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## THE HISTORY OF THE POST MORTEM EXAMINATIONS IN HUNGARY

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### ABSTRACT

*Any death must be determined by a post mortem. One element of this is to determine that death has occurred, a decision which can be made by a doctor and by a paramedic. A further element of the post mortem is to determine the mode and cause of death. In terms of the mode of death, we distinguish between natural and non-natural deaths. The cause of death can either be declared immediately during the post mortem (run over by a train, stabbing injury, firearms injury, body severely damaged) or only after an autopsy has been carried out. It follows from the foregoing that in most cases the post mortem can only reveal the mode of death, i.e. we can distinguish between deaths caused naturally and unnaturally, in which case an official procedure is required to close the case. However, in the case of deaths caused by natural diseases, the necessary steps can be taken without the involvement of the authorities. A post mortem is also important in the sense that we can deduce a possible crime from external injuries, wounds, and damage to the clothing worn by the deceased, so that the authority can be provided with a fresh trail in their attempts to solve the case. At the end of the 19th century in Hungary, a law incorporating a completely new approach to a public health was introduced, which created regulations of a European standard, and at the same time raised the post mortem to a completely new, European level.*

**KEYWORDS:** *hungarian coronary system, autopsy, extraordinary death, history of law, medical law.*

### 1. INTRODUCTION

*In this article, we give a historical overview of the post mortem examinations in Hungary from the 12th century to the second half of the 19th century, and then follow the practice of the post mortem following its establishment in Law XIV of 1876, right up until the 50s and 60s of the 20<sup>th</sup> century, when the old post mortem was replaced by a new post mortem investigation.*

*We will examine the changes which occurred in the 20<sup>th</sup> century, and then outline the current regulations, showing how the initially modern, forward-looking death system for investigating cause of death has become more and more superficial as a result of continuous modifications.*

### 2. INITIAL EXPERIENCES OF EXPERTS IN HUNGARY

*In Hungary, the establishment of the first regulations relating to investigations into cause of death can be linked to the name of Moys-nádor, who, in 1270, determined the*

amount of punishment for damage caused by a crime, based on the length of the wounds<sup>1</sup>. Otherwise, in the 11<sup>th</sup> and 12<sup>th</sup> centuries the task of carrying out the examination of corpses in connection with crimes was the responsibility of the judges, but the first experts in the current sense of the word could be said to be midwives.<sup>2</sup>

### ***2.1. The roles of the barber's craft and barbers in investigations into cause of death***

The word barber first appeared in written form in 1436, when it meant "the craft of caring for hair and beards".

About a century later, in the second half of the 16<sup>th</sup> century, the barber's trade already included "medical assistance and surgical" activities, and according to the Hungarian guild charters issued in 1557 and 1583, healing wounds was already part of the barber's craft<sup>3</sup>. The development of the barber's profession towards care for wounds is explained by the fact that at this time doctors performed only internal medicine tasks, so the barber could do external medical activities.

According to some sources, besides caring for and healing wounds, barbers also carried out post mortems<sup>4</sup>.

The fact that the profession of barber spread much more widely than that of doctors was also facilitated by the fact that ordinary peasants could only afford the services of barber-surgeons. The barber was able to work with an appropriately equipped workshop and assistants after acquiring the right experience<sup>5</sup>. All in all, it can be stated that the barber's profession was initially a highly respected occupation, as King Sigismund ennobled his court barber in 1430 as a sign of recognition of his merit.

The Praxis Criminalis II, published by Ferdinand II in 1656, also contained several provisions on barbers and doctors<sup>6</sup>. The statutory provision required a compulsory surgical examination for the burial of the deceased, without which the body could not be buried, so the occurrence always had to be examined by a qualified surgeon, who also had to establish the location of any wounds, and give a description of their nature, as well as detect and accurately describe fatal injuries and effects. The test had to be carried out even if the culprit remained unknown<sup>7</sup>.

During the reign of Maria Theresa, the powers of barbers were significantly reduced, as they were banned by national regulation from practicing internal medicine. By the decree issued in 1745, the Council of Deputies further narrowed the tasks of the barber, as this regulation precisely defined the tasks they could perform. From 1755 onwards, the rules for carrying out barber's activities were further tightened, as the precondition for the activity was the passing of the compulsory surgical exam. In 1761, membership of the barbers' guilds was already subject to an examination, thereby further restricting the operating conditions<sup>8</sup>.

The end of the barber's occupation as an external medic and a healer of wounds and their return to caring for the face, teeth and beard is linked to introduction of the medical course established at the University of Nagyszombat (Trnava) on 12 May 1635, by Péter Pázmány, Archbishop of Esztergom. Regular surgical training began the 1770s, and from 1786, doctors were required to study surgery at the university, that is to say, the range of

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<sup>1</sup> MAGYARY-KOSSA GYULA: Magyar Orvosi Emlékek II (Hungarian Medical Recollections II). Magyar Orvosi Kiadó Társulat. Budapest. 1940. p. 197.

<sup>2</sup> KENYERES BALÁZS: A törvénytörő orvostan tankönyve. I. rész. (The Medical Textbook for the Legal Profession, Part I) Novák Rudolf és tsa. Budapest. 1926, p. 17.

<sup>3</sup> SZULOVSZKY JÁNOS: A borbélytól a fodrászig (From the barber to the hairdresser) - História 2006. (28. évf.) issue 1, pp. 31-33.

<sup>4</sup> BOGDÁN ISTVÁN: Régi magyar mesterségek (Old Hungarian Professions). Neumann Kht. Budapest. 2006, p. 260.

<sup>5</sup> GOSZTOLA ANNAMÁRIA: A borbély-seborvosnál (At the barber-surgeon's). Lege Artis Medicinae. 1997. no. 7, p. 606.

<sup>6</sup> MAGYAR-KOSSA GYULA, op. cit., p. 193.

<sup>7</sup> KENYERES, op. cit., p. 17.

<sup>8</sup> SZULOVSZKY, op. cit., pp. 31-33.

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activity of today's medical profession was established, and the barber had to abandon caring for and healing wounds. At that time, post mortems had already been made compulsory by royal and conciliary decrees, but in the absence of a sufficient number of doctors, for long time they could not be carried out even in large cities.<sup>9</sup>

### *2.2. Creating the basis for the modern post mortem in Hungary*

The focus of the post mortem regulations was initially centred around apparent death and its problems. Apparent death caused considerable problems in the Monarchy in the age of Enlightenment. The problem was based on the fact that even medical science itself had not yet defined the exact concept of death and the conditions for its determination. The problem was that at this time, death was in most cases tied to the cessation of breathing, and the dead, or those perceived to be dead, were often not seen by a physician, so for a layman the death was difficult to separate from simple fainting. So there were a number of situations where a person considered dead had been nailed into a coffin almost immediately after falling unconscious, so that it could happen that an ill person could be buried alive. On the other hand, we cannot ignore the fact that both Christian and Jewish traditions around death respected the will of God, and therefore they explicitly forbade cutting open and examining the dead.

It is logical, therefore, that in the Enlightenment era, absolute rulers and the slow-growing public health bureaucracy were first and foremost concerned with the risk of apparent death and its recognition. Maria Theresa and Ferenc I issued several decrees calling on their subjects to revive the undead. Early regulation in Hungary is linked to the name of Maria Theresa, who initially in 1769 and then again in 1775 made it mandatory to wait 48 hours after the death; only after this time could the dead be buried. However, the provisions were initially not adhered to in practice, partly due to the above-mentioned religious reasons and, partly to the absence of conditions relating to the medical concept of death and how to establish it.

The first comprehensive rule on post mortem investigations in Hungary was published in 1826, according to which the duties of the coroner included the detection of violent death, the recording of deaths and the reporting of epidemics. In 1841, István Széchenyi proposed the establishment of independent houses of the dead, in which the deceased would be laid until the appearance of the unmistakable sign of death, the decay of the body.<sup>10</sup>

In Hungary, the beginning of the bureaucratization of death appeared in the era of absolutism, i.e. between 1849 and 1867, and extended into the second half of the 19th century. At that time, death and the regulations related to it were removed from the jurisdiction of the Church, which had enforced them according to its religious convictions, and were placed under the state administration, which had authority over the churches. Following this, public health laws and regulations developed the most general framework of rules related to death, and so, for example, the liturgy itself was based on legal provisions. Of course, the fact that in this age one of the important issues of medical science became the definition of the essential criteria for determining the concept and occurrence of death cannot be neglected either.<sup>11</sup>

Unfortunately, the appearance of the rules relating to post mortems initially had no effect on practice, as there were cases where unqualified individuals examined the dead and there were also places where the 48-hour observation of the dead person was not observed.<sup>12</sup>

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<sup>9</sup> KÁDÁR LÁSZLÓ, BALÁZS PÉTER: Temetés és haláleset kapcsán követendő eljárások dilemmái a modern közegészségügyi igazgatásban (Dilemmas relating to the procedures for burial and death in modern public health administration). *Egészségtudomány*, LIII. évfolyam, 2009. no. 3.

<sup>10</sup> PESTI HÍRLAP (Pest News) 1841.(03.03) Tavaszelő (Spring Number) 3. no. 18. Szerda Vezércikk (Wednesday leading article)

<sup>11</sup> HANÁK PÉTER: A halál Budapesten és Bécsben: a nagyvárosi halál elidegenítése a múlt századvégén. (Death in Budapest and Vienna: the estrangement of death in the metropolis at the end of the last century), *Budapesti Negyed*. VI. évfolyam. 1998. no. 4, pp. 123-138.

<sup>12</sup> *Budapesti Hírlap* (Budapest News) 1853. no. 9, 11th January 1853, p. 42.

At the 1863 general assembly of Hungarian Physicians and Examiners of Nature held in Budapest, the participants drew attention to the shortcomings and deficiencies of the post mortem system. So a unified post-mortem was still not operating properly. Clearly, the earlier instruction of 1826 was still not applied in practice.<sup>13</sup>

### 3. THE POST MORTEM AT THE END OF THE 19TH CENTURY AND IN THE 20<sup>TH</sup> CENTURY IN HUNGARY

In 1876, a law on the organization of public health was drafted,<sup>14</sup> Chapter 12 of which contained the procedural rules for dealing with the dead and dead bodies, and also made provisions for burial and cemeteries. The law required that it be ascertained whether death had actually occurred, and to prove or rule out whether death had occurred as a result of a crime.<sup>15</sup> Section 110 of the Act imposed a compulsory post-mortem in the event of death, and banned anyone from being buried in the absence of a written declaration of death by the coroner. In the event of an epidemic, a forensic autopsy should be carried out on corpses, so that epidemic or contagious diseases could be recognized. The autopsy was also mandatory if the authority considered it necessary for some reason.<sup>16</sup>

The rules of a truly modern post mortem came into force on January 1 1877, with Decree no. 31.025 issued by the Minister of the Interior. This decree and the Public Health Act jointly defined the procedures and rules to be followed in the event of death, as well as the actions to be taken in the event of apparent death, extraordinary death, and the public health responsibilities associated with burial. The decree authorised any doctor or surgeon qualified to practice in the country to become a coroner if he or she had passed a coroner's exam or obtained other qualifications for the practice of post mortems. Those coroners who had already pursued their activities prior to the entry into force of the decree, could become a coroner without medical or surgical training if they had been working as an official coroner for at least two years, and their service was performed impeccably. It is important to mention that even though they could not become coroners, local and community doctors could also perform investigation into cause of death. The law defined those qualified to carry out post mortems so broadly for the simple reason that there were not enough coroners available in the country at this time.

According to the decree, the post mortem had to be started immediately after the notification of death. In the case of suspicion of apparent death, the physician or the surgeon was required to begin resuscitation activities; if the examination had not been initiated by a medical coroner, resuscitation could only begin when the doctor who had been notified appeared on the scene. If the suspicion of apparent death did not prove to be well-founded, the coroner had to make a decision on the question of the extraordinary nature of death. The extraordinary causes were partly covered by the previously mentioned decree on investigation into cause of death, and partly by other provisions.

It was considered an extraordinary death under the Regulation in the following cases:

- “1. If during the examination of the corpse, suspicion or signs of violent death can be detected (suicide, murder),*
- 2. if the individual has died suddenly*
- 3. if bodies were found*
- 4. if death occurred due to a disease that usually develops as a contagious epidemic,*
- 5. for unborn foetuses, regardless of their age and development;*

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<sup>13</sup> TÓTH GYÖRGY: Halottkémlés Hazánkban a XIX. – XX. században. (The Coroner's Inquest in Hungary) Hadmérnök. XII. évfolyam 3. szám., September 2017, p. 307.

<sup>14</sup> 1876. évi XIV. tv. a közegészségügy rendezéséről (Law XIV of 1876 on the public health system)

<sup>15</sup> 1876. évi XIV. tv. a közegészségügy rendezéséről 109.§ (Section 109 of Law XIV of 1876 on the public health system)

<sup>16</sup> 1876. évi XIV. tv. a közegészségügy rendezéséről 110.§ (Section 110 of Law XIV of 1876 on the public health system)

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### *6. and deaths of children under 7 years of age without medical treatment.*<sup>17</sup>

In 1876, Decree no. B.M. 31.025 of 1876 was the first to regulate the post mortem in a comprehensive manner, as the legislator extended the scope of those authorised to carry out post mortems, laid down the conditions for becoming a coroner, and organized the procedure to be followed in the event of death.

In the case of judicial and police investigations of the dead, the special rules of decree no. 78.879 of 1888, which included general rules formulated in decree no. 78.579 of 1888 further authorised the application of decree no. 31.035 of 1876, and also authorised the establishment of premises suitable for storing corpses and performing autopsies. The decree stipulated that the corpses would either be taken to the nearby hospital or, if the hospital was not within reach, to the morgue created in the cemetery, and that the autopsy would be carried out here; it also included a detailed list of the compulsory equipment for the autopsy rooms.

On January 1 1900, Act XXXIII of 1896 of the Code of Criminal Procedure entered into force.<sup>18</sup> Sections 240-243 covered post mortems and autopsies. The Criminal Procedure Code provided that investigation into cause of death and autopsy should be carried out when there was a suspicion that someone had died as a result of a crime or misdemeanour, and that it was also possible to exhume an already buried body if in the opinion of the expert present more useful information could be gained from an examination and autopsy. The investigation into cause of death and autopsy had to be carried out by two medical experts and not by a physician who had treated the deceased for an illness in the period prior to death. The attending physician was required to appear before the investigating judge and provide information on the course of the illness before the autopsy.<sup>19</sup>

In the era after World War II, Health Ministry Instruction no. 8200-5/1954 stipulated that “the coroner shall examine the deceased within 12 hours of the announcement.” The investigation had to cover whether death had actually occurred, the cause of death, whether the death occurred as a result of the crime, and whether death could be associated with an infectious disease.<sup>20</sup>

Health Ministry Official Notice no. 32 523/1961 required the coroner to examine the entire corpse in all cases, in an undressed condition. The post mortem thus provided not only the possibility of noting the condition of the corpse, but also enabled conclusions to be drawn on the cause of death. The decree confirmed the previous Health Ministry Instruction no. 8200-5/1954 to the coroner that the post mortem must extend to an examination of whether the death had occurred as a result of a criminal offence. Of course, most of the time, there was only a suspicion of this. In cases where the cause of death could clearly not be established, or when external injuries were detected on the body, and the circumstances on the site of death indicated a violent act, such as a crime, suicide, or accident, the death had to be classified as an extraordinary death. In this case, the coroner was subject to reporting obligations to the competent police authority in relation to the death and could not issue a death certificate,

Act no. II of 1972 on health affairs separated the post mortem investigation and the regulations which had governed it up to that point, established the concept of the post mortem, and the establishment of the cause of death, and separated the two concepts from each other. From that point, the post mortem and its accompanying documentation became the exclusive competence of doctors.

Ministry of Health decree no. 5/1984 contained the necessary activities related to the investigation into cause of death and extraordinary death which had been described in Act II

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<sup>17</sup> 1876. évi 31.025 számú Belügyminiszteri Rendelet (Interior Ministry Decree no. 31.025 of 1876)

<sup>18</sup> The first codified criminal law procedure was unique in relation to the post mortem, as the subsequent procedural laws no longer contained the rules relating to the post mortem; none of the Acts - Act III of 1951, Act no. 8 of 1962, Act no. I of 1973, nor Act 19 of 1998, which is still in force – contain provisions relating to the post mortem.

<sup>19</sup> 1896. évi XXXIII. tc. 240-241. § (Sections 240-241 of Act no. XXXIII of 1896)

<sup>20</sup> 8200-5/1954. Eü.M. sz. utasítás 21.§ (1) (Section 21 of Instruction 8200-5/1954 of the Health Ministry)

of 1972 on health care. The decree clearly established the post mortem as a purely medical task and prescribed a range of competent medical investigators for each type of death. It also contained a detailed description of the requirements related to autopsies. This regulation had previously included instructions relating to extraordinary deaths, but had not laid down detailed rules.

Law CLIV of 1997 (hereinafter referred to as “Eü.tv”) on health affairs introduced new concepts related to death and re-regulated the provisions on the post mortem. Chapter 12 of the Eü.tv contains provisions for how to proceed in cases of death. Section 216 of the Act contains the concepts of death, clinical death, brain death, perinatal death, early or middle-aged foetal death, and accident. These definitions were not included in the earlier Act II of 1972. In addition, the Eü.tv also extended the task of establishing death to paramedics, as well as doctors. Another innovation was that Eü.tv introduced the concept of the coroner’s expert and made it possible to use him/her in cases of extraordinary death, in order to help general practitioners. Unfortunately, this innovation only existed in theory, since in practice the use of advisers has not yet been introduced, even today.

The detailed rules were laid down by the legislator in Combined Article 34/1999 BM-EüM-IM, which included the provisions of the Health Act concerning the dead and the procedures to be followed in the event of extraordinary death. As a police norm, ORFK Order no. 1/2006 was published, regulating police procedure to be followed in the event of an extraordinary death, which the procedure contained in ORFK instruction no. 24/2014 followed.

Furthermore, during this period, on March 15 2014, Section 218 of the Eü.tv, which had previously distinguished natural and extraordinary deaths, was also modified. The amendment abolished the main category of extraordinary death, and instead - in addition to the notion of natural death - introduced the concept of non-natural death, subdivided into two subgroups of extraordinary deaths and deaths resulting from criminal activity.

The 2007 amendment of Act XIX of 1998 on Criminal Procedure determined the conflict of interest of experts working in the police force, and was soon followed by amendment of Government Decree no. 282/2007 which radically transformed the practice of the post mortem in Hungary; the Forensic Medical system disappeared, which meant that post mortems involving extraordinary deaths were subsequently carried out mainly by general practitioners and doctors on duty. Official and judicial autopsies were carried out by the Judicial Expert and Research Institutes (ISZKI), and by the National Centre for Expert Research (NSZKK) and by the Hungarian Medical Institutes of the Hungarian Universities, a situation which continues to this day.

Through the Combined BM-EüM-IM Decree no. 34/1999 which entered into force in 1999 the Eü.tv regulated the procedures to be followed in the event of death, as well as those for extraordinary death, a situation which continued until 2013. The introduction of the legislative changes and the introduction of a major category of non-natural deaths in the intervening period also made it necessary to amend the provisions of Decree 34/1999, which was amended by Government Decree no. 351/2013.

#### **4. CONCLUSIONS**

All in all, it can be concluded that the post mortem has faced a number of problems over the past nearly eight centuries in Hungary. Initially, the absence of a proper treatment of apparent death was not only obvious to legislators, but also to the general public. This problem was overcome by the modern, forward-looking regulation of the late 19th century. On the basis of the what has been discussed above, it can be stated that the late 19th century Hungarian coronary system can be regarded as a forward-looking, pioneering regulation, with particular reference to Decree No. 78.889 of 1888, which precisely defined the autopsy techniques to be performed for each examination, including a precise description of the type of incision and the provision of autopsy equipment. As we have seen, after the Second World

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War, new rules were created, which were not necessarily forward-looking; indeed, taking into account the abolition of the coroner's system, the restriction of the conditions for obtaining a court-ordered post mortem may give rise to several concerns. In the absence of guidelines or protocols, GPs and physicians on duty do not have the appropriate guidance to carry out a post mortem, which can be a source of many errors. Moreover, the fact that the procedure for the dead has remained essentially unchanged over the last 150 years cannot be ignored.

It can be stated that the Hungarian autopsy rate - which is 35-37% - is the highest among European countries. This high rate goes completely against international trends. The reason for this high rate of autopsy is that in the case of illness-related autopsies, it is possible to maintain some pathology departments in existence through funding for autopsies. In recent times, there have been significant changes in cases of extraordinary deaths - not necessarily in the right direction -, but in many cases the ordering organization regulates the autopsy. (The question arises as to whether this regulation is practically applied in appropriate cases.) Of course, it may not always be possible to agree with this provision, but through a proper and adequate experience of post mortems and co-operation with the ordering organization, a new, modern foundation for the procedure can be developed in the future, rather than relying on the survival of a procedure very similar to that of the current police doctor system.<sup>21</sup>

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<sup>21</sup> Such examinations may also be important in proving medical malpractice. MADAI SÁNDOR: *Az „orvosi műhiba” gyakorlati problémáihoz (To the practical problems of the medical malpractice)*. in: Karsai Krisztina szerk. Keresztmetszet. Tanulmányok fiatal büntetőjogászok tollából. Pólay Elemér Alapítvány. Szeged. 2005. 147-152.

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- [47] Budapesti Hírlap 1853. 9. szám. 1853.január 11.
- [48] Budapesti Hírlap 206.sz. 1857.szeptember 11.