PRAVNI ZAPISI, God. XV, br. 1 (2024)
UDK 364.2:61]:321.74(439)
DOI 10.5937/pravzap0-49493

ORIGINAL SCIENTIFIC ARTICLE

*Marton Varju**
*Judit Sándor***

NEEDS OVER RIGHTS: THE RIGHT TO HEALTH IN STATE SOCIALIST HUNGARY AND ITS IMPLEMENTATION

***Abstract*:** *State socialist Hungary undertook historically unparalleled action to satisfy the health needs of its population. To support its efforts, it recognized in its constitution the protection of health as an essential state task and, later, a right to health. Although formulated as a right of citizens, the right to health was not available to enfranchise the individual. Instead, it expressed common social needs, as well as the responsibility and the institutional obligation of the socialist state to take care of those needs. This emphasis on needs over individual rights had a crucial impact on the implementation of the right to health. Contemporary and retrospective policy and sociological analyses reveal that the healthcare system in state socialist Hungary left the individual exposed to institutional and professional interests within the health system, and their vulnerability as a patient was regularly exploited.*

Key words: Socialist Fundamental Rights, Right to Health, State Socialism, Socialist Healthcare, Vulnerability.

1. Introduction

Socialist states, as twentieth century alternatives to Western capitalism, saw themselves as frontrunners in social development, dedicated to meeting the material and other needs of their population. They demonstrated the superiority of socialism over other socioeconomic regimes,

* Research Fellow, Central European University, Center for Ethics and Law in Biomedicine, Budapest; e-mail: varjum@ceu.edu ORCID ID: https://orcid.org/0000-0003-3027-0493

** Professor, Central European University, Center for Ethics and Law in Biomedicine, Budapest; e-mail: sandorj@ceu.edu ORCID ID: https://orcid.org/0000-0003-0134-4414

This work was supported by ERC Synergy Grant "Taming the European Leviathan: The Legacy of Post-War Medicine and the Common Good" (Funding from the European Research Council, ERC) under the European Horizon 2020 research and innovation program (Grant agreement No. 854503).

especially by making a generous range of fundamental rights available to the citizens in their legal systems. Socialist fundamental rights were intended to communicate and express that the state is prepared to meet needs in society, for instance by securing the public provisions necessary for the realization of the rights enumerated demonstratively in socialist constitutions. Fundamental rights in socialist states, which included the right to health, exhibited not only the qualitatively enhanced status of the citizens in the new regime, but also the fields of policy in which capitalist rivals were supposed to be outperformed. One such area of state activity was healthcare and public health protection, in which socialist regimes accomplished comparatively significant outcomes and historically unprecedented advancements. However, the availability of fundamental rights did not mean that individuals received actual entitlements or were enfranchised in their interactions with the state, which controlled the totality of socioeconomic relationships. In this article, we focus on the socialist fundamental right to health. We examine how it represented common needs in society and the associated institutional responsibilities of the state rather than actual individual rights, and whether this had implications for its realization in the framework of the health system created by socialist Hungary.

We begin by summarizing the key conclusions of the legal-historical examination of socialist fundamental rights in Western scholarship. The pertinent works, although following distinct paths, all lead to the same conclusion. Socialist fundamental rights, including the right to health, were introduced to articulate common needs and interests, as well as the related tasks and objectives of the socialist state. They were not available to the citizens as legal entitlements that would have enabled the advancement of individual claims against the state and its institutions, either generally or in relation to the public services provided to meet societal needs. This assessment serves as the foundation for our analysis in the next section, regarding the emergence and the legal regulation of the fundamental right to health in socialist Hungary. When it became part of the socialist constitution, the right to health essentially stood for an institutional obligation of the state to protect the health of its citizens, particularly through the establishment and the maintaining of what socialist legal thinking referred to as "institutional guarantees". The article's last section looks at how the right to health was implemented in socialist Hungary in the framework of its main "institutional guarantee" – the socialist health system. We will rely on contemporary and retrospective policy and sociological analyses to demonstrate that the right to health, as conceived in socialist law, allowed for two significant flaws in socialist healthcare. Not

being able to impose any constraints on the state, the right to health was unavailable to prevent the development of a structurally distorted health system, impacting both the availability and the quality of care. The health system also left the individual patient unprotected and failed to address their vulnerability.

2. Analyzing Socialist Fundamental Rights

During and after their duration, the fundamental rights enumerated in socialist constitutions have been subject to legal and legal-historical analyses from multiple perspectives. As an evident, often comparison-oriented area of scrutiny, critical analysis explored whether the apparent determination and generosity of the relevant constitutional provisions were matched by similar qualities in the course of their implementation in socialist reality. The central finding, which did not exclude the possibility of particular developments following different directions within national constitutional frameworks, was that socialist fundamental rights primarily had a declarative nature and lacked a normative character that would have given them genuine relevance as rules of law applicable in everyday life.[1] The normative character of socialist fundamental rights was found to be missing, especially because what they declared was either impossible to achieve, or they referred to social, economic, and political achievements, benefits or goods that were not available in real life.[2] Their main function was to communicate – possibly also fulfilling a propaganda and educational function – the achievements of socialist transformation, as well as intentions and plans for social and economic change, thereby lending legitimacy to the regime.[3] The declarative nature of fundamental rights corresponded to how socialist constitutions in general were assessed in Western scholarship. They were considered as non-neutral political

1 Towe, T., 1967, Fundamental Rights in the Soviet Union: A Comparative Approach, *University of Pennsylvania Law Review*, Vol. 115, No. 8, pp. 1256, 1259; Havelková, B., 2017, *Gender Equality in Law: Uncovering the Legacies of Czech State Socialism*, Oxford, Oxford University Press, p. 64. Historical research suggests that the political-constitutional development of individual socialist states was not homogenous. There were evident "national roads", even in the legal-constitutional domain, as determined by local socioeconomic, cultural, and political conditions. See, in this regard, Graaf, J. de, 2019, *Socialism Across the Iron Curtain*, Cambridge, Cambridge University Press, Chapter 1.

2 Havelková, B., 2017, pp. 74–75. See also Sajó, A., 1990, New Legalism in East Central Europe: Law as an Instrument of Social Transformation, *Journal of Law and Society*, Vol. 17, No. 3, p. 332.

3 Towe, T., 1967, pp. 1262–1263; Havelková, B., 2017, p. 64.

instruments that had been adopted to facilitate socialist transformation, and which therefore aimed to anchor the politico-ideological foundations of the regime, as well as the fundamentals of the socialist socioeconomic order.[4] Their provisions – including those on fundamental rights – communicated public (state) goals, and thus conveyed the basic collective promises of socialism to the citizens.[5]

As a parallel, more complex area of analysis, Western legal scholarship examined the particular, ideologically determined relationship between politics, the constitution, and the economy in socialism.[6] Socialist fundamental rights, as indicated also by symbolic choices, such as the prioritization of economic, social, and cultural rights in the constitutional text over other basic rights, in particular, over political rights and the freedoms of the individual, were assessed as tools utilized by the regime to signal that it is determined to achieve the fundamental transformation of society and the economy. These rights also express that political and other public efforts in socialist regimes, as set out in Marxist ideology, followed the central objective of meeting the needs of the population.[7] Having regard to this particular ideological framework, the relevant academic analyses reached the common conclusion that socialist fundamental rights did not represent genuine entitlements of the individual, which would have imposed legal limitations on the power of the state,[8] rather they stood for goods and benefits, representing the common interest and reacting to common social needs, guaranteed by the state, in particular through public services and other state provisions.[9] As analyzed distinctively by

4 Hazard, J., 1982, The Common Core of Marxian Socialist Constitutions, *San Diego Law Review*, Vol. 19, No. 2, pp. 297, 299.

5 See Markovits, I., 1982, Law or Order: Constitutionalism and Legality in Eastern Europe, *Stanford Law Review*, Vol. 34, No. 3, pp. 518, 521. For example, the central ideological promise that the regime will look after the needs of the population, especially the most basic human needs, such as human security, livelihood and health.

6 See, in this regard, the explanation in Kopeček, M., 2019, The Socialist Conception of Human Rights and its Dissident Critique, *East Central Europe*, Vol. 46, No. 2–3, pp. 263–266. See also Pešelj, B., 1963, Socialist Law and the New Yugoslav Constitution, *Georgetown Law Journal*, Vol. 51, No. 4, pp. 654–655.

7 In particular, securing the welfare and the well-being of the population. See Towe, T., 1967, pp. 1256, 1269; and the literature cited in Pešelj, B., 1965, Recent Codifications of Human Rights in Socialist Constitutions, *Howard Law Journal*, Vol. 11, No. 3, pp. 346, 352. See also, Markovits, I., 1982, p. 520; Kopeček, M., 2019, p. 263.

8 Towe, T., 1967, p. 1264, where he also claimed that in socialism the interests of the individual could receive recognition if they corresponded with the collective interest (the interests of the state). See further Havelková, B., 2017, pp. 74, 76; Kopeček, M., 2019, p. 263; Sajó, A., 1990, p. 331.

9 See, *inter alia*, Berman, H., 1965, Human Rights in the Soviet Union, *Howard Law Journal*, Vol. 11, No. 2, p. 340; and Berman, H., The Struggle for Law in Post-Soviet

Markovits, socialist rights established tasks and objectives that the state promised to achieve in the course of the historical project of building socialism.[10] Even though they were addressed to the socialist citizen, they did not contain "primary entitlements", but instead individualized "policy declarations" or "public standards for desirable goals".[11]

The same analytical perspective was also used to assess the guarantees available for fundamental rights in socialism and their effectiveness. As explained above, the realization of the rights listed in socialist constitutions, more precisely the collective tasks and objectives embodied in them, was the state's task, which for this purpose was supposed to assume responsibility and secure the necessary public services and other policy outputs.[12] The (only) guarantee for the realization of the rights enumerated in the constitution was therefore, as explained in socialist legal theory. the positive institutional obligation that the rights themselves imposed on the state for their implementation.[13] However, in reality, the socialist state, which was bound only by the broad political promise of progress with socialist transformation, acted as a paternalistic entity and implemented fundamental rights entirely at its discretion, *dispensing* them rather than being compelled to provide or protect them.[14] It ensured the realization of

Russia, in: Sajó, A., (ed.), 1996, *Western Rights? Post-Communist Application*, The Hague, Kluwer Law International, p. 41; Havelková, B., 2017, p. 64; Kopeček, M., 2019, p. 263; Markovits, I., 1982, p. 519 (if and when it was possible).

10 Markovits, I., 1982, pp. 521–522.

11 Markovits, I., 1978, Socialist vs. Bourgeois Rights: An East-West German Comparison, *University of Chicago Law Review*, Vol. 45, No. 3, p. 615. Social rights in socialism expressed "essential state performance" and policy priorities, and not benefits legally enforceable by individuals, (Newton, S., 2015, *Law and the Making of the Soviet World: The Red Demiurge*, New York, Routledge, p. 205).

12 For Newton's observation about the donative, unilateral character of social rights in socialist law, which meant in particular that their regulation did not aim to show how they may be exercised, see Newton, S., 2015, p. 204.

13 See Towe, T., 1967, p. 1265; Newton, S., 2015, p. 205, where he also observed that the law's role was limited to ensuring a reliability and regularity of state provision, and was not available to protect or enforce these rights. According to contemporary socialist legal thinking, the institutional obligation of the state was manifested in so-called "institutional guarantees", which established concrete institutional frameworks for the implementation of socialist fundamental rights. See, *inter alia*, Szabó, I., 1987, *Ember és jog* [Human and rights], Budapest, Akadémiai Kiadó, p. 158.

14 In contemporary dissident criticism, the repressive paternalism of the state and its extensive public socioeconomic provisions led to the assessment that the satisfaction of needs, as supported by socialist fundamental rights, was the "central social pillar of dictatorship". In this environment, rights were mere privileges guaranteed by the regime, not rights in any sense. See Kopeček, M., 2016, Human Rights between Political Identity and Historical Category, Czechoslovakia and East Central Europe in a Global Context, *Czech Journal of Contemporary History*, Vol. 4, No. 1, pp. 17–18.

the needs expressed in socialist fundamental rights only when those needs corresponded with the actual interests of the regime, and abandoned them when they threatened to undermine the regime or obstruct its further development.[15] Furthermore, its actions – as recognized also in official legal ideology – were contingent upon the availability of economic and other resources to support this particular area of state activity.[16] When such resources were unavailable, the state ignored the institutional obligations it had undertaken in the constitution.[17]

The third major analytical approach examined socialist fundamental rights following a historical evolutionary perspective. The relevant analyses – among other things – established periodizations of legal changes in the socialist space. These works revealed in particular that around the 1970s socialist law and the fundamental rights therein underwent a significant change, motivated by politics and ideology. During that period, ideology recognized the validity of needs in socialism, other than the common needs of society, in particular those of individual citizens. Following this ideological change, the creation of the so-called "socialist state" was announced, which – as a distinct stage of socialist development – was defined primarily by an increased availability of the material and other

15 See Towe, T., 1967, pp. 1264, 1267, where he also claimed that the only supported rights were those which did not interfere with the regime and the realization of its objectives, and which strengthened the prevailing political and economic order. See also, Pešelj, B., 1965, pp. 343, 345; Pešelj, B., 1963, p. 669; Havelková, B., 2017, p. 78; Kopeček, M., 2019, p. 263.

16 Markovits, I., 1982, pp. 520, 615, 616, 621. This made these external factors more important than the legal content of fundamental rights and the possibilities for their legal protection. Newton observed that socialist fundamental rights were exposed to the struggle between the "developmental" and the "social" modes of the socialist state, and their realization depended on how the state oscillated between these modes and decided whether the resources available should be used to bolster economic development or to increase welfare and wellbeing (Newton, S., 2015, pp. 26, 190, 246–247). In other words, the realization of socialist fundamental rights was not a process of straightforward progressive accumulation and elaboration of entitlements, and the building and refinement of the corresponding institutions (*Ibid*., p. 190).

17 See the overview in Towe, T., 1967, p. 1269. See also Pešelj, B., 1963, pp. 655–656; Markovits, I., 1968, Civil Law in East Germany, *Yale Law Journal*, Vol. 78, No. 1, p. 4. There is evidence that the fundamental rights declared in the early Stalinist constitutions were only implemented in later periods, when politics and the socialist economy were prepared to support them (Kopeček, M., 2019, p. 264). As noted by Quigley, the implementation of the right to health promised (first in history) in the 1936 constitution of the Soviet Union had to wait until industrialization had ensured that resources were available for this purpose in the economy (Quigley, J., 2007, *Soviet Legal Innovation and the Law of the Western World*, Cambridge, Cambridge University Press, p. 16).

benefits of socialism to individuals.[18] In socialist constitutions, the novel period was manifested (although at different times and in different ways) in a more generous enumeration of fundamental rights and the explicit stipulation of the state's responsibility and obligation to implement them.[19] According to Markovits' analysis, this period was characterized by the law assuming the extra responsibility of ensuring that the new and improved aspects of socialism and the accompanying socioeconomic reforms were realized.[20] She reported an expansive use of law to assure that the state delivered the particular benefits that developed socialism promised to the individual.[21] Others revealed that the law, as a central instrument of the administration and governance of the emergent "socialist state", took on a technocratic and regulatory character and gave the state an objective responsibility to provide for the needs of its citizens.[22]

Fundamental rights originally emerged in socialist laws during the Stalinist period, when the regimes (re)discovered the qualities of law and revived legality for their own goals.[23] Stalin's constitution and the rights enumerated therein, which provided the blueprint for many of the early socialist constitutions in Central Europe, were supposed to illustrate that the stability and predictability of the law are necessities for the operation of the regime and the management of everyday life.[24] This was the legacy that influenced legal developments in the subsequent post-Stalinist period, which, as mentioned earlier, involved the reconfiguration of law as a tool of the "socialist state" around the 1970s, and, as part of that process, the use of fundamental rights to create a qualitatively enhanced relationship between the state and its citizens, based on the state's self-imposed responsibility for satisfying the needs of the citizens.[25] Newton argues that

18 See, in this regard, the description in Kornai, J., 1993, *A szocialista rendszer*, Budapest, HVG Kiadó, pp. 85–86.

19 See, *inter alia*, Towe, T., 1967, p. 1257.

20 Markovits, I., 1968, pp. 21–35.

21 *Ibid*., p. 48.

22 Kopeček, M., Dissident Legalism: Human Rights, Socialist Legality, and the Birth of Legal Resistance in the 1970s Democratic Opposition in Czechoslovakia and Poland, in: Donert, C. *et al.*, (eds.), 2022, *Making Sense of Dictatorship*, Budapest, CEU Press, pp. 247, 248; Kopeček, M., 2020, Was There a *Rechtsstaat* in Late Communist East Central Europe?, *Journal of Modern European History*, Vol. 18, No. 3, pp. 288–289. See the similar and much earlier assessment in Sharlet, R., Stalinism and Soviet Legal Culture, in: Tucker, R., (ed.), 1977, *Stalinism: Essays in Historical Interpretation*, New York, Taylor and Francis, pp. 168–179.

23 *Ibid*., p. 158.

24 *Ibid*., pp. 169–170.

25 *Ibid*., pp. 178–179.

the reformulation of rights and law during this period of socialism was an evident choice by the regime, which remained committed to fulfilling its original political promises and bringing about social change.[26] According to his analysis, the emergence of the "socialist state" signified that, for the first time during socialist development, social priorities gained precedence over economic priorities, which shift in socialist politics was anchored in the recalibrating of fundamental rights in new or substantively modified constitutions, as manifestations that the state had taken on responsibility for guaranteeing the widest possible range of public goods and services.[27]

There are evident overlaps between the previously mentioned analyses. Irrespective of their particular focus, they presented fundamental rights as components of socialist constitutions that expressed common needs and anchored the corresponding tasks of the state. During the period of developed socialism (the period of the "socialist state"), they gained the additional function of articulating the institutional obligation for the state to ensure their implementation, using the necessary resources – if they were available. Socialist fundamental rights were not supposed to be "exercised" by individual citizens as entitlements, in particular to advance claims against the state and its institutions, and their expression in law did not mean that they secured autonomy for the individual, for example in concrete decision-making scenarios before state bodies.[28] Generally speaking, the relevant works revealed an institutional and practical understanding of fundamental rights in socialism, highlighting that their realization depends on the state dedicating the necessary resources and administrative and organizational efforts. This paradigm made it clear that the implementation of fundamental rights, which would lead to the desired changes in socioeconomic conditions in the process of building socialism, required creating an institutionalized policy and an institutional framework to operate that policy. However, it also suffered from critical hiatuses. The socialist paradigm assumed, but did not guarantee, a state that is competent, has access to the necessary resources, and has no other motives than those expressed demonstratively in the provisions of its constitution. Also, it left the individual powerless in situations when the outcomes promised to the citizens failed to materialize.

26 Newton, S., 2015, pp. 183–184.

27 *Ibid*., pp. 84, 190–191. Correspondingly, Newton characterized socialist social rights as "pure unilateral public largesse" provided by the "authoritarian welfare state", which would never issue "justiciable entitlements or enforceable claims." They were "state-originated and –bestowed," and they did not constitute "individually held and asserted *claims* against the state." (*Ibid*., p. 205).

28 See, in this regard, the assessment by Havelková in regards the regulation of abortion in socialist Czechoslovakia, Havelková, B., 2017, p. 79.

3. The Right to Health in the Law of Socialist Hungary

The Constitution adopted in 1949 by state socialist Hungary (Act XX of 1949)[29] did not recognize a right to health in its catalogue of fundamental rights. The adoption of this landmark legal measure was supposed to express and communicate the beginning of transition towards socialism, as well as to outline a basic scheme for the transition process. It therefore adopted an assertive tone when defining the common social and economic goals, but was rather reserved when laying out the specific outcomes of socialist transition for the citizens. The constitutional text defined in clear terms the fundamentals of the promised new socioeconomic order,[30] which specifically included the principle of socialist distribution.[31] However, it used a language that suggested reservation and conditionality when addressing how the individual may access the benefits of the socioeconomic order being developed. As an illustration of the constitution's ambivalent treatment of its central promises, although its provisions included a general principle of equality and thus expressed a fundamental objective of the regime, Article 2(1) recognized only workers (industrial workers and working peasants) as constituents of socialist Hungary, thus explicitly excluding other social groups from the material and other benefits of the socialist transformation. Also, Article 9(4) defined the principle of socialist distribution as a goal that the state just needed to "strive to realize" and not actually deliver.

The ambivalent regulation of the more general and the specific political promises of the regime in the constitution was reflected in how the issues of health and health protection were included in the constitutional text. Article 47 was placed among the provisions enumerating fundamental rights; however, rather than recognizing a fundamental right, it regulated a task for the state – the task of protecting the health of Hungarian workers. Specifically, Article 47 instructed the state to accomplish this task by using broadly defined institutional solutions, such as the organization of an "expansive" system of social security and the system of medical care.

The sui generis right to health was introduced as part of the major 1972 overhaul of the 1949 Constitution (Act I of 1972). The main aim of the modification was to herald a new era in the building of socialism: the

29 https://en.m.wikisource.org/wiki/Constitution_of_the_People%E2%80%99s_Republic_of_Hungary_(1949), 7. 4. 2024.

30 In essence, the elimination of the exploitation of man by man and the building of socialism based on work.

31 "From each according to his ability, to each according to his work" (Article 9(4)).

completion of the transition to socialism and the creation of the "socialist state". In contemporary legal writing, the new period marked by the constitutional amendment was described as a "permanent", in other words not a transitionary stage of socialist development, which is characterized by the state ensuring that the material and other benefits of socialism are available to the individual citizen.[32] Contemporaries identified multiple rationales for the amendment, such as the consolidation and the stabilization of the regime and its power and economic base, modernization of the state, and allowing for further "democratization" of the regime.[33]

Following these objectives, some of the original provisions were demonstratively discarded or changed. The distinction between workers and other social groups, as well as the reservation of certain social benefits for workers in the constitution – disappeared.[34] The principle of socialist distribution was redrafted in Article 14(4) as a more exacting objective, which had to be realized by the state "in a consistent manner". The constitutional definition of the socialist socioeconomic order was expanded with a listing of concrete tasks and responsibilities of the state towards its citizens (Article 17), including the "protection of the life, bodily integrity, and health of every individual".[35] The latter changes expressed this important shift of emphasis in the regime, that socialism was no longer limited to meeting common social needs, but was prepared to look after the needs of individual members of society and allow them access to the benefits brought about by two decades of transformation.

The right to health was recognized in new Article 57, which was drafted as the right of citizens to the protection of life, bodily integrity, and health. The provision instructed the state to establish and maintain the concrete "institutional guarantees" necessary for its implementation. These included institutional solutions that were broader and arguably more specific than those listed in the 1949 Constitution, such as the "or-

32 Kovács, I., Bevezető [Introduction], in: Besnyő, K., (ed.), 1985, *Az Alkotmány a gyakorlatban* [The Constitution in practice], Budapest, Közgazdasági és Jogi Kiadó, p. 22. While the 1949 Constitution aimed to give expression to the novel sociopolitical system, and to lay down its politico-constitutional foundations, the 1972 amendment "harmonized" the constitutional text with the social, economic, and political transformation that had been achieved since 1949 (*ibid*.).

33 *Ibid*., pp. 25–26; Schmidt, P., 1984, *Szocializmus és államiság* [Socialism and statehood], Budapest, Kossuth Kiadó, p. 154.

34 See Article 54, which no longer distinguished workers and other groups of society when laying out the general provisions on fundamental rights.

35 Translated by author. The general aim of the 1949 Constitution of "continuously increasing" the living and the cultural standards of the working population was also reformulated in Art. 7 as the aim of "regularly increasing the living and the educational standards of citizens".

ganization of healthcare institutions and of medical care", ensuring health and safety protection in the workplace, and the protection of the "human environment". The more generous and more categorical constitutional framing of the state's institutional obligations in the protection of health corresponded with the previously mentioned expanded and novel rules of Article 17. It also matched the confidence in the performance of the socialist economy, expressed in the amended regulation of the principle of socialist distribution in Article 14(4), which articulated indirectly that more robust distributive policies had become part of socialist reality.

Apparently, Article 47 of the 1949 Constitution was not drafted to regulate a constitutionally guaranteed entitlement of individuals in socialism. As visible from its text, it laid down the conditional task for the state, which it could realize at its discretion.[36] The provision that replaced Article 47 in the 1972 amendment was formulated differently. However, the recognition of a right to health in Article 57 – despite the general narrative of democratization and inclusiveness surrounding the constitutional modification – did not mean that the constitution provided an actual right of the individual, which would have made it possible to put forward claims and secure protection against the state in regard to its actions and choices in health policy and healthcare. Retrospective legal analysis has pointed out that the more categorical formulation of fundamental rights following the 1972 amendment aimed primarily to anchor deeper in the constitution the objective institutional obligations of the socialist state.[37] Therefore, the language of rights was only employed to bolster the commitment of the regime to honor one of its central responsibilities towards its citizens.[38]

36 The incumbent minister for health referred to it as a pivotal organizational principle in socialist Hungary, which required that the state ensure – as a common social cause – the protection and restoration of the health of Hungarian workers, Ratkó, A., 1949, Megnyitó beszéd [Opening speech], *Népegészségügy*, Vol. 30, p. 557. She also remarked that the constitutional provisions declared an essential objective of socialist transformation: the human being is the supreme value (*Ibid*., p. 558).

37 Vastagh, P., 2017, Alkotmányrevízió 1972 [Constitutional revision 1972], *Múltunk*, pp. 214, 242. The aim was to abandon the original declarative, program-setting function of the constitution and lend its provisions a normative character (*Ibid*.).

38 As framed in contemporary legal analysis, the recognition of the right to health as a fundamental right of citizens indicated that the protection of health was no longer a mere political promise of socialism. Instead, it was a genuine outcome of the socialist transformation, realized through the "institutional guarantees" put into place and maintained by the state (Szabó, I., 1987, p. 165; Schmidt, P., 1984, p. 168). As held in socialist constitutional thinking, "institutional guarantees" were supposed to express, inter alia, that socialist constitutions are meant to be implemented, as opposed to their "bourgeois" counterparts (Szabó, I., 1987, pp. 155, 158).

The 1972 constitutional modification was preceded by a shift in contemporary legal thinking regarding the nature of fundamental (human) rights and their place in socialist law.[39] The concept of fundamental rights in the 1949 Constitution followed prior examples available in the socialist legal space. It denied the natural law premises of human rights and also renounced the very idea of human rights, on the ground that they represented moral concepts and not institutions of formal law.[40] The citizens' (fundamental) rights introduced by the 1949 Constitution were creations of formal law, as made available by the socialist state to its citizens.[41] Twenty years later, the fundamental rights, provided following the 1972 amendment, were associated with the function of defining the various "social institutions" in the "socialist state", through which the state ensures their implementation.[42] The recognized specific rights, including the newly introduced right to health, were conceptualized as rules that reflect and determine the status and condition of individuals in the socialist society, as shaped by the state performing its constitutionally enumerated tasks.[43] From the state's perspective, they stood as objective requirements imposed on its operation,[44] while also indicating its responsibility for realizing the social and economic objectives of socialism.[45]

In the constitution of socialist Hungary, economic, social, and cultural rights were accorded explicit ideologically-driven priority over other rights in the catalogue of fundamental rights.[46] This choice was supposed

39 Kovács reported significant disagreements regarding the conceptualization of the emergent "socialist state" and its socioeconomic foundations in the Constitution, in particular whether the state is responsible for meeting the material and cultural needs of its citizens and protecting their rights, Kovács, I., 1988, *A Magyar Népköztársaság Alkotmányának fejlődése és az új alkotmány* [The development of the Constitution of the Peoples' Republic of Hungary and the new Constitution], Budapest, MTA Jogtudományi Intézet, pp. 326–329.

40 Szabó, I., 1968, *Az emberi jogok* [Human rights], Budapest, Akadémiai Kiadó, p. 24.

41 *Ibid*.

42 Szabó, I., 1987, p. 164. The modification also included the anchoring of the duty of the state to observe human rights in Art. 54. With the term "human rights", the Art. 54 referred to the rights recognized in international treaties, and not the rights of humans as a natural law construct. According to contemporary legal thinking, in international treaties human rights were formal legal rights, which emerged from states (including socialist states) taking up international obligations for their protection. It was the formal legal nature of rights recognized in international treaties that enabled socialist legal doctrine to rediscover the notion of human rights. See *ibid*., pp. 130–131.

43 *Ibid*., pp. 129–138, 158–159.

44 Kovács, I., 1988, p. 25; Schmidt, P., 1984, pp. 151–165.

45 Kovács, I., 1988, p. 25; Schmidt, P., 1984, pp. 151–152.

46 See Szabó, I., 1987, pp. 154, 155, 159–160.

to express that the regime regarded as its core task the satisfying of, first and foremost, the most basic needs of its citizens, such as human security and health, and that it would actually guarantee this novel status that socialism provided for the citizens.[47] The economic, social, and cultural rights in the Hungarian Constitution, which included the right to health, thus had an institutional character, incorporating political promises rather than genuine rights of the individual. Connected to this definition, socialist legal thinking identified a critical factor that affected the realization of economic, social, and cultural rights in real life. As made explicit in legal writing, the realization of the common needs manifested in these fundamental rights was dependent upon the level of economic development achieved by socialism and the economic resources thus made available to support the state's efforts.[48] This means that economic and other resources presented an "objective circumstance"[49] that could render inadequate or illusory the implementation enumerated in the constitution, through the explicitly enumerated "institutional guarantees". In other words, when the social and economic circumstances were unfavorable, the state could deprive citizens of their constitutionally recognized benefits.[50]

The right to health was implemented in law, immediately after the constitutional modification, by the 1972 healthcare act (Act II of 1972), which also outlined its details. The general provisions of the act were drafted in accordance with the prevailing constitutional rules.[51] Its preamble declared that healthcare was a state task that involved the state providing the "preconditions" of the entire population's medical care.[52] According to the official explanation of the act, the state in its latter role, was to provide and develop universal and equal healthcare free of charge. The general objective pursued was to secure the population's access to the necessary healthcare that is adequate, effective and prompt, does not

47 Schmidt, P., 1984, p. 226.

48 Szabó, I., 1987, pp. 158, 164; Schmidt, P., 1984, pp. 230–231.

49 See Szabó, I., 1987, pp. 158, 164.

50 It is rather telling that contemporary commentators announced with unreserved confidence and pride in their legal analysis that the right to health – just like the entire constitution – was firmly rooted in economic reality, and its implementation was made possible by the achieved economic development (Szabó, I., 1987, p. 155; Schmidt, P., 1984, pp. 153, 169).

51 The act came nearest to formulating an individual entitlement to health when it declared in Section 25(1) that patients "can access" therapeutic-preventive healthcare provisions free of charge, including medical examinations and treatments in and outside the hospital system, ambulance services, and obstetric care.

52 The earlier, 1959 professional regulations for the medical profession contained a similar statement of general purpose. Technically, the 1972 act raised the regulations' objectives to a higher level within the socialist legal system.

depend on territorial location. The act, which regulated a vast and complex health system developed during the previous two decades of socialism, covering basic and specialist care, biomedical and pharmaceutical research, translational medicine, etc., contained almost exclusively institutional provisions that defined the framework within which the state was expected to fulfill its constitutional tasks in healthcare and health protection.[53] Mainly, they specified public tasks and responsibilities in different areas of healthcare and public health,[54] especially the responsibilities and the tasks of physicians.[55]

The rights of the individual patient were addressed only marginally by the act. Their regulation was limited to situations when the institutions and institutional actors of the health system came into contact with the individual patient, which meant that the provisions regulating patients were formulated from the perspective of health actors focusing on their specific preferences and interests. Essentially, the relevant legal provisions created a paternalistic relationship between the physician and the patient. They secured a principal position for the physician and permitted only minimal autonomy for the individual. In Section 43(1), which as a core provision of the measure defined the basic "therapeutic-preventive" responsibilities of physicians, the act guaranteed almost absolute professional discretion to the physician, save for the objective limitations introduced to address evident medical risks.[56] In particular, it empowered physicians to apply what they would regard as "the most suitable" diagnostic and therapeutic solution when carrying out the professional tasks and obligations.[57]

53 See Sections 23 and 23, setting out a general framework for general ("therapeutic-preventive") healthcare, which prescribed general institutional responsibilities and tasks, as well as programmatic objectives of health policy.

54 See Sections 3 and 4, which specifying concrete institutional responsibilities within the health system at large.

55 Section 1 defined the aim of the act as laying down the fundamental provisions regarding the health system in Hungary and regulating the rights and obligations pertaining to the protection of the health of the population.

56 The crucial measure in Section 44(1) imposed the following restrictions on administering therapeutic-preventive interventions: the intervention does not correspond with the state of the art; the risks of the intervention are higher than the risks of deciding against the intervention, and there is no reasonable ground justifying the risks of the intervention; the physician lacks the necessary training or skills, or the necessary equipment is missing; and the intervention is prohibited by law, or is used in the course of a conduct prohibited by law. Under Section 47, surgical interventions could be carried out when justified by the medical state of the art, subject to meeting the standards of the medical profession, as well as prohibitions or specific conditions imposed by law.

57 The physician was required to provide a complete diagnosis based on the complaints of the patient and any other symptoms discovered, and to offer treatment taking into

Intended as a guarantee of medical professionalism, Section 43(3) specifically authorized the physician to choose the scientifically appropriate diagnosis and therapy permitted by law, without involving the patient in that choice.

Nevertheless, patients were provided some protection. The relevant legal rules were formulated from the perspective of the physician and primarily offered institutional guarantees. Section 43(2) formulated the general obligation that the physician, acting with utmost care and circumspection, must take every step necessary for the prevention of diseases, for healing the patient and saving their life, and for restoring the patient's ability to work.[58] Section 43(3) declared that the physician is responsible for the actions taken in the context of diagnosing and treating the patient, as well as for the failure to take the necessary action. Informed consent formed part of the act's framework of guarantees, however, its availability was restricted. The obligation of obtaining prior consent from the patient applied in two circumstances only: in case of surgical interventions, and when the patient was required to undergo treatment in a hospital.[59] Moreover, the act specifically provided that consent must be treated as adequately provided when the patient does not make any remarks. There was no general requirement for the consent to be obtained in writing; written consent was required only for surgical interventions.[60] The act did not provide any more details regarding the scope and the substance of informed consent.[61]

Section 45(1) defined the obligation of the physician to inform the patient of their illness and health condition. The patient did not have to

consideration the state of the art of medicine, the individual condition of the patient, and the patient's illness.

58 The physician was required to provide healthcare to patients diagnosed with an incurable disease with utmost care. This provision stood as an indirect prohibition of euthanasia in the healthcare act, in accordance with the applicable criminal provisions.

59 Sections 47(3) and 26(3) respectively. Section 26(2) required physician to order hospital treatment when the adequate examination or treatment of the patient could only be secured there. Under Section 26(4), consent for hospital treatment was not necessary when the patient was a minor, was legally incapacitated, or was in an immediate life-threatening situation requiring hospitalization.

60 Section 47(4). The act ordered that surgical interventions must be carried out in hospital.

61 The way the act treated informed consent and patient autonomy is demonstrated by how it regulated certain medical risks as objective limitations and/or conditions of medical interventions, and as the only limitations to the professional discretion of the physician (recited in note 55), but failed to recognize the right of consent regarding those same risks.

be informed when doing so would have violated the patient's interest. The act did not regulate a corresponding right of access to patient information. Evidently, the information obligation of the physician was not a guarantee of patient autonomy. The previously mentioned rules on medical decision-making, the physician–patient relationship, and informed consent excluded meaningful patient involvement, even when the patient had access to the relevant medical information. Section 45(2) required the physician to provide the patient the instructions about the prescribed treatment in a detailed manner and with utmost care. Its aim was to regulate the conduct and the responsibility of the physician, and not to guarantee patient participation and autonomous conduct. In the framework of the extensive public health and epidemiology provisions of the act, the physician–patient relationship was regulated even more restrictively. Sections 15 and 16 regulated compulsory participation in medical screening and examination, medical therapy, and vaccination.[62] Public health authorities could impose these compulsory interventions, as well as compulsory hospitalization through a formal administrative order.[63]

4. Implementation of the Right to Health in State Socialist Hungary

Fulfilling the promise of the constitution, healthcare and public health were in general treated as priority areas of policy in state socialist Hungary, the developments in which were readily showcased by the politics of the time.[64] The results attained were presented as flagship achievements of the socialist transformation and cornerstones of socialist development.[65] Unquestionably, within a relatively short period of time, socialist Hungary managed to establish a healthcare system based on a

62 The rules on informed consent and the information obligation of the physician were not applicable.

63 Compulsory medical hospitalization also appeared in the rules adopted for the "protection of women and mothers", which ordered the next of kin of the woman in labor, or any other person with a direct knowledge of the medical situation, to arrange her admission to a maternity institute, or, when that was not possible, to secure the presence of a physician or other qualified medical personnel (Section 29(3)).

64 As noted retrospectively by Losonczi, healthcare was managed as a priority area that was capable of demonstrating the superiority of socialism over other political and socioeconomic regimes (Losonczi, Á., 1998, *Utak és korlátok az egészségügyben* [Pathways and limitations in healthcare], Budapest, Magyar Tudományos Akadémia, p. 28).

65 See Hahn, G., 1960, *A magyar egészségügy története* [The history of healthcare in Hungary], Budapest, Medicina, pp. 187, 190. On similar developments taking place in parallel in developed (capitalist) welfare states, see Szalai, J., 1986, Az egészségügy

system of universal social insurance, which was proclaimed to ensure and actually provide universal, free, and equal access to a broad range of basic and specialist health services.[66] It was reported by contemporary official commentators that the health system created during the first twenty years of socialist rule, until the political landmark years of the early 1970s, had resolved the critical healthcare and public health challenges of pre– and postwar Hungary.[67] They claimed that the developments eliminated the negative legacies of the prior capitalist healthcare system,[68] and that the new system was guaranteed to meet the health needs of society, principally by increasing the access of the population to health services.[69] They also reported an improvement in the general health condition of the population, which was associated with multiple factors, including the improved access to healthcare, as well as the general amelioration of living and working conditions.[70]

However, when the developments are assessed more closely, the socialist health system, which was established as the main "institutional guarantee" for the realization of the state's constitutionally expressed responsibilities, evidently struggled with fundamental issues. As examined below, even the official commentators at the time admitted that during the first twenty years of socialism the implementation of the state's tasks in healthcare and health protection was undermined by the political, social and economic conditions that existed in postwar Hungary. During that period, as well as during the two decades leading to 1989, the development of the socialist health system faced multiple obstacles. As the next paragraphs elucidate, there was a shortage of economic and other resources, health policy had a more limited political clout than economic

betegségei [The illnesses of healthcare], Budapest, Közgazdasági és Jogi Kiadó, pp. 12–13.

66 *Ibid*., p. 23.

67 Simonovits, I., 1970, A magyar egészségpolitika 25 éve [25 years of Hungarian health policy], *Orvostörténeti Közlemények*, Vol. 54, pp. 19–20.

68 Such as the lack of universal healthcare, an underdeveloped institutional system, and social and territorial inequality in access to health services. See Orosz, É., 1986, Egészségügyi alapellátás – területi különbségek 1876–1945 [Basic healthcare – Territorial differences 1876–1945], *Orvostörténeti Közlemények*, Vol. 113–114, p. 61. In the interwar period, the welfare performance of Hungary slumped back compared to that of developed countries, and welfare provision and access to it became extremely varied in terms of social status and class (Szalai, J., 1986, pp. 22–23).

69 See Hahn, G., 1960, p. 190. See also Kornai, J., 1993, p. 87. On the similar concerns and ethos in developed (capitalist) countries, which influenced the development of universal state health services there, see Szalai, J., 1986, pp. 13–14.

70 Hahn, G., 1965, *A magyar egészségügy 20 éve* [20 years of healthcare in Hungary], Budapest, Ministry of Health, p. 6.

policies, and healthcare development was driven by distorted priorities. The applicable legal framework, which also included constitutional provisions, *i.e.*, starting in 1972 the right to health and the related institutional responsibilities of the state, was not available to prevent or correct the distortions and the deficiencies in the design and operation of the socialist health system. The socialist state administered its health system entirely at its discretion and individuals (the individual patient) lacked the legal means to enforce the healthcare promised to them.

Pursuing the central political objective of increasing the access of the population to healthcare,[71] in particular to basic care, as well as the political promise of the regime expressed in the 1949 Constitution on providing socialized healthcare, during the first two decades after 1949 the Hungarian health policy focused predominantly on achieving quantitative developments (Table 1). This was a gradual process, during which access to free, state-provided healthcare was extended to cover the entire population.[72] Expanding access to healthcare had a geographical and an infrastructural dimension, which was manifested in the construction and/or the further development of healthcare facilities, initially in the major industrial centers and subsequently throughout the country.[73]

Table 1. Quantitative changes in the Hungarian healthcare system 1938–1968.

	1938	1945	1947	1950	1956	1968
Number of physicians (per 10,000 pop.)	10,590 (12.2)[74]	7,240 (7.7)[75]	8,900 (9.6)[76]	9,609 (10.3)	13,830 (13.9)	19,290 (18.8)
Number of hospital beds (per 10,000 pop.)	48,283 (55.5)[77]	27,000 (28.9)[78]	40,350 (43.8)[79]	49,980 (53.7)	64,888 (65.65)	83,769 (81.5)

Source: Simonovits, I., 1970, pp. 22, 24, 26, 28, 32, 34; Hungarian Central Statistical Office (KSH), (www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_ege0001.html, 7. 4. 2024).

71 Basically, the aim was to ensure that more people are able to receive medical care than ever before in history (Hahn, G., 1960, p. 169, and, retrospectively, Szalai, J., 1986, p. 15).

72 Hahn, G., 1960, pp. 154–155.

73 Simonovits, I., 1970, p. 23; Hahn, G., 1960, p. 191.

74 Calculated based on the 1930 census data (total population: 8,685,000).

75 Calculated based on the 1941 census data (total population: 9,316,000).

76 Calculated based on the 1949 census data (total population: 9,205,000).

77 Calculated based on the 1930 census data.

78 Calculated based on the 1941 census data.

79 Calculated based on the 1949 census data.

Quantitative developments maintained their relevance from 1970 onward, during the second twenty years of socialist rule (Table 2). The priorities of health policy, together with the general priorities of the regime, had shifted by then. During this period, the central aim was to enable the health system, which had been quantitatively greatly enlarged, to deliver higher quality therapy and other qualitative healthcare outputs, in particular to develop and improve health provision beyond basic care in specialist healthcare.[80] This required state intervention that was different from those during the previous period, when the priority was to expand healthcare capacities and increase access to health services.[81] Nevertheless, the attraction of socialist health policy to quantitative improvements persisted, mainly because of resource constraints. Quantitative developments were also regarded as enablers of qualitative improvement when more resource– and knowledge-intensive opportunities were unavailable.[82]

Table 2. Quantitative changes in the Hungarian healthcare system 1970–1989.[83]

	1970	**1975**	**1980**	**1985**	**1989**
Number of physicians (per 10,000 pop.)	20,491 (19.8)	23,588 (22.3)	26,898 (25.1)	29,524 (28)	31,530 (30.4)
Number of hospital beds (per 10,000 pop.)	85,768 (82.9)	90,180 (85.4)	95,539 (89.2)	102,348 (96.9)	104,951 (101.2)

Source: Hungarian Central Statistical Office (KSH), (www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_ege0001.html, 7. 4. 2024).

Despite the evident achievements, the defects in implementing the state's responsibilities expressed in the Constitution were also readily apparent. As evident from Tables 1 and 2, by the end of the first decade of the postwar period only some of the infrastructural capacities of the

80 See, retrospectively, Losonczi, Á., 1986, *A kiszolgáltatottság anatómiája az egészségügyben* [The anatomy of vulnerability in healthcare], Budapest, Magvető Kiadó, p. 52.

81 Simonovits, I., 1970, pp. 19–20.

82 For example, as will be examined in detail below, the increasing of hospital capacities enjoyed a special priority both before and after 1970 (Hahn, G., 1965, p. 23).

83 In the Soviet Union, the number of physicians per 10,000 population: 20 in 1960, 25.8 in 1968, 30.6 in 1973, and 31.6 in 1978; the number of hospital beds per 10,000 population: 80.4 in 1960, 103.8 in 1968, 114.4 in 1973, and 115.9 in 1974. In Poland, the number of physicians: 44,827 in 1968, 53,040 in 1972, and 56,949 in 1974; the number of hospital beds per 10,000 population: 55.4 in 1960, 61.4 in 1968, and 65.6 in 1974. Source: Kaser, M., 1976, *Health Care in the Soviet Union and Eastern Europe*, London, Croom Helm, pp. 82, 226, 228.

prewar health system had been restored. It took another ten years to surpass them and attempt to fulfill the central social promise of the socialist rule – creating the institutional framework capable of supporting a system of universal healthcare. Simonovits, the senior health policy bureaucrat both before and after 1970, observed critically that until the mid-1950s (the end of the Stalinist Rákosi-era) health policy and the development of healthcare had remained of secondary importance behind industrial and economic policy, despite the frequently expressed commitment of the Communist Party and the state.[84] He also noted that during the first two decades of socialism, the health system had a much more limited access to resources than other, politically more important areas of state activity, such as industrialization.[85] The limited resources allocated to healthcare were then used on certain politically prioritized, ideologically important areas of health protection, such as infant care, prenatal care, and pediatric care.[86] The scarcity of resources continued to cause disruptions also during the second two decades of socialist rule, despite the much enhanced political commitments expressed in the 1972 constitutional amendment.[87]

The resource constraints, as well as the reluctance of the regime to divert resources away from the so-called production sectors of the socialist economy, had widely acknowledged adverse effects on the implementation of the state's responsibilities in health protection. It was reported that both before and after 1970, the health system was struggling with its core task of delivering basic care, and that preventive healthcare, which was recognized as the cornerstone of socialist health policy, was never implemented in full.[88] Reports also reveal that developments in one area of health policy, such as the development of hospital care, could only take place when resources were taken away from other areas.[89] Contemporary commentators explicitly acknowledged that the previously mentioned flagship achievements in certain prioritized areas, such as the higher quality

84 Simonovits, I., 1970, pp. 19–20. See further, in this regard, Hahn, G., 1960, pp. 144–148. Generally, developments in healthcare followed the development of the economy with a significant gap, and the shortage of economic resources during this period had real consequences for the quality of healthcare available (Simonovits, I., 1970, p. 27).

85 *Ibid*., pp. 19–20. On the scarcity of resources in healthcare, and on the diversion of resources from the sector, see retrospectively Kornai, J., 1993, pp. 332–33; Losonczi, Á., 1998, pp. 27–28; Orosz, É., 1992, *Egészségügyi rendszerek és reformtörekvések* [Healthcare systems and plans for reform], Budapest, Politikai Tanulmányok Intézete, pp. 21–22, 171.

86 See Hahn, G., 1960, pp. 173–174.

87 Orosz, É., 1992, pp. 184–185.

88 Simonovits, I., 1970, p. 37 (before 1970); Orosz, É., 1992, pp. 184–185 (after 1970).

89 Hahn, G., 1960, p. 167 (before 1970); Orosz, É., 1992, pp. 184–185 (after 1970).

of care for infants and children, came with the cost of deprioritizing other, politically less concerning areas, for example the treatment and care for the mentally ill.[90]

The deprioritizing of certain healthcare areas continued during the 1970s and 1980s. Commentators noted that adequate care for the elderly and people with chronic illnesses remained an unresolved issue during the entire socialist era, and the health system practically disregarded certain illnesses, such as alcohol and drug addiction, mental illnesses, and disabilities.[91] As a well-known distortion characterizing the entire socialist period, the priority accorded to the development of the hospital system[92] and the focus on hospital as opposed to primary care and health prevention meant that healthcare outside of the hospital system was generally inadequate.[93] There were distortions also in the development of hospital care itself. The health administration favored low-cost quantitative improvements, in particular increasing the number of hospital beds, which took resources away from the development of capacities necessary for improving care quality, such as diagnostics.[94]

The achievement of the desired qualitative developments also suffered from distortions and deficiencies, both before and after this became the health policy priority in developed socialism, around 1970. Securing qualitative advances presented a number of complex challenges. As observed in both contemporary and retrospective commentary, the most difficult challenge throughout the entire socialist era was that the health system was expected to deliver both quantitative and qualitative advances concurrently, while the resources available continued to be inadequate.[95] The surge in the demand for healthcare in socialist Hungary, which was caused by the quantitative developments implemented to increase access

90 Simonovits, I., 1970, p. 37.

91 Orosz, É., 1992, p. 185.

92 As elsewhere in socialist Central Europe, the "county hospital" as an advanced general and specialist healthcare institution was supposed to be the flagship institution of the socialist health system (Hahn, G., 1965, p. 28).

93 Simonovits, I., 1970, p. 37 (before 1970); Orosz, É., 1992, p. 185 (after 1970).

94 See Hahn, G., 1965, p. 25. See Orosz's retrospective analysis concluding that the focus in the entire healthcare sector on the "input" side of therapy (the number of doctors and hospital beds), which continued even after the 1970s, prevented the efficient use of resources. The means and the ends were unclear: developments in healthcare were not driven by the aim of protecting human health, but ensuring the availability of means or "inputs" – in other words medical capacity – within the system (Orosz, É., 1992, pp. 172–173, 183).

95 Hahn, G., 1960, pp. 168–69 (before 1970). For a retrospective analysis covering the entire socialist period, see Orosz, É., 1992, pp. 184–185.

to health services in an expanded system of healthcare institutions,[96] meant that newly adopted quantitative developments soon proved inadequate and there was a constant need for further improvement.[97] Generally speaking, the health system constantly failed to live up to the expectation that the state would carry out its responsibilities by both increasing access to healthcare and delivering qualitative healthcare outputs.[98]

Retrospective analyses highlighted that qualitative developments were mostly restricted to areas within the health system where the quantitative developments and the resulting improvement of access to healthcare were generally adequate to ensure qualitative results.[99] In the more resource-, technology– and knowledge-intensive areas of the health system, in particular in specialist care, qualitative developments were far less present.[100] According to Szalai's sociologically oriented assessment, during the first two decades of Hungarian socialism – as was the case in many other countries in the world – healthcare experienced a "golden age", which was characterized by rapid progress, and also by the direct conversion of quantitative developments into actual qualitative advances.[101] This was followed by a period of stagnation – as was the case in other countries in Western and Eastern Europe – when the structural distortions and problems of the significantly enlarged health system prevented further high-impact qualitative progress.[102] The political and legal changes of the 1970s, marked in health policy by the expansion of

96 However, the institutional framework remained gravely inefficient throughout the socialist period (Orosz, É., 1992, p. 27).

97 One of the major managerial shortcomings of the health system, which prevented qualitative improvements in areas where it was objectively within its capacity, was that the system of basic care was left qualitatively weak and overwhelmed by patients, which meant that patients were forwarded almost automatically to hospitals and the system of specialist care therein, overburdening the relatively well-equipped and –staffed hospital system (Szalai, J., 1986, p. 27). See, in this regard, the analysis that services in the socialist economy, including healthcare, were expected to meet their delivery goals despite their limited resources and infrastructure, which had an evident impact on the quality of service delivery (Kornai, J., 1993, p. 213).

98 Hahn, G., 1960, pp. 168–169 (before 1970); Szalai, J., 1986, p. 27 (after 1970). Sustaining the expanded health system and transforming the achieved quantitative developments into qualitative advances were among the major challenges also during the period after 1970 (Orosz, É., 1992, p. 22).

99 Losonczi, Á., 1998, p. 28 (for example in basic care).

100 *Ibid*. The response in the 1970s was the establishment of a group of elite healthcare institutions accessible only for a narrow segment of society, which evidently contradicted the principle of universal health provision (Losonczi, Á., 1998, pp. 30–31; Losonczi, Á., 1986, p. 74).

101 Szalai, J., 1986, pp. 15–20.

102 *Ibid*.

responsibilities and tasks in the Constitution and in the healthcare act, aimed to respond to these problems. However, their impact proved to be limited. As revealed by retrospective studies, the newly introduced legal provisions were supposed to be implemented in a health system that had already been struggling to fulfill its existing responsibilities, and which continued to be denied adequate resources.[103]

Retrospective sociological research also sheds light on another significant, possibly less well-documented deficit of the socialist health system in Hungary. This shortcoming contradicted possibly even more intimately its objective of delivering the healthcare promised to the citizens in the Constitution. Based on empirical research conducted in late socialism, these groundbreaking critical sociological studies called attention to how the vulnerability of the individual patient was exploited in the health system and how individuals were disenfranchised in the context of the decision-making affecting their health. The focus of these analyses fell on the organization, the management, and the operational practices of socialist healthcare, which were identified as a direct source of vulnerability and a cause of frustration and suffering of the individual.[104] The relevant works revealed that, as a general trend, the interests of the patient were overshadowed by the interests and practices of the health system, which was congested and limited in its resources, relied on dictated "coercive" methods and a "top-down, quasi-feudal system of relationships," and prioritized the politically determined institutional objectives in its operation.[105] It was highlighted that the system dispensed therapy and care in a poorly managed and low-efficiency environment, in which medical decisions were taken without the involvement of patients and without adequately informing them.[106] According to Losonczi's well-known conclusions, the

103 Losonczi, Á., 1998, p. 30. As observed by Orosz, the significant distortions and disproportionality in the availability and the use of the human and physical resources, which accumulated over the decades of quantitative healthcare development, prevented the provision of quality health services that would have enabled healthcare on a genuinely universal basis (Orosz, É., 1992, p. 182).

104 Losonczi, Á., 1998, p. 28. See also the criticism by Orosz that the highly centralized and rigid policy-making and administration in state socialism, which favored simplistic responses to healthcare problems, such as the prioritization of therapy over prevention, was unable to align the structure of healthcare with the actual healthcare needs, and was slow in reacting to significant changes in the healthcare needs of the population (Orosz, É., 1992, pp. 172–173).

105 Losonczi, Á., 1998, pp. 28, 30, translated by author.

106 See *ibid*., pp. 52–63. See further Kornai, J., Eggleston, K., 2001, *Welfare, Choice and Solidarity in Transition*, Cambridge, Cambridge University Press, p. 139, mentioning in their political economy analysis that the health system provided low quality care, left patients defenseless, and was slow to take up scientific and technological developments.

socialist health system was oblivious to the further health harms and risks caused to individuals, in addition to those that it had failed to treat.[107]

These findings demonstrate that while Hungary's socialist constitution internalized the political promise of satisfying health needs in society, respect for the autonomy of the individual in the context of healthcare and public health protection was not part of its offerings. The right to health introduced later was not available to prevent, exclude, or remedy vulnerability and disenfranchisement, which were typically experienced by the individual in the socialist health system. Although the legal recognition of the relationship between the state, its health system, and the individual patient was a significant development, the rules of the Constitution and the provisions of the 1972 healthcare act were both unable to secure the adequate status and treatment of the individual. Supporting our assessment of the legal framework, the previously mentioned critical sociological analyses highlighted that the 1972 legislation anchored the dominant position of the physician and left the individual exposed and defenseless in medical decision-making.[108] They also observed that since patients' participatory informational and decisional rights were either not provided or provided inadequately, the legal framework kept the responsibility of the physician limited and overlooked the suffering that might have been caused to the patient.[109]

5. Conclusions

The recognition and the implementation of the right to health in state socialist Hungary allows for significant conclusions on fundamental rights in socialism. The right to health, introduced into the socialist constitution in 1972, incorporated health primarily as a need, and it expressed and communicated that the state would look after that need by organizing and maintaining a comprehensive and universal health system, as a public task dispensed by its institutions. The 1972 healthcare act, which was adopted to implement the constitutional provision, further confirmed that the actual right of individuals and guarantees of individual autonomy in the context of healthcare were not included in the offerings of socialist law. The emphasis on common needs over individual rights had evident repercussions on the delivery of healthcare

107 Losonczi, Á., 1989, *Ártó-védő társadalom* [A society that harms and protects], Budapest, Közgazdasági és Jogi Kiadó, pp. 25–26.

108 Losonczi, Á., 1998, p. 36.

109 *Ibid*.; Losonczi, Á., 1986, pp. 64–67.

in socialist Hungary. Despite its social ambitions, the regime ended up with a structurally distorted and substantively deficient health system. Its policy efforts remained unrestricted by law, especially by an enforceable claim right of individuals, and it would never completely fulfill its promises in the field of health. For the individual patient, the socialist health system meant vulnerability and disenfranchisement. Healthcare, as one of the core social enterprises of Hungarian socialism, was therefore affected by the paradox that is inherent in socialist fundamental rights. The regime fell short of fulfilling its responsibilities to meet social needs because it refused to provide real rights for the protection of individual citizens as the users of health services.

Bibliography

1. Berman, H., 1965, Human Rights in the Soviet Union, *Howard Law Journal*, Vol. 11, No. 2, pp. 333–341.
2. Berman, H., The Struggle for Law in Post-Soviet Russia, in: Sajó, A., (ed.), 1996, *Western Rights? Post-Communist Application*, The Hague, Kluwer Law International, pp. 41–55.
3. Graaf, J. de, 2019, *Socialism Across the Iron Curtain*, Cambridge, Cambridge University Press.
4. Hahn, G., 1960, *A magyar egészségügy története* [The history of healthcare in Hungary], Budapest, Medicina.
5. Hahn, G., 1965, *A magyar egészségügy 20 éve* [20 years of healthcare in Hungary], Budapest, Ministry of Health.
6. Havelková, B., 2017, *Gender Equality in Law: Uncovering the Legacies of Czech State Socialism*, Oxford, Oxford University Press.
7. Hazard, J., 1982, The Common Core of Marxian Socialist Constitutions, *San Diego Law Review*, Vol. 19, No. 2, pp. 297–311.
8. Kaser, M., 1976, *Health Care in the Soviet Union and Eastern Europe*, London, Croom Helm.
9. Kopeček, M., 2016, Human Rights between Political Identity and Historical Category, Czechoslovakia and East Central Europe in a Global Context, *Czech Journal of Contemporary History*, Vol. 4, No. 1, pp. 5–18.
10. Kopeček, M., 2019, The Socialist Conception of Human Rights and Its Dissident Critique, *East Central Europe*, Vol. 46, No. 2–3, pp. 261–289.
11. Kopeček, M., 2020, Was there a *Rechtsstaat* in Late Communist East Central Europe?, *Journal of Modern European History*, Vol. 18, No. 3, pp. 281–296.
12. Kopeček, M., Dissident Legalism: Human Rights, Socialist Legality, and the Birth of Legal Resistance in the 1970s Democratic Opposition in Czechoslovakia and Poland, in: Donert, C. *et al.*, (eds.), 2022, *Making Sense of Dictatorship*, Budapest, CEU Press, pp. 241–270.

13. Kornai, J., 1993, *A szocialista rendszer*, Budapest, HVG Kiadó (in English: Kornai, J., 1992, *The Socialist System: The Political Economy of Communism*, Princeton, Princeton University Press).
14. Kornai, J., Eggleston, K., 2001, *Welfare, Choice and Solidarity in Transition*, Cambridge, Cambridge University Press.
15. Kovács, I., Bevezető [Introduction], in: Besnyő, K., (ed.), 1985, *Az Alkotmány a gyakorlatban* [The Constitution in practice], Budapest, Közgazdasági és Jogi Kiadó, pp. 1–33.
16. Kovács, I., 1988, *A Magyar Népköztársaság Alkotmányának fejlődése és az új alkotmány* [The development of the Constitution of the Peoples' Republic of Hungary and the new Constitution], Budapest, MTA Jogtudományi Intézet.
17. Losonczi, Á., 1986, *A kiszolgáltatottság anatómiája az egészségügyben* [The anatomy of vulnerability in healthcare], Budapest, Magvető Kiadó.
18. Losonczi, Á., 1989, *Ártó-védő társadalom* [A society that harms and protects], Budapest, Közgazdasági és Jogi Kiadó.
19. Losonczi, Á., 1998, *Utak és korlátok az egészségügyben* [Pathways and limitations in healthcare], Budapest, Magyar Tudományos Akadémia.
20. Markovits, I., 1968, Civil Law in East Germany, *Yale Law Journal*, Vol. 78, No. 1, pp. 1–51.
21. Markovits, I., 1978, Socialist vs. Bourgeois Rights: An East-West German Comparison, *University of Chicago Law Review*, Vol. 45, No. 3, pp. 612–636.
22. Markovits, I., 1982, Law or Order: Constitutionalism and Legality in Eastern Europe, *Stanford Law Review*, Vol. 34, No. 3, pp. 513–613.
23. Newton, S., 2015, *Law and the Making of the Soviet World: The Red Demiurge*, New York, Routledge.
24. Orosz, É., 1986, Egészségügyi alapellátás – területi különbségek 1876–1945 [Basic healthcare – Territorial differences 1876–1945], *Orvostörténeti Közlemények*, Vol. 113–114, pp. 61–71.
25. Orosz, É., 1992, *Egészségügyi rendszerek és reformtörekvések* [Healthcare systems and plans for reform], Budapest, Politikai Tanulmányok Intézete.
26. Pešelj, B., 1963, Socialist Law and the New Yugoslav Constitution, *Georgetown Law Journal*, Vol. 51, No. 4, pp. 651–705.
27. Pešelj, B., 1965, Recent Codifications of Human Rights in Socialist Constitutions, *Howard Law Journal*, Vol. 11, No. 3, pp. 342–355.
28. Quigley, J., 2007, *Soviet Legal Innovation and the Law of the Western World*, Cambridge, Cambridge University Press.
29. Ratkó, A., 1949, Megnyitó beszéd [Opening speech], *Népegészségügy*, Vol. 30, pp. 558–559.
30. Sajó, A., 1990, New Legalism in East Central Europe: Law as an Instrument of Social Transformation, *Journal of Law and Society*, Vol. 17, No. 3, pp. 329–344.
31. Schmidt P., 1984, *Szocializmus és államiság* [Socialism and statehood], Budapest, Kossuth Kiadó.
32. Sharlet, R., Stalinism and Soviet Legal Culture, in: Tucker, R., (ed.), 1977, *Stalinism: Essays in Historical Interpretation*, New York, Taylor and Francis, pp. 155–179.

33. Simonovits, I., 1970, A magyar egészségpolitika 25 éve [25 years of Hungarian health policy], *Orvostörténeti Közlemények*, Vol. 54, pp. 19–38.
34. Szabó, I., 1968, *Az emberi jogok* [Human rights], Budapest, Akadémiai Kiadó.
35. Szabó, I., 1987, *Ember és jog* [Human and rights], Budapest, Akadémiai Kiadó.
36. Szalai, J., 1986, Az egészségügy betegségei [The illnesses of healthcare], Budapest, Közgazdasági és Jogi Kiadó.
37. Towe, T., 1967, Fundamental Rights in the Soviet Union: A Comparative Approach, *University of Pennsylvania Law Review*, Vol. 115, No. 8, pp. 1251–1274.
38. Vastagh, P., 2017, Alkotmányrevízió 1972 [Constitutional revision 1972], *Múltunk*, pp. 203–244.

POTREBE IZNAD PRAVA: PRAVO NA ZDRAVLJE U SOCIJALISTIČKOJ MAĐARSKOJ I NJEGOVA IMPLEMENTACIJA

Marton Varju

Judit Sándor

APSTRAKT

U socijalističkoj Mađarskoj država je preduzela istorijski važnu inicijativu kako bi zadovoljila zdravstvene potrebe stanovništva. U tom cilju, ustavom je bila predviđena zaštita zdravlja kao osnovni državni zadatak, a kasnije je zaštićeno i pravo na zdravlje. Iako je bilo formulisano kao pravo građana, pravo na zdravlje nije osnažilo pojedinca. Umesto toga, izražavalo je zajedničke društvene potrebe, kao i odgovornost i institucionalnu obavezu socijalističke države da brine o tim potrebama. Ovo naglašavanje potreba u odnosu na individualna prava imalo je presudan uticaj na praktičnu primenu prava na zdravlje. Savremene i retrospektivne politike i sociološke analize ukazuju da je zdravstveni sistem u socijalističkoj Mađarskoj prepustio pojedinca institucionalnim i profesionalnim interesima, a da je vulnerabilnost pacijenta bila često iskorišćavana.

Ključne reči: socijalistička osnovna prava, pravo na zdravlje, državni socijalizam, socijalističko zdravstvo, vulnerabilnost.

Article History

Received: 27 February 2024

Accepted: 28 May 2024