European Court of Human Rights

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ECHR 2021/4 *Case of Gawlik v. Liechtenstein*, 16 February 2021, no. 23922/19

The Facts

The applicant is a doctor specialised in general and internal medicine. From 1 June 2013 he was employed as deputy chief physician of the department for internal medicine at the Liechtenstein National Hospital (Liechtensteinisches Landesspital), a registered Liechtenstein public law foundation. On 9 September 2014 the applicant did some research in the electronic medical files of the hospital. He found information showing that ten patients had died in the hospital following the administration of morphine. He concluded from notes made in these files that Dr H., who had treated these patients, had practised active euthanasia.

On the same day the applicant met with the President of the Control Committee of the Liechtenstein Parliament (the “Parliamentary Control Committee”), Mr M., on the latter’s initiative, following several anonymous complaints about deficiencies in quality in the Liechtenstein National Hospital. On that occasion, the applicant voiced suspicions that Dr H. had practised active euthanasia. On 11 September 2014 the applicant, on Mr M.’s advice, lodged a criminal complaint against Dr H. with the Public Prosecutor’s Office which instituted proceedings against Dr H. on suspicion, inter alia, of killing on request and participation in another person’s suicide. He supported his suspicions by the fact that according to the electronic files, the death of these patients had occurred shortly after the start of the treatment with morphine, that morphine had been given even without an indication that the patients suffered from pain, that the treatment had been called “supportive therapy” or “supportive measures”, and having regard to the medication administered.

He stressed that the aim of his statement was to avert damage to patients of the hospital.

At the time of the events, the Liechtenstein National Hospital had a body to which irregularities could be reported anonymously via an online form, the Critical Incident Reporting System (CIRS).

On 19, 22 and 24 September 2014 the vice-president of the hospital's foundation board drew up three reports on the request of the foundation board regarding the treatment of the ten patients in question. Having examined the patients' paper files and having questioned Dr H., he concluded that all patients had been in a palliative situation under the WHO's standards and that there had not been any mistake regarding the morphine administered. He considered that the applicant had failed to take into account the pain or difficulty in breathing of the patients concerned, which had made necessary the treatment in question. If the applicant had read the patients' paper files, which alone, as had been known at the time, had contained complete information regarding the patients' condition and treatment and to which he had had access, he would have realised immediately that his suspicions of active euthanasia were clearly unfounded. In a report received by the National Hospital on 15 October 2014 a Swiss external medical expert in palliative medicine commissioned by the Hospital, N., having studied the medical paper files of the patients concerned and having heard Dr H., concluded that no active euthanasia had been practised on the ten patients in question. The expert considered that the patients' palliative treatment had been necessary and justified as they had been at the end of their lives. They had died as a result of their illnesses and not as a result of their treatment. They had been given morphine in order to treat their pain and difficulty in breathing and not to end their lives. The expert noted that some of the morphine doses prescribed – especially those “without upper limit” – may not have been necessary, but such doses had never been administered in practice.

On 17 October 2014 the director of the National Hospital dismissed the applicant without notice. He considered that owing to the applicant's severe fault, the relationship of trust with him had been destroyed irretrievably. He argued that the applicant had failed to raise his allegations of active euthanasia and quality flaws with the hospital's competent internal bodies prior to raising them externally with the President of the Parliamentary Control Committee and with the Public Prosecutor's Office. The applicant had been obliged to inform Dr H., or at least the director of the hospital or a member of the foundation board with whom he had a normal relationship, of his allegations. Furthermore, the applicant's allegations of euthanasia had been considered as clearly unfounded by the external expert commissioned by the hospital.

The Liechtenstein newspapers and radio repeatedly reported on the suspicions of active euthanasia at the Liechtenstein National Hospital and the criminal investigations against Dr H. in this respect.

The Law

The applicant complained that his dismissal without notice from the National Hospital on account of the fact that he had lodged a criminal complaint for active euthanasia had breached his right to freedom of expression as provided in Article 10 of the Convention.

Such interference will constitute a breach of Article 10 unless it is “prescribed by law”, pursues a legitimate aim under its paragraph 2 and is “necessary in a democratic society” for the achievement of such aim.

(a) Interference “prescribed by law”

The Court observes that the applicant’s dismissal was based on Article 1173a para. 53 of the Civil Code, which authorises the termination of employment contracts without notice for important reasons. It was thus “prescribed by law” for the purposes of Article 10 para. 2.

(b) Legitimate aim

The Court notes that there was no dispute between the parties, and the Court agrees, that the interference pursued the legitimate aims of protecting the reputation and rights of others. It served to protect both the business reputation and interests of the employing National Hospital, including its interest in a professional work relationship based on mutual trust, and the reputation of the hospital’s chief physician who was concerned by the applicant’s allegations of euthanasia.

(c) Necessity of the interference in a democratic society

As regards the application of Article 10 of the Convention to the workplace, the Court has held that the signalling by an employee in the public sector of illegal conduct or wrongdoing in the workplace, so-called whistle-blowing, should, in certain circumstances, enjoy protection. This may be called for in particular where the employee concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large. The Court is at the same time mindful that employees owe to their employer a duty of loyalty, reserve and discretion. When assessing, in this context, the proportionality

of the interference with an employee's right to freedom of expression in relation to the legitimate aim pursued, the Court, in its case, has had regard to the following six criteria.

– *Public interest in the disclosed information*

In the first place, particular attention shall be paid to the public interest involved in the disclosed information. There is little scope under Article 10 para. 2 of the Convention for restrictions on debate on questions of public interest.

The Court considers that the information disclosed by the applicant, namely the suspicion that a chief physician currently working at the Liechtenstein National Hospital had repeatedly practised active euthanasia, concerned suspicions of the commission of serious offences, namely the killing of several vulnerable and defenceless patients, in a public hospital, as well as a risk of repetition of such offences. It agrees that this information was as such of considerable public interest.

– *Authenticity/veracity of the information disclosed*

The second factor relevant in this balancing exercise is the authenticity of the information disclosed. The Court reiterates in this context that freedom of expression carries with it duties and responsibilities and any person who chooses to disclose information must carefully verify, to the extent permitted by the circumstances, that it is accurate and reliable – in particular if the person concerned owes a duty of discretion and loyalty to his or her employer and there is question of attacking the reputation of private individuals.

As regards the authenticity, in the sense of veracity, of the information disclosed by the applicant in the present case, the Court cannot but note, that the Supreme Court and the Constitutional Court that had intervened in the proceedings, found that the suspicions of active euthanasia which the applicant had reported to the Public Prosecutor's Office had been clearly unfounded. The Court observes that the assessment that no active euthanasia had been practised was shared, in particular, by the two external medical experts, N. and L., who had been asked by the Liechtenstein National Hospital and the Public Prosecutor's Office respectively to examine this question on the basis of the medical paper files. The Court thereby cannot but note that the applicant comprehensive information in this respect was only available in the paper medical files which the applicant, however, did not consult. Despite the fact that expert L. saw some room for improvement in the documentation in these files, both external experts concluded without any reservations that the patients in question had received necessary and justified palliative treatment.

The Court would stress that information disclosed by whistle blowers may also be covered by the right to freedom of expression under certain circumstances where the information in question subsequently proved wrong or could not be proven correct. It recalls, in particular, that it cannot reasonably be expected of a person having lodged a criminal complaint in good faith to anticipate whether the investigations will lead to an indictment or will be discontinued. However, in these circumstances the person concerned must have complied with the duty to carefully verify, to the extent permitted by the circumstances, that the information is accurate and reliable. The Court observes that the guiding principles developed by the PACE in its Resolution 1729 (2010) on the protection of “whistle-blowers” reflect the same approach, stating that “[a]ny whistle-blower shall be considered as having acted in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case ...”. Likewise, the guiding principles in the Appendix to Recommendation CM/Rec(2014)7 on the protection of whistle-blowers provide that “[p]rotection should not be lost solely on the basis that the individual making the report or disclosure was mistaken as to its import or that the perceived threat to the public interest has not materialised, provided he or she had reasonable grounds to believe in its accuracy” (principle no. 22).

In the present case, the applicant based his allegations of active euthanasia only on the information available in the electronic medical files which, as he had known as a doctor practising in the National Hospital, did not contain complete information on the patients’ state of health. Had he done so, he would have recognised immediately that his suspicions were clearly unfounded and he had therefore acted irresponsibly. By reason of the duties and responsibilities inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to whistle-blowers is subject to the proviso that they acted in order to disclose information that is accurate and reliable and in accordance with professional ethics. This applies, in particular, if the person concerned, like the applicant in the present case as deputy chief physician and thus a high-ranking and highly qualified employee, owes a duty of loyalty and discretion to his or her employer.

Having regard to the gravity of an allegation of active euthanasia the Court therefore concludes that the applicant was obliged to, but failed to proceed to such a verification. He did not, therefore, carefully verify, to the extent permitted by the circumstances, that the information he disclosed was accurate and reliable.

– Detriment to the employer

Third, on the other side of the scales, the Court must weigh the damage, if any, suffered by the employer as a result of the disclosure in question and assess whether such damage outweighed the interest of the public in having the information revealed.

In the present case, the Court considers that the allegation of active euthanasia having been practised at a State-run hospital was certainly prejudicial to the employing hospital's business reputation and interests and to the public confidence in the provision of medical treatment in accordance with the state of the art in the only public hospital in Liechtenstein. It was further prejudicial to the personal and professional reputation of another staff member of that hospital, namely the chief physician concerned by the allegations. Although, there was as such a public interest in the revelation of information on suspicions of repeatedly practised active euthanasia in a public hospital, in the present case, in which the well foundedness of that suspicion had not been sufficiently verified prior to its disclosure, the public interest in receiving such information however cannot outweigh according to the Court the employer's and chief physician's interest in the protection of their reputation.

– Existence of alternative channels for making the disclosure

Fourth, the Court needs to determine whether, in the light of the duty of discretion owed by an employee towards his or her employer, the information was made public as a last resort, following disclosure to a superior or other competent body unless it is clearly impracticable to disclose the information to a superior or other competent authority. The Court must take into account in this context whether any other effective means of remedying the wrongdoing which the employee intended to uncover were available to him or her.

In this perspective, the Court observes in the present case that both the Supreme Court and the Constitutional Court left open the question whether the applicant, prior to raising his suspicions externally, should have attempted to raise them internally. The Court, having regard to the circumstances of the case, the gravity of the acts at issue and its case-law, finds that the applicant could not be expected to first raise his suspicions with his superior Dr H., who was directly concerned by them. As for the internal reporting channel, the CIRS, the Court notes that it has not been shown that it had been communicated within the hospital that anonymous reports of irregularities via that system were no longer handled by Dr H. alone. Therefore, the applicant could legitimately proceed on the assumption that redress could not be obtained in this way either.

With regard to the question whether the applicant should have raised his suspicions either with a member of the hospital's foundation board or with the hospital's director prior to lodging a criminal complaint, the Court notes that, in view of the normal professional relationship between the applicant and these bodies and the availability of medical expertise within the hospital, these instances appear to be effective alternative channels for disclosure, with the potential to remedy any irregularities rapidly. However, the Court does not overlook either that the offences which the applicant suspected his direct superior of were serious and that there was a possibility that he might himself be held liable in case of a failure to report such offences. It further takes note of the fact that the guiding principles in the Appendix to the Committee of Ministers' Recommendation CM/Rec(2014)7 on the protection of whistle-blowers do not establish an order of priority between the different channels of reporting and disclosure, stating that the individual circumstances of each case will determine the most appropriate channel. The Court considers, however, that in the circumstances of the case it can leave open the question whether the applicant was obliged to raise his suspicions with the said internal instances of the hospital.

– Applicant's motives for the disclosure

Fifth, the motive behind the actions of the reporting employee is another determining factor in deciding whether a particular disclosure should be protected or not. For instance, an act motivated by a personal grievance or personal antagonism or the expectation of personal advantage, including pecuniary gain, would not justify a particularly strong level of protection. It is important to establish that, in making the disclosure, the individual acted in good faith and in the belief that the information was true, that it was in the public interest to disclose it and that no other, more discreet means of remedying the wrongdoing was available to him or her.

In this case, the Court observes that the domestic courts did not find that the applicant had acted out of personal motives. Having regard to the material before it, the Court does not have reasons to doubt that the applicant, in making the disclosure, acted in the belief that the information was true and that it was in the public interest to disclose it.

– Severity of the sanction

Lastly, in connection with the review of the proportionality of the interference in relation to the legitimate aim pursued, a careful analysis of the severity of the sanction, in particular the penalty imposed on the employee and its consequences, is required.

In that perspective the Court observes in the present case that the applicant's dismissal without notice constituted the heaviest sanction possible under labour law. This sanction not only had negative repercussions on his professional career, it also led to the applicant and his family having to leave Liechtenstein as he was to lose his residence permit as a foreign national without employment. Having regard also to the media coverage regarding the suspicions of euthanasia in Liechtenstein, the sanction therefore must have had a certain chilling effect on other employees in the hospital and the health sector in general – at least as regards the direct disclosure to external bodies of suspicions of irregularities.

Conclusion

The Court concludes that the domestic courts struck a fair balance between the need to protect the employer's and the staff member's reputation and rights on the one hand and the need to protect the applicant's right to freedom of expression on the other. It therefore concludes that the interference with the applicant's right to freedom of expression, in particular his right to impart information, was proportionate to the legitimate aim pursued and thus necessary in a democratic society. There has accordingly been no violation of Article 10 of the Convention.

ECHR 2021/5 *Case of Vavříčka and others v. the Czech Republic*, 8 April 2021, no. 47621/13 and 5 others¹

Facts

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

Application no. 47621/13 (*Vavříčka v. the Czech Republic*) was lodged on 23 July 2013 by Pavel Vavříčka, a Czech national who was born in 1965. In 2003 Mr Vavříčka was fined for refusing to have his two children, then aged 14 and 13, vaccinated against poliomyelitis, hepatitis B and tetanus, as required under domestic law (the Public Health Protection Act no. 258/2000 and Decree of the

¹ This summary is based on the English Press Release issued by the Registrar of the Court.

Ministry of Health no. 439/2000). The appeals lodged by Mr Vavříčka against the decision were dismissed by the domestic courts.

Application no. 3867/14 (*Novotná v. the Czech Republic*) was lodged on 9 January 2014 by Markéta Novotná, a Czech national who was born in 2002. The applicant's parents agreed to have her vaccinated against all diseases for which vaccination was compulsory, except for measles, mumps and rubella (MMR) as they had doubts about the MMR vaccine. In 2006 the applicant was admitted to nursery school. Two years later, having been informed by the paediatrician that the applicant had not received the MMR vaccine, the head teacher decided to reopen the admission procedure and to refuse her admission. The applicant unsuccessfully challenged the head teacher's decision in the domestic courts, which took the view that the applicant had failed to establish any disproportionate interference with her fundamental rights: her continued attendance at the nursery school was capable of endangering the health of others, and the right to health protection took precedence.

Application no. 73094/14 (*Hornych v. the Czech Republic*) was lodged on 16 November 2014 by Pavel Hornych, a Czech national who was born in 2008. Having suffered from various health problems, the applicant was not vaccinated, his parents arguing that this was due to the lack of an individualised vaccination recommendation by his paediatrician. No minor-offence proceedings were however taken in connection with his vaccination status. In 2011, at the time of the applicant's enrolment in nursery school, the paediatrician certified in writing that the applicant had not been vaccinated. Despite this a handwritten note was added that he "was not lacking any regular vaccination prescribed by law". Be it as it may, in the same year, he was refused admission to nursery school because he had not proved that he had been vaccinated. Appeals against this decision were unsuccessful.

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

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

Application no. 43883/15 (*Roleček v. the Czech Republic*) was lodged by Prokop Roleček, a Czech national who was born in 2008. The applicant's parents, who are biologists, set out an individual vaccination plan for him, according to which he was vaccinated against some of the illnesses later than required by law and not vaccinated against others. In 2010 the head teachers of two nursery schools refused to admit the applicant on the grounds that the conditions laid down in the relevant Law (no. 258/2000) had not been met. The applicant challenged this decision, but his appeal was dismissed.

This summary is restricted to the issues raised under Article 8 of the Convention

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

The Law

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

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

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

Whether there was an interference

According to the Court's case-law, compulsory vaccination, as an involuntary medical intervention, represented an interference with the right to respect for private life within the meaning of Article 8 of the Convention. In the present case, although none of the contested vaccinations had been performed, the Court considered that as a result of the refusal to admit them to preschool, the child applicants (in five of the applications) had borne the direct consequences of non-compliance with the vaccination duty. With regard to Mr Vavříčka,

while it was his children's vaccination that was at issue, under domestic law he was personally subject to the duty to have his children vaccinated; the consequences of non-compliance with it, namely, a fine, had been borne by him directly as the person legally responsible for his children's well-being.

Each of the applicants had therefore suffered an interference with their right to respect for private life.

To determine whether this interference entailed a violation of Article 8 of the Convention, the Court must examine whether it was justified under the second paragraph of that Article, that is, whether the interference was "in accordance with the law", pursued one or more of the legitimate aims specified therein, and to that end was "necessary in a democratic society".

(i) *In accordance with the law*

The Court reiterates that an impugned interference must have some basis in domestic law, which law must be adequately accessible and be formulated with sufficient precision to enable those to whom it applies to regulate their conduct and, if need be with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. The Court reiterates that the term "law" as it appears in the phrases "in accordance with the law" and "prescribed by law" in Articles 8 to 11 of the Convention, is to be understood in its "substantive" sense, not its "formal" one. It thus includes, *inter alia*, "written law", not limited to primary legislation but including also legal acts and instruments of lesser rank. In sum, the "law" is the provision in force as the competent courts have interpreted it.

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

(ii) *Legitimate aim pursued by the interference*

With regard to the aims pursued by the vaccination duty, objective of the relevant legislation is to protect against diseases which may pose a serious risk to health. This refers both to those who receive the vaccinations concerned as well as those who cannot be vaccinated and are thus in a state of vulnerability, relying on the attainment of a high level of vaccination within society at large for protection against the contagious diseases in question. This objective corresponds to the aims of the protection of health and the protection of the rights of others, recognised by Article 8.

In view of the above, there is no need to decide whether other aims recognised as legitimate under Article 8 para. 2 may be of relevance where a State takes measures to guard against major disruptions to society caused by serious disease, namely the interests of public safety, the economic well being of the country, or the prevention of disorder.

(iii) *Necessity in a democratic society*

a. General principles and margin of appreciation

The Court summarises the applicable principles as follows:

An interference will be considered “necessary in a democratic society” for the achievement of a legitimate aim if it answers a “pressing social need” and, in particular, if the reasons adduced by the national authorities to justify it are “relevant and sufficient” and if it is proportionate to the legitimate aim pursued;

The Convention system has a fundamentally subsidiary role. The national authorities have direct democratic legitimation in so far as the protection of human rights is concerned and, by reason of their direct and continuous contact with the vital forces of their countries, they are in principle better placed than an international court to evaluate local needs and conditions;

It is therefore primarily the responsibility of the national authorities to make the initial assessment as to where the fair balance lies in assessing the need for an interference in the public interest with individuals’ rights under Article 8 of the Convention. Accordingly, in adopting legislation intended to strike a balance between competing interests, States must in principle be allowed to determine the means which they consider to be best suited to achieving the aim of reconciling those interests;

That assessment by the national authorities remains subject to review by the Court, which makes the final evaluation as to whether an interference in a particular case is “necessary”, as that term is to be understood within the meaning of Article 8 of the Convention;

A certain margin of appreciation is, in principle, afforded to domestic authorities as regards that assessment; its breadth depends on a number of factors dictated by the particular case. The margin will tend to be relatively narrow where the right at stake is crucial to the individual’s effective enjoyment of intimate or key rights. Where a particularly important facet of an individual’s existence or identity is at stake, the margin allowed to the State will also be restricted. Where there is no consensus within the Contracting Parties to the Convention, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider. The Court

has held that matters of healthcare policy are in principle within the margin of appreciation of the domestic authorities, who are best placed to assess priorities, use of resources and social needs. The Court thereby reiterates that the respondent State's margin of appreciation will usually be wide if it is required to strike a balance between competing private and public interests or Convention rights.

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

The Court noted that there was a general consensus that vaccination was one of the most successful and cost-effective health interventions and that each State should aim to achieve the highest possible level of vaccination among its population. As to the best means of achieving that, however, there was no consensus amongst the Contracting Parties to the Convention over a single model. Rather, there existed a spectrum of policies concerning the vaccination of children. The Czech Republic's position was at the more prescriptive end of that spectrum, a position supported and shared by three of the intervening Governments (of France, Poland and Slovakia). Indeed, the Court noted that several other Contracting Parties had recently changed their policies towards a more prescriptive approach, due to a decrease in voluntary vaccination and a resulting decrease in herd immunity. While it was accepted that making vaccination a matter of legal duty raised sensitive issues, this was not limited to the perspective of those disagreeing with the vaccination duty, but encompassed the value of social solidarity, the purpose of which was to protect the health of all members of society, particularly those who were especially vulnerable and on whose behalf the remainder of the population was asked to assume a minimum risk in the form of vaccination. In consequence, the Court considered that in the present case the State's margin of appreciation should be a wide one.

b. Pressing social need

The Convention as well as other international instruments imposes a positive obligation on the Contracting States to take appropriate measures to protect the life and health of those within their jurisdiction. The expert material submitted by the respondent Government conveyed the firm view of the relevant medical authorities of the Czech Republic that the vaccination of children

ought to remain a matter of legal duty in that country, and underlined the risk to individual and public health to which a possible decline in the rate of vaccination would give rise were it to become a merely recommended procedure. Concerns regarding the risk associated with a decrease in vaccine coverage had also been expressed by the intervening Governments, with emphasis placed on the importance of ensuring that children were immunised against the diseases in question from an early age. Similar concerns had also been expressed elsewhere at European and international level.

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

c. Relevant and sufficient reasons

With regard to the reasons put forward for the mandatory nature of vaccination in the Czech Republic, the Court acknowledged the weighty public health rationale underlying this policy choice, notably in terms of the efficacy and safety of childhood vaccination, and also the general consensus supporting the objective, for every State, to attain the highest possible degree of vaccine coverage.

It further noted the conclusion of the Czech Constitutional Court that the relevant data from national and international experts in the matter justified pursuing this policy. While a system of compulsory vaccinations was not the only, or the most widespread, model adopted by European States, the Court reiterated that, in matters of health-care policy, it was the national authorities who were best placed to assess priorities, the use of resources and the needs of society. All of these aspects were relevant in the present context, and they came within the wide margin of appreciation that the Court should accord to the respondent State.

Furthermore, in all decisions concerning children their best interests must be of paramount importance. This reflects the broad consensus on this matter, expressed notably in Article 3 of the UN Convention on the Rights of the Child (see, for example, *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], request no. P16–2018–001, French Court of Cassation, para. 38, 10 April 2019, with further references; and *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, para. 135, ECHR 2010). It followed that there was an obligation on States to place the best

interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development.

With regard to immunisation, the objective had to be to protect every child against serious diseases. In the great majority of cases, this was achieved by children receiving the full schedule of vaccinations during their early years. Those to whom such treatment could not be administered were indirectly protected against contagious diseases as long as the requisite level of vaccination coverage was maintained in their community; in other words, their protection came from herd immunity. Thus, where the view is taken that a policy of voluntary vaccination is not sufficient to achieve and maintain herd immunity, or herd immunity is not relevant due to the nature of the disease (e.g. tetanus), domestic authorities may reasonably introduce a compulsory vaccination policy in order to achieve an appropriate level of protection against serious diseases. In the Court's view, the respondent State's health policy was based on such considerations, and for this reason it could be said to be consistent with the best interests of the children who were its focus. The choice of the Czech legislature to apply a mandatory approach to vaccination was therefore supported by relevant and sufficient reasons, as were the specific interferences complained of by the applicants.

d. Proportionality of the interference in relation to the aim pursued

The vaccination duty concerned nine diseases against which vaccination was considered effective and safe by the scientific community, as was the tenth vaccination, which was given to children with particular health indications. While the Czech model was one of compulsory vaccination, this was not an absolute duty. An exemption was permitted, notably in respect of children with a permanent contraindication to vaccination. The Court notes, however, that none of the applicants, either in the domestic proceedings or before this Court, relied on an actual contraindication in relation to any of the vaccinations concerned by their objections.

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

With regard to the child applicants, the Court has viewed their non-admission to preschool as an "interference" within the meaning of Article 8 para. 2 of the Convention. However, the Court regards the consequence, which was clearly provided for in primary legislation, of non-compliance with a

general legal duty intended to safeguard in particular the health of young children as being essentially protective rather than punitive in nature.

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

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

Conclusion

The Court clarified that, ultimately, the issue to be determined was not whether a different, less prescriptive policy might have been adopted, as had been done in some other European States. Rather, it was whether, in striking the particular balance that they did, the Czech authorities had exceeded their wide margin of appreciation in this area. It concluded that the impugned measures could be regarded as being “necessary in a democratic society”. Accordingly, there has been no violation of Article 8 of the Convention.

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