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Vaccination Requirements – A Lifeline for Festivals, Events and Other Leisure Driven Gatherings

Abstract

With the start of vaccination efforts in various countries, hopes spark that social gatherings are coming closer within reach. From a leisure and tourism business perspective, vaccination is a possible road to restart. Such a restart depends on the number of people receiving vaccinations and the sense of safety for customers. Therefore, businesses relying on social gatherings might be highly motivated to further boost vaccination acceptance by requiring their customers to get vaccinated. The following shall provide a basis of debate about the possibilities of enforcing vaccination initiatives from a political perspective considering legal restrictions.

Keywords: Covid-19, event management, festivals, political decisions, fundamental rights, vaccination mandate

1. Introduction

The Covid-19 pandemic has almost brought all kinds of social gatherings and subsequently significant parts of the tourism and leisure industry to a standstill. This is particularly true for larger events in countries and regions without the possibility of excluding themselves from the epidemiological development. For those countries, whole industry segments of gatherings were completely diminished (Harchandani & Shome, 2021; Seraphin, 2021). Among others, the closure of venues as well as the corresponding impacts were the most (in-)visible consequences for industries and consumers alike (Hall et al., 2020). Covid-19 might be overcome, and leisure industries shall experience a rebound in demand once the crisis has come to an end (Zhang et al., 2021), but for now, the restrictions are unavoidable (Yeh, 2020).

Vaccinations are considered a key factor to facilitate such a rebound (Saad-Roy et al., 2020). Therefore, this debate contribution shall illustrate some of the policy and legal restrictions businesses have to consider if social gatherings represent an important revenue stream for them. Given that Covid-19 might only be a preliminary taste of what is considered a new age of pandemics (Morens & Fauci, 2020), the findings and conclusions are thought-provoking for post-Covid events and other leisure gathering businesses.

2. Governmental positions and corresponding debates

Liberal democratic governments quickly ruled out the option of mandatory vaccination for the entire population or parts of it. The European Commission even expressively demanded test and recovery from a Covid-19 infection as an equal alternative to vaccination within its Green Certificate initiative (European Commission, 2021). This, however, ignores previous evidence from other diseases like yellow fever. In those scenarios, vaccination requirements are deemed to be enforced more strictly on a global level (Wasserman et al., 2016).

From a political perspective, refraining from mandating vaccination is partly fuelled by scepticism expressed by parts of the population, which could lead to a lower level of support compared to voluntary measurements (Schmelz, 2021). Such scepticism varies from country to country and may ultimately result in strengthening the anti-vaccination movement (Grignolio, 2018). It is a movement that already enjoys media and political presence, making it an important voter group that cannot be neglected lightly (Kennedy, 2019; Bradshaw et

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al., 2020). In democratic societies, various political parties are more dependent than others to consider the positions of vaccination sceptics (Hamilton et al., 2015; Ward et al., 2020), which ultimately inherits the risk of taking political decisions focusing on maintenance of power rather than the common good.

Obviously, this approach appears way too power-based and proclaims specific voter groups as debate dominating. An even more important aspect is represented by constitutional elements derived from the fundamental rights of the state population. (Schmelz, 2021) One of these fundamental rights is the right to retain bodily integrity. Constitutions in democracies around the globe, influenced by the declaration of human rights, prohibit governmental institutions, rules, and regulations from intruding in citizens' bodily integrity unless such an intrusion is inevitable to protect the citizens' life or for public health reasons that have an outstanding importance for the society. Those strict requirements provide the reason for the empirical evidence that mandatory vaccinations represent a rare phenomenon among liberal democratic societies (Cassimos et al., 2020).

Like vaccinations mandated by the governments, rules and regulations will only be considered acceptable from a constitutional law perspective if they pass the proportionality test that applies in various legal systems (Grimm, 2007). According to the proportionality test, governments may only enforce a public vaccination mandate if such a mandate is a suitable measurement to prevent either virus transmissions or severe illnesses. On top of this, such a measurement cannot be replaced by a less intrusive measurement that achieves the same purpose and is considered necessary. Nevertheless, even if a mandated vaccination is suitable and necessary for public health purposes, it needs to be appropriate compared to the individual's fundamental right to retain bodily integrity.

Using the Covid example, it is evident that a vaccination mandate is a suitable measurement to fight the pandemic. However, already the necessity of such a measurement is questionable. Given social distancing and other restricting measurements deemed to be successful (Hall et al., 2020), they may be seen as less intrusive to the individual's fundamental rights than an intrusion into physical integrity. Even if it is deemed necessary, it is considered inappropriate in a liberal society. Mandatory vaccinations require completely abandoning fundamental rights on bodily integrity, not considering fundamental rights regarding specific religious beliefs etc. (Zuck, 2017). For such reasons a vaccination mandate is only constitutional for specific circumstances allowing individuals to refrain from vaccination by having the opportunity to avoid such scenarios.

3. Private sector activities and legal framework

Since a governmental vaccination mandate appears unlikely, attention is turned to the possibilities of private sector activities. For private sector businesses, relying on personal gatherings, it is crucial to be able of opening their doors again. But it will only be successful if they operate in a safe environment and be able to offer their customers a safe and hassle-free experience (Foroudi et al., 2021). To achieve this, the private sector either has to rely on rapid antibody screening or immunized customers. The latter can reliably only be achieved with vaccination as they are constantly under development and mitigate the risks of mutation's 'immune escape' (Kupferschmidt, 2021). An accurate testing scheme would not be executable from a procedural perspective given the necessary time for extracting results. Hence, rapid antibody testing is the only suitable option but has its downsides in accuracy (Augustine et al., 2020; Weinstein et al., 2020). Only accepting vaccinated customers could provide an appropriate solution. This combines a high protection level for the individual and is assumed to prevent infections (Amit et al., 2021). With such a measure, a safe and hassle-free experience is within reach.

In principle, implementing such a requirement for visitors of events or other venues and other customer groups in the leisure and tourism industry is at the discretion of the contracting parties in the respective business. This right is protected by the principle of private autonomy (Möllers, 2018). However, fundamental rights still need to be considered, considering their effects on the overall legal system, including private law (Engle,

2009; Federal Constitutional Court, 2018). Hence, if a vaccination requirement is part of the contract for attending events or other social gatherings, this requirement also needs to pass the proportionality test.

A vaccination requirement is suitable as it helps reach the goal of a safe and hassle-free environment. Testing the necessity requires a slightly different analysis compared to the explanations above. Private businesses that rely on social distancing cannot utilize social distancing and closures to provide a business environment. Therefore, those do not constitute a less intrusive measurement into the fundamental rights of a customer being forced to be vaccinated. Facilitating mandatory rapid antibody screening represents a less intrusive alternative. However, given the flaws and reduced accuracy, they are not granting the same level of protection of a safe business environment. As a result, the necessary condition for required vaccinations is considered present.

Finally, it is up to the appropriateness of a measure in comparison to the fundamental right of a customer to retain his or her bodily integrity. One aspect that needs consideration is the possibility of not accepting the contractual requirement of a vaccination. To do so, customers might simply refuse to enter into a business relationship with a business requiring a vaccination. There might be scenarios where this could constitute social exclusion if vaccination is refused (Federal Constitutional Court, 2018). Taking this into account, a requirement to get vaccinated before attending an event or similar gathering appears a harsh hit on the individual's fundamental rights.

However, withdrawing from such a requirement may result in a business environment that constitutes a potential health risk for other customers and employees alike. As a result, this may dissuade customers or attendees from actually attending events and bringing back part of the event and gathering business. From a legal perspective, the fundamental rights of private autonomy and freedom of behaviour of businesses, employees and other customers outweigh the individual's fundamental right of bodily integrity. Therefore, such a measure has to be considered appropriate even if it may partly result in the social isolation of people refusing a vaccination.

4. Conclusion

Considering all aspects, liberal democracies will have to refrain from mandating vaccinations even in a pandemic like Covid-19. This at least applies to illnesses that do not represent a death sentence or severe long-term consequences for a vast majority of the population. Moreover, in a pandemic, social distancing or social isolation could still be deemed more appropriate. However, the same liberal and legal principles grant businesses the right to apply measurements with similar effects to contractual requirements for their customers. Despite the consequence of deepened social inequalities (Liz, 2021), especially in countries without universal healthcare, a privately agreed vaccination mandate combined with a rigorous testing scheme is probably the only way of survival for events, festivals and other touristic and leisure activities involving social gatherings, not just during the Covid-19 pandemic but potentially the upcoming pandemic age in general.

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