



*Julesz Máté tudományos munkatárs,
Szegedi Tudományegyetem Népegészségtani Intézet*

*Máté Julesz research fellow,
University of Szeged Department of Public Health*

A Short History of Public Health Law in Hungary

1. Libri Medicinarum

We have come a long way from the situation of the legal regulation of public health in the 19th century. Legislation of this area was always based on the *lex* and *consuetudo* of former centuries. The beginnings of a modern type of regulation of public health in Hungary were created by Act No. 17 of 1884 on Industry and Act No. 14 of 1876 on Public Health (Julesz 2007b: 35-36). Early physicians such as Pápai Páriz wrote volumes on health (*Pax Corporis*), which were masterpieces of medical thinking without developed medical laws in the background. It might be said that books like those of Pápai Páriz in the 17th century, of Ponyikay also in the 17th century (*Liber Medicinarum*), or of Melius Juhász in the 16th century (*Herbarium*) to some extent substituted the legal regulation of the medical profession. In other words, instead of medical laws formulated with the aim of regulation, there was a kind of medical legal orientation.

Orientation was later supplemented by acts of parliament. In Hungary, Act No. 2 of 1972 on Health formally mimicked the structure of the Code of Medical Ethics adopted by the American Medical Association in 1847. It may appear astonishing that a norm from the 19th century could yield any basis for a 20th-century legal product, but it seems to be true. As compared with the Act on Health of 1972, Act No. 154 of 1997 on Health was a major step forward in the evolution of medical law. The question remains of why Hungarians had to wait almost a decade after the political changes in Eastern Europe for a new and reformed basic regulation of the medical law.

Law and medicine are strongly interrelated: public health cannot function well without proper legal regulations, and the rule of law, as a human right, requires an understanding on the part of the state. The right to health is a fundamental human right, and as early as in the 1980s the European Court of Human Rights heard cases concerning the violation of rights to private property and to a healthy environment (Julesz 2007a: 68 et Julesz 2006). In the 1970s, Nizsalovszky wrote a groundbreaking book, *A Legal Approach to Organ Transplantation and Some Other Extraordinary Medical Actions*, which was followed by other highly noteworthy manuals in the field. The only negative remark that might be made in this respect is that, even in the 20th century, medical law evolved virtually solely from the activities of scientific writers and was largely neglected by rule-makers. It was necessary to wait until the end of the 20th century for the emergence of a legal framework suitable for the contemporary level of medical sciences.

2. Law and Ethics

In the 1940s, Pólya wrote about late physicians as no one had done before (Pólya 1941). The historical aspects of the situation of health and law in Hungary are of great importance, though it must be borne in mind that time passes. The future of Hungarian medical law is in the hands of the legislators. Fortunately, these legislators include educated physicians, who possess both a practical and a political view of the situation of health and law.

We shall not touch here upon such points as the privatization of medical care in Hungary, or the differences in policy between the governing party and the opposition. These topics will be left to political analysts and economists. The history of privatization in Britain is a familiar matter, and we are also well acquainted with the problems arising from the health care system in the USA. Many countries with a higher economic level than that of Hungary have coped successfully with such problems. Their example is to be followed. The right of people to good health care is not merely a question of daily politics. This right is rooted in the historical heritage of the nation's medical science, starting from the *Herbarium*⁴ by Melius Juhász, through the medical revolution in the 19th century, and up to the present-day medical laws.

The people's right to health care was never as evident as after the Declaration of Human Rights in 1948 under the auspices of the United Nations. This was followed by the International Covenant on Economic, Social and Cultural Rights in 1966. In this document,

the right to health care is formulated as a basic right of each and every human being. Mental attitudes have progressively changed and today we believe that other living creatures (e.g. animals) also have the right to a healthy environment.

The interconnection between the mass media and physical and mental health is a complex one. The mass media nowadays exert a special impact on people. Only recently, a new article was introduced into the Act on Health of 1997. This article is devoted to food health as part of public health (article 50 of Act No. 154 of 1997). The role of the mass media is important in broadcasting information about healthy nutrition and a healthy lifestyle. When a movie hero smokes a cigar on TV, our less conscious counterparts also light a cigar. The roles of the press and the electronic media have never been as crucial as today in providing everyday people with the necessary quantity of correct information about health conservation.

The reasonable control of publicity is a must, but such restrictions should not be limitless. The basic right of man to a healthy environment is axiologically a higher value than the rights of the publicity-makers. Constitutional rights thus vary in importance. It is one of the tasks of the mass media to promote healthy life-conduct, this being public service of the mass media (see Article 5 of the Principles of Medical Ethics of the American Medical Association, 2001). Article 7 of the Principles of Medical Ethics of the American Medical Association states that a physician must recognise his or her responsibility to participate in activities contributing to the improvement of the community and the betterment of public health. It is a moral rather than a legal question whether physicians should or should not partake in activities involving commercial publicity. Professional publicity-making for good purposes (such as public health and achievement of the right to a healthy environment) is fully in accordance with the rules of medical ethics, whereas publicity-making for an average tooth-paste certainly falls under a different moral judgement. Legal regulations must change in parallel with social development.

3. Conclusions

Public health has always been exposed to the vicissitudes of human history. Mankind rarely respects the interest of its minorities, whether these be an ethnic or any other social minority. The holistic view tends to overwhelm the interests of minorities, and it stimulates the law-makers to put the rights of the majority before the rights of the few. This type of law-making must be modified. Not only people, but also the ecosphere in which we live is to be protected.

The evolution of public health is bound to legal evolution. Law will never create public health, but it must postulate the social need for a better quality of public health.

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