EDITORIAL

Health-Law towards the 21st Century

I am grateful for the opportunity which has been so kindly given to me to write the Editorial of the third issue of the European Journal of Health Law, on the occasion of the 10th World Congress on Medical Law which will be held in Israel from August 28, 1994 to September 1, 1994. About a thousand speakers and participants are expected to attend this unique gathering; many of them, I'm sure, will have an interest in this new Journal!

Twelve years ago, its elder brother was born, carrying the name of Medicine and Law. The title of the new Journal symbolizes the change which occurred during the last decade or two, as Health Law occupies the position of Medical Law. In past generations, medico-legal discussions were confined to medical negligence. Malpractice will be discussed at length in the coming years, too. Human activities necessarily entail misjudgments, errors, and wrong outcomes. No wonder that dubious treatment and harmful consequences arouse emotions, provoke curiosity and stir up strife. However, malpractice will not take up the focus of health law in generations to come.

The field of Health Law comprises innumerable subject matters. Former studies focused on particular issues. Later approaches came to an understanding that nucleonics do not supply the knowledge of the whole, just as the body is not the mere collection of its parts. A certain kind of relationship between the different parts, and a communication process thereby, founded and justified the holistic approach. The conceptual turn is qualitative rather than quantitative. The nature and the functioning of each separate unit should be learned in light of the whole to which they belong, and the two-way influence of parts versus ties should become familiar to scientists in the field of Health Law.

Progressive science asks for a progressive legal framework. Our legislative organs do not fulfil this request. Parliaments are neither equipped nor trained in order to absorb and cope with such complicated data. An utterly new consulting organ should be created. It will consist of a collective multidisciplinary group of experts. Knowledge and control of a particular legal or medical region is not sufficient. Further education and additional training should be formed and conducted in order to construct a different curriculum for the new medicolegal consultants. Even the public at large will need to be re-educated through a long-term scheme.
The judiciary too is expected to form and apply relevant improved guidelines. Until recently, courts have been occupied mainly with suits concerning professional negligence. Apparently, doubts have arisen with regard to their competence to determine even these matters, but lack of a better alternative system justified the continuation of this procedure. Courts are regarded as authentic machinery for the protection of individual rights, and the lack of competitive organs encourages them to deal with other medicolegal issues as well. However, if the judiciary seeks to win the confidence of the people in the new world, judges will have to acquire a different kind of skill.

Good character and common sense are a **conditio sine qua non** for judicial functioning, but these traits will not replace knowledge. Complicated operations need fitter tools.

Conservative medicine occupied itself with the patient only. The modern field of Health Law will deal with healthy people as well as with ill people, with social interests as well as with individual concerns. The balance of interests of any person versus his neighbors' will gain more attention. No more unlimited sanctification of individual rights, no more unbounded subjection of individuals to their community. No doubt, such a new approach necessitates novel moral assessments and renewed legal forming-up, and it applies to societies, to cultures, and even to religions. Many concepts and rules have become obsolete, and the believers are in need of modern tools in order to cope with the progressive scientific world.

An important branch of modern medicine engages prevention. Preventive medicine deals with healthy people. The widening of the medical practice brings about the broadening of the legal engagement. Modified codes should be formed with regard to duties and rights and responsibility and authority of both the care-taker and the care-receiver.

The community of care-takers will grow and include various groups of therapists, apart from physicians and nurses. New healing schools may be incorporated in the health system, and should no longer be ignored. The assumption that recognition, authorization and licensing entail undertaking responsibility should be reflected in the new codes.

The relationship between the care-taker and the care-receiver has been thoroughly discussed. This is precisely the reason why difficulties are liable to occur in any attempt to reopen this discussion.

Seventy generations have passed since the birth of the old physicians' oath. Many mutations afflicted human civilization. Rightness and relevancy have experienced transformations.

Therapeutic professions are no longer based on altruistic grounds. There is neither reason nor prospects in pulling medicine off the capitalistic shelf. The duty of doctors to render reasonable help should be of legal rather