

ARGUMENTS FOR AND AGAINST THE INTRODUCTION OF COMPULSORY VACCINATION FOR HEALTH CARE WORKERS*

Ivana Tucak**

Mario Vinković***

ABSTRACT

The refusal of vaccination by health professionals, as a scientifically proven method of protection against disease, in a time of COVID 19 is deeply worrying because they are the ones who should explain to patients the characteristics of the vaccine and its benefits. The WHO believes that the introduction of compulsory vaccination can be counterproductive and that other non-coercive measures should be employed beforehand to achieve high vaccination coverage. States should therefore strike an appropriate balance between the autonomy and the right to self-determination of health professionals and the principle that their actions must not harm patients (the principle of non-maleficence) or must contribute to patient well-being (the principle of beneficence). This paper aims to analyze the response of the Republic of Croatia to this exceptional public health crisis. The paper is divided into two main parts. The first part of the paper explores the doctrinal, legal, and social issues surrounding the model of voluntary vaccination and the model of compulsory vaccination concerning health professionals. Special emphasis is placed on reasons for vaccine refusal among healthcare professionals. The second part of the paper deals with the issues of (compulsory) vaccination of health professionals through the labor law perspective in the Republic of Croatia, but also the practices of EU Member States that have

* This paper is a product of work that has been fully supported by the Faculty of Law Josip Juraj Strossmayer University of Osijek under the projects no. IP-PRAVOS-23 “Contemporary Issues and Problems to the Protection and Promotion of Human Rights”, and no. IP-PRAVOS-3” Labour law facing the challenges of the 21st century; transformation, humanization, discrimination, and equality”.

** Ivana Tucak, Faculty of Law University of Osijek, Osijek, Croatia; ivana.tucak@pravos.hr.

*** Mario Vinković, Faculty of Law University of Osijek, Osijek, Croatia; mario.vinkovic@pravos.hr.

introduced vaccination as an obligation of employees. The authors focused their research on socio-legal and qualitative analysis, as well as methodological pluralism.

KEYWORDS: *COVID-19, compulsory vaccination, health care workers, Croatian legislation, right to self-determination*

1. INTRODUCTION

Severe acute respiratory syndrome coronavirus-2 was reported to the World Health Organization (WHO) on December 31, 2019. COVID-19, a disease caused by this virus, was declared a pandemic by the WHO on 11 March 2020.¹ Shortly after the discovery of the vaccine and the approval of its use,² the debate on how to ensure wide availability of the vaccine and its just distribution has been superseded by a debate on how to ensure a sufficient vaccination rate to reach the so-called “herd immunity”. What has proven particularly worrying in the current situation is the refusal of vaccination by health professionals themselves. The refusal of vaccination by health professionals, as a scientifically proven method of protection against disease, is deeply worrying because they are the ones who should explain to patients the characteristics of the vaccine and its benefits. The WHO believes that the introduction of compulsory vaccination can be counterproductive and that other non-coercive measures should be employed beforehand to achieve high vaccination coverage.³ States should therefore strike an appropriate balance between the autonomy and the right to self-determination of health professionals and the principle that their actions must not harm patients (the principle of non-maleficence) or must contribute to patient well-being (the principle of beneficence). The aim of this paper is primarily to analyze the response of the Republic of Croatia to this exceptional public health crisis. The paper is divided into two main parts. The first part of the paper explores the doctrinal, legal, and social issues surrounding the model of voluntary vaccination and the model of compulsory vaccination concerning health professionals.⁴ The second part of the paper

¹ Tucak, I.; Blagojević, A.: Covid- 19 pandemic and the protection of the right to abortion, EU and comparative law issues and challenges series (ECLIC), (5) 2021, [<https://doi.org/10.25234/ecllc/18355>], p. 856.

² Biswas, N. *et al.*: *The Nature and Extent of COVID-19 Vaccination Hesitancy in Healthcare Workers*, Review J Community Health, 46 (6) 2021, [<https://doi.org/10.1007/s10900-021-00984-3>], pp. 1244.

³ [<https://unric.org/en/who-mandatory-vaccinations-are-a-last-resort/>], accessed on 03/02/2022.

⁴ [<https://www.britannica.com/topic/bioethics>], accessed on 03/02/2022; Frati, P. *et al.*: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, Vaccines, 9 (9) 2021, [<https://doi.org/10.3390/vaccines9090966>], p. 2.

focuses on labor law aspects of (non) vaccination of health workers in the Republic of Croatia, as well as on those EU Member States that have introduced vaccination as an obligation for certain categories of workers. This seeks to gain insight into the reality of the application of the analyzed solutions as well as their justification and proportionality.

2. BENEFITS OF HEALTHCARE WORKER'S VACCINATION

Vaccination is a minor, low-risk medical procedure that reduces or completely eliminates the risk of contracting an infectious disease.⁵ From a scientific perspective, there is no doubt that vaccination is the most effective method of preventing the spread of infection, disease progression, and related complications.⁶ Vaccination has prevented more deaths than any other medical procedure.⁷ Healthcare workers (HCWs) bear a significant amount of responsibility for spreading infection since they can transmit a virus not only to their family and friends but also to their patients, some of whom may be unvaccinated for medical reasons.⁸ For this reason, and also due to their occupational exposure to the risk of infection, governments commonly define HCWs as a high-priority group for vaccination.⁹ HCWs are most at risk of infection and further spread of infectious diseases, as they generally find themselves in close contact with potentially infected patients daily.¹⁰ National public health institutions regularly advise all HCWs to get vaccinated¹¹ because only high vaccination rates among HCWs (approximately 80%) can guarantee the benefits of vaccination.¹² If healthcare providers become infected, they must be pulled out of the health-

⁵ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618.

⁶ Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, p. 115.

⁷ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618.

⁸ Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, p. 115.

⁹ Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, pp. 118-119.

¹⁰ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618; Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, pp. 118-119.

¹¹ Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, pp. 118-119.

¹² Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, p.115.

care system and they are unable to work.¹³ In other words, vaccination reduces sick leave rates and the absence of medical staff from work during a pandemic, as well as the use of health resources and medications.¹⁴ However, despite all the potential benefits of achieving adequate vaccination rates, some HCWs are hesitant about getting vaccinated. This is particularly worrying because their attitudes have a significant impact on their patients. Research has shown that the public considers HCWs to be one of the most trusted sources of information.¹⁵ Furthermore, an HCW's recommendation to get vaccinated is one of the main predictors of whether a patient will accept a vaccine or not,¹⁶ making the consequences of their vaccine refusal or hesitancy rather far-reaching.¹⁷ Since most patients consider HCWs to be a highly reliable source of information about vaccination, many tools have been developed to help HCWs discuss vaccination with vaccine-hesitant or vaccine-refusing patients.¹⁸ Such tools are similar in the sense that they are focused on "the importance of maintaining a trustworthy patient–HCW relationship" and adapting communication to the patient's concerns about vaccination.¹⁹ A large-case study conducted in the USA has shown that the majority of parents who initially refused or hesitated to vaccinate their child changed their mind and decided to accept the vaccine based on the information and/or assurance received by HCWs.²⁰ The following section of the paper, therefore, discusses the importance of understanding why HCWs refuse or are hesitant about vaccination.

3. VACCINE HESITANCY

At the moment, there is a great amount of scientific research studying COVID-19 vaccine hesitancy in the general public. However, this section of the paper will

¹³ Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, pp. 118-119.

¹⁴ Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, p.115.

¹⁵ Heyerdahl, L. W. et al.: *Doubt at the core: Unspoken vaccine hesitancy among healthcare workers*, *Lancet Reg Health Eur.* (12) 2022, [[https://doi: 10.1016/j.lanep.2021.100289](https://doi.org/10.1016/j.lanep.2021.100289)].

¹⁶ Dubé, E. et al.: *Vaccine hesitancy: an overview*, *Hum Vaccin Immunother* [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1768.

¹⁷ Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, p.115.

¹⁸ Dubé, E. et al.: *Vaccine hesitancy: an overview*, *Hum Vaccin Immunother* [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1768.

¹⁹ Dubé, E. et al.: *Vaccine hesitancy: an overview*, *Hum Vaccin Immunother* [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1767.

²⁰ Dubé, E. et al.: *Vaccine hesitancy: an overview*, *Hum Vaccin Immunother* [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1768.

focus on this phenomenon, its nature, and its extent among HCWs.²¹ Some authors have pointed out that vaccine hesitancy has resulted from being focused on individual action and the patient's active involvement in making decisions about their health, as well as from increasing consumerism in healthcare.²² Informed consent, now the guiding principle of medical law, has taken away the decision-making power from physicians. Consequently, modern medical law is based on shared decision-making between physicians and patients.²³ Vaccine hesitancy is also affected by media controversies.²⁴ Since the COVID-19 vaccine was developed in an extremely short period, i.e. less than one year after the disease had emerged, and since it had already been known that new vaccines amplify hesitancy more than well-known ones, this has exacerbated the issue even further.²⁵ Vaccine hesitancy is a part of a larger phenomenon known as denialism, characterized by using rhetorical arguments to create an impression of a legitimate debate, but with the actual goal of denying facts supported by the scientific consensus.²⁶ Research on seasonal influenza and the 2009 pandemic H1N1 vaccination among HCWs has shown that adequate vaccination rates often cannot be achieved exclusively by voluntary vaccination. This is particularly noticeable in the case of nurses and caregivers.²⁷ In these instances, not even recommendations or mass vaccination campaigns could help achieve adequate vaccination rates.²⁸ For example, the 2009 influenza pandemic in the USA resulted in the seasonal influenza vaccination rates increasing from 43% to 61%, but only 37% of health professionals were vaccinated against the pandemic H1N1 virus. In 2007, the average vaccination rate

²¹ Biswas, N. *et al.*: *The Nature and Extent of COVID-19 Vaccination Hesitancy in Health-care Workers*, Review J Community Health, 46 (6) 2021, [<https://doi.org/10.1007/s10900-021-00984-3>], pp. 1244-1251.

²² Dubé, E. *et al.*: *Vaccine hesitancy: an overview*, Hum Vaccin Immunother [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1765.

²³ Dubé, E. *et al.*: *Vaccine hesitancy: an overview*, Hum Vaccin Immunother [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1765.

²⁴ Dubé, E. *et al.*: *Vaccine hesitancy: an overview*, Hum Vaccin Immunother [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1765.

²⁵ Dubé, E. *et al.*: *Vaccine hesitancy: an overview*, Hum Vaccin Immunother [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1765.

²⁶ Dubé, E. *et al.*: *Vaccine hesitancy: an overview*, Hum Vaccin Immunother [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1766.

²⁷ Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, Medicus, 20 (1) 2011, pp.118-119; Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615-618.

²⁸ Dubé, E. *et al.*: *Vaccine hesitancy: an overview*, Hum Vaccin Immunother [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1767; Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, Medicus, 20 (1) 2011, pp.118 – 119.

among all HCWs in Croatia was 26%.²⁹ Regarding vaccine-hesitant HCWs, interesting results were obtained in a study conducted in Quebec, Canada, which included 540 HCWs. Many of them proved to be concerned about vaccination, especially children, and the study showed that 37% of subjects believed that children received too many vaccines, while 36% of them believed that a healthy lifestyle makes vaccination redundant.³⁰ HCWs are vaccine-hesitant mostly because they are concerned about vaccine safety and its short-term and long-term side effects.³¹ Personal choice is rarely indicated as a reason for refusing vaccination. Vaccine hesitancy among HCWs is also associated with a lack of knowledge and adequate information about vaccine safety, which makes them more likely to wait for more data about the vaccine, its safety, and efficacy.³² However, the latter arguments are hard to accept because waiting for more information causes more infections, medical complications, and deaths. Unvaccinated physicians, nurses, and other HCWs thus violate the principles of bioethics by unnecessarily exposing themselves to infection.³³

There has already been extensive scientific research on COVID-19 vaccine hesitancy among HCWs. In this context, an article by Nirbachita Biswas et al. should be mentioned. The authors used “a scoping review to assimilate scientific evidence on COVID-19 vaccine hesitancy” and the “final pool of studies comprised 35 studies” from countries around the world. “The sample size of the studies ranged from 123 to 16,158 participating HCWs (average study sample = 2,185 per study and a total of 76,741 participants across all studies). The prevalence of COVID-19 vaccination hesitancy worldwide in HCWs ranged from 4.3 to 72% (average rate of 22.51% hesitant individuals across studies)”.³⁴ The majority of studies have confirmed that the main reasons for COVID-19 vaccine hesitancy among HCWs are concerns about vaccine safety, efficacy,

²⁹ Čivljak, R.: *Zdravstveni radnici i cijepljenje protiv influence*, *Medicus*, 20 (1) 2011, p.115.

³⁰ Dubé, E. et al.: *Vaccine hesitancy: an overview*, *Hum Vaccin Immunother* [[https://doi: 10.4161/hv.24657](https://doi.org/10.4161/hv.24657)], 9 (8) 2013, p. 1767.

³¹ Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, *Vaccines*, 9, 966, 2021, [<https://doi.org/10.3390/vaccines9090966>], p. 2.

³² Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, *Vaccines*, 9, 966, 2021, [<https://doi.org/10.3390/vaccines9090966>], p. 2.

³³ Sokol, D.: *Covid-19 vaccination should be mandatory for health care workers*, *BMJ*. 2021 Nov 2; 375: n2670, [[https://doi: 10.1136/bmj.n2670](https://doi.org/10.1136/bmj.n2670)]. PMID: 34728499], p. 1.

³⁴ Biswas, N. et al.: *The Nature and Extent of COVID-19 Vaccination Hesitancy in Healthcare Workers*, *Review J Community Health*, 46 (6) 2021, [<https://doi.org/10.1007/s10900-021-00984-3>], p. 1245.

and potential short- and long-term side effects.³⁵ It has also been found that older male physicians are most likely to get vaccinated against COVID-19.³⁶ However, it is also necessary to mention “unspoken vaccine hesitancy”,³⁷ a phenomenon where HCWs do not express their concerns about vaccines publicly due to institutional and societal pressure. Since attitudes about vaccination have become a source of a great social divide, HCWs choose not to voice their concerns about vaccines, especially when talking to their colleagues, out of fear of being mocked and stigmatized as conspiracy theorists or anti-vaxxers. Such unspoken doubts are more difficult to recognize and resolve.³⁸

4. REASONS TO INTRODUCE MANDATORY VACCINATION

This section of the paper discusses issues related to introducing mandatory vaccination, which from the perspective of public health can also be seen as an “issue of patient safety”.³⁹ When it comes to protecting their vulnerable patients, HCWs find themselves in a “specific position of guarantee and trust”.⁴⁰ HCWs who come into contact with vulnerable patients are expected to ensure their safety and health. It is therefore assumed that HCWs have an ethical obligation to get vaccinated.⁴¹ Public health protection involves risk balancing.⁴² It can be said that what is being sought is an “ethical equilibrium”, as suggest-

³⁵ Biswas, N. et al.: *The Nature and Extent of COVID-19 Vaccination Hesitancy in Healthcare Workers*, Review J Community Health, 46 (6) 2021, [https://doi.org/10.1007/s10900-021-00984-3], p. 1246.

³⁶ Biswas, N. et al.: *The Nature and Extent of COVID-19 Vaccination Hesitancy in Healthcare Workers*, Review J Community Health, 46 (6) 2021, [https://doi.org/10.1007/s10900-021-00984-3], p. 1245.

³⁷ Heyerdahl, L. W. et al.: *Doubt at the core: Unspoken vaccine hesitancy among healthcare workers*, Lancet Reg Health Eur. (12) 2022, [https://doi: 10.1016/j.lanep.2021.100289].

³⁸ Heyerdahl, L. W. et al.: *Doubt at the core: Unspoken vaccine hesitancy among healthcare workers*, Lancet Reg Health Eur. (12) 2022, [https://doi: 10.1016/j.lanep.2021.100289].

³⁹ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618.

⁴⁰ Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, Vaccines, 9, 966, 2021, [https://doi.org/10.3390/vaccines9090966], p. 3.

⁴¹ Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, Vaccines, 9, 966, 2021, [https://doi.org/10.3390/vaccines9090966], p. 3; Sokol, D.: *Covid-19 vaccination should be mandatory for health care workers*, BMJ. 2021 Nov 2; 375: n2670, [https://doi: 10.1136/bmj.n2670]. PMID: 34728499], p. 1; Heyerdahl, L. W. et al.: *Doubt at the core: Unspoken vaccine hesitancy among healthcare workers*, Lancet Reg Health Eur. (12) 2022, [https://doi: 10.1016/j.lanep.2021.100289].

⁴² Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618

ed by Rus and Grošelj. This means that the degree of respect for a patient's autonomy is not absolute, but rather variable and contingent on the level of herd immunity. It is not universal, but specific to each society.⁴³ To reach satisfactory vaccination rates, "a more aggressive approach is needed than simply informing" HCWs on the benefits of vaccination.⁴⁴ Voluntary vaccination usually does not lead to herd immunity, with vaccination rates often staying below 50%.⁴⁵ More aggressive measures must be aimed at making "vaccination as convenient and" its "avoidance as inconvenient" for HCWs "as possible".⁴⁶ If adequate vaccination rates are not achieved, it is ethically justified to introduce mandatory vaccination. This can be concluded from the fact that the state is responsible for protecting herd immunity as a common good.⁴⁷ It has been proved that mandatory vaccination of HCWs is an approach that leads to the highest vaccination rates. In the case of mandatory vaccination, HCWs are faced with an important choice because if they decide not to get vaccinated, they lose their job.⁴⁸ When France made vaccination mandatory for HCWs, vaccination rates surged from 60% in July 2021 to almost 100% (over 99%) in October 2021.⁴⁹ Ethical grounds justifying the introduction of mandatory vaccination include the inefficacy of voluntary vaccination, absence of less coercive alternative measures, clear scientific consensus supporting vaccination, and exposure of the members of society to health risks.⁵⁰ Moreover, in case of a pandemic, mandatory vaccination requirements intensify.⁵¹ The most

⁴³ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 1.

⁴⁴ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618

⁴⁵ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618

⁴⁶ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618

⁴⁷ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p.1.

⁴⁸ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618

⁴⁹ Sokol, D.: *Covid-19 vaccination should be mandatory for health care workers*, BMJ. 2021 Nov 2; 375: n2670, [[https://doi: 10.1136/bmj.n2670](https://doi.org/10.1136/bmj.n2670)]. PMID: 34728499], p. 1.

⁵⁰ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 7.

⁵¹ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618

important bioethical principles in the context of mandatory vaccination will be explained in the following sections.

4.1. THE PRINCIPLE OF AUTONOMY

Reluctant medical staff is thus pushed to undergo a medical intervention, which is experienced by many members of this group as undermining their own autonomy.⁵² Patients' autonomy is "the central issue of many ethical arguments within medical law".⁵³ Although the concept of autonomy is well-known in legal, moral, and political philosophy, its meaning is still in the spotlight of many discussions, including those referring to the area of medical ethics, where this issue is top-ranked.⁵⁴ The simplest explanation thereof would be self-rule.⁵⁵ In this form, the concept of autonomy is not normative but rather represents "an empirical issue" since one cannot know *ex ante* whether autonomy is good or not. It is rather to be explored whether a person controls his/her action in a certain situation. If the answer is positive, such a person can be depicted as being autonomous.⁵⁶ The concept of autonomy also set grounds for the Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (Oviedo Convention) which contains, in its Article 5, an internationally well-known rule, according to which a medical intervention shall not be performed on a patient if he/she has not given his/her "free and informed consent to it" (Article 5 paragraph 1 of the Oviedo Convention).⁵⁷ Making a medical decision on intervention can be regarded as an autonomous procedure if the patient has already been provided with "appropriate information as to the purpose and nature of the intervention as well as on

⁵² Pizzo, M.: *Mandatory vaccination for healthcare workers: consequences of denying bodily autonomy*, BMJ, 2021, 375:n3041 [<https://doi.org/10.1136/bmj.n3041>].

⁵³ Coggon, J.; Miola, J.: *Autonomy, liberty, and medical decision-making*, The Cambridge law journal vol. 70 (3) 2011, [<https://doi.org/10.1017/S0008197311000845>], p. 1.

⁵⁴ Pizzo, M.: *Mandatory vaccination for healthcare workers: consequences of denying bodily autonomy*, BMJ, 2021, 375:n3041 [<https://doi.org/10.1136/bmj.n3041>].

⁵⁵ Sellers, M.: *An introduction to the value of autonomy in law*, in: Sellers, M. (ed.): *Autonomy in the Law*, Dordrecht, 2007, p. 1.

⁵⁶ Coggon, J.; Miola, J.: *Autonomy, liberty, and medical decision-making*, The Cambridge law journal vol. 70 (3) 2011, [<https://doi.org/10.1017/S0008197311000845>], p. 1.

⁵⁷ Acosta, J. I.: *Vaccines, informed consent, effective remedy and integral reparation: an international human rights perspective*, Vniversitas, (131) 2015 [<https://doi.org/10.11144/Javeriana.vj131.vier>]; Council of Europe, Explanatory Report to the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, Dir/Jur(97)5, par. 34 (May, 1997).

its consequences and risks” (Article 5 paragraph 2 of the Oviedo Convention). Once given consent can be withdrawn at any time (Article 5 paragraph 3 of the Oviedo Convention). Information provided to the patient who is supposed to undergo an intervention shall include its purpose, nature, and consequences as well as inherent and individual risks for the patient. The patient shall always get an adequate answer to his/her request for additional information.⁵⁸ The principle of informed consent is also protected in the case law of the European Court of Human Rights (ECtHR), though it does not appear in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In the *Pretty* case, the ECtHR highlighted that if not accompanied by the consent of a mentally competent adult patient, a medical intervention represents a violation of Article 8 of the ECHR, which protects the right to respect for private and family life. Such a procedure infringes an individual’s physical integrity.⁵⁹ It can be thus concluded that pursuant to the case law of the ECtHR, a person enjoys autonomy from a medical intervention if he/she is provided with the possibility to give informed consent thereto.⁶⁰ The signatory states are hence bound to adopt ”necessary regulatory measures” for ensuring such a possibility.⁶¹ A failure to respect this standard might also lead to a breach of Article 3 of the ECHR (prohibition of torture)⁶²

⁵⁸ Acosta, J. I.: *Vaccines, informed consent, effective remedy and integral reparation: an international human rights perspective*, Vniversitas, (131) 2015 [https://doi:10.11144/Javeriana.vj131.vier]; Council of Europe, Explanatory Report to the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, Dir/Jur(97)5, par. 35 (May, 1997).

⁵⁹ Hendriks, A. C.: *End-of-life decisions. Recent jurisprudence of the European Court of Human Rights*, ERA Forum, (19) 2019, pp. 564-565. Hendriks mentions the following cases: *Pretty v. the UK*, no. 2346/02, 29 April 2002, ECLI:CE:ECHR:2002:0429JUD000234602, para. 63. See also *Codarcea v. Romania*, no. 31675/04, 2 June 2009, ECLI:CE:ECHR:2009:0602JUD003167504, para. 104; *V.C. v. Slovakia*, no. 18968/07, 8 November 2011, ECLI:CE:ECHR:2011:1108JUD00189680 and *G.B. and R.B. v. Moldova*, no. 16761/09, 18 December 2012, ECLI:CE:ECHR:2012:1218JUD001676109.

⁶⁰ Hendriks, A. C.: *End-of-life decisions. Recent jurisprudence of the European Court of Human Rights*, ERA Forum, (19) 2019, pp. 564-565.

⁶¹ Hendriks, A. C.: *End-of-life decisions. Recent jurisprudence of the European Court of Human Rights*, ERA Forum, (19) 2019, p. 565. Hendriks mentions the following case: *Csoma v. Romania*, no. 8759/05, 15 January 2013, ECLI:CE:ECHR:2013:0115JUD000875905, para. 42

⁶² Hendriks, A. C.: *End-of-life decisions. Recent jurisprudence of the European Court of Human Rights*, ERA Forum, (19) 2019, p. 565. Hendriks in this context mentions the following cases: *Yazgöl Yılmaz v. Turkey*, no. 36369/06, 1 February 2011, ECLI:CE:ECHR:2011:0201JUD003636906 and *I.G. et all v. Slovakia*, no. 15966/04, 13 November 2012, ECLI:CE:ECHR:2012:1113JUD001596604.

4.2. CONFLICTS OF PRINCIPLES

Compulsory vaccination represents a violation of an individual's liberty, but this does not have to mean that it is not permitted. Vaccination, a minor medical intervention performed without informed consent may protect other people's health,⁶³ which is safeguarded by other bioethical principles. Autonomy is associated with liberty understood as the right of an individual not to be interfered with by others. Sellers points out that such a definition of liberty is one of the most important justifications for the rule of law. However, this prohibition of interfering with liberty is not absolute, since liberty can sometimes be constrained by the common good. The law thus protects autonomy by drawing lines that determine the extent of the self-rule of the holder of autonomy.⁶⁴

The principle of nonmaleficence requires doctors not to harm their patients or somebody else.⁶⁵ It is one of the fundamental principles of medical ethics, known as the primary maxim, do no harm, "*Primum non nocere*".⁶⁶ The sources of this maxim have remained unknown.⁶⁷ However, it is interesting that the Hippocratic Oath contains both this principle and the principle of beneficence,⁶⁸ which will be elaborated on below.

Furthermore, the principle of nonmaleficence requires a medical worker to abstain from harmful action "Do not do X".⁶⁹ It is as well worth mentioning that the concept of harm is itself contested. Moreover, the word "harm" is

⁶³ Sokol, D.: *Covid-19 vaccination should be mandatory for health care workers*, BMJ. 2021 Nov 2; 375: n2670, [[https://doi: 10.1136/bmj.n2670](https://doi.org/10.1136/bmj.n2670)]. PMID: 34728499], p. 1.

⁶⁴ Sellers, M.: *An introduction to the value of autonomy in law*, in: Sellers, M. (ed.): *Autonomy in the Law*, Dordrecht, 2007, p. 2.

⁶⁵ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 5; Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 113; [<https://www.healthcareethicsandlaw.co.uk/intro-healthcare-ethics-law/principlesofbiomedethics>], [https://www.euractiv.com/section/politics/short_news/mandatory-vaccination-suffers-setback-in-austria/], accessed on 03/02/2022.

⁶⁶ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 5; B and C, str. 113

⁶⁷ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 113.

⁶⁸ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 113.

⁶⁹ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p.115.

“vague and ambiguous”.⁷⁰ According to Joel Feinberg, “the harm principle is a mere convenient abbreviation for a complicated statement that includes, among other things, moral judgment and value weightings of a variety of kinds”.⁷¹ It surely comprises “significant bodily harms and other setbacks to significant interest”.⁷² Besides that, it equally involves physical damage, such as pain, disability or death, and mental harm.⁷³

In compliance with the principle of nonmaleficence, once the potential damage from or risk of a proposed intervention is assessed, it is to be assessed whether the respective intervention is eligible. This is done only in case the potential damage exceeds the benefits of a controversial intervention.⁷⁴ Scientists are unanimous about vaccination being “the least invasive” and a “safe procedure”.⁷⁵

Yet, the principle of nonmaleficence is here to be observed too, particularly concerning vaccine development, adverse events, and contraindications for immunization.⁷⁶ As far as the process of vaccine development and registration is concerned, potential harm for the examinees and vaccine recipients needs to be prevented.⁷⁷

The principle of beneficence qualifies the benefits of patients as the main target of the providers of medical services. Doctors have the duty to apply the procedure which is in the best interest of their patients.⁷⁸ It can be said that the

⁷⁰ Feinberg, J.: *Harm to Others*, volume one, New York/Oxford, 1984, p. 31.

⁷¹ Feinberg, J.: *Harm to Others*, volume one, New York/Oxford, 1984, p. 32.

⁷² Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 117.

⁷³ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 117.

⁷⁴ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 5.

⁷⁵ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 5.

⁷⁶ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], pp. 5 – 6.

⁷⁷ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 6.

⁷⁸ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 165.

principle of beneficence is a certain upgrade of the principle of nonmaleficence since unlike the latter, the former does not require from a medical worker only abstention from harmful action but undertaking positive action which is expected to be beneficial to the patient.⁷⁹ Beauchamp and Childress divide beneficence into two categories: positive beneficence where medical workers are supposed to provide their patients with benefits and utility beneficence which obliges medical workers to "balance benefits and drawbacks to produce the best overall results".⁸⁰ The principle of beneficence bears great importance for building trust in the healthcare system, which represents a prerequisite for building a successful relationship between doctors and their patients as well as for the successfulness of immunization programs and various research.⁸¹ At this point, one can detect a transition from "individual's to the public health benefit of vaccination".⁸² Beauchamp and Childress have defined the difference between beneficence and nonmaleficence as follows:⁸³ the principle of nonmaleficence implies the negative prohibition of certain actions and such legal prohibition shall be enforced impartially and be supported with moral grounds. On the other hand, the principle of beneficence entails "positive requirements of action", is not bound to the principle of impartiality, and almost never provides moral grounds for legal penalization of medical workers when they do not act according to the rules. In some cases, the norms of beneficence create strict obligations that supersede the nonmaleficence-related obligations. For instance, vaccination is beneficial to the majority of the population while very few experience it as detrimental.⁸⁴

⁷⁹ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 165.

⁸⁰ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 165.

⁸¹ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, *Vaccines* (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 6.

⁸² Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, *Vaccines* (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 6.

⁸³ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 168; [<https://www.healthcareethicsandlaw.co.uk/intro-healthcare-ethics-law/principlesof-biomedethics>], [https://www.euractiv.com/section/politics/short_news/mandatory-vaccination-suffers-setback-in-austria/], accessed on 03/02/2022.

⁸⁴ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 168; [<https://www.healthcareethicsandlaw.co.uk/intro-healthcare-ethics-law/principlesof-biomedethics>], [https://www.euractiv.com/section/politics/short_news/mandatory-vaccination-suffers-setback-in-austria/], accessed on 03/02/2022.

The principle of justice is generally defined in two manners.⁸⁵ Numerous authors use the expressions “fairness”, “desert” and “entitlement” to define justice “as fair, equitable, and appropriate treatment of what is due or owed to persons”.⁸⁶ “A holder of a valid claim based on justice has a right and therefore is due something”.⁸⁷

According to Sellers, “true justice is achieved in a state or society when all its members have the opportunity to lead worthwhile and fulfilling lives”.⁸⁸ This means that liberty and autonomy are their prerequisites. “Worthwhile and fulfilling lives” are not possible without self-rule.

Regarding the area of healthcare, justice is sometimes described as “fair, equitable and appropriate distribution determined by justified norms that structure the terms of social cooperation”.⁸⁹ This refers to the equal distribution of limited medical resources.⁹⁰ In medical practice, the applied criteria are not absolute. They are rather subject to amendment in crisis situations such as pandemics when the general benefits of the healthcare system are superior to the benefits of an individual.⁹¹ The principle of justice is expected to ensure equal access to preventive medicine measures for everyone, fair distribution of vaccines, and equal contribution to herd immunity.⁹² However, and this should be stressed, the contribution of an individual to herd immunity is insignificant.⁹³ At this point, one needs to note, that the principle of solidarity complements

⁸⁵ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 7.

⁸⁶ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 226.

⁸⁷ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 226.

⁸⁸ Sellers, M.: *An introduction to the value of autonomy in law*, in: Sellers, M. (ed.): *Autonomy in the Law*, Dordrecht, 2007, p. 2.

⁸⁹ Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001, p. 226.

⁹⁰ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 7.

⁹¹ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 7.

⁹² Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 7.

⁹³ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 7.

the principle of justice, but unlike the latter, the former is not based on rights. The former entails an individual's deprivation of his/her interest in favor of the benefits of society at large. It is also based on reciprocity, dedication, and responsibility.⁹⁴

4.3. VAVRIČKA AND OTHERS V. THE CZECH REPUBLIC

Some countries have already introduced mandatory vaccination for various diseases, usually imposing financial penalties for non-compliance.⁹⁵ Mandatory vaccination policies do not involve informed consent to, or refusal of vaccination and they impose a penalty for refusal. However, such policies usually also provide for situations when refusal is justified, for instance, if a person has contraindications or has developed natural immunity.⁹⁶ Naturally, HCWs have rights that must be respected.⁹⁷ Even in the context of a pandemic, HCWs are entitled to “decent, healthy and safe working conditions”.⁹⁸ Based on a risk assessment, it is necessary to introduce appropriate safety measures and pay attention to other occupational risks amplified during a pandemic, such as violence, “stigma, discrimination, heavy workload and prolonged use of personal protective equipment”.⁹⁹ Employers have a responsibility to reduce occupational risks to which HCWs are exposed. The right of governments to make vaccination mandatory has been recognized by numerous national constitutional and supreme courts, but now it has also been recognized explicitly by the European Court of Human Rights (ECtHR)¹⁰⁰ in the case of Vavříčka and Others v the Czech Republic (ECHR judgment no. 116 (2021) of 8 April

⁹⁴ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [https://doi: 10.3390/vaccines9020113], p.7.

⁹⁵ Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, Vaccines, 9, 966, 2021, [https://doi.org/10.3390/vaccines9090966], p. 7.

⁹⁶ Savulescu J.: *Good reasons to vaccinate: mandatory or payment for risk?* J Med Ethics, 47(2) 2021 [https:// doi: 10.1136/medethics-2020-106821], p. 81.

⁹⁷ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618.

⁹⁸ World Health Organization, COVID-19: Occupational health and safety for health workers, 2021 [https://www.jstor.org/stable/resrep33225], accessed on 03/02/2022.

⁹⁹ World Health Organization, COVID-19: Occupational health and safety for health workers, 2021 [https://www.jstor.org/stable/resrep33225], accessed on 03/02/2022.

¹⁰⁰ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618.

2021).¹⁰¹ Although this case pertained to the mandatory vaccination of children, the judgment has indicated the criteria to be fulfilled by national legislators when seeking a balance between the rights of individuals (the right of respect for private life, which is protected under Article 8 of the Convention)¹⁰² and the protection of public health as a common good.¹⁰³ The Court once again reiterated that, when it comes to health policies, national authorities are best placed to make decisions concerning priorities, resources, and social needs.¹⁰⁴ Vaccine safety and efficacy were the keys and the most controversial issues for the ECtHR in this case [paragraph 285].¹⁰⁵ The Court concluded that the decision of the Czech legislature to make the vaccination of children against nine diseases mandatory was “an answer to a pressing social need” [paragraph 281]. By virtue of relevant provisions of the Convention (particularly under the previously mentioned Article 8 and under Article 2 – Right to Life), “states are under a positive obligation (...) to take appropriate measures to protect the life and health of those within their jurisdiction” [paragraph 282]. This measure complies with the fundamental principle of proportionality as it permits medical exemptions [paragraph 291], but also because the case law of the Czech Constitutional Court provides for the right to a “secular objection of conscience” to vaccination [paragraph 292]. Also, the Czech legislature has no provision allowing for vaccination of children to be forcibly administered, but rather, the penalty for non-compliance consists of an administrative fine that may only be imposed once [paragraph 293]. Applicants also have the right to administrative appeals as well as judicial remedies [paragraph 295].

¹⁰¹ Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, *Vaccines*, 9, 966, 2021, [https://doi.org/10.3390/vaccines9090966], p. 2.

¹⁰² Hurford, J. E.: *COVID-19 and Compulsory Vaccination: An Acceptable Form of Coercion?*, *The New Bioethics*, 28 (1) 2022, [https://doi: 10.1080/20502877.2021.2010441], pp. 10-11.

¹⁰³ Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, *Vaccines*, 9, 966, 2021, [https://doi.org/10.3390/vaccines9090966], pp. 2-3.

¹⁰⁴ Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, *Vaccines*, 9, 966, 2021, [https://doi.org/10.3390/vaccines9090966], pp. 2-3.

¹⁰⁵ Hurford, J. E.: *COVID-19 and Compulsory Vaccination: An Acceptable Form of Coercion?*, *The New Bioethics*, 28 (1) 2022, [https://doi: 10.1080/20502877.2021.2010441], pp. 10-11; Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, *Vaccines*, 9, 966, 2021, [https://doi.org/10.3390/vaccines9090966], p. 6.

5. OPPONENTS TO MANDATORY VACCINATION

The potential impact of mandatory vaccination on HCWs is worrying,¹⁰⁶ especially in the long term.¹⁰⁷ Compulsion could lead to some HCWs leaving the profession and consequently increasing the pressure on those who stay.¹⁰⁸ However, the consequences of avoiding vaccination are also severe, including the transmission of diseases to patients, other employees, and self-isolation, with the burden of care for patients potentially being shifted to other employees.¹⁰⁹ Some opponents of mandatory vaccination claim that the goal should be solidarity, rather than conformity. Individuals should have a sense of moral responsibility, which is impossible if they do not have freedom of choice.¹¹⁰ As seen in the previous section, mandatory vaccination measures can be modified to exempt individuals with strong religious or secular beliefs.¹¹¹ Opponents of mandatory vaccination also present this issue as an issue of rights. Should HCWs “have less freedom than others to decide what health risks they” will accept?¹¹² Mandatory vaccination also exposes HCWs to certain risks. Any vaccine may pose a threat, even to persons without known contraindications. For instance, risks may arise from additives in vaccines, such as thimerosal, a mercury-based preservative.¹¹³ Moreover, a shot that does not produce any immediate harm may still pose a long-term risk, as was the case with the 1976 swine flu vaccine, which “turned out to be associated with an increased risk of Guillain–Barré syndrome”.¹¹⁴

¹⁰⁶ Sokol, D.: *Covid-19 vaccination should be mandatory for health care workers*, BMJ. 2021 Nov 2; 375: n2670, [[https://doi: 10.1136/bmj.n2670](https://doi.org/10.1136/bmj.n2670)]. PMID: 34728499], p. 1.

¹⁰⁷ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 8.

¹⁰⁸ Sokol, D.: *Covid-19 vaccination should be mandatory for health care workers*, BMJ. 2021 Nov 2; 375: n2670, [[https://doi: 10.1136/bmj.n2670](https://doi.org/10.1136/bmj.n2670)]. PMID: 34728499], p. 1.

¹⁰⁹ Sokol, D.: *Covid-19 vaccination should be mandatory for health care workers*, BMJ. 2021 Nov 2; 375: n2670, [[https://doi: 10.1136/bmj.n2670](https://doi.org/10.1136/bmj.n2670)]. PMID: 34728499], p. 1.

¹¹⁰ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [[https://doi: 10.3390/vaccines9020113](https://doi.org/10.3390/vaccines9020113)], p. 8.

¹¹¹ [<https://www.newyorker.com/news/daily-comment/vaccine-mandates-have-a-bad-day-at-the-supreme-court>], accessed on 03/02/2022.

¹¹² Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618; [<https://www.newyorker.com/news/daily-comment/vaccine-mandates-have-a-bad-day-at-the-supreme-court>], accessed on 03/02/2022.

¹¹³ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618

¹¹⁴ Field, R. I.: *Mandatory Vaccination of Health Care Workers: whose rights should come first?*, P & T : a peer-reviewed journal for formulary management, 34 (11) 2009, pp. 615–618

Iñigo de Miguel Beriain uses a risk-benefit analysis in this context. The benefits of vaccination usually outweigh the risks. However, imposing a vaccination obligation will improve the situation for the entire population, but not necessarily the situation of the individual being vaccinated, as he or she may suffer serious side effects.¹¹⁵ Therefore, it may be better for an individual not to get vaccinated. Older and younger patients have different side effects. The risk of side effects is not the same in patients who are allergic to some of the vaccine ingredients and those who are not, i.e., different types of vaccines have different risk/benefit ratios.¹¹⁶ These facts are important indicators for policy implementation. Other opponents of mandatory vaccination have pointed out that vaccination is no longer necessary and that natural immunity to COVID-19 as well as progress in the treatment of patients who contracted the disease must be taken into account.¹¹⁷ After the emergence of the new, highly contagious omicron variant, SARS-CoV-2 has become widespread among both vaccinated and unvaccinated persons. This has led to epidemiologists highlighting the fact that the need for such a measure must be re-evaluated after the omicron wave has ended.¹¹⁸ The weight of the provision on the introduction of compulsory vaccination also depends on the ability of the vaccine to prevent the spread of the disease, and not just to prevent “more serious presentations of the disease”.¹¹⁹

What are the alternatives to mandatory vaccination? To achieve an adequate level of responsibility among HCWs, communication and education strategies about the individual and societal benefits of vaccination must be considered.¹²⁰

¹¹⁵ de Miguel Beriain, I.: *Mandatory vaccination and the ‘seat belt analogy’ argument: a critical analysis in the context of the Covid-19 pandemic*, Med Health Care Philos, 2022, [<https://doi.org/10.1007/s11019-022-10068-1>], p. 2.

¹¹⁶ de Miguel Beriain, I.: *Mandatory vaccination and the ‘seat belt analogy’ argument: a critical analysis in the context of the Covid-19 pandemic*, Med Health Care Philos, 2022, [<https://doi.org/10.1007/s11019-022-10068-1>], p. 4.

¹¹⁷ Pizzo, M.: *Mandatory vaccination for healthcare workers: consequences of denying bodily autonomy*, BMJ, 2021, 375:n3041 [<https://doi:10.1136/bmj.n3041>].

¹¹⁸ Pizzo, M.: *Mandatory vaccination for healthcare workers: consequences of denying bodily autonomy*, BMJ, 2021, 375:n3041 [<https://doi:10.1136/bmj.n3041>]; [https://www.euractiv.com/section/politics/short_news/mandatory-vaccination-suffers-setback-in-austria/], accessed on 03/02/2022.

¹¹⁹ de Miguel Beriain, I.: *Mandatory vaccination and the ‘seat belt analogy’ argument: a critical analysis in the context of the Covid-19 pandemic*, Med Health Care Philos, 2022, [<https://doi.org/10.1007/s11019-022-10068-1>], p4.

¹²⁰ Rus, M., Grošelj, U.: *Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics*, Vaccines (Basel), 9, 113, 2021, [<https://doi:10.3390/vaccines9020113>], p. 8; Biswas, N. et al.: *The Nature and Extent of COVID-19 Vaccination Hesitancy in Healthcare Workers*, Review J Community Health, 46 (6) 2021, [<https://doi.org/10.1007/s10900-021-00984-3>], pp. 1244-1251.

Understanding and addressing (unspoken) vaccine hesitancy is an essential dimension of building vaccine confidence. We need new proactive and interdisciplinary approaches.¹²¹ “Giving voice to vaccine concerns in a constructive dialogue” should contribute to achieving satisfactory vaccination rates.¹²²

6. LABOUR LAW IMPLICATIONS OF (COMPULSORY) VACCINATION OF HEALTH WORKERS IN CROATIA AND OTHER EU MEMBER STATES DURING THE COVID-19 PANDEMIC

Unlike several other countries, Croatia did not impose a state of emergency in response to the COVID-19 pandemic, so the constitutional framework of the Civil Protection Headquarters, the Government, and ultimately the Croatian Parliament fell under regular or “peacetime” conditions. The introduction of the state of emergency has its constitutional and doctrinal implications and raises several issues, that cannot be said to have not been the subject of political and professional debates in Croatia. However, of the 17 EU Member States whose constitutional provisions allow for some form of constitutional emergency, 10 (Bulgaria, the Czech Republic, Estonia, Finland, Hungary, Luxembourg, Portugal, Romania, Slovakia, and Spain) took advantage of this opportunity in the first wave of the pandemic.¹²³ The other seven, including Croatia, Germany, Lithuania, Malta, the Netherlands, Poland, and Slovenia, have not used their own constitutional mechanisms in this regard, both due to legal uncertainty and historical circumstances of previous use of the institute, as well as an approach that the current legal framework provide sufficient possibilities of action (without a need for the introduction of a state of emergency), etc.¹²⁴ With a distance of two years from the beginning of the Covid 19 pandemic and recent news about liberalization and even the abolition of several epidemiological measures in many European countries, one gets the impres-

¹²¹ Heyerdahl, L. W. et al.: *Doubt at the core: Unspoken vaccine hesitancy among healthcare workers*, *Lancet Reg Health Eur.* (12) 2022, [[https://doi: 10.1016/j.lanpe.2021.100289](https://doi.org/10.1016/j.lanpe.2021.100289)].

¹²² Heyerdahl, L. W. et al.: *Doubt at the core: Unspoken vaccine hesitancy among healthcare workers*, *Lancet Reg Health Eur.* (12) 2022, [[https://doi: 10.1016/j.lanpe.2021.100289](https://doi.org/10.1016/j.lanpe.2021.100289)].

¹²³ Diaz Crego, M.; Kotanidis, S.: States of emergency in response to the coronavirus crisis, Normative response and parliamentary oversight in EU Member States during the first wave of the pandemic, Study, European Parliamentary Research Service, European Parliament, p. 21. [[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659385/EPRS_STU\(2020\)659385_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659385/EPRS_STU(2020)659385_EN.pdf)], accessed on 12/01/2022.

¹²⁴ Diaz Crego, M.; Kotanidis, S.: States of emergency in response to the coronavirus crisis, Normative response and parliamentary oversight in EU Member States during the first wave of the pandemic, p. 22.

sion that Croatia in terms of access to (compulsory) vaccination, but also epidemiological measures, was *prima facie* a rather tactile and even benevolent state. This applies not only to the vaccination of health care professionals,¹²⁵ but also to employees in other public services, who are doubly at risk due to the nature of their work, but also the vulnerability and health compromise of users of their services. The risk of personal infection, but also the risk of transmitting Covid 19 to vulnerable categories of persons to whom they provide their services, as well as to members of their own families. Such a scenario indisputably compromises the professions in question and at the same time carries several other previously mentioned consequences (lack of medical staff due to illness and incapacity for work, consequent system load, inability to perform work tasks in time, etc.). Discussions on compulsory vaccination of employees in health care (and social welfare) have been the subject of frequent public debates in Croatia. Both in terms of possible restrictions on constitutional rights, and in terms of the manner and modalities of the possible introduction of (compulsory) vaccination. The first layoffs in the health and social care system were recorded for those employees who did not want to present the EU digital Covid certificate proving vaccination, recovery, or regular testing.¹²⁶ Special security measures for the presentation of evidence of mandatory virus testing (at least twice in seven days), vaccination, or recovery have been introduced for employees of health care institutions, companies performing health care activities, and employees of private health care workers.¹²⁷ We may qualify them as a proportionate and personal choice-dependent alternative to the introduction of compulsory vaccination. Legal experts in the public sphere cautiously commented on the legality of such dismissals, taking into account

¹²⁵ Frlan Gašparović, I.: *Vlada se nije usudila uvesti obvezno cijepljenje u zdravstvo. Ovako su prošle države koje su to učinile, Hrvatska Vlada u zdravstvo uvodi blažu mjeru, Covid potvrde, ali je očito cilj povećati procijepljenost*, Telegram [<https://www.telegram.hr/politika-kriminal/vlada-se-nije-usudila-uvesti-obvezno-cijepljenje-u-zdravstvo-ovako-su-prosledrzave-koje-su-to-ucinile/>], accessed on 15/01/2022.

¹²⁶ Jureško, G.: *Šest djelatnika KBC-a Zagreb dobilo otkaz, doznali smo o kome se radi: «Ne žele se testirati»*, Daily news Jutarnji list, [<https://www.jutarnji.hr/vijesti/hrvatska/sest-djelatnika-kbc-a-zagreb-dobilo-otkaz-doznali-smo-o-kome-se-radi-ne-zele-se-testirati-15116674>], accessed on 15/01/2022.

¹²⁷ Odluka o uvođenju posebne sigurnosne mjere obveznog testiranja svih zaposlenika zdravstvenih ustanova, trgovačkih društava koja obavljaju zdravstvenu djelatnost te privatnih zdravstvenih radnika na virus SARS-CoV-2 from 28 September 2021 (NN no. 105/21); Odluka o izmjeni Odluke o uvođenju posebne sigurnosne mjere obveznog testiranja svih zaposlenih djelatnika zdravstvenih ustanova, trgovačkih društava koja obavljaju zdravstvenu djelatnost te privatnih zdravstvenih radnika na virus SARS-CoV-2 from 5 October 2021 (NN no. 108/21), and Odluka o izmjenama i dopunama Odluke o uvođenju posebne sigurnosne mjere obveznog testiranja svih zaposlenika zdravstvenih ustanova, trgovačkih društava koja obavljaju zdravstvenu djelatnost te privatnih zdravstvenih radnika na virus SARS-CoV-2 from 24 January 2022 (NN no. 10/22).

the proportionality of the measures taken, the potential for suspension as a more appropriate institution than the dismissal measure,¹²⁸ the previously applied procedure (warning before dismissal), the type of dismissal (regular dismissal due to wrongful conduct of extraordinary dismissal), as well as the fact that there is no (similar) jurisprudence applicable to specific cases. We should not forget the fact that the assessment of the constitutionality of the introduced national measures and the obligation to present the certificates in question in the proceedings before the Constitutional Court has a (fairly) direct impact on the *pro futuro* decisions of regular courts in labor disputes due to termination of employment contracts.¹²⁹ The problematic legal and constitutional framework of the Civil Protection Headquarter was resolved by a decision of the Constitutional Court of the Republic of Croatia which did not question its status as an executive body operating under the direct supervision of the Government, and qualified it as an *expert, operational and coordinating body for implementing measures and activities during major disasters*.¹³⁰ Presentation of the EU digital COVID certificate or other relevant evidence of recovery or vaccination, according to the decision of the Constitutional Court, has a valuable medical role in the fight against COVID-19. The introduced measure has the capacity to contribute to the achievement of a legitimate aim¹³¹ because it is appropriate and necessary. Employees in the health and social care system should not be carriers of the infection in the institutions where they work. Therefore, the obligation to test health and social care workers, or the obligation to present an EU digital COVID certificate or other appropriate evidence of vaccination or illness “*as proof of having a sufficient level of certainty that they will not infect another person*”¹³² is necessary to prevent viruses from entering these systems, reducing, as far as possible, the risk of infection, and for the protection of the life and health of persons being treated or placed in

¹²⁸ Barić, S.: *Ustavna stručnjakinja o otkazima zbog potvrda i Hasanbegovićevoj izjavi: ‘Postoji pravo sa se zaraziti, ali..’*, Daily news Jutarnji list [<https://www.jutarnji.hr/vijesti/hrvatska/ustavna-strucnjakinja-o-otkazima-zbog-covid-potvrda-i-hasanbegovicevoj-izjavi-postoji-pravo-da-se-zarazi-ali-15117527>] accessed on 10/01/2022.

¹²⁹ Professor Viktor Gotovac in: Cvrtila, M.: *Stručnjak za radno pravo: ‘ne igrajte se! Otkaz vam definitivno visi nad glavom ako budete odbijali testiranje, a nemate covid potvrdu... Čeka li vam se na birou presuda Ustavnog suda?’*, Daily news Slobodna Dalmacija [<https://slobodnadalmacija.hr/vijesti/hrvatska/strucnjak-za-radno-pravo-ne-igrajte-se-otkaz-vam-definitivno-visi-nad-glavom-ako-budete-odbijali-testiranje-a-nemate-covid-potvrdu-ceka-li-vam-se-na-birou-presudu-ustavnog-suda-1141930>] accessed on 10/01/2022.

¹³⁰ Constitutional Court of the Republic of Croatia U-I-1372/2020, 14/09/2021, (NN no. 105/20), paragraph 29.1.

¹³¹ Constitutional Court of the Republic of Croatia U-II/5417/2021 et al, Paragraph 13.4. [www.usud.hr], accessed on 20 January 2022.

¹³² Constitutional Court of the Republic of Croatia U-II/5417/2021 et al, paragraph 15.

social care institutions (whose immunity and health are already endangered).¹³³ Based on previous interpretations of the Constitutional Court on EU digital COVID certificates, it is quite certain that health workers who did not want to present the certificate to their employers, or those who did not want to be tested or vaccinated, if they were subject to appropriate dismissal procedures, in accordance with the Labour Act,¹³⁴ will fail in proceedings to challenge the legality of such dismissals. With regard to the institute of suspension in Croatia in case of non-presentation of the EU digital COVID certificate, as possibly more appropriate and according to the mentioned experts more proportionate measure, it should be noted that it is not regulated by general labor legislation, ie the Labour Act. The institute of suspension, ie removal from service, is envisaged *expressis verbis* as a kind of preventive measure in cases of initiating criminal proceedings or disciplinary proceedings for a serious breach of the official duty of civil servants and is regulated by the Civil Servants Act.¹³⁵ However, this does not mean that suspension is impossible to apply according to the general regulations of labor law, i.e. the interpretation of an essential element of the employment relationship - subordination.¹³⁶ Namely, it is the obligation of the employee to act according to the instructions of the employer given by the nature and type of work, as well as by the employer's right to determine the place and manner of work respecting the rights and dignity of workers.¹³⁷ However, the application of this institute can open several other issues - the right to compensation for the duration of the suspension, duration of the suspension, the possibility that a large number of suspended workers paralyze the employer and prevent the proper functioning of the system and prompt provision of health care to patients. No less important is the issue of workers' opposition to the suspension, which would open the possibility of termination of the employment contract by the workers, as well as the possible initiation of a dispute due to the (illegal) nature of the employer's decision. The complexity of the pandemic and the strong impact it has had on labor relations and their transformation,¹³⁸ on the one hand, and the need for normal health

¹³³ Constitutional Court of the Republic of Croatia U-II/5417/2021 et al, paragraph 15.

¹³⁴ Labour Act (NN no. 93/14, 127/17, 98/19).

¹³⁵ Civil Servants Act (NN no. 92/05, 140/05, 77/07, 107/07, 27/08, 34/11, 49/11, 150/11, 34/12, 49/12, 37/13, 38/13, 01/15, 138/15, 67/17, 70/19 and 98/19), Art. 112.

¹³⁶ Professor Sanja Barić, Professor Anita Blagojević i Professor Mario Vinković for Faktograf.hr . in: Galić, G.: *Sudovi će vagati između prava na rad i prava građana na zdravlje*, of 19 November 2022. [<https://faktograf.hr/2021/11/19/sudovi-ce-vagati-između-prava-na-rad-i-prava-gradana-na-zdravlje/>], accessed on 10/01/2022.

¹³⁷ Labour Act (NN no. 93/14, 127/17, 98/19), Art. 7.

¹³⁸ Hodder, A.; Martínez Lucio, M.: *Pandemics, politics, and the resilience of employment relations research*, Labour & Industry: a journal of the social and economic relations of work,

system functioning, the necessary humanity, and solidarity between health and social care users and providers, on the other, emphasize the need for proportionate actions in labor relations. Actions that will not constitute the abolition and suspension of workers' rights, but their "restriction to the necessary extent".¹³⁹ But is the termination of the employment contract in the aforementioned cases a justified and proportionate measure? We are of the opinion that it is because mandatory vaccination of employees in no economic sector has been introduced in Croatia, and the obligation to present an EU digital COVID certificate proving vaccination, recovery, or testing at specified intervals cannot be considered irrational or disproportionate. Humanity, solidarity, patient health care, and saving lives are certainly some of the fundamental tenets of the medical profession, which is why requests for certification are appropriate, justified, and proportionate suspensive conditions imposed by the employer in conditions where there are no medical contraindications for vaccination or (extremely rare) testing for Covid-19 virus. Otherwise, any other reason could, in our opinion, be an introduction to endless discussions about the limits of our rights, which, in any case, should never exceed the limits of protection of the rights of another person. Legal theory and philosophy clearly and indisputably teach us about the necessity of observing legal rules and legal norms, as well as human rights and freedoms, in interrelation, because only in this way is it possible to find answers to previously emphasized questions. After all, patients have a right to expect that healthcare facilities have taken all reasonable measures to protect their health and prevent infections with new diseases while their treatment in healthcare facilities is ongoing.¹⁴⁰ The presentation of a digital COVID certificate is not synonymous with compulsory vaccination and should therefore not be interpreted as such. Least by health workers. However, this does not mean that the issues in question are one-dimensional and simple. Dissenting opinions that indicate that the set goals can be achieved with existing measures and with a lesser degree of encroachment on civil and political rights¹⁴¹ must not be forgotten. Time and, ultimately, case law will show which

31(4), 2021, [<https://doi.org/10.1080/10301763.2021.1953225>], pp. 433-434; Grgurev, I., Potočnjak, Ž.: Radni odnosi u vrijeme pandemije COVID-19, in: Barbić, J.(ed.) : *Primjena prava za vrijeme pandemije COVID-19*, Zagreb, 2021, pp. 47-68.

¹³⁹ Učur, M. Đ.: *Okvir determiniranja prava na rad za vrijeme epidemije*, Zbornik Pravnog fakulteta u Rijeci, 42(2) 2021, p. 416.

¹⁴⁰ Field, R. I.: *Mandatory Vaccination of Health Care Workers, Whose Rights Should Come First?*, *Health Care and Law*, 34(11) 2009, p. 618.

¹⁴¹ Paris, E.: *Applying the Proportionality Principle to COVID-19 Certificates*, *European Journal of Risk Regulation*, 12(2)2021, Special Issue 2: Symposium on COVID-19 Certificates and Special Issue on the Global Governance of Alcohol [<https://doi.org/10.1017/eer.2021.27>], pp. 287-297.

answer or solution is more appropriate to the hitherto unrecorded global pandemic of the modern world and the working conditions of health professionals. The data suggest that by April 2022, almost 80% of dentists in Croatia were vaccinated with both doses (43.62% of them were vaccinated with a booster dose), as well as 90% of doctors (63.08% with a booster dose).¹⁴² Also, 72% of other health professionals were vaccinated with both doses of vaccine (32.27 with booster dose), as well as 74.28% of medical technicians (33.98 with booster dose) and 77.13% of health care associates (37.17 with booster dose).¹⁴³ In order to increase the level of vaccination, some EU Member States have considered the possibility of introducing compulsory vaccination for all adults such as Austria (9 March 2022 decided to postpone the application of such an obligation), or for certain age groups such as Italy and Greece.¹⁴⁴ Germany, Greece, Italy, Latvia, and Hungary introduced vaccination obligations for employees in the health system or public services as a condition for continuing work,¹⁴⁵ while in Estonia (until 6 March 2022) and Hungary employers were authorized to impose such conditions on workers.¹⁴⁶ The need for compulsory vaccination of healthcare workers in Italy was justified, *inter alia*, by the fact that fewer doctors and medical technicians have refused to support the vaccination campaign, thus calling into question the safety and health of patients.¹⁴⁷ Italy introduced the mandatory vaccination measure for employees in health and health-related activities (hospitals, health entities, social welfare institutions, and pharmacies) by a Decree-Law of 1 April 2021,¹⁴⁸ which has been amended or supplemented several times since. Legislative changes that followed the obligation to vaccinate extended to other categories of workers (employees in nursing homes, external staff, school staff, employees in the army, police, prisons, etc.).¹⁴⁹ These regulations introduced vaccination as a basic

¹⁴² According to the data available and processed by the Croatian Institute of Public Health. Croatian Institute of Public Health in accordance with the author's request.

¹⁴³ According to the data available and processed by the Croatian Institute of Public Health.

¹⁴⁴ Diaz Crego, M. *et al.*: Legal issues surrounding compulsory Covid 19 vaccination, European Parliamentary Research Service, European Parliament, p. 2. [[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729309/EPRS_BRI\(2022\)729309_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729309/EPRS_BRI(2022)729309_EN.pdf)], accessed on 20/04/2022.

¹⁴⁵ Diaz Crego, M. *et al.*: Legal issues surrounding compulsory Covid 19 vaccination, p. 2.

¹⁴⁶ Diaz Crego, M. *et al.*: Legal issues surrounding compulsory Covid 19 vaccination, p. 2

¹⁴⁷ Frati, P. *et al.*: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, *Vaccines*, 9, 996 [<https://doi.org/10.3390/vaccines9090966>], p. 2.

¹⁴⁸ Decreto-Legge n. 44 (GU no. 79 of 1 April 2021).

¹⁴⁹ Decreto-Legge n. 122 (GU Serie Generale no. 217 of 10 September 2021); Decreto-Legge n. 172 (GU Serie Generale no. 282 of 26 November 2021) – amended with Legge no. 3 (GU no. 19 of 25 January 2022) etc.

precondition for performing the mentioned tasks, and the eventual refusal of vaccination resulted in transfers to other jobs without contact with the public, or, in case of impossibility of such transfer, suspension without the right to compensation or salary.¹⁵⁰

The German legislator in both houses of the Bundestag voted to introduce mandatory vaccinations for health workers to speed up the campaign to vaccinate the population with a booster dose by March 15, 2022. Employees in hospitals, retirement homes, doctors' offices, facilities for the disabled, and other health facilities following the obligation imposed must provide proof of vaccination or proof of recovery from COVID-19. An exception exists only for those health professionals who are exempt from the obligation to vaccinate due to medical indications and have not previously suffered from COVID-19.¹⁵¹

By a decree of the Government of Hungary from October 2021, compulsory vaccination, as well as receiving a booster dose, was introduced for all employees in the health care system, except for those who are prevented from receiving vaccines for medical reasons.¹⁵² The Constitutional Court of Hungary, assessing the constitutionality of the legal act which introduced compulsory vaccination for health workers, concluded that it was a proportional measure as well as a necessary and proportional restriction of fundamental rights.¹⁵³

Austria is certainly one of the countries that has implemented the most comprehensive measures to combat Covid 19, introducing a lockdown for unvaccinated people at some point¹⁵⁴ and adopting the Compulsory Vaccination Act against COVID-19.¹⁵⁵ According to the latter law (the application of which has been postponed), every person over the age of 18 residing in the Republic of Austria should be fully vaccinated, including with a booster dose. A time continuum divided into three phases is envisaged for the implementation of the respective measure, but pregnant women and persons whose medical condition indicates the need to avoid vaccination are exempted from such an obliga-

¹⁵⁰ Diaz Crego, M. *et al.*: Legal issues surrounding compulsory Covid 19 vaccination, p. 10.

¹⁵¹ [<https://www.dw.com/en/germany-approves-covid-vaccine-mandate-for-medical-staff/a-60078690>] accessed on 15/01/2022.

¹⁵² Diaz Crego, M. *et al.*: Legal issues surrounding compulsory Covid 19 vaccination, p. 11.

¹⁵³ Constitutional Court of Hungary, Decision 3537/2021 of 22 December 2021; Diaz Crego, M. *et al.*: Legal issues surrounding compulsory Covid 19 vaccination, p.12.

¹⁵⁴ [<https://www.dw.com/en/covid-digest-austria-lifts-lockdown-for-the-unvaccinated/a-60554450>], accessed on 09/01/2022.

¹⁵⁵ Bundesgesetz über die Pflicht zur Impfungen gegen COVID-19 (COVID-19-Impfpflichtgesetz – COVID-19-IG) (BGBl, I, no. 4/2022).

tion.¹⁵⁶ The assessment of the constitutionality of the mentioned Act was sent to the procedure before the Austrian Constitutional Court, which decision is expected.¹⁵⁷

France is one of the countries that has introduced compulsory vaccination for a wider range of public service employees. Namely, the August 2021 Act¹⁵⁸ introduced the obligation to vaccinate (or proof of recovery) to health professionals, health students, firefighters, and civil protection employees, as a condition for the continuation of their professional activities. Avoiding the measure in question resulted in a suspension without the right to compensation/salary, except for those employees who have medical contraindications to vaccination.¹⁵⁹ Employees of some of the highlighted French public services have practically overwhelmed the European Court of Human Rights in their demands, asking that the measure of compulsory vaccination (i.e. the presentation of an appropriate digital certificate proving this) be determined contrary to the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁶⁰ In *Thevenon v. France*, in which Mr. Thevenon, as a firefighter, considered that the compulsory vaccination measure was contrary to the provisions of the Convention and asked the Court to impose a temporary measure of compulsory vaccination suspension, the Court rejected the request for an interim measure. The Court referred to the case of *Abgrall and 671 Others v. France*, pointing out that the request for an interim measure was outside the scope of Rule 39 of the Court's Rules on Interim Measures.¹⁶¹

In relation to the observed legal systems of the EU Member States, one gets the impression that Croatia has weighed its measures and introduced to health professionals and employees in the social welfare system, more cautiously and measuredly than it might seem *prima facie*. The vaccination obligation was not introduced as *a conditio sine qua non*, because the presentation of the Covid digital certificate could prove both recovery and regular testing. In other words, the measure of regular testing was a sufficient and proportionate

¹⁵⁶ Diaz Crego, M. *et al.*: Legal issues surrounding compulsory Covid 19 vaccination, pp. 12-13.

¹⁵⁷ Diaz Crego, M. *et al.*: Legal issues surrounding compulsory Covid 19 vaccination, p. 13.

¹⁵⁸ Loi no. 2021-1040 du 5 août 2021 relative à la gestion de la crise sanitaire (1) (JO no. 0181 of 6 August 2021), [https://www.legifrance.gouv.fr/download/pdf?id=KV88RcN_J88jRL-W9EJIqJ96Wakxk7JLKoUd3uP63A4=] accessed on 17/02/2022.

¹⁵⁹ Diaz Crego, M. *et al.*: Legal issues surrounding compulsory Covid 19 vaccination, p. 9.

¹⁶⁰ ECtHR Application no. 46061/21 *Thevenon v. France*; ECtHR Application no. 41950/21 *Abgrall and 671 Others v. France*; ECtHR Application no 41994/21 *Zambrano v. France*.

¹⁶¹ See ECtHR Application no. 46061/21 *Thevenon v. France* and ECtHR Application no 41950/21 *Abgrall and 671 Others v. France*.

requirement for those employees who did not want to be vaccinated. However, can such a request also be considered unacceptable, superfluous, or unnecessary restriction of human and labor rights in the current circumstances? Following all the previously stated and analyzed opinions, there is no place for such an approach and interpretation. At least because such a reason would call into question the fundamental principles of solidarity, humanity, and treatment of those whose health needs to be protected due to health threats and compromises. Otherwise, the question arises as to whether those who oppose such an approach and interpretation have chosen the appropriate occupation and “call”.

7. CONCLUSION

Due to their increased exposure to infection at the workplace and close contact with patients, HCWs are commonly defined as a high-priority group in vaccination campaigns.¹⁶² They have an extremely important role in reducing the burden of the pandemic since they can act as role models to other people and have an impact on their vaccination acceptance.¹⁶³ Vaccine hesitancy, both public and unspoken, can reduce public trust in COVID-19 vaccines and compromise current and future vaccination campaigns.¹⁶⁴ The introduction of mandatory vaccination generally depends on two factors: medical and scientific evidence that vaccines are safe and efficient; and epidemiological conditions that need to be ascertained by relevant authorities.¹⁶⁵ Mandatory vaccination is thus directly affected by current vaccination rates. In that context, national legislators must find a reasonable balance between the need to guarantee effective infectious disease prevention and the need to avoid arbitrarily limiting an individual’s right to self-determination.¹⁶⁶ Besides protecting personal rights, mandatory vaccination of HCWs has also been avoided out of fear that they would

¹⁶² Heyerdahl, L. W. et al.: *Doubt at the core: Unspoken vaccine hesitancy among healthcare workers*, *Lancet Reg Health Eur.* (12) 2022, [[https://doi: 10.1016/j.lanep.2021.100289](https://doi.org/10.1016/j.lanep.2021.100289)].

¹⁶³ Biswas, N. et al.: *The Nature and Extent of COVID-19 Vaccination Hesitancy in Healthcare Workers*, *Review J Community Health*, 46 (6) 2021, [<https://doi.org/10.1007/s10900-021-00984-3>], pp. 1244-1251.

¹⁶⁴ Heyerdahl, L. W. et al.: *Doubt at the core: Unspoken vaccine hesitancy among healthcare workers*, *Lancet Reg Health Eur.* (12) 2022, [[https://doi: 10.1016/j.lanep.2021.100289](https://doi.org/10.1016/j.lanep.2021.100289)].

¹⁶⁵ Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, *Vaccines*, 9, 966, 2021, [<https://doi.org/10.3390/vaccines9090966>], p. 7.

¹⁶⁶ Frati, P. et al.: *Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection*, *Vaccines*, 9, 966, 2021, [<https://doi.org/10.3390/vaccines9090966>], p. 7.

quit their jobs and leave medicine, consequently leading to a labor shortage.¹⁶⁷ However, the obligation to present an EU digital COVID certificate (on recovery, vaccination, or testing) for employed health professionals should not be considered synonymous with mandatory vaccination, as it provides its holders with a choice and alternative. For these reasons, such obligation should be considered as a justified and proportionate means of achieving the legitimate aim that employers in the health and social care system are entitled to introduce. Hesitation with the introduction of mandatory vaccination for HCWs in Croatia *post festum* can be qualified as a reasonable, measured and justified approach. Instead of compulsory vaccination, Croatia has introduced the obligation to present EU digital covid certificates, offering this category of workers an alternative and respecting their human and labor rights. However, this does not mean that the different conduct of other states on this issue should be *a priori* criticized and challenged because it will ultimately be decided by both their national courts and possibly international ones. Suspensions and terminations of employment contracts for the observed categories of employees who refused compulsory vaccination in certain countries are subject to both the determination of their legality and the specific circumstances in which they are imposed.

LITERATURE

1. Acosta, J. I.: Vaccines, informed consent, effective remedy, and integral reparation: an international human rights perspective, *Vniversitas* (131) 2015, pp. 19-64. – DOI: <https://doi.org/10.11144/Javeriana.vj131.vier>
2. Beauchamp, T. L.; Childress, J. F.: *Principles of biomedical ethics* 5th ed, Oxford, 2001.
3. Biswas, N. et al.: The Nature and Extent of COVID-19 Vaccination Hesitancy in Healthcare Workers, *Review J Community Health*, 46 (6) 2021, pp. 1244-1251. – DOI: <https://doi.org/10.1007/s10900-021-00984-3>
4. Coggon, J.; Miola, J.: *Autonomy, liberty, and medical decision-making*, *The Cambridge law journal* vol. 70 (3) 2011, pp. 523-547. – DOI: <https://doi.org/10.1017/S0008197311000845>
5. Čivljak, R.: Zdravstveni radnici i cijepljenje protiv influence, *Medicus*, 20 (1) 2011, pp.115 – 122.

¹⁶⁷ [<https://www.newyorker.com/news/daily-comment/vaccine-mandates-have-a-bad-day-at-the-supreme-court>]; [https://www.euractiv.com/section/politics/short_news/mandatory-vaccination-suffers-setback-in-austria/], accessed on 03/02/2022.

6. Diaz Crego, M.; Kotanidis, S.: States of emergency in response to the coronavirus crisis, Normative response and parliamentary oversight in EU Member States during the first wave of the pandemic, Study, European Parliamentary Research Service, European Parliament, [[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659385/EPRS_STU\(2020\)659385_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659385/EPRS_STU(2020)659385_EN.pdf)]
7. Diaz Crego, M. et al.: Legal issues surrounding compulsory Covid 19 vaccination, European Parliamentary Research Service, European Parliament, p. 2. [[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729309/EPRS_BRI\(2022\)729309_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729309/EPRS_BRI(2022)729309_EN.pdf)], accessed on 20/04/2022.
8. Dubé, E. et al.: Vaccine hesitancy: an overview, *Hum Vaccin Immunother*, 9 (8) 2013, pp.1763-1773.
– DOI: <https://doi.org/10.4161/hv.24657>
9. Feinberg, J.: *Harm to Others*, volume one, New York/Oxford, 1984.
10. Field, R. I.: Mandatory Vaccination of Health Care Workers: whose rights should come first?, *P & T : a peer-reviewed journal for formulary management*, 34 (11) 2009, pp. 615–618.
11. Frati, P. et al.: Compulsory Vaccination for Healthcare Workers in Italy for the Prevention of SARS-CoV-2 Infection, *Vaccines*, 9, 966, 2021.
– DOI: <https://doi.org/10.3390/vaccines9090966>
12. Grgurev, I., Potočnjak, Ž.: Radni odnosi u vrijeme pandemije COVID-19, in: Barbić, J.(ed.) : *Primjena prava za vrijeme pandemije COVID-19*, Zagreb, 2021, pp. 47-68.
13. Hendriks, A. C.: End-of-life decisions. Recent jurisprudence of the European Court of Human Rights, *ERA Forum*, (19) 2019, pp. 561–570.
14. Heyerdahl, L. W. et al.: Doubt at the core: Unspoken vaccine hesitancy among healthcare workers, *Lancet Reg Health Eur*. (12) 2022.
– DOI: <https://doi.org/10.1016/j.lanepe.2021.100289>
15. Hodder, A.; Martínez Lucio, M.: Pandemics, politics, and the resilience of employment relations research, *Labour & Industry: a journal of the social and economic relations of work*, 31(4), 2021, pp. 433-434.
– DOI: <https://doi.org/10.1080/10301763.2021.1953225>
16. Hurford, J. E.: COVID-19 and Compulsory Vaccination: An Acceptable Form of Coercion?, *The New Bioethics*, 28 (1) 2022, pp. 4-26.
– DOI: <https://doi.org/10.1080/20502877.2021.2010441>
17. de Miguel Beriain, I.: Mandatory vaccination and the ‘seat belt analogy’ argument: a critical analysis in the context of the Covid-19 pandemic, *Med Health Care Philos*, 2022, pp. 1–6.
– DOI: <https://doi.org/10.1007/s11019-022-10068-1>

18. Paris, E.: Applying the Proportionality Principle to COVID-19 Certificates, *European Journal of Risk Regulation*, 12(2)2021, Special Issue 2: Symposium on COVID-19 Certificates and Special Issue on the Global Governance of Alcohol, pp. 287-297.
– DOI: <https://doi.org/10.1017/eer.2021.27>
19. Pizzo, M.: Mandatory vaccination for healthcare workers: consequences of denying bodily autonomy, *BMJ*, 2021, 375:n3041.
– DOI: <https://doi.org/10.1136/bmj.n3041>
20. Rus, M., Grošelj, U.: Ethics of Vaccination in Childhood-A Framework Based on the Four Principles of Biomedical Ethics, *Vaccines (Basel)*, 9, 113, 2021.
– DOI: <https://doi.org/10.3390/vaccines9020113>
21. Savulescu J.: Good reasons to vaccinate: mandatory or payment for risk? *J Med Ethics*, 47(2) 2021, pp. 78-85.
– DOI: <https://doi.org/10.1136/medethics-2020-106821>
22. Sellers, M.: An introduction to the value of autonomy in law, in: Sellers, M. (ed.): *Autonomy in the Law*, Dordrecht, 2007, pp. 1-9.
– DOI: https://doi.org/10.1007/978-1-4020-6490-6_1
23. Sokol, D.: Covid-19 vaccination should be mandatory for health care workers, *BMJ*. 2021 Nov 2; 375: n2670.
– DOI: <https://doi.org/10.1136/bmj.n2670>. PMID: 34728499
24. Tucak, I.; Blagojević, A.: Covid- 19 pandemic and the protection of the right to abortion, *EU and comparative law issues and challenges series (ECLIC)*, (5) 2021, pp.853–877.
– DOI: <https://doi.org/10.25234/ecllc/18355>
25. Učur, M. Đ.: Okvir determiniranja prava na rad za vrijeme epidemije, *Zbornik Pravnog fakulteta u Rijeci*, 42(2) 2021, pp. 405-417.
– DOI: <https://doi.org/10.30925/zpfsr.42.2.8>
26. World Health Organization, COVID-19: Occupational health and safety for health workers, 2021 [<https://www.jstor.org/stable/resrep33225>], accessed on 03/02/2022.

LEGISLATION

1. Bundesgesetz über die Pflicht zur Impfungen gegen COVID-19 (COVID-19-Impfpflichtgesetz – COVID-19-IG) (BGB1, I, no. 4/2022)
2. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (Oviedo Convention) [<https://www.coe.int/en/web/bioethics/oviedo-convention>], accessed on 03/02/2022.

3. Odluka o uvođenju posebne sigurnosne mjere obveznog testiranja svih zaposlenika zdravstvenih ustanova, trgovačkih društava koja obavljaju zdravstvenu djelatnost te privatnih zdravstvenih radnika na virus SARS-CoV-2 from 28 September 2021 (NN no. 105/21).
4. Odluka o izmjeni Odluke o uvođenju posebne sigurnosne mjere obveznog testiranja svih zaposlenih djelatnika zdravstvenih ustanova, trgovačkih društava koja obavljaju zdravstvenu djelatnost te privatnih zdravstvenih radnika na virus SARS-CoV-2 from 5 October 2021 (NN no. 108/21).
5. Odluka o izmjenama i dopunama Odluke o uvođenju posebne sigurnosne mjere obveznog testiranja svih zaposlenika zdravstvenih ustanova, trgovačkih društava koja obavljaju zdravstvenu djelatnost te privatnih zdravstvenih radnika na virus SARS-CoV-2 from 24 January 2022 (NN no. 10/22).
6. Labour Act (NN no. 93/14, 127/17, 98/19).
7. Civil Servants Act (NN no. 92/05, 140/05, 77/07, 107/07, 27/08, 34/11, 49/11, 150/11, 34/12, 49/12, 37/13, 38/13, 01/15, 138/15, 67/17, 70/19 and 98/19).
8. Decreto-Legge n. 44 (GU no. 79 of 1 April 2021).
9. Decreto-Legge n. 122 (GU Serie Generale no. 217 of 10 September 2021).

CASE LAW

1. Constitutional Court of the Republic of Croatia U-I-1372/2020, 14/09/2021, (NN no. 105/20).
2. Constitutional Court of the Republic of Croatia U-II/5417/2021 et al, Paragraph 13.4. [www.usud.hr], accessed on 20 January 2022.
3. Constitutional Court of Hungary, Decision 3537/2021 of 22 December 2021.
4. ECtHR Application no. 46061/21 Thevenon v. France;
5. ECtHR Application no. 41950/21 Abgrall and 671 Others v. France;
6. ECtHR Application no 41994/21 Zambrano v. France

ONLINE SOURCES

1. [https://unric.org/en/who-mandatory-vaccinations-are-a-last-resort/], accessed on 03/02/2022.
2. [https://www.britannica.com/topic/bioethics], accessed on 03/02/2022.
3. [https://www.newyorker.com/news/daily-comment/vaccine-mandates-have-a-bad-day-at-the-supreme-court], accessed on 03/02/2022.
4. [https://www.euractiv.com/section/politics/short_news/mandatory-vaccination-suffers-setback-in-austria/], accessed on 03/02/2022.

5. [<https://www.jutarnji.hr/vijesti/hrvatska/ustavna-strucnjakinja-o-otkazima-zbog-covid-potvrda-i-hasanbegovicevoj-izjavi-postoji-pravo-da-se-zarazi-ali-15117527>] accessed on 10/01/2022.
6. [<https://www.telegram.hr/politika-kriminal/vlada-se-nije-usudila-vesti-obvezno-cijepljenje-u-zdravstvo-ovako-su-prosle-drzave-koje-su-to-ucinile/>], accessed on 15/01/2022.
7. [<https://www.jutarnji.hr/vijesti/hrvatska/sest-djelatnika-kbc-a-zagreb-dobilo-otkaz-doznali-smo-o-kome-se-radi-ne-zele-se-testirati-15116674>], accessed on 15/01/2022.
8. [<https://slobodnadalmacija.hr/vijesti/hrvatska/strucnjak-za-radno-pravo-ne-igrajte-se-otkaz-vam-definitivno-vidi-nad-glavom-ako-budete-odbijali-testiranje-a-nemate-covid-potvrdu-ceka-li-vam-se-na-birou-presudu-ustavnog-suda-1141930>] accessed on 10/01/2022.
9. [<https://faktograf.hr/2021/11/19/sudovi-ce-vagati-izmedu-prava-na-rad-i-prava-gradana-na-zdravlje/>], accessed on 10/01/2022.
10. [<https://www.dw.com/en/covid-digest-austria-lifts-lockdown-for-the-unvaccinated/a-60554450>], accessed on 09/01/2022.
11. [https://www.legifrance.gouv.fr/download/pdf?id=KV88RcN_J88ijRLW9EJIq-J96WAkxk7JLKOud3uP63A4=] accessed on 17/02/2022.