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

Press Release
issued by the Registrar of the Court

ECHR 116 (2021)
08.04.2021

Court's first judgment on compulsory childhood vaccination: no violation of the Convention

In today's **Grand Chamber** judgment[1] in the case of Vavřička and Others v. the Czech Republic (applications no. 47621/13 and five other applications) the European Court of Human Rights held, by a majority (sixteen votes to one), that there had been:

no violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

In the Czech Republic there is a general legal duty to vaccinate children against nine diseases that are well known to medical science. Compliance with the duty cannot be physically enforced. Parents who fail to comply, without good reason, can be fined. Non-vaccinated children are not accepted in nursery schools (an exception is made for those who cannot be vaccinated for health reasons).

In the present case, the first applicant was fined for failure to comply with the vaccination duty in relation to his two children. The other applicants were all denied admission to nursery school for the same reason.

The Court pointed out that, under its case-law, compulsory vaccination, as an involuntary medical intervention, represents an interference with physical integrity and thus concerns the right to respect for private life, protected by Article 8 of the Convention.

It recognised that the Czech policy pursued the legitimate aims of protecting health as well as the rights of others, noting that vaccination protects both those who receive it and also those who cannot be vaccinated for medical reasons and are therefore reliant on herd immunity for protection against serious contagious diseases. It further considered that a wide "margin of appreciation" was appropriate for the respondent State in this context.

It noted that in the Czech Republic the vaccination duty was strongly supported by the relevant medical authorities. It could be said to represent the national authorities' answer to the pressing social need to protect individual and public health against the diseases in question and to guard against any downward trend in the rate of vaccination among children.

The judgment emphasises that in all decisions concerning children, their best interests must be of paramount importance. With regard to immunisation, the objective has to be that every child is protected against serious diseases, through vaccination or by virtue of herd immunity. The Czech health policy could therefore be said to be consistent with the best interests of the children who were its focus.

The Court also observed that the vaccination duty concerned nine diseases against which vaccination was considered effective and safe by the scientific community, as was the tenth vaccination, which was given to children with particular health indications.

The Court then examined the proportionality of the vaccine policy. On a general level, it noted the scope and content of the duty to vaccinate, the existing exceptions from it and the procedural safeguards available. It found that it was challenges to the instructional arrangements in place in the Czech Republic and to the effectiveness and safety of the vaccines in question had not been

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

established (see Q&A attached for more details). Moreover, as to the applicants' specific circumstances, it noted that the fine imposed on Mr Vavřička had not been excessive. Although the child applicants' non-admission to preschool had meant the loss of an important opportunity to develop their personalities, it was a preventive rather than a punitive measure, and had been limited in time in that when they reached the age of mandatory school attendance their admission to primary school had not been affected by their vaccination status.

In consequence, the measures complained of by the applicants, assessed in the context of the national system, had been in a reasonable relationship of proportionality to the legitimate aims pursued by the Czech State (to protect against diseases which could pose a serious risk to health) through the vaccination duty.

The Court clarified that, ultimately, the issue to be determined was not whether a different, less prescriptive policy might have been adopted, as had been done in some other European States. Rather, it was whether, in striking the particular balance that they did, the Czech authorities had exceeded their wide margin of appreciation in this area. It concluded that the impugned measures could be regarded as being "necessary in a democratic society".

This press release is accompanied by a Q&A sheet.

Principal facts

Application no. 47621/13 (*Vavřička v. the Czech Republic*) was lodged on 23 July 2013 by Pavel Vavřička, a Czech national who was born in 1965.

In 2003 Mr Vavřička was fined for refusing to have his two children, then aged 14 and 13, vaccinated against poliomyelitis, hepatitis B and tetanus, as required under domestic law (the Public Health Protection Act no. 258/2000 and Decree of the Ministry of Health no. 439/2000). The appeals lodged by Mr Vavřička against the decision were dismissed by the domestic courts.

Application no. 3867/14 (*Novotná v. the Czech Republic*) was lodged on 9 January 2014 by Markéta Novotná, a Czech national who was born in 2002.

The applicant's parents agreed to have her vaccinated against all diseases for which vaccination was compulsory, except for measles, mumps and rubella (MMR) as they had doubts about the MMR vaccine. In 2006 the applicant was admitted to nursery school. Two years later, having been informed by the paediatrician that the applicant had not received the MMR vaccine, the head teacher decided to reopen the admission procedure and to refuse her admission. The applicant unsuccessfully challenged the head teacher's decision in the domestic courts, which took the view that the applicant had failed to establish any disproportionate interference with her fundamental rights: her continued attendance at the nursery school was capable of endangering the health of others, and the right to health protection took precedence.

Application no. 73094/14 (*Hornych v. the Czech Republic*) was lodged on 16 November 2014 by Pavel Hornych, a Czech national who was born in 2008.

Having suffered from various health problems, the applicant was not vaccinated, his parents arguing that this was due to the lack of an individualised vaccination recommendation by his paediatrician. No minor-offence proceedings were however taken in connection with his vaccination status. In 2011, at the time of the applicant's enrolment in nursery school, the paediatrician certified in writing that the applicant had not been vaccinated. Despite this a handwritten note was added that he "was not lacking any regular vaccination prescribed by law". Be it as it may, in the same year, he was refused admission to nursery school because he had not proved that he had been vaccinated. Appeals against this decision were unsuccessful.

Applications nos. 19306/15 and 19298/15 (*Brožík v. the Czech Republic and Dubský v. the Czech Republic*) were lodged by Adam Brožík and Radomír Dubský on 16 April 2015. The applicants are Czech nationals who were born in 2011.

The applicants' parents refused to have them vaccinated against some of the illnesses defined by law on the grounds of their beliefs and convictions. In 2014 the head teacher refused to admit the applicants to nursery school, stating that compulsory vaccination constituted a permissible restriction of the right to freely manifest one's religion or belief because it was a necessary measure for the protection of public health and the rights and freedoms of others. The applicants unsuccessfully challenged this decision and sought an interim measure to enable immediate enrolment in the establishment.

Application no. 43883/15 (*Roleček v. the Czech Republic*) was lodged by Prokop Roleček, a Czech national who was born in 2008.

The applicant's parents, who are biologists, set out an individual vaccination plan for him, according to which he was vaccinated against some of the illnesses later than required by law and not vaccinated against others. In 2010 the head teachers of two nursery schools refused to admit the applicant on the grounds that the conditions laid down in the relevant Law (no. 258/2000) had not been met. The applicant challenged this decision, but his appeal was dismissed.

Complaints, procedure and composition of the Court

The applicants alleged, in particular, that the various consequences for them of non-compliance with the statutory duty of vaccination had been incompatible with their right to respect for their private life under Article 8 (right to respect for private life) of the Convention.

The applications were lodged with the European Court of Human Rights between 2013 and 2015. On 7 and 9 September 2015 they were communicated[2] to the Czech Government. On 17 December 2019 the Chamber to which they had been allocated relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 1 July 2020.

The French, German, Polish and Slovakian Governments were given leave to intervene in the written procedure, as were several non-governmental organisations.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Jon Fridrik **Kjølbro** (Denmark),
Ksenija **Turković** (Croatia),
Paul **Lemmens** (Belgium),
Síofra **O'Leary** (Ireland),
Yonko **Grozev** (Bulgaria),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Marko **Bošnjak** (Slovenia),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),
Lado **Chanturia** (Georgia),
Erik **Wennerström** (Sweden),

2 In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure"). Further information about the procedure after a case is communicated to a Government can be found in the Rules of Court.

Raffaele **Sabato** (Italy),
Anja **Seibert-Fohr** (Germany),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Article 8 (right to respect for private life)

The Court's reasoning commences with the clarification that the case is about the standard and routine vaccination of children against diseases that are well known to medical science, and the compulsory nature of the relevant vaccines in the Czech Republic.

The vaccination duty concerned vaccination against diphtheria, tetanus, whooping cough, *Haemophilus influenzae* type b infections, poliomyelitis, hepatitis B, measles, mumps, rubella and – for children with specified health indications – pneumococcal infections.

Whether there was an interference

According to the Court's case-law, compulsory vaccination, as an involuntary medical intervention, represented an interference with the right to respect for private life. In the present case, although none of the contested vaccinations had been performed, the Court considered that as a result of the refusal to admit them to preschool, the child applicants (in five of the applications) had borne the direct consequences of non-compliance with the vaccination duty. With regard to Mr Vavřička, while it was his children's vaccination that was at issue, under domestic law he was personally subject to the duty to have his children vaccinated; the consequences of non-compliance with it, namely, a fine, had been borne by him directly as the person legally responsible for his children's well-being. Each of the applicants had therefore suffered an interference with their right to respect for private life.

Lawfulness of the interference

The Court considered that the interference complained of had an adequate basis in domestic law, being based on a combination of primary and secondary legislation that had already been found by the domestic courts to satisfy the requirements of Czech constitutional law.

Legitimate aim pursued by the interference

The objective of the relevant legislation was to protect against diseases which could pose a serious risk to health. This referred both to those who received the vaccinations concerned as well as those who could not be vaccinated and were thus in a state of vulnerability, relying on the attainment of a high level of vaccination within society at large for protection against the contagious diseases in question. This objective corresponded to the aims of the protection of health and the protection of the rights of others, recognised by Article 8 of the Convention.

Whether the interference was necessary in a democratic society

- ***The States' margin of appreciation***

Since the present case concerned a compulsory medical intervention, the vaccination duty could be regarded as relating to the individual's effective enjoyment of intimate rights. However, the weight of this consideration was lessened by the fact that no vaccinations had been administered against the will of the applicants, nor could they have been, as the relevant domestic law did not permit compliance with the duty to be forcibly imposed.

The Court noted that there was a general consensus that vaccination was one of the most successful and cost-effective health interventions and that each State should aim to achieve the highest possible level of vaccination among its population. As to the best means of achieving that, however,

there was no consensus amongst the Contracting Parties to the Convention over a single model. Rather, there existed a spectrum of policies concerning the vaccination of children. The Czech Republic's position was at the more prescriptive end of that spectrum, a position supported and shared by three of the intervening Governments (of France, Poland and Slovakia). Indeed, the Court noted that several other Contracting Parties had recently changed their policies towards a more prescriptive approach, due to a decrease in voluntary vaccination and a resulting decrease in herd immunity. While it was accepted that making vaccination a matter of legal duty raised sensitive issues, this was not limited to the perspective of those disagreeing with the vaccination duty, but encompassed the value of social solidarity, the purpose of which was to protect the health of all members of society, particularly those who were especially vulnerable and on whose behalf the remainder of the population was asked to assume a minimum risk in the form of vaccination.

In consequence, the Court considered that in the present case the State's margin of appreciation should be a wide one.

- ***Pressing social need***

The Convention as well as other international instruments imposes a positive obligation on the Contracting States to take appropriate measures to protect the life and health of those within their jurisdiction. The expert material submitted by the respondent Government conveyed the firm view of the relevant medical authorities of the Czech Republic that the vaccination of children ought to remain a matter of legal duty in that country, and underlined the risk to individual and public health to which a possible decline in the rate of vaccination would give rise were it to become a merely recommended procedure. Concerns regarding the risk associated with a decrease in vaccine coverage had also been expressed by the intervening Governments, with emphasis placed on the importance of ensuring that children were immunised against the diseases in question from an early age. Similar concerns had also been expressed elsewhere at European and international level.

In the light of these arguments, the Court considered that in the Czech Republic the vaccination duty could be said to represent the national authorities' answer to the pressing social need to protect individual and public health against the diseases in question and to guard against any downward trend in the rate of vaccination among children.

- ***Relevant and sufficient reasons***

With regard to the reasons put forward for the mandatory nature of vaccination in the Czech Republic, the Court acknowledged the weighty public health rationale underlying this policy choice, notably in terms of the efficacy and safety of childhood vaccination, and also the general consensus supporting the objective, for every State, to attain the highest possible degree of vaccine coverage. It further noted the conclusion of the Czech Constitutional Court that the relevant data from national and international experts in the matter justified pursuing this policy. While a system of compulsory vaccinations was not the only, or the most widespread, model adopted by European States, the Court reiterated that, in matters of health-care policy, it was the national authorities who were best placed to assess priorities, the use of resources and the needs of society. All of these aspects were relevant in the present context, and they came within the wide margin of appreciation that the Court should accord to the respondent State.

Furthermore, in all decisions concerning children their best interests must be of paramount importance. It followed that there was an obligation on States to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development.

With regard to immunisation, the objective had to be to protect every child against serious diseases. In the great majority of cases, this was achieved by children receiving the full schedule of vaccinations during their early years. Those to whom such treatment could not be administered were indirectly protected against contagious diseases as long as the requisite level of vaccination

coverage was maintained in their community; in other words, their protection came from herd immunity. Thus, where the view was taken that a policy of voluntary vaccination was not sufficient to achieve and maintain herd immunity, the national authorities could reasonably introduce a compulsory vaccination policy in order to achieve an appropriate level of protection against serious diseases.

In the Court's view, the respondent State's health policy was based on such considerations, and for this reason it could be said to be consistent with the best interests of the children who were its focus. The choice of the Czech legislature to apply a mandatory approach to vaccination was therefore supported by relevant and sufficient reasons, as were the specific interferences complained of by the applicants.

- ***Proportionality of the interference in relation to the aim pursued***

The vaccination duty concerned nine diseases against which vaccination was considered effective and safe by the scientific community, as was the tenth vaccination, which was given to children with particular health indications. While the Czech model was one of compulsory vaccination, this was not an absolute duty. An exemption was permitted, notably in respect of children with a permanent contraindication to vaccination. In addition, there was a further exemption on the basis of a "secular objection of conscience", as recognised by the Constitution Court in Mr Vařička's case and further developed in subsequent cases.

While vaccination was a legal duty in the respondent State, the Court pointed out that compliance with it could not be directly imposed, in the sense that there was no provision allowing for vaccination to be forcibly administered. The sanction imposed on Mr Vavřička could be regarded as relatively moderate, consisting of a one-off administrative fine.

With regard to the child applicants, the Court considered that their non-admission to preschool had been a measure intended to safeguard the health of young children in particular and was essentially protective rather than punitive in nature.

The Court also noted the procedural safeguards provided for in national law. The applicants had had at their disposal both administrative appeals as well as judicial remedies before the administrative courts and, ultimately, the Constitutional Court. They had failed to make out claims calling in question the institutional arrangements in place in the Czech Republic in the area of formulating the compulsory vaccination policy and the effectiveness and safety of the vaccines concerned (see Q&A attached for more details).

With respect to the child applicants, their exclusion from preschool had meant the loss of an important opportunity for them to develop their personalities and to begin to acquire important social and learning skills in a formative pedagogical environment. However, that had been the direct consequence of the choice made by their respective parents to decline to comply with a legal duty, the purpose of which was to protect health, in particular in that age group. Moreover, the effects on the child applicants had been limited in time. When they reached the age of mandatory school attendance, their admission to primary school had not been affected by their vaccination status.

In consequence, the measures complained of by the applicants, assessed in the context of the national system, had been in a reasonable relationship of proportionality to the legitimate aims pursued by the respondent State through the vaccination duty.

Conclusion

The Court clarified that, ultimately, the issue to be determined was not whether a different, less prescriptive policy might have been adopted, as had been done in some other European States. Rather, it was whether, in striking the particular balance that they did, the Czech authorities had exceeded their wide margin of appreciation in this area. It concluded that the impugned measures

could be regarded as being "necessary in a democratic society". Accordingly, there has been no violation of Article 8 of the Convention.

Other articles

The Court also declared, by a majority, the complaints under Article 9 (freedom of thought and conscience) of the Convention inadmissible and that there was no need to examine the case separately under Article 2 of Protocol No. 1 (right to education) to the Convention.

Useful link

Q&A sheet.

Separate opinions

Judge Lemmens expressed a partly concurring and partly dissenting opinion. Judge Wojtyczek expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

Press contacts
During the current health-crisis, journalists can continue to contact the Press Unit via echrpress@echr.coe.int

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