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## Compulsory vaccination: Public benefit or individual's right limitation\*

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**Abstract.** Mass vaccination and its controversial assessments have become key issues under the covid-19 pandemic. Outbreaks of diseases and popularity of anti-vaccination movements require a study of legal foundations for medical interventions and freedom restrictions which are considered as the result of serious risks to health and sanitary-epidemiological well-being of the population. The question is what should be prioritized — paternalistic powers of the state or individual rights and freedoms to decide what risks to take. In terms of responsibility distribution, people often consider vaccines as more dangerous than infectious diseases [17], which makes compulsory vaccination a legal phenomenon of particular importance. In the contemporary legislation, there are various national approaches to the individual autonomy and freedoms. In some countries, vaccination is directly linked to the possibility to study (USA), in others it is associated with 'public health' (Australia), financial sanctions (Poland) or freedoms' limitations (Pakistan). In terms of public health ethics, vaccination is similar to the use of seat-belts in cars, and compulsory vaccination policy is ethically justified by the same reasons as mandatory seat-belt laws [8]: at first, they were met with great opposition; later the use of seat belts acquired the significance of not only a legal but also a social norm precisely because it was made mandatory [1]. The similar approach is applicable to vaccination: the policy of compulsory vaccination can make it a social norm. However, in the legal perspective, compulsory vaccination is a compulsory medical intervention which raises the question about whether it is possible to limit individual rights and freedoms in the name of public health safety. The article considers contradictory issues in the state policy of compulsory vaccination and its legal support. The author presents a definition of compulsory vaccination, identifies its types, describes the specifics of its national legal regulation and sanctions for the refusal to be vaccinated, and explains its social necessity and expediency as a public good.

**Key words:** vaccination; compulsory vaccination; public interest; individual rights and freedoms; restriction of rights and freedoms; private life; public health

### Legal regulation of compulsory vaccination: the choice of priorities

Vaccination is a set of measures aimed at the formation of anti-infectious immunity by injecting vaccines into the human body, which is officially recommended or prescribed due to the fact that infectious diseases pose a serious threat to the health of individuals and to the sanitary-epidemiological well-being of

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the population. Vaccination can be both voluntary and mandatory. Many states face such a phenomenon as anti-vaccination challenging the safety and effectiveness of vaccination, i.e., people refuse to vaccinate themselves or their children. However, many of them think that vaccines in general are good and even argue that people have a moral obligation to be vaccinated, but they oppose government coercion in the name of individual freedom or others value like physical inviolability.

Today the state provides an extensive system of means for individual rights protection from unreasonable restrictions. At the same time, the state is a bearer of public interest and must protect not only individual rights but the society as a whole from those large-scale threats that entail mass infectious diseases. Thereby, it is necessary to develop a state policy to harmonize the interests and rights of individuals and public. One of its instruments is *compulsory vaccination* which helps to reduce morbidity and mortality. It is also called mandatory, coercive or obligatory vaccination without focusing on semantic nuances and differences between them.

There are two main forms of such vaccination: direct and indirect. In the *direct form*, the obligation to be vaccinated is ensured by the compulsory administration of the vaccine: citizens are forced to be vaccinated by the direct legal obligation or the direct threat of adverse consequences, including criminal penalty. This is compulsory vaccination ‘in its absolute form’, i.e., by definition ignores the personal consent, infringement of physical integrity and provisions of the Article 8 of the European Convention on Human Rights [13]. The *indirect form* implies relative forms of coercion, which have negative consequences in case of the vaccination refusal but not the compulsory administration of the vaccine. This form of compulsory vaccination is chosen by the majority of states: the obligation to vaccinate is not established directly — rather by limiting the individual’s choices and by making vaccination a condition for certain services (restaurants, theaters, etc.), industries (health care, etc.) or state benefits. Thus, the state establishes legal conditions to indirectly force individuals to accept vaccination, such as ensuring negative consequences in case of vaccination refusal.

The legal term ‘compulsory’ means that vaccination becomes a legal requirement ensured directly or indirectly by the legal enforcement measures, i.e., compulsory vaccination turns into a legal regime, according to which a refusal to vaccinate is illegal and can have legal consequences. Such a legal regulation can be considered as mandatory vaccination when parents of unvaccinated children are fined or certain benefits depend on children vaccination (exclusion of children from public schools for non-medical excuses for not being vaccinated, when unvaccinated workers are suspended from work, etc.).

The study of data from 108 countries on the legal consequences for people refusing vaccination allowed to identify four types of such penalties [9]: financial (fines) — influence the financial position of the individual (32 countries); restriction of parental rights or loss of guardian status (for example, in Italy, there are procedures to temporarily revoke custody); educational penalties — limit the

access of the unvaccinated child to education; imprisonment (for up to 6 months in 12 countries, mainly in Africa). In addition to these four types of penalties, another one should be named — suspension of unvaccinated workers and limitation of access to certain services (restaurants, theaters, public transport, etc.) and benefits. Compulsory vaccination rules are applied in more than 100 countries within different legal systems.

### **Compulsory vaccination in the Anglo-Saxon countries (Australia and the USA)**

In Australia, the compulsory vaccination model makes certain benefits dependent on vaccination. According to the 2017 Bill of Rights, everyone has the right of physical and psychological integrity (Article 12), and every child has fundamental rights and freedoms of one's age (Article 18). Moreover, the Article 3 emphasizes that rights and freedoms are subject only to such reasonable legal restrictions that can be clearly justified in a free and democratic society. Australia's No Jab, No Pay Act obliges parents to vaccinate their children and deprives them the right to freely consider the risks and benefits of such medical interventions as vaccination, which contradicts the Australian Immunization Guidelines setting the criteria for *legally valid consent* to medical intervention. Such consent must be given voluntarily in the absence of undue pressure, coercion, or manipulation and can only be given after the potential risks and benefits of the vaccine, the risks of not having it and any alternative options were explained. Thus, there is a conflict between the federal law of Australia No Jab, No Pay and the right to legally valid consent, which is still ignored by politicians and doctors.

In Australia, children must complete all vaccinations according to the Young Child Vaccination Schedule in order to get access to financial benefits. After the No Jab, No Pay Act came into force in January 2016, this schedule has expanded — diphtheria, tetanus and pertussis vaccines at 18 months (up to six doses for children) and meningococcal combination vaccine ACWY for 12-month-olds. Thus, in the name of public good, the Australian government forces its citizens, namely the parents, to vaccinate their children. There have been cases when the courts allowed a child to be vaccinated against the will at least one parent: the judges explained that they were acting 'in the best interests of the child' and based their decision on the scientific evidence, including the risk assessments by medical practitioners. For instance, the Supreme Court of Queensland considered the case when both parents refused to vaccinate a child born to a mother with chronic hepatitis B, thereby exposing the child to a 10–20% risk of infection (which would mean a 90% chance of chronic infection and a 25% chance of cirrhosis and/or hepatocellular carcinoma). The baby could not be examined until 9 months old, but it was possible to immediately vaccinate him to significantly reduce the risk of infection. The judge decided to vaccinate the child.

In the United States, a deadly smallpox epidemic swept the northeast in 1901, and the Boston and Cambridge health councils ordered all residents to be vaccinated.

Some of them refused arguing that the vaccination order violated their personal rights and freedoms guaranteed by the Constitution. In 1905, the Supreme Court made a historic decision by recognizing the government's right to 'reasonably' limit personal freedoms under the public health crisis by imposing fines on those who refused vaccination. Moreover, the court noted that the state had an obligation to use coercion to protect the lives of citizens from the threat of a fatal disease. This decision became a judicial precedent: in the early period of the covid-19 pandemic, when states issued closure orders and banned mass gatherings, several judges justified these restrictions by citing the *Jacobson v. Massachusetts* case as the last Supreme Court direct address to the state under the epidemic. Considering this precedent, it can be assumed that the lawsuits on violation of constitutional rights by compulsory vaccination will be lost in the United States. Nevertheless, the position of the US Supreme Court can be justified only under the real deadly threat and not an organized political ploy. However, the Court admitted that the threat might not be real if those who decide to vaccinate believe in vaccine effectiveness, which provides a loophole for officials.

In Texas, a lawsuit was filed by 117 hospital employees who demanded the abolition of compulsory vaccinations. In particular, the lawsuit alleged a violation of medical ethical standards known as the Nuremberg Code: this international document introduced ethical standards for scientists involved in medical experiments on humans. It includes 10 principles, the main one of which is the mandatory voluntary consent to participate in the research, i.e., the participant must be informed about its nature, duration, purpose and possible consequences, and another principle is the inadmissibility of compulsory vaccination as a must to work in the hospital. The experts immediately argued that the plaintiffs' assertion that the vaccine was experimental was controversial: tens of thousands of people underwent clinical trials of the third phase of the vaccine. Plaintiffs accused the hospital administration of violating the state law and federal health care law on the use of medical devices in emergencies, claiming that coronavirus vaccines were only allowed for emergency use, and asked the court to prohibit the hospital to fire unvaccinated employees. However, their claim was dismissed by the court. Since the pandemic determined the public health crisis, it can be assumed that the judges may recognize the right of employers to demand vaccinations from their workers.

The legal mechanism of compulsory vaccination in the United States depends on judicial precedents prevailing in different states. For instance. these are cases when the parents' refusal to vaccinate their children was considered by courts as a medical neglect (refusal to seek medical help to prevent, investigate, or treat a disease) with criminal penalties [6]; the parent may be charged with child abuse which can result in a criminal fine and imprisonment; health care neglect is a form of child neglect (not just medical) and constitutes child abuse in the US criminal law. Therefore, one of the most important government policies to support compulsory vaccination consists of treating vaccine refusal as medical neglect and to report such cases to the Child Protection Services (CPS) or similar agencies [4]

to make a child vaccinated so that he can attend a public, private or parish school, or get ‘other adequate and systematic education’ (like a home tutor). For instance, according to the Arkansas law, vaccination is a condition for attending an accredited school and does not allow any religious exception (parents’ refusal to vaccinate their child is considered a neglect).

In some states of America, health authorities have the *emergency powers* to force people to vaccinate. For example, in Wisconsin, the public health authority can take the following steps to respond to a public health emergency: order any person to be vaccinated, unless vaccination can cause serious harm or is denied for religious reasons; isolate or quarantine any person who is unable or unwilling for these reasons to be vaccinated. In Connecticut, under a public health emergency declared by the Governor, his commissioner can order vaccination of all residents of the area as a reasonable and necessary measure to prevent the spread of an infectious disease. The commissioner must inform such residents on benefits and risks of the vaccine and on the possibility to refuse vaccination for any reason. No child can be vaccinated without a parent’s or guardian’s written consent. However, the commissioner can issue a quarantine or isolation order for any person or group unable or unwilling to be vaccinated. In New Mexico, under a public health emergency, to prevent the spread of an infectious disease, the Minister of Health can isolate or quarantine a person unable or unwilling to be vaccinated.

### **Compulsory vaccination in the EU countries**

Article 3 of the EU Charter of Fundamental Rights (CFR) guarantees the right of personal physical and mental integrity. In the field of medicine and biology, it means the free and informed consent to medical intervention. However, according to Article 35 of the Health Charter, “everyone has the right to access preventive health care and the right to receive health care in accordance with the conditions established by the national law and practice. A high level of human health protection must be ensured when defining and implementing all policies and activities of the Union”. Thus, the right of physical integrity correlates with the high value of public health in the EU, and to understand the real mechanism of this correlation and practical priorities, we should consider the relevant legal acts, such as the European Court of Human Rights (ECHR) decisions on compulsory vaccination as necessary in the democratic state.

For instance, in the decision on the group of cases *Vavříčka v the Czech Republic* (Czech families were punished for refusing to vaccinate their children), in April 2021, the ECHR declared that democracies can make vaccination compulsory, which is not a violation of democratic norms, and this decision on mandatory vaccination against childhood diseases could have implications for the covid-19 vaccination policy. The ECHR explained that in the Czech Republic, there is a general legal obligation to vaccinate children against 9 well-known diseases, which cannot be considered physical coercion. Parents who refuse vaccination without a valid reason can be fined, and their unvaccinated children are not admitted

to kindergartens (with an exception of medical recusals). The ECHR also mentioned that compulsory vaccination was an involuntary medical intervention, thus, constituting an attack on physical integrity and affecting the respect for privacy protected by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). However, the ECHR considered whether such an interference corresponded to a “pressing social need”, was “proportionate to the legitimate aim pursued”, and the reasons of the national authorities were relevant and sufficient. The ECHR admitted that the Czech policy pursued the legitimate aim of protecting health and rights of citizens, and that vaccination protected both vaccinated and those who could not be vaccinated for medical reasons and depended on the collective immunity.

Thus, compulsory vaccination is a response of national authorities to the clear social need to protect individual and public health and to stop the downward trend in children vaccination rates. The ECHR stated that the Czech health policy was in the best interests of children — to be protected from serious diseases by vaccination or collective immunity, i.e., there was no violation of Article 8 of the European Convention in the decision of the Czech authorities to introduce compulsory vaccination — the decision “was fully consistent with the protection of public health”.

In the similar case *Solomakhin v Ukraine*, the ECHR decided that compulsory vaccination could be justified by “the need to control the spread of infectious diseases”. The ECHR admitted that preventive vaccinations against tuberculosis, poliomyelitis, diphtheria, pertussis, tetanus and measles were mandatory in Ukraine, and the corresponding demographic groups and categories of workers, procedures and schedule of vaccination were set by the Ukrainian Ministry of Health. According to Article 2 of the Convention, *Solomakhin* complained about the harm to his health due to the alleged medical negligence (vaccination on November 28, 1998 resulted in a number of chronic diseases). The government representatives agreed that the mandatory vaccination constituted an intervention with the applicant’s private life, but it was justified — preventive vaccination against diphtheria was compulsory according to Article 27 of the Health and Disease Control Act 1994, and the Ministry of Health set its procedure and timing in the instructions (Order No. 14 of January 25, 1996). The government officials argued that the medical intervention pursued the legitimate aim of protecting applicant’s and public health from diphtheria as a highly contagious and dangerous disease in the difficult epidemiological situation in the country. The ECHR noted that the applicant’s allegations had been scrutinized by national courts as unsubstantiated, and national courts revealed only one minor irregularity in the vaccination procedure — administration outside the vaccination room, which did not affect the applicant’s health. Moreover, the applicant had not experienced any known side effects of vaccination (based on the sufficient medical data collected at the request of the applicant and courts), i.e., the applicant did not submit any evidence to challenge the findings of the national authorities. Therefore, the ECHR did not identify any violation of Article 8 of the European Convention.

Although the ECHR decisions can be considered precedents proving that compulsory vaccination does not contradict the European Convention, this does not mean that European countries can force people to be vaccinated — according to Article 8 of the European Convention, vaccination strategies are legal only if they are proportionate, do not become an unduly burden for those affected, and their benefits should compensate for any harm done. Compulsory vaccination can be justified only if necessary and proportionate for ensuring public health, administered by the competent authority with the right to set public-health goals and not restricting individual freedoms longer than necessary, i.e., policymakers need to constantly reevaluate the use of their powers to make sure that they remain necessary and proportionate [5].

Compulsory vaccination is one of the strategies adopted by some European countries to protect population when vaccination coverage is unsatisfactory. In Italy, in 2017, vaccination against diphtheria, tetanus, pertussis, hepatitis B, poliovirus, haemophilus influenzae type b, measles, mumps, rubella and chickenpox became mandatory in childhood. Other European countries recommend or plan mandatory vaccines against diphtheria, tetanus, pertussis, hepatitis B, poliovirus, hemophilus influenzae type b, measles, mumps, rubella and chickenpox [3]. In Latvia, there are 10 compulsory vaccines for children, in Bulgaria, Croatia, Czech Republic, France, Hungary, Poland and Slovakia — up to 9 mandatory childhood vaccines. All European countries recommend or introduced mandatory vaccines against tetanus, diphtheria, pertussis, hemophilus influenza B, hepatitis B, poliovirus, mumps, measles and rubella (except Iceland with no recommended vaccination against hepatitis B).

Almost all EU countries have a long tradition of developing and implementing vaccination programs differing not only in types of vaccines used, number of doses and timing of vaccination, but also in whether vaccines are recommended or compulsory (11 out of 31 countries considered have at least one mandatory vaccine). The World Health Organization (WHO) supports the intentions of individual countries to move towards compulsory vaccination programs when they face declining vaccination rates and disease outbreaks. Moreover, “WHO is very interested in learning from countries about vaccine mandate in order to better understand the impact on immunization coverage and the strengths and weaknesses of such approaches” [23]. The legal mechanism for compulsory vaccination is provided for the basic international legal treaty of the WHO — International Health Regulations (IHR) adopted in 2005. According to Paragraph 1 of Article 31, in the cases specified by them, the state has the right to require from travelers to be vaccinated, to have a certificate of vaccination, or to introduce other preventive measures. According to Paragraph 2 of Article 31, if such a traveler refuses to accept any of these measures or to provide information or documents, the state can prohibit his entry. Under the proved public health risk, the state, in accordance with the national law and to the extent necessary to control such a risk, “may compel the traveler to undergo or recommend vaccination”, other preventive or additionally

established health measures to control the spread of the disease, including isolation, quarantine or placing the traveler under medical supervision.

Thus, the general legal regulation of compulsory vaccination includes the following elements: legislative acts or judicial precedents forcing special categories of population to be vaccinated; acceptance of the informed refusal to vaccinate; adverse consequences for those who refuse vaccination as required by the national law; the right to demand vaccination in case of its absence.

### **Legal regulation of compulsory vaccination in Russia**

In Russia, at the legislative level, there is a general rule that any preventive vaccination is voluntary, i.e., everyone has the right to refuse vaccination based on the right of the informed voluntary consent to any medical intervention according to Article 20 of the Federal Law “On the Basics of Health Protection of Citizens in the Russian Federation” of November 21, 2011 (Law No. 323-FZ). Everyone’s right to refuse vaccination is guaranteed by Article 5 of the Federal Law “On Immunoprophylaxis of Infectious Diseases” of September 17, 1998 (Law No. 157-FZ). There is no legal norm directly establishing the legal obligation of citizens to be vaccinated. However, Law No. 157-FZ introduces (without any legal definition) the concept of compulsory vaccination for preventive (routine) vaccinations for special categories of citizens against the number of diseases set in Article 9, and for preventive vaccinations under the *epidemic* for special categories of citizens (with the highest risk), the list of which is set by the federal executive body authorized by the Russian Government (Article 10). Nevertheless, citizens from both groups for compulsory vaccination also have the right (Part 1, Article 5, Law No. 157-FZ) to refuse vaccination.

According to the WHO recommendations, vaccinations are divided into routine and emergency. Under the epidemic level with no collective immunity (at least 60% of the adult population), in the first half of 2021, the Russian Government started the mass emergency vaccination, which raised two important issues: expanding the vaccination activity of citizens under the lack of the direct legal obligation to vaccinate, and ensuring the efficient compulsory vaccination mechanism for all categories of citizens according to the existing legal acts based on their status, type or area of activity. In legal terms, compulsory vaccination under the pandemic has acquired particular relevance due to the fact that the refusal to vaccinate would have adverse consequences for people (Part 2, Article 5, Law No 157-FZ): ban for citizens to travel to countries in which specific preventive vaccination is required; temporary refusal to admit citizens to educational organizations and health institutions; refusal to admit citizens to work or suspension from work with a high risk of infectious diseases.

Certainly, such measures entail certain restrictions of the rights of nonvaccinated citizens. However, these restrictions are established by the federal law in accordance with Part 3 of Article 55 of the Russian Constitution, which allows restrictions of civil rights and freedoms only by the federal law and on certain



grounds as health protection, rights and legitimate interests of others. In the legal basis of compulsory vaccination, by-laws and regulations adopted by executive authorities play an important part, and the challenge is to ensure the consistency of the legal regulation of compulsory vaccination within these authorities' power limits under the threat of epidemics. This challenge determined a number of court cases in the pre-covid period, whose decisions acquired particular relevance under the mass anti-covid vaccination. Thus, one company applied to the Arbitration Court with a lawsuit against the territorial department of the Rospotrebnadzor (Administration) in order to invalidate its instructions to ensure that all employees were vaccinated against influenza during the epidemic season 2020/2021. The first-instance court satisfied the claim, which was appealed by the Arbitration Court of Appeal, according to which by recognizing the instruction as invalid, "the court of the first instance rightly proceeded from the fact that trade activities are not included in the list of works with a high risk of infectious diseases and compulsory preventive vaccinations approved by the Decree of the Russian Government of July 15, 1999 No 825; the society does not have the authority to oblige employees to preventive vaccination, because according to Part 1 of Article 5 and Part 2 of Article 11 of the Law No 157-FZ, citizens have the right to refuse preventive vaccination which requires the informed voluntary consent to medical intervention", i.e., the Arbitration Court of Appeal agreed with the position of the first-instance court.

In July 2020, the Chief State Sanitary Doctor of the Russian Federation issued a decree recommending the mass immunization of employees against influenza. The Rospotrebnadzor sent instructions to organizations that did not comply with the recommendations in the decree and did not help to provide "collective immunity" due to the requirement, among other things, "to organize preventive influenza vaccination of employees with at least 60%" and provide the supporting data to the Rospotrebnadzor. One organization (the cinema network) challenged these instructions in the arbitration court: the first-instance court satisfied the lawsuit and declared them unlawful, which was supported by the Court of Appeal.

At the same time, there are other legal issues, for instance, Part 2 of Article 5 of the Law No. 157-FZ obliges the employer to suspend a non-vaccinated employee from work only if this work implies the high risk of infectious diseases. The list of such works requiring mandatory preventive vaccination is provided by the Decree of the Russian Government No. 825 of July 15, 1999. The functions of employees in the central office that ensure the operation of cinemas (financial, economic, legal, marketing, etc.), and of employees in cinemas (executives, directors, managers) are not included in this list, i.e., the organization has no reason to suspend any of them as not having preventive vaccination. Thus, the decisions of the arbitration courts point to the developing legal practice, according to which the suspension from work with a low risk of infectious diseases as based on the lack of compulsory preventive vaccination is illegal.

Under the current mass vaccination against the coronavirus infection, in the media and public discussions, there are doubts about the legality of the new list of

works and workers subject to compulsory vaccination as expanded by the Chief State Sanitary Doctor [12]. This problem is of fundamental importance for this list is associated with the implementation of the legislative norm on the refusal to hire or suspend unvaccinated employees. However, the lists of jobs and workers subject to compulsory vaccination as approved by the Chief Sanitary Doctors differ significantly from the list approved by the Federal Government by Resolution No. 825. The Chief Sanitary Doctor of Moscow adopted Resolution No. 1, in which he ordered the heads of organizations to ensure the preventive vaccination against the covid-19 for at least 60% of employees (in July 2021, the head of the WHO recommended the states to ensure vaccination of 70% of the population). The list of workers subject to compulsory vaccination in Resolution No. 1 includes more than 20 spheres (trade, public catering, public transport, taxi, etc.), while the list of works approved by the government includes only 12 categories of work with a high risk of infectious diseases and compulsory preventive vaccination, i.e., the regional list expanded the number of groups subject to compulsory vaccination (only education and healthcare workers are in both lists).

Thus, there is a question about the legality of such expansion by the Chief Sanitary Doctor, which considers the statutory competence of subjects adopting the regulation of compulsory vaccination at the sublegal level. According to Part 2 of Article 5 of the Law No. 157-FZ, the list of works with a high risk of infectious diseases and compulsory preventive vaccination is set by the federal executive body authorized by the Russian Government, and, according to Part 3 of Article 10 of the Law No 157-FZ, this is the Ministry of Health. The Russian Government has the right to provide the list of works, and the Ministry of Health approves the calendar of preventive vaccination, its timing, and the categories subject to compulsory vaccination. According to this calendar, preventive vaccination against the covid-19 is obligatory for workers of medical, educational, social-service organizations and multifunctional centers (1<sup>st</sup> level priority); employees of transport and energy organizations, rotational workers, services and military personnel (2<sup>nd</sup> level priority); civil and municipal employees, students over 18 years old, and conscripts (3<sup>rd</sup> level priority).

Thus, the lists of workers subject to compulsory vaccination against the covid-19 as established by the Ministry of Health and by the Federal Resolution No. 825 differ. And the question is which of these two federal regulations has the priority for a legally justified mechanism of compulsory mass vaccination. We believe that the priority should be given to the list in the calendar of preventive vaccinations for epidemic indications: first, the government list sets the types of work in the most general form and does not take into account the pandemic conditions; second, according to Part 3 of Article 10 of the Law No. 157-FZ, the Ministry of Health is the federal executive body authorized by the Russian Government to approve the calendar of preventive vaccinations. When adopting resolutions on preventive vaccination for certain groups for epidemic indications, the regions' chief sanitary doctors should follow the calendar of the Ministry of Health.

However, under the epidemic, the regions' executive bodies of state power can change the priority levels of groups subject to compulsory preventive vaccination

(Clause 8 of the Procedure for preventive vaccination within the calendar for epidemic indications as approved by the order of the Ministry of Health No. 125.) This normative act does not specify which regions' executive authorities have the right to make such decisions, but Part 2 of Article 10 of the Law No. 157-FZ allows this to the chief sanitary doctor, who also sets the number/share of workers for mandatory vaccination in order to prevent the spread of coronavirus. For instance, Resolution No. 1 adopted by the Chief State Sanitary Doctor of Moscow provides a list of works for compulsory vaccination within the list in the calendar of preventive vaccinations for epidemic indications as approved by the Ministry of Health. There is no expansion of the list of employees subject to compulsory vaccination, but rather its clarification in order to make the legal act clearer for the population and law enforcement officers. Therefore, within such areas as trade, public catering, public transport and others, the Chief Sanitary Doctor specifies the calendar category 'employees of service organizations' of the 2<sup>nd</sup> level priority.

Thus, in Russia, the compulsory vaccination mechanism is an exception to the current general rule of voluntary preventive vaccination. However, compulsory vaccination does not mean that the personal consent to vaccination according to the law and the calendar of preventive vaccinations for epidemic indications is not needed, i.e., compulsory vaccination in Russia, as in the majority of contemporary states, presents its indirect form. Nevertheless, even in this form, it cannot but affect the individual rights of citizens, for instance, the right to respect for one's private life as protected by Article 8 of the European Convention. However, the ECHR practice on compulsory vaccination justifies such an interference as necessary in the democratic society if based on an appropriate legal basis and a legitimate aim. The Russian compulsory vaccination mechanism against the coronavirus fully meets these criteria: there is a sufficiently developed legislative framework that allows a flexible implementation of the policy of preventive vaccinations to protect individual and public health, although it needs further improvement to eliminate some incoherence and ensure its consistency. In particular, one of the unresolved issues is the legal regulation of the list of works with a high risk of infectious diseases and compulsory preventive vaccinations, which can be resolved at the federal level by appropriate changes to the list adopted by the Russian Government. Under the pandemic, the need to use the mechanism of compulsory vaccination is less and less questioned. In addition to the educational activities of public authorities and associations, this was largely determined by the fact that mass vaccination allowed to significantly reduce the infection rate and the share of patients with severe complications.

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In the democratic society, the state must protect both individual rights and the society as a whole from such large-scale threats as mass infectious diseases. This explains the need to develop a public policy of compulsory vaccination in order to increase the share of vaccinated population and to reduce morbidity and mortality. Such a policy requires a flexible and well-functioning mechanism of legal support,

a proper legal basis: legislation norms that directly or indirectly oblige people from special categories to be vaccinated; a legal procedure for obtaining an informed consent/refusal to be vaccinated; legal adverse consequences for those obliged to be vaccinated but refusing to do so; personal lawsuits in case of lack of vaccines.

Public authorities have the right to impose compulsory vaccination, but this does not mean that people can be physically forced to be vaccinated. Moreover, in contemporary states, the obligation to be vaccinated is not established directly, rather there are limitation of the individual choice (for example, vaccination is a condition for accessing certain public goods and services, for employment in certain industries, etc. By such limitations, the state indirectly makes individuals accept vaccination. Thus, compulsory vaccination can be defined as a system that implies negative legal consequences for the refusal to vaccinate, which can affect and are intended to influence the decision to be vaccinated. Compulsory vaccination is considered a public good that ensures health protection of both individuals and the population, which makes the state include the relevant legal norms in its constitutional acts, i.e., to create a legal framework for compulsory vaccination in both rational and ethical terms.

The public legal obligation to be vaccinated cannot but affect the individual rights such as the right to respect for private life protected by Article 8 of the European Convention. This right is not absolute: the Convention implies that it can be limited by the law in order to protect the health or rights and freedoms of others. According to the ECHR decisions on compulsory vaccination, such an intervention of public authorities is justified if it is necessary, has an appropriate legal basis and pursues a legitimate goal. The influence of compulsory vaccination as a preventive measure on personal privacy, rights and freedoms should be considered in the framework of protecting the health and well-being of the population, i.e., a socially fundamental and ethically justified public goal cannot be considered as a violation of individual rights.

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## **Обязательная вакцинация: социальное благо или нарушение индивидуальных прав\***

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**Аннотация.** Массовая вакцинация и ее противоречивые оценки оказались в центре общественного внимания в условиях пандемии коронавируса. Вспышки заболеваний и широкое распространение движения против вакцин требуют изучения правовых основ медицинского

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вмешательства и ограничения свобод, которые стали результатом признания серьезных рисков для здравоохранения и санитарно-эпидемиологического благополучия населения. Проблема сводится к расстановке приоритетов — что важнее: патерналистская власть государства или индивидуальные права и свобода решать, на какой риск идти. С точки зрения распределения ответственности люди часто воспринимают вакцины как нечто более опасное, чем сами инфекционные заболевания [17], что и объясняет важность рассмотрения обязательной вакцинации как правового феномена. В современном законодательстве оформились разные подходы к трактовке личных свобод. Одни страны напрямую увязывают вакцинацию с возможностью обучения (США), другие — скорее со «здравоохранением» (Австралия), финансовыми ограничениями (Польша) или ограничением свобод (Пакистан). С точки зрения этики здравоохранения вакцинация схожа с использованием ремней безопасности в автомобиле, т.е. обязательная вакцинация объясняется теми же причинами, что и требование пристегиваться [8]: сначала оно было воспринято резко негативно, но затем стало не только законодательной, но и социальной нормой благодаря своей обязательности [1]. Схожий подход применим к вакцинации: меры обязательной вакцинации могут превратить ее в социальную норму. Однако с юридической точки зрения обязательная вакцинация — это принудительное медицинское вмешательство, порождающее вопрос об ограничении индивидуальных прав и свобод во имя сохранения общественного здоровья. В статье рассмотрены противоречивые аспекты государственной политики обязательной вакцинации и ее нормативное обоснование. Автор предлагает определение обязательной вакцинации, определяет ее типы, описывает особенности ее законодательного обеспечения в разных странах и санкции за отказ от вакцинации, объясняет ее социальную необходимость и целесообразность как общественного блага.

**Ключевые слова:** вакцинация; обязательная вакцинация; общественные интересы; индивидуальные права и свободы; ограничение прав и свобод; частная жизнь; здравоохранение