

## COVID-19 VACCINATION IN THE NATIONAL SECURITY SYSTEM OF THE RUSSIAN FEDERATION: COORDINATION OF PRIVATE AND PUBLIC INTERESTS\*\*

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The subject. Having a proven positive social and economic effect, vaccination remains one of the most important institutions in the system of public safety. The development of this institution requires a rational legal support, considering not only current epidemic process, but also potential threats of bioterrorism and the development of biological weapons. In this light, effective legal regulation of vaccination measures, determination of their desirable forms and scope of the population coverage, as well as cooperation between citizens and the State in ensuring epidemiological safety become a matter of paramount importance.

The purpose. The authors propose to discuss two issues: the limits of the possibility of introducing the institution of mandatory vaccination and the issue of legal assistance for the population to participate in vaccination programs in order to achieve the maximum possible coverage.

The methodology. The article employs a comprehensive approach which combines formal interpretation and comparative analysis of legal acts and courts decisions with the insights from sociology, behavioral sciences and discourse analysis. The article focuses on the international and national standards of regulation of the vaccination by the means of public and private law in order to achieve herd immunity.

Our analysis of the vaccination institute place in the legal system demonstrates that this institution can be included in a row of disciplinary, coercive and binding institutions for citizens prescribing mandatory participation. However, its coercive potential is relatively small and is limited to certain segments of the society that are of strategic importance for ensuring the epidemiological safety. The article posits that such groups remain in the legal field of exceptions, whereas in general, the vaccination institute presumes that the mandatory component is prescribed primarily to the state, not the citizens. And therefore, the citizen's participation in vaccination has the character of an individual rational choice.

Conclusions. Our analysis shows that the law on vaccination should be focused on the facilitating socially desirable individual choice rather than binding norm prescription. In this area, the main tasks of legal regulation are establishment of an adequate system of accounting and distribution of individual risks, as well as fair compensation for possible damages during vaccinations. The second main direction of legal development is overcoming information asymmetry in the situation of individual decision-making in order to reduce the shortage of reliable data and to ensure effective communication within an expert community, the state and the person. We propose that this development contributes to the transformation of a purely legal norm on vaccination into a social and cultural one and strengthens the cooperative strategies of citizens in the fight against vaccine-controlled diseases.

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## 1. Introduction

Vaccination has been and remains one of the most important institutions in the complex system of public safety with a proven positive social and economic effect. Despite the obvious successes of Russian and world medicine, the development of the pandemic process continues to be one of the most acute problems facing the Russian Federation at present. The long-lasting surge in morbidity triggers negative processes in the economy, reducing its productivity, and destabilizes public life, provoking cascades of crisis phenomena in various spheres. The attention of this article is focused on discussing a relatively small segment of the entire spectrum of possible ways to counter the pandemic, related to the legal protection of the life and health of citizens of the Russian Federation and thus minimizing the direct impact of the epidemic and its consequences on the population of the country.

According to Rosstat (Russian agency for Statistics), by the end of 2021 mortality record in the Russian Federation reached its peak since 1945, and the indicator of natural population loss exceeded one million people<sup>1</sup>. Due to many factors, this indicator is dependent on historical demographic dynamics and does not reflect consequences directly related to the pandemic. Nevertheless, it is the new coronavirus infection that makes a significant contribution to the decline in the country's population. Covid-associated mortality reached the figure of 220 people per 100 thousand in last year<sup>2</sup>. Under these

conditions, the scientific community and the Government of the country emphasize the need to achieve collective immunity as a basic condition for reducing morbidity and further defeating the epidemic. Therefore, vaccination is put at the center of state policy to curb morbidity<sup>3</sup>, striving to reach as full coverage of the population as possible.

The development of this institution requires a balanced and rational legal support, not only based on its importance in stopping the current epidemic process. An important task in the development of the country's legal system is also to achieve epidemiological security in countering future potential threats of both natural and intentional nature. The latter is connected with the danger of bioterrorism and the development of biological weapons contrary to the norms of international law<sup>4</sup> by individual States, as well as by informal actors. In connection with the events of the last period, the risks associated with the work of "viral" scientific laboratories in various regions of the world are becoming obvious.

The implementation of extraterritorial legal and organizational strategies by a number of States, involving the removal of such objects from developed countries to remote jurisdictions where legislation and the public do not strictly regulate bioengineering activities and research, provokes the danger of both intentional and accidental leaks of harmful microorganisms, which sets the stage for future mass disasters. In this light, effective legal

<sup>1</sup> Rosstat. General results of the population movement. URL: [https://rosstat.gov.ru/storage/mediabank/2021\\_edn12.htm](https://rosstat.gov.ru/storage/mediabank/2021_edn12.htm) (access date 02.23.2022).

<sup>2</sup> Coronavirus. Statistics URL: <https://yandex.ru/covid19/stat#statistics-table> (date of address: 06.03.2022). (In Russ).

<sup>3</sup> RBC. The Kremlin called the statistics on population decline in Russia sad. URL: <https://www.rbc.ru/society/31/01/2022/61f7b3899a79476ff9fb17ac> (access date 31.01.2022). (In Russ).

<sup>4</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. Adopted by the General Assembly resolution 2826 (XXVI) of 16 December 1971. URL: <https://front.un-arm.org/wp-content/uploads/2020/12/BWC-text-English-1.pdf> (access date 02.03.2022).

regulation of vaccination measures, determination of their desirable forms and scope of coverage of the population, as well as cooperation between citizens and the State in ensuring epidemiological safety become a matter of paramount importance.

The issues of vaccination against COVID-19 are covered in different scientific dimensions: medical [1, 2], bioethical [3, 4], political science [5,6], legal. In the field of law, vaccination against COVID-19 was considered mainly in the context of human rights restrictions [7], the institution of informed consent for medical intervention [8], the regulation of the status of certain groups of subjects of law (military personnel [9], workers [10], etc.).

Within the framework of this article, vaccination is considered in the context of the national security of the Russian Federation. The purpose of the article is to search for the best practices, to determinate the limits to the legal institution of mandatory vaccination and to define legal methods to facilitate the participation of the population in vaccination programs in order to achieve the maximum possible coverage of citizens of the Russian Federation.

### **1. COVID-19 Vaccination and National Security of the Russian Federation**

Preservation of the people is one of the highest-ranked national priorities in the Russian Federation until 2030<sup>5</sup>. Along with the goals of development of human potential, improving the quality of life and well-being of citizens, it is solved by improving the quality and accessibility of medical care, including

vaccination, and drug provision<sup>6</sup>. Russia's state policy in the field of healthcare is based on a preventive model. Thus healthy lifestyle was consolidated as a value during the constitutional reform of 2020 (Article 72 of the Constitution of the Russian Federation).

The state policy in the field of prophylaxis of infectious diseases is carried out in order to protect the health and ensure the sanitary and epidemiological well-being of the population of the Russian Federation, which implies the prevalence of public legal regulation. Guarantees from the state in the field of prophylaxis, including the availability of vaccines, free vaccinations, social guarantees in case of post-vaccination adverse reactions, support for scientific research are established<sup>7</sup>. The development of this policy is directly carried out by the Russian Federation, and its implementation is also provided by the regional executive authorities.

In the course of countering the coronavirus infection, the Russian authorities have relied on vaccination as a significant way of achieving a collective immunity. According to epidemic indications, vaccination against coronavirus infection was included in the National Vaccination Calendar, which is a state guarantee of the vaccine availability. Moreover, the situation has led to a new Calendar approval<sup>8</sup>. Taking into account the specifics of the pathogen, the effectiveness of the entire system of vaccination measures consists

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<sup>5</sup> On the National Development Goals of the Russian Federation for the Period up to 2030: Decree of the President of the Russian Federation No. 474 of July 21, 2020 // Official Internet Portal of Legal Information [www.pravo.gov.ru](http://www.pravo.gov.ru). July 21, 2022. (In Russ).

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<sup>6</sup> The National Security Strategy of the Russian Federation: Decree of the President of the Russian Federation No. 400 dated July 21, 2021 // Official Internet Portal of Legal Information [www.pravo.gov.ru](http://www.pravo.gov.ru). July 3, 2022. (In Russ).

<sup>7</sup> On Immunoprophylaxis of Infectious Diseases: Federal Law No. 157-FZ of September 17, 1998 // Russian Gas. 1998. September 22. (In Russ).

<sup>8</sup> On Approval of the National Calendar of Preventive Vaccinations and the Calendar of Preventive Vaccinations for Epidemic Indications: Order of the Ministry of Health of the Russian Federation No. 1122n dated December 6, 2021 // Official Internet Portal of Legal Information [www.pravo.gov.ru](http://www.pravo.gov.ru). December 20, 2021. (In Russ).

precisely in the mass coverage of the population with preventive vaccinations [11, p. 20].

At the same time, it should be recognized that mechanisms for stimulating the population participation in vaccination have not been developed in detail at the federal level. The Federal Law "On Immunoprophylaxis of infectious Diseases" fixes the consequences of refusing vaccinations. Among them: a ban for citizens to leave the place in certain cases; temporary (!) refusal to admit citizens to educational organizations and health-improving institutions in the event of mass infectious diseases outbreak or the threat of epidemics; refusal to allow citizens for workplaces or removal of citizens from work associated with a high risk of infectious diseases.

In all cases, a citizen (or his legal representative) has the right to decline vaccination, even if vaccination is mandatory for him. This provision applies to both routine vaccinations and vaccinations during epidemic. The principle of voluntariness is of key importance for the state policy of immunoprophylaxis in Russia. It makes it possible to ensure that the interests of citizens are taken into account during vaccination. At the same time, it is permissible to establish certain categories of citizens subject to mandatory vaccination by an authorized federal body. To date the Government of the Russian Federation approved a list of jobs requiring mandatory vaccination<sup>9</sup>. This list was expanded by the Resolution of the Chief State Sanitary Doctor on the basis of Part 6, part 1 of art. 51 of Federal Law No. 52-FZ, which is used when there is a threat of the emergence and

spread of infectious diseases that pose a danger to others<sup>10</sup>. In case of emergence and spread of dangerous infectious diseases, the chief state sanitary doctors in the subjects of the Russian Federation may issue resolutions on preventive vaccinations of the citizens or particular groups of citizens. This assumes that these persons are subject to mandatory vaccination<sup>11</sup>. The regions of the Russian Federation included to this category persons over 60 years of age (Amur region, etc.), university students over 18 years of age (Amur, Irkutsk regions, etc.), taxi workers (Vladimir, Ivanovo, Kaliningrad regions, etc.), banks and post offices (Bryansk, Vladimir, Ivanovo regions, etc.), volunteers (Amur, Voronezh regions, etc.). Thus, regional authorities are able to compensate for the shortage of binding mechanisms at the federal level.

Federal legislation establishes the procedure for processing of medical documentation confirming the fact of vaccination. However, subjects of the Russian Federation employ restrictive measures, including those related to the absence of vaccination against coronavirus confirmation (so in majority of subjects of the Russian Federation, restrictive measures were introduced to visit shopping malls, government agencies, cultural institutions, cafes and restaurants, hotels, etc.). In some subjects of the Russian Federation, the non-participation in vaccination became the basis for mandatory self-isolation of certain groups of citizens<sup>12</sup>. So,

<sup>9</sup> On Approval of the List of Works, the Performance of which is Associated with a High Risk of Infectious Diseases and Requires Mandatory Preventive Vaccinations: Decree of the Government of the Russian Federation of July 15, 1999 No. 825 // SZ RF. July 19, 1999 No. 29. St. 3766. (In Russ).

<sup>10</sup> On Carrying out Preventive Vaccinations against Coronavirus Infection Caused by the SARS-CoV-2 Virus to Certain Groups of Citizens for Epidemic Indications: Resolution of the Chief State Sanitary Doctor No. 8 of June 27, 2021 // Official Internet Portal of Legal Information [www.pravo.gov.ru](http://www.pravo.gov.ru). June 27, 2021. (In Russ).

<sup>11</sup> On Sanitary and Epidemiological Welfare of the Population: Federal Law No. 52-FZ of March 30, 1999 // CZ RF. 1999. No 14. Art. 1650. (In Russ).

<sup>12</sup> See details: URL: <https://www.buhsoft.ru/article/3658-obyazatelnyaya-vaktsinatsiya-spisok-regionov> (access date 02.03.2022). (In Russ).

in the Yamalo-Nenets Autonomous Okrug, mandatory self-isolation was provided for citizens over 60 years old who were not vaccinated against coronavirus or who recovered.

In fact, the current distribution of powers between the state authorities of the Russian Federation and the subjects of the Russian Federation, together with the low rates of vaccination of the population, indicate, systemic crisis in healthcare. It is necessary to develop stimulating measures for vaccination of the population and change the strategy for the development of the National Vaccination Calendar, including through the development of so-called "target calendars" of preventive vaccinations for groups at high risk, namely the elderly, pregnant women, travelers, representatives of certain professions (medical workers, teachers and teachers, transport and utility workers, patients with chronic pathology).

## **2. Vaccination, Restrictive Measures and Human Rights during the Response to the Spread of COVID-19**

The legal fact of non-vaccination is part of the mechanism for implementing certain restrictive measures to counteract the spread of coronavirus infection. On the one hand, it encourages individuals to get vaccinated, but on the other hand, it entails a restriction of their rights. Failure to vaccinate persons classified as mandatory may result in suspension from work, which in turn limits the right to work. Failure to vaccinate may result in restrictions on freedom of movement both within the state and internationally. So, during the coronavirus pandemic, vaccination is one of the conditions for obtaining a qr-code, which is necessary for passing to some organizations. At the same time, the lack of vaccination can limit international mobility, which is regulated by the establishment of

bans both on leaving the country and on entering it in the absence of the necessary vaccinations.

However, in an effort to massively cover the population with vaccination, the state, nevertheless, must not only encourage citizens to vaccinate, but also take into account their private interests, as well as take into account and respect the values, religious and, in a broad sense, philosophical beliefs of citizens. This is what the institution of consent to vaccination is oriented towards. Moreover, the restriction of human rights, including in the case of the introduction of a high alert regime during the spread of coronavirus infection, is permissible only within the framework of the constitutional mechanism for such restriction (Article 55 of the Constitution of the Russian Federation). The article considers below the features of vaccination of certain categories of citizens and the impact of the fact of non-vaccination on the legal relations they enter into, as well as on the exercise of their rights, in relation to the following groups of persons (1) workers, (2) military personnel, (3) minors and (4) students.

### **3.1. Employee and Employer: Is It Possible to Work without Vaccination?**

As a general rule, the absence of vaccination does not affect labor relations, with the exception of those categories of workers for whom vaccination is mandatory (for example, for people who work with patients with infectious diseases, work with live cultures of pathogens of infectious diseases, work with human blood and biological fluids, work in organizations engaged in educational activities, etc.). Workers who refuse to be vaccinated and for whom vaccination is mandatory should be suspended from work without pay until they

have been vaccinated<sup>13</sup>. The lack of preventive vaccinations, which include the COVID-19 vaccine, is the basis for refusal to hire and the basis for suspension from work, but this rule applies only to persons whose professional activities are associated with a high risk of infection and spread of infection [12, c. 165]. Even employees who work remotely (online), who refuse vaccination and have no contraindications, may be suspended from work. At the same time, transfer to remote work is not an alternative to suspension from work. The start date of the suspension depends on the deadlines for vaccination established by the acts of the constituent entities of the Russian Federation.

In the analyzed case, there are three groups of relations: worker-employer, state-worker and state-employer. In this case, the law establishes the following balance of interests between the employee and the employer: the employer cannot dismiss an employee who refuses to be vaccinated, but can suspend him from work and not pay wages for the period of suspension from work. The state, through the introduction of compulsory vaccination of certain categories of workers, solves the problem of mass vaccination. An additional guarantee of vaccination of workers for whom vaccination is mandatory is the obligation of the employer to provide a certain percentage of those vaccinated. The employer is subject to administrative liability if he does not comply with the requirements of the law (Article 6.3 of the Code of Administrative Offenses, etc.).

Such a ratio of guarantees and restrictions, in our opinion, has an imbalance:

the state, without providing for measures to stimulate the vaccination of workers, imposes the need to ensure vaccination by the employer, providing for the responsibility of the employer for failure to comply with the requirements of the law. Employer pressure becomes one of the motivations for vaccination. According to the RANEP study, which involved 1.4 thousand Russians, factors such as reliable data on vaccine safety, the ability to choose vaccines, access to travel abroad, pressure from the employer were named as conditions under which respondents are ready to be vaccinated<sup>14</sup>. In the absence of legislative incentive mechanisms, employers are forced to put pressure on workers in informal ways, which destabilizes the entire system of labor relations and increases its conflict.

### 3.2. Vaccination of Military Personnel against COVID-19: Vaccination by Order

Military personnel have a special legal status, which is enshrined not only in federal laws, but also in military acts of the Armed Forces of the Russian Federation. The status of military personnel is predetermined by the nature of their activities: military personnel carry out their activities in the public interest and to protect the state sovereignty and territorial integrity of the Russian Federation, to ensure the security of the state, which is the essence of military duty and predetermines the content of the general, official and special duties of military personnel. The special status of military personnel implies, firstly, additional guarantees of the availability of vaccination: according to the Preventive Vaccination Calendar, according to epidemic indications, military personnel are assigned to the second priority of vaccination against coronavirus

<sup>13</sup> On the Possibility of Dismissal from Work of Workers not Vaccinated against COVID-19: Letter of the Federal Service for Labor and Employment of July 13, 2021 No. 1811-TZ // URL: <https://www.garant.ru/products/ipo/prime/doc/401390063/?ysclid=law2c31rx1308710229> (access date 05.01.2022). (In Russ).

<sup>14</sup> See details: URL: <https://www.rbc.ru/society/05/04/2021/6064ae1f9a794724a33854bd> (access date 02.03.2022).

infection, and secondly, the obligation to be vaccinated against coronavirus infection - military personnel are included in the number of persons who are subject to mandatory vaccination.

Art. 345 of the Charter of the Internal Service of the Armed Forces of the Russian Federation states: "To ensure the immunity of military personnel to infectious diseases, preventive vaccinations are carried out, which can be planned and according to epidemic indications. Scheduled preventive vaccinations for all personnel of the regiment are carried out in accordance with the vaccination schedule, and according to epidemic indications - by order of the senior commander (chief)"<sup>15</sup>. Exemption from vaccination is allowed only if there is a doctor's conclusion. In fact, the wording of the Charter testifies to the mandatory vaccination against coronavirus infection for military personnel: vaccination is carried out on the basis of an order from a senior commander (chief). The execution of an order given in the prescribed manner is mandatory, and its failure to comply entails criminal liability. The legality of these provisions is substantiated by the conflict binding of the prevalence of a special norm over the norms of a general nature [9, p. 175]. It is permissible to appeal the order in the prescribed manner. At the same time, military personnel, as well as other persons, draw up their written informed consent for vaccination, which in fact is a formal element of the medical procedure for vaccination. This implies that vaccination in any case (even by order) is carried out on a voluntary basis - this is a guarantee that, being mandatory, it cannot be carried out by force.

### **3.3. Vaccination of Minors against COVID-19: Autonomy of Legal Representative, Child Welfare and Public Health**

In accordance with the Preventive Vaccination Calendar, in case of epidemic indications, children from 12 to 17 years of age are subject to mandatory vaccination against coronavirus infection, while this category is indicated outside the priority of vaccination. In this case, vaccination is carried out voluntarily with the written consent of one of the parents (or other legal representative). This case includes: the relationship between the state and the legal representative, the relationship between the child and the legal representative, the relationship between the state and the child, the relationship between parents. According to Russian legislation, the only consequence of the lack of vaccination in this case may be a temporary denial of admission to educational organizations and health institutions in the event of mass infectious diseases or the threat of epidemics. Such regulation in the context of the spread of coronavirus infection did not effectively solve the problem of mass vaccination of children. Conditions have not been created under which legal representatives would seek to strengthen the epidemiological safety of children through collective actions.

In some European countries, compulsory vaccination is a condition for the admission of children to educational organizations (Poland, France, the Czech Republic, Slovenia, etc.). Such regulation can be interpreted as a restriction on the right to respect for private life. Keys to understanding the proportionality of interference with privacy in the case of requiring mandatory vaccination of children can be found in the judgment of the Grand Chamber of the European Court of Human Rights of 8 April 2021 in the case of *Vavříčka and Others v. the Czech*

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<sup>15</sup> On the Approval of the Military Regulations of the Armed Forces of the Russian Federation: Decree of the President of the Russian Federation of November 10, 2007 No. 1495 // SZ RF. 2007. No. 47 (Part I). Art. 5749. (In Russ).

Republic<sup>16</sup>, which became very relevant in connection with the mandatory vaccination of children during the spread of coronavirus infection.

According to the Law of the Czech Republic No. 258/2000 on Protection of Public Health, permanent residents must undergo standard mandatory vaccination procedures. The same law stipulates that preschool institutions can only accept children who have passed the required vaccination or who have a certificate of maintaining immunity by other means, or who are exempted from vaccination for health reasons. For children under the age of 15, the responsibility for fulfilling the obligation to vaccinate rests with their legal representatives. The Czech state, in turn, guarantees: the availability of vaccination by covering the cost of vaccines with health insurance, compensation for harm in case of post-vaccination complications. The applicant contested the prosecution with reference to the right to refuse medical intervention and the right to respect for one's religious and philosophical convictions. Another applicant, in the same case, invoked the right to education and the right to life in view of the uncertain consequences of vaccination.

Analyzing the question of the proportionality of the interference of the state in the rights of the applicants in the light of the obligation of the state to take measures to protect the life and health of persons under its jurisdiction (Articles 2 and 8 of the Convention), taking into account the concepts of “the best interests of the children” and “the obligation of informed consent to medical intervention”, the court concluded that the restrictions on rights are proportional in the context of the national legal system, which

corresponds to the pursued goal, the acceptable form of restriction, the margin of appreciation of a particular state, which finds direct democratic legitimation on human rights issues, and the convention mechanism has a subsidiary role [13, p. 130]. The nature of infectious diseases predetermines the fact that the decision of the legal representative to vaccinate or not vaccinate affects not only the individual child, but also other children and the health of the nation as a whole. The autonomy of a legal representative may also conflict with the well-being of a particular child. When it comes to public health, it is permissible to restrict individual rights within certain limits.

Another problem fixed in the mandatory vaccination of children is the “illusory nature” of informed consent: despite the fact that legal representatives can hypothetically refuse to be vaccinated, there are legal consequences of not vaccinating, including fines, not being allowed to attend educational institutions, not providing benefits [3].

### **3.4. Vaccination of Students: the Limits of University Independence**

According to the Preventive Vaccination Calendar students in vocational educational organizations and educational institutions of higher education over 18 years of age are subject to mandatory vaccination for epidemic indications and are assigned to the third priority group. The Chief State Sanitary Doctor of the Russian Federation and the Chief State Sanitary Doctors of the constituent entities of the Russian Federation shall decide on such vaccinations. At the level of individual subjects of the Russian Federation, vaccination was mandatory for students over 18 years of age (Amur, Vladimir, Kursk, Irkutsk, Tomsk, Kemerovo regions, Perm and Krasnodar regions, Kalmykia, Dagestan, Buryatia, etc.). In five subjects of the Russian Federation (St. Petersburg, Tatarstan, Astrakhan, Nizhny

<sup>16</sup> Case of Vavříčka and others v. the Czech Republic, nos. 47621/13 and 5 others, 8 April 2021. URL: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-209039%22%5D%7D> (access date 22.01.2022).



Novgorod and Kaluga regions) vaccination was required in case of student practice outside the university.

In a letter dated July 29, 2021, the Ministry of Education and Science recommended that students who have not been vaccinated against coronavirus or who have a medical exemption must be transferred to distance learning, and that when students move into a dormitory, certificates of vaccination, past illness or medical exemption from vaccination should be required, based on the right of universities provided by law to provide safety of the educational process<sup>17</sup>. Some universities established such requirements even before the letter – MGIMO University, National Research University “MPEI”, National Research University Higher School of Economics and RosNOU. But just a week later, the demands were softened due to criticism from individual members of the United Russia party. Indeed, such provisions should be recognized as limiting certain rights, while at the level of federal laws such powers of universities are not directly enshrined, and the constitutional mechanism for restricting human rights provides only for the use of the federal law as an appropriate form of restriction of the right.

This issue has become relevant in the light of the development of the epidemic in other countries. On July 18, 2021, the U.S. Supreme Court upheld Indiana University's requirement that students be vaccinated against coronavirus infection as legitimate. To continue studying in the fall semester, the University required students to be vaccinated against COVID-19, with the exception of the absence of vaccination for religious reasons

and medical reasons. The decision makes reference to the 14th amendment to the US Constitution, according to which no state can deprive anyone of life, liberty or property without due process of law. However, the court articulates the possibility of limiting the application of this rule in light of the evolving epidemic process: “Recognizing students’ significant freedom to refuse unwanted medical treatments, the Fourteenth Amendment allows Indiana University to continue a reasonable and due process of vaccination in the legitimate interest of public health for its students, faculty and staff”<sup>18</sup>. The decision also states that the university allows certain exceptions, including for religious and medical reasons, so students have “multiple options, not just forced vaccination”. Based on the fact that the requirement applies only to those who want to attend university, the court follows the following logic: “People who don't want to be vaccinated can go somewhere else.” This gives universities much more freedom to regulate than the state. That is, the line of reasoning of the courts in cases on compulsory vaccination at universities differs significantly from cases on compulsory vaccination introduced by the state. “In an environment where university education involves following instructions about what to write and what to read, it's hard to see a medical condition that helps students stay healthy while studying as a problem.”

A detailed argument about balancing private and public interests was set out in the decision of the first instance – the District Court of Indiana<sup>19</sup>. The Court upholds a university regulation making vaccination mandatory for students, subject to the reasonableness and

<sup>17</sup> Letter of the Ministry of Education and Science of the Russian Federation dated July 29, 2021 No. MN-7/5979 // <https://www.garant.ru/products/ipo/prime/doc/402012584/?ysclid=lawpyqknhp384278966CfIC> (access date 04.01.2022). (In Russ).

<sup>18</sup> Stuart E. Federal judge upholds Indiana University's Covid-19 vaccination requirements.

URL: <https://edition.cnn.com/2021/07/19/us/iu-covid-vaccine-mandate/index.html> (access date 20.03.2022).

<sup>19</sup> URL: <https://www.courthousenews.com/wp-content/uploads/2021/07/klaassen-indiana.pdf> (access date 23.03.2022).

proportionality of limiting student autonomy in the interest of public health.

In the conditions of the Russian legal system, taking into account the delimitation of powers between the state authorities of the Russian Federation and the constituent entities of the Russian Federation, it is required at the level of federal legislation to consolidate the possible legal regimes used to counteract the spread of infection (in addition to quarantine), within which to establish the rights and obligations of all participants and the forms of their interaction, including educational organizations, which would allow universities to introduce restrictive measures related to mandatory vaccination at their own discretion. Under the current legal regulation, there were situations when students could not visit shopping centers due to restrictive measures as part of the regime to combat the spread of coronavirus infection at the level of a constituent entity of the Russian Federation, but at the same time they attended universities.

#### **4. Stimulating of Participation in vaccination by legal methods: experience of legal regulation during the spread of COVID-19**

The analysis allows us to conclude that the legitimacy of mandatory vaccination, addressed equally to the entire population of a country, is currently problematic both from the standpoint of its doctrinal support [14] and everyday practice. The idea of introducing such a practice with continuous application will face a rather low willingness for cooperation of the population, and moreover, it may predictably be accompanied by resistance from certain segments of society. As it happened, for example, in Canada in the winter of 2022, where mandatory vaccination measures against truckers have led to an increase of

violent confrontation with the authorities<sup>20</sup>.

To date, only a few countries have introduced universal mandatory vaccination (among them Indonesia (all adults), Tajikistan (for all persons over 18 years old), Turkmenistan (for all persons over 18 years old), Austria (for all persons over 14 years old)), the most employ selective approach [15].

Despite the fact that mandatory practices can be justified in legal and public discourses towards certain groups (age, professional, particularly at risk of infection, participating in cross-border mobility, etc.), such groups remain exceptions. During the pandemic, the Russian state significantly limited the enforcement of mandatory practices by introducing them in limited sectors of public life, as well as by transferring the decision to introduce mandatory vaccination to the regional level.

Thus, the necessary flexibility of coercive impact was provided. Law enforcement agencies during the epidemic could be notorious with regard to vaccination of military personnel, both conscripts and contractors<sup>21</sup>, civil servants, and civilian personnel with minimal opportunities for non-participation (for medical reasons), setting the coverage rate at 65%<sup>22</sup>. At the same time, in other sectors, the promotion of vaccination was less intense.

At the same time, in regions where the epidemiological process was particularly active,

<sup>20</sup> Coletta A., Suliman A. A self-described 'Freedom Convoy' of Canadian truckers opposed to vaccine mandate arrives in Ottawa // URL: <https://www.washingtonpost.com/world/2022/01/28/canada-truckers-convoy-ottawa-covid/> (access date 06.03.2022).

<sup>21</sup> Bratsky Ya. Shoigu spoke about the procedure for vaccination against COVID-19 in the Russian army // URL: <https://tvzvezda.ru/news/2020826628-0jbVK.html> (access date 06.02.2022). (In Russ).

<sup>22</sup> On Carrying out Preventive Vaccinations of a New Coronavirus Infection in the Armed Forces of the Russian Federation for Epidemic Indications: Resolution of the Chief State Sanitary Doctor of the Ministry of Defense of the Russian Federation No. 129 dated June 18, 2021 // SPS "ConsultantPlus" (access date 06.02.2022). (In Russ).

the practice of stimulating vaccination, including the restriction of certain rights for the unvaccinated, acquired an intensive character. While in others, not so susceptible to the disease, the coverage of target groups and the population as a whole could be smaller. This differentiated strategy was generally positively evaluated by Russian researchers [see for example: 7, p. 72; 16, p. 765-766, 17, p. 179], although it is obvious that the inclination towards the mandatory vaccination, due to the introduction of an extensive system of negative incentives, is predominant [7, p. 63; 18, p. 250].

Such evidence suggests that the institution of vaccination may be inscribed in a number of disciplinary institutions when the coercive influence of public and governmental institutions on an individual is large. Nevertheless, outside of large-scale crisis situations, the vaccination institute is formed in such a way that the mandatory component is prescribed primarily not to citizens, but to the state. As the main provider and guarantor of the public good, the State must ensure guaranteed equal access to the vaccination within the framework of constitutional obligations to protect health and medical care (Article 41 of the Constitution of the Russian Federation). The provision of these guarantees in the Russian Federation is free access of the population to immunoprophylaxis according to the National Calendar of Preventive Vaccinations and the Calendar of Preventive Vaccinations for Epidemic Indications in accordance with the legislation on compulsory medical insurance<sup>23</sup>. In the same vein, international law formulates the norms, according to which States are responsible for the prevention and treatment of epidemic diseases to protect the right of each individual

"to the highest attainable level of physical and mental health"<sup>24</sup>.

At the same time, for the median citizen, whose life is not determined by special legal statuses, and whose professional activity is not associated with risks of infection with vaccine-controlled diseases<sup>25</sup>, participation in vaccination is the subject of individual rational choice, which in turn is an integral part of the individual autonomy. And therefore it is appropriate and necessary to recall here that the law is able to exercise its regulatory functions not only by creating a system of direct prescriptions and prohibitions, but is also able to realize an important function of facilitating socially desirable individual choice – by creating conditions that compensate for individual risks; contributing to overcoming information asymmetry; and also helping to transform a purely legal norm on vaccination into a social and cultural one, and the transformation of coercive mechanisms into cooperative ones[19]. In this role, the law is quite capable of remedying objections and subjective fears of people who make decisions in a situation of information shortage and in conditions when the achievement of the common good contains an indefinite set of private risks.

In this sense, the development of a legal complex to ensure vaccination should be based not only on the coercive force of public institutions, and not only on the ability of each individual to make a socially desirable moral

<sup>23</sup> On Immunoprophylaxis of Infectious Diseases: Federal Law No. 157-FZ of September 17, 1998 // Russian Gazette. 1998. 2 Sep. (access date 06.02.2022). (In Russ).

<sup>24</sup> The International Covenant on Economic, Social and Cultural Rights (Adopted on 16.12.1966 by Resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly). [URL: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights) (access date 10.01.2022).

<sup>25</sup> On Approval of the List of Works, the Performance of which is Associated with a High Risk of Infectious Diseases and Requires Mandatory Preventive Vaccinations: Decree of the Government of the Russian Federation of July 15, 1999 No. 825 // SZ RF. July 19, 1999 No. 29. St. 3766. (In Russ).

choice that exceeds individual interest [20, p. 153], but also on full recognition and respect for the autonomy of the will, as one of the fundamental legal values [21].

Traditionally, the doctrinal complex associated with the discussion of the autonomy of the will was developed within the framework of studies of the legal regulation of the market economy [see, for example: 22]. However the use of this paradigm in relation to the institute of vaccination, which situates at the point of interweaving of the interests of the individual, society and the state, can also enrich the legal tools available in this area.

#### **4.1. Vaccination and the Problem of Individual Risks**

It is quite obvious that the doctrinal foundations of the autonomy of the will proceed from the presumption of a rational subject who acts in his best interests, taking into account the balance of risks and benefits. In the context of this article, an individual makes an assessment of the risks and benefits of participating in vaccination. It is quite natural that the beneficiary of vaccination is not only the state and society as a whole, not only corporate economic entities that protect their labor force, but above all the individual himself, receiving additional guarantees of health safety, working capacity, income, in the extreme case – life saving.

It is with this balance of benefit distribution the institute of vaccination is being formed today in most countries primarily as a voluntary one and is localized in the field of institutionally secured human rights to health protection, access to medical care [23] while maintaining guarantees of personal freedom of choice in means and methods to ensure personal safety, taking into account also personal beliefs, religious motives, guarantees of personal integrity and other legal guarantees.

Proceeding obviously from this logic, the American courts qualified the negative consequences of vaccinations in the workplace as an occupational injury only in a limited number of cases. This happened when there was an obvious relationship between the interests of the employer, whose actions to stimulate the participation of employees in the vaccination were motivated by the goal of preserving the labor force, and significant coercion to participate in vaccination by applying various significant sanctions to the employee. At the same time, if there was no significant coercion to vaccination (if the employee could refuse to participate and at the same time was not at risk of punishment, for example, suspension from work), the decision to vaccinate was qualified by the courts as a free expression of individual will motivated by the participant's own interests in maintaining a place in the labor market [24, p. 465-468]. This meant that some of the existing mechanisms for compensation of damage, enshrined in labor law, were inaccessible to the injured employee: in particular, compensation for harm to health through occupational risk insurance mechanisms at the workplace.

However, obvious asymmetry in this balance should also be noted. With the obvious distribution of the potential benefits of vaccination between the individual, the professional community and the corporation, the market as a whole and the state, the possible risks from the consequences of vaccination influence directly the individual. Despite the fact that, in general, the probability of a threat to human health and life as a result of vaccination is statistically unlikely, in each case it is neither illusory nor insignificant in terms of the possible damage.

Moreover, for each individual case, such risks are also not absolutely predictable and calculable, and the fear of post-vaccination consequences is the most important reason for

not participating in vaccination. Therefore, one of the tasks of the legal support of the vaccination institute is to find a better distribution of the balance of risks in order to provide greater protection to the individual participating in vaccination programs.

Russian legislation takes into account the individual risk factor by establishing state compensations for the occurrence of certain side effects during vaccinations according to a compact list that includes only seven items<sup>26</sup>, as well as determining measures to support the victim and his family as part of state lump-sum benefits (in the amount of 10,000 rubles in case of complications and 30,000 rubles to family members in case of death of the vaccinated), monthly monetary compensation (in the amount of 1000 rubles with indexation according to the federal budget legislation), temporary disability benefits for one of the family members in case of caring for a child under the age of 18.

In fact, the side effects of the introduction of vaccines are more diverse than it is established by the list mentioned. Medical statistics record among the possible consequences of vaccinations deaths, disability, and permanent disability, causing significant harm to health and disfiguring side effects. In addition, the probability of post-vaccination complications is higher and may be more unfavorable in people who have had COVID-19 [1, 2], therefore, the system for assessing individual risks should also include mandatory medical examination before vaccination.

However, even in the case of

vaccinations against diseases with a long accumulated experience of application, new more accurate methods of post-vaccination monitoring can reveal frequent and serious side effects that were previously either not systematically recorded, or were considered acceptable against the background of more terrible threats of a mass epidemic. For example, a comprehensive proactive surveillance and monitoring system created to track the side effects of smallpox vaccination in the United States in the 2000s (this campaign is interesting for it was conducted after the terrorist attack of 9/11 and in anticipation of the alleged new bioterrorist attacks [5] against a disease that was considered eradicated) systematically recorded patients have cases of complications in the work of the cardiac system caused by the introduction of the vaccine [6].

The post-vaccination monitoring system, established in the USA as part of the smallpox vaccination campaign, played a positive role by contributing to the improvement of the medical withdrawal system, which was especially important in those sectors where vaccination measures were characterized by a high degree of coercion. In particular, in the military units of the US Army and Navy, vaccination against smallpox has become mandatory at this time. At the same time, the monitoring system has removed a significant number of those subject to vaccination from the program, reducing the number of cases of adverse reactions.

However, it should be noted that this organizational measure could not have a significant impact on achieving the goals of a large-scale vaccination campaign in the civilian sector. The task was to provide coverage at the first stage of 500 thousand employees of the public health system and then reach 10 million civilians. In reality, only about 40 thousand in the civilians volunteered<sup>27</sup>. The main reason was

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<sup>26</sup> On Approval of the List of Post-Vaccination Complications Caused by Preventive Vaccinations Included in the National Calendar of Preventive Vaccinations and Preventive Vaccinations for Epidemic Indications, Entitling Citizens to Receive State Lump-sum Benefits: Decree of the Government of the Russian Federation No. 885 of August 2, 1999 // Russian Gazette. 1999. 13 Aug. (In Russ).

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<sup>27</sup> Onion R. George W. Bush Set Out to Vaccinate Health Care Workers in Case of a Smallpox Bioattack. URL:

the fear of side effects and the uncertainty of the participants in the availability of mechanisms and the sufficiency of compensation for health damage in the case of instant and delayed side effects for each individual participant [25, p. 261].

This experience reveals a significant deficit in the system of legislation, which is characteristic not only for the modern Russian Federation, where the established limits of state support for citizens in the case of post-vaccination complications are hardly worth considering as sufficient and capable of performing the function of post-vaccination individual risk minimization. Naturally, the problem is not only in determining a sufficient amount of state compensation, but also in finding a mechanism for a more equitable distribution of the individual risk of a participant in the vaccination program among all parties interested in this participation.

The system of mass prevention is characterized by a rather complex organizational structure involving many segments of public life, including scientific developments, a system of testing and state certification, drug production, a vaccine distribution system, medical institutions directly carrying out vaccination, companies operating both in the segment of compulsory and voluntary health insurance, state regulatory authorities, etc. Such an extensive system of relationships predictably makes it difficult to determine those responsible for possible harm to the health and life of a particular patient. And from the patient's point of view, this means the complexity and high duration of actions to protect their interests and the unpredictability of their result.

The experience of different countries shows that this complexity demotivates

potential participants in vaccination, especially in cases when they lack confidence in a particular vaccine (especially a new one) or the public health system as a whole. In these conditions, a positive role is played, on the one hand, by the introduction of the one-stop principle, in which the duty to compensate for damage to life and health is performed by an authorized state body; and, on the other, by minimizing the victim's obligations to collect evidence of damage and its assessment.

The mentioned smallpox vaccination campaign in the USA shows that in order to implement the planned amount of vaccination, the state first of all legally protected the vaccine-producing campaigns and direct vaccination administrators from lawsuits from affected patients<sup>28</sup>. All listed persons are considered as employees of the US public health system, respectively, the defendant in court according to the Federal Law on Civil Claims (Federal Tort Claim Act<sup>29</sup>) is the United States, which compensated for the damage from a special fund. In turn, the State reserves the right of judicial recovery for those cases when the damage is caused by the proven negligence of the manufacturer or distributor of vaccine preparations or the medical organization or its personnel during the immunization process. Nevertheless, civil lawsuits against companies based solely on the fact that campaigns produce potentially dangerous and damaging drugs, and medical institutions use them, are excluded in

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<https://slate.com/technology/2021/02/smallpox-vaccine-bioattack-2003-health-care-workers-military-bush.html> (access date 05.02.2022).

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<sup>28</sup> Homeland Security Act 2002 section 304; Pub. L. No. 107-296, 116 Stat. 2135. URL: [https://www.dhs.gov/sites/default/files/publications/hr\\_5005\\_enr.pdf](https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf) (access date 27.03.2022).

<sup>29</sup> Federal Tort Claims Act 28 U.S.C. (1982); Pub.L. No. 79-601, 60 Stat. 812: §§ 1346, 1402, 2110, 2401, 2402, 2412, 2671-2680. URL: <https://www.govinfo.gov/app/details/USCODE-2011-title28/USCODE-2011-title28-partIV-chap85-sec1346/context> (access date 27.03.2022).

principle<sup>30</sup>. At the same time, the causal relationship between the side effect that has occurred and the fact of vaccination is considered by the court as a rebuttable presumption, which also serves to protect the interests of the affected individual and eases the burden of evidence for him.

Such a structure of the compensation system for possible damage is quite compact in organizational terms and, on the one hand, introduces an element of legal security into the work of pharmaceutical manufacturers and medical institutions. Especially in cases where the damage is caused not by the fault of the manufacturer / administrator, but by unforeseen and unpredictable reasons. On the other hand, this design creates an understandable procedure for seeking help for affected patients.

The US legislation on accounting and compensation of individual risk has a long history and an extensive structure [26, pp. 381-392]. However, this approach is quite common. The legislation of European countries assumes that the damage caused to the participant of vaccination is compensated by the state without any exculpatory circumstances, the treatment of the consequences of vaccination is carried out within the framework of state medical insurance [13, p. 128]. The standard civil court procedure is also reserved for cases of violation of the procedures and conditions for the administration of vaccination measures.

Thus, an approach based on minimizing the efforts of the affected patient (even with his voluntary informed participation) to protect his interests in order to compensate for the damage caused, placing the bulk of actions on the state as a center uniting the interests of society, the market, specific legal entities and individuals, turns out to be the most adequate

for the purposes of stimulating mass vaccination campaigns.

At the same time, in terms of enriching the institutional structure of the protection of specific patients, it is possible to create specialized bodies [13, p. 137] that perform expert and consulting functions, medical investigations. However, it should be noted that such institutions, having the opportunity to have a positive impact on the quality of medical care, will still play a subsidiary role.

#### **4.2. Vaccination and Information Asymmetry**

Each individual decision on participation or non-participation in vaccination takes place in conditions of a fierce competition of various sources of influence, both from the immediate environment of the individual and from the media, represented by both traditional and decentralized network communications. According to Russian sociological studies carried out back in the "pre-epidemic" period, the Internet in its entirety becomes the main source of information about vaccination and vaccines (for 91.1% of respondents), while only a third of participants receive information from medical professionals [27].

In the event of a new unknown threat, such a decision is met in conditions of a critical shortage of trusted information. The problem is also exacerbated by the lack of unity in the expert community, specialized organizations at the international and national levels, which develop contradictory recommendations on the preferred mechanisms for countering the epidemic [28, p. 44]. Mass strategies of participation and non-participation in collective actions are marked by distrust of "... *any explanations coming from institutions with recognized expert and scientific authority...*"; the communication coming from them "... *is initially regarded as biased and by definition false*" [29,

<sup>30</sup> Restatement (Second) of Torts § 402A, cmt. k (1965).  
URL: <https://biotech.law.lsu.edu/cases/products/402a-b.htm> (access date 27.01.2022).

p. 104].

The center of this problem, burdening individual cooperation with joint efforts to reduce morbidity, lies in the problem of the alleged conflict of interests inherent in the very structure of the vaccination. The mass opinion recognizes the scientific community, including the direct developers of vaccines, and the "big pharma" interested in receiving government orders, and self-interested bureaucratic groups making decisions on privileged admission to the market of certain drugs, and the state itself, implementing some of its own power strategies with non-obvious goals in against the population under the auspices of mass vaccination.

Such discourses reflect the fundamental problem of the communication gap that arises between public policy, society and a specific individual. Therefore, an important task of state policy and its legal support is the exclusion of defects in goal setting in mass vaccination campaigns. Of particular importance is the strengthening of the entire complex of countering conflicts of interest arising in this field [30]. In this regard, it is of great importance, for example, the availability of alternatives to vaccination with various drugs and ensuring the patient's right to choose any of them. Even taking into account the fact that his personal competence may not be sufficient to make a rational choice, the very possibility of choice minimizes concerns about the commercial interest of agents carrying out vaccination. Of big importance is the consistent separation of official activities in state bodies and the commercial interest of an official in the field of public health. Public doubt about the observance of this watershed also increases the area of epistemological distrust and discredits all efforts of vaccination. In the Russian Federation, such defects have repeatedly caused the polarization of public opinion against certain drugs or medical

programs.

The implementation of this set of goals involves the whole range of public services and bodies in solving the problem, including those whose area of responsibility lies far beyond the issues of vaccination itself. Nevertheless, it is obvious that a significant part of the problem with the public assessment of vaccination has been localized in the field of international political and economic relations. The "vaccine diplomacy" of a number of foreign countries on the non-admission of Russian drugs to national markets has played and continues to play its negative role in discrediting Russian medical achievements within the country, in creating motivations for specific individuals to apply to foreign vaccines due to their interest in travel or business trips, possible only in the case of vaccination recognized in a particular country. However, a possible consequence may be the discrediting of the vaccination policy and the reason for refusing to participate in it in principle.

Such situations reflect a real situation when a conflict of interests leads to large-scale failures in the mass understanding of the goals and objectives of vaccination, which go directly beyond ensuring public safety and serve to achieve completely different socially opaque goals.

All these factors predispose state strategies to take into account in their activities this specificity of the polarization of public opinion in the logic of "post-truth" and assume a comprehensive informational counteraction to the appearance and dissemination of deliberately false information regarding any of the components of the vaccination system.

In this sense, Russian legislation reacted by increasing the responsibility of individuals and legal entities for the dissemination of deliberately false information, which was reflected in the introduction of new offences in the Criminal Code (Articles 207.1 and 207.2.)



and the Administrative Code of the Russian Federation (Paragraphs 10.1; 10.2.; 10.11. Article 13.15). The introduction of such novels is fully justified from the point of view of achieving the necessary social effect. At the same time, it should also be noted that these measures have obvious limitations due to the fact that their activation is possible only in the case of an already committed offense and is in the paradigm of punishing the violator, and not preventing damage. In addition, it is quite possible to accuse the state of censorship of undesirable points of view, which is really quite problematic if society as a whole and its expert communities have not accumulated sufficient experience in coping with the problem and, accordingly, there is an discussion about possible ways to resolve it. The situation with a new coronavirus infection, the development and introduction of completely new drugs into mass use is just such a case when exclusion from the media space and punishment of individual points of view is counterproductive.

It seems that in this case, the experience of labeling media content and the introduction of the obligation of the media channel to inform the recipient of information about the content of the official point of view on vaccination issues is applicable, which makes it publicly available and as widespread as possible.

## 5. Conclusions

An analysis of the place of the institution of vaccination in the legal system shows that despite the fact that this institution can be included in a number of disciplinary and obligatory institutions, its coercive potential is relatively small. It is limited to certain segments of the public structure that is of strategic importance for ensuring the epidemiological safety of society as a whole and representatives of certain most vulnerable

groups. These restrictions are performed by establishing of certain restrictions in the event of withdrawal of vaccination (non-admission to schools, hospitalization based on vaccination status, etc.), and liability measures in case of deliberate avoidance of vaccination. With regard to the specified contingents, which can be identified in the general mass of the population due to their professional, age, social status, it becomes possible to justify legally the mandatory participation in vaccinations, carried out within the framework of public law regulation.

However, such groups remain in the legal field of exceptions, while in general the institution of vaccination is designed in such a way that the compulsory component is prescribed primarily not to citizens, but to the state. And therefore, the participation of a citizen in vaccination has the character of an individual rational choice. Our analysis shows that in this field the law development should be focused on the implementation of the function of facilitating a socially desirable individual choice. In this direction, the main tasks in the field of regulation should be focused on the formation of an adequate system for distribution of individual risks to life and health, as well as fair compensation for possible health damages that are possible during vaccination. The second main direction is overcoming of the information asymmetry in the situation of making socially desirable choice considering the lack of trusted data, ensuring effective communication between the expert community, the state and the individual. It seems that the development of the legal system in this direction will contribute to the transformation of a purely legal norm on vaccination into a social and cultural one, which will strengthen the cooperative strategies of citizens in the fight against vaccine-controlled diseases.

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