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VIOLATION OF LABOUR RIGHTS IN THE CONTEXT OF COMPULSORY VACCINATION AGAINST COVID-19

Abstract

The aim of the article is to conduct research on the issue of whether compulsory vaccination, enshrined in international and national legal acts, violates labour rights. The main

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research method was a comparison method, which helped to compare the experience of different countries in restricting labour rights in the context of compulsory vaccination against COVID-19. Moreover, the main characteristics of restrictions on labour rights during the COVID-19 period were highlighted using the method of system analysis. The evolution of compulsory vaccination was analysed using a historical-logical method. A formal legal method was applied to generalise, classify, and systematize research results, as well as to present these results. The current outbreak of COVID-19 has provoked trends in discriminatory behaviour in the workplace. Therefore, the restrictions on labour rights must comply with international human rights standards, which, however, largely reflect a position that does not support compulsory vaccination.

Keywords

labour rights – labour code – pandemic – ECtHR – international standards

INTRODUCTION

The WHO (World Health Organization) declared COVID-19 a pandemic on March 11, 2020 (WHO, 2020). Nowadays, more than 245 million people have been infected with COVID-19, and more than 5 million people have died worldwide as a result of this disease.¹ The COVID-19 pandemic has become a global challenge, which requires the development and the implementation of measures to combat effectively its negative consequences.² It seems that COVID-19 is primarily a health crisis. So, it is enough to invent a vaccine, a medicine, to plan anti-epidemic measures, to introduce them, and success in fighting the virus is guaranteed. However, the COVID-19 pandemic has provoked the emergence of such negative social phenomena in the world as a socio-economic crisis.

Indeed, the COVID-19 pandemic has had a major impact around the world. In order to slow the spread of the virus and control the situation, governments have imposed restrictions. Thus, most economic and la-

¹ United Nations, *Strategic preparedness and response plan*, 2020b, available at https://www.un.org/sites/un2.un.org/files/un_comprehensive_response_to_covid-19_june_2020.pdf [last accessed 11.2.2022].

² M. Dei, T. Kortukova, N. Kaminska, A. Blahodarnyi, “COVID-19: Regulation of migration processes in the European legal area”, *Cuestiones Políticas*, 2020, Issue 38, pp. 321–332.

bour activities have been temporarily suspended.³ A large list of measures has been taken to reduce the economic and social consequences of such emergencies, as well as to protect workers and allow them to resume employment after the crisis. In addition, in order to avoid infection, most countries have taken necessary measures of social distancing, which have had a significant impact on human rights. However, the vast majority of scientists believe that vaccination is a prerequisite for a return to a “normal” social and economic life.⁴

The multiple COVID-19 vaccines developed over the past months are typically thought of as the only means to meet the challenges posed by the pandemic. Still, public opinion on vaccines is heavily divided. Moreover, discussions about compulsory vaccination, often based on fundamental rights arguments, tend to become heated.⁵ The question of the effectiveness of compulsory vaccination policies remains open, being influenced by vaccination rates that are conditional on the achievement of the herd immunity threshold.⁶ Nowadays, there is a tendency in the world to increase the incidence of compulsory vaccination.⁷ In order to protect the health and well-being of the population, governments restrict freedom and autonomy of the individual. For example, they limit personal freedom by making vaccination a condition for working. Such a policy is not uncommon, although it should be noted that the WHO does not currently support coercion to vaccinate against COVID-19, arguing that it is better to concentrate on information campaigns and the

³ M. Inshyn, T. Vakhonieva, A. Korotkikh, A. Denysenko, K. Dzhura, “Transformation of labor legislation in the digital economy”, *InterEULawEast*, 2021, Issue 8(1), pp. 39–56, doi:10.22598/iele.2021.8.1.3

⁴ D. Graeber, C. Schmidt-Petri, C. Schroder, “Attitudes on voluntary and mandatory vaccination against COVID-19: Evidence from Germany”, *PLOS ONE*, 2021, Issue 18, available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0248372> [last accessed 11.2.2022].

⁵ A. Krasser, “Compulsory Vaccination in a Fundamental Rights Perspective: Lessons from the ECtHR”, *ICL Journal*, 2021, Issue 15, pp. 207–233.

⁶ J. Neufeind, C. Betsch, V. Zylka-Menhorn, O. Wichmann, “Determinants of physician attitudes towards the new selective measles vaccine mandate in Germany”, *BMC Public Health*, 2021, Issue 21, p. 566.

⁷ K.L. Tomashevski, O.N. Yaroshenko, “Problems of labour legislation codification in Belarus and Ukraine: history, current situation and prospects”, *Journal Transition Studies Review*, 2020, Issue 27(2), pp. 41–49.

production of affordable vaccines. Regardless of this fact, in some countries, compulsory vaccination was introduced.

Almost every state in the world has established constitutionally the rights of the individuals to health care and the corresponding duty of the state to ensure such rights. Voluntary vaccination can be considered one of the forms of realization of an individual's right in the field of health care. In this case, the state fulfils its positive obligation to ensure public health by creating opportunities for the realization of such a right. Based on the provisions of international legal instruments, states have obligations to ensure and protect public health. According to Art. 12 of the International Covenant on Economic, Social and Cultural Rights, states should, *inter alia*, take the following measures to prevent and treat epidemic diseases. The said measures are: (1) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (2) the improvement of all aspects of environmental and industrial hygiene; (3) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; (4) the creation of conditions which would assure to all medical service and medical attention in the event of sickness. However, neither the text of the Covenant nor General Comment No. 143 mentions vaccination.⁸

Furthermore, it is worth mentioning that when compulsory vaccinations are waived, an individual is subject to a number of restrictions on the further exercise of his or her civil and constitutional rights, such as the right to work. Therefore, the state created conditions in which vaccination is allegedly "voluntary", while the right to vaccination was transferred to the category of responsibilities of an individual.⁹ For example, in order to combat COVID-19, it became possible to transfer a person to remote work, suspend paid work, and even dismiss unvaccinated employees.

A number of domestic and foreign scholars analysed the limitation of labour rights due to the need for vaccination. For example, A. Krasser¹⁰ analysed compulsory vaccination from a fundamental rights per-

⁸ I. Demchenko, N. Dubytska, "Regulatory regulation of mandatory vaccination: arguments "for" and "against", *Journal of Kyiv University of Law*, 2017, Issue 4, pp. 133-138.

⁹ O. Kruglova, "Mandatory vaccination: violation of personal non-property rights of an individual", *Law Forum*, 2011, Issue 1, pp. 537-541.

¹⁰ Krasser, *supra* note 5.

spective in accordance with the ECtHR (European Court of Human Rights). Moreover, D. Salmon, S. Teret, C. MacIntyre, D. Salisbury, A. Burgess, and N. Halsey carried out research on compulsory vaccination and conscientious or philosophical exemptions.¹¹ Besides, D. Graeber, C. Schmidt-Petri, and C. Schroder analysed attitudes to voluntary and mandatory vaccination against COVID-19.¹² Apart from that, S. Harmon, D. Faour, N. MacDonald, J. Graham, C. Steffen, L. Henaff, and S. Shendale studied immunisation governance and mandatory immunisation.¹³ Finally, J. Neufeind, C. Betsch, V. Zylka-Menhorn, and O. Wichmann explored determinants of physicians' attitudes towards the new selective measles vaccine mandate in Germany.¹⁴ However, the issue of compulsory vaccination against COVID-19 in a number of countries and, therefore, the restriction of human rights has not been comprehensively studied yet. Consequently, this paper pays detailed attention to the analysis of international legal instruments and national legislation acts of various countries in order to determine whether the compulsory vaccination violates labour rights.

I. MATERIALS AND METHODS

This study analyses the specifics of restrictions on labour rights in the context of compulsory vaccination against COVID-19 throughout the world and in Ukraine. The article also aims to make concrete, fact-based, practical suggestions for compulsory COVID-19 vaccination and labour rights.¹⁵ For the purpose of a comprehensive analysis of the problems under consideration, a set of general scientific techniques was

¹¹ D. Salmon, S. Teret, C. MacIntyre, D. Salisbury, A. Burgess, N. Halsey, "Compulsory vaccination and conscientious or philosophical exemptions: past, present, and future", *Lancet*, 2006, Issue 367, pp. 436-442.

¹² Graeber, Schmidt-Petri, Schroder, *supra* note 4.

¹³ S. Harmon, D. Faour, N. MacDonald, J. Graham, C. Steffen, L. Henaff, S. Shendale, "Immunization governance: mandatory immunization in 28 global NITAG network countries", *Vaccine*, 2020, Issue 38, pp. 7258-7267.

¹⁴ Neufeind, Betsch, Zylka-Menhorn, Wichmann, *supra* note 6.

¹⁵ M. Inshyn, O. Moskalenko, "Ensuring freedom of labor in Ukraine in the context of labor emigration", *Baltic Journal of Law and Politics*, 2018, Issue 11(2), pp. 1-31, doi:10.2478/bjlp-2018-0009.

applied in the research. At the same time, the dialectical method and a systematic approach to the analysis of labour relations regulation features during COVID-19 and the impact of compulsory vaccination on labour rights constitute the theoretical and methodological bases of the study. A number of methods were used to accomplish the objectives, in particular the following special methods: historical-legal, comparative-legal, formal-legal, and structural-functional ones.

For example, the dialectical method facilitated new results regarding labour rights in the context of compulsory vaccination against COVID-19. In addition, the study used the methods of induction and deduction that prompted the suggestion that labour rights have been violated during the compulsory COVID-19 vaccination. In addition, using the deductive method, conclusions were drawn based on other domestic and foreign studies. One of the leading research methods was the comparative method, which helped to compare the experience of other countries of the world in restricting labour rights in the context of compulsory vaccination against COVID-19. In particular, it made it possible to analyse the practice of the ECtHR and some foreign countries on the issue of compulsory vaccination and restriction of labour rights, in particular in the United States and Australia. On the basis of the experience in the aforementioned countries, positive practices were extracted and suggestions were made for their implementation in the national system of Ukraine.

The main characteristics of restrictions on labour rights during the COVID-19 period were highlighted using the system analysis method. The evolution of compulsory vaccination was analysed using the historical-logical method. It was determined that it first appeared in Italy in 1806. The formal legal method was applied to generalize, classify, systematize, and present the research results. The normative basis of the research was the Constitution of Ukraine, the Labour Code of Ukraine, its laws, and bylaws. In addition, in the article, the materials of law-making, law-enforcement, and interpretive practice were studied. In particular, the empirical basis of the study consists of the case law on restriction of labour rights, as well as materials of scientific conferences and seminars, reports, discussions, regarding various aspects of problems in the field of labour rights during the compulsory vaccination against COVID-19. Thus, using the above methods and materials,

the issue of the restriction of labour rights in the context of compulsory vaccination against COVID-19 was comprehensively analysed.

II. RESULTS

The first mandatory vaccination requirements were established in Italy in 1806, in France in 1810, and in Sweden in 1816.¹⁶ Besides, in 1855, the USA (Massachusetts) became the first state to introduce a vaccination requirement in schools. Moreover, nearly 100 years ago, in the *Jacobson v. Massachusetts* case, the Supreme Court of the United States defended the right of states to impose compulsory vaccination.¹⁷ The court ruled that a healthcare order requiring vaccination is a reasonable exercise of state power that does not violate a person's right to liberty under the Fourteenth Amendment to the U.S. Constitution. The *Jacobson v. Massachusetts* judgment was later upheld in the *Zucht v. King* case of 1922,¹⁸ which concerned the expulsion from public and private schools of students who had not been vaccinated against smallpox. At the same time, views on the introduction of compulsory vaccination often provoked heated debates about the relationship between human rights and compulsory vaccination, which is carried out to protect public health.¹⁹

Mandatory vaccination against COVID-19 currently exists in several countries. In particular, it was enshrined in law by such countries as Australia, the UK, Greece, India, Indonesia, Italy, Kazakhstan, China, Latvia, New Zealand, the Russian Federation, Saudi Arabia, the United States, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, France, etc.²⁰ However, the need for compulsory vaccination varies from country to country in scope, coverage (distribution to health and education work-

¹⁶ Salmon, Teret, MacIntyre, Salisbury, Burgess, Halsey, *supra* note 11.

¹⁷ *Jacobson v. Massachusetts*, 197 U.S. 11, Judgement of 20.02.1905, U.S. Supreme Court, available at <https://supreme.justia.com/cases/federal/us/197/11/> [last accessed 11.2.2022].

¹⁸ *Zucht v. King*, 260 U.S. 174, Judgement of 13.11.1922, U.S. Supreme Court, available at <https://supreme.justia.com/cases/federal/us/260/174/> [last accessed 11.2.2022].

¹⁹ A. Mernyk, O. Yaroshenko, M. Inshyn, D. Lukianov, O. Hyliaka, "Vaccination: human right or duty", *Georgian Medical News*, 2021, Issue 315, pp. 135–140.

²⁰ Harmon, Faour, MacDonald, Graham, Steffen, Henaff, Shendale, *supra* note 13.

ers), sanctions, (which include fines, the loss of social benefits, and criminal liability), and the possibility of refusing vaccination (religious or other reasons). That is, the legislation and legal justifications for the compulsory vaccination differ depending on the jurisdiction.²¹ On the one hand, mass vaccination is important for the prevention of infectious diseases and reduction of their mortality. In this context, vaccination is one of the most important means of primary prevention. On the other hand, the lack of information, fake news, and unfounded doubts about the safety of vaccination are among the main factors contributing to the low rate of vaccinated people.

In this aspect, it is worth mentioning that on average the stages of development and production of any vaccine take a considerable amount of time, that is, basic research – 2–4 years, preclinical trials – up to 2 years, and three phases of clinical trials as follows:

- The first phase of the clinical stage is 1–5 years. The vaccine is given to a small number of volunteers to assess its safety, to make sure it generates an immune response, and to determine the correct dose. Typically, vaccines are tested on young adult volunteers during this phase of testing.
- The second phase is 2–3 years. The vaccine is given to hundreds of volunteers to further assess its safety and ability to generate an immune response.
- The third phase continues for 5 or more years. The vaccine is given to thousands of volunteers, and compared with a similar group of people who did not receive the vaccine, but received a placebo to determine whether the vaccine is effective against the disease for which it is intended and to explore its safety among many more people.²²

Therefore, the development of a vaccine takes about 10–15 years, which is consistent with the Decision No. 78 of the Council of the Eurasian Economic Commission “About Rules of registration and examina-

²¹ WHO, *Coronavirus (Covid-19) dashboard*, 2021, available at <https://covid19.who.int/> [last accessed 11.2.2022].

²² N. Nikityuk, M. Gorbunov, V. Ikoev, Y. Obukhov, “Basic approaches to the organization and conduct of clinical trials of vaccines”, *Medical Almanac*, 2013, Issue 3, pp. 51–54.

tion of medicines for medical application".²³ In view of the above-mentioned facts, it is necessary to highlight that at the international level the legal grounds for refusal of vaccination are provided for by the Nuremberg Code of 1947. Thus, it declares that the absolutely necessary condition for conducting a human experiment is the voluntary consent of a participant. The Declaration of Helsinki states that physicians must take into account the ethical, legal, and regulatory norms and standards of human research in force in their countries, as well as relevant international norms and standards.²⁴ No national or international ethical, legal, or regulatory requirements may limit or disregard the provisions on the protection of research objects.

The International Code of Medical Ethics states that when providing medical care, a physician should act solely in the best interests of the patient. The Convention for the Protection of Human Rights and Dignity with regard to the Application of Biology and Medicine stipulates that any intervention in the field of health may be carried out only with the voluntary and informed consent of the person concerned. Moreover, in March 2020, the Secretary General of the United Nations Antonio Guterres published the report "Shared Responsibility, Global Solidarity".²⁵ According to the report, in order to combat and prevent the spread of the pandemic, it is necessary to envisage 5 main areas of activity, including protection of the labour rights of citizens such as the protection against illegal dismissals and other abuses by employers, and support for small and medium-sized businesses and worker groups in the informal sector within the framework of economic recovery programmes. Apart from that, in June 2020, the United Nations Comprehensive Response to COVID-19 was published, providing for a socio-economic response to cur-

²³ Council of the Eurasian Economic Commission, *Decision of November 3, 2016 No. 78 "About Rules of registration and examination of medicines for medical application"*, available at <https://cis-legislation.com/document.fwx?rgn=93271> [last accessed 11.2.2022].

²⁴ WMA General Assembly, *The Declaration of Helsinki, 1964*, available at <https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/> [last accessed 11.2.2022].

²⁵ United Nations, *Shared responsibility, global solidarity: Responding to the socio-economic impacts of COVID-19, 2020*, available at <https://unsdg.un.org/sites/default/files/2020-03/SG-Report-Socio-Economic-Impact-of-Covid19.pdf> [last accessed 11.2.2022].

rent crisis in the field of human rights protection.²⁶ Accordingly, it is proposed to pay special attention to the issues of protecting the rights of the most vulnerable segments of the population, in particular, low-paid workers.

Furthermore, it is necessary to mention that Resolution No. 2361 “Covid-19 vaccines: ethical, legal, and practical considerations” states that, on the one hand, the rapid worldwide spread of safe and effective vaccines against COVID-19 will be important to contain the pandemic, protect health systems, save lives, and help rebuild the world economy.²⁷ On the other hand, it is important that states ensure that citizens are informed that vaccination is not mandatory. Apart from that, no one is subjected to political, social, or other pressure to be vaccinated. In addition, states should guarantee that no one is discriminated against on the ground of being unvaccinated because of possible health risks or if they do not wish to be vaccinated.

Therefore, it is essential to analyse the ECtHR case law on the violation of human rights during compulsory vaccination. Currently, the ECtHR is analysing the case of *Abgrall and 671 Others v. France* about the dismissal without pay of workers who refused to be vaccinated against COVID-19.²⁸ According to this case, the plaintiffs are appealing against the decisions taken by the Constitutional Court of France on the recognition of the constitutional provision regarding the compulsory vaccination of doctors, firefighters, and rescuers. Earlier, the ECtHR heard the case of *Vavříčka and Others v. The Czech Republic* regarding compulsory vaccination.²⁹ In particular, the Court held that the Czech Repub-

²⁶ United Nations, *Strategic preparedness and response plan*, 2020, available at https://www.un.org/sites/un2.un.org/files/un_comprehensive_response_to_covid-19_june_2020.pdf [last accessed 11.2.2022].

²⁷ Parliamentary Assembly, *Resolution No. 2361 Covid-19 vaccines: ethical, legal and practical considerations*, 2021, available at <https://pace.coe.int/en/files/29004/html?fbclid=IwAR0dJZPR5izqkbfqxahyEOICx0GfR7-7FVGnBpzCYA2DCRsmbyNmR9ISoco> [last accessed 11.2.2022].

²⁸ *Abgrall and 671 Others v. France*, Application no. 41950/21, Judgment of 24.08.2021, available at <https://www.lawpluralism.unimib.it/en/oggetti/816-abgrall-and-other-671-v-france-dec-no-41950-21-e-ct-hr-24-august-2021> [last accessed 11.2.2022].

²⁹ *Vavříčka and Others v. The Czech Republic*, Application No. 47621/13, Judgment of 8.04.2021, available at [https://hudoc.echr.coe.int/fre#%7B%22itemid%22:\[%22001-209039%22\]%7D](https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-209039%22]%7D) [last accessed 11.2.2022].

lic had not violated the Convention for the Protection of Human Rights and Fundamental Freedoms because the government had enshrined the need for compulsory vaccination in law, subject to certain exceptions.

Indeed, in this case, the ECtHR recognized the compulsory vaccination of children in the Czech Republic as not violating the right to respect for private life. However, the case concerned the vaccination of children against well-known diseases with a tried and tested vaccine. Thus, one of the criteria applied in the ECtHR case law is proportionality. On the one hand, there is a situation of a dangerous epidemic that takes many lives and requires states to take measures to overcome it. On the other hand, there is the lack of confidence in the government by society in a number of countries. In such circumstances, compulsory vaccination will only increase social discontent.

To conclude, it is crucial to mention that efforts undertaken at global, international, and regional levels to combat the COVID-19 pandemic and its consequences are bringing positive results in developing and adopting certain initiatives and recommendatory documents, which, to a certain extent have increased the level of protection of labour rights. Regarding this research, the experience of different countries in compulsory vaccination should also be examined. For example, in April 2021, in the case of *Jennifer Bridges, et al. v. Houston Methodist Hospital et al.*, the U.S. Federal Court denied a lawsuit filed by physicians at a Texas hospital to appeal in court against their dismissal on the basis of their refusal to get vaccinated against COVID-19.³⁰ The Australian Fair Work Commission considered a similar case, *Jennifer Kimber v. Sapphire Coast Community Aged Care Ltd.*,³¹ in which an employee of a nursing home was fired for the lack of a flu vaccination. The Commission concluded that the requirement to be vaccinated and further dismissal or other disciplinary action were lawful and justified. This gives a reason to

³⁰ *Jennifer Bridges, et al. v. Houston Methodist Hospital et al.*, Case 4:21-cv01774, Judgment of 21.06.2021, U.S. District Court, available at <https://www.documentcloud.org/documents/20860669-houston-methodist-lawsuit-order-of-dismissal> [last accessed 11.2.2022].

³¹ *Jennifer Kimber v. Sapphire Coast Community Aged Care Ltd*, Application no. C2021/2676 2021, Judgment of 27.09.2021, The Australian Fair Work Commission, available at <https://www.fwc.gov.au/documents/decisionssigned/html/2021fwcfb6015.htm> [last accessed 11.2.2022].

expect similar judgments in cases regarding the immunization against coronavirus.

III. DISCUSSION

The situation with the COVID-19 pandemic revealed gaps in labour legislation that needed to be addressed urgently to curb the spread of the virus while maintaining normal working conditions for the population. There are indisputably short-term measures to handle emergencies. However, in the long run, further modernization of labour relations is needed, as the unstable economic situation, provoked by the pandemic does not facilitate the development of the labour market and employment.³² It is worth mentioning that in Ukraine, the first government action on vaccination was Order No. 2153, adopted by the Ministry of Health, which gives employers the right to suspend employees of certain categories from work without pay if they refuse to get vaccinated against COVID-19.³³ The first to be affected by the changes are employees of central and local executive authorities, educational and scientific institutions. The only exception to suspension is the employee's medical contraindication to this vaccination.

Concerning the legality of the adopted Order, Art. 43 of the Constitution of Ukraine guarantees everyone the right to work and protection from unlawful dismissal.³⁴ In addition, according to order No. 3018 of the Ministry of Health of Ukraine "On approval of the roadmap for the introduction of vaccine against respiratory disease COVID-19 caused by

³² N. Lukyanova, O. Zaitseva, *Coronavirus pandemic: legal mechanisms for protection of labor and social rights of employees*, 2021, available at http://rv.dsp.gov.ua/wp-content/uploads/2021/02/lhsi_pandemya_koronavrusu.pdf [last accessed 11.2.2022].

³³ Ministry of Health of Ukraine, Order No. 2153 *On approval of the List of professions, industries and organizations whose employees are subject to mandatory preventive vaccination*, 2021, available at <https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukrainivid-04102021--2153-pro-zatverdzhennja-pereliku-profesij-virobnictv-ta-organizacij-pracivniki-jakih-pidljagajut-obovjazkovim-profilaktichnim-scheplennjam> [last accessed 11.2.2022].

³⁴ Verkhovna Rada of Ukraine, *Constitution of Ukraine*, 1996, available at <https://rm.coe.int/constitution-of-ukraine/168071f58b> [last accessed 11.2.2022].

coronavirus SARS-CoV-2”,³⁵ vaccination against coronavirus is defined as voluntary for all groups of the population and professional groups. Apart from that, the Labour Code of Ukraine prohibits any discrimination in the field of labour: that is, direct or indirect restriction of workers’ rights, in particular with regard to health, is not permitted.

On the other hand, Art. 46 of the Labour Code explicitly allows and Art. 7 of the Law of Ukraine “On Ensuring the Sanitary and Epidemic Welfare of the Population” even obliges the employer to suspend their employees from work on the grounds provided by the law. These legal grounds are the rules of para. 2 art. 12 of the Law “On protection of the population from infectious diseases” and para.14 of the Resolution No. 267 “On approval of the Regulation on the Ministry of Health of Ukraine”, approved by the Cabinet of Ministers of Ukraine.^{36,37} They authorize the Ministry to approve a list of professions and introduce compulsory vaccination against new infectious diseases. Moreover, this is permitted in respect of any workers whose activities may lead to the spread of infectious diseases. Therefore, it is possible that the list of professions may be expanded. In this context, it should be noted that Order No. 2153, which just recently entered into force, was already appealed against to the District Administrative Court of Kyiv (Baranova, 2021).³⁸

The case is still pending, so it is important to study the previous cases of Ukrainian courts on compulsory vaccination. For example, the Judgment of the Supreme Court of Ukraine in case No. 682/1692/17

³⁵ Ministry of Health of Ukraine, Order No. 3018 “On approval of the Roadmap for the introduction of vaccine against respiratory disease COVID-19 caused by coronavirus SARS-CoV-2”, 2020, available at <https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukraini-vid-24122020--3018-pro-zatverdzhennja-dorozhnoi-karti-z-vprovadzhenja-vakcini-vid-gostroi-respiratornoi-hvorobi-covid-19-sprichinenoi-koronavirusom-sars-cov-2-i-provedennja-masovoi-vakcinacii-u-vidpovid-na-pandemiju-covid-19> [last accessed 11.2.2022].

³⁶ Verkhovna Rada of Ukraine, Law of Ukraine No. 1645-III “On Protection of the Population from Infectious Diseases”, 2000, available at <https://zakon.rada.gov.ua/laws/show/1645-14#Text> [last accessed 11.2.2022].

³⁷ Cabinet of Ministers of Ukraine, Resolution No. 267 on approval of the Regulation on the Ministry of Health of Ukraine, 2015, available at <https://zakon.rada.gov.ua/laws/show/267-2015-%D0%BF#Text> [last accessed 11.2.2022].

³⁸ O. Baranova, Order of the Ministry of Health on the list of professions for compulsory vaccination is asked to declare illegal through the court, 2021, available at https://biz.ligakon.net/news/206879_nakaz-moz-pro-perelk-profesij-dlya-obovyazkovo-vaktsinatsii-prosyat-viznati-protipravnim-cherез-sud [last accessed 11.2.2022].

states that the requirement for mandatory vaccination of the population against particularly dangerous diseases to protect public health as well as the health of those concerned persons is justified.³⁹ That is, in this case, the principle of importance of public interests prevails over personal ones. The decision of the Supreme Court of Ukraine in case No. 337/3087/17 determines that the individual right (interest) to refuse vaccination is opposed to the general right (interest) in order to achieve the common good in the form of the right to health care,⁴⁰ which is guaranteed by Articles 3, 27 and 49 of the Constitution of Ukraine.⁴¹

Undoubtedly, problems in the field of labour have deepened with the breach of the pandemic, requiring the modernization of labour legislation. However, such changes must be introduced taking into account the Constitution of Ukraine, which enshrined the social model of state development.⁴² In addition, it should be noted that the current outbreak of COVID-19 has provoked tendencies to discriminatory behaviour towards all those believed to have had contact with the virus. That is why workers who are not infected with COVID-19, cannot be fired and should not be held liable for refusing to be vaccinated. Obviously, compulsory vaccinations are usually due to the risk of future infection and the spread of the disease indoors, but this example is simply a fear of the disease. However, such measures were described as discriminatory, for example in the case of people living with HIV, as noted by the ECtHR in the judgment *I.B. v. Greece* of 3 October 2013.⁴³ If the employer cannot deprive an AIDS worker of doing his or her job, there are more compelling legal grounds for protecting an unvaccinated worker in the case of COVID-19.

³⁹ Supreme Court of Ukraine, *Case no. 682/1692/17*, Application no. N 61-8263sv18 of 17.04.2019, available at <https://verdictum.ligazakon.net/document/81652333> [last accessed 11.2.2022].

⁴⁰ Supreme Court of Ukraine, *Case no. 337/3087/17*, Application no. K/9901/283/18 of 20.03.2018, available at <https://zakononline.com.ua/court-decisions/show/72899510> [last accessed 11.2.2022].

⁴¹ Verkhovna Rada of Ukraine, *supra* note 34.

⁴² O.M. Yaroshenko, O.V. Moskalenko, A.M. Sliusar, N.M. Vapnyarchuk, "Professional development of employees as the way to innovative country integration", *Journal of Advanced Research in Law and Economics*, 2020, Issue, 11(2), pp. 683–695.

⁴³ *I.B. v. Greece*, Application no. 552/10, Judgment of 3.10.2013.

Apart from that, Resolution No. 392 of the Cabinet of Ministers “On quarantine to prevent the spread of respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, and stages of mitigation of countermeasures” and amendments introduced by Resolution No. 500 of June 17, 2020 “On Amendments to Certain Acts of the Cabinet of Ministers of Ukraine” recommended that public authorities, enterprises, institutions, organizations, regardless of ownership, provide a quarantine for the period of transport restrictions on the way to/from work, applying flexible working hours if possible.⁴⁴ In particular, it presupposes different working hours for different categories of workers and remote work.

Thus, flexible work is a form of work organization that makes it possible to establish a work schedule that is different from the rules of internal labour regulations, subject to compliance with the established daily, weekly, or monthly working hours.⁴⁵ That is, an individual employee (group of employees) can work according to an individual work schedule, which differs from the general work schedule of the enterprise, institution, or organization. Such a work schedule can be agreed upon when hiring, and later, for a specified period. Finally, the procedure and conditions of flexible working hours should be defined in the rules of internal labour regulations.

CONCLUSIONS

In a short period of time, the COVID-19 pandemic has changed the life of the world community. The world population has had to adapt to var-

⁴⁴ Cabinet of Ministers of Ukraine, Resolution No. 392 on quarantine to prevent the spread of respiratory disease COVID-19 caused by coronavirus SARS-CoV-2, and stages of mitigation of countermeasures, 2020, available at <https://www.kmu.gov.ua/npas/pro-vstanovlennya-karantynu-z-metoyu-zapobigannya-poshirennyu-na-teritoriyi-ukrayini-gostroyi-respiratornoyi-hvorobi-covid-19-sprichinenoyi-koronavirusom-sars-cov-i200520-392> [last accessed 11.2.2022]. Also: Cabinet of Ministers of Ukraine, Resolution No. 500 on amendments to certain acts of the Cabinet of Ministers of Ukraine, 2020, available at <https://zakon.rada.gov.ua/laws/show/500-2020-%D0%BF#Text> [last accessed 11.2.2022].

⁴⁵ M. Inshyn, N. Khutoryan, R. Cherneha, V. Bontlab, D. Tkachenko, “Correlation of labor and civil contracts related to the performance of work: Preventing the substitution of concepts”, *Employee Responsibilities and Rights Journal*, 2021, Issue 33(4), pp. 265–279, doi:10.1007/s10672-021-09373-3.

ious constraints, while international organizations and governments have faced a double challenge related to the need to ensure both anti-epidemiological measures and measures to minimize economic damage. Today, more and more countries are announcing compulsory coronavirus vaccination for certain categories of the population, especially, for workers in certain professions. For instance, such areas often include the provision of services such as medical, educational, transport, and/or trade services. In addition, compulsory vaccination is introduced in certain regions of the country or throughout the country.

Vaccination may be considered not only desirable, but also obligatory in some cases, so the right to personal liberty and security may be restricted. Still, such restrictions must be carried out in compliance with constitutional guarantees for the protection of human and civil rights and freedoms, and the principles of justice, equality, and proportionality. Consequently, a fair balance of the interests of the individual and of society should be preserved, in the manner prescribed by the law of Ukraine, taking into account international legal instruments and acts, as well as the position of the European Court of Human Rights. The violation of the right to work in the context of compulsory vaccination is a debatable and difficult issue. First of all, this is attributed to a serious distrust of citizens of new vaccines and public health policy in a number of countries. Consequently, it is necessary to find a balance between the interests of society and the state, on the one hand, and human rights on the other. At the same time, in different countries of the world, the legal consequences of refusing to be vaccinated can be very different, including fines, dismissal, restriction of the right to work, etc. In addition, it should be noted that the outbreak of COVID-19 has provoked cases of discriminatory behaviour towards all those believed to have had contact with the virus.

That is why uninfected workers cannot be fired and should not be held liable for refusing to be vaccinated. Compulsory vaccinations are usually justified by the risk of future infection and the spread of the disease. Such measures were described as discriminatory, for example in the case of people living with HIV, as noted by the ECtHR in its judgment. If the employer cannot prevent a worker with AIDS from doing his or her job, there are more compelling legal grounds for protecting an unvaccinated worker in the case of COVID-19. In this regard, it is

crucial that governments encourage the voluntary vaccination against COVID-19 before implementing the compulsory vaccination. In addition, in order to increase the number of vaccinated people, it is necessary to prove the benefits and safety of vaccines. The restrictions on human rights must comply with international human rights standards, which, however, today largely reflect a position that does not support compulsory vaccination.