

Legal aspects of the struggle against infectious illnesses in Austria-Hungary

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Introduction

The tragic experience of the COVID-19 pandemic provokes deeper reflection and, in a way, provides a reason to look back to earlier solutions offered by earlier legislation. Epidemics, as well as infectious illnesses, are some of the topics that humanity has struggled with since the beginning of time. These topics were also relevant in the Habsburg monarchy.¹ This issue was regulated mainly by decrees and rescripts of the Ministry of the Interior,² and at the level of particular crown regions by circulars of the c.k. governorate, which referred to various aspects of human life.

¹ Szumowski W., *Galicja pod względem medycznym za Jędrzeja Krupińskiego pierwszego protomedyka 1772–1783*, In: *Archiwum Naukowe – Towarzystwo Popierania Nauki Polskiej. Dział I Historyczno-Filozoficzny*, tom IV, s. 1–368.

² The chairman of this office was: Eduard Taaffe, Karl Giskra, Karl Hohenwart, August Wehli, Josef Lasser, Adolf Auersperg, Olivier de Bacquehem, Erich Kielmansegg, Kazimierz Badeni, Paul Gutsch, Franciszek Thun, Ernst Koerber, Josef Stummer, Arthur Bylandt-Rheidt, Konrad Hohenlohe, Richard Bienerth, Guido Haerdtl, Maximilian Wickenburg, Karl Heindl, Erasmus Handel, Erwin Schwarzenbau, Friedrich Toggenburg, Edmund Gayer. Łazuga W., *Kalkulować... Polacy na szczytach C.K. Monarchii*, Poznań 2013 s. 404–418.

Framework solutions and responsibilities of authorities

A rescript of the Ministry of the Interior of 7 March 1887³ mentioned several basic measures to prevent the risk of the spread of infectious illnesses. One of the most important duties was to alert the municipal authorities to the first cases of infectious illnesses.⁴ In addition, special permission from the political authorities was required for the transport of, for example, infectious patients for medical treatment, which, as practice has shown, was not always used.⁵ The duties of the municipalities with regard to sanitary policing and therefore the treatment of infectious illnesses are implied in Article 3 of the Act of April 1870⁶ and the Act on the Organisation of Municipalities in Galicia of 1866.⁷ As soon as the municipal authorities were informed of the occurrence or possible occurrence of any infectious illness⁸ in the municipality, they had to send a district doctor, who took the necessary steps to stop the illness. In addition, the district doctor had to determine the causes of the disease,⁹ especially typhoid fever, enteric typhus, smallpox,¹⁰ diphtheria and cholera, and then submit

³ Reskrypt ministerstwa spraw wewnętrznych z 7. marca 1887 o zarządzeniach dla stłumienia chorób zakaźnych, o asanacji i o delegowaniu lekarzy do chorób zakaźnych, l. 3.098, In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. IV. Lwów 1912, s. 422–427, okólnik namiestnictwa z 16. kwietnia 1887 l. 15.388

⁴ Attention was also given to travellers. Duties in this aspect were placed on the municipal authorities and the district administration. Reskrypt ministerstwa spraw wewnętrznych z 26. grudnia 1896 l. 42.643, In: *Ibidem*, s. 422. Permanent monitoring of the epidemic status also took place during the procedure for issuing passports. okólnik namiestnictwa z 21. maja 1899, l. 52141, In: *Ibidem*.

⁵ The governorate reminded starosts of the need for more diligent control when transporting patients to hospitals. okólniki namiestnictwa z 16 kwietnia 1887, l. 15. 889, z dnia 8 marca 1888, l. 13.890 oraz z dnia 2 września 1888, l. 52. 607, In: *Ibidem*.

⁶ Ustawa z 30. kwietnia 1870, D.p.p. Nr 68, In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. IV. Lwów 1912, s. 1–10.

⁷ Ustawa obowiązująca w królestwie Galicji i Lodomeryi z Wielkiem Księstwem Krakowskiem, o urządzeniu gmin i ordynacji wyborczej dla gmin z 12. sierpnia 1866, d.u.k. Nr. 9, In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. I, Lwów 1899, s. 415–453.

⁸ Measures against municipalities that informed too late of the appearance of infectious illnesses on their territory or did not do so were set out, for example, in a circular (okólnik namiestnictwa) z 11. marca 1864 l. 13. 446, In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. IV. Lwów 1912, s. 427.

⁹ In the case of border districts, the district doctor was also to verify that the illness did not have its source abroad Reskrypt ministerstwa spraw wewnętrznych z dnia 6. sierpnia 1884, l. 12.815 s. 427 In: *Ibidem*, s. 427.

¹⁰ Rozporządzenie ministerstwa spraw wewnętrznych z 14. września 1874 o wprowadzeniu ochronnego szczepienia ospy co rok w każdej miejscowości, okólnik namiestnictwa z 29. grudnia 1874, l. 61.085, In: *Ibidem*, s. 385.

a report,¹¹ which had to be returned if not enough information was provided. In the process of carrying out his tasks, he supervised the sanitation activities of the municipalities, including whether it was necessary to open an epidemic hospital, whether workable disinfection apparatus was available¹² and whether staff were able to use it. In the case of district towns, on the requests of the district doctor, the district office issued orders and presented the current situation to the governorate.¹³

In efforts to treat infectious illness,¹⁴ it was recommended that measures, including financial ones, be adjusted to take account of local relations. Efforts were also made to set up special isolation rooms¹⁵ in individual municipalities, as a rule against cholera. Due to the lack of financial resources in smaller municipalities, they were able to join efforts with neighbouring municipalities and jointly build such a room. However, they could also be used in “health times” as rooms for, for example, women in labour. It was also recommended that the sick be treated on site, in isolation if it was possible. Similarly, the insane were also to be sent away to dedicated institutions,¹⁶ forced labour establishments or orphanages¹⁷ if they were infectiously ill. If necessary, all the

¹¹ Okólnik namiestnictwa z 14. lipca 1883, l. 43. 797 In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. IV. Lwów 1912, s. 426.

¹² For more information on how disinfection was undertaken see also rozporządzenie ministra spraw wewnętrznych z 16 sierpnia 1887, l. 20662, dz.u.kr. N. 56 Kasperek J. R., *Zbiór ustaw i rozporządzeń administracyjnych w Królestwie Galicji i Lodomeryi z Wielkiem Księstwem Krakowskiem obowiązujących z wyciągiem orzeczeń c.k. Trybunału administracyjnego*, t. VI, Lwów 1889, s. 4652–4665.

¹³ Okólnik namiestnictwa z 27. lutego 1892 l. 13. 647 In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. IV. Lwów 1912, s. 426.

¹⁴ Special instructions were issued for individual illnesses, e.g. 63 points indicated the necessary measures to be taken to treat the illness. These included, for example, rigorous control of inns and taverns and the distribution of clean drinking water. Instrukcja o cholercze, ułożona na żądanie Ministerstwa spraw wewnętrznych przez najwyższą Radę zdrowia, aprobowana i dana do zastosowania się politycznym Władzom krajowym reskryptem ministerialnym z 5 sierpnia 1886, l. 14.067, dz.u.kraj. N. 81, In: Kasperek J. R., *Zbiór ustaw i rozporządzeń administracyjnych w Królestwie Galicji i Lodomeryi z Wielkiem Księstwem Krakowskiem obowiązujących z wyciągiem orzeczeń c.k. Trybunału administracyjnego*, t. VI, Lwów 1889, s. 4627–4648.

¹⁵ Reskrypt ministerstwa spraw wewnętrznych z 20. sierpnia 1893, l. 20. 581, okólnik namiestnictwa z 26. sierpnia 1893, l. 69. 403 In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. IV. Lwów 1912, s. 425.

¹⁶ Reskrypt ministerstwa spraw wewnętrznych z 17. listopada 1896 o odsyłaniu zakaźnie chorych do zakładów dla obłąkanych, do szpitalów i innych zakładów, l. 37. 205, okólnik namiestnictwa z 27. listopada 1896, l. 101.977, In: *Ibidem*, s. 440.

¹⁷ Reskrypt ministerstwa sprawiedliwości z 24. września 1883, l. 14. 309, reskrypt ministerstwa sprawiedliwości z 22. stycznia 1897, l. 24. 107.

sick person's belongings also had to be disinfected.¹⁸ The obligation to notify also applied to hospitals. They informed the political authorities of the case and gave the necessary information to control the illness as quickly as possible and of the measures taken to prevent the further expansion of the illness.

Invaluable help during the struggle against epidemics was provided by the Austrian Red Cross Society. Its activities were in turn standardised by a Ministry of the Interior rescript of 13 February 1901.¹⁹ The association helped, among other things, by providing hospital equipment or disinfection equipment at the request of a national political authority after notifying the Interior Ministry²⁰ via the governorate, even by telegraph. A report was drawn up on the disinfection carried out and a copy sent via the governorate to the Ministry of the Interior. In practice, a certain dangerous tendency to let people go home before the treatment process was completed was observed. Therefore, appropriate solutions were included in the circular of the governorate of 27 April 1896²¹ and in the circular of the Land Department of 14 April 1896.²² In the case of people paying for their stay in hospital, who had not yet been fully treated, the hospital management was to immediately notify the local municipal authority. The municipal authority was obliged to provide medical supervision for such a person. If the person had to travel, the information obligation extended to the municipal authorities of the destination and to the head of the railway station.

¹⁸ Doctors were required to remind the patient's family that, as a rule, the patient should have stayed at home. If the doctor's recommendations were breached and the patient left the place of residency, the medic was obliged to notify it to the district office. Okólnik namiestnictwa z 9. sierpnia 1891, l. 51. 923 In: *Ibidem*, s. 423. During the disinfection, it was recommended that clothes should be burned, and that they should be compensated through charity or with the help of the local Red Cross Society. Reskrypt ministerstwa spraw wewnętrznych z 10. lipca 1897, l. 17. 053.

¹⁹ Reskrypt ministerstwa spraw wewnętrznych z 13 lutego 1901 l. 3291, okólnik namiestnictwa z 12 marca 1901, l. 17. 453 In: *Ibidem*, s. 435–437.

²⁰ Reskrypt ministerstwa spraw wewnętrznych z 20. maja 1907, l. 10.697.

²¹ Okólnik namiestnictwa z 27. kwietnia 1896 o wypuszczeniu ze szpitali osób z chorobami zakaźnymi, l. 34. 999.

²² Okólnik Wydziału Krajowego z 14. kwietnia 1896, l. 21.499. For more information on the National Department's health activities please see Małecki M., *Wydział Krajowy sejmu galicyjskiego, Geneza, struktura i zakres kompetencji, następstwo prawne*, Kraków 2014.

Carrying out tests

A procedure was also described for the test of objects on which germs could be found. These could be undertaken at the request of the c.k. district doctor²³ by the county governor's office. The sample was sent via the governorate to the c.k. National Council of Health. Such tests had to be carried out only if the results were relevant to the case.²⁴ The cost of the shipment was covered by an appropriate subvention for epidemics and epizootics. The sample was given for testing at the university's chemical laboratory or at the bacteriological laboratory of the National Council of Health. The testing procedure was standardised in detail by a decree of the Ministry of the Interior, Religious Affairs and Education of 11 May 1901.²⁵ Samples that may contain at least the germs of smallpox, diphtheria, measles, diphtheria, whooping cough, typhoid, spotted fever, cholera, leprosy, dysentery, yellow fever, anthrax, glanders, hydrocephalus, roseola, as well as those from the corpses of people who had died of infectious illnesses or animals could only be examined by doctors or veterinarians. Direct testing under the microscope should, as a principle, take place at their place of origin. If this was not possible, it was recommended that they be carried out in an isolated place and, on completion, treated with appropriate chemical processes to eliminate germs.

On the other hand, ordinary microscopic examinations, which made it possible to diagnose diseases (without experimental tests), could be carried out by experts, following the opinion of the High Council of Health and receipt of special permission from the Ministry of the Interior and if they had special premises for the tests. If the institute was not a government institute, created by the state authorities, with the agreement of the Minister of the Interior, permission had to be obtained after the opinion of the Highest Council of Health. The possibility of employing persons who were not doctors by profession was

²³ Office doctors were obliged to take accurate registers of items sent for testing and to 'keep an eye on' the results they received. Reskrypt ministerstwa spraw wewnętrznych z 15. września 1891 l. 17.187, l. nam. 73. 316 ex 1891 In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. IV. Lwów 1912, s. 429.

²⁴ Reskrypt ministerstwa spraw wewnętrznych z 9. sierpnia 1870, l. 9. 351, okólnik namiestnictwa z 6. września 1870, l. 35. 600 In: *Ibidem*, s. 429.

²⁵ Rozporządzenie ministerstwa spraw wewnętrznych, wyznań i oświaty z 11 maja 1901 z sanitarno-policyjnymi przepisami, jakich przestrzegać należy, aby zapobiedz zakażeniu się przy zawodowo-technicznym badaniu i używaniu materiałów, zawierających zarodki chorób zaraźliwych, udzielających się z reguły ludziom, dz. p.p. l. 49 In: *Ibidem*, s. 430-437.

reserved to the Ministry of the Interior, after obtaining the opinion of the Highest Council of Health. The institution was headed by a supervisor and assisted by a vice supervisor. In addition, it was possible to employ assistants and servants. People in the laboratory should be vaccinated against the various illnesses. Such laboratories could not be located in residential buildings or in hospitals next to patient rooms. Security measures also included the location of the premises so that no stranger could enter the laboratory. The key was held by the supervisor of the laboratory or his vice supervisor. They had to be well ventilated with good openings, and the floor made of an impermeable and easily cleanable and disinfected material. These requirements also applied to the walls. Windows had to be protected with special nets to prevent insects from flying into the room. The staff in the laboratories were required to use outer clothing and footwear that was disinfected. It was strictly forbidden to eat food in the laboratory. If a member of staff became ill, the supervisor had to be notified and a medical test had to be carried out. If an infection was suspected, the political authority had to be informed. Disinfection was undertaken by the doctors assigned to the laboratory. If it was necessary to send a sample,²⁶ e.g. to authorised institutions, it was advisable to use glass vessels and, in addition, still securely described precisely about their substance.

Regulation of other areas of public life

Appropriate duties were also required of entrepreneurs and industrialists to make every effort to observe the workers employed by them whether they were ill with one of the infectious illnesses and to allocate isolated rooms for the sick. These duties were inspected by government doctors during unannounced visits.

The duties also applied to other areas of public life, such as the railways. Railway staff had to ensure that there was no contact between healthy people and those who showed symptoms of illness, not only in waiting rooms but also in other station areas. If necessary, sanitary-police intervention had to be taken, e.g. in the form of disinfection.²⁷ Furthermore, if a person showed symptoms

²⁶ The procedure for dealing with the customs office was described in the reskrypt ministerstwa skarbu z 16. marca 1897, l. 6.519 In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. IV. Lwów 1912, s. 434.

²⁷ Reskrypt ministerstwa spraw wewnętrznych z 5. maja 1892, l. 7.904 l. nam. 36.911 In: *Ibidem*, s. 422.

typical of smallpox in particular, they were absolutely not allowed to continue their journey unless they had paid for a separate cabin for themselves, which was then subject to obligatory disinfection.²⁸ Special attention was also to be given to travellers from the Russian Empire, who often travelled while being ill. If necessary, they were to be kept in isolation with the ordering of all necessary sanitary and police measures.²⁹ Some restrictions on the possibility of buying goods that could be a “transporter” of infectious illnesses were applied in towns affected by infectious illnesses.³⁰

It also regulated the operation of schools during epidemics.³¹ Above all, it was recommended that the decision to close schools should not be taken too prematurely.³² After schools had been closed for 14 days, the district doctor, following an analysis of the present situation, made

a decision as to whether the school could be reopened. In addition, he could also, in the case of an immediate emergency, close the school together with the head of the school and then obtain approval of the order from the regional school council.³³ A similar procedure applied to the opening of schools.

Appropriate regulations were also introduced for prisons.³⁴ Each prisoner was to be tested by a doctor for infectious illnesses before entering the prison, and his clothes were to be disinfected. In the event of an epidemic in a prison, an administrative doctor had to be sent in coordination with the judicial and political authorities.³⁵ In this area, the starost’s office also had its duties, above all to avoid overpopulation in prisons during an epidemic. The information duties of the authorities also applied to the military authorities.

²⁸ Reskrypt ministerstwa handlu z 25. września 1879, l. 34.181 ex 1878 In: Piwocki J., *Zbiór ustaw i rozporządzeń administracyjnych*, t. IV. Lwów 1912, s. 422–423. For more on this topic please see also reskrypt ministerstwa spraw wewnętrznych z 2. maja 1879, l. 7.651, l. nam. 27. 184 ex 1879.

²⁹ Reskrypt ministerstwa handlu z 26. kwietnia 1892, l. 19. 795 In: *Ibidem*, s. 422.

³⁰ Reskrypt ministerstwa spraw wewnętrznych z 21. sierpnia 1899, l. 27 702 l. nam. 87. 340 In: *Ibidem*, s. 427.

³¹ Okólnik namiestnictwa z 13. maja 1896 o zamykaniu szkół ludowych w czasie epidemii, l. 38. 739, In: *Ibidem*, s. 427–428.

³² Rozporządzenie Rady Szkolnej Krajowej z 26. stycznia 1887, dz.u. kr. Nr. 8.

³³ For more on information obligations please see in okólnik namiestnictwa z 18. grudnia 1855, l. 79. 083 In: *Ibidem*, s. 428.

³⁴ Reskrypt ministerstwa spraw wewnętrznych z 20. kwietnia 1887 o zapobieganiu chorobom zakaźnym w aresztach sądowych, l. 4.888, okólnik namiestnictwa z 16. maja 1887, l. 24.393 In: *Ibidem*, s. 437–439, rozporządzenie ministerstwa sprawiedliwości z 14. marca 1887, l. 4.592.

³⁵ The emergence of an infectious illness should be notified to the municipal authorities and the district political authority. Reskrypt ministerstwa spraw wewnętrznych z 10. sierpnia 1907, l. 20. 959, reskrypt ministerstwa sprawiedliwości z 28. maja 1907, l. 12. 630 In: *Ibidem*, s. 439.

They should be in contact with the military commands at all times and pass on information as to the occurrence of infectious illnesses, in particular smallpox and typhoid.³⁶

Although the fight against infectious illnesses was and is not an unproblematic matter, depending on many factors, including non-legal ones, the dispatches undertaken in Austria-Hungary should be appreciated positively. The regulations affected many aspects of life and were undertaken at different levels, requiring close cooperation between many authorities. The duties given to the various authorities not only to inform each other about current infectious illnesses, e.g. civil and military authorities, but also e.g. entrepreneurs, must also be viewed positively. The interaction with district doctors and municipal authorities provided an opportunity to react promptly and to take appropriate sanitary-police measures. Reporting obligations, on the other hand, made it possible to verify the steps taken and assess their usefulness also in case of future necessary struggle against illnesses. In addition, the opportunity to control the occurrence of illnesses in the future was also provided by the testing of samples in the laboratories and the results obtained thereafter, which made it possible to regularly renew current knowledge.

Abstract

Legal aspects of the struggle against infectious illnesses in Austria-Hungary

The article gives an overview of the main legal regulations in Austria-Hungary applicable to the struggle against infectious illnesses. Various legal acts were given out both by the central authorities, e.g. by the Ministry of the Interior, and at the level of the regional authorities, here in particular the circulars of the c.k. governorate should be mentioned. Of the various measures implemented, those aimed at putting an end to the epidemic as quickly as possible should

³⁶ Reskrypt ministerstwa spraw wewnętrznych z 30 kwietnia 1885 l. 6973, l. nam. 26062, In: Kasperek J. R., *Zbiór ustaw i rozporządzeń administracyjnych w Królestwie Galicyi i Lodomeryi z Wielkiem Księstwem Krakowskiem obowiązujących z wyciągiem orzeczeń c.k. Trybunału administracyjnego*, t. VI, Lwów 1889, s. 4627.

be singled out in the first place. These included the information obligations of local authorities, especially municipal authorities, concerning the occurrence of individual disease entities and the need for regular cooperation in this area, e.g. with higher authorities, e.g. the county governor's office, or also with military authorities. In addition, the aim was to create a separate place (building) in each municipality for isolating the patients. The procedure for carrying out disinfection, e.g. by means of instructions issued for this purpose, was worked out in details. Local authorities were obliged to work together closely with the district doctors. Reporting and information duties were also imposed on the district doctors. Remarkably meritorious in the struggle against epidemics was the Austrian Red Cross Society. The measures taken tried to respond to the real needs of the local population and sought to rectify any irregularities that occurred in practice, e.g. by drawing the attention of hospital authorities to the premature discharge of patients home. The possibility of testing objects that could potentially contain germs was also regulated in some details. It should also be emphasised that these aspects were not only used in medical law, but also in other areas of public law, e.g. the regulation of railway traffic or the operation of schools or prisons during epidemics. In addition, some obligations in the field of prevention of epidemics also applied to entrepreneurs, which were then verified when doctors made inspections.