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Preventing vaccine discrimination

Committee Opinion¹

Committee on Social Affairs, Health and Sustainable Development

Rapporteur: Ms Carmen LEYTE, Spain, Group of the European People's Party

A. Conclusions of the committee

1. The Committee on Social Affairs, Health and Sustainable Development (“the committee” hereafter) welcomes the report prepared by Ms Thorhildur Sunna Ævarsdóttir (Iceland, SOC) for the Committee on Legal Affairs and Human Rights, although it would have preferred a greater focus on the overriding interests of public health, and the necessity to shield vulnerable persons from infection and health-care systems from collapsing. The right to life and the right to health weigh more than possible “vaccine discrimination” in travelling or access to public venues.

2. The committee agrees with the main thrust of the draft resolution and the draft recommendation and commends the rapporteur for taking into account the position of the World Health Organization (WHO). The committee recalls that the Parliamentary Assembly has taken a clear position on how to beat Covid-19 with public health measures in [Resolution 2424 \(2022\)](#), and how to fight vaccine-preventable diseases in [Resolution 2455 \(2022\)](#), adopted both with an overwhelming majority. The committee thus sees no need to revisit these issues.

3. With this in mind, the committee proposes a small number of mostly technical amendments to further reinforce and align the text with the Assembly's adopted positions.

B. Proposed amendments to the draft resolution

Amendment A (to the draft resolution)

In paragraph 12, replace the words “and new infringements on human rights and fundamental freedoms may still occur in the future” with the following words:

“and new public health measures may be necessary in the future which risk leading to infringements on human rights and fundamental freedoms”

Amendment B (to the draft resolution)

Replace paragraph 12.6 with the following paragraph:

“avoid unlawful discrimination between those who have been vaccinated against Covid-19 and those who have not or cannot be vaccinated, either for medical reasons or because they are minors;”

1. Reference to committee: [Doc. 15361](#), Reference 4607 of 27 September 2021. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 15608](#). Opinion approved by the committee on 23 September 2022.



Amendment C (to the draft resolution)

Delete paragraph 12.7.

Amendment D (to the draft resolution)

After paragraph 12.7, add the following paragraph:

“refrain from imposing restrictions that undermine the right to seek asylum, which is a basic human right, and replace the requirement of having a valid Covid pass with testing, quarantine, access to vaccination and/or other reasonable and proportionate measures;”

Amendment E (to the draft resolution)

After paragraph 12.7, add the following paragraph:

“follow WHO advice and refrain from imposing blanket travel bans, which have proven to be ineffective from a public health perspective, and which may interfere with the right to family life and, in cases concerning children, with the best interests of the child, and disproportionately impact individuals and families from countries that have been undermined in equitable access to vaccines;”

Amendment F (to the draft resolution)

In paragraph 12.8, replace the words “legitimate purpose” with the following words:

“legitimate public health purpose”

Amendment G (to the draft resolution)

After paragraph 12.8, add the following paragraph:

“work together with organisations dealing with undocumented migrants to ensure that they have equal access to vaccination, with particular regard to the challenges which undocumented migrants may face, such as not having a social security number, a national identity number, or in some cases a home address. Due consideration should also be given to the situation of undocumented migrant children who are unaccompanied or separated from their parents, bearing in mind the need for their informed consent. The Assembly calls on member States to adopt specific safeguarding policies to ensure that personal data is not transmitted to immigration authorities;”

Amendment H (to the draft resolution)

In paragraph 15.1, replace the words “legitimate purpose” with the following words:

“legitimate public health purpose”

Amendment I (to the draft resolution)

After paragraph 15.4, add the following paragraph:

“develop the necessary technical solutions to recognise proof of recovery from Sars-CoV-2 from a country other than a person’s usual place of residence, so that this can be added to their certificate.”

C. Explanatory memorandum by Ms Carmen Leyte, rapporteur for opinion

1. I would like to welcome the report prepared by Ms Thorhildur Sunna Ævarsdóttir (Iceland, SOC) for the Committee on Legal Affairs and Human Rights. I am particularly grateful to the rapporteur for taking into account the position of the World Health Organization (WHO), as well as the previous positions of the Parliamentary Assembly: on how to beat Covid-19 with public health measures in [Resolution 2424 \(2022\)](#), adopted in January, and on how to fight vaccine-preventable diseases in [Resolution 2455 \(2022\)](#), adopted in June, both of which were adopted with an overwhelming majority. I thus see no need to revisit these issues in this opinion.

2. I must admit, however, that I would have preferred a greater focus on the overriding interests of public health, and the necessity to shield vulnerable persons from infection and health-care systems from collapsing. The right to life and the right to health weigh more than possible “vaccine discrimination” in travelling and access to public venues. This is why, in paragraph 9.2.2.3 of [Resolution 2424 \(2022\)](#), the Assembly put such an emphasis on the necessity of “shielding highly vulnerable persons from infection, including by legislating for vaccination mandates for healthcare or social-care personnel in contact with them, and ensuring that the necessary financial, logistical and other support is in place for the measures to be effective, and that their economic and social rights enshrined in the European Social Charter are guaranteed”.

3. Indeed, much evidence has emerged in the last 18 months, since Covid-19 vaccines became widely available in most of our member States, on which public health measures are the most effective in preventing SARS-CoV-2 transmission and the development of severe forms of the disease Covid-19. Those vaccines which have been approved either by the European Medicines Agency (EMA) or by the WHO have been shown to dramatically reduce the chance of developing severe forms of the disease, and to cut the risk of developing “long Covid” by half. In addition, the viral load is much reduced, leading to less transmission and shorter periods of infectiousness. Vaccinated individuals thus not only protect their own health, but also the health of others due to the reduction in infectiousness and by posing less of a burden to health-care systems, which were close to collapse in some member States in the early stages of the pandemic.

4. Nevertheless, vaccination is not a panacea, and there are more immediately effective measures than vaccination which pose less of an interference with the right to give free and informed consent to any intervention in the health field (as protected by the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, “Oviedo Convention”, ETS No. 164). This is why the Assembly, in [Resolution 2424 \(2022\)](#), recommended “putting in place a timely and staggered response to rising infection rates in accordance with WHO guidance, adapted to the local circumstances in pandemic hotspots, while implementing appropriate measures to offset any negative impact and respecting the principle of proportionality”, in particular, by “developing production capacity, distribution and considering mandating the use of high-quality masks (progressively moving to masks of FFP2 standard if possible) in high-risk situations (such as on public transport, in crowded spaces inside and outside and in schools); and providing such masks free of charge for vulnerable groups if possible”.

5. I agree with the main thrust of the draft resolution and the draft recommendation but would like to propose a small number of mostly technical amendments to further reinforce and align the text with the Assembly’s adopted positions.

6. With **amendment A**, I am seeking to clarify that new public health measures may be necessary in the future. It is these measures which risk leading to infringements on human rights and fundamental freedoms, not the evolution of the pandemic itself.

7. In [Resolution 2424 \(2022\)](#), the Assembly made very clear that it opposed discrimination against those who have not or cannot be vaccinated because of medical reasons, or because they are minors. I am thus proposing **amendment B**, to bring the text in line with our Assembly’s adopted position. I can see no reason to deviate from this position which we adopted with an overwhelming majority in January 2022, only 8 months ago.

8. I am proposing the deletion of sub-paragraph 12.7 (**amendment C**) because it is redundant: the same point is made in sub-paragraph 12.3, and that sub-paragraph is better worded. WHO evaluation of a vaccine under the EUL procedure needs to be the benchmark against which vaccines are measured, so that they are both safe and effective.

9. There can be all kinds of legitimate purposes; however, I am certain that we all agree that when it comes to the use of Covid passes or pandemic-related restrictions to free movement, the only legitimate purpose should be a public health one. I would not want Covid passes to, for example, be used and abused in the legitimate fight against terrorism, for example. This is why I suggest making clear that, when it comes to Covid passes and pandemic-related restrictions to free movement, only public health purposes are legitimate (**amendments F and H**).

10. Blanket travel bans and non-acceptance of proof of vaccines from certain countries, despite vaccines being listed under WHO’s EUL procedure, are ineffective and interfere with the right to family life. Rich countries, including the European Union block, have undermined access to Covid-19 vaccines for poorer countries, thus resulting in inequitable distribution, particularly with regard to vaccines that have been granted EMA authorisation. Thus, such restrictions disproportionately affect individuals and families from poorer

countries. Member States should rather adopt alternative measures that are more effective from a public health perspective, upon arrival to their territory, such as testing and social distancing, taking into account the [Resolution 2424 \(2022\)](#)(**amendment E**).

11. Currently there exists a technical solution to transfer proof of vaccination from one country's covid pass to that of another country. However, this does not apply to proof of recovery from Sars-CoV-2. In situations of scarce resources, it would be a waste to administer vaccines to persons who are normally regarded as having sufficient antibodies for a certain period. This is even more so, because lack of a technical solution seems to be the only obstacle (**amendment I**).

12. At our committee meeting on 23 September 2022, Mr Pierre-Alain Fridez (Switzerland, SOC), former Chairperson of the Committee on Migration, Refugees and Displaced Persons, put forward two additional amendments (**amendments D and G**) to safeguard the rights of refugees and migrants, in particular of unaccompanied migrant or refugee children. Both the Committee on Social Affairs and myself fully support these amendments.