THE CONVERSATION

Academic rigor, journalistic flair



Halfpoint/Shutterstock

Compulsory vaccination: what does human rights law say?

September 14, 2021 5.21am EDT

Kanstantsin Dzehtsiarou

Professor in Human Rights Law, University of Liverpool

The UK government has opened consultations on mandatory vaccination for frontline health and social care staff in England. The plans could require vaccination against COVID-19 and flu for workers who come into contact with patients and those receiving care.

A policy like this will have implications for the human rights of NHS staff, who will have to agree to be vaccinated to continue their work. Similar policies were introduced in other European countries. The US policy of mandatory vaccination targets federal employees, so it is not unlikely that these policies will be spread beyond medical professionals.

The wide spread of these policies does not immediately mean that they do not violate human rights. A look at past cases addressed by the European court of human rights sheds light on how these policies fare under human rights law. Regardless of who mandatory vaccination is directed at, human rights feature quite prominently in the discussion.

On the same day that the UK government opened the consultation on mandatory vaccination, the Strasbourg court published a press release informing that it decided not to grant interim measures to suspend the compulsory vaccination programme of medical professionals in Greece.

The request for such measures was submitted by 30 doctors, nurses, paramedics from public and private practices in Greece. The court usually issues interim measures when the applicants can show that they face irreversible harm. If the measures are granted, the court orders the respondent governments to freeze the situation until it has a chance to deal with the substance of the case.

The court did not provide reasons for its decision not to halt mandatory vaccinations in Greece, indicating that either the court did not consider that compulsory vaccination will lead to irreversible harm, or the consequences of refusal to be vaccinated are not irreversible. In both cases, the court is unlikely to prevent the member states of the Council of Europe from implementing policies similar to the Greek one.

Having said that, the Greek case is in a preliminary stage of litigation, and there is still a chance that the court will find a violation of human rights subsequently.

This Greek case is not the first time the human rights court has dealt with compulsory vaccinations. In April 2021, the court decided the case of Vavřička and Others v the Czech Republic. This case originates from the pre-COVID times and deals with the Czech policy of mandatory vaccination of children, but it can be used as a guide for the new policies in this area.

In the Czech Republic, children must undergo mandatory vaccination for several diseases. If parents do not comply with this policy, they can be fined and the children cannot attend preschools.

Although the European court of human rights agreed with the applicants that this policy interferes with their right to private life, the court thought that this interference is justifiable. The Czech government managed to persuade the court that their policy is necessary to protect the health of the population.

Still, this is not a blanket precedent. While the court did not find a violation in that particular case, it does not mean that any form of mandatory vaccination is legal. In each case, a more detailed analysis of the policy is needed.

No simple answer

As it is often the case in human rights law, there is no simple solution here. Compulsory vaccination is an interference with the human right of bodily integrity, which is a part of the right to private life enshrined in the Universal Declaration of Human Rights as well as in the European Convention on Human Rights. However, not every interference with this right is automatically illegal. The legality depends on several factors.

The word “compulsory” can mean many different things: from injecting the vaccine into the physically restrained patient (I am sure that this is not what the UK government intends in their proposals), to fines for failing to comply with requirements. While forced administering of vaccines will certainly violate human rights, other less brutal forms of compulsory vaccination might not.



The UK has one of the highest rates of vaccination uptake in the world. Andy Rain/EPA-EFE

Another important question is whether the policy allows for exceptions. Even compulsory vaccination should allow those with valid health-related or other relevant reasons to opt out. If such exceptions are not provided, then it is likely that this policy violates human rights of vulnerable people. The government needs to be clear as to what exceptions might exist and who will decide if the exception is justifiable.

The seriousness of sanctions for failure to be vaccinated will also be taken into account. Very high fines or other more brutal forms of punishment, such as imprisonment, will perhaps be difficult to justify. At the same time, temporary suspension of a medical professional might be acceptable if the government can prove that this is done to minimise the risk to their patients.

The issue of compulsory vaccination is difficult because the governments need to consider multiple interests – all protected by human rights law – and strike a fair balance between them.

The interests of medical professionals who do not consent to vaccination are on the one side. On the other side are the interests of their patients, who might suffer if they are infected by unvaccinated medical professionals.

The government will need to prove if health risk exists, but if it does, then life, health and bodily integrity of the patients are also protected by human rights law and they might prevail. If the proposed policies are spread beyond medical professionals the policymakers will have to specifically justify why mandatory vaccination is necessary more broadly.