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Enforcing children’s right to self-determination in health care: theoretical and practical issues raised by the refusal of age-related compulsory vaccinations in Hungary

ABSTRACT: Anti-vaccination is a world-wide movement that has, unfortunately, found followers in Hungary as well. Anti-vaccination advocates attempt to postpone or outright avoid compulsory vaccinations for their children in various ways. On the one hand, these parents do not cooperate with family pediatricians, family nurses, and vaccinating doctors, and on the other hand, possession of medical documentation or certification without having actually had the vaccinations administered is an increasingly common phenomenon. One of the harmful consequences of the anti-vaccination movement is the increased incidence of epidemic outbreaks in developed countries, not just in developing ones.¹ The question arises as to in what form and under what procedural framework a minor child’s right to self-determination in medical procedures should be enforced and whether the child’s parent, as the child’s legal representative, has the right — and if so, within what legal framework — to decide and even refuse, with regard to their child, a medical treatment or invasive intervention that is compulsory or recommended by a doctor. The case of refusal of age-related compulsory vaccinations is also of particular importance. The paper deals in more detail with the legal background of the arguments and counter-arguments and the practical problems involved.

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¹ Epidemics have arisen in places where they had not occurred for a long time since the advent of compulsory vaccination. Specifically, cases have been reported in countries that previously reported having successfully suppressed certain diseases, such as the United Kingdom, Albania, Greece, and the Czech Republic, although these four countries had earlier announced to have successfully stamped out the disease. The number of measles cases doubled between January and June 2019 compared to the same period in 2018. Available at:

<https://www.informed.hu/betegsegek/pediatrics/infections/morbilli/terjed-a-kanyarovilagszerte-225911.html> (Accessed: 16 October 2023).

KEYWORDS: self determination, children rights, compulsory vaccinations, refusing a medical treatment, health authority's decision.

1. Legal framework for refusing a medical treatment or intervention that a child needs

According to the Hungarian Health Act,² a medical treatment or intervention that a child needs, that is, where its absence would likely result in *serious or permanent impairment* to the minor patient's health condition, cannot be refused.³ However, legislators did not want to completely exclude the possibility of refusing care in cases where a minor has unappeasable pain due to a terminal and incurable disease. Hence, while allowing the disease to follow its natural course, it is possible to refuse life-supporting or life-saving interventions, but only if the child suffers from a serious disease which, according to the current state of medical science, will lead to death within a short period of time even with adequate health care and is incurable. In such cases, the entitled parent (legal representative) or other relatives may refuse care as indicated in the Health Act via a statement incorporated into a public deed or a fully conclusive private deed, or, in the case of the representative's inability to write, in a declaration made in the joint presence of two witnesses. In the latter case, the refusal must be recorded in medical documentation that shall be certified with the signatures of the witnesses. In such a case, however, the health care provider is obliged to bring an action to obtain the required consent of the relevant court, and the treating doctor is obliged to provide the care justified by the ill child's state of health until a final and binding court decision is made.⁴

In case of direct danger to life, medical providers do not need to attempt to have the relevant court invalidate a parent's declaration of refusal before performing the required intervention. In order to comply with his or her obligation, the treating doctor, if necessary, may also seek the assistance

² Act CLIV of 1997 on Health (Health Act).

³ Section 21(1) of the Health Act; Hidvéginé Adorján and Simkó-Sári, 2017, p. 121.

⁴ Palliative care for children is a special area that is closely related to that for adults. Palliative care for children can take place at times when a child is suffering from a disease that is life-limiting (e.g., muscular dystrophy) or life-threatening (e.g., advanced cancer). In such cases, it is ideal for the child to receive the required care in their family home with the pediatric palliative team constantly available and accessible. Hidvéginé Adorján, Simkó-Sári and Ohár, 2021, p. 210.

of the police.⁵ The procedure that replaces the court's ruling in this case entails the court acting through a non-contentious proceeding held on a priority basis. The proceeding is free of charges because of the subject matter.⁶ However, the person making the declaration of refusal may withdraw the declaration at any time, without any formal obligation.

In a case that started in 2014, the parents refused the administration of age-related compulsory vaccines to their infant, refrained from choosing a family pediatrician, refused the family nurse's services, and denied a social worker entry into their home; consequently, the child protection authority took their child into protective custody.⁷ In the same year, it was also declared in a normative way that in the case of a minor with no or limited capacity, the health care services of the general practitioner, the family pediatrician, and the family nurse cannot be refused.⁸ It is the obligation of the family pediatrician or, where there are mixed districts, that of the general practitioner, to provide primary health care to minor children⁹ up to the age of 19 years.

For the child's healthy development, the legal representative is obliged to cooperate with the general practitioner and the family pediatrician and ensure that the child attends screening, status, and check-up examinations at the times determined by the general practitioner and the family pediatrician. If the legal representative fails to fulfil this obligation, the health authority, on the initiative of the general practitioner or the family pediatrician, may order an investigation involving the family and child welfare authority, if necessary.¹⁰ In cases where the general practitioner or the family pediatrician, as part of the child protection referral system,

⁵ The question arises as to how doctors shall act in the case of a conflict with an incapacitated or partially incapacitated patient's legal representative. It is the doctor's duty to protect patients with no or limited capacity to consent against the decisions of persons who have not decided in the patient's best interest; thus, legislation should provide appropriate redress regarding this issue as well. Doctors, in practice, may be faced with a conflict of obligations when they are required to provide care, for example to a child, that is in line with professional standards and to which the legal representative has also given consent. Can a doctor be obliged by the court to provide or withhold health care against their own professional conviction? Dósa, 2012, p. 185.

⁶ Sections 20(3)-(8) and 21 of the Health Act.

⁷ Court Resolution BH2017.101.

⁸ Section 21(1)(a) of the Health Act.

⁹ Section 8(2)(a) of Act CXXIII of 2015 on Primary Health Care (Hereinafter Health Care Act).

¹⁰ Section 8(1)-(2) of the Health Care Act.

detects that the child is at risk, they must indicate it to the family and child welfare service and initiate an authority proceeding in the cases specified in Act XXXI of 1997 on the Protection of Children and Guardianship (Child Protection Act). In order to prevent harm and eliminate the risk threatening the child, the general practitioner and the family pediatrician caring for the child and the family nurse responsible per the child's place of residence are obliged to cooperate and mutually inform each other.¹¹

In the case of medical interventions required by law, such as age-related compulsory vaccination, the parent's (legal representative's) consent is not required.

On the basis of today's dominant scientific worldview, the World Health Organization is running a global campaign advocating children's immunization, and Hungarian legislation is in line with this framework. The strategic goal of the World Health Organization is to reach 95% immunization coverage worldwide. Hungarian statistics are more favorable than that, with the local vaccination system having internationally acknowledged results.¹²

2. Parental refusal of age-related compulsory vaccinations

The Hungarian vaccination system has a well-defined legislative background. Age-related vaccinations are administered at specific ages and in specified combinations according to the vaccination calendar included in the methodological letter published and renewed annually by the National Public Health Center (Nemzeti Népegészségügyi Központ).¹³ Vaccines and their administration to children are free of charge; costs are covered by the central budget.¹⁴

¹¹ Section 8(3)-(3)(a) of the Health Care Act.

¹² Joint Report of the Commissioner for Fundamental Rights and the Deputy Commissioner for Fundamental Rights and Ombudsman for Future Generations on Case AJB-3119/2014, p. 9.

¹³ The vaccine against smallpox (variola) was the first vaccine to be introduced and was used until 1980 when the WHO declared the world free of smallpox. Dósa, Hanti and Kovácsy, no date, *Great Commentary*. (Hereinafter: *Great Commentary*) Explanation of Section 57 of the Health Act.

¹⁴ Together with other epidemiological health care services, compulsory vaccinations shall also be provided to individuals residing in Hungary as part of the "basic health package." Thus, the administration of age-related compulsory vaccinations is free of charge for a child settled in Hungary even if the child does not yet have a social security number. Section 142 of the Health Act.

The effective family nurse system has a crucial role in the Hungarian vaccination scheme. It is the local family nurse's duty¹⁵ to register the children living in their area of care who are subject to compulsory vaccination and to notify the children's legal representatives, typically parents, about the due date of compulsory vaccination and provide related information including the exact method, purpose, place, and time of vaccination.¹⁶ The legal representative is obliged to ensure the presence of the minor person who is subject to vaccination.¹⁷ In a case where, for any reason, the parent is unable to be present with the child at the place of the vaccination at the indicated time, the family nurse is obliged to report this without delay. In this case, the minor's legal representative will be informed of the new date of vaccination. The reason for the absence might be that the compulsory vaccination was already administered to the child elsewhere or the child was permanently exempted from vaccination. The parent is obliged to declare such facts and provide credible supporting evidence. It is essential that parents keep their children's vaccination documentation and present it to the doctor on occasions of new vaccination and screening and check-up examinations. In the event of a lost or damaged Healthcare Book, the data comprising the Vaccination Data Sheet shall be replaced by the vaccinating doctor on the basis of the vaccination records.¹⁸

The vaccinating doctor is also obliged to keep records of the children subject to vaccination who fall under their responsibility of care and shall report to the family nurse¹⁹ and the health authority all data on missed vaccinations in a given month (what vaccinations, who missed them and for what reason).

In case where the parent does not comply with their obligation even after receiving a written notice, and the family nurse's call and the information provided by the vaccinating doctor are not effective either, the state health administration will order the vaccination by decision.²⁰ In such cases, the authority does not have discretionary powers as the law contains

¹⁵ Section 15(1) of the Decree 18/1998 (VI. 3.) NM of the Minister of Public Welfare (MPW) on the Epidemiological Measures Necessary for the Prevention of Infectious Diseases and Epidemics (Hereinafter: MPW Decree).

¹⁶ The family nurse is obliged to report administered and missed vaccinations to the health authority on a monthly basis. Mohai and Péntzes, 2018, pp. 87-89.

¹⁷ Section 14(1) of the MPW Decree; Section 58(6) of the Health Act.

¹⁸ Section 14(1)-(4) of the MPW Decree.

¹⁹ Section 8(3)(b) of the Health Care Act.

²⁰ Section 58(7) of the Health Act.

the following clear obligation: It must ensure that the requested vaccination is carried out by the means available. In a case where the authority obliges the legal representative to have the compulsory vaccine administered to the child, it sets an appropriate time limit to realize that, and it also informs the parent of the legal consequences applicable in the event of non-compliance.

The decision ordering the vaccination was immediately enforceable until 20 June 2007 irrespective of legal remedy.²¹ However, a serious legal debate developed regarding the immediate enforceability of the health authority's decision ordering the vaccination, in which the Supreme Court finally ruled that developing active and passive immunity to infectious diseases is a public interest that justifies the ordering of immediate enforcement.²² However, the Constitutional Court classified the legal provision on the immediate enforceability of the decision as unconstitutional because it considered that the immediate enforceability of the first-instance decision ordering the administration of vaccination, irrespective of the specific circumstances and the irreversibility of the intervention, disproportionately restricted the right to legal remedy recognized in Section 57(5) of the Constitution.²³ Thus, according to the provisions currently in force, the health authority's decision ordering vaccination can be declared immediately enforceable only in the case of an immediate epidemiological risk in respect of the scope of vaccination determined by the emergency, and otherwise not.²⁴

3. Sanctions applicable in cases of refusal of compulsory vaccination

If the parent still does not comply with the decision, the health authority will institute infringement proceedings²⁵ in which it may impose a health fine,²⁶ the amount of which may range from HUF 30,000 to HUF 5,000,000.

²¹ Section 58(3)-(4) of the Health Act.

²² Court Decision BH 2004.37.

²³ Constitutional Court Decision 39/2007 (VI. 20.) AB.

²⁴ Section 58(7) of the Health Act.

²⁵ Pursuant to Section 239(1)-(3) of Act II of 2012 on Minor Offenses, Offense Procedures and the Registration System of Offenses, those who violate health legislation regarding vaccination, infectious diseases, infectious patients, or persons suspected of being infected, epidemiological surveillance or control and disinfection, or a health provision issued under such legislation, commit an offense, for which the procedure falls within the competence of the state health administration.

²⁶ Section 13/A(5) of Act XI of 1991 on Health Governance and Administration Activity.

According to a report from the ombudsman in 2016, the practice of continuously imposing fines on those declining compulsory vaccination is, in the unanimous opinion of the health authorities consulted, an insufficient deterrent for parents. Instead, it leads to the development of such an unequal legal situation in which parents who refuse vaccination and have a better financial situation “can buy off” the exemption of their children from the compulsory vaccination scheme by paying the fine(s); hence, there is a need for proportionality, graduality, and consistency in this area.²⁷

A long-used sanction was kindergartens refusing admission to children who had not been vaccinated. Previously, a child could only be admitted to kindergarten education if their guardian could produce a medical certificate stating that the child “could enter the community,” which meant that the child had received age-related compulsory vaccines. However, the 2016 ombudsman's report declared that a child's admission to kindergarten cannot be made dependent on the receipt of compulsory vaccinations required at the child's age. At the same time, the head of the kindergarten is responsible for ensuring that the kindergarten has an appropriate health service, whereby the kindergarten's doctor is obliged to check the receipt of compulsory vaccinations in respect of all children admitted to the kindergarten and must also take the necessary measures in the event of any vaccination deficiencies.²⁸

For lack of human rights violations, the European Court of Human Rights (ECHR) dismissed a number of cases brought by parents in the Czech Republic, alleging that they had been fined by the authorities for refusing their children's compulsory vaccinations and that kindergartens had refused their children's admission. As in Hungary, it is a general legal obligation to vaccinate children in the Czech Republic, and parents who fail to do so can be fined. Although, according to the ECHR, the execution of a refused medical intervention may harm the related person's right to privacy, it is a necessary and proportionate restriction to protect the health rights of others, particularly children (i.e., the development of herd immunity). Pursuant to the ECHR's decision, the lawful refusal of kindergarten admission is a measure of prevention rather than punishment for the parents. However, as taking part in education is essential for children's personal development, children of compulsory schooling age can attend educational

²⁷ Report of the Commissioner for Fundamental Rights on the case AJB-361/2016, p. 16.

²⁸ Report of the Commissioner for Fundamental Rights on the case AJB-361/2016, p. 18.

institutions in the Czech Republic even in the absence of compulsory vaccinations.²⁹

A precedent-setting judgement was made in Hungary on the question of whether parents who actively, intentionally, and habitually prevent their minor child from receiving age-related vaccinations can be convicted of the offense of “endangering a minor.” In this particular case, it was clearly established that the parents, by this behavior, had thwarted their child in developing a more complete immunity to the diseases the vaccinations are intended to prevent, thus exposing the child to risk in the form of there being a chance of becoming infected with the pathogens of such diseases due to environmental circumstances. However, the expert opinion also found that, due to compulsory vaccination, the occurrence of these diseases is very low in practice; thus, there is relatively little chance that, in the absence of vaccination, the child involved in the case could actually become infected, thereby putting their physical development at immediate risk. The offense of endangering a minor is a result crime, which means that its commission is conditional on actual endangerment of the minor’s physical development.³⁰ It is, however, a fact that the possibility of infection is extremely low, exactly because of the public health situation that has been achieved through vaccination; therefore, it could not be established that, in the absence of vaccinations, the child concerned was at risk of serious infections that would have endangered their physical development. The remote (theoretical) possibility of danger was insufficient to establish the offense; thus, in the absence of a situation actually endangering the child’s physical development, the crime of endangering a minor could not be established in respect of the parents.³¹

Finally, refusal of compulsory vaccination may lead to an authority measure ordering the child’s removal from the family and his or her temporary placement on the grounds of child endangerment if the parent fails to have the compulsory vaccination administered to the child and hinders its implementation in every possible way. In one specific case,

²⁹ *Case of Vavříčka and Others v. the Czech Republic* App. No. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15 and 43883/15, 8 April 2021. Available at: <https://hudoc.echr.coe.int/fre?i=001-209039> (Accessed: 16 October 2023); Láposy, 2022, p. 6.

³⁰ The concept of danger is of dual origin: Besides the child's lack of immunity to specific diseases (as a risk factor), a real possibility of actual infection (as a risk factor) is also required.

³¹ Principled Court Resolution EBH2009.2029.

parents tried to prevent their infant child from being vaccinated by hiding the child, and they did not cooperate at all with health and child protection authorities, to such an extent that they did not fulfil their obligation to do so even despite a final decision. The enforcement was obstructed by failing to cooperate and by isolating and hiding the child from the competent authorities, and by referring to foreign residence. The authorities first ordered that the child be taken into protection, but as serious endangerment persisted, the second-instance child protection authority decided to remove the child from the family and place him or her in temporary foster care. The Curia also confirmed in its decision that the fact that health and child protection services had completely lost sight of the child implied such serious endangerment that could only be averted by taking the child into temporary care.³²

In another case, the child's endangerment and, consequently, the decision to take the child into protection and appoint a family carer was based on the parents' refusal to present the child for administration of compulsory vaccinations, their failure to request the services of a family nurse, and their failure to choose a family pediatrician for their child (although, when the child was ill, they took the child to four different pediatricians a total of 14 times). Furthermore, the parents only appeared to cooperate with the Child Welfare Center, but they did not apply its advice, and the father did not allow the family carer into their home. The Curia confirmed the principle established by the lower courts that the choice of a general pediatrician is a child's right under the freedom to choose a doctor but an obligation for parents. Health care is much more efficient if the same doctor regularly sees the child and knows the medical history as said doctor has a better chance of identifying possible diseases earlier based on the symptoms. Failure to administer compulsory vaccinations to a child is tantamount to endangerment that may require an order to take the child into protection because it may hinder or impede the child's physical development. There is no need to call an expert to confirm the "danger" required for protection, which can be established without further proof in the case of failure or refusal to administer compulsory vaccinations since the child's physical, mental, and emotional or moral development does not have to be impaired in order to determine endangerment.³³

³² Paragraphs [26]-[27] and [39] of Principled Court Resolution EBH2018. K21.

³³ Paragraph [21] of Court Resolution BH2017.101.

However, legislation is not as strict everywhere in Europe as it is in Hungary, which has led to an increase in vaccine hesitancy throughout the continent. In a resolution adopted in April 2018, the European Parliament noted that epidemiological data from Member States have shown important gaps and that vaccine hesitancy has reached worrying proportions.³⁴ Although vaccination is estimated to prevent around 2.5 million deaths worldwide each year, Europe's vaccination coverage rate is still declining, which has led to a significant increase in measles epidemics and related deaths in many European countries.³⁵

4. Arguments against the administration of compulsory vaccinations³⁶

A primary argument concerns people's liberties with respect to the state's authority. Anti-vaccination assumed an organized form as early as the 19th century when those concerned claimed unjustified restrictions on human liberties. These groups were not so much protesting against vaccinations as against the practice of making them compulsory; such protest has been established upon various ideological grounds, the essence of which is that making vaccinations compulsory deprives parents of their freedom of choice. Even on this premise, the question has arisen as to whether the extent of the restriction is proportionate to the goal it is intended to achieve.

Possible harmful consequences. Another important anti-vaccination argument is that compulsory vaccinations might also cause serious damage to health. However, vaccination safety has improved significantly over time, and the occurrence of infectious diseases has decreased. As infectious diseases become less common, parents are less and less likely to recognize and perceive the risks of infectious diseases; thus, their fears about them also understandably diminish. For this reason, the complications of infectious diseases are not the focus of parents' concerns but rather the vaccinations and, thus, unclear chronic conditions (i.e., possible autoimmune diseases).

³⁴ European Parliament Resolution of 19 April 2018 on vaccine hesitancy and the drop in vaccination rates in Europe (2017/2951(RSP)). Available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0188_HU.html (Accessed: 16 October 2023).

³⁵ Great Commentary explanation of Section 57 of the Health Act.

³⁶ Mohai and Péntzes, 2018, p. 84.

However, there are also people who question the effectiveness of compulsory vaccinations. As already mentioned, the radical reduction in the occurrence of diseases that are preventable with vaccines is apparent to all. However, some of those who deny vaccination do not attribute this phenomenon to vaccines but to the improvement of hygiene and living conditions. Unfortunately, if the number of unvaccinated people in a community increases, or if they mix with vaccinated people in higher proportions, then vaccinated people are also more likely to contract infectious diseases. However, when such mixture is low level, the unvaccinated form “insular” communities that serve as a starting point for local outbreaks.³⁷

In recent decades, it has become increasingly common in Hungary, as well as elsewhere, for parents to attempt to avoid the administration of compulsory vaccinations to their children on various grounds. Among vaccine-skeptic parents, there are some who argue for the freedom to raise children, the inviolability of privacy, and the right to raise and care for their children as they wish, according to their conscientious and religious convictions. This freedom is limited by the provisions on compulsory vaccination, which deprive parents of the right to raise their children according to their conscience and to decide to refuse the administration of the vaccine they consider dangerous to their child.³⁸ The Constitutional Court already addressed this issue in 2007³⁹ and ruled that vaccinations can be considered invasive health interventions executed for public health and epidemiological purposes. The decision declared that compulsory vaccinations are suitable and necessary means to, on the one hand, ensure children's proper physical, mental, and moral development and, on the other, protect society as a whole against infectious diseases and epidemics. The judicial practice developed along the lines of the Constitutional Court's decision is also consistent in that objective legal norms protecting the child and thus the health of the society cannot be set aside because of the parent's subjective convictions. The legal obligations and responsibility concomitant with being a parent are more pronounced than parental rights, which are limited by law. Moreover, parents are only entitled and obliged to exercise their parental rights to custody in line with the rules of guarantee, that is, in

³⁷ Ibid. pp. 85-86.

³⁸ Paragraph [5] of Court Resolution BH2020.147.

³⁹ Section V, Paragraph 3.6 of Constitutional Court Decision 39/2007 (VI. 20.) AB.

the interest of their child's proper physical, mental, and moral development.⁴⁰

In several cases, parents who assert a claim refer to the infringement of the right to freely choose a doctor. Section 8(1) of the Health Act does indeed declare the right to free choice of a doctor as a general rule; however, the phrase “unless an exception is provided by law” clearly creates the possibility of derogation from the general rule. Based on the provisions in Section 5(5) and (9) of the MPW Decree, it clearly follows that, in the case of in-school campaign vaccinations, the right to free choice of a doctor, under Section 8(1) of the Health Act, may be restricted, not only by law but by any legislation. Hence, the right to free choice of a doctor as a general rule does not apply in the case of in-school campaign vaccinations, and the law allows for this.⁴¹

The other argument based on which parents have refused to cooperate in their children's immunization through compulsory vaccination is on grounds of violation of the child's right to bodily integrity.⁴² According to parents, the obligation to administer vaccinations is an intervention in the children's bodily and psychological integrity and simultaneously the parents' right to choose their children's care and education. It is a general point of reference that the use of binding and coercive legal instruments can only be a last measure to achieve public health objectives. According to parents, failure to receive a vaccination or revaccination does not endanger the individual or the community to the extent that it is necessary for the state to enforce vaccination, especially if the vaccine may have side effects. It has been argued that the health authority should consider, on a case-by-case basis, whether the child's individual interest with respect to being vaccinated (as a benefit) and the social interest from the viewpoint of protecting the community outweigh the constraint or harm resulting from

⁴⁰ Szendrői, 2020, p. 193.

⁴¹ Paragraph [17] of Court Resolution BH2020.343.

⁴² In a specific case, the parents argued that the vaccination scheme, based on the administration of age-related compulsory vaccinations and defined by the Health Act and related statutory provisions, both unnecessarily restricts fundamental constitutional rights and violates the vaccinated person's right to bodily integrity. The Curia established as a matter of principle that, in cases where the procedure followed by the health authority (the decision requiring vaccination) complied with the law, it could not concurrently constitute a substantive violation of personality rights. At the same time, the Constitutional Court did not find that the referred legislation was unconstitutional. Paragraphs [24]-[25] of Court Decision BH2020.147.

use of a coercive measure.⁴³ The Curia balanced these interests in several cases and found that vaccine administration does indeed violate the bodily integrity of the vaccinated person if they oppose the vaccination. At the same time, however, it must also be examined whether there is an interest that justifies this infringement, that is, whether the individual's right to bodily integrity can be restricted in order to promote their own interests or those of a larger community. In general, the Curia has shared the position of the Constitutional Court, which has already been cited,⁴⁴ based on scientific knowledge that the individual and social benefits of institutionalized vaccination far outweigh the potential harms and risks that may arise as side effects in vaccinated children as non-vaccination usually poses a much greater risk to children's health than the vaccines themselves. The correct outcome of the balancing of interests is therefore that individual rights, such as the right to bodily integrity, can be constitutionally limited in the case of vaccinations. Should the possibility of a restriction be realized through the application of a balancing of interests, this excludes the declaration of infringement on personality rights and the application of the legal consequences associated with the infringement of personality rights.⁴⁵ Parents with the capacity to make decisions cannot refuse vaccinations on behalf of their children either. In such cases, the state, instead of the family, must provide children with the protection and care necessary for their proper physical, mental, and moral development, and therefore, the state must protect children's autonomous interests, even against the parents.⁴⁶

Another common argument among vaccine-skeptics is that vaccination poses a risk to the health of the vaccinated child and can, in extreme cases, lead to death or permanent damage to health. If a person subject to compulsory vaccination suffers serious damage to his or her health, disability, or death in connection with the vaccination, the state will compensate him or her or his or her dependents.⁴⁷ Though infrequent, there may be pathological complications of compulsory vaccinations, for which legislators, because of the binding force involved, place responsibility on the state. The law imposes an obligation to compensate only in the case of a "person subject to compulsory vaccination," so there is no such obligation

⁴³ Paragraph [3] of Court Decision BDT2018.350.

⁴⁴ Section V, Paragraph 3.6 of Constitutional Court Decision 39/2007 (VI. 20.) AB.

⁴⁵ Paragraphs [28]-[29] of Court Decision BH2022.147.

⁴⁶ Court Decision BDT2018. 3950.

⁴⁷ Section 58(7) of the Health Act.

incumbent on the state in respect of damages arising in connection with optional vaccinations.⁴⁸

Age-related compulsory vaccinations (BCG, diphtheria, whooping cough, and polio) have been considered by the court to be invasive interventions which, as a general rule, cannot be refused; however, the right to information is also granted to the person to be vaccinated or to his or her legal representative.⁴⁹ Compensating the damage caused by a vaccination is compensation because the vaccine recipient suffers a health impairment or death despite the health care provider's lawful proceeding. The state's obligation to compensate gives rise to a claim for damage on an objective basis.⁵⁰ This means that if it can be proved that a patient suffered serious damage to his or her health, disability, or death and any of these can be casually linked to the vaccine, he or she or his or her dependents will be compensated by the state. However, proving causality is often difficult.⁵¹ In one specific case, a ten-month-old child had been given Sabin drops during his or her hospitalization at a medical institution, after which the child became paralyzed. The paralysis mainly affected the child's limbs. According to the then Ministry of Health, there was no medical failure, but a

⁴⁸ Barzó, 2019, pp. 393-413.

⁴⁹ Curia Judgement Kfv.III.39.058/2012/9.

⁵⁰ Gyöngyösi, 2002, p. 246.

⁵¹ This was also the case in a lawsuit in which the person concerned received a vaccine against hepatitis B, produced by Sanofi Pasteur, within the period late 1998 to mid-1999, after which the person was diagnosed with multiple sclerosis in November 2000. Before his death, the patient filed a lawsuit seeking compensation from Sanofi Pasteur for the damage caused by the vaccine that had been administered. The proceeding court (cour d'appel de Paris) dismissed the action on the grounds that causation had not been proven. The French Cour de cassation (court of cassation), proceeding on the basis of the submitted request for review, referred the case to the Court of Justice of the European Union as a preliminary ruling procedure, and the latter court declared that the administration of the vaccine and the occurrence of the disease were close in time, and, furthermore, there was no personal or family medical history in connection with the disease. Additionally, a significant number of cases have been recorded where administration of this vaccine resulted in the disease subject in the lawsuit. Based on the above, the court concluded that administration of the vaccine was the most likely explanation for the occurrence of the disease; therefore, the vaccine did not provide the safety that could be reasonably expected. It is for national courts to ensure that the possible evidence put forward is indeed sufficiently serious, precise, and consistent to allow a clear consequence to be drawn regarding that the defect in the product is the most likely explanation for the damage. Judgment in Case C-621/15. *N. W and Others v. Sanofi Pasteur MSD SNC and Others* Press Release No. 66/17 of the Court of Justice of the European Union (Luxembourg, 21 June 2017).

very rare vaccination complication, for which the state was obliged to pay compensation for all the damage that was not reimbursed by the social security system.⁵²

It is worth noting that, contrary to the rules laid down for damage caused in connection with the donation of blood or the use of blood products, the relevant legal provision here provides that the state's obligation to compensate is independent of whether the damage occurred with or without compliance with professional rules. However, if serious damage to health following administration of a vaccine can be causally linked to the professional misconduct of a health care provider (general practitioner, family pediatrician, etc.), the health care provider is liable under the relevant civil and health law rules. A health care provider breaches a professional rule if, for example, he or she does not ensure before administering a vaccine that the child is not suffering from a disease or that the child's general health has not deteriorated to such an extent that administration of the vaccine should be delayed. Of course, in this case, the health care provider's liability is not objective.⁵³ It is also important to note that, although only the person who has suffered a health impairment or, in the event of death, his or her dependent relatives are entitled to compensation from the state, the parents or siblings of a child who has suffered a serious health impairment can, for example, also claim damages and compensation from the health care provider who has committed professional misconduct under the relevant civil law rules.

In a specific case, a procedure carried out at the ombudsman's office examined whether the established practice of using cell lines from surgical

⁵² Court Resolution BH1981.455.

⁵³ The rules of the Civil Code on liability for non-contractual damages [Section 6(519)] and on sanctions for violating personality rights shall be appropriately applied to claims for damages arising in connection with health care services and to claims for violations of personality rights. Section 244 of the Health Act. The health care provider must therefore prove that it is not at fault in order to be exempt. This generally means showing the behavior that is generally expected in a given situation. However, the standard of care in suits for health care compensation is higher: All patients, regardless of the reason for seeking care, must be treated with the diligence expected of those involved in their care and in accordance with professional and ethical rules and guidelines. Section 77(3) of the Health Act. A health worker shall perform health care activities with the diligence normally expected in the given situation, within the framework of professional requirements, in compliance with ethical rules, to the best of their ability and conscience, on a level determined by the material and personal conditions available to them, and in accordance with their professional competence. Section 5(1) of the Health Act.

abortions for the production of the combined measles, mumps, and rubella (MMR) vaccine used in Hungary is a violation of parents' freedom of conscience. The ombudsman's report stated that, by virtue of freedom of conscience, the state may not force anyone into a situation that would bring him or her into conflict with himself or herself a situation incompatible with an essential conviction defining a person. Furthermore, the state has a duty not only to refrain from such coercion but also to allow, within reasonable limits, alternative conduct, that is, by furnishing the realistic possibility of exercising freedom of conscience by providing and accepting other vaccines under the same material conditions.⁵⁴

5. Postponement of compulsory vaccination and permanent exemption

The law allows for the temporary postponement of compulsory vaccination if vaccination is not possible because of the patient's health condition or if vaccination is likely to have an adverse effect on the patient's health or existing illness and a change in the patient's health condition that would allow the patient to be vaccinated is expected within a period of time that does not risk the public health interests relating to vaccination. This is up to the treating doctor to decide based on the current medical condition of the child to be vaccinated. In this case, however, the missed vaccination must be administered as soon as the contraindication regarding the child's health condition ceases to exist, and the postponement of compulsory vaccination must be reported to the health authority.⁵⁵

Permanent exemption from compulsory vaccination can be initiated with the competent health authority jointly by the treating doctor and the legal representative of the minor to be vaccinated. Exemption can only be

⁵⁴ According to the report, the complainants, who are committed to law-abiding behavior, have made a legitimate request to the authorities to apply for an alternative vaccine in order to exercise their freedom of conscience, as guaranteed by the Fundamental Law, as the alternative vaccine they found on their own initiative was identical in its active ingredients to the vaccine in circulation in Hungary, as acknowledged by the Hungarian authorities, and their vaccinating doctor agreed to administer the vaccine to their children. Regarding funding, the report considered it an equitable solution for the state to provide financial support equal in proportion or in degree to the price subsidy of the state-acknowledged and compulsory vaccine for those who are obliged to vaccinate and are forced by conscience to choose between law-abiding behavior and the exercise of freedom of conscience and religion. AJB-3119/2014. See more details in: Láncoš, P. L., 2015, pp. 55-69.

⁵⁵ Section 58(1) of the Health Act.

granted if vaccination is not possible due to the health condition of a sick child or if vaccination is likely to adversely affect the child's health or existing illness and no change in the child's health condition is expected in the foreseeable future. The medical opinion of the treating doctor justifying the exemption must be attached to the request.⁵⁶ The health authority makes the final exemption decision. During the exemption procedure, no notice or authority order for the administration of the compulsory vaccination may take place and if an authority decision has already ordered vaccination, said decision cannot be enforced until the exemption procedure has been finalized.⁵⁷

The Curia has explained in several judgements⁵⁸ that, under the law, exemption from compulsory vaccination is only possible in a narrow range of cases and that the law puts the obligation on the person obliged to take vaccination (or his or her legal representative) to prove all the circumstances that justify the exemption. If, after a comprehensive and careful investigation, the forensic expert appointed in the lawsuit concludes that the child does not have any illness or condition that would contraindicate the administration of age-related vaccines, there should be no exemption.⁵⁹ In a particular case, the parents applied for their child's permanent exemption from compulsory vaccination on the grounds that they had learned that a 12-year-old girl had died in Szeged as a result of vaccination. From the perspective of responsible parents, their fears should be understandable and reasonable to everyone. However, the Curia clearly declared that exemption from compulsory vaccination can only be granted if there is a contraindication concerning the person of the applicant, and the parents did not present such a case. Reference to a death unrelated to the specific case and a general assessment of the potential risk of vaccination cannot serve as a basis for granting an exemption.⁶⁰

Despite the consistent jurisprudence of the Constitutional Court and the Curia, legal disputes over the refusal of age-related compulsory vaccinations for children are prevalent in Hungary. Parents and their legal representatives keep generating new arguments and explanations. Among the latest of such attempts, is when parents refrain from taking their child to

⁵⁶ Section 58(3) of the Health Act.

⁵⁷ Great Commentary explanation of Section 58 of the Health Act.

⁵⁸ Kfv.III.37.962/2015/5., Kfv.VI.37.199/2016/13., Kfv.II.37.080/2016/9.

⁵⁹ Paragraphs [15]-[17] of KGD2018. 112.

⁶⁰ Paragraph [15] of KGD2018. 113.

the in-school vaccination program organized by the educational institution's vaccinating doctor for some reason (e.g., illness), and then, in the official procedure, they claim that their child has already been vaccinated by another doctor and attach a certificate from the "vaccinating doctor" to support this claim. In these cases, however, it is not uncommon for the authenticity of certificates supposedly issued by a doctor to be called into question. This is particularly true in cases where, every time there is an in-school vaccination campaign, parents, by all means, try to prevent having their child vaccinated by the school doctor and elect to take their child to a doctor in another part of the country supposedly to receive the vaccine(s). A child with false documentation may be at serious risk if, for example, during the treatment of an injury with a risk of tetanus infection, they are not vaccinated even though a tetanus prophylaxis is required according to the professional protocol for unvaccinated persons.⁶¹ The MPW Decree specifies the identity of the vaccinating doctor for all age-related compulsory vaccinations in order to prevent such cases:

The vaccinating doctor is the general practitioner and the family pediatrician of the child obliged to be vaccinated, the school doctor in the case of a school vaccination campaign, the doctor of the occupational health service, the clinical vaccination adviser, the doctor at the vaccination center authorized to administer international vaccinations. [...] Age-related compulsory vaccination can be administered at vaccination centers.⁶²

Children are therefore vaccinated by their family pediatrician until they are 6 years old, as some children are still in kindergarten at that age, whereas others are in primary school. However, from mandatory school age

⁶¹ In such a case, a serological test requested by the health authority can partly determine whether, with regard to the vaccination claimed in the documentation, there can be antibodies detected in the child's blood protecting against the examined infection. There is also a Curia decision which states that, according to the law, the obligation to vaccinate is not linked to the level of antibodies but to age, and even if antibodies can be detected, the obligation to vaccinate is not overruled and parental consent is not required either. Curia Kfv. 37.374/2017/7. In particular, doubts regarding the vaccinating doctor's certificate arise in cases when the doctor's practice is extremely far away from the child's place of residence, or the doctor no longer has a license. Mohai and Péntzes, 2018, pp. 96-97.

⁶² Section 5(9) of the MPW Decree.

onward, age-related compulsory vaccinations must be carried out in the framework of school vaccination campaigns, in which case the school doctor is considered to be the vaccinating doctor, even in cases of replacement vaccination, as the recording and follow-up of the vaccination cannot be achieved with similar effectiveness without organizing in-school vaccination campaigns. With respect to this, the Curia has also retained in force a first-instance judgement that refused the parents' action for annulment of the health authority's decision requiring vaccinations to be administered by a vaccinating doctor.⁶³ This was also confirmed by the Constitutional Court in its decision in the case of an 11-year-old child, in which, applying the general test of fundamental rights protection, the court stated that the vaccination of children of a given age (11 years and over) and the recording and follow-up of vaccination cannot be achieved with similar effectiveness without organizing in-school campaigns.⁶⁴

In another case based on similar facts, the administration of a child's compulsory age-related vaccination to be carried out within the framework of an in-school campaign was not executed through the authorized school doctor. In addition to imposing a fine, the health authority ordered the parents to "re-administer" the vaccinations through a vaccinating doctor (school doctor), on the grounds that the vaccination of the child could not be considered proper immunization with regard to the person of the vaccinating doctor who administered it, the unidentifiability of the vaccination site, the lack of vaccination documentation, and the fact that the efficacy of the vaccination had become questionable as vaccines' particular sensitivity of vaccines made it impossible to control compliance with storage, transport, and usage rules. In this case, the Curia stated that "The failure to properly comply with the administrative obligations cannot be identified with the fact of non-vaccination," rendering it necessary to examine whether, in the case of this lawsuit, the purpose of vaccination, that is, active or passive protection against a specific infectious disease for the child, had developed—

⁶³ The parent wanted to have his or her child vaccinated by a doctor of his or her own choice (i.e., a family pediatrician), invoking the right to free choice of a doctor. Paragraph [16] of Court Resolution BH2020.343.

⁶⁴ Paragraph [80]-[84] of Constitutional Court Resolution 3114/2022 (III. 23.) AB.

–as if this protection exists, the legal objective has been achieved and no further obligation can be imposed with regard to that.⁶⁵

6. Conclusions

Individuals or organizations that reject vaccinations and propagate their denial have built up (pseudo)scientific or even “philosophical” systems that may seem very convincing and logical to laymen, but the authenticity and veracity of the information they communicate, promote, disseminate, and transmit is highly doubtful. Presently, the most important issue regarding the maintenance of the compulsory vaccination scheme is the extent to which the state, in its duty to protect institutions, can help parents recognize and perceive their participation in compulsory vaccination not as an act performed under compulsion but as cooperation that is based on information and is beneficial to all.⁶⁶

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⁶⁵ The first vaccine was administered by the family pediatrician and the second by a doctor who did not have a valid operating record in Hungary and was not entitled to perform independent medical activities. Paragraph [8], [33]-[34] of Court Decision BH2021.293.

⁶⁶ Report of the Commissioner for Fundamental Rights on Case AJB-361/2016., p. 14.

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