



Vaccination litigation and impact of government measures on fundamental rights

Sébastien Fassiaux

Covid-19 Litigation Legal Briefs Series

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ABOUT THE PROJECT

Developed by the University of Trento in 2020 with the financial support of the World Health Organization, the Covid-19 Litigation Project aims to provide an overview of the case law arising worldwide from disputes related to the Covid-19 pandemic. Under the coordination of Prof. Paola Iamiceli (University of Trento) and Prof. Fabrizio Cafaggi (Italian Council of State), the Project has established a partnership with eight Universities and Research Centers from all different continents and an International Network of Judges and Scholars (INJS), partaken by experts and contact points in more than 30 countries around the world. Through these collaborations, relevant decisions are selected in more than 70 jurisdictions, examined, reported, and made accessible in a dedicated open-access [Database](#) and [News page](#), that collects the latest developments on major Covid-related case law. These tools enable public and private stakeholders to access relevant case law on global Covid-19 litigation and to foster a debate on the pandemic's challenges and how governments and courts face them.

More than 2,000 cases are today reported in the Database and News page, relating to different areas of law, such as healthcare management, vaccination, education, business closures, freedom of movement of people, goods and capital, health, right to information and freedom of expression, the scope of powers of national authorities and many others. Particular attention is drawn to vulnerable subjects and how they might have been impacted by governments' public health measures to curb the spread of the Covid-19 virus.

For further information about the Project, please visit our website: www.covid19litigation.org. This website is run and maintained by the University of Trento, whose Law Faculty is the Coordinating Institution of this Project.

The Covid-19 Litigation Project welcomes all valuable contributions and invites its website visitors to report legal cases that might be of interest to the Database by using the dedicated contact form on the website.

Paola Iamiceli
Full Professor of Private Law (Faculty of Law, University of Trento)

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About this Series

The *Covid-19 Litigation Legal Briefs Series* aims to provide a comparative analysis of relevant topics within Covid-19 litigation and underlying regulation. Without being exhaustive, this comparative analysis highlights the different policy options emerging from litigation and the possible approaches and techniques used by courts in their judicial review of legislation and administrative acts. It also aims to bring the attention of the [Database's](#) and [News page's](#) users on critical issues within the global and regional debate, being open to upcoming issues, and, ultimately, provide some guidance for choices to be made by policymakers and courts based on existing alternative routes.

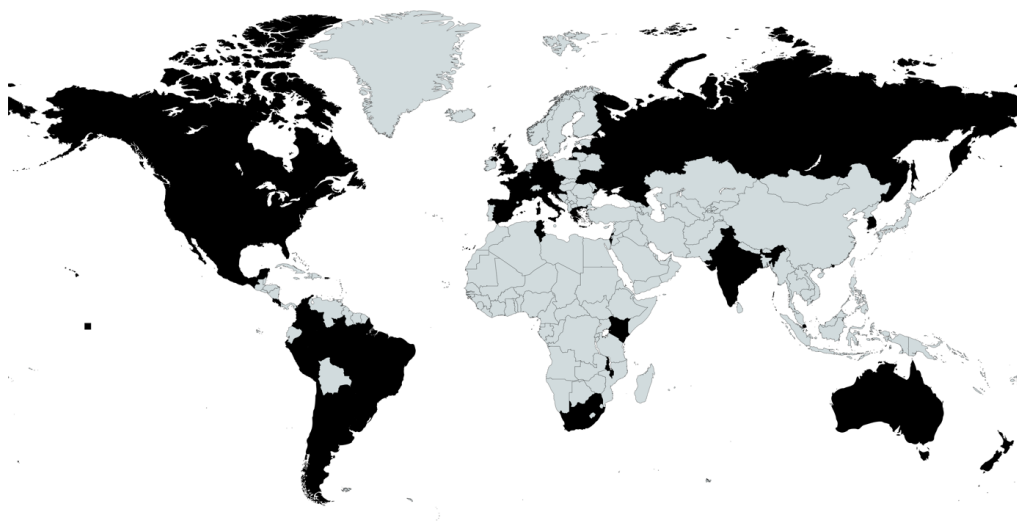
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I. Introduction¹

The administration of Covid-19 vaccines began in December 2020, nine months after the World Health Organization declared the pandemic a public health emergency of international concern. Since then, courts have had to decide on many vaccine-related issues involving balancing fundamental rights. Building on two years of research and case collection and analysis, this brief explores vaccination litigation worldwide – with a particular focus on cases against government measures – and covers jurisdictions from all continents, as the following map shows (although most cases concern Europe and the Americas):



Over these two years, vaccination campaigns worldwide have made remarkable progress. By the end of September 2022, around [68% of the global population](#) had received at least one dose, and 62% was fully vaccinated. Nevertheless, high vaccination rates in high-income countries sharply contrast with those in low-income countries, where only about 22% of the population had received at least one dose that month. Litigation also reflects this difference. Indeed, while plaintiffs tend to challenge government measures related to vaccine mandates in high-income countries, they appear to confront government (in)action related to vaccine scarcity in low-income countries.

¹ This brief was finalized in December 2022 and is the result of a team effort under the Covid-19 Litigation Project, coordinated by Prof. Paola Iamiceli (University of Trento) and Prof. Fabrizio Cafaggi (Italian Council of State). Special thanks to Valentina Cafaro, Flaminia Festuccia, Raffaele Minicozzi, and Gianmatteo Sabatino for their teamwork in identifying and summarizing relevant cases that are also reported here. This litigation brief on vaccination can be complemented with an upcoming brief in this series highlighting the regulatory aspects around vaccination worldwide, prepared by the O'Neill Institute for National and Global Health Law at the Georgetown University Law Center.

This brief is divided into three parts. **Section II** presents the **main issues around vaccination litigation**: (i) challenges against different types of vaccine mandates; (ii) the impact of vaccination on children's rights; (iii) on personal data protection; (iv) on employment relations; (v) on public trust and transparency; and (vi) on damages claims for defective vaccines. Although not exhaustive, this selection of issues reflects the intensity of litigation in these areas worldwide. **Section III** assesses the various judicial **approaches emerging from litigation** to tackle these issues, comparing them in different parts of the world. Finally, **Section IV** lists all the **cases** referred to in this brief.

All cases referred to here are accessible either in the [Covid-19 Litigation database](#) or the [News section](#) of the project's website – sometimes both – where case summaries are available in open access, in English, usually with links to the original judgments and complete references. A list of cited cases is available below. Although this brief gives particular importance to higher court cases, it also includes lower court judgments, either to show how they might have been upheld or reversed later, or because of their noteworthiness.

II. Presentation of litigation issues

This litigation brief focuses on five areas of vaccination litigation. First, it analyzes litigation around the issue of **vaccine mandates**, comparing approaches to solve challenges against government measures imposing different types of obligations to vaccinate. Most of the litigation in this space concerned vaccination passes to access public places, which was a way of nudging citizens to vaccinate, as many places were concerned: hotels, restaurants, bars, shops, transportation, hairdressers, gyms, etc. Courts usually ruled in favor of health passes in the cases surveyed here. However, they appear to have been more critical as the pandemic evolved, for instance, when comparing different types of places requiring vaccination. Many courts finally annulled such requirements, over equality or data protection issues, for example. Another set of cases focused on the constitutionality of more generally imposed compulsory vaccination and the influence of the *Vavříčka* judgment issued by the European Court of Human Rights in 2021.

Second, it examines the impact of vaccination on **children's rights** through prolific litigation in this space. Here, the issue of vaccination as a requirement to attend school was an important issue leading to litigation. Surveyed cases also concern parents challenging health authorities' authorizations granted for putting on the market pediatric vaccines, a judicial saga around the vaccination campaign for children under 13 in Uruguay and limiting access to public places

for unvaccinated children. In Latin America, many cases also relate to individual requests by parents requiring health authorities to vaccinate their children. In addition, vaccine mandates in schools and vaccination campaigns for children have more generally triggered conflicts within families, sometimes leading to court decisions.

Third, it surveys cases concerning the impact of vaccination campaigns on **personal data protection**. One set of cases deals with the issue of personal data processing for contact tracing and health passes, including at the European Parliament. The other examines the specific issue of data transfers between the European Union and the United States, which was problematic when governments resorted to US firms to handle vaccination campaigns in light of a European Court of Justice judgment limiting such transfers.

Fourth, the brief reviews litigation related to **employment relations**, given controversial mandates imposed by governments, especially for healthcare workers. Here, our sample of cases shows decisions from all continents, with contrasting findings. These cases concerned vaccination mandates for healthcare workers, civil servants, military personnel, and private employers, and this brief analyzes them separately. If courts usually upheld vaccine mandates for healthcare professionals, the situation is more contrasted in the private sector. This section also offers a case study on federal vaccine mandates and access to work in the United States, which were the object of intense litigation, including before the US Supreme Court.

Fifth, the survey analyzes the impact of vaccination campaigns on **public trust and transparency**. If vaccination was already a polarizing topic before the pandemic, controversies around it amplified with Covid-19. Our surveyed cases show that vaccination campaigns worldwide impacted trust in public institutions, science, and the media. In this context, citizens used legal mechanisms to obtain more transparency from public administrations – for example, with extensive litigation over decisions by the Transparency Council in Chile.

Finally, **damages claims** for harms potentially caused by the Covid-19 vaccines have emerged and led to some judicial cases. Although litigation in this space is still developing, its consequences will nonetheless be significant in the future. Here, we highlight some initial cases.

III. Approaches emerging from litigation

This section assesses and compares various judicial approaches emerging from worldwide litigation to tackle the abovementioned four categories of issues.

1. Distinction between different types of vaccine mandates

Governments have adopted different types of vaccination mandates throughout the pandemic. This section highlights different approaches that courts adopted to deal with challenges to these government measures. In particular, it surveys cases against widely used health passes and cases against compulsory vaccination. It leaves the question of vaccination mandates at school and the workplace for the following sections.

A. Vaccination passes to access public places

Governments widely imposed the presentation of vaccination or health passes to demonstrate they were somehow immune to Covid-19 (through vaccination or recovery) or virus-free (through negative testing). They were established with differentiated intensity across jurisdictions, targeting different activities or access to specific places.² In the EU, the Commission designed the Digital Covid Certificate to facilitate interoperability between passes established at the national level, with the stated objective of easing the free movement of people. As discussed below, Members of the European Parliament challenged its use to access the European Parliament buildings before the EU's General Court (see Section III.4.B).

In France, President Macron announced in July 2021 that people should hold a 'health pass' to be allowed in bars, restaurants, shops, some trains, and flights. A few weeks later, the French Constitutional Council confirmed the validity of the provisions of the law on health crisis management that imposed the 'health pass' ([France, Constitutional Council, 5 August 2021, n°2021-824 DC](#)). The Constitutional Council motivated its decision by the fact that (i) the legislature pursued the constitutional objective of protecting health; (ii) the measure would apply temporarily until 15 November 2021 (it was later extended until 31 July 2022), during which the legislature considered there was a significant risk of the epidemic spreading through new virus variants; (iii) the pass would only be required in places where the activities carried out present a particular risk of spreading the virus; (iv) the obligations imposed on the public may be fulfilled by

² On the regulatory aspects of these certificates, see the upcoming brief in this series prepared by the O'Neill Institute for National and Global Health Law at the Georgetown University Law Center.

the presentation of proof of vaccination status, negative test results, or a certificate of recovery, thus not imposing vaccination; and (v) the presentation of these documents is carried out in a form that does not allow the “nature of the document held” to be ascertained, and ID checks can only be carried out by law enforcement officials. Thus, the Constitutional Council held that the contested measure achieved an appropriate balance between the right to health and the freedom of movement, the right to respect for private life, and the right to the collective expression of ideas and opinions. The French Council of State also ruled that accepting only vaccines authorized by the European Medicines Agency to obtain the health pass was legal ([France, Council of State, 19 May 2022, n°454621](#)). Interestingly, the Italian Council of State referred to the Constitutional Council case in a decision on mandatory vaccination for healthcare workers (see below).

In Germany, the so-called ‘2G rule’ meant that individuals could access certain public places only if they could prove they were vaccinated or had recovered from Covid. Administrative courts throughout the country have mostly dismissed challenges to that rule (including in Lower Saxony, Bremen, Berlin, and Baden-Württemberg). One example is that of the High Administrative Court of Thüringen dismissing a challenge to that rule for non-essential shopping ([Germany, High Administrative Court of Thüringen, 24 January 2022, n°3 EN 804/21](#)). Austria also adopted a similar 2G rule to access public places (including museums, theatres, and hairdressers). The country’s Constitutional Court initially rejected a challenge to this rule, finding (i) no infringement of the right of private and family life; (ii) no infringement of the principle of legality; and (iii) no discrimination between the recovered/vaccinated and the non-recovered/non-vaccinated, as the different impact of the 2G rules was based on a factual situation because recovered/vaccinated people are not subject to a high risk to catch and suffer from Covid-19 ([Austria, Constitutional Court, 29 April 2022, n°V 23/2022-25](#)). The same court later considered that it was unconstitutional to restrict access to hairdressers with the 2G rule, based on other arguments ([Austria, Constitutional Court, 30 June 2022, n°V 3/2022-19](#)), and to close the cultural sector but allow religious gatherings, as it was contrary to the principle of equality ([Austria, Constitutional Court, 30 June 2022, n°V 312/2021-15](#)).

Other European courts finally annulled such requirements. That was the case in the Czech Republic, where the Supreme Administrative Court annulled the 2G rule to access restaurants, hotels, and other places. It found that the health minister was not competent to impose such a rule without a legal base ([Czech Republic, Supreme Administrative Court, 2 February 2022, n°8 Ao 2/2022](#)). In Slovenia, the Constitutional Court also declared unconstitutional two government decrees imposing the presentation of health passes to access some public places over data protection issues (see Section III.3.A).

In America, our sample of cases shows that courts have generally validated government measures imposing similar health passes. That was the case in Argentina, where the Supreme Court of Buenos Aires found that a vaccination pass required to access certain public activities did not violate fundamental rights and did not amount to an extreme coercive measure ([Argentina, Supreme Court of Buenos Aires, 28 December 2021, n°RR-1064-2021](#)). In Uruguay, an appellate court upheld the government requirement for unvaccinated individuals to provide a negative test result upon arrival in the country, after a lower court had decided otherwise ([Uruguay, Court of Appeal of the Sixth Circuit, 1 August 2022](#)). In Colombia, the Council of State dismissed a challenge to similar measures ([Colombia, Council of State, 23 February 2022, n°11001-03-24-000-2021-00884-00](#)). It found that the measures did not violate any fundamental rights because the restrictions were necessary, suitable, proportional, and reasonable to avert the effects of Covid-19, and they did so in a non-discriminatory manner. In Canada, the Supreme Court of British Columbia also rejected a similar challenge of rules imposing individuals to obtain two vaccine doses to access places and activities ([Canada, Supreme Court of British Columbia, 12 September 2022, n°2022 BCSC 1606](#)).

In Australia, federal and state governments in New South Wales and Victoria had established mandatory vaccination and lockdowns – against which an applicant argued it infringed its right to bodily integrity and freedom of movement. However, the Federal Court of Australia rejected the case, considering it was more of a “general attack on the government response across Australia to the Covid-19 pandemic” rather than a detailed case about the applicant’s circumstances ([Australia, Federal Court of Australia, 27 June 2022, n°\[2022\] FCA 741](#)). In New Zealand, the High Court also rejected a challenge to the Covid vaccination certificates imposed to attend public religious gatherings ([New Zealand, High Court, 16 August 2022, n° \[2022\] NZHC 2026](#)). The Court considered that the measures were justified, proportionate, and reasonable, even after the appearance of the Omicron variant. Finally, a court in Hong Kong also rejected the appeal of a claimant opposed to the vaccination program introduced in February 2022 for access to a series of premises such as courts, restaurants, and supermarkets ([Hong Kong, Court of First Instance, 30 March 2022](#)).

There are also cases where courts suspended government measures imposing such passes in Africa. For instance, the High Court of Kenya suspended the regulation issued by the Ministry of Health imposing a vaccine requirement to access public transportation, education, hospitals, national parks, hotels, restaurants, and prisons ([Kenya, High Court, 14 December 2021](#)).

DISTINCTION BETWEEN COMPULSORY AND FORCEFUL VACCINATION IN BRAZIL

At the beginning of the vaccination campaigns, the Brazilian Federal Supreme Court found a sufficient legal basis for indirect compulsory vaccination. It provided guidelines on implementing measures to incentivize citizens to vaccinate ([Brazil, Federal Supreme Court, 17 December 2020, n°ADI 6.586/DF](#)). The Court expressly referred to this possibility as ‘compulsory vaccination’ (*‘obrigatoriedade da vacinação’*) to distinguish it from ‘forced vaccination’ (*‘vacinação forçada’*) because vaccination would always require the patient’s consent to be administered, and the authorities cannot force patients to take the jab. Although it refers to ‘compulsory vaccination,’ the Court essentially allows the authorities to impose indirect measures aimed at inciting vaccination, such as restricting the exercise of certain activities or entering some public places. The Court specified that, for such measures to be implemented, appropriate legislation must be adopted, which should be (i) based on scientific evidence; (ii) accompanied by extensive information on the effectiveness, safety, and contraindications of immunizers; (iii) respectful of human dignity and fundamental rights; (iv) reasonable and proportionate; and (v) geared toward ensuring that the vaccines are distributed universally and free of charge. At any rate, the Brazilian court did not make vaccination compulsory but provided these rather general guidelines for public authorities to adopt indirect measures to incentivize citizens to vaccinate.

The Federal Supreme Court confirmed its case law throughout the pandemic, for instance, to suspend a decree from the municipality of Uberlândia (Minas Gerais) which aimed at lifting compulsory vaccination and restrictions on unvaccinated people ([Brazil, Federal Supreme Court, 6 April 2022, n°946/MG](#)). In that case, the Court used the same criteria established in December 2020 and made the same distinction between compulsory and forced vaccination. On that basis, the Court reiterated the lawfulness of mandatory vaccination since it is (i) grounded on scientific evidence; (ii) consistent with the principles of precaution and prevention; and (iii) it implies the use of indirect, non-forceful measures.

B. Compulsory vaccination

Instead of, or in complement to, imposing vaccination or health passes to access certain places, governments sometimes imposed broader general vaccination mandates. Austria was one of the first countries to adopt a general vaccine mandate for its population as of February 2022.³ The Constitutional Court heard the case of an 18-year-old individual against the mandate, ultimately rejecting it

³ On the regulatory aspects of this Austrian mandate, see the upcoming brief in this series prepared by the O’Neill Institute for National and Global Health Law at the Georgetown University Law Center.

([Austria, Constitutional Court, 23 June 2022, n°G 37/2022-22](#)). The Court found that the restriction to the right to the respect for private life guaranteed by the European Convention on Human Rights should be strictly assessed. But it found no issues here, mainly because the obligation to vaccinate was suspended in March 2022, showing that the government continuously evaluated the need to impose the mandate. The court thus rejected the applicant's claims which mainly focused on his situation as a young, healthy man, without considering the collective dimension of vaccination.

Another example of a court rejecting challenges to compulsory vaccination in Costa Rica, where the Supreme Court dismissed a case as the law established exceptions to mandatory vaccination ([Costa Rica, Supreme Court, 12 November 2021, n°25499](#)).

In some instances, compulsory vaccination did not originate from mandates imposed by law but from judicial authorizations. That has been the case for incapacitated persons, for example, who could not consent to vaccination themselves. In a case that reached the Spanish Constitutional Court, the guardian of an older woman that could not consent to vaccination argued that the suspension of her vaccination authorized by a judge was necessary to prevent irreparable or very difficult to repair harm ([Spain, Constitutional Court, 26 October 2022, n°93/2022](#)). The Court rejected the petition, mainly because the lack of vaccination for an older adult implies semi-isolation and adverse effects on the person's physical and physiological condition. Similarly, in Paraguay, a court ordered the Health Ministry to prioritize the administration of the vaccine to a woman with an incurable disease and associated conditions, considering that constitutional protection was necessary in this case due to the urgency of the situation ([Paraguay, 6th Civil and Commercial Court of First Instance of Asuncion, 1 July 2021](#)).

In contrast, the Colombian Constitutional Court held that requiring a person to vaccinate to visit a relative hospitalized with a high-risk disease was not proportional ([Colombia, Constitutional Court, 26 September 2022, n°T-337/22](#)). According to the Court, for a restrictive measure to be constitutionality justified and proportional, it should constitute the only available measure for achieving the desired results. Here, measures other than vaccination existed, such as physical distancing and mask-wearing, plus the fact that the patients and health workers were already vaccinated, constituting an effective form of protection.

Sometimes, litigants even anticipated government action in this space. In Malawi, a court dismissed a challenge to the government's plan to implement compulsory vaccination, as it had only expressed intentions ([Malawi, High Court of Lilongwe, 13 January 2022, n°66/2021](#)).

EUROPEAN COURT OF HUMAN RIGHTS – THE VAVŘIČKA CASE

With *Vavříčka*, the European Court of Human Rights might inspire European countries to mandate Covid-19 vaccination, or at least would make it more difficult for applicants to challenge such mandates judicially, should they be adopted ([European Court of Human Rights, *Vavříčka and Others v. the Czech Republic* \[GC\], no. 47621/13 and 5 others, 8 April 2021, ECLI:CE:ECHR:2021:0408JUD004762113](#)). The case concerned the compulsory nature of standard and routine vaccination of children in the Czech Republic against nine well-known diseases. While the case did not examine Covid-19 vaccination in particular, the Court, sitting in Grand Chamber, found that states have a wide margin of appreciation for imposing compulsory vaccination on children.

Despite recognizing that compulsory vaccination interfered with the right to private life, the state's objective was to protect against diseases that cause a severe threat to health. The Court considered this objective legitimate because it aimed at guaranteeing the protection of health and the rights of others, as guaranteed by Article 8 of the European Convention on Human Rights. The Czech law did not foresee the forced administration of the contested vaccines. However, it did establish sanctions such as (limited) administrative fines or the non-admission to preschool. The Court found that Contracting Parties to the Convention could choose between a spectrum of policies regarding compulsory vaccination because they had a wide margin of appreciation. In any case, the Court also stated that the Convention imposes a positive obligation on the Contracting Parties to protect the life and health of their citizens and that international and national medical experts had recommended maintaining such a duty for children vaccination.

Finally, the Court found the Czech policy proportionate to its objectives because (i) an exemption was permitted based on a "secular objection of conscience;" (ii) no provisions allowed for 'forced' vaccination; (iii) one-off administrative fines were relatively moderate; (iv) non-admission to preschool was a protective rather than punitive sanction, and the loss of an opportunity to develop the children's personalities is a direct result of their parents' decline to comply with a legal duty; and (v) national law established appropriate procedural safeguards. Therefore, the Court considered the Czech policy "necessary in a democratic society." The European Court of Human Rights emphasized the need for social solidarity:

"The Court considers that it cannot be regarded as disproportionate for a State to require those for whom vaccination represents a remote risk to health to

accept this universally practiced protective measure, as a matter of legal duty and in the name of social solidarity, for the sake of the small number of vulnerable children who are unable to benefit from vaccination” (Vavříčka, §306)

Although the *Vavříčka* case did not concern Covid-19 vaccination directly, several higher European courts referred to the European Court of Human Rights’ judgment in matters relating to Covid-19 or children’s vaccination. For instance, in a very detailed and scientifically backed decision, the Italian Council of State confirmed the validity of a Decree-Law in a case involving healthcare workers refusing to vaccinate ([Italy, Council of State, 20 October 2021, n°7045](#)). The country’s highest administrative court motivated its decision based on a thorough scientific analysis of the safety and efficacy of the vaccines in the context of their conditional marketing authorization in the EU, rebuffing claims that vaccines are merely “experimental.” It also heavily relied on the principle of solidarity to justify the selective mandate, mainly based on the *Vavříčka* judgment, which already shows its influence in the Covid-19 context. The Council of State also explained that doctors’ duty of care imposes an obligation to protect themselves and others, primarily because of the trust that patients vest in them, leaving no legitimate space for vaccine hesitancy in a democratic society during such a health emergency. The French Council of State also highlighted the importance of scientific evidence and pharmacovigilance data in assessing whether a vaccine booster shot was proportionate ([France, Council of State, 14 February 2022, n°460891](#)). It ruled that it was, even for the younger population. Similarly, in a referral to the Italian Constitutional Court related to the vaccination of healthcare workers, the Sicilian Administrative Court explained that the legislative choice of mandatory vaccination should be subject to continuous review in light of the evolution of medical and scientific knowledge. Legislation should require precautionary and mitigation measures related to the vaccine’s effects ([Italy, Sicilian Administrative Court, 16 March 2022, n°1272/2021](#)).

In Austria, the Constitutional Court also referred to the *Vavříčka* judgment when it validated the country’s general vaccine mandate ([Austria, Constitutional Court, 23 June 2022, n°G 37/2022-22](#)). Although the mandate ceased to apply on 12 March 2022, the Court dismissed the challenge against the federal Covid-19 Compulsory Vaccination Act. The Court recognized that compulsory vaccination is a severe infringement on the right to physical integrity and the right of self-determination of the individual. Thus, it should strictly assess the proportionality test under Article 8(2) of the European Convention on Human Rights. Here, the contested Covid-19 Compulsory Vaccination Act pursued the goal of a high

vaccination rate to protect people who cannot use the vaccination for medical reasons or for whom the effectiveness of vaccination is reduced (i.e., vulnerable persons). The Act also aimed at protecting the functioning of the health infrastructure and, thus, public health by reducing the risk of severe disease courses after vaccination. Therefore, the Court rejected the applicant's claims.

Finally, the German Federal Constitutional Court also referred to *Vavříčka* when assessing the constitutionality of the law imposing measles vaccination for children ([Germany, Constitutional Court, 21 July 2022, n°1 BvR 469/20](#)). In this case, the Court rejected the challenges of several parents of minor children against the obligation to show proof of vaccination against measles for children at least one year of age to receive early childhood or preschool education and daycare. The applicants had argued that the obligation infringed on their fundamental rights to parental care (Article 6(2) of the German Basic Law) and their children's physical integrity (Article 2(2) of the German Basic Law). The children in question had no contraindication to take the measles vaccine. In practice, children cannot be prohibited from receiving school education due to the obligation to attend school, but parents could be fined for not complying with the vaccine mandate.

While the Court recognized that the vaccine mandate does infringe on both fundamental rights, it held that their limitation was constitutionally justified and proportionate. Indeed, the vaccine mandate (i) is based on a statutory provision; and (ii) pursues the legitimate objective of protecting vulnerable children who might catch measles and those that cannot adequately protect themselves against it because of contraindications to take the vaccine. Also, (iii) the obligation to show proof of vaccination to attend preschool or daycare is suitable to meet that objective and necessary to protect individuals and the overall population from measles; and (iv) the state has a duty to protect public health and take precautionary measures against health risks, which can be effective only with high vaccination rates. Therefore, the Court held that the contested provisions were constitutional.

2. Impact on children's rights

Vaccine mandates have affected children's rights on different continents as well. Litigants complained about vaccination campaigns for children and mandates affecting them, including at school.⁴ In Latin America, abundant litigation is

⁴ On the regulatory aspects of these children mandates, see the upcoming brief in this series prepared by the O'Neill Institute for National and Global Health Law at the Georgetown University Law Center.

related to individual cases of parents requesting health authorities to vaccinate their children. Vaccination of minors has also affected parental rights.

A. Education

Vaccine mandates have mostly affected children at school, leading parents to challenge them in court, which took contrasting decisions. For instance, a state court in California held that the Los Angeles school district could not issue vaccination requirements, which it had done for students aged 12 and older ([United States, Superior Court of California, County of Los Angeles, 5 July 2022, n°21STCP03381](#)). The court held that state law prevented the school district from adopting such a mandate with no possible exemption based on personal beliefs. In South Korea, a court exempted private schools from requiring students aged 12 or older to submit a vaccination certificate to attend ([South Korea, Administrative Court of Seoul, 4 January 2022](#)). However, the Supreme Court of Puerto Rico dismissed an appeal against the requirement imposed by the Secretary of Health for children aged 12 or older to vaccinate, as well as teaching and non-teaching personnel in schools ([Puerto Rico, Supreme Court, 2 February 2022](#)).

Sometimes, applicants sought interim relief before courts to stop the government from prohibiting schools to adopt vaccine mandates. That was the case in Brazil, where the Federal Supreme Court stopped the Ministry of Education from prohibiting federal education institutions from requiring proof of vaccination to attend in-person teaching activities ([Brazil, Supreme Court, 31 December 2021, n°ADPF 756](#)).

Note that sometimes, mandates other than for vaccines were limited by the eligibility of children for vaccination. In New York, the fact that children were not eligible for vaccination impacted the mayor's ability to impose a mask requirement at school for children under 12. Indeed, the Supreme Court of New York declared the mask requirement void and unenforceable ([United States, Supreme Court of New York, Richmond County, 1 March 2022](#)), except for children under five that were not eligible for vaccination.

B. Children's vaccines, vaccination campaigns, and access to public places

Even in the absence of children's vaccination mandates, parents sometimes challenged health authorities' authorizations granted to pharmaceutical companies manufacturing vaccines. In New Zealand, a court dismissed such an application for interim measures of parents seeking judicial review of the authorization granted to Pfizer's pediatric vaccine ([New Zealand, High Court, 1 February 2022, n°CIV-2022-485-13](#)). The court held that halting the vaccine roll-out would have adverse social repercussions.

As discussed below (Section III.5.B), Uruguayan applicants judicially challenged the vaccination campaign for children under 13 over the information provided to parents to obtain their informed consent – and, more generally, distrust in science. Vaccination of children between 5 and 11 in Brazil, approved by regulatory health authorities, was later put into question by the Health Ministry, which organized a public consultation on the topic. Following a challenge to this public consultation by a workers' union, the Federal Supreme Court ordered the President and the Health Ministry to clarify this consultation, as the regulatory health authorities had already approved vaccination for this segment of the population ([Brazil, Federal Supreme Court, 30 December 2021, n°ADPF 929/DF](#)). Similarly, the Health Ministry intended to undermine vaccination for children and adolescents between 12 and 17 years of age, limiting it to those who presented permanent deficiencies, comorbidities, and those deprived of liberty. Five political parties – claimants in this case – argued that this measure contained in a technical note by the Ministry violated the provisions of Brazil's National Immunization Plan. The Federal Supreme Court again ordered the federal government to remove those limitations from its technical note and reiterated the importance of vaccination for this age group to ensure a safe return of students to the classroom ([Brazil, Federal Supreme Court, 11 October 2021, n°ADPF 756](#)).

Applicants also challenged mandates limiting access to public places. In South Korea, an administrative court considered that teenagers should not be required to show proof of vaccination in supermarkets ([South Korea, Seoul Administrative Court, 14 January 2022](#)).

C. Individual requests to get vaccinated

In Latin America, many parents requested that courts order authorities to vaccinate their children. In Mexico, individuals made use of the *amparo* action to do so. In some instances, administrative courts granted precautionary measures against the State's omission to vaccinate minors of 14 years old ([Mexico, First Collegiate Court of the Twenty Fourth Circuit, 4 February, n°582/2021](#)) and children between 5 and 11 years old ([Mexico, Fourth Collegiate Tribunal of the First Circuit, 18 February 2022, n°51/2022](#)). However, another court rejected a parental request to prioritize their child's vaccination schedule before returning to school. It found that the assigned date scheduled for vaccination did not entail any additional risk of contagion or threat to the child's health ([Mexico, Second Collegiate Tribunal for the 17th Circuit, 18 March 2022, n°XVII.2o. PA J/6 K](#)). Note that such individual requests to vaccinate were not limited to children but that some courts also granted such requests to older citizens. That was the case in Costa Rica, where the Supreme Court recognized that the right to health of an 86-year-old woman had been violated because, having lost her vaccination card, the administrative steps to get vaccinated were too cumbersome. The Court ordered the public administration to make such

proceedings easier ([Costa Rica, Supreme Court of Justice, Constitutional Chamber, 9 February 2022, n°02924 – 2022](#)).

However, in Brazil, some courts rejected such individual claims. There, the Superior Court of Justice rejected the challenge of a father alleging that the government was purposefully procrastinating to start the vaccination campaign for children aged 5 to 11 ([Brazil, Superior Court of Justice, 28 December 2021, n°28312-DF 2021/0408539-1](#)). The Court found that the judiciary should refrain from interfering in legislative and administrative matters to respect the principle of separation of powers. Conversely, another federal court rejected a mother's claim that her child should attend school even without proof of vaccination ([Brazil, Federal Court of Rio de Janeiro, 3 February 2022, n°HC 5006181-88.2022.4.02.5101/RJ](#)). The Court rejected the claim and ordered the authorities to guarantee the child's right to vaccination because, here, state intervention for the protection of the child is justified.

D. Parental rights

Finally, vaccine mandates in schools and vaccination campaigns for children have triggered family conflicts, sometimes leading to court decisions. In Spain, a court sided with a father who did not want to vaccinate his 8-year-old son, disagreeing with the mother ([Spain, Tribunal of First Instance n°1 of Palencia, February 2022](#)). The Court granted the father the ability to decide on vaccination for the next two years. It motivated its decision because young children appeared less affected by Covid-19, and no children had died of it in the autonomous community of Castilla y León. This outcome contrasts with a Chilean case in which the Supreme Court sided with a mother by finding that the vaccination of two girls aged 8 and 11 was in their best interest ([Chile, Supreme Court, 8 February 2022, n°3650-2022](#)). The father opposed the vaccination after it became required to attend school, alleging a violation of his daughters' rights to life, physical and psychological integrity, and religious beliefs.

In Canada, the consequences of vaccination litigation heavily affected parental rights. The Superior Court of Québec temporarily suspended the right of access of a father to his 12-year-old child because he had not been vaccinated against Covid-19 and supported anti-vaccine arguments on his Facebook account ([Canada, Superior Court of Québec, 17 December 2021, n°500-04-067178-153](#)). Similarly, another court in Québec suspended a father's parental rights who had refused to vaccinate his 14-year-old son, thus not acting in his best interest ([Canada, Court of Québec, Youth Division, 14 January 2022, n°200-41-015901-184](#)). The father had argued that Covid-19 vaccines were experimental.

In the United Kingdom, the High Court of England and Wales held that local authorities could vaccinate a child against Covid-19 without the parents' authorization ([United Kingdom, England and Wales High Court, 9 November](#)

[2021, n°\[2021\] EWHC 2993 \(Fam\)](#)). Here, a 12-year-old child who had expressed his will to get vaccinated nonetheless could not because his mother had refused. The Court held that, under the Children Act 1989, local authorities could exercise parental responsibility regarding vaccination, regardless of the parent's consent. The only requirements are that (i) the vaccine be part of a national vaccination program; (ii) that the child consents or is not deemed by the court yet competent to decide on the matter; and (iii) that the authority's decision is necessary to his welfare.

3. Impact on personal data protection

Some countries managed their vaccination campaigns through digital technologies for medical appointments, keeping track of vaccination status for issuing health passes, etc. Courts have been defining to what extent authorities can collect and process citizen health data linked to vaccination. The issues of proper personal data handling, data transfers, and surveillance have been the object of important cases in Europe.

A. Processing of personal data: contact tracing and health passes

Courts have had to decide on personal data protection issues in the context of contact tracings tools to break the transmission of the virus. That was the case in Belgium, where the manual and digital tracing of Covid-19-infected persons, suspected infected persons, and their contacts involved several levels of government. The federal government and several federated entities entered a cooperation agreement to organize contact tracing. The cooperation agreement provided for the creation of several databases managed by different entities and levels of government. Several associations and German-speaking deputies challenged the cooperation agreement before the Constitutional Court, which issued an important judgment ([Belgium, Constitutional Court, 22 September 2022, n°110/2022](#)).

The Belgian court generally found the cooperation agreement constitutional and rejected most of the applicant's claims, except on three points. First, the Court found that the lack of a maximum retention period for personal data contained in one of the databases (a database containing contact information for communities with a heightened risk of Covid-19 spread, such as hospitals, schools, or nursing homes) was unconstitutional. Second, the Court found that the cooperation agreement was contrary to the EU's General Data Protection Regulation by not considering the federal authorities and federated entities jointly responsible for processing the centralized database. Although the federal level managed the central database and the federated authorities operated contact centers, mobile teams, and hygiene inspection services, the data they processed was linked to the federal database. Third, the Court annulled the authority of the Information Security Committee (a body independent from the

Data Protection Authority) to authorize the disclosure of personal data to third parties for scientific research purposes. The Court found that this committee was not sufficiently subject to parliamentary control, and the legislators had been too vague about the possible recipients involved.

The processing of personal data also occurred when the presentation of health passes was required to access different places or activities. That was the case at the European Parliament, which led certain of its elected Members and employees to challenge the decision to impose holding an EU Digital Covid Certificate⁵ for anyone accessing its premises (in Brussels, Strasbourg, and Luxembourg). The claimants argued that this system involved risks to their personal health data. In interim proceedings, the President of the EU's General Court rejected their claims ([Court of Justice of the European Union, President of the General Court, 30 November 2021, T-710/21 R](#)) because:

- ❖ to minimize data, only the validity of the certificate and the full name of the individuals would appear on the screens used by security agents when controlling access to the buildings;
- ❖ personal data would not be processed for any other means, and security agents are subject to strict obligations of professional secrecy; and
- ❖ the impact assessment for the protection of personal data made by the Parliament considered the risk of the vulnerability of the application used by security agents to be low.

Subsequently, an extended composition of the General Court rejected their claims seeking to annul the Parliament's decision ([General Court of the European Union, *Roos & Others v Parliament*, 27 April 2022, T-710/21, T-722/21, T-723/21](#)). The Court first held that the decision of Parliament could determine the personal data processing, as it constitutes a "law" in the sense of the EU's Charter of Fundamental Rights, although it is not a legislative act. It also found that processing personal data as a consequence of the contested decision was not unlawful or unfair. Its objective was protecting public health, an EU general public interest. The processing was also transparent and fair, as the Parliament had duly informed the individuals concerned at the moment of their personal data collection that it could further be processed for accessing its premises.

In Slovenia, the country's Information Commissioner complained to the Constitutional Court, accusing government measures imposing the health pass to access certain places of violating the constitutional right to the protection of

⁵ EU Digital Covid Certificates are issued by national health authorities and attest to a person's vaccination, testing or recovery status – they are interoperable between EU Member States and participating countries.

personal data ([Slovenia, Constitutional Court, 14 April 2022, n°U-I-180/21](#)). The court held that the EU's General Data Protection Regulation could not be the appropriate legal basis for processing personal data in this case. The court also held that the consent provided by citizens for such processing was not voluntary, as access to their individual social, political, and religious lives depended on it. Therefore, consent could not be a valid legal basis in this case. The effect of the annulment will take place one year after the judgment's publication, leaving the government time to adopt new rules for processing such personal data.

B. Data transfers between the European Union and the United States

In France, the Council of State held that French authorities could lawfully partner with a company that subcontracts the hosting of personal data for appointments to get vaccinated to a US company ([France, Council of State, 12 March 2021, n°450163](#)). Associations and trade unions had asked the Council of State to suspend the partnership between the Ministry of Health and a company providing online medical appointment services for the vaccination campaign. They argued that the firm used the Luxembourg subsidiary of Amazon Web Services (a company incorporated in the United States) to host its appointment data, entailing risks about access requests by US authorities in the context of surveillance programs. Nevertheless, the interim relief judge of the Council of State dismissed the complaint, noting:

- ❖ that the data collected in the context of the vaccination appointments did not include health data on the possible medical reasons for eligibility for vaccination but rather personal identification data and data relating to appointments;
- ❖ that guarantees had been put in place to deal with a possible request for access by US authorities; and
- ❖ that the data was protected by sufficient security safeguards, for instance, encryption procedures based on a trusted third party located in France.

Therefore, the Council of State found that the level of protection of the data relating to vaccination appointments was not manifestly inadequate considering the risk of infringement of the EU's General Data Protection Regulation, as further defined by the [Court of Justice of the European Union in a Grand Chamber judgment of 16 July 2020 in *Data Protection Commissioner v Facebook Ireland and Maximilian Schrems* \(*Schrems II*\)](#). In other words, the Council of State focused on applying the Court of Justice's *Schrems II* ruling to evaluate whether the processing of personal data for vaccination appointments entailed a risk of data transfer to the United States in violation of European Union law.

4. Impact on access to work

Vaccine mandates also impacted access to employment, as governments have sometimes extended the requirement to bear a vaccination certificate to the workplace.⁶ On this topic, our sample shows judicial decisions from all continents – with contrasting findings.

In general, equality in the design of the rules around labor or travel restrictions was a key litigation topic. In France, the Constitutional Council generally considered that the introduction of an obligation to present a ‘health pass’ for employees working in certain places and establishments was constitutional ([France, Constitutional Council, 5 August 2021, n°2021-824 DC](#)). However, it declared unconstitutional the provision allowing for the early termination of fixed-term or assignment contracts of employees who do not present the health pass at the employer’s initiative. The Council considered that this provision violated the principle of equality, as it had established an unjustified difference of treatment between employees according to the nature of their employment contract.

However, in Australia, equality was not the main contentious issue in a case brought by a renowned tennis player who was notably refused a visa to enter the country to compete in the Australian Open Championship ([Australia, Federal Court, 16 January 2022, n°VID 18/2022](#)). Instead, the Court analyzed whether the minister for immigration had duly exercised its discretionary power to cancel the visa of the player, who was not vaccinated and had publicly opposed vaccination. The Court held that it did, as the player’s presence on Australian territory represented a risk to health, safety, and good order.

A. Healthcare workers

Litigation also arose in specific sectors. An essential part of the collected cases relates to vaccine mandates for healthcare workers. As explained above, the Italian Council of State confirmed the validity of the Decree-Law imposing vaccination on healthcare workers (see Section III.1.B). The Council of State also required strict scrutiny to assess vaccination exemption for healthcare personnel. For instance, it rejected claims by a doctor seeking an exemption because the medical certificate he presented did not clearly indicate the grounds for exemption ([Italy, Council of State, 16 December 2021, n°9948/2021](#)). The Council of State confirmed the priority of public health protection over health

⁶ On the regulatory aspects of these workplace mandates, see the upcoming brief in this series prepared by the O’Neill Institute for National and Global Health Law at the Georgetown University Law Center.

professionals' right to choose and rejected claims of violation of the principle of equality.

In Germany, the Constitutional Court also rejected challenges to the vaccine mandate for health professionals ([Germany, Constitutional Court, 27 April 2022, n°1 BvR 2649/21](#)). The applicants – amongst whom doctors who were required to show proof of vaccination, compared to nurses who could also show a recovery certificate – had argued that the mandate violated their rights to bodily integrity and to exercise a profession. The Court rejected the claims, holding that the interference with both rights is justified because the legislators pursued a legitimate objective to protect vulnerable groups from Covid-19 infection. Later, an administrative court in Lower Saxony relied on this judgment to confirm a decision that banned the dentist from working in his dental practice or any other facility due to his refusal to vaccinate ([Germany, Higher Administrative Court of Lower Saxony, 8 September 2022](#)).

Courts also upheld sanctions against health professionals for anti-vaccine views. In Israel, a court rejected the appeal of a former medical doctor whose license had been revoked by the Health Ministry following the publication of denigrating articles about the medical community written by the doctor himself, as well as his public call to violate Covid guidelines issued by the Ministry ([Israel, District Court of Jerusalem, 29 August 2022](#)). In Latvia, a court sentenced a healthcare employee to a suspended prison term of a year and a half and to a 2-year ban from working as a medical receptionist for facilitating false vaccination certificates, receiving bribes of €1,000 per certificate ([Latvia, Economic Affairs Court of Riga, July 2022](#)).

Elsewhere, the question was not whether healthcare workers violated government measures but whether the authorities vaccinated them equally. In Colombia, the Constitutional Court held that, by failing to prioritize midwives in the National Vaccination Plan against Covid-19 and by excluding them from the economic aid regime, the authorities had violated their fundamental rights to health, equality, non-discrimination, and ethnic diversity ([Colombia, Constitutional Court, 18 April 2022, n°T-128/22](#)).

B. Civil servants

If decisions regarding healthcare professionals appeared to favor health authorities, some courts sided with civil servants. In Brazil, a federal court held that the requirement imposed by the Federal Public Defender's Office on its employees to provide proof of vaccination violated their fundamental rights ([Brazil, First Federal Civil Court of Goiás, 14 January 2022, n°193](#)). The Court found that the measure's purpose was to impose sanctions as a form of coercion on those who decide not to vaccinate rather than to protect the employees' health. However, Brazil's Federal Supreme Court held a month later that a court

of the state of Bahia could not allow an unvaccinated military police officer to work and receive remuneration, contrary to a state decree mandating public servants to vaccinate against Covid-19 ([Brazil, Federal Supreme Court, 14 February 2022, Tutela Provisória na Reclamação Constitucional 51.644 Bahia](#)). This ruling again confirmed the role of the Federal Supreme Court to overturn municipal authorities and state court decisions hostile to vaccine mandates.

In Slovenia, the Constitutional Court declared the government decree requiring all public sector employees to vaccinate against Covid-19 unconstitutional ([Slovenia, Constitutional Court, 29 November 2021, n°147/21, 149/21, 152/21, 155/21, 170/21, 171/21](#)). The Court held that mandatory vaccination required a prior amendment of the Law on Infectious Diseases. Similarly, in Ukraine, a court upheld the claim of a teacher suspended from work without salary for not vaccinating and not testing against Covid-19 ([Ukraine, Izyaslavski District Court of Khmelnytskyi Region, 13 December 2021, n°675/1910/21](#)). The court did not accept the defendant's reference to the European Court of Human Rights case law and ordered the dismissal order revocation.

In Tunisia, however, a court upheld the claims of education workers suspended because they could not prove vaccination ([Tunisia, Administrative Court of First Instance of Monastir, 23 March 2022](#)). The applicants argued that the measure violated the principle of proportionality. In contrast, the Kenya Employment and Labour Relations Court dismissed a petition challenging a government directive imposing mandatory vaccination for public officers ([Kenya, Employment and Labour Relations Court, 3 October 2022](#)). The Court rejected the argument that the mandate would mean subjecting people to experimentation, as the US Food and Drugs Administration and the World Health Organization had approved the vaccines.

In the United States, a state court suspended the vaccine mandate for employees of the city of Boston ([United States, Massachusetts Appeals Court, 15 February 2022, n°2022-J-0031](#)). The New York Supreme Court also reinstated former public employees terminated for not complying with the city of New York vaccine mandate. The city had provided a blanket exemption for private employees' vaccine mandate for certain professions ([United States, Supreme Court of New York, 24 October 2022, n°85163/2022](#)).

EU GENERAL COURT – ACCESS TO THE EUROPEAN PARLIAMENT

Before the EU's General Court – the world's largest international court –, some elected Members of the European Parliament and employees of the institution challenged the Parliament's decision to impose holding an EU Digital Covid Certificate for anyone accessing its premises (in Brussels, Strasbourg, and

Luxembourg), initially until 31 January 2022. However, the President of the General Court rejected their request for interim measures in November 2021.

On 27 April 2022, an extended composition of the General Court rejected their claims seeking to annul the Parliament's decision ([General Court of the European Union, *Roos & Others v Parliament*, 27 April 2022, T-710/21, T-722/21, T-723/21](#)). The Court justified its decision mainly because (i) the Parliament had the power to take this decision for its own internal organization, without seeking authorization from the EU legislature; (ii) the contested decision does not constitute a disproportionate or unreasonable interference with the free and independent exercise of the Members' mandate; (iii) the processing of personal data as a consequence of the contested decision was not unlawful or unfair; (iv) the contested decision is not an infringement or a disproportionate infringement of the right to physical integrity, the principles of equal treatment and non-discrimination, the right to free and informed consent to any medical treatment, the right to freedom and, lastly, the right to privacy and protection of personal data; and (v) the contested decision was proportionate, as the applicants could not bring forward a less restrictive measure that was equally effective to protect health, it took account of the specific situation of the MEPs who frequently travel internationally, and it was limited in time and reviewed regularly. Thus, the Court rejected the claims. The judgment is under appeal before the Court of Justice (C-458/22 P).

C. Military personnel

Soldiers enrolled in the army also complained about vaccine mandates. In Germany, an administrative court dismissed the petitions of two air force officers against the obligation to tolerate Covid-19 vaccination based on constitutional provisions and the loyalty they owe to the Bundeswehr ([Germany, Federal Administrative Court, 7 July 2022, n°BVerwG 1 WB 2.22; BVerwG 1 WB 5.22](#)). The Court again relied on the Constitutional Court judgment rejecting claims against the mandate for healthcare professionals (see Section III.4.A). Yet, the Federal Ministry of Defense has to evaluate and monitor the maintenance of the mandate, to determine whether it continues to be proportionate and discretionary in light of changing circumstances.

D. Private employers

Governments sometimes imposed vaccine mandates for employees of private companies or left employers to decide for themselves. In both cases, litigation resulted in decisions usually favoring employees in countries with lower access to vaccination and decisions generally upholding mandates in countries with higher vaccination rates.

In Australia, for instance, courts considered that vaccine hesitancy and conscientious objection could not constitute a ground for exemption ([Australia, Industrial Relations Commission of Queensland, 27 January 2022, n°PSA/2022/17](#)). They also found that employers rightfully terminated the contract of an employee who failed to comply with the company's vaccination plan ([Australia, Fair Work Commission, 8 July 2022, n°C2022/1360](#)), even though the policy was implemented rapidly ([Australia, Fair Work Commission, 24 May 2022, n°U2022/1556](#)). However, a court found that preventing a nursing student from undergoing curricular work placement based on her opinion about Covid-19 vaccines – despite her vaccination – was unlawful ([Australia, Supreme Court of New South Wales, 10 June 2022, n°2021/332456](#)).

In Canada, a fourth wave of contaminations during the fall of 2021 prompted the government of Ontario to introduce stricter measures, including mandatory vaccination for workers in different sectors, paired with a suspension without pay for those who refused. The health measure inter alia affected transportation workers, whose case reached the Superior Court of Ontario. The workers argued that the mandate violated their rights to life, liberty, and security enshrined in the Canadian Charter of Rights and Freedoms. The Court dismissed their claims, holding that restricting these rights was reasonable in light of the exceptional nature of the pandemic ([Canada, Superior Court of Ontario, 5 July 2022](#)). In India, a court held that the mandatory testing of port employees who refused to vaccinate was legal, rejecting arguments that the measure was discriminatory ([India, High Court of Bombay, 21 December 2021, n°17132](#)). In Singapore, a court dismissed claims against government measures allowing employers to terminate contracts of unvaccinated employees and make Covid-19 patients pay for their bills if they decided not to vaccinate ([Singapore, High Court, 16 June 2022, n°1313/2021](#)). In South Africa, a court also rejected the appeal of the employee of a company that had required its workers to vaccinate or provide weekly negative tests. The court found no employment contract violation since the measure was required under the Occupational Health and Safety Act ([South Africa, Labor Court of Johannesburg, 14 March 2022, n°J49/22](#)).

Nevertheless, there are examples of courts siding with employees against vaccination mandates. In Peru, the Supreme Court of Justice considered that requiring drivers in the private and public transport sectors to show proof of vaccination violated their fundamental right to work, mainly because manual labor cannot be substituted with remote working ([Peru, Supreme Court of Justice, 25 July 2022, n°05318-2021-0-1801-JR-DC-03](#)). In India, a court upheld the appeal of a university employee who had refused to vaccinate: the university reinstated the employee and agreed to review its vaccination policy ([India, High Court of Bombay, 13 May 2022](#)). In Russia, a court also partially upheld an applicant's claim challenging his employer's decision to suspend him for lack of

vaccination ([Russia, Krasnooktyabrsky District Court of the city of Volgograd, 23 December 2021, n°2-3600/2021~M- 3419/2021](#)).

FEDERAL VACCINE MANDATES AND ACCESS TO WORK IN THE US

In the United States, the issue of vaccination and access to work was fundamental, as vaccine mandates were primarily established through occupational requirements. President Biden established them for large employers, federal workers, companies contracting with the federal government, and healthcare workers. Litigation around these mandates revolved around the issue of what government level is competent to regulate the matter. For instance, the US Supreme Court suspended the Occupational Safety and Health Administration (OSHA) – a federal agency – vaccine or test mandate for employers with at least 100 employees ([United States, US Supreme Court, 13 January 2022, n°21A244 and 21A247](#)). The Court considered that the agency was only competent to set workplace safety standards, not broad public health measures: Covid instead qualifies as a “hazard of daily life.” This judgment led the agency to [withdraw](#) its vaccine or test mandate a few weeks later. However, the Supreme Court held that the Secretary of Health and Human Services did have the power to issue the vaccine mandate for healthcare workers because unvaccinated staff did pose a serious threat to the health and safety of patients in facilities participating in the federal Medicare and Medicaid programs, most of whom are elderly, disabled or otherwise in poor health ([United States, US Supreme Court, 13 January 2022, n°21A240 and 21A241](#)). Here, Congress had expressly authorized the Secretary to impose on the receipt of Medicare and Medicaid funds all such conditions deemed necessary in the interest of the health and safety of patients. The Court had previously rejected a group of doctors and nurses' request to suspend a New York mandate applying to them as health workers based on religious reasons ([United States, US Supreme Court, 13 December 2021, n°21A145](#)).

Vaccine mandates in the military also sparked debates around the separation of powers between the judiciary and the executive. Lower federal courts have granted preliminary injunctions against sanctions on Navy Special Warfare servicemembers ([United States, US District Court for the Northern District of Texas, 3 January 2022, n°4:21-cv-01236-O](#)) and an Air Force officer ([United States, US District Court for the Middle District of Georgia, 15 February 2022, n°5:22-cv-00009-TEs](#)) for refusing to vaccinate for religious reasons – a requirement introduced in the armed forces in August 2021. Finally, the US Supreme Court cut the debate short after it allowed the Biden administration to consider the vaccination status of US Navy members while making operational decisions ([United States, US Supreme Court, 25 March 2022, n°21A477](#)). The Court held that the District Court unduly inserted itself into the Navy's chain of command, overriding military commanders' professional military judgments.

Similar outcomes have appeared regarding other federal vaccination mandates: one compelling each business contracting with the federal government to require its employees to be vaccinated or lose its contract, the other imposing a vaccine mandate on all federal workers. For instance, a federal court in Texas issued a preliminary injunction against the federal worker mandate. It held that the mandate could not be considered an employment regulation; hence the President did not have the power to issue it ([United States, US District Court for the Southern District of Texas, 21 January 2022](#)). Again, the Court of Appeals later reversed that decision, holding that the District Court did not have jurisdiction over the matter ([United States, Fifth Circuit Court of Appeals, 7 April 2022, n°22-40043](#)).

Yet, religious belief arguments have not always convinced federal courts in other sectors. For instance, a federal court in Wisconsin rejected a woman's challenge against her employer's vaccination and testing policy based on religious beliefs ([United States, US District Court for the Western District of Wisconsin, 20 July 2022, n°3:22-cv-00118-bbc](#)). The employee had filed charges of discrimination against her employer.

5. Impact on public trust and transparency

In and out of court, the Covid-19 pandemic has challenged public trust in institutions, science, and the media. Litigation on all three topics emerged around the world.

A. Trust in public institutions

If strategic lawsuits against public participation (SLAPPs) are known to be used against individuals or civil society organizations to silence them, coordinated actions to destabilize judicial institutions are less common. In 2021, however, the European Court of Human Rights was subject to a similar strategy ([European Court of Human Rights, *Zambrano v. France*, no 41994/21, 21 September 2021, ECLI: CE:ECHR:2021:0921DEC004199421](#)). A French university lecturer (himself a lawyer) complained about the "health pass" established in France to access certain public places in an attempt by the government to promote vaccination. Individuals could obtain the health pass by proving their vaccination status or presenting a negative test or a recovery certificate. In August 2021, the French Constitutional Council confirmed the constitutionality of the health pass a few weeks before the applicant's challenge before the European Court (see above).

The Court held that the application was inadmissible, not only because the applicant had failed to exhaust domestic remedies but also because he had abused his right of individual petition. Indeed, he had put in place a sort of collective application to cause "congestion, excessive workload and a backlog"

at the Court, “force the Court’s entrance door,” and “derail the system,” as made clear in several online videos in which he appeared. Thus, he established a procedure for individuals to lodge standardized applications with the same object. The Court received around 18,000 applications, most of which it could not process. The Court concluded that this significant surge in applications could affect its ability to fulfill its mission – primarily to work on applications that did satisfy the admissibility criteria. The Croatian Constitutional Court later referred to the *Zambrano* case ([Croatia, Constitutional Court, 21 December 2021, n°U-II-5571/2021 U-II-5744/2021 U-II-5784/2021 U-II-7007/2021](#)). The court followed the European Court of Human Rights’ analysis of the health pass, considering that they do not constitute a vaccine mandate, as individuals can present a negative test or a recovery certificate instead of vaccination status.

B. Trust in science

Applicants have also requested more transparency over clinical trials of Covid-19 vaccines. Courts have generally granted the applicants’ requests. In Chile, the Transparency Council – an independent public body in charge of the compliance of an act on transparency of public service and access to information – granted an individual’s requests for copies of the clinical trial protocols of two Covid-19 vaccines. The Court of Appeal of Santiago upheld the decision of the Transparency Council after a university sought to reverse it ([Chile, Court of Appeal of Santiago, 7 January 2022, n°377/2021](#)). The same court dismissed the appeal of a vaccine manufacturer against a decision of the Transparency Council ordering government authorities to disclose information about ongoing negotiations to acquire vaccines ([Chile, Court of Appeal of Santiago, 12 January 2022, n°438/2021](#)). The Court favored the constitutional principle of publicity over the manufacturer’s commercial and economic rights.

In Uruguay, distrust over the vaccination campaign for children under 13 was at the heart of a judicial saga leading a Montevideo court to order the suspension of the vaccination campaign for children ([Uruguay, Court of First Instance of Montevideo, 7 July 2022, n°41/2022](#)). The Court upheld claims that parents could not express their informed consent for the vaccination of their children since the government had not provided enough information about the substances used in vaccines, as well as their risks and benefits. The Court found that the government had only reproduced the information provided by the manufacturer. By doing so, the government had breached its fundamental duty to protect the population’s health, according to the court, which ordered the disclosure of vaccine purchase agreements, among other things. The Court of Appeal of Montevideo finally reversed the lower court’s judgment on procedural grounds ([Uruguay, Court of Appeal of Montevideo, 25 July 2022](#)), allowing the vaccination campaign for children to resume.

In Mexico, the National Institute for Transparency, Access to Information, and Personal Data Protection (INAI) requested government authorities to disclose a document from a vaccine manufacturer stating that a second shot is required six months after the first one ([Mexico, National Institute for Transparency, Access to Information and Personal Data Protection, 6 March 2022](#)). The Institute rejected the government's arguments that the information related to national security.

In Costa Rica, a worker who was requested to vaccinate asked the country's Social Security Fund to provide information on the effects of the vaccine on his health – the public entity refused. The country's Supreme Court then held that the refusal to provide the information violated the claimant's right to petition and to a prompt response ([Costa Rica, Supreme Court of Justice of Costa Rica, Constitutional Chamber, 26 November 2021, n°2021026597](#)). The Court ordered the public entity to provide the information within a specific timeframe.

However, in India, the Supreme Court refused to grant access to information on trials and the adverse effects recorded for the Covishield and Covaxin vaccines ([India, Supreme Court, 14 March 2022, n°608/2021](#)). The Court rejected the case because specialized bodies had developed the vaccines and because the information requested was already available on the manufacturer's website. Information related to the clinical trial process was covered by professional secrecy and, thus, confidential.

Finally, in the United States, a federal court dismissed a lawsuit filed by AstraZeneca shareholders alleging that the pharmaceutical company had misled investors about the progress of clinical trials for its Covid-19 vaccine ([United States, US District Court for the Southern District of New York, 12 September 2022, n°21-00722](#)). The Court held that the manufacturer had no "generalized duty" to disclose "negative facts" about the trials.

C. Trust in the media

Tech companies also faced litigation for their decisions to fight the spread of misinformation on their platforms. Courts appear to have sided with the platforms. In the United States, a California federal court held that Twitter was not liable for permanently suspending a user's account after repeatedly violating the social media's Covid-19 misinformation guidelines ([United States, US District Court for the Northern District of California, 29 April 2022, n°21-09818](#)). The Court held that the platform's decision did not violate the applicant's First Amendment free speech rights – although he was an independent journalist.

In Italy, a first instance court rejected a challenge by a Facebook user who was suspended from the social media for spreading false information about Covid-19 ([Italy, Court of First Instance of Varese, 27 July 2022, n°2572/2021](#)). The

Court found that freedom of expression is limited by other rights and rules concerning information. Contractual terms between Facebook and users regulating fake news cannot be considered unfair because these limitations are imposed to protect other fundamental rights like privacy, health, and security.

Finally, in France, a Paris court dismissed claims by the publishing company of a news website against Google, which had cut off the website from its advertising network, dereferenced it from its news service, and suspended its YouTube channel because of content that violated its rules ([France, Commercial Court of Paris, 6 September 2022](#)). Google had done so because the news website had disseminated conspiracy content related to Covid-19, which the company's rules prohibited. The Court rejected the freedom of speech arguments raised by the news outlet.

6. Vaccine side effects and damages

As vaccination campaigns progressed worldwide, possible side effects provoked by vaccines led to damages claims before the courts. In Colombia, a claimant who had taken the Janssen vaccine started to experience what government-sponsored health insurance indicated were typical side effects ([Colombia, Council of State, 24 February 2022, n°11001-03-15-000-2021-07661-00](#)). Although it was not established that they were a consequence of the vaccine, the public health provider did not diagnose nor treat the patient's conditions. The claimant had to resort to a private health provider to undergo several tests and therapies but could still not obtain a diagnosis for his condition and could not continue covering their cost. The claimant considered that this situation violated his fundamental rights to health, human dignity, personal integrity, and social security. The Council of State upheld his claims and ordered the public health provider to assess the claimant's health condition with the necessary specialists so that he could obtain a diagnosis and treatment. It indicated that the state had created the "Council for the Evaluation of Adverse Reactions to Covid-19 Vaccines" to deal with such cases.

More recently, an administrative court in Seoul awarded compensation to a man claiming to be injured by the Covid-19 vaccine – a first in the country ([South Korea, Seoul administrative court, September 2022](#)). The claimant, in his thirties, had received the AstraZeneca vaccine and suffered dizziness and pain in his legs. He was diagnosed with intracerebral hemorrhage and other neurological diseases. The Disease Control and Prevention Agency rejected a first application for compensation as the authorities did not recognize the causal relationship between the vaccine and the diseases. However, the Seoul administrative court underlined that, before vaccinating, the patient was healthy and without any medical records of neurological disorders. Thus, it is reasonable to assume a causal relationship between the vaccine and the disease.

IV. List of cases

A. Supranational

European Court of Human Rights, *Zambrano v. France*, no 41994/21, 21 September 2021, ECLI: CE:ECHR:2021:0921DEC004199421

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European Court of Human Rights, *Vavříčka and Others v. the Czech Republic* [GC], no. 47621/13 and 5 others, 8 April 2021, ECLI:

CE:ECHR:2021:0408JUD004762113

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General Court of the European Union, *Roos & Others v Parliament*, 27 April 2022, T-710/21, T-722/21, T-723/21

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President of the General Court of the European Union, *Roos & Others v Parliament*, 30 November 2021, T-710/21 R

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B. National

Argentina, Supreme Court of Buenos Aires, 28 December 2021, n°RR-1064-2021

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Australia, Fair Work Commission, 8 July 2022, n°C2022/1360

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Australia, Federal Court of Australia, 27 June 2022, n°[2022] FCA 741

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Australia, Supreme Court of New South Wales, 10 June 2022, n° 2021/332456

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Australia, Fair Work Commission, 24 May 2022, n°U2022/1556

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Australia, Industrial Relations Commission of Queensland, 27 January 2022, n°PSA/2022/17

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Australia, Federal Court of Australia, 16 January 2022, n°VID 18/2022

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Austria, Constitutional Court, 30 June 2022, n°V 3/2022-19

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Austria, Constitutional Court, 30 June 2022, n°V 312/2021-15
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Austria, Constitutional Court, 23 June 2022, n°G 37/2022-22
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Austria, Constitutional Court, 29 April 2022, n°V 23/2022-25
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Belgium, Constitutional Court, 22 September 2022, n°110/2022, ECLI:
BE:GHCC:2022:ARR.110
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Brazil, Federal Supreme Court, 6 April 2022, n°946/MG
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Brazil, Federal Supreme Court, 14 February 2022, Tutela Provisória na
Reclamação Constitucional 51.644 Bahia
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Brazil, First Federal Civil Court of Goiás, 14 January 2022, n°193
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Brazil, Federal Supreme Court, 31 December 2021, n°ADPF 756
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Brazil, Federal Supreme Court, 30 December 2021, n°ADPF 929/DF
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Brazil, Federal Supreme Court, 11 October 2021, n°ADPF 756
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Brazil, Federal Supreme Court, 17 December 2020, n°ADI 6.586/DF
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Canada, Supreme Court of British Columbia, 12 September 2022, n°2022
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Canada, Superior Court of Ontario, 5 July 2022
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Chile, Court of Appeal of Santiago, 12 January 2022, n°438/2021
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Chile, Court of Appeal of Santiago, 7 January 2022, n°377/2021
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Colombia, Constitutional Court, 26 September 2022, n°T-337/22
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Colombia, Constitutional Court, 18 April 2022, n°T-128/22
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Colombia, Council of State, 24 February 2022, n°11001-03-15-000-2021-07661-00

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Colombia, Council of State, 23 February 2022, n°11001-03-24-000-2021-00884-00

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Costa Rica, Supreme Court of Justice. Constitutional Chamber, 9 February 2022, n°02924 – 2022

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Costa Rica, Supreme Court of Justice of Costa Rica, Constitutional Chamber, 26 November 2021, n°2021026597

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Costa Rica, Supreme Court, 12 November 2021, n°25499

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Croatia, Constitutional Court, 21 December 2021, n°U-II-5571/2021 U-II-5744/2021 U-II-5784/2021 U-II-7007/2021

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Czech Republic, Supreme Administrative Court, 2 February 2022, n°8 Ao 2/2022

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France, Council of State, 19 May 2022, n°454621

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France, Council of State, 14 February 2022, n°460891

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France, Constitutional Council, 5 August 2021, n°2021-824 DC

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France, Council of State, 12 March 2021, n°450163, ECLI: FR:CEORD:2021:450163.20210312

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Germany, Higher Administrative Court of Lower Saxony, 8 September 2022

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Germany, Constitutional Court, 21 July 2022, n°1 BvR 469/20

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Germany, Federal Administrative Court, 7 July 2022, n°BVerwG 1 WB 2.22; BVerwG 1 WB 5.22

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Germany, Constitutional Court, 27 April 2022, n°1 BvR 2649/21

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Germany, High Administrative Court of Thüringen, 24 January 2022, n°3 EN 804/21

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Greece, Council of State, 29 June 2021, n°133/2021

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Hong Kong, Court of First Instance, 30 March 2022

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Latvia, Economic Affairs Court of Riga, July 2022

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India, High Court of Bombay, 13 May 2022

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India, Supreme Court, 14 March 2022, n°608/2021

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India, High Court of Bombay, 21 December 2021, n°17132

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Israel, District Court of Jerusalem, 29 August 2022

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Italy, Court of First Instance of Varese, 27 July 2022, n°2572/2021

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Italy, Sicilian Administrative Court, 16 March 2022, n°1272/2021

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Italy, Council of State, 16 December 2021, n°9948/2021

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Italy, Council of State, 20 October 2021, n°7045, ECLI:
IT:CDS:2021:7045SENB

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Kenya, Employment and Labour Relations Court, 3 October 2022

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Kenya, High Court, 14 December 2021

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Malawi, High Court of Lilongwe, 13 January 2022, n°66/2021

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Mexico, National Institute for Transparency, Access to Information and
Personal Data Protection, 6 March 2022

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New Zealand, High Court, 16 August 2022, n°[2022] NZHC 2026

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New Zealand, High Court, 1 February 2022, n°CIV-2022-485-13

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Paraguay, 6th Civil and Commercial Court of First Instance of Asuncion, 1 July 2021

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Peru, Supreme Court of Justice, 25 July 2022, n°05318-2021-0-1801-JR-DC-03

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Puerto Rico, Supreme Court, 2 February 2022

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Russia, Krasnooktyabrsky District Court of the city of Volgograd, 23 December 2021, n°2-3600/2021~M- 3419/2021

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Tunisia, Administrative Court of First Instance of Monastir, 23 March 2022

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Slovenia, Constitutional Court, 14 April 2022, n°U-I-180/21

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Slovenia, Constitutional Court, 29 November 2021, n°147/21, 149/21, 152/21, 155/21, 170/21, 171/21

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Singapore, High Court, 16 June 2022, n°1313/2021

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South Africa, Labor Court of Johannesburg, 14 March 2022, n°J49/22

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South Korea, Seoul Administrative Court, September 2022

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South Korea, Seoul Administrative Court, 14 January 2022

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South Korea, Administrative Court of Seoul, 4 January 2022

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Spain, Constitutional Court, 26 October 2022, n°93/2022

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United Kingdom, England and Wales High Court, 9 November 2021, n°[2021] EWHC 2993 (Fam)

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United States, Supreme Court of New York, 24 October 2022, n°85163/2022

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United States, US District Court for the Southern District of New York, 12 September 2022, n°21-00722

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United States, US District Court for the Western District of Wisconsin, 20 July 2022, n°3:22-cv-00118-bbc

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United States, US District Court for the Northern District of California, 29 April 2022, n°21-09818

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United States, Fifth Circuit Court of Appeals, 7 April 2022, n°22-40043

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United States, US Supreme Court, 25 March 2022, n°21A477

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United States, US District Court for the Middle District of Georgia, 15 February 2022, n°5:22-cv-00009-TES

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United States, Massachusetts Appeals Court, 15 February 2022, n°2022-J-0031

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United States, US District Court for the Southern District of Texas, 21 January 2022

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United States, US Supreme Court, 13 January 2022, n°21A244 and 21A247

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United States, US Supreme Court, 13 January 2022, n°21A240 and 21A241

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United States, US District Court for the Northern District of Texas, 3 January 2022, n°4:21-cv-01236-O

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United States, US Supreme Court, 13 December 2021, n°21A145

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Ukraine, Izyaslavski District Court of Khmelnytskyi Region, 13 December 2021, n°675/1910/21

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Uruguay, Court of Appeal of the Sixth Circuit, 1 August 2022

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Uruguay, Court of First Instance of Montevideo, 7 July 2022, n°41/2022

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