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***Criminal law protection of the child's right to health in the face of the  
phenomenon of evasion of compulsory childhood vaccination in Poland***

**Summary**

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Infectious diseases can be considered the invisible enemy of all societies around the world. Since time immemorial, these diseases have decimated the population, regardless of race, gender, and social status. However, significant advances in medical science have led to the invention and subsequent improvement of vaccines against many infectious diseases known to mankind. Finally, infectious diseases are an invisible enemy to health, both individually (human health) and collectively (public health). Thus, the issue under discussion is relevant from two perspectives: the protection of the child's right to health and the possible consequences of the progressive trend of non-vaccination of children for public health (possible loss of collective immunity of society).

The problem of maintaining the desired level of public health is not only national, since biological pathogens do not know national borders, so that in the era of globalization they can freely transmit through people of different countries. Particularly vulnerable, therefore, are unvaccinated children, who are just developing their immune systems, and many times a medically known infectious disease can pose a serious threat to a child's health (or even life).

Despite such an important scientific achievement as vaccination, for several years there has been an increase in the activity of anti-vaccine movements that discourage vaccination. Numerous Internet publications and campaigns of circles hostile to the implementation of vaccination are among the reasons for the negative social phenomenon, which can be called evasion of mandatory vaccination of children. The title view is also prompted by the very disturbing statistics of evasion of mandatory vaccination of children. Detailed statistics will be discussed in the body of the work, but by way of example, it can be said that in 2010 there were 3437 cases of evasion of this obligation, and 10 years later, in 2020, these cases were already 50,575. In 2022, the number was already 72,722 cases.

The issue of vaccination is multifaceted. Indeed, it is possible to consider this issue through the prism of many scientific disciplines. First, medicine, public health, and legal sciences. However, one must take the position that in dogmatic-legal analyses devoted to such an important issue, one cannot abstract from the reality in which the analyzed regulations operate. This reflection alone prompts interdisciplinary efforts to study the functioning of vaccination. Moreover, this obligation has a scientific and society-wide dimension. Undeniably, they are also a socially controversial topic, which has become the ground for many debates, including scientific ones.

Vaccination can be divided into recommended and mandatory. The performance of the former depends solely on the will of those who wish to undergo them. Among the numerous recommended vaccinations is vaccination against the most popular infectious disease of the autumn-winter season, the flu. However, mandatory vaccination are the most controversial. Fear of this obligation is also revealed, which can lead to a significant decrease in the percentage of vaccinated people in society.

Only on the ground of legal science, the problems related to the operation and implementation of mandatory vaccination can be considered from the perspective of various branches of law. First, the available legal analyses focus on constitutional law and administrative law, sometimes also civil law. On the other hand, considerations of criminal law in its broadest sense are unheard of, as well as criminological analyses of the title phenomenon have not yet been made. Taking these aspects into account, it is necessary to define this social pathology as criminologically relevant, which will be done in this work, and show a broader perspective of the studied issue in the field of public law.

The reason for this negative social trend is the fact that the performance of mandatory vaccination is secured by repressive sanctions, which are enforced under the law of misdemeanors, which is doctrinally divided within the criminal law *sensu largo*. Moreover, engaging in behavior that realizes the hallmarks of evasion of mandatory vaccination of children is contrary to criminal law in its broad sense.

The scientific purpose to explore the issue of the social phenomenon posed in the title of the dissertation requires not only a comprehensive, but also an interdisciplinary research approach. This is also an asset of the present dissertation, which was created during training at the Doctoral School of Social Sciences at the University of Lodz and fits into the newly formed framework of interdisciplinarity in scientific research.

The identified research gap prompted the work to be embedded around the protection of the child's right to health. The main scientific objective of the submitted dissertation is to establish the legal guarantee of child health protection and the child's right to achieve the highest possible level of health in the face of the criminogenic phenomenon of evasion by persons obliged to subject the child to mandatory vaccination. Against the background of this thread, specific problematic issues should be singled out.

The first is the issue of the effectiveness of legal guarantees for the performance of this duty in Poland. The second aspect is to embed the identified social phenomenon in the field of criminology, to determine the reasons for the development of this

phenomenon, as well as to derive a criminological forecast as to possible trends in the development of this social pathology. This results in a third area of research interest. It is to attempt a comprehensive presentation of the legal possibilities for reducing this negative trend. Particular attention will be paid to the model of repressive sanctions that are applied in connection with the evasion of compulsory vaccination of children. An innovative thread will also be an in-depth dogmatic-legal analysis of the offense styled in Article 115 Misdemeanor Code, which has not yet been discussed in detail in the legal doctrine.

Considering the complexity of the studied issues, the dissertation is divided into six chapters enriched with an introduction, conclusion and *de lege ferenda* conclusions. A dogmatic-legal, statistical, and socio-criminological analysis was used, enriched with legal-comparative threads in a horizontal perspective. The leading research method is the formal-dogmatic method. The paper also uses the methods of literature criticism and legal-comparative method. Statistical studies were presented graphically after the analysis of statistical data. Empirical research, on the other hand, was elicited by making inquiries through access to public information to the provincial governors and the State Provincial Sanitary Inspectors. The work is crowned with a list of literature, case law and other sources. The work considers the legal status as of December 31, 2023.

The essential concepts of the work such as health, child, public health, vaccination, vaccine are defined. The work also analyzes the right to health of the child in the regulations of international and domestic law. Such an approach is justified by the multifaceted nature of the matter under study, as well as the presence of many issues specific to health sciences and medicine, which may pose interpretation difficulties in the legal sciences, both during the author's deliberations and in the subsequent reception by the Reader, and which the author would like to avoid.

A dogmatic and legal analysis of the legal regulations shaping the operation of compulsory vaccination of children in Poland was given. The paper pays attention to the problems of administrative law and administrative procedure. Also pointed out is the issue of consent to the performance of mandatory vaccination, which is controversial when talking about the obligation of a legal nature, rather than the voluntariness of vaccination.

The central point of consideration is to embed the phenomenon of evasion of compulsory vaccination of children as a criminological phenomenon with features of social pathology. This aspect is placed in selected criminological theories. This provides a starting point for consideration of the offense of evasion of compulsory vaccination of children.

A novel dogmatic-legal analysis makes it possible to draw conclusions from the analysis of the offense of Article 115 Misdemeanor Code. This part of the work presents an analysis of the model of liability for the act of evading the mandatory vaccination of a child or examination after administrative enforcement measures. At this level, the fundamental problems on the ground of the practice of application of this regulation are outlined. Particular attention was paid to determining the possibility of effective implementation of the title obligation.

Finally, the title considerations were directed to the criminal law arena, to seek effective protection of the child's right to health. It was pointed out that the legal representatives or actual guardians of a child may be subject to criminal liability for possible negative consequences for the health of an unvaccinated child. In particular, the unintentional types of selected crimes against life and health are mentioned. Statutory representatives and actual guardians are guarantors of the non-occurrence of the consequences described in the referenced provisions. The sources of the guarantor's duties are the provisions of the Family and Guardianship Code and the provisions of the Law on the Prevention and Control of Infections and Infectious Diseases in Humans, together with the regulation governing the scope of the subject-matter obligation.

Legal representatives and factual guardians may incur criminal liability for exposing an unvaccinated child to imminent danger of grave harm to health or loss of life because of a prior failure to submit the child to mandatory vaccination. It should be assumed that the evasion of the child's submission to this obligation constitutes an increase in the danger to criminally protected goods (the child's life and health), since, despite the possibility of reducing this risk by having the child obtain artificial immunization, either the legal representatives or the actual guardians failed to do so.

The last part is an exemplification of the considerations undertaken in the search for possible solutions for the Polish legal model of repressive sanctions applied for non-vaccination of a child. The research field of this part of the work has been narrowed only to repressive sanctions, since the legal models of vaccination are highly different, so that their comparison with national legal regulations should be the content of a separate study.

Two models of repressive sanctions used in selected European countries (administrative-legal and criminal-legal *sensu largo*) will be presented.

Among the *de lege ferenda* postulates, the need for urgent legal intervention in the functioning of compulsory childhood vaccination was pointed out. Current legal regulations are unable to effectively protect the child's right to health. The phenomenon of evasion of compulsory vaccination of children is progressive with a negative criminological prognosis for the future. It is necessary to eliminate Article 115 of Misdemeanor Code from the legal order and the creation of a separate regulation in the Law on Prevention and Control of Infections and Infectious Diseases in Humans. It is also necessary to introduce a special administrative procedure dedicated to vaccination so as not to use the Law on Administrative Enforcement Proceedings. Moreover, periodic nationwide information and education campaigns on mandatory and recommended vaccination of children should be introduced.