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*Mental Disorder as a Ground for Divorce in the Czechoslovak Marriage Amendment and Comparison to Hungarian Law**

Abstract

The author reviews mental disorder as a ground for divorce in the Czechoslovak Act No. 320 of 1919 Coll. This Act was called the Marriage Amendment and was in effect for the Czech countries until 1950. The author considers the wording of the Act itself, the explanatory report, jurisprudence, and the court practice. The author compares it to the Hungarian marriage law that continued to be effective in Slovakia until 1950. It was Act No. XXXI of 1894 (the so-called Marriage Act), which regulated divorces in Slovakia, despite adopting the Czechoslovak Marriage Amendment. The Hungarian Marriage Act did not recognise mental illness as a ground for divorce. However, it was a controversial topic in both legal environments, the Hungarian and Czechoslovak.

Keywords: mental disorder; mental illness; divorce; Czechoslovak law; Hungarian law; Act No. 320 of 1919 Coll. (the Marriage Amendment); Act No. XXXI of 1894 (the Marriage Act)

Introduction

The statistical data of the World Health Organisation include disquieting information about the mental health¹ of the population. The information states as follows:

¹ The WHO defines a mental disorder as a large scale of problems and symptoms – a combination of abnormal thoughts, perceptions, emotions, behaviour, and relationships with others. The definition provides examples such as depression, bipolar disorder, schizophrenia, other psychoses, dementia, and developmental

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Around one in five of the world's children and adolescents have a mental disorder.

Mental, neurological and substance use disorders make up 10% of the global burden of disease and 30% of non-fatal disease burden.

Globally, it is estimated that 5.0% of adults suffer from depression.

Almost 800,000 people die by suicide every year.²

These are just a few worrying facts. Mental health awareness is an important, thus still neglected, topic nowadays. It needs to become a generally accepted fact that mental health issues deserve the same attention as any other issue that brings discomfort to society. These health issues need to be destigmatised. Medical, legal, and social ways of help need to be promoted as common ordinary means of improvement for those who directly or indirectly suffer due to mental disorders, i.e. those affected by mental disorders or their relatives.

The main aim of this article is to draw attention to the fact that a human approach to the treatment of mental disorders has a short history. And so does the sensible and sensitive legal protection of those involved. This article deals with a prejudiced issue, i.e. how mental illness became a recognised ground for divorce in the Slovak territory. The crucial period was between 1919 and 1950. The mental disorder was a ground for divorce according to the Czechoslovak Act No. 320 of 1919 Coll. (the so-called Marriage Amendment), which was in effect in the Czech countries until 1950.³ The Hungarian Act No. XXXI of 1894, which was in effect in Slovakia until 1950, did not recognise such ground for divorce. Since 1950, both the Slovak and Czech legal orders involve the irremediable breakdown as the basis for divorce. Thereunder, it is possible to obtain a divorce even due to the mental disorder of the spouse.

disorders, including autism. It highlights that effective strategies for preventing mental disorders such as depression, exist and so do the effective treatments. In Slovakia, the National Health Information Centre issues the Slovak version of the International Classification of Diseases (the latest effective since 26 April 2021). There, the mental and behavioural problems are classified in the Chapter V as: "organic, including symptomatic, mental disorders (brain dysfunctions such as dementia, delirium, amnesia that can appear due to brain damage and dysfunction and to physical disease), mental and behavioural disorders due to psychoactive substance use, schizophrenia, schizotypal and delusional disorders, mood [affective] disorders (e.g. manic episode or depressive episode), neurotic, stress-related and somatoform disorders (e.g. phobic anxiety disorders, obsessive-compulsive disorders, hypochondriacal disorders), behavioural syndromes associated with physiological disturbances and physical factors (e.g. eating disorders, nonorganic sleep disorders, sexual dysfunction), disorders of adult personality and behaviour (e.g. pathological gambling, pyromania, kleptomania, disorders of sexual preference such as fetishism, paedophilia), mental retardation, disorders of psychological development (such as autism), behavioural and emotional disorders with onset usually occurring in childhood and adolescence (e.g. socialised conduct disorder), and unspecified mental disorder." WHO, "Mental Disorders"; NCZI, "Medzinárodná klasifikácia chorôb".

² WHO, "Mental Health".

³ Its provisions about marriage conclusion were in effect for Slovakia too.

1. Mental Health in European Countries with a Special Focus on the 19th Century – Hungary

In the past, mental health problems were not as easily recognisable as they were in the 19th century, the century of a major revolution in education. Naturally, there have always been attempts to treat mental disorders. For instance, Avicenna included a chapter about neurological and psychiatric disorders in his Canon of Medicine, where lifestyle change, homoeopathic, and suggestion therapy are methods described to prevent and treat depression. Interventions into the individual private sphere existed, too. According to Foucault, the lunatics were living on the edge of society. In many medieval cities, they were placed within the city walls or into jails. However, 17th-century Western society was “quite friendly towards the famous lunatics who engaged in discussions with noblemen.”⁴

Until the 19th century, clergymen and philosophers influenced the handling of people affected by mental disorders far more than physicians, whose number was low. “The priests decided who suffered from mental illness, was obsessed, was a danger to the public and, thus, had to be placed in the poorhouse, jail, prison, social welfare institution, facilities for incurable ill or locked in the cellar of relatives. In the 18th century, a healthy person could still be deprived of freedom long after the mental problems had resolved.”⁵

In philosophy, the Kantian classification of disorders was well-known in the 18th century. Kant recognised *hypochondria* (imagination of health problems, changes in behaviour, tendency to suicide), *amentia* (disorders in the form of the thinking), *dementia* (impairment of cognitive function), *insania* (impaired judgement), *vesania* (disorders in the content of the thinking) and *rage* (psychomotor disorders).⁶

The humanising approach toward custody and care of psychiatric patients in Europe began in the late 18th and early 19th centuries. The notable pioneers were the French physician Philippe Pinel, English philanthropist William Tuke or Italian physician Vincenzo Chiarugi. Very influential was the German psychiatrist Emil Kraepelin, the founder of modern scientific psychiatry. With his Compendium of Psychiatry of 1883, he established the foundations of the modern classification system for mental disorders. He recognised acquired psychiatric conditions (exhaustion such as delirium acutum, amentia, acute dementia, chronic fatigue syndrome, neurasthenia; acute intoxications; chronic toxicity such as alcoholism, morphinism, cocaineism; congenital disorders such as cretinism or early dementia; mental disorders caused by brain disease; mental disorders caused by senile involution such as melancholy or senile dementia) and psychotic disorders (periodic psychosis and paranoia; neurological disorders such as epilepsy and hysteria; psychopathy and mental retardation).

The pioneers of modern psychiatry in the Hungarian Kingdom were Ferenc Schwartzer (1818–1889), Gyula Niedermann (1839–1910) and Károly Laufenuer (1848–1901).

⁴ Foucault, *Psychologie a duševní nemoc*, 113.

⁵ Benedek, *A psichiatria története*, 6.

⁶ Scaglia, *Kant's Notion*, 178.

Up to 31 December 1914, 10,449⁷ psychiatric patients required hospitalisation in Hungarian facilities. Used for their placement were four state asylums for the mentally ill, two university clinics, Bratislava state hospital, an observation and treatment facility under the Ministry of Justice, twenty larger hospital units, two private asylums, three units in the charity institutes, four family facilities, forty-eight hospitals, fifteen smaller psychiatric units and two private asylums for the “feeble-minded and stupid”.⁸ The first Slovak psychiatric units were built in Bratislava, Nitra, and Košice.⁹

One can find the 19th-century Hungarian legal classification of mental disorders in Act No. XX of 1877 on Guardianship and Curatorship. After the establishment of Czechoslovakia, the Hungarian Guardianship Act continued to be effective for Slovakia. According to Article 28, “People deranged, deaf-mute unable to use sign language, feeble-minded, deaf-mute unable to use sign language and therefore unable to administer their assets, and waster ought to be placed under guardianship”.

Furthermore, the Hungarian Act No. XIV of 1876 on Public Health contained provisions on mental disorders in Articles 71–76. It distinguished between curable and incurable disorders and disorders with or without adverse consequences on society. The mentally ill who were a danger to society had to be detained. Otherwise, either relatives or the village had to care for “the harmless feeble-minded and stupid paupers”.

“In the second half of the 19th century, the doctors of the Schwartzner’s Private Clinics in Buda recognised melancholy, mania, monomania, paranoia, and dementia. Other doctors also recognised insanity, hysteria, and progressive paralyses.”¹⁰

2. Mental Disorder as a Ground for Divorce in the Hungarian Act No. XXXI of 1894 on Marriage Law

For the development of marriage law in Slovakia, 1894 remains the cardinal year. Act No. XXXI of 1894 introduced a radical change – the dissolubility of marriages. The divorce grounds were adultery, unnatural offences and bigamy (§ 76), unlawful intentional desertion of some duration (§ 77), violence endangering the life or health of the spouse (§ 78), the death sentence or imprisonment for at least five years as far as the other spouse had not known about the committed crime before entering the marriage (§ 79), the intentional commission of a grave matrimonial offence different from aforementioned ones (§ 80a), instigation of children belonging to the family to commit crimes or to conduct an immoral life (§ 80b), licentious life (§ 80c) and imprisonment for less than five years (§ 80d).

Neither the lack of mental health nor physical health was a ground for divorce under this Act. The Marriage Act was a compromise between the Catholic Church,

⁷ In total, around 7.6 million people lived in the Hungarian Kingdom in 1910. Kocsis, Bottlik, *A népesség változó etnikai arculata Magyarország mai területén*.

⁸ Benedek, *A pszichiatría története*, 24–5.

⁹ Hraše, *Aktuality naší péče*, 13–5.

¹⁰ Kiss, *A magyar*, 134.

supported by Emperor Franz Joseph I, and the liberal (mainly protestant) government,¹¹ and recognition of such divorce grounds would be too liberal. **The Explanatory Report explained that the Marriage Act protected the innocent spouse, and thus, neither illness nor physical defect was a valid ground for divorce.**¹² However, both judges and legal experts had to reflect on situations when the disorder or disease conditioned the harm of the spouse (absent-minded injury, distress, and danger due to alcoholism, etc.).

Therefore, **the Curia of Hungary** issued Ruling No. 1156 of 1897, which made divorce under Article 78 of the Marriage Act possible if the mentally ill spouse endangered the life or health of another spouse. One of the proponents of this ruling was Judge Károly Göldner. He said that the mental state of the offender changed nothing about the harm to the victim. Thus, a termination of marriage where one had hurt the other was necessary. Lawyer Jenő Horváth suggested recognising mental illness as a divorce ground under Article 78 and using judicial discretion similarly to the cases reviewed under Article 80 (immoral acts). The endurability of such actions was supposed to be a criterion for deciding.

Judges Gergely Jancsó and Ferencz Raffay said that the German BGB¹³ was better than the Hungarian Marriage Act because it recognised mental illness as a ground for divorce and bound the healthy spouse to provide lifelong care for the ill. Neither the Austrian ABGB nor the French Code Civil recognised such ground for divorce.¹⁴

One of the dissenting opinions was that Article 78 regulated only intentional wrongdoing, while mental illness excluded intention. Judge Gáspár Tóth emphasised that divorces due to mental illness were inhumane and cruel.

Consequently, the Curia of Hungary ruled that Article 78 could apply only to intentional wrongdoing (Ruling No. 7226).¹⁵

The Hungarian Marriage Act recognised **alcoholism**, or alcohol-related neurologic disorder, as a ground for divorce. The judge could divorce a marriage with an alcoholic under Article 80 letter c) as a consequence of an impenitent immoral lifestyle, e.g., in the case of the wife who was a liquor addict, repeatedly found in the mud unable to walk home on her own, the Curia ruled in favour of the man and gave divorce in 1896.¹⁶ In contrast, the Curia ruled against divorce in the case where “the spouse was alcoholic, but he accepted to go to a treatment, he never made a scandal, never was rude to his wife, and always talked to her and their children with affection”.¹⁷

¹¹ Herger, “The Introduction of Secular Divorce Law”, 140.

¹² The Explanatory Report is available at <https://net.jogtar.hu/ezer-ev-torveny?docid=89400031.TVI&-searchUrl=/ezer-ev-torvenyei%3Fpagenum%3D44> (accessed: 24.02.2022).

¹³ The conditions for a divorce on the ground of mental illness (Article 1569 of the German BGB) were that the spouse was mentally ill for at least three years during the marriage and the illness was so severe that it disturbed the mental harmony and excluded every possibility to restore the marriage.

¹⁴ ABGB (1811) is available at http://repertorium.at/qu/1811_oestabgb.html (accessed: 24.02.2022). Code Civil (1804) is available at https://books.google.sk/books?id=fU_bGsvP98C&printsec=frontcover&dq=code+civil+or+code+napoleon&hl=en&sa=X&redir_esc=y#v=onepage&q=code%20civil%20or%20code%20napoleon&f=false (accessed: 24.02.2022).

¹⁵ Raffay, *A Magyar*, 224–5.

¹⁶ The Ruling of the Curia of Hungary No. 9390 of 1896.

¹⁷ The Ruling of the Curia of Hungary No. 5417/1908 sz. a. III. p. t.

3. Mental Health in the 20th-Century European Countries with a Special Regard to the 20th Century – Czechoslovakia (The First Czechoslovak Republic, 1918–1938)

The 20th century was the age of two devastating world wars and the rise of extremism as of dramatic scientific advancement too. Both these factors influenced the development of psychiatry. Some milestones in the psychiatric history of this era were:

- Identification of the first case of what later became known as Alzheimer's disease by the German psychiatrist Alois Alzheimer.
- Introduction of the term mental hygiene by the Swiss psychiatrist Adolf Meyer.
- Creation of the Binet-Simon scale to assess intellectual ability by the French psychologists Alfred Binet and Theodore Simon.
- Introduction of the term schizophrenia by the Swiss psychiatrist Paul E. Bleuler.
- Publication of fundamental works by the Austrian neurologist Sigmund Freud.
- The first description of neurotransmitters by the German pharmacologist Otto Loewi and the English neuroscientist Henry Dale.
- Nobel Prize award for the Austrian physician Julius Wagner-Jauregg for his invention of treatment for neurosyphilis.

As doctor Hraše said, it was beyond reasonable doubt that the rate of mental and neurologic illnesses in civilised nations augmented in the early 20th century, and Czechoslovakia was not an exemption. This number was not proportional to the population growth, he added. Hraše used a German statistic to explain the situation in Czechoslovakia. According to him, Germany was the leader in the prevention and treatment of mental illnesses. Still, the German statistic revealed that three to five of one thousand people suffered from mental illnesses. Hraše said that the numbers were comparable to Czechoslovakia, except for the eastern part, where they were even higher “due to liquor drinking”.¹⁸ To provide an example, the asylums for the mentally ill treated 11,401 Czechoslovak patients in 1919, 14,756 in 1922, 17,849 in 1925, and 21,249 in 1928¹⁹ Hraše said that the state did little to help the mentally ill and made almost no preventive measures. He criticised Czechoslovakia as undeveloped in contrast to other civilised nations and called the Czechoslovak approach a “laissez-faire, laissez-passer approach.”²⁰ Nonetheless, founded were some new institutions – in Slovakia, the psychiatric units in Trenčín (1928) and Levoča (1929), however, with an insufficient capacity. Hence, they relocated some psychiatric patients to two private asylums whose owner was, at the same time, their director. Such a situation was undignified and dangerous indeed.²¹ Contrary to this, the so-called family care that existed in Slovakia had a good reputation. It meant that a family took care of a mentally ill person who was able to lead a social life. Such patients enjoyed “almost absolute freedom”, enjoyed the attention of the family, spent time with the family in the fields and gardens, went to church and pilgrimages, and went

¹⁸ Hraše, *Aktuality naší péče*, 5–7.

¹⁹ Brandejs, “Duševní nemoc – sociální problém.”

²⁰ Hraše, *Aktuality naší péče*, 5–7.

²¹ *Ibid.*, 16.

to celebrations. “Basically, the mentally ill did not even notice that they were under supervision and treatment”. In the Czech countries that followed the Austrian system since 1861, only very costly asylums provided treatment to the mentally ill.²²

The pioneers of modern psychiatry in Czechoslovakia were Karel Kuffner (1858–1940) and his student Antonín Heveroch (1869–1927). Kuffner was a proponent of the so-called somatic approach. He reasoned those mental illnesses appeared due to brain dysfunctions and that each mental illness was related to anatomical and histological changes. In contrast, **Heveroch, who got an invitation to work on the Czechoslovak Marriage Amendment that recognised mental illness as a ground for divorce,** was a proponent of the psychological approach. According to him, one could not evaluate symptoms without understanding the personality and thinking of the patients.²³

Concerning the classification of mental illnesses, Heveroch said that the study of psychiatry was complicated as every book followed a different classification. Thus, he made a comprehensive system out of the most influential classifications in Czechoslovakia made by Kuffner, Ziehen, Binswanger-Siemerling, Krafft-Ebing, and Kraepelin.²⁴

4. Mental Disorder as a Ground for Divorce in the Czechoslovak Act No. 320 of 1919 Coll. on the Change of the Provisions Regulating the Marriage Contract, on Divorce and Marriage Impediments

After the independence of Czechoslovakia was proclaimed, the process of legal reception took place. It dwelled in the transformation of norms and regulations of former Hungarian and Austrian Law from the period before 1918 into the form of norms and regulations of the newly established Czechoslovak legal order (see Act No. 11 of 1918 Coll. on Founding the Independent Czechoslovak State, i.e. the so-called Reception Act). To unify and codify law was among the highest priorities in Czechoslovakia. However, in general, this goal remained unsuccessful. Act No. 320 of 1919 Coll. on the Change of the Provisions Regulating the Marriage Contract, on Divorce and Marriage Impediments (the so-called Marriage Amendment) only partially unified the family law.²⁵ The Act

²² Words of the psychiatrist from Nitra, doctor Závodný. *Ibid.*, 14, 19.

²³ For both the Heveroch's and Kuffner's opinions, see Šedivec, “Heverochovi názory na manio-melancholii,” 115–8.

²⁴ The Heveroch's system and his notes are available. Heveroch, *Diagnostika chorob duševních*, 648–60.

²⁵ “A specific situation was in Czechoslovakia, where the Austrian marriage law with feudal elements continued to be in force. Not only did the Czechoslovak lawmakers have to cope with the capitalist changes of the society, but they also had to solve what the Austrian bourgeois had not solved in the Monarchy. There had been a carefully made divorce campaign already before the Great War, but the issue became truly urgent only after the war when many people lived in concubinage. First, it appeared that the influence of the Catholic Church had ceased with the fall of the Monarchy. However, it was not true, and the Catholic Church did many intrigues against the draft that proposed dissolubility of marriages. In the churches, one could hear lies about the introduction of polygamy or about the rights of men to repudiate old women. The clergy members went to mental asylums to collect signatures for the petitions. It went so far that, in April 1919, the government

regulated the marriage conclusion uniformly for the whole state (equally binding was both civil and religious marriage). However, this Act did not unify the provisions on marriage dissolution.²⁶

Article 13 of the Marriage Amendment recognised the following grounds for divorce: (a) adultery; (b) sentence of imprisonment up to three years or even less if the intention or the circumstances predicated on the perverse nature of the perpetrator; (c) intentional desertion without a lawful ground without returning to the abandoned husband within six months from the court summons; (d) intentional violence endangering life or health of the spouse; (e) mistreat, serious bodily harm, repeated slander; (f) excess lifestyle; (g) **chronic or periodic mental illness of minimum three years duration, congenital and acquired mental disorder including severe hysteria, alcoholism, and drug abuse of minimum two years duration, epilepsy that lasted at least one year with six or more seizures per year or with an associated psychiatric disorder**; (h) deep and irretrievable breakdown of the marriage; (i) insurmountable aversion.

The Austrian ABGB, which had been in effect for the Czech countries before the Marriage Amendment, did not recognise mental illness as a ground for divorce. According to the Explanatory Report, this “legal gap forced spouses to stay in the marriage with feeble-minded, deranged, or epileptics, some of them in asylums for life, without any hope to recover”. Most modern codes reflected this “potential harm and saved those condemned to live intimately with insane, lost, and dangerous people”. Inspiration to recognise mental illness (and irretrievable breakdown) as a ground for divorce came from Switzerland.²⁷

The **Explanatory Report**²⁸ emphasised the use of judicial discretion, i.e. the judge could grant a divorce “when, in the exercise of a sound discretion, he deems it reasonable and proper, conducive to domestic harmony, and consistent for the peace and morality of society.” However, “to prevent hurried and unjustified divorces”, the Act recognised an exhaustive list of divorce grounds. This list was broad, though,²⁹ and so was Article 13 g) itself.

On the expert advice of Antonín Heveroch, Article 13g) recognised three broad groups of reasons. Some lawyers criticised this broadness, though. Lawyer Schwab said that mental disorders, alcoholism, drug abuse, epilepsy, and mental illness should not be recognised as grounds for divorce unless they significantly destroy the marriage. He pointed out that Article 2 of the Austrian Imperial Act No. 207 of 1916 on Deprivation

announced to revoke the draft and retain indissoluble marriages. Nevertheless, it provoked such a big wave of protests from the progressives that the government could not ignore it. The discussions about the draft of the Marriage Amendment started in the Parliament on 15 May 1919, in a tense situation when the character of the newly created state was still uncertain. However, this draft was a reworked one, a result of a compromise”. Klabouch, *Manželství a rodina v minulosti*, 162–5.

²⁶ It was caused by Article 30 of the Marriage Amendment, according to which Article 13 regulating marriage dissolution was not applied on the territory of Slovakia.

²⁷ Hácha *et al.*, *Slovník veřejného práva československého*, 35.

²⁸ Available at https://www.psp.cz/eknih/1918ns/ps/tisky/t0298_02.htm (accessed: 4.08.2021).

²⁹ Many of the grounds were subjective, and thus, many people disapproved of “opening the doors to divorces wide. The lawmakers did a gathering of spikelet”, the legal theorists said, meaning that “they took over the divorce grounds from all the European codes while none of them recognised so many of them at the same time”. Klabouch, *Manželství a rodina v minulosti*, 226.

of Legal Capacity required auxiliary conditions for partial deprivation of legal capacity due to alcoholism or drug abuse in the Czech countries. Such conditions were that the alcoholics or drug addicts caused distress to the family, imposed danger to others, or needed someone to take care of them. He thought that the Marriage Amendment should have had recognised such auxiliary conditions too. As the contrary was the case, the lawmakers, in his eyes, allowed easy divorces.³⁰ Another thing that Dr Schwab criticised was that the Act did not provision the beginning of a mental disorder, mental illness, or epilepsy after marriage. He said that the Marriage Amendment lacked the formulation of the German BGB, “wenn der andere Ehegatte in Geisteskrankheit verfallen ist”. He said that if the fiancé/fiancée had been mentally ill for two and half years or had suffered from epilepsy with severe seizures for half a year, the spouse could file for divorce already six months after the marriage conclusion. Of course, only if the spouse had had no knowledge or suspicion about the problems of the fiancé/fiancée (as only an innocent spouse could file for divorce according to Article 13 of the Marriage Amendment or Article 96 of the Austrian ABGB).³¹ He insisted on counting these periods after the marriage conclusion (for this, see the court rulings below). He also called for the possibility to file for marriage nullity based on the mistake as to the person.³²

As written in the Explanatory Report, three years were sufficient to know the prognosis of the illness and the effect on family life. Effective treatment of the mental illness could not be an impediment to filing a lawsuit and being successful. The Explanatory Report stated that a good, compassionate and devoted spouse should not consider divorce but prolonging an unwanted marriage was useless. A suffering spouse could become more of a burden than the happiness of the mentally ill. In case of a disorder (severe degeneration), two years were sufficient to consider the effect on family life and justify the divorce. Concerning epilepsy, the Explanatory Report stated that negative feelings of the spouse could only worsen one’s illness and staying in marriage could lead to misfortune for everyone.

The Explanatory Report provided two reasons for the recognition of this divorce ground. The first reason was **the suffering of the healthy spouse** and the second reason was that **an unhealthy spouse could conceive an unhealthy offspring**. It was difficult to classify mental disorders as curable and incurable; hence, it was necessary to take these aspects into account.

Concerning the first reason, Schwab said:

Our legal order so far never recognised mental disorder, mental illness, and epilepsy as grounds for divorce. They can appear without anybody’s fault. A healthy spouse is morally bound to take care of the physically or mentally ill spouse.³³

However, he concluded that once the disorder lasted for a longer time, it was not possible to reach the goal of the marriage and justified the divorce.

³⁰ Schwab, “Několik poznámek”, 289.

³¹ Even the spouse who suffered from a mental disorder, mental illness, or epilepsy could file for divorce based on this ground unless the spouse knew about the mental problems before the marriage conclusion.

³² Schwab, “Několik poznámek”, 292–3.

³³ *Ibid.*, 287.

More controversial was the second reason related to the possibility to conceive unhealthy offspring. In Czechoslovakia, some used this divorce ground to advocate for the legitimacy of **eugenics**. That helps us better understand the moderate approach of Hungarian lawyers as we know that eugenics took a dark turn in the 20th century. Dr Haškovec said that Article 13 letter g) justified the introduction of the prenuptial health certificates. He proposed to amend the Marriage Amendment as follows: “A submission of the prenuptial health certificate is a prerequisite of marriage. Only a general practitioner, police physician, district physician, and town or county physician in Slovakia can issue a certificate confirming that the fiancées are free of any disease that would endanger one of them or their offspring”. Dr Haškovec said that Dr Heveroch supported obligatory prenuptial health certificates, too.³⁴

In legal theory, some lawyers called for the necessity to fill in the legal gap related to the alimention of the mentally ill. They wanted the divorcee to provide **alimention** for the mentally ill former spouse in the same way as if they were guilty of divorce.³⁵ However, **in legal practice**, the opinions were rather opposite. In the case where the husband applied for a divorce on the ground of epilepsy and auxiliary mental disorder, the judge ruled that no party was guilty. Despite it, the wife demanded alimention. The Court of First Instance ruled in her favour under Article 1266 of the Civil Code that recognised the right of the innocent spouse to satisfaction. The Court of Appeal dismissed the appeal of the former husband. It considered the application of Article 1266 adequate. Pursuant to the judgement, one could not raise monetary claims only in the case of mutually insurmountable aversion. As stated in the judgement, “Considering the recentness of this divorce ground, it is unlikely that the lawmakers wanted to deprive the innocent wife of alimony. More probable seems that the lawmakers considered Article 1266 a good protection of the innocent spouse”. The alimony, as the judge said, was a public law right, and if Article 1266 had not been applicable, the lawmakers would have included this issue in the Marriage Amendment. However, the Supreme Court ruled in favour of the former husband – innocent and thus, not entitled to pay alimony. The Supreme Court reasoned that under Article 1324, only the guilty party had to pay the damages. According to the Supreme Court, the innocent husband was not bound to pay alimony. “That was the intention of lawmakers because the divorce terminates the marriage as the death or nullity would”. The right to be alimentioned was a private law right. The Civil Code regarded marriage as a civil contract and all the related rights as private law rights. Separation was a mutual agreement of a husband and a wife to discontinue mutual life that terminated the female duty to take care of the household and the male duty to alimention her. “After divorce, these principles apply ultimately”, ruled the Court. If, in the divorce procedure, neither the parties reached an agreement nor the judge decided whether one is entitled to alimony, one shall not start a civil proceeding to award alimony after the divorce. “It is a coincidental misfortune for the wife to suffer from epilepsy and mental illness. Nobody takes responsibility for that (Article 1311 of the Civil Code) as nobody would take responsibility for the suffering of a single girl or a divorced husband”.³⁶

³⁴ Haškovec, “O návrhu zákona”, 28–35.

³⁵ Schwab, “Několik poznámek”, 293.

³⁶ Decision Rv. I. 148 of 7 June 1922.

Visibly, the lawyers had various opinions on this divorce ground, as they had on the Marriage Amendment or the divorce *per se*. As lawyer Klabouch said,

The Catholics called for indissolubility, J.R. Kliment and Judge Horák suggested in 1919 to facilitate the divorces of childless spouses and make them more difficult for spouses with children, legal historian Jozef Vacek called for indissolubility with few exceptions and strict procedure in 1920, Jaromír Sedláček suggested in 1938 to allow separation only after three years and divorce after two more years solely due to adultery, criminal behaviour, desertion, or wrongdoing.³⁷

Some of the early Supreme Court's rulings concerning mental illness as a ground for divorce included the following:

- A note from the asylum doctor sufficiently proves a mental disorder that can be a ground for divorce.³⁸
- Mental illness excludes guilt in the divorce procedure.³⁹
- A mild form of temporal hysteria is not a ground for separation.⁴⁰
- The Court of First Instance can promulgate a judgement only if the mental illness lasts. If the signs of mental illness went away, but it used to be long-term, the judge can divorce a marriage due to an irretrievable breakdown.⁴¹
- The requirement for a mental disorder (severe degeneration) to last for two years is independent of the time of marriage. It is sufficient if the mental disorder began two years before the court issued a judgement.⁴²
- Concerning epilepsy, six seizures within 365 days justify a divorce on this ground. Upon promulgation of the decision, one had to suffer from epilepsy.⁴³
- It is irrelevant whether mental illness auxiliary to epilepsy is periodical or long-term. If the husband knew that the wife suffered from epileptic seizures, he still could file for divorce once the epilepsy worsened. It is unimportant whether epilepsy was congenital or acquired.⁴⁴
- Alcohol abuse is a disorder that refers to a long-term addiction to alcohol linked to a range of mental health issues.⁴⁵
- The illness does not have to be incurable. It is necessary to meet the requirement of the three years upon the promulgation of the first judgement.⁴⁶

³⁷ Klabouch, *Manželství a rodina v minulosti*, 226–7.

³⁸ Decision Rv II 303/19 No. 383 of 20 January 1920.

³⁹ Decision Rv II 247/21 No. 1285 of 8 November 1921.

⁴⁰ Decision Rv I 1041/22 No. 266 of 7 March 1923. It was possible to convert the separation judgment to divorce judgment.

⁴¹ Decision Rv II 271/22 No. 2628 of 15 May 1923.

⁴² Decision Rv I 1238/23 No. 3056 of 17 October 1923.

⁴³ Decision Rv I 943/23 No. 3506 of 19 February 1924.

⁴⁴ Decision Rv II 635/25 No. 5943 of 15 April 1926.

⁴⁵ Decision Rv I 907/26 No. 6458 of 10 November 1926.

⁴⁶ Decision Rv II 205/26 No. 6512 of 24 November 1926.

Conclusion

Scientific progress and tragic international events largely contributed to the increased interest in mental health in the 20th century. It proves the following statistics, indeed. There were 7,612,114 inhabitants in the Hungarian Kingdom in 1910. The data from 1914 tell about 10,449 hospitalised patients with mental disorders. In Czechoslovakia, there were 2,367,974 inhabitants in 1921. The data from 1922 tell about 14,756 hospitalised patients with mental disorders.

After the independence of Czechoslovakia was proclaimed, the Austro-Hungarian legal rules continued to be in effect. Concerning divorce, the Hungarian Marriage Act No. XXXI of 1894 was in effect for Slovakia, and first, the Austrian ABGB and later the Czechoslovak Marriage Amendment No. 320 of 1919 Coll. were in effect for the Czech countries.

The Hungarian Marriage Act did not recognise mental disorders as a ground for divorce. However, both in legal theory and legal practice, one could hear many opposing opinions. Who was the guilty one in a marriage with the mentally ill? The one who suffered from mental illness? The one who suffered because of the mentally ill spouse? None of them, of course. We believe that one of the reasons why the Hungarian Marriage Act did not recognise mental illness as a ground for divorce was the concept of family care established in the Hungarian Kingdom. Its main aim was to keep the patients in their familiar environment and give them treatment while leading a relatively ordinary life. Furthermore, the Act was far more liberal for its period, even without recognising mental illness as a divorce ground, than the legislation in many other countries. Alcoholism was something different, though, and recognised by the Hungarian Marriage Act as a ground for divorce.

After the establishment of Czechoslovakia, the experts required better care for the mental health of the nation. For example, Hrašé said that Czechoslovakia needed physically and mentally healthy citizens to be the power of the newly born state. For reaching this goal, it was necessary to overcome the problems inherited from the times of the Monarchy. According to Hrašé, problematic in Slovakia were the private asylums that lacked state control and the non-existence of a state asylum. On the other hand, the problem in the Czech countries was that only asylums existed, and other treatments, such as family care, were not recognised. The leading psychiatrist in Czechoslovakia was doctor Heveroch, a proponent of the psychological approach to mental disorders, which meant reviewing the personality and thinking of the patient. He largely influenced the works on the Marriage Amendment that recognised mental disorders, neurological disorders, and mental illnesses as grounds for divorce in the Czech countries for the first time in history. The Explanatory Report stated that they caused suffering to the healthy spouse. Already the Hungarian Curia had first ruled that jeopardy of the healthy spouse by the mentally ill could be considered a reason to divorce. However, under social pressure, it rendered different judgements later on, and in Slovakia, the mental disorder was not a ground for divorce. As stated in the Czechoslovak Explanatory Report, another reason for divorces due to mental disorders was the possible conception of an unhealthy offspring. As eugenics took a dark turn in the 20th century, this was a slippery soil, indeed, and helped

to understand the concerns of both Hungarian and Czechoslovak lawyers who had very diverse opinions on this issue.

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