

CONDUCTING PREVENTIVE VACCINATIONS (IMMUNIZATION) AS A COMPONENT OF THE RIGHT TO HEALTH CARE

ПРОВЕДЕННЯ ПРОФІЛАКТИЧНИХ ЩЕПЛЕНЬ (ВАКЦИНАЦІЯ) ЯК СКЛАДОВА ПРАВА НА ОХОРОНУ ЗДОРОВ'Я

Yermolieva K.A., Graduate student at the Department of Service and Medical Law
Kyiv National University named after Taras Shevchenko

The article is dedicated to the study of the peculiarities of the legal regulation of the organization and conduct of preventive vaccinations, as well as the right of individuals to vaccination as a component of the right to health care. The article analyzes legislative and doctrinal approaches to defining such concepts as "the right to health care," "medical assistance," "preventive vaccination," "the right to vaccination," and others. In addition, this research examines both international and national legislation provisions in the field of regulating public relations related to the right to health care. The author concludes that the right to health care consists of two components: health care itself and medical assistance. In our opinion, these two components should be correlated as a general concept and its part, respectively. In turn, medical assistance involves the provision of medical services, which include not only disease detection and treatment but also prevention (prophylaxis) and rehabilitation. Preventive measures, in our opinion, should include conducting preventive vaccinations (immunization). High-quality and accessible prevention forms the foundation of medical assistance, as it is aimed at preserving health and reducing treatment costs. The legal regulation of preventive vaccinations and the right to vaccination is an integral component of the right to medical assistance, which, in turn, is an element of the right to health care. The conduct of preventive vaccinations is aimed at protecting both the individual and society as a whole from dangerous infections, and vaccination is part of the concept of human health. It is impossible to fully realize the right to medical care without ensuring the right to vaccination. In this regard, it is necessary to conclude that the right to vaccination constitutes a measure of authorized behavior of the empowered person regarding the administration of safe and accessible vaccines. These vaccines are aimed at creating artificial immunity in individuals and developing collective immunity against infectious diseases to preserve human life and health, as well as to ensure their physical and social needs.

Key words: health, right to health care, medical assistance, vaccination, immunization, right to vaccination.

Стаття присвячена дослідженню особливостей правового регулювання організації та проведення профілактичних щеплень та права особи на вакцинацію як складової права на охорону здоров'я. У статті проаналізовані законодавчі та доктринальні підходи до визначення таких понять як «право на охорону здоров'я», «медична допомога», «профілактичне щеплення», «право на вакцинацію» та інші. Крім того, у даному дослідженні аналізуються положення як міжнародного, так і національного законодавства в сфері регулювання суспільних відносин, пов'язаних із правом на охорону здоров'я. Авторка прийшла до висновку. Право на охорону здоров'я містить дві складові, власне саму охорону здоров'я та медичну допомогу. На нашу думку, ці дві складові необхідно співвідносити як загальне та частину відповідно. У свою чергу, медична допомога являє собою надання медичних послуг, які включають в себе не лише виявлення та лікування хвороби, але і попередження (профілактику) та реабілітацію. До профілактичних заходів необхідно відносити, на нашу думку, проведення профілактичних щеплень (вакцинацію). Якісна та доступна профілактика становить основу медичної допомоги, оскільки покликана зберегти здоров'я та зекономити витрати на лікування. Правове регулювання проведення профілактичних щеплень і право особи на вакцинацію є невід'ємною складовою права на медичну допомогу, що, у свою чергу, є елементом права на охорону здоров'я. Проведення профілактичних щеплень спрямоване на захист як окремої людини, так і всього суспільства від небезпечних інфекцій, а сама вакцинація входить до поняття здоров'я людини. Не можливо повноцінно реалізувати право на медичну допомогу без забезпечення права на вакцинацію. У зв'язку із цим, необхідно зробити висновок, що право на вакцинацію становить міру можливої поведінки уповноваженої особи стосовно ведення безпечної, доступної вакцини, яка спрямована на створення в особі штучного імунітету та вироблення колективного імунітету від інфекційних хвороб з метою збереження життя та здоров'я людини, а також забезпечення її фізичних і соціальних потреб.

Ключові слова: здоров'я, право на охорону здоров'я, медична допомога, щеплення, вакцинація, право на вакцинацію.

Problem Statement: The attitude of society towards conducting preventive vaccinations (immunization) continues to provoke discussions and remains ambiguous. In recent years, the level of infectious diseases has been increasing. Furthermore, new infectious diseases are emerging, which negatively affects the health of the population. The refusal of vaccination significantly worsens the epidemiological situation.

State of Research: The issue of legal regulation of the organization and implementation of preventive vaccinations has been the subject of research by scholars such as M.Yu. Holovatenko, N.O. Horobets, O.I. Hutsuliak, L.M. Zhvanko, S.V. Knysh, I.A. Matseliukh, T.I. Tolkova, T.A. Frantsuz-Yakovets, and others. The problem of defining the content of the right to health care has been addressed in the works of domestic researchers such as S.B. Buletsa, I.S. Demchenko, N.T. Dubynska, H.V. Inshakova, A.B. Kasumova, V.F. Moskalenko, O.O. Prasov, O.O. Punda, I.Ya. Seniuta, K.O. Skrynnikova, and V.V. Shafranskyi. However, given the dynamic development of Ukrainian legislation in the field of organization and conduct of preventive vaccinations, particularly the adoption of several legislative and subordinate regulatory acts aimed at preventing the spread and eliminating outbreaks of coronavirus disease, as well as the adoption

of the Law of Ukraine "On the Public Health System," there is a need for further scientific research on these issues.

The aim of the article is to explore the peculiarities of the legal regulation of the organization and conduct of preventive vaccinations, as well as an individual's right to vaccination as a component of the right to health care.

Presentation of the main material: Health is a natural good and an element of human anthropic nature, endowed from birth. On the one hand, a person's health condition depends on characteristics inherent by nature, and on the other, it is shaped by the influence of natural and hereditary factors, social conditions, economic circumstances in the state, and other factors.

Before proceeding to analyze the content of the right to vaccination as a component of the right to health care, it is first necessary to characterize the content of the right to health care itself.

The right to health care is enshrined in several international legal instruments. In particular, Article 25(1) of the Universal Declaration of Human Rights (1948) guarantees the right to an adequate standard of living, including food, clothing, housing, medical care, and necessary social services, essential for maintaining health [1]. The International Covenant on Economic, Social, and Cultural Rights (1966) provides for

the right to the highest attainable standard of physical and mental health (Article 12(1)) [2]. The right to health care is also established in Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) [3]. According to Article 11 of the European Social Charter (revised, 1996), every person has the right to benefit from any measures enabling them to attain the best possible state of health [4].

The definition of the right to health care is also contained in the 2002 Charter of Patients' Rights, which states that the right to health care includes access to preventive medical services and the right to benefit from medical assistance under national laws and practices [5]. Similarly, in Section 1.6 of the Declaration on the Promotion of Patients' Rights in Europe, the right to health care is defined as the right to protect one's health to the extent that preventive measures and treatments allow, so that one may achieve the highest level of health for themselves [6].

Various definitions of the right to health care exist within legal doctrine. Let us present a few of them.

According to V.Ye. Kovryhina, the right to health protection is a system of regulatory and protective administrative-legal norms established by the state, which regulate relations regarding such a personal non-property benefit as human health (physical person) [7, p. 129]. We believe that this definition does not fully reflect the essence of the right under study, because, firstly, relations concerning human health are regulated both at the national and international levels; secondly, the relevant relations may concern the provision and protection of public health. As O.O. Punda notes, the right to health protection is a system of legal norms that regulate relations regarding the preservation, maintenance, and strengthening of health. In our opinion, this definition is comprehensive and defines the right to health protection as an enabling right, the goal of which is to prevent the deterioration of a person's health [8, p. 82].

The current legislation of Ukraine, in particular Article 6 of the Fundamentals of Ukrainian Health Legislation, provides a list of components of the right to health protection. According to this, the components of this right include: accurate and timely information about the state of one's health, including existing and potential risk factors and their degree; a standard of living, including food, clothing, housing, medical care, and social services necessary to maintain health; a safe environment for life and health; legal protection against unlawful forms of discrimination related to health status; safe and healthy working, learning, living, and leisure conditions; qualified medical care, including free choice of doctor and healthcare facility; compensation for harm caused to health, and more [9].

Thus, the concept of the right to health protection includes two components: health protection itself and medical care. In our opinion, these two components should be correlated as the general and the particular, respectively.

O.O. Prasov believes that the right to medical care is derived from the right to life, and its essence lies in the individual's ability to freely (at their discretion) determine their behavior in the field of health and treatment, which is conditioned by their objective situation, health status, and social standing [10, p. 57]. In the definition provided by the author, disease prevention and diagnosis are not included, which consequently narrows the concept and essence of the term "medical care."

In turn, according to I.Ya. Seniuta, "medical care" should be understood as a type of professional activity that includes measures for prevention, diagnosis, treatment, and rehabilitation. The goal of this activity is to maintain, strengthen, develop, and, in cases of violation, restore the maximum attainable level of physical and mental health of the human body. These processes are carried out by healthcare professionals who have the appropriate legal rights in accordance with current legislation [11, pp. 278–279].

We support the position of scholars, particularly V.Ye. Kovryhina and A.N. Savytska, that the right to health protection belongs to the natural rights of a person [7, p. 129]. This right corresponds to the duty of the authorized entity to ensure that everyone has the right to health protection.

Moving on to the study of the legal regulation of preventive vaccinations and its place within the healthcare legislation of Ukraine, it is necessary to define the content of terms such as "vaccine," "vaccination," "inoculation," and their interrelationship. A vaccine is a medical preparation administered to a person to stimulate the body to develop active immunity to one or more specific diseases. It is important to note that, in this case, the term refers specifically to the "preparation," not the procedure of its use. Sometimes "vaccination" is understood as the procedure of administering the vaccine, but we believe that the term "inoculation" is more appropriate in this context.

Regarding the relationship between the terms "serum" and "vaccine," it should be noted that both aim to produce acquired immunity in the body. However, there is a fundamental difference: a vaccine contains weakened or inactivated infectious agents, while serum contains ready-made antibodies against a specific disease. Serum is typically used to combat an already existing disease, meaning it is essentially a treatment, not a preventive measure.

As antigenic material, the following can be used: synthetic vaccines; live but weakened strains of viruses or microorganisms; purified materials (proteins of microorganisms); and inactivated (killed) microbes.

The following types of vaccines are distinguished: vaccines made from live pathogens with weakened virulence (against tuberculosis, smallpox, influenza, rabies, anthrax, plague, etc.); vaccines from killed pathogenic microbes (polio, cholera, pertussis, typhoid, leptospirosis, etc.); toxoids, which are made from exotoxins of the respective pathogens over 3–4 weeks, maintained at a temperature of 30–40°C, and treated with a formalin solution of 0.3–0.4%; chemical vaccines made from chemical complexes through the processing of cell suspensions using a special method rather than whole bacterial cells [12].

The term "inoculation" refers to the procedure of administering a preparation with antigenic material, i.e., a vaccine or serum. In other words, while "vaccine" and "serum" refer to preparations, the term "inoculation" denotes the process of introducing them into the human body. Inoculation creates artificial immunity in a person and protects them from dangerous diseases such as diphtheria, polio, tuberculosis, etc. [13].

The goals of inoculation are, first, to create artificial immunity in a person and protect their health from dangerous diseases such as diphtheria, tuberculosis, polio, etc., and second, to ensure that any inoculation is safer compared to the disease it protects against.

The legal definition of the term "preventive vaccination" is provided in the Law of Ukraine "On the Public Health System." Preventive vaccination is defined as the introduction of a medical immunobiological preparation into the human body to create specific immunity against infectious diseases, carried out according to the vaccination schedule approved by law [14].

According to the provisions of the Ministry of Health Order No. 595 of September 16, 2011, "On the Procedure for Conducting Preventive Vaccinations in Ukraine and the Control of Quality and Circulation of Medical Immunobiological Preparations," it is established that the terms inoculation, immunization, and vaccination are synonymous, and their meaning involves the creation of artificial immunity in a person against certain infectious diseases through the introduction of immunoglobulins or vaccines [15].

Summarizing the above, we can draw the following conclusions. The terms "inoculation" and "vaccination"

are synonymous, both referring to the creation of artificial immunity in a person against specific infectious diseases through the administration of a vaccine, immunoglobulin, or toxoid. At the same time, the term “vaccine” refers to a specialized medical preparation that is administered to a person to stimulate the body to develop active immunity against one or more specific diseases.

Article 49 of the Constitution of Ukraine enshrines the provision that everyone has the right to health protection, medical care, and health insurance [16]. According to Article 10 of the Fundamentals of Ukrainian Health Legislation [9], citizens of Ukraine are obliged to take care of their health and the health of their children, not to harm the health of others, undergo preventive medical examinations, and receive vaccinations in cases provided for by law.

Among the obligations of citizens, according to part 2 of Article 15 of the Law of Ukraine “On the Public Health System,” are the following: to comply with the instructions and orders of officials of executive authorities and local governments when they carry out medical and sanitary measures, and to fulfill other obligations provided for by sanitary legislation. Persons with infectious diseases or carriers of infectious disease pathogens are required to: follow the instructions of healthcare workers and the provisions of legislation to prevent the spread of infectious diseases, follow the treatment conditions prescribed by healthcare workers, and adhere to the working conditions of healthcare institutions and scientific establishments where they are being treated [14].

Moreover, for the purpose of conducting preventive vaccinations, administrative coercion may be applied as a means of addressing public health concerns when the public interest in preserving and strengthening public health outweighs the private interests of individual rights and preferences [17]. This is confirmed by the position of the European Court of Human Rights (ECHR). Specifically, in its ruling on the case “Vavříčka and Others v. The Czech Republic,” the ECHR deemed it lawful to impose administrative penalties on parents for refusing mandatory vaccinations for their children. The Court noted that the contested measures had a reasonable relationship to

the aim pursued by the Czech Republic—protecting against diseases for which vaccination is considered effective and safe [18].

As noted by N.O. Horobets, vaccination is currently recognized as the only effective means of combating infections and viruses (though its effectiveness is not always 100%). Therefore, the possibility of mandatory vaccination cannot be excluded, meaning the restriction of the right to refuse vaccination in order to develop herd immunity and reduce the severe consequences of infections [19].

Conclusions. The right to health care is a complex system of legal norms that regulate relations concerning the preservation, maintenance, and strengthening of health at both national and international levels.

The right to health care consists of two components: health protection itself and medical care. In our opinion, these two components should be viewed as the general and the specific, respectively. Medical care, in turn, involves the provision of medical services that include not only the diagnosis and treatment of diseases but also prevention (prophylaxis) and rehabilitation. Preventive measures, in our view, include the administration of preventive vaccinations (immunization). High-quality and accessible prevention forms the foundation of medical care, as it is aimed at preserving health and reducing the costs of treatment.

Thus, the legal regulation of preventive vaccinations and the right of individuals to vaccination are integral components of the right to medical care, which in turn is an element of the right to health care. The administration of preventive vaccinations is aimed at protecting both individuals and society as a whole from dangerous infections, and vaccination itself falls within the scope of human health. The right to medical care cannot be fully realized without ensuring the right to vaccination.

In this regard, it can be concluded that the right to vaccination represents the measure of possible conduct by an authorized person regarding the administration of safe and accessible vaccines. These vaccines are designed to create artificial immunity in individuals and promote herd immunity against infectious diseases, thereby protecting life and health and meeting both physical and social needs.

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