

REVIEW ARTICLE

The emerging public health legislation in Ukraine

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Abstract

As Ukraine has started the legal process for a public health legislation, this narrative review attempts to: i) characterize recent legal acts (which are current as well as drafts) and international standards in the sphere of public health; ii) analyze the definitions of public health legally relevant to Ukraine, in particular: public health and public health protection; iii) discuss related definitions relevant to the health sector; iv) characterize the main subjects tasked to protect public health; v) and clarify the necessary educational innovations, which are the basis in the preparation of human resources for an efficient implementation of the public health concept.

After referring to the current legislative process and a discussion of some of the concepts and terminologies available in the literature, the following understanding of the terminology is proposed here: i) 'Public Health' should be understood as mental and physical health of the population in a certain territory, determined by the best achievable demographic indicators, characterized by decreasing morbidity and mortality and increasing the potential to lead an active and long life; ii) the term 'Public Health Protection' (or, 'Protection of Public Health') should address a system of measures which are aimed at prevention and control of morbidity, optimization of demographic indicators, promoting a value-oriented state policy, securing biological and genetic safety and relying on joint societal efforts.

It is essential that the implementation of a public health law is underpinned by adapting the postgraduate educational system to the new challenges in Ukraine.

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Introduction

Ukraine entered an active process to integrate public health into the national health system as part of the wide spectrum of transformations of all Ukrainian systems. The “embryo” of public health has a long national history. In the historical context, it is worth paying attention to the State Sanitary-Epidemiological Service, which was responsible for protection of public health and had two main functions, i.e. control of communicable diseases and environmental protection (monitoring the quality of water, air, soil and food) (1).

Scholars, who worked on various aspects of public health development in Ukraine include Y. Bazylevych, I. Gryga, N. Chala, V. Moskalenko, V. Lekhan, V. Rudyi and others. In particular I. Gryga researched the issue of public health funding in Ukraine and proved the idea of introducing official patient payments in Ukraine in order to avoid informal or quasi-official payments (2). The system of state bodies responsible for public health protection was the focus of interest of V. Lekhan and V. Rudyi (1).

This process started to actively develop when Ukraine signed the Association Agreement with the European Union in 2014 (3). The article 426 of Chapter 22 of the Association Agreement foresees that the Parties shall develop their cooperation in the field of public health, to raise the level of public health safety and protection of human health as a precondition for sustainable development and economic growth. A conceptual provision of the Association Agreement within its Chapter 22 is the “Health in All Policies” approach. Hence, public health and health care should be a starting point for the state authorities to develop policies benefitting their population, since human wellbeing constitutes the core of any health system. Correspondingly, the article 3 of the Constitution of Ukraine states that an individual, his or her life and health, honour and dignity, inviolability and security shall be recognized in Ukraine as the highest social value.

Value-oriented law-making foresees the satisfaction of universal human needs and interests and it creates a relevant social toolset to meet these objectives. In the philosophical-legal interpretation, a value means objects, phenomena, social processes and their features, which are treated by a human being as those, which satisfy his or her social needs, interests, desires and which he or she involves to one’s sphere of life activity (4). Public Health is a collective good, which has an individual value effect – human health.

In this paper I try to elucidate some aspects of the formation and development of the public health concept as a national Ukrainian paradigm; to clarify the terminological framework as a basis for the creation of the forthcoming public health legislation; to define public health in the Ukrainian environment and characterize the main educational innovations to support the preparation of well-trained human resources.

In order to achieve these objectives the following is required: i) to characterize recent legal acts (which are current as well as drafts) and international standards in the sphere of public health; ii) to analyze the definitions of public health legally relevant to Ukraine, in particular: public health and public health protection; iii) to discuss related definitions relevant to the health sector; iv) to characterize the main subjects tasked to protect public health; v) and to clarify the necessary educational innovations, which are the basis in the preparation of human resources for an efficient implementation of the public health concept.

Recent legal initiatives in Ukraine

Currently, the establishment of an effective public health system is one of the priorities of the Ukrainian Ministry of Health (3). In a Strategic document of the World Health Organization (WHO) Regional Office for Europe, issued in 2012: “Health 2020: A European policy framework supporting action across government and society for health and well-being” (5), it

is noted that “...all 53 Member States in the WHO European Region have agreed on a new common policy framework – Health 2020. Their shared goals are to “significantly improve the health and well-being of populations, reduce health inequalities, strengthen Public Health and ensure people-centred health systems that are universal, equitable, sustainable and of high quality”.

Recommendations of the Parliamentary hearings on the topic: “On Health Care Reform in Ukraine” of 21 April 2016 (6), which is currently the sole strategic document for the envisaged transformations of the health system, also encompasses the public health sector. The ‘Recommendations’ define the list of tasks of the state bodies with regard to public health, including:

- development and approval of the concept of the public health system reform;
- preparation of a draft-law on the public health system in Ukraine;

Hence, the government started coordinating a process aiming at the legal foundation of a national system of public health, which should include the following elements:

- a modern system of epidemiologic surveillance of communicable diseases;
- a modern system of epidemiologic surveillance of non-communicable diseases;
- creating a system of public health, which is based on the principle “Ukraine 80+”.

For the first time the principle “Ukraine 80+” was mentioned in the agenda of the head of the Committee on Health of the Verkhovna Rada of Ukraine, namely professor O. Bogomolets (“Health care reform: 25 steps to happiness”). In order to implement this principle it was foreseen that there should be developed such a system of public health which would secure an increase in life expectancy of the Ukrainian people. However, this principle was not further legally established in order to be implemented, except for some initial measures of organizational character, in particular official meetings with the European Union representatives.

Subsequently, the “Concept of Public Health System Development in Ukraine” (7) (*hereinafter – the “Concept”*) and the draft “Law on Principles of State Policy of Health Care” (8) (*hereinafter the “draft Law”*) have been issued. For the first time, the draft Concept foresees the definition of the term ‘System of Public Health’, which is a set of instruments, procedures and measures, which are implemented by state and non-state institutions in order to strengthen the health of the population, prevent disease, support an active aging, and promote a healthy lifestyle, as a joint effort of the whole society. The draft Law attempts to provide a legal definition of the public health notion as a set of activities aiming at the maintenance and strengthening of the health of the population and increasing life expectancy. The state agencies and the bodies of local self-government are responsible for the organization of these societal efforts.

Definitions of public health legally relevant to Ukraine

Since the legal framework for a system of public health is under consideration, the terminology and meaning of the central term ‘Public Health’ has to be thoroughly examined. There are many scientific and legal definitions of this term. Therefore, a comparative discussion has to be conducted with regard to terms and concepts relevant to the health system.

One of the oldest definitions has been formulated by Charles-Edward Winslow in 1920: “Public Health refers to the science and art of preventing disease, prolonging life and promoting health through organized efforts and informed choices of society, organizations, public and private, communities and individuals” (9). According to the WHO definition in 1978 (10): “Public Health is the science and art of preventing disease, prolonging life and

promoting mental and physical health and efficiency through organized community efforts for the sanitation of the environment, the control of communicable infections, the education of the individual in personal hygiene, the organization of medical and nursing services for the early diagnosis and preventive treatment of disease, and the development of social machinery to ensure to every individual a standard of living adequate for the maintenance of health, so organizing these benefits as to enable every citizen to realize his birthright of health and longevity". The dimension of health according to WHO refers to "...a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". Also, this understanding of public health incorporates the interdisciplinary approaches of epidemiology, biostatistics, community health, behavioural health, health economics, health management, health policy, health insurance, mental health, and occupational health as important subfields.

However, probably, the most common definition has been coined by Donald Acheson in 1988 (11): "*Public Health is the science and art of preventing disease, prolonging life and promoting health through organised efforts of society*". In contrast, in John Last's famous Dictionary of Public Health in 2006 (12), it reads as follows: "*The mission of Public Health is to protect, preserve and promote the health of the public. Public Health is the art and science of promoting and protecting good health, preventing disease, disability, and premature death, restoring health when it is impaired, and maximizing the quality of life when health cannot be restored. Public Health requires collective action by society; collaborative teamwork involving physicians, nurses, engineers, environmental scientists, health educators, social workers, nutritionists, administrators, and other specialized professional and technical workers; and an effective partnership with all levels of government*".

Ukrainian laws in force do not foresee a legal definition of the term public health; the above mentioned draft legal acts do that for the first time. It is worth paying attention to the legislation of other countries, which have special laws with a relevant legal glossary. For instance, the article 3 of the 'Law of Georgia on Public Health' of 27 June 2007 (13) provides a definition of the term 'Protection of Public Health' as a set of measures aimed at improving the health of the population, prevention and monitoring of diseases. The article 1 of the 'Law on Public Health' of the Kyrgyz Republic of 25 June 2009 (14) defines 'public health' as the health of the population or certain groups and communities defined by a geographic, social or another characteristic, which is evaluated by demographic indicators, characteristics of physical development, morbidity and disability, whereas 'Public Health Protection' is defined as a system of measures, directed at the protection of public health, prevention of diseases, prolongation of life and strengthening of human health owing to organizational efforts of all parties, the population, public and private organizations, communities and individuals. These two examples demonstrate that the respective legislators have adapted elements from the aforementioned definitions which are deemed relevant in their national contexts.

Related definitions relevant to the health sector

However, terminological problems can easily occur importing and translating terms during the process of their adaptation to national legal systems. For example, in Chapter 22 of the Association Agreement (3), the term 'public health' is used solely to define the name of the chapter but in the text of the Agreement the term 'health care' is used, which has a different meaning underlining individual health rather than population health.

Taking into consideration the definitions of public health discussed so far, it is worthwhile to relate the term ‘public health’ to other terms in the field of health care and identify its place in the relevant system.

Especially relevant for the Ukrainian legislative process is the understanding of public health as the health of the population impacted by activities which are not restricted to the public sector – a common misunderstanding of the terminology. Therefore, we propose to consider in addition the term “Public Health Protection” which denotes the set of activities to be performed - not only by the public services - in order to achieve the best possible public health (health of the population) as a vision and objective.

Also, Verweij and Dawson (15) for example argue that the term ‘public health’ combines two words, each of which can be ambiguous and that among the many definitions of public health, the word “public” has two general interpretations. In a straightforward interpretation, “public” is an aggregate concept and is equated with the “population”. In this meaning, “public health” refers to the state of population’s health in general or a certain population group. The second interpretation of “public” is in terms of “collective action”, which has the goal to protect and promote a population’s health alongside efforts to prevent diseases.

Although historically, the same term “public health” was used in both meanings to characterize the state of the population in general and to define joint measures, which have to be taken in order to protect and improve such health (16). In the Ukrainian context, it seems preferable to apply two different terms: “public health” – to define a state of health of the population and “public health protection (or: “protection of public health” – to describe collective measures. However, most scholars agree that the essence of public health is the prevention of diseases, in order to maintain and strengthen both individual and collective (population’s) health (17).

With reference to the above considerations, in the Ukrainian legislative process, the following understanding of the terminology should be adopted:

- Public health is understood as mental and physical health of the population in a certain territory, determined by the best achievable demographic indicators, characterized by decreasing morbidity and mortality and increasing the potential to lead an active and long life.
- Under the term ‘public health protection’ (or, ‘protection of ‘public health’) we understand a system of measures, which are aimed at prevention and control of morbidity, optimization of demographic indicators, promoting a value-oriented state policy, securing biological and genetic safety and relying on joint societal efforts.

According to article 3 of the Law of Ukraine on: “Principles of Ukrainian Health Care Legislation” (18), medical care is the activity of the professionally trained medical workers, aimed at prophylaxis, diagnosis, treatment and rehabilitation pertinent to diseases, injuries, intoxications and pathological conditions, as well as pregnancy and childbirth. Consequently, the complexity of public health’s legal nature is caused by its multidisciplinary character, which generates the following formula: “medical care” and “public health protection” are partially overlapping in the area of prophylaxis. At the same time, both terms are part of the umbrella term ‘health care’. Hence, both terms are within the realm of ‘health care’. The term ‘medical care’ by its content is narrower than ‘public health protection’, since providing equal access to effective and high quality medical care is only one of the functions of the protection of public health.

On this basis, the main functions of the protection of public health include:

- *Monitoring*: evaluation, analysis, and comparison of the state of health of the population in order to identify the existing problems and develop priorities.

- *Control*: provision of biological and genetic security, decreasing the morbidity level.
- *Prevention*: prophylaxis of diseases and formation of a healthy lifestyle of the population.
- *Strategy and coordination*: formation of the state and local policy on the basis of “Health in All Policies”.
- *Communication*: interaction of different subjects in terms of implementing the values of public health protection into social and state life.
- *Medical*: securing equal access of the population in general and each person in particular to high-quality and effective medical services.
- *Integration*: consolidation of the national and international efforts aimed at the protection of public health.

Public health service

According to paragraph 1.2 of the Concept (7), the key central body of executive power, which is responsible for the management of public health system, is the Ministry of Health of Ukraine. The Department of Public Health as a structural subdivision is targeted at securing proper management of the public health system. In order to implement policy and provide services in the sphere of public health at the national level, on 31 May 2016, the government established a State Institution “Centre of Public Health of the Ministry of Public Health of Ukraine” (*hereinafter – the Centre*). According to its charter, the Centre is a scientific and practical institution of medical profile, which fulfils the following functions: ensure the permanent strengthening of the population’s health; carrying out social and hygienic monitoring of diseases; epidemiological supervision and biological security; conducting the group and population oriented prophylaxis of morbidity; combating epidemics; and execute the strategic management of all public health issues. At the regional level, it is foreseen to create Regional Centres of Public Health. At the level of districts and cities, the provision of public health services will be coordinated by a public health specialist (epidemiologist) of the Regional Centre who will be appointed to a certain territory. The Concept also envisages that family doctors, mid-level medical personnel and representatives of the civil society should be involved in public health services.

Preparing human resources for the implementation of the upcoming public health legislation

When creating a new structure no less important are the human resources, which will be the element of the system that takes responsibility to implement a state policy in the sphere of public health. An important step in area of education was made after the Resolution of The Cabinet of Ministers of Ukraine passed on 23 November 2016. According to this Resolution, a new specialty labelled “public health” was added to the list of fields of knowledge and specialties, according to which, persons who receive higher education, are trained. This step became a foundation for the implementation of bachelor and master programs on public health. Consequently, this new sector will promote the professionalization of the public health workforce. Currently, in Ukraine, Schools of Public Health are being actively established and these schools will be the major centres responsible for educating the new generation of public health professionals. On the one hand, according to the multidisciplinary character of public health, specialists can be trained after different undergraduate studies (bachelor programs) and, on the other hand, training of professionals is conducted with a focus on different competencies, which are necessary for the public health sphere (for instance, with a legal specialization).

One of the examples of innovations in the sphere of education includes the departments of medical law, which were established within medical schools. These departments are to provide advanced training for health care managers and physicians. Therefore, they should be involved in the training of public health professionals, especially for those who are going to specialise on legal issues of public health. In this respect, the example of the Department of Medical Law of the Danylo Halytskyi Lviv National Medical University is of interest, which became already an associated member of ASPHER (19). At this Department, a postgraduate course on medical law has been established targeting physicians, health care managers, and lawyers. In addition, this Department has implemented other innovative educational programs, among them for example “Leadership in the Sphere of Health Care, Human Rights and Public Health Law”, focusing on an advanced training of health care managers and comprising 78 hours, including lectures, practical classes and individual work.

Conclusions

The legislative initiative to formulate a Public Health Law for Ukraine requires a careful analysis of the concepts and the term ‘Public Health’ and the pre-existing services and service providers in Ukraine. After referring to the current legislative process and a discussion of some of the concepts and terminologies available in the literature, the following understanding of the terminology is proposed here:

- ‘Public Health’ should be understood as mental and physical health of the population in a certain territory, determined by the best achievable demographic indicators, characterized by decreasing morbidity and mortality and increasing the potential to lead an active and long life.
- The term ‘Public Health Protection’ (or, ‘Protection of Public Health’) should address a system of measures which are aimed at prevention and control of morbidity, optimization of demographic indicators, promoting a value-oriented state policy, securing biological and genetic safety and relying on joint societal efforts.

It is essential that the implementation of a public health law is underpinned by adapting the postgraduate educational system to the new challenges in Ukraine.

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