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**THE (STILL) UNRESOLVED QUESTION OF
COVID-19 PASSES COMPATIBILITY WITH THE
ECHR. COMMENTS ON THE ECTHR DECISION OF
7 OCTOBER 2021 IN (APPLICATION NO. 41994/21)**

Abstract: This article analyses the question of compatibility of COVID-19 passes with the European Convention of Human Rights. The present commentary's point of reference is the European Court of Human Rights inadmissibility decision in *Zembrano v. France*. Nevertheless, the main focus is not given to the admissibility criteria but to the more general considerations concerning restrictions of individual rights and freedoms introduced in the context of the current pandemic. The article offers some insights into the necessity and proportionality of an interference (the COVID-19 pass requirement). It also discusses if such measures are discriminatory or not.

Keywords: COVID-19 pass, victim status, abuse of the right of individual petition, exhaustion of domestic remedies, right to private and family life, discrimination

1. Introduction

In order to fight the COVID-19 pandemic, states undertook different steps and measures aimed at minimising the spread of the virus. The most frequent types of measures that were implemented in the first six months of the pandemic were school closures, border closures, quarantine and isolation, limiting gatherings, and household confinement.¹ These measures have already been challenged before domestic courts and some applicants brought their claims before the European Court of Human Rights.² When COVID-19 vaccines were approved and produced on a large scale, many countries and regions introduced the requirement of COVID-19 certificates/passes,³ some even introduced (or were considering) mandatory vaccinations for at least certain occupations.⁴ These measures spurred discussions of discrimination and legitimate justifications that could support interferences in personal freedom and autonomy.⁵

¹ Zweig, S. A., Zapf A. J., Beyrer Ch., Guha-Sapir D., Haar R.J. (2021) “Ensuring Rights while Protecting Health: The Importance of Using a Human Rights Approach in Implementing Public Health Response to COVID-19”, *Health and Human Rights Journal*, vol. 23, no. 2, December 2021, 173-186.

² A violation of Article 11 ECHR was found in *Communaute genevoise d'action syndicale (CGAS) v. Switzerland*, appl. no. 21881/20, Judgement of the ECtHR of 15.3.2022. Amongst the communicated cases are, *inter alia*: *Magdić v. Croatia*, Application no. 17578/20, communicated on 31.5.2021 (the application concerns the measures adopted by the Croatian authorities in the context of the prevention of spreading the COVID-19 virus. In particular, the relevant authority issued decisions: prohibiting citizens to leave their place of domicile and residence save in exceptional circumstance; prohibiting public gatherings comprising more than 5 people; suspending religious gatherings); *Toromag, s.r.o. v. Slovakia*, Application no. 41217/20 and four other applications, communicated on 5.12.2020 (the applications concern a closure of applicant's businesses that resulted in incurred pecuniary damage and a loss of future income as well as clientele).

³ *Green Pass: Which Countries in Europe Require a COVID Vaccine Pass to Get Around?*, <https://www.euronews.com/travel/2021/10/12/green-pass-which-countries-in-europe-do-you-need-one-for> (accessed 10.2.2022).

⁴ *Which Countries in Europe Will Follow Austria and Make COVID Vaccines Mandatory?*, <https://www.euronews.com/my-europe/2022/02/01/are-countries-in-europe-are-moving-towards-mandatory-vaccination> (accessed 10.2.2022).

⁵ Milanović M., “Covid Passes and Non-Discrimination”, <https://www.ejiltalk.org/covid-passes-and-non-discrimination/> (accessed 30.12.2021); Cope, K., Stremitzer A., *Governments Are Constitutionally Permitted to Provide “Vaccine Passports” — Some May Also Be Constitutionally Obligated to Do So*, “Journal of Nuclear Medicine” vol. 62(6), June 2021, pp. 771-772, DOI: <https://doi.org/10.2967/jnumed.121.262434>.

It is important to point out from the outset that the *Zembrano* decision of the European Court of Human Rights (hereinafter: ECtHR or Court) relied on formal admissibility criteria (procedural grounds, grounds relating to the Court’s jurisdiction, and victim status), and in fact the Court did not look into the merits of the case. More specifically, the application was not declared inadmissible as *prima facie* manifestly-ill founded, which would mean that either in the Court’s view, there was no interference with the rights invoked, or even if there had been interference, it was obviously justified and compatible with the Convention’s standards. Therefore, the question of whether COVID-19 passes might violate the European Convention of Human Rights was not analysed by the Court. Even though the Court did not consider the merits of the case, it is justifiable to make an attempt to anticipate the possible outcome of similar applications regarding restrictions introduced to fight current (or future) threats to public health.

2. Facts of the Case

The applicant, Mr Guillaume Zambrano complained about the COVID-19 pass introduced in France by Law no. 2021-689 of 31 May 2021. The law authorised the Prime Minister to issue implementation decrees (*décret*) aimed at the protection of public health and the fight with the epidemic. Initially, until 30 September 2021, the COVID-19 pass had been required for international travel to and from France, as well for entering certain public venues (such as cinemas, theatres, museums) and larger public events. Particular decisions to have the said restrictions in place were to be guided by considering factors such as “density adapted to the characteristics of the places, establishments or events concerned, including outdoors, to guarantee the implementation of measures likely to prevent the risk of spreading the virus.”⁶

Subsequently, Law no. 2021-1040 of 5 August 2021 extended the regime of exiting the public-health state of emergency until 15 November 2021 and also broadened the use of the COVID-19 pass to other public venues and places, e.g. restaurants and bars (including patio open space

⁶ As regulated in French law: “une densité adaptée aux caractéristiques des lieux, établissements ou événements concernés, y compris à l’extérieur, pour permettre de garantir la mise en oeuvre de mesures de nature à prévenir les risques de propagation du virus”.

areas), leisure activities, department stores and shopping centres (subject to a decision of a relevant “state departmental representative, when the characteristics and the seriousness of the risks of contamination justify it”⁷), seminars, hospitals, and other health-care facilities (requirement applicable to staff, visitors, and patients with scheduled appointments, with the exception of a medical emergency), long-distance public transport by train, coach, or airplane. The COVID-19 pass was mandatory for adults wishing to enter these venues or means of transport, either as a guest/customer/participant, or a staff member. The applicable law provided for sanctions in case of a failure to present a pass or for its fraudulent use.

Mr Zambrano, who is a lecturer at the University of Montpellier, was critical of the COVID-19 pass and created the “No PASS!!!” movement to protest against it. On his webpage he encouraged visitors to complete a pre-filled form with a view to submitting applications to the ECtHR. He aimed at flooding the Court with applications to “paralyse its operations” with “congestion, excessive workload, and a backlog”. By the date the Court adopted its decision in the present case, it had received almost 18,000 applications.

In his application Mr Zambrano alleged, under Article 3 (prohibition of inhuman or degrading treatment) of the Convention that contested Laws nos. 2021-689 and 2021-1040 intended to force individuals to subject themselves to vaccination. He claimed that the French authorities introduced medically unjustified “reprisal measures” that would cause intense physical suffering and a serious risk of physical injury, as – in his opinion – the vaccines were at the phase of clinical trials. He also relied on Article 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Conventions and on Article 1 of Protocol no. 12 as in his opinion the COVID-19 pass system was discriminatory and constituted unjustified interference with the right to respect for private life.

3. Decision of the Court

As already pointed out, the ECtHR declared the application inadmissible for several reasons. First of all, the applicant failed to exhaust domestic remedies

⁷ As regulated in French law: “représentant de l’État dans le département, lorsque leurs caractéristiques et la gravité des risques de contamination le justifient”.

(Article 35§ 1 and 4 ECHR). Mr Zambrano did challenge the provisions of Laws nos. 2021-689 and 2021-1040 before the Constitutional Council (who found the contested provisions in accordance with the Constitution⁸), but did not request a judicial review of the decrees implementing these laws before the administrative courts because he had concerns as for their effectiveness in light of the CC ruling. The ECtHR rightly pointed out that the fact that a legislative act that had been considered as compatible with the Constitution does not preclude that a regulatory act that implements it may not violate rights guaranteed by the Convention.⁹

The second reason why the application was declared inadmissible – the abuse of the right of individual petition – is not frequent in the Court’s practice. Rejection of an application on grounds of abuse of the right of application is regarded as an “exceptional measure”.¹⁰ Thus far, inadmissibility on this ground usually related to misleading information: use of offensive language; violation of the obligation to keep friendly settlement proceedings confidential; application manifestly vexatious or devoid of any real purpose.¹¹ In the discussed case, the applicant deliberately and openly aimed to undermine the Convention system and the functioning of the Court, to the detriment of other applicants. Already in several other cases, the Court stated that applications that impede the proper functioning of the Court or the proper conduct of the proceedings before it constitute an abuse of the right of application.¹² It reached a similar conclusion regarding the application at issue, stating that “the purpose of Article 17 of the Convention, insofar as it refers to groups or to individuals, is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the

⁸ Judgement no. 2021-824 of 5 August 2021. Provisions concerning the COVID-19 pass were regarded as being in conformity with the Constitution, except the provisions of law providing for the early termination of certain employment contracts.

⁹ *Zambrano v. France*, paras 26-28.

¹⁰ *Ibid.*, para. 33.

¹¹ Council of Europe/European Court of Human Rights, *Practical Guide on Admissibility Criteria*, pp. 51-54, https://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf (accessed 4.1.2022).

¹² *Zhdanov and Others v. Russia*, Application nos. 12200/08, 35949/11, 58282/12, Judgement of the ECtHR of 16 July 2019, paras 79-81 and the references cited therein; *Miroļubovs and Others v. Latvia*, Application no. 798/05, Judgement of the ECtHR of 15 September 2009, paras 62 and 65; *S.A.S. v. France* [GC], Application no. 43835/11, Judgement of the ECtHR of 1 July 2014, para. 66; *Bivolaru v. Romania*, appl. no. 28796/04, Judgement of the ECtHR of 28 February 2017, paras 78-82).

rights and freedoms set forth in the Convention; whereas, therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms”.¹³ Mr Zembrano’s actions would negatively affect the Court’s ability to adjudicate alleged violations of rights and freedoms of other applicants.

A third inadmissibility ground related to “victim” status. The word “victim”, in the context of Article 34 of the Convention had an autonomous meaning and denotes a person or persons directly or indirectly affected by the alleged violation, as well as potential victims (limited to certain specific situations).¹⁴ Mr Zembrano’s application lacked detail and the applicant had neither provided information about his personal situation or details explaining how the contested laws already directly violated his rights and freedoms, nor if they were liable to affect him in the future. It follows from the Court’s jurisprudence that it is open to a person to contend that a law violates his or her rights, in the absence of an individual measure of implementation, if he or she is required either to modify his or her conduct.¹⁵ Taking into account that the contested laws applied to all French citizens, Mr Zembrano had been covered by their provisions. According to ECtHR case-law, the mere existence of legislation affecting all citizens is not sufficient to establish the applicant’s victim status. There must also be a direct link between the law in question and the obligations or effects weighing on the interested parties.¹⁶ The Applicant would therefore have to argue that not showing a COVID-19 pass would prevent him from, amongst others, attending a scientific conference, visiting his relatives using public transport, entering a restaurant etc. In other words, his rights and freedoms could be directly affected on a daily basis. However, Mr Zembrano argued *in abstracto* that that French legislation had been inadequate, instead of providing information on his personal situation. Moreover, there is another condition that needs to be met by potential victims: lack of effective remedies to challenge contested law.¹⁷ In the case at issue, such remedies existed, but were not exhausted.

¹³ *Zembrano v. France*, para 37.

¹⁴ *Practical Guide on Admissibility Criteria*, *op. cit.*, pp. 11-16.

¹⁵ *Ibid.*, p. 16.

¹⁶ *Kalfagiannis and Pospert v. Greece*, Application no. 74435/14, Decision of the ECtHR of 9 June 2020, para 46.

¹⁷ *Roman Zakharov v. Russia* [GC], Application no. 47143/06, Judgement of the ECtHR of 4 December 2015, paras 173-79; *Centrum för Rättvisa v. Sweden* [GC], Application no. 35252/08, Judgement of the ECtHR of 25 May 2021, paras 166-77.

It may be concluded that having regard to the well-established admissibility criteria, none of these inadmissibility conclusions raised doubts.

4. Comments on the Merits

4.1. COVID-19 Pass and the Prohibition of Inhuman or Degrading Treatment

It is rather indisputable that *prima facie* allegations based on Article 3 ECHR would be pronounced as manifestly ill-founded. To fall within the scope of Article 3, interference has to reach a minimum threshold set up for this provision in the vast case-law.¹⁸ In other words, ill-treatment must attain a minimum level of severity. It should be noted that the threshold is relative and depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.¹⁹

It is clear from the outset that a requirement to show a COVID-19 pass did not meet this threshold. Contrary to Mr Zambrano's assertions French legislation did not limit the COVID-19 pass to a certificate of vaccination (*un justificatif de statut vaccinal concernant la covid-19*), but extended it to other two possible situations: a negative test result (*le résultat d'un examen de dépistage virologique ne concluant pas à une contamination par la covid-19*) and a certificate of recovery following infection with COVID-19 (*un certificat de rétablissement à la suite d'une contamination par la covid-19*). Thus, it would be far-fetched to argue that the applicable law indirectly forced the applicant to get vaccinated. The question of mandatory vaccinations against COVID-19 compatibility with the Convention would eventually be scrutinised by the ECtHR in *Thevenon v. France*, a case that was communicated to the French Government on 7 October 2021.²⁰ Although it is debatable if even this most "intrusive" measure would be regarded as attaining a minimum

¹⁸ Harris, D.J., O'Boyle M., Bates E.P., Buckley C.M. (2014), *Law of the European Convention on Human Rights*, OUP, 3rd ed., 236-237.

¹⁹ *Kudła v. Poland*, Application no. 30210/96, Judgement of the ECtHR of 26 October 2000, para. 91.

²⁰ Application no. 46061/21. This case concerns compulsory vaccination applicable to certain occupations, e.g. the fire service. The applicant complained that as a consequence

level of severity, as inhuman treatment entails “either actual bodily injury or intense physical or mental suffering”,²¹ while degrading treatment “arouses in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them”.²²

4.2. COVID-19 Pass and the Right to Respect for Private and Family Life

A broad understanding of “private life” was endorsed by the ECtHR in its 1992 Judgement in *Niemietz v. Germany*, where it stated that “It would be too restrictive to limit the notion of private life to an ‘inner circle’ in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings”.²³ Thus, Article 8 of the ECHR is an obvious choice when litigating restrictions connected with COVID-19 passes. Inability to enjoy and continue various activities within a sphere of private life and family life, be they connected with leisure, work, travel etc. undoubtedly is to be regarded as interference. This general standpoint should nevertheless be assessed *ad casum*, depending on particular circumstances. For example, the inability to access a gym or a swimming pool may have a different impact on an individual’s private life and interests when a person is a professional sportsmen, non-frequent user, or mere spectator.

For the purpose of considerations based on the facts of the application in question, we may presume that most (if not all) restrictions could be regarded as interferences. This fact, however, in itself does preclude that there has been a violation of the right to respect for private and family life. A key question that remains to be answered is whether restrictions were legitimate and justified under the limitation clause.²⁴

of his refusal to be vaccinated, he was suspended from work and did not receive a salary. It should be noted that the applicant in this case did not invoke Article 3.

²¹ *Kudła v. Poland*, para. 92.

²² *Pretty v. the United Kingdom*, Application no. 2346/02, Judgement of the ECtHR of 29 April 2002, para. 52.

²³ Application no. 13710/88, Judgement of the ECtHR of 16 December 1992, para. 29.

²⁴ Schabas, W.A. (2015) *The European Convention on Human Rights. A Commentary*, Oxford: OUP, 401-406.

An interference with Article 8 must be “in accordance with the law”. This does not only mean that a measure needs to have a legal basis (be authorised by a rule recognised in the national legal order), it also has to meet a qualitative requirement of accessibility and foreseeability. The degree of precision required of the “law” depends on the subject matter and it has to provide adequate protection against arbitrary interference. In the case of various COVID-19 restrictions it has often been the case that laws changed overnight and it might have been difficult for people to follow. In addition, most national jurisdictions require (on the level of constitutional norms) an act of Parliament to limit the rights and freedoms of citizens. However, in time of emergency this legitimacy threshold may be lower when a state of emergency/state of exception is declared.²⁵ Thus, as this has been the case here, French law authorised the Prime Minister to issue implementation decrees (*décret*) aimed at the protection of public health and the fight with the epidemic. It may be concluded that the legality test has been met.

Another limitation condition concerns legitimate aim, necessity, and proportionality (fair balance). A set of said legitimate aims/purposes is listed in Article 8(2). Even though it is an exhaustive list, its wording enables a broad interpretation. In the case at issue it seems unquestionable that the measures were introduced in order to “protect public health”. As it is often the case, the essence of the problem lies in necessity and proportionality. It is the most subjective part of the application of the limitation clause.²⁶ Proportionality requires balancing the right of the individual against the interest of the state and the society in represents, or against the rights of another individual(s). When applying this test, the state enjoys a margin of appreciation that may later be scrutinised and assessed by the ECtHR.²⁷ A margin of appreciation afforded to states enables a certain degree of flexibility and for tailoring measures to a specific situation in a given country. It thus follows that the same measure (restriction/limitation) may or may not meet the necessity and proportionality test, depending on a particular national context. For example, the COVID-19 pass requirement or introduction of mandatory vaccinations may be viewed as necessary

²⁵ Tacik, P. (2021) *The Blizzard of the World: COVID-19 and the Last Say of the State of Exception*, ‘Acta Universitatis Lodziensis. Folia Iuridica’ vol. 96, 25-28.

²⁶ Schabas, W.A. *op. cit.*, 406.

²⁷ See generally Arai, Y. (2001) *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Antwerp/Oxford/New York: Intersentia.

and proportional in a country that has low vaccination levels and a high mortality rate, while the same measures would be excessive in a country with a different factual situation²⁸. It is also important to note that the pandemic is dynamic and requires a constant change of approach from states. Restrictions need to reflect this change and cannot be prolonged, if they are no longer necessary.

4.3. COVID-19 Passes: Discriminatory or Not?

The introduction of COVID-19 passes has raised the question of possible discrimination against non-vaccinated persons. As I will argue here, this question does not in fact arise, and restrictions based on COVID-19 certificates should be assessed from the point of view of a limitation clause solely.

A usual starting point for discussions regarding COVID-19 passes is an *a priori* assumption that such measures are of a discriminatory nature, and they thus require objective and reasonable justification. In the specific context of a global pandemic, it is worthwhile reflecting upon the very essence of the principle of equality and non-discrimination, and analysing the problem in question from a different perspective. Formal equality refers to Aristotle's idea that things that are the same or similar should be treated in the same or similar ways. In a normative legal context this means that each individual is equal under the laws that should apply to everyone equally. This does not mean, however, that unequal treatment (difference in treatment) is always to be regarded as discrimination (as well defined in, *inter alia*, the Human Rights Committee in General Comment No. 18 and in the Committee's decisions).²⁹

With regard to COVID-19 passes, a difference in treatment (inability to access certain public venues or services, etc.) would result from being vaccinated or not. In other words, differences in treatment

²⁸ Kapelańska-Pręgowska, J. *Inadequate State Response to Protect Life and Health in Times of COVID-19 as a Violation of Human Rights Obligations – the Example of Poland*, 2022 EJIL: Talk!, <https://www.ejiltalk.org/inadequate-state-response-to-protect-life-and-health-in-times-of-covid-19-as-a-violation-of-human-rights-obligations-the-example-of-poland/> (accessed 3.3.2022).

²⁹ General comment no. 18, Non-discrimination, 21 November 1989, CCPR/C/21/Rev.1/Add.1. As for the decisions see e.g. *Zwaan-de Vries v. The Netherlands*, communication no. 182/1984, Views of 9 April 1987, CCPR/C/29/D/182/1984.

would be associated not with personal characteristics (such as gender, age, ethnic origin etc), but from an individual's behaviour and choices. Even though Article 14 ECHR contains a non-exhaustive list of characteristics (prohibited grounds of discrimination), it is not concerned with all differences of treatment but only with differences having as their basis or reason a personal characteristic by which persons or group of persons are distinguishable from each other.³⁰ It is questionable if personal attitudes regarding the pandemic and restrictions or distrust towards scientific development could be seen as a "personal characteristic" for the purpose of Article 14, even though the ECtHR indicated that "other status" is not limited to characteristics that are personal in the sense of being innate or inherently linked to the identity or personality of the individual.³¹ The same applies to the interpretation of Article 1 of Protocol No. 12 that extends the scope of protection against discrimination to "any right set forth by law" and thus introduces a general prohibition of discrimination.

Since legal provisions requiring a COVID-19 pass/certificate to apply to society as a whole, it would mean that no direct discrimination would take place. The same logic applies to bans on smoking in public places or to a prohibition against driving after drinking alcohol. In all these three instances, legal norms are addressed in a general way, and not to a specific group with a discriminatory aim.³² Individuals still retain a degree of freedom and make decisions regarding their conduct and actions, and at the same time need to face some restrictions and consequences. To argue otherwise would mean that the prohibition of smoking in a restaurant was direct discrimination against smokers. An analogous conclusion would apply to the requirement for COVID-19 passes.

To close this part of a discussion, possible indirect discrimination should be considered. This form of discrimination usually requires

³⁰ European Court of Human Rights, *Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention*, 2021, p. 23 et seq; https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf (accessed 13.3.2022).

³¹ Harris, D. J., O'Boyle M., Bates E. P., Buckley C.M. (2014) *Law of the European Convention on Human Rights*, Oxford: OUP, 3rd ed, p. 791.

³² Similar considerations were reflected in the *Terhes v. Romania* decision (Application no. 4933/20, dec. 20.05.2021) where the Court observed that the complained measure (lockdown) had been a general one, applied to everyone by means of legislation enacted by the Romanian authorities. No individual preventive measures had been taken against the applicant.

statistical data to prove that a *prima facie* neutral legal norm or policy negatively impacts any vulnerable group.³³ States should thus ensure that certain groups, amongst others ethnic minorities, persons with disabilities, or persons living in remote and rural areas, are not adversely affected by COVID-19 restrictions. Vaccinations need to be easily available to everyone, and exceptions have to be foreseen when there are medical or other relevant reasons against vaccination. Religion, belief, or opinion may be taken into consideration, albeit it is questionable.³⁴ However, this does not mean that a belief/opinion stemming from a distrust in science, or from conspiracy theories could be protected here as one of the prohibited grounds of discrimination. Introducing COVID-19 passes may be approached either as a worse treatment of non-vaccinated members of society or as a preferential treatment of those vaccinated. Either way, a key consideration is whether a difference in treatment is arbitrary and irrational, or “objectively and reasonably justified”. In the latter case, it would mean no indirect discrimination.

4.4. Final Remarks

It is important to remember that the reasonableness, necessity, and proportionality of COVID-19-related restrictions should not be assessed in a generalised manner, but on a country-by-country basis.³⁵ To have a broader context-specific picture of the effects of COVID-19 passes, it is not enough to measure societal attitudes and political aims (or fears). The ultimate aim is to stop the virus, and to protect human life and health.³⁶ Thus far there have been no other ideas on how to achieve this goal, other than through a “soft” incentive of COVID-19 passes or a “hard” mandatory vaccination. It is relevant to finish this analysis with a remark that while pandemic-related restrictions interfere with human rights and freedoms, they are to be balanced not only against the general (and to some extent

³³ *Guide on Article 14 of the European Convention on Human Rights...*, *op. cit.*, p. 11-12.

³⁴ Giubilini, A., Minerva F., Schuklenk U., Savulescu J. (2021) *The ‘Ethical’ COVID-19 Vaccine is the One that Preserves Lives: Religious and Moral Beliefs on the COVID-19 Vaccine*, “Public Health Ethics”, vol. 14, Issue 3, 242-255.

³⁵ Kapelańska-Pręgowska, J. *op. cit.*

³⁶ Nawrot, O., Nawrot J., Vachev V. (2022) *The Right to Healthcare during the Covid-19 Pandemic under the European Convention on Human Rights*, “The International Journal of Human Rights”, DOI: 10.1080/13642987.2022.2027760.

abstract) interest of public health, but also against the rights and freedoms of others, having special regard to vulnerable groups³⁷. Focusing on this latter perspective may help to avoid arbitrary and excessive restrictions, and at the same time, take other relevant rights and freedoms into account.

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³⁷ Jaskiernia, J. (2002) *Challenges Posed by the COVID-19 Pandemic to the Protection of Human Rights*, "Stosunki Międzynarodowe – International Relations" no. 4(56), pp. 65-78, DOI: 10.7366/020909614202004.

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