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Articles Studia Iuridica Lublinensia vol. 31, 1, 2022
DOI: 10.17951/sil.2022.31.1.63-77

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Compulsory Vaccination and Fundamental Human Rights in the World of Work

Przymusowe szczepienie a podstawowe prawa człowieka w świecie pracy

ABSTRACT

During the COVID-19 epidemiological emergency, several countries adopted regulations which have affected the world of work. The impact of these measures on workers and other employees has been the subject of numerous studies. Among the legislation, there are some that apply to specific occupational groups, such as healthcare workers, and others that apply more generally to a broad section of society. What they have in common is that they restrict the fundamental rights of workers to an extent that justifies a thorough human rights and constitutional rights analysis. The aim of this paper is to analyse the issue of compulsory vaccination by focusing primarily on the case law of the European Court of Human Rights and attempt to interpret it in relation to the domestic regulation of the COVID-19 pandemic. The second part of the paper is a case study based on the Hungarian legislation, which was adopted recently.

Keywords: COVID-19; human rights; employees; European Court of Human Rights; Hungarian legislation

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INTRODUCTION AND METHODOLOGY

The most comprehensive case of the European Court of Human Rights (ECtHR) on vaccination is the *Vavricka v. Czech Republic* case.[1] In this case, the ECtHR has conducted an extremely extensive evidentiary procedure, which is relevant for the analysis of vaccination against COVID-19. The plaintiffs, in this case, were children (or their parents) who, for one reason or another, did not participate in the compulsory vaccination programme.[2] Therefore, they are not necessarily in a similar situation in this respect to healthcare workers or employees who are obliged by their employer to receive the vaccination. However, the position of parents against compulsory vaccination and the ECtHR's line of reasoning may also be applicable to vaccination during an epidemiological emergency situation. It is not surprising that several applications have been submitted to the ECtHR since the outbreak of the COVID pandemic,[3] but the ECtHR has rejected the requests for interim measures in these cases, so it is likely to be some time before we know the ECtHR's position on this issue.[4] The aim of this paper is to analyse the issue of compulsory vaccination by focusing primarily on the case law of the ECtHR and attempt to interpret it in relation to the domestic regulation of the COVID-19 pandemic. The second part of the paper is a case study based on the Hungarian legislation, which was adopted recently. Thus, the methodology is based on a dogmatical analysis of the relevant international and domestic legislation and the case law interpreting the legal measures.

The fundamental rights concerned in the context of compulsory vaccination under the European Convention on Human Rights (ECHR) are the right to life (Article 2 ECHR), the right to respect for private and family life (Article 8 ECHR) and the freedom of thought, conscience and religion (Article 9 ECHR).

The right to life is an absolute right, and the state must not only refrain from acts that would limit it, but also has a positive obligation to prevent risks to life and

[1] *Vavricka and others v. Czech Republic*, Application nos. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15, 43883/15.

[2] On the child's best interest, see D. Archard, J. Brierley, E. Cave, *Compulsory Childhood Vaccination: Human Rights, Solidarity, and Best Interests*, "Medical Law Review" 2021, vol. 29(4).

[3] *Kakaletri and others v. Greece*, Application no. 43375/21 (24 applicants, 18 of them work in private practice and six of them work in public hospitals); *Theofanopoulou and others v. Greece*, Application no. 43910/21 (6 applicants – doctors, nurses, healthcare workers – working in public hospital).

[4] European Court of Human Rights, Refusal of requests for interim measures in respect of the Greek law on compulsory vaccination of health-sector staff against Covid-19, Press Release issued by the Registrar of the Court, ECHR 266 (2021), 9.9.2021, https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7113391-9633858&filename=Request%20for%20interim%20measures%20against%20Greece%20concerning%20compulsory%20vaccination%20for%20health%20staff.pdf (access: 21.2.2022).

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thus, protect the individual.[5] The Contracting State has a considerable margin of appreciation in this area, as this duty is considered to be fulfilled when individuals are protected against risks that are "know or should have known".[6]

Regarding the issue of childhood vaccination schedules,[7] the ECtHR takes the view that protection under Article 2 ECHR is not applicable in these cases. Article 2 provides protection against deprivation of life and, although it can be understood as a protection of bodily integrity, vaccination does not in itself constitute a severe interference as to infringe the right to life.[8] The side effects of vaccination can of course cause health problems in the case of allergies or other contraindications, but if these do not constitute a serious risk, they are not covered by Article 2 either.[9] Even if the vaccination caused death, the Contracting State cannot be held liable for it, if it has taken appropriate steps to monitor and control the process.[10] In other words, isolated death cases do not constitute a violation of Article 2. According to A. Krasser, this also means that there should be health-justifiable exceptions for cases where someone has to be exempted from vaccination.[11]

The right to privacy is at the heart of the claims in cases concerning compulsory vaccination. While the concept of privacy is not clear-cut and can encompass many life situations,[12] it certainly includes the issue of individual autonomy,[13] which is usually at the core of the arguments.[14] Since medical interventions often affect bodily integrity, autonomy in this area implies that such interventions can only be carried out with the consent of the individual.[15]

If vaccination is compulsory in the sense that the individual is forced by administrative means in the absence of consent, then the freedom of the individual is

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[5] *LCB v. the United Kingdom*, Application no. 23413/94, [36].

[6] *Ibidem*, [41].

[7] The childhood vaccination schedules in all EU/EEA countries include the vaccination against measles, mumps, rubella, diphtheria and other common diseases. See European Vaccination Information Portal, *Vaccination schedules in the EU/EEA*, https://vaccination-info.eu/en/vaccination/when-vaccinate/vaccination-schedules-eueea (access: 28.2.2022).

[8] *Carlo Boffa and others v. San Marino*, Application no. 26536/95, [33].

[9] A. Krasser, *Compulsory Vaccination in a Fundamental Rights Perspective: Lessons from the ECtHR*, "ICL Journal" 2021, vol. 2(15), p. 211.

[10] *Association of Parents v. the United Kingdom*, Application no. 7154/75, [31] (Commission Decision, 12 July 1978), [32].

[11] A. Krasser, *op. cit.*, p. 212.

[12] *Costello-Roberts v. the United Kingdom*, Application no. 13134/87 (ECtHR, 25 March 1993).

[13] Individual autonomy may also be related to personal health data and data protection issues. See A. Wołoszyn-Cichocka, *Access to Patient's Medical Records in the Light of the Case Law of Administrative Courts*, "Studia Iuridica Lublinensia" 2021, vol. 30(1).

[14] *Vavricka and others v. Czech Republic*, Application nos. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15, 43883/15, [37], [45], [95], [102], [223].

[15] C. Grabenwarter, *European Convention on Human Rights: Commentary*, München 2014, Article 8 (29).

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clearly infringed.[16] However, the ECtHR case law has also held that compulsory vaccination must include cases where the individual's right to choose is taken away indirectly, by the prospect of some disadvantage.

In contrast to the right to life, the right to privacy may be restricted. However, it is limited by the ECHR: the exercise of this right may be interfered with by a public authority only in cases provided for by law, where such interference is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of public health or morals, or for the protection of the rights and freedoms of others.[17]

According to some religious teachings, vaccination is an external intervention in human life, and therefore it is an unacceptable procedure. There are also religious beliefs that more specifically reject the use of certain vaccines (e.g., gelatine extracted from swine tissue or other animal-derived substances, or vectors from aborted foetuses). Some reject vaccines because they consider them incompatible with their views on animal health protection, as vaccines are tested on animals (in the EU Member States, for example, it is a compulsory step[18]).

The word "religion" is defined neither by the text of Article 9 ECHR nor in the ECtHR's case law in order to keep the notion flexible enough to embrace the whole range of religions worldwide and, at the same time, specific enough to be applicable to individual cases.[19] The scope of Article 9 is very wide, as it protects both religious and non-religious opinions and convictions. If a personal or collective conviction is to benefit from the right to "freedom of thought, conscience and religion" it must attain a certain level of cogency, seriousness, cohesion and importance.[20]

However, the ECtHR ruled in *Vavricka v. Czech Republic* that Article 9 ECHR does not always guarantee the right to behave in the public sphere in a way which was dictated by such beliefs and noted that the term "practice" did not cover each and every act which was motivated or influenced by a belief.[21] In relation to the specific applications, it found that the applicants' concern was primarily medical in nature, and that the issue of freedom of conscience and religion was also second-

[16] F. D'Ancona, C. D'Amario, F. Maraglino, G. Rezza, S. Iannazzo, *The law on compulsory vaccination in Italy: An update 2 years after the introduction*, "Eurosurveillance" 2019, vol. 24(26).

[17] Article 8 (2) ECHR.

[18] Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, pp. 67–128), Annex I, Part II, F 1.4.

[19] Guide on Article 9 of the Convention – Freedom of thought, conscience and religion, Council of Europe/European Court of Human Rights, 2021, [14].

[20] *Ibidem*, [16].

[21] *Vavricka and others v. Czech Republic*, Application nos. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15, 43883/15, [331].

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ary before the national courts (in the case of Mr Vavricka, whereas the applicants Novotná and Hornych did not even raise this before the national court). And when the national court asked Mr Vavricka to explain exactly what prevented him from receiving the vaccination according to his beliefs, he could not provide an adequate answer. Since Article 9 guarantees protection for beliefs or convictions that are sufficiently cogent, serious, cohesive and important,[22] claims centred around Article 9 were rejected.

This article examines the jurisprudential practice of the Hungarian Constitutional Court. The methodology of examination is twofold. First, there is a dogmatical analysis of the Constitutional Courts' decisions, and then comparative analysis of the ECtHR and the Constitutional Court's decisions. The comparison is focused on human rights issues, most importantly about the right to life, the right to human dignity and the freedom of thought, conscience and religion.

RESEARCH AND RESULTS

This section analyses the practice of the Hungarian Constitutional Court. The number of relevant decisions is extensive. Previously constitutional concerns about compulsory vaccination in Hungary were related primarily to the mandatory vaccination programme for children.[23] However, two recent decisions deal with COVID-19 related issues: the first one was about the restrictions on social distancing,[24] and the second one scrutinizes the mandatory vaccination of healthcare workers.

1. Case study of compulsory vaccination in Hungary

The set of government decrees which made vaccination compulsory has become a rather controversial product of emergency legislation in Hungary. The provision on compulsory vaccination of healthcare workers against coronavirus was adopted in July 2021 by Government Decree No. 449/2021 (VI. 29). It provided for that new employment contract shall not be concluded anyone who has not received the SARS-CoV-2 coronavirus vaccination (hereinafter: vaccination) during the state of danger related to the pandemic.[25] Moreover, the employment contract shall be terminated with immediate effect, if employees fail to duly certify to the employer within 15 days that they have received the vaccination. Persons who have medical

[22] *Ibidem*, [335].
[23] Hungarian Constitutional Court Decision No. 39/2007 (VI. 20).
[24] Hungarian Constitutional Court Decision No. 27/2021 (XI. 5).
[25] Section 1 (1) and (2) of Government Decree No. 449/2021 (VII. 29).

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contraindication and therefore cannot be vaccinated are exempted from this obligation if they provide a medical certificate on their status.[26]

After the third wave of the pandemic, the Government also made vaccination compulsory for other groups of workers in addition to healthcare workers, but the legislation was rather half-hearted. According to Government Decree No. 598/2021 (X. 28) on the protection of workplaces against the coronavirus, employers – taking into account the specific characteristics of the workplace and the job – may require their employees to be vaccinated in order to protect their health, except for those who are exempted for medical reasons. If the employee fails to take the vaccination within the time limit set by the employer, the employer may unilaterally order unpaid leave for no longer than one year. If the employee fails to take the vaccination within one year, the employer may terminate the employment relationship with immediate effect. Government Decree No. 599/2021 (X. 28) on the compulsory use of the coronavirus vaccination by employees of public institutions[27] provides for that employers must impose unpaid leave on unvaccinated employees, but the employer may decide whether to terminate the employment relationship with immediate effect after the one-year period.[28] The temporal scope of these government decrees is linked to Act I of 2021 on state of danger; thus, it is limited to the duration of the emergency.

These regulations have been the subject of controversy mainly because anti-COVID vaccines – unlike the serums used in the regular vaccination schedule, which are known and used for a long time – have not gone through the traditional licensing procedure, so their effects and side effects are not well known. However, opposition to vaccinations is not new, and the Hungarian Constitutional Court has already addressed the issue.

2. Analysis of the case law of the Hungarian Constitutional Court

Regarding the mandatory vaccination of children, the Constitutional Court's landmark decision was delivered in 2007[29] and annulled certain paragraphs of the Healthcare Act.[30] According to the contested provision of the law, "if the person

[26] Section 1 (6) of Government Decree No. 449/2021 (VII. 29).

[27] The personal scope of Government Decree covers employees of state and municipal institutions, like universities, public schools, nurseries, law enforcement or defence institutions and public administration bodies.

[28] This provision significantly circumvent the employer's level playing field to decide about termination. On the importance of internal regulations and decision making abilities, see W. Uziak, *A Few Remarks on Content of Employer's Internal Regulations*, "Studia Iuridica Lublinensia" 2015, vol. 24(3); A. Dral, *An Employment Contract for a Specified Period and the Problem of the Causation of a Notice – Current Status and the Tendencies of Changes*, "Studia Iuridica Lublinensia" 2015, vol. 24(3).

[29] Act CLIV of 1997 on Health.

[30] Constitutional Court Decision No. 39/2007 (VI. 20).

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subject to the obligation to vaccinate fails to comply with this obligation upon written request, the health authority shall order vaccination by decision". In other words, the law back then provided for a *de facto* compulsory vaccination. The Constitutional Court found that since the law did not grant a definitive exemption from vaccination, and therefore, the legislation did not provide for any legal possibility of appeal to a higher authority or judicial review these provisions are violating the Constitution.[31] At the same time, the Constitutional Court did not find compulsory vaccinations *per se* unconstitutional, neither in relation to the right to self-determination, nor in relation to the prohibition of discrimination, nor in relation to freedom of conscience and religion.

Regarding the prohibition of discrimination, the Constitutional Court has stated that everyone is entitled to the same set of rights, and that the law applies to everyone. The Constitutional Court also referred to the fact that the provisions of the Healthcare Act are not based on the acceptance of the truth of a particular belief. Therefore, they do not favour one belief over another, but contain rules which are equally binding on all, irrespective of their belief, on the basis of scientific grounds.[32] Consequently, no exception can automatically be made in general on grounds of conscience, but must be decided on a case-by-case basis, where account must be taken, i.a., of whether the required exception is closely linked to a religious practice or observance; whether the exception may not be prejudicial to the rights of others, including persons outside the religious community. Thus, these findings are in line with the reasoning of the ECtHR decisions in the *Carlo Boffa*[33] and the *Vavricka*[34] cases.

However, this decision may not be considered as a sole guideline in all respects with regard to COVID-19 vaccination, as the decision itself states that the decision explicitly refers to mandatory vaccinations linked to age, and that the Constitutional Court did not take a position on mandatory vaccinations for other purposes (like going abroad or holding certain jobs). Also, the petitioners did not challenge the existence of compulsory vaccinations, but the legality of the sanctions imposed on children and their parents who do not receive vaccinations. Moreover, the Hungarian Constitution[35] changed in 2011 to the Fundamental Law of Hungary.[36] To

[31] Article 57 (5) of the Constitution provided for that everyone has the right of appeal against any judicial, administrative or other public authority decision that infringes his or her rights or legitimate interests, as provided by law; and Article 50 (2) of the Constitution provided for that the court checks the legality of public administrative decisions. See Hungarian Constitutional Court Decision No. 39/2007 (VI. 20), [VI. 2.5].

[32] Hungarian Constitutional Court Decision No. 39/2007 (VI. 20), [V. 2].

[33] *Carlo Boffa and others v. San Marino*, Application no. 26536/95.

[34] *Vavricka and others v. Czech Republic*, Application nos. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15, 43883/15.

[35] Act XX of 1949 on the Constitution of the Republic of Hungary.

[36] Fundamental Law of Hungary (25 April 2011). About the adoption and the content of the Fundamental Law, see A. Vincze, M. Varju, *H Hungary the new fundamental law*, "European Public

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understand the Constitutional Court's approach, we have to take a step back and see the COVID-related case law as well.

Earlier in 2021, the Constitutional Court examined the constitutionality of Government Decree No. 484/2020 (XI. 10), which had introduced restrictions on social distancing and ordered for the reduction of contact between people to slow down the spread of the pandemic. In its decision, the Constitutional Court stated that it considered fears related to the pandemic situation protected characteristics, because the psychological burden caused by the restrictions, the beliefs about the efficacy and safety of vaccines may affect, i.a., a person's identity.[37] In its decision, the Constitutional Court also held that the exercise of certain fundamental rights may be suspended or restricted beyond the limits laid down in the Fundamental Law in times of emergency.[38] However, it took into account that the restrictions are temporary and their necessity is regularly reviewed by the Government.[39]

In the context of the emergency legislation relating to the COVID-19 pandemic, the Constitutional Court received a number of applications, some of which related to compulsory vaccination.[40] The petitions allege that the provisions of Government Decree No. 449/2021 (VII. 29) related to the mandatory dismissal of healthcare workers are unconstitutional. In support of their claim, the applicants argue that the compulsory administration of a vaccine developed under a non-routine procedure disproportionately restricts human dignity as laid down in Article II of the Fundamental Law, the right to working conditions which respect one's health, safety and dignity as laid down in Article XVII (3),[41] and the right to physical and mental health as laid down in Article XX (1),[42] and dispute that immediate termination is a disproportionate sanction. They also challenged the legislation on the grounds that it infringed the right to self-determination related to medical decisions.

As it was described above, the Hungarian legislation on healthcare workers provides for two legal consequences in the event of non-vaccination: no employment relationship may be established with such a person,[43] or if there is an existing relationship, it must be terminated immediately.[44] For employees covered by

Law Journal" 2012, vol. 18(3), pp. 437–453; F. Gárdos-Orosz, *Constitutional interpretation under the new Fundamental Law of Hungary*, [in:] *Populist Challenges to Constitutional Interpretation in Europe and Beyond*, eds. F. Gárdos-Orosz, Z. Szente, London 2021, pp. 143–159.

[37] Hungarian Constitutional Court Decision No. 27/2021 (XI. 5).

[38] *Ibidem*, [74].

[39] *Ibidem*, [97].

[40] Applications nos IV/03010/2021 and IV/03234/2021.

[41] According to Article XVII (3) of the Fundamental Law: "Every employee shall have the right to working conditions which ensure respect for his or her health, safety and dignity".

[42] Article XX (1) of the Fundamental Law provides for that "Everyone shall have the right to physical and mental health".

[43] Section 1 (1) of Government Decree No. 449/2021 (VII. 29).

[44] Section 1 (8) of Government Decree No. 449/2021 (VII. 29).

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Government Decree No. 598/2021 (X. 28) and Government Decree No. 599/2021 (X. 28) the legal consequences are less severe: as a first step, the employer may order or order unpaid leave for the employee, and as a second step, if one year has elapsed since the order for unpaid leave was issued, the employer may terminate the employment relationship with immediate effect. Although the government regulations do not provide for a ban on new employment, it seems reasonable that employers should have the right not to employ new workers who will not meet the conditions for vaccination set forth by the employer.[45]

The Constitutional Court so far has examined only Government Decree No. 449/2021 (VII. 29) imposing compulsory vaccination of healthcare workers, and rejected the constitutional complaints.[46] The Constitutional Court argued that even though the immediate dismissal entails financial and moral consequences, it does not impose a disproportionate and unreasonable burden on healthcare workers.[47] The Constitutional Court also held that although the contested legal obligation related to compulsory vaccination was an interference with the petitioners' right to self-determination, this restriction was imposed for a legitimate purpose and it was necessary: the State thereby fulfilled its duty to protect institutions under Article XX (1) of the Fundamental Law by to ensure the continuity of the health care system.[48] Furthermore, it confirmed that, in imposing the COVID-19 vaccination, the legislator acted in accordance with the prevailing scientific consensus.[49]

DISCUSSION

1. The Hungarian Constitutional Courts' decision about the compulsory vaccination of healthcare workers

Termination with immediate effect as a legal consequence, while an understandable legislative move in the context of a pandemic, is more controversial from a proportionality point of view. Government Decree No 449/2021 (VII. 29) on the employment of healthcare workers allows the employer to terminate the employment relationship with immediate effect without first ordering unpaid leave. In my view, this seems to be a disproportionate disadvantage because there would be a number of possibilities which would be less disadvantageous for the employee,

[45] A. Kozma, L. Pál, *A védőoltásra kötelezés feltételei a munkajogviszonyban*, "Munkajog" 2021, vol. 4, pp. 17–25.

[46] Hungarian Constitutional Court Decision No. IV/3010/2021.

[47] *Ibidem*, [11].

[48] *Ibidem*, [50], [51], [56].

[49] *Ibidem*, [54], also with reference to the Hungarian Constitutional Court Decision No. 27/2021 (XI. 5).

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but which, given the temporary nature of the emergency, would be equally effective in achieving the objective of the measure. Such a solution could have been temporary employment in another job, in another workplace or with another employer, or – as the legislator subsequently used it – the imposition of unpaid leave. These measures would be capable to prevent the employment of persons who have not been vaccinated in a high-risk workplace.

On the other hand, the Constitutional Court held that the termination of the employment of healthcare workers without notice period and severance pay cannot be considered a disproportionate measure. It reasoned that, although the loss of employment generally means the loss of the most important source of income and the loss of severance pay also represents a significant financial disadvantage, the measures could be considered proportionate because the vaccination cannot be imposed *de facto*, so that the persons concerned retain the right to choose whether or not to receive the vaccination. Since the State has complied with its obligation to inform healthcare workers about the vaccinations and has given them sufficient time to prepare themselves to adopt the expected behaviour, they could make well-informed and considerate decision related to their professional life.[50] The Constitutional Court also explained that the eligibility requirements for healthcare workers are more stringent and that vaccination can be required for employees even under normal legislation. Moreover, a complete denial of the right to self-determination in this matter, such as an obligation to vaccinate, including the use of administrative force, would not constitute a disproportionate restriction of a fundamental right. Thus, this obligation has not been created an unknown burden, but provided "specific content" to a previous one.[51] Regarding proportionality, the Constitutional Court stated that the obligation, although it may have consequences beyond the temporal scope of the government regulation, is of a temporary nature; therefore, it meets the requirements of constitutionality.[52]

However, this reasoning, in my view, only partially answers the question of why this severe work-related disadvantage can be considered proportionate. In addition to the immediate termination, those who do not take up the vaccination must also face the prospect of not being able to practice their profession during the emergency, since they cannot find employment with any other healthcare provider. The fact that a person is deprived of the possibility of practicing a profession may create a disproportionate hardship which could lead to a breach of the right

[50] Hungarian Constitutional Court Decision No. IV/3010/2021, [71], [78].
[51] *Ibidem*, [71], [75].
[52] *Ibidem*, [76].

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to work,[53] in particular in the light of Article 1 of the European Social Charter.[54] Generally, it is justified for the State to ensure that an unvaccinated person does not provide healthcare services and thereby does not pose a risk to others. Thus, *in abstracto*, such a restriction can be justified and proportionate, but in its current form it constitutes a disproportionate sanction. Providing notice period and severance pay would have been necessary, particularly given that healthcare workers are not allowed to re-enter their profession during the state of danger.

It is particularly noteworthy that Hungary has not made use of the mandate given by the European Social Charter, which allows it to take measures temporarily derogating from its obligations under the Charter in the event of war or other exceptional circumstances threatening the existence of the nation, provided that it gives a notification to the Secretary General of the Council of Europe within a reasonable time.[55] Thus, all provisions derived from and adopted under the European Social Charter must be duly implemented during the emergency. Although the Constitutional Court does not examine sources of law other than the Fundamental Law in the context of a constitutional complaint, these aspects should have been taken into account by the Government when it drafted the decree.

2. The issue of compulsory vaccination ordered for employees and public servants

Compared to healthcare workers, the rules for public and private sector workers allow for a much lighter sanction. For employees, termination is preceded by an unpaid leave ordered unilaterally by the employer. Even though under the Labour Code it is not possible for the employer to unilaterally order unpaid leave,[56] but given the nature of the emergency measures, this provision can be justified. During the state of danger, it has been the legislator's intention to give the employer more discretion. On the other hand, the imposition of unpaid leave in itself is also a form of sanction, since during the period of unpaid leave employees' social insurance status is suspended[57] and they are liable to pay their own healthcare contributions.[58] In the absence of insurance, employees are not entitled to sick pay in the event of incapacity for work. Also, the period of unpaid leave is not taken into account

[53] S. Deakin, *The Right to Work*, [in:] *The European Social Charter and the Employment Relation*, eds. N. Bruun, L. Klaus, I. Schömann, S. Clauwaert, Oxford 2017, pp. 143, 147–165.

[54] Part I (1) of the European Social Charter provides for that "Everyone shall have the opportunity to earn his living in an occupation freely entered upon".

[55] Article 30 of the European Social Charter.

[56] Sections 128–132 of the Act No. I of 2012 – Labour Code.

[57] Section 16 (a) of the Act No. CXXII of 2019 – Social Insurance Act.

[58] Section 43 (1) (a) of the Social Insurance Act.

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when calculating the length of employment on which the notice period and the severance pay is based.[59]

Obviously, no wages are paid during unpaid leave, but the law does not provide for the possibility for the employee to engage in other gainful activities during this period. Based on the general principles of the Labour Code it can be argued that during the period of unpaid leave, the employee's obligations arising from the employment relationship (except for the obligation to be available and to work) are not suspended.[60] During this period, they may establish an employment relationship in accordance with the general rules and the employer's regulations, but must respect the employer's legitimate economic interests.[61] In the case of persons covered by Government Decree No. 599/2021 (X. 28) the rules concerning conflict of interest are stricter than those of the Labour Code, depending on the content of the activity performed as a public servant. It may therefore be more difficult for public servants to find sufficient financial resources during the period of unpaid leave. This may also increase informal, undeclared work.

Pursuant to Government Decree No. 598/2021 (X. 28) and Government Decree No. 599/2021 (X. 28) the employer may terminate the employment of an employee with immediate effect. The legislation does not clarify the relation of this termination to the general rules on dismissal, and arguable it constitutes a *sui generis* termination of employment, which excludes the application of the general rules on termination.[62] Therefore, further questions arise about the applicability of general rules concerning protection against dismissal, especially in the case of protection of pregnant workers and workers with young children. Hungary is under an international or EU legal obligation to provide such protection, and in their case, the deprivation of protection cannot be justified either by emergency legislation or by the principle of *lex generalis derogat legi generali*.

Regarding severance pay, this one-time payment is awarded to employees in recognition of long service. Under the general rules of the Labour Code, no severance pay is payable if the reason for termination is the employee's conduct in relation to the employment relationship.[63] Thus, in the case of the special rule, it may even be justified from the point of view of proportionality that no severance pay is due in this case, since the termination is ultimately due to the employee's failure to comply with the employer's instructions. Thus, it may justify why it is not awarded to employees who would be entitled to it on the basis of their previous length of service. Another important consideration is that termination is optional

[59] Section 69 (4), Section 77 (2), Section 115 (1) of the Labour Code.
[60] Section 6 (2) of the Labour Code.
[61] Section 8 of the Labour Code.
[62] A. Kozma, L. Pál, *op. cit.*, pp. 17–25.
[63] Section 77 (5) (b) of the Labour Code.

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for the employer, it may decide to continue to employ the employee instead of terminating the contract in the event of non-vaccination. However, in these cases, it is the employers' obligation to apply the proportionality test and decide what measures they impose on their workforce. Thus, these regulations may create uncertainty from many aspects, especially with regard to protection against dismissal, but they provide for a proportionate sanction, as oppose to those concerning healthcare workers.

CONCLUSIONS

The COVID-19 pandemic has also presented unprecedented challenges for labour law all over the world. Based on the already existing case law of the ECtHR, fundamental rights concerned in the context of compulsory vaccination against COVID-19 under the ECHR are the right to life, the right to respect for private and family life, and the freedom of thought, conscience and religion. Although it has to be decided on a case-by-case basis, compulsory vaccination *per se* would not violate these fundamental rights; however, sanctions related to the refusal of vaccination may rise proportionality questions.

Regarding Hungary, with the re-emergence of the pandemic, individual responsibility has been extended to the extreme, as the legislator has made it the task and responsibility of the employer, rather than the state, to decide whether to require its employees to be vaccinated. In so doing, the Government has also placed the responsibility for carrying out the above-explained proportionality test on the employer. However, the other legal conditions necessary for an informed decision, such as the question of the relationship between the specific and the general rules, have not been defined. In such a legislative environment, it is not surprising that few employers take the risk of imposing vaccination on their employees.

In contrast, in the health sector, the state has ordered compulsory vaccination and has not given employers any discretion to seek an alternative solution to the problem. The obligation to administer vaccinations are provisions which raised the question of the violation of individual dignity and the right to self-determination, in particular through the sanctions attached to them. The Hungarian Constitutional Court rejected the petitions in this regard, i.a., because of the specific situation of the health sector. However, it remains questionable to what extent compulsory vaccinations imposed by employers in the private sector will be considered constitutional, since a significant part of the reasoning of the Constitutional Court's decision about healthcare workers will not be applicable in other sectors.

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Data: 17/11/2026 22:04:16

REFERENCES

Literature

Archard D., Brierley J., Cave E., *Compulsory Childhood Vaccination: Human Rights, Solidarity, and Best Interests*, "Medical Law Review" 2021, vol. 29(4), **DOI: https://doi.org/10.1093/medlaw/fwab024**.

D'Ancona F., D'Amario C., Maraglino F., Rezza G., Iannazzo S., *The law on compulsory vaccination in Italy: An update 2 years after the introduction*, "Eurosurveillance" 2019, vol. 24(26), **DOI: https://doi.org/10.2807/1560-7917.ES.2019.24.26.1900371**.

Deakin S., *The Right to Work*, [in:] *The European Social Charter and the Employment Relation*, eds. N. Bruun, L. Klaus, I. Schömann, S. Clauwaert, Oxford 2017.

Dral A., *An Employment Contract for a Specified Period and the Problem of the Causation of a Notice – Current Status and the Tendencies of Changes*, "Studia Iuridica Lublinensia" 2015, vol. 24(3), **DOI: https://doi.org/10.17951/sil.2015.24.3.141**.

Gárdos-Orosz F., *Constitutional interpretation under the new Fundamental Law of Hungary*, [in:] *Populist Challenges to Constitutional Interpretation in Europe and Beyond*, eds. F. Gárdos-Orosz, Z. Szente, London 2021.

Grabenwarter C., *European Convention on Human Rights: Commentary*, München 2014, **DOI: https://doi.org/10.5771/9783845258942**.

Kozma A., Pál L., *A védőoltásra kötelezés feltételei a munkajogviszonyban*, "Munkajog" 2021, vol. 4.

Krasser A., *Compulsory Vaccination in a Fundamental Rights Perspective: Lessons from the ECtHR*, "ICL Journal" 2021, vol. 2(15), **DOI: https://doi.org/10.1515/icl-2021-0010**.

Uziak W., *A Few Remarks on Content of Employer's Internal Regulations*, "Studia Iuridica Lublinensia" 2015, vol. 24(3), **DOI: http://dx.doi.org/10.17951/sil.2015.24.3.259**.

Vincze A., Varju M., *Hungary the new fundamental law*, "European Public Law Journal" 2012, vol. 18(3).

Wołoszyn-Cichocka A., *Access to Patient's Medical Records in the Light of the Case Law of Administrative Courts*, "Studia Iuridica Lublinensia" 2021, vol. 30(1), **DOI: http://dx.doi.org/10.17951/sil.2021.30.1.369-384**.

Online sources

European Court of Human Rights, Refusal of requests for interim measures in respect of the Greek law on compulsory vaccination of health-sector staff against Covid-19, Press Release issued by the Registrar of the Court, ECHR 266 (2021), 9.9.2021, https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7113391-9633858&filename=Request%20for%20interim%20measures%20against%20Greece%20concerning%20compulsory%20vaccination%20for%20health%20staff.pdf (access: 21.2.2022)

European Vaccination Information Portal, *Vaccination schedules in the EU/EEA*, https://vaccination-info.eu/en/vaccination/when-vaccinate/vaccination-schedules-eueea (access: 28.2.2022).

Legal acts

Act XX of 1949 on the Constitution of the Republic of Hungary.

Act CLIV of 1997 on Health.

Act No. I of 2012 – Labour Code.

Act No. CXXII of 2019 – Social Insurance Act.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
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Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, pp. 67–128).
European Social Charter.
Fundamental Law of Hungary (25 April 2011).
Government Decree No. 449/2021 (VII. 29).
Government Decree No. 598/2021 (X. 28).
Government Decree No. 599/2021 (X. 28).

Case law

Association of Parents v. the United Kingdom, Application no. 7154/75.
Carlo Boffa and others v. San Marino, Application no. 26536/95.
Costello-Roberts v. the United Kingdom, Application no. 13134/87.
Hungarian Constitutional Court Decision No. 39/2007 (VI. 20).
Hungarian Constitutional Court Decision No. 27/2021 (XI. 5).
Hungarian Constitutional Court Decision No. IV/3010/2021.
Kakaletri and others v. Greece, Application no. 43375/21.
LCB v. the United Kingdom, Application no. 23413/94.
Theofanopoulou and others v. Greece, Application no. 43910/21.
Vavricka and others v. Czech Republic, Application nos. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15, 43883/15.

ABSTRAKT

W trakcie stanu epidemii COVID-19 kilka państw przyjęło uregulowania mające wpływ na świat pracy. Oddziaływanie tych rozwiązań na pracowników i inne osoby zatrudnione stało się przedmiotem licznych opracowań. Wśród aktów prawnych jest kilka dotyczących szczególnych grup zawodowych, jak np. pracownicy służby zdrowia, ale są też akty prawne mające zastosowanie ogólnie do społeczeństwa. Ich elementem wspólnym jest to, że ograniczają podstawowe prawa pracownicze w stopniu uzasadniającym gruntowną analizę w zakresie praw człowieka i praw konstytucyjnych. Celem artykułu jest przeanalizowanie kwestii przymusowych szczepień w oparciu głównie o orzecznictwo Europejskiego Trybunału Praw Człowieka i próba jego interpretacji w odniesieniu do krajowych przepisów dotyczących pandemii COVID-19. Druga część artykułu to studium przypadku oparte na ostatnio przyjętym ustawodawstwie węgierskim.

Słowa kluczowe: COVID-19; prawa człowieka; pracownicy; Europejski Trybunał Praw Człowieka; ustawodawstwo węgierskie