

The evaluation of the refusal to submit to compulsory vaccination in Hungarian criminal law

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The felony of abuse of a minor under Section 195 (1) of Act IV of 1978 on the Criminal Code of Hungary (Btk.) is committed by the person obligated to rear, control or provide care for the minor who gravely breaches his obligation arising from this duty and thus endangers the physical, mental or moral development of the minor. Both active and passive conduct on the part of the person gravely breaching his obligation may be considered criminal conduct. The above-mentioned three obligations include so many unspecifiable tasks that the punishability of their violation may only be founded on reference to the consequences. A special form of criminal conduct based on the above provisions is constituted by the refusal to submit to compulsory vaccination, which may endanger the physical development of the minor. Criminal conduct is based on the failure to perform the personal obligation laid down by Act CLIV of 1997 on Healthcare, however, the question whether this really endangers the physical development of the minor may only be answered by medicine.

On vaccinations in general

The expression „vaccine” stems from the Latin word „vacca” (meaning „cow”). This name originated from the first experiment of vaccination. People were vaccinated against the pox with the discharge of cowpox (a disease attacking the udder of cows). The idea of vaccination first occurred to British paediatrician Edward Jenner in 1796. His starting point was that the milkmaids who had already got through cowpox had become resistant to the significantly more dangerous pox. The doctor administered discharge taken from the hand of a milkmaid infected by cowpox into a cut on the arm of a healthy 8-year-old boy. The boy developed cowpox, then, 48 days later, when the doctor infected him with the pox, he did not become ill.¹

The reaction to the vaccine, the illness, is a pathological phenomenon resulting from the vaccination, which occurs in the majority of those vaccinated and which may be accompanied by local (red skin around the vaccination, callus, pain) and general (high temperature, indisposition, fatigue, headache) symptoms.

On the contrary, complications caused by the vaccine cannot be considered regular concomitants of the vaccination, they rather result from the vaccinated person’s atypical reaction. A part of the susceptibility factors are unknown, so complications resulting from vaccination cannot be totally eliminated.²

There is an expanding worldwide movement querying „routine” vaccinations. Routine vaccinations are the usual childhood vaccinations such as the vaccination against the pox used to be, which has been abolished as the number of illnesses caused by the vaccination proved greater than its advantages.

In his preface to a book entitled „Vaccinations” by Neil Z. Miller, Harold E. Buttram writes about the following. In the United States, the state of health of children and

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¹ Miller [2003]

² Budai-Nyerges [2004]

young people is deteriorating steadily. In the past few generations autoimmune diseases have increased significantly. Behaviour disorders in childhood have become more frequent, including hyperactivity and learning disorders. This problem results from a complexity of causes. However, the issue to be decided is whether routine-like, mass vaccinations for children may contribute to the intensified weakening of resistance.

The new-born baby has a relatively undeveloped immune system, which must be exposed to infections in order to become strong and resistant. This process lasts 10-12 years.

Earlier less serious childhood diseases – measles, mumps, rubella – probably played an important role in the normal development and strengthening of the child's immune system.³ The change in the functioning of the immune system caused by vaccination may have led to the development of some chronic diseases occurring more frequently in our days.

Compulsory vaccinations based on age in Hungary

In accordance with Law-Decree 18/1998. (VI. 3.) of the Ministry of Public Welfare, every Hungarian citizen and every person, refugee, asylum-seeker or exile with an immigration or residence permit in Hungary irrespective of citizenship shall receive vaccinations according to their age. These vaccinations are against the following diseases: tuberculosis, croup (diphtheria), whooping cough (pertussis), lock-jaw (tetanus), infantile paralysis (poliomyelitis anterior acuta), measles (morbilli), mumps (parotitis epidemica), German measles (rubella), hepatitis B, b type Haemophilus influenzae (Hib).

Here is some information about the individual diseases and vaccinations.⁴

The most serious professional debate arose out of the vaccination against tuberculosis.⁵ In some countries to the east of Hungary this vaccination is not compulsory. This fact „forces” Hungary to continue the existing practice of vaccination as this infectious disease may easily spread to Hungary from the neighbouring countries. Therefore, according to the position arrived at during the debate (although not shared by all), this vaccination must also remain part of the system.

The combined vaccination against croup, whooping cough and lock-jaw is called DiPerTe. The DPT vaccination was made compulsory in 1954. After the vaccination, usually everybody experiences pain at the place of the vaccination and 20-50% of those vaccinated have high temperature in the next 24-48 hours.

The pathogen of croup may inflame the throat and larynx, it may damage the cardiac muscle, the nervous system and, in some cases, the kidneys. The whooping cough

³ Of course, the immune systems of only those could become stronger who had survived the ordeal of childhood illnesses. They were really stronger, that is why they were able to survive. At the present level of development of medicine, the lives of weaker children may be saved, nevertheless, they suffer from more illnesses and weaknesses – which could not have occurred in early times as they lived only a few years. Fortunately, today they have the opportunity to „spoil statistics”. Therefore, we must also examine the effect of this phenomenon when arguing about the strengthening effect of childhood diseases on the immune system.

⁴ Budai-Nyerges [2004]

⁵ In our country, about one quarter of the people suffering from TBC are homeless, permanently unemployed, seriously addicted to alcohol, hard smokers or suffer from related illnesses. Their readiness to cooperate is minimal, they avoid treatments, they do not take medicine or take it irregularly, so they often infect other people by passing resistant or multi-resistant bacteria. As a solution to this problem, lung specialists suggest keeping such patients in closed hospital departments or in prison hospitals based on a court decision until they have recovered. (Bedros-Huszár-Kozma-Ütő [2005])

may be very dangerous for babies under six months. The suspicion arose concerning the whole-cell vaccine containing whole bacteria that it may cause serious, even mortal complications in the form of damage to the brain or nervous system and also epilepsy. Tetanus infection occurs if spores from the soil get into the lacerated wound. The multiplication of bacteria is not accompanied by local symptoms, but their absorbed toxin is harmful for the nervous system, which harm is manifested in serious spasms. As opposed to this, as experience shows, the vaccine is one of least harmful ones.

The MMR is a combined vaccination against measles, mumps and German measles.

By the introduction of the vaccination against measles – unlike in the case of other infectious diseases – the number of people becoming infected with it has not decreased.⁶ On the other hand, deaths caused by this infection have increased. Common reactions to the vaccine include high temperature, convulsion, less frequently the brain or eyes may also become damaged. In childhood, German measles is a mild illness accompanied by spots, which guarantees whole-life resistance to this disease. Vaccination is almost solely aimed at ensuring the resistance of women during their pregnancy as the mother's infection by the disease may seriously harm the foetus during the first third of pregnancy. The compulsory nature of the vaccination against mumps may be explained by the fact that it prevents possible lasting impairment including sterility following orchitis or the impairment of hearing in one ear.⁷

In Hungary the last large epidemics of infantile paralysis took place in 1954, 1956 and 1959. After the introduction of the live vaccine there were only a few serious infections and only up to 1969.

The hepatitis b virus is a common pathogen of infectious jaundice. This vaccination was entered in our calendar of vaccinations in 1999 on recommendation by the WHO. This vaccination has insignificant side effects. The skin may become red or swell around the pricked point, general symptoms may include a rise in temperature or high temperature, but they last only a few days.

One fifth of the few dozen cases of suppurative meningitis occurring in a year is caused by the Hib bacterium. This bacterium may also cause acute laryngitis, tympanitis or pneumonia. The vaccination does not ensure resistance to all types of meningitis. It has been compulsory in Hungary since 1999.

Endangerment of a minor?

It would be important to answer the question whether the person who refuses to submit the minor to the compulsory vaccinations and fails to make it possible for him to appear before a doctor performs the factum of abuse of a minor specified under Section 195 (1) of the Criminal Code.

The act under Section 195 (1) is committed if the special subject of the crime, through the serious neglect of his obligation, endangers – in the present case – the physical development of the minor. Based on judicial sentencing, the commission of the crime may be established if the breach of duty endangers the physical development of the minor directly, therefore, general, abstract danger is not sufficient for factuality. The realization of

⁶ „The vaccination against measles does not provide long-lasting resistance ... During some larger epidemics...95% of those infected had already been vaccinated. The WHO thinks that the risk of infection by the measles is 15 times higher for people who have been vaccinated against it than for those who have not.” (Miller [2003] p. 40)

⁷ Miller [2003]

a serious breach of duty is required that has a direct effect on the minor or leads to circumstances hindering his development directly. Firstly, we must decide whether the refusal to subject the minor to the vaccinations made compulsory by law involves an inherent real and direct danger. If the answer is affirmative, the crime in question is realized, if it is negative, the existence of the abstract danger justifies the establishment of the commission of a minor offence only. The problematic nature of this theory is well-manifested by judicial sentencing.

In a case in Kaposvár, the municipal prosecutor's office stated that vaccination was to be enforced within the framework of administrative proceedings and not by the instruments of criminal law. According to their reasoning, in order to commit the crime under Section 195 (1) of the Criminal Code, the physical development of the minor must be in danger de facto and causal relations must be established between this danger and the perpetrator's intentional conduct to this purpose. However, in case of vaccinations, the reasons underlying the reported persons' refusal to vaccinate their children are not that they intend to endanger their children, make them become ill or they would reconcile themselves to their becoming ill. Therefore, considering these facts, the act does not constitute a crime according to their position.

The municipal prosecutor's office in Székesfehérvár has a contrasting view. According to their position, the parents endanger the health of their children, and through it, indirectly, their physical development as well if they consciously hinder the administration of the compulsory vaccinations dependant on age at the most appropriate time. Namely, if the children do not receive the vaccination at the indicated time, they are exposed to the danger of such preventable diseases which may lead to serious complications or may even end by death. Therefore the act of the suspects was found suitable for establishing the felony of abuse of a minor under Section 195 (1) of the Criminal Code.⁸

The mother who had failed to provide her children with one of the compulsory vaccinations was given a suspended sentence of six months' imprisonment by the County Court of Csongrád. Following the DiPerTe vaccination, one of her children suffered from spasms for several weeks, that is why she decided not to subject the other two children to this vaccination.⁹

A couple was reprimanded by the prosecution for not allowing their children to be vaccinated. They thought that the resistance of the immune system to illnesses could be developed in another way too, however, during the proceedings they understood that vaccinations contributed to the healthy development of their children.¹⁰

Conclusions

Based on the contradicting scientific views, it is impossible, even in case of the individual vaccinations, to arrive at a unanimous conclusion about whether they are to be condemned or they are to be insisted on by all means.

Until medicine can come forward with a unified position and give a uniform answer to some apparently simple but nevertheless extremely complicated questions, jurisprudence and legal practice will not be able to safely answer the question whether the parent who refuses to subject his child to the compulsory vaccination perpetrates the crime discussed above.

⁸ Balogh [2004] p. 28.

⁹ <http://origo.hu/itthon/20051104bortonbe.html> (20. 02. 2006.)

¹⁰ http://babanet.hu/lazi/hetrol_hetre/0301161.htm (20. 02. 2006.)

A parent who refuses to subject his child to the compulsory vaccination breaches his legal duty. Therefore, the question lies only in whether, by his conduct, he commits a crime or a minor offence only. However, to decide this question, we would have to rely on medicine as it is medicine that could give an answer to the question whether the minor is directly endangered if he does not receive the vaccination. For the above-mentioned reasons there exist several justified answers to this question. However, it is based on this that we can decide whether the act is dangerous to society. Namely, if the act endangers the child's physical development, it is, without doubt, dangerous to society. On the other hand, even if the act does not endanger the health of the particular child, it may be dangerous, in a wider circle, for the physical development or health of others and, therefore, it may also be found dangerous to society. We may conclude that the notions used by judicature in this context should be filled with reliable content so that, based on their uniform weight, similar conducts would have similar weight on the scales of justice.

Some French cases

The French daily *Le Monde* published some interesting articles about the following cases in which parents had refused, for a variety of reasons, to subject their children to a compulsory vaccination.

In August 2001 in France, a family with four children moved to a small village. The parents grew bio products and herbs in their garden with the intention to make their way of life as healthy as possible. They intended to treat and cure their children also themselves. Two out of their four children were of school-age when they moved to the village, so they were enrolled in the local school. However, they rejected the vaccination against tuberculosis, which was compulsory at the age of six. They explained this by referring to the fact that this vaccination was no longer compulsory in Germany and Sweden except for those who lived among circumstances where they were threatened by this illness to a greater extent than others. In these countries, this vaccination ceased to be compulsory because it contains aluminium, as a result of which the World Health Organization also objected to it. On the other hand, the parents considered the vaccination of their children unnecessary as they lived in a healthy environment, they did not need this artificial protection. The article outlined two possible solutions and conclusions of this case. Either the parents manage to obtain a medical certificate¹¹ stating that the vaccine would be dangerous for the children's health – in this situation they are exempted from the obligation to submit to the vaccination – or for the lack of such certificate the children would be dismissed from their present school and rejected by all state schools, as a result of which they could only continue their studies privately.¹²

19 members of the Tabitha's Place sect – numbering approx. one hundred members – were given a suspended sentence of three months' imprisonment and fined 2000 francs for refusing to enrol their children in a school and to subject them to the compulsory vaccinations.¹³

Comparison

¹¹ A doctor may exempt a patient from the compulsory vaccination temporarily or - on approval from the healthcare authorities – definitively if the vaccination had a harmful effect on his condition of health or already existing illness. This is stated in Section 58 (1) of the Hungarian Act on Healthcare.

¹² *Le Monde*: 16 October 2002.

¹³ *Le Monde*: 7 April 2001.

The parents who refuse to vaccinate their children do not fit into the general category of the perpetrators of the felony of abuse of a minor. The majority of them come from the circle of intellectuals. They have a wider knowledge of vaccinations than the average people. They know more about the possible complications and they think they protect their children's health by their decision. In their case, malicious intent may be excluded, the possible harmful effect is not caused by them directly either – unlike in the case of a parent abusing his child. In the latter situation, we cannot presume, even with utter benevolence, that the parent meant the child well.

The difference between these „two types” may be manifested in the possible solution to the problem. The doubting parent may be convinced about what really serves the interests of the child. On the contrary, it is almost impossible to convince a violent, negligent parent, who may also have grown up without parental love and whose problems are more complex, and to change his behaviour by reasoning and referring to best interests. Here other means are needed, it is not the symptoms but the real problem which needs to be revealed and addressed. Therefore, the child whose parents do not want him to receive the compulsory vaccinations prescribed for him is in a better situation than the child who receives only beating at home.

Finally, based on the above, I would like to draw parallels relying on the reasoning of court decisions taken in a well-known case. A mother drowned her eleven-year-old daughter suffering from an extremely painful, incurable disease following repeated requests from her. The Metropolitan Court of Budapest found her guilty of the felony of homicide, however, it suspended the sentence of two years' imprisonment for a probationary period of five years. The court explained its decision by stating that the woman had not been motivated by hatred but motherly love when she took her child's life: she had killed out of love. During the appeal procedure, the Supreme Court did not agree with this reasoning. It held that homicide at request – out of love – as a privileged case is unknown in the Criminal Code, so it declared the suspending of the sentence unfounded.¹⁴

However, this act does not fit into the traditional circle of perpetrated homicide cases, just like committing the crime of abuse of a minor by refusing to subject the child to vaccination differs from the „common” cases of abuse of a minor. This difference results from the different degree of danger to society. Nevertheless, in neither case may the perpetrator escape the classification under the Criminal Code – at least, not until „perpetration out of love” is listed among the privileged cases in the text of the relevant statutory provisions.

„Only the love guided by the rational mind can be strong.”
/Clement of Alexandria/

Notes:

Balogh Ildikó [2004]: A kiskorú veszélyeztetésének időszerű kérdései. (Seasonable questions regarding the abuse of a minor.) *Ügyészek Lapja*, 6.

Bedros J. Róbert – Huszár András – Kozma Dezső – Ütő István [2005]: A tuberkulózisjárvány hazánkban, a nemzetközi migráció várható hatásai. (The tuberculosis epidemic in Hungary, the anticipated consequences of international migration.) *Belügyi Szemle*, 2.

Budai József – Nyerges Gábor [2004]: *Védőoltások*. (Vaccinations.) Medicina Könyvkiadó, Budapest

¹⁴ Tóth [2005] p. 218.

Epinfo [2005]: Johan Béla Országos Epidemiológiai Központ Módszertani Levele a 2006. évi védőoltásokról (The methodological rules of the National Center for Epidemiology concerning vaccinations, 2006.)

Gyöngyösi Zoltán [2002]: Az élet és a test feletti rendelkezések joga. (The power of disposing of life and body.) HVG ORAC, Budapest

Le Monde: 7 April 2001.

Le Monde: 16 October 2002.

Neil Z. Miller [2003]: Védőoltások – Kérdések és kételyek. (Vaccinations – Questions and concerns.) Kétezerregy Kiadó

Tóth Mihály [2005]: Az Ószövetségtől a Pink Floydig. (From the Old Testament to Pink Floyd – Collection of irregular legal cases.) Dialóg Campus, Budapest-Pécs

Fél évet kapott egy oltásmegtagadó anya. (Six months of imprisonment for a mother refusing vaccination.) <http://origo.hu/itthon/20051104bortonbe.html> (20. 05. 2007)

Ügyészi megrovás oltás megtagadása miatt. (Prosecutor's admonition for refusal of vaccination.) http://babanet.hu/lazi/hetrol_hetre/0301161.htm (26. 02. 2007. 02. 26)