



Recueil des observations écrites remises en tierce intervention dans l'affaire :

Vavříčka c. République tchèque (n° 47621/13) et cinq autres requêtes

Collection of written comments submitted by third parties in the case:

Vavříčka v. Czech Republic (no.47621/13) and five other applications

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Juillet 2020



Bundesministerium
der Justiz und
für Verbraucherschutz

Die Verfahrensbevollmächtigte
der Regierung der Bundesrepublik Deutschland

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European Court of Human Rights
- Council of Europe -
F-67075 STRASBOURG – CEDEX

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Subject: Individual Application No. 47621/13
Vavříčka v. Czech Republic

here: Letters from the Court dated 10 March 2020 and 17 March 2020

**Written comments by the Federal Republic of Germany
in the case of *Vavříčka v. the Czech Republic*
pursuant to Article 36 § 2 of the Convention
for the Protection of Human Rights and Fundamental Freedoms**

- 1 The Federal Government of the Federal Republic of Germany would like to express its particular thanks to the President of the Grand Chamber for the opportunity to submit written comments pursuant to Article 36 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") regarding the case of Vavříčka v. the Czech Republic.

- 2 The Federal Government would like to take this opportunity to outline the current legal situation in Germany and to present to the Court its legal opinion on the compatibility of compulsory vaccination with the Convention. It should be emphasized however that compulsory vaccination in this context does not refer to the coercive administration of a vaccine. Compulsory vaccination refers to an obligation to get vaccinated in a number of specifically defined situations which is not enforced however by means of direct or physical coercion. In order to preserve personal autonomy, enforcement is rather limited to the imposition of a penalty or to the exclusion from educational institutions.

1. Compulsory vaccination in Germany – the German Act for the Protection against Measles (Masernschutzgesetz)

- 3 In Germany, compulsory vaccination has just recently been enacted for measles with the newly implemented Act for the Protection against Measles (Masernschutzgesetz). The Federal Government would first like to outline the essential elements of this new legislation. Secondly, it would like to give the Court an overview of the reasons for its enactment.
- 4 In Germany, compulsory vaccination applies to measles since 1 March 2020. Under the newly implemented Act for the Protection against Measles, certain categories of persons are required to provide proof of vaccination or immunity to measles before receiving care or before working in a number of facilities specified by the Act. This obligation extends to all persons born after 1970 who are at least one year of age and who receive care in a joint facility such as in day care centres, after-school care centres, schools and other educational establishments in which predominantly minors are looked after and to persons who receive care in a children's home or in community housing for asylum seekers and refugees. Additionally, vaccination is mandatory for persons who work in the above mentioned institutions or in health facilities such as hospitals and doctor's offices.
- 5 It should be stressed that vaccination as such cannot be administered coercively without the consent of the person concerned or their parents or legal guardian. However, persons who fall into one of the above-mentioned categories must provide proof of vaccination, immunity or of the fact that they cannot be vaccinated because of a medical contraindication to the management of the respective institution before starting to work or being cared of. Without proof, they are not permitted to work or to receive care in these places. Children under one year of age do not have to provide proof and can be admitted without proof.

Special transition periods apply to persons who were already in the care of or who already worked in the respective facilities when the law entered into force on 1 March 2020.

- 6 Under the Act, an exemption applies where compulsory education is concerned. School education is compulsory in Germany. Accordingly, even if they are not vaccinated, immune or medically excluded from being vaccinated, children who are legally obliged to attend school cannot be excluded from entering school facilities or from taking part in school activities. Hence, entry bans do not apply to children attending school in accordance with their corresponding obligation. However, where school children fail to provide adequate proof of vaccination, immunity or medical contraindication, their school is obliged to give a report to the responsible public health department. The latter may impose a fine of up to 2.500 Euros after it has once again unsuccessfully requested the relevant proof from the person in question. A repeated imposition of the fine is possible under certain circumstances.
- 7 It is important to note that exceptions to the obligation to get vaccinated can only be granted on medical grounds or in cases where no vaccine is available. The Act does not on the other hand, allow for exceptions based on religion or belief.
- 8 Under German law, a compensation scheme is available in the rare case where a person has side effects stemming from the vaccination which exceed the usual scope of a reaction to a vaccination. The claim for compensation does not presuppose illegality or fault, but is mainly based on the causality between the obligatory vaccination and its consequences.
- 9 The German legislation is based on similar considerations than the Czech legislation under review in the present case. The German Act for the Protection against Measles, like similar legislation on compulsory vaccination, serves to protect public health. Its aim is to protect not only the individual obliged to get vaccinated but society as a whole, in particular vulnerable persons who cannot be vaccinated themselves due to their age or state of health.
- 10 Measles are one of the most infectious diseases. The course of the disease is often severe and the risk of complications and serious consequences is high, including cases of death. Vulnerable groups such as young children who cannot be vaccinated, pregnant women or the seriously ill are particularly exposed to this risk. Germany has witnessed repeated outbreaks in the past. Prevention however is possible and vaccine that is well-tolerated and

effective is available. But vaccines only prevent a disease from spreading throughout a population if the level of protection is sufficiently high. In the long run, if vaccination coverage is high enough it would be possible to eliminate the disease as such, a goal that has been pursued with respect to measles on an international level by the states in the WHO European Region since 1984. Elimination would however require a vaccination rate of 95 % of the population, a coverage that has not been reached in Germany despite efforts to raise awareness in the population. In fact, the coverage in Germany has remained static for a number of years. According to the standing vaccine commission at the Robert Koch-Institute, which is the German government's central scientific institution in the field of biomedicine, children should be vaccinated twice against measles before they reach the age of two. In the years since 2008 however, even at the moment of enrolment in elementary school, the coverage among children for the second vaccination never reached more than 93 %. This is the situation the German legislator was faced with when implementing legislation on compulsory vaccination against measles. The legislation finally adopted was preceded by an intense debate both in the German society and in the German parliament where arguments against and in favour of this legislation were debated thoroughly.

- 11 In order to reach a sufficient vaccination coverage, compulsory vaccination should start at a young age. Moreover, young children are particularly affected by infectious diseases such as measles because their immune system is still immature. For compulsory vaccination to be the most effective, the respective legislation should target places where people come closely together on a daily basis. Besides, supervision of a compulsory vaccination scheme is best manageable in the context of long-term care, thus in particular in pre-schools and nurseries. As a consequence, it seemed appropriate to restrict compulsory vaccination to the above-mentioned categories of persons instead of including the entire population. It should be noted that such an approach seems all the more sensible with the increasing number of children attending day care facilities.

II. Compatibility of compulsory vaccination with the Convention

- 12 In the view of the Federal Government, compulsory vaccination is in principle compatible with the obligations of Member States under the Convention as long as the legislation in its specific form observes the principle of proportionality.

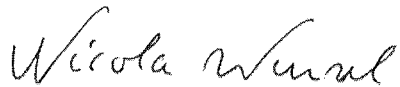
- 13** Compulsory vaccination constitutes an interference with Article 8 of the Convention. While respective legislation seems to affect the right to respect for family life only marginally if at all, the obligation to get vaccinated on pain of penalty or of exclusion from educational institutions amounts to an interference with the right to respect for private life (Solomakhin./. Ukraine, judgment of 15 March 2012, Application no. 24429/03, § 33; Salvetti./. Italy, decision of 9 July 2002, Application no. 42197/98; Boffa and others./. San Marino, decision of 15 January 1998 (Commission), Application No. 26536/95).
- 14** Furthermore, excluding children from preschool facilities such as day care centres and nurseries due to their failure to comply with a vaccination obligation might also amount to an interference with the right to education protected by Article 2 of Protocol No. 1. It is not entirely clear from the Court's previous rulings however whether the notion of education in the sense of Article 2 of Protocol No. 1 includes preschool facilities for such young children (Leyla Sahin./. Turkey, judgement of 10 November 2005, Application no. 44774/98, § 134; Velyo Velevev./. Bulgaria, judgment of 27 May 2014, Application no. 16032/07, § 31 with further references). In any case, as will be elaborated further, where compulsory vaccination aims at facilities at this low educational level, this should be taken into account in the assessment of the proportionality of the respective legislation.
- 15** By contrast, in light of the Court's case law on Article 9 of the Convention, depending on the circumstances of the specific case, there is certainly often reason to doubt that compulsory vaccination or measures to ensure its enforcement such as a fine or exclusion from preschool amount to an interference with the right to freedom of thought, conscience and religion. As the Court has recognised, not all opinions or convictions constitute beliefs in the sense protected by Article 9 of the Convention (Pretty./. UK, judgment of 29 April 2002, Application no. 2346/02, § 82). In the view of the Federal Government, the position of a person opposing vaccination will in most cases not attain the level of cogency, seriousness, cohesion and importance required by the Court's case law (Bayatan./. Armenia, judgement of 7 July 2011, Application no. 23459/03, § 110).
- 16** In any case, none of the aforementioned Convention rights are guaranteed without limits. Articles 8 para. 2 and 9 para. 2 of the Convention explicitly allow restrictions for the protection of health. Despite the less explicit wording of Article 2 of Protocol No. 1, the right to education is not absolute either, but may as well be subject to limitations (Velyo Velevev./. Bulgaria, judgment of 27 May 2014, Application no. 16032/07, § 32). With respect to all of these rights, the essential question is whether the obligation to get vaccinated on pain of a

penalty or exclusion from educational institutions is proportionate to the legitimate aim pursued, namely the protection of public health.

- 17 The expectation that a penalty will be inflicted or that a child will be excluded from educational institutions at least indirectly compels the persons concerned to subject themselves or their child to the injection of a vaccine. This is certainly a significant – albeit indirect – interference with a person's physical integrity. In the view of the Federal Government, a number of arguments however justify the proportionality of compulsory vaccination.
- 18 First of all, the protection of public health, above all the protection of vulnerable persons within a society is of fundamental significance. It is important to note in this context that the rights guaranteed by the Convention not only limit a state's possibility to interfere with them but also establish positive obligations on the Member States. As the Court has previously established with respect to health care, under Article 2 of the Convention, the Member States have to take appropriate steps to safeguard the lives of those within their jurisdiction (*Hristozov and Others./.* Bulgaria, judgment of 13 November 2012, Application nos. 47039/11 and 358/12; *Calvelli and Ciglio v. Italy*, judgment of 17 January 2002 (GC), Application no. 32967/96, § 48).
- 19 When weighing the different rights and interest at stake, one should take into account that vaccination protects the health of a large number of people, in particular the health of those who cannot be vaccinated themselves. What is more, the person vaccinated as well enjoys the protection of this health care measure. Its great benefit for individual health in fact motivates the vast majority of parents to have their children vaccinated on a voluntary basis. As stated before, almost 93 % of the children entering elementary school in Germany are sufficiently vaccinated against measles. This is not a vaccination rate high enough to eliminate the measles, as previously explained. However, it demonstrates that legislation on compulsory vaccination requires a behaviour widely accepted as necessary throughout the population.
- 20 On closer examination, the reasons for parents not to have their children vaccinated or for adults not to get vaccinated are mostly convenience and carelessness. Only a small share of the population opposes vaccination as a matter of principle. The main causes for an insufficient vaccination coverage in a society, namely convenience and carelessness, are easily eliminated by means of a legal obligation without any major interference with individual rights.

- 21 Besides, the faster a sufficiently high vaccination rate is reached, the faster a disease can be eliminated altogether. As a consequence, vaccination would no longer be necessary and the corresponding legal obligation would become dispensable, including for those who oppose it. The historical example of smallpox shows how in this way compulsory vaccination helps to eradicate an infectious disease.
- 22 It should further be emphasized that the individual sacrifice to be made by a person required to get vaccinated is rather small. While vaccinations may have side effects, serious health impairments are extremely rare. In case of the measles for example, the side effects are usually limited to a reddening of the skin where the vaccine was injected or to a fever. By contrast, as pointed out before, infectious diseases often have serious consequences.
- 23 Another aspect to be considered is that the vaccination as such is not administered by force under either the German or the Czech legislation on compulsory vaccination. In order to satisfy the requirement of proportionality, the consequences of a refusal to comply with the obligation to get vaccinated or to have your child vaccinated are limited to the imposition of a fine or to exclusion from a number of facilities. Hence, no direct interference with a person's physical integrity is allowed under these laws.
- 24 As indicated before, where the exclusion from educational facilities is concerned, an assessment of the proportionality of such a measure must also take into account that it only concerns preschool facilities. In Germany for example, entry bans do not apply where school education is compulsory such as for primary or secondary schools. The legislator has thus established very balanced regulations, considering that where compulsory school education is concerned, a crucial objective such as the need for general education outbalances the goal of a high vaccination rate.
- 25 Finally, the Court will have to take into account the wide margin of appreciation that Member States enjoy with respect to their health care systems. The Court has previously established that matters of health care policy, including preventive measures are in principle within the Member States margin of appreciation (*Shelley./. United Kingdom*, decision of 4 January 2008, Application no. 23800/06). This margin is particularly wide where sensitive moral and ethical issues are concerned. Moreover, there will usually be a wide margin if the State is required to strike a balance between competing private and public interests (*Evans./. the United Kingdom*, judgement of 10 April 2007, Application no. 6339/05, § 77; *Parrillo./. Italy*, judgement of 27 August 2015, Application no. 46470/11, § 169). As the Court has pointed out, domestic authorities are best placed to assess priorities and social needs with respect to health care policy (*Shelley./. United Kingdom*, decision of 4 January

2008, Application no. 23800/06). In the view of the Federal Government, this should include a state's choice, made after due considerations of all arguments for and against such legislation, as whether to fight infectious diseases by imposing compulsory vaccination.

A handwritten signature in black ink, appearing to read 'Nicola Wenzel'. The script is cursive and fluid, with the first name 'Nicola' written in a larger, more prominent hand than the last name 'Wenzel'.

(Dr. Nicola Wenzel)

OBSERVATIONS DU GOUVERNEMENT
DE LA REPUBLIQUE FRANCAISE
EN QUALITE DE TIERS INTERVENANT
DANS LES REQUETES n° 47621/13, n° 3867/14, n° 73094/14, n° 19306/15,
n° 19298/15 et n° 43883/15, *Vavříčka et autres c. République tchèque*
DEVANT LA COUR EUROPEENNE DES DROITS DE L'HOMME

Par courrier en date du 29 avril 2019, la Cour européenne des droits de l'Homme a accordé au Gouvernement français l'autorisation de présenter des observations écrites, en qualité de tiers intervenant, dans la requête *Vavříčka et autres c. République tchèque*.

Le Gouvernement français a l'honneur de présenter à la Cour les observations suivantes.

1. Les requérants Pavel Vavříčka, Markéta Novotná, Pavel Hornych, Adam Brožík et Radomír Dubský, et Prokop Roleček, ressortissants tchèques, ont introduit des requêtes devant la Cour respectivement les 23 juillet 2013, 9 janvier 2014, 16 novembre 2014, 16 avril 2015 et 31 août 2015 se plaignent d'avoir, pour l'un d'entre eux, fait l'objet d'une contravention pour avoir refusé de faire vacciner ses enfants, et pour les autres, mineurs représentés par leurs parents, de s'être vus opposer des décisions leur refusant l'accès à l'école maternelle car ils n'avaient pas été vaccinés.
2. Les requérants invoquent plusieurs articles de la Convention européenne des droits de l'Homme (ci-après, la « Convention ») et en particulier, les articles 8 (droit au respect de la vie privée et familiale) et 9 (droit à la liberté de pensée, de conscience et de religion) de la Convention ainsi que l'article 2 du Protocole n° 1 (droit à l'instruction) à la Convention.

I. GRIEFS

3. La Cour a adressé les questions suivantes aux parties :

« Dans l'affaire Vavříčka (no 47621/13)

1. L'imposition de l'amende au requérant pour avoir refusé de faire vacciner ses enfants a-t-elle constitué une atteinte à son droit au respect de sa vie privée, au sens de l'article 8 § 1 de la Convention ?

2. Y a-t-il eu de ce fait, dans le chef du requérant, atteinte à sa liberté de pensée ou de conscience, au sens de l'article 9 § 1 de la Convention ? En particulier, le refus de faire vacciner ses enfants constituait-il une manifestation par le requérant de sa liberté de pensée, de conscience ou de religion, au sens de cette disposition ?

3. Dans l'affirmative, l'ingérence dans l'exercice de ces droits et libertés était-elle prévue par la loi et nécessaire, au sens des articles 8 § 2 et 9 § 2 ?

Dans les affaires Novotná (no 3867/14) et Hornych (73094/14)

1. Le refus des autorités de les admettre à l'école maternelle au motif qu'ils ne se sont pas soumis à l'obligation de vaccination, laquelle constitue selon les requérants une ingérence dans leur droit au respect de la vie privée et à leur liberté de conscience, a-t-il constitué une atteinte à ces droits et libertés garantis par les articles 8 § 1 et 9 § 1 de la Convention ?

2. Dans l'affirmative, l'ingérence dans l'exercice de ces droits et libertés était-elle prévue par la loi et nécessaire, au sens des articles 8 § 2 et 9 § 2 ?

3. Y a-t-il eu violation de l'article 2 du Protocole no 1 du fait que, faute de s'être soumis à tous les vaccins obligatoires, les requérants n'ont pas été admis dans les écoles maternelles ?

Dans les affaires Brožík (no 19306/15) et Dubský (no 19298/15)

1. Le refus des autorités d'admettre les requérants à l'école maternelle au motif qu'ils ne se sont pas soumis à l'obligation de vaccination, a-t-il constitué une atteinte à leur droit au respect de leur vie privée, au sens de l'article 8 § 1 de la Convention ?

2. Dans l'affirmative, l'ingérence dans l'exercice de ce droit était-elle prévue par la loi et nécessaire, au sens des articles 8 § 2 ?

3. Y a-t-il eu violation de l'article 2 du Protocole no 1 du fait que, faute de s'être soumis à tous les vaccins obligatoires, les requérants n'ont pas été admis dans les écoles maternelles ? »

4. Le Gouvernement français, eu égard à la nature de la tierce intervention, limitera ses observations aux principes généraux en jeu dans la solution de l'affaire.

II. EN DROIT

5. Le Gouvernement français considère que l'instauration d'un système de vaccination obligatoire pour les enfants, ayant pour corollaire d'une part la mise en place de sanctions pénales pour les parents ne procédant pas à cette vaccination, et d'autre part le refus de scolarisation des enfants non vaccinés, n'est pas contraire à l'article 8 et à l'article 9 de la Convention, ni à l'article 2 du Protocole n°1 à la Convention.
6. Le Gouvernement entend souligner l'importance, pour les Etats, de pouvoir mettre en place des politiques de santé publique efficaces, permettant de lutter de manière effective contre les maladies graves et/ou contagieuses et de protéger la vie et l'intégrité physique de leurs ressortissants. La crise sanitaire liée à l'épidémie de Covid-19 démontre malheureusement que ces considérations sont plus que jamais d'actualité.
7. La mise en place de systèmes juridiques imposant la vaccination des enfants contre ces maladies participe pleinement de cet objectif et, ainsi que le Gouvernement français entend le démontrer, n'est nullement contraire aux exigences conventionnelles.

A) Présentation du cadre juridique français

8. A titre liminaire, le Gouvernement français souligne qu'il a adopté une législation très similaire à la législation tchèque en matière de vaccination obligatoire.
9. En effet, depuis la loi n°2017-1836 du 30 décembre 2017, 11 vaccinations ont été rendues obligatoires en France pour les enfants âgés de 0 à 24 mois¹. Auparavant, seuls

¹ Article L. 3111-2 du code de la santé publique (antidiphtérique, antitétanique, antipoliomyélitique, contre la coqueluche, contre les infections invasives à *Haemophilus influenzae* de type b, contre le virus de l'hépatite B, contre les infections invasives à pneumocoque, contre le méningocoque de séro groupe C, contre la rougeole, contre les oreillons et contre la rubéole)

trois vaccins étaient obligatoires (diphtérie, tétanos et poliomyélite), les autres étaient simplement recommandés.

10. Le Gouvernement français souligne que la liste de ces vaccinations est, à une exception près², identique à celle de la législation tchèque et que la législation française prévoit, comme son homologue tchèque, une exception en cas de « contre-indication médicale reconnue » (article L. 3111-2 du code de la santé publique précité).
11. Par ailleurs, comme en droit tchèque, les vaccinations obligatoires sont exigibles pour être admis en collectivité³. L'article R 3111-8 du code de la santé publique prévoit également que *« lorsqu'une ou plusieurs des vaccinations obligatoires font défaut, le mineur est provisoirement admis. Le maintien du mineur dans la collectivité d'enfants est subordonné à la réalisation des vaccinations faisant défaut qui peuvent être effectuées dans les trois mois de l'admission provisoire conformément au calendrier prévu à l'article L. 3111-1 »*. Par ailleurs, ce même article prévoit que lorsqu'un mineur est dans une collectivité d'enfants, son maintien est subordonné à la présentation, chaque année, de documents attestant du respect de l'obligation vaccinale.
12. La loi du 30 décembre 2017 précitée a abrogé l'ancien article L. 3116-4 qui punissait d'une peine maximale de 6 mois d'emprisonnement et de 3 750 euros d'amende le fait de ne pas se vacciner ou de ne pas vacciner les personnes sur lesquelles on exerce l'autorité parentale. Cependant les parents qui s'abstiennent de respecter l'obligation vaccinale sont susceptibles d'être poursuivis sur le fondement des dispositions plus générales de l'article L. 227-17 du code pénal⁴.

B) S'agissant de la conformité d'un système de vaccination obligatoire à l'article 8 de la Convention

13. L'article 8 de la Convention stipule que :

« Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance.

Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui.

14. Le Gouvernement français souligne que la Cour n'a jamais, à ce jour, jugé que la vaccination obligatoire des enfants, y compris assortie d'une sanction pénale ou d'une impossibilité de scolarisation, serait contraire à la Convention.

² Vaccination au méningocoque de séro groupe C

³ Article R. 3111-8 du code de la santé publique

⁴ *« Le fait, par le père ou la mère, de se soustraire, sans motif légitime, à ses obligations légales au point de compromettre la santé, la sécurité, la moralité ou l'éducation de son enfant mineur est puni de deux ans d'emprisonnement et de 30 000 euros d'amende. L'infraction prévue par le présent article est assimilée à un abandon de famille pour l'application du 3° de l'article 373 du code civil.*

15. En effet, si la Cour considère que le droit à l'intégrité physique est une composante de la vie privée, et que la vaccination obligatoire constitue, à ce titre, comme tout traitement médical non volontaire, une ingérence au sens de l'article 8§1, cette ingérence peut être admise si elle remplit les conditions du paragraphe 2 de l'article 8, c'est-à-dire si elle est prévue par la loi, poursuit l'un des buts légitimes énumérés et est nécessaire, dans une société démocratique, à la poursuite de ce but.

1) But légitime poursuivi

16. Il ne fait pas de doute que les législations qui imposent des obligations vaccinales poursuivent le but légitime de protection de la santé. La Cour l'a d'ailleurs admis dans son arrêt *Solomakhin c. Ukraine* du 15 mars 2012⁵, où elle a indiqué que la vaccination obligatoire dont se plaignait le requérant poursuivait le but légitime de protection de la santé (§ 33). Dans sa décision *Boffa et 13 autres c. Saint Marin*, la Commission européenne des droits de l'Homme avait jugé que l'obligation de se faire vacciner sous peine de sanction était « *justifiée par la protection tant de la santé publique que de celle des intéressés eux-mêmes* »⁶.

2) Nécessité dans une société démocratique

17. Le Gouvernement français souligne que la mise en place d'un système de vaccination obligatoire, assorti de sanctions pénales ou de l'impossibilité de scolariser les enfants non vaccinés, n'est pas contraire à l'article 8 de la Convention.
18. En premier lieu, le Gouvernement français souligne la nécessité que la conformité des obligations de vaccination à l'article 8 de la Convention soit appréciée au regard des obligations positives qui pèsent sur les Etats de protéger la vie et l'intégrité physique des personnes placées sous leur juridiction.
19. La Secrétaire Générale du Conseil de l'Europe a d'ailleurs récemment rappelé dans la boîte à outils pour les Etats membres « Respecter la démocratie, l'état de droit et les droits de l'homme dans le cadre de la crise sanitaire du COVID-19 »⁷ : « *le droit à la vie et l'interdiction de la torture et des peines ou traitements inhumains ou dégradants sont au nombre des droits qui relèvent du noyau dur des droits protégés par la Convention ; à ce titre, ils ne peuvent faire l'objet d'aucune dérogation, même en situation d'urgence telle que celle causée par le COVID-19. La jurisprudence est constante à cet égard : ces droits impliquent de la part des États des obligations positives de protéger les individus aux mains de l'Etat contre les maladies mortelles et les souffrances en découlant* ».
20. Dès lors, et dans la mesure où des droits concurrents sont en jeu, les Etats doivent bénéficier d'une large marge d'appréciation, d'autant plus qu'il n'existe pas de consensus européen sur la vaccination obligatoire.

⁵ 24429/03

⁶ Comm EDH, *Boffa et 13 autres c. Saint Marin*, n°26536/95, 15 janvier 1998

⁷ SG/Inf(2020)11, 7 avril 2020, Respecter la démocratie, l'état de droit et les droits de l'homme dans le cadre de la crise sanitaire du COVID-19 - Une boîte à outils pour les États membres

21. De manière générale, le Gouvernement français rappelle que, au regard de la jurisprudence de la Cour, « *l'étendue de la marge d'appréciation dont disposent les Etats varient selon les circonstances, les domaines et le contexte*⁸ ». Le Gouvernement français invite la Grande chambre à indiquer qu'en matière de politique de santé publique et de prévention de la propagation de maladies graves et/ou contagieuses, les Etats bénéficient d'une large marge d'appréciation. Ils sont en effet les mieux placés pour apprécier, au regard de la situation sanitaire sur leur territoire et des moyens à leur disposition, les mesures nécessaires pour protéger la santé publique.
22. En deuxième lieu, le Gouvernement français souligne l'importance de la vaccination obligatoire dans la prévention de la propagation des maladies.
23. En effet, la vaccination permet de combattre et d'éliminer des maladies infectieuses potentiellement mortelles. Elle représente l'un des progrès majeurs en santé publique du siècle dernier. Selon l'Organisation mondiale de la santé (OMS), ce geste de prévention simple et efficace permet d'éviter chaque année 2 à 3 millions de décès dans le monde⁹.
24. Elle permet d'améliorer la couverture vaccinale contre ces maladies et d'assurer la sécurité sanitaire sur le territoire, de limiter les risques d'épidémie, de diminuer la mortalité infantile. L'OMS considère qu'il s'agit de l'une des interventions de santé publique les plus efficaces et qui présente le meilleur rapport coût-efficacité¹⁰.
25. Chez le nourrisson, celle-ci permet de protéger l'enfant dès son plus jeune âge et avant l'entrée dans une période à risque. La vaccination des nourrissons était d'autant plus justifiée que les données immunologiques ont permis de diminuer le nombre de doses et de supprimer les rappels tardifs en montrant que ce schéma simplifié pouvait protéger la vie.
26. Le caractère obligatoire de la vaccination se justifie par la gravité des effets néfastes qu'engendre un faible taux de couverture vaccinale sur la santé publique. En effet, certaines personnes peuvent opter pour une approche consistant à rechercher le bénéfice de l'immunité de groupe offerte par la vaccination sans se soumettre elles-mêmes à l'aléa résiduel lié à l'acte de vaccination. La généralisation d'une telle approche conduit inévitablement à une diminution de la couverture vaccinale, et à terme à la réapparition de pathologies que l'on croyait en recul.
27. Afin de protéger efficacement la collectivité, une politique vaccinale doit donc toucher le plus grand nombre. La vaccination est ainsi particulièrement importante pour les personnes qui ne peuvent être vaccinées du fait de défenses immunitaires déprimées. La vaccination protège l'enfant, mais aussi son entourage, et, au premier chef, les jeunes enfants qui l'entourent, particulièrement les plus fragiles.
28. Ainsi, l'insuffisance de couverture vaccinale est à l'origine d'épidémies et de décès ou de handicaps évitables.

⁸ *Mennesson c. France*, n°65192/11, 26 juin 2014, § 77

⁹ <https://www.who.int/fr/news-room/facts-in-pictures/detail/immunization>

¹⁰ *Id.*

29. A ce titre, le Gouvernement français souligne la gravité, et la haute contagiosité des maladies pour lesquelles la législation tchèque prévoit une vaccination obligatoire :
- la diphtérie, la poliomyélite et le tétanos sont des infections graves, pouvant mettre en jeu le pronostic vital : le maintien d'une couverture vaccinale élevée reste donc nécessaire eu égard à la poursuite de la circulation de la bactérie ou du virus qui en sont la cause dans certaines régions du monde ;
 - le tétanos, qui présente la particularité, lui, de ne pas avoir de caractère contagieux, revêt toutefois le caractère d'une maladie infectieuse aiguë dont le traitement doit intervenir en urgence et qui ne peut être éradiquée ;
 - la rougeole, les oreillons et la rubéole sont des infections virales très contagieuses, qui, pour les deux premières sont susceptibles de complications graves, pouvant entraîner la mort. Quant à la rubéole, elle crée pour la femme enceinte un risque élevé de décès du fœtus ou de malformations congénitales graves ;
 - la coqueluche est une affection très contagieuse et grave chez le nourrisson ;
 - enfin, l'hépatite B est une infection virale qui peut évoluer, dans près de 1 % des cas, vers une hépatite fulminante comportant un risque de mortalité très élevé.
30. Dès lors, la mise en place d'une politique de vaccination obligatoire, assortie de sanctions pénales destinées à la faire respecter, paraît nécessaire aux objectifs de protection de la santé publique. Il en va de même de l'impossibilité de scolariser un enfant non vacciné, au regard du risque de contagion ou de la gravité des maladies concernées.
31. En dernier lieu, le Gouvernement français souligne que la politique de vaccination obligatoire est également conforme à la recommandation n°1317 (1997) de l'Assemblée parlementaire du Conseil de l'Europe, « *Vaccinations en Europe* » qui invite les Etats membres du Conseil de l'Europe « *à élaborer ou à réactiver des programmes de vaccination de masse de leurs populations qui constituent le moyen le plus efficace et le plus rentable de lutte contre les maladies infectieuses* ».
32. Elle s'inscrit aussi en cohérence avec l'engagement des Etats parties à l'article 11 de la Charte sociale européenne révisée « *à prendre, soit directement, soit en coopération avec les organisations publiques et privées, des mesures appropriées tendant notamment: [...] à prévenir, dans la mesure du possible, les maladies épidémiques, endémiques et autres, [...]* ».
33. Par ailleurs, elle répond à la recommandation relative au renforcement de la coopération contre les maladies à prévention vaccinale (2018/C466/01), adoptée par le Conseil de l'Union européenne, le 7 décembre 2018, qui rappelle que : « *La vaccination est l'une des mesures de santé publique les plus efficaces et les plus rentables qui aient été mises en place au XXe siècle et reste le principal outil de prévention primaire des maladies transmissibles.* »
34. Par conséquent, le Gouvernement français relève que toutes les maladies et infections en cause sont graves et, pour la plupart, contagieuses, et d'autre part, que l'efficacité des vaccins obligatoires est reconnue et leurs effets indésirables limités.

35. Ainsi que l'ont souligné les juridictions nationales tchèques, la balance qui doit être opérée entre la protection de la santé publique et les risques que la vaccination est susceptible d'engendrer, doit comporter la prise en compte de contre-indications médicales reconnues.
36. Par conséquent, une telle législation relative à la vaccination obligatoire apporte au droit au respect de la vie privée une restriction justifiée par l'objectif poursuivi d'amélioration de la couverture vaccinale pour atteindre le seuil nécessaire à une immunité de groupe au bénéfice de l'ensemble de la population, y compris ceux de ses membres qui ne peuvent être vaccinés en raison d'une contre-indication médicale, et proportionnée à ce but.
37. Le Gouvernement français relève que la Cour a déjà, par le passé, estimé que l'obligation vaccinale imposée à des requérants était nécessaire à but de protection de la santé qu'elle poursuit.
38. Dans sa décision *Boffa et autres c. Saint Marin*, précitée, la Commission EDH avait, pour juger la vaccination obligatoire dont avait fait l'objet le requérant proportionnée au but légitime recherché de protection de la santé, souligné « *qu'une campagne de vaccination, telle que mise en place dans la plupart des pays, obligeant l'individu à s'incliner devant l'intérêt général et à ne pas mettre en péril la santé de ses semblables, lorsque sa vie n'est pas en péril, ne dépasse pas la marge d'appréciation laissée à l'Etat* » (§4).
39. Dans son arrêt *Solomakhin c. Ukraine* précité, si la Cour a reconnu que la vaccination obligatoire constitue une atteinte au respect de la vie privée, qui inclut le respect de l'intégrité physique, elle a estimé que cette atteinte était justifiée au regard de considérations de santé publique et de la nécessité de maîtriser la propagation des maladies infectieuses.
40. Le Gouvernement français invite la Cour à ne pas faire évoluer sa jurisprudence sur ce point.

C) S'agissant de la conformité d'un système de vaccination obligatoire à l'article 9 de la Convention

41. Aux termes de l'article 9 de la Convention :

«1. Toute personne a droit à la liberté de pensée, de conscience et de religion; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.

2. La liberté de manifester sa religion ou ses convictions ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publiques, ou à la protection des droits et libertés d'autrui. »

42. Le Gouvernement français souligne en premier lieu que les faits de la présente affaire ne constituent pas une ingérence dans le droit à la liberté de conscience du requérant.
43. En effet, la Cour a rappelé à plusieurs occasions que l'article 9 protège avant tout le domaine des convictions personnelles et des croyances religieuses (le for intérieur), et qu'il protège en sus les actes intimement liés à ces comportements, tels les actes de culte ou de dévotion qui sont des aspects de la pratique d'une religion ou d'une conviction sous une forme généralement reconnue.
44. Elle rappelle également que l'article 9 énumère diverses formes que peut prendre la manifestation d'une religion ou d'une conviction, à savoir le culte, l'enseignement, les pratiques et l'accomplissement des rites (*Kalaç c. Turquie*, 1er juillet 1997, et *Cha'are Shalom Ve Tsedek c. France* [GC] n°27417/95, 27 juin 2000). Cependant, pour protéger ce domaine personnel, l'article 9 de la Convention ne garantit pas toujours le droit de se comporter dans le domaine public d'une manière dictée par cette conviction.
45. Le terme « pratiques » au sens de l'article 9 § 1 ne désigne pas n'importe quel acte ou comportement public motivé ou inspiré par une religion ou une conviction. A titre d'exemple, dans son arrêt *Pretty c. Royaume-Uni*¹¹, la Cour avait indiqué qu'elle ne doute pas de la fermeté des convictions de la requérante concernant le suicide assisté, mais observait que tous les avis ou convictions n'entrent pas dans le champ d'application de l'article 9 § 1 de la Convention et constataient que les griefs de l'intéressée ne se rapportent pas à une forme de manifestation d'une religion ou d'une conviction par le culte, l'enseignement, les pratiques ou l'accomplissement des rites, au sens de la deuxième phrase du paragraphe 1 de l'article 9.
46. La Commission, dans sa décision *Boffa et autres c. Saint-Marin* précitée, avait relevé que l'obligation de se faire vacciner telle que prévue par la législation en cause, s'appliquait à toute personne quelle que soit sa religion ou conviction personnelle. En conséquence, la Commission avait estimé qu'il n'y avait pas eu en l'espèce d'ingérence dans la liberté garantie par l'article 9§1.
47. Le Gouvernement invite donc la Cour à maintenir cette jurisprudence et à juger que dans la présente affaire, l'obligation vaccinale ne s'analyse pas en une ingérence dans le droit à la liberté de conscience des requérants.
48. La vaccination obligatoire, dans les circonstances de ces affaires, ne constitue donc pas une ingérence dans la liberté de pensée, de conscience et de religion telle que protégée par l'article 9§1.

¹¹ N°2346/02, 29 juillet 2002

49. Néanmoins, à titre subsidiaire, si une telle ingérence devait être caractérisée par la Cour, cette ingérence pourrait être admise si les conditions du paragraphe 2 de l'article 9 étaient remplies et, notamment, si cette ingérence était prévue par la loi et constituait une mesure nécessaire, dans une société démocratique à la protection de la santé publique.
50. Pour les raisons identiques à celles évoquées aux paragraphes 17 à 35 des présentes observations, une telle législation relative à la vaccination obligatoire apporterait alors à la liberté de pensée, de conscience et de religion une restriction justifiée par l'objectif poursuivi d'amélioration de la couverture vaccinale pour atteindre le seuil nécessaire à une immunité de groupe au bénéfice de l'ensemble de la population, y compris ceux de ses membres qui ne peuvent être vaccinés en raison d'une contre-indication médicale, et proportionnée à ce but.

D) S'agissant de la conformité d'un système de vaccination obligatoire à l'article du Protocole n°1 à la Convention

51. Le droit à l'instruction prévu à l'article 2 du Protocole n°1 stipule que « *Nul ne peut se voir refuser le droit à l'instruction. L'État, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques.* »
52. La Cour a estimé que ce droit comprend le droit d'accès aux établissements d'enseignement scolaires existant à un moment donné¹².
53. Si aucune limitation à ce droit n'est expressément prévue par le texte de l'article 2 du Protocole n°1, contrairement aux articles 8 à 11 de la Convention, la Cour a jugé que ce droit appelait « *par sa nature même une réglementation par l'Etat* » et que des limitations étaient « *implicitement admises* », les Etats bénéficiant en la matière d'une « *certaine marge d'appréciation* »¹³.
54. Ces limitations ne sont admises qu'à la condition d'être prévues par la loi, de poursuivre un but légitime, de ne pas atteindre le droit à l'instruction dans sa substance même, de ne pas heurter d'autres droits protégés par la Convention et s'il existe un rapport raisonnable de proportionnalité entre les moyens employés et le but visé.
55. Le refus des autorités d'admettre des enfants à l'école maternelle au motif qu'ils ne se sont pas soumis à l'obligation de vaccination s'analyse en une limitation du droit à l'instruction, qui est prévue par la loi.
56. Cependant, cette restriction poursuit le but légitime de protection de la santé des enfants et des enseignants, objectif qui a été considéré par la Cour comme un but légitime dans l'arrêt *Memlika c. Grèce*, relatif à l'exclusion de plusieurs élèves

¹² *Affaire linguistique belge*, Cour (Plénière), n°1474/62, 23 juillet 1968, § 4 de la partie « en droit »

¹³ *Leyla Şahin c. Turquie*, [GC], 10 novembre 2005, § 154.

susceptibles d'être atteints de la lèpre¹⁴. La Cour a jugé dans cet arrêt que les mesures d'exclusion ne pouvaient être conformes à la Convention que si elles respectaient « *la proportionnalité entre la protection des intérêts de la collectivité et celle de l'intérêt des individus soumis à de telles mesures* », ce qui imposaient aux autorités grecques de faire preuve de « *diligence et de célérité dans la gestion de ces mesures* » et de ne les maintenir que « *dans la durée strictement nécessaire* » au but recherché.

57. En outre, le refus d'inscription dans un établissement scolaire ne fait pas obstacle au respect, pour l'élève concerné, de son droit à l'instruction : celui-ci peut en effet bénéficier d'une instruction en famille et avoir recours, s'il le souhaite, aux services d'enseignement à distance.
58. En conséquence, le refus d'inscription à l'école des enfants non vaccinés n'est pas contraire à l'article 2 du Protocole n°1.
59. Le Gouvernement français invite la Cour à ne pas faire évoluer sa jurisprudence et à préserver la marge d'appréciation des Etats en la matière./.

¹⁴ *Memlika c. Grèce*, 6 octobre 2015, n°7991/12, § 155 : « *Au vu des circonstances de la présente affaire, la Cour a conscience de la nécessité pour les autorités chargées de la protection de la santé publique de prendre les mesures appropriées afin de s'assurer qu'une maladie aussi grave et infectieuse que celle en cause en l'espèce cesse de produire ses effets et d'éviter ainsi tout risque de contamination. Par conséquent, la mesure litigieuse poursuivait un but légitime : la protection de la santé des enfants et des enseignants de l'école* »

Warsaw, 23 April 2020



**Republic of Poland
Ministry
of Foreign Affairs**

Plenipotentiary of the Minister
of Foreign Affairs for cases and procedures
before the European Court of Human Rights
Agent for the Polish Government

DPT.432.4.2020

EUROPEAN COURT OF HUMAN RIGHTS

Vavříčka v. Czech Republic

Application no. 47621/13

(and five other applications listed in the attachment)

OBSERVATIONS

Submitted by the Government of the of Poland as a third-party

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I. INTRODUCTION

1. The Government of the Republic of Poland (“the Intervening Government”) have the honour of submitting to the European Court of Human Rights (“the Court”) their written comments in the exercise of their right to intervene as a third party to the present case under Article 36 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and Rule 44 of the Rules of Court.

2. The case originates in an application no. 47621/13 against the Czech Republic lodged with the Court under Article 34 of the Convention by a national of the Czech Republic, Mr Pavel Vavříčka (“the applicant”), on 23 July 2013.

3. On 17 December 2019 the above-mentioned application and five other applications (listed in the attachment) were referred to the Grand Chamber of the Court under Article 30 of the Convention.

4. On 13 March 2020 the Intervening Government were informed that they were granted the requested leave under Rule 44 § 3 of the Rules of Court to make written submissions in the above mentioned case.

II. THE SUBMISSIONS OF THE POLISH GOVERNMENT’S

A. Applicability of the Convention to compulsory vaccination cases

5. The Intervening Government should like to note that the matter raised in the above mentioned cases concern an important issue related to compulsory vaccination of children that may be perceived as being highly important and relevant for other Contracting States, including Poland.

6. The Intervening Government are of the view that compulsory vaccination schemes provided for by law and sanctions for non-compliance with such an obligation do not constitute a violation of the Convention, whereas the sanctions should be considered as compatible with Article 8 § 2 and Article 9 § 2 of the Convention.

7. It should be observed that the right to health is not directly mentioned in the Convention. However, the Court ruled on numerous occasions that consent to a medical treatment is vital to the principles of self-determination and personal autonomy (see case of *Jehovah’s Witnesses of Moscow and others v. Russia*, no. 302/02, judgment of 10 June 2010, § 136) and as such is protected by Articles 8 and 9 of the Convention. Compulsory vaccination – as an involuntary medical treatment – constitutes an interference with the right to respect for private life, which includes a person’s physical and psychological

integrity, as guaranteed by Article 8 § 1 of the Convention (see *Salveti v. Italy* (dec.), no. 42197/98, 9 July 2002; *Matter v. Slovakia*, no. 31534/96, § 64, 5 July 1999; *Solomakhin v Ukraine* no 24429/03, 15 March 2012 § 33). On the other hand, the Court notes that such an interference does not constitute a violation of the Convention when it is clearly foreseen by law, pursues the legitimate aim of the protection of health and is necessary in a democratic society (see *Solomakhin v Ukraine* cited above § 33).

B. Necessity of compulsory vaccinations

8. In the light of the Court's case-law the term "necessity" implies the existence of a "pressing social need" which is initially assessed by the State authorities (see: *Dudgeon v. United Kingdom*, no 7525/76, 22 October 1981, § 51-52). The Court has clarified that "the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued" (see *Piechowicz v. Poland*, no 20071/07, 17 April 2012, § 212). The above implies that the Court affords Contracting States a margin of appreciation. There will usually be a wide margin of appreciation accorded if the State is required to strike a balance between competing private and public interests or Convention rights (see *Paradiso and Campanelli v. Italy*, no 25358/12, 24 January 2017, § 182).

1. Pressing social need

9. Epidemics caused by the spread of infectious diseases may cause sanitary, social and economic crises. Vaccination plays an important role in shaping public health in the area of preventing the occurrence of infectious diseases and preventing the consequences of these diseases. Thanks to the so called "herd immunity" that can be obtained by the vaccination of the population (*e.g.* against measles, tuberculosis or pertussis) not only the vaccinated persons are protected but also persons who cannot be vaccinated due to various contraindications. The more persons are vaccinated, the better community's resilience and the epidemiological safety of the given area.

10. Public authorities are obliged to combat epidemic diseases, including infections and infectious diseases in humans. An optimal preventive measure in this regard is the use of vaccinations which reduces the number of cases and, if possible, leads to the complete elimination of an infectious disease¹. It should be therefore noted that vaccinations are dedicated primarily to the youngest generation, and the effects related to its

¹See: <https://www.who.int/bulletin/volumes/86/2/07-040089/en/>; <https://ivaccinate.org/about-vaccines/vaccines-areeffective/>; <https://hub.jhu.edu/2017/01/11/vaccines-autism-public-health-expert/>.

implementation can be observed when the range of recommended vaccinations covers 95% of the population.

11. It should be also noted that vaccinations against selected diseases reduce the social consequences associated with severe health complications after infectious diseases², including those related to the costs of their treatment covered by the public finance sector. The system constructed in this way enables effective prevention of spread of dangerous infectious diseases, keeping the balance between fulfilling the State's obligation towards citizens (the fullest possible provision of public health) and citizens towards the state (obligation to undergo vaccination).

12. It should be emphasized that any reduction in the level of compulsory vaccinations is unfavourable and reduces the population protection (community immunity). It also poses a direct threat of an increase in incidence of infectious diseases. In addition, the widespread use of vaccinations is also recommended by the European Centre for Disease Prevention and Control³.

2. Wide margin of appreciation

13. In Europe, a range of solutions applied by authorities to ensure epidemic security is diverse. There is no unified approach⁴, also because the States' authorities are considered the most appropriate to regulate the healthcare issues due to social, economic and cultural differences between the State Parties.

14. Divergences in Europe concern both vaccination obligations, the scope of the recommended/compulsory vaccinations and the vaccination schedule⁵. For example, children in the EU countries are vaccinated against measles from 6 to 23 months of age (in France already when they are 6 months old and in Iceland only when they are 18 months old). Vaccination against tuberculosis in most of the countries is obligatory for children immediately after their birth, but in Sweden only after a child is 6 months old. In turn, children are vaccinated against rubella between 9 (Liechtenstein) and 18 (Sweden, Iceland) months of age.

15. The obligation for selected groups of persons to undergo protective vaccinations against specific infectious diseases, which has existed in Poland for nearly 60 years, is of administrative nature and is based directly on the provisions of the Act of 5 December 2008

² See: <https://www.who.int/news-room/facts-in-pictures/detail/immunization>

³ See: <https://www.ecdc.europa.eu/en/immunisation-vaccines/EU-vaccination-schedules>

⁴ <https://vaccine-schedule.ecdc.europa.eu/>

⁵ See: [Expert Panel on Effective ways of investing in Health, Vaccination Programmes and Health Systems in the European Union \(September, 2018\).](#)

on the prevention and combating of infections and infectious diseases in humans. This obligation does not assume that a direct coercive measure is always applicable and cannot be considered as a violation of the Convention.

16. The list of compulsory vaccinations and the group of persons obliged to undergo these vaccinations have been defined in detail in Article 17 (1) of the aforementioned Act and in the *Ordinance of the Minister of Health of 18 August 2011 on compulsory vaccination*, which was adopted on the basis of Article 17 (10) of the aforementioned Act. Aforementioned legal regulations are supplemented by the Protective Vaccination Program announced annually by the Chief Sanitary Inspector, which is addressed to professionals (doctors and nurses) who are implementing compulsory protective vaccinations.

17. It should be emphasised that the obligation of preventive vaccinations encompasses 11 infectious occurring in Poland/Europe, including: diphtheria, tuberculosis, invasive *Haemophilus influenzae* type b infection, invasive *Streptococcus pneumoniae* infections, whooping cough/pertussis/, mumps, measles, acute common paralysis (poliomyelitis), rubella, tetanus, hepatitis B (children and adults risk groups). It does not apply to diseases that are not characteristic for the geographical region, *e.g.* tropical diseases. For risk groups, *e.g.* children attending nurseries, there is an obligation to undergo vaccination against chickenpox. Post-exposure vaccination against rabies and tetanus is also obligatory.

18. Compulsory vaccinations are periodically reviewed and listed in the Preventive Vaccination Program which is updated every year. It is created on the basis of the latest medical data, including the occurrence of specific diseases in Poland and in the neighbouring countries. The Intervening Government take a responsibility for the security of introduced procedures and finance them. The costs of carrying out compulsory vaccinations are financed in accordance with the provisions of the *Act of 27 August 2004 on health care services financed from public funds*.

19. The above-mentioned solution does not exclude a possibility for persons who are obliged to undergo vaccination to choose from commercially available vaccines instead of the ones offered free of charge by the Intervening Government. In the latter case the costs of the vaccine is financed by the persons subjected to vaccination. Thus, the Intervening Government leave the aforementioned individuals the right to choose, at their own discretion, the type of vaccines to be used for vaccination. In the case of compulsory vaccinations with the vaccine provided by the State, the Government not only cover the costs of the compulsory vaccinations but also the treatment of their possible side-effects.

20. Any person residing in the territory of the Republic of Poland is obliged to undergo compulsory protective vaccinations on the terms set out in the above-mentioned Act. In case when a person does not have full legal capacity (*i.e.* a child), a parent or a legal guardian is responsible for fulfilling this obligation.

21. If a parent or a legal guardian evades complying with the statutory obligation to subject children to vaccination, it is necessary to undertake actions in order to persuade them to fulfil this obligation. Thus, in accordance with Article 5 § 1(2) of the aforementioned Act, the organs of the State Sanitary Inspection (*Państwowa Inspekcja Sanitarna*) are obliged to request, by way of administrative execution, to fulfil the obligation to vaccinate children. The regulation concerning the compulsory vaccination and its enforcement has never been questioned.

22. Imposing a general obligation to undergo compulsory vaccination against selected infectious diseases ensures a sufficiently high percentage of people immunized against these diseases and effectively reduces the risk of epidemic spread of diseases in the population. The vaccination level of the Polish population, ranging from 95% to 100% (for various diseases), contributes to a situation that persons who cannot be vaccinated also enjoy the protection of the immunized population.⁶

23. The absence of a pan-European consensus regarding the compulsory vaccination leaves a margin of appreciation for each country, which they complete in accordance with their own best knowledge and possibilities. States should be granted a wide margin of appreciation, since they have an obligation to achieve a balance between the safety and protection of public health and the rights of individuals. In view of the wide margin of appreciation, the proportionality of all the solutions adopted should be assessed on a case-by-case basis.

3. Proportionality of sanctions

24. The Intervening Government are of the view that measures to ensure population security must be necessary, appropriate and proportional. As demonstrated above, according to the current state of medical knowledge, there are no better measures to prevent infectious diseases and epidemics than common vaccination. At the same time it should be underline that these measures are relatively cost-effective, which is not without significance in view of the State's obligation to provide the best protection for as many persons as possible.

⁶ See for example: <https://vk.ovg.ox.ac.uk/vk/herd-immunity>

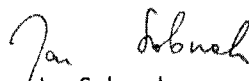
25. As far as the proportionality of the measures adopted in Contracting States is concerned, it should be noted that due to diversity of legal and healthcare systems, it is inevitable that systems ensuring sufficient level of vaccination among the population might be implemented by different methods in various countries. These methods are adapted to local conditions, habits and expectations of the society as well as to the economic possibilities of the state. As the Court rightly stated in the case of *Pentiacova and Others v. Moldova*, the national authorities are in a better position to carry out this assessment requirements for their health systems in relation to the funds available for them, than an international court. It should be emphasized that the assessment of specific sanctions in each Contracting State should not lead to undermining the compulsory vaccination system in general.

26. The sanction systems, as well as the vaccination systems, differ in each Contracting State. This diversity results precisely from the margin of appreciation which is unique for individual societies of each Contracting States and results from the indelible differences between them and between accepted models of social life. Similarly, compulsory education, military service or social security rights are also differently defined and sanctioned in each Contracting States.

III. CONCLUDING REMARKS

27. Taking all of the above arguments into account the Intervening Government should like to kindly request the Court to conclude in the interest of justice that compulsory vaccinations required by law and sanctioned in case of non-compliance should not be considered as being incompatible with the Convention, whereas the sanctions themselves should fall within the scope of Article 8 § 2 and Article 9 § 2 of the Convention.

28. At the same time the Intervening Government respectfully invite the Court to pay due regard to the concept of margin of appreciation while adjudicating the above-mentioned cases.



Jan Sobczak

Government Agent

**OBSERVATIONS OF THE GOVERNMENT OF THE SLOVAK REPUBLIC
AS THIRD PARTY TO APPLICATIONS**

VAVŘIČKA v. the CZECH REPUBLIC (no. 47621/13)

NOVOTNÁ v. the CZECH REPUBLIC (no. 3867/14)

HORNYCH v. the CZECH REPUBLIC (no. 73094/14)

BROŽÍK v. the CZECH REPUBLIC (no. 19306/15)

DUBSKÝ v. the CZECH REPUBLIC (no. 19298/15)

ROLEČEK v. the CZECH REPUBLIC (no. 43883/15)

**OBSERVATIONS OF THE GOVERNMENT OF THE SLOVAK REPUBLIC
AS THIRD PARTY TO APPLICATIONS
VAVŘIČKA v. the CZECH REPUBLIC (no. 47621/13), NOVOTNÁ v. the CZECH
REPUBLIC (no. 3867/14), HORNYCH v. the CZECH REPUBLIC (no. 73094/14),
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REPUBLIC (no. 19298/15), ROLEČEK v. the CZECH REPUBLIC (no. 43883/15)**

I. General comments

1. The Deputy Registrar of the Grand Chamber of the European Court of Human Rights (hereafter the “Court”) with letter of 3 April 2020 notified the Government of the Slovak Republic (hereafter the “Government”) that the President of the Grand Chamber according to Rule 44 §§ 3 and 4 (b) of the Rules of Court granted leave to the request for intervention of the Slovak Republic as third party and to submit written observations in cases *Vavříčka v. the Czech Republic*, *Novotná v. the Czech Republic*, *Horných v. the Czech Republic*, *Brožík v. the Czech Republic*, *Dubský v. the Czech Republic* and *Roleček v. the Czech Republic*.

2. The applicants complain in the above listed cases that in result of imposed fine for failure to comply with the obligation to vaccinate the child and in relation to refused admission of unvaccinated children to nursery school, their rights guaranteed in the European Convention on Human Rights (hereafter the “Convention”) were violated. In relation to the above cases, the Court raised questions with the Czech Government on the rights guaranteed in Articles 8 and 9 of the Convention and Article 2 of Protocol no. 1 to the Convention.

3. The Government as the intervening third party submit the following observations within the given time-limit.

II. Third party observations

4. The Court has already had the opportunity to assess complaints on compulsory vaccination of a person. In its actual case law it held that compulsory vaccination – as an involuntary medical treatment – amounts to an interference with the right to respect for one’s private life, which includes a person’s physical and psychological integrity, as guaranteed by Article 8 § 1 of the Convention (see, *mutatis mutandis*, *Boffa and 13 Others v. San Marino*, decision of the Commission, 15 January 1998, also *Solomakhin v. Ukraine*, 15 March 2012, § 33). The Court during its decision-making practice has not yet arrived to the conclusion of violation of the right guaranteed in Article 8 of the Convention by the very existence of the obligation to vaccinate in the legal order. The Court reiterated in this regard that the State’s vaccination policy follows general interest on the protection of public health and the eradication spreading of infectious diseases and the State enjoys a margin of appreciation in this regard (see, *mutatis mutandis*, *Baytiire and Others v. Turkey* (dec.), 12 March 2013, § 28).

5. There is no uniform approach in the Council of Europe States to the question of vaccination. The Slovak Republic belongs among countries where compulsory vaccination is regulated legislatively. Compulsory vaccination is in the Slovak legal order included in Section 51 § 1 (d) of Act no. 355/2007 Coll. on Protection, Support and Development of Public Health as amended (hereafter the “Act no. 355/2007 Coll.”) and in the Ordinance of the Ministry of Health of the Slovak Republic no. 585/2008 Coll., Establishing Particulars of Prevention and Control of Transmitted Diseases as amended. Compulsory vaccination is

established as a general obligation (whereas the legal regulation establishes compulsory regular vaccination of individuals at a certain age, compulsory vaccination of individuals exposed to increased danger of selected infections, compulsory vaccination of individuals exposed through profession to increased danger of selected infections and special compulsory vaccination), except for cases where contraindications are known with the person. Compulsory vaccination after attained certain age established by the legal order is against diphtheria, tetanus, black cough, infectious child cerebral palsy, type B inflammation of the liver caused by viral infection, invasive haemophilus infections, pneumococcal invasive disease, measles, mumps and rubella and re-vaccination of adults against diphtheria and tetanus. According to the Office of Public Health of the Slovak Republic the most frequent permanent contraindications of vaccination are severe oncologic diseases, immune-depressive conditions, severe neurological diseases, cerebral palsy, innate developmental defects, oncologic and allergic diseases.

6. The Constitutional Court of the Slovak Republic (hereafter the "Constitutional Court") has entertained the possible collision between the protection of fundamental rights and freedoms and compulsory vaccination, upholding in judgment file no. PL. ÚS 10/2013 of 10 December 2014 the accordance of the above mentioned provisions of Section 51 § 1 (d) and Section 62 (a) of the Act no. 355/2007 Coll. with the provisions of the Constitution of the Slovak Republic, guaranteeing protection of fundamental rights and freedoms. The Constitutional Court in those proceedings did not grant the motion of the Regional Court in Nitra to declare incompatibility of the noted provisions with the Constitution. The Constitutional Court held that compulsory vaccination could contravene with the right to protection of health if compulsory vaccination would be required regardless of health contraindications of the patient, in this case the vaccinated child, or if the harmfulness of compulsory vaccination to the health of the vaccinated citizens would generally be demonstrated. It pointed out that the legal regulation of compulsory vaccination however recalls contraindications with the child (or the individual obliged to go through compulsory vaccination) and does not regulate the obligation to receive compulsory vaccination or imposes the duty to the attending doctor performing compulsory vaccination to regard prior to compulsory vaccination the eventually known contraindications. It further held that it is not possible to consider demonstrated the general negative impact of vaccination on people, on the contrary, demonstrated is the positive impact of compulsory vaccination in order to prevent the rise and spread of transmitted and deadly diseases, for example also by overall eradication of real smallpox. The Constitutional Court pointed out that as for the safety of vaccine substances on the health of the people, their harmlessness and prevention of adverse effects of medicaments, the State is watching over this in form of regulation of State control of medicaments by means of the State Institution for Control of Medicaments. Upon the above mentioned the Constitutional Court arrived to the conclusion that the legal regulation of compulsory vaccination does not clearly intervene with the core (essence) of the right to protection of health. The Constitutional Court reviewed also the relation between the compulsory vaccination and the right to privacy, where colliding are two constitutionally protected interests, whereas the right to privacy is restricted by the law in favour of public interest on the protection of citizens (humankind or the life and health of the citizens) against the rise and spread of transmitted deadly diseases by establishing the obligation to all natural persons to receive compulsory vaccination. The Constitutional Court referred to the case law of the Court in cases *Solomakhin v. Ukraine* and *Boffa and 13 Others v. San Marino*, as well the decision of the Supreme Court of the United States of America in case *Jacobson v. Massachusetts*, file no. 197 U. S. 11 (1905) and when assessing the proportionality of the challenged measure in the Slovak Republic it pointed to the obligation of the doctors prior to vaccination to perform medical examination of the vaccinated, the obligation to regard health

contraindications and advise the natural person (vaccinated or the parents of the child) on all aspects of vaccination and the impact on health condition as well the liability of the provider of health care for damage caused by conduct *non lege artis* in case of incorrect conduct of the provider of health care and eventual damage on health of the vaccinated which in the Slovak legal order is regulated by the respective laws. It held that *„the significant extent of satisfiability of public interest on protection of life and health of the citizens by preventing the rise and spread of transmitted deadly diseases prevails over the medium to significant interest on the protection of the right to privacy of natural persons and therefore it is necessary to prefer public interest on protection of life and health of the citizens by preventing the rise and spread of transmitted deadly diseases by securing compulsory vaccination.“*

7. In relation to practicing compulsory vaccination in the Slovak Republic, the Supreme Court of the Slovak Republic (hereafter the “Supreme Court”) filed a motion on 6 August 2013 with the Court of Justice of the European Union (hereafter the “Court of Justice”) to initiate preliminary ruling according to Article 267 of the Treaty on the Functioning of the European Union. The motion was filed by the Supreme Court within proceedings pending in case of M.Š. c/a Office of Public Health of the Slovak Republic concerning the refusal of M.Š. to comply with the obligation established by the domestic legal regulation to subject her minor child to vaccination against certain diseases. The Court of Justice (ninth chamber) with decision in the matter C-459/13 of 17 July 2014 decided that it was manifestly incompetent to answer the questions raised by the Supreme Court. The Court of Justice among other instances held that this issue belonged exclusively within domestic legal regulation and judiciary.

8. The Ministry of Health of the Slovak Republic (hereafter the “Ministry of Health”) stated with respect to the Slovak legal regulation concerning the issue: *“the legal regulation establishing compulsory vaccination of children in the Slovak Republic follows legitimate aim which is securing the public health of the population, in accordance with international law obligations whereas such protection of health shall be generally considered prevention as such. According to Article 24 of the Charter of Fundamental Rights of the European Union, in all actions relating to children taken by public authorities the child’s best interests must be a primary consideration. However, in several cases upon Article 8 of the Convention, concerning the right for respect of private and family life, the consideration is from the perspective of the parents’ rights, rather than then child’s, whereas in case of compulsory vaccination the best interest of the child is regarded who can be vaccinated, as well the best interest of the child who has health contraindications and cannot be vaccinated. The purpose of this legal regulation is to protect the health of the population already since child age and protect children in particular who cannot be vaccinated due to health contraindications. These children are thus the most vulnerable group which cannot be protected from diseases against which children without health contraindication should be vaccinated and so are such children put at a risk of being infected with a disease by the children who were not vaccinated, which may in their case have a more severe course than in case of children without health contraindications. The Ministry of Health considers sanctions for the violation of the lawful obligation of vaccinating children necessary in the democratic society to accomplish the aim which is the effective protection of health of the population, whereas it considers the imposition of such sanctions for an approach fully compliant with Article 8 § 2 of the Convention. States Parties to the Convention on the Protection of the Rights of the Child pursuant to Article 3 § 2 undertake to ensure the child such protection and care as is necessary for his or her welfare, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures and at the same time according to Article 24 of the Convention on the Rights of the Child undertook to adopt necessary measures to ensure the child’s right to the enjoyment of the highest attainable standard of health and measures which would be effective and appropriate to remove all usual conducts harming the child’s health. Breaching the legal obligation to get the child vaccinated is a conduct capable to harm the child’s health and it is therefore necessary and inevitable to expect compliance with such lawful obligation even under the threat of sanctions being imposed, such as fines, or*

non-admission of the unvaccinated child into pre-school facility. If the State is to adopt measures which effectively regulate the sphere of protection of health of the population, it must in inevitable cases apply also solutions which collide with the protection of other rights of the given population whereas the interest on the right to protection of health significantly prevails over the damage which may occur for instance, by an interference with the right to private and family life. Apart from the above mentioned international law obligations, the Slovak Republic pursuant to Article 12 § 2 (c) of the International Pact on Economic, Social and Cultural Rights admits each person's right to attain the highest attainable level of physical and mental health and adopts measures to attain the full exercise of this right which includes, among others, also the prevention of epidemic diseases and other diseases. Compulsory vaccination of children has in the course of time proven to be the most effective prevention from epidemic and other diseases which under the current scientific and medical knowledge may not be replaced by alternative forms of prevention which could accomplish the given purpose at the required level. The obligation established by the law to vaccinate the child and the sanctions related thereto for failure to comply with such obligation is under the principle of proportionality an inevitable and at the same time the most appropriate, the most adequate and the most effective instrument to attain the legitimate aim which is the protection of health of the population and therefore an instrument in accordance with international principles of protection of human rights and fundamental freedoms."

9. In the assessed cases however preferential is not the question of compulsory vaccination as such which clearly falls within the scope of Article 8 of the Convention and clearly presents an interference with the right of respect for private life, but rather the question of the consequences related thereto, or the question of consequences connected to the refusal of the person of compulsory vaccination. The Government express the view that during assessment of the objected violation of the right protected by Article 8 of the Convention it needs to be distinguished between the compulsory vaccination as such and the consequences related to the refusal of compulsory vaccination which may be of diverse nature and must not necessarily, depending on the specific circumstances of the case, fall within the scope of Article 8 of the Convention.

10. In the Slovak legal order compulsory vaccination is regulated as an obligation which cannot be complied with forcedly or forcedly enforce its performance. Consequence of incompliance with the obligation of vaccination by natural persons is in the Slovak Republic considered as liability for misdemeanour. Precisely, in relation to compulsory vaccination of minor children this means that in case the parents without demonstrating serious health issues or issues reasoned by a doctor refuse the compulsory vaccination of the child, according to Section 56 § 1 (a) of the Act no. 355/2007 Coll. they commit a misdemeanour within the field of public health care for which under Section 56 § 2 of the Act no. 355/2007 Coll. fine can be imposed in total amount of EUR 331. According to information from the Ministry of Health the vaccinating doctor attempts in the first place to explain to the parents the significance of vaccination, as well the risk which threatens to the child in case it will not be vaccinated. If the person due for vaccination fails to appear for compulsory vaccination even in the alternative term to which it was provably invited, the doctor shall notify of this fact in accordance with the valid legislation to the Regional Office of Public Health. Upon the notification by the vaccinating doctor on refusal of compulsory vaccination, the competent Regional Office of Public Health invites the parents of the child to inform them about the significance of vaccination and the health risks threatening to the child if it will not be vaccinated. And if not even after this conversation will the parents consent to compulsory vaccination of their child, the Regional Office of Public Health shall proceed in accordance with the Act no. 372/1990 Coll. on Misdemeanours in wording of later rules whereas the competent Regional Office of Public Health will determine the amount of the fine according to the respective offence cases. The Ministry of Health disposes with the following statistical

data on the number of notifications in this matter and the number of imposed fines for the violation of the obligation to vaccinate according to the Act no. 355/2007 Coll.:

REVIEW OF NOTIFICATIONS AND FINES FOR YEARS 2014 – 2019			
YEAR	NUMEBR OF NOTIFICATIONS	NUMBER OF FINES	FINES – TOTAL AMOUNT (EUR)
2014	2 271	369	28 234
2015	2 132	457	34 443
2016	2 301	690	39 004
2017	2 041	607	36 279
2018	1 791	563	33 216
2019	1 674	376	22 345

11. The Government further state that the Slovak legislation enshrines the possibility to assert in case of adverse effects caused by vaccination or health injury the claim for compensation. The claim may actually be asserted according to the Act no. 437/2004 Coll. on Compensation for Pain and on Compensation for Impediment of Social Position in wording of later rules, or eventually according to the provisions of the Civil Code (Act no. 40/1964 Coll. in wording of later rules), regulating general liability (Section 420 § 1 and foll.), as well the absolute objective liability (Section 421a § 1 and 2 in connection with Section 444 and foll.) and in connection with the Act no. 437/2004 Coll. on Compensation for Pain and on Compensation for Impediment of Social Situation.

12. Enshrining the liability as such for eventual damage on health caused by compulsory vaccination may be a significant aspect within the assessment of the objected violation of the rights of the person by such measure (see, *Baytiire and Others v. Turkey* (dec.), 12 March 2013, § 30).

13. The Slovak legal order does not regulate the possibility of refusal of admission of the child in nursery school for not receiving compulsory vaccination. In 2019 however, the Ministry of Health and the Office of Public Health of the Slovak Republic submitted a legislative motion the purpose of which was to invent changes in the field of admission of children to nursery school upon the status of their vaccination, only to protect the most vulnerable group of citizens. The noted draft act amending the Act no. 355/2007 Coll. and further related acts established the obligation to ensure that only children would be accepted to nursery school who were compulsorily regularly vaccinated corresponding to the age of the child according to the vaccination calendar or have a confirmation from the attending doctor that it is immune against infection or cannot be vaccinated for permanent contraindications. Part of the legislative motion was to quash fines for failure to receive compulsory vaccination which currently may be imposed in total amount of EUR 331. In the reasoning report to the draft act the need to invent the suggested measure was explained with the fact that *“collective institution creates conditions facilitating the introduction and spread of the infection. Unvaccinated children in a collective may be source of originator of infection for other children who cannot be vaccinated due to contraindications or are immune for inability of the organism to create protection.”* This motion was on 21 August 2019 approved by the Government of the Slovak Republic and was subject to deliberations at the 51th and 53th session of the National Council of the Slovak Republic. The draft act did not get sufficient support and in the end has not been approved in the 3rd


reading. For the present intervention of the Government the Ministry of Health reasoned the suggested measure as follows: *“With regard to the increased occurrence of diseases which can be prevented with vaccination (in particular measles) in the Slovak Republic but also overall in Europe, it is truly needed to invent the suggested measure. Diseases against which the Slovak Republic vaccinates within compulsory vaccination have very much of a serious course or carry serious complications. Many children however with regard to their health condition cannot be vaccinated. Collective immunity secures the children protection against such diseases (large number of vaccinated children prevents diseases to spread). As the number of vaccinated children in the Slovak Republic against certain diseases is decreasing, collective immunity may not sufficiently be provided for. An unvaccinated child, in particular in a collective facility, may then be the source of infection or may facilitate the spreading of the disease. In times of outbreak of epidemic it is often too late to decide to have the child vaccinated. Under the current health threats such as measles in EU countries like in Slovakia experts stress the necessity of collective immunity to be provided for against infectious diseases. Sufficient level of vaccination of children and preserving collective immunity of the population secures protection for all people. For this reason, it is necessary to execute changes in the field of acceptance of the children in nursery school upon their vaccination status. Restriction of admission of unvaccinated children in nursery schools was invented for instance already in the Czech Republic, Lithuania as well France.”*

14. The Government stress as for the refusal of admission of the child to nursery school in result of the failure to comply with the obligation of vaccination established by the law and in relation to the right to education according to Article 2 of Protocol no. 1 to the Convention, that the Court in its decision-making practice applied the article in issue of the Convention to “primary education” (see, *Valašinas v. Lithuania* (dec.), 14 March 2000), to “higher education” (see, *Leyla Sabin v. Turkey* [GC], 10 November 2005, §§ 141-142), or to “primary, secondary and higher levels of education” (e.g., *Velyo Velev v. Bulgaria*, 27 May 2014, § 32, with further references), stressing explicitly that this article does not secure the absolute right to all forms of education (e.g., *Belgian linguistic case*, 23 July 1968, Series A no. 6, pgs. 30-32, §§ 1-6). The Court actually did not apply yet the right to education guaranteed in Article 2 of Protocol no. 1 to the Convention to pre-school facilities, such as day-care centres or nursery schools (kindergartens).

15. The Government state in this regard the in the Slovak Republic pre-school facilities are for the children not compulsory. In sense of Section 20 § 1 of the Act no. 245/2008 Coll. on Education and Training and on the amendment and supplementation of certain acts (hereafter the “School Act”) the compulsory school attendance in the Slovak Republic is performed in elementary schools, secondary schools and in schools for students with special educational and training needs. The interest of the parents on placing the children in nursery schools is however increasing, currently exceeding their capacities. Nursery schools according to the legal regulation support personal development of children in the social, emotional, intellectual, physical, moral, esthetical fields, develop abilities and skills, create requirements for further education and prepare for life in the society in accordance with the individual and age particularities of the children. The amendment of the School Act invented in the Slovak Republic with effect from 1 January 2021 compulsory pre-primary education for children of age five (pre-school preparation prior to entering elementary school). This legal regulation will affect children who reach the age of five by 31 August 2021 and start compulsory school attendance in elementary school from 2022/2023. The parent will be able in this regard to choose whether to put the child in nursery school, private establishment providing care for the children up to six years, or if he will educate him individually, whereas only that parent can educate the child at home who has at least full secondary general or professional education.

16. In the Government's view, also the above-mentioned aspects are relevant from the point of view of assessment of the connection between the compulsory vaccination, refusal of admission of the child in pre-school facility in result of its unvaccination and the right to education, guaranteed in Article 2 of Protocol no. 1 to the Convention.

Bratislava, 7 May 2020


Marica Pirošíková
Agent of the Government
of the Slovak Republic
before the European Court of Human Rights



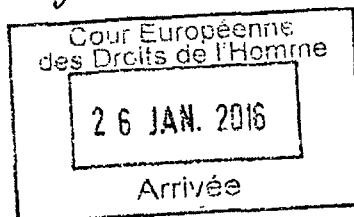
**Společnost pacientů
s následky po očkování, z. s.**

ECHR - LE 14.86 P3

1M/jz

The Registrar
The European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

Prague, Czech Republic
20th January 2016



Association for Vaccine Injured Patients and its relationship to the future decision of the European Court of Human Rights ("ECHR")

I.

Association for Vaccine Injured Patients in the context of the repressive vaccination policy in the Czech Republic

The Association for Vaccine Injured Patients is an organization of patients, their relatives and others who have been affected by adverse effects of vaccines. The aim of the organization is to help the affected patients with associated health, social and legal issues.

Our assistance to the affected families is focused on facilitation of the information flow between the family, health care providers, government authorities, Ministry of Health and schools with the aim to ensure appropriate health care, adequate help from the authorities and school integration for the child and the family.

The Association was formed as a consequence of civic activities evolving since 2014, questioning contents of the amendment of the Act No. 258/2000 Coll. on Protection of Public Health that was under discussion throughout the year. The new proposal was designed to strengthen repressions against non-vaccinated, semi-vaccinated or alternatively vaccinated children (children not complying exactly with the rigid mandatory vaccination schedule) by increasing the fines significantly. At that time, many parents of vaccine injured children were visiting local politicians to share their perspective and experience with the aim to persuade them to change Section 50 of the Act and allow the non-vaccinated, semi-vaccinated or alternatively vaccinated children attend kindergarten or other forms of preschool education.

These parents in cooperation with the Patients Association of the Czech Republic published two brochures named „How the system of vaccination affected the lives of some families“ that presented one hundred stories of families affected by health issues, socially or economically. These stories have much in common and show all the objections to the current vaccination schedule in the Czech Republic from the perspective of Czech parents and children. Most of the stories end with wording such as: “the child will not be able to attend the kindergarten”, “the mother will not be able to have a job and the family will lose one income”, however, these families rather change their lifestyle than risk the possibility of health issues in their children. Two of the stories are translated in the attachment no.1. Both brochures are attached (in the original language).

Currently ECHR is facing a decision on the interpretation of the rules of the Convention for the Protection of Human Rights and Fundamental Freedoms ("Charter"). This decision will significantly affect all children, parents and families whose relationship and access to compulsory vaccination, currently being promoted by the Czech Republic on its territory, is critical and different from the views of political leaders, government bodies and some professional associations.

We are defending the interests of parents and children who have a valid reason to be apprehensive of the

mandatory blanket vaccination program extensively enforced by the Czech Republic. Naturally, these families are more concerned about vaccination due to their previous negative or even tragic personal experience with the adverse effects of vaccination. Lots of scientific research proves that some individuals could be genetically predisposed to develop severe vaccine adverse effects. The level of risk and severity can be observed in connection with certain vaccine adverse effects experienced previously in the already vaccinated individual or in another family member – a sibling or parent. Despite new findings in scientific research, this objectively more vulnerable group of parents and children has been so far completely ignored by the health policy authorities of the Czech Republic.

To achieve even very low epidemiologic benefit for the public, the Czech vaccination policy completely ignores the individual situation of these families, their fears and reasonable concerns. Even though these families have already been negatively affected by the vaccination program they have been forced to complete the mandatory vaccination or the children would be excluded from children's groups and kindergartens. Families are forced to conform to the rigid vaccination schedule and risk health issues in their other children. There are several cases of families with vaccine injured children who were persuaded or who finally conformed to the repressive measures and vaccinated their second child. Shortly after the vaccination this child showed signs of permanent health injury or development issues. The third child, who the parents refused to vaccinate remained healthy, but cannot attend kindergarten or other children's groups. Such children are forbidden up to the age of 18 attend any summer camp or other field trips with their schoolmates. These unvaccinated children have even been explicitly labelled as „parasites“ on the vaccinated children's groups by a regional court in the Czech Republic. They also declared the presence of an unvaccinated child in the group to be a discrimination of the vaccinated children and thus in conflict with the law.

Our members, the parents and children we defend have to resist the highly manipulated majority of the Czech public. This extreme opinion polarisation is created by the repressive policy of the state and a strong tradition of medical status. Authorities and medical society representatives take a very uncompromising approach to physicians who resist the vaccination paradigm and try secretly or publicly help the unfortunate and helpless families with vaccine injured family members. Playing a crucial role in this situation is a vast, long-term and professional mass media manipulation of the public opinion, funded by vaccine producers and distributors.

For the above reasons our members and families feel fundamentally affected in their goals and interests. Our aim is to protect them against marginalization and politically motivated social exclusion. In the field of vaccination the Czech Republic represents within Europe a modern-day dictatorship denying basic democratic principles and values including fundamental human rights and freedoms. We dare to choose such strong words when we see a completely different approach by the politicians, experts and public in most European developed countries to the affected families and children. In all neighbouring countries with the Czech Republic where the epidemiologic situation is the same, the unvaccinated children can attend all children's groups without any problem. Neither political leaders, nor the professional medical community prevent this and consider it to be necessary. All the families with negative or even tragic experience with effects after vaccination are free to not immunize their other children or choose to vaccinate according to an individual schedule. These children are not labelled as „parasites“, the families are not vilified in media and, most importantly, the children are not being expelled from all children's groups and can live normal lives as everyone else. These differences among European countries in the approach to the unvaccinated individuals are all in plain sight and there is no rational or exact foundation for them.

The mechanism of human rights violations and penalties in the Czech Republic

The rules of the Charter, as consistently interpreted by the ECHR, allow to restrict fundamental rights and freedoms guaranteed by the Charter only if it is objectively necessary for the protection of public health in a democratic society. It is the professional community and the representatives and authorities in human medicine and medical sciences who must decide on the need to do so and properly and convincingly justify such a decision. In the Czech Republic the expert reasoning is not disclosed to the public, its content is

completely unknown to the independent critics, the decision-making methodology and input information and data are not to be provided to anyone. It is highly likely that some of the reasoning and methodology does not exist at all. This state of affairs has a definite cause. That is an absolutely unfettered power of the national executive to these technical issues and to decision making by subordinate legislation such as a decree.

1) Sanctions

If the child is not vaccinated, for example, because of concerns about the health of the child, the situation can be evaluated by the physician as neglect of a child. In this case the doctor has an obligation to report the family to the Social-legal Protection of Children Authority (SPCA) to investigate. Not only that the family is threatened by questioning from SPCA but each legal representative of the child is under a threat of financial penalty up to 10.000,- (ten thousand) CZK, i.e. half of the average monthly wage of a Czech citizen. When the child has two legal representatives, the family faces the fine twice. This fine is imposed by the Regional Public Health Authority (RPHA), an authority for public health protection. RPHA has the right to ask the doctor to provide information about the child, and doctors can be fined if they did not cooperate (letter b) and c) par. 51 of Law 258/2000 Coll). The law does not impose an obligation to the doctor to report the unvaccinated individuals. However, in practice, it often happens and thus the doctors are

There are further sanctions for families that are trying to protect the health of their child in the form of excluding the unvaccinated child from children's groups, pre-school education as per par. 50 of Law

Such children are systematically excluded from society. They are denied the right to preschool education, thus in the Czech Republic children's fundamental rights are not respected-the right to health and pre-school education.

2) Strict vaccination policy

The current system of vaccination policy may damage a range of individuals who, due to their health status, should not be vaccinated according to the fixed vaccination schedule. They should have the possibility to be vaccinated according to an individual vaccination schedule, which generally does not happen.

Strictness of the system is given by the deadlines stipulated in the decree by which each vaccine must be administered. These periods should be followed by the general pediatrician. In the Czech Republic every child is in the care of their pediatrician, who should know the condition of his patient. By law, the pediatrician is obliged to administer vaccination if they do not vaccinate without a reason, they face a fine of 1.000.000,- CZK without a reason means without a contraindication temporary or permanent, the issue will be discussed below. Pediatrician obviously cannot vaccinate against the will of the parents. Then the penalty does not apply to the pediatrician, but to the family, see above.

During vaccination the pediatrician must respect the health of the patient, who should be perfectly healthy to handle the vaccination without complications. In case of small children, who have to get at least 4 vaccinations within 3 years (to be able to board the nursery), this can sometimes be a problem to administer all vaccination in time, especially in children with eczema, middle ear infection, chronic cough, neurological damage etc.

For admission to the kindergarten a child must be vaccinated by a hexa-vaccine, at least in the schedule 2 + 1 doses and MMR (measles, mumps, rubella) 1 dose. NIKO (National Committee for Immunization, an advisory body to the Ministry of Health, which issues recommendations to the Ministry of Health on the issues of vaccination), however, continues to advise the hexa-vaccine in the schedule 3 + 1 doses and 2 doses of MMR. In total the child should get 6 vaccines during 3 years, according to vaccination schedule followed by most pediatricians.

3) Common practice

From experience we know that children at risk that are sensitive to vaccination and are threatened with grave consequences after vaccination, the tight time line is impossible to keep. Moreover, this approach does not correspond to the principle of "lege artis". Unfortunately, it often happens that the physical and mental condition of the child is not taken into account by pediatricians. The important thing for them is that the vaccination is administered within the deadline and the parents are told that they need to have the child vaccinated in order to have the child accepted in the kindergarten so that the parents can go to work. Pediatricians need to have the child vaccinated not to risk a fine of 1.000.000,- (one million) CZK. We know about cases when a pediatrician pushes parents by reporting them to SPCA for care neglect or to RPHA.

4) Insufficient education of pediatricians, trivialization of ADVERSE Effects of vaccination

Unfortunately, we can say that a large quantity of practical pediatricians in the Czech Republic is not sufficiently familiar with the latest information on adverse effects of vaccines. We have seen cases when the link between vaccination and febrile convulsions that happened three days after vaccination, had been denied, by both the practical pediatrician who carried out the vaccinations and the physician who accepted the baby with the convulsions to the hospital. However, that is a serious complication referred to in the Summary of Product Characteristics (SPC) and according to the law both doctors should have reported this event (as stated in Section 51 letter a) of Act 258/2000 Coll., Physician is obliged to report even suspicion of NU, failing that, he could be fined up to 100.000,- (one hundred thousand) CZK. The law does not indicate which authority is determined to enforce this obligation. We raised a query to the Ministry of Health which body is determined to do so, however we have not received a reply up to date)

We encountered similar ignorance of the law and the obligation to report adverse effects in cases of unconsciousness, epilepsy, severe worsening of eczema with hospitalization, bronchitis, and others. Today, most pediatricians deny or do not know that autoimmune disease in the family, allergies, eczema, previous vaccination with febrile convulsions or prolonged crying, faulty neurological development, eg. cerebral palsy, epilepsy, muscular hypotonia with subsequent rehabilitation and many more are all risk factors in vaccination and in combination with vaccination can lead to very serious conditions such as damage to the immune, and nervous system and in the worst cases, death. Unfortunately, it is not a common knowledge among pediatricians what can be identified as adverse effects. Connection with vaccination is usually denied and the result is that the injured child is a victim of the pediatrician ignorance. The family is forced to continue the vaccination because of deadlines a decree prescribed by the decree, even though the health condition already suggests that the child may not cope with further vaccination. In these cases, the pediatrician should correctly describe the health condition and contraindicate further vaccination until recovery of the patient, to the full stabilization of health. This occurs only in cases of contagious diseases when vaccination is postponed until the child is considered to be healthy. However, in cases of repeated infections when the child is actually in a state of continuous recovery, their real health state is often disregarded and the pediatrician vaccinates despite the rules of safe vaccination. Most pediatricians do not know that even eczema and allergies can manifest as acute diseases, not of contagious nature, but of immune system nature. The same as they do not know that neurological imbalance needs time and rehabilitation to stabilize and consequently many children are vaccinated despite the acute ongoing difficulties and thus exposed to a higher risk of further adverse effects of vaccination.

In case of eg. febrile convulsions after vaccination we are trying to communicate with pediatricians to report the adverse effect so that the child is entitled to an individual vaccination schedule at least. In one case of unconsciousness within one week after vaccination when the physicians denied any suspicion of relation or link to vaccination, the child was threatened with the standard vaccination schedule as opposed to the individual schedule, which could be fatal in this situation. Understandably, the parents are not open to risk the health of their child but if the doctors do not recognize the link, they do not back up their little patient and do not confirm contraindication to vaccination. Thus the child will either be exposed to additional risk of repeated loss of consciousness and other damage after vaccination or will not be vaccinated from the will of the parents and will not be admitted to the kindergarten as a consequence. The system forces the parents through social and economic mechanisms to cause potential damage to the health of their children. Parents do not have a choice to protect the health of their child other than officially refuse vaccination and the whole family gets into a problem with the system as described above. However,

in our opinion, in a system, where there is no room for free decisions about health of an individual, the Convention of Fundamental Human Rights is being violated.

5) PERMANENT CONTRAINDICATIONS - divergence of interpretation of the CONSTITUTIONAL COURT AND PRACTICE

From Section 50 results that an exception for the entry of an unvaccinated child to kindergarten is apart

Doc. MD. Vojtěch Thon, Ph.D. (Department of Clinical Immunology and Allergology) stated to the notion of permanent contraindication following: "Contraindication but also indication of any procedure in medicine is always evaluated for the patient at the current moment in time, according to the patient's clinical status. This is true for any medical procedure, including the administration of a particular vaccine. I.e. the contraindication either exists or does not exist, always at that particular time. In medicine, there is nothing quite permanent. It should be sufficient to confirm contraindications without further specification."

Although there exist a decision of the Constitutional Court Pl.US 16/14 (paragraph 93 et seq.) which states that the designation of "permanent contradiction" should be also used when a child's health condition prevents administration of the vaccine in long-term, irrespective of whether in the medical certificate there is indicated the term "permanent contradiction," the practice of many kindergartens is different. In reality children who lack some of the 9 compulsory vaccinations are not being accepted despite their current state of health does not allow them to be vaccinated. Often their health condition worsened after the previous vaccination. Although there have been several appeals of parents against the decision of kindergartens to the regional authorities, the Ministry of Health does not act and leaves this obvious discrimination unnoticed. Also the Ministry of Health does not unite the decision-making process of kindergartens by issuing an official position. In Appendix no. 1 there is a response of the Deputy Minister of Health and Chief Public Health Officer Dr. CR. Valenta to the request of one family for an official position to the provided medical certificate that says: "XX patient cannot be vaccinated due to the medical indication with the vaccine for measles, rubella and mumps. " Yet, they have not been accepted into the kindergarten. We provide a quote from the response of MD. Valenta: "In the provided medical certificate from your attending physician there is not stated that the child has a permanent contraindication to vaccination against mumps, measles and rubella. In the document provided there is stated a medical indication, not the permanent medical contraindication to the vaccination specified above. "The response of the Ministry of Health is in a direct conflict with the above stated decision of the Constitutional Court.

Contraindication is used in practice relatively scarcely, whether by general pediatricians or specialist pediatricians like neurologists, immunologists, dermatologists, despite it could help to many children with chronic problems associated with vaccination. General pediatricians are using contraindications only during an infectious disease or severe exacerbation of immune and neurological disease. Moderately severe case of eczema is not considered to be a contraindication because the child is treated with corticosteroids and looks apparently healthy. However, corticosteroids do not cure eczema. They only reduce immunity since its hyper-stimulation is the cause of the eczema. After discontinuation of the medication, severe deterioration of the state is likely. Such deterioration may happen due to vaccination as vaccination stimulates the immune system in the auto-aggressive manner. Thus vaccination may unfortunately trigger allergies, eczema, asthma, and autoimmune diseases. In a similar manner the health of children who had neurological reactions after vaccination-febrile convulsions, dysphasia (speech disorder), various paralyses, encephalitis and other neurological conditions described as consequences of vaccination is treated. Instead of additional vaccination being contraindicated, the children are hospitalized and vaccinated under a blanket of anti-epileptics, sedatives, antihistamines, antipyretics. We believe that such procedures is unethical and certainly not according to the medical rule of PRIMUM NON NOCERE – (first, do not harm) especially when we realize that it is risking the health of small children for preventative and not curative procedure. Obviously, the rule FIRST, VACCINATE is valid in the Czech Republic.

Contraindications that are acknowledged by the officer of the Regional Public Health Authority (RPHA) as a sufficient reason allowing a child to attend the kindergarten without the complete vaccination, are known in practice only from specialist physicians. General pediatricians do not issue such a contraindication even

though they can. No matter if due to ignorance, indifference or fear of a conflict with RPHA. They might not be able to justify their decision and would face a million-dollar fine mentioned above. Unfortunately, we have seen a case when a specialist dermatologist issued a contraindication to further vaccination due to a

Specialists often do not know what health conditions they can recognize as a contraindication, because there is not unified information specifying the reasons for contraindications. There is no compliance with doctor's obligation to protect the health of their patients and the right for the individual treatment decisions based on the current condition of the patient either. Even the specialist pediatricians avoid contraindication recognition, although they are the ones who really can require an individual vaccination schedule, recognize contraindications, provide time for the safe vaccination approach, while allowing the child to attend the kindergarten.

6) The polarization of society

Repressive health policy based on hiding content of professional justification and on an unlimited decision-making power of the executive and which is not subject to the public parliamentary debate, requires protection from the public outrage. This protection is secured in the Czech Republic mainly by four mechanisms:

a) very aggressive approach of authorities and representatives of the medical society towards the doctors in the field. It is the intimidation of doctors with the intention to make them feel afraid and not cooperate and not help the parents to effectively prevent the extensive national vaccination policy. So in 2013, a professional organization - Czech Medical Chamber ("CMC") - which can withdraw a license to practice medicine, released to the media a clearly threatening statement:

In a letter dated September 19, 2013 addressed to the head hygienist and the health minister in resignation, the president of CMC MD. Milan Kubek informs about the professional opinion of the Scientific Board of the Chamber, which clearly rejects denial of the importance of vaccination and overrating the adverse effects of vaccination. "CMC considered 'questioning the benefits of vaccination' by doctors as practice "non-lege artis", meaning the procedure would conflict with the highest scientific knowledge. The doctor who questions the benefits of vaccination, or even refuses to vaccinate, not only violates the Act no. 372/2011 Coll., On health services and health service terms and conditions (§ 4, para. 5), but also the Code of Ethics of the Czech Medical Chamber (§ 2 para. 1) and the Convention on Human Rights and Biomedicine (Article 4) "

However, article 4 (of the Convention) is about professional standards and does not affect the obligation to vaccinate everyone regardless of their health status. Conversely, in the Czech Republic article 2 has been violated, since it does not take into account the individual's health state and is putting the interests of the

CMC thus questions the practice of physicians in other European countries.

b) Then there is a wide media manipulation in favor of vaccination, which is undercover funded by manufacturers and distributors of vaccines through their communications agencies. The aim is to socially dishonor all parents who refuse to fully comply with the national vaccination policy and also dishonor representatives of criticism and opposition. Unfortunately, this negative media campaign is very effective and so-called "vaccination rejectionists" - for example, parents who already have one handicapped child after vaccination - become targets of a broad social ridicule and humiliation. Within this vicious media campaign there are being used tools of high social danger, for example, a non-profit organization strongly promoting vaccination and declaring its absolute independence is created and controlled by traders with vaccines and financed from their funds.

c) The third pillar of protection to the unjustified repressive national vaccination policy is, unfortunately, the national judiciary. The Constitutional Court of the Czech Republic plays a key role here. The Court issues vaccination decisions under the influence of politics and apparently against its previously settled case laws, as there had been, for example, very rare but important dissenting opinions such as dissenting opinion of the constitutional court judge Kateřina Šimáčková (see Annex).

d) The fourth pillar of protection is the intentional disinformation publicly distributed directly by the state authorities and authorities of the state as such:

There is one example of such a distribution of official disinformation by the Ministry of Health of the Czech Republic that for the current epidemic of whooping cough and repeated local epidemics of mumps "vaccination rejectionists" are responsible. Quote from a brochure "Patient Advisor" distributed directly by the Ministry of Health on its website: p. 62: "Vaccination is one of the most effective preventive measures in human history. Czech immunization schedule ranks among the most sophisticated calendars in Europe and in the world. However, recently, we are facing an outbreak of anti-vaccination activities. In this situation there has been a decrease in vaccination rates and consequently increase in incidence of certain previously successfully controlled infectious diseases, such as pertussis, mumps or measles. "

In accordance with scientific findings, the global problem with pertussis was caused by the failure of the new acellular vaccines. Local epidemics of mumps, which regularly take place also in the vaccinated population, are caused by a too rapid decline in the protective effect of the vaccination. "Vaccination rejectionists ", including parents and families with negative or even tragic experience with vaccination are publicly, and even by the government authorities of the Czech Republic, labeled as the culprits of all the problems and difficulties, for which can objectively be made accountable the weaknesses of products of the strongly favored pharmaceutical industry.

7) The reasons for the lack of education

One of the reasons why the pediatricians do not receive adequate information on adverse reactions to vaccines is their education. Education is primarily organized by clubs of the general pediatricians with expertise, financial and media support of the pharmaceutical companies. On the website of association of general practitioners for children and adolescents and organization of general practitioners for children and adolescents is listed as a general partner pharmacological company Glaxo Smith Kline, vaccine manufacturers, which greatly benefited from the set system because it provides de facto guaranteed sale of 400.000 (four hundred thousand) doses of the hexa-vaccine and 200.000 (two hundred thousand) doses of Priorix per year and therefore has a strong interest in maintaining the system guaranteeing such good sales. The President of the Association of general practitioners for children and adolescents CR (AGCPA CR) MUDr. Alena Šebková said that 20% of pediatricians are trained per year and the goal is to train all pediatricians in the coming years. Among the information to pediatricians can be found e.g. that when vaccination is administered it does not weaken the immune system. It is scientifically proven that a part of the immune system is weakened at the expense of another part being hyper-stimulated. That's why infectious diseases with severe progression occur after vaccination and that would not occur if there was no imbalance of the immune system by vaccination. Pediatricians are obviously missing this information, as well as a range of adverse effects and possibilities and obligations related to contraindications. It is not surprising, because for the vaccine manufacturer, which is the general partner of the educator, is mentioning the risks and side effects of its products at the most inappropriate.

Head of the Department of Practical medicine for children and adolescents of the Institute of Postgraduate Medical Education (IPME) in Prague and a member of the Committee of Association for Immunisation of the Czech Medical Chamber MD. Hana Cabrnchová is well known by the positive relationship with the pharmaceutical lobby and repeatedly publicly denies the frequency of adverse effects stating that during the ten years of her medical practice has seen only one serious case of adverse effects - febrile convulsions. Then it is not surprising that she does not know and does not recognize the effects of vaccination and so do probably not even her students. According to the SPC, the incidence of serious adverse effects is much higher than the above mentioned doctor said, has seen. On the website of this doctor there is not a single note on adverse effects.

In 2014, on the grounds of the Medical Faculty in Prague (1st MF of Charles' University) there was a dispute between the Department of Neurology and Clinic of Hygiene and Epidemiology because of adverse effects of vaccines. The neurologists in lectures to the undergraduate students mentioned serious adverse effects of vaccines, ASIA syndrome (Autoimmune / inflammatory Syndrome Induced by Adjuvants). Students then reproduce this knowledge in front of hygienists who, however, denied such risks associated with

vaccination. A dispute between the heads of the clinics followed this event and eventually resulted in a joint workshop with a vague conclusion. The whole situation shows that the current and future doctors do not receive adequate information determining objective approach to vaccination. Whether we are experiencing a conviction of unconditional safety and the need for vaccination and thus ignorance of scientific evidence of our leading hygienists or a strong influence of the pharmaceutical lobby, we do not know.

8) Violation of principles of safe vaccination

The common practice is that the pediatricians administer the hexa-vaccine, even when the child has a mild viral infection or a low fever (37°C), therefore, not a condition in which the patient is ideally healthy. Pediatrician's argument is that SPC allows this practice. MD. Škovránková from the Vaccination Centre stated that this practice is meant to be used in areas of the world where the doctor is not able to see the patient every week but maybe only once every six months. For these situations it was allowed to vaccinate despite the increased risk of adverse effects due to the combination with an ongoing infection. However, in our conditions this practice is not necessary, on the contrary, it is a striking NON LEGE ARTIS (illicit) procedure.

The parents are being offered optional vaccination against pneumococcus along with the mandatory vaccination by hexa-vaccine. Concurrent administration of the vaccines is in accordance with the SPC of each of the vaccine. However, it is also stated in the SPC that in case of concurrent administration of Infanrix Hexa and Prevenar 13 there was reported an increased percentage of adverse reactions as fever higher than 38 ° C, seizures (with or without fever) or hypotonic-hypo-responsive episodes. It is a common practice that despite this warning, pediatricians vaccinate both vaccines at once automatically, regardless of the child's health condition. The President of AGCPA MD. Šebková defended this "common practice" in children's clinics in front of witnesses and argued that there were no problems in her practice and that SPC allows the concurrent administration.

We can see that some information from SPC is used according to the needs of the system, while others are not highlighted at all like, for example, adverse effects to be reported which does not happen as the case of febrile seizures mentioned above.

We believe that especially the important authorities among hygienists, pediatricians, their associations and those who lead the education of other physicians should monitor the safety of vaccination, highlight the potential risks and truthfully communicate that information to their students and responsibly protect their patients.

The state should act with the same level of responsibility since it declares the vaccination to be mandatory. The state should provide sufficient legal space for gentle approach leading to safe vaccination. It should not be enforced by means of sanctions thereby creating a health risk which can subsequently result in violating the human rights of its citizens.

9) Responsibility for the adverse effects

The state should also take responsibility for the adverse effects. However, the corresponding legislation is still missing. The chief hygienist has confirmed working on the concept of the compensation fund in the media already in June 2014. Only in January 2015 has started a comparison with neighboring countries. Upon the request of the Constitutional Court to draw up such legislation, the Ministry of Health promises that the Act could be valid no sooner than in 2017.

III.

Non-profit organizations in the Czech Republic compared the 31 developed countries in Europe in the fundamental aspects of their vaccination policies. The aspects compared were firstly the number of

compulsory vaccination and secondly the extent of repression of unvaccinated children. The differences were so huge that it absolutely cannot be explained by medical or epidemiological differences among the countries.

People do not have to be doctors or lawyers to easily understand the status and its nature. No one can explain to the parents in the Czech Republic why it is an imperative that it is their children who cannot attend the kindergarten if they are missing even one of nine vaccinations when in the neighboring Federal Republic of Germany and Austria vaccination against these diseases is not even compulsory. In neighboring Poland and the Slovak Republic the children must also be compulsorily vaccinated, but when the parents refuse, their unvaccinated child is not punished by the state by being excluded from kindergartens and summer camps. NGOs have transferred this situation in Europe into clear graphic diagrams.

The proposed methodology of scoring the rate of repression of fundamental human rights in individual countries then showed that the Czech Republic is probably the most extremist in vaccination policy of all 31 evaluated countries in Europe.

Parents ask for their children safe medical care including vaccination. In terms of adverse effects they are often better informed than general pediatricians who are generally unfamiliar with them, deny them and become untrustworthy as well as the top experts in pediatrics and hygiene who do not listen to the parents and are less able to respond to the increasing number of injured children (allergies, asthma, eczema, immunodeficiency, behavioral, speech and learning disorders, post-vaccination encephalopathy, hypotonia). The society is increasingly polarized, the family is not backed up both in the law and the doctor and despite their negative experience they are called in the media "vaccination rejectionists". Since the beginning of our civic activities, the situation has gotten worse for many families. Children were being expelled from kindergartens, kindergartens and other children's groups are heavily controlled by the Authority for Public Health.

During the year 2015, there has been discussed an amendment to Act No. 258/2000 in the Parliament with a proposal e.g. of a fine up to 3.000.000,- (three million) CZK to a doctor who would not vaccinate (finally the fine is up to 1 million CZK) and up to 500.000,- CZK for a kindergarten, which would accept a child without complete mandatory vaccination etc. There has even been raised a proposal to exclude the regular immunization from the regime of needing the free and informed consent which results in the possibility to administer vaccinations without the informed consent and even against the will of the child's parents. The proposal would allow vaccination of children without the consent of and against the will of their parents, which does not exist in any Western or Eastern European country. Thanks to civic activity, this proposal was finally withdrawn. In June 2015 the Senate discussed the bill and returned it with amendments to the House of Commons. The amendments concerned the abolition of the requirement to present a certificate of vaccination for field trips and recreational trips and enable admission into the kindergarten or similar facility for the unvaccinated children. It would be only mandatory to submit a document with information what vaccinations were administered to the child (including no vaccination). However, the Senate's proposal was voted down in the House of Commons and the Act 258/2000 Coll. was approved as amended, which is actually stricter than the previous amendment.

The promised discussion of the Ministry of Health with the public happens in the form of a Working Commission for the issues of vaccination, which over the period of 8 months of its existence got together 3 times. The Commission numbering about 30 people includes only 2 members of the public. The outputs only describe the current status but do not deliver any results to the public. The ECHR verdict in favor of the complainants would certainly have an impact on further development of this discussion, enforcement and settlement of fundamental rights of the child.

IV.

Significance and consequences of the decision of the ECHR

When the ECHR translates the rules of the Charter that:

The Czech Republic violated the Charter when virtually with no reservations enforces all nine of the mandatory vaccinations as a condition of participation of children in children collectives and groups, solely

on the basis of subordinate legislation (a decree) of which the content and scope is not liable virtually to any democratic debate in the Czech Republic, the decision of the ECHR will be for parents and their children with adverse effects after vaccination favorable. In this case the Czech Republic will be forced to apply the democratic principles in relation to their vaccination policy. The state will be forced to pass its repressive measures, which are currently solely dictated by the executive branch, to a wider public and political discussion. It will be forced to transparently expose their professional justification to criticism of many ideological and interest groups. Such a debate has not been open in the Czech Republic so far. The vast majority of European countries has already been through the debate a long time ago and did not tolerate their executive body unfettered power over human rights in this area.

When the ECHR translates the rules of the Convention that:

The Czech Republic has not violated the Charter, and its repressive measures against unvaccinated children conform to the Charter and its objectives, it will be a very adverse decision for the parents and their children living in the country. In this case, the situation in the Czech Republic will not only change for the better but it may even get significantly worse. Such a decision of ECHR would open door to the national lobby for drafting and adopting other similar repressive measures. (For example, all unvaccinated or partially vaccinated children could be prevented to participate in all sports and recreational clubs and sports or training camps.) Subsequently it opens the way to achieve the same effects and implications in all other European countries. Pharmaceutical and medical lobbies will get the strongest possible argument to try and enforce similar measures in the jurisdictions at the national level in their own countries. In many countries, the expert public considers such repression to unvaccinated children in conflict with the Charter and with national constitutions. Therefore there are no such pressures.

We are aware of the fact that ECHR has an obligation to interpret the rules of the Charter, regardless of national circumstances, and with a definitive validity for all states.

Our association would be very happy to reach for their members and Czech families with children affected by vaccination, only what has long been available for the parents and the children in all neighboring European countries. We believe that it is an entirely legitimate claim. Therefore, we have truthfully described to ECHR the consequences that the Czech Republic achieved on its territory by its legal system and subordinate regulations in the hope of change. One of the impulses would certainly be an interpretation of the Charter in favor of the complainants.

Thank you for the opportunity to comment on the issue.

Kind Regards



Václav Hrabák

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attachment no. I

Failed to be admitted to a kindergarten despite a medical contraindication to vaccination

Our 3-year-old son Anthony K. suffers from allergies to milk, dairy products, eggs and this year a new allergy to grass pollen showed up. The situation has given us a really hard time. In the first year of life, our son received all mandatory vaccinations, and also Prevenar 13 (Optional vaccination against pneumococcus).

Since he was born prematurely, his pediatrician outlined an individual vaccination plan for him. She proposed to postpone the vaccination with Priorix (mandatory vaccination against measles, mumps and rubella) to about his 3rd birthday.

Priorix vaccine contains, among other things, egg white, to which our son is severely allergic. The leaflet even states that the vaccine should not be administered to individuals with reactions to egg protein. Our son's doctor warned us about the possibility of an allergic reaction after vaccination. She did not dare to administer the vaccine herself, however she pushed us to vaccinate very hard.

In the end she booked us into the university hospital, where doctors should have assessed whether our son could be vaccinated or not.

Meanwhile, registrations in kindergartens took place and since our son has not received all mandatory vaccinations, to this day he has not been admitted to a kindergarten.

After the kindergarten enrollment, we visited an immunologist at the University Hospital in Brno and he decided that our son should not be vaccinated by the vaccine Priorix because of contraindications to vaccination.

Unfortunately, the kindergarten director refuses to accept our son until the mandatory vaccination is completed.

There should exist an exception for such kids, shouldn't there? In the autumn I return to work and this situation is a fatal problem for us. Despite all problems we still hope that our son will be accepted to the kindergarten along with other children.

mother of Antonín K:

Individual immunization schedule is not enough

First I would like to say that I had been a vaccination supporter before I became a parent. I did not understand those who did not want to immunize their children with all the vaccines that were available. However events in life change an individual as well as one's opinions.

I started to take an interest in immunization when my first daughter was born. I was still convinced that vaccines could do no harm. I trusted the doctors. Every time our daughter was given a shot we made sure she was perfectly healthy, as well as the rest of the family. She responded quite well to all the vaccines except for the second shot of Priorix. This was probably the so called last straw and my daughter's immunity completely fell apart. A few days after the immunization she got a bad cough and also suffered from never-ending viral infections. It all resulted in meningitis of an unknown origin. My daughter became paralyzed. Full details of my daughter's story can be found in the first volume of a brochure with stories of patients after vaccination issued by the Patient's union in Czech Republic: Magdalena got paralyzed.

We decided not to administer Priorix to our younger daughter because of our bad experience and her poor health. Our younger daughter suffered from excessive mucus congestion when she was a little baby. When she was six months old she suffered from otitis media and was given her first antibiotics. In a few months

everything started all over again. For this reason her immunization started when she was 10 months old. She was given 3 doses of the vaccine and several months after that atopic eczema appeared on her skin. It is hard to say whether immunization caused it or not. However, everything points to the fact that our younger daughter's immunity has been weakened since she was a baby. When we went to see a dermatologist she told us in private that we should be very careful about proceeding with further vaccination. Our family is affected by a high genetic burden. I was allergic to milk and eggs as a child and was admitted to hospital several times.

My mother suffers from asthma and she has to be medicated. My mother's sister suffers from such a severe form of atopic eczema that her nails often crack.

Our younger daughter's eczema affected her legs and arms. She cried for several days and nights because her skin hurt.

Based on our bad experience with our older daughter, high genetic burden and recurring illnesses of our younger daughter we are very afraid to continue her vaccination now.

When we were applying for a kindergarten we submitted an admission exception request. We added medical reports and a written statement explaining our reasons for postponing further vaccination.

We met with the kindergarten director several times and thoroughly discussed our situation. She said that she understood the situation and would like to accept our daughter in the kindergarten.

However, she did not. Our pediatrician confirmed an individual immunization schedule. Our daughter's atopic eczema was also confirmed by a doctor but it is not enough. There has to be a statement confirming the child's PERMANENT contraindication. I was told that atopic eczema was not a permanent contraindication and that we should wait until our daughter would get better and then we should finish her vaccination. Furthermore, we were told that children with cancer were also vaccinated so our „illness“ was just a „silly thing“. Who cares that nobody knows what could actually happen to our daughter if we continued with her immunization?

What does it mean for us? Our daughter is excluded from all kindergartens and isolated from her peers. She cannot attend children groups either. My maternity leave is about to end and I cannot go back to my job. I started working right after high school, I have never received any benefit except for a few months after high school before I started my first job. We cannot afford a private kindergarten.

I will be forced to go to the job centre and claim benefit despite the fact that I could work instead, which I would love to do.

There should exist an exception for cases like this. In my opinion we have done everything right. Really. Think about it please... Would YOU immunize your child in such a situation? No, we are not doctors, just loving parents looking after their children around the clock. We really saw the enormous difference before and after vaccination. We were the ones who were looking after our older daughter when she got paralyzed...

Unfortunately we belong to the small percentage of cases where vaccination has gone wrong but are we to suffer further and be excluded from society?

Parents of Magdalena



WRITTEN OBSERVATIONS

submitted to the European Court of Human Rights

in the case

Pavel VAVŘIČKA and others v. the Czech Republic
(Application No 47621/13)

Grégor Puppink
Director

March 2016

This case is important as it deals with the respect for physical and moral integrity of the persons that is guaranteed, mainly, by the fundamental principles of the primacy of the human being over the sole interest of society or science and by that of the free and informed consent of the person before any intervention in the health field is carried out. These principles are respectively set out in articles 2 and 5 of the 1997 *Convention on Human Rights and Biomedicine* (Oviedo Convention below) for which the European Court is the legitimate interpreter (art. 29).

The development of biotechnological knowledge requires, with particular acuteness, the establishment of principles defining the power of society over the body and health of individuals. In the 20th century, the governments of many countries, even democratic ones, abused their power by making people's bodies an object of their policies, especially their social hygiene and eugenics policies. Cases of compulsory sterilisation of disabled or Roma women regularly brought before the Court illustrate this abuse of power. The case-law principles identified by the Court in these cases can be usefully applied to other imposed medical practices.

In the United-States, a pioneer in this area, legal sterilisation was carried out until 1948 on 50,193 people deemed "unfit."¹ This policy was enabled by the Supreme Court of the United States which, in the case of *Buck v. Bell* (274 U.S 200) in 1927, declared it constitutional as it served the legitimate purpose of ensuring the preservation of public health. The Court then ruled that:

"It is better for all the world if, instead of waiting to execute degenerate offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes..."

1

It should be noted that it was on the basis of the acceptance of the mandatory nature of vaccination that compulsory sterilisation was accepted, both of them being preventive health measures intended to serve the purpose of social hygiene. These sterilisation policies still continued in the 1970s, with variable degrees of constraint. Thus, for instance in order to reduce the fertility rate of Tunisia to that of Italy, the World Bank funded a "family planning" programme which set the goal of performing 8,000 abortions and 3,000 sterilisations per year in the region of Bizerte alone, and offered a bonus of 4 dinars and 50kg of semolina² to each woman who agreed to be sterilised. Medical staff also received a bonus of 1 dinar per sterilisation and 0.5 dinar per abortion. Such programmes are still widely carried out.

Therefore, the State may compel a person to undergo an intervention in the health area, or may strongly encourage the person to undergo such an intervention through the promise of a reward or the threat of a sanction. It is within the scope of this last hypothesis - that of the threat of a sanction- that the present cases fall.

¹ See J. SUTTER, « L'eugénique, problèmes, méthode, résultats » *Cahier de l'Institut d'études démographiques*, n° 11, Paris, PUF, 1950.

² Appendix of the « *Note synthétique sur le programme de planning familial dans le gouvernorat de Bizerte, Office National du Planning Familial et de la Population, 1973. Archives Pierre Simon, Bibliothèque universitaire d'Angers, 17 AF 26.* »

In the present case, the parents refused to submit to the legal obligation to vaccinate their children because they considered, in substance, that such a vaccination was against the interest of their children. As a result, they were sanctioned, denied permission to set up a privately run school, and their children were denied enrolment in a public nursery school.

Given that in the present cases no one was forced to undergo a vaccination, the question does not directly concern the legitimacy of compulsory vaccination, but that of the sanction imposed on the applicants. Does this sanction threaten the physical and moral integrity of the applicants, as well as their right to education? The issue must be examined in the light of article 8 and 9 of the Convention and article 2 of the first additional Protocol.

Article 8 certainly offers the simplest way to examine the main issue raised by this case: can the policy of compulsory vaccination legitimately justify sanctioning the people who refuse to submit to it, and are the sanctions appropriate to the intended goal? From the point of view of the ECLJ, the principles identified by the Court in previous cases are well established and deserve to be widely confirmed. The Court and the former Commission have long recognised that the sphere of private life, under article 8 of the Convention, “*covers the physical and moral integrity of the person.*”³ In the case *Salveti v. Italy*,⁴ and referring to the decision in *Matter v. Slovakia*,⁵ the Court considered that compulsory vaccination as a non-voluntary medical treatment constitutes a violation of the right to respect for private life guaranteed under article 8 § 1. This assessment was confirmed in the judgment of *Solomakhin v. Ukraine* of 15 March 2012 (no 24429/03). The Court based its decision on the general principle that physical integrity concerns one of the most intimate aspects of private life and even a minor compulsory medical intervention constitutes an interference with this right.⁶ In the case of compulsory sterilisation, the Court found that these practices also violate article 3 (*V C v. Slovakia*, no 18968/07).

2

Thus, a policy of compulsory vaccination constitutes an interference with the right to respect for private life guaranteed under article 8 § 1. In the present case, there is no serious doubt that this policy is “prescribed by the law” within the meaning of the Convention and that it has a legitimate aim of protecting public health. The question focuses on the necessity of the measures taken by the public authorities concerning the applicants in support of this policy. This will be mentioned further on.

Above all, it is regarding the applicability of article 9 that the ECLJ wishes to enlighten the Court. In terms of article 9, the refusal of a vaccination raises the delicate issue of *conscientious objection*.

We will examine neither the issue of respect for physical integrity of the people nor the right to education.

To our knowledge, only the former European Commission of Human Rights ruled on the applicability of article 9 in a case of refusal of vaccination in *Boffa and others v. Saint-Marin*.

³ *Giuseppina Passannante v. Italia* No 32647/96, Dec. 1st July 1998, and *X and Y v. the Netherlands*, 26 March 1985, series A, no 91, p 11, § 22.

⁴ *Salveti v. Italy*, no 42197/98, 9 July 2002.

⁵ *Matter v. Slovakia*, no 31534/96, 5 July 1999, § 64.

⁶ See also *Pretty v. United-Kingdom*, no 2346/02, §§ 63 and 65; *Glass v. United-Kingdom*, no 61827/00, §§ 82-83; *Jehovah's Witnesses of Moscow v. Russia*, no 302/02, § 135, 10 June 2010; *V C v Slovakia*, no 18968/07, § 105.

It considered that “*compulsory vaccination, if applied to everyone irrespective of their beliefs, does not constitute interference with the exercise of freedoms guaranteed by Article 9 of the Convention.*”⁷ This reasoning is not convincing; it would even be in contradiction with the recognition of the right to conscientious objection facing the equally general compulsory military service. Just because an obligation is general does not mean that it is exempt from infringing on the freedom of conscience. In another case of conscientious objection (*Pichon and Sajous v. France*),⁸ the reasoning of the Court is also unconvincing. It held that a pharmacist’s refusal to sell the abortion pill could be punished without infringing his or her freedom of conscience, considering that he or she retained the right to manifest those beliefs “in many ways outside the professional sphere.” This was a demonstration of a schizophrenic conception of the freedom of conscience.

It is therefore necessary to deepen the understanding of conscientious objection and to identify assessment criteria.

The existence of a conviction within the meaning of article 9

“Convictions” are not to be confused with conscience, as they are judgments which the latter pronounces, they are “*firmly held beliefs or opinions*”, according to the Oxford dictionary, to which the activity of the conscience leads: the person is convinced of the truth of his or her conclusions after discernment, the quality of which depends on the enlightenment and uprightness of reason. To have a conviction is to be convinced, to be “vanquished” by a certainty that imposes itself on one’s intelligence, in other words, by the truth of a particular Good. Judgment is therefore the act by which we recognize ourselves convinced (“convanquished”). Convictions are therefore not arbitrary or fanciful opinions; they are the expression of an imperative internal to the person. The “dictates of the conscience” are convictions about what should be done or should not be done.

3

The United Nations Commission on Human Rights recognised that conscientious objection “*derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives.*”¹⁰ However, it is not always easy to determine whether, in this or that particular case, the motive for the objection is indeed a “conviction” within the meaning of article 9 of the Convention, deserving the protection granted to freedom of conscience and religion, and whether the objection itself is genuine. In this respect, the quality of the conviction, in the name of which the objection is made, and of the objection are distinct from each other. For instance, a conviction related to a cultural dietary dictate is certainly religious and deserves protection. But is the person who claims an objection on that ground really acting for this reason? Or is he or she not guided by some other motive? Several criteria can be identified from the case-law of the European Court and of the conclusions of the United Nations Human Rights Committee for assessing the quality of both the convictions expressed and the objection made, making it possible to separate convictions which “*deserve ... respect in a democratic society*” (free translation)

⁷ European Commission of Human Rights, 15 January 1998, *Boffa and others v. San-Marino*, DR 92/27, 20 August 1993; *B.B. v. Switzerland*, DR 75/223.

⁸ *Pichon and Sajous v. France*, no 49853/99, 2 October 2001.

⁹ Play on words translated from French: In French the word “convaincu”, meaning “convinced”, is made of the term “vaincu” meaning “vanquished” and the prefix “con”. Thus, the term “convaincu” can be translated by the neologism “convanquished” in order to illustrate the link between the etymology of the words “convince”, “vanquish” and “conviction”.

¹⁰ Human Rights Commission: resolution 1998/77, adopted on 22 April 1998, § 10.

from mere “*personal inclination*” (free translation), which is rather within the scope of article 8.

Criteria to assess the quality of convictions

Four criteria to assess the quality of convictions can be identified.

Firstly, the convictions in question must be “*genuinely-held*”¹¹ convictions, according to the United Nations Human Rights Committee, or “*deeply and genuinely held religious or other*”¹² convictions according to the European Court. It may be an “*ethical*”¹³ conviction, in other words, moral or “*religious*.”¹⁴

Secondly, the content of the convictions must be identifiable and substantial.¹⁵ The Court states in this regard that: “*The term “conviction” taken on its own, is not synonymous with the words “opinions” and “ideas”. It denotes views that attain a certain level of cogency, seriousness, cohesion and importance.*”¹⁶ For instance, atheism and pacifism are philosophical convictions.

Thirdly, when the convictions are of religious nature, they must be linked to a “*known religion*,”¹⁷ even if “*the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or of the means used to express them.*”¹⁸ Therefore, while the judge may find that a conviction leading to an objection is actually part of the cult precepts of a given religion, he or she cannot, in principle, pass judgment on its legitimacy.

Fourthly, when the convictions are not of religious nature “*the expression “philosophical convictions” in the present context denotes . . . such convictions as are worthy of respect in a “democratic society,” and are not incompatible with human dignity.*”¹⁹ This reference to democracy and human dignity is not only useful, but it shows the link, constituent of human dignity, between personal conscience and common sense of what is just and good.

Criteria to assess the quality of the objection

The European Court distinguishes the objection from its motives, that is, from the conviction invoked in support of it. It is not sufficient for the objection to be based on sincere and serious religious convictions, the objection itself must also have the characteristics of a conviction.

¹¹ Human Rights Committee, *cf. Op. Cit.*, communications, mainly, CCPR/C/88/D/1321-1322/2004, § 8.3.

¹² *Bayatyan v. Armenia*, no 23459/03, GC, 7 July 2011.

¹³ *Chassagnou v. France*, no 25088/94, 28331/95, 28443/95, 29 April 1999, § 114, and *Schneider v Germany*, § 80.

¹⁴ *Eweida and others v. United-Kingdom*, no 48420/10, 36516/10, 51671/10, 59842/10, 15 January 2013, § 108.

¹⁵ Eur.Com DH, 15 May 1980, *T. Mac Feeley v. United-Kingdom*, DR 20/44.

¹⁶ *Folgero and others. v. Norway*, no 15472/02, 29 June 2007, § 84; see also *Valsamis v. Greece*, no 21787/93, 18 December 1996, §§ 25 and 27, and *Campbell and Cosans v. United-Kingdom*, no 7511/76, 7743/76, 25 February 1982, §§ 36-37.

¹⁷ *Valsamis v. Greece*, § 26.

¹⁸ *Manoussakis and others v. Greece*, 26 September 1996, § 47; *Hassan and Tchaouch v. Bulgaria* [GC], no 30985/96, § 78, and *Refah Partisi and others v. Turkey* [GC], nos 41340/98, 41342/98, 41343/98 and 41344/98, § 91.

¹⁹ *Campbell and Cosans v. United-Kingdom*, § 36.

Thus, the European Court held that the objection must itself have the characteristics of a “*conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.*”²⁰ A person who objected only intermittently or out of opportunism would not deserve the protection provided by this article. This could be the case of a person who objected on the grounds of cult limitations of a religion he or she did not practice assiduously. The person has to be consistent.

The objection has to result from “*a serious and insurmountable conflict*”²¹ between an “*obligation (...) and a person’s conscience or beliefs.*”²² Thus the conflict must meet two criteria, first, that of seriousness and second, that of its insurmountable nature. Regarding the first of these criteria (seriousness), it should be understood as requiring that the matter in question be not minor and have an impact on the conscience. This is not the case for instance, with the obligation to pay taxes.²³ As for the second of those criteria (the insurmountable nature), it means that the objection must be the person’s only possible choice: the person must be forced into refusing, with no other way-out.

Finally, the objection must not be motivated by “*reasons of personal benefit or convenience but on the ground of his genuinely held religious convictions.*”²⁴ This criterion of personal selflessness is enlightening.

Personal positions which do not constitute a conviction within the meaning of article 9 are then mere “opinions” or “personal convenience”²⁵ and therefore, cannot give rise to a genuine conscientious objection. They are not, however, devoid of any conventional protection, since such protection can be obtained on the basis of other rights and freedoms, especially in their negative aspects, in particular article 8 of the Convention.

Considering the present cases, it should be noted that in the case *Nyyssönen v. Finland* (No. 30406/96, Dec., 15 January 1998), the former Commission held that a doctor’s position on alternative medicine constituted coherent philosophical convictions and genuinely fall within the scope of article 9. Similarly, in the cases regarding the denial of blood transfusions for religious reasons (Jehovah’s Witnesses), the Court held that this denial fell within the scope of articles 8 and 9 of the Convention.

In the present case, the applicants do not rely on religious convictions in support of their objection, but on moral grounds relating to the nature of the vaccines in question. Those grounds, in that they relate to an objective reality, do not aim to be an opinion of a personal convenience, but a rationally founded “conviction,” that is, a moral conviction.

The difference between *moral* and *religious* convictions should be emphasised here, reflecting the difference between morality and religion. While religious convictions deserve respect to the extent of freedom of religion, the respect that moral convictions deserve depends more directly on the nature of the conviction at issue, since objections based on a moral conviction calls into question the very justice of the order to which it objects, whereas objections based on a religious conviction call into question only the tolerance of society.

²⁰ *Bayatyan v. Armenia*, § 110. It refers to the judgment *Campbell and Cosans v. United-Kingdom*, § 36, and, in contrast, to the judgment *Pretty v. United-Kingdom*, no 2346/02, § 82.

²¹ *Bayatyan v. Armenia*, § 110.

²² *Idem.*

²³ *C. v. United-Kingdom*, no 10358/83, Dec. From the European Commission of Human Rights, 15 December 1983, DR 37, p. 148.

²⁴ *Bayatyan v. Armenia*, § 124.

²⁵ *Idem.*

Objections based on a moral conviction, because they call into question the very justice of the order objected to, deserve to be examined with great care, for the personal conscience is the ultimate witness of justice in the face of wrongful laws and orders. It should be noted in this regard that the Court has recently recognised the existence of a risk of a difference between morals and positive law, in particular “*that law may diverge from morality.*”²⁶

Such conscientious objections, when recognised as valid by society, guarantee the objector genuine immunity. Indeed, recognition of the objections remove the obligation to perform the reprobated deed conscientiously, but even more so, it prevents any sanction against the objector due to his refusal. Indeed, if society admits that the deed objected to is wrongful, or that it can be considered wrongful, then it would be wrongful to compel a person to carry it out and to punish him or her for this refusal.

Society has in very few cases recognised the legitimacy of such moral objections. These are, in fact, situations in which society tolerates an evil that it considers necessary or unavoidable, such as war, abortion, or prostitution. No one can be forced to collaborate in these practices, even when they are legal, and cannot be sanctioned for such refusal.

Thus, the United Nations Human Rights Committee ruled that: “*repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibits the use of arms, is incompatible with article 18, paragraph 1, of the Covenant*”²⁷ which guarantees freedom of conscience and religion. When faced with conscientious objection to military service, the state should not punish objectors; at most, “*A State party may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside of the military sphere and not under military command. The alternative service must not be of a punitive nature, but must rather be a real service to the community and compatible with respect for human rights.*”²⁸ As Sir Nigel Rodley points out, it is because of “*the sanctity of human life*” that “*the right to refuse to kill must be accepted completely.*”²⁹ The same approach applies to health personnel.³⁰

6

Thus, in the case of a genuine conscientious objection of a moral nature, no sanction can be inflicted upon the objector. How can such an objection be recognised?

Criteria for conscientious objection of a moral nature

The fact that an objection is not of a religious nature is not sufficient to guarantee its objective justice. Moreover, to judge whether an objection is truly just or moral might seem out of place in a society which, in the name of relativism and subjectivism, has given up, at least partially,

²⁶ *Annen v. Germany*, no 3690/10, 26 November 2015, § 63.

²⁷ Communications nos 1853/2008 and 1854/2008, *Cenk Atasoy and Arda Sarkut v. Turkey*, views adopted on 29 March 2012, § 10.5. See also Communications nos 1642-1741/2007, *Jeong and consorts v. the Republic of Korea*, views adopted on 24 March 2011.

²⁸ Communication no 1786/2008, *Jong-nam Kim and consorts v. Republic of Korea*, Views adopted on 25 October 2012, § 7.4. See also Communications nos 1853/2008 and 1854/2088, *Atasoy and Sarkut v. Turkey*, views adopted on 29 March 2012, §. 10.4.

²⁹ *Atasoy and Sarkut v. Turkey*, views adopted on 29 March 2012, Appendix 2, Individual opinion of Committee member Sir Nigel Rodley, jointly with Krister Thelin and Mr. Cornelis Flinterman (concurring).

³⁰ See notably, PACE, Resolution 1763 (2010) of 7 October 2010 on « The right to conscientious objection in lawful medical care ».

the conviction that there is an objective good. However, to refuse to make this effort would be to give up the rationality of justice and to resign oneself to arbitrariness.

Four criteria can be identified to determine whether an objection is of a moral nature, and, consequently, whether it is based on a demand for justice.

i - The objection must be aimed at respecting the just and the good

To be “moral” the objection must be aimed at achieving justice and/or good, and therefore must oppose the violation of a fundamental right (for instance, of life or physical integrity) or of an objective good (for instance the natural environment). An objection that does not seek to respect a fundamental right or property would not be “moral.”

ii – The command objected to infringes a fundamental right or principle

This second criterion is linked to the first, since if the objection is aimed at respecting the just or the good, it is because the command infringes upon it. The command, while legal, creates an exception to a principle. The existence of this exception is often observable in positive law or in the history of the norm of which the application is denied. Thus, abortion and destructive research on the embryo were perceived as exemptions from the principle of respect of human life. Euthanasia and war are also exemptions or extenuating facts faced with the prohibition of homicide. In fact, when the command objected to infringes a fundamental right or principle, it refers to an action that is authorised by the law, but which no one could carry out freely without such an authorisation (no one has the freedom to carry out abortion, vaccination, euthanasia or to declare war by oneself.) The *Dictionnaire permanent de bioéthique et de biotechnologies* (“the Permanent Dictionary of Bioethics and Biotechnology”, free translation) describes the scope of conscientious objection in the field of medicine as follows: it “concerns all non-therapeutic medical deed in which there is a risk of infringing the integrity or dignity of the individual or of “reification” of the human person”³¹ (free translation). Indeed, for a medical deed to be lawful – and medical in the strict sense of the term – it must be therapeutic, respecting the principles of dignity and primacy of the human being,³² of integrity and lack of availability of the human body.

iii – The objection can be made universal

Kant’s categorical imperative provides a complementary criterion of rationality and justice: “Act only according to that maxim by which you can at the same time will that it should become a universal law.”³³ The question is therefore, whether society could continue to function in the event that none of its members would agree to perform the deed which is objected. More specifically, would a society be better off without old-age insurance,³⁴ vaccines, abortion, hunting, euthanasia, war, alcohol, and nuclear energy? This criterion of “universality” of the objection makes it possible to observe whether it is directed towards the common good or a particular good. An objection which cannot be universalised would be aimed at a particular good and would therefore not be the expression of a rational moral conviction ordered to justice.

³¹ *Dictionnaire permanent. Bioéthique et biotechnologies*, Paris, éditions législatives.

³² Convention on Human Rights and Biomedicine Article 2 – Primacy of the human being “The interests and welfare of the human being shall prevail over the sole interest of society or science.”

³³ “Act only according to that maxim by which you can at the same time will that it should become a universal law” in *Groundwork for the Metaphysics of Morals*, Immanuel Kant.

³⁴ *V. v. the Netherlands*, no 10678/83, the Commission’s decision of 5 July 1984.

iv – The objection relates to an ethically sensitive issue

As morality undergoes rapid social change, it is difficult to judge, in certain areas in which there is no longer consensus, whether an objection is rational. On such topics under discussion, the Parliamentary Assembly of the Council of Europe give a useful indication by calling on states to “*ensure the right to well-defined conscientious objection in relation to morally sensitive matters, such as military service or other services related to health care and education*”.³⁵ The Assembly focuses largely on issues of bioethics and religious and sex education. The Assembly’s recommendation is wise: society may disagree on what constitutes a good, but it is clear that some issues are so ethically sensitive that they cause much debate. This is a criterion of great utility.

Regarding the present cases, the denial of vaccination tends indeed towards the respect of a good (the person’s health) and is opposed to the infringement of a fundamental right (the respect of physical integrity). Moreover, a refusal is an expression of the principle of the free and informed consent of the person prior to any health intervention. Nevertheless, if the objection to vaccination were to become general, it would be likely to seriously jeopardise public health, in so far as the vaccines in question prove to be necessary. The vaccination to which it is objected cannot be considered objectively wrongful if the vaccines in question demonstrate a real utility for public health. Beyond this, people who refuse vaccination for themselves nevertheless benefit from the immunity resulting from the vaccination of the rest of the population, which brings about a problem of justice; a problem that is exacerbated when these people invoke the fact that a disease disappeared thanks to a vaccination policy with intent of avoiding this vaccination.

The distance between the object and the reason for the objection

8

In assessing the legitimacy of an objection, account should be taken of the distance between the object (the deed in question) and the reason (the conviction) for the objection. Being forced to hold a gun is not the same as being forced to use it. Every deed engages the conscience of its originator to varying degrees according to circumstances that must be assessed on a case by case basis.

The European Court expresses the need for a sufficiently close link between the object and the reason of the objection, in clear terms: “*Even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a “manifestation” of the belief. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9 § 1.*”³⁶ The Court specifies that “*the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case.*”³⁷ For the objection to be serious, there must thus be a sufficiently “*close and direct*” link between the reason for the objection and its object³⁸ so that the person commits morally through the action. In the present case, the existence of a close and direct link is established.

³⁵ PACE, Resolution 1928 (2013), of 24 April 2013, “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”, § 9.10.

³⁶ *Eweida*, § 82. See also *Skugar and others v. Russia* (Dec.), no 40010/04, 3 December 2009, and for example, *Arrowsmith v. United-Kingdom*, no 7050/75, report of the Commission of 12 October 1978, Decisions and reports (DR) 19, p. 5; *C. v. United-Kingdom*, no 10358/83, report of the Commission of 15 December 1983, DR 37, p. 142; *Zaoui v. Switzerland* (Dec.), no 41615/98, 18 January 2001.

³⁷ *Eweida and others. v. United-Kingdom*, § 82.

³⁸ *Borre Arnold Knudsen v. Norway*, Dec. 8 March 1985 on the admissibility (no 11045/84).

Where the refusal in question is motivated by a genuine conviction within the meaning of article 9, it deserves respect within society, but without being recognised as a requirement of justice, the existence of a sanction is not in itself sufficient to bring about a violation of article 9. The examination should then focus on the necessity of the sanction imposed in the present case. This examination is then no different from the one carried out under article 8.

The difference in approach, depending on whether one is within the scope of articles 8 or 9, lies in the fact that article 9 protects personal conscience, which is linked to the perception of the just and the good, whereas article 8 protects only “individual autonomy,” which is independent of it. The conscience of article 9, whether informed by religion or morality, is not autonomous; it is the conscience that links the individual and the entire legal order to justice.

The necessity of the sanction imposed

Regarding the examination of the necessity of the sanction imposed on a conscientious objection, it should be pointed out that both the Court and the Human Rights Committee have developed an approach (which we consider to be a very good one) of asking public authorities to set up a mechanism to reconcile the competing rights and interests, and not merely to put them in contrast. Indeed, the approach of justifying the legitimacy of the sanction only justifies the dominance of community over a person’s rights. On the other hand, a conciliatory approach seeks to respect the freedom of conscience and the autonomy of individuals in a pluralistic society.

Regarding military service, the European Court held that the absence of an alternative civilian service, reconciling the rights and interests of the objectors and of society, constitutes in itself a violation of article 9. Similarly, regarding dietary dictates of religious nature, the Court found that there was a positive obligation on the state to provide a diet compatible with the religion of the detained people.³⁹ Not only can a state not *de facto* compel a prisoner to eat food against his religious beliefs, but it must adjust the diet as best as possible so that the prisoner can feed himself without his religion being a source of unequal treatment. This conciliatory approach aims at seeking compromise⁴⁰ and at applying the principle of pluralism and tolerance⁴¹ which are at the core of the contemporary understanding of freedom of thought, conscience and religion.⁴²

In the present case, it should be noted that a significant proportion of the States party to the Convention do not impose any obligation to vaccinate and even provides for a positive right of conscientious objection. Europe is quite divided over this issue. In the European Union, Austria, Cyprus, Denmark, Spain, Estonia, Finland, Germany, Ireland, Lithuania, Luxembourg, Norway, the Netherlands, Portugal, the United-Kingdom and Sweden have no vaccination requirements.⁴³ The other countries require between one vaccine (Belgium) and twelve for Latvia. As early as 1898, the British Parliament passed the Vaccination Act,⁴⁴ which gave parents the right to withdraw their child from vaccination if they considered it

³⁹ *Vartic v. Romania* (no 2), no 14150/08, 17 December 2013.

⁴⁰ *Leyla Sahin v. Turkey*, GC, no 44774/98, 10 November 2005, § 108.

⁴¹ *United Communist Party of Turkey and others v. Turkey*, no19392/92, 30 January 1998, § 57 and *Serif v. Greece*, no 38178/97, 14 December 1999, § 53.

⁴² *Kokkinakis v. Greece*, no 14307/88, 25 May 1993, § 31; and *Buscarini and others v. San-Marino* [GC], no 24645/94, 18 February 1999, § 34.

⁴³ Mandatory and recommended vaccination in the EU, Iceland and Norway: results of the VENICE 2010 survey on the ways of implementing national vaccination programmes. Euro Surveill. 2012 ; 17(22):pii=20183, p. 3 and 4. Available online: <http://www.eurosurveillance.org/ViewArticle.aspx?ArticleId=20183>

⁴⁴ Bertrand A, Torny D. *Libertés individuelles et santé collective. Une étude socio-historique de l'obligation vaccinale*. Cermes - Rapport au Conseil supérieur d'hygiène publique de France, November 2004, 108 pages.

unnecessary and/or dangerous. This seems to be the first legal recognition of a right of conscientious objection,⁴⁵ even before military service.

Beyond that, it is interesting to note that the utility, and hence the necessity, of the compulsory nature of vaccination is not in fact attested because, as pointed out by the Chairman of the *Comité technique des vaccinations* (the French Technical Vaccination Committee): “Countries that give parents a choice have rates of vaccination coverage roughly similar to ours” (free translation), that is, similar to countries that impose vaccination through constraint.⁴⁶

There is therefore no evidence that constraint is necessary in terms of vaccination policy. What’s more, it can be harmful as vaccines and viruses evolve. François Vié Le Sage, a paediatrician and Infovac⁴⁷ expert points out in this regard: “*The question of whether the obligation should be maintained has been on the table for a few years now. Imposing some vaccines and recommending others establishes a hierarchy which is not necessary. Today, vaccines against whooping cough, pneumococcus or measles are only recommended although these diseases bring about more health problems than polio, diphtheria and tetanus!*”⁴⁸ In the same vein, the French National Academy of Medicine declared on October 27, 2015 regarding the obligation to vaccinate: “*In France, three vaccines are still covered by a compulsory regime: the vaccines against tetanus, diphtheria and poliomyelitis. Over time, this situation became paradoxical since the three diseases subject to compulsory vaccination are no longer at the forefront of the infection risks to which the French population is exposed.*”⁴⁹

Thus, a public health policy aimed at reconciling competing rights and interests, with an emphasis on education and recommendation rather than constraint, and with more flexible procedure, would certainly be more respectful of the moral and physical integrity of people guaranteed under article 8 and 9 of the Convention. It seems that the legitimate aim sought by compulsory vaccination could be achieved through less restrictive measures which would be more respectful of the fundamental rights involved. Interference in the exercise of these rights does not appear to correspond to a “*pressing social need.*”⁵⁰

⁴⁵ “The term “conscientious objector” was coined much later than “conscientious objection”. It seems to have first appeared in the 1890s, when it was applied to those who opposed compulsory vaccination.” See Moskos and Chambers, eds., *The New Conscientious Objection*, p. 11 in, United Nations Human Rights Office of the High Commissioner, “*Conscientious Objection to Military Service*”, HR/PUB/12/1, United Nations, 2012, p. 4.

⁴⁶ Cécile Casciano, « L’arrêt de la vaccination obligatoire est inéluctable », *L’Express*, 20 mars 2015.

⁴⁷ InfoVac-France is a hotline for information and consultation on vaccinations in France.

⁴⁸ *Idem*. Free translation.

⁴⁹ Académie Nationale de Médecine, Communiqué, *À propos du maintien ou de la levée de l’obligation vaccinale*, 27 October 2015, free translation.

⁵⁰ *Sviato-Mykhailivska Parafiya v. Ukraine*, no 77703/01, 14 June 2007, § 116.

**Third-party intervention of the EFVV in the case of Pavel Vavříčka v.
the Czech Republic (no. 47621/13) and 5 other cases.**

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1 – Democracy and the medical act:

In a modern democracy, when societal decisions are taken there are always two specialised parties to guarantee impartiality. In national assemblies, senates or other parliamentary chambers in democratic regimes there is the authority in charge of societal decisions and the opposition.

In the working world there is company management on the one hand and the unions on the other, who are familiar with the company's workings, or labour lawyers who have the power to challenge management decisions and defend the physical, professional and financial interests of the employees.

In the world of justice, however serious the offence, when it entails a real infringement of an institutional or individual freedom, there is the civil party on the one hand, represented by a lawyer, and the person or legal entity incriminated, whose legal interests are defended by a lawyer who takes the client's side because of the adversarial nature of the judicial proceedings. With rare exceptions the lawyers for the civil party and the defence are appointed by their respective clients.

2 – How society represents patients:

In the public health field there is no specialised trade union to represent the individual and no specialised public health body to defend people's medical choices and interests.

In France, as in other countries, there is a "medical association" (*ordre des médecins*) and a High Authority for Health in charge of the health sector, but there are no expert public health bodies specialised in representing patients in disputes. The experts are attached to the appeal courts and appointed by the legal institutions. The institutional framework that defines the democratic balance of power in justice has not been applied to public health.

Unlike in law, where legal representation is available to the civil party and the defence, there is no legal representation in public health to defend the interests of the opposing parties.

This is all the more unfortunate in so far as where, in justice, laws are written and updated by the case-law, public health does not lend itself to the establishment of regulations, as the parameters of living beings evolve over time, hence the need for professional representation for patients and others in the face of the health authorities. This representation has already been initiated in France through an academic approach that awards "expert patient" doctorates. The Patients' University was set up in France and various other countries by Professor Catherine Tourette-Turgis: "The Patients' University is an innovative teaching scheme that includes "expert patients" from the voluntary sector in university diploma courses in therapeutic care. **Recognising the experience and expertise of the sick: a public health issue**",

<https://universitedespatientssorbonne.fr/>). **It is time to institutionalise this representation at societal decision-making level.**

3 – Legal representation of public health actors:

As things stand at present in France, experts are appointed by interim order of the President of the *Tribunal de Grande Instance* and play a role which is open to criticism, as they do not

possess all the general knowledge or all the information needed to analyse a case. Their role is all the more debatable as these so-called experts are all doctors or researchers specialised in their own highly restricted fields and are incapable of making a decision on such a general question as the appropriateness of a treatment, *a fortiori* a vaccination, the impact of which on an individual's physiology is unknown.

Compartmentalisation, hyper-technology and hyper-specialisation in clinical practice today make it impossible for public health actors to give an opinion on subjects outside their own very narrow specialised field of expertise.

4 – Responsibility of fundamental research:

Fundamental research in the medical field is generally very reductive, limited to the study of isolated molecular mechanisms and their effects, mostly in the limited context of *in-vitro* experiments. This is mainly for organisational and financial reasons; if their work is to be published, researchers are expected to present single-parameter experiments.

This can be seen in the testing of medicinal molecules, for example. It fails to study the impact on the millions of cells, other than those studied *in vitro*, which make up each of the individual's physiological systems, and therefore on our overall physiological system. Yet we know today that all of an individual's physiological systems are interdependent and that an impact on one of these systems will affect the others (for example, the molecular relationship between the central nervous system and the immune system; how the microbial, enteric, immune and neuronal systems interact in the intestinal sphere; the importance of micro-organisms in the human physiology...)

In addition, funding researchers is effective only in terms of the scientific papers they publish, which often results in mediocre scientific content and ill-advised medical content which nevertheless generates business for the pharmaceutical laboratories and large-scale investment (examples: Mediator, a diabetes medicine marketed by Servier laboratories – legal proceedings pending; a vaccine against the hepatitis B virus and its responsibility in triggering multiple sclerosis, which has been a frequent subject of legal action...).

Another classic example which has long been the subject of shameful debate in the field of biological research is the fact that a “failed” experiment will never be published, a negative result or one which cannot be reproduced is often cast aside because of some unknown factor that allegedly interfered with the experiment. In 1955 a Journal of Irreproducible Results was even founded in Israel by virologist Alexander Kohn and physicist Harry J. Lipkin, who wanted to provide scientists with a humorous science journal.

5 – Responsibility of pre-clinical research:

As regards vaccinology, vaccines are mainly tested on murine models, whose immune system resembles the human immune system. However, while the immune systems of mice and men are alike in cell distribution and general functions, they do not function in the same way at the molecular level. In particular, the presentation of the antigen in a vaccine by the dendritic cells (also called antigen-presenting cells) does not occur in the same way in the mouse as in the human being. This explains why the pharmaceutical laboratories regularly increase the doses of adjuvants in an attempt to achieve effective immunisation in cases where the antigens are not presented to the immune system correctly.

6 – Responsibility of clinical research:

In clinical research the obligation is systematically to select candidates who will take part in clinical tests “to effectively test the treatment”. Clinical studies are carried out on candidates with a favourable profile based on certain inclusion factors, while those who do not possess the requisite characteristics are excluded, in order to guarantee a statistically homogeneous study group (although that homogeneity is very relative because of the physiological and genetic differences between individuals, and this results in a high exclusion rate).

It is not possible, for example, to include individuals with any form of physio-pathological susceptibility. As soon as an accident, however minor, occurs, or a symptom appears that is unrelated to the therapeutic procedure under study, the individual concerned is excluded from the study with no further investigation, except in the event of a dramatic or fatal incident. In fact, therefore, the result will obviously be skewed because potential side effects of the treatment tested will be ruled out, legitimately so in terms of health precautions, but as a result we will never know what impact the treatment would have had in the long term. Just as the candidates are monitored for a few months after the clinical tests because this is provided for in the funding for the protocol... But what about the long-term side effects?

7 – Responsibility of court-appointed experts:

When courts request expert opinions the experts are expected to inform them whether the information on undesirable side effects, and the precautions included in the instructions for use of the products released by the laboratories were sufficiently clear, complete and substantiated as regards post-vaccination pathologies. In practice the undesirable effects never concern severe pathologies because the first symptoms observed, however benign, cause the subjects to be excluded from the clinical studies immediately. What precautions for use can there possibly be when no dramatic experience is ever really addressed during the clinical studies?

Experts are also asked to describe the disorders and sequels imputable to the administration of vaccines and to research the science. But no scientific research is published or even conducted post-vaccination, particularly when it means announcing the side effects of vaccinations or even treatments.

8 – Responsibility of the health authorities and their experts:

As a general rule the views expressed by the health authorities on side effects are very partial. In one doctoral thesis presented at the Paul Sabatier University in Toulouse, on 4 July 2014, for a State PhD in Pharmacy (C. MERLO, Annex 1), which is considered an authority among recent reference works, having been approved by an expert panel of professors, it does say with regard to adjuvants that “*some publications associate their use in vaccines with autism, Guillain-Barré syndrome, multiple sclerosis or the appearance of macrophagic myofasciitis*”, with references to the corresponding publications, and that “*the causal links for all these undesirable side effects have always been refuted by the scientific literature and experts*”, but without any references to this scientific literature or the names of the experts concerned being given. **It is common practice never to mention the experts in this kind of situation.**

Scientists should produce these publications which are not mentioned and do not exist for legal purposes, and the experts who do not exist because their names are not cited in a book on the specific subject of adjuvants should speak up.

In the same “reference” document the author says: “*All the controversy about vaccination and adjuvants leads to public fear that can lower vaccination rates and allow diseases to reappear.*” Concerning the reappearance of diseases, this is untrue, as the pathologies appearing today are known to be pathologies with new resistant germs: the tuberculosis that has resurfaced is a form resistant to the available treatments, and the BCG vaccine created by Messrs Calmette and Guérin to “protect” people from tuberculosis in the last century is ineffective against this “new tuberculosis”.

9 – Incrimination of the use of toxic adjuvants:

The author of the same thesis describes adjuvants according to the pharmaceutical laboratories they belong to, stating that thus far aluminium-based compounds (made up mainly of hydroxide or phosphate) are those most commonly used in the production of human vaccines. It seems that the choice of the adjuvant used is based not on medical criteria but on convention, for nothing in the use of adjuvants really contributes to the efficacy of the vaccine, on the one hand, or to the reduction of side effects, on the other. The neurotoxicity of aluminium was denounced over 100 years ago. Scientists assume that the damage aluminium does to the cells is linked to the production of free radicals, interference with the glucose metabolism and disturbance of the nerve impulses. Vaccines which contain aluminium and mercury increase the effects of this neurotoxicity (research done by Professor Boyd Haley, a specialist in medical chemistry at the University of Kentucky in the United States).

The immunotoxic mechanisms of adjuvants are perfectly well-known and are presented by the author of the thesis mentioned above (Annex 4). Freund’s adjuvant (produced using highly immunogenic bacterial germs) and aluminium salts are the only adjuvants currently registered for human medicine. A paper used in veterinary training (S. VERMOUT, Annex 2) says that “the production of antibodies induced by these adjuvants remains moderate. For new vaccines which will require high levels of titration it is likely that other adjuvants will have to be used.” The paper also says that “unlike aluminium, calcium phosphate is not a foreign body for the organism; so it is better tolerated and resorbed (Cedarlane Laboratories Limited, 2003)”. Curiously, this adjuvant, which has been demonstrated to be harmless and has been used in different vaccines in the past (in the early 1970s, aware of the risks presented by aluminium salts, the Institut Pasteur developed vaccines adsorbed on calcium phosphate) [Translator’s note : this sentence seems to be incomplete].

10 – Responsibility of the pharmaceutical industry:

In January 1985 the Institut Mérieux acquired the Institut Pasteur’s vaccine production activity. The Institut Mérieux decided to do away with calcium phosphate in vaccines, in spite of the warnings issued by researchers at the Institut Pasteur. Marc Girard (scientific director in 1985 of Pasteur Vaccines, created by the Pasteur / Mérieux merger) admitted that economic criteria had prevailed in the decision to impose aluminium as the only adjuvant. Calcium phosphate is no longer used and neurotoxic aluminium-based compounds continue to be used, or derivatives of Freund’s adjuvant, which is known to be toxic and highly painful, and has been taken off the market in many countries.

11 – The thorny question of how to administer vaccines:

There has only been one really successful test in the past: the oral vaccine against polio developed by Dr Albert Sabin, an American immunologist of Polish origin. The period 1963 to 1980 saw the introduction of vaccination using live-virus vaccines attenuated by Dr Sabin's method, together with the decision to mass-vaccinate the population between 3 months and 40 years of age. The efficacy of the Sabin-type oral vaccine led to a sharp decline in the number of cases. The polio vaccine is often cited as a success of vaccinology, but in actual fact the administration of this vaccine has nothing in common with the means of delivery preferred in the 21st century. The vaccine was delivered orally, via the mucus, whereas modern-day vaccines are delivered by injection.

12 – Physiological explanations: the difference is fundamental:

The mucosal surfaces serve many vital functions, including respiration (nasal passage and lung), absorption (gastrointestinal tract), excretion (lung, urinary tract, large intestine) and reproduction (reproductive tract). In performing these functions, the host of an infectious germ is inevitably exposed to environmental antigens, food particles, commensal flora and pathogens. Mucosal surfaces contain specialised dendritic cells (DCs) capable of sensing these external stimuli and mounting appropriate local responses depending on the nature of the elements they encounter. In the absence of pathogens, mucosal DCs either ignore the antigen or induce regulatory responses, particularly in the presence of toxins of various origins. Upon recognition of microorganisms that invade the mucosal barrier, mucosal DCs mount robust protective immunity. Mucosal DCs process external information and direct appropriate responses by mobilising various cells of the innate and adaptive immune systems to achieve homeostasis and protection (maintaining physiological equilibrium). (Reference: A. Iwasaki, Mucosal dendritic cells, Annual Review of Immunology, 2007, 381-418)

There are many DCs in the human body, but the mucosal DCs specialise in immunisation, that is, picking up a pathogen and triggering an appropriate response. Until recently Dr Sabin's vaccine was the only mucosal vaccine and the only really effective vaccine; it made it possible to eradicate poliomyelitis, demonstrating the merits of vaccinology.

Mucosal DCs are the only really mature cells in the immune systems of newborn babies, and the most important cells in the immune system until the age of 1 or 2 years. They identify germs and activate the maternal antibodies still present in the baby's blood.

The sub-cutaneous DCs targeted by vaccination by injection are less numerous, as the skin is thicker and less penetrable than the mucus and therefore does not need so many dendritic cells, and their function is not specialised like that of mucosal DCs, which distinguish between pathogens and minor antigens which are not actively pathogenic. That is a first fundamental error of vaccination by injection. Soliciting sub-cutaneous DCs causes serious inflammation at the injection site (we have all observed these sometimes painful indurations and irritations). These inflammations spread all round the body, producing inflammation markers that solicit the immature immune systems of young children, for example. Paediatricians almost always observe intestinal inflammation in children injected with the MMR vaccine. Other inflammatory processes affect the nervous system (at the intestinal or the cortical level) causing the autism often observed in young children round the world.

13 – Inefficacy of vaccines: non-neutralising characteristic

Scientific and medical publications clearly show that most vaccinations by injection are “non-neutralising” in adults, raising frequent questions as to the advisability in clinical conditions of repeating vaccines which have not worked. As these neutralisation tests are not systematic in the general population, and considering the large number of cases of non-neutralising vaccinations observed mainly in public health staff (hospital and biological laboratory or medical research staff), there is reason to doubt the efficacy of vaccinations by injection. The most likely hypothesis is that the DCs solicited subcutaneously respond erratically to the many and varied antigens and molecules present in the vaccines.

14 – Example of a clinical case

Let us take the recent example of a clinical case of a child showing signs of “convulsive encephalopathy following a herpes simplex virus (HSV-1) meningoencephalitis” during a vaccination period. The lawyers have not yet established the cause-and-effect link between the vaccination and the pathology; the case is still pending.

The clinicians persisted in pursuing a vaccination protocol that bore no relationship with the infection observed (Infanrix Quinta, a vaccine against diphtheria, tetanus, whooping cough, poliomyelitis and meningitis, and Prevenar against pneumococcal infections – the pathological link being still under debate among experts).

It is clearly understood that in the case of such a serious neuronal infection the production of neurohormones is disturbed. It is also well known that there is a link between neurohormones and cytokines, substances developed by the immune system that regulate cellular activity (Annex 3 – I. J. Elenkov, Neurohormonal-cytokine interactions: Implications for inflammation, common human diseases and well-being, *Neurochemistry International* 52 (2008) 40-51). In these conditions, how is it possible to imagine that an immune system can react normally to a vaccination? Each stage of the vaccination protocol was concomitant with the pathogenesis, but the clinicians continued the vaccinations.

15 – Weakness of the medical system:

The interdependence of the physiological systems was not taken into account, through oversight or ignorance. Yet the phrase “*Primum non nocere*” is one of the principal precepts that all students are taught in medical and pharmaceutical school.

“*In dubio ipsum abstinendi*.” Even if these vaccinations were administered in keeping with the normal vaccination schedule, it would have been wise to refrain from any therapeutic act not directly related to the serious clinical conditions observed in the child concerned. The doctors should have used their judgment to place the importance of this single vaccination in the chronology of clinical events in perspective in view of the child’s condition and taken the initiative not to administer the vaccinations in what was clearly a disturbing situation.

The recurrence of this type of situation raises the question in our society of performing an intrusive medical act endorsed and imposed by “administrative order”. Except in extremely urgent situations, even surgery, which is an “invasion of the integrity of the human body” (article 16-3 of the civil code) requires the prior informed consent and agreement of the

person concerned or a family member (except in exceptional cases), and “informed” in this context means “with a full explanation of the processes triggered by the proposed therapy”.

In the medical world there seems to be some confusion between “informed consent” and “permission granted by a patient to perform a specific intervention”. This is perhaps because doctors, in spite of their lengthy studies, are not taught to transmit scientific and medical information in terms patients can understand, or they are not given all the necessary scientific and medical information to do so, which rather undermines the law on informed consent.

16 – Justification of a medical act: from scientific observation to therapeutic application

Because of the complexity of animal physiology, no scientific study can make it possible today to say whether scientific knowledge of therapeutic approaches is exactly in tune with an individual’s physiological responses, and *a fortiori* those of every individual. What is more, the information transmitted by a fundamental research scientist to a pharmaceutical laboratory, then by a “medical visitor” to the doctor responsible for the vaccination, by no means enables the doctor to present the facts concerning a therapeutic procedure to a patient in such a way as to enable them to give their informed consent.

17 – Justification of informed consent

In France the Law of 29 July 1994 on respect for the human body, as amended by section 70 of Law no. 99-641 of 27 July 1999, states “There shall be no interference with the integrity of the human body, except in the event of medical necessity for the person concerned. The person’s prior consent must be obtained except where their state of health requires medical intervention to which they are unable to consent” (civil code, article 16-3).

In France vaccination is an administrative obligation, with no signature of free and informed consent. Although vaccination is an “intrusive” procedure in the eyes of the law (and therefore subject to informed consent), no one is asked for their informed consent when they are vaccinated.

In addition, “consent” means “acceptance or otherwise” of the “proposed” therapeutic procedure, which in fact implies therapeutic freedom and therefore freedom with regard to vaccination. Perhaps that is why informed consent is not requested when vaccinations are administered, so as not to give the patient a legitimate choice.

18 – Back to the clinical case example: risk factors; genetic susceptibility factors

In the case mentioned earlier, before the vaccines were administered the child had no unusual health symptoms for his age. The child was normally developed, with no genetic pathology and no known risk factors; “the initial pathology was an infection by the HSV-1 herpes virus. That infection was not foreseeable”; “there were no symptoms prior to the onset of herpetic meningoencephalitis”: so prior to the administration of the vaccines there were no signs that there was anything wrong with the child.

In this case the experts say: “... factors of genetic susceptibility to HSV-1 encephalitis have been identified in children who suffer from herpetic encephalitis.” In actual fact, it has never been demonstrated that the presence of susceptibility factors triggers pathologies. A

susceptibility factor is merely a biological coincidence observed in patients in this particular case who showed signs of HSV-1 encephalitis, and fortunately its presence is not a pathogenic sign, much less a systematic one. Furthermore, the assertion concerning factors of genetic susceptibility to HSV-1 encephalitis is inadmissible because the expert report indicates that the child “had no genetic pathology and no known risk factor”.

If the genetic susceptibility factors spoken of since the sequencing of the human genome were potential causes of adverse reactions to vaccinations we would have to stop vaccinating the whole world population, for there would be a very real danger of unleashing the worst pathologies. There is an imperative need for more medical research to ensure that everyone can be vaccinated without any misgivings.

Even if we “accept that herpetic meningoencephalitis occurs on a predisposed genetic terrain” we cannot decently guarantee that the appearance of a pathogenicity is not linked to the activation of viral production by stimulation of the immune system by vaccination in this particular case of predisposition.

“The appearance of the herpetic meningoencephalitis is independent of the administration of the vaccines. The information given by the respondents was full, sufficient and pertinent.” The very notion of genetic susceptibility to HSV-1 encephalitis, advanced by the experts themselves, contradicts that statement by the simple fact that the administration of the vaccine cannot have been studied in the context of this genetic susceptibility, and further scientific tests should be carried out in the specific context of a genetic susceptibility to HSV-1 encephalitis to demonstrate that in the case of the child mentioned above there is no direct or indirect causal link between the vaccination and the encephalopathy.

It cannot be said, therefore, that “the appearance of the herpetic meningoencephalitis is independent of the administration of the vaccines” and that “the child’s pathology is independent of the vaccination”. Very little is known about the activation of cellular factors capable of inducing production of the HSV-1 virus. The suggestion that it is independent of the administration of vaccines is scientifically and mistakenly peremptory.

19 – Lack of scientific proof:

It is therefore up to the scientific and medical authorities to provide scientific proof that “there is no cause-and-effect link between the child’s pathology and the vaccination”. What applies to this case applies to all the other cases. Numerous cases of serious pathologies have been reported following vaccinations. At a time when the number of serious pathologies is on the increase – autism, multiple sclerosis, Guillain-Barré syndrome, macrophagic myofasciitis, etc. – and vaccination is suspected to be the cause, we need to eliminate the potential risks and scientifically demonstrate that there is no causal link between the pathologies observed post- vaccination and the administration of the vaccines. This means that it is essential to apply the principle “*in dubio ipsum abstinendi*” and that **scientific medical research must be undertaken to make sure that no vaccine will induce a pathology, severe or benign, depending on a person’s genetic makeup, medical background or biological fragility.**

20 – Scientific and medical responsibility of a democratic society:

“Vaccines cause no pathologies, disorders or sequels”, we are told, peremptorily and mistakenly, by those who support vaccination, but in a significant number of legal

proceedings in similar cases of pathologies resulting from vaccinations, pharmaceutical laboratories and governments have been found guilty.

It is inconceivable, therefore, that there should be no scientific research to determine whether vaccination was the cause of the serious pathologies observed; without demonstration in the specific context of each case observed, there remains too much scientific, medical and pharmaceutical uncertainty regarding the harmful effects of vaccination.

Even the economic factor cannot be relied on to avoid the necessary research. Decades and billions of dollars are spent funding blind scientific research (such as High Throughput Screening (HTS) of vast databases of compounds for activity against biological targets, using automation, miniaturised testing and large-scale data analysis) and clinical studies to produce treatments the side effects of which we look at only exceptionally and often after numerous clinical applications.

What is remarkable in the cases brought to justice which eventually lead to compensation by the laboratories concerned or by governments, is that the legal proceedings surf on the notions of risk, minimisation of the reality of the facts and wearing the adversary down, with cases going on for years and years, while the subjective reality of scientific and medical knowledge is denied, in the hope of stifling criticism of the collateral damage done more or less randomly by treatments theoretically meant to cure or prevent disease.

In legal disputes over accidents or offences, the benefit of the doubt prevails in almost all democracies. Why is that not the case when the offence takes the form of a serious illness?

21 – To allow for doubt is to respect people's free will in a democratic society

At the moment our understanding of physiology is in its early stages, in spite of the scientism of the 19th century and the advanced but mechanistic research of the 20th and 21st centuries, which endeavoured to impose their "learned" knowledge to justify a "Science" completely detached from any Pragmatics of Life (pragmatics is a branch of linguistics which studies elements of language the meaning of which can only be understood from the context in which they are used). We claim to have sequenced the human genome, only 3 to 5 percent of which has been worked out (more, in fact, in how they are expressed and in certain biological coincidences than in their function; what does it really mean to advance the notion of susceptibility genes in that context?); so far we only know the broad lines of what goes on in a living human cell; we have only just discovered a sizeable new organ in the human body (the interstitium), and understood that many microorganisms (viruses, bacteria and others) are components of human physiology (microbiota and microbiome) and that their pathogenicity is in fact largely the result of the ill-treatment we inflict on our physiology, of which they legitimately and biologically form a part.

Vaccination as it is practised today is an archaic procedure in respect of which laboratories and the institutions that control them have accepted certain arrangements (replacing an inoffensive adjuvant with one known to be toxic for economic reasons / continuing to inject substances sub-cutaneously knowing that this restricts their efficacy and that in the past the Sabin vaccine, a mucosal vaccine, made it possible to eradicate poliomyelitis). How dare we

impose a treatment on a young child without his or her consent, knowing that we are injecting a toxic adjuvant and that its efficacy is hard to predict.

Our society stands before our human physiology and physiopathology like a linguist before Etruscan inscriptions, deciphered but incomprehensible. Even if we have made edifying discoveries we do not yet really know the language of life, so how can we justify the pertinence and universality of a treatment?

The idea is not to challenge the principle of immunisation, which can even occur naturally, through a chance encounter with a pathogenic germ.

- Who in the 20th century did not catch what was considered at the time to be a benign disease, such as measles, chicken pox, scarlet fever or German measles, without it being lethal?
- Who has never had ordinary symptoms like those brought on by the flu virus or the coronavirus we hear so much about, when they are just ordinary viruses almost everyone has been infected by at some stage with no other consequences than a few days of fever?
- Why do they want to rid us of these common infections at any cost when we know they will just return in a more pernicious form in the near future?

Messrs Calmette and Guérin ridded us of tuberculosis but it appears to be returning with a vengeance, more resistant than ever, without us wondering why it is resistant. We all know that infectious diseases are all the more resistant today, that the pathologies associated with them are increasingly serious (AIDS, Ebola in Africa, resistant tuberculosis all over the world, the revival of bubonic plague in Madagascar, various cancers of infectious origin ...). Why? We know that antibiotics are less and less effective because they are used in excess and because *doctors and patients* are ill-informed, and in some countries they are used far too widely in livestock to prevent disease.

Widespread vaccination is currently recommended in the aggressive vaccination policies of many governments although there is no scientific evidence of the wisdom of this approach. In the 1950s and 60s the WHO did observe that in countries like India or Sub-Saharan Africa vaccine coverage of over 80% failed to stem some very lively smallpox epidemics (World Health Organization, The global eradication of smallpox: final report of the Global Commission for the Certification of Smallpox Eradication, Geneva, December 1979, 122 p.).

The idea is to highlight the shortcomings of medical science, what it knows, the research methods used, the relevance of its vaccination methods and the risks, however small, it poses to our society, and to make it assume those risks.

22 – Thoughts and prospects:

Were those patients who were diagnosed with multiple sclerosis, autism or macrophagic myofasciitis clearly informed by the doctors who vaccinated them of the physiological consequences of the vaccination, whether the molecules injected into their bodies or those of their children were harmless or harmful, what side effects or accidents the therapy might cause? This information comes out after a clinical accident, in the despair of irretrievable clinical situations. While some European countries let people choose whether to be vaccinated or not, others continue to oblige their citizens to undergo a universal,

indiscriminate medical intervention with no regard whatsoever for the biological integrity of the patients or for their free and informed consent.

One solution would be to inform the patients or their representatives clearly and in detail of all the potential risks of a curative or preventive treatment and to inform them that they are free to accept or refuse the treatment. But are doctors capable of explaining all the details of the physiological processes involved so that their patients understand them? Logically the patient would then sign an informed consent or refusal, while those proposing the treatment admit on the same document that they do not know all the risks involved and that they have informed the patient of the possibility that there will be side effects, known or unknown, large or small.

ANNEX 4

Early reactions at the injection site	
Non-immune	Immune
Primary irritation	Danger signals
Cell lysis	PAMP TLR complex
	Inflammatory immune complex
	Chemotaxis

Cytokine: proinflammatory:
IL-1. TNF - α . IFN- β . IFN- γ . IL-6. IL- ς

Circulatory system

Local reactions

Inflammation. Local pain.
Ulceration. Granulomas. Arthus reaction.

Systemic reactions

Flu-like symptoms and other
acute phase responses.
Capillary leak syndrome.
Hepatic metabolism change.
Autoimmune diseases.
Allergies.

Representation of the immunotoxic events that can appear when adjuvants are used

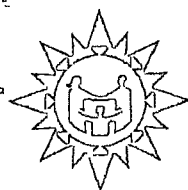
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ANNEXES

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ROZALIO

Rodiče za lepší informovanost
a svobodnou volbu v očkování, z.s.

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The Registrar of the ECHR
The European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

11th February 2020



GRAND CHAMBER

Written comments regarding 47621/13 Vavříčka v. the Czech Republic and 5 other applications

Dear Sir/Madam,

ROZALIO association – Parents for better public awareness and free choice in vaccination – is a non-profit organization founded in 2007 by a group of parents not satisfied with the existing situation concerning compulsory vaccination. There are more parents every year who want to know more about vaccination, they question the necessity of some vaccinations and their timing and feel their inalienable right to decide about their children and matters concerning them freely and on the basis of a sufficient amount of information.

Possible ruling of the European Court of Human Rights in favour of complaining parties can contribute to our goals to be fulfilled, meaning that the effort for high vaccination coverage in the Czech Republic would not be achieved only by repressive measures, as it is currently the case, but for parents to have the option to decide about the vaccination of their child and their health freely, well-informed and responsibly.

Rozalio's activities focus on two main areas:

1. Consulting, supporting parents when solving problematic situation with vaccination and possible assistance when communicating with public institutions.
2. An effort to affect vaccination policy of the state, while communicating with deputies, with the Ministry of Health and other institutions' officials, proposing possible changes to vaccination system and calling attention to examples of bad practice shared directly by parents.

I.

The majority of parents we encounter do not refuse to vaccinate their kids completely, but they ask for an individual approach and vaccination in different schemes than uniformly prescribed by Czech legislature. They care for the health of their children and approach vaccination with caution, because they are aware that just like other medicine also vaccination can have undesirable effects. A big group are parents of children who have been health stigmatized and children who have experienced adverse events after vaccination. These definitely want an individual approach for their children.

Parents also often do not know how to communicate with doctors or officials who do not treat them with respect. The Ministry of Health has not yet produced any quality information source – a portal where you could find comprehensive information parents look for. Our state, instead of trying to offer vaccination options, reckons that high vaccination coverage will be secured by strict sanctions and zero tolerance policy against individual families. **However, this approach leads to an increasing distrust in vaccination system in a significant number of parents.**

It is the parents who have the greatest interest in vaccination to be done as warily as possible and in all the specifics of their child to be taken into account. We are therefore convinced that parents

should be involved in the decision-making process and be its equal part. Repressing and pressing parents, which is happening, unfortunately decreases the trust in vaccination as such. Repressions also disrupt the relationship of trust between parents and paediatricians.

II.

The possibility of free and informed parent's decision is prevented by the existence of Public Health Protection Act. It imposes vaccination obligation under a threat of a financial sanction and, at the same time, forbids the children who have not been vaccinated properly to access any preschool facilities both public and private. It also bans children from participation in school trips, retreats – children camps, skiing trainings etc.

Financial sanctions

Each of parents face criminal procedure and can be fined up to CZK 10,000 for refusing vaccination as such but also parts of compulsory vaccination. Exceptions from compulsory vaccination were admitted by Constitutional Court first in 2011 and 2015.

Constitutional Court stated in its ruling related to constitutionality of compulsory vaccination, file number III. of constitutional court 449/06 of 3 February, 2011 that there must be exceptions, when vaccination cannot be sanctioned or otherwise enforced - especially for the reasons of faith, convictions or conscience of parents or other constitutionally relevant reasons. The ruling of Constitutional Court file number. I. CC 1253/14 of 22 December, 2015 first outlined also the so-called conscientious objection to compulsory vaccination and set conditions under which the reservation can be acknowledged and vaccination obligation does not have to be enforced in the concrete case.

Quoting Constitutional Court ruling:

45. The insistence of reasons given as a part of conscientious objection to compulsory vaccination remains undoubtedly subjective. It is the "here and now" which prevents us from unexceptional submitting to the order of law. The variety of contents of the objections cannot be defined easily; undoubtedly the conviction that there can be irreversible damage to health of a close person can potentially be one of them. If it is a legal guardian for a minor, specific aspects of their interest for not conducting vaccination need to be taken into account.

51. ...It needs to be emphasized that the exception from a legal obligation can be considered only in extraordinary cases, closely connected to a person subject to vaccination obligation or to the people close to them (highly undesirable response to former vaccinations of this person, their child etc.).

44. ...Clause 15 para.1 of the freedom of conscience or convictions of the bearers of a fundamental right remains an immanent aspect of the case. The often-repeated argument about vaccination as an intervention to bodily integrity in accordance with clause 7 para. 1 of Convention cannot be disregarded, although not only the untouchability of a person is at stake here, but also (and maybe even more) the aspect of injected vaccine with long-term effects to the body with consequences for person's health in accordance with clause 31 of Convention. In all cases, these are fundamental rights eligible for mutual measure against each other (optimization).

Naturally, there are also parents in the Czech Republic who refuse to vaccinate for religious reasons, Constitutional Court admits this as well:

50. Surely, the freedom of conscience, belief and conviction is autonomously applied only in private, even intimate area. In case of outer expression, in public space, it cannot be deprived of explicitly modified (cf. clause 16 para. 4 of Convention) and implicitly present limitations. Thus, also refusing compulsory vaccination for religious reasons and belief, which cannot be fully excluded based on specific circumstances, must remain a restrictively perceived exception...

In 2011, proceedings for offences stopped being initiated in the Czech Republic, parents were not sanctioned for refusing vaccination or partial vaccination. Proceedings for offences were initiated in 2018 and parents are fined. Some parents justify their decision by conscientious objection. This objection

has not been acknowledged in any case neither by the administrative body, i.e. regional public health office, or the body of appeal, the Ministry of Health. Since the verdict of Constitutional Court acknowledging conscientious objection, nobody has been granted it. Institutions do not want to respect the finding of Constitutional Court and when parents decide they do not want to grant parents the option to decide for partial vaccination or no vaccination for serious reasons.

Conscientious objection has never been taken into account even when admitting children to preschools. No child who would not have proper vaccination has ever been admitted to optional preschool education, even if for their serious adverse events, or adverse events of their siblings or parents. The objection is not acknowledged even in these cases.

Participation in preschool education

Only a child that is properly vaccinated against 9 diseases, hexavaccine in a scheme 2 + 1 and a dose of MMR vaccine, can be admitted to a public and private preschool. Amendments to Public Health Protection Act are currently being discussed so that vaccination against B type hepatitis would not be required for these facilities. Proper vaccination required for attending preschool would then be against eight diseases, while compulsory vaccination still requires vaccination against nine diseases.

An exception for a child, who does not have all compulsory vaccination to be admitted, is a confirmation of permanent contraindication. However, it happens often that health condition preventing vaccination is not considered permanent by a doctor. In case a child has, for example, serious problems with their immune system, digestion or suffers from neurological or severe skin problem, which are not considered as contraindication for vaccination by doctors, it is a temporary contraindication.

Anaphylaxis after a prior dose of a certain vaccine or its elements and severely immunocompromised individuals (permanent contraindication only to live vaccines) belong to permanent contraindications.

Temporary contraindications are, for example, epilepsy, cancer, leukaemia, generalized atopic eczema, progressive encephalopathy, multiple sclerosis relapse, neurological disorders (including seizures, cerebral palsy and arrested development), thrombocytopenia etc.

Already in 2014, Constitutional Court interpreted in their finding file number Pl. ÚS 16/14 that it is not necessary to insist on the literal definition "permanent contraindication", but it will suffice when it is proved that the child's health condition does not allow for the vaccine to be administered. Unfortunately, even this interpretation of Constitutional Court has not contributed to a change of situation and public health officials still require to have an explicit confirmation that the contraindication is permanent. Therefore, it happens that even children who are not vaccinated for health reasons acknowledged by a doctor cannot attend a preschool and when a preschool admits them, they are forced to exclude them after inspection by public health authorities and pay a fine for admitting a child like that. Parents are forced to stay at home with a child or pay high amounts of money for an individual care for the child.

It is only now, at the beginning of 2020, when the modification of term "permanent contraindication" to just "contraindication" started to be discussed when amending the law. Up to now, hundreds to thousands of children are discriminated for being ill. We have recently learnt from a deputy minister that the Ministry of Health will prepare accompanying documents to law in order to be able to specify granting contraindication for entry to a preschool. They are planning to define that contraindication is a health condition preventing vaccination administration for more than a year. Again, this is a requirement set to the detriment of health disabled children. Health condition of a child developing quite fast at a young age is unstable and unpredictable. Therefore, to know for sure that a contraindication will last for more than a year is hard and doctors will not want to issue such confirmations. It is thus possible that some children will still be little ill for contraindication but too ill for vaccination.

The planned amendment to law concerning contraindication is designed in particular because of our long-term pressure and pointing out cases of faulty practice. We initiated a petition to remove discrimination

of children in access to children groups with compulsory vaccination, which has been physically signed by over five thousand people in five months and signatures keep on coming. However, we do not momentarily know how the practice will be set. To get a contraindication with an ill child so that they could be admitted to preschool education has been, and according to the Ministry of Health, will be problematic. Parents deal with a decision whether to vaccinate their child despite their health problems and be entitled for admission to a preschool or not to undergo vaccination for an increased risk and then to stay at home with their children.

The whole strict legislature sounds utterly absurd in comparison with all neighbouring countries with similar epidemiology. However, these do not require vaccination for accessing children groups.

There is another trial by European Court of Humans Rights when a child has been expelled from preschool despite having a confirmed contraindication

A complaint was lodged against the Czech Republic with the European Court of Human Rights for expulsion of a child from preschool. This child had a contraindication confirmed by a doctor (extensive eczema), still expulsion of the child from preschool was requested after inspection from regional public health office. The doctor confirmed her decision and diagnosis stating that it is not suitable to vaccinate the child in their current health condition. The representative of regional public health office disputed the opinion of the doctor and decided that this health condition is not enough for contraindication and the child was to be vaccinated or expelled from preschool. The parents appealed against the verdict and sued in court. However, the court found the opinion of public health office correct in contrast to the opinion of the doctor who took care of the child from their birth and is familiar with the health condition of the child in detail.

Public but also private facilities are in the danger of a fine of up to CZK 500,000 by regional public health office if they accept a child that would not be fully vaccinated. So far, the fines given have been significantly lower, but public health officials, organizers and ministries do not hesitate to threaten the heads of preschools and children groups by these high fines.

The state argues that it is the protection of children's health in preschools that is the condition for proper vaccination, but this rule applies only for children to 5 years of age, therefore to the time when a child becomes a preschooler and the situation completely changes. The Czech Republic introduced compulsory preschool education from 2017/2018, which means that from 5 years, all children must go to preschool together regardless of their vaccination state. By introducing compulsory preschool attendance, the restriction of admission of partially vaccinated and non-vaccinated children has proven to be completely nonsensical. The Public Health Protection Act states that the obligation to admit only vaccinated children does not apply for facilities where the attendance is compulsory, which applies for the last year of preschool. Four-year old and younger children that are not vaccinated properly cannot attend preschool, while five-year-olds have to.

Now it has been 2.5 years from the introduction of compulsory last preschool year, when groups in preschool tend to be of mixed ages and the situation is just as good as before the introduction – experiences are good, there have been no negative changes in preschools.

If it were necessary to protect children in preschool and there would be a real risk, the state would not admit to have not fully vaccinated or non-vaccinated preschool children in them! The current situation shows that the point of this measure is only a repression to enforce full vaccination, which, however, leads in particular to the discrimination of children and ill-founded meddling with the rights of citizens, not the protection of their health.

Participation in school trips (schools in nature) and retreats

Other repressive measures include the fact that children without proper vaccination are banned from school trips and retreats. According to law, retreat is an organized stay of 30 and more children to the age of 15 for a time period longer than 5 days. Its purpose is to strengthen children's health and increase their physical fitness. Retreat can therefore be a camp or skiing training. If 29 children participated in a retreat, vaccination is not required. If a school organizes an event called "school in nature", vaccination is always

required regardless of the length of stay or a number of children. If a child has incomplete vaccination, they are excluded and punished for their parents' decision.

If a school or scout's camp organizer admit just one child lacking just one vaccination, there is a risk of a fine of up to CZK 30.000. Again, Czech legislature defining this measure in vaccination is in conflict with logic here, without this legislature being founded in epidemiology. The Ministry of Health has never presented justification of proper vaccination for school trips and retreats.

These sanctions that harm in particular the interests of children and impose a significant burden for school facilities, camp organizers and events for children are absolutely unparalleled in the European region.

An amendment is currently in discussion to abolish the restrictions of the vaccination condition for participation in a school trip as a part of amending the Public Health Protection Act. However, in all other events (retreats) where 30 and more children participate for a period of longer than 5 days, the condition of proper vaccination remains. When the amendment is passed, there will be a state of some relief for schools and children in them, but organizers of camps, skiing training and similar events will still be forced to discriminate some children without any reasonable explanation and without them finding it necessary. They therefore become an enforcing tool of vaccination policy against their will.

All the above mention bans from participation in groups of children are, according to the Ministry of Health, a punishment for parents for disrespecting the law and a tool to enforce vaccination. Unfortunately, children in particular are punished for this and they have no influence on the decision of their parents.

III.

In the Czech Republic, repressions against parents who do not vaccinate and those who require individual vaccination calendar keep on rising.

The condition of compulsory vaccination for preschools was introduced in 2001.

The condition of proper vaccination for schools in case of school trips was introduced in 2003.

Children groups originated in 2014 as an alternative to preschools, with the condition to accept only children who are vaccinated properly.

Conditions for preschools have become stricter in 2015:

- creches, preschools, children groups to be fined up to CZK 500,000 for admitting a child without proper vaccination
- schools and organizers of retreats for kids of up to CZK 30,000 for a kid that is present at the event and not vaccinated.

These repressive measures are reflected in vaccination coverage of the Czech Republic in a negative way, and, clearly, the trust in the system of vaccination decreases with increasing repression.

Having mentioned the prepared amendment to Public Health Protection Act, it needs to be pointed out that the currently prepared amendments to Public Health Protection Act mentioned above and mentioning the harsh consequences of the legislature are presented by deputies in a form of amendments. The Ministry itself did not consider it necessary to propose any of these amendments despite the fact that we have consulted the problems with "permanent contraindication" or missing vaccination against hepatitis B with them for a long time. In the end, the Ministry has unwillingly accepted some of the proposals of deputies.

The main part of this year' proposal by the Ministry for the law to be amended is a stricter and increased repression. The amendment suggests that the conditions for accepting children in all kinds of facilities are "straightened", so that there will be no chance for partially vaccinated or non-vaccinated children to be among their peers. These children have a very limited option to visit any preschool facility. Parents therefore self-organize small groups, completely independent on any financial support from the state, unregistered in a registry of preschool facilities or in some forest preschools. The Ministry wants to subject

these groups to vaccination inspections and they even want the vaccination condition to be set also for nannies watching over more than one child.

It is a question how the vaccination is supposed to increase with this measure, when previous repressions only decreased the trust in the vaccination system.

IV.

A big group of children who fall under the cases where the exception from vaccination should be applicable are children with health disabilities. They need an individual plan, delay in vaccination or a specific approach to vaccination. It is them that are hit hard by the condition of proper vaccination. Their parents decide not to vaccinate precisely according to the compulsory vaccination calendar because their conscience will not allow that or they are convinced about the risks of vaccination.

There are not registries for individual diseases in the Czech Republic (only oncological and diabetological registry), so neither we nor the state have an overview about the number of the chronically-ill. Patients in medical care can partially help us to have an overview (medical care – continuous monitoring of patients with a specific chronic disease). Their numbers can be learned about at the Institute of Health Information and Statistics of the Czech Republic (ÚZIS). However, those are available only to 2015. Czech Health Statistics Yearbooks do not list the number of children in medical care from 2016.

All diagnoses are included in patients in medical care. It cannot be uncovered yet how many among them are children with allergies, asthma, epilepsy, autoimmune diseases, neurological problems, oncology patients. For those, individual approach to vaccination is crucial. The numbers are low and increasing every year (every year's summary states: *"The increase in numbers of children and youth with different allergic symptoms continues."*).

	2008	2009	2010	2011	2012	2013	2014	2015
Total of children to 15 years of age in medical care (in thous.)	501	522	534	375	597,4	638	638	638

Source: Czech Health Statistics Yearbooks (ÚZIS) <https://www.uzis.cz/category/tematicke-rady/zdravotnicka-statistika/deti-dorost>

V.

Another group of children that are not completely vaccinated are children with adverse reactions to vaccination. Parents are afraid to vaccinate them again because they have former negative experience.

State Institute for Drug Control states that there were approximately 1-5 % serious adverse events reported in 2018. Only approximately 1.4 % of the total number of doctors in the Czech Republic reported, the number of adverse events is therefore higher in reality.

Overview of adverse events to vaccines from compulsory vaccination

	2014	2015	2016	2017	2018
Hexavalent vaccines	195/174	418/N/A	273/229	229/205	226/177
MMR vaccines	89/85	195/N/A	139/127	124/113	132/96
Vaccines against pertussis, diphtheria and tetanus (revaccination at 5 years of age)	242/143	229/N/A	155/121	77/61	144/94

Source: Information newsletter of State Institute for Drug Control (total number/serious adverse events)

Many of these children or their siblings were not vaccinated or received limited vaccination, or stopped vaccinating after undergoing problems, always only because of fear for the health of a child. Although this reason is fully understandable and legitimate, it is not accepted in the Czech Republic. These parents and children face the consequences – health, financial and sanctions (a fine, inability to go to preschools and leaving for school trips).

VI.

The punishment in a form of denying preschool education or being banned from participating in school events or summer camps impacts most severely children and their families, but also school heads and leaders of children groups, teachers, preschool facility education authorities and camp organizers.

The impact on families is enormous. One of the parents is limited in returning back to work, often loses it, because they have to stay home with their children to the age of 5, it limits their career growth or their work continuity.

There is a multiplied risk of not being able to find their place in the labour market also in later years for women who usually tend to stay at home with children. Single parents find themselves in the worst situation, under the biggest pressure. They need to choose vaccination for their children in unsuitable health condition for existential reasons, to make sure a child gets admitted to preschool and the parent can provide for them financially.

The families that are forced to live on one salary for several years often deal with financial crisis. Part of the families have to use social allowance; they fall in the category of low-income families and are endangered by social exclusion.

Children of foreign workers on short-term and mid-term projects in the Czech Republic are also a problem as they cannot be placed for their different vaccination schemes. According to law, anyone with residence permit in the Czech Republic or residing in the Czech Republic for more than 90 days is bound by compulsory vaccination, which includes the condition of proper vaccination in children to be admitted to preschools or to participate in retreats. Children with different vaccination schemes from abroad thus cannot be admitted to preschools and the stay and work in the Czech Republic gets more complicated for their parents.

Another unjustified stakeholder are heads of preschools, leaders of children groups, managers of retreats who have become an enforcing tool for vaccination policy of the state. Their duty is to “enforce” vaccination for their activity, not to admit children to their facilities or exclude them from some events. They face huge administrative load in administration procedure, threat of fines for admitting children, very unpleasant part of explaining to parents why they will not admit their child and appeals from parents. People working with children do this work because they have positive relationship to children and it is them who are forced

to discriminate against them. They have nothing in common with vaccination agenda, they do not have training in the topic and get no remuneration for communicating it or solving it.

VII.

We described repressive steps against those who do not keep to the compulsory vaccination calendar above. What remains is to briefly describe vaccination system of the Czech Republic as such.

Doctors are legally bound to offer and perform vaccination. Even when parents express interest in individual vaccination, doctors do not have the option to offer different vaccines than those designed for compulsory vaccination. Although more vaccines are registered in the Czech Republic, only one hexavaccine (Hexacima) and one MMR vaccine (Priorix) are used (with exceptions).

These two vaccines are paid for by the state, different options need to be paid by parents. Although they vaccinate against compulsory diseases, but in a different scheme, they are not reimbursed for these vaccines. In 2017 and 2018, health insurance companies even refused to cover for compulsory vaccination by vaccines reimbursed by the state to those children whose vaccination was only postponed by their parents. It surely was yet another factor for increasing the distrust. Thanks to our work, this illegal practice has been stopped and some of the parents have been even able to get the money they paid for compulsory vaccination back from health insurance companies. The Ministry of Health has not been able to make health insurance companies change their practice which was in conflict with Public Health Insurance Act. Nonetheless, the situation with reimbursement is still not fully settled and health insurance companies refuse to cover for hexavaccine applied to children older than 2 years of age. The Ministry of Health does not deal with this treatment from health insurance companies.

On the contrary, the Ministry even advises health insurance companies to require the payment for potential treatment of a disease, against which a child should have been vaccinated and to use section 55 of Public Health Insurance Act with interpretation that they have committed an unlawful act. Many parents refuse vaccination for child's health problems, but the Ministry does not press insurance companies to take the reasons for refusal into account. It is just another adding fuel to the fumes, when the public loses the trust in Czech system of vaccination only faster.

The purchase and distribution of vaccines in the Czech Republic is a non-transparent and problematic area, there is only one company that has a monopoly for import of vaccines for compulsory vaccination. Regional public health offices (state institutions) were in charge of supplying vaccines to mid of 2009. Subsequently, there was an amendment to law and at the time a small company Avenier was chosen to ensure distribution, while distribution companies with experience, capital and built distribution network did not succeed, even in later selection proceedings. Office for the Protection of Competition fined seven health insurance companies in 2019 for discriminative selection proceedings for supplier of vaccines in 2018, as a winner was clear beforehand – the current distributor of vaccines, Avenier.

Czech doctors are not trained in work with individual vaccination scheme. Education seminars for doctors are led only one way: how to make parents accept compulsory plan by compulsory vaccines by means of directive treatment, threatening, mocking for inexpertise or for worries about a child, to reporting to child welfare office dealing with parental neglect. Surely it does not happen in all surgeries, but this is quite frequent way of dealing with parents who require individual approach. It immensely disrupts the relationship of trust between parents and doctors and the trust in vaccination as such.

Czech compulsory vaccination scheme is quite extensive: obligation to vaccinate against hepatitis B, which is basically non-communicable among children or vaccinating by hexavaccine from week 9 and immediately followed by MMR vaccine, where the time span is only 6 months to complete the vaccination scheme.

Some experts do not approve of the existing vaccination scheme fully and recommend changes. The Ministry of Health refuses these changes, does not take incentives from the public and experts in consideration, does not lead any discussion. A consulting body of the Ministry – National Immunization

Board (NIKO) – a group of 9 people decide about vaccination behind closed doors – without any control from the public which can lead to asserting other interests than the health of children and economical drawing of funding from public health insurance. We have long criticized personnel composition of the board. Many expert representations are missing in the board, there is no neurologist, immunologist, neonatologist, therefore pieces of expertise that are very important for assessment, proposal of changes and expert recommendations. It is crucial to have experts taking a direct care of children damaged by vaccine on the board. Those are therefore familiar with these cases with regard for the objections to vaccination. These are mostly connected with possible adverse events.

There is no platform introduced in the Czech Republic for communication about vaccination between general public and experts: doctors, experts and recipients of care – parents and patients. The Ministry established a working commission for the problems of vaccination in 2015. 3 organizations representing patients and children's parents were present among the 20 commission members. This working commission has met only five times, has not issued any standpoint or recommendation, has never been officially abolished, but has not met since 2018 and their activity is no longer counted with. Neither general public nor organizations dealing with vaccination have an official possibility to bring experience from practice and propose changes. Good results cannot be reached without an effort to solve the problem both from the perspective of experts and patients.

Deriving from experience from abroad, the most efficient way seems to be more intensive communication of higher quality with legal guardians of children through experts, the possibility of choice and certain variability of vaccination schemes. However, there is no quality, well-structured source of information in the Czech Republic. Both the Ministry of Health and expert associations fail in this. Information is fragmented on many portals of state institutions and some cannot be found at all. Parents refusing to stick to the strict compulsory vaccination are viewed as misled people influenced by conspiracy theories and anti-vaccine movement, but quality comprehensive information are not offered in turn and nobody is interested in their reasons and decisions.

The Czech Republic has been failing so far in introducing the responsibility of the state for vaccination-related injury, which is criticized also by Constitutional Court. In fact, there is currently a bill about compensation for compulsory vaccination-related injury waiting to be passed after many years. Rozalio has actively expressed their comments to the creation of law. However, it is a question what its concrete application in practice will be. Nonetheless, the Ministry has already announced that they will not be reimbursing anyone in retrospect and that they expect reimbursement for a maximum of 5 cases a year.

WHO removed the status of "measles-free" country from the Czech Republic in 2019. It needs to be explained that an increased number of measles cases was in particular among adults who were vaccinated as children. Children had a small representation among the ill and patient zero (from who the infection spread) was always an adult. Developed immunity after vaccination was to blame, not non-vaccinated children.

VIII.

From a case study: Attitudes of Parents Refusing Compulsory Vaccination of their Children, the Crisis of Trust in Biomedical Knowledge

"Nevertheless, the conclusions of my research show that the decisions to refuse some or all vaccinations of their children is not a mindless decision, exaggerated response to rumour or a product of favouring their own lifestyle to the health of their own children. It is a complicated process when individuals define and evaluate risks, build strategies to tackle uncertainty and by means of an imperative of personal responsibility discipline themselves. Parents critical to vaccination in a way become an expression of will to health and changes in functioning of modern biopolitics [cf. Rose 2001]. In this regard, the criticism of compulsory vaccination needs to be perceived as an expression of change in role an individual should take on in relation to their health and healthcare system."

PhDr. Jaroslava Hasmanová Marhánková, Ph.D., Faculty of Philosophy, University of West Bohemia in Pilsen – Attitudes of Parents Refusing Compulsory Vaccination of their Children: the Crisis of Trust in Biomedical Knowledge,
http://sreview.soc.cas.cz/uploads/680e5dca482c7a08e72490c3f4b4df0e2da4e3b3_14-2-02Hasmanova16.indd.pdf

IX.

In conclusion, the above-mentioned facts need to be summed up. Parents who are afraid of vaccine adverse events or wish for an individual approach for their child often face pressure to vaccinate precisely according to ministerial decree. There is no debate, no options. Parents are then sanctioned for their decision by a high fine and by not being able to place their child in a state or private preschool or a children group. Their child cannot participate in either school trips or camps and is thus excluded from a group without this measure having grounds in epidemiology. A child is excluded from a group also in the case when a doctor has confirmed that their health condition does not allow for vaccine to be administered, but it is not a permanent contraindication.

These sanctions are the only tool the Czech Republic uses to secure public health protection. The Ministry does not use different means which are common in neighbouring countries: e.g. quality information available, the possibility to choose vaccines or information campaign. These create the environment of trust and are enough to ensure necessary vaccination coverage of children's population also in case of voluntary vaccination. To the contrary, vaccination coverage decreases every year in the Czech Republic, almost in direct proportion to growing sanctions.

Forcing children with health problems to vaccinate according to calendar only because the system is not willing to deal with children individually and the highest goal is vaccination coverage and observance of the system is most shameful.

As stated above, there is a risk of financial sanction in the amount of up to CZK 10,000 and a child not admitted to preschool in the Czech Republic. In accordance with valid legislature, one act cannot be sanctioned more times. This has been happening in the Czech Republic for many years, still our laws have not been modified in accordance with this rule.

The Slovak Republic refused to introduce the condition of proper vaccination for admitting children to pre-schools. Slovak Ministry of Health submitted a proposal to amend a law. They were inspired by Czech legislative design and they literally copied the Czech law restricting children's admission to preschools. However, there is an important fact that together with this proposal, the Ministry of Health of the Slovak Republic simultaneously proposed to abolish fines for not vaccinating, justifying it by the fact that one act cannot be punished twice. This proves that fundamental rights and freedoms are violated in the Czech Republic. The obligation of proper vaccination for preschools was in the end refused by the National Council of the Slovak Republic, the main argument being that it will lead to segregation of children in access to education.

We are convinced that the information stated in our amicus curiae will contribute to wider understanding of the problem of Czech vaccination system by the European Court of Human Rights and will support the statement of the complaining party that the Czech Republic violates the rights guaranteed by Convention of Human Rights and The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine by their actions.

Martina Suchánková, chair of ROZALIO

