

Compulsory Vaccination against COVID-19 in the Context of the Principles of the Convention on Human Rights and Biomedicine

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Abstract

Introduction: At this stage of the global health crisis caused by the SARS-CoV-2 coronavirus, an increasing number of countries are considering enacting legislation requiring compulsory vaccination or implementing a mechanism to ensure mass vaccination of the population. Such policy decisions raise a number of legal and deontological issues.

Aim: The aim of the study was to analyze the legal and deontological issues related to the introduction of compulsory vaccination against COVID-19 in the context of the principles of the Convention on Human Rights and Biomedicine (Oviedo Convention).

Materials and methods: The analysis looks at the international legal framework that governs the protection of human rights and freedoms, the principles and rules that apply to the achievements of biology and medicine, and, in particular, the Oviedo Convention.

Results: Vaccines against COVID-19 are a modern scientific success in biology and medicine, particularly those of the latest generation of vaccines presented by the scientific community as a consequence of revolutionary mRNA technology. It is for this reason that the provisions of the Oviedo Convention should serve as guidelines for countries to follow in their fight against COVID-19 pandemic.

Conclusions: Achieving mass vaccination of the population in accordance with the provisions of the Oviedo Convention and other relevant international standards for the protection of fundamental human rights, in conjunction with a large-scale information campaign, seems a sensible approach that would contribute to the rapid and peaceful resolution of the current global health crisis.

Keywords

individual rights, public health, right to health, right to privacy, right to informed consent

INTRODUCTION

At this stage of the global health crisis caused by the SARS-CoV-2 coronavirus, more and more countries are considering enacting legislation that requires compulsory vaccination or implementing a mechanism to ensure mass vaccination of the population. Such policy decisions raise a number of legal and deontological issues, which can be classified into two categories, one containing issues relat-

ed to the conflict and supremacy of basic human values, such as citizens' health on the one hand and, on the other, the right to personal choice, dignity, and freedom of the individual, and the other relating to the legal possibility of applying mandatory measures to a population or certain groups, resulting in broader vaccination coverage and, respectively, the limitation of personal freedom and the exercise of individual rights.

AIM

The aim of the study was to analyze the legal and deontological issues related to the introduction of compulsory vaccination against COVID-19, in the context of the principles of the Convention for the Protection of Human Rights and Human Dignity in relation to the implementation of the achievements of biology and medicine: Convention on Human Rights and Biomedicine (Oviedo Convention).^[1]

MATERIALS AND METHODS

This analysis examines the international legal framework governing the protection of human rights and freedoms, the principles and rules applied to the achievements of biology and medicine, and in particular the Oviedo Convention. A literature review of the legal and deontological issues arising in connection with the rights and obligations of citizens in conducting mass vaccination has been made.

RESULTS

The analysis shows that the principles established by the Convention on Human Rights and Biomedicine for the protection of the human individual, his dignity and identity, and for ensuring, without discrimination, any person's respect for his or her inviolability and other fundamental rights and freedoms in the application of the achievements of biology and medicine, are important for effective and correct decisions and are central to combating the current pandemic. Vaccines against COVID-19 are a remarkable achievement of modern science in the fields of biology and medicine, especially those of the latest generation presented by the scientific community as being created by an innovative mRNA technology. It is for this reason that the provisions of the Oviedo Convention should serve as guidelines for countries to follow in their fight against COVID-19 pandemic. Given the fact that there is currently insufficient scientific evidence of the long-term effect of approved vaccines on all people, regulators and governments are refraining from introducing mandatory vaccinations. In this regard, the provision of mass vaccination must always be preceded and accompanied by large-scale public awareness campaigns on the effects of COVID-19 infection, but above all on the nature and effectiveness of the vaccines themselves.

DISCUSSION

The main problem that could arise from the introduction of compulsory or mass vaccination of the population against the new coronavirus stems from the clash of opinions and theses used to protect the highest human values, such as public health, on the one hand and, on the other, the right to personal choice, the dignity, and freedom of the individual.

The main universal human value national authorities emphasize in their efforts to accelerate the vaccination of the population is public health, which is protected by the various legal systems through the exercise of the right to health. Modern regulations define health as a state of complete physical, mental and social well-being. Due to the crucial importance of the right to health, the international community regulated its protection decades ago in a large number of universal and regional human rights instruments.^[2-7]

The right to health is a complex right that includes "a combination of rights and freedoms that must preserve the biological and social conditions of the individual."^[8] In this sense, an integral part of everyone's subjective right to health is his/her right to control his/her body, his/her right to be free from interference without express consent, and the right to be free from compulsory medical treatment or experimentation.^[9]

The accession of states to international sources of law has the effect not only of increasing the protection of the right to health but also of creating a legal obligation for them to guarantee not so much public health as state capital or national welfare as the individual, subjective right to health. Here, the provisions of the Convention on Human Rights and Biomedicine can serve as a guiding principle in the national policy of each state in the fight against COVID-19 pandemic. It is *"a legally binding international text designed to preserve human dignity, rights and freedoms, through a number of principles and prohibitions against the abuse with biological and medical achievements."*^[10-12]

The Explanatory Report to the Convention states that it aims to provide a common framework for the protection of human rights and human dignity in developing areas related to the application of biology and medicine.^[13]

The Oviedo Convention raises to the highest level the principle of human supremacy, expressed in the rule that the interest and good of man take precedence over the interest of society or that of science. It requires all parties to protect the human individual, his/her dignity and identity, and to guarantee to every person, without discrimination, respect for his or her inviolability and other rights and fundamental freedoms with regard to the application of the achievements of biology and medicine (Article 1).

In the fight against the COVID-19 pandemic, the scientific community presented to the world a new generation of vaccines made using an innovative mRNA technology against the COVID-19 virus, which can rightly be defined as a great achievement in medicine. It is precisely because of this nature of vaccines that the provisions of the Oviedo Convention should serve as guidelines for States in combating the COVID-19 pandemic.

However, with the introduction of mass or compulsory vaccination of the population with the new vaccines, the first and very important question for public attitudes arises, namely: how will the state guarantee the right to health of everyone if it does not guarantee the whole set of subjective rights which are integral elements of the right to health in general? The second important question is whether, in

the fight against COVID-19 pandemic, the public interest should be given priority over that of the individual. In resolving these issues, the international community and state authorities should pay particular attention to the principle of human supremacy set out in Art. 2 of the Oviedo Convention, according to which *“the interest and welfare of man take precedence over the interest of society or that of science”*. The proclamation of this principle is undoubtedly one of the most significant achievements of the international community in protecting human rights and freedoms. Another approach would not be justified, as in these cases, it is not a question of applying scientific results that have been proven over time in a completely objective and definite way. It is for this reason that the introduction of mass vaccination of the population should respect the fundamental principle of informed consent of the patient, explicitly proclaimed in a number of international treaties, including Art. 5 of the Oviedo Convention. According to that provision, *“any intervention relating to health shall be carried out only with the free and informed consent of the person concerned. This person shall receive in advance the necessary information on the purpose and nature of the intervention, as well as on the consequences and risks arising therefrom.”* However, when compulsory vaccination is introduced, the rule of informed consent could not be complied with unconditionally. If they adopt this approach, national authorities will introduce measures and regulations contrary to the concept of human supremacy. Compulsory vaccination can affect a number of other basic rights of citizens: the right to privacy, the right to education, the right to work, the right to free movement, the right to social inclusion, etc. The introduction of compulsory (or forced) vaccination against COVID-19 also raises a number of deontological issues. Mandatory vaccination excludes the patient *“as a central figure and subject in health prevention, diagnosis and treatment”*.^[14,15]

Any compulsory medical intervention is contrary to the basic principle of medical ethics for respect for the autonomy of the individual.

Undoubtedly, under international treaties, states have an obligation to ensure public health, including through measures to prevent, treat, and combat epidemic, endemic, occupational and other diseases.^[16]

But above all, they have an obligation to guarantee the universal subjective right to health and other universal subjective human rights. It is for this reason that international treaties on the protection of human rights seek to strike a balance between the exercise and restriction of subjective rights, with restrictions being permissible only when legally established, proven necessary and proportionate, when respecting the fundamental content of the same rights and freedoms.^[17]

In the fight against the COVID-19 pandemic, the protection of public health and public interest is in fact the main argument for restricting some of the fundamental rights of citizens. However, these restrictions should be applied in accordance with the specifics of each specific situation in which the individual may find himself and in

achieving a fair balance between protected and endangered goods and values. For example, in certain conditions or for certain groups of persons, vaccination with authorized new vaccines is contraindicated, even if the person wishes to be immunized - immunocompromised individuals and persons with unspecified condition with indications of allergic symptoms, as well as individuals with hypersensitivity to an active substance or excipients of the vaccines. This also applies to pregnant women and children under the age of 18 or 16, for whom the safety and efficacy of the new vaccines have not been definitively established. Such persons, as well as their legal representatives, guardians or escorts, would inevitably find themselves in a situation where they will suffer, without guarantees of accessible and timely legal protection, restrictions imposed by public authorities on the exercise of certain activities. Logically, in a situation of compulsory vaccination or a legal obligation to carry it out in a relatively short period of time, the rights and freedoms of these groups would be significantly affected, such as the right to free communication and movement, the right to free participation in social and cultural life, the right to education, the right to work, etc.

Therefore, the conflict between public interest and that of the individual can be overcome only through awareness and guarantees of free choice for or against medical intervention. Without guaranteeing personal interest and well-being, we could not speak of the supremacy of man over the interests of science and state organizations.

It is likely that the provision of collective immunity in the fight against COVID-19 can be achieved through compulsory or forced vaccination, but such measures will be easily attacked by national and international human rights jurisdictions. Mass and subsequently regular vaccination against COVID-19 can be achieved through a more complete and wider awareness of the population, and most importantly, by providing sufficient guarantees and confidence in all members of our society that they have the opportunity to exercise personal choice.

CONCLUSIONS

When organizing and conducting vaccination campaigns, states should take into account the basic principles enshrined in the Convention for the Protection of Human Rights and Human Dignity in relation to the implementation of the achievements of biology and medicine (Oviedo Convention). The protection of public health is the duty of all states, but at the same time, it is the duty of governments to recognize and respect the freedom of the individual, his or her dignity and all other fundamental and inalienable human rights. In complex social crises, in which states have to make choices and put some values above others, to give priority to some basic human rights over others, the right approach would be one in which all actions are in line with the ethical and legal principles established by the international community. Compliance with the provisions of the

Oviedo Convention and international standards for the protection of fundamental human rights, combined with a broad information campaign, is the sensible approach to conducting vaccination campaigns and quickly overcoming the global health crisis.

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Обязательная вакцинация против COVID-19 в контексте принципов Конвенции о правах человека и биомедицине

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Резюме

Введение: На данном этапе глобального кризиса в области здравоохранения, вызванного коронавирусом SARS-CoV-2, все большее количество стран рассматривают возможность принятия законодательства, требующего обязательной вакцинации, или внедрения механизма для обеспечения массовой вакцинации населения. Такие политические решения поднимают ряд юридических и деонтологических вопросов.

Цель: Цель исследования заключалась в анализе правовых и деонтологических вопросов, связанных с введением обязательной вакцинации против COVID-19 в контексте принципов Конвенции о правах человека и биомедицине (Конвенция Овьедо).

Материалы и методы: В ходе анализа рассматривается международно-правовая база, регулирующая защиту прав и свобод человека, принципы и нормы, применимые к достижениям биологии и медицины, и, в частности, Овьедская конвенция.

Результаты: Вакцины против COVID-19 — это современный научный успех в биологии и медицине, особенно вакцины последнего поколения, представленные научным сообществом как следствие революционной технологии мРНК. Именно по этой причине положения Овьедской конвенции должны служить руководством для стран, которым они должны следовать в своей борьбе с пандемией COVID-19.

Заключение: Достижение массовой вакцинации населения в соответствии с положениями Овьедской конвенции и других соответствующих международных стандартов по защите основных прав человека в сочетании с широкомасштабной информационной кампанией представляется разумным подходом, который будет способствовать быстрому и мирному урегулированию нынешнего глобального кризиса в области здравоохранения.

Ключевые слова

индивидуальные права, общественное здравоохранение, право на здоровье, право на неприкосновенность частной жизни, право на информированное согласие