

AUT-2022-2-003

a) Austria / b) [Constitutional Court](#) / c) / d) 23-06-2022 / e) G 37/2022 / f) / g) ECLI:AT:VFGH:2022:G37.2022 / h) CODICES ([German](#)).

Keywords of the systematic thesaurus:

- [03.09](#) General Principles - **Rule of law.**
- [03.16](#) General Principles - **Proportionality.**
- [03.17](#) General Principles - **Weighing of interests.**
- [05.03.32](#) Fundamental Rights - Civil and political rights - **Right to private life.**

Keywords of the alphabetical index:

[COVID-19, pandemic](#) / [Vaccination, compulsory](#) / [COVID-19, measures, vaccination](#).

Headnotes:

The Mandatory COVID-19 Vaccination Law aims to achieve a high vaccination coverage rate to protect people who cannot benefit from vaccination for medical reasons or for whom the effectiveness of vaccination is reduced. It is also intended to protect the functioning of the health infrastructure through the lower risk of severe courses of disease after vaccination. The Minister of Health shall continuously review whether there are equally effective, less intrusive means than mandatory vaccination to achieve these goals. As a result of that evaluation, the Law has been suspended since March 2022. Therefore, the Law is not unconstitutional.

Summary:

I. § 1 of the Mandatory COVID-19 Vaccination Law stipulates that for the protection of public health, residents in Austria above the age of 18 are obliged to be vaccinated against COVID-19. That vaccination duty may not be enforced by exercising direct coercion.

The applicant, an Austrian citizen, filed a constitutional complaint with the Constitutional Court, claiming that such a duty violated both the right to private life under [Article 8 ECHR](#) as well as the principle of equality under Article 7.1 of the Federal Constitutional Act.

He alleged, in particular, that mandatory vaccination of vulnerable people would be sufficient to protect the functioning of the health care system. None of the vaccines conferred sterile immunity. The available vaccines were unsuitable to attain herd immunity. Instead, testing and face masks would prevent infection just as effectively as and less intrusively than vaccination. There was also a lack of data on the effectiveness of vaccination with regard to unknown virus variants.

II. The Constitutional Court observed that the Mandatory COVID-19 Vaccination Law and the Mandatory COVID-19 Vaccination Regulation had been adopted against the background of the Delta virus variant and the uncertain prognosis regarding the Omicron virus variant. The

regulation specifies when a valid vaccination status exists and standardises exemptions from mandatory vaccination. Owing to the COVID-19 Non-Application Regulation, the vaccination duty was not enforced at the time of the present proceedings.

According to the Constitutional Court, mandatory vaccination was a particularly severe interference with individual rights. Nevertheless, such interference was justified: vulnerable persons, who cannot be vaccinated for medical reasons or for whom the effectiveness of a vaccination is reduced, depended on social solidarity in order to be able to continue to participate in social life. The individual could be required to accept a low health risk associated with vaccination in order to protect those people. Based on the prevailing scientific opinion, the legislator rightly assumed that the Mandatory COVID-19 Vaccination Law served to protect health insofar as vaccinated persons are exposed to a significantly lower risk of a severe course of disease and that this reduces the burden on the health infrastructure by persons suffering from COVID-19.

The Court continued that, as per § 19.2 of the Law, the Minister of Health shall specify the vaccination duty. Accordingly, the Minister may react to current developments without delay; he shall at any time determine what is constitutionally required with a view to the current state of science. The Court had no objections to this power to issue general administrative regulations from the perspective of the principle of the rule of law.

§ 19.2 of the Law ensures that the obligation to vaccinate only comes into effect if it is appropriate and necessary in the light of the pursued goal. Thereby, the limits of [Article 8 ECHR](#) must be observed. The goal of preventing the spread of COVID-19 through high vaccination coverage in order to protect vulnerable persons, as well as of disburdening the health infrastructure by reducing the risk of severe courses of disease, serves the public interests of protecting life and health. The legislator cannot rule out a repetition of such threat situations, because at the particular peaks of the pandemic the health system was heavily burdened and because the development of the virus is unpredictable.

Mandatory vaccination is justified if it is absolutely necessary to achieve the legitimate goal. In this context, it must be taken into account whether there were other equally effective but less intrusive means. The Minister of Health must continuously evaluate the necessity of mandatory vaccination and suspend the obligation if necessary. The Minister fulfilled this obligation by means of the COVID-19 Non-Application Regulation, according to which the vaccination duty had been suspended since March 2022.

The Constitutional Court concluded that against the background of that regulation, which was in force, the Law was also in line with the constitutional requirement of proportionality.

Cross-references:

European Court of Human Rights:

- *Vavricka v. Czech Republic* [GC], no. 47621/13, 08.04.2021, [[ECH-2021-2-015](#)].

Languages:

German.