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

SECOND SECTION

DECISION

Application no. 11504/18
J.Č.
against Croatia

The European Court of Human Rights (Second Section), sitting on 13 December 2022 as a Committee composed of:

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 11504/18) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 2 March 2018 by a Croatian national, Ms J.Č. ("the applicant"), who was born in 1976 and lives in Novi Marof, and was represented before the Court by Ms S. Mandac, a lawyer practising in Zagreb;

the decision to give notice of the complaints concerning legal certainty, no punishment without law and respect for private life to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare the remainder of the application inadmissible;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's conviction in minor-offence proceedings for refusing to allow the mandatory vaccination of her daughter.

2. On 16 September 2013 the applicant signed a statement in which she refused to have her daughter, born on 23 June 2013, vaccinated with the vaccines Pentaxim and Engerix against diphtheria, tetanus, pertussis, poliomyelitis and hepatitis B. The statement indicated, among other things,

that by failing to vaccinate her child in accordance with the Mandatory Vaccination Programme for Children in School and Pre-school (hereinafter "the Vaccination Programme") in effect in Croatia, the applicant understood that her child would not be able to attend kindergarten.

3. On 26 September 2013 the Novi Marof branch of the Ministry of Health Department for Sanitary Inspection issued a penalty notice against the applicant for not allowing the mandatory vaccination of her daughter. The applicant was fined 2,000 Croatian kunas (HRK; approximately 270 euros (EUR)) for committing a minor offence punishable under section 77 of the Protection of the Population against Communicable Diseases Act (hereinafter "the Act"). That provision states that any parent who does not comply with the vaccination obligation established by the Vaccination Programme will be fined up to HRK 2,000 in minor-offence proceedings.

4. The applicant lodged an objection against the penalty notice, submitting that her older child was severely disabled on account of what she believed to have been the side effects of a vaccine he had received and that she wanted to have her daughter tested in order to exclude any such side effects.

5. On 3 October 2014 the Varaždin Minor Offences Court found the applicant guilty of the minor offence defined in section 77 of the Act, reprimanded her (*sudska opomena*) and ordered her to pay HRK 200 (approximately EUR 27) in respect of the costs of proceedings. The court noted that section 40 of the Act prescribed mandatory vaccines, including the ones refused by the applicant. Moreover, the Vaccination Programme, as well as the Rules on the manner of implementation of immunisation, seroprophylaxis and chemoprophylaxis against communicable diseases and on the persons subject to the obligation to vaccinate (hereinafter "the Vaccination Rules"), provided precise time frames within which each child was to receive each of the mandatory vaccines. The court further noted that the Constitutional Court had recently upheld the constitutionality of mandatory vaccination for the purposes of protection of the health of children and had held that parents' refusal of vaccinations jeopardised the health of their children and of other persons who could not be vaccinated on account of medical conditions or for whom vaccination would not attain the requisite level of protection, thereby violating those persons' right to a healthy life. The Constitutional Court had thus found it justified, in order to ensure those persons' rights, to provide for the mandatory vaccination of citizens against diseases whose prevention was in the State's interest.

6. The applicant then lodged a constitutional complaint against the judgment of the Varaždin Minor Offences Court. On 11 June 2017 the Constitutional Court dismissed her complaint.

7. The applicant complained, under Article 6 § 1 of the Convention, that the case-law of the domestic courts had been inconsistent on the issue of punishment of parents who refused to vaccinate their children. She further

complained, under Article 7 of the Convention, that the legislation on the basis of which she had been convicted had been neither accessible nor foreseeable in its application. Lastly, she complained, under Article 8 of the Convention, that her conviction in minor-offence proceedings for refusing the mandatory vaccination of her child had violated her right to respect for her private and family life.

THE COURT'S ASSESSMENT

8. At the outset, the Court considers that it is not necessary to examine the Government's preliminary objection that the applicant had suffered no significant disadvantage, since the application is in any event inadmissible for the reasons set out below.

A. Alleged violation of Article 6 of the Convention

9. The general principles applicable in cases concerning conflicting decisions in the case-law of the domestic courts have been summarised in *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, §§ 49-58 and 61, 20 October 2011).

10. The Court observes that the applicant submitted four court decisions, adopted between 2014 and 2018, in which parents had not been found guilty despite having refused to vaccinate their children, whereas the Government submitted approximately twenty-five judgments, adopted during the same period, in which parents who had refused vaccination had been found guilty of a minor offence under section 77 of the Act. The Government also submitted that between 2014 and 2018 the national courts had delivered 216 judgments convicting parents of the same offence; the Varaždin Minor Offences Court alone had convicted parents in twenty-six cases, dismissed the charges in three cases on account of the expiry of the statute of limitations and acquitted one parent whose child had been shown to have a medical contraindication to vaccination.

11. The Court notes that the judgments relied on by the applicant do indeed appear to be contrary to the decision reached in her case. However, the facts of at least one of those cases were not comparable to those in the applicant's case. Furthermore, it appears from the numerous court judgments and statistics submitted by the Government that the overwhelming body of the case-law has followed the approach taken in the applicant's case, namely that parents were found guilty of a minor offence if they refused to vaccinate their children.

12. In such circumstances, the Court considers that the applicant has failed to show that there were long-lasting and profound differences in the domestic courts' case-law on the matter, or that the domestic legal system

could not remedy any possible inconsistencies (compare *Derbuc and Others v. Croatia* (dec.), nos. 53977/14 and 41902/15, §§ 43-45, 15 March 2022).

13. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 7 of the Convention

14. The relevant principles emerging from the Court's case-law under Article 7 of the Convention are summarised in *Vasiliauskas v. Lithuania* ([GC], no. 35343/05, §§ 153-55, ECHR 2015).

15. The applicant argued that she had been convicted on the basis of a legal provision which referred to the Vaccination Programme, but that the Vaccination Programme had never been published in the Official Gazette.

16. The Court notes that, while it is true that section 77 of the Act was indeed a referencing (blanket) provision in that it referred to the Vaccination Programme, which has never been published in the Official Gazette, this does not mean that the legal basis on which the applicant was convicted had been either inaccessible or unforeseeable.

17. First of all, even assuming that the applicant was unable to find the Vaccination Programme online at the material time or that the schedule of vaccinations had not been communicated to her by her child's paediatrician, as should have been done according to the Government, the consequences of a parent's failure to vaccinate his or her child are already clear from section 40 of the Act read in conjunction with section 77. Moreover, the Vaccination Rules, which were published in the Official Gazette and on which the domestic court relied when convicting the applicant, contained the relevant time frame within which each of the mandatory vaccines were to be administered to children (see paragraph 5 above). On the basis of those documents, as well as the fact that the mandatory nature of vaccination in Croatia is common knowledge, having been in force for decades, and the statement which the applicant signed when refusing her child's vaccination (see paragraph 2 above), the Court finds no basis for her complaint that she could not foresee the possible legal consequences of her refusal to have her child vaccinated.

18. For the above reasons, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violation of Article 8 of the Convention

19. The relevant principles emerging from the Court's case-law under Article 8 of the Convention in the context of vaccination of children are summarised in *Vavřička and Others v. the Czech Republic* ([GC], nos. 47621/13 and 5 others, §§ 273-89, 8 April 2021).

20. The Court considers that the applicant's conviction resulted in an interference with her right to respect for her private life (compare *Vavřička and Others*, cited above, § 264). That interference was in accordance with the law, namely section 77 of the Act, and pursued the legitimate aims of protection of health and protection of the rights of others (compare ibid., § 272).

21. As regards the proportionality of the measure in question, the Court cannot but reiterate the arguments put forward by the Grand Chamber in *Vavřička and Others* (ibid., §§ 290-312), in which it found no issue with the system of mandatory vaccination of children in the Czech Republic, which is in many ways very similar to the mandatory vaccination system in Croatia.

22. Specifically, the vaccination requirement in Croatia concerns ten diseases against which vaccination is considered effective and safe by the scientific community. An exemption from the requirement is permitted notably in respect of children with a medical contraindication to vaccination. Moreover, there is no provision allowing vaccinations to be forcibly administered.

23. In 2014 the Constitutional Court reviewed the constitutionality of the mandatory vaccination system and its compliance with Article 35 of the Constitution, which guarantees respect for private and family life. Relying on scientific evidence proving that active immunisation was the most effective and the safest measure to prevent communicable diseases, the Constitutional Court held that the mandatory nature of immunisation against certain diseases was a measure whereby the State fulfilled its positive obligation to respect private life and ensure a healthy life for its citizens, in accordance with Article 8 of the Convention.

24. The applicant argued that she did not wish to vaccinate her second child before appropriate testing had been performed to confirm that the child would not develop autism, as her first-born child had after he had received the vaccines in question. In this connection, the Government explained that testing prior to vaccination could be performed, and in such instances paid for by the State, only in cases of medical necessity, to be established following an examination of the child by a paediatrician. They also asserted that there had been no testing available in respect of the contraindication about which the applicant had been concerned (autism) and that that contraindication had never been associated with the vaccines which the applicant had refused in respect of her daughter. In the present case, having found no contraindications for the vaccination of the applicant's child, the paediatrician in charge had refused to order any additional tests, deeming them unnecessary. The Court is not equipped to second-guess the doctor's medical assessment in the present case and, more generally, it sees no reason to question the adequacy of the domestic system in this respect, as long as the safety of the vaccines in use remains under continuous monitoring by the competent authorities (compare *Vavřička and Others*, cited above, § 301).

25. Lastly, as regards the intensity of the interference with the applicant's rights as a parent, the Court notes that she was only reprimanded in minor-offence proceedings, a sanction which cannot be considered disproportionate (compare *Vavřička and Others*, cited above, § 304). Moreover, the Court reiterates that it could not be regarded as disproportionate for a State to require those for whom vaccination represents a remote risk to health to accept this universally practised protective measure in order to be included into preschool. It was validly and legitimately open to the legislature to make such a choice, which is fully consistent with the rationale of protecting the health of the population (compare ibid., § 306).

26. In the light of the considerations above, the Court is satisfied that in sentencing the applicant for refusing the mandatory vaccination of her child the domestic authorities put forward relevant and sufficient reasons and that, bearing in mind their wide margin of appreciation in the matter (compare ibid., § 280), this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2023.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President