

HISTORY OF MANDATORY PREMARITAL HEALTH EXAMINATIONS

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Abstract: *The study is an insight into the legal regulation of mandatory premarital health examinations in chosen European countries (Germany, France, Hungary) in the 20th century, and in the case of France even in the 21st century. There were no obligatory premarital health checkups in Slovakia (1939–1945) and Czechoslovakia (1918–1938, 1945–1989). However, as the reader can notice, the relevant expert discussion was on a relatively high level.*

Keywords: *Health, Health Law, Marriage, Premarital Health Examinations, History, Eugenics, Czechoslovakia, Slovakia, Hungary, France, Germany*

INTRODUCTION

European legal orders were significantly affected by public health campaigns introduced with developing medicine and medical sciences in the 19th century. Important milestones were the years 1882 and 1905. German physician and microbiologist Robert Koch published his findings on the causative agent of tuberculosis in 1882. In 1905, the German zoologist Fritz Schaudinn, together with the German dermatologist, co-discovered the causative agent of syphilis. Introduction of the so-called positive eugenics on the scientific level and negative eugenics on both the scientific and political level, to improve life, physical, or mental characteristics of future generations, went hand in hand with the adoption of laws and amendments introducing obligatory premarital health examinations, first intended as preventive measures, especially for the above-mentioned infectious diseases. As eugenics got interconnected with Nazi racism and infringed the human rights and freedoms, eugenic measures, including the premarital health checks, were left out from many legal orders.

Nowadays, for example, are prenuptial health checks necessary for the UAE, Turkey, or Romania. They were mandatory in France till 2008 and Luxembourg till 2015, respecting all the human rights standards.

1. PIONEERS IN EUROPE

In Europe, the **Scandinavian countries** were the first to require mandatory prenuptial health examinations.¹ According to the Swedish Marriage Act of 1915, “those having the

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¹ Sooner it was in the USA where many States had passed laws regarding premarital physical examination as early as 1913. “These differed from State to State, and none of them was particularly effective. A medical certificate of freedom from the venereal disease from the male applicant was required to secure a marriage license in Alabama, North Dakota, Oregon, and Wisconsin. In New York and Pennsylvania, both applicants had to promise under oath that they were free from venereal disease and tuberculosis. Indiana, Michigan, New Jersey, Oklahoma, and Vermont had regulations making it a misdemeanor for a person having a venereal disease to marry. But, there were no adequate enforcement measures or any penalties for noncompliance. The Utah law provided that a marriage between persons afflicted with the venereal disease was void. The Virginia law provided that if the woman was under 45 years of age, the man had to swear that he was free from any contagious venereal disease and had to make an affidavit that he believed the woman named in the license to marry was free from such disease.” See SHAFER, J. K. *Premarital Health Examination Legislation: History and Analysis. Public Health Reports*. 1954, Vol. 69, No. 5, p. 487.

venereal disease in a contagious stage, the feeble-minded and the insane or epileptic did not have the right to marry, and fiancées had to submit medical certificates.”² A similar Act was adopted in Norway in 1918, where people who suffered from contagious syphilis could not get married. “In the case of other infectious venereal diseases, epilepsy, or leprosy, the fiancée had to be informed, and both fiancées had to be instructed by a physician. A form had to be signed by both the betrothed persons.”³ The Act that made physical and mental health a prerequisite for marriage was effective in Denmark since 1922.⁴

2. NEGATIVE EUGENICS

The main aim of the marriage laws from the beginning of the 20th century “was not to prevent marriages but only to postpone marriages until the infected persons got adequate treatment or passed the communicable stage of syphilis.”⁵ These were the so-called **positive eugenic** laws. They were different from the **negative eugenic** laws that recognised eugenically undesirable characteristics based on race, nationality, and ethnicity. The negative eugenic laws discouraged or prohibited marriage and family life for those with eugenically undesirable characteristics. They recognised sexual segregation, sterilization, and euthanasia.⁶ Such were the **German** laws adopted after Adolf Hitler seized power. Act on Prevention of Genetic Diseases (Ger. *Gesetz zur Verhütung erbkranken Nachwuchses*) was adopted in the Third Reich in 1933 and allowed the compulsory sterilisation of any citizen who, in the opinion of the so-called Genetic Health Court, suffered from a genetic physical or mental illness. Art. 1 Sec. 2 recognised diseases such as congenital mental deficiency, schizophrenia, manic-depressive insanity, hereditary epilepsy, Huntington’s disease, hereditary blindness, hereditary deafness, and any severe hereditary deformity. Under Art. 1 Sec. 3, sterilisation was recommended for a person with a severe alcohol use disorder. According to Art. 12 Sec. 1, the operation could be carried out even against the will, except when the person applied for sterilisation himself. The police assisted the physician, and the use of direct force was permitted.⁷ Legal recognition of obligatory prenuptial health-checks in the Third Reich dates back to 1935 (Marital Health Law, Act on Protection of the Hereditary Health of the German Nation, Ger. *Gesetz zum*

² SZEGEDI, G. *Good Health is the Best Dowry: Marriage Counseling, Premarital Examinations, Sex Education in Hungary 1920–1952*. Budapest: Central European University, 2014, p. 30.

³ BLACKER, C. P. Laws on Health and Marriage. *Eugenics Review*. 1935, Vol. 27, No. 3, pp. 195–196.

⁴ HANSEN, B. S. Something Rotten in the State of Denmark: Eugenics and the Ascent of the Welfare State. In: *Opiskelijakirjaston verkkojulkaisu* [online]. 2006 [2020-12-05]. Available at: <https://www.google.com/url?sa=t&source=web&rct=j&url=https://helda.helsinki.fi/bitstream/handle/10224/3636/2006198.pdf%3Fsequence%3D1&ved=2ahUKEwjB1omWk5bgAhVJsaQKHwnuDIUQFjABegQICRAB&uus=AOvVaw1A6UyOcVgVR_flvWdVzEvA>.

⁵ SHAFER, J. K. Premarital Health Examination Legislation: History and Analysis. *Public Health Reports*. 1954, Vol. 69, No. 5, p. 487.

⁶ WILSON, R. In: *Eugenics: positive vs negative* [online]. 2013 [2020-12-02]. Available at: <<http://eugenicsarchive.ca/discover/tree/5233c3ac5c2ec50000000086>>.

⁷ Law is available – In: *www.documentarchiv.de* [online]. [2021-10-05]. Available at: <<http://www.documentarchiv.de/ns/erbk-nws.html>>.

Schutze der Erbgesundheit des deutschen Volkes).⁸ Under Art. 2, the fiancées had to submit a medical certificate before marriage. Under Art. 1, if the fiancée suffered from a contagious disease dangerous for the other partner or future offsprings, they could not contract marriage. Other impediments were: deprivation of legal capacity, interlocutory proceedings for deprivation of legal capacity, mental disorder, marriage undesirable for the nation – Ger. *Volksgemeinschaft*,⁹ hereditary illness specified in the Act on the Prevention of Genetic Diseases, not including infertility.¹⁰ The examination by a *Gesundheitsamt* physician was the prerequisite of the medical certificate for each fiancée. They had to respond truthfully to all physicians questions about them and their relatives. The physician was not entitled to issue the certificate if the marriage was “a threat to the German blood purity.”¹¹ Naturally, the concept of *Volksgemeinschaft* was rather abstract. Marriage was void if one lied to obtain the medical certificate. In such a case, the fiancées, physician, and the registrar were subject to criminal sanctions. Once the medical certificate was issued, the fiancées had to enter into marriage within six months.¹² This Act remained in force during the era of National Socialism.

The marriage laws had been changing under the influence of Nazi Germany also in other European countries. For example, the prenuptial health checkups were mandatory in Hungary and France, where the circumstances for adopting these Acts were similar. “In both countries, the first serious debates and legislative drafts appeared in the mid-1920s,

⁸ In Germany, prior to 1935, it was compulsory to have prenuptial health certificates only for persons who applied for marriage loans. The applicant had to fill in the forms issued by the Ministry of Public Health for the Reich. Furthermore, the applicant had to provide information about their health state (about weakmindedness, epilepsy, mental diseases, convulsions, malformations, defects such as inherited blindness, deafness, dumbness, etc., skeletal deformities, metabolism disorders, tuberculosis, alcoholism, drug addiction, suicide, constitutional illnesses, confinement in houses for lunatics, mental defectives or epileptics), and health state of siblings, parents, grandparents, brothers or sisters of parents and their children. Fiancées only had to state if they suffered from chronic infectious or constitutional illnesses (including vocational), addictions, or defects. Female fiancé only had to specify the number of pregnancies, number of live-births, number of still-births, and number of abortions. The physician could advise against the intended marriage (negative eugenic measure). This was the “space” for genetic and racial discrimination. See the Schedule in BLACKER, C. P. Laws on Health and Marriage. *Eugenics Review*. 1935, Vol. 27, No. 3, pp. 193–195.

⁹ As Lenaerts writes, to understand this, Stuckart and Globke stated that one had to consult earlier laws such as the *Gesetz, betreffend die Bekämpfung gemeingefährlicher Krankheiten* a *Gesetz, betreffend die Bekämpfung übertragbarer Krankheiten*. For instance, it could be cholera, yellow fever, plague, smallpox, typhoid, tuberculosis, gonorrhoea, syphilis. If both fiancées suffered from venereal disease and only one of them was infertile (infertility had to be proved except if the woman was older than 45 years), they could contract marriage. Regarding the restriction of legal capacity, as Lenaerts continues, under BGB it was possible for cases of mental disorder, wastefulness, and alcoholism, all regarded as hereditary. Examples of mental disorders not resulting in deprivation of legal capacity were a squanderer who had so much to spend that his financial situation was never in danger or a wealthy alcoholic who had someone hired to manage his affairs. See LENAERTS, M. *National Socialist Family Law: The Influence of National Socialism on Marriage and Divorce Law in Germany and the Netherlands*. Leiden: Martinus Nijhoff Publishers, 2014, pp. 96–100.

¹⁰ Law is available – In: *Österreichische Nationalbibliothek – ALEX Historische Rechts- und Gesetzestexte* [online]. [2021-10-05]. Available at: <<http://alex.onb.ac.at/cgi-content/alex?apm=0&aid=dra&datum=19350004&seite=00001246&zoom=2>>.

¹¹ See Act on Protection of German Blood and German Honour (Ger. *Blutschutzgesetz*) and its First Supplementary Decree.

¹² LENAERTS, M. *National Socialist Family Law: The Influence of National Socialism on Marriage and Divorce Law in Germany and the Netherlands*. Leiden: Martinus Nijhoff Publishers, 2014, pp. 100–106.

and it took over 15 years to adopt them.¹³ Both Acts were essentially serving social hygiene goals (focusing on venereal diseases), and they were both adopted by right-wing governments,¹⁴ in the times when the racial policy of the Third Reich blossomed.

3. HUNGARY

In **Hungary**, Act no. XV of 1941 on Amendment and Alteration of Act no. XXXI of 1894 on Marriage Law was adopted. It introduced the mandatory prenuptial health examinations already in the first title.¹⁵

According to this Act, the entry into marriage was possible only if the fiancées obtained a medical certificate (only if the physician considered them fit for getting married). The medical certificate could not be older than thirty days. Fiancées had to cooperate with the physician, especially let themselves be examined. They could obtain the certificate only if they were free from contagious venereal disease and contagious tuberculosis. The registrar could conduct the marriage ceremony without the certificate only if the fiancée was terminally ill, if both fiancées doubtlessly suffered from contagious tuberculosis, or if the fiancées already had a child together, or the woman had doubtlessly got pregnant before the Act became effective. If the medical certificate was not issued, the applicant could file a complaint.

The Act was adopted during Prime Minister Pál Teleki's term of office. He was known as an anti-Semitic, even though not a pro-German leader who proposed and enacted the first anti-Jewish European law in 1920. This dualism of Teleki's personality is visible in the Act itself. On one hand, it introduced the ban on mixed marriages of Jews and non-Jews but, on the other hand, introduced the obligatory prenuptial health checkups as a public health measure and not as a racial policy measure. Prenuptial health checkups were supposed to detect communicable tuberculosis and venereal diseases instead of preventing hereditary diseases, as in Germany. All anti-Jewish provisions were made void in 1945, while those on checkups were *de iure* made void only by statutory rule adopted in 1952.¹⁶ It proves that the prenuptial health checkups were not a racial measure. Nonetheless, considering the social situation and ideological background, the duty to obtain the prenuptial medical certificate was deemed as interconnected with the racial laws.

¹³ "In Hungary, there were four problematic areas that made it difficult to introduce the checks: technical (the problems of detecting syphilis and gonorrhoea and relatively high occurrence of false results), legal (liability of the physician and thus lack of courage to issue certificates as the majority of the urban population had at least once in their lives been probably infected), administrative (only qualified doctors were allowed to do the tests, but with 75 000 marriages yearly, 50 new specialists would have to be appointed), ethical (state intervention in private affairs and reduction of the number of marriages)." See SZEGEDI, G. *Good Health is the Best Dowry: Marriage Counseling, Premarital Examinations, Sex Education in Hungary 1920-1952*. Budapest: Central European University, 2014, p. 109.

¹⁴ SZEGEDI, G. *Good Health is the Best Dowry: Marriage Counseling, Premarital Examinations, Sex Education in Hungary 1920-1952*. Budapest: Central European University, 2014, p. 13.

¹⁵ Law is available – In: <https://net.jogtar.hu> <<https://net.jogtar.hu/getpdf?docid=94100015.TV&targetdate=&printTitle=1941.+%C3%A9vi+XV.+t%C3%B6rv%C3%A9nycikk&referer=1000ev>>.

¹⁶ 423/11 MT. Törvényerejű rendelet tervezet a házasságkötés megkönnyítéséről [Regulation No. 423/11 MT].

4. FRANCE

In **France**, the *certificat prénuptial* was introduced by the French Foundation for the Study of Human Problems. Alexis Carrel, a French surgeon, biologist and Nobel Prize laureate who had connections to the cabinet of Vichy France president Philippe Pétain, strongly advocated for the Foundation. The *certificat prénuptial* became a legal prerequisite in 1942 when the *Act on Protection of Maternity and Infancy*¹⁷ was adopted. The registrar could hold the ceremony only if the fiancées submitted the certificate confirming the premarital medical examination “not older than a month.” Otherwise, he could be “fined up to 100 francs.”¹⁸ The aim of the lawmaker was not to “make some marriages undesirable as each individual was upon medical examination entitled to a medical certificate and the physician had no right to deny its issue.” The decrease in the number of contracted marriages was anticipated. However, one’s knowledge about the health status and medical consultation before “such an important step in life” was more beneficial.¹⁹ The Act did not contain the list of undesirable diseases. However, according to Title III (*Protection of Mothers*), pregnant women had to be tested for syphilis and tuberculosis. The mandatory health examination was not, similarly as in Hungary, a negative eugenic measure. According to the explanatory report, it was the first eugenic measure in France, variable according to needs.²⁰ It was not a part of anti-Jewish legislation. The physician could not refuse to issue the certificate. However, similarly to Hungary, the link to the totalitarian regime in the eyes of society existed. Furthermore, the explanatory report stated: “Physical and moral protection of the *race* requires resolute steps. Health and society require protection, and the children mortality, which has recently so rapidly increased, must be defeated.”²¹

In France, the necessity to be examined before marriage survived World War II and existed in the French legal order until 2008. There were two amendments to the French Act. The 1978 amendment introduced testing for rubeola and toxoplasmosis, determination of the blood type and Rh factor, antiglobulin testing for women younger than 50 years and genetic consultation.²² The 1992 amendment introduced testing for hepatitis B for future mothers, the necessity to suggest voluntary HIV testing, and voluntary syphilis testing.²³ Since 2007, doubts about the benefit of mandatory pre-nuptial health checkups (Art. 63 of the Code Civil and Art. L 153 of the Public Health Code) emerged. Economics and demography became the main

¹⁷ *Loi n° 941 du 16 décembre 1942 relative à la protection de la maternité et de la première enfance*. The requirement to obtain *le certificat d'examen médical avant le mariage* was incorporated into the Code Civil in 1943 (Code Civil, art. 63).

¹⁸ Law no. 941 of 1942, title II, art. 4. See *Lois*. Journal Officiel de l'Etat Français v. 22.12.1942, p. 4171.

¹⁹ CARLES, J. *Problèmes d'Hérédité*. Paris: Beauchesne et ses fils, 1945, p. 218.

²⁰ *Rapport au Maréchal de France, Chef de l'Etat Français*. See *Lois*. Journal Officiel de l'Etat Français v. 22.12.1942, p. 4170.

²¹ *Rapport au Maréchal de France, Chef de l'Etat Français*. See *Lois*. Journal Officiel de l'Etat Français v. 22.12.1942, p. 4170.

²² VALIN, M. S. État des lieux et freins de la consultation préconceptionnelle chez les médecins Haut-Normands en 2017. In: *Médecine humaine et pathologie* [online]. 2018 [2020-12-10]. Available at: <<https://dumas.ccsd.cnrs.fr/dumas-01760456/document>>.

²³ VALIN, M. S. État des lieux et freins de la consultation préconceptionnelle chez les médecins Haut-Normands en 2017. In: *Médecine humaine et pathologie* [online]. 2018 [2020-12-10]. Available at: <<https://dumas.ccsd.cnrs.fr/dumas-01760456/document>>.

reasons. “In 2007, for the first time in history, the number of out-of-wedlock births was 50,6 % (compared to 11,4% in 1980). According to the National Institute of Demographic Studies, 90 % of all couples had lived together before contracting marriage. From an economic point of view, the information about pregnancy became much more accessible, and it could save up to 14 million euros.”²⁴ In Luxembourg, the prenuptial health checkups were mandatory even longer than in France (until 2015). Reasonings in favour of their obsolescence were a high rate of out-of-wedlock births and a decrease in reported tuberculosis cases.²⁵

5. SLOVAKIA AND CZECHOSLOVAKIA

In Slovakia, there was no legal duty to get examined before marriage. However, eugenic discussions were not uncommon among scientists, experts, influential people, or statemen. For example, Jozef Tiso said: “*We want a healthy population. Hence, everybody who wants to get married must answer one crucial question – whether they can give the most important dowry – the health itself, the health physical and mental. That is why we plan to build several eugenic advisory centres in Slovakia. They will promote that ~Only Healthy People Can Marry~.*”²⁶ Similarly, Juraj Čečetka²⁷ said: “*Even if not all effects of eugenic measures are known, mainly of those human eugenic measures, they are admirable. Pedagogy must promote eugenics and significantly help to reduce the number of perverse youth.*”²⁸ However, eugenic marriage laws were not adopted for various reasons. For instance, the eugenic researches were severely underfinanced compared to Germany or Scandinavian countries. Furthermore, the political regime differed from the German regime, where eugenics advocated for racial theories. The Slovak nation also lacked hegemony tendencies due to its history. Strongly influential for the Slovak legal order was the papal encyclical *Casti Connubii*, which condemned the marriage eugenic practice.²⁹ Last but not least, the drafts of the Czechoslovak Eugenics Society on eugenic sterilisation were not enacted.³⁰ To sum up, negative eugenics was condemned by the lay society,³¹ and the

²⁴ AUBIN-AUGER, I., SANTANA, P., NOUGAIREDE, M. La suppression du certificat prénuptial nécessite de rechercher les opportunités d’informer les jeunes adultes sur la préparation d’une grossesse. *Exercer*. 2008, Vol. 19, No. 83, p. 117.

²⁵ THÉOBALD, P. La fin des examens avant le mariage. In: *L’essentiel* [online]. 2014 [2020-12-10]. Available at: <<http://www.lessentiel.lu/fr/luxembourg/story/la-fin-des-examens-avant-le-mariage-11974996>>.

²⁶ Governmental Declaration of the Prime Minister Dr. Jozef Tiso (21. 1. 1931).

²⁷ Čečetka was the first assistant professor in pedagogy in Slovakia.

²⁸ KUDLÁČOVÁ, B., VALKOVIČOVÁ, L. Tvorba Juraja Čečetku a ideológia Slovenského štátu v rokoch 1939–1945. *Historia Scholastica*. 2015, Vol. 1, No. 2, pp. 42–43.

²⁹ Eugenic indications were strictly condemned in 1941 when Law no. 61 of 1941 on Fetus Protection was adopted. See ŠPROCHA, B., TIŠLIAR, P. *Demografický obraz Slovenska v rokoch 1938–1945*. Bratislava: Muzeológia a kultúrne dedičstvo, o. z. v spolupráci s Centrom pre historickú demografiu a populačný vývoj Slovenska, Filozofickej fakulty Univerzity Komenského v Bratislave, 2016, p. 53.

³⁰ ŠIMŮNEK, M. V. Pro et contra debaty o zavedení tzv. eugenické sterilizace v Československu, 1933–1938. *Speciální pedagogika*. 2012, Vol. 22, No. 3, p. 239.

³¹ For example: “*Definition of national eugenics is purposely different from the German racial hygiene;*” or “*The Czechoslovak society is fully instructed about the difference between eugenics and negative eugenics, i.e., the unpopular racial theories and the idea of inequality of the European races.*” See RŮŽIČKA, V. Dědičnost a eugenika. K biologické definici pojmu národa a národní eugeniky. *Revue*. 1918, Vol. 15, No. 1-3, p. 33 and SEKLA, B. Eugenics in Czechoslovakia. *The Eugenics Review*. 1936, Vol. 28, No. 2, p. 117.

experts in the **Czech** (later **Czechoslovak**) **Eugenic Society** (1915) led only discussions that did not become law. To give an example, Jaroslav Kříženecký made the following reference to the German suggestion to introduce the mandatory prenuptial health checkups in 1916: *“The suggestion of the Munich medical society is undoubtedly interesting...it only can be approved, even though with all vigilance...The most important is to raise social awareness and to develop eugenic thinking among people because that is one of the key conditions of success. Americans did not understand the benefit of eugenic marriage laws, and therefore it failed. On the other hand, there is no doubt that education is not enough, and certain legal measures will have to be adopted. In this aspect, the courage of the Munich medical society deserves awe. However, one more remark ought to be made...this courage, now praised by the public, is not unknown to us. I remember the suggestions of Prof. Haškovec and his calls for marriage law amendment to achieve public health, especially for prenuptial medical consultation and possible marriage bans. Back then, these bold ideas were bitterly criticised and laughed off by the public and daily press. I think that this twist in thinking and appreciation of these efforts can bring satisfaction for the past.”*³² Dr. Ladislav Haškovec, one of the founders of the Czechoslovak neurology and one of the most famous Czechoslovak eugenicists, repeatedly called for the enactment of mandatory premarital health examinations. He referred to the Commentary on ABGB about the marriage of mentally ill people in their lucid periods. The authors of the Commentary were in favour of the *eheunfähigkeit*. Furthermore, he observed that the Commentary authors interpreted perpetual impotence (Art. 60) extensively; Impediments to the marriage were the diseases which caused sexual dysfunction, infertility, or were a threat to offsprings. Additionally, Haškovec reasoned that “during the war, the nation lost too many of the healthiest men, fittest for the procreation.” He also understood the worsened postwar living conditions and health conditions and warned about “the dangerous spread of venereal diseases and tuberculosis.” His reasonings were also of medical nature (medical progress; study of heredity; knowledge about the influence of syphilis, gonorrhoea and related acquired diseases, together with alcohol and other toxins on embryonic cells and fetus) and of legal nature (necessity to protect the child already before the birth). According to Haškovec, marriage impediments were: diseases that threatened the spouse and fetus (feeble-mindedness, progressive paralysis, contagious syphilis and gonorrhoea, chronic alcoholism), more serious neurological disorder, and mental disease of both fiancées. He did not consider the unconcealed impotence for a marriage impediment as “the marriages are not contracted only for procreation but also for moral, economic and social reasons.” Haškovec recognised some exceptions such as terminal illness and morally and socially acceptable reasons if both fiancées consented and the offsprings were not in jeopardy. He admitted that the examination was supposed to be “a confidential medical consultation,” performed by “any Doctor of Medicine.” Furthermore, he emphasised the necessity of the existence of a legal remedy against the physician’s decision. He insisted

³² KŘÍŽENECKÝ, J. Návrh na zavedení povinné lékařské prohlídky před sňatkem a sňatkových zákazů. *Revue*. 1917, Vol. 14, No. 8-10, p. 372.

that the medical certificate could not be issued more than three weeks before a wedding. He backed up his conclusions with his colleagues' opinions, namely those of Návrata, Mareš, Papirnik, Heveroch, Henner, and Růžička. This way Haškovec approved, clarified and provided somewhat like an explanatory report on the governmental amendment draft to the Act no. 320 of 1919 Coll. Under Art. 1 of this amendment draft: "*Fiancées can get married provided that they produce a certificate obtained from a public physician (general practitioner, police surgeon, district physician, in Slovakia possibly municipal or county physician), confirming freedom from such venereal diseases that constrain the purpose of marriage or impose a threat to the health of the other spouse or the offsprings.*"³³ Haškovec promoted the work of Czech eugenicists at the Conference of the International Institute of Anthropology in Prague.³⁴ Despite, the governmental draft amendment to Act no. 320 of 1919 Coll. was not enacted. Possibly the greatest opponent for Haškovec, especially for his call for *immediate* enactment of the mandatory prenuptial health checkups, was Prof. Josef Pelnář. He let himself be heard: "*Present methods can lead to faulty conclusions as it is nearly impossible to gather a complete and accurate medical history of a large family, concerning the possible marital infidelity and promiscuity of fathers and mothers. The physicians are entirely dependent on inadequate anamnesis, in some cases even just on death records. From the scientific point of view, it is entirely unsatisfactory, and we are in jeopardy by intentional deceit in case of diseases that would damage the families' reputation. Furthermore, we should reach eugenic conclusions in the persons' 20s or 30s age when a hereditary disease might have yet not developed, and that happens often.*"³⁵ The government itself withdrew the amendment draft after the State Health Council announced that: "*Science has not yet reached a level to decide the fiancées' ability or inability to contract marriage and procreate. The studies of syphilis, gonorrhoea, neurological disorders, mental diseases in latent periods, heredity, and genealogy give no satisfactory answers to physicians. Thus, they make them unable to decide on marriage. To issue a certificate would either be impossible in everyday practice, or it would become a mere formality.*"³⁶

Discussions about the advantage of the mandatory prenuptial health examinations did not cease even during the socialist era. Planková regarded them as a measure preventing divorce on objective grounds such as infertility or impotence. She claimed that fiancées got voluntarily tested before marriage only rarely, even though it could "prevent uncontested divorce, desertion of spouse or infidelity."³⁷

³³ HAŠKOVEC, L. O návrhu zákona k obřadnostem smlouvy manželské. *Revue*. 1920, Vol. 17, No. 1-3, pp. 28–35.

³⁴ SCHNEIDER, W. H. *Quality and Quantity: The Quest for Biological Regeneration in Twentieth – Century France*. Cambridge: Cambridge University Press, 2002, p. 153.

³⁵ PELNÁŘ, J. Omezování a zakazování sňatků z důvodů eugenických. *Časopis lékařův českých*. 1919, Vol. 58, No. 49, p. 978.

³⁶ Zasedání Národního shromáždění československého r. 1920. Tisk 2672. Zpráva právního výboru o vládním návrhu zákona tisk č. 1398, jímž se doplňuje zákon ze dne 22. května 1919, kterým se mění ustanovení občanského práva o obřadnostech smlouvy manželské, o rozluce a o překážkách manželství [Czechoslovak Parliament Session].

³⁷ PLANKOVÁ, O. *Rozvod manželstva v československom práve*. Bratislava: Osveta, 1964, pp. 62–63.

CONCLUSION

The concept of premarital health examination was born at the beginning of the 20th century. As a eugenic (Gr. *eugenes* meaning “well-born”) and a health measure, it was first enacted in the USA and Scandinavian countries. In the second case, the State aimed to protect the public from infectious diseases such as syphilis, gonorrhea, and tuberculosis, once their causative agents got discovered. As the premarital health examinations could be both a eugenic and a public-health measure, they existed in legal orders variously long time. However, the popularity of eugenics decreased when the eugenicist Ernst Rüdin advocated for the German racial policy. In Germany, the examinations were interconnected with racial policy and *übermensch* ideology. Hence, it ceased to be a legal prerequisite to obtain a medical certificate right after the end of World War II. In Hungary, the examinations were a public-health measure against infectious diseases. However, they were regulated by the anti-Jewish legislation that forbade the marriage of Jews with non-Jews, and that allowed the physician to issue a marriage ban. This dual character of premarital health examinations in Hungary led to *de iure* abolishment in 1952. French law recognised mandatory premarital health examinations since 1942 as a public health measure. The aim was to promote awareness of health issues, not to decrease marriage numbers. It caused that mandatory premarital health examinations survived in the French legal order until 2008. In Luxembourg, where they got re-introduced in 1972, it was even until 2015. Taking into account the proportionality test, in France and Luxembourg they were of the same nature as the laws on mandatory vaccination (in Slovakia regulated by Act no. 355 of 2007 on Protection, Promotion, and Development of Public Health and Art. 13 of the Constitution). According to lawmakers, they lost their meaning in the 21st century due to liberal marriage laws, frequent premarital cohabitation, and good preventive medicine. Nowadays, prenuptial health checkups are a legal prerequisite in countries with State religion such as the UAE. There, premarital screening varies from one region to another depending on the prevalence of the diseases in the area (in gulf regions testing for sickle cell disease and thalassemia is necessary). In Dubai, the premarital screening test includes complete blood count, blood group (ABO & Rh typing), Hb Variants testing (Thalassemia, Sickle cell), G6PD, sexually transmitted diseases (HIV, Hepatitis B, Hepatitis C, Syphilis and other such as gonorrhea or chlamydia). Further examinations might include male and female fertility testing, karyotyping or, genetic testing if the fiancées are related or come from families with known genetic diseases.³⁸ Apart from the Arab countries, it is a legal prerequisite in some African and Asian countries.³⁹ Mandatory premarital health examinations did not disappear from Europe either, as they are still necessary for Romania (blood tests and pulmonary radiography are required to obtain the *Certificat medical prenuptial*).⁴⁰

³⁸ FREIBURG MEDICAL LABORATORY MIDDLE EAST (L.L.C): Pre-marital Tests. In: <https://www.fml-dubai.com> [online]. 2020 [2020-12-22]. Available at: <<https://www.fml-dubai.com/pre-marital-testing/>>.

³⁹ Mandatory Premarital HIV Testing. An Overview. In: *Open Society Institute* [online]. 13. 5. 2010 [2020-12-22]. Available at: <<https://www.opensocietyfoundations.org/sites/default/files/mandatory-premarital-hiv-testing-20100513.pdf>>.

⁴⁰ Preturi Analize Medicale prenuptiale Sandor si Medlife, rapid si ieftin. In: www.medicalonet.com [online]. 2017 [2020-12-22]. Available at: <<https://www.medicalonet.com/2017/03/preturi-analize-medicale-prenuptiale.html>>