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**AVOIDING MANDATORY COVID-19 VACCINATION:
ARROGANCE TOWARD SCIENCE AND LACK OF RESPECT
FOR COMMON SENSE**

This paper is a continuation of the research that the author started several years ago and which was published in the article Compulsory Vaccination of Children: Rights of Patients or Interests of Public Health? The emphasis will be on professional and scientific discussions on whether it is permissible to prescribe mandatory vaccination during the COVID-19 pandemic, as well as whether this is in line with the Constitution and legally allowed for all or only for certain population categories in Serbia. Earlier decisions of the constitutional courts of Serbia, Croatia, and Slovenia, as well as the recent judgment of the ECtHR in the Vavrička case will be reconsidered. All these decisions by the highest national courts, as well as the judgment of the European Court of Human Rights, have unequivocally confirmed that mandatory vaccination is not contrary to some basic human rights regularly invoked by opponents of vaccination.

Key words: *Mandatory vaccination. – Pandemic. – COVID-19. – Law on the Protection of the Population from Communicable Diseases. – Case law of the European Court of Human Rights.*

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A few days ago a doctor died in Niš, an anti-vaxxer, born in 1973. He was at home in bed for three days, he had a high fever but wouldn't turn to doctors for help, so he died within less than 24 hours. That is so sad. He was a specialist physician, a multi-talented person, he played the guitar and had three children.

(Dr. Tatjana Adžić, director of the Batajnica COVID hospital, in *Politika* 2021, 7)

1. INTRODUCTION

The issue of mandatory vaccination during the COVID-19 pandemic is, without a doubt, a controversial and planetary phenomenon – literally! Namely, while nearly half of humanity is desperate for vaccines that will reduce infection rates and high mortality in the countries of the so-called third world, the World Health Organization (WHO) is wondering whether it is fair that millions of people in a handful of high-income countries have received a vast majority of vaccines, in a significant part of that other half of the world a fierce battle is being fought against practicing any, and especially mandatory vaccination, in spite of the fact that the COVID-19 pandemic is raging and claiming millions of lives.

Medically speaking, it is indisputable that vaccines have saved many human lives and that they are the safest form of protection from a large number of serious contagious diseases. True, along with the first laws in the world that prescribed mandatory vaccination – as was, for example, the 19th-century Prussian law on mandatory vaccination against smallpox – there were also public debates on the benefit or harm of vaccines. The biggest known anti-vaccination movement began after British gastroenterologist Andrew Wakefield and 12 of his colleagues published a paper in 1998 in the prestigious medical journal *Lancet* in which they presented 12 cases they believed indicated that the MMR vaccine – a combined vaccine against measles, mumps and rubella – may predispose to behavioral regression and pervasive developmental disorder in children. Despite the small sample size and the speculative nature of the presented conclusions, the paper received wide publicity, and the percentage of vaccinated children rates began to drop nearly in the whole world, because parents were concerned about the risk of developing autism after vaccination. Overshadowed by Wakefield's "success" was the insufficiently known fact that, right after this event,

representative epidemiological and laboratory studies were conducted and published – as many as 14 such studies by independent experts were subject to an assessment by the World Health Organization – which refuted the posited link between MMR vaccination and autism, i.e., the unanimous conclusion was that there was no link between autism nor a spectrum of autistic disorders and the MMR vaccine. Moreover, the *Lancet* journal first admitted that Wakefield and the other authors had failed to disclose a conflict of interest in this matter (the research was funded with GBP 55,000 by lawyers who had been engaged by parents in lawsuits against vaccine-producing companies), and then completely retracted the paper in February 2010, admitting that Wakefield and the other authors were guilty of fraud and of forging the results. The current anti-vaccination movement, which has gripped a greater part of humanity and is very loud in its efforts to prevent any kind of mandatory vaccination against COVID-19, came as a phenomenon that has outdone even its first role model.

On the other hand, when looking at the obligation to vaccinate the population from the point of view of modern medical law, it needs to be reaffirmed that one of the most important patients' rights is the right to autonomy of will, i.e., the patient's right to self-determination. The essence of the right to self-determination is that every patient with legal capacity has the right to decide on everything that concerns their body or health. In other words, without a patient's consent, as a rule, no medical intervention can be performed on them, nor can a medical doctor resort to any diagnostic or therapeutic procedure – regardless of whether it is routine, painless, common, non-invasive, etc. – if consent to that medical intervention had not been previously obtained, preceded by the adequate informing of the patient of all the important aspects of one such intervention. Ultimately, this means that every person with legal capacity, i.e., a person capable of consenting to medical intervention, can refuse medical intervention, no matter how imprudent or dangerous that may seem, even in situations when such actions may result in the patient's death. However, even the patients' right to self-determination – just like certain other human rights, such as the right to respect for private and family life, home and correspondence, freedom of thought, conscience and religion, freedom of expression, and freedom of assembly and association – can be limited. The most important international treaty in the field of patient rights is the Council of Europe Convention on Human Rights and Biomedicine, which contains a general ban on restricting the exercise of the rights contained in the Convention, with the exception of those prescribed by law and that are necessary in a democratic society in the interest of public safety, for the prevention of crime, for the protection of public health, or for the protection of rights and freedoms of others. Similarly, Law on the Protection of the Population from Communicable

Diseases of the Republic of Serbia has recognized the protection of public health as a basis for restricting the right to patients' autonomy of will and provides for mandatory immunization of both children and other persons specified by the law.

2. LAW ON THE PROTECTION OF THE POPULATION FROM COMMUNICABLE DISEASES

2.1. Regular Mandatory and Recommended Immunization

The Law on the Protection of the Population from Communicable Diseases (LPPCM)¹ provides that immunization is carried out with immunological medication and that it can be mandatory or recommended.

Mandatory immunization primarily refers to children of a certain age, against certain diseases (tuberculosis, diphtheria, tetanus, whooping cough, polio, measles, rubella, mumps, viral hepatitis B, diseases caused by *Haemophilus influenzae* type B, and diseases caused by *streptococcus pneumoniae*).

Immunization is also mandatory for some adults, such as persons exposed to certain communicable diseases (hepatitis B, hepatitis A, typhoid fever, rabies and tetanus), persons at special risk of diseases (hepatitis B, influenza, meningococcal disease, diseases caused by *streptococcus pneumoniae* and *Haemophilus influenzae B*, chicken pox, infections caused by respiratory syncytial virus), people employed in healthcare institutions against certain infectious diseases, and international passengers against yellow fever and other contagious diseases as required by the destination country.

The common norm for all cases of mandatory vaccination is that the person to be immunized, or their parent or guardian, cannot refuse it, except when there is a temporary or permanent medical contraindication that is established by a physician with an appropriate medical specialty or a team of experts on contraindications.²

However, the thing that should be clarified at the very beginning, regarding terminology, which is particularly stressed in literature (Gravagna *et al.* 2020, 7865), is that *mandatory* immunization is by no means *forced* vaccination!

¹ Law on the Protection of the Population from Communicable Diseases, *Official Gazette of the Republic of Serbia* 15/2016, 68/2020 and 136/2020.

² Law on the Protection of the Population from Communicable Diseases, Art. 32 paras 1–4.

In other words, administering a vaccine without the consent of the person being vaccinated would run counter to the constitutional guarantee of inviolability of physical and psychological integrity.³ The constitutional guarantee is also enforced by Serbia's Patient Rights Law (PRL) through the patient's right to personal autonomy, envisaging that no medical treatment can be carried out on a patient without his/her consent, i.e., that medical treatment can be applied against a patient's will or against the will of his/her legal representative only in exceptional cases, which are defined by law and are in accordance with medical ethics.⁴ This means that refusal or omission of mandatory vaccination may be sanctioned only by a fine, precisely as stipulated by the Law on the Protection of the Population from Communicable Diseases.⁵ However, since the linguistic meaning of this norm indicates that the legislator provided for the sanction of a fine only in the event of failure to adhere to mandatory vaccination of children ("mandatory immunization of a person of a certain age"), while all other indications for mandatory vaccination are not covered by the penal provisions of this law, refusal of mandatory vaccination could be grounds for the application of certain other epidemiological measures. These, above all, include measures that the minister of health may prescribe when declaring an infectious disease epidemic of greater epidemiological significance, precisely such as the COVID-19 pandemic (ban on public assembly, restriction of the movement of the population in areas affected by the emergency situation, ban or restrictions on travel, ban or restrictions on the circulation of certain types of goods and products, emergency vaccination and measures of personal protection from infection).⁶

³ Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia* 98/2006, Art. 25 para 1.

⁴ Patient Rights Law, *Official Gazette of the Republic of Serbia* 45/2013, Art. 15 paras 2 and 3. For more on patients' right to self-determination see Draškić 2010, 37–53; Ivović 2004, 19–34; World Health Organization, Regional Office for Europe 1996, 18–19.

⁵ "The person who refuses mandatory immunization of a person of a certain age shall be issued a misdemeanor fine in the amount of 50,000 to 150,000 dinars (Art. 32 para 2)." See Law on the Protection of the Population from Communicable Diseases, Art. 85 para 6.

⁶ Law on the Protection of the Population from Communicable Diseases, Arts. 50–53. See Decision of the Government of the Republic of Serbia on declaring COVID-19, caused by the SARS-CoV-2 virus, a contagious disease, *Official Gazette of the Republic of Serbia* 23/2020...116/2020 and Order of the Minister of Health on declaring the epidemic of the contagious coronavirus disease an epidemic of greater epidemiological significance, *Official Gazette of the Republic of Serbia* 37/2020.

Recommended immunization is carried out if it is recommended by a medical doctor or a specialist in the relevant branch of medicine, in accordance with the program for the immunization of the population against certain contagious diseases both for children, i.e., persons of a certain age (against chicken pox, HPV infections, hepatitis A and B, influenza, and diseases caused by *streptococcus pneumoniae* and others, in accordance with the law), and for adults (on the basis of clinical indications, against hepatitis A and B, influenza, diseases caused by *streptococcus pneumoniae* and others, in accordance with the law). A special category of people for whom vaccination may be recommended is international passengers (against typhoid fever, hepatitis A and B, influenza, polio and others, in accordance with the law). Finally, immunization can also be carried out for other contagious diseases for which medical doctors are not required to recommend immunization, as well as at the patient's personal request.⁷

2.2. Emergency Mandatory or Recommended Immunization

In addition to regular mandatory immunization, the minister of health may also order emergency mandatory (or recommended) vaccination against other contagious diseases for all persons, i.e., for certain categories of people, if a risk of the transmission of this disease is determined, as well as if a contagious disease is imported into the country, in accordance with the plan to eliminate certain contagious diseases, i.e., in order to maintain the status of a disease that has been eradicated. Mandatory and recommended emergency immunization is ordered by the minister of health in accordance with the recommendations of the WHO, at the proposal of the Institute of Public Health of the Republic of Serbia⁸ with the consent of the Republic Expert Committee for the Protection of the Population from Communicable Diseases.⁹

Both conditions that the Law on the Protection of the Population from Communicable Diseases alternatively envisages as prerequisites for an order on emergency mandatory vaccination are met in the case of the COVID-19 epidemic: it is a very dangerous contagious disease that has been found

⁷ Law on the Protection of the Population from Communicable Diseases, Art. 32 paras 5 and 6.

⁸ The competence of the Office of Public Health of the Republic of Serbia is performed by the Dr. Milan Jovanović Batut Institute of Public Health of Serbia.

⁹ Law on the Protection of the Population from Communicable Diseases, Art. 33 para 3.

to be easily transmitted, and a contagious disease that has been brought into the country from abroad. The Institute of Public Health is authorized to propose such a measure, bearing in mind that it is the most competent to issue an opinion on the protection of the population from contagious diseases and that it is the main institution responsible for coordinating the implementation of epidemiological oversight in the territory of the Republic of Serbia and to issue expert instructions for epidemiological oversight for contagious diseases and special health issues.¹⁰

2.2.1. Republic Expert Committee for the Protection of the Population from Communicable Diseases

The Expert Committee is a body established by the minister of health at the proposal of the Institute of Public Health and reference health institutions, and its principal legal jurisdiction is precisely the establishment of professional opinions on the preservation and improvement of health, prevention and suppression of contagious diseases, treatment and healthcare, as well as the improvement and development of the organization of health services that deal with the prevention, suppression and treatment of contagious diseases, and providing support for the sick based on evidence and international recommendations. The Expert Committee evaluates the epidemiological situation of contagious diseases in the Republic of Serbia, based on reports by the Institute of Public Health and provides conclusions and recommendations on improving the protection of the population from contagious diseases.¹¹ It would, therefore, be logical for the Expert Committee to back the proposal of the Institute of Public Health for emergency mandatory immunization to be carried out, due to the fact that a contagious disease epidemic of greater epidemiological significance had been declared,¹² which poses a serious threat to the health of the entire population of Serbia.¹³

¹⁰ Law on the Protection of the Population from Communicable Diseases, Art. 7 para 3.

¹¹ Law on the Protection of the Population from Communicable Diseases, Art. 11.

¹² See the Order of the Minister of Health on declaring the epidemic of the contagious coronavirus disease an epidemic of greater epidemiological significance, *Official Gazette of the Republic of Serbia* 37/2020.

¹³ According to statistical data, as of 11 October 2021 there had been a total of 1,005,168 persons infected with the SARS-CoV-2 virus in Serbia, a total of 8,737 people had died, and in recent days the officially announced daily death toll had exceeded 60. See <https://covid19.rs/> (last visited 11 October 2021). However, the data of the Statistical Office of the Republic of Serbia shows that the number

The problem, however, lies in the fact that the Expert Committee has not issued a single statement since the beginning of the COVID-19 epidemic, nor does the public in Serbia know whether it exists or who the members of the Expert Committee are,¹⁴ but it would be logical to assume that – given that the Expert Committee is formed by the minister of health at the proposal of the Institute of Public Health and reference health institutions – it must comprise medical doctors of relevant specialties (epidemiologists, immunologists, virologists, microbiologists, pulmonologists, pharmacologists, etc.), as well as directors of the most important health institutions tasked with the treatment of this disease, and by no means politicians, ministers, state secretaries, or mayors. Instead of an invisible Expert Committee, only the Crisis Committee appears in public, having established under the Serbian Government Conclusion of 13 March 2020 and Decision on the Establishment of a Crisis Committee for the Suppression of the COVID-19 Contagious Disease. The Crisis Committee is tasked with monitoring the situation, directing and coordinating the actions and activities of all relevant bodies, organizations and services, as well as all other subjects, controlling the import and preventing the spread of the contagious coronavirus disease, providing proposals and recommendations for measures and activities

of people who died in the Republic of Serbia during the January–August 2021 period was 82,681 and, compared to the same period of the previous year, when there were 70,322 deaths, there is an increase of 12,359 deaths, i.e., 17.6%. See <https://www.stat.gov.rs/sr-Cyrl/oblasti/stanovnistvo/rodjeni-i-umrli> (last visited 13 October 2021). The Committee for the Analysis of Fatal Outcomes, established by the minister of health on 27 May, established, based on hospital death certificates signed by attending physicians based on laboratory results or clinical pictures, that the number of people who died from being infected by the coronavirus in 2020 was 10,356. In spite of this, the official information still posted on the Ministry of Health website, without any explanation, was that 3,130 people had died – a figure that is three times lower and which was taken as the starting point for all future deaths in 2021. See <https://www.autonomija.info/birn-komisija-za-analizu-smrtnih-ishoda-sluzila-da-se-katastrofa-zataska.html> (last visited 27 October 2021). A total of 544 million people have been infected with the SARS-CoV2 virus worldwide and more than 6 million have died from it. See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> (last visited 8 November 2022). This data is also an indication that the number of deaths in Serbia was significantly reduced from the onset of the epidemic, since the worldwide death rate varied between 1.1% and 2.1%, while in Serbia it was constantly at 0.8%.

¹⁴ Deputy Director of the Public Health Institute Dr. Darija Kisić Tepavčević told a press conference that “as for the Republic Expert Committee, of course it exists” and that its members are “mostly the same names that you now see (*sic!*), and its chair is Dr. Goran Stevanović, infectologist, the director of the Clinic for Infectious and Tropical Diseases.” See <https://www.slobodnaevropa.org/a/srbija-sa-dva-paralelna-stru%C4%8Dna-tela-za-suzbijanje-pandemije/30757505.html> (last visited 8 November 2022).

in controlling the import and prevention of the spread of the contagious coronavirus disease, monitoring the situation, directing and coordinating activities of crisis committees of local self-government units in controlling the import and prevention of the spread of the contagious coronavirus disease, proposing to the Government and relevant bodies, organizations, services and other subjects the undertaking of measures within their respective jurisdiction, as well as other activities in controlling the import and prevention of the spread of the contagious coronavirus disease and protection of the population.¹⁵

The Crisis Committee was, therefore, given powers that largely overlap with those of the Expert Committee, as defined in the Law on the Protection of the Population from Communicable Diseases. It remains unclear why was it necessary to have two parallel bodies with the same basic jurisdiction in preventing one and the same contagious disease. The fundamental legal jurisdiction of the Republic Expert Committee for the Protection of the Population from Communicable Diseases is precisely the establishment of expert views on the prevention and suppression of contagious diseases, but the Serbian Government arbitrarily transferred one such important responsibility to the Crisis Committee and tasked it, among other things, with “providing proposals and recommendations for measures and activities in controlling the import and prevention of the spread of the contagious coronavirus disease.” What is different is the makeup of the Crisis Committee, compared to the Republic Expert Committee for the Protection of the Population from Communicable Diseases. Even though we have no reliable information on the number of members of this Committee or their identities, based on its name and legal competences, as well as who appoints the members and at whose proposal – it is likely that it consists solely or predominantly of medical doctors. As opposed to this, the 28 members of the Crisis Committee were appointed: 8 ministers, 8 civil servants, the Mayor of Belgrade, and 12 medical doctors most of whom, at the same time, hold public posts as directors of major health institutions (actually only five of the medical doctors are not public office holders); the Crisis Committee

¹⁵ See the Decision on the Formation of the Crisis Committee for the Suppression of the COVID-19 Contagious Disease, *Official Gazette of the Republic of Serbia* 132/2020, item 2. The legal basis for establishing the Crisis Committee was subsequently introduced into the Law on the Protection of the Population from Communicable Diseases, in the provisions on the measures to be taken in the event of an epidemic or a pandemic of a contagious disease of greater epidemiological significance (Art. 53a, para 1 item g), despite the fact that the Crisis Committee had already been clandestinely operating for six full months, even without this legal basis.

chair is the Prime Minister, and her deputy is the minister of health.¹⁶ This makeup of the Crisis Committee shows that it is mainly a political body, and that there are grounds to legitimately raise the question of whether the Crisis Committee can provide proposals and recommendations for measures and activities in controlling the import and prevention of the spread of COVID-19 solely on the basis of medical criteria. And it is precisely these medical criteria that should be decisive when giving approval to the minister of health to carry out extraordinary mandatory immunization.

2.2.2. World Health Organization Recommendations

It is also necessary to consider whether a decision on emergency mandatory immunization would be in line with WHO recommendations.

On 13 April 2021 the WHO published a policy brief on its policy on mandatory vaccination, entitled *COVID-19 and mandatory vaccination: Ethical considerations and caveats* (WHO 2021a). In its introduction, the brief indicates the position that vaccines are one of the most effective tools for protecting people against COVID-19 and that it is therefore expected that many countries will be considering whether to make COVID-19 vaccination mandatory in order to increase vaccination rates and achieve public health goals. In addition, it is also not uncommon for governments and institutions to mandate certain actions or types of behavior in order to protect the wellbeing of individuals or communities. Such policies can be ethically justified, as they may be crucial to protecting the health and wellbeing of the public. Nevertheless, because policies that mandate an action or behavior interfere with individual liberty and autonomy, they should seek to balance communal wellbeing with individual liberties. While interfering with individual liberty does not in itself make a policy intervention unjustified, such policies raise a number of ethical considerations and concerns and should be justified by advancing another valuable social goal, such as protecting public health. This document, however, does not provide a position that endorses or opposes mandatory COVID-19 vaccination, even though it mentions that the World Health Organization does not presently support the direction of mandates for COVID-19 vaccination, believing that it is better to work on information campaigns and making vaccines accessible.¹⁷

¹⁶ See the Decision on the Formation of the Crisis Committee for the Suppression of the COVID-19 Contagious Disease item 3.

¹⁷ In addition, in February 2021 the WHO presented its position that national authorities and conveyance operators should not require vaccination against COVID-19 as a condition for international travel. See World Health Organization 2021b.

Still, the main focus of this document is ethical considerations and caveats for mandatory COVID-19 vaccination policies, which governments and other institutional policy-makers should have in mind when passing decisions.

2.2.2.1. Necessity and Proportionality

Mandatory vaccination should be considered only if it is necessary for the achievement of an important public health goal (e.g., herd immunity, protecting the most vulnerable, protecting the capacity of the acute healthcare system) and if that goal is identified by a legitimate public health authority. However, if such a public health goal can be achieved with less coercive or intrusive policy interventions (e.g., public education), mandatory vaccination would not be ethically justified, as achieving public health goals with less restriction of individual liberty and autonomy yields a more favorable risk-benefit ratio. Since mandatory vaccination represents a policy option that interferes with individual liberty and autonomy, it should be considered only if it would increase the prevention of significant risks of morbidity and mortality or promote significant and unequivocal public health benefits. If important public health objectives cannot be achieved without a mandate – for instance, if a substantial portion of individuals are able but unwilling to be vaccinated and this is likely to result in significant risks of harm – their concerns should be addressed, proactively if possible. Still, if addressing such concerns is ineffective and those concerns remain a barrier to the achievement of public health objectives or if low vaccination rates in the absence of a mandate put others at significant risk of serious harm, a mandate may be considered “necessary” to achieve public health objectives.

This is certainly the most important recommendation that the World Health Organization has made to its member states within its policy on mandatory vaccination. It advises progression and responsibility in making the decision on mandatory vaccination so as to balance, in an optimal manner, the public interest of protecting the population from a new and severe illness, while preserving, as much as possible, each individual’s freedom of decision-making and autonomy. In other words, the introduction of mandatory vaccination is believed to be ethically justified in the event of the necessity to protect an important public health goal (such as protection of the most vulnerable individuals, protection of the capacities of the acute healthcare system, prevention of significant risks of morbidity and mortality, legitimacy of the authority passing such a decision, etc.), but, at the same time, with a warning that a less coercive approach should be taken if the same goal can be achieved through the system for educating and informing

the public, a proactive attitude toward those who express concern about mandatory vaccination, continuous and large-scale testing for COVID-19, etc. Such a test of the risk-benefit ratio should be carried out by every member state, but it is an unambiguous conclusion of the WHO that if in spite of all the applied noncoercive measures, the reservations of individuals who are able to be vaccinated but who do not wish to do so become a barrier to the achievement of public health objectives, i.e., if low vaccination rates – in the absence of mandatory vaccination – put others at significant risk of contracting the disease, a mandate may be considered necessary to achieve public health objectives.

2.2.2.2. *Sufficient Evidence of Vaccine Safety*

The second important ethical standard promoted by the World Health Organization (WHO 2021a) is the accessibility of data demonstrating that the vaccine has been found to be proven safe in the population for which the vaccine has been made mandatory.¹⁸ When safety data is lacking or when it suggests that the risks associated with vaccination outweigh the risks of harm without the vaccine, the mandate is not ethically justified, particularly without allowing for reasonable exceptions (such as, for example, medical contraindications). Policymakers should consider specifically whether vaccines authorized for emergency or conditional use meet the evidentiary threshold for safety sufficient for a mandate (Gostin *et al.* 2021). Even when the vaccine is considered sufficiently safe, mandatory vaccination should be implemented with no-fault compensation schemes to address any vaccine-related harm that might occur. This is important, as it would be unfair to require people who experience vaccine-related harm to seek legal remedy for harm resulting from a mandatory intervention.

This part of the WHO Recommendation was already previously addressed by some constitutional courts. In a part of its decision on the constitutionality of the legal provisions on mandatory vaccination, the Constitutional Court of Slovenia established that the Communicable Diseases Act is inconsistent with the Constitution, because it does not provide a special procedure or the rights of the persons affected by the failure to prescribe justified reasons for exemption from mandatory vaccination, and, on the other hand, because

¹⁸ According to the WHO, nine different vaccines have so far been approved for emergency medical use, which means that they are considered to be safe, and a total of 11,981,689,168 vaccine doses have been administered as of 17 May 2022. See [https://www.who.int/news-room/q-a-detail/coronavirus-disease-\(covid-19\)-vaccines?topicsurvey=v8kj13](https://www.who.int/news-room/q-a-detail/coronavirus-disease-(covid-19)-vaccines?topicsurvey=v8kj13) (last visited 8 November 2022).

it does stipulate the state's responsibility for compensation of harm that may occur as a consequence of mandatory vaccination. The Constitutional Court judged that the legislator should specifically regulate the protection of persons who have suffered harm due to vaccination, as well as the form of compensation for such harm. Namely, the principle of solidarity, which is, *inter alia*, the basis for prescribing the measure of mandatory vaccination, requires that the state that has prescribed such a measure for the benefit of all must provide compensation to harmed individuals for the harm caused to them by this measure, regardless of whether prerequisites exist for liability for damages according to general rules. In other words, it would be unacceptable for a person to bear the harm that is a consequence of a mandatory medical measure introduced for the general benefit. However, as this is a legal gap, i.e., it has to do with the fact that the legislator failed to legally regulate something that should be regulated, it is not possible to annul a legal provision as a sanction for the established unconstitutionality. This is why, in accordance with Article 48 of the Constitutional Court Act, the Constitutional Court of Slovenia adopted a declaratory decision and ordered the legislative body to eliminate, within a year, the Act's inconsistency with the Constitution, having in mind the reasons stipulated by the Constitutional Court in this decision.¹⁹

2.2.2.3. *Sufficient Evidence of Vaccine Efficacy and Effectiveness*

In addition to sufficient evidence on vaccine safety, data should also be available that show the vaccine is efficacious in the population for which vaccination is to be mandated and that the vaccine is an effective means of achieving an important public health goal. For instance, if mandatory vaccination is considered necessary to interrupt transmission chains and prevent harm to others, there should be sufficient evidence that the vaccine is efficacious in preventing serious infection or transmission. Alternatively, if

¹⁹ Decision of the Constitutional Court of Slovenia U-I-127/01, 12 February 2004, § 12–25, *Uradni list RS* 25/2004. According to Draškić 2018, 23–24. In executing this Constitutional Court decision, the Slovenian Parliament swiftly passed the Law on Amendments to the Communicable Diseases Act (*Uradni list RS* 119/2005), in which it prescribed both the reasons and the procedure for opting out of mandatory vaccination (Art. 3), and liability for compensation of harm caused to the persons who suffered harm to their health on account of being subject to mandatory vaccination, as stipulated by this Act (Art. 4). See also similar decisions of the Constitutional Court of Italy No. 307/1990, of 14 June 1990, and No. 118/1996, of 18 April 1996. According to *Vavrička and Others v. the Czech Republic*, No. 47621/13 and 5 others, 8 April 2021.

a mandate is considered necessary to prevent hospitalization and protect the capacity of the acute healthcare system, there should be sufficient evidence that the vaccine is efficacious in reducing hospitalization.²⁰

The efficacy and safety of the existing COVID-19 vaccines, developed by thousands of researchers in the course of 2020, are essentially based on the same idea as the world's first vaccine, produced by English village doctor Edward Jenner against smallpox in the late 18th century. Namely, the mechanism behind the vaccine – the invention that saved the most lives since humankind began exploring the world – is ingeniously simple: by introducing a harmless agent into the human body, the immune system is trained, in advance, to recognize at some later time a dangerous disease-causing agent. The agent does not trigger the disease, but the human body perceives it as a disease-causing agent, it triggers an immune response within the body, destroys it, and learns how to kill every microorganism in the future that is linked to this agent. An agent can be the very virus that causes the disease, but which is previously broken into fragments or weakened in a long process in a laboratory, so it does not trigger the disease (so-called conventional vaccines, such as China's *Sinopharm* vaccine). An agent can also be an entirely different virus that essentially does not make the body ill, but into which key information has been inserted by means of genetic modification – the genome of the SARS-CoV-2 spike glycoprotein. The vaccine works in a way that, once administered, the adenovirus enters the human cells and delivers genetic information that induces the synthesis of the spike glycoprotein, the immune system reacts and triggers an immune response by producing neutralizing antibodies and a cellular immune response. In essence, by using a trick, an immune response with antibodies is created against COVID-19 “fraudulently” and safely, even though the immune system produces antibodies against a harmless microorganism that only serves as a vector (carrier, deliverer). This is how the vaccines developed by Russia's Gamaleya Institute (*Sputnik V*) and the University of Oxford (*AstraZeneca*) work. Finally, a vaccine does not have to contain the virus or any other pathogen, but rather messenger RNA (mRNA) can be used as an agent

²⁰ Even though studies have shown that several COVID-19 vaccines have a high level of efficacy, just like all other vaccines, COVID-19 vaccines will not be 100% effective. The WHO is working on ensuring that all approved vaccines are as effective as possible, so as to have the greatest possible impact on the pandemic. Additionally, since COVID-19 vaccines were developed only over the past several months, it is too soon to draw conclusions on how long the protection they provide will last. See [https://www.who.int/news-room/q-a-detail/coronavirus-disease-\(covid-19\)-vaccines?topicsurvey=v8kj13](https://www.who.int/news-room/q-a-detail/coronavirus-disease-(covid-19)-vaccines?topicsurvey=v8kj13) (last visited 8 November 2022). According to the data from the largest hospitals in Serbia that treated patients with COVID-19, fully vaccinated patients treated in hospitals accounted for only 5%–10%.

instead, as a matrix that carries the information for the synthesis of the spike glycoprotein. The mRNA is packed in lipid nanoparticles without any other adjuvants (enhancers) or dangerous substances, in a lipid membrane that enables it to pass through the cell membrane, and then synthesize the spike glycoprotein inside it. The immune system recognizes the spike glycoprotein as a foreign molecule, it is activated, and protective immunity is created (neutralizing antibodies and cellular immunity). The mRNA does not multiply in the cell and is very quickly broken down and removed. This innovative and revolutionary vaccine production model was used by German-American company *Pfizer-BioNTech* and by American company *Moderna* (Arsenović Ranin, Bufan, Filipić 2020, 1–7).

2.2.2.4. *Sufficient Supply*

In order for a mandate to even be considered, the supply of the authorized vaccines should be sufficient and reliable, including free access for those for whom it is to be made mandatory. The absence of a sufficient supply and free access would not only render the mandate ineffective in achieving vaccine uptake, but would also create an unduly burdensome demand on those who are required to be vaccinated, i.e., on those who would be in a situation to ask to be vaccinated but have no access to the vaccine.

2.2.2.5. *Public Trust*

Mandatory vaccination policymakers should carefully consider the effect that mandating vaccination could have on public confidence and public trust, particularly on confidence in the scientific community and public trust in vaccination generally (Schwartz 2020). If such a policy threatens to undermine confidence and public trust, it might affect both vaccine uptake and adherence to other important public health measures, which can have an enduring negative effect. This kind of danger was written about long before the current pandemic (Shetty 2010, 970–971; Amanna 2005, 307–315). This particularly refers to vulnerable and marginalized populations, and minority populations with a history of disadvantaged social status, so it is important that cultural considerations are taken into account. Vaccine hesitancy may be stronger in such populations and may not be restricted to just concerns about the vaccines' safety and efficacy.

2.2.2.6. Ethical Processes of Decision-Making

Finally, transparency and stepwise decision-making by legitimate public health authorities should be fundamental elements of ethical analysis and decision-making about mandatory vaccination. Reasonable efforts should be made to engage affected parties and relevant stakeholders, particularly those who are vulnerable or marginalized, to elicit and understand their perspectives. Legitimate public health authorities that are contemplating mandatory vaccination policies should use transparent, deliberative procedures to consider the ethical issues outlined in this document, including the threshold of evidence necessary for vaccine safety and efficacy to justify a mandate. As in other contexts, mechanisms should be in place to monitor evidence constantly and to revise such decisions periodically.

In its conclusion, the WHO states that vaccines are effective in protecting people from COVID-19 and that governments and institutional policy-makers should use arguments to encourage voluntary vaccination against COVID-19 before contemplating mandatory vaccination. Efforts should be made to demonstrate the benefit and safety of vaccines for the greatest possible acceptance of vaccination. Stricter regulatory measures should be considered only if these means are not successful. A number of ethical considerations and caveats should be explicitly discussed and addressed through an ethical analysis when considering whether mandatory COVID-19 vaccination is an ethically justifiable policy option. Similar to other public health policies, decisions about mandatory vaccination should be supported by the best available evidence and should be made by legitimate public health authorities in a manner that is transparent, fair, non-discriminatory, and involves the input of affected parties.

3. CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

The case law of constitutional courts and of the European Court of Human Rights (ECtHR) can also be an important guide to WHO member states when making decisions on mandatory vaccination, on whether mandatory vaccination is in accordance with the human rights guaranteed both by the many constitutional texts and by the most important international treaties on human rights. The most recent and the most comprehensive test of proportionality in assessing a decision on mandatory vaccination was demonstrated by the ECtHR in its recent Grand Chamber judgment in

Vavříčka and Others v. the Czech Republic.²¹ The proceedings were initiated by five parents who believed that the legal obligation to vaccinate children in the Czech Republic, against diseases that are well-known to medical science, was incompatible with the right to respect for private life guaranteed by Article 8 of the European Convention on Human Rights. The first applicant was fined for failing to comply with the obligation to vaccinate his two children, while the children of the other applicants were refused admission to preschool for the same reason.

The ECtHR first repeated its position expressed several times in its case law that mandatory vaccination, as an involuntary medical intervention, represents an interference with the right to respect for private life. Even though none of the contested vaccinations were performed, i.e., none of the vaccinations were administered against the will of the applicants, nor could they have been – because the applicable domestic law did not allow for the performance of the obligation to be imposed by force – the Court believed that, because of their refusal, the applicants bore the direct consequences of non-compliance with the vaccination duty.²² In order to determine whether such interference constituted a violation of Article 8 of the European Convention, the ECtHR examined whether such interference was justified, having in mind the limitations of the right to respect for private life contained in Article 8 para 2 of the European Convention. This means that the interference was in accordance with the law, and that it had a legitimate goal (the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others), and that the interference was necessary in a democratic society.

Assessing the lawfulness of the interference, the Court found that the interference that the applicants were contesting had a basis in domestic law, based on a combination of primary and secondary legislation, for which the domestic courts had already established that they satisfy the requirements of the Czech constitutional law.²³

The objective of the relevant legislation was to protect against diseases that may pose a serious risk to health. This refers both to those who receive the vaccinations concerned as well as to those who cannot be vaccinated

²¹ *Vavříčka and Others v. the Czech Republic*, Nos. 47621/13 and 5 others, 8 April 2021, § 113–114.

²² *Ibid.*, § 263.

²³ *Ibid.*, §§ 266–271.

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 contagious diseases in question. This objective corresponds to the aims of the protection of health and the protection of the rights of others, recognized by Article 8 of the European Convention.²⁴ The court ascertained that there is a general consensus that vaccination is 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. However, as there is no consensus on which means is the most suitable for the protection of interests at issue, the Court found that the state's margin of appreciation should be a wide one.²⁵

Finally, in assessing the necessity and the proportionality of the interferences, as the most important criterion for the term “necessary in a democratic society,” the ECtHR noted that the European Convention, as well as other international legal instruments, impose on the states a positive obligation to put in place effective public measures to protect the life and health of those within their jurisdiction. The expert material submitted by the Government of the respondent state conveys the firm view of the relevant medical authorities of the Czech Republic that the vaccination of children should remain a matter of legal duty in that country, and underlines the risk to the individual and public health that a possible decline in the rate of vaccination would give rise to, in the event that were it to become a merely recommended procedure. In the light of these arguments, the Court believed that it could be said that in the Czech Republic the vaccination duty represents the response of the domestic authorities 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. Having in mind the extensive scientific evidence showing that early childhood is the optimum time for vaccination, and the reasons presented in favor of the compulsory nature of child vaccination in the Czech Republic, the Court acknowledged the important public health reasons that this choice of health policy is based on, especially regarding the efficacy and safety of vaccination during childhood, as well as the general consensus that supports the objective of every state to achieve the highest possible degree of vaccine coverage.²⁶ Regarding the proportionality of the measure of compulsory vaccination, the Court reiterated that the vaccination duty

²⁴ *Ibid.*, § 272.

²⁵ *Ibid.*, §§ 277–278.

²⁶ *Ibid.*, §§ 279–289.

concerns diseases for which vaccination is considered effective and safe by the scientific community, but that this was not an absolute duty. An exemption from the duty was permitted notably in respect of children with a permanent contraindication to vaccination. In addition, there was also an additional exemption based on the “secular objection of conscience” which the Constitutional Court recognized in the case of the first applicant and further elaborated in subsequent cases. Even though vaccination was a legal duty in the respondent state, the Court emphasized that its honoring cannot be directly enforceable and that, in this sense, there is no provision allowing for forcible administration of a vaccine. The sanction imposed on the first applicant – a one-time administrative fine – could be considered relatively moderate. As for the other applicants’ children, the Court believed that their non-admission to preschool establishments was a measure aimed in particular at safeguarding the health of young children, which was essentially protective rather than punitive in nature. The exclusion of children from preschool establishments 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 was 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 their health, especially in that age group. Moreover, the effects on the applicants’ children were limited in time. Upon reaching the age of mandatory school attendance, their admission to primary school was not affected by their vaccination status. The Court, therefore, found that it could not be regarded as disproportionate for a state to require those for whom vaccination represents a remote risk to health to accept this universally practiced 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. This is why, in the opinion of the European Court of Human Rights, the measures complained of by the applicants stand in a reasonable relationship of proportionality to the legitimate aims pursued by the respondent state through the vaccination duty.²⁷

²⁷ *Ibid.*, §§ 290–309. The same position was taken by the European Commission in *Carlo Boffa and 13 others v. San Marino*, No. 26536/95, 15 January 1998, and the ECHR in *Solomakhin v. Ukraine*, No. 24429/03, September 24, 2012, § 33–39. For more on these decisions see Draškić 2018, 17–20.

4. RULINGS OF EUROPEAN CONSTITUTIONAL COURTS

The issue of the constitutionality of the cited provisions of the Law on the Protection of the Population from Communicable Diseases was also raised before the Constitutional Court of Serbia. The Constitutional Court delivered a decision rejecting several initiatives for the assessment of the constitutionality of Article 32 of the Law on the Protection of the Population from Communicable Diseases with the following rationale:

“Having in mind all the above mentioned, the Constitutional Court finds that it is the undisputed competence of the legislator to prescribe health protection measures by law, for which it has been established, in accordance with the rules of the profession, that they achieve the most favorable results in preventing the spread of contagious diseases. As immunization is a preventive measure of healthcare that is an area of public healthcare activity and one undertaken in order to protect the population in its entirety from certain contagious diseases, the Constitutional Court finds that the legislator acted within its constitutional authority when prescribing mandatory immunization against the contagious diseases specified by law. Namely, the aforementioned measure is aimed at eliminating certain diseases from the entire population, which is, in the understanding of the Court, a legitimate objective, and is at the same time an obligation of the state arising from the provisions of Article 68 para 1 of the Constitution and of the right to the protection of physical and mental health, guaranteed by it to everyone ...”

“Furthermore, as under the Law on Healthcare Protection, every individual is obliged to preserve and enhance both their health and that of other people, the Constitutional Court finds that the impossibility of refusing vaccination logically follows from the said obligation. Therefore, in this concrete case, in the understanding of the Court, the constitutional right to an individual’s health protection correlates, on the one hand, with the obligation of the state to take appropriate protection measures, including preventive measures aimed at the entire population and, on the other hand, with each individual’s obligation to undergo a measure also aimed at achieving the rights of others to health protection. In connection with this, the Constitutional Court also cites a provision of Article 26 of the Convention on Human Rights and Biomedicine, according to which the law can place restrictions on the exercise of certain rights contained in the Convention, including the right to refuse medical intervention, if the restrictions are necessary in a democratic society, among other things, for the protection of public health or for the protection of the rights and freedoms of others. Since the Convention, upon ratification, became an integral part of the legal order of the Republic of Serbia, in accordance with Article 16 para 2 of the Constitution, the Patient

Rights Law thus also stipulates that the patient has the right to freely decide on everything that concerns his/her life and health, except when that directly endangers the lives and health of others, and that a medical measure can be taken against the will of a patient, i.e., legal representative of a child, only in exceptional cases specified by law. In view of the above, and since, according to the legislator, the measure of mandatory immunization is prescribed by the provisions of the challenged Law, as a necessary measure to preserve collective immunity in order to eradicate contagious diseases and preserve the health of all, based on Constitutional Court findings, prescribing mandatory immunization against certain diseases specified by law is not contrary to the constitutional guarantee of the right to protection of physical and mental health under Article 68 para 1 of the Constitution, as stated by the petitioners. On the contrary, the aforementioned is undertaken precisely with the aim of achieving the highest possible level of preservation of the citizens' health and to eradicate certain contagious diseases, all in line with the cited constitutional provision.²⁸

The Constitutional Court of Croatia has also rejected proposals for the initiation of proceedings for the assessment of the constitutionality of relevant provisions of the Law on the Protection of the Population from Infectious Diseases governing mandatory vaccination. One of the petitioners explained his request by saying that the disputed provisions imposed and sanctioned the obligation to vaccinate while the state did not guarantee the people that, following vaccination, they would not fall ill with the diseases they were obliged to vaccinate against. The petitioner also pointed to potential health complications related to vaccination, believing that the human body protects itself from infectious diseases more efficiently and with less risk through the development of natural immunity by means of various unconventional techniques (meditation, energization, music therapy) and a natural way of life, and by using natural products (especially bee products), than through mandatory vaccination.

The Constitutional Court of Croatia, however, found these assertions to be unfounded, guided by an opinion from the Ministry of Health that it obtained in the normative control procedure: "In the submitted opinions, the Government of the Republic of Croatia and the Ministry of Health stressed that active immunization was the most effective and the safest measure in preventing infectious diseases, which are most common during childhood when the biological defense mechanisms are the least developed. They

²⁸ Ruling of the Constitutional Court of Serbia IUz 48/2016, 26 October 2017, <http://www.ustavni.sud.rs/page/jurisprudence/35/> (last visited 8 November, 2022). According to Draškić 2018, 20–21.

state that the main purpose of active immunization is to develop specific resistance in the youngest, i.e., the most vulnerable population. Regarding complications that may arise from vaccination, it is said that clinical side effects occur very rarely, mostly locally in the form of redness and painful swelling. They point out that active immunization during childhood has been proved, both in the Republic of Croatia and elsewhere in the world, as the most effective health protection measure in the prevention of infective diseases, by means of which some diseases have been eradicated (smallpox), while some have become extremely rare (diphtheria, polio) or rare (measles).

“Considering the challenged provisions from the aspect of the aforementioned constitutional provisions, the authority of the legislator to prescribe health protection measures that are, according to the rules of the medical profession, proven to achieve the most favorable results in preventing the spread of contagious diseases, as well as sanctions for those who break the law by failing to abide by the prescribed measures, is indisputable [...] In view of the above, by refusing vaccination, parents endanger the health of their own children, the health of other persons who are not vaccinated due to medical contraindications, and that of persons for whom vaccination has not achieved a satisfactory level of protection (no vaccination protects 100% of vaccinated people), thereby denying them the right to a healthy life [...] That being said, in order to ensure the aforementioned right, it is justified to oblige citizens by law to vaccinate against diseases whose prevention is of interest to the Republic of Croatia [...] Therefore, in order to protect a child’s health and a child’s right to health, it is justified to deny parents the choice of non-vaccination, because a child’s right to health outweighs the parents’ right to (the wrong) choice.”²⁹

The Constitutional Court of Slovenia also ruled on the constitutionality of the Slovenian Communicable Diseases Act, adopting an interesting decision. Namely, regarding the constitutionality of certain provisions of the Communicable Diseases Act, the Constitutional Court established that Article 22.1.1. of the Communicable Diseases Act is undoubtedly an interference with certain human rights – the right to self-determination, the right to protection of physical integrity (Article 35 of the Constitution), and the right

²⁹ Decision U-I-5418/2008, U-I-4386/2011 and U-I-4631/2011, 31 January 2014. The Constitutional Court of Croatia passed a decision rejecting the constitutional complaint filed against the ruling of the Magistrates Court in Varaždin that found the applicant guilty for failing to allow the vaccination of her underage daughter with the vaccine Pentaxim and Engerix against diphtheria, tetanus, whooping cough and polio. See decision U-III-7725/2014, 11 July 2017, <https://www.usud.hr/hr/praksa-ustavnog-suda> (last visited 8 November, 2022). According to Draškić 2018, 21–22.

to voluntary medical intervention (Article 51.3. of the Constitution) – but that the goal of the disputed legal provisions that determine mandatory vaccination is to prevent the spread of contagious diseases. Protection of individuals from contagious diseases, therefore, should be ensured to the highest possible degree, and the outbreak of epidemics prevented, seeing as in the past contagious diseases have resulted in damages to the health – sometimes in the death – of a large number of people. Vaccination against contagious diseases achieves immunity of the vaccinated person, and with a vaccination rate of 90%–95% collective immunity of the entire population is also achieved. Therefore, the spread of contagious diseases and outbreaks of epidemics can be prevented only if a satisfactory level of general immunization coverage is achieved. This is why it is necessary for every person to be vaccinated, unless there are justified reasons (contraindication) to omit vaccination. Since the Constitution itself allows for certain health measures to be prescribed by law even without patient consent (Article 51.3.), it is clear that mandatory vaccination can also be regulated by law in order to achieve the desired goal – ensuring collective protection from contagious diseases. This is why individuals cannot exercise their right to self-determination by claiming that the spread of contagious diseases will be prevented thanks to those who have consented to vaccination. Vaccination has greatly contributed to raising the overall level of health protection of the population, i.e., to significantly reducing the number of persons sick with contagious diseases or who succumb to them, as there have been no epidemics or even individual cases of persons contracting certain diseases in recent years. The Constitutional Court of Slovenia, therefore, concluded that mandatory vaccination, as prescribed by Article 22.1.1. of the Communicable Diseases Act, is an adequate measure for achieving the desired legitimate goal, i.e. the prevention and control of contagious diseases. Moreover, the Constitutional Court of Slovenia holds that the benefit of vaccination to the health of individuals and the broader community exceeds any possible damage which may be incurred by individuals due to the side effects of mandatory vaccination. In the opinion of experts, the risk of individuals suffering damage to their health due to vaccination is considerably lower than the damage that could be caused to them by the disease itself, which can have far more serious consequences than vaccination (Šelih 2000, 52–54). Even if there were side effects of vaccination in individual cases, they are mostly mild and regularly pass without any additional medical intervention or permanent damage (mild allergic reaction, slight fever, headache, etc.), while medical intervention or hospitalization are seldom required. As opposed to this, in situations where vaccination could pose a great risk to a patient's health, the Law provides for finding permanent or temporary justified solutions to omit vaccination. Omitting mandatory vaccination,

however, would be a big risk in situations in which the number of vaccinated persons in the overall population would drop below the critical limit, for that would mean a reoccurrence of certain contagious diseases or epidemics. Such consequences for the health and lives of people would be disproportionately greater than the risk of health problems that only exceptionally occur following vaccination. In other words, the Constitutional Court finds that the benefits of mandatory vaccination to the health of individuals and the broader community exceed the consequences of interference with the constitutional rights of each person, and thus mandatory vaccination, as defined by the Communicable Diseases Act, is not an excessive measure.³⁰

Similar decisions with analogous reasoning to those cited in the decisions of the constitutional courts of Serbia, Croatia and Slovenia were also passed by the Constitutional Council of France, the Constitutional Court of Hungary, the Constitutional Court of North Macedonia, the Constitutional Court of Italy, the Constitutional Court of Moldova, the Constitutional Court of Slovakia, and the Court of Appeal in the United Kingdom.³¹

5. INSTEAD OF A CONCLUSION: ITALY'S EXAMPLE THAT SHOULD HAVE BEEN FOLLOWED

Mandatory vaccination against contagious diseases, which can be dangerous, severe, and easily transmitted, is undoubtedly the safest way to protect public health and one of the ways to ensure the highest level of health and medical care nationally. However, in order for vaccination to be effective, collective immunity needs to be achieved, which means that it is not enough for individuals to get vaccinated and therefore protect themselves from contagious diseases, but almost all members of society need to do the same. The vaccine coverage rate that is necessary to stop an infection, differs depending on the contagious disease in question, but for those that are the most contagious, such as COVID-19, it is extremely high and requires coverage of about 90% of the population. It is also true that some people have medical contraindications to vaccination (for example, patients with malignant diseases, patients who have had organ transplants, pregnant women in the first trimester, people who develop allergic reactions

³⁰ Decision of the Constitutional Court of Slovenia U-I-127/01, 12 February 2004, § 12–25, *Uradni list RS* 25/2004. According to Draškić 2018, 23–24.

³¹ See more in *Vavrička and Others v. the Czech Republic*, Nos. 47621/13 and 5 others, 8 April 2021, §§ 94–128.

to vaccines, etc.), but an immunity barrier in the population is important precisely for them, so they do not have the opportunity to get infected, even though they themselves have not been vaccinated.

In spite of this, there are people who oppose mandatory vaccination. The reasons for this attitude are many and they include a wide spectrum of circumstances, from the most banal ones – based on a combination of tales, rumors, prejudices, anecdotes, populist slogans and claims that are not supported by credible sources – to a general tendency of people to put up resistance against anything that is forced on them. Vaccination is presented as the citizens' right to freedom to decide about their own lives and health and as the right to freedom of thought in an atmosphere of political correctness, even though it is a matter of basic scientific facts in the domain of public health and general interest, where qualified professionals must have the last say.

Still, there is certainly an alternative to mandatory vaccination, though it is by no means “meditation, energization, music therapy and a natural way of life”, a medication that has not been scientifically approved for the treatment of this disease, or arbitrary use of various immune-boosting products. The alternative to mandatory vaccination is simply widespread voluntary vaccination, and this can be achieved solely by persistently and constantly informing people on credible scientific discoveries and by assuring them that scientifically verifiable facts exist and are available. Unfortunately, the incumbent authorities in Serbia are not acting in an enlightening and emancipatory manner; they have no intention of carrying out a serious and comprehensive vaccination campaign, obviously caring more about the fact that various xenophobic anti-vaxxer groups, extreme rightists, and theorists with the most diverse conspiracy theories constitute a significant part of the electorate. They have continuously used the majority of the media to spread confusing messages both in favor and against vaccination,³² thus only additionally shaking the confidence of the people who are unable to resist fake news, who are confused and indecisive because they are incapable of critical thinking, or are simply insufficiently informed. Instead, a serious and responsible state would promote the clear and outspoken position that science is the supreme factor in the fight against pandemics and that measures for the protection of the population from severe contagious diseases must not be passed by those who know absolutely nothing about the field of epidemiology.

³² See, for example, the numerous public appearances by Branimir Nestorović, professor of the University of Belgrade Faculty of Medicine, in which he presented scientific untruths, nonsenses, belittled and ridiculed the threat of the epidemic and on many occasions publicly promoted inappropriate behavior patterns.

The Italian Government, headed by Prime Minister Mario Draghi, demonstrated precisely this approach in a successful fight against the pandemic, yet without mandatory vaccination. This approach showed that national interests, public health and a legal state can function almost impeccably, because the most efficient network in Europe for widespread vaccination of the population was organized there. The target was set at the beginning of the vaccination campaign: 80 percent of the population must be immunized by the end of 2021, which would pave the way for the lifting of the state of emergency declared in connection with the pandemic.

What is particularly important – and could be an exceptionally important guide for Serbia (if it is not too late) – a media campaign was simultaneously conducted against fake news released by the so-called anti-vaxxer circles. Even though Italian society is highly susceptible to conspiracy theories – much more than other European Union members – the coordinated work on reporting and timely exposure of anti-vaxxer propaganda in the media produced excellent results, and subversive groups failed to spread their influence and remained limited to their narrow circles. It is known from the very beginning of the pandemic that somewhere between 10 and 15 percent of Italians were sworn opponents of vaccines and that it would be very difficult to persuade them to get vaccinated. This is why the key objective was to protect the remaining Italians, i.e., to ensure that opponents of vaccination were not in a position to contaminate the rest of the population. The clear results of the measures carried out by the Italian Government in suppressing the pandemic rather irritated the hardline anti-vaxxer core, because all conspiracy theories, starting with the most stupid ones – that vaccines killed people and contained microchips – to the theory on the collusion between the government, Big Pharma and the journalists who manipulated the results, faded away when confronted by exact figures. Mario Draghi pursued the policy of zero tolerance for anti-vaxxers from the very beginning, not allowing rightist parties (which anti-vaxxers mostly voted for) to impose conditions on the Government, the vaccination campaign, and the implementation of other anti-pandemic measures. The secret of the success of this policy was exposing the policy of extremist and rightist parties, which were willing to push the country into a new wave of the coronavirus pandemic, in order to obtain the votes necessary to gain power, yet without adequate tools to suppress the disease. With widespread vaccination and a consistent implementation of suppression measures, Italy became an example that should have been followed.

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