

Віктор Миколайович Єрмолаєв

*Національна академія правових наук України
Харків, Україна*

*Кафедра історії держави і права України і зарубіжних країн
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна*

Айсел Азад кизи Омарова

*Кафедра історії держави і права України і зарубіжних країн
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна*

Ганна Павлівна Пономарьова

*Кафедра історії держави і права України і зарубіжних країн
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна*

РОЗВИТОК МЕДИЧНИХ ПРАВ ДІТЕЙ В УКРАЇНІ (1919 р. – початок ХХІ ст.)

Анотація. Медичні права дітей активно розвивалися у ХХ столітті після Першої світової війни. Це була подія глобального масштабу, яка спричинила законодавчі зміни у національних законодавствах країн світу, в тому числі й в Україні. Досвід України в галузі охорони здоров'я дітей багатий на приклади як успішних реформ у цій галузі, так і не дуже успішних. Розвиток медичних прав дітей в Україні пройшов різні етапи свого розвитку. Для розв'язання цього питання був взятий період з 1919 року до початку 21 століття. Вибір цього історичного періоду обґрунтовується наявністю різних етапів державно-правового розвитку України, і, як наслідок, розвитком медичних прав дітей. Це пов'язано з тим, що розвиток прав дітей нерозривно пов'язаний з розвитком державної політики у сфері захисту дітей. При дослідженні питання розвитку медичних прав дітей були використані відповідні правова, теоретична та методологічна бази. Метою цього дослідження є аналіз розвитку медичних прав дітей на прикладі України. Для досягнення цієї мети були проаналізовані міжнародно-правові документи, законодавство України, а також праці вчених з різних країн. Під час вивчення цього питання використовувались різноманітні наукові методи, з-поміж яких: діалектичний, історичний метод, метод аналізу та синтезу, метод аналогії та метод тлумачення правових норм. Основними результатами є: аналіз історії розвитку медичних прав дітей в Україні та вплив Всесвітньої організації охорони здоров'я та Конвенції про права дитини (1989) на цей розвиток. Цінність цієї статті полягає в отриманні практичних рекомендацій щодо прав дітей загалом та медичних прав дітей зокрема

Ключові слова: медична допомога дітям, здоров'я дітей, право на охорону здоров'я, право на життя, захист дітей, Конвенція про права дитини

Viktor M. Yermolaiev

*National Academy of Legal Sciences of Ukraine
Kharkiv, Ukraine*

*Department of History of State and Law of Ukraine and Foreign Countries
Yaroslav Mudryi National Law University
Kharkiv, Ukraine*

Aisel A. Omarova

*Department of History of State and Law of Ukraine and Foreign Countries
Yaroslav Mudryi National Law University
Kharkiv, Ukraine*

Hanna P. Ponomarova

*Department of History of State and Law of Ukraine and Foreign Countries
Yaroslav Mudryi National Law University
Kharkiv, Ukraine*

THE DEVELOPMENT OF CHILDREN'S MEDICAL RIGHTS IN UKRAINE (1919 – BEGINNING OF THE XXI CENTURY)

Abstract. *Children's medical rights were actively developed in the twentieth century after the First World War. It was an event of a global scale that prompted legislative changes in national legislations, including Ukraine. Ukraine's experience in children's health care is rich in examples of both successful reforms in this field, and also not that successful ones. The development of children's medical rights in Ukraine had passed different stages of its development. The period from 1919 to the beginning of the 21st century was taken to resolve this issue. The choice of this historical period is justified by the presence of different stages of state and legal development of Ukraine, and, as a consequence, the development of children's medical rights. This is because the development of children's rights is inextricably linked with the development of state policy in the field of child protection. The aim of this research is to analyse the development of children's medical rights on the example of Ukraine. To achieve this goal, international legal documents, legislation of Ukraine, and works of scholars from various countries were analysed. During the study of this issue, a variety of scientific methods were used. Among them are the dialectical, historical method, method of analysis and synthesis, method of analogy and method of interpretation of legal norms. The main results obtained are: analysis of the history of the development of children's medical rights in Ukraine and influence of the World Health Organisation and the Convention on the Rights of the Child (1989) on this development. The value of this paper lies in obtaining practical recommendations regarding children's rights in general and the medical rights of children in particular*

Keywords: *medical care for children, children's health, the right to health protection, the right to life, protection of children, the Convention on the Rights of the Child*

INTRODUCTION

Due to certain events (increased cases of domestic violence, hostilities, terrorist attacks, children's suicide, etc.), scientists, state, and public figures are increasingly focusing on problems such as the perception of the child as the subject of law, observance of their rights and freedoms, equalisation of children's rights regardless of gender, understanding of the need for a special attitude towards childhood, the formation of juvenile courts, etc. [1, p. 54]. Among all these issues, we can also single out the issue of the development of children's medical rights. In the last 100 years, there have been significant changes in the world in the protection of children's rights, including medical rights. The first international legal instrument on the legal protection of the rights of the child was the Convention on the Custody of Minors of June 3, 1902, prepared at the 3rd session of The Hague Conference on International Law. The Convention expired almost 100 years later, pursuant to Article 51 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation on Parental Responsibility and Child Protection Measures of October 19, 1996 (entered into force on January 1, 2002).

In 1919, the British Eglantyne Jebb and her sister Dorothy Buxton founded the non-governmental organisation "Save the Children" in London to help German and Austrian children affected by the First World War. Later, "Save the Children" began to open offices in other countries and in 1920, with the support of the International Committee of the Red Cross, acquired the status of an international foundation. It was Eglantyne Jebb who drafted the Declaration of the Rights of the Child, which was approved by the Save the Children International Foundation on February 23, 1923 and submitted to the League of Nations on 28 February 1924.

Based on the Eglantine Jebb project, the General Assembly of the League of Nations adopted the Geneva Declaration of the Rights of the Child on September 26, 1924, which is called the Geneva Declaration. Structurally, the Declaration of 1924 is a fairly compact document, consisting of only five main program items:

1. The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;
3. The child must be the first to receive relief in times of distress;
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

So, in these paragraphs, the Declaration enshrined children's rights for health and normal physical development. In fact, this international document was a starting point of recognition of children's rights, including medical rights, at the global level. This five-point declaration – which was promulgated by the League of Nations in 1924 – has later been canonised as the first international declaration, not only on children's rights but on human rights more broadly [2, p. 290].

Generally, the concern about the health of children was caused by the need to overcome the consequences of the First World War, the fight against hunger, the epidemic of typhus, and the Spanish flu. Ukraine was not an exception. That is why the origins of juvenile law in Ukraine, including the consolidation and regulation of children's medical rights, began to take shape in these times. The need to consider the development of children's medical rights in Ukraine is explained primarily by the fact that in recent years in Ukraine there is an active reform of the field of medicine, including medical care for children. As it is known, when starting any transformations or changes, it is important to carefully study previous experience because it enables defining what exactly needs to be improved.

The general issue of juvenile law and the rights of minors have been studied by many well-known scholars from various areas of law, such as O.I. Anatolieva [2], L. Lindkvist [3], E. Agnew [4], S.M.F. Arend [5], E.A. Faulkner, C. Nyamutata [6], N.M. Krestovska [7], O.V. Kaplina, O.P. Kuchynska, O.M. Krukevych [8], S.V. Nesinova [9], O.V. Temchenko [10], O.I. Vinglovska [11] and others. The issue of children's medical rights has been investigated by such scientists as R. Adami, K. Dineen [12], P. Alderson [13], K.E.Ó. Cathaoir [14], T. Dare [15], K.H. Federle [16], Fedotova [17], U. Kilkelly [18], N. Lynch, U. Kilkelly [19], F. Kokabisaghi [20], Melnychuk [21], S. Minson, C. Flynn [22], A. Olefir and V. Pashkov [23], V.M. Pashkov, M.V. Trotska, O.S. Soloviov [24], O.V. Petryshyn, M.I. Liubchenko, O.O. Liubchenko [25], Yu.S. Razmetaeva and O.O. Sydorenko [26] and others.

However, a holistic theoretical legal study on the development of children's medical rights in Ukraine had not been carried out. Thus, the main purpose of this article is to analyse the process of development of children's medical rights in Ukraine.

1. MATERIALS AND METHODS

The regulatory framework for this study includes international legal documents and legislation of Ukraine. Among these documents are international declarations and conventions, constitutions, collection of laws, etc. Examining international documents gives us an opportunity to understand the global development of the issue of children's medical rights. At the same time, Ukrainian legislation shows us an influence of changes on the international stage on the development of children's medical rights in our state.

The theoretical framework of the study comprises scientific works of mentioned above scholars exploring the general issue of children's rights and medical rights in particular. Undoubtedly, the opinion of these leading experts became an important source of information for this study. To conduct this research, a system of methods of scientific cognition was applied. The methodological framework of this study is represented primarily by the philosophical method. The general philosophical method of cognition was applied at all stages of the cognitive process.

Secondly, the general scientific methods, specifically dialectical and historical methods, method of analysis and synthesis were used. Using the historical method, the authors researched the issue in chronological order. Using the method of analysis, the study identified the specific of children's medical rights, moreover, this method made it possible to engage reverse engineering of the concept, in particular, to distinguish a stage of development of these rights and investigate it as a separate part of the whole. The method of analysis also contributed to the identification of the inherent features of children's medical rights, made it

possible to identify similarities and distinguish them with other undeniable children's rights, correlate the universal catalog of human rights with the rights that started developing under processes of the recognition of the child as a subject of law. The method of synthesis gave the authors an opportunity to study children's medical rights in their entirety, in single and interconnected parts. In the process of the scientific research, synthesis is associated with analysis, that is what allowed the authors to combine stages of the process of the development of the children's medical rights, highlight the basic elements of these rights in the process of analysis, to establish their relationship and to investigate the development of children's medical rights as a whole.

Thirdly, special legal methods like formal-legal, comparative-legal, system-structural methods, and method of interpretation of legal norms were used. Formal-legal and system-structural methods were used in the development and research of the terminology of this paper, namely, in clarifying the content of the categories "children's rights", "children's medical rights", as well as upon formulating the definition of the specified legal categories. The most popular special legal method is the method of interpretation of legal norms. In this study, this method was used to analyse the formation and development of the issue of children's medical rights on the international stage and, primarily, in Ukraine. Generally, explanations through the law are the most fundamental type of historical explanation. The genetic explanation is used when the task is to reveal the essence of historical and legal phenomena and processes in their specific temporal expression [27, p. 71].

2. RESULTS AND DISCUSSION

2.1. *Children's medical rights in Ukraine during Soviet period*

As in many countries around the world, in Ukraine after the First World War and after the change of government (Ukraine became the Soviet Republic), the question of revising the legislation for improvement and bringing it into line with the requirements of the time arose. One of the main tasks of the Soviet government during this period was to ensure the health of the population in general and children as the future of the state in particular. On June 29, 1920, in accordance with the resolution of the Council of People's Commissars of the USSR the Council for the Protection of Children began its work, whose competence included the settlement of the issue of food supply, sanitation, and public education of children of the urban poor. Subsequently, provincial councils for the protection of children were established under the leadership of the chairmen of provincial executive committees, among whose tasks according to the statute "On Provincial Councils for the Protection of Children" was the implementation of the largest possible number of measures for health, nutrition, supply, and education of children.

At that time, the state paid special attention to disease prevention. Thus, programs of physical education classes were developed in all children's institutions, which were held under appropriate medical supervision. Moreover, these measures were included in the operational plan of the People's Commissariat of Health for 1923-1924 [17, p. 28]. We should not overlook the fact that during this period there were special institutions for children with vision and hearing disorders and for mentally-retarded children and children with disabilities, which, in the authors' opinion, is quite justified and logical because these categories need special medical supervision and living conditions. Undoubtedly, this was a big step forward because until that time such institutions did not exist in Ukraine.

It should be noted that on November 19, 1924, the Council of People's Commissars and the All-Ukrainian Central Executive Committee of the USSR adopted a resolution "On the state organisation of children's health and the rights and responsibilities of children's health doctors". The document provided that, in addition to the position of a child health doctor, the positions of medical support staff (nurses) for child health care would also be introduced in places that serve all types of children's institutions. Article 3 of the considered document contained the list of measures of sanitary-prophylactic, treatment-prophylactic, and medical-pedagogical nature the application of which was entrusted to health care bodies. Among them: 1) supervision over the sanitary condition of children's institutions; 2) sanitary care for children's nutrition; 3) application of personal and public prevention measures to children; 4) control of infectious diseases in children's institutions; 5) supervision over the psychophysical development of children; 6) dissemination among children, as well as teachers and parents of the necessary sanitary and hygienic information and habits (sanitary education), etc. Moreover, Art. 9 of the above mentioned Resolution provided that the children's health doctor monitored the sanitary condition of children's institutions, monitored compliance with certain sanitary and hygienic standards, including the announcement of quarantine in closed children's institutions and temporary closure of open children's institutions in case of acute infectious diseases or a mass epidemic among children or staff with the consent of the health inspector and the consent of the Inspectorate of the People's Commissariat of Education.

Thus, it could be stated that this Resolution was revolutionary, as it clearly indicated the health care bodies for children, outlined the scope of their powers, enshrined the legal status of a child health doctor (now known as a pediatrician), and so on. As for children's institutions, their network consisted of institutions of open (consultations, nurseries, "milk drops", kindergartens, etc.) and closed (mother and child homes, shelters, etc.) type [21, p. 127].

During the Second World War, one of the main problems was the demographic crisis, due to which the health authorities had to increase the birth rate in Ukraine, to take care of the health of children. That is why in 1943 in the USSR the creation of sanatorium kindergartens began, where children with impaired health were provided with the necessary nutrition and constant medical care. Children could stay in such institutions from 3 to 6 months within 24 hours. Moreover, they were provided with enhanced nutrition and constant medical care. Pedagogical work in sanatorium kindergartens was carried out, considering the state of health of children. Additionally, the health of newborns should be considered. First of all, it should be pointed out that in the postwar period, this area had certain negative features and shortcomings. The unsatisfactory state of hospital life in many maternity hospitals and other hospitals led to a reduction in the length of stay of women in bed in several areas. It should not be forgotten that in those days there was no proper connection with pediatric counseling, and therefore, under such conditions, early discharge of children, including premature babies, was a threat to their health and life. Considering this, not only increased the number of deaths of newborns in the hospital, but also increased the mortality of newborns after their early discharge from the hospital [28, p. 55].

The end of the 1960s in the field of health care was marked by the adoption in the USSR of the Law "On Approval of the Fundamentals of the Legislation of the USSR and the Union Republics on Health Care" of December 19, 1969. It was the first law (a kind of code) in the USSR that comprehensively regulated the issue of health care. According to this Law, on July 15, 1971, the Law of the Ukrainian SSR "On Health Care" was adopted in the USSR, in the introductory part of which it was stated that special attention of socialist society is paid to the health of mother and child. A separate section of the above law was devoted to the protection of motherhood and childhood. Article 65 of this Law enshrined the right of a mother and her newborn child to receive medical care (inpatient care during childbirth, medical and preventive care, etc.). The law also provided the provision of medical care to children and adolescents in treatment and prevention and health care facilities: children's clinics, dispensaries, hospitals, sanatoriums, and other health care facilities.

At the constitutional level, the right of citizens to health care was first enshrined in the Constitution of the USSR in 1977 and, of course, in the Constitution of the Ukrainian SSR in 1978. In Art. 40 of the Basic Law of the Ukrainian SSR, it was noted that the state took special care of the health of the younger generation, which, in particular, provided for the prohibition of child labor not related to education and labor education. There have been significant changes at the international level regarding children's rights, including medical rights. These changes had a great impact on the development of medical rights in Ukraine. In 1978, the UN General Assembly in its resolution noted that the International Year of the Child provides a unique opportunity for all countries to undertake an in-depth review and evaluation of their policies for children and to establish programs of action to be undertaken, and for the world community to renew and to reaffirm its determination to meet children's needs and to secure their fundamental rights. Moreover, at this 33 session of the UN General Assembly, a resolution about the necessity of adoption of the convention on rights of the child was adopted. In support of the decision of the UN General Assembly, on March 15, 1979, the Verkhovna Rada of the Ukrainian SSR adopted a resolution "On holding the International Year of the Child in the Ukrainian SSR". This resolution envisaged directing efforts of the state and public organisations to ensure a stable improvement of the well-being of children, namely the development of a network of children's hospitals, polyclinics, sanatoriums, and preschool institutions, expanding the range and improving the quality of goods for children, improving public catering for children and more.

The most significant world event of the twentieth century in the field of children's rights, including medical rights, was the adoption by the UN General Assembly of the Convention on the Rights of the Child in 1989, which the Ukrainian SSR ratified in 1991. The Convention on the Rights of the Child is regarded as successful by practitioners pursuing a career in the field of Public International Law because, in addition to having been ratified over the decades by more than 190 countries (even under several reservation clauses), the socio-legal view of this legislation has been gradually adopted by the populations of countries located in various continents of the globe [5, p. 606]. The idea of universal acceptance of childhood finds justification in the swift ratification of the UNCRC, a document that has enshrined Euro-American ideals and notions of children, childhood, and the politics of protection [6, p. 69-70]. According to this Convention, states parties recognise that every child has the inherent right to life, and they shall ensure to the maximum extent possible the survival and development of the child (Art. 6), enshrine the rights of the mentally and physically disabled child (Art. 23), recognise the right of the child to the enjoyment of the highest attainable standard of health

and to facilities for the treatment of illness and rehabilitation of health (Art. 24), recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement (Art. 25). The Convention had a significant impact on the legislation of all states, including the Ukrainian SSR, on their attitude to the rights of the most vulnerable age group, as well as the recognition of the need to ensure the rights of children at the legislative level. However, there is a huge gap in the Convention. We share U. Kilkelly's opinion, that at the same time, the CRC says remarkably little about the scope of the child's right to health and how to ensure that children's healthcare is delivered in a rights-compliant manner. Nor does the CRC directly states the many sensitive and controversial issues in children's health, including consent to medical treatment, involvement in medical trials, and the impact of poverty on child's health [18, p. 217].

2.2. Children's medical rights in Ukraine after proclamation of independence

The current Constitution of Ukraine, adopted in 1996, stipulates, that citizens have the right to social protection, including the right to be provided in the case of full, partial, or temporary disability, loss of a breadwinner, unemployment due to circumstances beyond their control, and in old age and in other cases provided by law (Art. 46). It is this article that guarantees social protection to children with disabilities by the state and on its basis, other legal acts are adopted in the field of providing state assistance to children with disabilities (for example, the Law of Ukraine "On Fundamentals of Social Protection of Persons with Disabilities in Ukraine" of March 21, 1991, No 875-XII). Article 48 of the Constitution of Ukraine stipulates that everyone has the right to an adequate standard of living for himself and his family, which includes adequate food, clothing, and housing.

The main article of the Constitution, which is the basis of children's medical rights in Ukraine, is Article 49, according to which everyone has the right to health protection, medical care, and medical insurance. Medical care is provided free of charge in state and municipal health care facilities. In Ukraine, as well as in most countries, parents make all decisions about the medical care of their children. The authors strongly agree with T. Dare that in fact there is a presumption in favor of parental rights. Such rights are normally rebuttable: they can be set aside by courts where parents' decisions pose a significant risk to the life or well-being of the child [15, p. 947].

In accordance with the ongoing medical reform in Ukraine, changes have been made to the responsibilities of the pediatrician. Thus, according to the order of the Ministry of Health "Procedure for providing primary care" of March 19, 2018, No. 504 pediatrician is obliged to provide the following services free of charge:

- to provide primary care to patients;
- to form and control the implementation of the plan of examinations and treatment, analyse the results of research, prescribe drugs and other treatment measures;
- to provide medical care to patients in an emergency;
- to refer, in accordance with the medical indications of a patient who does not need emergency medical care, to provide him with secondary (specialised) or tertiary (highly specialised) medical care;
- to coordinate work with other parts of medical care;
- to manage patients suffering from socially dangerous infectious diseases in accordance with the legislation;
- to carry out immunoprophylaxis in accordance with current legislation;
- to advise on a healthy lifestyle;
- to carry out measures of mass and individual prevention of infectious diseases;
- to assess individual disease risks and advise on prevention. Develop individual health examination and monitoring programs;
- to inform the patient about national screening programs and perform other functions in accordance with the law or the program;
- to provide medical care for a healthy child;
- to prescribe medicines with the registration of documents according to the legislation;
- to draw up medical notes, forms, sickness certificates.

The Constitution also enshrines the protection of childhood by the state (Art. 51), which indicates a special attitude of the state to this vulnerable part of the population. In execution of this provision of the Constitution, in 2001 the Law of Ukraine "On Childhood Protection" was adopted. This law provides a definition of the terms child, childhood, child with a disability, etc., as well as a list of children's rights. One

of them is the right to life and health care (Art. 6). This right means that every child has the right to life from the moment he or she is determined live-born and viable of the criteria of the World Health Organisation. The state also guarantees to the child the right to health care, free qualified medical care in state and municipal health care facilities, promotes the creation of safe living conditions and healthy development of the child, nutrition, and the formation of healthy lifestyle skills. In order to achieve all of the above, the state takes measures:

- to reduce infant mortality;
- to ensure the provision of necessary medical care to all children;
- to combat disease and malnutrition, including by providing children with access to sufficient quality food and clean drinking water;
- to create safe and healthy working conditions;
- to provide mothers with appropriate health care services in the prenatal and postpartum periods;
- to provide all segments of society, including parents and children, with information on the health and nutrition of children, the benefits of breastfeeding, hygiene, sanitation of children, and the prevention of accidents;
- to develop educational work, services in the field of family planning and reproductive health;
- to provide children with preferential medicines and food in the order established by the legislation.

Therefore, studying the issue of development of children's medical rights it should be noted that the rights of children in health care can be classified into two main groups: – universal, which are inherent both for children and adults; – specific, which belong only to children, besides they are reinforced with guarantees of their legal status. The first group include the right to life and development, the right to the highest level of health as possible and access to health services, to receive treatment based on clinical need, respect for privacy and dignity, etc. The second group include the following: the right of disabled children to special care, the right of children placed in the care of the State to periodic review of treatment, the right to protection from the use of narcotic and psychotropic drugs, etc. [23, p. 1123].

As for the right to life, there are still fierce disputes among scholars. Some scientists note that the unresolved issue is the balance of human rights, first of all, the balance between the protection of the fetus and the respect for a pregnant woman's rights [26, p. 135]. The resolution of the issues and forming of a reasonable legal position in Ukraine require comparative legal research of the experience of other countries. One of the important decisions of the essential question of constitutional guarantees for the life of a child during the prenatal period in the event of a conflict of interests was made by the Constitutional Tribunal of the Republic of Poland [29]. In the Tribunal's view, termination of pregnancy even where, "based on prenatal tests and/or on other medical grounds, there is a high probability of the fetus's severe and irreversible impairment or of the fetus's life-threatening incurable illness" is inconsistent with the Constitution of the Republic of Poland. It held that an unborn child – as a human being, entitled to the inherent and inalienable dignity of the person – is recognised under law as a subject of rights and obligations who enjoys the right to life. Moreover, the experience of non-west legal systems, for example, Islamic law where there are specific approaches to children's rights protection, is interesting for research [30].

So, nowadays, children's medical rights and children's health care are still developing. For example, there are studies about human digital rights [31], children's right to freedom from obesity [14], and human rights in conditions of the COVID-19 pandemic fight [32]. So, as we can see, at the beginning of the XXI century there were considerable changes in children's health care. The development of children's medical rights has been continuing up to nowadays.

CONCLUSIONS

Thus, it could be concluded that children's medical rights were actively developed in the twentieth century after the First World War. It was an event of a global scale that prompted legislative changes in national legislations, including Ukraine. Ukraine's experience in children's health care is rich in examples of both successful reforms in the field of children's health care, and not so successful. A new system of public health was built, much was done to ensure the smooth realisation of children's right to health care, which was most needed during World War II, to overcome its consequences such as demographic crisis, exacerbation of children's health problems, settlement issues of their rehabilitation, both physiological and psychological, etc. Furthermore, intense activity in the provision of quality medical services to children was developed, the rights of children at the highest constitutional level were enshrined. Moreover, Ukraine acceded to the Convention on the Rights of the Child, which also contained articles on children's medical rights. So, Ukraine's accession to international conventions is an indicator of the direction of Ukrainian legislation in line with the

consolidation of children's medical rights according to international standards. The modern Constitution of Ukraine contains articles on children's health. Moreover, Ukraine has adopted a separate law "On the protection of childhood". The modern Ukrainian legislation about children's medical rights has been improving, new medical reform has been carried out, which also provides changes in children's health care. Nowadays, the issue about children's medical rights among Ukrainian and foreign scholars still have been developing. That is an indication of further development of children's medical rights both on an international stage and in Ukraine. That is why the conclusion can be drawn, that development of children's medical rights in Ukraine had reached the level when it is necessary to create a juvenile code with a separate section on children's medical rights.

REFERENCES

- [1] Omarova, A.A. (2020). Formation and development of juvenile law in Europe and Ukraine in the first third of the twentieth century. *Problems of Legality*, 150, 53-66. doi: 10.21564/2414-990x.150.209283.
- [2] Anatolieva, O.I. (2003). *Legal regulation of combating homelessness, neglect and crime in the USSR in the 20s of the XX century* (Doctoral thesis, National Academy of Internal Affairs, Kyiv, Ukraine).
- [3] Lindkvist, L. (2018). Rights for the world's children: Radda Barnen and the Making of the UN Convention on the rights of the child. *Nordic Journal of Human Rights*, 36(3), 287-303. doi: 10.1080/18918131.2018.1522772.
- [4] Agnew, E. (2021). Sexting among young people: Towards a gender sensitive approach. *The International Journal of Children's Rights*, 29(1), 3-30. doi: 10.1163/15718182-28040010.
- [5] Arend, S.M.F. (2020). Human rights and childhood: Building the Convention on the Rights of the Child (1978-1989). *Tempo*, 26(3), 605-623. doi: 10.1590/TEM-1980-542X2020v260305.
- [6] Faulkner, E.A., & Nyamutata, C. (2020). The decolonisation of children's rights and the colonial contours of the convention on the rights of the child. *International Journal of Children's Rights*, 28(1), 66-88. doi: 10.1163/15718182-02801009.
- [7] Krestovska, N.M. (2008). *Juvenile law in Ukraine: Historical and legal research*. Odesa: Feniks.
- [8] Kaplina, O.V., Kuchynska, O.P., & Krukevych, O.M. (2021). Interrogation of minor and juvenile witnesses in criminal proceedings: Current state and prospects for improvement. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 268-276. doi: 10.37635/jnalsu.28(3).2021.268-276.
- [9] Nesinova, S.V. (2005). *State and legal mechanism of the protection of the rights of minors in the Ukrainian SSR (60's – Early 80's of XX Century)* (Doctoral thesis, National Academy of Internal Affairs, Kyiv, Ukraine). Retrieved from <https://cutt.ly/mUWbozQ>.
- [10] Temchenko, O.V. (2013). *Social function of the Ukrainian state in ensuring the rights of children* (Doctoral thesis, International Humanitarian University, Odesa, Ukraine).
- [11] Vinglovskaya, O.I. (2000). *Implementation of international standards of children's rights in the national legislation of Ukraine* (Doctoral thesis, Taras Shevchenko Kyiv National University, Kyiv, Ukraine). Retrieved from <https://mydisser.com/en/avtoref/view/15600.html>.
- [12] Adami, R., & Dineen, K. (2021). Discourses of childism: How COVID-19 has unveiled prejudice, discrimination and social injustice against children in the everyday. *The International Journal of Children's Rights*, 29(2), 353-370. doi: 10.1163/15718182-29020001.
- [13] Alderson, P. (2016). *Health and children's rights. Handbook of children's rights: Global and multidisciplinary perspectives*. New York: Routledge.
- [14] Cathaoir, K.E.O. (2018). Children's right to freedom from obesity: Responsibilities of the food industry. *Nordic Journal of Human Rights*, 36(2), 109-131. doi: 10.1080/18918131.2018.1505090.
- [15] Dare, T. (2009). Parental rights and medical decisions. *Pediatric Anesthesia*, 19, 947-952. doi: 10.1111/j.1460-9592.2009.03094.x.
- [16] Federle, K.H. (2021). The child's right to be vaccinated. *The International Journal of Children's Rights*, 29(4), 897-919. doi: 10.1163/15718182-29040006.
- [17] Fedotova, O. (1930). *Protection of motherhood and childhood in Ukraine*. Kharkiv: Naukova dumka.
- [18] Kilkelly, U. (2015). *Health and children's rights. Routledge international handbook of children's rights studies*. New York: Routledge.
- [19] Lynch, N., & Kilkelly, U. (2021). "Zooming in" on children's rights during a pandemic: Technology, child justice and COVID-19. *The International Journal of Children's Rights*, 29(2), 286-304. doi: 10.1163/15718182-29020010.
- [20] Kokabisaghi, F. (2017). Equity in access to health care for children: Domestic implementation of the international human rights law in Iran. *Medicine and Law*, 36(2), 59-80.
- [21] Melnychuk, M.O. (2016). *Legal regulation of public health in the USSR (1921-1929)* (Master's thesis, National Pedagogical Dragomanov University, Kyiv, Ukraine). Retrieved from <https://cutt.ly/yUWbdXF>.

- [22] Minson, S., & Flynn, C. (2021). Symbiotic harms of imprisonment and the effect on children's right to family life. *The International Journal of Children's Rights*, 29(2), 305-325. doi: 10.1163/15718182-29020011.
- [23] Pashkov, V., & Olefir, A. (2017). Protection of children's rights in the health care: Problems and legal issues. *Wiadomości Lekarskie*, 71(6), 1122-1132.
- [24] Pashkov, V.M., Trotska, M.V., & Soloviov, O.S. (2019). Right to child health in context of natural environmental security. *Wiadomości Lekarskie*, 72(3), 418-424.
- [25] Petryshyn, O.V., Liubchenko, M.I., & Liubchenko, O.O. (2020). Child's health care: Legal framework and ongoing challenges. *Wiadomości Lekarskie*, 73(12 p. II), 2789-2794. doi: 10.36740/WLek202012215.
- [26] Razmetaeva, Yu.S., & Sydorenko, O.O. (2021). Abortion, human rights and medical advances in digital age. *Wiadomości Lekarskie*, 74(1), 132-136. doi: 10.36740/WLek202101126.
- [27] Shygal, D., & Omarova, A. (2021). Evaluation of the results of the historical and legal comparison of the juvenile justice of Ukraine and Poland in the 1920s. *Access to Justice in Eastern Europe*, 2(10), 67-85.
- [28] Vasyutinskij, N., & Staxovich, V. (1957). *The network and staff of medical institutions of the Ukrainian SSR in the fifth five-year plan*. Kyiv: Medgiz.
- [29] Family planning, the protection of fetuses, and grounds for permitting the termination of a pregnancy. Judgment. Ref. No. K 1/20. (2020). Retrieved from <https://cutt.ly/nUWbwJg>.
- [30] Lukianov, D.V., Ponomarova, H.P., & Tahiev, A.S. (2020). The Quran in Shia jurisprudence. *Journal of the National Academy of Legal Sciences of Ukraine*, 27(4), 29-42.
- [31] Petryshyn, O.V., & Hyliaka, O.S. (2021). Human rights in the digital age: Challenges, threats and prospects. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(1), 15-23. doi: 10.37635/jnalsu.28(1).2021.15-23.
- [32] Mernyk, A., Yaroshenko, O., Inshyn, M., Lukianov, D., & Hyliaka, O. (2021). Vaccination: Human right or duty. *Georgian Medical News*, 315, 135-140.

Viktor M. Yermolaiev

Doctor of Law, Professor

Academician of the National Academy of Sciences of Ukraine

National Academy of Legal Sciences of Ukraine

61024, 70 Pushkinska Str., Kharkiv, Ukraine

Director of the Institute of Postgraduate Education

Professor of the Department of History of State and Law of Ukraine and Foreign Countries

Yaroslav Mudryi National Law University

61024, 77 Pushkinska Str., Kharkiv, Ukraine

Aisel A. Omarova

PhD in Law

Assistant Professor of the Department of History of State and Law of Ukraine and Foreign Countries

Yaroslav Mudryi National Law University

61024, 77 Pushkinska Str., Kharkiv, Ukraine

Hanna P. Ponomarova

PhD in Law

Lecturer of the Department of History of State and Law of Ukraine and Foreign Countries

Yaroslav Mudryi National Law University

61024, 77 Pushkinska Str., Kharkiv, Ukraine

Suggested Citation: Yermolaiev, V.M., Omarova, A.A., & Ponomarova, H.P. (2021). The development of children's medical rights in Ukraine (1919 – beginning of the XXI century). *Journal of the National Academy of Legal Sciences of Ukraine*, 28(4), 181-189.

Submitted: 24.08.2021

Revised: 10.10.2021

Accepted: 26.11.2021