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The criminalization of informal patient payments in the Hungarian healthcare sector

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Abstract

Informal patient payments represent a semi-legal phenomenon in many countries with a low GDP. This institution does not only exist in post-state-socialist states. In Hungary, from 1 January 2021, informal patient payments have constituted a crime of corruption. The only opportunity for patients to express their gratitude to healthcare workers materially is in the form of a gift of small value provided after care. Hungarian doctors' salaries have been greatly increased, though nurses have not been remunerated in similar measure. Corrupt payments in the Hungarian healthcare sector are prosecuted. Covert agents thus create situations in which doctors and nurses might be trapped. The Hungarian efforts are top-down measures. Positive general prevention should ultimately be stressed. Certainly, taxing legal gift-giving would promote transparency in the Hungarian healthcare system.

Keywords: informal patient payments; corruption; positive general prevention; post-state-socialist healthcare culture; Hungary

1 Introduction

Corruption is more than a technical term in criminal substantive law. It is also a criminological term, which has a wider meaning than the crime of corruption. Some sociological forms of corruption do not fall within the scope of criminality. For example, the corruption of social capital, the erosion of social cohesion, corrupting citizens' way of thinking about good and bad, and the moral corruption of the doctor-patient relationship do not necessarily violate a national Criminal Code.

The guilty act is usually a criminal act; however, the sociology of crime also encompasses social phenomena that are not necessarily tantamount to a crime according to the law. National Criminal Codes throughout the world criminalize different kinds of corruption, and the social relevance of the wider sociological term of corruption is indisputable. There is a common standard for corruption in the national criminal law in the great majority of countries. Offering money for illegal benefits is a crime in states under the

rule of law. However, it is the legislature that determines what is illegal, for example, in a provider-patient relationship. Corruption is partly a legal question and partly a cultural one. In criminal law, liability for corruption can only be established if it is proven in court with 100 per cent certainty.

Zhang et al. (2009, p. 213) hold that 'increased social support, measured as public expenditure on the healthcare needs of citizens, reduces a nation's level of corruption'. This claim is clearly true; however, corruption in healthcare and the impact of this on nationwide corruption are two different matters. Corruption in healthcare is not only found in post-state-socialist countries and other states with especially low GDP, nor does the quality of healthcare necessarily depend on the state subsidising the healthcare sector. Indeed, healthcare systems in wealthy countries are based on patients paying for healthcare services, while others offer them free of charge. For instance, in the area of medical malpractice, the avoidability standard applies in a few wealthy countries. However, most countries with a high GDP maintain the negligence standard.

2 Methodology and data

The article is based on information retrieved from the recent literature on how Central and Eastern European countries have responded to the challenges of state-socialist remnants like informal patient payments, with a focus on Hungary. The similarities and differences between these countries yield added value. Indeed, the different kinds of informal patient payments in Central and Eastern Europe call for a nuanced understanding.

Cases from the Hungarian Collection of Court Decisions and fresh data on integrity testing among healthcare workers by the Hungarian National Protective Service *(Nemzeti Védelmi Szolgálat),* which is an anti-corruption police force, *inter alia*, point to serious attempts to eliminate informal patient payments in Hungary.

3 Informal patient payments in the post-state-socialist and early Hungarian healthcare cultures

Informal patient payments can be universally defined as giving cash or gifts to the healthcare provider as an incentive to violate their obligations to the patient. The payments (1) are informal; i.e. they do not represent a legal fee for healthcare services and might constitute a crime; (2) are provided to obtain a privilege or to ensure a normally legal patient right; (3) can be supplied in cash, in kind or in any other form; (4) comprise the offering of an undue benefit to the provider; and (5) are ethically and/or legally prohibited by law.

Informal patient payments are not only a Hungarian phenomenon. We encounter them in most post-state-socialist countries, such as Croatia (Franic & Kojouharov, 2019, p. 49) as well as Bulgaria and Ukraine (Stepurko et al., 2017, p. 454). In Western Balkan countries, cash is 'the most common form of bribery in two-thirds of all bribery cases' (Mejsner & Karlsson, 2017, p. 630). Gift-giving is less frequent in healthcare. Gifts of small value, given after care, are considered less detrimental to society in Central and Eastern

European post-state-socialist countries. This recognition influenced Hungarian lawmakers in maintaining the legality of giving gifts of small value after care.

The 2017 Special Eurobarometer Report on Corruption showed that among the Czech Republic, Poland, Hungary, Slovenia, Slovakia, Estonia, Latvia and Lithuania, informal payments in the healthcare sector were 'most widespread in Hungary (reported by 17 per cent of those who had used healthcare in the previous 12 months), while Slovenia and Estonia occupied the opposite end with 3 per cent of users paying informally' (Tambor et al., 2021, p. 20). According to Horodnic et al. (2021, p. 1), in the EU in 2020, 'the highest rate of informal payments, used in the form of bribes, was encountered in the medical sector (6 per cent of all respondents), with 22 per cent of patients in Romania making such payments and 19 per cent in Bulgaria'. In Slovakia, despite the healthcare reform of 2003 introducing fees for such services as hospital stay, a visit to the physician and transport by ambulance, informal patient payments have been maintained because patients still wish to purchase a standard level of care and are not aware of what they have to pay for and what they do not (Cimova, 2024, p. 462). The case of Slovakia demonstrates that the introduction of visit fees in the Hungarian healthcare system in 2007 would likely not have eliminated informal patient payments had it not been cancelled as a result of a plebiscite in 2008.

Villanueva (2023, p. 144) points out that 'the complicated relationship between state and civil society may undermine the supposed positive impact of civil engagement in anti-corruption'. There is still much to do to make the dialogue between civil society and the state more effective in Central and Eastern European post-state-socialist countries. Civil society in post-state-socialist European countries has played less of a role than expected during the three decades after the regime change. Social capital is not at the level of Western European countries. This has led to a weak impact of civil society on social phenomena, such as corruption in healthcare.

This sort of corruption is immanent in the national culture of the countries concerned. It is indeed not only a legal question, but also a cultural one. It is related to the low level of the rule of law, to the economic situation of the country and to existing cultural norms rooted in citizens' attitude towards such white-collar criminality.

Informal patient payments are mostly tied to some groups of states. However, approximately 7.3 per cent of all health expenditures globally are lost to healthcare fraud and abuse annually (Vian et al., 2022, p. 1). The self-assessed health status of patients in the public healthcare sector and the quality of public healthcare are lowered by the phenomenon of informal patient payments. Among the post-state-socialist Eastern European countries, the situation is the direst in Armenia and Georgia (Mavisakalyan et al., 2021, p. 994). In Armenia, unsatisfactory public financing of the healthcare system has led to the privatisation of a great many healthcare institutions (Zopunyan et al., 2013, p. 42). We can see similar privatisation in other Eastern European post-state-socialist countries as well. Informal patient payments are meaningless in the private healthcare sector.

The criminalization of informal patient payments in the healthcare sector is the focus of my recent research. On the one hand, if we regard the *objectum sceleris*, informal patient payments are not as detrimental to society as pharmaceutical companies corrupting providers. On the other hand, informal patient payments corrupt not only the doctor-patient relationship, but also the foundations of the social contract. These main forms of healthcare corruption are not comparable to each other.

In the history of post-state-socialist states, informal patient payments appeared before state-socialism and developed into its corrupt form during the state-socialist era. After the political changes around 1989, they generally continued. Before state-socialism, unpaid junior trainee doctors in Hungary received money from patients as an expression of gratitude. Older doctors also used to offer the informal patient payments they had received to their underpaid younger colleagues. In the first half of the 20th century, it was rather an honour to be a medical doctor than a well-paid profession. Only experienced physicians represented a true value in the marketplace of health professionals, and it was a long road for a physician to become recognised monetarily by wealthy patients.

In the early years of modern medicine, the medical profession was characterised by mysticism, which gradually disappeared with the development of diagnostic and treatment techniques. The 'doctor knows best' principle was long maintained. By that time, the medical profession in Hungary was passed from father to son, while women were rare among medical doctors.

In any case, being a young doctor without connections was not an attractive prospect. Until the 19th century, some ethnic minorities were excluded from the legal profession in Hungary; however, they could opt for a medical career. It was an excellent opportunity for upward mobility: the medical profession was open to all without ethnic discrimination, though it was not as well paid as the law. However, in Hungary, Act XXV of 1920 introduced a *numerus clausus*, and its executive order limited the number of ethnic students in medical schools, law schools and other areas of higher education.

Only rich families could afford to hire a physician to work for them, and public healthcare in its modern form did not exist in Hungary before World War II. Act XIV of 1876 on Public Healthcare laid down that towns and villages with a large number of inhabitants should employ a physician to ensure healthcare for the poor free of charge. Groups of small villages had to employ a district doctor *(körorvos)* collectively. Act XXXVIII of 1908 maintained this regulation, with §27 stipulating that towns and large villages should employ a midwife, while groups of small villages could finance one collectively. The task of municipalities and the state was to finance a physician and a midwife for the poor. The county controlled the functioning of the healthcare system for the poor. Salaries paid to doctors and midwives were low. Patients who could afford it gave money to the physician and midwife; however, the less well-off usually offered chickens, fruit and vegetables, if anything, which was not an attractive extra remuneration. Most of those who opted for the medical profession in the 19th century and the first half of the 20th century found themselves faring no better than a teacher, a priest or any average state employee. By that time, informal patient payments had not emerged as a form of corruption in Hungarian court practice.

The social status of physicians changed in state-socialist Hungary following a short period after World War II. They gained privileges and an exceptional reputation within society, backed by the state. As concerns informal patient payments, the state-socialist leaders of Hungary briefly discussed this problem in the 1950s and, in the end, remained inert. The Minister for Health (Anna Ratkó) and the head of the physicians' labour union (Emil Weil) proposed a significant pay rise for medical doctors in an effort to eradicate informal patient payments. Nonetheless, the Politburo of the state-socialist party that governed Hungary (the Hungarian Working People's Party) did not agree to a rise in salaries.

The Politburo decided to postpone a decision on the problem for three years and allowed the acceptance of informal patient payments until then. Today, we know that no measure was taken to tackle healthcare corruption after this deadline.

In Hungary, according to Act II of 1972 (i.e. the state-socialist era Act on Health), only physicians working in public healthcare were allowed to have private consultations for extra money. Mostly, it was dentists who opened private consulting rooms. Only a few medical doctors followed this practice. In fact, this led to a certain form of 'privatisation' of the dental profession under state-socialism, thus producing a fairly high income for dentists. To a certain extent, this resulted in a gap between dentists and physicians. Dentists did not need informal patient payments, while physicians were dependent on them. In state-socialist Hungary, gifts of high value were also given to doctors besides cash. It was common for expensive alcoholic beverages to be offered to them. A long list of alternative gifts were also given from labour-saving devices to foreign journeys. As maintained by the preamble to the state-socialist era Act on Health, 'the state shall provide the people with healthcare in accordance with the principles of socialist healthcare'. This Act often referred to 'socialist morals' as a standard in healthcare, which meant something different from today's medical morals; it also implied faithfulness to the state and the state-socialist party governing it. Patients resorted to informal payments because they did not trust paternalistic state provision (which was based on an extremely hierarchical relationship between doctors and patients), and/or because they wanted advantages in a universal-egalitarian system not available to everyone.

Ádám (1989, p. 315) argues that in Hungary, 'The habit of giving a gratuity [to doctors] became so frequent at the end of the 1950's that countermeasures were enacted. These have been completely ineffective.' On 13 January 1959, the Politburo of the state-socialist party argued that the working people were entitled to a high level of healthcare for free and that the corruption, the vending of beds to patients and the blackmailing of patients were to be stopped by educative and administrative measures (Ádám, 1984, p. 547).

In Hungary, as a general rule, Act C of 2020 bans public healthcare workers from concurrently practising in private healthcare. However, as an exception, the option is legally upheld by §4 of the Act if permitted by the National Directorate General for Hospitals. At present, we see a great many medical specialists receiving this authorization.

There are some common features in post-state-socialist customary rights orientating the institution of informal patient payments. At first sight, we could draw parallels. Nevertheless, if we examine the causes of informal patient payments in those countries in depth, we find healthcare systems based on differing social values. However, corruption is ubiquitous in all those healthcare cultures.

4 Informal patient payments as a crime in the Hungarian legal system

In state-socialist Hungary, the Act on Health of 1972, §75(2), forbade informal patient payments. Patients were to be informed of this ban, which was made public in written form at the entrance to every healthcare facility. Nonetheless, informal patient payments were inherent in the Hungarian healthcare culture and were not generally prosecuted. Only

exceptional cases were brought to court. The state was mostly silent on informal patient payments, as in neighbouring state-socialist countries. In this way, in part, patients financed public healthcare instead of the state. Still, informal patient payments theoretically remained a crime. Selective prosecution was an important tool in the hands of the state-socialist state.

With reference to the Act on Health of 1972, §75, quoted above, the Hungarian Supreme Court declared in ruling EBH 1999.18. that an informal patient payment after care was not contrary to law; however, informal payments could not successfully be claimed as indemnity in a civil suit for damages. Thus, legally, it was understood as a true expression of gratitude that was not requested by the provider.

In 2001, informal patient payments amounted to Ft 16.2–50.9 billion (i.e., €64.8–203.6 million or $77.1–242.4 million) in Hungary. This means that informal patient payments constituted 1.5–4.6 per cent of total health expenditures (Gaal et al., 2006, p. 86). The distribution of informal patient payments among healthcare workers was unequal under the old regulation, and the existing latent informal payments are still unequal in Hungary. Mostly, this money goes to physicians and not to nurses (Julesz & Kereszty, 2022).

In Hungary, before 1 January 2021, under the Act on Health of 1997, according to ruling EBH 2015. B.27. of the Hungarian Supreme Court (named the Curia since 2012), informal patient payments did not constitute an act of corruption if (1) they were provided by the patient or a relative after care, (2) this was not done under duress, and (3) they did not incentivize the provider to violate their legal obligations.

In Hungary, informal patient payments have constituted a crime from 1 January 2021, even if provided after care (Criminal Code, §§290–291), with both the patient and the healthcare worker being punishable for corruption. The criminalization of informal payments to doctors, nurses and other healthcare workers is a milestone in Hungarian medical law. For long, informal patient payments were not punished, and healthcare workers expected them (Julesz, 2018). Ambrus (2020, p. 10) argues that §290(6) of the Hungarian Criminal Code criminalizes a subsidiary case of corruption.

The COVID-19 pandemic pushed back the number of doctor-patient encounters and, as a result, informal patient payments. Hungarian legislative reform was brought about during the pandemic. At any rate, informal patient payments significantly decreased. This may be due to the criminalization of such payments as well as to the fewer occasions to hand over cash or gifts (Julesz, 2022, pp. 34–35; see also Ságvári et al., 2021; Vicsek & Mikó, 2023). Horodnic et al. (2021, p. 12) hold that '12 per cent of the patients in Central and Eastern Europe made at least one informal payment during the analysed period [the COVID-19 pandemic]'.

The reasons for informal patient payments today are the low salaries earned by health professionals other than physicians (e.g. nurses) and the low level of trust placed in the ethical behaviour of healthcare workers. Horodnic et al. (2022, p. 6) argue that the high prevalence of informal patient payments is linked to low trust in public authorities. The authors offer the examples of Romania, Lithuania and Bulgaria. They arrive at the following astonishing result: 'Only for Hungary is the value of the Institutional Trust Index very close to the average registered across all the 27 EU countries: 0.55 compared to 0.52' (Horodnic et al., 2022, p. 6). Sakalauskas points out that 32 per cent of Lithuanians admitted to having corrupted someone in 2004, while 10 per cent had engaged in corruption in

2021. Corruption in Lithuania is common in the healthcare sector (Sakalauskas, 2022, p. 309). It also exists in healthcare in Western European EU Member States, such as Germany, though there it usually means something completely different, for instance, when a provider proposes a blood glucose meter produced by a chosen firm in exchange for a bribe (Sommer, 2018, p. 465). Such healthcare corruption is not comparable to informal patient payments in post-state-socialist EU Member States.

Since informal patient payments were criminalized, a few criminal proceedings have been initiated against doctors and nurses in Hungary. The first aim of the state is to punish corruptible healthcare workers in the service of general prevention. In particular, I agree with Hirtenlehner et al. (2023, p. 85) that positive general prevention is more favourable to society than negative general prevention.

Patients who pass on illegal money are engaging in active corruption and are only prosecuted in low numbers. The Hungarian Act on Health and the Criminal Code were modified with the primary aim of eliminating corruption in the healthcare sector and with the secondary aim of changing the mindset among Hungarian patients in the long run. The secondary aim would best serve the goal of positive general prevention. Meanwhile, doctors and nurses have been tested for corruption by covert agents.

Natural situations have also occurred; however, they are difficult to spot. If there is an unbroken chain of indirect proofs, this may be sufficient. However, if any doubt arises, the accused person should be acquitted. In a doctor-patient relationship, it is usually not easy to find direct proof of informal patient payments. In the main, indirect proof can justify the accusation, such as a doctor's bank account bearing out the spending of more money than officially earned or testimony from colleagues and neighbours, testimony from unsatisfied nurses etc.

In the professional literature, *informal payment* is the most frequently used term for an inappropriate payment in the healthcare sector. Other terms also exist, though with specific meanings, such as *hongbao* ('red packet') in China (Xu & Yuan, 2022, p. 1), under-the-table payment and under-the-counter payment. Sircar (2024, p. 365) points out that, 'in post-communist Europe, while in Slovakia the term *pozornost* ("attention") is ambiguous, *aploksne* ("envelope") only has negative connotations in Latvia'. The Hungarian literature on informal patient payments also uses the terms *paraszolvencia* ('supplementary payment') and *hálapénz* ('gratitude payment'), while the fresh Hungarian professional literature disputes the outcomes of the stricter criminalization of this institution (Gaal et al., 2021; Velkey et al., 2022, p. 1670).

In Hungary, the purpose of the stricter criminalization of informal patient payments is to protect an ethical principle by means of criminal law. Rules of ethics had already banned the acceptance of informal payments by healthcare workers long before. In Hungary, we find such rules against informal payments for medical doctors as well as for nurses and pharmacists (the Code of Medical Ethics of the Hungarian Medical Chamber, the Code of Nursing Ethics of the Chamber of Hungarian Healthcare Professionals and the Code of Ethics of the Hungarian Chamber of Pharmacists).

In Hungary, according to the Labour Code, §52(2), since 1 July 2012, 'The employee may not accept or demand any remuneration from a third party without the prior permission of the employer' (Somogyvári, 2013, p. 543). Thus, acceptance of an informal patient payment needed to be authorized by the director of the hospital or university clinic, and

the informal payment became legal under labour law. The quoted passage strengthened the old practice and made it semi-legal. This legal norm is still in effect in the Labour Code; however, it is no longer applicable to the acceptance of informal patient payments.

According to the Hungarian Supreme Court, only informal payments provided *ex ante* constituted corruption before 1 January 2021. The courts did not punish *ex post* informal payments in the doctor-patient relationship, so it was semi-legal. The obligation of healthcare workers to declare an accepted informal patient payment legalized this institution in respect of administrative tax law. The legislature decided to alter court practice until then leaving room for corruption disguised as an expression of gratitude (gratitude payment) (Day et al., 2020, p. 2303).

Today, informal patient payments constitute a crime of corruption in Hungary. However, the criminal character of informal patient payments does not make the healthcare worker that accepts it tax exempt. As stipulated in the Act on Personal Income Tax, §1(7), it represents taxable income. Otherwise, according to the Criminal Code, §396, liability for tax evasion can also be established. I find it important to note that any payment in lieu of cash (e.g. a book voucher) can be an *objectum sceleris* of healthcare corruption.

Moreover, in civil law, informal patient payments tend to appear in fictitious contracts. For example, the doctor and patient enter into a loan agreement as if the informal payment were a loan granted by the doctor and paid back by the patient. A patient may also pay for suture removal in private healthcare, though this should be part of a patient's treatment in public healthcare.

These practices can erode legislative reform in the field. In Hungary, according to the Code on Criminal Procedure, §20, a case of informal patient payments as a form of corruption is initiated before a regional court (a higher court), not before a district court (a lower court). This may be explained by the fact that such cases require a high level of judicial professionalism, and that corruption is particularly detrimental to society. Thus, doctors and nurses who accept informal patient payments are ranked among the most serious criminals. The laxity of previous legal policy was intended to protect healthcare workers from being treated like criminals. Now, criminal policy has changed, and the state's attitude towards corruptible doctors and nurses has been reformed.

Dogmatically speaking, informal patient payments represent a form of corruption. Even so, gifts of small value (not exceeding 5 per cent of the minimum monthly wage) given after care fall outside the scope of the crime of corruption. In the case of long-term in-patient care, a gift of small value may be given by the patient or their relative once every two months (Act on Health of 1997, §138/A). From 1 January 2023, in Hungary, 5 per cent of the minimum monthly wage was Ft11 600, i.e., approximately €31 or $33; from 1 December 2023, 5 per cent of the minimum monthly wage was Ft13 340, i.e., approximately €36 or $38. This is a legal loophole in the Act on Health of 1997, decriminalizing a less dangerous kind of informal patient payment. A gift of small value given after care maintains an old custom among patients who wish to express their gratitude to doctors and nurses. However, it is the healthcare worker's task to estimate the value of the gift at the moment it is received. If it is seemingly above the legally permitted 5 per cent of the minimum monthly wage, it should be refused immediately. If it turns out to be above the legal limit later, the healthcare worker should not be punished for not recognising the true value of the gift. There might be a fine line between legally permitted and punishable

gift-giving. The patient ought to know the commercial value of the gift, so, in such a situation, the healthcare worker should not be trapped. Indeed, a healthcare worker is not liable for an *error in facto*. If there is no question about such an error, the healthcare worker must thus be acquitted. Nevertheless, the patient can be found criminally liable if they knew that the exact value of the gift was above the legal limit. This legal permission to give a gift is suited to decriminalizing phenomena similar to payment into the *Kaffeekasse* in Germany and the *caisse de café* in France; however, from the aspect of the rule of law, it might run counter to legal certainty because it leaves doubts. Finally, it will be for the court to decide whether a gift of a value around the legal limit can be an *objectum sceleris* of corruption in a specific case.

The retail price of the gift may vary. That is why the sum of money paid for the gift by the patient counts. If it cannot be proven or the gift is homemade, the market price of a comparable object is taken into account. However, if an expert witness testifies that the price of the gift may vary from above to below the legal limit, the court should apply the principle of *nullum crimen sine lege certa*. At any rate, the giving of cash before or after care constitutes a crime of corruption, even if it does not exceed the legal limit on *ex post* gifts. Naturally, the payment due, according to the legal rates, i.e. the fee for healthcare services, is legal and mandatory, while payments above the legal rates are not tolerated by the state. This problem may arise in public healthcare. Informal patient payments mostly remain unknown in private healthcare because the fee for services is determined by the provider there. In private healthcare, the patient knows that they are receiving the standard level of healthcare for their money. In my opinion, a standard level of healthcare should not be purchasable. It is a legal right enjoyed by all, deriving from the basic right to health and healthcare.

In Hungarian legal language, a gift can be anything but money. In fact, a true expression of gratitude is not in breach of the law or morality. The legislature's message to both healthcare workers and patients is that it intends to eliminate corrupt payments. On the other hand, giving chocolate or flowers corrupts neither doctors nor nurses. In Hungary, nurses usually received small sums of money or gifts, such as coffee, chocolate and perfume, before the regulatory changes in 2021. Except for cash, this practice has been upheld. The ban on informal patient payments mainly affects doctors, whose loss of income has been counter-balanced by a significant pay rise. An increase in nurses' salaries is underway (Julesz & Kereszty, 2021, p. 1858; Julesz & Kereszty, 2022, p. 362). There is no direct link between low healthcare salaries and healthcare corruption; however, a large pay rise in the healthcare sector in Hungary may be as beneficial as it has been in Slovenia and the Czech Republic (Mihályi, 2009, p. 47).

In Romania, since 2018, there has been a large pay increase (over 100 per cent) in the healthcare sector; nonetheless, the Romanian Ministry for Healthcare reported 4200 cases of informal patient payments detected in January–September 2022 alone. In Romania, certain patients feel obligated to provide informal payments, while others see it as a sign of gratitude to healthcare staff (Tuchilus et al., 2022, p. 7). The authors consider certain Eastern European countries, such as Ukraine and Moldova, as rifer with informal patient payments than others; however, they conclude that the problem exists as a post-Soviet tradition in all Eastern European countries (Tuchilus et al., 2022, p. 6). In Romania, Bulgaria and Moldova, informal patient payments are still common, and informal personal connec-

tions are also used with the aim of accessing good-quality healthcare (Miteniece et al., 2023, p. 212). This latter sort of informality may also be found in Hungary. Hungarian lawmakers have endeavoured to overcome this problem by minimizing patients' options to choose their treating physician in public healthcare.

According to Popa et al. (2017, p. 2), 'Eastern European countries have fallen behind Western European countries in terms of health care quality since the 1970s because of the lingering influence of communist policy throughout the region'. The authors argue that Eastern Europe is 'dominated by corruption, informal payments and the need to reform' (Popa et al., 2017, p. 2). In Hungary, now that doctors' salaries have been raised, nurses' salaries will also be increased in the hope that the entire Hungarian healthcare system will become free of corruption. Corruption exists everywhere in wealthy countries within the borders of 'normal' criminality. The true aim of Hungarian lawmakers is to reach this 'normal' level of corruption, which would spell the ultimate end of informal patient payments in Hungary. However, time is needed to clean up the healthcare sector. It is the task of the investigative authorities to uncover latent corruption in healthcare and thus to enforce a legislated ban. It is always difficult to totally change a healthcare culture which dates back to the early years of state-socialism.

The Hungarian Collection of Court Decisions contains criminal cases of corruption via informal patient payments, and those are not only from before the regulatory changes in 2021. For example, in June 2021, the Hungarian Curia qualified the act of a chief physician receiving cash for prioritizing patients as corruption under the former criminal regulation (Curia, Bhar.III.254/2021/13.). In a fresh case, the Hungarian Curia established the criminal liability of a corrupt physician and sentenced the doctor to two years of imprisonment with a suspension and imposed a fine. The Hungarian Curia found that the acceptance of bribery is a crime, regardless of the benefit provided for in §138/A of the Act on Health of 1997 if the benefit promised to the healthcare worker is unlawful and is tied to their regular activities (Curia, Bhar.I.1375/2022/5.).

In case No. 25.B.68/2023/14/III., the regional court of Debrecen found a nurse guilty of complicity in corruption because a surgeon who had received Ft 30 000 and a bottle of wine from a patient on 8 October 2021 for an otherwise free suture removal in public healthcare (a university clinic) passed on Ft 5000 to the nurse, who accepted it. The punishment imposed on the nurse was one year of imprisonment with a suspension and a small fine. Thus, in less serious cases of healthcare corruption, the courts tend to impose a short term of deprivation of liberty with a suspension.

In Hungary, the National Protective Service creates situations in which doctors and nurses can be tested for corruption in public healthcare. The Service is not active in private healthcare. Many cases initiated by the National Protective Service have not yet arrived at a court decision. By 6 November 2023, the National Protective Service had completed 414 preparatory procedures, secretly collected information in 255 cases and conducted 103 integrity tests. Dozens of cases have ended up with charges being brought.

According to earlier court practice, it was not permitted for cash to exchange hands before treatment; however, *ex post* cash giving did not constitute healthcare corruption, since the Hungarian Curia had allowed cash giving after care. This was a compromise based on the social contract. Healthcare workers were strapped for cash, and patients had

to purchase a standard level of care. It was the Hungarian Curia and not the legislature that had to legalize cash giving after care in order to eliminate corrupt payments in advance. Tax was thus levied on informal patient payments. This notwithstanding, most doctors who received cash did not declare the actual sum, and it was difficult for the authorities to control. In many cases, patients paid informally before treatment, and both active and passive corruption remained undetected.

The fact that the practice of informal patient payments was based on a decision of the Curia before 2021 necessitated a precise legislative norm in this area. According to the law, since corruption is prohibited by an Act of Parliament, it was necessary to decriminalize it partially with another Act of Parliament.

5 Conclusions

In the last few years, among Central and Eastern European countries, Hungary has made the greatest steps to stamp out informal patient payments. However, the question arises whether Hungary has attained the results of Estonia and Slovenia. There is still much to do in the field of legal practice so as to bring the legislated norms into effect. Hungary has a larger patient population and a greater number of healthcare workers than Estonia and Slovenia, making it harder to tackle corruption in healthcare.

The Hungarian effort to eradicate informal patient payments could be an example for quite a few Central and Eastern European countries. The prevention of corruption in healthcare is one of the main current socio-economic problems in a great many countries in the region. Many of those countries struggling with informal patient payments could use the Hungarian National Protective Service's efforts and methods as a model. It is not enough to pass a ban on informal patient payments. Enforcement of the law is paramount. The cons of the Hungarian efforts are that those are top-down measures. Additionally, the educational effect of positive general prevention should be further emphasized.

At present, according to the Act on Health, §138/A, legal gifts of small value (not exceeding Ft13 340) do not exceed the duty-free legal limit (Ft150 000) in Hungarian law (Act on Duties, §11(2)). Research among Hungarian nurses allows me to conclude that, given the low income among nurses, these gifts might corrupt some of them (Julesz & Kereszty, 2021; 2022). Even if constituting a crime, if a gift offered to a healthcare worker amounted to more than Ft150 000, a duty would be levied. The tax authority should use investigative measures to control this. A duty should be levied on gifts of small value as well to ensure the transparency of the Hungarian healthcare sector.

Thankful patients transferring money to the bank account of a hospital or clinic foundation is a transparent way to back treating physicians. Elected members of the foundation's board of governors may use this money for the scientific advancement of clinicians. In Hungary, there has long been a tradition in this regard. According to Hungarian tax law, it is also possible for patients to donate 1 per cent of their tax to a civil society organisation, such as a clinic or hospital foundation. Indeed, while the legislature has criminalized informal patient payments, it has left the door open for legal and ethical support of conscientious doctors and nurses.

In Hungarian court practice, previously legal *ex post* informal patient payments were not added to the damages awarded to the claimant in a lawsuit after a car crash or other accident. In my view, a legal gift of small value offered after care should not amount to damages today. After all, a gift is given out of gratitude, and it is the patient's choice whether to offer it or not. If a small gift were interpreted as damages suffered by the victim, it would lose its role of expression of gratitude towards the healthcare worker. Ultimately, the institution of small gifts is immanent in the provider-patient relationship, and a defendant who caused health damages should not be involved in this relationship.

All in all, with informal patient payments, the accent should be placed on positive general prevention. The educational effect of punishment on both providers and patients could prevent them from emulating the guilty act. However, the punishment of corrupt health professionals should be stricter than that of intimidated patients, since the latter offer money illegally under *vis compulsiva*, which mitigates their culpability.

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