

# STRUCTURE AND THE SCOPE OF LEGAL REGULATIONS IN PUBLIC HEALTH IN POLAND

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## Overall view and historical background.

We all know that the great goal of many governments and organisations is to achieve “a high level of human health protection”, we all know that the “science and art” of promoting and protecting health for human populations is the core element of various health policies, programmes and activities, we all know that this field of human activity has been included into the notion of “public health”. Public health in this context means in general: science and art of providing populations with a better health status and better health services. But it would not be enough to say simply public health is “a science and art” because it is also the law that defines, regulates and serves this discipline. Public health stipulates the necessity of legal provisions, regulations connected to many quite differentiated areas of human life, both in the individual and social contexts. The question concerns international law (including European and community law) but national laws as well (each system of national law regulates aspects of health protection issues in different, specific for the concrete health care system - model, ways. In the light of above hereby we talk about public health law.

Some of public health law regulations concern the whole population health issues, some other regulations are focused on health of individuals or groups protection, and there is no need to underline an obvious relation between them. Having in mind a very clear division into public and private law in many fields of law, the same should be said in case of public health law: it belongs to the two mentioned general law categories. As it concerns public law the way of issues regulation is mostly categorical: includes provisions that prohibit or order specific actions (e.g. medicaments production or sale etc.). The second type are provisions included into private public health law: in this kind of regulation the provisions character is not such strongly imperative (individuals are much more free in a sense of undertaking activities in health care sphere).

Starting from a bit of history one may indicate first public health regulations in Polish law in 18<sup>th</sup> century: among the duties of The Proper Order Committee sanitary questions and controlling health institutions were regulated. In 1775, the Parliament passed the Hospital Act – according to the new law each poor person could ask for hospital treatment without paying for the hospital care service. Looking further one can mention other laws, dating from 18<sup>th</sup> and 19<sup>th</sup> centuries, binding in three parts of Poland (belonging to three separate systems of national law). After regaining independency in 1918, public health law in Poland may be described in the light of indicated three epochs:

- 1918-1939 – a period quite difficult at its beginning because of three different health systems in three parts of Poland – the heritage of Polish partitioning between Russia, Austria and Prussia;
- PRL (after WWII) – another difficult period of socialist health care system (Siemaszko system) where not so many regulations in the public health area were passed (despite the set of socialist ideas about the state welfare in the sphere of public health);

- III Republic (1989-...) – the time of the new regulations on many questions concerning health, health care system and public health establishment (some of them introduced into legislation for the first time in Poland - for example mental health care).

The third period of changes indicated hereby: all health care reforms including public health law establishing and creation of its main principles - constitutes the essential part of the contemporary approach to public health in Poland.

## **Public Law.**

### ***Constitutional principles.***

Public law implicates constitutional, administrative, financial, penalty and contraventions fields of law. Starting with Polish Constitution defining fundamental citizens rights, article 68 has to be mentioned on the first place in the context of every one right to health care stated there with a special care put on particular social groups (disabled persons and mother and child). This is however a general rule that needs detailed regulations. The basic principle has been defined and developed (also in a sense of its scope limitation) in other particular laws (there are a few thousands of such specific laws). The most important role plays the law on health services financed from public funds (passed in August 2004- it is the third “big” reform of Polish health care system on the grounds of laws). Other articles of Constitution concern the safety and hygiene in work place and the right to a special protection and care in difficult situations (disability, disease).

### ***Penal Code.***

In penal law we can also find many questions concerning public health. Among other, Penal Code (1997) describes:

- making the serious health (disability, invalidity, serious incurable disease or long –term disease threatening the life, mental disease that causes general or important inability to work in a profession, important defacement or disfigurement (from 1 to 10 years imprisonment, in case of death result from 2 to 12 years imprisonment - art.156);
- infringement of the body organ activity of health disorder other than mentioned above (3 to 5 years imprisonment; if it last up to 7 days – to 2 years imprisonment or freedom restriction or fine –art 157);
- injury of the nasciturus (foetus) body, with the exemption of the necessary medical treatment actions result (art.157a);
- exposition a man for the direct danger of life loss or serious health damage (up to 3 years imprisonment – art. 16);
- conscious exposition for infection by a person infected HIV (up to 3 years imprisonment –art.161);
- conscious exposition for the direct danger of venereal disease, infectious disease, serious non curable disease or a disease seriously threatening life (fine punishment, freedom restriction or imprisonment up to 1 year- art 161&2);
- non applying the aid in situation of direct life threatening or serious health infringement (up to 3 years imprisonment – art. 162);
- producing an event threatening the life or health of many persons (including the poisoning substances spreading, suffocating substances etc. (from 1 to 10 years imprisonment – art. 163);

- producing the danger for life or health of many persons, causing the epidemiological threatening or the infectious diseases spreading (from 6 months to 8 years imprisonment and in case of death or serious health impairment of many persons from 2 to 12 years imprisonment – art.165);
- water, air or ground pollution with the poisoning substances or by the ionising radiation that may threaten life or health of many persons (from 3 month imprisonment – art.182);
- remaking, transportation of waste in the circumstances threatening the health of many persons (from 3 month to 5 years imprisonment – art. 183);
- transportation, collecting or throwing of nuclear materials or sources of ionising radiation threatening the life or health of man (from 3 month to 5 years imprisonment – art. 184), in case that actions defined in art.182 –184 cause the health impairment of many persons - from 2 to 12 years imprisonment);
- physical or psychological persecution (molesting) of close person or of the person in a dependence relation or of juvenile person (from 3 months to 15 years imprisonment – art.207);
- inducing to drinking of juvenile person (from 2 years imprisonment, restriction of freedom of fine – art.208);
- neglecting of safe and hygiene conditions of work duties that expose for the direct danger of life loss or serious health impairment (to 3 years imprisonment, in case of involuntary action to 1 year, restriction of freedom or fine – art. 20);

In case of the serious health impairment, infringement of the body organ activity or health disorder crime the court may – on the basis of the person harmed motion or other legitimised person - to order the obligatory damage repair or vindictive damage in order to compensate the damage (art.46 &1). The vindictive damage may be ordered by the court also for health care objectives (art.47).

In other penal rules we can find some ensuring the good practice and safe treatment of patients as for example these about punishing for treating patients without qualifications. Contraventions against public health are widely listed in the Code of Misdemeanours in following chapters: Chapter X – misdemeanours against the persons and possessions safety; Chapter XII – misdemeanours against an individual; Chapter XIII – misdemeanours against health; Chapter XV – misdemeanours against the consumers interests.

### ***Administrative law***

Taking into account different branches of public law the widest protection of people life and health is guaranteed by the largest and the most differentiated branch of Polish law – administrative law. It covers many issues connected to quite different fields of activity. The Administrative Procedure Code in its art.108 states that each decision of the administration organ that may be appealed, in case of life and health protection necessity may be executed with the immediate severity. On the other hand each administrative decision on life or health protection or sanitary or epidemiological restrictions may be proceed to the administrative court that is to resolve if the rights of the party concerned have been infringed (art.196 of the Code). Among the administrative substantive law a great deal of its provisions concern the health protection; from them for example the house

- building law, nuclear law, water law, environment protection law or waste law may be indicated.

### **Private law.**

The health of the individuals is widely protected also in private law provisions. Talking about private law we mean civil law, family law, work and insurance law. According to Civil Code we can say that health is one of the most important “personal goods” of human being. The difficulty arises when it comes to the value of health evaluation – it of course does not belong to property rights and has the incommensurable nature. On the ground of private law any action against persons health causing and resulting in health status damage, independently from the potential penal procedure introduced in such case, is a matter of civil liability. The key question in case of civil liability is the damage repair obligation that results not only from the rule of culpability but from the risk rule (liability in case of damage caused by the person under legal protection).

### **Public Health Law in Poland.**

As a specific part of administrative law, public health law regulates various issues related to health in a widest scope. In this context a long list of differentiated laws and executive regulations, many of them strictly connected to medical, professional or health care system problems, should be mentioned. For the reason of such a wide scope of public health law provisions interests just for example the following may be indicated:

- As to regulations on *Medical professions*, their organisation and duties one can enumerate the most important:

Law of 17<sup>th</sup> May 1989 on physicians' chamber;

Law of 19<sup>th</sup> April 1991 on pharmacists' chamber;

Law of 19<sup>th</sup> April 1991 on nurses' and midwives' chamber;

Law of 5<sup>th</sup> July 1996 on the profession of nurse and midwife;

Law of 5<sup>th</sup> December 1996 on the profession of physician;

- In the field of *Health care institutions law (units)* the fundamental and of the systemic nature:

Law of 30<sup>th</sup> September 1991 on health care institutions;

- Concerning the *Pharmaceutical law*:

Law of 27<sup>th</sup> September 1991 on the rules of payments for medicines and sanitary materials and Law of 10<sup>th</sup> October 1991 on pharmaceutical products, medical materials, pharmacies, wholesaling and pharmaceutical supervision, both of them very important for the new system, then replaced for other rules, finally by: Pharmaceutical Act (6<sup>th</sup> of September 2001)

- And finally regulation on *Population health law (ancient “sanitary law”)* included into listed below set of documents:

Law of 19<sup>th</sup> August 1994 on mental health;

Law of 26<sup>th</sup> October 1995 on collecting and transplanting of cells, tissues and organs, replaced in 2005;  
Law of 27<sup>th</sup> June 1997 on occupational health (medical) service;  
Law of 22<sup>th</sup> August 1997 on public blood service;  
Law of 11<sup>th</sup> May 2001 on healthy standards of food and nutrition;  
Law of 6<sup>th</sup> September 2001 on infectious diseases and infections;  
Law of 29<sup>th</sup> July 2005 on drug addiction counteractive.

## **Conclusions**

In Polish internal law system the health protection regulations have not a unified nature. Some of them are addressed to protect the whole population health or prevent threats and other to secure the individuals or particular groups health. A great range of those regulations – mainly belonging to the public law - are imperative resolutions, different types of writs, bans, compulsory permits for particular type of activity connected with potential harmful impact on people's health. The second group of regulations – this time private law – concerns individuals and their participation in activities included into health care services provision or other activities “inside” the health care system.

The protection of individual health as well as population health is widely regulated in many branches of Polish law. Almost all aspects of health or life threatening, resulting from different activities and fields of social or economic life are the subject of public health law, the main objective of which is prevention and elimination of eventual negative effects. On the other hand the health care services and medical assistance for all citizens is guaranteed on the ground of another provisions, included for instance into Polish health care insurance law or social security law.

In the context of described Polish public health law issues it is worth mentioning that this branch of law in Poland evaluated and developed under an important influence of international law, both regional (European) and universal regulations. It should be underlined that in XX century Poland signed and ratified many international conventions directly or indirectly aiming at health protection. On the ground of Polish Constitution all such conventions are included into Polish internal law system and, after the publication, they constitute binding law, the same as Polish laws.

## **Literature**

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