



Warsaw, 23 April 2020

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Republic of Poland  
Ministry  
of Foreign Affairs

Plenipotentiary of the Minister  
of Foreign Affairs for cases and procedures  
before the European Court of Human Rights  
Agent for the Polish Government

DPT.432.4.2020

**Mr Roderick Liddell**  
**Registrar**  
**European Court of Human Rights**

**BY E-TRANSMISSION ONLY**

**Application no. 47621/13**

**Vavříčka v. Czech Republic**

**(and five other applications listed in the attachment)**

*Dear Sir,*

With reference to the above-mentioned application I have the honour to submit a copy of the written comments of the Government of the Republic of Poland as a third-party intervening in the case *Vavříčka v. Czech Republic* (application no. 47621/13) and five other applications pending before the European Court of Human Rights

*Yours faithfully,*

  
Jan Sobczak

Government Agent

Enc.

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**EUROPEAN COURT OF HUMAN RIGHTS**

***Vavříčka v. Czech Republic***

***Application no. 47621/13***

**(and five other applications listed in the attachment)**

**OBSERVATIONS**

**Submitted by the Government of the of Poland as a third-party**

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## **I. INTRODUCTION**

1. The Government of the Republic of Poland (“the Intervening Government”) have the honour of submitting to the European Court of Human Rights (“the Court”) their written comments in the exercise of their right to intervene as a third party to the present case under Article 36 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and Rule 44 of the Rules of Court.

2. The case originates in an application no. 47621/13 against the Czech Republic lodged with the Court under Article 34 of the Convention by a national of the Czech Republic, Mr Pavel Vavříčka (“the applicant”), on 23 July 2013.

3. On 17 December 2019 the above-mentioned application and five other applications (listed in the attachment) were referred to the Grand Chamber of the Court under Article 30 of the Convention.

4. On 13 March 2020 the Intervening Government were informed that they were granted the requested leave under Rule 44 § 3 of the Rules of Court to make written submissions in the above mentioned case.

## **II. THE SUBMISSIONS OF THE POLISH GOVERNMENT’S**

### **A. Applicability of the Convention to compulsory vaccination cases**

5. The Intervening Government should like to note that the matter raised in the above mentioned cases concern an important issue related to compulsory vaccination of children that may be perceived as being highly important and relevant for other Contracting States, including Poland.

6. The Intervening Government are of the view that compulsory vaccination schemes provided for by law and sanctions for non-compliance with such an obligation do not constitute a violation of the Convention, whereas the sanctions should be considered as compatible with Article 8 § 2 and Article 9 § 2 of the Convention.

7. It should be observed that the right to health is not directly mentioned in the Convention. However, the Court ruled on numerous occasions that consent to a medical treatment is vital to the principles of self-determination and personal autonomy (see case of *Jehovah’s Witnesses of Moscow and others v. Russia*, no. 302/02, judgment of 10 June 2010, § 136) and as such is protected by Articles 8 and 9 of the Convention. Compulsory vaccination – as an involuntary medical treatment – constitutes an interference with the right to respect for private life, which includes a person’s physical and psychological

integrity, as guaranteed by Article 8 § 1 of the Convention (see *Salveti v. Italy* (dec.), no. 42197/98, 9 July 2002; *Matter v. Slovakia*, no. 31534/96, § 64, 5 July 1999; *Solomakhin v Ukraine* no 24429/03, 15 March 2012 § 33). On the other hand, the Court notes that such an interference does not constitute a violation of the Convention when it is clearly foreseen by law, pursues the legitimate aim of the protection of health and is necessary in a democratic society (see *Solomakhin v Ukraine* cited above § 33).

## **B. Necessity of compulsory vaccinations**

8. In the light of the Court's case-law the term "necessity" implies the existence of a "pressing social need" which is initially assessed by the State authorities (see: *Dudgeon v. United Kingdom*, no 7525/76, 22 October 1981, § 51-52). The Court has clarified that "the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued" (see *Piechowicz v. Poland*, no 20071/07, 17 April 2012, § 212). The above implies that the Court affords Contracting States a margin of appreciation. There will usually be a wide margin of appreciation accorded if the State is required to strike a balance between competing private and public interests or Convention rights (see *Paradiso and Campanelli v. Italy*, no 25358/12, 24 January 2017, § 182).

### **1. Pressing social need**

9. Epidemics caused by the spread of infectious diseases may cause sanitary, social and economic crises. Vaccination plays an important role in shaping public health in the area of preventing the occurrence of infectious diseases and preventing the consequences of these diseases. Thanks to the so called "herd immunity" that can be obtained by the vaccination of the population (*e.g.* against measles, tuberculosis or pertussis) not only the vaccinated persons are protected but also persons who cannot be vaccinated due to various contraindications. The more persons are vaccinated, the better community's resilience and the epidemiological safety of the given area.

10. Public authorities are obliged to combat epidemic diseases, including infections and infectious diseases in humans. An optimal preventive measure in this regard is the use of vaccinations which reduces the number of cases and, if possible, leads to the complete elimination of an infectious disease<sup>1</sup>. It should be therefore noted that vaccinations are dedicated primarily to the youngest generation, and the effects related to its

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<sup>1</sup>See: <https://www.who.int/bulletin/volumes/86/2/07-040089/en/>; <https://ivaccinate.org/about-vaccines/vaccines-areeffective/>; <https://hub.jhu.edu/2017/01/11/vaccines-autism-public-health-expert/>.

implementation can be observed when the range of recommended vaccinations covers 95% of the population.

**11.** It should be also noted that vaccinations against selected diseases reduce the social consequences associated with severe health complications after infectious diseases<sup>2</sup>, including those related to the costs of their treatment covered by the public finance sector. The system constructed in this way enables effective prevention of spread of dangerous infectious diseases, keeping the balance between fulfilling the State's obligation towards citizens (the fullest possible provision of public health) and citizens towards the state (obligation to undergo vaccination).

**12.** It should be emphasized that any reduction in the level of compulsory vaccinations is unfavourable and reduces the population protection (community immunity). It also poses a direct threat of an increase in incidence of infectious diseases. In addition, the widespread use of vaccinations is also recommended by the European Centre for Disease Prevention and Control<sup>3</sup>.

## **2. Wide margin of appreciation**

**13.** In Europe, a range of solutions applied by authorities to ensure epidemic security is diverse. There is no unified approach<sup>4</sup>, also because the States' authorities are considered the most appropriate to regulate the healthcare issues due to social, economic and cultural differences between the State Parties.

**14.** Divergences in Europe concern both vaccination obligations, the scope of the recommended/compulsory vaccinations and the vaccination schedule<sup>5</sup>. For example, children in the EU countries are vaccinated against measles from 6 to 23 months of age (in France already when they are 6 months old and in Iceland only when they are 18 months old). Vaccination against tuberculosis in most of the countries is obligatory for children immediately after their birth, but in Sweden only after a child is 6 months old. In turn, children are vaccinated against rubella between 9 (Liechtenstein) and 18 (Sweden, Iceland) months of age.

**15.** The obligation for selected groups of persons to undergo protective vaccinations against specific infectious diseases, which has existed in Poland for nearly 60 years, is of administrative nature and is based directly on the provisions of the Act of 5 December 2008

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<sup>2</sup> See: <https://www.who.int/news-room/facts-in-pictures/detail/immunization>

<sup>3</sup> See: <https://www.ecdc.europa.eu/en/immunisation-vaccines/EU-vaccination-schedules>

<sup>4</sup> <https://vaccine-schedule.ecdc.europa.eu/>

<sup>5</sup> See: [Expert Panel on Effective ways of investing in Health, Vaccination Programmes and Health Systems in the European Union \(September, 2018\).](#)

*on the prevention and combating of infections and infectious diseases in humans.* This obligation does not assume that a direct coercive measure is always applicable and cannot be considered as a violation of the Convention.

**16.** The list of compulsory vaccinations and the group of persons obliged to undergo these vaccinations have been defined in detail in Article 17 (1) of the aforementioned Act and in the *Ordinance of the Minister of Health of 18 August 2011 on compulsory vaccination*, which was adopted on the basis of Article 17 (10) of the aforementioned Act. Aforementioned legal regulations are supplemented by the Protective Vaccination Program announced annually by the Chief Sanitary Inspector, which is addressed to professionals (doctors and nurses) who are implementing compulsory protective vaccinations.

**17.** It should be emphasised that the obligation of preventive vaccinations encompasses 11 infectious occurring in Poland/Europe, including: diphtheria, tuberculosis, invasive *Haemophilus influenzae* type b infection, invasive *Streptococcus pneumoniae* infections, whooping cough/pertussis/, mumps, measles, acute common paralysis (poliomyelitis), rubella, tetanus, hepatitis B (children and adults risk groups). It does not apply to diseases that are not characteristic for the geographical region, *e.g.* tropical diseases. For risk groups, *e.g.* children attending nurseries, there is an obligation to undergo vaccination against chickenpox. Post-exposure vaccination against rabies and tetanus is also obligatory.

**18.** Compulsory vaccinations are periodically reviewed and listed in the Preventive Vaccination Program which is updated every year. It is created on the basis of the latest medical data, including the occurrence of specific diseases in Poland and in the neighbouring countries. The Intervening Government take a responsibility for the security of introduced procedures and finance them. The costs of carrying out compulsory vaccinations are financed in accordance with the provisions of the *Act of 27 August 2004 on health care services financed from public funds*.

**19.** The above-mentioned solution does not exclude a possibility for persons who are obliged to undergo vaccination to choose from commercially available vaccines instead of the ones offered free of charge by the Intervening Government. In the latter case the costs of the vaccine is financed by the persons subjected to vaccination. Thus, the Intervening Government leave the aforementioned individuals the right to choose, at their own discretion, the type of vaccines to be used for vaccination. In the case of compulsory vaccinations with the vaccine provided by the State, the Government not only cover the costs of the compulsory vaccinations but also the treatment of their possible side-effects.

**20.** Any person residing in the territory of the Republic of Poland is obliged to undergo compulsory protective vaccinations on the terms set out in the above-mentioned Act. In case when a person does not have full legal capacity (*i.e.* a child), a parent or a legal guardian is responsible for fulfilling this obligation.

**21.** If a parent or a legal guardian evades complying with the statutory obligation to subject children to vaccination, it is necessary to undertake actions in order to persuade them to fulfil this obligation. Thus, in accordance with Article 5 § 1(2) of the aforementioned Act, the organs of the State Sanitary Inspection (*Państwowa Inspekcja Sanitarna*) are obliged to request, by way of administrative execution, to fulfil the obligation to vaccinate children. The regulation concerning the compulsory vaccination and its enforcement has never been questioned.

**22.** Imposing a general obligation to undergo compulsory vaccination against selected infectious diseases ensures a sufficiently high percentage of people immunized against these diseases and effectively reduces the risk of epidemic spread of diseases in the population. The vaccination level of the Polish population, ranging from 95% to 100% (for various diseases), contributes to a situation that persons who cannot be vaccinated also enjoy the protection of the immunized population.<sup>6</sup>

**23.** The absence of a pan-European consensus regarding the compulsory vaccination leaves a margin of appreciation for each country, which they complete in accordance with their own best knowledge and possibilities. States should be granted a wide margin of appreciation, since they have an obligation to achieve a balance between the safety and protection of public health and the rights of individuals. In view of the wide margin of appreciation, the proportionality of all the solutions adopted should be assessed on a case-by-case basis.

### **3. Proportionality of sanctions**

**24.** The Intervening Government are of the view that measures to ensure population security must be necessary, appropriate and proportional. As demonstrated above, according to the current state of medical knowledge, there are no better measures to prevent infectious diseases and epidemics than common vaccination. At the same time it should be underline that these measures are relatively cost-effective, which is not without significance in view of the State's obligation to provide the best protection for as many persons as possible.

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<sup>6</sup> See for example: <https://vk.ovg.ox.ac.uk/vk/herd-immunity>

25. As far as the proportionality of the measures adopted in Contracting States is concerned, it should be noted that due to diversity of legal and healthcare systems, it is inevitable that systems ensuring sufficient level of vaccination among the population might be implemented by different methods in various countries. These methods are adapted to local conditions, habits and expectations of the society as well as to the economic possibilities of the state. As the Court rightly stated in the case of *Pentiacova and Others v. Moldova*, the national authorities are in a better position to carry out this assessment requirements for their health systems in relation to the funds available for them, than an international court. It should be emphasized that the assessment of specific sanctions in each Contracting State should not lead to undermining the compulsory vaccination system in general.

26. The sanction systems, as well as the vaccination systems, differ in each Contracting State. This diversity results precisely from the margin of appreciation which is unique for individual societies of each Contracting States and results from the indelible differences between them and between accepted models of social life. Similarly, compulsory education, military service or social security rights are also differently defined and sanctioned in each Contracting States.

### III. CONCLUDING REMARKS

27. Taking all of the above arguments into account the Intervening Government should like to kindly request the Court to conclude in the interest of justice that compulsory vaccinations required by law and sanctioned in case of non-compliance should not be considered as being incompatible with the Convention, whereas the sanctions themselves should fall within the scope of Article 8 § 2 and Article 9 § 2 of the Convention.

28. At the same time the Intervening Government respectfully invite the Court to pay due regard to the concept of margin of appreciation while adjudicating the above-mentioned cases.



Jan Sobczak

Government Agent

## **Appendix**

### **List of applications**

1. Vavříčka v. Czech Republic (no. 47621/13)
2. Novotná v. Czech Republic (no. 3867/14)
3. Horných v. Czech Republic (no. 73094/14)
4. Brožík v. Czech Republic (no. 19306/15)
5. Dubský v. Czech Republic (no. 19298/15)
6. Roleček v. Czech Republic (no. 43883/15)