



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 400-2 esq a Lerdo de Tejada, Toluca, Estado de México. 7223898476*

RFC: ATII20618V12

Revista Dilemas Contemporáneos: Educación, Política y Valores.

<http://www.dilemascontemporaneoseducacionpoliticayvalores.com/>

Año: VI

Número: Edición Especial

Artículo no.:39

Período: Diciembre 2018.

TÍTULO: Problemas legales de prevención vacunal.

AUTORES:

1. Arte I. Khabirov.
2. Gulnara M. Khamitova.

RESUMEN: La vacunación es una forma de intervención médica para prevenir la posible aparición de una enfermedad infecciosa. El descubrimiento del principio de la inmunización activa es una herramienta poderosa en la lucha contra las enfermedades infecciosas, incluidas las causadas por virus. La relevancia del tema elegido se debe al deterioro de la situación epidemiológica en Rusia, al rechazo masivo de las vacunas, y al aumento de la incidencia de varias infecciones. El artículo está dedicado al análisis de las bases legales de la vacunación en la Federación Rusa, incluidos los niños. Sobre la base de las disposiciones establecidas, propusimos una posible forma de mejorar la organización de las vacunas preventivas.

PALABRAS CLAVES: prevención de vacunas, derecho a la salud, servicios médicos, seguro social.

TITLE: Legal problems of vaccinal prevention

AUTHORS:

1. Artur I. Khabirov.
2. Gulnara M. Khamitova.

ABSTRACT. Vaccination is a form of medical intervention to prevent the possible appearance of an infectious disease. The discovery of the principle of active immunization is a powerful tool in the fight against infectious diseases, including those caused by viruses. The relevance of the selected topic is due to the deterioration of the epidemiological situation in Russia, the massive rejection of vaccines, and the increase in the incidence of several infections. The article is devoted to the analysis of the legal bases of vaccination in the Russian Federation, including children. Based on the established provisions, we proposed a possible way to improve the organization of preventive vaccines.

KEY WORDS: vaccinal prevention, right to health, medical services, social insurance.

INTRODUCTION.

Since ancient times, mankind has constantly been subjected to infectious diseases, which were accompanied by fatal outcomes.

In modern conditions, a significant proportion of attention is paid not so much to the treatment of the diseases themselves, but rather to their prevention. Such recreational activities as a balanced diet, necessary physical activity and physical culture, a clear day regimen, body adaptation to different environmental conditions, etc., are undoubtedly auxiliary measures to protect the body from diseases, but the most effective way is still preventive vaccinations.

Some representatives of the population, and often the doctors themselves and other employees of medical institutions, cast doubt on the need for immunoprophylaxis, as a result, the discussion on the subject “vaccination - for and against” remains relevant for a long period of time.

“Now people are more educated and informed, which, paradoxically, does not at all lead to reaching a consensus on these issues in the modern world. There is a certain democratic right to discussion and disputes, and many citizens believe that they can reasonably have their point of view, even if it contradicts the position of their doctor and official recommendations. In addition, "there is no consensus among the experts themselves”, notes doctor Antoine Flao [Antoine Flahault (Антуан Флао)].

DEVELOPMENT.

Methods.

The study is based on a method of analyzing current Russian legislation and law enforcement practice and existing European (global) standards for the purpose of legal unification [Comparative Law, 1947; 386].

The methods of legal modeling and forecasting make it possible to determine the need for changes in the current Russian regulatory acts, as well as the need to adjust judicial practice [Dale, William, 1977]. Due to the use of modeling and forecasting methods, the consequences of such changes and adjustments can be established with a sufficient degree of reliability.

It is also revealed the extent to which the Russian law enforcement practice will be close to the existing European (world) standards [Arslanov Kamil Maratovich, Khabirov Artur Ilfarovich, 2017, 324–325]. The legal sociological method allows the assessment of social problems from a legal position, from the position of the legislator and the law enforcer [Siems, M., & Mac Síthigh, D., 2012; 651]. The method of interpretation complements the comparative legal analysis in the study, making it possible to understand and compare the Russian and European (world) legal standards [Davies, P. 2016, 62]. The use of various methods allowed us formulating the main theoretical

conclusions and make our own proposals on the studied field of public relations [Demieva A.G., Arslanov K.M., 2016, 2475; Arslanov Kamil, Khabirov Artur, 2017; 99–100].

Results and Discussion.

The legal basis for vaccination in the Russian Federation is enshrined in the Constitution of the Russian Federation and in the federal legislation. In particular, in the Federal Law No. 157-FZ dated September 17, 1998 “On Immunoprophylaxis of Infectious Diseases”. Also, the national calendar of preventive vaccinations and the calendar of preventive vaccinations for epidemic indications, which were adopted in 2014, are in force. These documents, among others, regulate the rights, duties and various manipulations of health workers during vaccinations. The implementation of these regulations is mandatory in all medical institutions.

Article 5 of the Federal Law “On Immunoprophylaxis of Infectious Diseases”, which is called “Rights and Obligations of Citizens in the Implementation of Immunoprophylaxis”, emphasizes that every citizen has the right to receive complete objective information about significance, rationality, and possible consequences of his/her refusal and about the complications resulting from vaccination. That is, the medical worker shall provide full information, without forcing to make vaccination, without imposing personal opinion, but not dissuading the patient. The information should be provided in an accessible form.

However, in a critical situation, the interests of a society are put higher than the interests of a single person. In other words, if the likelihood of the occurrence of especially dangerous infections appears, then vaccination activities will be carried out without fail. In this situation, vaccination will be an emergency measure [Kuzmenko L.G., Ovsyannikov D.Yu., Kiseleva N.M., 2009; 84–85]. This is stated in Article 10 “Preventive Vaccinations for Epidemic Indications” of the above Federal Law: “Vaccinations for epidemic indications are given to citizens with the threat of infectious

diseases, the list of which is established by the federal executive body that performs the functions of developing and implementing public policy and regulatory framework in the field of health care”.

On a personal level, the vaccination process should be strictly voluntary. At the same time, the employees of medical organizations shall provide the patient with all relevant information before vaccination, which will help make the right decision.

Each person can refuse vaccination, but this refusal shall be recorded in the medical records. Thus, Article 2 of the Constitution of the Russian Federation is being implemented: “Human, his/her rights and freedoms are the highest value. Recognition, observance and protection of the rights and freedoms of a person and citizen is the state's duty. That is, a citizen has the right to the inviolability of his/her personality, as well as in relation to his/her health, he/she is independent in making decisions that seem to be the most correct from his/her point of view, not forgetting that he/she is responsible for the consequences that take place. Thus, in our country, which is a democratic state, the rights and freedoms of the individual predominate, rather than state policy, affecting all the same rights and freedoms of citizens.

It is necessary to vaccinate children, the most thorough and carefully. For starters, the drug is tested on adults. Another condition for this procedure is the presence of the informed consent of the parents or legal representatives of the child. The Federal Law No. 323-FZ dated November 21, 2011 “On the Basic Principles of Health Protection of the Citizens in the Russian Federation”, the right of a citizen to informed voluntary consent to medical intervention and the right to refuse medical intervention is enshrined in Article 20. Part 7 of Article 20 of this Federal Law states that the informed voluntary consent to medical intervention or refusal of medical intervention shall be made in writing, signed by a citizen, one of the parents or another legal representative, a medical professional, and shall be attached to the patient's medical documentation.

Every year, it becomes more and more difficult to ensure vaccination of all segments of the population, since the decision is the result of free choice in modern conditions. In this regard, health care bears a huge damage, because the issues relating to this industry have ceased to be only for doctors for a long time. It is necessary to take this into account.

Ultimately, it will be very difficult to get rid of diseases like poliomyelitis, whooping cough, etc., and those children whose parents have refused vaccines may have to pay for such a rash act.

Nowadays, people have ceased to be afraid of such infectious diseases as whooping cough and tetanus, because they have almost disappeared from our society for a long time, therefore, the population is paying more attention to the effects of vaccination and therefore is increasingly refusing vaccination. But do not forget that now many people are traveling, and there is no guarantee that they will not bring any virus with them that is not defeated in a particular country. Or, for example, the tetanus virus lives in the most unexpected things, such as spikes of flowers, rusty nails, etc., so it is still as dangerous as in the past. As a consequence, the refusal consequences are still dangerous, regardless of time.

Abroad, vaccination is a mandatory preventive measure, they do not even ask for consent to be vaccinated, because they guarantee safety not only for themselves and their loved ones, but also for the people around them in this way. For example, in Italy it is mandatory to make vaccination against influenza in children under 16 years old. And in the United States, the presence of vaccinations against the same influenza is a prerequisite for continuing education in public schools. Some states have taken a number of measures for irresponsible treatment of vaccinations. Thus, in Belgium every child should be vaccinated against poliomyelitis, and those parents who have refused vaccination without medical contraindications are brought to justice. In Singapore, parents who have not vaccinated their children will face a fine or imprisonment. And in Uganda, the head

of state has quite recently signed a law stating that the citizens will be punished with imprisonment for up to six months for refusing vaccinations. [Gorozhaninova M., 2018]

At its core, vaccination is not a therapeutic agent, it is administered to a greater extent in the form of a preventive medication. It is easier, cheaper and safer to carry out preventive measures than to treat a disease. But the parents who have thoughtlessly refused to vaccinate their own children create the life-threatening conditions for them. However, no kind of responsibility is provided for parents in the Russian Federation.

Every year, vaccination methods are constantly improved, but the citizens still continue to fear of them, which results in the pockets of dangerous diseases. Thus, the Federal Service for Health and Social Development for the RT published the statistics according to which people suffering from the lichen rose by 58.1%, and whooping cough - by 3.9 times in the year 2016. This was a cause for alarm [Gorozhaninova M., 2018].

According to Article 10 of Federal Law No. 124-FZ dated July 24, 1998, "On Basic Guarantees of the Rights of the Child in the Russian Federation", every child has the right to health care. Those parents who have refused to vaccinate their child endanger the lives and health of other children, potentially violating their rights.

Vaccinal prevention can prevent the spread of infectious diseases. There are not only people who refused of vaccinations of their own volition, but also those to whom this procedure has been contraindicated for medical reasons in our society. Such vulnerable people are pregnant women, cancer patients, young children and their vaccination can lead to the fact that the disease will take more severe form in them. Consequently, it is very important to be vaccinated in time to prevent the spread of infectious diseases [Yamchitskaya A.A., 2018].

“Still, parents should be responsible for their own decisions, because the child has also the right to a decent quality of life and health. He/she is small, he/she can neither say nor do anything in his/her defense, and adults should protect him/her. At some point, the child is deprived of protection through someone's fault and suddenly he/she meets with an infectious disease. He/she starts to hurt. The disease causes complications with the consequences for the whole life... The child's rights to health are violated. The one whose fault it happened should be punished. It will be logical and fair" [Khaidarshyna L., 2018].

This point of view deserves close attention and detailed study from both the legal and the moral side. Of course, the Ministry of Health cannot oblige the parents to vaccinate their children, as the legislation of the Russian Federation does not provide for the onset of responsibility for refusing vaccinations, so another effective method is needed. One of those is a change in the insurance terms of unvaccinated Russians.

In summary, in our opinion, in order to better encourage the parents or other legal representatives to vaccinate their underage children, amendments should be made to Part 2 of Article 9 of the Federal Law No. 255-FZ dated December 29, 2006 “On Compulsory Social Insurance for Temporary Disability and with Motherhood”. Currently, the current wording of this article states that the grounds for refusing to assign benefits for temporary disability to an insured person are:

- 1) The occurrence of temporary disability as a result of the intentional infliction of harm to one's health or attempted suicide as determined by the court.
- 2) The occurrence of temporary disability due to the commission of an intentional crime by the insured person.

In our opinion, it is necessary to amend the second part of subclause 3 in the following edition: “the occurrence of temporary disability in case of the need to care for a child whose disease has been caused by the lack of vaccination against the corresponding disease (virus, infection, etc.) due to the refusal of the parents or other legal representatives of the child to vaccinate the child”.

In our opinion, such a decision would be rational. Certainly, it is impossible to make vaccinations to everybody without analysis. Since there are no identical people, and even more so organisms. The diseases of the same type is different in each of us. Therefore the reaction of the immune system is completely unpredictable. Also, we need to undergo a medical examination for contraindications before any vaccination.

CONCLUSIONS.

Article 11 “Requirements for Preventive Vaccinations” of the Federal Law No. 157-FZ dated September 17, 1998 “On Immunoprophylaxis of Infectious Diseases” has a clause stating that “preventive vaccinations are given to citizens who do not have medical contraindications.

The list of medical contraindications for preventive vaccinations is approved by the federal executive body responsible for the development and implementation of state policy and regulatory framework in the field of health care”.

In our opinion, it is also necessary to create a special medical expert commission so that the parents or legal representatives of the child receive an expert opinion on the basis of their research, which would entail legal consequences in case of deviation from this expert opinion.

Acknowledgements.

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

BIBLIOGRAPHIC REFERENCES.

1. Antoine Flahault (Антуан Флао). Pendant que les anti-vaccins gagnent du terrain en France, les États-Unis commencent à voir les effets dévastateurs très concrets d'un phénomène en vogue ("Refusal of Vaccinations can be Costly in the Future.") [Electronic resource]. <http://www.atlantico.fr/decryptage/pendant-que-anti-vaccins-gagnent-terrain-en-france-etats-unis-commencent-voir-effets-devastateurs-tres-concrets-phenomene-en-1803221.html#xqZZBVxCtmSDLP7m.99>
<https://inosmi.ru/world/20141013/223640855.html> (access date: 29.06.2018).
2. Arslanov Kamil Maratovich, Khabirov Artur Ilfarovich. About the Weak Party of the Loan Contract // *Astra Salvensis, Review of History and Culture Supplement*. – 2017. – P.323–330.
3. Arslanov Kamil, Khabirov Artur. About the bilateral character of the debt contract // *National Academy of Managerial Staff of Culture and Arts Herald*. – 2017. – № 4. – P. 99-103.
4. Comparative Law. An Introduction to the Comparative Method of Legal Study and Research. By Gutteridge H. C., K.C., LL.D. (Cambridge Studies in International and Comparative Law, Vol. I.) – London: Cambridge University Press. *The Cambridge Law Journal*. – 1947. – 9(3). – P. 386-387.
5. Dale, William. *Legislative Drafting: A New Approach: a Comparative Study of Methods in France, Germany, Sweden and the United Kingdom*. – London: Butterworths, 1977. – 341 p.
6. Davies, P. Rectification versus interpretation: the nature and scope of the equitable jurisdiction. – *The Cambridge Law Journal*. – 2016. – 75(1). – P.62-85.
7. Demieva A.G., Arslanov K.M. Legislation on Business: the International Experience and the Prospects of Development in Russia // *The Turkish Online Journal of Design, Art and Communication (TOJDAC)*. – November. – 2016 Special Edition. – P.2474–2479.

8. Gorozhaninova M. "Fashion to Refuse Vaccination": Tatarstan is Overwhelmed with Whooping Cough and Lichen [Electronic resource] (access date: 29.06.2018).
<https://re-alnoevremya.ru/articles/37692>
9. Kuzmenko L.G., Ovsyannikov D.Yu., Kiseleva N.M. Children's Infectious Diseases: Study Guide for the Students of the Higher Educational Institutions. – M.: Publishing Center "Akademiya", 2009. – 528 p.
10. Khaidarshyna L. "The Penalty for Irresponsibility" [Electronic resource] (access date: 29.06.2018) <https://www.oblgazeta.ru/society/35025/>
11. Siems, M., & Mac Síthigh, D. Mapping legal research. The Cambridge Law Journal. – 2012. – 71(3). – P.651-676.
12. Yamchitskaya A.A. "Vaccination in the Modern World. Why do we Need to be Vaccinated?" [Electronic resource] <https://www.pediatrplus.-com.ua/article/77/pdf> (access date: 29.06.2018).

DATA OF THE AUTHORS.

1. Artur I. Khabirov. Kazan Federal University Email: art.khabir@gmail.com

2. Gulnara M. Khamitova. Kazan State Medical University. Email: info@prescopus.com

RECIBIDO: 2 de noviembre del 2018.

APROBADO: 16 de noviembre del 2018.