

## Q&A on the case of *Vavříčka and Others v. the Czech Republic*<sup>1</sup>

*This document is a tool for the press, issued in the context of notification of the above judgment. It does not bind the Court.*

### **What were the applicants complaining about?**

The applicants complained about the consequences of non-compliance with the general statutory duty in the Czech Republic to ensure routine vaccination of children against diseases that are well known to medical science.

### **What does the Czech legislation stipulate?**

In the Czech Republic, the Public Health Protection Act, in combination with an implementing ministerial decree, provides for vaccination of permanent and long-term residents in line with a defined schedule. In the case of children, it is the parents who are to ensure compliance. Failure to do so constitutes a minor offence, and day-care facilities for children up to the age of three and other types of preschool facilities (that is, receiving children until the school year following the date on which they reach the age of six) may only accept children who have received the required vaccinations, or who have been certified as having acquired immunity by other means or as being unable to undergo vaccination on health grounds.

### **Which vaccines are concerned ?**

The legislation concerns the vaccines administered against childhood diseases that are well known to medical science, namely diphtheria, tetanus, whooping cough, *Haemophilus influenzae* type b infections, poliomyelitis, hepatitis B, measles, mumps, rubella and – for children with specified health indications – pneumococcal infections.

### **What were the consequences for the applicants of failure to comply with the vaccination duty?**

Five applications were lodged by “child applicants” who had not been admitted to nursery school or their enrolment had been cancelled, as they had not been vaccinated or their vaccinations did not correspond to the schedule provided for in the legislation.

One application (from Mr Vavříčka) was lodged by a father who had failed to have his two children vaccinated. This failure was found to be a minor offence and a fine was imposed.

### **What were the applicants' specific complaints?**

The applicants relied on several Convention provisions, and especially on Article 8 (right to respect for private life) of the European Convention on Human Rights.

### **Why has the Court found no violation of Article 8 of the Convention?**

The Court held that the measures that the applicants complained about, assessed in the context of the national system, were in a reasonable relationship of proportionality to the legitimate aims pursued by the Czech State through the vaccination duty. It has concluded that the Czech authorities did not exceed the wide discretion (“margin of appreciation”) that they enjoy in this area.

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<sup>1</sup> Applications no. 47621/13 and five others. See press release for more details.

**What was the reasoning followed by the Court in reaching this conclusion?****▪ Was there an interference?**

According to the Court's case-law, compulsory vaccination, as an involuntary medical intervention, represents an interference with the right to respect for private life. In the present case, there was such an interference, although no forcible vaccination in fact took place.

**▪ What is the legitimate aim pursued by the Czech legislation?**

The aim of the Czech legislation is to protect against diseases which may pose a serious risk to health. This refers both to those who receive the vaccinations concerned as well as those who cannot be vaccinated and are 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 corresponds to the aims of the protection of health and the protection of the rights of others, recognised by Article 8 of the Convention.

**▪ What is the States' margin of appreciation in the area of public health?**

According to the Court's case-law, matters of healthcare policy are within the margin of appreciation of the national authorities. In the present case, which specifically concerned the compulsory nature of child vaccination, that margin had to be a wide one.

**▪ Did the interference with the right to private life correspond to a pressing social need?**

Articles 2 (right to life) and 8 (right to respect for private life) impose a positive obligation on the Contracting States to take appropriate measures to protect the life and health of those within their jurisdiction. Similar obligations arise under other international instruments. In the Czech Republic the vaccination duty, which is strongly supported by the relevant medical authorities, represents 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.

**▪ Where do the best interests of the child come into this question?**

In line with the case-law, in all decisions concerning children their best interests are of paramount importance. It follows that there is 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. When it comes to immunisation, the objective should be that every child is protected against serious diseases. In the great majority of cases, this is achieved by children receiving the full schedule of vaccinations during their early years. Those to whom such treatment cannot be administered are indirectly protected against contagious diseases as long as the requisite level of vaccination coverage is maintained in their community; that is, their protection comes from herd immunity. This public health policy is based on relevant arguments and as such is consistent with the best interests of the children who are its focus. The Court therefore accepted that the Czech legislature's choice to apply a mandatory approach to vaccination is supported by relevant and sufficient reasons.

**▪ What about the effectiveness of the vaccines in question and possible exemptions?**

The vaccination duty concerns nine diseases against which vaccination is considered effective and safe by the scientific community, as is the tenth vaccination, to be given to children with particular health indications. Although the Czech model advocates compulsory vaccination, this is not an absolute duty. An exemption from the duty is permitted notably in respect of children with a permanent contraindication to vaccination. An exemption may also be permitted on the basis of the Constitutional Court's *Vavříčka* case-law, which subsequently developed into the right to a secular objection of conscience.

▪ **What about the safety of the vaccines in question?**

It is not disputed that although entirely safe for the great majority of recipients, in rare cases vaccination may prove to be harmful to an individual, causing serious and lasting damage to his or her health. The Government indicated that out of approximately 100,000 children vaccinated annually in the Czech Republic (representing 300,000 vaccinations), the number of cases of serious, potentially lifelong, damage to health stood at five or six. In view of this very rare but undoubtedly very serious risk to the health of an individual, the Convention institutions have stressed the importance of taking the necessary precautions before vaccination. This evidently refers to checking in each individual case for possible contraindications and to monitoring the safety of the vaccines in use. The Court saw no reason in any of these respects to question the adequacy of the national system.

▪ **Were the applicants forced to be vaccinated or to have their children vaccinated?**

No. In the Czech Republic, vaccination is a legal duty, but compliance with it cannot be directly imposed, as there is no provision allowing for vaccination to be forcibly administered.

▪ **Were the measures imposed on the applicants excessive?**

The application of sanctions is used as an indirect method of enforcing this duty. In the Czech Republic the sanction can be regarded as relatively moderate, since it consists of an administrative fine that may only be imposed once. The applicants have had the benefit of a full range of legal remedies.

- In the case of Mr Vavříčka, the amount of the fine was towards the lower end of the relevant scale and could not be considered as unduly harsh or onerous.
- With regard to the child applicants, their non-admission to preschool meant the loss of an important opportunity to develop their personalities. However, this was a consequence (clearly provided for the legislative texts) of their parents' choice not to comply with a general legal duty, which was intended to safeguard the health of young children in particular and was essentially protective rather than punitive in nature.

In the Court's opinion, it cannot 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, as a matter of legal duty and in the name of social solidarity, for the sake of the small number of vulnerable children who are unable to benefit from vaccination. The Court has found that it was validly and legitimately open to the Czech legislature to make this choice, which is fully consistent with the rationale of protecting the health of the population.

▪ **Were the child applicants able to resume their school education on reaching the age of compulsory school attendance?**

Yes. The effects on the child applicants were limited in time. When they reached the age of compulsory school attendance, their admission to primary school was not affected by their vaccine status.

***Is this the first time that the European Court of Human Rights has examined a case of this type?***

Yes, this is the first time that the Court has delivered a judgment about compulsory vaccination against childhood diseases that are well known to medical science.

***Which judicial formation ruled on this application?***

A Grand Chamber of 17 judges delivered a judgment on 8 April 2021.

***Is this judgment final?***

Yes – the Grand Chamber's judgments are final from delivery.