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Bratislava
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Application No. 47621/13 and five others applications
Vavříčka and Others v. the Czech Republic

Dear Sir,

With regard to the letter of the Deputy Grand Chamber Registrar of 3 April 2020, please find enclosed written observations of the Government of the Slovak Republic as the third party in the above cases.

Yours faithfully,


Marica Pirošíková
Agent of the Government
of the Slovak republic
before the European Court of Human Rights

**OBSERVATIONS OF THE GOVERNMENT OF THE SLOVAK REPUBLIC
AS THIRD PARTY TO APPLICATIONS**

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

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

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

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

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

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

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VAVŘIČKA v. the CZECH REPUBLIC (no. 47621/13), NOVOTNÁ v. the CZECH
REPUBLIC (no. 3867/14), HORNYCH v. the CZECH REPUBLIC (no. 73094/14),
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REPUBLIC (no. 19298/15), ROLEČEK v. the CZECH REPUBLIC (no. 43883/15)**

I. General comments

1. The Deputy Registrar of the Grand Chamber of the European Court of Human Rights (hereafter the “Court”) with letter of 3 April 2020 notified the Government of the Slovak Republic (hereafter the “Government”) that the President of the Grand Chamber according to Rule 44 §§ 3 and 4 (b) of the Rules of Court granted leave to the request for intervention of the Slovak Republic as third party and to submit written observations in cases *Vavříčka v. the Czech Republic*, *Novotná v. the Czech Republic*, *Horných v. the Czech Republic*, *Brožík v. the Czech Republic*, *Dubský v. the Czech Republic* and *Roleček v. the Czech Republic*.

2. The applicants complain in the above listed cases that in result of imposed fine for failure to comply with the obligation to vaccinate the child and in relation to refused admission of unvaccinated children to nursery school, their rights guaranteed in the European Convention on Human Rights (hereafter the “Convention”) were violated. In relation to the above cases, the Court raised questions with the Czech Government on the rights guaranteed in Articles 8 and 9 of the Convention and Article 2 of Protocol no. 1 to the Convention.

3. The Government as the intervening third party submit the following observations within the given time-limit.

II. Third party observations

4. The Court has already had the opportunity to assess complaints on compulsory vaccination of a person. In its actual case law it held that compulsory vaccination – as an involuntary medical treatment – amounts to an interference with the right to respect for one’s private life, which includes a person’s physical and psychological integrity, as guaranteed by Article 8 § 1 of the Convention (see, *mutatis mutandis*, *Boffa and 13 Others v. San Marino*, decision of the Commission, 15 January 1998, also *Solomakhin v. Ukraine*, 15 March 2012, § 33). The Court during its decision-making practice has not yet arrived to the conclusion of violation of the right guaranteed in Article 8 of the Convention by the very existence of the obligation to vaccinate in the legal order. The Court reiterated in this regard that the State’s vaccination policy follows general interest on the protection of public health and the eradication spreading of infectious diseases and the State enjoys a margin of appreciation in this regard (see, *mutatis mutandis*, *Baytüre and Others v. Turkey* (dec.), 12 March 2013, § 28).

5. There is no uniform approach in the Council of Europe States to the question of vaccination. The Slovak Republic belongs among countries where compulsory vaccination is regulated legislatively. Compulsory vaccination is in the Slovak legal order included in Section 51 § 1 (d) of Act no. 355/2007 Coll. on Protection, Support and Development of Public Health as amended (hereafter the “Act no. 355/2007 Coll.”) and in the Ordinance of the Ministry of Health of the Slovak Republic no. 585/2008 Coll., Establishing Particulars of Prevention and Control of Transmitted Diseases as amended. Compulsory vaccination is

established as a general obligation (whereas the legal regulation establishes compulsory regular vaccination of individuals at a certain age, compulsory vaccination of individuals exposed to increased danger of selected infections, compulsory vaccination of individuals exposed through profession to increased danger of selected infections and special compulsory vaccination), except for cases where contraindications are known with the person. Compulsory vaccination after attained certain age established by the legal order is against diphtheria, tetanus, black cough, infectious child cerebral palsy, type B inflammation of the liver caused by viral infection, invasive haemophilus infections, pneumococcal invasive disease, measles, mumps and rubella and re-vaccination of adults against diphtheria and tetanus. According to the Office of Public Health of the Slovak Republic the most frequent permanent contraindications of vaccination are severe oncologic diseases, immune-depressive conditions, severe neurological diseases, cerebral palsy, innate developmental defects, oncologic and allergic diseases.

6. The Constitutional Court of the Slovak Republic (hereafter the “Constitutional Court”) has entertained the possible collision between the protection of fundamental rights and freedoms and compulsory vaccination, upholding in judgment file no. PL. ÚS 10/2013 of 10 December 2014 the accordance of the above mentioned provisions of Section 51 § 1 (d) and Section 62 (a) of the Act no. 355/2007 Coll. with the provisions of the Constitution of the Slovak Republic, guaranteeing protection of fundamental rights and freedoms. The Constitutional Court in those proceedings did not grant the motion of the Regional Court in Nitra to declare incompatibility of the noted provisions with the Constitution. The Constitutional Court held that compulsory vaccination could contravene with the right to protection of health if compulsory vaccination would be required regardless of health contraindications of the patient, in this case the vaccinated child, or if the harmfulness of compulsory vaccination to the health of the vaccinated citizens would generally be demonstrated. It pointed out that the legal regulation of compulsory vaccination however recalls contraindications with the child (or the individual obliged to go through compulsory vaccination) and does not regulate the obligation to receive compulsory vaccination or imposes the duty to the attending doctor performing compulsory vaccination to regard prior to compulsory vaccination the eventually known contraindications. It further held that it is not possible to consider demonstrated the general negative impact of vaccination on people, on the contrary, demonstrated is the positive impact of compulsory vaccination in order to prevent the rise and spread of transmitted and deadly diseases, for example also by overall eradication of real smallpox. The Constitutional Court pointed out that as for the safety of vaccine substances on the health of the people, their harmlessness and prevention of adverse effects of medicaments, the State is watching over this in form of regulation of State control of medicaments by means of the State Institution for Control of Medicaments. Upon the above mentioned the Constitutional Court arrived to the conclusion that the legal regulation of compulsory vaccination does not clearly intervene with the core (essence) of the right to protection of health. The Constitutional Court reviewed also the relation between the compulsory vaccination and the right to privacy, where colliding are two constitutionally protected interests, whereas the right to privacy is restricted by the law in favour of public interest on the protection of citizens (humankind or the life and health of the citizens) against the rise and spread of transmitted deadly diseases by establishing the obligation to all natural persons to receive compulsory vaccination. The Constitutional Court referred to the case law of the Court in cases *Solomakhin v. Ukraine* and *Boffa and 13 Others v. San Marino*, as well the decision of the Supreme Court of the United States of America in case *Jacobson v. Massachusetts*, file no. 197 U. S. 11 (1905) and when assessing the proportionality of the challenged measure in the Slovak Republic it pointed to the obligation of the doctors prior to vaccination to perform medical examination of the vaccinated, the obligation to regard health

contraindications and advise the natural person (vaccinated or the parents of the child) on all aspects of vaccination and the impact on health condition as well the liability of the provider of health care for damage caused by conduct *non lege artis* in case of incorrect conduct of the provider of health care and eventual damage on health of the vaccinated which in the Slovak legal order is regulated by the respective laws. It held that „*the significant extent of satisfiability of public interest on protection of life and health of the citizens by preventing the rise and spread of transmitted deadly diseases prevails over the medium to significant interest on the protection of the right to privacy of natural persons and therefore it is necessary to prefer public interest on protection of life and health of the citizens by preventing the rise and spread of transmitted deadly diseases by securing compulsory vaccination.*“

7. In relation to practicing compulsory vaccination in the Slovak Republic, the Supreme Court of the Slovak Republic (hereafter the “Supreme Court”) filed a motion on 6 August 2013 with the Court of Justice of the European Union (hereafter the “Court of Justice”) to initiate preliminary ruling according to Article 267 of the Treaty on the Functioning of the European Union. The motion was filed by the Supreme Court within proceedings pending in case of M.Š. c/a Office of Public Health of the Slovak Republic concerning the refusal of M.Š. to comply with the obligation established by the domestic legal regulation to subject her minor child to vaccination against certain diseases. The Court of Justice (ninth chamber) with decision in the matter C-459/13 of 17 July 2014 decided that it was manifestly incompetent to answer the questions raised by the Supreme Court. The Court of Justice among other instances held that this issue belonged exclusively within domestic legal regulation and judiciary.

8. The Ministry of Health of the Slovak Republic (hereafter the “Ministry of Health”) stated with respect to the Slovak legal regulation concerning the issue: *“the legal regulation establishing compulsory vaccination of children in the Slovak Republic follows legitimate aim which is securing the public health of the population, in accordance with international law obligations whereas such protection of health shall be generally considered prevention as such. According to Article 24 of the Charter of Fundamental Rights of the European Union, in all actions relating to children taken by public authorities the child’s best interests must be a primary consideration. However, in several cases upon Article 8 of the Convention, concerning the right for respect of private and family life, the consideration is from the perspective of the parents’ rights, rather than then child’s, whereas in case of compulsory vaccination the best interest of the child is regarded who can be vaccinated, as well the best interest of the child who has health contraindications and cannot be vaccinated. The purpose of this legal regulation is to protect the health of the population already since child age and protect children in particular who cannot be vaccinated due to health contraindications. These children are thus the most vulnerable group which cannot be protected from diseases against which children without health contraindication should be vaccinated and so are such children put at a risk of being infected with a disease by the children who were not vaccinated, which may in their case have a more severe course than in case of children without health contraindications. The Ministry of Health considers sanctions for the violation of the lawful obligation of vaccinating children necessary in the democratic society to accomplish the aim which is the effective protection of health of the population, whereas it considers the imposition of such sanctions for an approach fully compliant with Article 8 § 2 of the Convention. States Parties to the Convention on the Protection of the Rights of the Child pursuant to Article 3 § 2 undertake to ensure the child such protection and care as is necessary for his or her welfare, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures and at the same time according to Article 24 of the Convention on the Rights of the Child undertook to adopt necessary measures to ensure the child’s right to the enjoyment of the highest attainable standard of health and measures which would be effective and appropriate to remove all usual conducts harming the child’s health. Breaching the legal obligation to get the child vaccinated is a conduct capable to harm the child’s health and it is therefore necessary and inevitable to expect compliance with such lawful obligation even under the threat of sanctions being imposed, such as fines, or*

non-admission of the unvaccinated child into pre-school facility. If the State is to adopt measures which effectively regulate the sphere of protection of health of the population, it must in inevitable cases apply also solutions which collide with the protection of other rights of the given population whereas the interest on the right to protection of health significantly prevails over the damage which may occur for instance, by an interference with the right to private and family life. Apart from the above mentioned international law obligations, the Slovak Republic pursuant to Article 12 § 2 (c) of the International Pact on Economic, Social and Cultural Rights admits each person's right to attain the highest attainable level of physical and mental health and adopts measures to attain the full exercise of this right which includes, among others, also the prevention of epidemic diseases and other diseases. Compulsory vaccination of children has in the course of time proven to be the most effective prevention from epidemic and other diseases which under the current scientific and medical knowledge may not be replaced by alternative forms of prevention which could accomplish the given purpose at the required level. The obligation established by the law to vaccinate the child and the sanctions related thereto for failure to comply with such obligation is under the principle of proportionality an inevitable and at the same time the most appropriate, the most adequate and the most effective instrument to attain the legitimate aim which is the protection of health of the population and therefore an instrument in accordance with international principles of protection of human rights and fundamental freedoms."

9. In the assessed cases however preferential is not the question of compulsory vaccination as such which clearly falls within the scope of Article 8 of the Convention and clearly presents an interference with the right of respect for private life, but rather the question of the consequences related thereto, or the question of consequences connected to the refusal of the person of compulsory vaccination. The Government express the view that during assessment of the objected violation of the right protected by Article 8 of the Convention it needs to be distinguished between the compulsory vaccination as such and the consequences related to the refusal of compulsory vaccination which may be of diverse nature and must not necessarily, depending on the specific circumstances of the case, fall within the scope of Article 8 of the Convention.

10. In the Slovak legal order compulsory vaccination is regulated as an obligation which cannot be complied with forcedly or forcedly enforce its performance. Consequence of incompliance with the obligation of vaccination by natural persons is in the Slovak Republic considered as liability for misdemeanour. Precisely, in relation to compulsory vaccination of minor children this means that in case the parents without demonstrating serious health issues or issues reasoned by a doctor refuse the compulsory vaccination of the child, according to Section 56 § 1 (a) of the Act no. 355/2007 Coll. they commit a misdemeanour within the field of public health care for which under Section 56 § 2 of the Act no. 355/2007 Coll. fine can be imposed in total amount of EUR 331. According to information from the Ministry of Health the vaccinating doctor attempts in the first place to explain to the parents the significance of vaccination, as well the risk which threatens to the child in case it will not be vaccinated. If the person due for vaccination fails to appear for compulsory vaccination even in the alternative term to which it was provably invited, the doctor shall notify of this fact in accordance with the valid legislation to the Regional Office of Public Health. Upon the notification by the vaccinating doctor on refusal of compulsory vaccination, the competent Regional Office of Public Health invites the parents of the child to inform them about the significance of vaccination and the health risks threatening to the child if it will not be vaccinated. And if not even after this conversation will the parents consent to compulsory vaccination of their child, the Regional Office of Public Health shall proceed in accordance with the Act no. 372/1990 Coll. on Misdemeanours in wording of later rules whereas the competent Regional Office of Public Health will determine the amount of the fine according to the respective offence cases. The Ministry of Health disposes with the following statistical

data on the number of notifications in this matter and the number of imposed fines for the violation of the obligation to vaccinate according to the Act no. 355/2007 Coll.:

REVIEW OF NOTIFICATIONS AND FINES FOR YEARS 2014 – 2019			
YEAR	NUMEBR OF NOTIFICATIONS	NUMBER OF FINES	FINES – TOTAL AMOUNT (EUR)
2014	2 271	369	28 234
2015	2 132	457	34 443
2016	2 301	690	39 004
2017	2 041	607	36 279
2018	1 791	563	33 216
2019	1 674	376	22 345

11. The Government further state that the Slovak legislation enshrines the possibility to assert in case of adverse effects caused by vaccination or health injury the claim for compensation. The claim may actually be asserted according to the Act no. 437/2004 Coll. on Compensation for Pain and on Compensation for Impediment of Social Position in wording of later rules, or eventually according to the provisions of the Civil Code (Act no. 40/1964 Coll. in wording of later rules), regulating general liability (Section 420 § 1 and foll.), as well the absolute objective liability (Section 421a § 1 and 2 in connection with Section 444 and foll.) and in connection with the Act no. 437/2004 Coll. on Compensation for Pain and on Compensation for Impediment of Social Situation.

12. Enshrining the liability as such for eventual damage on health caused by compulsory vaccination may be a significant aspect within the assessment of the objected violation of the rights of the person by such measure (see, *Baytiire and Others v. Turkey* (dec.), 12 March 2013, § 30).

13. The Slovak legal order does not regulate the possibility of refusal of admission of the child in nursery school for not receiving compulsory vaccination. In 2019 however, the Ministry of Health and the Office of Public Health of the Slovak Republic submitted a legislative motion the purpose of which was to invent changes in the field of admission of children to nursery school upon the status of their vaccination, only to protect the most vulnerable group of citizens. The noted draft act amending the Act no. 355/2007 Coll. and further related acts established the obligation to ensure that only children would be accepted to nursery school who were compulsorily regularly vaccinated corresponding to the age of the child according to the vaccination calendar or have a confirmation from the attending doctor that it is immune against infection or cannot be vaccinated for permanent contraindications. Part of the legislative motion was to quash fines for failure to receive compulsory vaccination which currently may be imposed in total amount of EUR 331. In the reasoning report to the draft act the need to invent the suggested measure was explained with the fact that *“collective institution creates conditions facilitating the introduction and spread of the infection. Unvaccinated children in a collective may be source of originator of infection for other children who cannot be vaccinated due to contraindications or are immune for inability of the organism to create protection.”* This motion was on 21 August 2019 approved by the Government of the Slovak Republic and was subject to deliberations at the 51th and 53th session of the National Council of the Slovak Republic. The draft act did not get sufficient support and in the end has not been approved in the 3rd

reading. For the present intervention of the Government the Ministry of Health reasoned the suggested measure as follows: *“With regard to the increased occurrence of diseases which can be prevented with vaccination (in particular measles) in the Slovak Republic but also overall in Europe, it is truly needed to invent the suggested measure. Diseases against which the Slovak Republic vaccinates within compulsory vaccination have very much of a serious course or carry serious complications. Many children however with regard to their health condition cannot be vaccinated. Collective immunity secures the children protection against such diseases (large number of vaccinated children prevents diseases to spread). As the number of vaccinated children in the Slovak Republic against certain diseases is decreasing, collective immunity may not sufficiently be provided for. An unvaccinated child, in particular in a collective facility, may then be the source of infection or may facilitate the spreading of the disease. In times of outbreak of epidemic it is often too late to decide to have the child vaccinated. Under the current health threats such as measles in EU countries like in Slovakia experts stress the necessity of collective immunity to be provided for against infectious diseases. Sufficient level of vaccination of children and preserving collective immunity of the population secures protection for all people. For this reason, it is necessary to execute changes in the field of acceptance of the children in nursery school upon their vaccination status. Restriction of admission of unvaccinated children in nursery schools was invented for instance already in the Czech Republic, Lithuania as well France.”*

14. The Government stress as for the refusal of admission of the child to nursery school in result of the failure to comply with the obligation of vaccination established by the law and in relation to the right to education according to Article 2 of Protocol no. 1 to the Convention, that the Court in its decision-making practice applied the article in issue of the Convention to “primary education” (see, *Valašinas v. Lithuania* (dec.), 14 March 2000), to “higher education” (see, *Leyla Sabin v. Turkey* [GC], 10 November 2005, §§ 141-142), or to “primary, secondary and higher levels of education” (e.g., *Velyo Velez v. Bulgaria*, 27 May 2014, § 32, with further references), stressing explicitly that this article does not secure the absolute right to all forms of education (e.g., *Belgian linguistic case*, 23 July 1968, Series A no. 6, pgs. 30-32, §§ 1-6). The Court actually did not apply yet the right to education guaranteed in Article 2 of Protocol no. 1 to the Convention to pre-school facilities, such as day-care centres or nursery schools (kindergartens).

15. The Government state in this regard that in the Slovak Republic pre-school facilities are for the children not compulsory. In sense of Section 20 § 1 of the Act no. 245/2008 Coll. on Education and Training and on the amendment and supplementation of certain acts (hereafter the “School Act”) the compulsory school attendance in the Slovak Republic is performed in elementary schools, secondary schools and in schools for students with special educational and training needs. The interest of the parents on placing the children in nursery schools is however increasing, currently exceeding their capacities. Nursery schools according to the legal regulation support personal development of children in the social, emotional, intellectual, physical, moral, esthetical fields, develop abilities and skills, create requirements for further education and prepare for life in the society in accordance with the individual and age particularities of the children. The amendment of the School Act invented in the Slovak Republic with effect from 1 January 2021 compulsory pre-primary education for children of age five (pre-school preparation prior to entering elementary school). This legal regulation will affect children who reach the age of five by 31 August 2021 and start compulsory school attendance in elementary school from 2022/2023. The parent will be able in this regard to choose whether to put the child in nursery school, private establishment providing care for the children up to six years, or if he will educate him individually, whereas only that parent can educate the child at home who has at least full secondary general or professional education.

16. In the Government's view, also the above-mentioned aspects are relevant from the point of view of assessment of the connection between the compulsory vaccination, refusal of admission of the child in pre-school facility in result of its unvaccination and the right to education, guaranteed in Article 2 of Protocol no. 1 to the Convention.

Bratislava, 7 May 2020



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