

Measures imposed on unvaccinated healthcare workers justified

In today's **Chamber** judgment¹ in the case of [Pasquinelli and Others v. San Marino](#) (application no. 24622/22) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the effects on the applicants – all healthcare workers – following their refusal to be vaccinated against Covid-19.

Bearing in mind the wide discretion States had in healthcare policy matters, the Court found that the measures had been proportionate and justified in view of the legitimate aim pursued, specifically, the health of the population in general, including the applicants themselves, and the rights and freedoms of others. It noted furthermore that the losses suffered by the applicants were an unavoidable consequence of an “exceptional and unforeseeable” context of a global pandemic that had pertained at the relevant time in this case.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicants are 19 San Marinese nationals, six Italian nationals and one Moldovan national.

Under section 14 of Law no. 85/2021 concerning the vaccination of healthcare personnel (*sanitario e socio-sanitario*), employees in this sector were sent invitations for appointments to get vaccinated against Covid-19. In line with the Law and its later amendments (Law no. 107/2021), if staff refused vaccination, then the authorities had to firstly attempt to organise the service so as to minimise their contact with users. Possibilities then included reassignment to other services of the Social Security Institute (SSI), or to other vacant public-service positions, or to community service in exchange for an allowance of a maximum of 600 euros (EUR) per month. As an extreme alternative, if the other options were not viable or were not accepted, temporary suspension from service could be ordered.

Where staff could not be vaccinated owing to prior health conditions, the law provided for them to be placed on leave of absence with the right to receive their full salary.

The applicants are a group of healthcare workers who refused to be vaccinated against Covid-19. In consequence, they were affected by one or more measures, mainly related to their employment. These included suspension without pay; undertaking community service in exchange for an allowance proportionate to the hours worked; or relocation to vacant posts.

An application by popular initiative was brought before the Constitutional Court in July 2021, arguing, in particular that sections 2, 6 and 8 of Law no. 107/2021 violated the principle of equality and amounted to discrimination. It was further argued that section 8 of Law no. 107/2021 also constituted an abusive interference of public power in the private sphere. The Constitutional Court,

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

with reference to the European Court's case-law (in particular [Vavříčka and Others v. the Czech Republic](#), nos. 47621/13 and 5 others) confirmed the compatibility of the provisions in question with the Constitution and other instruments.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Article 14 (prohibition of discrimination) and Article 1 of Protocol No. 12 (general prohibition of discrimination), the applicants complained of the obligation on them to get vaccinated, the consequences suffered as a result of that refusal, and that those consequences, as well as the alleviation of certain measures for vaccinated individuals, had amounted to discrimination.

The application was lodged with the European Court of Human Rights on 30 April 2022.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana Jelić (Montenegro), *President*,
Alena Poláčková (Slovakia),
Lətif Hüseyinov (Azerbaijan),
Péter Paczolay (Hungary),
Gilberto Felici (San Marino),
Erik Wennerström (Sweden),
Raffaale Sabato (Italy),

and also Liv Tigerstedt, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court firstly considered that vaccination in San Marino was not obligatory and secondly that the measures put in place following the applicants' choice not to get vaccinated had been lawful. It reiterated that the Covid-19 virus during the pandemic had been liable to have serious consequences for individuals and public health. States had (and had had during the pandemic) an obligation to safeguard the lives of those within their jurisdictions. The restrictions in this case had pursued the legitimate aim of the protection of health and the rights and freedoms of others. The question for the Court was whether the measures had been "necessary in a democratic society" within the "exceptional and unforeseeable context" which had pertained at that time.

While the Court did not comment on whether the applicants, as unvaccinated staff members, had posed a higher risk to others than those who had been vaccinated. However, it did hold that it was indisputable that unvaccinated individuals had been and remained both more susceptible to the infection and in a position to contaminate and spread the virus.

The Court noted that the impugned law was a result of a global reduction of restrictive measures, which had taken place against a background of risks to the global economy. Even if the effectiveness of vaccination in limiting contagion had been dubious, it had not been unreasonable to alleviate measures in respect of vaccinated individuals who themselves had been less at risk. Unvaccinated people, as had been established at the time, were more vulnerable to serious consequences from the disease.

The Court noted that the measures to which the applicants had been subject had been temporary, and the applicants had failed to show how their dignity or emotional wellbeing had been affected by the measures, or how their financial losses had worsened the material wellbeing of each applicant and their respective families.

San Marino had put forward different options regarding the measures applied to each individual applicant.

The financial losses had not been particularly significant for many of the individuals concerned, and there where the losses had been very significant, the applicants had refused voluntary work and had failed to justify that refusal. Financial losses, the Court reiterated, had been an unavoidable consequence of the global pandemic.

The San Marino legislature had been justified in passing into law the measures designed with the legitimate aim of protecting the wellbeing of others, including the applicants. The measures had been proportionate to the aims pursued and had not exceeded the wide discretion (“margin of appreciation”) in healthcare matters afforded to States.

There had been no violation of Article 8.

Other articles

The Court ruled that the application of measures to a small number of SSI staff had not exceeded the State’s discretion (“margin of appreciation”) in healthcare matters. It considered that the difference in treatment of the applicants had been objectively justified, further noting that mask-wearing and protective distancing as temporary measures during a global pandemic were measures of limited intensity. It had not been unreasonable to alleviate measures in respect of vaccinated persons who had been less at risk while maintaining them for those such as the applicants who had remained at risk and thus such action could not be considered discriminatory.

The Court found these complaints under Article 14 and Article 1 of Protocol No. 12 to be manifestly ill-founded.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.