the emergency medical service. At the international level, it is then necessary to look for additional additions to this regulation. The following interpretation will follow the described structures.

III. THE TRANSFER OF PATIENTS

The transfer of patients between emergency vehicles of the ambulances of both countries in the immediate vicinity of the Czech-German border has long been perceived very negatively. These are patients who are currently provided with emergency medical care by the emergency medical service. Although patients transferred in this way may not be in direct danger of life at any given time, it is clear that moving them typically from one ambulance to another can usually be difficult to describe as consistent with the need to provide the best health care appropriate to their condition. From the patients' point of view, such activity within the Schengen area is difficult to justify. According to the prevailing idea, the ambulance should be able to continue freely across the border and transport patients without any restrictions – that is, as freely as the patient himself can move in the Schengen area.

On closer inspection, however, it is clear that the legal status of the emergency medical service in the Czech Republic is regulated by a relatively rigid mandatory regulation, which precisely defines the boundaries of its possible functioning. The basis of this regulation must be sought in the already mentioned Act No. 374/2011 Coll., on the ambulance service. It clearly determines that the emergency medical service is a specific type of medical service in the sense of Act No. 372/2011 Coll., on health services [§ 2 par. 2 point. d) Act No. 372/2011 Coll. and § 2 par. 1 of Act No. 374/2011 Coll.]. It is a service that is aimed primarily at providing pre-hospital emergency care to people with severe health disabilities or in direct danger to life on the basis of an emergency call. The specificity of this service and the public interest in its proper functioning is clearly reflected in the fact that the provider of emergency medical services can only be a contributory organization established by the region, which is authorized to provide emergency medical services under the Health Services Act. Only one provider[7] can provide an emergency medical service in the territory of each region. The provision of emergency medical services must be continuous (Section 8, § 3 of Act No. 374/2011 Coll.). The availability of the emergency medical service is organized on a regional land basis. The aim is to cover the territory of

[7] There are partial exceptions to this rule – cf. e.g. § 5 par. 5 of Act No. 374/2011 Coll.

the region with the exit bases of the emergency medical service to such an extent that the legal travel time is met.

Itis obvious that each regional emergency medical service is exclusively obliged and authorized in the territory of its region on the basis of an emergency call[8] provide pre-hospital emergency care to persons with severe disabilities or in direct danger to life. Pre-hospital emergency care is obliged to provide the patient both at the place of serious disability or direct threat to life and then during his transport to the target provider of acute inpatient care. This should be the closest available provider of acute inpatient care, which is qualified to professionally ensure the continuation of health care to the patient, corresponding to the severity of the disability or direct threat to life [§ 3 point. d) Act No. 374/2011 Coll.]. The provider of acute inpatient care is obliged to take the patient into his care if his contact point was the possibility to receive the patient confirmed by the medical operating center or auxiliary operating center. He must always do so if the patient is in imminent danger of death. The target provider of acute inpatient care is obliged to confirm the acceptance of the patient into his/her care in writing to the head of the field group (Section 6, § 2 of Act No. 374/2011 Coll.). By handing over the patient to the acute inpatient care provider against a written confirmation, the provision of emergency medical services in the traditional model ends. The emergency medical service provider does not generally have the possibility to deviate from this procedure. He is obliged to provide urgent care on the basis of an emergency call to any natural person with a serious disability or direct threat to life. Nationality, nationality, mother tongue, place of residence or domicile play no role in this[9] On closer inspection, we find that the issue is not directly addressed in the Framework Agreement. The definition of cooperation in the Framework Agreement is relatively narrow and is targeted differently. The key limitation stems in particular from the fact that cooperation must always be initiated at the request of the relevant medical operating center of one of the Contracting Parties. Moreover, such a request should be made only in exceptional cases. The provision of emergency medical care, which is prescribed by the legislation of the given country, must be ensured by the emergency medical service of the given state. The requesting Contracting Party should request the intervention of the outgoing group of the requested Contracting Party, regardless of the patient's nationality, only if it cannot provide pre-hospital emergency care itself at the place of intervention itself (Article 3 of the Cooperation Agreement). The submitted application must be accepted by the relevant medical operating center of the other Contracting Party, even taking into account the given starting points. Only after this activation is the outreach group sent for assistance to the territory of the other Contracting State (Article 4 (3) of the Framework Agreement). It is in sending a field group (or more groups) that the cross-border cooperation itself lies. The outgoing group sent in this way

[8] An emergency call is an evaluated call to the national emergency number 155 or a call handed over by the operational center of another component of the integrated rescue system – i.e. the Fire and Rescue Service of the Czech Republic or the Police of the Czech Republic.

[9] Cf. to this end, Article 3 of the Convention on Biomedicine, which obliges the Contracting Parties to take account of medical needs and available resources, shall take appropriate measures to ensure, within their jurisdiction, equal access to healthcare of appropriate quality.

may cross the borders of the neighboring state and may provide the need for medical care at the place of intervention.

The place of intervention is the place where the patient is at the moment when the members of the field group reach him (Article 1, § 8 of the Framework Agreement). If cross-border cooperation is activated, the patient should be transported for further follow-up care to an appropriate, readily available medical facility, taking into account the patient's medical condition. With regard to the preferential use of the Framework Agreement at the expense of national regulations, it does not necessarily have to be an facility providing acute care according to Act No. 374/2011 Coll., Even in the event of a disability in the Czech Republic. Pursuant to Article 4 (4) (a) 4. At the same time, framework agreements shall apply that, if the patient's state of health so permits, a patient who resides in the territory of one Contracting Party at the time of the intervention of the field group shall, as a general rule, be transported to the territory of that Contracting Party.

The variant of cross-border cooperation in the provision of urgent pre-hospital care other than the one just described is not foreseen in the Framework Agreement. The transfer of patients is not provided for in the Framework Agreement at all. This is probably an intention – given the already mentioned negative perception of this procedure, there was clearly no room for enshrining such activity in the Framework Agreement. The intervention mechanism set out in the Treaty then conflicts with such a procedure in at least several directions. This fact can be demonstrated by a simple example. The model can be based on a situation where the patient is a German national. The place of origin of the disability is the territory of the Czech Republic. The emergency call will be answered by the Czech Operations Center. There are several possible ways to proceed. The first and most common solution will be to send a field team of the Czech ambulance service. It manages the intervention on the spot itself – i.e. without activating cross-border cooperation. In such a case, it will start providing the relevant pre-hospital care and will provide it without further ado during the entire period of transport to the acute inpatient care provider and handing over the patient against the signature of this provider. Its intervention will take place according to national regulations, regardless of the patient's nationality (or residence). Cross-border cooperation was not activated – no outreach group was requested (after all, if the Czech emergency medical service itself manages the provision of assistance, cross-border cooperation should not be activated according to the Framework Agreement and the Cooperation Agreement). It is not appropriate to transfer such a patient near a common border. The patient's will does not matter here. The Czech Ambulance Service is obliged by law to take a patient to an acute inpatient care provider in the Czech Republic. It is this obligation that he clearly violates by transferring the patient to the border. This is only seemingly an exaggerated formalism. In the event that the patient suffers a subsequent deterioration of health after such a transfer due to delay or failure to provide proper care in the facility to which he was transferred (e.g., because the facility would be less materially or personally equipped than the facility in which he had may be led to any foreseeable consequences associated with such tortious conduct by the emergency medical service provider.

However, the situation would not have been significantly different in the described case even if the cooperation under the Framework Agreement had been activated. It is clear

that this cooperation should not consist in the mere meeting of outreach groups at the border and the transfer of the patient. In such a case, urgent pre-hospital care is already provided to the patient by the Czech Emergency Medical Service. There is generally no reason for cross-border intervention. The Czech Emergency Medical Service should continue to provide urgent pre-hospital care in accordance with national regulations – i.e. until the patient is handed over to an acute inpatient care provider.

In other words, once the Czech Emergency Service starts to provide urgent pre-hospital care to a patient and loads it, the intervention is in line with the intentions of the national regulation. According to the law, the outreach group of the Czech Emergency Medical Service is obliged to provide the patient with urgent care at all times until he is handed over for hospitalization (not until the patient is transferred).

Only with very extensive interpretations of the Framework Agreement is it possible to come to the conclusion that the given problem can be bridged, so that after the request of assistance, a German outreach group will be sent from the German side. The place of intervention will be considered to be the place near the state border where the patient is taken over. The fact that urgent pre-hospital care does not have to be provided according to the Framework Agreement at the place of disability (as required by Act No. 374/2011 Coll.), but at the place of intervention, gives room for this interpretation. In other words, the place of the injury itself and the place of intervention of the sent intervention unit may be elsewhere. However, doubts about the admission of such a possibility are, in essence, caused by the fact that this variant is not explicitly foreseen in the Framework Agreement itself. Just to supplement, it should be noted that the German ambulance should drive into the Czech Republic. Otherwise, the logic of the matter will not be a case of cross-border intervention within the meaning of the Framework Agreement. At the same time, there is no doubt that such a procedure should meet the needs of the acute care of the patient.

However, the discrepancy of the given procedure with the requirements for the performance of care on the part of the Czech Emergency Medical Service is not resolved even by such an extensive interpretation of the Framework Agreement – urgent patient care should be provided by the outreach group at the intervention site as well as during patient transport. The ambulance service does not hand over the patient here against the signature of the acute inpatient care provider. In practice, transfers between ambulances at a common border are usually handled with the patient's consent. Autonomy of the will of the individual enshrined in general in Article 31 of the Charter of Fundamental Rights and Freedoms (No. 2/1993 Coll.).[10] In general, such a statement should be made in writing. However, if the patient's state of health does not allow the expression of will in such a way, the healthcare professional shall record the undoubted expression of the patient's will in the medical records kept, indicating the manner in which the patient expressed his will and the medical reasons preventing the patient from expressing it in the required manner. Such a record will be signed by a medical professional and a witness (Section 34, § 6 of

[10] Cf. for more details, e.g. TOMOSZEK, M. In: F. Husseini – M. Bartoň – M. Kokeš – M. Kopa. *Charter of Fundamental Rights and Freedoms.* 1st edition. Prague: C. H. Beck, 2021, pp. 860 et seq.

Act No. 372/2011 Coll.). – cf. more closely e.g.[11] The care of the Emergency Medical Service can thus certainly end not only by handing over the patient to the provider of acute inpatient care, but also by signing a written statement by which the patient refuses further provision of care according to § 34 No. 372/2011 Coll. (this is the so-called negative reverse).[12] However, it is clear that such a procedure is undesirable for several reasons. In such a case, it must be administered to the patient in accordance with § 34 par. 3 of Act No. 372/2011 Coll. information on his state of health (unless he has given up this information).

The information must be provided to the extent and in such a way as to show that the non-provision of health services can seriously damage the health or endanger the patient's life.[13]

It is obvious that in order to receive such information and to grant a subsequent negative reverse, the patient's decision-making capacity must be maintained to an appropriate extent at a given moment.[14]

A member of the field team should be sure that the person has such competence (which may not always be easy in a given acute situation). In the case of patients who are unconscious or have impaired legal capacity, the provision of health services cannot be terminated in such a way. In addition, withdrawal of consent is not always possible. The law excludes its effects in a situation where the performance of a medical procedure has already begun, the interruption of which may cause serious damage to the patient's health or endanger his life (Section 34, § 4 of Act No. 372/2011 Coll.). For the sake of completeness, it should be added that in the event that the patient does not give consent to the termination of the provision of care, or refuses to give, the Emergency Medical Service provider should not terminate the provision of urgent prehospital care and hand the patient over to anyone other than the target acute inpatient care provider.

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[12] The same authorization of the patient follows from the amendment of the Civil Code. According to § 2642 par. 1, the second sentence applies that "If the treated consent refuses, it will confirm this to the provider at his request in writing." – more on this, for example, DOLEŽAL, T. In: M. Hulmák et al. *Civil Code VI. Law of obligations. Special part (§ 2055-3014)*. 1st edition. Prague: C. H. Beck, 2014, p. 1164.

[13] The scope and form of this instruction depend on the circumstances of the individual case. However, the duty of instruction cannot be considered completely boundless. According to the judgment of the Supreme Court of 29 April 2015, case no., 25 Cdo 1381/2013, the following applies: *"There are essentially unlimited amounts of different risks for each procedure. If the duty of instruction were to apply to all, informed consent would be virtually unattainable and, in the end, its very meaning would be suppressed."*

[14] Cf. more closely, e.g. HOLČAPEK, T. In: P. Šustek – T. Holčapek. *Medical law*. Prague: Wolters Kluwer CR, 2016, p. 259.

IV. TRANSPORT OF A PATIENT BY THE CZECH EMERGENCY SERVICE TO A HOSPITAL CARE PROVIDER IN GERMANY

From the procedure described above for the provision of Emergency Medical Service, it is clear that it is necessary to distinguish between cases where the provision of Emergency Medical Service takes place with the intentions of national legislation and cases where it is subject to the supplementary regulation of the Framework Agreement. In the absence of activation of cross-border cooperation, urgent pre-hospital care is provided purely for the purposes of national law. The patient does not have the right to choose the medical facility to which he is to be transported. This is a rule that is not aimed at suppressing his rights or the possibility of free choice. On the contrary, the aim is to protect it. The solution is motivated by the effort to transfer this choice from the patient to the health service provider in situations where his health condition can be serious and his decision-making ability may be limited. The law does not explicitly exclude that the provider of Emergency Medical Service take into account the expressed wishes of the patient regarding the provider of acute inpatient care, and thus the place of possible hospitalization. However, such a wish is not decisive for him.

This procedure applies in general. It does not matter what the nationality of the affected person is, as well as whether it should be transported to a more distant Czech or German hospital according to its wishes. With regard to the above, it is clear that the legislation cannot set any criteria that the emergency medical service should take into account in such a situation – i.e. whether, for example, in addition to the patient's wishes to take into account nationality or citizenship, communicates etc. Most often, such a request will be made against an intervening Czech ambulance service by a German citizen residing in the Federal Republic who wishes to be transported to a hospital facility in the Federal Republic.

However, the same wish can be expressed by a Czech national (e.g. because he works in Germany), but it can also be a citizen of another EU state and a state outside the EU, etc.

The transport of the victim to a medical facility other than that corresponding to his/her state of health in connection with the local context of the intervention can lead to a number of negative consequences from the point of view of the Emergency Medical Service provider. Transport that does not meet the patient's acute needs may lead to delays. Delayed follow-up care can worsen the patient's condition, lead to further health complications, or even death. At the same time, it is clear that the emergency medical service is obliged to provide the above-described urgent care always, continuously and in precisely determined travel times, with appropriate staffing and with the material equipment of outreach groups prescribed by the relevant decree. Transportation of the disabled person according to his wishes to more distant providers of acute inpatient care would often lead to insufficient coverage of part of the region by exit groups with all the foreseeable negative consequences. This is also one of the reasons for the patient's choice of the device to which he is to be transported.

At the same time, it is necessary to realize that there is a risk of violation of the above-mentioned obligation defined in § 4 point g) Act No. 374/2011 Coll. The Emergency Medical Service must provide systematic health care and continuous monitoring of

indicators of the patient's basic vital functions during transport to the target provider of acute inpatient care, until the patient is personally handed over to the healthcare professional of this target provider of acute inpatient care. The definition of the provider of acute inpatient care is enshrined in Act No. 372/2011 Coll., on health services, which defines the very concept of acute inpatient care and at the same time sets the conditions for its provision. The definition and delimitation of the term acute inpatient care provider is a matter of Czech law. Following this adjustment, the National Register of Health Service Providers contains a list of providers of acute inpatient care in a given locality. The Act on the Ambulance Service follows on from this regulation and does not provide for the transfer of a patient to a medical facility outside the territory of the Czech Republic. If the legislator expected to transport patients outside the Czech Republic, he could simply capture this variant in law (e.g. immediately "or until handing over to a provider of similar health services outside the Czech Republic") – however, the current legislation does not contain such a solution.

Regarding the given situation, it should also be noted that the German medical facility is not obliged to accept the victim from the Czech rescue service, because with regard to the principle of territorial competence, Act No. 374/2011 Coll. (although the possibility of rejecting a patient in serious danger to life is probably rather theoretical here). On the contrary, the domestic target provider of acute inpatient care is obliged to take the patient into its care if its contact point was the possibility of accepting the patient confirmed by the medical operating center or auxiliary operating center. In addition, the target provider of acute inpatient care is obliged to take the patient into his care at the request of the medical operating center or auxiliary operating center whenever the patient is in direct danger of life.

It is then necessary to add and remind that the ambulance service is not a medical transport service.[15] Transportation of the disabled person according to his wishes to more distant providers of acute inpatient care would often lead to insufficient coverage of part of the region by exit groups with all the foreseeable negative consequences. This is also one of the reasons for the patient's choice of the device to which he is to be transported. At the same time, it is necessary to realize that there is a risk of violation of the above-mentioned obligation defined in § 4 point g) Act No. 374/2011 Coll. The Emergency Medical Service must provide systematic health care and continuous monitoring of indicators of the patient's basic vital functions during transport to the target provider of acute inpatient care, until the patient is personally handed over to the healthcare professional of this target provider of acute inpatient care. The definition of the provider of acute inpatient care is enshrined in Act No. 372/2011 Coll., on health services, which defines the very concept of acute inpatient care and at the same time sets the conditions for its provision. The definition and delimitation of the term acute inpatient care provider

[15] Implementing Decree No. 240/2012 Coll., which implements the Act on Ambulance Service; Decree No. 296/2012 Coll., on requirements for the equipment of the provider of medical transport services, providers of medical rescue services and providers of transport of patients in urgent care by means of transport and on requirements for these means of transport; Government Regulation No. 148/2012 Coll., on determining the amount of costs for the readiness of the provider of emergency medical services to deal with emergencies, crisis situations from the state budget.

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It is then necessary to add and remind that the ambulance service is not a medical transport service.[16] Its activity is not primarily to transport patients, but to provide urgent care anywhere in the region. The Health Services Act also directly regulates procedures that can be used for the subsequent transport of a patient after the provision of acute inpatient care to another facility (e.g. in the greater vicinity of his/her residence). In this case, even if this procedure is carried out by an ambulance vehicle, it is not a question of providing pre-hospital emergency care by the ambulance service. To the patient, hospital care is already provided.

Aside from closer attention, it is then possible to keep the issues related to the reimbursement of costs incurred for the narrow focus of the local interpretation. These can also occur on the part of the patient himself. He is being transported to a foreign medical facility, although his health was damaged in the territory of another state and he could (and should) have been provided with appropriate care in this territory.

It is therefore clear that the removal of a patient by the Czech ambulance service from the place of intervention directly to a hospital in the territory of the Federal Republic is not supported by domestic legislation. This may be the case if cross-border cooperation is activated according to the Framework Agreement. If the above criteria given by the Framework Agreement are met, the Czech Emergency Medical Service can transport the

[16] The Act on Health Services provides, in addition to the Emergency Medical Service, with the medical transport service [§ 2 point e) Act No. 372/2011 Coll.] and with the transport of patients of urgent care [§ 2 par. 1 point e) Act No. 372/2011 Coll.]. The transport of patients in urgent care is one of the health care services paid for by public health insurance [Section 13 of Act No. 48/1997 Coll.], and it is the transport of patients between providers exclusively under the conditions of continuous provision of urgent care during transport. It has already been indicated that this case does not involve the provision of pre-hospital emergency care, even if the transport itself is carried by an ambulance. It begins at the scene and ends with the delivery of the victim to an acute inpatient care provider.

affected patient directly to a medical facility in Germany. Here too, however, the conditions set out in Article 4 (3) of the Framework Agreement must be met in principle. It will therefore be necessary to request cooperation from the relevant medical operating center on the German side, acceptance of this request by the relevant medical operating center on the Czech side and send a field team to the place of intervention in Germany. If these conditions are met, it is possible for the patient to be taken by a Czech Emergency Medical Service, regardless of nationality, to a hospital in Germany and the Czech Republic. The place to which the patient will be transported will be determined by the requested operating center (Article 4 of the Cooperation Agreement). From the Czech territory, if the conditions for activating cross-border cooperation are met, patients can be taken to German providers of acute inpatient care by the outgoing group of the German Emergency Medical Service, which has crossed the state border upon request. Pursuant to Article 4 (4) (a) 4. The framework agreements provide that the transport of a patient to a medical establishment in the territory of the State in which he resides is, in all cases where his state of health so permits, a preferred option.

V. SUMMARY

It is clear that the Framework Agreement between the Czech Republic and the Federal Republic of Germany on cross-border cooperation in the field of Emergency Medical Service represents significant progress in the regulation of cooperation between the Czech and German Emergency Medical Service. However, given the above interpretation, it is not clear that the scope of this cooperation was set very narrowly. It is not possible to assume that both parties would not be aware of this relatively strict definition when negotiating the Framework Agreement. The Framework Agreement does not provide for the transfer of patients between Emergency Medical Service at all. He then counts on the transfer of patients to a medical facility in the territory of another state, only in a very narrowly focused range of cases. In addition, transport is only possible if cross-border cooperation is activated. Thus, not in the case of the national intervention of the Czech ambulance service in the territory of the Czech Republic itself. At the same time, it is clear that if the transport to medical facilities providing inpatient care outside the territory of the Czech Republic would be the desired solution, the legislator could have explicitly regulated this fact directly in the national regulation, or clearly enshrined in international regulation.

In view of all the above, it seems that a Czech provider of Emergency Medical Services providing emergency assistance in the Czech Republic with the intentions of national regulations could transport a patient directly to a hospital facility in Germany without simultaneously exposing the risk of violation of the law, only for compliance, conditions of some of the circumstances precluding illegality. In the given context, the fulfillment of the conditions of the state of extreme emergency can be expected in particular. These will be cases where, in the circumstances, it was not possible to avert the danger to the patient other than by being transported to a medical facility in the territory of another state. Nor should such a procedure have the effect of manifestly serious or even more serious consequences which would otherwise be imminent. Under the fulfillment of the general conditions of extreme emergency, it will be possible to exclude the illegality of the conduct

of the rescue service at the criminal law level (Section 28 of the Criminal Code),[17] administrative (§ 24 of Act No. 250/2016 Coll).[18] However, it is clear that the fulfillment of all preconditions for acting in extreme need will be rather exceptional in the given cases. The conditions can be met, for example, in a situation where the injury suffered significantly threatens the patient's life and a suitable German facility is clearly more accessible and at the same time willing to accept the patient.[19] Here too, the question worthy of deeper consideration remains whether the patient, who is provided with urgent medical care, is not always obliged to bear the risk of longer transport to a Czech medical facility, because the legislation does not give him the option of choosing a provider of follow-up acute inpatient care (cf. § 28 par. 2 of the Criminal Code, or § 24 par. 2 of Act No. 250/2016 Coll.). In the case of such an interpretative view, the conditions of extreme emergency would almost never be met.

The described legal status is perceived mostly negatively by the medical professional public. According to the Czech legislation, it is difficult to blame the providers of Emergency Medical Service for their reluctance to transport patients to German medical facilities. Their activity is firmly established by public law, which does not provide for such a variant in the case of purely national intervention. The procedure according to the criteria of extreme emergency is a variant of the *ultima ratio* and is far from applicable in general. In addition, the provision of primary emergency medical care should be set up quite unambiguously and in such a way that the intervening medical staff does not have to consider, in the given acute conditions, the compliance of their actions with the law or the possible illegal consequences of their actions.

It is clear that a possible decision to adopt a regulation further expanding cross-border cooperation in this area is primarily a political issue, not a legal one. Greater freedom of action for national emergency medical services outside their home country would require substantial changes at both international and national level. The rules for receiving emergency calls on both sides of the border would have to be set uniformly. A common operations center would probably have to be set up to receive such calls. Coverage of the territory of a foreign state by the national health service would have to be mandatory – ie not tied to the acceptance or non-acceptance of a request for assistance. Unity would also need to set rules for the admission of patients to providers of follow-up acute inpatient care. Last but not least, the issue of reimbursement of the costs of such services, including reimbursement of the costs of follow-up hospital care, would also have to be resolved.

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[17] The Criminal Code is the Act No. 40/2009 Coll. – to the conditions of extreme emergency cf. more details e.g. ŠÁMAL, P. In: P. Šámal et al. *Criminal Code*. 2nd edition. Prague: C. H. Beck, 2012, p. 388. This is a law on liability for misdemeanors and proceedings on them – on the conditions of extreme emergency, cf. more details e.g. VETEŠNÍK, P. In: L. Jemelka – P. Vetešník. *Act on Liability for and Infringement of Misdemeanors. Act on certain offenses.* 2nd edition. Prague: C. H. Beck, 2020, p. 193.

[18] This is a law on liability for misdemeanors and proceedings on them – on the conditions of extreme emergency, cf. more details e.g. VETEŠNÍK, P. In: L. Jemelka – P. Vetešník. *Act on Liability and Proceedings for Misdemeanors. Act on certain offenses.* p. 193.

[19] The Civil Code is Act No. 89/2012 Coll. – on the private law concept of extreme emergency, cf. e.g. BEZOUŠKA, P., HULMÁK, M. et al. *Civil Code VI. Law of obligations. Special part (§ 2055-3014).* 1st edition. Prague: C. H. Beck, 2014, p. 1527 et seq.