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# Historical Foundations of the Development of Medical Law in Hungary

Dr. Jur. Zoltán Lomnici PhD

**Abstract-** The study briefly presents the public law-historical foundations of Hungarian medicine; describes the main peculiarities of the early, unchiseled regulation and the fact that the institutional care of the sick and poor was first dealt with by the clergy and the monastic orders. Real development began in the last third of the 19th century, and the first serious steps in public law were the changes at the legislative level of 1871 and 1876. By the 20th century, the pharmaceutical profession had developed, the organization of social security had been established, and after the Second World War the Ministry of Health was established in Hungary.

## THE BEGINNINGS

As a starting point, it should be noted that the early Hungarian regulations were rather unchiseled. It is well known that the institutional care of the sick, the poor was first dealt with by the clergy and monastic orders.<sup>1</sup> The Benedictine order settled by King St. Stephen (ruler 1000-1038) in particular can be highlighted, as they - as a primary healing order - maintained a hospital in Pannonhalma, in the area of the abbey, as early as 1221.<sup>2</sup>

In addition to all this, one of the decrees of King Kalman (ruler 1095-1116) is probably the first piece of health legislation. It clearly states, "Women who have lost their fetuses should atone to the principal."<sup>3</sup>

Despite the lack of legal bases and qualifications, several so-called domus hospitalis (hospital) was built from the 13th century, after the already mentioned Pannonhalma in Sopron (1274), Esztergom (1303), Buda (1439) and Debrecen (1529). However, we must look for the ancestors of real hospitals not in this age, but later, at the time of the appearance of camp hospitals.<sup>4</sup>

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<sup>1</sup> The Second Book of the Decrees of King St. Stephen states, "Know ye all, our brethren, that the priests labor above all."

<sup>2</sup> In addition to them are the Antonites, Johannites, Templars, Paulists, Jesuits, and Cistercians. It is important to note that domus hospitalis cannot yet be considered a real hospital, mainly because their "managers" and nurses did not usually have a medical qualification. See: Gábor Jobbágyi: Personality Rights - Health Contract (in Hungarian), in: Jogtudományi Közönlöny 1984/1 16. p.

<sup>3</sup> Source: Corpus Iuris Hungarici CD; KJK-KERSZÖV

<sup>4</sup> This was the case on Margaret Island in 1686 and in Buda in 1688. However, Article 30 of King Rudolf's 1596 Decree states: "The faculties and royal orders understood the desire of His Imperial Majesty to care for the wounded and sick soldiers and, for this purpose, to equip hospitals." Cf. Gábor Jobbágyi: New Questions of the Civil Liability of a Doctor in Judicial Practice (in Hungarian), in: Jogtudományi Közönlöny, 1986/4 15-17. p.

Until 18-19. century, medical concepts and activities were mixed. Doctors (Latin phisicus) were often priests, doctors, and pharmacists at the same time. Contemporary healers have been concentrated in guilds from the beginning to better protect their interests. The first medical specialty was the guild of barber surgeons (Latin chirurgus) from the 16th century.<sup>5</sup>

One of the next stages in the development of the law is a decree of 1714 issued by the city of Debrecen, which required, among other things, a personal presence for the doctor and "humane, gentle, willing treatment of the patient".<sup>6</sup>

There have also been developments in the social approach to patient care: under the provisions of the Royal Decree of 22 August 1721, each village was obliged to provide for its own poor, both in terms of healing and care.<sup>7</sup>

Meanwhile, guilds were constantly established, but they still could not provide a higher standard of medicine. It was rare for such an excellent specialist as Matthias (Mátyás) Lassel, a doctor from Brasov, who practiced between 1760 and 1792. Lassel traveled from town to town, declaring himself an ophthalmologist (German Augenarzt) and performing successful cataract surgeries.<sup>8</sup>

The further tightening of medical activity was brought about by the fact that, from 1751, only persons who had previously been examined "by uninteresting masters" could be admitted to the guild of surgeons.<sup>9</sup>

The first major draft implementing the regulation of public health and medical practice is the "Planum regulationis in re sanitatis" from 1755. The main points of the draft, prepared on the proposal of the health councilor Károly Perbegh, were the following:

- 1) Medical degrees obtained abroad must be presented to the Royal Council of Governors.

<sup>5</sup> For a long time, however, they became "masters" not on the basis of a medical degree but on the basis of a master's examination and the observance of guild requirements (in Hungarian); Cf. Gábor Jobbágyi: JK op cit 17. p. See also: Gyula Magyary-Kossa: Hungarian Medical Memories, Budapest 1940.

<sup>6</sup> See: Gyula Magyari-Kossa: op cit 136-137. p.; See also: Balázs Landi: Issues of Civil Liability of Doctors (in Hungarian). Study 8. p.

<sup>7</sup> See the Explanatory Memorandum to the law Article III of 1875 ("On the coverage of the costs of public patient care").

<sup>8</sup> Cf. Gábor Jobbágyi: JK op cit 17. p.

<sup>9</sup> Gyula Magyary-Kossa: op cit 145. p.

- 2) The authority must keep a "mandatory list" of doctors, the exact definition of which is not given in the draft.
- 3) Pharmacies should be inspected annually for compliance with public health standards.
- 4) "The operation of ophthalmologists, gallstone and hernia cutters and tooth extractors visiting cities should be carefully checked by the authority; it may not allow them to perform other medical functions, such as internal cures, and give them official certificates of surgery only with the utmost care."<sup>10</sup>

Until the 19th century, the shortage of doctors in Hungary was depressing. In 1763, for example, there was no doctor or pharmacy in Békés County. These conditions led the Royal Council of Governors, during 1766, to order centrally that each authority report the doctors, pharmacists, surgeons, and midwives in their district.<sup>11</sup> It was also expected that the reports to be forwarded to the Royal Council of Governors should also indicate which of these individuals met the previously specified examination requirements.

#### *The first signs of development*

Real development began in the last third of the 19th century. Large Hungarian medical figures such as Ignác Semmelweis, Frigyes Korányi, János Balassa and others appeared. By the end of the century, the first serious legislation appeared, and as an institution, first the National Public Health Council (OKT)<sup>12</sup> and then the Forensic Medical Council.

The first significant step in the Hungarian legislation was the enactment of law Article III of 1875 ("On the coverage of the costs of public patient care").<sup>13</sup> In the following, let's review the starting lines for justifying the norm.

The following aspects have guided the drafting of this bill:

1. That the interests of public patient care are adequately protected, while ensuring the survival of hospitals and medical institutions;
2. That the amount hitherto covered by the State Treasury for the cost of medical care be reduced as far as possible;

3. That, by clearly outlining the obligation to reimburse the costs of patient care by whom and in what order, this will allow for faster and more secure recovery of patient care costs'.

Nevertheless, according to Section 7 of the law Article: "every village, in its own bosom, is responsible for the treatment of the wealthless patients competent there and for the care of the incurable". Also, Section 9 provides that "any wealthless person who is cared for and registered as incurable in public hospitals and medical institutions shall be taken over by the municipality of residence for further care and attention". This laid the foundations for healing hospitals.

Ahead of many developed countries, in 1876 the Hungarian parliament passed the law Article XIV of 1876 ("On the Order of Public Health").<sup>14</sup> The law Article consisted of two hundred sections and regulated the most important areas of health care for nearly a century. In the law Article XIV of 1876, we can observe a mixture of administrative and civil law elements. Section 1 states that "the management of public health is the responsibility of the state administration". At the same time, according to Section 47: "A doctor authorized to practice may not be restricted in the application of the treatment, but his operation is under the control of the State and he is responsible for any malfunctions committed by him". In the latter, we can already clearly discover the germs of civil law regulation.

The Preamble to the law Article also emphasizes the importance of the measure. Its opening sentence reads: "A law that would have regulated the issue of public health in Hungary has not existed so far."

It further states that "the task of the health administration is not only to ensure that the troubles which have arisen are to be remedied, but also, and above all, to take measures to prevent such troubles and public health deficiencies and to ensure the well-being of public health; however, in order to solve this task, it is necessary, on the one hand, to determine the powers of the public authorities and, at the same time, to limit the scope of private law, and, on the other hand, to win the interest and participation of the public".

An important innovation of the legislation is the establishment of the aforementioned National Public Health Council (OKT), under the authority of the Minister of the Interior, as a body of the Ministry of the Interior, the history of which dates back to the early 19th century.

At the beginning of the 19th century, the situation of the population of Hungary was miserable. Roughly 90% of the 10 million population had no real estate at all. Due to poor economic conditions, famines were common. There were national and local epidemics, a high number of deaths due to lack of treatment, a large shortage of doctors and surgeons, and a small number of pharmacies. In addition, the number of

<sup>10</sup> Ferenc Linzbauer: Codex sanitario-medicinalis Hungariae I-III. Buda 1852-1861, II.302. See: Balázs Landi op cit 9. p.

<sup>11</sup> The midwives (old women) were essentially midwives. They rarely had a vocational qualification. Incidentally, attempts have been made in several regulations to eliminate their ignorance. The role of midwives has re-evaluated over time. According to Section 27 of the law Article XXXVIII of 1908: "Every town (village) is obliged to keep a qualified midwife." See also Balázs Landi: op cit 11. p.

<sup>12</sup> Based on the suggestions of Balassi and Korányi, among others. See also: Bezerédyné-Henz-Zalányi: Centuries of struggle for the health care of Hungary (in Hungarian). K.J.K. Budapest 1967; 24-26. p.

<sup>13</sup> CJH-MTT, Law Article III of 1875 ("On the coverage of the costs of public patient care")

<sup>14</sup> Ibid.

hospitals and hospital beds was alarmingly low, and there was a backlog in the treatment of patients and in hospital hygiene.<sup>15</sup>

After the defeat of the Hungarian Revolution and War of Independence against Austria in 1848-49, Hungary became completely vulnerable. With the Austro-Hungarian Compromise of 1867 (with the creation of a more independent Hungary in addition to Imperial Austria), development began, and this extended to health care.

In response to the changes, a preparatory meeting on the development of the Hungarian public health system was held under the leadership of the Minister of the Interior, Béla Wenckheim, and with the involvement of renowned Hungarian professors. At the meeting, four drafts were presented to the Minister in person: the older one, drafted in 1848, two proposals drawn up at the Wandering Meeting of Doctors and Naturalists in Bratislava and Rimaszombat, and finally the memorandum by Professors Balassa, Korányi, Lumniczer and Markusovszky. Of these, the Minister chose the latter as the basis for negotiation, as it discussed all public health requirements in sufficient detail. This was seen as a finished program of all public health progress.

The draft envisioned the Public Health Council as a Prussian-style advisory body to the portfolio, independent and covering all special professions, for the purpose of giving opinions throughout health care, drafting laws, and preparing instructions and regulations for health officials. This council was tasked with establishing and overseeing examinations of applicable medical personnel, and was the supreme authority for health and forensic medical issues over malpractice, setting medical fees, and proposing pharmaceutical profession. The draft provided an exhaustive and convincing explanation as to why these actions could not be entrusted to officials, the teaching staff, the medical association or the medical college. In April 1868, the king approved the basic structure of the OKT, and in June of that year he appointed János Balassa as chairman, and in addition to the second chairman (Endre Kovács-Sebestény), he also appointed 10 regular and 27 extraordinary members.<sup>16</sup>

As this organization was not effective enough, the law Article XI of 1890 established the Forensic Medical Council with the aim of speeding up criminal sentencing as a body of medical experts. According to the reasoning of the law for the above two bodies: "The compulsion to these bodies, which eliminates slowness and delay, cannot be exercised because they could only

exert greater speed by pushing their ownership responsibilities into the background, which is not only unfair but also wrong. In addition, both bodies will be completely shut down for almost three full months of the year.

This Section states that the council to be set up will be called upon to operate exclusively in the field of the civil service of the judiciary, and is therefore at the disposal of the Minister for Justice."<sup>17</sup>

Meanwhile, the conditions for becoming a doctor have been gradually tightened. According to Section 9 of the law Article I of 1883 ("On the Qualification of Civil Servants"), this is:

"In the Department of Public Health of the Ministry of the Interior, for doctors, a degree in general medicine or a degree in medicine, surgery and obstetrics.

The same is expected of doctors at the metropolitan police station; and from the chief medical officers, district doctors in the capital, and two years of medical practice.

District doctors and doctors from cities with an organized council must have a medical degree and two years of medical practice."<sup>18</sup>

There were special regulations for pharmacists. Pursuant to Decree No. 22.370 / 1883 of the Minister of the Interior, if a pharmacist applies for a permit for the establishment of a new pharmacy, he is obliged to indicate the districts which form part of the turnover of the pharmacy to be newly established. In addition, the following had to be attached to the application:

1. Diploma in pharmacy in original or notarized copy
2. Statement of occupation to date, all certificates in chronological order (...)
3. A moral certificate from the authority of residence<sup>19</sup>

#### *Health legislation of Hungary in the 20th century*

The law Article XXXVIII of 1908 on the Amendment of the Public Health Act classifies the legal relationship between a doctor and a patient as an assignment, namely in connection with the replacement: Pursuant to Section 24, the village (district) doctor may request 3 weeks of leave per year, which is granted to him by the sub-prefect after hearing the district Chief Judge and the county chief medical officer. The latter also arranges, in consultation with the Chief Judge and the district doctor, for replacement in the event of illness of the municipal (district) doctor.

<sup>17</sup> It should be noted that sections 64 and 165 of the law Article XIV of 1876, respectively, place health care under the control of the Ministry of the Interior

<sup>18</sup> The Section 43 of the law Article XIV of 1876 states that only those who have a medical diploma issued by a scientific university in the territory of the country have the right to practice medicine in Hungary

<sup>19</sup> The latter is worth comparing with Section 22 of Act I of 1936 and its critique. See Bezerédyné-Henz-Zalányi, op cit 217. p. Source: Collection of Administrative Legislation, Fővárosi Nyomda Rt., Bp. 1932

<sup>15</sup> Dr. József Honti: The Law XIV of 1876 and antecedents; in: OrvosiHetiLap (1997) 16. 1009.-1011. p.

<sup>16</sup> Cf. Lajos Csatóry Grósz.: Fifty years of operation of the National Public Health Council (in Hungarian). Budapest, Franklin, 1918. 5-15. p.

The replacement should be entrusted to another local doctor living in the village, or in the absence of such, to a private doctor who lives in the village (district) during the time of the replacement. If this is not the case, or if the latter method of replacement does not prove necessary, the sub-doctor shall replace the replacement with a municipal (district) physician or a private doctor, or, if appropriate, with the division of the medical community into two or more neighboring municipalities (districts).

The municipal (district) doctors are obliged to accept the order and perform the replacement without any separate payment. ”

In the 1930s, medical law was essentially in crisis in Hungary. The few monographs that have been born on this subject have only exacerbated the chaos. An example is Béla Szász's Medical Jurisprudence,<sup>20</sup> which examines the relevant provisions through the eyes of a forensic doctor, using criminal and private law aspects.

Although the organization of social security was established in principle, poor health conditions still prevailed in most of Hungary. In addition, the number of medical experimental interventions has increased. In 1935, the publication Rules of Medical Practice reported that a decision had to be made on the so-called On the prohibition of Zeileis treatment<sup>21</sup> because it is unscientific and “could lead to serious harm to some patients”. In addition, although local governments for doctors were established, their situation remained unclear vis-à-vis doctors from public and private insurers, so they did not have a serious weight.

The first major change in the field of advocacy was the publication of the law Article I of 1936 (“On Medical Ordinance”).

Section 1 (1) of the Act states: “The Medical Chamber is the representation of the interests of doctors. Its task is to guard the patriotic conduct and moral authority of the medical faculty, to enforce the moral and financial interests of doctors in accordance with the public interest, to check the regularity of medical practice, to exercise disciplinary jurisdiction over its members, and to make proposals on medical and public health issues. This task is performed in its territory by the Medical Chamber (hereinafter: the District Chamber), and in the national context by the National Medical Chamber (hereinafter: the National Chamber). ”

The second section deals with the question of the examination (approbation): “An activity the performance of which is linked to a medical degree may be pursued only by a member of a district chamber.”<sup>22</sup>

The legislation is based on the law Article XXXVIII of 1908, in accordance with the law, classifies

the doctor-patient relationship as a contract type of assignment. According to (3): “Compensation determined by free agreement may be reduced by the court if, as a result of an unforeseen event, the assignment is terminated or the doctor resigns from further activities or does not perform the work for which the amount of remuneration was determined.”<sup>23</sup>

Although the law significantly increased the authority of the medical faculty (including doubling the number of members of the upper house that could be elected by the faculty), it was widely criticized, for example, because section 22 of the law tied chamber membership to an impeccable history.<sup>24</sup>

The aforementioned Medical Ordinance Act was repealed in 1945,<sup>25</sup> and after a fourteen-year *ex lex* status it was enacted under Act VIII of 1959 on Medical Ordinance. In addition, the Law on Pharmacy was enacted between 1945 and 1972,<sup>26</sup> and the Ministry of Health was established in 1950.<sup>27</sup>

<sup>20</sup> See: Béla Szász: Medical Law (in Hungarian). Danubia, Pécs 1925

<sup>21</sup> Read more: Gábor Jobbágyi: JK op cit 17. p.

<sup>22</sup> See also law Article I of 1936 (“On Medical Ordinance”)

<sup>23</sup> According to some, this is due to the fact that the civil law literature has so far been unable to break with the theory that there is a contract work between a doctor and a patient.

<sup>24</sup> Read more: Bezerédyné-Henz-Zalányi, op cit 217 p.

<sup>25</sup> 2500/1945. (VI.3) Prime Ministerial Decree

<sup>26</sup> Act XXX of 1948

<sup>27</sup> Act IV of 1950