

# HEALTH AND ITS PROTECTION IN SCHOOLS AND SCHOOL FACILITIES FROM THE VIEWPOINT OF THE STANDARDS OF THE ADMINISTRATIVE LAW

---

*Lubica DEMEKOVÁ*

**Abstrakt:** *Human health as a social value and its protection is the interest of many branches of law. The given article focuses on administrative law aspects of the given topic. It deals with health and its protection in specific school environment, mainly in primary and secondary schools as well as in selected school facilities. The given topic is approached from various legal regulations which fall within the so-called special part of substantive administrative law. It clarifies the problem of health and its protection in terms of schools and school facilities in connection with public health, protection from alcohol abuse and protection of non-smokers and with the related structure and responsibilities of public authorities working in this field. Moreover, it deals with the latest changes of legal regulations in this area.*

**Key words:** *health, public health, health protection, schools, school facilities, public authorities, changes of legal regulations*

## 1. Introduction

The importance of health as a social value protected by law confirms the content of many legal regulations operative in the Slovak Republic. As written in the Constitution of the Slovak Republic: „Every human being has the right to health protection.<sup>1</sup> „It is important to understand the meaning of this right, i.e. „health is a certain social value which shall be protected with regards to its subject matter.“<sup>2</sup> It should be noted that „the subject matter of Article 40 of the Constitution is health“ which is specifically connected with the meaning of human being.<sup>3</sup> Moreover, „the

---

1 Article 40, the first sentence of the dokument of Slovakia „Ústava SR“ (The sentence is translated from Slovak language into English. Other station of the „Ústava SR“ and of other documents and publications are transitech, too.

2 DRGONEC, J.: *Základné práva a slobody podľa Ústavy Slovenskej republiky*. Bratislava: Manz, 1999, s. 201.

3 Compare to DRGONEC, T.: *Ústava Slovenskej republiky-Komentár*. Heuréka: Bratislava, 2007, s. 419.

*limits of this constitutional law shall be stipulated by law in case someone wants to solicit this right.*<sup>4</sup>

A scientific opinion exists based on which law which modifies specific rights dealing with health protection means „*the legal guarantee of the implementation of basic human rights and freedoms...*“<sup>5</sup> At this point it is important to note that this is a scientific opinion which leads to health protection which is performed within the field of common health protection, i.e. within the field of providing health care services, i.e. in which we talk mainly about the performance of right to patients' health protection which in practice is performed through institutions which belong to any individual and patient's right such as information on health state and advice, information on prognosis and methods of treatment and their consequences and information on consent to interference in body which "*have to be respected by health care workers.*"<sup>6</sup>

Generally speaking, it may be said that „*the right to health protection in the Slovak Republic is performed by health care service pursuant to the Act no. 576/2004 Coll. on Health Care Services relating to providing health care, as amended.* (hereinafter 576/2004 Coll., as amended).“<sup>7</sup>

However, I believe that the same principle is applied not only in health care services but also in other fields of social and legal relations. These are modified inter alia by regulations of the administrative law namely those ones which deal primarily with the implementation of constitutional right to education where health and its protection are also important. Education definitely belongs to this field.

From this point of view those legal regulations which modify specific rights, duties, measures and institutions dealing with health protection of children, i.e. students in primary and secondary schools and in school facilities, also form the legal guarantee of implementation of the right to health protection as one of the basic human rights performed in the given school environment but other than through health care pursuant to the Act no. 576/2004 Coll., as amended.<sup>8</sup>

Therefore, any child attending kindergarten, student attending primary or secondary school or university is the subject of the right to health protection pursuant to Article 40 of the Constitution of the Slovak Republic. They also come under the term „every men“ stated in the given Article of the Constitution as „*the subject-matter of constitutional right to health protection is the health of a person*“<sup>9</sup> and as they are also individuals, persons, their health is the subject-matter of this constitutional rights, i.e. they are those subjects of specific rights constituting the constitutional right to health protection entrenched mainly in § 11 Article 8 Act no. 576/2004 Coll., as amended.<sup>10</sup>

---

4 ČIC, M a kol.: Komentár k Ústave Slovenskej republiky. Martin: Vydavateľstvo Matice slovenskej, 1997, s. 207.

5 Porov. ZIMEK, J.: Právni problematika zásahů do tělesné integrity. In: *Časopis pro právní vědu a praxi*, (1995), č. 3, s. 124.

6 Note by author. Compare to the opinion in the book from 5.

7 Compare to BARANCOVÁ, H. a kol.: *Medicínske právo*. Bratislava: Veda, vydavateľstvo SAV, 2008, s. 29.

8 Note by author.

9 See BARANCOVÁ, H. a kol. *Medicínske právo*, s. 28

10 Note by author.

On the other hand, health as a social value in case of a natural person in a specific position, for instance pupil or student, requires specific ways and means of its protection and consequently it may also grant specific rights or it may impose specific duties to students or to other physical or legal entities working in schools or school facilities for the purpose of pupils' or students' health protection. These are the rights and duties entrenched in inter alia administrative standards which form the content of legal regulation of different legal force used in the area of education. It may represent the rights and duties of precautionary, revisory, repressive or other nature.<sup>11</sup>

Therefore, the aim of this article is to find out which specific rights, duties and measures connected to health protection in conditions of schools and school facilities deal with this right and in terms of legal or internal prescriptive acts. Due to the given extent of this article, it does not deal with the complex mapping of the issue but only with selected areas.<sup>12</sup>

## **2. On Health and Public Health. Theoretical Bases for Dealing with Their Protection in Schools and School Facilities in Terms of Law**

Fundamental prerequisites for dealing with the aspects of health protection, rights and duties connected to health protection in schools and school facilities is the explanation of basic terminology, i. e. what can be understood under the term health.

In regards to legal regulations - for purposes and needs of this article mainly regulations in the fields of education, health care service and public health care service are included - it is important to mention some definitions of health terminology. Definitions can be found mainly in scientific literature and mainly from the perspective of disciplines other than law.

Therefore, the key definition of this term is the definition provided by the World Health Organization according to which health is „*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.*“

Given fields use the term in different variations, phrases and meanings, although - as it has been already mentioned - they do not define it. Its meaning may be inferred from the various uses of the term which is found in the given legal regulation. In majority, the term health is used in connection with health protection. Also, meaning of the term health protection and specific measures of its implementation vary depending on whether the term is used in the field of health care service, public health care service or education.<sup>13</sup>

In the field of health care service the term itself is used mainly in connection with the term health care. In my opinion, the term health is understood mainly as the term which refers to health status, quality and life expectancy of a person which may

---

11 Note by author.

12 Note by author.

13 Note by author.

be proved by such terms as health care or urgent health care which is more closely defined in Act no. 576/2004 Coll., as amended.<sup>14</sup> The term is also used in connection with clarification of terms which fall under health care, for instance prevention (here the concept of health is used in connection with its maintenance or restoration), diagnosis (in connection with health defects) and treatment (in connection with restoration of health).<sup>15</sup> Urgent health care service is understood in connection with serious health threats, etc.

In other legal regulation, such as Act no. 578/2004 Coll. on Health Care Providers, Medical Workers, Professional Organizations in the Health Service, as amended, or Act no. 581/2004 Coll. on Health Insurance Companies and Supervision, as amended, the term health is used mainly in connection with the term health protection.<sup>16</sup>

Act no. 538/2005 Coll. on Natural Healing Waters, as amended, the term is used in connection with health refreshing.<sup>17</sup>

In further acts, such as Act no. 219/1996 Coll. On the Protection against Abuse of Alcoholic Drinks (hereinafter Act no. 219/1996 Coll., as amended) and Act no. 377/2004 Coll. on Protection of Non-Smokers, as amended, (hereinafter Act no. 374/2004 Coll., as amended), the term is used in accordance with its meaning and purpose mainly in the following collocations: physical injury, health disorder etc.<sup>18</sup> or health damage, effects on health,<sup>19</sup> etc. Pursuant to the Act no. 139/1998 Coll. on Narcotic and Psychotropic Substances, as amended inter alia the term health risk is also used.<sup>20</sup> Pursuant to the Act no. 131/2010 Coll. on Funerals the term is used in connection with health threat.<sup>21</sup>

These phrases suggest that health is viewed from different perspectives and therefore the merit of health protection, i.e. what is its subject-matter and what it has to be protected from, is perceived differently. However, all of these legal regulations see health as a social value which has to be protected. They also state that health as a social value refers to any physical entity, individual.<sup>22</sup>

On the contrary, health does not necessarily have to be connected only with individuals for our legal regulations deal also with the so-called public health.<sup>23</sup> Mainly Act no. 355/2007 Coll. on Protection, Support and Development of Public Health and on Amendments and Supplements to Certain Acts (hereinafter Act no. 355/2007 Coll.) defines public health as the level of society's health which refers to the level of health care provision, protection and support of health and which also refers to the economic level of the society.<sup>24</sup>

There are also other similar definitions on public health, according to which

---

14 See § 2 ods. 1 a 3 zák. č. 576/2004 Z. z.

15 See § 2 ods. 7, 9 a 10 zák. č. 576/2004 Z. z.

16 Note by author.

17 See § 2 ods. 10 a 11 zák. č. 538/2005 Z. z.

18 See § 5 ods. 2 a § 8 ods. 2 zák. č. 219/1996 Z. z.

19 See § 4 ods. 6, § 3 ods. 2 zák. č. 377/2004 Z. z.

20 See § 3 ods. 2 zák. č. 139/1998 Z. z.

21 See § 20 ods. 1 zák. č. 131/2010 Z. z.

22 Note by author.

23 See BARANCOVÁ, H. a kol. *Medicínské právo*, s. 28

24 § 2 ods. 1 písm. b) zák. č. 355/2007 Z. z..

health is perceived as „state of the highest possible level of health and the smallest health inequalities in society which may be achieved with regard to social and economic level and level of health care service in the given society.“<sup>25</sup>

The given understanding of public health refers to the perception of the so-called public health as a system based on protection, support and development of public health.<sup>26</sup> Similarly to the so-called Acheson commission for questions for further development of public health the definition of public health is as follows: “it is science and art of preventing disease, prolonging life and promoting health through organized efforts of society.“<sup>27</sup>

According to the above mentioned definitions of public health and public health care services, the term health is used, however, it is not explained and defined. The term is also used in connection with the so-called health determinants as factors determining health which, according to the given legal regulation, are „environment, working environment, genetic factors, health care service, health protection and support and life-style.“<sup>28</sup>

In terms of this legal regulation and the problem of health care, health is understood mainly as public health, i.e. health is such a social value protected by law which is connected to society, community and public.<sup>29</sup>

Based on the above mentioned facts it is necessary to think whether and in which connections we meet with health as a social value worthy of protection in schools - primary and secondary schools and school facilities, to extend the meaning of the term and understand it not only as a term related to individuals - as it has been already mentioned - but understand health as public health, i.e. a value which is related to society. However, at this point it is dealt with health only in terms of schools and school facilities. As it has been mentioned in some previous parts of the article we have to find out which specific acts and measures including competences of public authorities - in schools and school facilities - deal with not only health protection but also public health.<sup>30</sup>

### **3. Means to Health Protection of Students in Primary and Secondary Schools and School Facilities in Accordance with Selected Legal Regulations**

The main legal regulation modifying the problem of primary and secondary schools and school facilities is the re-enacted Act no. 245/2008 Coll. on Upbringing and Education, as amended (hereinafter Act no. 245/2008 Coll., as amended).<sup>31</sup> The given

---

25 *Koncepcia verejného zdravotníctva-návrh*. [online]. [cit. 20. 9. 2011]. Dostupné na: <[https://lt.justice.sk/\(S\(s4zenk55xdcube451agd0dvk\)\)/Attachmentvlastnymat.rtf?instEID=1661&docEID=14475&matEID=543&langEID=1&tStamp=20081016142647763](https://lt.justice.sk/(S(s4zenk55xdcube451agd0dvk))/Attachmentvlastnymat.rtf?instEID=1661&docEID=14475&matEID=543&langEID=1&tStamp=20081016142647763)>

26 § 2 ods. 1 písm. a) zák. č. 355/2007 Z. z.

27 ROVNÝ, I.: *Verejné zdravotníctvo*. Bratislava : Herba, spol. s r. o., vydavateľstvo zdravotníckej literatúry, 2009, s. 11.

28 § 2 ods. 1 písm. c) zák. č. 355/2007 Z. z.

29 Note by author.

30 Note by author.

31 That legal document abolished the legal document Law n. 29/1984 Zb. o sústave základných a stredných škôl (školský zákon) v znení nesk. práv. predpisov a tiež zák. č. 279/1993 Z. z.

legal regulation has brought many significant changes, mainly the change of philosophy in organization and activities of these schools and school facilities. Therefore, it is important to deal with this legal regulation in connection with the concept of health, or public health and its protection.<sup>32</sup>

After examining the content of the legal regulation it may be stated that many of the rules contained in the regulations have a character of general principles and moral principles within the so-called precautionary character. These are included in the section dealing with the so-called educational standards and educational aims related to them. This is given by the subject-matter of the legal regulation which emphasizes the need and meaning of education as such. This applies to health of children or students and their protection.<sup>33</sup>

In clarifying the basic concept of terms such as *inter alia* upbringing, the given regulation states that for the purposes of this regulation upbringing is understood as „a complex process of education and socialization focused on a child or student with the aim to develop their personality from the physical and mental perspective.“<sup>34</sup> If health means „*the state of complete physical and mental well-being,*“ as it has been already stated according to the WHO definition, then according to the given legal regulation upbringing of child or student as a process should lead to the development of their health.<sup>35</sup>

Furthermore, if we talk about the aims of upbringing and education, it is possible to allow the student to „to protect their health including healthy diet.“

Specific means of implementation of these principles leading to children's and students' health protection in schools and school facilities is the so-called national education program and the so-called school education program related with it and the so-called education program of school facilities.<sup>36</sup>

In accordance with the given legal regulations even these programs contain specific educational aims which are in accordance with § 4 of this regulation, i.e. they are in accordance with the aim of education as stated above,<sup>37</sup> i.e. leading to children's and student's health protection.<sup>38</sup>

Therefore, even school education programs should include the definition of their own aims and objectives and mission of education.<sup>39</sup> As the school education program has to be developed in accordance with the principles and objectives of education according to this Act and in accordance with the given national education program.<sup>40</sup> I think that its objectives of educations should affect health protection of children and students.<sup>41</sup>

The definition of own goals and mission of education is also related with the education program as the main document of school facility according to which educati-

32 Note by author.

33 Note by author.

34 See § 2 písm. f) zák. č. 245/2008 Z. z.

35 Note by author.

36 Note by author.

37 See § 6 ods. 4 písm. b) zák. č. 245/2008 Z. z.

38 Note by author.

39 See § 7 ods. 4 písm. b) zák. č. 245/2008 Z. z.

40 See § 7 ods. 3 zák. č. 245/2008 Z. z.

41 Note by author.

onal activities are performed in school facilities.<sup>42</sup> I am of that opinion that the aims and objectives of upbringing and education should deal with children's and student's health protection.<sup>43</sup>

As for the preventive means of non-legal nature leading to health protection, is for example activity of the so-called psychological counseling which is provided in the so-called school facilities of educational counseling and prevention leading to a healthy personal development and mental health development of not only children but also their legal guardians and educators.<sup>44</sup>

Another means is the so-called school in nature as one of the educational purpose school facility forming the system of school facilities, namely as a facility whose aim is to allow children and students to improve their physical and mental health in a favorable environment without education being interrupted.<sup>45</sup>

Duty lying in setting conditions for ensuring health safety and protection also belongs into the field of rules stated in the given legal regulation which is mainly of a preventive character; however, these do not have the character of principles which in case of their breach could be sanctioned.<sup>46</sup>

This applies to national education program which must include the above mentioned issues,<sup>47</sup> school education programs<sup>48</sup> and further education programs.<sup>49</sup>

The requirement is mainly emphasized in one of the so-called forms of specific implementation of school attendance which is one of the changes implemented in the new Act on Education - individual learning.<sup>50</sup> Specifically, request for individual learning - as individual learning shall be authorized by the school's headmaster which the student attends (it is the so-called root school), based on the written request of a legal guardian of an under-aged student or based on the written request of a full-aged student - shall contain description of conditions on health protection while individual learning of the student is in progress.<sup>51</sup> Breach of these conditions may be legally sanctioned in such a way that if the legal guardian of the student does not follow the conditions of the individual learning pursuant to the Act, i.e. including specification and follow-up of conditions leading to health safety and protection, the head-master has the right to prohibit individual learning.<sup>52</sup>

A very interesting condition of education in schools and school facilities leading to students' health protection is the one which prohibits the sale of products threatening health and which prohibits advertising of such products.<sup>53</sup>

As to the rules of behavior from the child's or student's side, namely as to the duties stated in the given legal regulation of a mainly preventive nature which in case

---

42 See § 8 ods. 1 a ods. 4 písm. b) zák. č. 245/2008 Z. z.

43 Note by author.

44 See § 135 ods. 2 zák. č. 245/2008 Z. z.

45 See § 138 ods. 1 zák. č. 245/2008 Z. z.

46 Note by author.

47 See § 6 ods. 4 písm. o) zák. č. 245/2008 Z. z.

48 See § 7 ods. 4 písm. l) zák. č. 245/2008 Z. z.

49 See § 8 ods. 4 písm. i) zák. č. 245/2008 Z. z.

50 Note by author.

51 See § 24 ods. 1 a 5 písm. e) zák. č. 245/2008 Z. z.

52 See § 24 ods. 11 písm. d) zák. č. 245/2008 Z. z.

53 See § 151 ods. 3 zák. č. 245/2008 Z. z.

of breaching may be sanctioned within the so-called disciplinary liability,<sup>54</sup> is their duty to act in such a way which endangers neither their nor some other people's health and safety involved in the education.<sup>55</sup>

With respect to other clause of the given legal regulation - according to which the school' or school facility's headmaster after negotiations with authorities from school administration and board of teachers he issues, i.e. he has to issue school rules which modify details on the exercise of rights and duties of children, students and their legal guardian in school or school facility<sup>56</sup> - most likely the very performance of this duty of children and student will be specified in the school regulations being one of the so-called School Internal Regulations.<sup>57</sup> With this in respect, as one of the student's duty is to follow the rules of internal regulations and further internal regulations of the school or school facility,<sup>58</sup> their duty will be to comply even those parts of school regulations which state the already mentioned prevention of health in a manner defined above.<sup>59</sup>

Breach of the obligation set by the internal school regulation is followed by child's or student's liability of a disciplinary character.<sup>60</sup>

Regarding the specific forms of sanctions for breach of that obligation, i.e. in case a student will act in such a way which will endanger his life and safety, i.e. he will act contrary to the regulations which are stated in school regulations, i.e. if he trespasses against school regulations,<sup>61</sup> in accordance with the given legal regulation it will be possible to impose an *admonition* or *warning* by the classroom teacher, or practical trainer; furthermore, *warning* from the headmaster, *conditional exclusion* or *complete exclusion*,<sup>62</sup> whereas in terms of this legal regulation we talk about the so-called *regulation measures in education*.

If a student violates the duty not to act in such a way which would endanger health and safety of other persons involved in the educational process with its behavior and aggressions, whereas according to the given legal regulation this obligation does not have to be stated in school regulations, it will be possible to place the so-called *protective measures* which means *student's immediate exclusion* from the educational process or *placing the students in a separate room* in the presence of a teacher.

According to the legal regulations, these kinds of protective measures may be applied even in those cases when a student's behavior and aggression undermines to educational process in such extent that it disables education of other participants involved in the educational process. The reason of this protective measure is to calm the student down whereas the reasons and conditions of protective measure given by the school's headmaster must be in written form.<sup>63</sup>

Within the preventive duties which may be legally sanctioned and which main-

---

54 Note by author.

55 See § 144 ods. 4 písm. f) zák. č. 245/2008 Z. z.

56 See § 153 ods. 1 písm. b) zák. č. 245/2008 Z. z.

57 Note by author.

58 See § 144 ods. 4 písm. b) zák. č. 245/2008 Z. z.

59 Note by author.

60 Note by author.

61 Note by author.

62 See § 58 ods. 2 zák. č. 245/2008 Z. z.

63 See § 58 ods. 3 a 4 zák. č. 245/2008 Z. z.

ly deal with schools and school facilities including students' legal representatives and educators, the given legal regulation also sets the liability to ensure safety and health protection of children and students and to keep records of school injuries which happened during the educational process or during activities organized by schools or school facilities.<sup>64</sup>

As to the complexity of information dealing with rules and regulations leading to health protection of individuals in the position of child and mainly in the position of a primary or high school student and which are of preventive nature and have no legal nature, this information is also included in other legal regulations not only in Act no. 245/2008 Coll., as amended.<sup>65</sup>

In practice it means specific means leading to health protection in terms of its consolidation which lean on support of sport. Realization of development project and programs and organization and funding of school sports competition on regional and national level, for instance, may represent the given means. Pursuant to Act no. 300/2005 Coll. on Sport Organizing and Support, as amended (hereinafter Act no. 300/2005 Coll., as amended) it is now in the agency on Ministry of Education of the Slovak Republic.<sup>66</sup>

Means to protect health of people in this group of non-legal character is in accordance with Act no. 288/1997 Coll. on Physical Culture, as amended, and 455/1991 Coll. on Trade and Entrepreneurial Activities, as amended (hereinafter Act no. 288/1997 Coll., as amended) care of physical culture within primary and secondary schools.<sup>67</sup> With regard to this area, municipalities and autonomous regions play an important role within schools in respect to those of which they act as founders. This includes, for instance, the support of building and operation of sports facilities in schools, development and care of physical culture in schools and support of school sports competitions.<sup>68</sup>

With regard to the known fact that health protection of individuals within the above mentioned groups lies also in their appropriate diet<sup>69</sup> and therefore it is essential to mention further legal regulations which modify the means of health protection of non-legal character lying in the support of milk and dairy products consumption inter alia for students of primary and secondary schools and also in the support of fruit and vegetable consumption of individuals within this group. Specific way of this support lies in provision of financial funds and in the aim of the so-called Agricultural Paying Agency which is governed by statutory order no. 339/2008 Coll. on Granting Aid for Promoting Consumption of Milk and Dairy Products for Children in kindergarten and Students of Primary Schools and High Schools, as amended by regulation of the Government of the Slovak Republic no. 341/2009 Coll. on Provision of Assistance for Support of Consumption of Fruits and Vegetables for Children in Kindergarten and Pupils in Elementary Schools.<sup>70</sup>

---

64 See § 152 písm. c) a e) zák. č. 245/2008 Z. z.

65 Note by author.

66 See § 15 ods. 1 a 2 zák. č. 300/2005 Z. z.

67 Note by author.

68 See § 6 písm. c) a d) a § 7 písm. c) a d) zák. č. 288/1997 Z. z.

69 Note by author.

70 Note by author. See the details in the texts of the given prescriptions of the Slovak government.

### **3.1 Means of Health Protection of Students at Primary and Secondary Schools from Abuse if Alcoholic Drinks and Smoking within Selected Legal Regulations**

A very specific area within health protection of individuals in the position of students of either primary or secondary schools is protection of their health from abuse of alcoholic beverages and smoking.<sup>71</sup>

As regards the first area mentioned, this is primarily modified by Act no. 219/1996 Coll. on the Protection against Abuse of Alcoholic Drinks, as amended (hereinafter Act no. 219/1996 Coll., as amended). Certain obligations in connection with observance of the given legal regulation in specific environment of schools and school facilities arise also from Act no. 596/2003 Coll. on School State Administration And School Self-Administration, as amended (hereinafter Act no. 596/2003 Coll., as amended).

Act no. 219/1996 Coll. as amended by regulations of the Government of the Slovak Republic for the purpose of health protection of individuals against alcoholic drinks abuse modifies prohibition of certain activities which have the character of the so-called protective measures. This prohibition, however, in accordance with the given legal regulation does not explicitly refer to primary and secondary school students but it refers to those younger than 18 years of age. As even primary and secondary school students belong to this category due to their age, the given prohibitions of certain activities also refers to individuals within this specific group of people.<sup>72</sup>

In case of persons younger than 18 years of age it is for example the ban on selling or serving alcoholic drinks or other facilitating their consumption in general as well as on public cultural events for these persons.<sup>73</sup>

Of important change towards the increase of protection of persons younger than 18 years of age, hence, primary and secondary schools students, is the adoption of this legal regulation, namely Act no. 214/2009 Coll. which modifies and amends Act no. 219/1996 Coll., as amended, is the one according to which these persons have the obligation, i.e. protective measure in the given obligation according to which this time they should not do things which are banned but they should do things which the law prescribes,<sup>74</sup> except the specified ban on consumption of alcoholic drinks or other addictive substance generally. This is mainly the obligation to undergo an informative breath test or an informative examination with testing devise for the detection of narcotics or psychotropic substance.<sup>75</sup>

This amendment has also introduced further protective measures which refer mainly to under-aged persons - but not to the age of 18 but only up to 15 years of age and it refers to the ban on unsupervised presence of their legal guardians after 21:00 o'clock in public places where alcoholic drinks are served.<sup>76</sup>

---

71 Note by author.

72 Note by author.

73 See § 2 ods. 1 písm. a) bod 1 a 5 zák. č. 219/1996 Z. z.

74 Note by author.

75 See § 2 ods. 2 zák. č. 219/1996 Z. z.

76 See § 2 ods. 3 zák. č. 219/1996 Z. z.

In case the obligation specified in the given act or in case of not-behaving in a way stated in the act, a new obligation comes into force and it is within the responsibility of the given unlawful acts lying in the duty to pay the fine, or in the form of another sanction.<sup>77</sup>

As regards sanctioning, either a physical or legal entity authorized to business may be sanctioned if the person has breach a ban, restriction or obligation leading on the, inter alia, prohibition on selling or serving alcoholic drinks or other forms of enabling their consumption by persons under the age of 18 years of age and also in public cultural events organized for persons under the age of 18.<sup>78</sup>

Any legal guardian of infants under the age of 18 or legal guardian of a youth under the age of 18 may be sanctioned in cases in which the youngster breaches the ban on consumption of alcoholic drinks or of other addictive drugs and the obligation to undergo informative breath test or informative diagnosis with a testing device for the detection of narcotic drugs or psychotropic substance and also in case of infants under the age of 15 who breach the ban on staying out without their legal guardians after 21:00 o'clock in public places where alcoholic drinks are served.<sup>79</sup>

Another form of sanction apart from fine is warning which, according to the given legal regulation, may be imposed on any persons under the age of 18 in cases in which they breach the ban on consumption of alcoholic drinks or other addictive drugs and the obligation to undergo informative breath test or informative diagnosis with a testing device for detection of narcotic drugs and psychotropic substance. In justified cases it is possible to impose a ban on attending publicly accessible areas and rooms in which alcoholic drinks are served.<sup>80</sup>

In case of fines as a kind of penalty for acts against the law as stated above, these fines are imposed by municipalities for which the given fine means income.<sup>81</sup>

As concerns the consumption of alcoholic drinks or other addictive drugs by a person younger than 15 years of age and youngster under the age of 18 and the consumption of alcoholic drinks or other addictive drugs is in the area of primary or secondary school, i.e. it refers to, inter alia, the student of the given school, the given amendment supplies Act no. 596/2003 Coll., as amended, of legal regulations which allocate the headmasters, inter alia, of primary and secondary school specific obligations in this area, namely a new obligation - for the headmaster and the others, namely the managing teaching staff - to notify the municipality of the consumption of such drink or substance.<sup>82</sup> The reason for implementing the new obligation for the given persons is the fact that fines may not be imposed by the given persons but by the municipality.<sup>83</sup>

As regards health protection of individuals in the position of primary or secondary school students outlined in the second part, i.e. health protection against smoking, it is important to lean on Act no. 377/2004 Coll. on Protection of Non-Smokers and on

---

77 Note by author.

78 See § 12 ods. 1 zák. č. 219/1996 Z. z.

79 See § 12 ods. 2 zák. č. 219/1996 Z. z.

80 See § 12 ods. 3 zák. č. 219/1996 Z. z.

81 See § 12 ods. 6 zák. č. 219/1996 Z. z.

82 See § 5 ods. 10 zák. č. 245/2008 Z. z.

83 Note by author.

changes and amendments of some other acts (hereinafter Act no. 377/2004 Coll., as amended).<sup>84</sup>

In order to protect health of individuals from the development of addiction to nicotine as addictive drug and addiction to the harmful part found in tobacco tobacco products, protect from harmful effects of smoking and protect from other uses of tobacco products which harm health of smokers as well as non-smokers exposed to the effects of smoking and their protection from products which are meant for smoking and do not contain tobacco,<sup>85</sup> the given legal regulation defines specific activities which are in accordance with this legal regulation prohibited on the one hand on behalf of targeted health protection of primary and secondary school students and also with school facilities and on the other hand within their protection but not protection of the target group but protection within groups of persons younger than 18 years of age.<sup>86</sup>

The given protection lies in prohibition of two types of activities. The given legal regulation prohibits the sale of tobacco products and products which are designed for smoking and which do not contain tobacco and within the second type of activities which are prohibited is the act of smoking. Both types of prohibited activities refer to inter alia primary and secondary schools and school facilities.<sup>87</sup> From the given it can be concluded that - with regards to the place or institutions where these prohibitions are applied as the given legal regulation clearly states that the first activity is prohibited in pre-school facilities and on children's playgrounds, in primary and secondary schools and in school facilities, in universities, dormitories and the second type except from the above stated regulations also deals with the prohibition in places of children's playground - by persons whose health protection we are talking about, which definitely refers to, inter alia, students of these schools and facilities.<sup>88</sup>

Regarding the prohibition of sale of tobacco products and products which are meant for smoking and which do not contain tobacco, this is stated in the given regulation not only by territorial jurisdiction related to the environment of inter alia schools and school facilities implying that the group of persons which should be protected from the development of addiction to nicotine as addictive and harmful part contained in tobacco and tobacco products are students of those schools and facilities but the scope of the stated illegal activity which is prohibited by the given legal regulation is defined also individually for persons within a certain age group, namely persons younger than 18 years of age.<sup>89</sup>

As students of these schools and school facilities belong to this age group it means that the sale of these products to these students is prohibited, i.e. these students are protected before unlawful activity even outside the area of primary and secondary schools and school facilities. I believe that due to increased protection of persons younger than 18 years of age this legal regulation clearly set out to everyone who sells tobacco products and products meant for smoking and do not contain tobacco, the obligation to withhold the sale to such a person.<sup>90</sup>

---

84 Note by author.

85 See § 1 písm. a) a b) zák. č. 377/2004 Z. z.

86 See § 6 and § 7 zák. č. 377/2004 Z. z. 80 See § 12 ods. 3 zák. č. 219/1996 Z. z.

87 See § 6 ods. 1 písm. c) a § 7 ods. 1 písm. c) zák. č. 377/2004 Z. z.

88 Note by author.

89 Note by author.

90 Note by author. § 6 ods. 2 a 3 zák. č. 377/2004 Z. z.

A very specific environment where the given sale is prohibited, according to the given legal regulation, is grocery store except those stores which have a separate room or stand and stores also sell goods meant for children.<sup>91</sup>

After extending the interpretation it can be concluded that this rooms mean potential risk also for health of students of schools and school facilities.<sup>92</sup>

Acts which are according to the given regulation forbidden meet the merits of violations which can be sanctioned. Bodies dealing with the given illegal acts as violations are in accordance with this legal regulation the so-called public health authorities.<sup>93</sup>

#### **4. Outline of the Means Dealing with Public Health in Conditions of Primary and Secondary Schools and School Facilities**

The second part of the given article suggests that if we think about tools to protect health of primary and secondary schools students and students in school facilities, it is important to focus on health as public health, i.e. to focus on the value bound to the society but whose range is restricted by schools and school facilities.

In this context, the conditions of the given schools and school facilities are applied in the basic legal regulation - Act no. 355/2007 Coll., as amended.<sup>94</sup>

Specifically, areas which in accordance with the given regulation influence the so-called public health and are related to the so-called health determinants are inter alia good life conditions and good working conditions as those ones which do not negatively affect health of people, but which protect and affect positively.<sup>95</sup>

The so-called inner environment of buildings also belongs to these conditions, which must meet, for example, requirements on hygrothermal microclimate, ventilation and heating, requirements on lighting and other types of optical lightning. Particular emphasis is put on the newly built buildings to which schools definitely belong and special requirements on classrooms lighting are implied.<sup>96</sup>

In order to protect public health in environment of schools, the given regulation puts emphasis on requirement and on the so-called facilities of catering which provide catering services connected with the production, preparation and distribution of meals or drinks at workplaces inter alia in school facilities and schools.<sup>97</sup>

The given regulation also modifies further requirements related to the environment of schools and school facilities which are mentioned in the article in order to protect public health in the specific environment; it further modifies the competences of public authorities in this field and also the merits of violations and other administrative offenses.<sup>98</sup>

---

91 Note by author. See § 6 ods. 1 písm. a) a b) zák. č. 377/2004 Z. z.

92 Note by author.

93 Note by author. See § 11 ods. 5 zák. č. 377/2004 Z. z.

94 Note by author.

95 See § 2 ods. 1 písm. f) zák. č. 355/2007 Z. z.

96 See § 20 ods. 1 a 2 písm. d) zák. č. 355/2007 Z. z.

97 See § 26 ods. 1 zák. č. 355/2007 Z. z.

98 Note by author.

As health protection in general as well as in specific environment requires specific attention, it is not possible to deal with it in regards to all its aspects; therefore, I am outlining only some of them through the given examples.<sup>99</sup>

## Conclusion

Based on the findings which I arrived at in the given chapters of this article it may be said that the aim stated in the introduction of this article was fulfilled. At a relatively small space limited by the number of pages I approached specific forms of the right to health protection, partially public health and means for its implementation in specific environment of schools and school facilities.

After examination of the content of legal rules and regulation modifying the specific conditions and means for realization of mainly the rights to health protection of primary and secondary schools students and students attending school facilities it is important to note that the mentioned specificity of environment for exercising these regulations was shown for example in the wide range of means on their realization of different character and in the involvement of a relatively wide circle of public authorities working in this field at both prevention of threats or breach of health of individuals of the group or at the level of implementation of sanctions.

In connection to this I am approaching the aspect of the problem in accordance with the legal state, i. e. I depict or point out the latest modifications of legal regulations in this area.<sup>100</sup>

## Literature

- BARANCOVÁ, H. a kol. *Medicínske právo*. Bratislava: Veda, vydavateľstvo SAV, 2008. 425 s. ISBN 978-80-224-1007-6.
- ČIČ, M. (et al.) *Komentár k Ústave Slovenskej republiky*. Martin: Vydavateľstvo Matice slovenskej, 1997. 598 s. ISBN 80-7090-444-5.
- DRGONEC, J. *Ústava Slovenskej republiky-Komentár*. Bratislava: Heuréka, 2007. 1197 s. ISBN 80-88122-38-8.
- DRGONEC, J. *Základné práva a slobody podľa Ústavy Slovenskej republiky*. Bratislava: Manz, 1999. 340 s. ISBN 80-85719-23-1.
- ROVNÝ, I. *Verejné zdravotníctvo*. Bratislava: Herba, spol. s r. o., vydavateľstvo zdravotníckej literatúry, 2009. 128 s. ISBN 978-80-89171-60-6.
- ZIMEK, J. Právni problematika zásahů do tělesné integrity. *Časopis pro právní vědu a praxi*, (1995), č. 3, s. 121-128. ISSN 1210-9126.

### LEGAL REGULATIONS:

1. Constitutional Act no. 460/1992 Coll. as amended. Act no. 219/1996 Coll. On the Protection against Abuse of Alcoholic Drinks
2. Act no. 288/1997 Coll. on Physical Culture, as amended, and 455/1991 Coll. on

---

<sup>99</sup> Note by author.

<sup>100</sup> Note by author.

Trade and Entrepreneurial Activities.

3. Act no. 139/1998 Coll. on Narcotic and Psychotropic Substances, as amended.
4. Act no. 596/2003 Coll. on School State Administration And School Self-Administration.
5. Act no. 377/2004 Coll. on Protection of Non-Smokers, as amended.
6. Act no. 576/2004 Coll. On Health Care Services relating to providing health care, as amended.
7. Act no. 578/2004 Coll. on Health Care Providers, Medical Workers, Professional Organizations in the Health Service, as amended.
8. Act no. 581/2004 Coll. on Health Insurance Companies and Supervision, as amended.
9. Act no. 300/2005 Coll. on Sport Organizing and Support.
10. Act no. 538/2005 Coll. on Natural Healing Waters.
11. Act no. 355/2007 Coll. on Protection, Support and Development of Public Health and on Amendments and Supplements to Certain Acts.
12. Act no. 245/2008 Coll. on Upbringing and Education, as amended.
13. Regulation of the Government of the Slovak Republic no. 339/2008 Coll. on Granting Aid for Promoting Consumption of Milk and Dairy Products for Children in Kindergarten and Students of Primary Schools and High Schools.
14. Regulation of the Government of the Slovak Republic no. 214/2009 coll., as amended.
15. Act. no. 219/1996 Coll., as amended.
16. Regulation of the Government of the Slovak Republic no. 341/2009 Coll. on Provision of Assistance for Support of Consumption of Fruits and Vegetables for Children in Kindergarten and Pupils in Elementary Schools.
17. Act no. 131/2010 Coll. on Funerals.

#### INTERNET SOURCES:

*Koncepcia verejného zdravotníctva-návrh.* [online]. [cit. 20. 9. 2011]. Dostupné na: <[https://It.justice.sk/\(S\(s4zcnk55xdcube451agd0dvk\)\)/Attachment-vlastnymat.rtf?instEID=1661&docEID=14475&matED=543&langEID=1&tStamp=20081016142647763](https://It.justice.sk/(S(s4zcnk55xdcube451agd0dvk))/Attachment-vlastnymat.rtf?instEID=1661&docEID=14475&matED=543&langEID=1&tStamp=20081016142647763)>

## ZDRAVIE A JEHO OCHRANA V PODMIENKACH ŠKÔL A ŠKOLSKÝCH ZARIADENÍ Z POHĽADU NORIEM SPRÁVNEHO PRÁVA

**Abstrakt:** Zdravie človeka ako spoločenská hodnota a jeho ochrana je predmetom záujmu viacerých právnych odvetví. Príspevok sa zameriava na správnoprávne aspekty tejto problematiky. Venuje sa zdraviu a jeho ochrane v špecifickom prostredí škôl, a to predovšetkým základných a stredných škôl a tiež vybraných školských zariadení. Túto problematiku približuje z pohľadu viacerých právnych predpisov spadajúcich do tzv. osobitnej časti správneho práva hmotného. Objasňuje problematiku zdravia a jeho ochrany v podmienkach škôl a školských zariadení, a to aj v nadväz-

nosti na verejné zdravie, ochranu pred zneužívaním alkoholických nápojov a ochranu nefajčiarov a s tým súvisiacu štruktúru a kompetencie orgánov verejnej správy pôsobiacich v tejto oblasti.

**Kľúčové slová:** zdravie, verejné zdravie, ochrana zdravia, školy, školské zariadenia, orgány verejnej správy, zmeny právnych predpisov