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A. Afanasieva-DeMaggio,
Attorney-at-Law, LLM University of Chicago

CHILDREN'S RIGHT TO BREASTFEEDING: REGULATION OF CHILDREN'S RIGHT TO BREASTFEEDING IN UKRAINE IN THE LIGHT OF HEALTHY CHILDREN'S NUTRITION INTERNATIONAL STANDARDS

As Ancient Greeks had it, I am what I eat. Did you know that this applies to baby foods as well? Infant nutrition sends a strong message to the child's present and future health and lifestyle, and this is why exclusive breastfeeding until the age of 6 months, and further breastfeeding until the age of 2 years with gradual introduction of the solid foods, is essential for normal child growth and development. When mothers tackle the issues of low milk supply, lack of time to feed, social restraints on feeding, or the baby's inability to latch properly, the many doctors in Ukraine are happy to offer formula before the age of 6 months, or suggest buying the baby foods the marketing of which violate the International Code of Marketing of Breastmilk Substitutes. However, the EU and U.S. communities most of the issues related to breastfeeding are easily dealt with the help of training, education, and a little bit of effort on the part of breastfeeding specialists, doulas, lactation consultants, and specially trained hospital nurses in the delivery rooms. In most cases, breastfeeding problems can be solved. On the other hand, in very rare cases the mothers are really not able to make it due to medical problems. If breastfeeding is so easy to fit to the mothers' expectation, why do not many even make it until 6 months in Ukraine?

The article answers this question by reinstating the need of governmental regulation of breastfeeding and of marketing of breastmilk substitutes, and hence raising the awareness of Ukrainian population on the utmost importance of breastfeeding, and potential hazards of formula feeding. It also provides a number of specific programs and laws that can be adopted by the government of Ukraine to protect, promote, and support breastfeeding in Ukraine.

Breastfeeding v. Artificial Feeding: the Facts that Moms in Ukraine Might Not Know
There are plenty of health advantages of breastfeeding [1, p. 1].

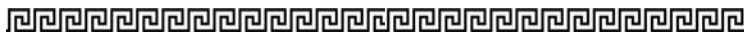
Mother's milk is the ideal nutrition for a baby," explains Valentyna Misnyk, leading

research officer of the Department of Nutrition of Young Children at the Institute of Pediatrics, Obstetrics and Gynaecology of the Academy of Medical Sciences of Ukraine (further – "IPOG AMSU"). "It is perfectly balanced in proteins, fats, carbohydrates, vitamins and minerals; it also contains various protective factors and biologically active substances. It is the best source of energy. In addition, the process of breast-feeding itself has positive impact on child's health and psychological and emotional development" [2, p. 1–3].

Both mothers and children benefit from breast milk. Breast milk contains antibodies that protect infants from bacteria and viruses. Infants who are exclusively breastfed tend to need fewer health care visits, prescriptions and hospitalizations resulting in a lower total medical care cost compared to never-breastfed infants. Breastfeeding also provides long-term preventative effects for the mother, including an earlier return to pre-pregnancy weight and a reduced risk of pre-menopausal breast cancer and osteoporosis [3, p. 1].

On the contrary, pursuant to INFACT Canada/IBFAN North America, there are numerous risks of formula feeding for babies, which include the increased risk of, inter alia, asthma, allergy, acute respiratory disease, altered occlusion, infection from contaminated formula, nutrient deficiencies, childhood cancers, chronic diseases, diabetes, cardiovascular disease, obesity, gastrointestinal infections, mortality, otitis media and ear infection, side effects of environmental contaminants. Besides, mothers who formula feed are proven to be at a higher risk of, among others, breast cancer, overweight, ovarian cancer and endometrial cancer, osteoporosis, rheumatoid arthritis, anxiety, and maternal diabetes [4, p. 1].

Despite the above, formula feeding is easier to use. No one needs to eat healthy keeping a diet and avoiding certain range of foods, there are no mastitis risks or other breast disease, and it is time- (note, not money-)



efficient. Unfortunately, it is often easier for a breastfeeding working mom to go back to her career track and buy formula for her child, because breastfeeding is tough. It requires time. It required patience, sense of safety and aweness. Above all, it requires social support, encouragement and understanding.

To ensure health of a human being, the World Health Organization recommends “exclusive breastfeeding for the first six months of life”, the introduction of local, nutrient rich complementary foods thereafter “with continued breastfeeding to two years of age or beyond”. [5, p. 2]. According to the United Nations Children’s Fund (further – “UNICEF”), and the Ministry of Health of Ukraine should receive breast milk exclusively until the age of 6 months [6, p. 1].

Governmental Guarantees of Children’s Health in Ukraine: the Duty of Care

Pursuant to Article 2 of the Law of Ukraine On the Protection of Childhood, the legislation on the protection of the childhood is based on the Constitution of Ukraine, the UN Convention on the Rights of the Child, international treaties, adopted by the Parliament of Ukraine as legally enforceable, the pertaining Law, and other legal acts, which regulate social relations in this sphere [7, p. 1].

Article 3 the Constitution of Ukraine proclaims the right to life and health, honor and dignity, immunity and security to be the highest social values in the country. It further states that the government is responsible for these rights and freedoms, enforcement thereof, the rights and freedoms, being the main governmental responsibility [8, p. 4]. This means that the government of Ukraine is liable for the health and lifespan of its citizens.

At the same time, there is no dispute about the fact that the health of every citizen depends on her lifestyle choices. However, before such a citizen is physically and mentally able to make the lifestyle choices for themselves, it would be no exaggeration to state that her health is a hundred percent dependent on the nurturer, the one who provides her with nutrition in the first several years of her life. This fact is reinforced by the following provisions of the Family Code of Ukraine: (i) paragraph 2 of Article 14, which says that the parents or legal guardians make sure that the rights of the child are duly executed; (ii) paragraph 2 of Article 150, which confirms that parents have a duty of care for the health, physical, spiritual, and moral development of the child; and (iii) Article 180, which lays the duty of care on the parents for the child’s support [9, p. 3].

So how do parents know what is best for the health of their children? Far from every parent in Ukraine has access to the Internet to

check what the standard global requirements for breastfeeding are, and what the major health organizations point out as the benefits of breastfeeding.

Even in the case of the availability of Internet connection in the family, the parent might not always have time, or put enough effort to check on those requirements. In the modern world, we sometimes tend to trust the healthcare professionals more than we trust our gut instinct. Hence, if the pediatrician prescribes artificial baby foods at 3 months to your infant, or if the doctor claims that you have milk supply problems, or that your child does not get enough, while the infant is in the fifty-growth percentile, an average mother goes ahead, and buys the artificial food, or formula, instead of applying one of the many methods to increase her milk supply just because breastmilk is the most healthy food for her infant.

It’s impossible to overestimate the importance of the two questions posed:

- (i) How can the parent, and especially a new mother, be aware of the perks of breastfeeding her child, and
- (ii) What does the government’s duty of care entails?

The answer to both of them lies within one sentence: The government has to enforce its duty of care for the children’s health by adopting and implementing the programs, including awareness programs, outlining international standards of breastfeeding, the legislative basis for the regulation of breastfeeding in Ukraine.

Hence, Ukrainian government can, and should take an active role in assisting mothers in their breastfeeding efforts, as opposed to creating more social obstacles for them. What is the basis for the government to change its attitude to breastfeeding moms, and start acting to encourage higher breastfeeding patterns? Such governmental action should be taken as a direct enforcement of the Articles 3 and 49 of Ukrainian Constitution, the 12 Principles For Successful Breastfeeding, detailed above, and the healthcare legislation of Ukraine.

Breastfeeding Laws in Ukraine: Reality

The primary obligation of the Ukrainian government is to formulate, implement, monitor and evaluate national policy on infant feeding [10, p. 23].

Overall, current laws in Ukraine are not responsive to the needs of breastfeeding moms. There are few governmental regulations, and no guidelines for breastfeeding, making it difficult for breastfeeding moms to keep it up after return to the workforce, or study environment, not to mention allowing them to exclusively breastfeed their children up to the age of 6 months, and until the age of 2 years



after having introduced the solid foods. The regulation effective at this moment in Ukraine is the Resolution of the Ministers of Cabinet of Ukraine (2006), № 1849 on the approval of the State program "Reproductive Health, 2006-2015", which affirms the necessity to increase to 60% the percentage of children who are exclusively breastfed for six months. However, needless to say, there has been no enforcement strategy or mechanism elaborated to implement the provisions of this resolution into real life in Ukraine. Hence, Ukraine has no legal framework for ensuring the increase of breastfeeding rates in the country.

The medical professionals do not provide adequate guidelines for mothers, either. On the upside of the story, the medical professionals often encourage mothers to introduce solid foods, or add formula to feeding the infants without any reasonable medical background for this parenting decision, but indeed based on the pecuniary benefits the doctors, and other healthcare staff receive from selling a certain amount of artificial nutrition, such as formula, or baby foods. There is a lack of surveys of service users about the quality of aid at health institutions, and degree of implementation of the principles of extended breastfeeding, International Code. Breastfeeding not included in training programs for doctors and specialists, nurses and midwives, either at regional or national levels [11, pp. 1–10]. At the same time, what was of huge help to me as a first-time mom, is the law that requires all hospitals, especially the hospitals providing maternity care, to make a lactation consultant, nurse or a midwife available to provide family-friendly support and breastfeeding advice.

There is no surprise that the UNICEF is concerned with the breastfeeding rate in Ukraine, which is one of the lowest in the region [12, p. 1]. At the same time, the World Bank Data Center shows that the percentage of exclusively breastfed children under 6 months in Ukraine was 6%, and has doubled within the last years, whereas in the U.S.A. this number is 65%, 3,5 times higher than in Ukraine. Croatia, Rwanda, Chile, and Afghanistan have indicators higher than 80%. Sri Lanka, Cambodia, Malawi, Peru, Nepal, Burundi, Uruguay, and North Korea have around 65% of exclusively breastfed babies below 6 months. Most African countries, Mongolia, and Georgia still have the indicators above 60% [13, p. 1].

The official website of the President of Ukraine lists the main legislative basis for protection of children's rights in Ukraine. Sadly, the list does not include a single act, either imperative or recommendatory, which would deal with the issues of infant feeding.

Governmental Regulation of Businesses: Breast Milk Substitutes Marketing

Coordination Council of UNICEF on "Support of Breastfeeding in Ukraine for years 2006-2010" program was prepared and presented for adoption by the Ministry of Health; but the governmental authority keeps delaying the implementation of the Resolution "On following the International Code of Marketing of Breastmilk Substitutes in health protection institutions" (further – the "Resolution", thus making the program inefficient per se [14, p. 44]. The International Code of Marketing of Breastmilk Substitutes (further – the "International Code"), in its turn, provides for the mechanisms for enforcement and prosecution of violations and a monitoring system that is independent of commercial vested interests, and for the maternity protection legislation that enables all working mothers to exclusively breastfeed their infants for six months and to continue thereafter. [15, pp. 1-24]. Well, we understand why the government might be delaying the implementation such code. The breast milk substitutes business are getting good profits from leaving this area of social life unregulated by the government, and make sure that the government does not pass any laws preventing them from getting the high stakes. After all, money talks, and business is business to them. The situation might be different in regards to their children, though.

While formula-oriented businesses like Hipp (produced by HIPPI) or Similac (produced by Abbott Laboratories) grow revenues from the sales of baby nutrition, Ukrainian government has so far been reluctant to implementation of more definite and stricter regulations for the like baby food producers. In fact, the government's failure to join the international community and become a member to the Resolution doom Ukraine to a lower level of safety of breast milk substitutes and total lack of education about them or about the benefits of breastfeeding, and to an almost unlimited poorly regulated content of the commercials regarding the formula-based products.

Therefore, due to the absence of legislation adequately addressing regulation of marketing of products for artificial infant feeding, or appropriate governmental programs aimed at increasing the social awareness and educating of health workers and health care facilities, the companies involved in the production or sales of breast milk substitutes, bottles, and other nursing substitutes in Ukraine take advantage of the ignorance of medical service providers, the general public, decision makers, and lack of awareness of the harmful influence of their incorrect marketing activity on breastfeeding.





The absence of legal and social control allows such companies to aggressively implement marketing programs involving medical providers, retail sales outlets and the media. It is also sad to admit the position of retail outlets permitting advertising, activities of sales agents dealing directly with mothers and pregnant women, which are mostly caused by unawareness of the International Code provisions and commercial interest [15, p. 23].

This is particularly upsetting news in the European country with almost 46,000,000.00 people because, as shown above, breastfeeding is crucial to the children's health, and their further health and development throughout their lives. Meanwhile, the European countries, the USA, and some post-Soviet countries, such as Georgia, have programs at the governmental level aimed at promotion, protection, and support of breastfeeding.

Breastfeeding Laws and Programs: What Can We Do?

The author has analyzed international breastfeeding regulations, and the breastfeeding laws of several European countries and the USA. With this in mind, she provides below a short outline of what the government of Ukraine can do to adopt the breastfeeding policy as the main one, protecting, advancing, and encouraging breastfeeding, which would be the key of the child nutrition.

Within the European Union the document called "Protection, Promotion and Support of Breastfeeding in Europe: a Blueprint for Action" (further – the "Document"), developed by a project co-funded by the Directorate General for Health and Consumer Protection of the European Commission, serves as the grounds for regulation of breastfeeding. The Document explicitly states that "promotion of breastfeeding is one of the most effective ways to improve the health of our children. It has also beneficial effects for mothers, families, the community, the health and social system, the environment, and the society in general", and further defines "the protection, promotion and support of breastfeeding" as the public priority. [16, p. 1-5]. The Document puts in line all the steps that the governments can take at the national and local levels to promote, encourage, and advance breastfeeding. The steps include, among others: (i) adoption and integration of the comprehensive national policy based on the Global Strategy on Infant and Young Child Feeding [17, pp. 1-46]; (ii) information, education, and communication (the so-called "IEC") programs; (iii) pre- and in-service training for all health worker groups; (iv) implementation of the International Code; (v) implementation of monitoring and evaluation practices of health

and social services; (vi) conducting research to elucidate the effects of marketing practices. If the Ukrainian government joins the efforts envisaged in the Document at supporting breastfeeding, it will also help create a whole new niche of employment opportunities in the economy of the country. Baby nutritionists, doulas, and independent lactation consultants will be trained to provide special assistance, encouragement, and guidance to mothers in breastfeeding. Moreover, breastfeeding pumps manufacturers and other breastfeeding-friendly producers will bring profits in the economy to substitute the loss from the shady and not always healthy formula and baby foods. The government could also implement additional taxes on the baby food producers to cover the governmental spending for the monitoring of the baby foods producing facilities. The system of strict fines should also be established, where the baby foods producers would be strictly liable for health damages to children, and liable for any violations of the provisions of the International Code.

As for the social programs aimed at raising awareness of society as to the breastfeeding issues, the government of Ukraine can follow the experience of some of the U.S. states.

For instance, the Code of Alaska allows a mother to breastfeed her child in any public or private location [18, p. 1]. Another statute in Alaska prohibit a municipality from enacting an ordinance that prohibits or restricts a woman breastfeeding a child in a public or private location where the woman and child are otherwise authorized to be. The law clarifies that lewd conduct, lewd touching, immoral conduct, indecent conduct, and similar terms do not include the act of a woman breastfeeding a child in a public or private location where the woman and child are otherwise authorized to be [19, p. 1]. Most U.S. states have similar provisions in their codes, or have special breastfeeding laws containing such provisions [20, p. 2].

The state of Arkansas helps the breastfeeding mothers get adapted to the working environment. Hence, if a mother has to go back to work after the maternity leave, she can still continue breastfeeding her child safely until the child meets the standard age when breastfeeding is not crucial, according to the international health standards, which is the age of two. The Arkansas Code requires an employer to provide reasonable unpaid break time each day to an employee who needs to express breast milk for her child and requires an employer to make a reasonable effort to provide a private, secure and sanitary room or other location other than a toilet stall where an employee can express her breast milk





[21, p. 1]. California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Indiana, Maine, Minnesota, Mississippi, Montana, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington and Wyoming have similar statutes [22, p. 2].

The State of California is probably one of the most advanced in terms of implementing breastfeed-friendly social programs to support breastfeeding mothers, and raise awareness of public in the area of breastfeeding. Thus, the California Code of Civil Procedure even takes care of the breastfeeding moms on the jury duty, and requires the Judicial Court to adopt a standardized jury summons for use, which must include a specific reference to the rules for breastfeeding mothers [23, p. 1]. Furthermore, the California Assembly Bill No. 1814, Chapter 226 (AB 1814) created the law and directs the Judicial Council to adopt a rule of court to allow the mother of a breastfed child to postpone jury duty for a period of up to one year and that after one year, jury duty may be further postponed upon written request by the mother. [24, p. 1]. The states of Connecticut, Idaho, Illinois, Iowa, Kansas, Kentucky, Michigan, Mississippi, Montana, Nebraska, Oklahoma, Oregon, South Dakota and Virginia also has this requirement in its statutes [25, p. 2].

The Department of Public Health of California is also required to include in its public service campaign the promotion of mothers breastfeeding their infants. Moreover, the department has to develop a training course of hospital policies and recommendations to promote exclusive breastfeeding. The Department of Public Health is also encouraged to expand the breastfeeding peer-counseling program. Illinois, Minnesota, Missouri, and Vermont have also implemented and encourage the development of various breastfeeding awareness education campaigns in society [26, p. 2].

Conclusion

As shown above, the health benefits of breastfeeding are numerous. Breastfeeding in itself prevents many diseases in a child, strengthens the child's immune system, creates a bond between the mother and the child, and helps raise the social welfare of the community overall. According to the international standards, the child should be breastfed until 6 months of age, and should be further breastfed with the introduction of solid foods until the age of 2 years. The government is directly responsible for raising breastfeeding awareness of the population, and keeping the businesses producing formula and artificial baby foods on the hook for violating the International Code, which needs to be implemented by the

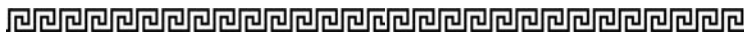
Parliament of Ukraine as soon as possible. As envisaged above, the government needs to adopt specific programs aimed at protection, promoting, and supporting breastfeeding in Ukraine in execution of its duty of care to the people of Ukraine as prescribed by the Ukrainian Constitution.

If Ukraine fails to provide for the healthy nutrition of its children, then who will?

Key words: breastfeeding, breast milk, formula feeding, artificial breastmilk substitutes, the WHO's International Code of Marketing of Breastmilk Substitutes, the children's right to breastfeeding, the government's duty of care for the health of children in Ukraine, Protection, Promotion and Support of Breastfeeding in Europe: a Blueprint for Action, the Global Strategy on Infant and Young Child Feeding.

This scholarly journal article is aimed at raising the social awareness in Ukraine to the benefits of breastfeeding children, the risks associated with the formula feeding, and the need for international marketing standards compliance of artificial infants' and toddlers' foods in Ukraine. The author is a Ukrainian lawyer and a U.S. licensed attorney, Master of Laws at Kyiv Shevchenko University IIR and the Univeristy of Chicago Law School, and a women's rights activist with the firsthand experience in both countries. The article reviews the government duty of care for the health of children in Ukraine, and offers a governmental policy program as the foundation to launch the breastfeeding campaign in Ukraine based on the examples of the European Union countries and most states of the U.S.A. The qualitative research methodology delivered alarming results on the state of regulation of marketing of artificial baby foods in Ukraine, which is one of the few European countries not to comply with the WHO's International Code. The absence of breastfeeding laws, or regulations in Ukraine is surprising for a European country. The quantitative research methods also revealed that though many Ukrainians follow traditional believes, as soon as mothers tackle any difficulties with breastfeeding, they give up for formula. According to polls conducted by the author, breastfeeding-uneducated medical providers encourage such choices of theirs. One of the few credible sources available on the breastfeeding issues, and hence used for this research, are the UNICEF and World Bank web portals. Otherwise, there is little data on the breastfeeding and artificial baby foods in Ukraine. The intended audience of the article are decision-makers and mothers, above all, as well as general public in Ukraine.





Ця стаття для наукового журналу має на меті підвищення соціальної обізнаності в Україні щодо переваг грудного годування дітей, ризиків, пов'язаних із штучним вигодовуванням, та потреби погодження штучного дитячого харчування в Україні до міжнародних маркетингових стандартів. Автор статті – український юрист та американський адвокат, магістр права при КНУ ім. Т. Шевченка ІМВ та Університету Чикаго Школи Права, правозахисник жінок, яка має безпосередній досвід праці в обох країнах. Стаття розглядає обов'язок держави забезпечувати здоров'я дітей в Україні, а також пропонує державну програму як основу для запуску кампанії грудного годування в Україні на прикладах країн Європейського Союзу та більшості штатів США. Результати досліджень якісних показників щодо регулювання маркетингу штучного дитячого харчування не є втішними в Україні, яка є однією з небагатьох європейських держав, де порушується Міжнародний кодекс ВОЗ. Відсутність правової бази щодо грудного годування в Україні не є характерною для європейських реалій. Крім того, дослідження кількісних показників доводить, що хоча більшість українців і є прихильниками традицій, але як тільки у матерів виникають труднощі із грудним годуванням, вони відразу ж переходять на штучне вигодовування. Згідно з опитуваннями автора, багато медичних установ погано проінформовані про грудне годування та підтримують вибір матерів на користь штучного вигодовування. Існує лише невелика кількість ресурсів з достовірною інформацією про грудне годування, які і були використані під час проведення дослідження, – веб-портали ЮНІСЕФ та Світового банку. Крім них, дані про грудне годування та штучне вигодовування в Україні практично відсутні. Цільова аудиторія статті – це, перш за все, державні органи, що приймають рішення, та матері, а також загальна громадськість в Україні.

Целью этой статьи для научного журнала является повышения уровня социальной осведомленности в Украине по вопросам кормления грудью, рисков, связанных с искусственным вскармливанием, и необходимости согласования искусственного детского питания в Украине с международными маркетинговыми стандартами. Автор статьи – украинский юрист и американский адвокат, магистр права при КНУ им. Т. Шевченка ИМВ и Университета Чикаго Школы Права, правозащитник женщин, у которой есть непосредственный

опыт работы в обеих странах. Статья проводит обзор обязанности государства обеспечивать здоровье детей в Украине, а также предлагает государственную программу в качестве основы для запуска кампании кормления грудью в Украине на примерах стран Европейского Союза и большинства штатов США. Результаты исследований качественных показателей касательно регулирования маркетинга искусственного детского питания неутешительны в Украине, которая является одной из немногих европейских стран, где нарушается Международный кодекс ВОЗ. Отсутствие юридической базы касательно грудного кормления в Украине не характерно для европейских реалий. Кроме того, исследования количественных показателей доказывают, что хоть большинство украинцев и являются сторонниками традиций, но как только у матерей возникают сложности с кормлением грудью, они сразу же переходят на искусственное вскармливание. Согласно опросам автора, многие медицинские учреждения плохо проинформированы о кормлении грудью и поддерживают выбор матерей в пользу искусственного вскармливания. Существует лишь небольшое количество ресурсов с достоверной информацией о кормлении грудью, которые и были использованы в данном исследовании, – веб-порталы ЮНЕСКО и Всемирного банка. Кроме них, данные о кормлении грудью и искусственном вскармливании в Украине практически отсутствуют. Целевая аудитория статьи – это, прежде всего, государственные органы, принимающие решения, и матери, а также широкая общественность в Украине.

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