

Obligatory protective vaccinations and the implementation of parental authority: a study of judicial decisions in the area of legal liability

GRZEGORZ ZIELIŃSKI^{1, A, B, D-F}, KRZYSZTOF KANECKI^{2, A, D},

ORCID ID: 0000-0001-7517-920X

ORCID ID: 0000-0001-8931-8565

ANETA NITSCH-OSUCH^{2, E, G}, PIOTR TYSZKO^{3, A, D, E, G}

ORCID ID: 0000-0002-2622-7348

ORCID ID: 0000-0002-3793-7214

¹ Faculty of Law and Administration, Kazimierz Pułaski University of Technology and Humanities in Radom, Poland

² Department of Social Medicine and Public Health, Warsaw Medical University, Poland

³ Witold Chodźko Institute of Rural Health, Lublin, Poland

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Summary The number of people who are afraid of vaccinations and who refuse to submit their children to them is constantly growing in Poland. Certain attempts are being made to change legal provisions regarding the obligation of preventative vaccinations. An important element of this discussion is an analysis of the current legal solutions included in judicial decisions.

The aim of this paper is to present court judgements in cases regarding legal responsibility related to the obligation of preventative vaccinations issued by the Supreme Court, district courts, the Supreme Administrative Court and voivodship administrative courts.

The subject of the judgments under discussion were, in particular, matters relating to the obligation to undergo mandatory vaccinations; legal sources of the obligation to undergo preventative vaccinations, included in the Announcement of the Chief Sanitary Inspector on the protective vaccine program; mandatory preventative vaccinations and the constitutional rights of citizens; administrative enforcement of the obligation to subject a child to mandatory preventative vaccinations, as interpreted by the state, and contraindications to vaccination; enforced fulfillment of the obligation to subject a child to preventative vaccination, and the legal effect of the refusal to subject a child to a pre-vaccination screening; the use of fines to enforce mandatory preventative vaccinations; administrative fines and criminal liability for failure to undergo vaccinations against infectious diseases; parental refusal to subject a child to mandatory vaccinations; civil liability for compensation; and nature and the enforcement of a parents' obligation to subject children to protective vaccination.

The administrative and criminal law measures provided for in the Act on enforcement procedure in administration, including fines, to enforce the statutory obligation of vaccination may be used to achieve this goal. This has been concluded in judgements which are valid.

Key words: vaccination, child, jurisprudence.

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Background

The number of people who are afraid of vaccinations and who refuse to submit their children to them is constantly growing in Poland. The most common reason behind this phenomenon is a fear of consequences from vaccination and unconfirmed rumors that vaccines cause autism and other diseases. State Poviät Sanitary Inspectorates reported over 23,000 cases of vaccination denials in 2016. This number increased to more than 30,000 in 2017 and grew even higher in 2018.

Although a bill introducing voluntary vaccinations was rejected in November 2018, the number of parents who refuse to vaccinate their children is still growing dramatically. Vaccinations are obligatory; however, the imprecision of legislative acts of general application, in particular with regard to the age of those subject to vaccination, leads to different interpretations as to the time when the obligation to subject a child to a protective vaccination comes into force.

In Poland, the issue of mandatory vaccinations is regulated by the provisions of the Act of December 5, 2008 on Preventing

and Combating Human Infections and Infectious Diseases [1]. To perform a vaccination on a child, it is necessary to obtain the consent of both parents, as vaccination is one of the more important matters in a child's life.

When hearing cases regarding vaccinations, each court is independent in its judgment and is subject only to the Constitution and parliamentary laws. However, attention should be paid to the special role of the resolutions of the Supreme Administrative Court and the Supreme Court. The resolutions of these courts standardize judicial decisions, thus unifying the case law – which has been divergent so far – or indicating the direction of judicial decisions on matters of importance and complexity. Hence, it is necessary to perform a detailed analysis of the case law with regard to the position of the higher courts on cases concerning physicians and their obligation to perform vaccinations, and to provide information related to vaccinations to legal guardians and those who are subject to mandatory vaccinations.

The case study method for case-law analysis shows the current legal status. The judgments of the Supreme Court, the dis-



trict courts, the Supreme Administrative Court and the voivodeship administrative courts are final; they are published and available on the website www.lex.pl.

Obligation to undergo mandatory vaccinations

It is obligatory to undergo the mandatory vaccinations. This imperative also involves the obligation to undergo pre-vaccination screening in order to exclude contraindications to vaccination. A legal interpretation of this regulation is included in the judgment of the Supreme Administrative Court of June 5, 2017 [2]. The Court emphasized that pre-vaccination screening is an integral part of a preventative vaccination. Pursuant to Article 17 Paragraph 2 and Paragraph 3 of that act [1], a mandatory preventative vaccination must be preceded by a medical screening in order to exclude contraindications to vaccination. No mandatory vaccination can be carried out if 24 hours have passed between the pre-vaccination screening and the vaccination itself, based on the date and time indicated in the screening certificate. This means that the obligation to undergo a particular preventative vaccination includes not only the act of vaccination, but also other activities inherently related to this act, including pre-vaccination screening.

Legal source of the obligation to vaccinate

The judgment of the Supreme Administrative Court of February 20, 2018 presents a valuable interpretation of human freedom and the right to live in a society free from infectious diseases. This judgement includes legal sources of the obligation to undergo protective vaccinations and determines the scope of this obligation [3].

The Supreme Administrative Court stated that the obligation to submit a ward to preventative vaccinations is regulated by the provisions of law, i.e., Art. 5 Para. 1 Subpara. 1 Point b and Paragraph 2, as well as Art. 17 Para. 1 of the Act of 2008 on Preventing and Combating Human Infections and Infectious Diseases. The obligation to vaccinate is also governed by the Implementing Regulation on Mandatory Preventative Vaccinations of August 18, 2011 [4]. This regulation specifies the infectious diseases against which preventative vaccinations are performed, the groups of people who are subject to the vaccination and their age. On the basis of this regulation, it can be assumed that the obligation to undergo preventative vaccination results directly from legal provisions. This reasonable assumption is not affected by the fact that the Chief Sanitary Inspector announces a protective vaccination program each year with a detailed schedule of individual vaccines to be used. This announcement includes necessary medical information on how to fulfill the obligation which arises from the Act.

The Supreme Administrative Court rightly remarked that the statement of the Chief Sanitary Inspector is not a spontaneous source of law, as it is issued in order to fulfill the obligation imposed by the Act [1]. The legal basis for issuing such statements is Art. 17 Para. 11 of the Act on Infectious Diseases, according to which the Chief Sanitary Inspector announces the preventative vaccination program for a given year by October 31 of the preceding year, in the form of a statement issued in the official journal of the Health Ministry, with detailed indications regarding the use of particular vaccines.

The Supreme Administrative Court indicates that one cannot invoke Article 16 of the Act of November 6, 2008 on Patient's Rights and the Ombudsman of Patient's Rights [5] with regard to the fulfillment of the obligation to vaccinate, since legal provisions on mandatory preventative vaccinations constitute specific provisions for all other provisions that make the performance of health services conditional upon the patient's consent.

Mandatory preventative vaccinations and the constitutional rights of the citizen

The obligation of mandatory vaccination covers the whole of society and is aimed at protecting all people in the territory of the Republic of Poland against threats (internal and external). The freedom of man and the right to decide about one's personal life, both of which are protected by the Constitution of the Republic of Poland, are not of an absolute nature and are subject to certain restrictions, e.g., on the grounds of protecting health (Art. 31 Para. 3 of the Constitution of the Republic of Poland). Pursuant to Art. 68 Para. 1 of the Constitution of the Republic of Poland, everyone has the right to the protection of health, and public authorities are obliged to provide special healthcare to children [6].

Art. 68 Para. 4 of the Constitution of the Republic of Poland states that "public authorities are obliged to combat epidemic diseases". According to the legal interpretation, this provision refers to infectious and infectious diseases in humans. Thus, it is clear that state authorities responsible for public health shall eliminate outbreaks of disease and take preventative measures to counteract diseases.

The obligation to provide a protective vaccination to a child lies within the sphere of competence of the state with regard to an individual and the general public. The legal justification of the interpretation of constitutional provisions on the obligation of vaccination was the subject of case law at the Voivodship Administrative Court in Warsaw in March 2019 [7].

In 2018, the Supreme Administrative Court clearly indicated that it cannot be claimed that human freedom is violated through the statutory introduction of mandatory preventative vaccinations. Human freedom is not absolute and must consider the rights of others, including the right to live in a society free from infectious diseases, which are prevented by vaccinations. Therefore, a complaint that the Court violated Art. 31 Paras. 1 and 2 of the Constitution of the Republic of Poland regarding the human right to freedom is not justified. In addition, the obligation to undergo preventative vaccinations is based on Art. 31 Para. 3 of the Constitution of the Republic of Poland, which stipulates that constitutional freedoms and rights may be restricted only in acts of law and only if they are justified on the grounds of public safety and order in a democratic state or in order to protect the environment, health, public morals and the freedoms and rights of others [3].

In March 2019, the Voivodship Administrative Court in Warsaw stated that pursuant to Art. 17 Para. 7 of the Act on Preventing and Combating Human Infections and Infectious Diseases, a person issuing a certificate of live birth is obliged to issue an immunization record card and a vaccination booklet for the child. In addition, each doctor providing preventative health care shall notify a person obliged to undergo a mandatory vaccination, the person who cares for a minor or a helpless person, or a guardian of such obligation.

The above-mentioned statutory obligations have been referred to in the executive provisions built under the Ordinance of the Minister of Health of August 18, 2011 on Mandatory Preventative Vaccinations. This ordinance specifies groups of people subject to the obligation to vaccinate and their age, the qualifications of those performing vaccinations, the manner in which the vaccination should be performed and detailed rules regarding record-keeping and reporting on vaccinations, including document types and forms, dates and the manner of circulating such documents.

The statutory obligation of preventative vaccination means that it is unacceptable to use the "clause of conscience", i.e., to give a patient the right to refuse medical treatment with reference to Art. 16 of the Act on Patient's Rights. As aptly pointed out in the case law, Art. 16 of this Act is applicable unless provisions of separate laws provide otherwise (Art. 15). However, the

Act on Preventing and Combating Infections and Human Infectious Diseases is a separate act of law, one which stipulates the obligation to undergo protective vaccinations. This law does not include the right to refuse a vaccination. On the contrary, it imposes a general obligation to undergo protective vaccinations. Only if there are certain medical indications – and the pre-vaccination screening gives grounds for a long-term postponement of the mandatory vaccination – can a physician refer a person who is subject to the obligation of vaccination to a specialist for consultation (Article 17 of the Act). This means that the Act of December 5, 2008 constitutes *lex specialis* to the Act on Patient's Rights with regard to the right to refuse a preventative vaccination [8].

Administrative enforcement of the fulfilment of the obligation to provide a mandatory preventative vaccination to a child – contraindications to vaccination

The aim of the administrative enforcement of the obligation to provide mandatory vaccination to a child is to obtain the consent of a legal or factual guardian. However, the enforcement procedure cannot be carried out when there are contraindications to child vaccination. This means that although there is an obligation regarding mandatory vaccinations, in a specific case this obligation is not valid because of contraindications to vaccination. The situation referred to above was the subject of a case at the Voivodship Administrative Court in Cracow on April 25, 2012 [9].

In this case, it was not disputed that there are certain mandatory vaccinations for a particular group of people, including children, which is governed by the applicable provisions of law, and that the fulfillment of the obligation to vaccinate rests with legal or factual guardians. The dispute in this case was whether the applicant's minor daughter could be subjected to the vaccination, and thus whether the obligation was due.

It should be emphasized that in the case of a child over 6 and under 18 years of age, pre-vaccination screening and the vaccination itself can only be performed after notifying a legal representative or a guardian about the vaccination and obtaining written consent and information on any health conditions they child may have that could constitute contraindications to vaccination.

Analysis of the case files shows that the applicant's refusal to subject their minor daughter to the mandatory vaccination did not result from disregard of this obligation, but from the applicant's concern – as a mother – for the health of the child, who had had certain health problems in the past, problems which had been described in detail by the applicant. In the course of the enforcement proceedings, the applicant informed the adjudicating authorities that in her opinion there were certain contraindications to the vaccination. The applicant described specific events that had occurred in the past and which affected her daughter's health; these events are partly confirmed by the case files. The applicant's complaint that these circumstances had not been taken into account by the adjudicating authorities was considered justified by the Court.

The appealed court decision was based on a certificate issued by a pediatrician, a specialist in pediatric neurology, from which it followed that "the problem [affecting the patient] consists in impaired concentration and difficulties in social situations. These symptoms do not constitute a contraindication to protective vaccination". In addition, the doctor stated that "at the moment epilepsy can be excluded".

The contested court decision included the following statement of the Voivodship Sanitary Inspector: "a specialist doctor has confirmed that there are no contraindications to vaccination in the case of the applicant's child".

In the opinion of the Court, this statement does not arise from the above-mentioned certificate and is not based on the evidence in the files. In the certificate, the issuing physician referred only to attention deficits of the child, difficulties in social situations and to the exclusion of epilepsy. On this basis, a position on the lack of contraindications to vaccination was built. However, in the course of legal proceedings, the applicant argued that the child also manifested other symptoms, such as eczema, rashes and gastrointestinal problems, which had been recorded in the Child's Health Card stored in the healthcare center. Furthermore, the applicant stressed that the child had been hospitalized in the Department of Neonatal Pathology at the Children's Hospital due to gastric reflux with suspected aspiration, thus suggesting that this condition could be related to an adverse event from a vaccine. The fact that three cases of multiple sclerosis had been reported in the child's family is not without significance for the assessment of whether contraindications to vaccination existed or not. It does not clearly follow from the case files whether these genetic conditions may lead to contraindications to vaccination in a child. Considering the above circumstances, the Court concluded that administrative bodies had neither obtained sufficient evidence nor considered all available evidence. The facts of the case raise doubts and do not unambiguously prove whether there were contraindications to the mandatory vaccination or not.

The Court noted that §13 of the Regulation of the Minister of Health of 19 December 2002 on the List of Mandatory Preventative Vaccinations [10], the Rules of Performing Vaccinations and Documentation of Vaccinations clearly states that "a pre-vaccination screening is followed by the doctor's confirmation of the patient being qualified for a protective vaccination with a signature placed on the immunization card and the vaccination booklet, and the result of the screening is entered into the medical records of the patient". Pursuant to §14 of this regulation, information on any adverse events from vaccines is recorded in the vaccination booklet, immunization card and medical records of the person vaccinated.

To conclude, in the case at issue, mandatory vaccinations could be made if the mother had given her written consent and provided information about the existence or absence of contraindications to vaccinations. Temporary and absolute contraindications have to be confirmed by a doctor and a specialist doctor, respectively. The doctor's opinion should not only consider the patient's current state of health, but should also (with regard to the applicant's allegations) prejudge in a convincing manner whether a child should qualify for vaccination or not. While the aim of administrative enforcement is to obtain the consent of a legal or factual guardian to the preventative vaccination of a child, enforcement proceedings cannot be conducted when there are contraindications to vaccination. This means that although certain vaccinations are mandatory, there are specific cases when the obligation to vaccinate is not valid because of contraindications to vaccination.

In the above-presented case, the applicant's refusal to subject her daughter to mandatory vaccinations is neither a manifestation of resistance, as alleged by the Voivodship Sanitary Inspector, nor a disregard of the applicable provisions, nor negligence of parental duties towards a child. On the contrary, the mother's refusal to subject her daughter to mandatory vaccinations is a manifestation of concern for the health of the child and results from properly exercised parental authority. The applicant's fears and doubts had not been assuaged in a reliable manner, which in turn led her to refuse to subject the child to protective vaccination.

Only doctors can judge to what extent the applicant's fears are justified; no court is entitled to make this judgement. The position of physicians should be confirmed by appropriate documents that can become evidence in a court case to be considered by the court.

Enforced fulfilment of the obligation to subject a child to protective vaccination: the legal effect of a refusal to subject a child to a pre-vaccination screening

It is parents' responsibility to fulfill the obligation to subject a child to protective vaccinations. This responsibility results from the parental authority they hold. Parents are legal guardians of a minor child. Each parent can act independently as a child's statutory representative. Parents hold an executory entitlement in administrative enforcement proceedings, which aim at enforcing the fulfillment of the obligation to subject a child to protective vaccinations, and it can be issued against each of the parents separately. A refusal to subject the child to a pre-vaccination screening is the same as a refusal of mandatory vaccination. This regulation was analyzed by the Supreme Administrative Court on April 24, 2018 [11].

In the enforcement proceedings presented above, the cassation complaint regarding a violation of Art. 93 §1 of the Family and Guardianship Code in conjunction with Art. 97 §2 of this Code [12], in conjunction with Art. 5 Para. 2 of the Act on Preventing and Combating Human Infections and Infectious Diseases [1] was unjustified due to the erroneous interpretation that in the case of vaccination of a child, the consent of one parent is sufficient, while in the case of matters significant to a child, such as vaccination, the joint consent of both parents is required.

With regard to the allegation presented above, the Supreme Administrative Court indicated that pursuant to Art. 5 Para. 2 of the Act on Preventing and Combating Human Infections and Infectious Diseases, in the case of a person who does not have full legal capacity, the responsibility for fulfilling the obligation of protective vaccination rests with the person who has legal custody over a minor or helpless person, or the factual guardian of this person. Parental authority is vested in both parents (Article 93 §1 of the Family and Guardianship Code) and involves in particular parent's right and obligation to exercise custody over a child and their property, and to raise the child while respecting their dignity and rights. In addition, parents are statutory representatives of a child who is under their parental authority. If a child remains under the parental authority of both parents, which is the case in the situation presented above, each of the parents can act independently as a statutory representative.

Each of the parents can act independently as a child's statutory representative, and in the case of matters that are important to the child, each of the statutory representatives is authorized to make a declaration of will regarding the minor. Since each parent can act independently as a child's statutory representative, an executory title in the administrative enforcement proceedings aimed at the enforcement of the obligation to subject a child to a protective vaccination can be issued against each of the parents individually [13].

Use of a financial penalty to enforce the obligation of preventative vaccination

The subject of the above-mentioned court case was the imposition of a fine of 500 PLN, pursuant to Art. 119 of the Act on Enforcement Procedure in Administration [14], in order to enforce fulfillment of the obligation to subject a child to mandatory protective vaccinations [15].

The Voivodship Administrative Court in Warsaw indicates that pursuant to Art. 119 of this Act, a fine can be imposed when the enforcement concerns the fulfillment of an obligation of cessation or omission, or an obligation to act, in particular to act in a situation when no other person can act due to the nature of the activity. A fine is also imposed if it is not expedient to apply other non-pecuniary means of enforcing the obligation. The amount of the fine depends on the nature of the obligation to

be enforced and is governed by Art. 121 of the Act on Enforcement Procedure in Administration.

Administrative fines and criminal liability for failure to undergo a protective vaccination against infectious diseases

The obligation to vaccinate is a non-pecuniary obligation and fulfills the condition of Art. 119 §1 of the Act on Enforcement Procedure in Administration. Therefore, one cannot claim that the imposition of a fine in the case of this obligation, in order to enforce mandatory preventative vaccinations, is a gross violation of the law. A legal interpretation of the application of fines was presented by the Supreme Administrative Court on January 14, 2019 [16].

The cassation appeal in this case was not based on justified grounds. The subject of the review of legality was the decision to impose a fine. The court decision under appeal was issued pursuant to Art. 119 §1 of the Act of 17 June 1966 on Enforcement Procedure in Administration [14]. According to this Act, a fine is an enforcement measure for a non-pecuniary obligation. The obligation to vaccinate is an obligation arising directly from the law with no need of an authoritative specification in the form of an administrative decision. Art. 5 Para. 1 of the Act of December 5, 2008 on Preventing and Combating Human Infections and Infectious Diseases stipulates that "Persons residing on the territory of the Republic of Poland are obliged under the Act to undergo protective vaccinations". This obligation is specified in the regulation included in Art. 17 Para. 1 of the Act on Preventing and Combating Human Infections and Infectious Diseases: "Persons listed in Para. 10 Point 2 are obliged to undergo protective vaccinations against infectious diseases determined in Para. 10 Point 1, hereinafter referred to as 'mandatory preventative vaccination'". The ordinance of the Minister of Health issued on the basis of the statutory delegation on August 18, 2011 on Mandatory Preventative Vaccinations includes a list of infectious diseases covered by the obligation to undergo preventative vaccinations and the people who are obliged to undergo mandatory vaccinations.

As for the fine itself, it is alleged that the application of this measure may prove to be ineffective and may cause excessive economic distress in combination with a possible fine for the offense defined in Article 115 of the Code of Petty Offenses [17, 18]. However, the idea behind indirect coercion is to make enforcement measures effective through their severity. Pursuant to Art. 115 of the Code of Petty Offenses, anyone who – despite administrative enforcement measures – does not undergo mandatory protective vaccination against tuberculosis or other infectious diseases or does not undergo mandatory health examination aimed at the detection or treatment of tuberculosis, venereal disease or other infectious diseases is subject to a fine of up to 1,500 PLN or a penalty of a reprimand. The same punishment is imposed on anyone who exercises custody over a minor or helpless person and, despite administrative enforcement measures, does not subject them to protective vaccination or examination. In order to punish a person pursuant to Art. 115 of the Code of Petty Offenses, first of all, administrative enforcement measures must be correctly applied by an appropriate administrative body, under the consideration of the Supreme Administrative Court's judgements as indicated above [19].

Parental refusal of mandatory preventative childhood vaccinations

In the case of parents' refusal to subject a child to mandatory protective vaccinations, it was a common practice that the State Sanitary Inspector imposed a fine on the parents or

ordered them to appear at the vaccination center in order to subject the child to the mandatory vaccination. Parents who did not want to vaccinate their children or pay fines sent their complaints to administrative courts, and the courts accepted these complaints, as the Supreme Administrative Court did in the judgment of April 5, 2011 [20]. The applicants lodged a cassation complaint challenging the decision of the State District Sanitary Inspector, who ordered the parents and the children to immediately report to the vaccination center. The Supreme Administrative Court upheld the complaint, lifted the appealed judgment and annulled the appealed decisions.

This judgment is often referred to as a justification of evading the fulfillment of the obligation to vaccinate, although it does not prejudge the lack of mandatory preventative vaccinations, but rather the lack of grounds for the State Sanitary Inspector to issue an administrative decision. The Supreme Administrative Court concluded that "The obligation to undergo obligatory preventative vaccinations arises from the provisions of law, which is why there is no legal basis to specify it in the form of an administrative decision".

Civil liability for compensation

Parents of children with adverse events from vaccines sometimes demand redress and a lifetime pension for their children from medical facilities or even from the State Treasury. Such claims are submitted to district courts throughout the country.

An example of court proceedings in this respect is the judgment of the District Court in Lodz, 2nd Civil Department, which dismissed a lawsuit after hearing the case of J. K. against the Medical Center ___ sp. z o.o. in L., ___ S.A. with headquarters in W. for the payment of compensation, which took place on July 9, 2017 [21]. In the legal justification, the court indicated that Art. 430 of the Civil Code states that the responsibility of a medical center rests with the superior who is responsible for their subordinate on a risk basis. Pursuant to this provision, whoever entrusts the performance of an activity to a person who is a subordinate and is therefore obliged to follow their superior's instructions is responsible for any damage caused through the fault of the subordinate. The premise for the superior's responsibility is the fault of the subordinate, and its normal consequence is damage caused to a third party.

Case law shows that in order to admit the fault of a person referred to in Art. 430 of the Civil Code, it is not required to prove that this person violated any regulations concerning health and safety. It is enough that the fault of this person consists in abandoning the principles of caution and safety, which arise from life experience and the circumstances of the incident [22].

Damage to a person in the conditions of medical malpractice is a specific form of civil law tort. It requires the premises for liability for tort: damage, fault and an adequate causal relationship. It should be acknowledged that medical malpractice is only an objective element of the physician's fault in performing medical activities. It is a doctor's act or omission in the field of diagnosis and therapy which is incompatible with the medical science in the field available to the doctor. A subjective element necessary to attribute fault to a doctor is their intent or carelessness [23]. Finding medical malpractice, in the context of the responsibility of a healthcare institution where a medical treatment took place, is completely independent of an individual doctor and the circumstances of taking medical action. The important thing is that this activity was performed by an employee of the facility as part of their operation.

In the civil proceedings presented above, the Court correctly noted that a distinction should be made between an error as a departure from the pattern and rules of due conduct, taking into account the professional nature of the perpetrator's activities, and a complication, which is a specific, sometimes atypical, reaction of the patient to properly administered treatment,

which was the case in the situation presented above.

The applicant in this case filed a lawsuit for redress, compensation and pension for increased life needs. The claim was related to medical malpractice of the staff, which consisted of the premature administration of vaccines to J. K., i.e., a few hours after birth, although there was a serological conflict in the primary groups.

The applicant was burdened with the obligation to prove the causal relationship between the activities undertaken by the medical staff and the ailments diagnosed in the child. The evidence obtained does not prove that the cause of encephalopathy in the child was the premature administration of the vaccines. On the contrary, an expert opinion by E. H. shows that the medical condition which J. K. suffered from has a genetic basis and is related to a mutation in the 9th chromosome, which means that the child's condition is not related to the activity undertaken by the staff of the medical facility. The serological conflict in the main blood groups did not constitute a contraindication to the vaccination, the minor child did not show any features of anemia and the diagnosed jaundice was within the norms of physiological jaundice.

If the legal and medical conditions required to vaccinate a child within the first 24 hours of life were fulfilled, no unusual symptoms occurred before the vaccination and the jaundice which appeared after the vaccination was typical and fell under the scope of physiological jaundice, medical malpractice can be excluded. Even if it turned out that the current state of the child's health is related to vaccinations, the defendants' responsibility would be excluded.

On the basis of an expert opinion, it was established beyond any doubt that there were no contraindications to perform the vaccination on the first day of the child's life.

To conclude, the lack of a causal relationship between the state of health of a minor applicant and the medical activities undertaken by the defendant's personnel makes the claim unjustified, both with regard to the subject and to the amount of the damages claimed.

Nature and enforcement of parents' obligation to subject children to preventative vaccinations: characteristics of an offense under Art. 115 §2 of the Code of Petty Offenses

The obligation to subject a child to preventative vaccination is a directly enforceable obligation which arises from the provisions of law. The failure to fulfill this obligation initiates enforcement proceedings whose intended result is to subject the child to the preventative vaccination, whereas the failure to undergo compulsory vaccination despite the administrative enforcement measures gives rise to the criminal and administrative responsibility provided for in Article 115 §1 of the Code of Petty Offenses [18]. The same type of responsibility rests with a person who does not subject a minor or helpless person under their custody to a particular preventative vaccination, despite administrative enforcement measures. This thesis was confirmed by the judgment of the Supreme Court of January 7, 2016 [24].

It should be noted that it is the parents' legal obligation to subject a child to mandatory preventative vaccinations, and only specific medical contraindications to vaccination can release them from this obligation. Art. 5 Para. 1 of the Act on Preventing and Combating Human Infections and Infectious Diseases clearly states that all people staying in the territory of Poland are obliged, under the provisions of this Act, to undergo preventative vaccinations. The Supreme Court referred to the judgments of the Supreme Administrative Court, which indicated in its judgment of April 6, 2011 that fulfillment of this obligation

is legally secured by administrative coercion and liability, regulated by the provisions of the Act of May 20, 1971 – the Code of Petty Offenses. This means that the legal obligation to subject a child to preventative vaccination is directly enforceable. Failure to fulfill this obligation initiates enforcement proceedings whose intended result is to subject the child to the preventative vaccination, whereas the failure to undergo compulsory vaccination, despite administrative enforcement measures, gives rise to the criminal and administrative responsibility provided for in Article 115 §1 of the Code of Petty Offenses.

The body which is authorized to enforce the obligation to vaccinate is the voivode. An analysis of the provisions of the Act shows that the heads of the voivodship and poviats services and inspectorates, including sanitary inspection bodies, constitute enforcement bodies only with regard to the obligations arising from decisions and orders issued by these bodies.

In her speech on the judgment of the Supreme Court of January 8, 2016, Julia Kosonoga-Zygmunt pointed to additional sources of responsibility of a statutory representative, including criminal liability, for failing to provide a child with mandatory protective vaccination, and in the longer term for possible consequences – in particular an illness against which vaccination has been refused – possible complications and further health consequences of the disease [25].

In the case of refusing to subject a minor child to obligatory preventative vaccinations, it can be assumed that statutory representatives (usually parents) act against the child's good. In this situation, interference of the guardianship court with parental authority is possible, pursuant to Art. 109 of the Family and Guardianship Code. The court might oblige parents and a minor child to undergo specific proceedings (Art. 109 §2 Point 1 of the Family and Guardianship Code) or subject the parental authority to the constant supervision of a probation officer (Art. 109 §2 Point 3 of the Family and Guardianship Code).

An analysis of the potential procedure to deprive parents of parental authority pursuant to Art. 111 of the Family and Guardianship Code requires a broader reflection. The above-mentioned provision of law allows for the deprivation of parents' parental authority by the guardianship court if they abuse their parental authority or grossly neglect their duties towards the child. The use of this procedure in the situations presented

above would be quite unique. As rightly indicated in the literature, not every case of the negligence of parental responsibilities results in the deprivation of parental authority. Such a case would have to constitute gross negligence which jeopardizes the proper development of the child and indicates that further exercise of parental authority does not promise a positive prognosis which would provide the child with proper care for their physical and mental development. Such cases should be assessed individually.

In order to assess the behavior of a minor child's parent with regard to the provisions of criminal law, it is crucial to recognize the parent as the guarantor of the child's safety, who has a legal and special duty to prevent ill effects on the child's welfare. The legal basis of parents' obligation to act in order to prevent the child's death or a violation of the child's welfare is found in Arts. 87, 95 and 96 of the Family and Guardianship Code, which define the scope of parental authority. Parents are obliged to care for the physical and mental development of the child. Based on the indicated provisions, it is argued that parental authority is a collection of rights and duties of parents towards the child, aimed at providing the child with adequate care and safeguarding their interests.

Summary

The main legal issues and examples of jurisdiction are presented in Table 1.

In their complaints to Voivodship Administrative Courts, parents of unvaccinated children mainly refer to the provisions included in the Constitution, the Act on Preventing and Combating Human Infections and Infectious Diseases, the Act on Patients' Rights and other sources of law, which stipulate that no one can be forced to undergo a specific treatment or a health service. Parents argued that even a small risk of a health problem after vaccination justifies their refusal to subject the child to vaccination.

However, the courts have concluded that the obligation to undergo preventative vaccinations arises from the Constitution, and the link between preventative vaccinations and protection of public health against the spread of infectious diseases is obvious.

Table 1. The main legal issues and examples of jurisdiction

	Legal issue	Jurisdiction
1.	Obligation to undergo mandatory vaccinations	Judgement of the Supreme Administrative Court of June 5, 2017, II GSK 2398/15
2.	Legal source of the obligation to vaccinate	Judgment of the Supreme Administrative Court of February 20, 2018, II OSK 1089/16
3.	Mandatory preventative vaccinations and constitutional rights of the citizen	Judgement of the Voivodship Administrative Court in Warsaw of March 20, 2019, VII SA/Wa 2675/18
4.	Administrative enforcement of the fulfillment of the obligation to provide a mandatory preventative vaccination to a child; Contraindications to vaccination	Judgement of the Voivodship Administrative Court in Cracow of April 25, 2012, III SA/Kr 901/11
5.	Enforced fulfillment of the obligation to subject a child to protective vaccination; Legal effect of the refusal to subject a child to pre-vaccination screening	Judgement of the Supreme Administrative Court of April 24, 2018, II OSK 2435/17
6.	Use of a financial penalty to enforce the obligation of preventative vaccination	Judgement of the Voivodship Administrative Court in Warsaw of February 9, 2017, VII SA/Wa 819/16
7.	Administrative fine and criminal liability for failure to undergo a protective vaccination against infectious diseases	Judgement of the Supreme Administrative Court of January 14, 2019, II OSK 367/17
8.	Parental refusal of childhood mandatory preventative vaccinations	Judgement of the Supreme Administrative Court of April 5, 2011, II OSK 32/11
9.	Civil liability for compensation	Judgement of the District Court in Lodz of July 19, 2017, II C 1555/15
10.	Nature and enforcement of parents' obligation to subject children to preventative vaccinations	Judgement of the Supreme Court of January 7, 2016, V KK 306/15

Parents' cassation complaints against these court judgments were sent to the Supreme Administrative Court, which usually dismissed cassation appeals because, in the opinion of the Court, there were indications to impose an enforcement fine. Even the Supreme Court clearly ruled that the obligation to subject a child to protective vaccination is directly enforceable. The statutory obligation to subject a child to preventative vaccination, which is included in the Vaccination Program, is closely related to preventing the spread of infectious diseases.

Courts have often emphasized that the essence of parental responsibility involves making decisions about essential matters concerning a child, including the issue of mandatory vaccinations. In the case of these vaccinations, the parents' decisions should be joint.

In order to secure fulfillment of the obligation to vaccinate, administrative and even criminal law measures provided for in the Act on Enforcement Procedure in Administration can be used, including fines. This has been concluded in judgements which are valid.

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Address for correspondence:

Piotr Tyszko, PhD, Assoc. Prof.

Instytut Medycyny Wsi

ul. Jaczewskiego 2

20-090 Lublin

Polska

Tel.: +48 501 134-524

E-mail: ptyszko@wum.edu.pl