

## OPINION

### On the New Measures to Prevent the Coronavirus Disease (COVID-19)

The new decree N 65-Ն of August 18 of 2021 of the RA Minister of Healthcare on making amendments and changes in the Decrees N 17-Ն dated August 4 of 2020 and Decree 24-Ն dated September 18<sup>1</sup> respectively adopted by the RA Minister of Healthcare stipulates new sanitary hygienic rules<sup>2</sup> to prevent Coronavirus disease (COVID-19), according to which, “the employees are obliged to present a COVID-19 PCR test certificate with a negative result taken within the previous 72 hours once in 14 days, a certificate of vaccination prescribed by Decree N 2688-L of August 10 of 2020 adopted by the RA Minister of Healthcare, with the exception to the employees who are vaccinated with one dose of vaccination, to the employees having documented contraindications to the vaccination and to pregnant women. The PCR test examination is carried out by the employee on his/her own expenses.

Parallel to this, the RA draft law on “Making Amendments and Supplements to the RA Law on Public Service”<sup>3</sup> was presented to public discussion, by which special grounds like “not allowing the public official or public servant to carry out work (service) or dismissal from work or service (ceasing the official powers or service)” for the failure to carry out the above mentioned obligations are defined.

By the same draft law it is recommended to define special grounds stipulated by the relevant legislation on the maintenance of the sanitary hygienic safety of the population to submit the relevant documents while being at work place (service), (Part 8 of Paragraph 1 of Article of the Law).

Moreover, the employee is not allowed to be present at the workplace without carrying out the above mentioned obligation, to carry out his/her official work duties and is not provided with salary without carrying out the obligations prescribed by Part 8 of Paragraph 1 of Article 19 of the Law.

According to the draft law, in the outcomes of the failure to carry out official work (service) duties conditioned by the violation of the mentioned obligations for more than 30

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<sup>1</sup> The Decree N 65-Ն, Dated 20 of 2021 <https://www.arlis.am/DocumentView.aspx?DocID=155352>

<sup>2</sup> The rules relate to the measures to prevent the prevalence of the Coronavirus disease in state agencies, local self-government bodies and private companies

<sup>3</sup> The RA draft law on “Making Amendments and Supplements to the RA Law on Public Service” available at <https://www.e-draft.am/projects/3541>

days or during the last 12 months, the failure to carry out official (service) duties is a ground for dismissal of the public official or for the termination of the authorities of public servant.

At the same time, an exception for the positions of the President of the Republic of Armenia, Members of the National Assembly, RA Prime Minister, Heads of the Communities and the Member of the Community Council, Human Rights Defender, Judge of the RA Constitution Court, member of the independent state agency, member of the autonomous body, Judge of the RA Court of Cassation, RA Court of Appeals and RA Court of General Jurisdiction respectively, RA Prosecutor General to carry out the mentioned obligation is stipulated by the draft law.

The European Court of Human Rights (herein, the Court) while referring to the protection of the right to private and family life in the context of the compulsory vaccination of children by the decision on the Case of Vavříčka and Others v. The Czech Republic<sup>4</sup>, recorded that the legal requirement for compulsory vaccination is an intervention to the right of person's private and family right.

However the state carries a positive obligation to take necessary measures for the protection of the life and health of the people under its legal control. The Court considered the objective to protect the life and health of citizens, as well as the rights of other people as a legal objective to intervene the private and family life. While referring to the necessity, proportionality and the justification of the taken measures, the Court highlighted the justifications presented by Czech Republic.

There are 9 types of scientifically approved severe diseases, in case of which it is recommended to get the children vaccinated with a full vaccination dose at an early age.

The unvaccinated children are indirectly protected from severe diseases as long as the necessary volumes of vaccination are maintained in the society. In other words, they are protected by public immunity. Therefore, if the policy of the voluntarily vaccinations is not sufficient for maintaining the public immunity, the state authorities can establish the policy of compulsory vaccination to reach the relevant level for the protection against serious diseases.

At the same time, though the vaccination was compulsory, certain exceptions were prescribed, for example the contraindications presented for children, as well as the objections to conscience. Thus, the Court recorded by the given case, that the measures established by the state are proportionate to the legal objective.

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<sup>4</sup> Vavříčka and Others v. the Czech Republic, verdict, dated 08 April, 2021. <http://hudoc.echr.coe.int/eng?i=001-209039>

Talking about the legality of the current regulations offered by the Republic of Armenia, the Organization concludes that the latter are not necessary, proportional and grounded to reach the expected objective that is to prevent the prevalence of Coronavirus disease (COVID-19) and to protect the life and health of the citizens under the legal control of the Republic of Armenia.

Moreover, the latter are of discriminate nature and can lead to violations of the rights of the employees of state agencies, local self-government bodies, as well as private companies.

Particularly,

***The discussed regulations contradict the Constitution of the Republic of Armenia, particularly to Articles 28, 29, 31, 57, and 78 of the RA Constitution.***

As envisaged by the recommended regulations, only the employed citizens are considered the targets of the mentioned requirements. According to official data, the number of registered employees as of July of 2020 in the Republic of Armenia was 614,459<sup>5</sup>.

According to the justifications presented by the RA Ministry of Justice, 246,900 citizens work in state agencies and in local self-government bodies. Under such conditions, the obligation to undergo PCR examination or to get vaccinated is applied towards the ¼ of the whole population of the Republic of Armenia. The justifications of the Republic of Armenia Ministry of Justice that employed and especially citizens carrying out public service “are constantly in a contact with different representative of society” are not justified, since interaction with different levels of society representative are taking place everywhere and are not conditioned by the working activities. At the same time, the intensity of human interaction during every-day working routine, as well as its duration and the work with groups vulnerable to the Coronavirus disease is not taken into consideration by the same regulations.

For example, the Members of the RA National Assembly, who participate in long-term sittings of the RA Parliament in a big, closed hall and have other interaction with the representatives of society, are released from the obligation of undergoing to PCR examination or to getting vaccinated by the presented regulations.

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<sup>5</sup> <http://cedi.am/wp-content/uploads/2019/12/%D4%B3%D5%90%D4%B1%D5%86%D5%91%D5%8E%D4%B1%D4%BE-%D4%B1%D5%87%D4%BD%D4%B1%D5%8F%D5%88%D5%82%D5%86%D4%B5%D5%90%D4%BB-%D4%B9%D5%8E%D4%B1%D5%94%D4%B1%D4%BF%D4%BB-%D4%B4%D4%BB%D5%86%D4%B1%D5%84%D4%BF%D4%BB%D4%B1%D5%86-3.pdf>

Similarly, an obligation to undergo to PCR examination or to getting vaccination for the students of the higher education institutions or for the pupils of public schools, who participate in long-term lesson process in classrooms, is not stipulated by the presented regulations.

Under such conditions, the obligation presented to at least ¼ of the overall population of the Republic of Armenia is not conditioned even by the necessity to create public immunity, since carrying out PCR examination even at constant pace cannot ensure that objective.

Moreover, the obligation to present the results of the PCR test taken before 72 hours is unclear, if the results of the PCR test is valid up to 14 days, since the presentation of the negative results of PCR test by the employees does not decrease the prevalence of the disease and after the presentation of the test result, the employee may get infected and become of source of the virus. Moreover, the results of the PCR test are not accurate by 100%, which is confirmed by the reservation made in the outcomes of the test results.

The price of the PCR test examination in the Republic of Armenia is between 9000-15000 AMD, which is an essential financial burden for the employees with minimum or average salary under the current social-economic conditions of the Republic of Armenia. Therefore, the vaccination under such alternative conditions is considered a non-compulsory enforcement. Moreover, the vaccinated citizens can also get infected with the Coronavirus disease and infect other people too, meanwhile the vaccinated citizens are released from the obligation to undergoing to PCR test examination.

If in the private sector, the regulation between the employer-employee, including the presentation of the negative results of PCR test examination or the certificate of vaccination is left to the discretion of the employer and can create direct consequences for the employers, than by the draft law circulated for public discussion it is stipulated, that the failure to carry out the above mentioned obligation leads to unfavorable consequences for the employee, including the deprivation of salary and further dismissal.

Such consequences by their nature and weight are considered punitive and put the employee in a vulnerable situation to follow the obligatory, compulsory conduct. ***Thus, citizens holding public positions, as well as the employees carrying out civil and technical service respectively in state and local self-government bodies are in a worse situation.***

Moreover, the authorized bodies did not present any justification, why the maintenance of the current sanitary hygienic safety rules is inefficient to prevent the prevalence of the Coronavirus disease and to protect the life and health of people. While

using the public transport operating under overloaded conditions, the citizens under the legal control of the Republic of Armenia are under a most favorable position to spread the disease, than while being at state agencies.

Meanwhile, the state and self-government bodies did not take any measure to decrease the risk of such situations.

Taking into account the above mentioned, the Organization recommends:

- To recognize the Decree N 65-Ն, adopted on 20.08.2021 by the RA Minister of Healthcare annul and eliminate it.
- Revoke the RA Draft Law on “Making Amendments and Supplements to the RA Law on Public Service”,
- Discuss the issues related to the application of the preventive measures with the interested parties to exclude the unjustified limitations of human rights, including the possibility of the violation of rights to discrimination and employment rights.