

NAGY MELÁNIA – RIPSZÁM DÓRA

# Informal payments in healthcare, as an issue of Hungarian national security

## I. Introduction

The fight against corruption has a long history, and we already have sources of law in Roman that have sanctioned various type of corruption.<sup>1</sup> In Hungary, the Code of Csemegi already provided for corruption torts, including bribery, official embezzlement, official criminal support, disclosure of official secrets, and criminalization of innocent persons.<sup>2</sup> Accurately determining the extent of corruption, especially comparing countries with other socio-economic-cultural backgrounds, poses a significant challenge to researchers. Various types of bribery are punished in many countries around the world, and the 2003 UN Convention against Corruption provides a fairly accurate description of the acts to be punished, but the problem begins with the fact that corruption goes far beyond the bribery situation in each country. (e.g.

<sup>1</sup> PÓKECZ KOVÁCS Attila: A magisztrátusi korrupció (zsarolás) büntetőjogi megítélése a köztársaságkori Rómában. (Criminal Judgment of Magistrate Corruption [Extortion] in Republican Rome) In: Emlékkötet, Tanulmányok Bodnár Imre egyetemi adjunktus tiszteletére. (Memorial volume, Studies in honor of Imre Bodnár, assistant professor) Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Pécs 2015. quotes: TÓTH Dávid: A korrupciós bűncselekmények szabályozásának története Magyarországon. (History of the regulation of corruption crimes in Hungary) In: Dr. TÓTH Dávid: A korrupciós bűncselekmények szabályozásának története Magyarországon. Büntető Törvénykönyv (új Btk.) a gyakorlatban (History of the regulation of corruption crimes in Hungary. Criminal Code (new Criminal Code) in practice) (ujbtk.hu) (download: 23.01.2022.).

<sup>2</sup> EDVI ILLÉS Károly: A Magyar Büntető Törvénykönyv magyarázata. (Explanation of the Hungarian Penal Code) 3. kötet. Révai Kiadó, Budapest 1909. 581. p. quotes: TÓTH Dávid: A korrupciós bűncselekmények szabályozásának története Magyarországon. In: Dr. TÓTH Dávid: A korrupciós bűncselekmények szabályozásának története Magyarországon. (History of the regulation of corruption crimes in Hungary) Büntető Törvénykönyv (új Btk.) a gyakorlatban (History of the regulation of corruption crimes in Hungary. Criminal Code (new Criminal Code) in practice) (ujbtk.hu) (download: 23.01.2022.).

gifts, gratuities, tips) whose criminal judgment, due to their strong social embeddedness, is unclear.<sup>3</sup> However, it is also difficult that there are no victims of bribery, that all participants have the same interest, so there is no one to complain about the illegality of the proceedings.<sup>4</sup> In Hungary, the phenomenon of gratuities was considered a necessary evil due to the extremely low salaries of health care workers. Previous research has shown that 57% of doctors consider a gratuities necessary because of their income.<sup>5</sup>

In order to regulate this disordered state, a legal relationship was established in the health service, which also brought about an increase in the salaries of doctors. Healthcare workers employed by state and municipal health care providers have previously worked in a number of legal relationships, but the labor law framework has been resolved in 2020 by changing the relevant legislation. In addition to the settlement of medical salaries and the abolition of the gratuities, a new legal status regulation has been established. Act C of 2020 on the Legal Status of the Health Service and the government decrees implementing it contain the salary scales, the range and amount of allowances due to health care professionals, and the amount and conditions of wages to be paid by health care providers.<sup>6</sup>

Pursuant to Section 20 of Act C of 2020 on the healthcare service employment, Sections 290 (bribery) and 291 (acceptance of bribery) of the Criminal Code have been supplemented as of 1 January 2021 as follows<sup>7</sup>: 290. § (6) “Any person who promises or gives unlawful advantage - as defined by the Healthcare Act - to a health professional or other healthcare worker, or to a third person at the behest of such person, in connection with the provision of health services is guilty of a misdemeanor punishable by imprisonment not exceeding one year, inso-

<sup>3</sup> KLOTZ Péter: Integritás és munkaköri kockázatok elemzése. (Integrity and job risk analysis) Dialóg Campus Kiadó, Budapest 2019. 206.

<sup>4</sup> <https://batki.info/halapenz/> (download: 27.01.2022.).

<sup>5</sup> HOLLÁN Miklós – VENCZEL Tímea: A hálapénz büntetendősége a jogtudatban. (The criminality of gratitude in legal consciousness) <http://real.mtak.hu/102807/3/h%C3%A1lap%C3%A9nz%20lead%207.pdf> (download: 25.01.2022.).

<sup>6</sup> Emberi Erőforrások Minisztériuma: Egészség Magyarországon 2021–2027. (Healthy Hungary 2021–2027) Egészségügyi Agazati Stratégia. Emberi Erőforrások Minisztériuma, Budapest 2021. 114. (Ministry of Human Resources, 2021).

<sup>7</sup> Az egészségügyi szolgálati jogviszonyról szóló 2020. évi C. törvény 20. § (Act C of 2020 on healthcare service employment).

far as the act did not result in a more serious criminal offense.”<sup>8</sup>

291. § (6) “For the purposes of this Section, unlawful advantage as defined by the Healthcare Act shall be construed as unlawful advantage provided in connection with the provision of health services.”<sup>9</sup>

Pursuant to Section 138/A. § (1) Act CLIV. of 1997 on the Healthcare: In addition to the reimbursement specified by law or regulation, a healthcare worker or healthcare professional may not claim or accept any consideration or other benefit provided in cash or in kind for the provision of healthcare.

At the same time as the above, Healthcare Act define certain exceptions. After the provision of the service, the healthcare worker may, on one-off basis, accept an item given as a gift by the patient or someone else with respect to it, the value of which does not exceed 5% of the current minimum wage. (In 2021: approx. HUF 8370) During the provision of long-term healthcare, a healthcare worker may accept once every two months an object given as a gift by the patient or another person, the value of which does not exceed 5% of the current monthly minimum wage.<sup>10</sup>

The National Protect Service (hereinafter: NPS) has been commissioned to inspect the system. After July 1, 2021, Colonel Imre Gyebnár will manage the Directorate of the Protection Service of Administrative Bodies, the new sub-unit of which will be the Department of Health Protection.<sup>11</sup>

## II. Efforts to define the concept of gratuities

Tips, gratuities, parasolvency, well-known concepts that have come under the criminal law approach more and more recently. The first definition may relate to a number of professions, but the latter two are usually related to health care. The name Hungarian gratuities is unique compared to international regulations, in Hungary it is marked with a positive indicator, while in other countries the emphasis is placed on the incorrectness and irregularity of the phenomenon.<sup>12</sup> The history dates back to 1952, when Ernő Gerő’s motion to make health care “tipped”. The opinion of gratuities has varied greatly among the various disci-

plines. According to economists, the system of out of pocket money can be explained on the basis of economic laws and can be well defined in terms of its functions, in contrast, lawyers considered the acceptance and giving of gratuities to be illegal.

István László Gál summarized the provisions on gratuities in a 2014, he explained that a doctor can no longer accept or request gratuities with the entry into force of the new Penal Code.<sup>13</sup>

After all, requesting an undue advantage or prior or post-acceptance is also considered acceptance of bribery. The only exception was that if the gratuities was given to the doctor retrospectively and without request, as it complied with the provisions of the Code of Medical Ethics, it did not constitute an undue advantage and no criminal offense was incurred.<sup>14</sup>

Mihály Tóth’s position is the same as discussed earlier: it is justified to ban the request for gratuities, no concessions can be made. [...] However, in accordance with the previous decades-long regulation, the acceptance of gratuities should be handled by criminal law only in the event of a breach of duty in return for gratuities.<sup>15</sup>

The concept of gratuities is defined in the Code of Ethics of the Hungarian Medical Chamber, which states that for gratuities is any benefit that a patient or a relative gives to a doctor after care, without request, if it does not indirectly affect the quality of care.<sup>16</sup>

Parasolvency is not synonymous with gratuities. According to Balázs Mórítz: all other conduct that cannot be included in the definition of gratuities should be assessed in the context of parasolvency and/or bribery.<sup>17</sup> Parasolvency also includes gratuities, a broader category and income that avoids any other legality that a doctor earns in connection with his or her work in public finances.<sup>18</sup> In summary, we can say that it is always aimed at a specific wish related to a service element.<sup>19</sup>

In summary, gratuities is not an undue advantage if it has been provided in the health sector, voluntarily and post-given. However, it was a bribe if one of the aforementioned conjunctive conditions was missing.<sup>20</sup>

<sup>13</sup> A Büntető Törvénykönyvről szóló 2012. évi C. törvény (Act C of 2012 on the Penal Code).

<sup>14</sup> GÁL István László: A korrupciós bűncselekmények. (Crime of corruption) In: (TÓTH Mihály – NAGY Zoltán ed.): Magyar Büntetőjog: Különös rész. (Hungarian Criminal Law: Special Part) Osiris Kiadó, Budapest 2014. 297.

<sup>15</sup> TÓTH Mihály: Boríték kapható. (Envelopes available) Élet és Irodalom 2014. no. 28. 5.

<sup>16</sup> Magyar Orvosi Kamara Etikái Kódexe II.15. (1) bek. (Ethics Code of Hungarian Medical Chamber).

<sup>17</sup> MÓRITZ Balázs: Hálapénz versus paraszolvenca. (Gratitude money versus parasolvency) Magyar Jog 2020. no. 11. 677–687.

<sup>18</sup> KIRÁLY: i. m.

<sup>19</sup> BALÁZS Péter: Hálapénz... ha végre paradigmát váltanánk. (Gratitude money ... if we finally changed paradigms) Egészségügyi gazdasági szemle 2007. no. 4. sz. 11–12. <https://weborvos.hu/adat/egsz/2007nov/11-19.pdf> (download: 20.10.2021.10)

<sup>20</sup> AMBRUS István: Büntetőjog 2021 – a pénzmosás újrhangolt tényállása

<sup>8</sup> A Büntető Törvénykönyvről szóló 2012. évi C. törvény 290. § (Act C of 2012 on the Penal Code).

<sup>9</sup> A Büntető Törvénykönyvről szóló 2012. évi C. törvény 291. § (Act C of 2012 on the Penal Code).

<sup>10</sup> Az egészségügyről szóló 1997. évi CLIV. törvény 138/A. § (4)–(5) bekezdése (Act CLIV of 1997 on Healthcare).

<sup>11</sup> KIRÁLY Gábor: A hálapénz és az ellene való fellépés Magyarországon. (Gratitude money and action against it in Hungary) Szakdolgozat, Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Pécs 2021.

<sup>12</sup> TAR Tímea: A hálapénz adás motivációi. (Motivations for giving gratitude money) OTDK dolgozat, Szegedi Tudományegyetem, Szeged 2017. 21.

The positions detailed above have already highlighted the problems with gratuities and, according to the present regulations, amended the provisions as a solution to this, and thus, in any form, the amount given in advance or afterwards is also a criminal offense. The National Protective Service has been commissioned to monitor law-abiding behavior.

### III. The activities of the National Protective Service, in particular the integrity testing

The National Protective Service is a budgetary body with national competence, operating independently and managing itself, headed by a director general appointed by the Minister of the Interior, who heads and represents the body. The headquarters are located in Budapest, some of its organizational units are located in the objects of the protected bodies.<sup>21</sup>

The National Protective Service conducts crime detection activities; detect crimes referred to its jurisdiction by law. The crime detection shall continue until it is necessary to order the investigation or its exclusion. Among other things, the NPS investigates bribery.<sup>22</sup>

The new unit of the NPS, the Department of Health Protection, which performs crime prevention and detection tasks among those employed in health care institutions in state or municipally maintained health care institutions (health care workers, as well as residents).<sup>23</sup>

With effect from 1 January 2021, the concept of bribery and acceptance of bribery has been supplemented by the notion of unlawful advantage (monetary or other consideration) granted (promised) or accepted (requested) in connection with health care.<sup>24</sup> The main tasks of NPS are the following:

- Crime prevention and detection,

- Lifestyle monitoring,
- Integrity testing,
- Protection,
- Prevention of corruption.

One of the most important basic tasks of the National Protective Service, defined by law, is to contribute to the fight against corruption, and one of the effective means of this is due integrity testing. The purpose of the investigation is to screen out persons who, by abusing their official position and using their official duties, commit criminal offenses, seriously undermining public trust, and undermining the social esteem of law enforcement and the civil service.<sup>25</sup> The integrity testing existed before, only the scope of the examined persons was expanded, so the health care workers were also regulated.

The integrity testing may be ordered against the head of the internal crime prevention and detection body against a member of the protected body or against a member of a protected group performing a specific service task who cannot be named at the time of the order. The law also provides for health-care professionals. The study applies to those performing service in the health care sector, as well as to those employed by the state-run institutions in the service of government, those employed in the civil service, and those in the service of the judiciary. Exceptions are students in health care activities or those working for health care providers under the auspices of an ecclesiastical legal entity, or those in private care.<sup>26</sup>

Due to the unexpectedness and novelty of the regulation, the Hungarian Medical Chamber launched a campaign banning gratuities in the country in order to inform the public about the criminalization of gratuities. As part of this, more than 3,000 posters have been placed in various health care facilities.<sup>27</sup> Act XXXIV of 1994 on the Police. Act 7/A. § (1), the purpose of the due integrity testing is to determine whether the person concerned fulfills his or her job obligations prescribed by law or by law, by a collective agreement, an employment agreement and an employment contract.<sup>28</sup>

The reasons for ordering an investigation include a random order if the job in question is “highly corrupt”. It is therefore not always necessary for the authority to have prior information about the person under investigation.<sup>29</sup> Examination is an integ-

és a hálapénz kriminalizálása (Criminal law 2021 – re-tuning the facts of money laundering and criminalizing gratuity) In: (Dr. Ambrus István ed.): Büntetőjog 2021 – a pénzmosás újrarahangolt tényállása és a hálapénz kriminalizálása | Büntető Törvénykönyv (új Btk.) a gyakorlatban (Criminal law 2021 – re-tuning of money laundering and criminalization of gratitude money | Criminal Code (new Criminal Code) in practice) (ujbtk.hu) (download: 29.01.2022.01).

<sup>21</sup> GÁL István László: Nemzetbiztonsági Szakági Jogi Alapismeretek. (Fundamentals of National Security Law) Nemzeti Közszolgálati Egyetem, Budapest 2020. 203.

<sup>22</sup> GÁL: i. m. 203.

<sup>23</sup> SZEMÁN László János: A többség becsülettel teszi a dolgát az egészségügyben. (The majority do their job in healthcare with honor) Magyar Nemzet: <https://magyarnemzet.hu/belfold/2021/02/a-tobbseg-becsulettel-teszi-a-dolgot-az-egeszsegugyben> (download: 23.11.2021).

<sup>24</sup> SZEMÁN László János: A többség becsülettel teszi a dolgát az egészségügyben. (The majority do their job in healthcare with honor) Magyar Nemzet: <https://magyarnemzet.hu/belfold/2021/02/a-tobbseg-becsulettel-teszi-a-dolgot-az-egeszsegugyben> (download: 23.11.2021).

<sup>25</sup> Nemzeti Védelmi Szolgálat (National Protective Service) <https://nvsz.hu/tevekenyseg/megbizhatosagi-vizsgalat> (download: 23.11.2021).

<sup>26</sup> A Rendőrségről szóló 1994. évi XXXIV. törvény 7/A. § (1) (2) bekezdése (Act XXXIV of 1994 on the Police).

<sup>27</sup> Magyar Orvosi Kamara (Hungarian Medical Chamber): Plakátkampányt indít a Magyar Orvosi Kamara a hálapénzmentes egészségügyért (The Hungarian Medical Chamber is launching a poster campaign for gratitude-free healthcare) (mok.hu) (download: 26.01.2022).

<sup>28</sup> A Rendőrségről szóló 1994. évi XXXIV. törvény 7/A. § (1)–(2) bekezdése (Act XXXIV of 1994 on the Police).

<sup>29</sup> Magyar Orvosi Kamara (Hungarian Medical Chamber): Megbízhatósági vizsgálatok (Reliability tests) NVSZ\_megbizhatosagi\_vizsg\_jogszabaly\_0525.pdf (mok.hu) (download: 23.01.2022).

rity test, where integrity refers to the inviolability, integrity and incorruptibility of the person under investigation.<sup>30</sup> Devices not subject to judicial authorization may be used during the investigation, and devices subject to judicial authorization are prohibited by law. The methods selected are:

- use a person working with the police to obtain information
- collect and verify information in such a way as to disguise the real purpose of the procedure
- you can secretly observe a person, apartment, vehicle, fenced place, public or open to the public, collect information, record it with a technical device (here observation from the outside is allowed).<sup>31</sup>

During the investigation, the NPS verifies whether the person concerned complies with his or her official duties, the requirement of lawful, unaffected performance of duties, by artificially creating real-life situations. The life situation to be established must be such that it entails an obligation of the person involved in the investigation to take action, but it must not restrict the decision-making freedom of the person involved in the investigation in choosing the method of action or the order of the procedure.<sup>32</sup>

The duration of the investigation is 15 days, which can be extended once by another 15 days by the Director General of the NPS. It may take place up to 3 times per calendar year in relation to the same person. If the creation of an artificial life situation does not start due to external circumstances, a decision must be made to terminate the integrity test. However, in the event that the study is terminated, this will not count towards the appropriate limit of 3 per calendar year. Reasons for termination may include, the illness or leave of the person concerned. The persons concerned shall be notified of the termination of the procedure within 15 days.<sup>33</sup>

If a criminal offense is suspected during the investigation, the NPS will immediately report it to the competent investigating authority or prosecutor, otherwise the data obtained during the investigation must be destroyed in accordance with the law.<sup>34</sup>

The investigation shall not impede the performance of the duties and responsibilities of the person under investigation, shall not infringe the rights of the person under investigation, and in particular shall not harm his or her honor and reputation, and shall not endanger his or her life or physical integrity.<sup>35</sup>

## IV. International aspects

The informal payments which can generally be labelled as “envelope” or “under-the-table” “out-of-pocket” “under-the-counter” payments or healthcare corruption, mostly typical in the post communist countries in Europe.<sup>36</sup> The issue of the „under-the-table” payments mostly common in the countries where the salaries of the doctors are very low, most of whom remain employed by public institutions. Many experts have studied the phenomenon of gratuities in Europe and concluded that it is the biggest problem in Hungary, Romania, Poland and Bulgaria and less of a problem in Croatia and the Czech Republic.<sup>37</sup> Other studies also highlighted the issue in Latvia, Lithuania, Slovakia. An international study examined the distribution of gratitude money by gender and age and by social status in East-European countries. Research shows that women give envelopes more often in the medical sector than men. This is perhaps explained by the fact that the most significant of the areas affected by gratitude are gynecological interventions such as: abortion, childbirth, maternity care. In the Baltic Countries 50% of the society considered that the level of corruption in government health services as very high, just few admitted to making informal payments (8% in Lithuania, 3% in Latvia and just 1% in Estonia)<sup>38</sup> The informal payment in the healthcare system also prohibited in Albania, but 45-67% of patients make gratuities. Some similarities have been found between Hungary and Albania, fear plays an important role in motivating informal payments as patients try to alleviate their overwhelming defenselessness with money.<sup>39</sup>

## V. Conclusion

It is difficult to talk about the efficiency of the system in such a short time. The introduction took place in the middle of the COVID-19 pandemic, which made health a priority anyway. The virus has also brought to the fore a number of acts of misconduct by health workers that were unprecedented at all (forgery of security certificate, non - vaccination). So, if only these violations are reduced, we can say that we are on the

<sup>30</sup> Így dolgozik majd a hálapénz kommandó – Nyíregyháza Megyei Jogú Város Portálja – Nyíregyháza Többet Ad! (nyiregyhaza.hu) (download:01.23.2022.).

<sup>31</sup> Magyar Orvosi Kamara (Hungarian Medical Chamber): Megbízhatósági vizsgálatok (Reliability tests) NVSZ\_megbízhatósági\_vizsg\_jogszabály\_0525.pdf (mok.hu) (download: 23.01.2022.).

<sup>32</sup> Nemzeti Védelmi Szolgálat (National Protective Service) <https://nvsz.hu/tevekenyseg/megbizhatosagi-vizsgalat> (download: 23.11.2021.).

<sup>33</sup> KIRÁLY: i. m.

<sup>34</sup> Nemzeti Védelmi Szolgálat (National Protective Service) <https://nvsz.hu/tevekenyseg/megbizhatosagi-vizsgalat> (download: 23.11.2021.).

<sup>35</sup> Nemzeti Védelmi Szolgálat (National Protective Service) <https://nvsz.hu/tevekenyseg/megbizhatosagi-vizsgalat> (download: 23.11.2021.).

[hu/tevekenyseg/megbizhatosagi-vizsgalat](https://tevekenyseg/megbizhatosagi-vizsgalat) (download: 23.11.2021.).

<sup>36</sup> COLIN C. WILLIAMS – IOANA ALEXANDRA HORODNIC – ADRIAN V. HORODNIC: Who is making informal payments for public healthcare in East-Central Europe? An evaluation of socio-economic and spatial variations. Eastern Journal of European Studies 2016. no. 1. 1.

<sup>37</sup> CIUMAS CRISTINA – VAIDEAN VIORELA-LIGIA: The health sector in Eastern Europe and proposals for reform, (download: 29.01.2022.).

<sup>38</sup> WILLIAMS–HORODNIC–HORODNIC: i. m. 1.

<sup>39</sup> TARYN VIAN – LYDIA J. BURAK: Beliefs about informal payments in Albania. Health Policy & Planning 2006. no. 5. 15.

right track. However, we cannot go without saying the fact that the regulation of doctors' incomes has been settled by regulation, which has been a huge problem for years. In our view, the current system has undertaken to eliminate a phenomenon that is very difficult to eradicate, and it will certainly not be possible to eliminate it from society in months. Success will require, among other things, a radical change in people's mindsets. Despite the fact that data and analyzes concerning physicians were available during the preparation of the legislation leading to the "ban" of gratuities, we do not know of a comprehensive, expert analysis. A the amendment of the Criminal Code applies to all healthcare workers, patients and their

relatives alike. It would therefore be necessary to develop a complex program capable of radically transforming social and health-professional attitudes.<sup>40</sup> The international outlook pointed out that the situation in Hungary was extremely bad compared to other countries. Let us therefore hope that corruption in this area will be reduced and that access to healthcare will be guaranteed equally for all citizens.

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<sup>40</sup> JULESZ Máté – KERESZTY Éva Margit: A hálapénzzel kapcsolatos szokások a magyar egészségügyi szakdolgozók körében. (Habits about gratitude money among Hungarian healthcare professionals) Orvosi Hetilap 2021. no. 41. 1658–1668.