



## Resolution 2468 (2022)<sup>1</sup>

# Preventing vaccine discrimination

## Parliamentary Assembly

1. The Parliamentary Assembly recalls its work carried out in response to the Covid-19 pandemic and the measures taken to counter it, in particular the following resolutions: [Resolution 2329 \(2020\)](#) “Lessons for the future from an effective and rights-based response to the Covid-19 pandemic”, [Resolution 2338 \(2020\)](#) “The impact of the Covid-19 pandemic on human rights and the rule of law”, [Resolution 2383 \(2021\)](#) “Covid passes or certificates: protection of fundamental rights and legal implications”, [Resolution 2361 \(2021\)](#) “Covid-19 vaccines: ethical, legal and practical considerations”, [Resolution 2424 \(2022\)](#) “Beating Covid-19 with public health measures” and [Resolution 2455 \(2022\)](#) “Fighting vaccine-preventable diseases through quality services and anti-vaccine myth-busting”.

2. The Assembly recalls that during the Covid-19 pandemic, Council of Europe member States have imposed various measures to restrict access to their territories (such as the use of Covid passes, quarantine or self-isolation, bans on entering their territories, the obligation to register or to carry out Covid-19 tests shortly before or after arrival). Some of them also decided to restrict access to public venues (such as bars, restaurants, sport and leisure facilities, event venues and others) or even to some means of public transportation.

3. The Assembly recalls that, in accordance with the European Convention on Human Rights (ETS No. 5, the “Convention”), while public health may constitute a legitimate purpose justifying restrictions on the rights to respect for private and family life (Article 8), freedom of assembly and association (Article 11) and freedom of movement (Article 2 of Protocol No. 4 to the Convention, ETS No. 46), any restrictions on the aforementioned rights must be “prescribed by law”, “necessary in a democratic society” and proportionate to the legitimate aim pursued.

4. The Assembly notes that compulsory vaccination can raise issues under international human rights standards, in particular the right to respect for private life (Article 8 of the Convention) and the right to give free and informed consent to any intervention in the health field, which is enshrined in 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 (ETS No. 164, the “Oviedo Convention”). The Assembly notes that the starting position is that a vaccine should not generally be mandatory, but that mandatory vaccination may sometimes be appropriate, for example for specific professions such as those exposed to vulnerable populations. The Assembly also notes the cases pending before the European Court of Human Rights concerning mandatory vaccination for specific workers.

5. The Assembly recalls the information document “Protection of human rights and the ‘vaccine pass’” issued by the Secretary General of the Council of Europe, the “Statement on human rights considerations relevant to ‘vaccine pass’ and similar documents” issued by the Council of Europe’s Committee on Bioethics (DH-BIO) and the statement “Covid-19 vaccination, attestations and data protection” issued by the Council of Europe’s Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD).

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1. *Assembly debate* on 14 October 2022 (34th sitting) (see [Doc. 15608](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Thórhildur Sunna Ævarsdóttir; and [Doc. 15625](#), opinion of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Carmen Leyte). *Text adopted by the Assembly* on 14 October 2022 (34th sitting).

See also [Recommendation 2240 \(2022\)](#).



6. The Assembly notes that the use of Covid passes, and in particular of vaccine certificates, entails risks of infringement of human rights and fundamental freedoms. These risks are further exacerbated when there are inequalities in access to vaccination against Covid-19. In this regard, the Assembly welcomes the United Nations General Assembly Resolution A/RES/76/175 “Ensuring equitable, affordable, timely and universal access for all countries to vaccines in response to the coronavirus disease (COVID-19) pandemic”. Moreover, the introduction and the use of Covid passes have in many instances led to a difference in treatment between persons who have been vaccinated against Covid-19 and those who have not, as well as to possible discrimination between persons who have been vaccinated with different vaccines. This may amount to unlawful discrimination within the meaning of Article 14 of the Convention if it does not have an objective and reasonable justification. The Assembly recalls that any inequality in treatment must pursue a legitimate aim and be proportionate; proportionality requires a fair balance between protecting the interests of the community (the legitimate aim) and respect for the rights and freedoms of the individual.

7. Referring to its [Resolution 2383 \(2021\)](#), the Assembly again stresses that measures such as the introduction of a Covid pass must be applied only in the context of fighting the pandemic and in compliance with the European Convention on Human Rights. There should also be clear and well-established scientific evidence showing that the adoption of such measures lowers the risk of transmission of SARS-CoV-2 to an acceptable level from a public health point of view. Any system of Covid passes should be limited in time according to the requirements of the public health emergency. Moreover, as stressed in the Assembly’s [Resolution 2424 \(2022\)](#), vaccination certificates should primarily be used for “their designated purpose of monitoring vaccine efficacy, potential side effects and adverse events”.

8. The Assembly recognises the introduction of the European Union Digital COVID Certificate as an instrument for facilitating freedom of movement within the European Union in the context of the various travel restrictions during the Covid-19 pandemic and that this type of system has also been used by numerous Council of Europe member States which are not members of the European Union and other States.

9. The Assembly further notes that the European Union Digital COVID Certificate was also used to limit and to grant freedom of movement in the European Union and in some public venues. It is concerned that such practices may lead to discrimination and other violations of human rights and fundamental freedoms.

10. The Assembly notes that although the European Medicines Agency (EMA) has granted conditional authorisation for the marketing of only six vaccines, some member States of the Council of Europe have administered other vaccines, including those listed only by the World Health Organization (WHO) under its Emergency Use Listing Procedure or approved by national authorities. The Assembly is worried that the use of Covid and vaccine passes may lead or might have led to discrimination in travelling and access to public venues between persons vaccinated with different vaccines, including those which have been approved only by the EMA and those which have been listed only by WHO.

11. The Assembly notes with satisfaction that the recognition of WHO-listed vaccines is now becoming more widely accepted within the European Union. However, European Union member States are free to limit access to public venues and to impose additional restrictions on non-European Union citizens’ access to their territory, which may lead to discrimination.

12. In the Assembly’s view, vaccination against Covid-19 has made a major contribution to overcoming the pandemic. This has facilitated the lifting of various restrictions related to Covid-19 and therefore indirectly restored the full enjoyment of many fundamental freedoms. Nevertheless, the pandemic is not yet over and new public health measures may be necessary in the future which risk leading to infringements on human rights and fundamental freedoms. The Assembly therefore calls on all member States to:

12.1. refrain from imposing further restrictions on individuals’ human rights and fundamental freedoms, unless it is strictly necessary to achieve the legitimate aim pursued. All restrictions must be compliant with the requirements stemming from the Convention and the case law of the European Court of Human Rights, namely that they must be prescribed by law; be in force for the shortest possible time; be proportionate to the pursued aim; and be effective;

12.2. take full account of the latest scientific evidence and expert knowledge, including that from WHO, when deciding on the imposition of restrictions on human rights and fundamental freedoms or on the relaxation of such restrictions;

12.3. treat equally all people vaccinated against Covid-19 with a vaccine that is either approved by the EMA or listed by WHO, whose evaluation under the Emergency Use Listing Procedure enables a thorough assessment of the quality, safety and effectiveness of vaccines;

12.4. mutually recognise Covid passes issued by other Council of Europe member States;

- 12.5. refrain from preventing individuals from exercising their human rights and fundamental freedoms because they have not been vaccinated or because they have been vaccinated with a vaccine which is not approved by the EMA;
  - 12.6. avoid discrimination between those who have been vaccinated against Covid-19 and those who have not or cannot be vaccinated, whether for medical or other reasons;
  - 12.7. refrain from imposing restrictions that undermine the right to seek asylum, which is a basic human right, and replace the requirement to have a valid Covid pass with testing, quarantine, access to vaccination and/or other reasonable and proportionate measures;
  - 12.8. 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 affect individuals and families from countries that have not been given equitable access to vaccines;
  - 12.9. discontinue the use of Covid passes for uses other than those which are strictly necessary to achieve a legitimate public health purpose;
  - 12.10. 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;
  - 12.11. ensure that the design and implementation of national vaccination plans and rollouts secure an ethical and equitable distribution of vaccines and avoid any discrimination on the basis of age, health, gender, race, religion, legal or socio-economic status, ability to pay, location and any other factor. Priority access should be given to groups in vulnerable situations, including persons over 65 years old and those under 65 with underlying health conditions.
13. The Assembly calls on Council of Europe member States which have not yet ratified the Oviedo Convention and/or Protocol No. 12 to the European Convention on Human Rights (ETS No. 177) to do so without delay.
  14. The Assembly also calls on Council of Europe member States which do not belong to the European Union to recognise the European Union Digital COVID Certificate.
  15. The Assembly invites the European Union and its member States to:
    - 15.1. refrain from imposing additional restrictions on free movement, including on that of European Union Digital COVID Certificate holders, unless these are strictly necessary to achieve a legitimate public health purpose;
    - 15.2. require the use of the European Union Digital COVID Certificate only as a measure of last resort and reassess its usefulness on a regular basis in the light of an epidemiological assessment;
    - 15.3. draw up common standards as regards the length of validity of the European Union Digital COVID Certificate;
    - 15.4. respect the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union when implementing Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable Covid-19 vaccination, test and recovery certificates (European Union Digital COVID Certificate) to facilitate free movement during the Covid-19 pandemic, and other related legal acts of the European Union;
    - 15.5. develop the necessary technical solutions to recognise proof of recovery from Covid-19 where that proof comes from a country other than that of a person's usual place of residence.
  16. Finally, the Assembly calls on all Council of Europe member States and other States to:
    - 16.1. ensure proper funding to WHO;
    - 16.2. submit their national regulatory systems to the WHO Global Benchmarking Tool in order to allow them to become WHO-listed authorities.