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STUDIO LEGALE

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Rome, March 22nd 2022

Before the

European Court of Human Rights

Council of Europe

67075 Strasbourg Cedex

FRANCE

In the case

Gatti Paolo and others

v.

Italy

The undersigned Alessandro Fusillo, counsel for the applicants, hereby explains the violations of the European Convention on Human Rights briefly referred to in the application.

The applicants requested injunctive relief by the Tribunal of Rome asking that it be ascertained that they had a right to medical self-determination and that the Tribunal suspend the plaintiff's and the interveners' obligation to be vaccinated.

The Tribunal dismissed the claim in the first instance and in the appeal procedure for the reasons that have been explained in the application form (statement of facts).

The decision infringes on the applicants' rights as set forth by the ECHR.

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Art. 2 Right to Life

The vaccine mandate infringes upon the right to life. It has been ascertained beyond any reasonable doubt that the Covid-19 vaccines currently in use in Italy are experimental treatments still subject to the completion of the clinical trials. The proof hereof derives from official documents that are publicly available.

We enclose hereby all implementing decisions by the European Commission in their first and last amendment version (Folders 5, doc. 33-42) and the annexes (summary of product characteristics, Folder 5, doc. 28-32) in their latest versions for all five vaccines that have been approved in Italy so far along with the Italian decisions by the national medicine agency AIFA (Agenzia Italiana del Farmaco) (Folder 5, doc. 43-47). The express reference to art. 14a of the Regulation (EC) No 726/2004 of the European Parliament and of the Council makes it totally clear that a final approval is subject to the completion of the ongoing clinical trials, whose aim is to ascertain the vaccines' safety and efficacy. The provisional and conditional positive evaluation by the European Medicines Agency and a preliminary positive assessment of the risk benefits ratio of the vaccines does not contradict the fact that the latter are still under experimental investigation by the producers. This is also shown by the risk-management-plans submitted by the producers, and by EMA's overviews. We enclose the overviews for all vaccines (Folder 5, doc. 48-52) and Pfizer's and Moderna's risk management plans (Folder 5, doc. 53 and Folder 6, doc. 54) where there are very clear statements about the fact that adverse events including death have occurred and will continue to occur and that interactions with several conditions (inflammation, pregnancy, lactation, other vaccines, immunological diseases) still need to be studied and assessed. All product summaries state that, albeit in very few cases, severe adverse effects including death have been observed.

On September 16th, 2021, the Public Health and Medical Professionals for Transparency (PHMPT), an organization made up of public health professionals, medical professionals, scientists, and journalists for the sole purpose of disseminating to the public the data and information in the biological product files for each of the COVID-19 vaccines, filed a "FOIA - Freedom of Information Act" claim with the United States District Court (Northern District of Texas) versus the US Food and Drug administration (FDA) (Folder 6, doc. 55). Scope of the claim was to obtain full disclosure of all data and information regarding, among other, safety and effectiveness data, adverse reaction reports, product experience reports, consumer complaints, and other similar data and information, a list of all

active ingredients and any inactive ingredients, with the exception of publicly available reports on the Vaccine Adverse Events Reporting System. The Court upheld the request with an order dated January 6th, 2022 (Folder 6, doc. 56). Thus, PHMPT got hold of several documents. The most important one, up to now, is a document with the title “5.3.6. *Cumulative Analysis of Post-Authorization Adverse Event Reports of PF-07302048 (BNT162B2) Received Through 28-Feb-2021*” (Folder 6, doc. 57). On pages 30 through 39 the document contains a list of adverse events. Many of these events are deeply concerning like Thrombophlebitis, Guillain Barre Syndrome, Multiple Sclerosis, Herpes Zoster, Facial Paralysis, Myocarditis etc. The number of doses supplied was not made available (see page 6 of the Report, page ... of our Folder ...). However, the report shows 42,086 case reports. Of these 1,223 (close to 3%) had a fatal outcome and 11,361 (26%) were reported as yet unrecovered at the date of the report.

Hence, documents from Pfizer itself show that there is a substantial risk connected with the Comirnaty vaccine.

Pfizer-Comirnaty is by far the most used in Italy (with a percentage of almost 70%) as reported by the Italian medicines agency’s AIFA annual report about the vaccination plan (Folder 6, doc. 58). However, the applicants had provided proof for all vaccines that there was a substantial threat for life even with the documents attached to the claim and with the further documents submitted during the proceeding before the Tribunal of Rome (Folder 1, doc. 2, Folder 2, doc. 3). Although the pharmacovigilance is only passive and there may be a substantial risk of underestimation of adverse events, AIFA had to report 758 deaths. Further, AIFA had to admit that a small number of deaths and very serious adverse events were causally connected with the vaccines. AIFA’s report (Folder 6, doc. 58) must be taken with some caution. AIFA is a government agency, and the Italian government is committed to push the vaccines up to the point of making them compulsory unlike almost all other countries in the world. This entails grave responsibilities of the government officials and bureaucrats who have already been denounced of very serious crimes including mass murder. Understandably there is a strong incentive to defend the vaccine campaign at all costs and to torture the numbers in order to show that the risk connected with the vaccines is lower than the risk connected with Covid-19. However, even if it were so, this would not suffice to justify a compulsory vaccination.

In fact, every medicine, including vaccines, can be connected with adverse events and the risk of dying as an iatrogenic consequence of the medicine can never be totally ruled out. However, the decision whether to take a medicine or not is free and individual. Any patient has the right to informed

consent and may not be punished or suffer other consequences if he or she chooses not to undergo the treatment suggested by a physician. Even if such refusal may pose a threat to the patient's health and safety. Therefore, adverse events, including death, are individually and consciously accepted by any patient. The problem posed by the Italian vaccine mandate is that the law-decree 44/2021 makes it compulsory to undergo the vaccine under threat to lose one's job in case of non-compliance. Hence, the law denies the freedom of choice and makes it compulsory to risk life and limb or very serious adverse events. The circumstance that the statistical incidence of death and serious adverse events is, as far as it is currently known, very low does not change the problem from a legal point of view. Since the risk of death is proven, the Italian government, in a luckily very low number of cases, makes it compulsory to die in order to benefit public health or the public weal. Even if it were statistically proven that the risk connected with vaccines is lower than the risk connected with Covid-19 still the government in case of compulsory vaccinations would force someone to die because it is impossible to prove that the ones who suffered death and adverse events would have been infected by Covid-19 and would have suffered death and serious harm by the illness.

So, an individual sacrifice in the literal sense is required for an alleged "greater good". Such reasoning is in stark contrast with the European Convention on Human Rights that affirms an unconditional and individual right to life. The only exceptions admitted by the ECHR are referred to situations which have nothing to do with public health measures.

The possible deprivation of life that relates to the vaccine mandate is intentional. The government acted with recklessness (*dolus eventualis*). Although vaccines in a fortunately very low number of cases may cause death, the Italian government, however, decided to make them compulsory because it deemed a few deaths acceptable in comparison with the expected benefits in terms of common good. Thus, the threat of deprivation of life is intentional according to art. 2 of the Convention, although the possible victims of the Italian government's actions are uncertain and not identified.

Art. 5 Right to Liberty and Security

The vaccine mandate violates the right to liberty and security. Deprivation of liberty does not coincide exclusively with incarceration or other forms of restriction of a person within a closed space, but it may be construed also as referred to personal and moral freedom of choice, i.e., to behave according to one's ideas provided that such behaviour does not infringe on other people's freedoms and rights.

Now, in the case of the Italian vaccine mandate, the healthcare workers are posed before a choice: either get the vaccination with the risk of death and other adverse events and contrary to the individual's opinions about risks and benefits of the vaccines or accept not to work for a time span that up to now lasts from April 2021 to June 15th, 2022, but that may be extended arbitrarily by the government. Such a choice is a negation of personal freedom because it forces to decide under duress and without respect for the individual's ideas and convictions. It is worth highlighting that the risks connected with Covid-19 are very different according to age. Younger people (at least until the age of 50) have an almost non-existent risk and the likelihood of a severe or even mortal illness grows together with the age. The population above 70 years of age is the most exposed. A general vaccine mandate does not take into consideration such commonly known facts about Covid-19. We hereby enclose the latest statistical report by the Istituto Superiore di Sanità (ISS) about the illness that confirms such statements (see Folder 6, doc. 59). Hence, placing an individual younger than at least 50 years (or probably older) before the choice between the risks connected with the vaccines and the ones deriving from the illness under the threat, should he or she decide not to accept the vaccination, to lose the job and the possibility of earning a living, means an encroachment on personal liberty that is akin to the physical deprivation of freedom that is the main object of art. 5.

Art. 8 Right to respect for private and family life

The vaccine mandate infringes upon the right to privacy. In fact, the obligation impinges on a personal and private choice and makes all those who decide not to get vaccinated the object of public scorn. The choice has no possibility of being made privately because the vaccine sceptics are kicked out of their jobs and medical colleges and are branded as outcasts. This is not an exaggeration. Public figures such as the well-known virologist Burioni and prominent figures from the government including the Prime Minister exposed the unvaccinated to public shame and despal.

For example, the first, Prof. Burioni, publicly dubbed the unvaccinated as rats that deserved to be confined in their homes because they posed a danger for everyone (Folder 6, doc. 60).

Dr. Sileri, the vice-minister for health, publicly declared the government's intention to "make life impossible" for the unvaccinated because they are "dangerous" (Folder 6, doc. 62).

The very Prime Minister, Mr. Draghi, famously declared the unvaccinated as responsible for the death of other people (Folder 6, doc. 61). Mr. Draghi probably did not notice the inconsistency of his affirmations as, in his opinion, the ones who risk being killed by the unvaccinated are the very

vaccinated who got a vaccine that supposedly has the aim to protect them against the illness that the unvaccinated are accused to propagate.

These logical inconsistencies of the public discourse notwithstanding, the general atmosphere is that of a depiction of the unvaccinated as dangerous traitors. Hence, there is no respect whatsoever for the private life of the healthcare workers who are subject not only to the obligation to undergo a physical treatment they do not agree with, but who are also publicly shamed into taking a course of action that they do not wish without any respect for their privacy. The punishment for not accepting the vaccine is particularly harsh because it consists in the prohibition to work. Up to now the vaccine obligation should last until June 15th, 2022, but the government declared the adoption of a new decree that postponed such deadline until December 31st, 2022. There is no guarantee whatsoever that the healthcare workers will not be permanently excluded from their workplaces. It is worth mentioning that most of the healthcare professions entail a significant expense in order to achieve the proper academic degrees and that owing to the high specialization of the healthcare professionals switching to another job seems to be difficult if not altogether impossible. Shutting out healthcare workers from their jobs means literally ruining their lives and condemning them to a future of poverty, social exclusion, and personal uncertainty.

Counsel for the defendants objected in the Italian proceeding that compulsory vaccination has been approved and deemed necessary in a democratic society by the European Court's for Human Rights decision dated April 8th, 2021, in the Case of Vavříčka and others v. the Czech Republic (applications 47621/13 and others). The applicants hold this interpretation as ill-founded. In fact, counsel for the public defence did not consider that in the case decided by the European Court of Human Rights: (i) the defendant State made it possible to raise a secular objection of conscience against vaccinations (paragraph 93 of the decision); (ii) the refused vaccines were by no means in their clinical trial phase because the obligation was referred to well-established and safe vaccines like the ones against poliomyelitis, hepatitis B and tetanus (par. 23 of the decision); (iii) the vaccine mandate was referred only to minors and had to be assessed according to the principle that the minors' best interest is always paramount (par. 287); (iv) the proportionality test had been respected in the case of the Czech law because (par. 293) "*there is no provision allowing for vaccination to be forcibly administered*", the duty is enforced indirectly through the application of relatively moderate sanctions consisting of an administrative fine that may only be imposed once; such sanctions, held the Court, "*cannot be considered as unduly harsh or onerous*".

In the Italian case the situation is totally different. The sanctions are particularly harsh and cruel because they consist in the prohibition for unvaccinated healthcare workers to earn a living with their jobs and professions forcing them into possible poverty and anyway in a situation as social outcasts. Further, the expense of renouncing one's income from May-June 2021 to June 15th, 2021, as far as the current set of rules is concerned, entails an economic cost amounting to tens of thousands of Euros depending on the individual income of the different healthcare workers. Hence, the indirect fine imposed on the recalcitrant healthcare workers goes way beyond the amount imposed on the Czech parents in the case of Vavříčka, where they faced a one-time fine amounting to 400 Euros without any other consequence. The case of Vavříčka, thus, cannot be invoked in order to legitimate the Italian vaccine mandate for healthcare workers.

It may be worth mentioning that the latter have been a test case for further similar restrictions in Italy. Starting from February 15th, 2022, all workers in the age of 50 years and older are banned from working unless they undergo a compulsory vaccination exactly as the healthcare workers. The new regulation was imposed by means of the law-decree n. 1 of January 7th, 2022. The method of forcing the general population, willing or not, to accept the Covid-19 vaccination regardless of individual convictions and conditions by means of a prohibition to work and earn a living is getting established and entering the Italian legislation.

It is not conceivable that the vaccine mandate for the healthcare workers may be construed as *“necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”*. National security, public safety, economic well-being, prevention of disorder or crime and protection of morals can be ruled out right away because there is no possibility of interpreting a compulsory vaccination as connected with any of these concepts. So, the question remains only as far as the protection of health is concerned.

Protection of health can be referred both to the health of the person that must suffer a compulsory medical treatment and the protection of the others that may be threatened by the person who does not agree to the medical treatment. In the case of Vavříčka the Court argued that the best interest of the minor had to be considered as paramount and thus justified a vaccine mandate. This does not apply to the present case because all applicants are of age and do not need any special protection owing to

a supposed incapacity. Further, as they are all healthcare professionals, it is reasonable to suppose that they are even better equipped with specific knowledge regarding vaccines as medicines. Hence, they do not need any protection by the public authorities and are fully entitled to an informed and free decision about the Covid-19 vaccines.

So, the question remains if the government may impose a vaccination in order to protect all the others from the disease. In epidemiology the so-called “herd immunity” exists when enough people in a group or population have immunity against an agent such that the likelihood of an effective contact between diseased and susceptible individuals is reduced. Hence, the aim of achieving herd immunity through vaccination is not that of protecting the vaccinated or the general population. The scope of herd immunity by means of vaccination is to protect the small minority that cannot be vaccinated owing to medical conditions that are incompatible with the vaccine and the minority that is not protected by the vaccines because they did not produce immunity in a certain percentage of cases. Thus, herd immunity is not an effect that protects the general population. As explained above, the Covid-19 vaccines are still in their experimental phase and no final conclusions can be drawn relating to their safety and efficacy. It is sure, although the exact extent still must be ascertained, that the vaccines in question can have severe adverse events, including death. Further, it is still under scrutiny: (i) if and how long the vaccines protect those who receive them from the illness (all Summary of Product Characteristics describe this as an open issue); (ii) if the vaccines prevent the vaccinated from passing over the illness to others and if the vaccinated have a significant danger of contracting the illness again, their vaccination notwithstanding. There are very serious doubts that have been expressed in the scientific literature as far as the question is concerned regarding the possibility that the vaccinated patients contract the virus again, possibly in a slightly different variant (see Folder 6, doc. 63-69).

The Italian Covid-19 vaccine mandate poses a paradoxical public health dilemma: if the vaccines are safe and effective, then there is no reason of forcing anyone to be vaccinated because the treatment will protect the vaccinated from the illness, if they are not, i.e. if the vaccinated may be infected again, then there is no serious reason for the vaccine mandate because it does not fulfil the scope it was aimed at.

In any case the vaccine mandate falls short as of the proportionality standard. In order to further public health by a vaccine that is still under scrutiny and experimental examination the Italian government

and legislator demand a very serious sacrifice from the healthcare workers who do not want to be vaccinated owing to their scientific, personal, or religious convictions, demanding that they be ousted from their workplaces. The punishment is unproportionally high and cruel and is inconsistent with the techniques that have hitherto been used in order to overcome vaccine hesitancy, traditionally based on information and on limited punishments usually consisting of pecuniary fines.

It may be assumed that the government's intention was that to protect the patients from the disease that healthcare workers could possibly infect them with or to make sure that intensive care units were not overwhelmed by Covid-19 patients. If this is the case, it should be considered that there are already various rules and security measures making sure that these risks are drastically reduced. Healthcare workers have been subjected to obligations to wear surgical masks, to respect distancing whenever possible, to have their temperature checked frequently, and to undergo frequent tests to make sure that they were not infected with the virus. Hence, there is a vast array of possibilities that can make sure that the risk of spreading the disease is limited to a minimum without requiring the sacrifice of losing their jobs from the healthcare workers who do not wish to be vaccinated. Arguing that the vaccine mandate is the only and last resort would be an obvious exaggeration because there were and are measures that can be taken in order to protect the health of the patients and to make sure that the occupation of the intensive care units does not reach a critical limit. It may be observed that during the past two years the government, while very active in buying school benches with wheels and electrical scooters or investing heavily on the digitalization agenda, did not spend one euro on the supposedly short ICUs.

Hence, the possible exceptions to the enjoyment of the right to privacy do not apply in the case of the vaccine mandate for healthcare workers.

Art. 9 Freedom of thought, conscience, and religion

9.1. Catholic and Christian prohibition of abortion

The applicants stated their serious doubts about the legitimacy of the vaccines according to a traditional catholic perspective. The encyclical "*Evangelium Vitae*" prohibits not only engaging in abortion but also using foetal cells derived from an abortion in order to manufacture medicines. It is a well-known fact that all Covid-19 vaccines were either tested or manufactured using such cells.

Hence, disregard for the applicants' religious objections to the legitimacy of the vaccines entails a violation of their religious freedom because their choices based on the system of Christian thought and beliefs determine a very harsh punishment consisting, as already stated, in the impossibility to work.

Counsel for the defendant stressed that Pope Francis repeatedly spoke out in favour of the vaccines even to the point of describing the choice of not being vaccinated as an egoistic one, in contrast with Christian values of solidarity. However, the opinions expressed by the Pope, although commanding respect in every Catholic, are not deemed to be articles of faith. Only if and when the Pope speaks *ex cathedra* and states a dogma does this entail an obligation for the Catholics to conform with the position of the vicar of Christ. Personal opinions of the Pope, albeit authoritative, do not bind the individual Catholic's conscience and, most important, cannot annul the official positions that have been explained by past pontiffs in their encyclic letters. Hence, the wide prohibition against the use of foetal cells expressed in "*Evangelium Vitae*" stands and poses a strong objection against the use of the Covid-19 vaccines that have been made compulsory by the Italian government.

The alternative that is presented – vaccination or loss of one's job – is particularly malevolent in case of Christians and Catholics because it impinges also on other duties that have a religious meaning, like the duty to work and provide for one's family.

9.2. Influence on the Hippocratic oath

In case the case of doctors the vaccine mandate has an influence on their Hippocratic oath. In fact, losing one's job as a doctor determines the impossibility to help the patients and to save them from illness. Further, it is important to highlight that a doctor's professional services are not fungible and rest on a relationship of trust between the doctor and his patients. Being forced to abandon the patients and being hindered from providing them with the medical help they need means that the doctors are forced to renege their oath and their professional duties. This deontological dilemma has been strongly felt by many doctors and a substantial group of them decided to undergo the vaccination, contrary to their beliefs and convictions, lest they abandon their patients.

Again, the vaccine mandate entails a sort of legislative blackmail that does not respect the individual's religious and ethical beliefs and that entails a moral and practical duress.

**Art. 14 and Protocol No. 12 to the Convention made in Rome on November 4th, 2000 -
Prohibition of discrimination**

The regulations about healthcare workers are a clear case of discrimination based on “other opinion” or “other status”. Objection to vaccination may be construed as an opinion (ethical and religious as explained above) or as a biological or pharmacological status of being unvaccinated. In any case, the fact of refusing the compulsory vaccination gives rise to a very clear discrimination of the recalcitrant healthcare workers who are banned from their workplaces and professions owing to an opinion or an ommissive conduct that pertains, first, to their right of medical self-determination.

The latter fundamental right belongs to the field of application of art. 8 of the Convention, although there isn't a direct mention of the right of medical self-determination in the ECHR. However, it is worth mentioning that the European Charter of Fundamental Rights (art. 3 – Right to the Integrity of the Person) states that “*everyone has the right to respect for his or her physical and mental integrity*” and that “*in the fields of medicine and biology, the following must be respected in particular: (a) the free and informed consent of the person concerned, according to the procedures laid down by law.*”

The principle of free medical determination is embedded within a well-established legal tradition that may be traced back to *Schloendorff v. New York Hospital*, 105 N.E. 92 (NY 1914) New York Court of Appeals, April 14th, 1914 where Judge Cardozo stated: “*Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages.*” Thence, a clear thread is recognizable, especially in international legislation, that affirms the exclusive right of the individual to decide about any bodily treatment in full freedom. Suffice it to quote the Nuremberg Code, the New York Covenant on Civil and Political Rights (March 16th, 1966), the World Medical Association Declaration of Helsinki, and the Oviedo Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine. The latter convention is closely linked to the Council of Europe and thus to the European Convention on Human Rights and the very Court that the applicants hereby address.

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The violation of the principle of medical self-determination does not come into consideration on its own merits, but as a reason for discrimination. Namely, those who exercise their right to decide what may and what may not be inoculated into their bodies suffer a discrimination if their free choice is not consistent with the wishes of the government. Hence, there is a two-tiered violation of fundamental human rights, one of those is directly relevant before the European Court of Human Rights, the prohibition of discrimination.

Now, whereas art. 14 of the ECHR refers only to a discriminatory enjoyment of the rights and freedoms set forth in the Convention itself, the scope of Protocol 12 is ampler because it prohibits discrimination as such, not necessarily as connected with the enjoyment of other rights set forth in the ECHR. Hence, the vaccine mandate of Italy's law-decree 44/2021 is a clear case of discrimination.

Respectfully submitted,


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