EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

# FOURTH SECTION

# DECISION

Application no. 20874/18
Dragana BAŠA
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 30 May 2023 as a Committee composed of:

Faris Vehabović*, President*,
Iulia Antoanella Motoc,
Branko Lubarda*, judges*,

and Branimir Pleše, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 20874/18) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 April 2018 by a Serbian national, Ms Dragana Baša, who was born in 1977 and lives in Kraljevo ("the applicant") and who was represented by Mr M. Mihailović, a lawyer practising in Zmajevo;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar;

the parties' observations;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The applicant complained about the compulsory vaccination of pre-school and school-age children against certain diseases (tuberculosis, diphtheria, tetanus, whooping cough, poliomyelitis, measles, rubella, mumps, hepatitis B, *Haemophilus influenzae* type b, and diseases caused by *streptococcus pneumoniae*), provided for by Article 32 of the Protection Against Contagious Diseases Act 2016 ("the PACDA 2016"), and the consequences of not complying with it. Vaccination against those diseases cannot be refused either by the person in question or by the parent/guardian except where a temporary or permanent contraindication is established by a

doctor or a team of experts. Children need to comply with this requirement in order to be able to continue attending nurseries and schools, except in cases of contraindication. Article 85 of the PACDA 2016 also provides for a fine of up to 150,000 Serbian dinars (approximately 1,280 euros) for persons who refuse the vaccination.

2. On 23 February 2017 the applicant lodged an initiative with the Constitutional Court for an assessment of the constitutionality of Article 32 of the PACDA 2016.

3. On 6 November 2017 the Constitutional Court rejected this and several other initiatives (some of which also challenged the constitutionality of Article 85 of the PACDA 2016). In so doing, it took into account in particular the fact that the level of vaccination in Serbia in 2015 had been the lowest in the previous ten years. The Constitutional Court also noted that the disputed measure did not prohibit the enrolment of children in schools, but rather made their attendance conditional on vaccination in respect of certain diseases.

4. In January 2018 the Ministry of Health issued an instruction to all nursery schools that it was obligatory for children attending them to be vaccinated.

5. On 31 December 2020 the Constitutional Court rejected another similar initiative, noting that in addition to providing for children to be taught in schools in person, the Primary School Education Act also provided for the possibility of home schooling and long-distance learning (Articles 38 and 38a).

6. Articles 3, 16 and 147-51 of the Drug and Medical Supplies Act, taken together, provide that the State Agency for Drug Control is in charge of issuing licences for medicines (including vaccines), ensuring their registration, monitoring their side-effects, and performing quality control.

7. The Rules on Immunisation, as in force at the material time, provided that vaccination was to be performed by medical staff except in cases of temporary or permanent contraindication, which was to be established by general practitioners or specialists, and teams of medical experts respectively.

8. The applicant complained under Article 8 of the Convention about the compulsory vaccination of pre-school and school-age children against certain diseases and the consequences of not complying with that requirement. She also complained under Articles 3, 6 and 14 of the Convention, Article 2 of Protocol No. 1 and Article 1 of Protocol No. 12 in that the consequences of not complying with the compulsory vaccination amounted to inhuman or degrading treatment, breached the right of unvaccinated children to education and discriminated against them. She submitted in addition that the Constitutional Court's ruling in respect of the legislative measure in question had been arbitrary and insufficiently reasoned. The applicant complained for the first time under Article 9 of the Convention in her observations, arguing that the compulsory vaccination also breached her freedom of thought, conscience and religion.

# THE COURT'S ASSESSMENT

## I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

### A. The parties' submissions

9. The Government argued that the applicant lacked victim status, as she had not offered any evidence that she was a parent herself or that either she or her children had been affected by the legislation in question. In any event, had the applicant in fact been directly affected, she could have used a number of remedies, such as administrative and judicial review proceedings, an action based on the Protection Against Discrimination Act, or a constitutional appeal.

10. The Government referred to *Vavřička and Others v. the Czech Republic* ([GC], nos. 47621/13 and 5 others, 8 April 2021) and submitted that, quite apart from the above issues, there had also been no violation of any of the Articles complained of, as the Serbian legislation was similar, if not identical, to that of the Czech Republic. The vaccination requirement was limited only to nursery schools, as was evident from the instruction issued by the Ministry of Health (see paragraph 4 above) at the time of the measles epidemic, which had been the most serious epidemic in twenty-five years. There was, furthermore, no forced vaccination, and the sanction for non-compliance was only a fine, which could be imposed only once and which could be challenged before the courts.

11. The applicant maintained that complaints could also be accepted from potential victims, which was her position. At the time she lodged the initiative with the Constitutional Court (February 2017), her son had been attending primary school and when she filed her observations with the Court (July 2021) he had been attending secondary school.

12. The applicant also criticised the legislation in question because it was in contradiction with the legislation on education, which provided that primary school education was mandatory for all children. Even though the Minister of Education had stated publicly that all children would be enrolled in schools, the implementation of the disputed legislation was left to the discretion of heads of nurseries and schools. The applicant accepted that the interference had a legitimate aim, but she doubted the effectiveness and safety of vaccines. Banning unvaccinated children from nurseries and schools had a negative financial impact on their families, as did punishing citizens with fines that were too high for ordinary people. She also maintained that Serbia had decided to deny the parents of unvaccinated children the right to parental allowance, but submitted no evidence in that regard.

## B. The Court's assessment

13. The applicant's complaint about the obligation to vaccinate schoolchildren and the consequences for not complying with that obligation falls to be examined under Article 8 of the Convention (see *Vavřička and Others*, cited above, § 261).

14. Even assuming that this complaint is compatible with the said provision *ratione personae* (see, *mutatis mutandis*, *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010, and the authorities cited therein) it is, in the Court's view, manifestly ill-founded and as such inadmissible for the reasons stated below.

15. Despite the applicant in the present case having not actually been fined, she might still arguably be considered as a member of a class of people at risk of an interference with the right to respect for private life. In particular, the legislation in question requires her, as a parent, either to have her son vaccinated against her will in order for him to be able to stay in school or to be fined (see *Vavřička and Others*, cited above, § 264).

16. Furthermore, the parties themselves did not dispute that the alleged interference was in accordance with the law and that it pursued the legitimate aim of the protection of health (ibid., § 272). The Court itself sees no reason to disagree with that position.

17. As regards the necessity of the alleged interference, the relevant principles are set out in *Vavřička and Others* (cited above, §§ 273-75).

18. In 2015 the vaccination rate in Serbia was the lowest in ten years, and 2018 saw the biggest epidemic of measles in twenty-five years. It can be said, therefore, that in Serbia the duty to be vaccinated represented the domestic authorities' response to the pressing social need to protect individual and public health against the diseases in question and to guard against any downward trends in the rate of vaccination among children (ibid., *mutatis mutandis*, §§ 283-84). The Court therefore considers that the respondent State's approach in making vaccination mandatory was supported by relevant and sufficient reasons which justified its pursuing that policy.

19. The duty to be vaccinated applies in relation to eleven diseases which are well known to medical science (see paragraph 1 above; see also *Vavřička and Others*, cited above, § 158) and against which vaccination is considered effective and safe by the scientific community (ibid., § 291 *in limine*). An exemption from the duty is permitted, notably in respect of children with medical contraindications. Moreover, compliance with this duty cannot be directly imposed – that is, the vaccination cannot be forcibly administered. The duty is enforced indirectly through the imposition of sanctions. In Serbia, the sanction can be viewed as relatively moderate, consisting of an administrative fine. The applicant likewise did not submit any decisions on the imposition of a fine for not complying with the duty to be vaccinated, let alone one imposing a fine which might be unduly harsh or onerous. The

inability of unvaccinated children to continue going to nursery or school is the consequence, clearly provided for in legislation, of non-compliance with a general legal duty that was intended to safeguard in particular the health of young children and is essentially protective rather than punitive in nature (ibid., § 294).

20. The Court sees no reason to question the adequacy of the domestic system in respect of the effectiveness and safety of vaccination (ibid., § 301 *in fine*; see also paragraphs 6 and 7 above). The respondent State also provides for procedural safeguards (see paragraph 9 above *in fine*), by which persons can contest the consequences of their non-compliance with the vaccination duty (see *Vavřička and Others*, cited above, § 295).

21. As regards the seriousness of the alleged interference, the Court notes that no administrative fine has ever been imposed on the applicant, nor have there ever been any repercussions on the education of her son. While the applicant maintained that parents were exposed to additional costs and children were deprived of education because of the inability of unvaccinated children to attend nurseries and schools, the Court notes that this does not seem to have been the case with the applicant.

22. As regards schools, the disputed legislation required vaccination for school attendance, but not for admission. Education could also be provided via home schooling or long-distance learning (see paragraph 5 *in fine* above). Moreover, the relevant Minister publicly announced that all children would be enrolled in schools (see paragraph 12 above) and the applicant submitted no evidence to challenge that statement, either in general or in respect of her son specifically whom she, quite to the contrary, explicitly acknowledged to have attended his classes in school. The Court reiterates that the personal scope of a case examined under the "private life" head of Article 8 is limited to the applicants themselves and the repercussions for them of the contested measures (see *Vavřička and Others*, cited above, § 305).

23. In view of the foregoing, the Court considers that the legislative measures complained of stand in a reasonable relationship of proportionality to the legitimate aim pursued and that the respondent State did not exceed its wide margin of appreciation. The impugned measures can therefore be regarded as being "necessary in a democratic society".

24. Accordingly, the applicant's complaint is manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## II. OTHER COMPLAINTS

25. The applicant's complaint under Article 2 of Protocol No. 1 about the right to education is incompatible *ratione personae* with the provisions of the Convention and the Protocols thereto within the meaning of Article 35 § 3 (a)

and must be rejected in accordance with Article 35 § 4, as it is clear that she herself was not denied that right.

26. In the light of all the material in its possession, and in so far as the matters complained of under Articles 3, 6 and 14 of the Convention and Article 1 of Protocol No. 12 are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto. Accordingly, that part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention (see *Vavřička and Others*, cited above, §§ 346-47).

27. The applicant's complaint under Article 9 was not included in the initial application but was raised in her observations of July 2021. The Court therefore considers that it is not appropriate to take this matter up in the context of this application (see *Stanka Mirković and Others v. Montenegro*, nos. 33781/15 and 3 others, § 66, 7 March 2017, and the authorities cited therein).

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 22 June 2023.

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| Branimir Pleše<br>Acting Deputy Registrar | Faris Vehabović<br>President |