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

FIRST SECTION

DECISION

Application no. 31757/23
Nándor NEMCSOK
against Hungary

The European Court of Human Rights (First Section), sitting on 26 March 2024 as a Committee composed of:

Alena Poláčková*, President*,
Péter Paczolay,
Gilberto Felici*, judges*,

and Attila Teplán, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 31757/23) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 8 August 2023 by a Hungarian national, Mr Nándor Nemcsok, who was born in 2011 and lives in Kiskunfélegyháza ("the applicant") and was represented by his mother, Ms M. Dora,

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the authorities' refusal to have the applicant exempted from certain compulsory childhood vaccines.

2. On 16 August 2012 the applicant received a dose of MMR (measles, mumps and rubella) vaccine and the third dose of pneumococcus vaccine, at the age of 18 months. Shortly afterwards, he presented symptoms of juvenile idiopathic arthritis, an autoimmune disease. No causal link was found, however, by the National Centre for Epidemiology between this condition and the vaccination.

3. On 25 March 2014 the applicant's mother sent an application to the public health authority in order to have him exempted from additional compulsory child vaccines, especially from the DTP (diphtheria, tetanus and

pertussis) vaccine. The relevant authorities ultimately rejected the request in October 2015.

4. The mother challenged the administrative decision in court. On 13 December 2018 the Kecskemét Administrative and Labour Court dismissed the action. The decision was based on two forensic medical expert opinions, which both considered that the applicant had contraindications only to live-attenuated vaccines. On appeal, on 8 January 2020 the *Kúria* quashed the court decision and remitted the case to the first-instance public health authority to remedy some procedural shortcomings.

5. In the resumed proceedings, the first-instance public health authority partly granted the request (namely with respect to MMR and hepatitis-B vaccines) but rejected it in regard to other vaccines, such as DTP. An appeal was to no avail.

6. A court action ensued; and on 23 November 2021 the Szeged High Court dismissed the applicant's case, holding that the medical opinions furnished by the plaintiff were not capable of overriding the expert opinions which required to have the child exempted only from live-attenuated vaccines. On 11 May 2022 the *Kúria* upheld the court decision.

7. On 9 June 2023 the Constitutional Court declared the applicant's constitutional complaint inadmissible. It found no breach of fair trial guarantees in the case and held that the applicant failed to produce valid arguments demonstrating the unconstitutionality of the vaccination rules.

8. The applicant complained under Article 2 of the Convention that the imposition of childhood vaccination could have inflicted life-threatening consequences on him. He further complained, under Article 9 of the Convention, that his firm opposition to the vaccination programme had not been respected, constituting a violation of his right to respect for freedom of conscience. Lastly, he complained under Articles 6 and 13 of the Convention about the insufficient reasoning of the decisions dismissing his exemption request and the outcome of the domestic proceedings.

THE COURT'S ASSESSMENT

9. As regards the applicant's complaint under Article 2 of the Convention concerning the authorities' decision to allow exemption only from some contraindicated vaccines, the Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018) finds it appropriate to examine it rather from the perspective of the right to respect for private life as protected by Article 8 § 1 of the Convention (see, *a fortiori*, *Baytüre and Others v. Turkey* (dec.), no. 3270/09, § 26, 12 March 2013).

10. The Court reiterates that compulsory vaccination, as an involuntary medical intervention, represents an interference with the right to respect for private life within the meaning of Article 8 of the Convention

(see *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, § 263, 8 April 2021, and *Solomakhin v. Ukraine*, no. 24429/03, § 33, 15 March 2012, with further references). Such an interference will contravene paragraph 1 of Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and furthermore is "necessary in a democratic society" in order to achieve them.

11. The Court notes that national vaccination rules pursue the legitimate aims of the protection of health and the protection of the rights of others, recognised by Article 8 § 2 of the Convention. In health-care policy matters, a wide margin of appreciation is afforded to the domestic authorities. The Court has further recognised that there is a pressing social need to protect individuals and public health against contagious diseases and to ensure that the vaccination rate among children does not decline. It also pointed at the importance of taking the necessary precautions before vaccination, that is, to check each individual for possible contraindications (see *Vavřička and Others*, cited above, §§ 272-84 and 301).

12. In the present case, the Court observes that the vaccination duty and the grounds on which exemptions (either temporary or final) can be obtained under domestic law are provided for by sections 56 to 58 of Act no. CLIV of 1997 on Health and sections 5 and 11 of Decree no. 18/1998. (VI.3.) of the Minister of Public Health. The interference in question was therefore in accordance with the law within the meaning of the second paragraph of Article 8 of the Convention.

13. As to whether the measure was necessary in a democratic society, the Court again refers to the importance of vaccination schemes in preventing infectious diseases. In assessing how the applicant's particular situation was addressed by the authorities, it observes that several medical opinions were obtained (paragraph 4 above), both from clinicians and forensic experts. The courts based their conclusions largely on the opinions of court-appointed forensic experts; those experts agreed on the applicant's contraindication to live-attenuated vaccines only. The applicant's differing views were based on the opinions of clinicians rather than forensic experts; however, the *Kúria* explained why the former were to be considered by the courts to be incapable of refuting the latter. In these circumstances, the Court is satisfied that the findings of the domestic courts were grounded on a sufficient evidential basis; and due consideration was given to the issue of contraindication and partial exemption. The conclusions exempting the applicant only from certain vaccination requirements were therefore not arbitrary or manifestly unreasonable (see *Solomakhin*, cited above, § 20).

14. Accordingly, the Court concludes that there is no appearance of a violation of the applicant's right to respect for private life. It follows that the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

15. As regards the applicant's complaint of a violation of Article 9 of the Convention, the applicant's critical opinion on vaccination was based, primarily, on alleged health grounds, and is not such as to constitute a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9 (see *Vavřička and Others*, cited above, §§ 330-38). The Court therefore finds that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

16. Lastly, the applicant complained under Articles 6 and 13 about the alleged failure for the *Kúria* and the Constitutional Court to give adequate reasons for their decisions. However, the Court finds that both superior courts gave sufficiently detailed answers to the arguments advanced, notably in connection with the pivotal questions of the probative value of expert opinions and the justification for the restrictions on fundamental rights in vaccination context. In these circumstances, the Court cannot discern any appearance of a violation of the applicant's rights to a fair hearing and an effective remedy. It follows that these complaints are likewise 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 18 April 2024.

Attila Teplán Acting Deputy Registrar	Alena Poláčková President