THE CZECH REPUBLIC

OBSERVATONS OF THE GOVERNMENT TO THE GRAND CHAMBER

Pavel VAVŘIČKA v. the CZECH REPUBLIC
(no. 47621/13)

Markéta NOVOTNÁ v. the CZECH REPUBLIC
(no. 3867/14)

Pavel HORNYCH v. the CZECH REPUBLIC
(no. 73094/14)

Adam BROŽÍK v. the CZECH REPUBLIC
(no. 19306/15)

Radomír DUBSKÝ v. the CZECH REPUBLIC
(no. 19298/15)

Prokop ROLEČEK v. the CZECH REPUBLIC
(no. 43883/15)

PRAGUE

24 FEBRUARY 2020

1. By its letter of 19 December 2019, the European Court of Human Rights ("the Court") notified the Government of the Czech Republic ("the Government") that the Chamber decided to relinquish jurisdiction in accordance with Article 30 of the Convention and that the applications lodged with the Court by Mr Pavel Vavřička ("applicant Vavřička"), Ms Markéta Novotná ("applicant Novotná"), Mr Pavel Hornych ("applicant Hornych"), Mr Adam Brožík ("applicant Brožík"), Mr Radomír Dubský ("applicant Dubský") and Mr Prokop Roleček ("applicant Roleček") will be considered by the Grand Chamber.

2. By a subsequent letter of 10 January 2020, the Court invited the Government to submit their observations on the admissibility and merits of the cases that would constitute an exhaustive overview of the Government's position on the complaints raised. At a later stage, the Government were notified, by a letter dated 27 January 2020, that their written observations shall include, *inter alia*, the answers to a set of questions.

3. For the sake of completeness, the Government attach to their observations several enclosures encompassing in particular relevant expert context of vaccination in the Czech Republic, opinions of relevant expert societies operating in the Czech Republic, relevant domestic and international law and practice, a document describing the situation throughout Europe and the observations on the applicants' claims for just satisfaction.

THE FACTS

4. The Government have no fundamental objections to the description of the facts of the cases as presented by the Court in the statement of facts based on the applicants' assertions. However, they consider it necessary to add certain general facts that are directly relevant for the assessment of the merits of the applications in question. As a significant period has elapsed since the communication of the applications to the Government in 2015, they also complement these facts with recent information and development in the area of compulsory vaccination on national as well as international level.

I. CIRCUMSTANCES OF THE CASES

5. As to the relevant expert context of vaccination in the Czech Republic the Government at the time of communication of the applications in 2015 requested opinions from the competent expert societies existing in the Czech Republic, specifically the Czech Vaccinology Society, the Czech Paediatric Society and the Association of General Practitioners for Children and Youth, as well as the Czech Medical Chamber. They all very clearly favour keeping the existing system of obligatory vaccination in the Czech Republic (Enclosures 2–4). For the overall picture, the Government refer to specific parts of these opinions enclosed in English (Enclosure 1). Upon invitation of the Government, these expert societies have recently confirmed their position. As to the situation and trends in vaccination in the

Czech Republic at the material time and recent developments, the Government refer to Enclosures 5 and 12.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

6. For relevant domestic and international law and practice, the Government refer to Enclosures 6 and 7. For the situation in Europe, the Government refer to Enclosure 8. Moreover, Enclosure 9 includes a document "Obligatory vaccination in the Czech Republic and EU countries", drawn up by the Czech Parliamentary Institute in June 2014.

THE LAW

7. The Government shall express their opinion on the applicants' complaints in particular in the light of the Court's questions in relation to each Convention provision invoked. Before doing so, the Government shall also comment on their admissibility.

I. ADMISSIBILITY

8. The Government believe that three of the applications should be rejected in their entirety for a failure to satisfy the condition of admissibility; the Government shall raise other specific objections of inadmissibility in the parts concerning the particular Convention provisions invoked.

(i) Non-exhaustion of domestic remedies in the cases of applicants Brožík and Dubský

9. The Court poses a question whether applicants Brožík and Dubský exhausted all effective domestic remedies as required by Article 35 § 1 of the Convention, in particular a cassation appeal *(kasační stížnost)* and constitutional appeal (questions nos. 1 and 2).

10. The Government would point out that on 10 May 2016, the Hradec Králové Regional Court by its judgment no. 30 A 61/2014 dismissed the administrative action of applicants Brožík and Dubský against the decision of the Regional Authority of the Liberec Region *(krajský úřad)*, which confirmed the decision of the nursery school on non-admission of the applicants (Enclosure 10). Unlike other applicants in whose cases the claimed interference also consisted in non-admission to a nursery school, applicants Brožík and Dubský filed neither a cassation appeal nor a constitutional appeal, albeit they were not devoid of reasonable prospects of success (cf. § 16 and 66 below). Therefore, their applications must be declared inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention (cf. *Akdivar and Others v. Turkey*, no. 21893/93, judgment [GC] of 16 September 1996, § 65).

(ii) Lack of significant disadvantage in the case of applicant Vavřička

11. In this case the interference complained of consisted only in the imposition of a fine on the grounds that the applicant refused to have his children vaccinated. The Government would recall that this fine was levied on the applicant in 2003 in administrative delict proceedings *(řízení o přestupku)*, and amounted to CZK 3,000, together with an obligation to pay the costs of the proceedings amounting to CZK 500. In other words, the only disadvantage that the applicant suffered was a purely pecuniary one in the amount of CZK 3,500 (at the exchange rate valid at that time, approximately EUR 109 (cf. *Uhl v. the Czech Republic*, no. 1848/12, decision of 25 September 2012, § 23).

12. The Court has repeatedly decided that similar (or even higher) amounts were low, thus not amounting to a "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention (e.g. EUR 172 in *Rinck v. France*, no. 18774/09, decision of 19 October 2010; EUR 125 in *Ştefănescu v. Romania,* no. 11774/04, decision of 12 April 2011; EUR 228 in *Burov v. Moldova*, no. 38875/03, decision of 14 June 2011; EUR 504 in *Kiousi v. Greece*, no. 52036/09, decision of 20 September 2011; EUR 157 in *Fernandez v. France*, no. 65421/10, decision of 17 January 2012; EUR 227 in *Šumbera v. the Czech Republic*, no. 48228/08, decision of 21 February 2012; EUR 150 in *Sylka v. Poland*, no. 19219/07, decision of 3 June 2014, § 33; EUR 260 in *Škubonja v. Croatia,* no. 27767/13, decision of 19 May 2015, § 32; or EUR 180 in *Bekauri and Others v. Georgia*, no. 312/10, decision of 15 September 2015, §§ 41–42).

13. The Court has admitted that even modest pecuniary damage may be significant in the light of the person's specific condition and the economic situation of the country or region in which he or she lives (*Cecchetti v. San Marino*, no. 40174/08, decision of 9 April 2013, § 30). Therefore it must be taken into account whether the circumstances of the present case lead to a conclusion that the loss of the sum in question had a significant impact on the applicant's personal life (*Škubonja v. Croatia*, cited above, § 33).

14. However, applicant Vavřička did not present anything that could warrant a conclusion that in the relevant period his financial situation was such that the payment of the above fine had a significant negative impact on him (*Rinck v. France*, cited above). Moreover, the decision on the commission of the administrative delict *(přestupek)* and on the imposition of the administrative fine was not (and under the relevant domestic law could not be) registered in the applicant's criminal records (*Görgün v. Turkey,* no. 42978/06, decision of 16 September 2014). The applicant does not claim that this decision had other negative consequences for him, for example, in the form of dismiss,al from employment (*a contrario, Luchaninova v. Ukraine*, no. 16347/02, judgment of 9 June 2011, § 49). The applicant's insistence to appeal against the domestic decisions and subsequently to present his case to an international court may have been prompted by his subjective perception that it was an important question of principle. However, although relevant, this element does not suffice for the Court to conclude that he suffered a significant disadvantage (*Cecchetti v. San Marino*, cited above, § 32).

15. In the light of the above the Government are convinced that applicant Vavřička did not suffer any significant disadvantage in the present case as the alleged interference did not attain a minimum level of severity within the meaning of Article 35 § 3 (b) of the Convention.

16. Additionally, the other two safeguards laid down in the cited provision were also present. *First*, the case was duly considered by administrative courts at two levels of jurisdiction and then repeatedly by the Constitutional Court in its judgment no. III. ÚS 449/06 and decision no. III. ÚS 271/12. The applicant also had an opportunity to submit his written and oral arguments to those courts (*Bekauri and Others v. Georgia*, cited above, § 44). In the above judgment the Constitutional Court found a violation of Article 16 of the Charter of Fundamental Rights and Freedoms ("Charter") and the case was returned to the administrative court for further consideration (see Enclosure 6, § 30). *Second*, it cannot be said that the respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application at hand on the merits. The Government would recall that this requirement has to be assessed in correlation with considerations underlying its assessment of the two preceding criteria set out in Article 35 § 3 (b) of the Convention (*Komanický v. Slovakia*, no. 53364/07, decision of 18 June 2013, § 34).

17. For the above reasons the Government propose rejecting this application for a lack of significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

18. The Court poses several questions relating to Article 8 of the Convention (questions nos. 3–9). The Government are of the opinion that the admissibility of the applications is closely related to their merits and they will therefore deal with all the Court's questions in the same part of the observations.

(i) The Court's relevant case law

19. The Convention institutions first dealt with the issue of vaccination as early as 1978. In the case of *Association X. v. the United Kingdom* (no. 7154/75, Commission decision of 12 July 1978), an association of parents of children harmed by vaccination claimed a violation of Articles 2 and 8 of the Convention referring to the fact that the State did not sufficiently inform the parents of the risks that vaccination could entail. The Commission rejected the application as manifestly ill-founded. It based its conclusion primarily on the fact that in order to minimize the potential risks, the State had established a system of control and supervision over the vaccination and immunisation programme.

20. The case of *Boffa and Others v. San Marino* (no. 26536/95, Commission decision of 15 January 1998) concerned the existence of obligatory vaccination of children against hepatitis B. The Commission declared the complaint of a violation of Article 8 manifestly ill-founded; it emphasised that the applicants had not demonstrated a probability that, in the particular case of their children, the relevant vaccine would have caused serious problems. The Commission also noted that a vaccination campaign which obliges the individual to defer to the general interest

and not to endanger the health of others where his own life is not in danger, does not go beyond the margin of appreciation left to the State (cited above, part 4 of the Law section).

21. In the case of *Solomakhin v. Ukraine* (no. 24429/03, judgment of 15 March 2012), the applicant, as an adult, was vaccinated against diphtheria when he was in hospital. He then claimed compensation for damage to health allegedly caused by the vaccination. The courts rejected his claim noting that the applicant's vaccination had not been performed using physical force, that the applicant could have refused it and that the causal link between the vaccination and damage to health was not proved. The Court addressed the issue from the perspective of Article 8. It noted in the first place that the interference with the applicant's physical integrity pursued the legitimate aim of protecting public health and preventing spread of infectious diseases. It also emphasised that prior to the vaccination the medical staff had checked whether he was suitable for vaccination. Moreover, the applicant did not submit any evidence to prove that the vaccination had actually harmed his health. *Finally*, the Court pointed out that the domestic courts had carefully dealt with the case, based their decisions on several expert reports and their conclusions were not arbitrary or manifestly unreasonable. In the light of the above, the Court concluded that there was no violation of Article 8.

22. The Court has also dealt with the issue of compensation for vaccination in the case of *Baytüre and Others v. Turkey* (no. 3270/09, decision of 12 March 2013). This case was submitted by parents and their son who at the age of three months had been vaccinated, upon physicians' recommendations, against several diseases, including poliomyelitis. In consequence of the polio vaccination, he developed *metatarsus adductus* and the applicants claimed compensation from the State. The court commissioned an expert opinion from a faculty of medicine, according to which that case involved an extremely rare adverse effect of the vaccination (the probability was 1 in 2,500,000,000) that cannot be medically avoided; the court then rejected the applicants' claim noting that no error had occurred during the vaccination. As regards Article 8, the Court held that "si, dans le cadre d'une campagne de vaccination dont l'unique objectif est de protéger la santé de la communauté par l'éradication de maladies infectieuses, il se produit un faible nombre d'accidents graves, on ne peut reprocher à l'Etat d'avoir omis de prendre les mesures voulues pour protéger l'intégrité physique des individus". The Court also pointed out that it was not established that the vaccination in that case had been administered incorrectly or that adequate measures had not been adopted to avoid risks entailed in vaccination. In conclusion, the Court noted that in a system in which vaccination is not obligatory the introduction of compensation for side effects of vaccination performed *lege artis* is, in principle, a social measure that is not covered by the Convention. Therefore, the Court declared the application incompatible with the Convention *ratione materiae.*

(ii) Application of these principles to the present cases

a) Whether the facts of the cases fall within the scope of private and/or family life

23. In relation to all applicants, the Court poses question no. 3 whether the facts of the present cases come under the scope of the right to respect for private and/or family life within the meaning of Article 8 of the Convention.

24. *First,* with the exception of the submission of applicant Vavřička the applications were not filed by the parents, but on behalf of the children. Therefore, the Court should deal with interferences with the rights of the children, not with the rights of their parents. It follows that if the applicants' parents argue about the implications of compulsory vaccination for themselves, these objections are incompatible with the Convention *ratione personae.* In fact, the Government are convinced that the applicants' parents made a mistake as they lodged the applications with the Court only on behalf of their children. Moreover, the Government have doubts whether the applicants' parents were entitled to lodge the applications on behalf of their children as there might be a conflict of interest. The important question to answer is whether not having the children vaccinated is in their best interest especially if parents do not give a special reason for refusal to have their children vaccinated (see also § 31 below).

25. *Second,* the Government point out that in fact only applicant Roleček explicitly claims interferences with his family life in addition to an interference with his private life. In his application, the interference with the child's family life is seen in the fact that the child was not placed in a full-day institutional care, staying instead in his parents' care. This application thus contends a violation of the right to respect for family life in consequence of the fact that the applicant, who was two years old when the application for admission to the nursery school was made, was not admitted to this nursery school and it appears that his parents had to continue taking turns in taking care of him. All other applicants allege interferences with their family life on an abstract basis only.

26. To this end, the Government would recall that according to the Court's case law "the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8" (*Jovanovic v. Sweden,* no. 10592/12, judgment of 22 October 2015, § 74). By contrast, the Court did not establish an interference with family life in a situation where partners and their children were "able to live peacefully as a family" (*Şerife Yiğit v. Turkey,* no. 3976/05, judgment [GC] of 2 November 2010, § 101).

27. In the Government's opinion, it follows from the cited case law that the content of family life entails keeping and developing social and emotional relationships, in particular in the form of living together, among persons forming a family. In case of applicant Roleček, nor in cases of other applicants, the State authorities did not hinder the development of family ties. Moreover, the Government refer to § 33 below. Therefore, the notion of family life clearly applies neither to the situation claimed by applicant Roleček nor to the situation of other applicants. In the

application of applicant Roleček it is objected that his parents' right to respect for their family life was infringed by being forced against their will to care for their child. In fact, it bothers them that the State seemed to push them to develop family ties. The Government point out that the essence of this objection goes against the essence of the right to respect for family life. The parents invoke the right not to be forced to lead family life to the extent they did not want to. This objection does not fall within the ambit of family life.

28. *Third*, in previous cases, the Court dealt with the issue of vaccination from the perspective of private life (see §§ 19–22 above; and *Acmanne and Others v. Belgium*, no. 10435/83, Commission decision of 10 December 1984). To conclude, the Government do not question that the facts of the present cases come under the scope of the right to respect for private life.

b) Whether there was an interference with the applicants' right to respect for their private/family life

29. The Court poses questions nos. 4 and 8 whether there was an interference with the applicants' right to private/family life. With regard to the application of applicant Roleček the Court asks whether there was an interference with his private life only.

a) Applicants Novotná, Hornych, Brožík and Dubský

30. It must *first* be emphasised that in none of the present cases vaccination was actually administered without the applicant's or their parents' consent (see § 74 below).

31. *Second*, the non-admission to nursery schools was the consequence of the parents' decision not to have their children vaccinated. That was the decision of the parents not the applicants themselves. On this count the law was accessible and predictable (see § 43 below). Moreover, the decisions of the parents not to have the applicants vaccinated which were not based on objective needs of the applicants (e.g. health reasons, contraindications) – and in this regard it is questionable whether they were done in the best interest of the applicants (see § 24 above) –, the parents *de facto* deprived the applicants of a possibility to be with their peers in a nursery school.

32. *Third*, in *Boffa and Others v. San Marino*, cited above, the Convention institutions admitted that a requirement to undergo vaccination, on pain of penalty, may amount to an interference with the right to respect for private life; the applicants, as the minors' parents, faced criminal penalties, including imprisonment, for not undergoing vaccination. However, the present applications of applicants Novotná, Hornych, Dubský, Brožík and also Roleček (see §§ 38–41 below) have not been filed by parents claiming that they are being forced to have their children vaccinated under the threat of financial penalty in administrative proceedings (*a contrario, Boffa and Others v. San Marino*, cited above, where the applicants were under the threat of criminal penalty). The applications were filed on behalf of the children alone, while claiming that the alleged interference consisted in their non-admission to nursery schools due to a failure to satisfy the condition of obligatory vaccination.

33. *Fourth,* according to the Court, the notion of private life does not protect every activity a person might seek to engage in with other human beings in order to establish and develop such relationships. In other words, it cannot be said that, because an activity allows an individual to establish and develop relationships, it falls within the scope of Article 8 such that any regulation of that activity will automatically amount to an interference with the individual's private life (*Friend v. the United Kingdom,* no. 16072/06, decision of 24 November 2009, § 41). That provision is not applicable to situations concerning interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between the measures the State was urged to take and the applicant's private life (*Zehnalová and Zehnal v. the Czech Republic,* no. 38621/97, decision of 14 May 2002, part A of the Law section). The Court also emphasised that there is nothing in its established case law which would suggest that the scope of private life extends to activities having essentially public nature (*Friend v. the United Kingdom,* cited above, § 42).

34. The Government believe that attendance of a nursery school, as a public institution, can be included among activities of an essentially public nature. Moreover, in the present case, none of the applicants proved that with regard to the circumstances of their cases they were significantly deprived of an opportunity of developing relationships with the outside world in consequence of non-admission to nursery school (*a contrario*, *Niemietz v. Germany,* no. 13710/88, judgment of 16 December 1992, § 29) or that their right to respect for private life was interfered with in any other specific way.

35. *Finally,* there were alternatives to nursery schools where the applicants could have developed relationships with peers (see §§ 40, 97 and 188 below).

36. Therefore, the non-admission to nursery school did not interfere with the four applicants' right to private life under Article 8 of the Convention.

b) Applicant Vavřička

37. In response to the Court's question whether the decision to fine the applicant for refusing to have his children vaccinated amounted to an interference with his right under Article 8 of the Convention, the Government believe that in respect of his private life it did.

c) Applicant Roleček

38. *Firstly* and importantly, the applicant is a minor (see § 24 above).

39. *Secondly,* according to the Court's case law, under certain conditions the impugned legislation may interfere with the right to respect for private life. In *Dudgeon v. the United Kingdom* (no. 7525/76, judgment of 22 October 1981, § 41), and later in *Norris v. Ireland* (no. 10581/83, judgment of 26 October 1988, § 38) and *Modinos v. Cyprus* (no. 15070/89, judgment of 22 April 1993, § 29) the applicants complained of laws which made certain homosexual acts between consenting adult males criminal offences. The Court held that "in the personal circumstances of the applicant, the very existence of this legislation continuously and directly affects his private life". In *Keegan v. Ireland* (no. 16969/90, judgment of 26 May

1994, § 51), the Court stated that the fact that Irish law permitted the secret placement of the child for adoption without the applicant's knowledge or consent, leading to the bonding of the child with the proposed adopters and to the subsequent making of an adoption order, amounted to an interference with his right to respect for family life. However, more often an interference will be a specific individual act of public authority.

40. On the basis of the above, the Government are of the opinion that in the case at hand the domestic legislation itself does not amount to an interference with Article 8 of the Convention as the condition anchored in the Court's case law that the respective legislation constantly and directly affects the applicant's life (*a contrario, Norris and Keegan v. Ireland*, cited above) is not fulfilled. The personal circumstances of applicant Roleček are quite different from those of the applicants in the above-mentioned cases. To begin with, there are exceptions to applicable rules (see §§ 43, 66 and 138–142 below). Moreover, the applicant's parents would only run the risk of being fined, not that of being prosecuted and possibly convicted and punished (*a contrario, Bowman v. the United Kingdom*, no. 24839/94, judgment of 28 February 2007, § 29). In addition, the respective period of non-admission to a nursery school was limited for approximately three years only as the vaccination is not required for a school education. Non-admission to a nursery school is a transitional measure pursuing a legitimate aim of protection health and rights and freedoms of others. *Finally,* the applicant was not limited in terms of attending another group of peers (see §§ 97 and 188 below) and there was no legal entitlement to admission to a nursery school (see § 155 below).

41. Subsidiarily, the Government would note that impacts of the vaccination obligation under domestic law did not differentiate applicant Roleček from applicants Novotná, Hornych, Brožík and Dubský; similarly, applicant Roleček was not admitted to a nursery school because he had not undergone obligatory vaccination. Indeed, applicant Roleček does not claim any other consequences of the vaccination obligation for his private life.

c) Whether the interference was in accordance with the law

42. The Court poses questions nos. 5, 6 and 9 whether the decision to fine applicant Vavřička and the decision not to admit other applicants to the nursery school was in accordance with the "law" within the meaning of Article 8 § 2 of the Convention.

43. The Government have no doubts that in case of all applicants the claimed interference was "in accordance with the law" within the meaning of Article 8 § 2. Both the extent of obligatory vaccination of children and the administrative delict liability, relevant in the case of applicant Vavřička, and the impossibility to admit to a nursery school a child who has not undergone the required vaccinations, nor has submitted a confirmation stating that he/she is immune to infection or cannot undergo vaccination due to contraindication (relevant in the case of all other applicants), were in the material period (and still are) explicitly provided for in the relevant domestic law (see Enclosure 6, §§ 3, 8 and 20). This law can be viewed as adequately accessible and foreseeable, that is, formulated with sufficient precision

so as to enable the individual to regulate his conduct (*Sanoma Uitgevers B.V. v. the Netherlands,* no. 38224/03, judgment [GC] of 14 September 2010, § 81).

44. As regards the applicants' complaint that the specific extent and method of administration of obligatory vaccination in the Czech Republic is set out in a decree only rather than in a piece of legislation emanating from the Parliament, the Government would recall that the Court understands the term "law" contained in Article 8 § 2 in its "substantive" sense, not in its "formal" one; it includes both "written law", encompassing enactments of lower ranking statutes and regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament, and unwritten law and judge-made "law" (*Sanoma Uitgevers B.V. v. the Netherlands,* cited above, § 83; similarly *Leyla Sahin v. Turkey,* no. 44774/98, judgment [GC] of 10 November 2005, § 88.

45. Some applicants claim that the statutory power conferred on the executive to set out, in implementing secondary legislation, the specific extent and method of performing obligatory vaccination, i.e. in particular the specification of diseases against which the vaccination is to be performed and deadlines for vaccinations (see Enclosure 6, § 2), means that the executive has "unfettered power" and that it can therefore arbitrarily interfere with the rights of individuals.

46. In the present case, the law has empowered the executive to adopt a generally binding piece of legislation to set out detailed rules for obligatory vaccination: these rules are accessible to the general public and they apply in the same way and to the same extent to the groups of such persons that are further specified in the law; they are therefore sufficiently foreseeable and the executive cannot act arbitrarily or discriminate in individual cases.

47. Moreover, the Public Health Protection Act imposes general limits on the executive power in respect of adopting implementing legislation: under Article 108 § 4 of this Act, the Ministry of Health is obliged to set the hygienic limits and requirements on the basis of evaluation of health risks resulting from natural, living and working conditions and lifestyle, contemporary scientific knowledge, international obligations of the Czech Republic in this area and recommendations of the World Health Organization (see Enclosure 6, § 10).

48. *Finally,* the solution chosen in this area by the executive, i.e. the specific wording of the Ministry of Health Decree on vaccination against infectious diseases, can be subject to review by domestic courts (and it has actually been repeatedly reviewed by them as also shown by the proceedings initiated by the applicants themselves), which is, according to the Court's case law, also an important aspect when assessing the existence of "unfettered power" of the executive (*Milojević and Others v. Serbia,* cited above, § 64).

49. The Government would recall that in examining the lawfulness of the claimed interference within the meaning of the Convention, the Court has said that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law and to decide on issues of constitutionality (*R & L, s.r.o. and Others,* cited above, § 115). If a State's constitutional court finds a particular piece of legislation unconstitutional, this will also affect the lawfulness of the interference under the Convention. Likewise, one cannot ignore the fact that the highest domestic

courts, i.e. the Constitutional Court and the Supreme Administrative Court, have repeatedly reviewed in detail the relevant legislation and explicitly concluded that it was in compliance with the Constitution and the Court's case law (see, in particular, Enclosure 6, §§ 31, 32 and 50).

50. The Government would add that in this connection, the highest domestic courts also noted that the existing legislative solution makes it possible to react, with sufficient promptness, to developments in the incidence of various infectious diseases in the State's territory and to the latest scientific knowledge in medicine and pharmacology; this is also reflected in the amendments of the vaccination decrees adopted up to now. If all these details were provided for in law it would be considerably more difficult and time consuming to achieve their amendment; in certain urgent cases this could jeopardise the very purpose of the legislation concerned, i.e. to prevent the occurrence and spread of infectious diseases as part of public health protection (cf. the arguments of the Constitutional Court and the Supreme Administrative Court on this issue, see Enclosure 6, §§ 431, 32 and 50). Constitutional courts in other European countries have used similar arguments as regards regulation of vaccination (see Enclosure 8, §§ 11–19). The Court accordingly ruled that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see *Kokkinakis v. Greece*, no. 14307/88, judgment of 25 May 1993, § 40; and *Cantoni v. France*, no. 17862/91, judgment of 11 November 1996, § 31). However clearly drafted a legal provision may be, in any system of law, including criminal law, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances (see *Kafkaris v. Cyprus*, no. 21906/04, judgment [GC] of 12 February 2008, § 141).

51. In the light of the above the Government conclude that the interference with the applicants' private life satisfied the requirement of lawfulness provided for in Article 8 § 2 of the Convention.

d) Whether the interference pursued a legitimate aim

52. The Court does not explicitly ask about the existence of a legitimate aim of the alleged interference in any of the applicants' cases. It is evident from the wording of question no. 12 that the Court is aware of the general preventive public-health purposes and the general interest of the society in the protection of public health. Indeed, the Government note that the aims sought by the system of obligatory vaccination are the protection of health as well as the protection of rights and freedoms of others. The issue here is specifically the protection of public health and health of the minor applicants (cf. *Acmanne and Others v. Belgium*, cited above; similarly *Boffa and Others v. San Marino*, cited above, part 4 of the Law section), in particular from uncontrolled spreading of infectious diseases in the State territory (*Solomakhin v. Ukraine*, cited above, §§ 35–36). To add, the minors are especially vulnerable and exposed to the risk of infection, and they can face especially serious consequences (see § 173 below).

e) Whether the interference was necessary in a democratic society

53. The Court with reference to *Solomakhin v. Ukraine*, cited above, poses questions nos. 7 and 9 whether the decisions concerning the applicants were necessary in a democratic society within the meaning of Article 8 § 2 of the Convention.

a) On the necessity of the interference *in abstracto*

54. The Government shall first deal with the issue of whether the domestic legislation on obligatory children vaccination in general satisfies the requirements specified in this area by the Court's case law. In the Government's opinion, primarily the following factors should be taken into account.

55. *First*, according to the Court's case law in the public-health sphere the States are required to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives (*Calvelli and Ciglio v. Italy*, no. 32967/96, judgment [GC] of 17 January 2002, §§ 48–49). The State's positive obligation to contribute to the protection of health and lives of individuals also arises for the Czech Republic from its other international commitments, including in relation to the vaccination of the population in general and vaccination of children in particular; in this respect the Government would refer primarily to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the European Social Charter and the World Health Organization's documents (see Enclosure 7, §§ 2–5 and 12–16).

56. *Second*, as follows from the summary of domestic law (see Enclosure 6), vaccination in the Czech Republic is obligatory not in the sense of direct enforceability (i.e. none of the types of obligatory children vaccination can be physically enforced against the parents' will, as shown by the examples of all six applicants in the present case), but only in the sense of a possibility to impose a sanction. Penalties for failure to undergo obligatory vaccination (in the case of minors under 15 years, this penalisation is directed at their legal representatives) are not criminal, but only administrative in nature; it is specifically an administrative delict in the domain of healthcare and an administrative authority can levy a fine (see Enclosure 6, § 20), while:

- the fine can only be levied in relation to the vaccinations for which legislation provides deadlines by which the child must undergo each type of vaccination (see Enclosure 6, §§ 2, 25–26 and 41);
- the fine can only be levied after the respective deadlines lapsed, i.e. only once (see *ibid*);
- and finally, the maximum amount of the fine is CZK 10,000, i.e. approximately EUR 370, which in the Government's view cannot be regarded as a considerably high amount (as also shown by the case of applicant Vavřička, see §§ 11–17 above); in this respect the Government would note that this sum is much lower than e.g. in Germany (see Enclosure 8, § 5).

57. In cases specified by law, a legal consequence of a failure to undergo obligatory vaccination is also non-admission of the child to a nursery school; the

Government have already expressed their opinion on this issue in the field of Article 8 (see §§ 28–41 above) and they shall also address it in the domain of Article 2 of Protocol No. 1 to the Convention (see §§ 148–189 below).

58. *Third,* regulations governing vaccination in the Czech Republic are subject to an ongoing review by competent public authorities in cooperation with relevant experts (see Enclosure 5, § 1) where these authorities assess the necessity of various types of vaccination in the light of current scientific and epidemiological developments; in connection with that, they may revise the current regulations. The changes are also based on World Health Organisation and European Centre for Disease Control recommendations (see § Enclosure 6, § 10). In other words, the immunisation scheme in the Czech Republic dynamically evolves, as can be seen from the successive amendments to the relevant regulations. For example, in 2009, the global revaccination against tuberculosis was abolished in the case of children between 11 and 12 and one year later global primary vaccination against tuberculosis was abolished in the case of newborns (see Enclosure 6, §§ 27–28). In this place, the Government would emphasise that the content of the immunisation schedule in the Czech Republic at the material period, in relation to both the group of the diseases included in the obligatory vaccination of children and the vaccination deadlines, fully corresponded to the recommendations of the World Health Organization (see Enclosure 6, §§ 2 and 10).

59. *Fourth,* under the relevant legislation a medical examination is performed before every obligatory vaccination, and vaccination is not carried out when the person is found immune to infection or contraindication is found (see Enclosure 6, § 3); contraindication covers all situations when the child's state of health is found to be such as to prevent the administration of the vaccine (see Enclosure 6, § 32). These conditions can be viewed as adequate and sufficient preventive measures whose aim is to take precautions to avoid complications in relation to vaccination (cf. *Solomakhin v. Ukraine,* cited above, § 36; *Baytüre and Others v. Georgia*, cited above, § 29). It is precisely the admission of exceptions that the law is designed in such a way that in individual cases a fair balance is sought between the interest of society in a high degree of vaccination and the protection of the rights of the individual.

60. *Fifth,* within the meaning of the Constitutional Court's established case law, it is possible to seek exemption from obligatory vaccination on the basis of freedom of religion and conscience (see Enclosure 6, §§ 30 and 33–34); the Government shall address this option in detail under Article 9 of the Convention (see § 139 below).

61. *Sixth,* within the limits set out in Decree no. 537/2006, parents have a choice of vaccines to be used and dates for vaccinating their child. Thus, the child must be vaccinated against all diseases and within the time limits set out in the above Decree, but it is up to the parents to select the vaccines and days within the required period of time for vaccination. The applicants therefore had (and still have) at their disposal a range of alternatives in the obligatory vaccination system, which under the Court's case law plays an important role when assessing the question of proportionality (see, *mutatis mutandis, Chapman v. the United Kingdom*, no. 27238/95, judgment [GC] of 18 January 2001, § 113).

62. The above alternatives are explicitly envisaged in the national legal system. They can be classified into two categories: alternatives fully covered by public health insurance and those covered by parents themselves.

As for the first category, the Ministry of Health annually specifies particular vaccine variants that can be chosen by parents for regular immunisation under Article 80 § 1 (e) of Act on Public Health Protection, in the form of a notification published in the Official Gazette (see § 25 above; see also notification no. 261/2015 of the Ministry of Health on the antigenic formula of vaccines used for regular, special and emergency vaccinations in 2016 in Enclosure 11).

Parents can choose one of two optional vaccine formulas of hexavalent vaccines [point 1.1a) or 1.1aa) of notification no. 261/2015], one of three optional vaccine formulas of trivalent vaccines [point 1.1b) or 1.1ba) or 1.1bb) of notification no. 261/2015], and one of three optional vaccine formulas of tetravalent vaccines [point 1.1c) or 1.1j), or point 1.1ja) of notification no. 261/2015], and choose between several vaccine formulas of monovalent vaccines.[1] If parents do not wish, for example, their child to be vaccinated by a hexavalent vaccine, a trivalent diphtheria, tetanus toxoids and acellular pertussis vaccine can be used [vaccine of antigenic formula mentioned in point 1.1b) or 1.1ba), or 1.1bb) of notification no. 261/2015], followed by vaccination with monovalent vaccines against poliomyelitis, Haemophilus influenzae type b, and hepatitis B infections. The notification of the Ministry of Health also allows other similar alternatives, e.g., different combinations of a tetravalent vaccine and monovalent vaccines. The notification in Enclosure 5 proves the existence of these alternatives that can be used as variants of obligatory vaccination.

As for the other category of alternatives, under Article 47 § 1 of Act on Public Health Protection (this category of alternatives was introduced into the law as early as 2002) an individual can also ask for vaccination with other vaccines than those of the antigenic formulae laid down in the notification of the Ministry of Health (see § 23 above). Such vaccines must be registered in the Czech Republic and they are covered by the parents themselves. A list of these vaccines, including detailed information about them, can be found in the public drug database managed by the State Institute for Drug Control.[2]

63. Thus, if the parents are convinced that, e.g., a hexavalent vaccine constitutes an undue one-time interference with the child's physical integrity, they can, following consultation with the child's paediatrician, use alternative vaccines of their choice, which are used against a limited spectrum of diseases and which can be combined and distributed within a schedule for the recommended age limits approved by the Ministry of Health Decree No. 537/2006.

64. *Seventh*, the regulation of obligatory children vaccination in the Czech Republic clearly achieves the aim pursued, i.e. the protection of health, which is confirmed, *inter alia*, by the overview of trends of individual diseases before and after the introduction of obligatory vaccination (see Enclosure 1). Moreover, there

[1] The above vaccine formulae reflect supply on the market, and several different private suppliers can meet the particular antigenic formula of the vaccine.
[2] See http://www.sukl.cz/modules/medication/search.php

are reasons to believe that the given aim cannot be achieved in the Czech Republic at this moment using other, less severe measures, i.e. for example by introducing completely voluntary vaccination. Past experience indeed shows that voluntary vaccinations in the Czech Republic do not lead to a necessary level of vaccination coverage of the population (see Enclosure 1). Experience from other European countries with systems of obligatory vaccination indicates that if vaccination in those countries was voluntary, vaccination coverage would decline below a level that the World Health Organization considers to be a level below which the risk of epidemics of health and life threatening infections emerges (see Enclosure 8, §§ 5, 6 and 8). In any case, this issue must fall within the margin of discretion of individual States (see § 69 below).

65. *Eight,* the State has introduced a comprehensive mechanism for monitoring the adverse effects of pharmaceuticals, including vaccines (see Enclosure 6, §§ 11–19). Each healthcare professional is obliged under the law to report suspected serious or unexpected adverse effects or other facts related to the use of a medicinal product, which are serious for the patients' health, to the competent authority immediately. If the healthcare professional does not comply with this reporting obligation a fine of up to CZK 300,000 can be imposed upon him (see Enclosure 6, § 19). For example, even parents of vaccinated children can notify the competent authority of failure to comply with the reporting obligation, thereby providing the basis for instituting administrative proceedings on the imposition of a fine. The patients themselves can also report adverse effects of pharmaceuticals (see Enclosure 5, § 2). In connection with this monitoring the competent authority is entitled to prohibit the use of certain vaccines or to recall them from the market (see Enclosure 6, §§ 14 and 16).

66. *Ninth,* against an administrative authority's decision on imposition of a fine for failure to undergo obligatory vaccination or on non-admission to a nursery school for failure to satisfy the obligation of obligatory vaccination, an appeal can be lodged with a superior administrative authority and subsequently an administrative action, a cassation appeal, and a constitutional appeal can be brought (as shown by the applicants' cases). Administrative authorities' decisions related to vaccination can therefore be reviewed not only in the administrative proceedings themselves but also at several levels of the judiciary, where the persons concerned can claim, in particular, that in their specific case the statutory conditions for not performing the vaccination are satisfied or that it is necessary to grant an exemption from obligatory vaccination on the grounds of freedom of religion or conscience (see §§ 59–60 above).

67. The case law of domestic courts clearly shows that the above judicial review can be considered as effective for the purposes of protecting the rights of the affected persons (see Enclosure 6, §§ 30, 33–34; and §§ 77 and 143 below). In the light of the Court's case law outlined above, this option is also relevant for assessing whether Article 8 of the Convention was violated (in relation to vaccination see, in particular, *Solomakhin v. Ukraine,* cited above, § 38). In order for the right to respect for private life to be properly secured at domestic level, individuals must be able to seek to rely on arguments derived from Article 8 in domestic proceedings and to have those arguments considered and, where appropriate, taken into account

in the rulings of domestic courts, which is the so-called procedural aspect of Article 8 itself (*Nicklinson and Lamb v. the United Kingdom*, nos. 2478/15 and 1787/15, decision of 23 June 2015, § 81).

68. *Tenth*, the State does not prevent public discussion on vaccination, including discussion on its potential negative side effects (*a contrario*, *Mor v. France*, no. 28198/09, judgment of 15 December 2011, § 53) that can lead to revision of existing legislation in accordance with the rules of democracy (see Enclosure 5, § 4). On the contrary, public discussion is directly encouraged. In this connection it can be noted, for example, that within the Ministry of Health a Working Commission for Vaccination was set up in 2015, which should serve as one of the platforms for discussions of experts and the public on the vaccination strategy in the Czech Republic and which includes representatives of patients and parents and even some of the applicants' counsels (see Enclosure 5, § 3).

69. *Finally*, the Government would highlight that in respect of vaccination policy, there is clearly no agreement at the European level at present and that the Czech Republic's position on this issue is far from unique within the Council of Europe (see Enclosure 8); there is therefore no doubt that the State enjoys a wide margin of appreciation in this area (cf. *Parrillo v. Italy*, no. 46470/11, judgment [GC] of 27 August 2015, §§ 176–182). The Court has explicitly held that "matters of health care policy, in particular as regards general preventive measures, are in principle within the margin of appreciation of the domestic authorities who are best placed to assess priorities, use of resources and social needs" (*Shelley v. the United Kingdom*, no. 23800/06, decision of 4 January 2008). Moreover, where the case raises sensitive moral or ethical issues, the margin will be wider (*Parrillo v. Italy*, cited above, § 169). In all of their existing case law, the Convention institutions have not found a single violation of any provision of the Convention in connection with vaccination (see, in particular, §§ 19–22 above).

70. The fact that some other European countries may not consider the specific vaccination scheme currently in place in the Czech Republic to be necessary in their own conditions does not mean that the Czech Republic is not entitled to choose this option (cf. *Acmanne and Others v. Belgium*, cited above). Factors influencing the vaccination policy are diverse in different countries and in different periods; furthermore, the situation in this area in Europe is being complicated by new epidemics and the growing refugee crisis (see Enclosure 8).

71. The present case is a typical example of the fact that the national authorities, by reason of their direct and continuous contact with the vital forces of their countries, are in principle better placed than an international court to evaluate local needs and conditions (cf. *Chapman v. the United Kingdom*, cited above, § 91). In this connection the Government would recall that all relevant Czech expert societies are clearly in favour of keeping the existing system of vaccination (see § 5 above). The Court has also stated that with the exception of arbitrary interferences or manifest errors, it is not its task to dispute expert conclusions of domestic authorities, in particular as regards scientific assessment requiring special and deep expert knowledge, which also includes medical issues (*Lopes de Sousa Fernandes v. Portugal*, cited above, § 109). If the case requires an assessment by the national authorities of expert and scientific data, the margin of appreciation is broader (*Dubská and Krejzová v. the*

Czech Republic, no. 28859/11, judgment [GC] of 15 November 2016, § 182). The vaccination policy is not a legal issue but expert and scientific issue.

72. The Government would sum up that the system of children's obligatory vaccination in the Czech Republic as such is accompanied by due safeguards within the meaning of the Court's case law (see, in particular, *Association X. v. the United Kingdom,* cited above). The salient question in terms of Article 8 is not whether a different solution might have struck a fairer balance, but whether, in striking the balance at the point at which they did, the national authorities exceeded the wide margin of appreciation afforded to them (cf. *Hristozov and Others v. Bulgaria,* nos. 47039/11 and 358/12, judgment of 13 November 2012, § 125). In the light of the above, the Government believe that the existing regulations governing children's obligatory vaccination in the Czech Republic cannot be found to exceed that margin.

b) On the necessity of the interference *in concreto*

73. The Government are also convinced that even in relation to the individual applicants, a fair balance under Article 8 of the Convention was not disrupted. The Court poses several specific questions [see in particular questions nos. 7 (i) to (vii)] concerning applicants Brožík, Dubský, Novotná, Vavřička and Hornych and general question no. 9 concerning applicant Roleček. The Government will however not differentiate between applicant Roleček and other applicants (see § 29 above) as the findings below apply to all.

• *Seriousness and impact of the failure to have the children vaccinated*

74. As to the seriousness and the impact of the failure to have the children vaccinated according to the prescribed plan [question no. 7 (i)], it must *first* be emphasised that in none of the present cases vaccination was actually administered without the applicant's or his/her parents' consent. In other words, a medical intervention concerning a child unwanted by their parents was not carried out in any of the cases and therefore there was no interference with the applicants' physical integrity in the form of vaccination (*a contrario* in the context of a different medical intervention performed on a child against his parent's will, see *Glass v. the United Kingdom,* no. 61827/00, judgment of 9 March 2004, § 70).

75. *Second,* as already mentioned, vaccination in the Czech Republic is obligatory not in the sense of direct enforceability, but only in the sense of a possibility to impose a sanction. In cases specified by law, a legal consequence of failure to undergo obligatory vaccination is also non-admission to a nursery school (see §§ 56–57 above). The respective law can be viewed as adequately accessible and foreseeable (see §§ 42–51 above).

76. *Finally,* there are statutory exceptions and exceptions laid down by domestic courts' case law to the duty to have the children vaccinated (in details see §§ 59–60 above and 139 below).

• *Scope of the exceptions to the duty to have children vaccinated*

77. In so far as relevant in the given case [question no. 7 (ii)], it must be emphasised that none of the applicants has sufficiently proved in the domestic proceedings that in his/her case, or in the case of applicant Vavřička's children, the

statutory conditions for not performing the vaccination were satisfied or that in his/her individual case an exemption from obligatory vaccination should be granted on the basis of freedom of religion or conscience. Competent domestic courts duly considered this issue – to the extent of the applicants' claims – and they did not find the existence of such reasons and concluded that the applicants only used their generally dismissive attitude to vaccination as arguments.

78. In the case of applicant Novotná the Supreme Administrative Court noted in its judgment no. 8 As 6/2011 of 29 August 2012 (see Annex 13 to her application filed with the Court), *inter alia:*

> "33. According to the Constitutional Court, it is possible to ensure effective protection of fundamental rights that are in conflict with the public interest in the protection of health in a significantly more considerate way in the case of vaccination – namely by a careful consideration of the circumstances of the individual case rather than by disputing the constitutionality of a specific type of vaccination as such. Even the appellant did not claim that the protection of public health was not a legitimate aim. She only challenged whether the vaccination in question was necessary to achieve that aim. Her claim was therefore directed at the third point of the proportionality test – assessment of reasonableness / necessity of those measures.
>
> 34. For assessing the third point of the proportionality test, the individual must claim exceptional circumstances that should outweigh the protection of public health (*cf.* the Constitutional Court's judgment no. III. ÚS 449/06, according to which there must be '*such circumstances that call, in a fundamental manner, for respecting that person's autonomy*'). However, in her cassation appeal the appellant did not mention any circumstance of that type. She even did not claim that obligatory vaccination interfered with any of her fundamental rights. She herself thus made it impossible to '*carefully consider the circumstances of the individual case*' as required by the Constitutional Court. (…)
>
> 35. The Supreme Administrative Court concluded that the appellant failed to prove that in her case the obligation to undergo obligatory vaccination against measles, rubella and mumps amounted to a disproportionate interference with her fundamental rights (…). Therefore the defendant did not commit an error when it did not admit the appellant to a nursery school on the grounds of missing obligatory vaccination." *(Italics added by the Government.)*

79. Similarly in the case of applicant Hornych, the Supreme Administrative Court noted in its judgment no. 3 As 68/2013 of 10 September 2013 (see Annex 14 to his application filed with the Court), *inter alia:*

> "For assessing the third point of the proportionality test the individual must claim exceptional circumstances that should outweigh the protection of public health (*cf.* the Constitutional Court's judgment no. III. ÚS 449/06, according to which there must be '*such circumstances that call, in a fundamental manner, for respecting that person's autonomy*'). However, in his cassation appeal the appellant did not mention any circumstance of that type. He even did not claim that obligatory vaccination interfered with any of his fundamental rights. He only claimed that the majority of physicians do not undergo booster

> vaccination during their lives, and they do not consider it to be necessary for many infections, for example because the diseases do not occur any longer at all or occur only rarely. The Supreme Administrative Court concluded that the appellant failed to prove that in his case the obligation to undergo obligatory vaccination disproportionately interfered with his fundamental rights. Therefore the administrative authority did not commit an error when it did not admit the appellant to a nursery school on the grounds of missing obligatory vaccination." *(Italics added by the Government.)*

80. Also in the case of applicant Roleček the Supreme Administrative Court noted in its judgment no. 8 As 20/2012 of 29 March 2013 (see Annex 12 to his application filed with the Court), *inter alia:*

> "The appellant did not claim any exceptional reasons relating to his person and his situation. He only noted that '*faith and the world view are very general concepts and it is evident that the attitude of different parents* […] *can be diverse*' and that the appellant's parents expressed this attitude '*by refusing to follow the recommended vaccination schedule for reasons of interest in the minor's health*'. Therefore he did not claim, for example, that the vaccination would jeopardise the appellant's or his parents' membership of a specific religious society or otherwise prevent them from manifesting their faith. In this case, only a different opinion of the appellant's parents does not suffice. (…)
>
> The appellant therefore failed to prove that obligatory vaccination against diseases for which he did not undergo vaccination caused a disproportionate interference with his rights (…)." *(Italics added by the Government.)*

81. The Supreme Administrative Court made similar conclusions in the case of applicant Vavřička (see § 109 below).

82. In the cases of applicants Brožík and Dubský the merits of this issue have not been addressed by the domestic courts, which warrants the objection of non-exhaustion of domestic remedies (see §§ 9–10 above). The Hradec Králové Regional Court in its judgment no. 30 A 61/2014 of 10 May 2016 (see Enclosure 10) noted that the objection of conscience was not raised in time and that this objection was rather marginal in the context of the cases.

• *Definition of the scope of the compulsory vaccination*

83. As to the way in which the scope of the compulsory vaccination as applicable at the relevant time had been defined [question no. 7 (iii)], the Government state that, as already mentioned, vaccination in the Czech Republic is obligatory not in the sense of direct enforceability, but only in the sense of a possibility to impose a sanction (see §§ 56–57 and 75 above). The Government refer to Enclosure 1 for details.

• *The duty for the nursery schools' personnel to be vaccinated*

84. As to the duty for the nursery schools' personnel to be vaccinated [question no. 7 (iv)], the Government state that under Article 46 § 1 of the Act on Public Health Protection there is a general obligation of natural persons in the Czech Republic to undergo a set type of routine vaccination in cases and deadlines provided

for in secondary legislation (see Enclosure 6, § 2). In case of nursery schools' personnel the compulsory vaccination is not required beyond the obligation imposed on a natural person. Furthermore, the Government note that in the proceedings before the Constitutional Court concerning case no. Pl. ÚS 16/14 on mandatory child vaccination (see Enclosure 6, § 32), the chairman of the immunization section of the Czech Paediatric Society stated, *inter alia,* that "adult employees of a nursery school may theoretically endanger children [by infectious diseases], but in fact it is highly unlikely; the vast majority of this personnel were primo-vaccinated and booster-vaccinated in the childhood, and thus the risk is minimal" (see § 46 of the judgment of the Constitutional Court mentioned above).

• *Legislation governing compensation for damage to health*

85. As to the fact that the Czech Republic does not have any legislation governing compensation for damage to health caused by obligatory vaccination, i.e. compensation for side effects of vaccination performed *lege artis* [question no. 7 (v)], the Government would recall that in its existing case law the Court has not yet explicitly confirmed whether or not the opportunity to claim compensation in such situations constitutes a part of assessing whether the interference was necessary under Article 8 of the Convention. Nevertheless, the Government consider it appropriate to highlight the following aspects in this respect.

86. *First*, the Government observe that this complaint addressing the legal framework for compensation should be principally dismissed as an *actio popularis* since none of the applicants have suffered any damage to health in consequence of obligatory vaccination (cf. *Courty and Others v. France*, no. 15114/02, decision of 25 August 2005, part 3 of the Law section; similarly *Solomakhin v. Ukraine*, cited above, § 37). Nor have any of the applicants demonstrated a probability that in their particular case, or in the case of applicant Vavřička's children the relevant vaccine would cause serious problems (cf. *Boffa and Others v. San Marino*, cited above, part 4 of the Law section).

87. *Second*, even if such damage to health had been caused in the case of the applicants, or in the case of applicant Vavřička's children, it was possible to claim damages from the medical facility concerned in relation to damage incurred before 31 December 2013 under Article 421a of the Old Civil Code (see Enclosure 6, § 22).

88. *Third*, according to the data published recently by the State Institute for Drug Control, the occurrence of adverse effects of vaccination is very low (see Enclosure 5, § 2). In this place the Government would recall the Court's conclusion according to which "si, dans le cadre d'une campagne de vaccination dont l'unique objectif est de protéger la santé de la communauté par l'éradication de maladies infectieuses, il se produit un faible nombre d'accidents graves, on ne peut reprocher à l'Etat d'avoir omis de prendre les mesures voulues pour protéger l'intégrité physique des individus" (*Baytüre and Others v. Georgia,* cited above, § 28).

89. *Fourth*, as in respect of vaccination policy (see § 69 above), in relation to regulation on compensation for side effects of vaccination it is also not possible to note the existence of agreement at the European level and therefore the State enjoys a wide margin of appreciation in this area (see §§ 64, 69 and 72 above).

90. *Finally*, it must be noted that the current temporary absence of legislation on compensation is due to the fact that in 2014, the New Civil Code came into effect and a legislative lacuna therefore emerged in this respect for a period of time (see Enclosure 6, §§ 23–24). However, a bill on compensation for damage to health caused by compulsory vaccination is currently being discussed by Parliament (see Enclosure 5, § 6). In any event, this is a complex issue that deserves well-thought-out solutions (cf. *Andrle v. Czech Republic*, no. 6268/08, judgment of 17 February, § 58).

• *Exceptions to the applicable rules provided for by domestic courts*

91. As to the allegation of applicant Vavřička that the exceptions to the applicable rules have only been provided for retrospectively by the domestic courts [question no. 7 (vi)], the Government *firstly* point out that the applicant's allegation in this respect is purpose-built as he failed to establish the involvement of any of his philosophical or religious views in his decision not to have his children vaccinated (see §§ 108–112 below).

92. *Secondly*, in case of the applicant, the Constitutional Court in its judgment no. III. ÚS 449/06 for the first time examined the relationship between obligatory vaccination of children and the right to freedom of religion or belief and established that, in exceptional cases, there may be urgent reasons where priority must be given to respecting that person's autonomy. In that light, it is necessary to consider all the relevant circumstances of a case, especially the reasons a person claims for refusing the obligatory vaccination. As such reasons were not sufficiently taken into account in the applicant's case, it found a violation of Article 16 of the Charter that corresponds to Article 9 of the Convention and returned the case to the administrative court for further consideration. The Constitutional Court, *inter alia*, stated that it appears the applicant did not communicate with the competent public authority from the beginning and only claimed constitutionally relevant reasons for refusing vaccination at later stages of the proceedings, which plays a role in assessing the consistency of the person's claims. It was, however, up to the Supreme Administrative Court to consider the case according to the criteria set out in the judgment no. III. ÚS 449/06. Subsequently, the Supreme Administrative Court rejected the applicant's claim as he, in the light of the established criteria, failed to establish urgent reasons that could justify exemption from obligatory vaccination in his case. That was later also confirmed by the Constitutional Court. The conditions are quite strict; however, a waiver system must be capable of limiting the number of exemptions to such an extent that collective immunity is not jeopardized. The more categories of exemption-claimers are acknowledged, the larger the number of potential claimants is. The fact that the applicant's case was the first of its kind under the applicable legislation does not render the domestic courts' interpretation and application of the legislation arbitrary.

• *The attendance of applicant Novotná to the nursery school*

93. As to the fact that at the time of the decision not to admit applicant Novotná to the nursery school she had already been in fact attending it [question no. 7 (vii)], the Government *firstly* point out that specifically in the case of applicant Novotná the Constitutional Court noted in its decision no. IV. ÚS 4212/12 (see Annex 15 to her application filed with the Court) that the initial confirmation by the paediatrician that

the applicant had completed compulsory vaccination proved to be false. The Constitutional Court further doubted that the applicant was in good faith at the time of her admission to the nursery school that she had fulfilled the conditions for her admission as her admission was supported by a medical report that did not correspond to the reality. The Government consider the above-mentioned findings very serious and in fact decisive for the assessment of the merits of the case. The applicant could assume that her admission to the nursery school would be cancelled as she had not been vaccinated. In this respect, she could not have a legitimate expectation that she would be able to continue to attend the nursery school and had taken a significant risk. The latter decision of the director of the nursery school was predictable.

94. *Secondly,* the Constitutional Court convincingly justified that in a situation where the exercise of the right to continue attending a nursery school subject to compulsory vaccination threatens the health of others, the applicant's right to education that conflicts with others' right to health protection cannot be given priority.

95. *Thirdly,* interruptions in education caused by lawful detention (*Slivenko v. Latvia,* no. 48321/99, decision of 23 January 2002) or restrictions incidental to immigration measures (e.g. *X v the United Kingdom,* no. 9492/81, decision of 14 July 1982; *Jaramillo v. the United Kingdom,* no. 24865/94, decision of 23 October 1995) were found compatible with Article 8 of the Convention. The Government are convinced that the decision not to admit the applicant to nursery school was justified by public interest in health protection.

96. *Fourthly,* the applicant alleges that she attended a special type of pre-school, a Montessori nursery school, and after not being allowed to continue in that type of pre-school education she could not have been admitted to a Montessori school. The Government state that restriction on access to one particular curriculum has also not been found to constitute a denial of education (*Molly McIntyre v. the United Kingdom,* no. 29046/95, decision of 21 October 1998). The Government point out that there was no legal entitlement to admission to a nursery school (see § 157 below). Moreover, the Government note that according to information published on the internet sites of various Montessori primary schools in Prague (where the applicant lived), the attendance of a Montessori nursery school was not a necessary precondition for enrolment in a Montessori primary school: this criterion is either not mentioned at all among the conditions for enrolment,[3] or is included among those factors that might be considered in the admission process but do not represent an indispensable condition for enrolment.[4]

97. *Finally,* the applicant alleges that she was expelled from a group of peers and could not meet her friends at the time they were attending the Montessori nursery school. The Government note that these allegations do not match the reality. In fact, the applicant could freely meet her peers outside the premises of the nursery school/s. The legal ban on admission of non-vaccinated children to nursery schools

[3] See e.g. http://www.zsmeteo.cz/cz/zapis-do-1-tridy-1404041635.html or http://www.marche-montessori.cz/montessori-skola/prijimani-deti-cz/

[4] See e.g. https://www.duhovkaskola.cz/prijimani-deti/

in no way apply to development of social relations away from nursery schools, e.g. in peers homes, parks, playgrounds, etc. (see § 34 above and § 188 below).

d) Conclusion

98. The Government conclude that the claim of a violation of the right to respect for family life in the case of all applicants is incompatible *rationae materiae* with Article 8 of the Convention within the meaning of Article 35 § 3(a) of the Convention. Moreover, with the exception of applicant Vavřička there was no interference with the rights protected by Article 8 of the Convention. Subsidiarily, the Government are of the opinion that the alleged interferences were in accordance with the law, pursued legitimate aims and were necessary within the meaning of Article 8 § 2 of the Convention. Therefore, there was no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

99. Only with respect to applicants Vavřička, Novotná and Hornych the Court furthermore poses a question whether the facts of the present cases fall within the scope of Article 9 of the Convention (question no. 10). If so, the Court then asks whether there was an interference and if so whether it was prescribed by law and was necessary within the meaning of Article 9 § 2 of the Convention (questions nos. 11 and 12).

100. Before the Government formulate their observations on the merits of these complaints, under Article 9 of the Convention, they wish to express their opinion on their admissibility.

A) ADMISSIBILITY

101. In the Government's opinion the claim of a violation of Article 9 of the Convention in the case of all three applicants is incompatible *rationae materiae* and/or manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention as the facts of the present cases do not fall within the scope of Article 9 of the Convention or there was no interference with their respective rights. Additionally, with regard to applicants Novotná and Hornych, their applications should be deemed incompatible *ratione personae* with the Convention or inadmissible for non-exhaustion of domestic remedies respectively.

(i) Whether the facts of the present cases fall within the scope of Article 9 of the Convention

102. At the outset, the Government are of the opinion that the complaints raised under Article 9 are in fact of a similar nature as those claimed under Article 8 and propose examining them solely from the perspective of the latter (see § 28 above).

103. To this end, the Government argue that personal views towards compulsory vaccination based on wholly subjective assumptions about the necessity and suitability of undergoing such preventive health measures do not reflect a "belief"

within the meaning of Article 9 § 2 of the Convention. That provision essentially aims to protect religions, or theories on philosophical or ideological universal values (*F.P. v. Germany*, no. 19459/92, decision of 29 March 1993). However, without their sufficient specification and substantiation such views cannot constitute a coherent view on a fundamental problem and shall not therefore be regarded as a manifestation of personal beliefs in the sense of Article 9 of the Convention (*Blumberg v. Germany*, no. 14618/03, decision of 18 March 2008).

104. In the opinion of the Government, the concept of "religion or belief" within the meaning of Article 9 § 2 of the Convention cannot encompass every individual opinion, conviction or preference as such subjective conviction and self-definition of a person would lead to potentially unlimited scope of this right. To this end the Government also point to the Court's well-established case law that the right to freedom of thought, conscience and religion under Article 9 denotes "only those views that attain a certain level of cogency, seriousness, cohesion and importance" (*S.A.S. v. France*, no. 43835/11, judgment [GC] of 1 July 2014, § 55). Opinions that vaccination is not good for a person's health based solely on subjective presumption or conviction that natural immunity is best for a child should not, according to the Government, fall under the protection of Article 9 § 2. There is, however, no clear line in the existing case law of the Court which the Contracting Parties could follow in deciding what beliefs shall or shall not be regarded as a "religion or belief" within the meaning of Article 9 § 2 and thus deserve protection.

105. Even if the concept of objections of conscience against compulsory vaccination fell under the notion of "belief" under Article 9 § 2 (see § 138–141 below), the domestic courts inferred that it does not apply to the present cases as the applicants had not substantiated their objection towards compulsory vaccination with sufficiently relevant reasons (see §§ 78–79 above and § 108 below). Without relevantly justified reasons for such objection, solely subjective view shall not be regarded as a "belief" worthy of protection under Article 9.

106. Therefore, the Government consider that the facts of the present cases do not fall within the scope of Article 9 § 2 of the Convention as the applicants oppose compulsory vaccination for their children solely on the grounds of their subjective point of view. To the extent that the applicants' views reflect their commitment to the principle of personal autonomy, the Government suggest that their claims shall be viewed rather as restatements of their complaint raised under Article 8 of the Convention and shall be addressed solely under that particular provision (*Pretty v. the United Kingdom*, no. 2346/02, judgment of 29 April 2002, § 82 where the Court held that the applicant's firm views concerning assisted suicide cannot constitute belief protected by Article 9 of the Convention).

107. Below, the Government will gradually express their views on the admissibility of individual complaints in the light of their particular circumstances.

a) Applicant Vavřička

108. In this particular case, it shall be assessed whether the refusal to have his children vaccinated was a manifestation of his freedom of thought, conscience or religion within the meaning of Article 9 of the Convention. According to the Court

(see § 104 above), regard shall be specifically had to the conclusion of the domestic courts that he failed to establish the involvement of any of his philosophical or religious views in his decision not to comply with his statutory duty to have his children vaccinated.

109. In this respect the Government refer to the judgment no. 5 As 17/2005 of 30 September 2011 (see Annex 2 to applicant Vavřička's application filed with the Court), in which the Supreme Administrative Court noted *inter alia:*

> "(…) the appellant failed to appear at the oral hearing and he did not excuse himself. (…)
>
> In the present case, it was only in his appeal against the decision of the administrative authority of first instance that the appellant claimed that the decision was contrary to fundamental rights and freedoms and that the applied laws and the Decree were contrary to fundamental human rights, *inter alia*, the right to religion and philosophic conviction. He did not elaborate on his religious conviction. (…) The appellant did not submit any specific claims to the administrative authorities and administrative courts and he also did not specify the type and depth of his religious faith or the intensity of the interference with his religion caused by the vaccination of his children. During the oral hearing before the Constitutional Court he answered the Constitutional Court's question by noting that his reasons were primarily medical because 'vaccination harmed children', and he explicitly emphasised that the philosophical or religious aspect was secondary for him (…)."

110. Moreover, stemming from the Ministry of Health's decision (see Annex 6 to Mr. Vavřička's application), the applicant's children who were at the material time 13 and 14 years old have undergone a series of vaccination beforehand in line with the compulsory vaccination scheme. No contraindication has been found in their cases, nor there have been any side effects detected to the previously applied vaccinations. It is, however, only now that the applicant is refusing to let his children to be further vaccinated. Such view cannot be regarded as serious, consistent or convincing, whereas any urgent reasons were not given to support his claims (cf. Enclosure 7, § 36, decision of the Constitutional Court no. II. ÚS 3257/17 of 19 December 2017).

111. In light of the above, and in particular as Article 9 of the Convention protects "only those views that attain a certain level of cogency, seriousness, cohesion and importance" (*S.A.S. v. France,* cited above, § 55), the Government do not find any reason to depart from the domestic courts' opinion and believe as well that in the case of applicant Vavřička his refusal to have his children vaccinated was not an expression of his freedom of thought, conscience or religion within the meaning of Article 9 of the Convention as he failed to sufficiently specify how, if any, his philosophical or religious views had played a role in his decision not to comply with his statutory duty to have his children vaccinated.

112. The Government are of the opinion that the applicant's claims under that provision fall in fact under Article 8 of the Convention (see § 106 above). There is nothing in applicant Vavřička's submission to warrant a separate examination of this part of the application also under Article 9 of the Convention, and this part of the application should therefore be declared incompatible *rationae materiae* with Article

9 or manifestly ill-founded (cf. *Balsytė-Lideikienė v. Lithuania,* no. 72596/01, decision of 24 November 2005, part 3 of the Law section).

b) Both applicants Novotná and Hornych

113. With respect to both applicants, the Government recall that the applications were not submitted by the parents of children not admitted to nursery schools, but by the children themselves. It is striking that at the material time, i.e. when they were not admitted to nursery schools, they were five years old (applicant Novotná) and two years old (applicant Hornych).

114. In the Government's opinion, with regard to their very tender age it is very difficult to assume that these two applicants had, at the moment of the alleged interference and in connection therewith, experienced a "moral dilemma" (cf. *Blumberg v. Germany,* cited above) or that in respect of vaccination they had held "views that attained a certain level of cogency, seriousness, cohesion and importance" (*S.A.S. v. France,* cit. above, § 55). Consequently, it appears questionable whether Article 9 of the Convention may be applicable to their situation.

115. Although in its case law the Court has, on several occasions, dealt with the merits of claims of violations of Article 9 in cases of minors, they were always significantly older than applicants Novotná and Hornych, e.g. twelve and fourteen years old (*Valsamis v. Greece,* no. 21787/93; and *Efstratiou v. Greece,* no. 24095/94, judgments of 18 December 1996), eleven to sixteen years old (*Kervanci v. France,* no. 31645/04, decision of 30 June 2009). At that age, it is conceivable that the children were able to formulate their personal beliefs or convictions.

116. In light of the circumstances of the cases of applicants Novotná and Hornych and with regard to their age there could be no "manifestation of personal beliefs" within the meaning of Article 9 of the Convention. This part of their applications should therefore be declared inadmissible as manifestly ill-founded (cf. *Blumberg v. Germany,* cited above). If the applicants' parents argue about the possible interference with their freedom of religion or conscience, these objections are incompatible *ratione personae* (see § 24 above).

c) Applicant Novotná

117. In the case of applicant Novotná, the Court specifically asks whether Article 9 of the Convention applies to the facts of her case since the formulation of her complaint under this provision refers solely to the attitude and philosophical conviction of her parents and not of herself.

118. Indeed, in her complaint applicant Novotná declares herself that it was her parents' stance for which she was not vaccinated and, therefore, not allowed to attend the nursery school of her choice and not her personal conviction (see applicant Novotná's application, §§ 4 and 9). The applicant, however, confusingly claims that it was her right to freedom of thought and conscience protected under the Article 9 of the Convention that was supposed to be hindered. Furthermore, the Government have not identified any specification of such beliefs of the applicant even in her submissions before the domestic courts.

119. The question then arises whether her parents' refusal to have the applicant vaccinated constituted a manifestation of the applicant's personal beliefs. In this connection, the Government would find it logical that one cannot suffer from a violation of the freedom to manifest one's belief if he or she does not claim to have any relevant belief at all. Moreover, Article 34 of the Convention requires the applicant him- or herself to be the victim of the alleged violation, i.e. he/she must be personally affected by it (*Ligue des musulmans de Suisse and Others v. Switzerland*, no. 66274/09, decision of 28 June 2011), in order for the application to be admissible. However, applicant Novotná claims a violation of her own right protected under the Article 9 of the Convention, although her allegations point only to the beliefs of her parents and not of her own. Thus, the Government are of the opinion that her complaint should be declared incompatible *ratione personae* with Article 9 of the Convention or manifestly ill-founded as there can be seen no interference with her right under Article 9 of the Convention.

120. Furthermore, similarly as in the case of *Vavřička* (see § 110 above), at the material time, applicant Novotná underwent all other compulsory vaccinations except the one against measles, rubella and mumps. No contraindication has been found in her case, nor have there been any side effects detected to the previously applied vaccinations. Whereas no urgent reasons were given to support her claim (see § 139 below), her view or strictly speaking, the view of her parents, towards the compulsory vaccination shall not be regarded as consistent, seriously held or convincing and therefore deserving the protection of Article 9 of the Convention and this part of application should be found incompatible also *ratione materiae*.

d) Applicant Hornych

121. The Government must object to the admissibility of the complaint of applicant Hornych regarding the alleged violation of Article 9 of the Convention due to non-exhaustion of domestic remedies.

122. In line with the subsidiary character of the Convention machinery, Article 35 § 1 of the Convention requires a complaint to be raised before the domestic courts at least in substance before being subsequently examined at the international level (*Azinas v. Cyprus*, no. 21893/93, judgment [GC] of 28 April 2004, § 38).

123. Applicant Hornych maintained throughout the domestic proceedings, at first, that he could not undergo the regular vaccination process due to contraindications and, later on, no further vaccination should have allegedly been recommended to him by his paediatrician. Even before the Court, the applicant specifically claims that his parents have not refused to let him undergo vaccination. On the contrary, they should have expressed the intention to let him vaccinate if his paediatrician said so. Also, the Supreme Administrative Court stated in the applicant's case that he did not allege that compulsory vaccination interfered with any of his fundamental rights. He only claimed that the majority of physicians do not undergo booster vaccination and they do not consider it to be necessary for many infections (see § 79 above).

124. In view of the above, the Government propose rejecting the complaint of Mr Hornych for failure to exhaust domestic remedies or as manifestly ill-founded.

(ii) Whether there was an interference with the applicants' rights protected under the Article 9 § 2 of the Convention

125. In the case of all three applicants the alleged interference originated from the application of general and neutrally formulated legislation, both in relation to the fact that legal representatives of persons under 15 years of age can be held accountable for administrative delicts caused by failure to ensure obligatory vaccination of these minors (relevant in the case of applicant Vavřička) and in relation to the impossibility to admit to nursery schools children who had not undergone the required routine vaccinations, nor had submitted a confirmation of immunity to infection or of contraindication to vaccination (relevant in the case of applicants Novotná and Hornych). In other words, the legislation in question applies to all persons regardless of their thought, conscience or religion.

126. According to the established case law of the Convention institutions, "general legislation which applies on a neutral basis without any link whatsoever with an applicant's personal beliefs cannot, in principle, be regarded as an interference with his or her rights under Article 9 of the Convention" (*Skugar and Others v. Russia,* no. 40010/04, decision of 3 December 2009). The Commission reached this conclusion in a case of a Quaker who refused to pay taxes spent on military purposes (*C. v. the United Kingdom,* no. 10358/83, Commission decision of 15 December 1983; cf. also *V. v. the Netherlands,* no. 10678/83, Commission decision of 5 July 1984; and *Revert and Legallais v. France,* nos. 14331/88 and 14332/88, Commission decision of 8 September 1989). Recently, the Court has confirmed that Article 9 does not protect every act motivated or inspired by a religion or belief and in particular, it does not confer a right to refuse, on the basis of religious convictions, to abide by legislation the operation of which applies neutrally and generally (*Fränklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands,* no. 28167/07, decision of 6 May 2014, § 46).

127. In relation to obligatory vaccination the Commission explicitly reiterated this conclusion in the case of *Boffa and Others v. San Marino* (cited above, part 3 of the Law section), noting:

> "(…) the obligation to be vaccinated, as laid down in the legislation at issue, applies to everyone, whatever their religion or personal creed.
>
> Consequently, the Commission considers that there has been no interference with the freedom protected by Article 9 para 1 of the Convention."

(iii) Conclusion

128. For all the reasons outlined above the Government believe that in the case of all three applicants this complaint is incompatible *ratione materiae* with Article 9 of the Convention and in case of applicant Novotná also *ratione personae.* In addition, application of applicant Hornych should be in this part declared inadmissible for non-exhaustion of domestic remedies.

129. Alternatively, for the same reasons the Government propose rejecting this part of the applications as manifestly ill-founded since there was no interference with the rights safeguarded by Article 9 of the Convention.

130. However, should the Court find this part of all three applications admissible, the Government shall also express their opinion on the merits of the claimed interferences. The above stated arguments should be then taken into consideration at least when assessing the merits of the complaint of a violation of Article 9 of the Convention in the present cases.

B) MERITS

(i) The Court's relevant case law

131. The Convention institutions have specified various situations in which it may be necessary to restrict the rights afforded by Article 9 of the Convention in the interest of the protection of health. For example, the Commission examined the application of a Sikh who complained that he had been penalised for failing to wear a crash helmet when riding his motor cycle while he was required by his religion to wear a turban; in this case the Commission concluded that wearing a helmet was an indispensable safety measure and Article 9 was therefore not violated (*X. v. the United Kingdom*, no. 7992/77, Commission decision of 12 July 1978). The Court similarly decided on a complaint filed by an individual who, under Article 9 of the Convention, claimed a right to drive a car without fastening the seat belt noting that he was entitled to decide on his own how he would protect his "physical and mental integrity". The Court held that the disputed obligation imposed on the applicant as well as on all other drivers of motor vehicles did not amount to a sufficiently severe interference with their freedom of thought and conscience (*Viel v. France*, no. 41781/98, decision of 14 December 1999).

132. More recently, the Court has found that there was no violation of Article 9 when a hospital prohibited a nurse from wearing a cross and chain around her neck for the purpose of preventing injuries and infections in the ward. Although the Court admitted that it was very important for the applicant to wear this religious symbol, it referred to the importance of the opposing interest of the protection of health and to the wide margin of appreciation allowed to the domestic authorities in this field (*Eweida and Others v. the United Kingdom*, nos. 48420/10 and others, judgment of 15 January 2013, §§ 98–99). The Court reached a similar conclusion in the case of applicants complaining that they had not been allowed to use, during their religious rituals, a specific hallucinogenic substance that can, however, result in serious health consequences (*Fränklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands*, cited above, § 48).

133. However, under the circumstances of the present case, the Government would in particular refer to the case of *Jehovah's Witnesses of Moscow and Others v. Russia* (no. 302/02, judgment of 10 June 2010) where the Court noted with regard to Articles 9 and 11 of the Convention:

> "134. The Court recognises that the refusal of potentially life-saving medical treatment on religious grounds is a problem of considerable legal complexity, involving as it does a conflict between the State's interest in protecting the lives and health of its citizens and the individual's right to personal autonomy in the sphere of physical integrity and religious beliefs (…).

(…)

136. The freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, is vital to the principles of self-determination and personal autonomy. A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a blood transfusion. (…)

137. This position is echoed in the Russian law which safeguards the patients' freedom of choice [and which] explicitly provide for the patient's right to refuse medical treatment (…). The refusal may only be overridden in three specific situations: prevention of spreading of contagious diseases, treatment of grave mental disorders and mandatory treatment of offenders (…). Additionally, the parents' decision to refuse treatment of a child may be reversed by means of judicial intervention (…). It follows that Russian law protects the individual's freedom of choice in respect to their health care decisions as long as the patient is a competent adult and there is no danger to innocent third parties."

(ii) Application of these principles to the present case

134. *First*, the Government would refer to their arguments regarding the lawfulness, legitimacy and proportionality of the alleged interference under Article 8 of the Convention (see §§ 29–97 above), the large majority of which are also relevant for the purpose of assessing the compatibility of the alleged interference with the applicants' rights under Article 9.

135. Furthermore, it follows from the above case law that it is allowed to interfere with the exercise of the freedom of thought, conscience and religion guaranteed by Article 9 of the Convention in various situations in the interest of the protection of health. In this connection the Court has admitted that the right to refuse medical treatment on the grounds of conscience and religion can be restricted *inter alia* when the aim is to prevent the spreading of contagious diseases or in case of treatment concerning a child (*Jehovah's Witnesses of Moscow and Others v. Russia*, cited above).

136. As the Government have emphasised in relation to Article 8 of the Convention (see §§ 56 and 74 above), in all the present cases no vaccination was actually administered without the applicant's or his/her parents' consent. The alleged interference only consists in the fact that a fine was levied on applicant Vavřička, and that applicants Novotná and Hornych were not admitted to a nursery school.

137. To the extent to which these facts can even be regarded as interference with the freedom of thought, conscience or religion under Article 9 of the Convention (see §§ 102–130 above), the Government would remark that their purpose was clearly and without any doubt the protection of health within the meaning of Article 9 § 2 and involved the prevention of spread of contagious diseases as well as the situation concerning minors (cf. § 135 above). To this end the Government highlight that if a balance has to be strike between competing private and public interests or Convention rights, the margin of appreciation enjoyed by the State will generally be wide (*Evans v. the United Kingdom*, no. 6339/05, judgment [GC] of 10 April 2007, § 77).

138. The Government would also point out that according to the Constitutional Court's established case law the compulsory vaccination is, in general, a permissible restriction of a right to manifest one's religion or belief, since it is clearly a measure necessary to protect public health in a democratic society. As stated for the first time by the Constitutional Court in the case of applicant Vavřička, there may, however, be exceptional cases, where urgent reasons referred to by an individual for his refusal to undergo vaccination fundamentally call for respecting that person's autonomy (see § 45 above) despite the undisputed and significant public interest in the vaccination which should not be undermined by allowing for such rare exception.

139. Therefore, within the meaning of the Constitutional Court's established case law it is possible to claim exceptions from obligatory vaccination on the basis of freedom of religion and conscience. These are specifically situations in which all four of the following conditions are satisfied: (i) urgency of reasons claimed by the person concerned, (ii) their constitutional relevance, (iii) consistency and convincingness of claims of the person concerned, and (iv) keeping the necessary level of vaccination coverage of the population against contagious diseases.

140. In relation to 'secular objections of conscience', the Constitutional Court has included among urgent reasons for refusing vaccination in particular reasons that are closely linked to the person who is subject to the vaccination obligation or to persons closely related to such person (a highly undesirable reaction to previous vaccination in the case of that person, his child, etc.). On the contrary, it did not accept arguments that were only general, i.e. a general conviction that the applicants reached only by studying literature and other sources. If the person concerned is a minor represented by a legal representative, the interest of that minor should also be taken into consideration.

141. According to the Constitutional Court, the consistency and convincingness of the person's claims cannot be placed on an equal footing with the objective truth of those claims. At the same time, the manifestation of conscience must be unambiguous and adequately comprehensible. The Constitutional Court did not find consistency of claims in the situation where at the early stages of proceedings the applicant did not communicate with the competent public authority at all or where the applicants changed their reasons for refusing vaccination during the course of the proceedings before different authorities (see Enclosure 6, §§ 30 and 33–34).

142. Moreover, the Constitutional Court has confirmed that the above specified exceptions from obligatory vaccination can be called for in regard to administrative delict proceedings for failure of a parent to ensure obligatory vaccination of his or her minors, as well as in respect of admission proceedings of a child to nursery school (see Enclosure 6, § 36).

143. In the present case, in respect of all the applicants concerned, the competent domestic courts duly dealt with the issue of whether along the lines of the above cited Constitutional Court's case law, there were exceptional reasons for which an exception from obligatory vaccination should be granted. The domestic courts did

not find the existence of sufficient exceptional reasons in any of the cases (see §§ 78–79 and 109 above).

144. Therefore, it can be concluded that in the domestic proceedings, none of the applicants sufficiently demonstrated that in his/her specific case, or in the case of applicant Vavřička's children, exemption from obligatory vaccination should have been granted on the grounds of their freedom of thought or religion.

145. Taking this into consideration and in view to the fact that no vaccination was actually administered without the applicant's or his/her parents' consent the Government see no reason why should the personal views of the applicants prevail over the general interest of the society in the protection of public health.

146. It can be inferred from the above that the domestic authorities sought to strike fair balance between the rights of the applicants' parents, protection of the underage applicants from infectious diseases and the interests of the society as a whole in protection of public health. Stemming from the case law of the Constitutional Court, this balancing exercise resulted in a possibility to be exempted from the compulsory vaccination obligation in justified cases of objection of conscience. However, in cases of the applicants, such particular reasons were not found. Still, no vaccination was actually administered without the applicant's or his/her parents' consent. On the other hand, the parents' decision had other foreseeable consequences in the form of imposition of a fine (applicant Vavřička) or in non-admission of the children to a nursery school (applicants Novotná and Hornych). Taking this into consideration, the Government see no reason why should the personal views of the applicants prevail over the general interest of the society in the protection of public health and is convinced that the decisions of domestic authorities in the applicant's cases did not result in overstepping the margin of appreciation the States enjoy in this sphere.

147. On the basis of the above the Government are convinced that there was no violation of Article 9 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1

148. *Finally,* the Court asks whether there was a violation of Article 2 of Protocol No. 1 to the Convention on account of the fact that applicants Novotná, Hornych, Brožík, Dubský and Roleček were not admitted to a nursery school because they had not undergone obligatory vaccination (question no. 13).

149. Since in the present case the applicants, as children themselves, claim denial of access to education, in the Government's opinion the relevant part of Article 2 of Protocol No. 1 to the Convention is only its first sentence that reads as follows:

> "No person shall be denied the right to education."

150. Before the Government formulate their observations on the merits of the applications under Article 2 of Protocol No. 1 to the Convention, they also deem it necessary to express their opinion on their admissibility.

A) ADMISSIBILITY

151. *Firstly,* it must be reiterated that as far as the objections relate to the implications of compulsory vaccination on the rights of their parents and not of the applicants, they shall be deemed incompatible *rationae personae* (see § 24 above).

152. Moreover, these complaints are incompatible with Article 2 of Protocol No. 1 to the Convention *ratione materiae* as this provision does not apply to admission to a voluntary nursery school.

153. It follows from the Court's case law that the notion of "education" in the first sentence of that provision is not unlimited and does not safeguard an absolute right to all forms of education; the Court has repeatedly held that it applies to "mainly elementary education" (*Valasinas v. Lithuania*, no. 44558/98, decision of 14 March 2000; *Leyla Sahin v. Turkey,* cited above, §§ 134–141 or to "primary, secondary and higher levels of education" (*Catan and Others v. Moldova and Russia,* nos. 43370/04 and other, judgment [GC] of 19 October 2012, § 139; *Velyo Velev v. Bulgaria,* no. 16032/07, judgment of 27 May 2014, § 31). By contrast, there is nothing to suggest in the Court's case law that the notion of education should include also facilities such as nursery schools and kindergartens the attendance of which is completely voluntary.

154. The present cases involve precisely the admission to a nursery school. Attending a nursery school, however, is not education in the sense of gaining knowledge by, e.g., learning to read or write. It is primarily a place where care is provided to children instead of their parents and where, by interacting with the others, they can develop their social skills as well as their personality.

155. In this respect, the specificities of the regulation and operation of nursery schools in the Czech Republic should be taken into account.

156. At the material time, nursery school attendance was not mandatory in the Czech Republic and was not either a precondition for admission to primary school; the beginning of the compulsory education started with primary school (see Enclosure 6, § 21).[5]

157. Accordingly, there was no legal entitlement to have a child admitted to a nursery school, which is not disputed by the applicants either (see, for example, the constitutional appeal filed by applicants Brožík and Dubský, Annex 7, point IV). There was only one exception: under Article 34 § 4 of the Education Act (Enclosure 6, § 21) children in their last year before the beginning of compulsory education had to be admitted to nursery schools preferentially; if it was not possible to admit a child for capacity reasons, the municipality of the child's permanent residence should have ensured the placement of the child in another nursery school. Therefore, the law explicitly envisaged situations where children were not admitted to a nursery school in the place of their residence for capacity reasons (in cases of

[5] With effect from 1 September 2017, under Article 34 of the Education Act, pre-school education is compulsory from the beginning of the school year following the day on which the child reaches the age of five until the start of compulsory education in the primary school. The obligation under Article 50 of the Act on Public Health Protection does not apply to compulsory pre-school education (see Enclosure 6, § 8).

children in their last year before the beginning of compulsory education), or where children were not admitted at all (in the case of all other children).

158. The statistical yearbooks of the Ministry of Education, Youth and Sports from the material time show that in the Czech Republic, dozens of thousands of applications for admission to nursery school were turned down each year.[6] It is thus evident that only a part of children of pre-school age attended nursery schools.

159. Under domestic law, the Article 33 of the Education Act explicitly stipulates that the aim of attending nursery schools is supporting the development of personality of pre-school children and contribution to their healthy emotional, intellectual and physical development and acquiring the basic rules of conduct, fundamental life values and interpersonal relations (cf. § 154 above).

160. The Government would further recall that, for example, in the case of *Catan and Others v. Moldova and Russia* (cited above, § 137) the Court noted that:

> "this right of access constitutes only a part of the right to education set out in the first sentence [of Article 2 of Protocol No. 1]. For the right to be effective, it is further necessary that, *inter alia*, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed (…)."

In this connection the Government would highlight that after the end of nursery schools attendance in the Czech Republic, children do not receive any "official recognition of the studies completed", which is one of the Court's requirements, according to its above-cited case law, for a certain form of education to be subject to Article 2 of Protocol No. 1.

161. Applicant Roleček claims in his additional submission to the Court that nursery schools are included in the concept of "education" under Article 2 of Protocol no. 1 to the Convention, since "the missing preschool education can disadvantage the child in his/her further education", or that, to put it differently, "the preschool education facilitates the further education of a child"; and in addition, it allows "his/her parents to return back into their employment and to secure the family financially without problems" (page 17). To them the Government note that the statements quoted above may well be true in many cases, but that still does not mean that the right to education under Article 2 of Protocol no. 1 to the Convention is applicable to nursery schools.

162. To this point the Government assert that States may devise many policy instruments in order to facilitate the further education of a child and/or to enable the parents to return back into their employment and to secure the family financially, such as various social benefits, tax reliefs, accommodation of parents' needs in labour law, provision of personal assistants to disadvantaged children, or establishment of childcare facilities, including those for children under three years of

[6] Available at: http://toiler.uiv.cz/rocenka/rocenka.asp: 19,996 applications were turned down in the school year 2008/2009; 29,632 applications in 2009/2010; 39,483 applications in 2010/2011; 49,186 applications in 2011/2012; 58,939 applications in 2012/2013; 60,281 applications in 2013/2014; and 50,800 applications in 2014/2015.

age. However, the mere fact that these instruments may have the above mentioned purposes and effects does not make them automatically a part of the "right to education" under Article 2 of Protocol no. 1 to the Convention. They may be rather characterized as general fiscal, economic or social measures, which are closely linked to the State's financial resources and in respect of which the State enjoys a wide margin of interpretation, limited for the most part only by the prohibition of discrimination (*Şerife Yiğit v. Turkey,* cited above, § 70), or as social measures that are in principle not covered by the Convention (*Baytüre and Others v. Turkey,* cited above, § 30).

163. For the above reasons the Government propose that the Court declare these complaints incompatible with Article 2 of Protocol No. 1 to the Convention *ratione materiae.*

164. Even if the Court did not share this view, it should take the above into consideration when assessing the merits of these complaints.

B) MERITS

(i) The Court's relevant case law

165. The right to education safeguarded in Article 2 of Protocol No. 1, in spite of its importance, is not absolute and may be subject to limitations; these are permitted by implication since the right of access "by its very nature calls for regulation by the State". Admittedly, the regulation of educational institutions may vary in time and in place, *inter alia,* according to the needs and resources of the community and the distinctive features of different levels of education. However, the restrictions on the right to education may not impair its very essence: they must be foreseeable for those concerned and pursue a legitimate aim. Unlike the position with respect to Articles 8 to 11 of the Convention, there is not an exhaustive list of "legitimate aims" under Article 2 of Protocol No. 1. In addition, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see e.g. *Leyla Sahin v. Turkey,* cited above, § 154).

166. In the case of denial of access to education there must be procedural safeguards available, using which the person concerned may defend him- or herself against arbitrariness by public authorities (*Ali v. the United Kingdom,* no. 40385/06, judgment of 11 January 2011, § 58). Arbitrariness can occur, for example, in a situation where the applicant is not admitted to a specific school despite having complied with all conditions laid down in advance (*Mürsel Eren v. Turkey,* no. 60856/00, judgment of 7 February 2006, §§ 48–50).

167. The State's margin of appreciation in this domain increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large (*Ponomaryovi v. Bulgaria,* no. 5335/05, judgment of 21 June 2011, § 56). In this connection the Court has emphasised that primary schooling is of primordial importance for a child's development as it provides "basic literacy and numeracy" (ibid; see also *Timishev v. Russia,* nos. 55762/00 and 55974/00, judgment of 13 December 2005, § 64).

168. The Court has also held that the right to education must be read in the context of other Convention provisions, in particular, where appropriate in the light of Articles 8, 9 and 10 of the Convention (*Leyla Sahin v. Turkey,* cited above, § 155). For example, in the case of *Leyla Sahin* the Court concluded that Article 2 of Protocol No. 1 had not been violated, by referring almost exclusively to its arguments concerning Article 9 of the Convention (see §§ 157–162 of the judgment). Therefore, the Court's review in the field of the right to education depends to a large extent on the Court's review in the field of Articles 8, 9 and 10 of the Convention.

(ii) Application of these principles to the present cases

169. In this part of their observations, the Government refer to their arguments on the merits of the applications under Articles 8 and 9 of the Convention, which can also be used to a considerable extent in relation to the alleged violation of Article 2 of Protocol No. 1, as shown by the Court's case law (see § 168 above).

a) On the merits *in abstracto*

170. *First*, the alleged restriction of the right to education by the condition of obligatory vaccination was foreseeable in all relevant periods (and still is) with its statutory basis in Article 50 of the Public Health Protection Act read in conjunction with Article 34 § 5 of the Education Act (see Enclosure 6, § 8).

171. *Second*, nor can there be any doubt that the claimed obligation pursues the legitimate aim of protecting public health, specifically preventing the spread of contagious diseases among children, since pre-school children are particularly vulnerable in this respect (see § 175 below), and subsequently among the population as a whole (cf. *Memlika v. Greece*, no. 37991/12, judgment of 6 October 2015, § 55), as well as the protection of rights and freedoms of others.

172. *Third,* as regards proportionality, the Government would recall that the present cases do not involve legislation that would prevent all unvaccinated children from being admitted to nursery schools without any exceptions. There are statutory and judicatory exceptions (see § 139 above; and Enclosure 6, § 8).

173. Furthermore, the Government would reiterate in this connection that a judicial review is available in cases of non-admission to a nursery school (see § 66 above). This satisfies the procedural aspect of Article 2 of Protocol No. 1 (see § 166 above).

174. In this connection the Government would also refer to the extensive reasoning in the Constitutional Court's judgment no. Pl. ÚS 16/14 concerning the motion for repealing Article 50 of the Public Health Protection Act (see Enclosure 6, § 8). The Constitutional Court emphasised, in particular, that the immunisation of a sufficient majority of the population prevents the spread of selected diseases, thereby protecting not only the vaccinated individuals. The higher the ratio of unvaccinated individuals to vaccinated population, the higher the risk of a renewed infection spread and not only among those who voluntarily refused vaccination but also among those who could not be vaccinated due to serious, especially health-related reasons. Last but not least, the spread of the infection endangers individuals who are vaccinated but the vaccination did not achieve the required effect in them.

In the present case, where vaccination is a precondition for accepting the child to nursery school, in particular children are the subjects exposed to the risk of infection, and they can face particularly serious consequences. For these reasons the child's vaccination before the child is admitted to a nursery school can be regarded as an act of social solidarity, which becomes increasingly important as the number of vaccinated children in these pre-school facilities rises. On the contrary, cases where a certain group of children admitted to pre-schools refuses vaccination without serious reasons, thus enjoying the benefits of the effectiveness of vaccination or of the willingness of other children attending pre-schools to assume the minimum risk entailed in vaccination, could then be regarded as social injustice. The Government deem these arguments crucial in the present cases.

175. As also follows from the opinion of the Czech Vaccinology Society (see Enclosure 1, § 2), obligatory vaccination of children includes only the types of vaccinations that can be considered, from the expert point of view, necessary for achieving the pursued aim of the protection of health at present, given the conditions in the Czech Republic. The need for an early start of vaccination is driven by the desire to protect newborns after birth as early as possible because newborns and infants are very susceptible to infections. One part of their immune system is not fully matured and it is desirable to enhance its maturation by neonatal vaccination. Vaccines currently given at birth are able to activate the unimpaired immune response in the newborn and bridge the time gap between the immature and fully matured immune system function. Compared to other age groups, neonates and infants suffer a higher frequency and complication rates of some infections, resulting even in death in extreme cases. For this reason, an early vaccination is necessary (see Enclosure 1, § 2).

176. For the above reasons the requirement of obligatory vaccination is concentrated in the pre-school age and not in the school age. Also, the statutory condition to undergo required vaccinations applied in the material time only to admission to a nursery school and other pre-school facilities and not, for example, to admission to a primary school (see Enclosure 6, § 8).

177. In this respect the Government would also note that even if the Court holds that nursery school attendance falls under the notion of "education" within the meaning of Article 2 of Protocol No. 1 to the Convention, it follows from the Court's case law cited above that this provision does not apply to the same extent and in the same way to all forms of education and to all levels of the education system (see § 153 above). The Court differentiates between various forms of education mainly depending on their importance for the persons concerned and for the society at large: the Court sees the highest intensity of interference with the right to education in the case of primary schools, where children are provided with "basic literacy and numeracy", while in the case of other, in particular non-obligatory forms of education, it provides the State with a wider margin of appreciation as regards possible restrictions (see § 167 above).

178. In the Government's opinion one can hardly talk about "the very nature of the right to education" (see § 165 above) in connection with nursery schools, which are, in principle, voluntary, and, therefore, where there is no legal entitlement to admission and which a considerable part of the children population do not attend

(see § 158 above), where there is education in the sense of "basic literacy and numeracy" (see § 154 above), where the child does not receive any "official recognition of the studies completed" (see § 160 above), and which are therefore much less important for individuals as well as for the society at large than, for example, primary and secondary schools. If nursery school attendance falls under Article 2 of Protocol No. 1 at all, it is at the very fringe of the right to education. Therefore, in relation to setting the conditions for access to that institution the State enjoys a wide margin of appreciation within the meaning of the Court's case law and the State can restrict the access more than in the case of other educational levels.

179. Even though outside the material time, the Government see fit to point also to the development in this area as of 1 September 2017 when the pre-school education became compulsory for children that reached the age of five starting from the beginning of the school year following such day until the start of compulsory education in the primary school. According to the explanatory note, the compulsory final year of pre-school education shall ensure *inter alia* adequate preparation of 5-year-olds for starting the compulsory education aiming in particular at children from socially disadvantaged backgrounds. However, the condition of obligatory vaccination does not apply to compulsory pre-school education (see Enclosure 6, §§ 8 and 21). Thus, this group of children is not forced to undergo vaccination in order for them to be admitted.

180. In the light of all of the above, the Government believe that the legislation at the material time governing the condition of obligatory vaccination for admission to nursery schools cannot be seen as overstepping the margin of appreciation the State enjoys in this field.

b) On the merits *in concreto*

181. In the present cases the Government would recall that none of the applicants sufficiently proved within the domestic proceedings that they fulfil the criteria for exemption from the compulsory vaccination (see § 77 above).

182. Applicant Novotná claims that she only did not satisfy the condition of vaccination against measles, rubella and mumps, but in the case of this vaccination the Decree does not lay down a deadline for the child to undergo this vaccination. Nevertheless, the Government point out that under the relevant legislation, the setting of a deadline for vaccination is relevant for assessing the liability of the child's legal representatives for an administrative delict, and not for the purpose of deciding on the child's admission to a nursery school (see Enclosure 6, §§ 8, 36 and 42). In its judgment of 23 March 2010 (Annex 8 to the application of applicant Novotná, p. 9), the Prague Municipal Court noted in this respect that

> "(..) if Article 50 [of the Public Health Protection Act] clearly stipulates that only a child who has undergone the required routine vaccinations can be admitted to a pre-school facility, it thus emphasises the prevention of the spread of infectious diseases among children in pre-school facilities, because the risk of infection is higher there, and the risk is reflected in the requirement for higher vaccination coverage of children admitted to facilities at the age of, usually, three to six years. Admission of children to pre-school facilities is voluntary and therefore it is up to the legal representatives' will whether or not they sign up their

> children for such facilities. This also presumes that the child being signed up complies with the statutory conditions for the admission of children, i.e. also the required routine vaccinations before joining the facility, although in general the child could comply with this obligation, based on herd immunity, at a later time."

183. Another relevant criterion for assessing the issue of whether the right to education was violated is, under the Court's case law, the importance of the particular form of education for the person concerned which has impact on the width of margin of appreciation (see § 167 above). In this connection the Government would remark that none of the applicants in the present case have justified their interest in nursery school attendance in such a way and to such an extent that this interest could be regarded stronger than the public interest in the protection of health, which is pursued by the requirement of obligatory vaccination.

184. With regard to the fact that applicant Novotná already attended nursery school for two years before being dismissed as it was only then discovered that, in fact, she had not undergone the required routine vaccination, the Government refer to their argumentation already elaborated above (see §§ 93–97 above).

185. As the Government mentioned above, in the material time in the Czech Republic there was, in principle, no legal entitlement to admission to a nursery school and a child could be refused for various reasons, including the lack of capacity, which was in fact happening to quite a large extent (see § 157 above); therefore it cannot be claimed that due to their non-admission to nursery schools the applicants were significantly disadvantaged in comparison to their peers.

186. The applicants have also failed to prove that in their cases, nursery school attendance is important because of their special needs or vulnerability (cf., *mutatis mutandis*, *Oršuš and Others v. Croatia,* no. 15766/03, judgment [GC] of 16 March 2010, §§ 148 and 176–177).

187. In fact, in each of the submissions in the present cases the applicants' need to be admitted to nursery schools is primarily substantiated by referring to their parents' need to pursue their professional career, which undoubtedly is not a value protected through the children's right to education within the meaning of Article 2 of Protocol No. 1 to the Convention. In this regard the Government would refer to, in particular, applicant Roleček's submission to the Brno Regional Court of 30 December 2010 (Annex 7 to his application filed with the Court, point 12) and to applicant Novotná's application filed with the Court (point 7 of the statement of facts), as well as applicant Hornych's application (point 6 of the statement of facts). Also, applicants Brožík and Dubský provided only very brief and general arguments under Article 2 of Protocol No. 1 to the Convention, without sufficiently substantiating their interest in attending nursery school by specifying their individual circumstances and needs.

188. *Finally*, it can be noted that the applicants did not provide sufficient explanation of why they could not substitute the possible positive impact of nursery school by receiving the appropriate care at home from their parents and possibly other close persons (cf. *Ghazal v. France*, no. 29134/08; and *Aktas v. France*,

no. 43563/08). It should also be taken into account that the applicants were not prohibited from visiting other facilities such as children corners, clubs and playgrounds as the condition of compulsory vaccination stemming from the Article 50 of the Act on Public Health Protection, in general, does not apply to these facilities (see Enclosure 6, § 8). It cannot, therefore, be argued that the applicants were overall isolated from the contact with their peers.

189. Based on the above and with regard to the wide margin of appreciation enjoyed by the States in this field, the Government conclude that the applicants' right to education was not violated in the present cases.

OVERALL CONCLUSION

190. In the light of the above the Government of the Czech Republic, in their observations on the applications lodged by applicants Novotná, Vavřička, Hornych, Brožík, Dubský and Roleček, propose that the Court adopt the following decision.

(i) In the case of applicant Vavřička

191. The Government propose that the Court declare the application inadmissible as a whole for a lack of significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention and/or the complaint of violation of the right to respect for family life under Article 8 of the Convention incompatible with the Convention *ratione materiae*.

192. Subsidiarily, the Government propose that the Court:

a) hold that as regards the complaint of a violation of the right to private life under Article 8 of the Convention there was no violation of that provision;

b) as regards the complaint of a violation of the right under Article 9 of the Convention:

– declare the complaint incompatible with the Convention *ratione materiae* or, alternatively, for being manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention,

– subsidiarily, hold that there was no violation of that provision.

(ii) In the case of applicants Brožík and Dubský

193. The Government propose that the Court declare the applications inadmissible as a whole for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and incompatible with the Convention *ratione personae* and/or the complaint of violation of the right to respect for family life under Article 8 of the Convention incompatible with the Convention *ratione materiae*.

194. Subsidiarily, the Government propose that the Court:

a) hold that as regards the complaint of a violation of the right to private life under Article 8 of the Convention there was no violation of that provision;

b) as regards the complaint of a violation of the right under Article 2 of Protocol No. 1 to the Convention:

– declare the complaints incompatible with the Convention *ratione materiae*,

– subsidiarily, hold that there was no violation of that provision.

(iii) In the case of applicants Novotná and Hornych

195. The Government propose that the Court declare the applications as a whole incompatible with the Convention *ratione personae* and/or the complaint of violation of the right to respect for family life under Article 8 of the Convention incompatible with the Convention *ratione materiae.*

196. Subsidiarily, the Government propose that the Court:

a) hold that as regards the complaint of a violation of the right to private life under Article 8 of the Convention there was no violation of that provision;

b) as regards the complaint of a violation of the right under Article 9 of the Convention:

– declare the applications, with respect to applicant Novotná, incompatible with the Convention *ratione personae* and, with respect to applicant Hornych, inadmissible for non-exhaustion of domestic remedies, or

– declare the applications incompatible with the Convention *ratione materiae* or, in the alternative, for being manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention,

– subsidiarily, hold that there was no violation of that provision;

c) as regards the complaint of a violation of the right under Article 2 of Protocol No. 1 to the Convention:

– declare the applications incompatible with the Convention *ratione materiae*,

– subsidiarily, hold that there was no violation of that provision.

(iv) In the case of applicant Roleček

197. The Government propose that the Court declare the application as a whole incompatible with the Convention *ratione personae* and/or the complaint of violation of the right to respect for family life under Article 8 of the Convention incompatible with the Convention *ratione materiae.*

198. Subsidiarily, the Government propose that the Court:

a) hold that as regards the complaint of a violation of the right to private life under Article 8 of the Convention there was no violation of that provision;

b) as regards the complaint of a violation of the right under Article 2 of Protocol No. 1 to the Convention:

– declare the application incompatible with the Convention *ratione materiae*,

– subsidiarily, hold that there was no violation of that provision.

Vít Alexander Schorm

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Vít A. Schorm
Agent of the Government
(*signed electronically*)

ENCLOSURES

1. Relevant expert context of vaccination in the Czech Republic
2. Opinion of the Czech Vaccinology Society and the Czech Paediatric Society of 6 November 2015
3. Opinion of the Czech Medical Chamber of 27 October 2015
4. Opinion of the Association of General Practitioners for Children and Youth of 23 October 2015
5. Situation and trends in vaccination in the Czech Republic
6. Relevant domestic law and practice
7. Relevant international law and practice
8. Situation in Europe
9. Document “Obligatory vaccination in the Czech Republic and EU countries”, drawn up by the Parliamentary Institute in June 2014
10. Hradec Králové Regional Court’s judgment of 10 May 2016
11. Notification no. 261/2015 of the Ministry of Health on the antigenic formula of vaccines used for regular, special and emergency vaccinations in 2016
12. Document “Vaccination – trends of infections in the Czech Republic”, drawn up by the State Health Institute in 2015
13. Government’s observations on the applicants’ claims for just satisfaction

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