

Summary of the Public Statement/Opinion of the Commissioner for Administration and the Protection of Human Rights regarding the measures taken to combat the coronavirus pandemic (Covid-19) and their compatibility with human rights law, dated July 29, 2021

Description of the complaints

The Statement/Opinion was deemed necessary because a number of citizens had submitted complaints to the Office of the Commissioner regarding the measures that were adopted by the state to combat the new coronavirus (COVID-19). Specifically, until the date of submission of the Report on 29/7/2021, 51 such complaints had been submitted.

Because the complainants claimed, in general, that the measures in question violated fundamental human rights of the citizens, the Commissioner intervened/ in her capacity as the *National Authority for Human Rights* (NHRI).

In particular, the complaints focused on the following measures:

- a) The obligation of citizens to wear protective masks.
- b) The requirement for mandatory examination of employees with the method of rapid antigen detection test (rapid test), so that employees can have physical presence at their workplace.
- c) The requirement for compulsory examination of high school students via rapid tests in order to return to schools and attend classes in person.
- d) The “pressure” placed on a number of employees by their employers to be vaccinated against COVID-19.
- e) The promotion of the SafePass demonstration measure for the purpose of entering in overcrowded sites, which, as argued, constitutes a distinction between vaccinated and non-vaccinated persons, as well as (indirect) coercion of citizens to be vaccinated.
- f) The abolition of the free provision of rapid antigen detection test (rapid test) from August 1, 2021.

In addition, some citizens requested that the Commissioner comments of informs them, in general, about whether it is legal for people who do not wish to be vaccinated against coronavirus to be forced to do so. Also, complaints were received concerning the content of the messages forwarded by the Ministry of Health in order to promote / encourage the population to be vaccinated - which present vaccination as the only option and create, as argued, hostility towards citizens who choose not to be vaccinated.

Several complaints referred to specific provisions of the Constitution of the Republic of Cyprus, to the principle of proportionality and to specific international human rights texts, which, as argued, were violated by the measures taken by the state to combat the pandemic. In particular, reference was made to the provisions of the *Constitution and the European Convention on Human Rights (ECHR)* which ensure equal treatment, the right to life and physical integrity, the right to private life, as well as provisions of the *Council of Europe Convention (CoE) for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine* (also known as the "Oviedo Convention"), which provide, as a general rule, that health intervention may be carried out only after free and up-to-date consent of the person concerned (Article 5 of the Convention).

Existing Measures / Actions to combat the pandemic

The examination that took place by the Commissioner, initially established that the measures in question derived from Decrees of the Ministry of Health, which were of a definite duration and were issued on the basis of the Law to Combat Infectious Diseases [Cap 260]. The most recent of the Decreed was issued on July 19, 2021.

This Decree provided, inter alia, the following:

- The introduction/ adoption of the safety certificate (SafePass), by persons aged 12 and over, and its compulsory presentation in order to be able to enter areas of increased congestion (indoor and outdoor), where there was a possibility of gathering of more than 20 persons, including employees. Safe Pass is defined as providing evidence for one of the following:
 - 1) Negative laboratory test (PCR test) or Rapid Test for COVID-19 disease, with the sampling done within 72 hours.
 - 2) Vaccination certificate for COVID-19 at least of one dose and provided that 3 weeks have elapsed since the date of vaccination.

- 3) Evidence of “release” for persons who tested positive for COVID - 19 valid for six months from the date of their initial positive diagnosis.

As specified in the Decree, for the purposes of SafePass control, the presentation of the *European Digital Covid Certificate* of the European Union (EU Digital Covid Certificate) is acceptable.

- The increase of the maximum number of people permitted indoors from 350 to 450 people, provided that all people are fully vaccinated or have been infected with Covid - 19 in the last 6 months¹.
- The obligation for all employees, including the self-employed, in order to go to their workplaces, to have: either a negative PCR test or a Rapid Test with sampling done within 72 hours, or a vaccination certificate for COVID-19 disease at least of one dose and provided that 3 weeks have elapsed since the date of vaccination, or evidence of release in the case of persons infected with COVID-19 and provided that no period of 6 months has elapsed since the date of their initial positive diagnosis.

In addition, the Council of Ministers decided on 2/7/21 that the free antigen test program (rapid test) would be terminated from 1 August 2021 for unvaccinated persons. For the purpose of issuing a safety certificate, citizens will be able to perform Rapid Test, only in licensed clinical laboratories or pharmacies, with a maximum charge of 10 euros².

At the same time, the state conducts information campaigns for the wider society about the benefits of vaccination, while it has also promoted various projects that provide financial incentives to people who are vaccinated.³

In addition, in order to strengthen the state's effort to increase vaccination coverage for young people up to the age of 30, private companies and public law organizations have shown interest in providing incentives to young people to be vaccinated, as part of their corporate social responsibility⁴.

¹ The general rule excludes persons under the age of 12 as well as persons aged 16 and over who cannot be vaccinated due to a medical problem, who provide a relevant medical certificate and a negative laboratory test or Rapid Test with sampling performed within 72 hours.

² Exceptions to the above decision were reserved for certain categories of persons who did not have the option or possibility of vaccination against the COVID-19 virus until then, such as: Minors, pregnant with the necessary medical certificate from their gynecologist stating that it is not recommended the vaccination.

³ E.g. The "Granted Summer Vacation Program", for the period from July 15, 2021 until August 31, 2021.

⁴ Incentive Plan #BeSafe

Institutional framework

The Statement/Opinion of the Commissioner recorded and analyzed the relevant legislative, jurisprudential and institutional framework, both at international and national level.

Emphasis was placed on the provisions of international human rights instruments which protect the right to privacy, equal treatment and non-medical treatment without the consent of the person concerned. At the same time, the Commissioner cited and analyzed the provisions contained in these legal documents, which independently guarantee the individuals the collective right to high quality public health, and provide the possibility of imposing legal restrictions on the enjoyment of fundamental freedoms and rights in specific cases, such as the protection of other people's rights and / or the protection of public health and well-being⁵.

The Statement/Opinion also referred to the positions / views of international organizations in relation to the implementation of measures to limit the transmission of COVID-19 so that they are in line with human rights principles, such as the Fundamental Rights Agency of the European Union⁶ and the Parliamentary Assembly of CoE.⁷

The provisions of EU Regulation 2021/1953 were also analyzed, which established the framework for the issuance of interoperable certificates of vaccination, examination and recovery, in order to facilitate the exercise of the right of free movement of their holders within the Union during the COVID-19 pandemic (digital green certificate).

With respect to case law, reference was made to judgments of the ECHR related to the compulsory performance of medical procedures (treatments / interventions), by which the Court, on the one hand, ruled that the imposition of such an obligation may violate Article 8 of the ECHR which protects the right to "private and family life"⁸ (and which, as has been the case, includes the physical, psychological and moral integrity of an individual⁹). On the other hand, as it was pointed out, the Court

⁵ E.g. Articles 7, 17 and 19 (3) of the United Nations International Covenant on Civil and Political Rights, Articles 3, 7, 35 and 52 of the EU Charter of Fundamental Rights, Articles 11 and 31 of the European Social Charter of the CoE, Articles 5 and 26 of the CoE Convention on the Protection of Human Rights and Human Dignity of the Human Being with regard to the Application of Biology and Medicine, and, Articles 8, 17 and 18 of the European Convention on Human Rights.

⁶ E.g. Report of the EU Fundamental Rights Agency (Fundamental Rights Agency) in May 2021

⁷ Resolutions of the Parliamentary Assembly of the CoE with no. 2361 (2021) and 2383 (2021)

⁸ Case: *Acmanne and others v. Belgium*

⁹ Case: *X and Y v. the Netherlands*

also acknowledged that the conduct of certain medical examinations, even without the consent of the affected citizen, may not, under the circumstances, constitute a disproportionate interference with Article 8 of the ECHR¹⁰.

Special reference was made to a recent decision of the ECHR (*Case of Vavříčka and Others v. The Czech Republic, dated 8/4/21*), in which the Court examined the appeal of parents of children, who were not admitted to kindergartens in the Czech Republic, because they were not vaccinated. Among other things, the ECHR stated that compulsory vaccination is "necessary in a democratic society", that "vaccination policy sets legitimate goals for the protection of health and the rights of others ..." and that the Czech Republic's actions were in accordance with the "best interests of the children"¹¹.

In fact, in this decision, the ECHR adopted the "**principle of social solidarity**", which, as stated by the Court, can justify the imposition of vaccination, even to those who feel less threatened by the disease, on the occasion where the issue of protecting the most vulnerable is raised ".

The Commissioner also referred to the case law of the Supreme Court of Cyprus on the application of the principles of proportionality and equality by the Administration (public authorities), in which the following views were expressed

- In exercising its discretionary power, the Administration must take into account and weigh all the interests directly involved in the case, use means that are proportionate with the intended purpose, and intervene in individual rights, only to the extent necessary for the protection of the public interest.¹²
- The principle of equality, as enshrined in Article 28 of the Constitution, prohibits , in principle, the introduction of unjustified and arbitrary discrimination, but also permits the Administration and the Legislator to create reasonable and non-arbitrary discriminations when the "nature of things" allows it¹³.

General Observations

¹⁰ Cases: *Acmanne and Others v. Belgium* , *Boffa and Others v. San Marino* , *Salvetti v. Italy* , *X v. Austria* , *Peters v. the Netherlands*, *Solomakhin v. Ukraine* (no. 24429/03, 15 March 2012), *Vavříčka and Others v. the Czech Republic*, ημερ. 8/4/21

¹¹ Case *Vavříčka and Others v. the Czech Republic*, ημερ. 8/4/21

¹² Appeal against a decision of the Administrative Court of International Protection No. 16/2, date 20/7/2021

¹³ E.g. *Mikrommatis N. Dimokratias*, 2 A.A.D.D., 125, *Charalambos Papadopoulos N. Dimokratias* (1965) 3 AAD 401, N. *Charalambous "Handbook of Cypriot Administrative Law" 2006*, *EJBER AYDIN v. Department of Population Records and Immigration* 95/2013 etc.

In view of the nature of the measures in question and the purpose of which they were adopted, the Commissioner studied and stated the views and the suggestions of various international scientific organizations, in respect to combatting the spread of the pandemic.

As observed, the World Health Organization (WHO), being the UN body responsible for the protection of public health, has repeatedly recommended¹⁴: the use of protective masks, social distancing and avoidance of crowded places, vaccination -as soon as possible- with one of the approved, safe effective vaccines against COVID-19, conducting diagnostic tests for the early diagnosis of cases positive to the virus (including diagnostic tests within the school environment, students and teaching staff) in order to avoid distance education¹⁵. In light of the increase in cases due to the Delta variant of the virus, the WHO also recommended, the increase of access to free tests, so that the confirmed cases are isolated, the tracing mechanisms are intensified and the transmission chains are broken.

It was also established that, other scientific organizations have stated similar positions and suggestions with the WHO - in relation to the use of a protective mask, the use of rapid tests as a means of showing the true epidemiological picture in an environment, and the promotion of vaccination of citizens with the approved vaccines against COVID-19 -.These organizations include the *European Center for Disease Control and Prevention* ("ECDC") of the EU, the *European Medicines Agency* ("EMA") of the EU, the *US Center for Disease Control and Prevention* ("CDC")¹⁶ and the Public Health England¹⁷.

The Commissioner's Statement underlined that, according to data published by the Ministry of Health, the vast majority (about 85%) of people who undertake treatment for COVID-19 are people who have not been vaccinated or have not completed their vaccination cycle¹⁸, whereas correspondingly high rates of hospitalization of unvaccinated persons are recorded in other countries as well¹⁹.

¹⁴ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks> ,
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks> ,

<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/covid-19-vaccines/advice>
¹⁵ <https://apps.who.int/iris/bitstream/handle/10665/342002/WHO-2019-nCoV-lab-testing-2021.1-eng.pdf?sequence=1&isAllowed=y> .

¹⁶ <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/facts.html>

¹⁷ <https://www.gov.uk/guidance/covid-19-coronavirus-restrictions-what-you-can-and-cannot-do>

¹⁸ <https://www.pio.gov.cy/%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%89%CE%B8%CE%AD%CE%BD%CF%84%CE%B1-%CE%AC%CF%81%CE%B8%CF%81%CE%BF.html?id=21125#flat>

¹⁹ <https://www.theguardian.com/world/2021/jul/16/covid-19-us-delta-variant-unvaccinated>
<https://politix.com.cy/politix-news/ipa-covid19-parakolythoyme-tin-pandimia-ton-anemvoliaston/>

It was also noted that, although at EU level, mandatory vaccination against COVID-19 has not been adopted for the general population, some EU countries have decided to take more targeted measures for specific occupations, while restricting access to specific areas where people interact only for vaccinated persons or holders of a negative test. Specifically, reference was made to recent decisions of the Governments of Italy, Greece and France that introduced mandatory vaccination for all persons working in the healthcare sector, and the prohibition of entry on public transport or in enclosed spaces for unvaccinated persons.²⁰

Final Positions / Conclusions

The Commissioner stressed that the COVID-19 coronavirus pandemic has caused millions of deaths and other adverse effects on global health. She also emphasized that the efforts made in order to combat the pandemic have severely restricted basic individual rights of millions of people, referring specifically to strictions or prohibitions on freedom of movement and physical communication between people, restrictions on the operation of business activities, obligations to undergo frequent diagnostic tests, and, in some cases, indirect compulsory vaccinations. As the Commissioner characteristically stated, the crisis of the pandemic has created a parallel crisis in the protection of human rights.

The Commissioner noted that human rights law provides broad protection for individual rights which are restricted by the measures in question, such as the right to privacy and family life (which the ECHR has linked to medical practice) and the right to undergo medical intervention only after the consent of the individual.

However, she added that, with the exception of the absolute prohibition of torture and/or degrading and/or inhuman treatment, all other civil rights may be restricted/limited by laws which are necessary in a democratic society in order to protect the individual rights and freedoms of others, such as public health.

²⁰ <https://www.tovima.gr/2021/03/31/world/italia-ypoxreotikos-emvoliasmos-se-ygeionomikous-kyroseis-se-opoion-arneitai/>
<https://www.dw.com/el/%CE%B9%CF%84%CE%B1%CE%BB%CE%AF%CE%B1-%CF%85%CF%80%CE%BF%CF%87%CF%81%CE%B5%CF%89%CF%84%CE%B9%CE%BA%CF%8C%CF%82-%CE%B5%CE%BC%CE%B2%CE%BF%CE%BB%CE%B9%CE%B1%CF%83%CE%BC%CF%8C%CF%82-%CE%B5%CE%BA%CF%80%CE%B1%CE%B9%CE%B4%CE%B5%CF%85%CF%84%CE%B9%CE%BA%CF%8E%CE%BD/a-58298526>
<https://politis.com.cy/politis-news/ellada-kinitra-ypochreotikos-emvoliasmos-se-omades-ergazomenon-kleistoi-choroi-mono-gia-emvoliasmenoy-s-vinteo/>
<https://www.france24.com/en/europe/20210712-follow-live-france-s-macron-addresses-the-nation-as-covid-19-delta-variant-surges>
<https://www.lifo.gr/now/world/gallia-diaggelma-makron-ypohreotikos-o-emboliasmos-toy-ygeionomikoy-prosopikoy>

In particular, as the Commissioner pointed out, relevant international human rights texts and the Constitution of the Republic of Cyprus provide that individual rights may be restricted, even if a state of emergency is not imposed, through special legal provisions which, however, must be in line with the principle of proportionality, have a temporary duration, facilitate a legitimate aim and are absolutely necessary in a democratic society.

In addition, she pointed out that, under human rights law, states are not only expected to abstaining from actions or omissions that could jeopardize the protection of individual rights (negative obligation), but also have the positive obligation to take appropriate, under the circumstances, measures (of an administrative and a legislative nature), which in practice ensure the enjoyment of human rights by citizens.

Consequently, the Commissioner argued that the creation of conditions which allow the maximum protection of the fundamental right to health and well-being, not only individually but also collectively, is a legal obligation of the Republic of Cyprus.

In light of the above, the Commissioner examined the compatibility of each controversial measure taken by the State to limit the spread of the coronavirus COVID-19, with human rights law.

Complaints of (alleged) pressure placed on workers to be vaccinated

With regard to allegations of pressure being placed on workers to be vaccinated, the Commissioner stated that she had not been provided with any specific information to substantiate these allegations.

However, she noted that, unlike other countries, no measures have been taken by the state to make coronavirus vaccination mandatory for any group of workers. Therefore, she added, at least at this stage, any indirect or direct coercion of vaccination or threats by employers or any harmful change in workers' rights, namely dismissal, without applying alternatives (e.g. moving to a position that has not physical contact with the public or other colleagues, the possibility of teleworking) and without being justified by an objective purpose (such as protecting

vulnerable groups of the population who are at increased risk of death in the event of contracting the virus), may constitute indirect coercion that may lead to illegal dismissals.

In this respect, the Commissioner concluded that the general obligation to vaccinate in all categories of occupations which is not justified on the basis of the specific characteristics of the nature of the work and the immediate risk to third parties with increased vulnerability, could not be considered as necessary and proportionate in respect to the targeted aim.

Measures for mandatory mask use, rapid detection test and adoption of SafePass

With regard to other measures taken by the State for the purpose of limiting the spread of the pandemic (ie, the use of a mask, undergoing a rapid detection test and the adoption of **SafePass**), the Commissioner considered it appropriate to recall, and underline, the following:

- The disputed measures were taken by Decrees of the Ministry of Health, on the basis of the Law on Combating Infectious Diseases, and were of a definite duration.
- The measures to deal with the pandemic were taken after consulting a team of medical experts in Cyprus.
- The World Health Organization, the European Center for Disease Control and Prevention and the European Medicines Agency recommend the use of protective masks and rapid testing for early detection of positive cases as a means of indicating the real epidemiological picture in the community. Similar recommendations have been made public by other scientific organizations, such as the US Centers for Disease Control and Prevention and the Public Health England.
- Recently the WHO recommended the implementation of diagnostic tests in the school environment, in order to avoid distance education.
- Similar measures to protect public health are taken by many other countries worldwide.

- The European Court of Human Rights has recognized that conducting "relatively minor medical examinations", even without the consent of the affected citizen, may not constitute a disproportionate interference with Article 8 of the European Convention on Human Rights, which protects the right to "private and family life". The Commissioner noted the characteristic case law of the ECHR in the case of *Acamanne and Others v. Belgium*, in which the Court considered that the conduct of mandatory tests for the detection of tuberculosis for the purpose of protecting public health did not constitute a violation of Article 8 of the Convention.

- The possibility of restricting the right to privacy to protect public health, general well-being and the rights of others is in line with the conditions set out in Articles 15 and 28 of the Constitution, in Article 52 of the EU Charter of Fundamental Rights, Article 8 of the ECHR, Article 26 of the Oviedo Convention, Article 31 of the European Social Charter, and Article 29 of the Universal Declaration of Human Rights.

In fact, some texts on the protection of human rights specifically provide for the need to take measures, in particular to protect the population from epidemic diseases.

- Human rights law does not only recognize that the person is just a bearer of rights, but also a bearer of obligations towards the rest of society²¹. In fact, in its recent case law concerning the obligation to vaccinate,²² the ECHR adopted the "**principle of social solidarity**", for the purpose of protecting the most vulnerable members of a society.

In this context, the Commissioner concluded that, the obligation of unvaccinated persons to undergo frequent diagnostic tests is an **act of responsibility** towards the persons with whom they are cohabiting (including their colleagues and classmates), especially those who belong to the most vulnerable groups of the population.

With regard, in particular, to the measure of obtaining a **safety certificate (SafePass)** for the purpose of entering in specific areas of congestion, the Commissioner stated that, for the purposes of assessing its legality, in addition to the above, the following should be taken into account:

²¹ Article 29 (1) of the Universal Declaration of Human Rights

²² *Vavříčka and Others v. The Czech Republic*

- The measure was decided on July 19, 2021, in light of the epidemiological picture of the country at the time, which showed a rapid increase in cases, endangering the ability of our hospitals to cope and provide adequate medical care to those in need.
- The measure is in line with the recommendations of Resolution 2383 (2021) of the Parliamentary Assembly of the CoE, for the implementation of measures related to safety certificates (SafePass), the holders of which are exempted from certain restrictions, taking into account the risk of transmission of the virus by each category of the SafePass holders and the current epidemiological situation in each country.
- Both in Cyprus and internationally, the majority of people who are currently treated for COVID-19 are people who have not been vaccinated or have not completed their vaccination cycle.
- The classification of the certificate into three subcategories of holders (vaccination, recovery and negative examination) is based on the medical condition of each subcategory, and aims to reduce the collective risk of creating new outbreaks. Even though different criteria are applied, it is available to everyone, vaccinated or not.
- The specific (three-subcategory) SafePass is in line with the categorization provided by the EU Regulation 2021/1953, for the purposes of issuing the Digital Green Certificate to facilitate the free movement of its holders within the Union during the pandemic. As stated in the relevant EU Regulation, the "green" certificate is not considered to create discrimination between vaccinated and unvaccinated EU citizens, as all travelers can obtain it with a negative coronavirus test or recovery certificate.

According to the Commissioner, in order to assess the legality of the, by all accounts, harsh measures applied by the state in order to combat the pandemic, it is crucial to take into account the principle of proportionality which, in this case, requires for a just balance between the protection of the rights and freedoms of individuals and the protection of the interests of the broader society, but also a balance of each conflicting fundamental right on every occasion.

The Commissioner also referred to two recent relevant Judgments of the District Court of Nicosia on 9 July 2021 (Case no. 1498/2021), and 27 July 2021, with which the Court **rejected** requests submitted by citizens for the issuance of temporary restraining orders in relation to measures applied by the state aiming to

limit/prevent the transmission of the COVID -19 virus. In fact, in the second case, the request concerned the issuance of a temporary injunction against the State's requirements to present a SafePass to enter certain areas and to wear a protective face masks. In its Judgments, the Court stated, inter alia, that the circumstances justified the relevant decisions/measures of the Ministry of Health, that the procedure for issuing the Decrees was legal and that the power given to the Minister of Health to issue the Decrees was in accordance with the Constitution and current legislation. According to the Commissioner, these Judgments confirmed the necessity of adopting measures in order to meet the state's positive obligation to safeguard public health.

Notwithstanding the above, the Commissioner expressed her concern in relation to the ban on people without a SafePass to enter places where more than 20 people could gather was broad and general and did not take into account the fact that some of the places the rule applies for, provide "essential" services in relation to persons' basic needs. According to the Commissioner, the State should separate access to essential and non-essential services and goods (e.g. public health services) and ensure unhindered access, without excessive conditions, namely the need for vaccination.

Vaccination encouragement campaigns and measures

Regarding the content of the messages forwarded by the Ministry of Health for the promotion / encouragement of the population to be vaccinated, the Commissioner noted that it was in line with the recommendations made by scientific organizations, for vaccination of the population the soonest possible, with the approved vaccines which are available to the Cypriot state. She also noted that the implementation of campaigns to increase the vaccination coverage of the population is recommended by Resolution 2361 (2021) of the Parliamentary Assembly of the CoE, while information and education policies in the field of health are provided by Article 168 of the Treaty on the Functioning of EU.

In light of the above, the Commissioner concluded that there is no scope for her intervention in relation to vaccination promotion campaigns, nor for the Incentive Plans adopted with vaccinated beneficiaries.

Abolition of the free rapid antigen detection test from 1 August 2021

Regarding the Decision of the Council of Ministers to terminate, from 1 August 2021, the program of conducting a free Rapid Test and setting a (maximum) charge price of €10, the Commissioner noted her concern regarding the fact that, the categories of persons who are exempted from the obligation to pay a fee for the examination²³, did not include members of the economically vulnerable groups of the population (e.g. persons receiving a Minimum Guaranteed Income, long-term unemployed, single parents, low-income retirees, national guardsmen) who do not wish to be vaccinated.

In such cases, the Commissioner argued that the frequent payment of the relevant fee may not be possible, limiting the ability to these persons to participate in a wide range of social or other activities, thus raising the issue of indirectly forcing them to be vaccinated.

In addition, the Commissioner noted that the decision in question was not in line with recent positions / recommendations of international organizations, such as:

- The Parliamentary Assembly of the CoE (which in Resolution 2383 (2021) had emphasized that "the availability of certificates on the basis of a negative diagnostic test is not limited to those with the possibility of payment..."),
- The WHO (which recommended that states increase access to free testing), and,
- The EU Fundamental Rights Agency (which stated that diagnostic tests should be universal, accessible, timely and free of charge to ensure that everyone enjoys their rights, can participate in different areas of life and have access to in non-discriminatory services).

On the basis of the above, and given the financial difficulty that some families may have in frequently undergoing Rapid Test and securing a Safe Pass, the Commissioner expressed doubts as to whether the different treatment between vaccinated and non-vaccinated citizens deriving from the disputed decision, is, under the circumstances, necessary and proportionate to the intended purpose. The Commissioner also noted that since access to a free vaccine is provided but there is no longer free access to rapid antigen screening, a distinction is made between citizens in the same General Health System. The Commissioner added that, this measure may indeed encourage vaccination (as is the goal of the State), but it also prevents the detection of Covid-19 cases, their reduction, the detection of the transmission chain and consequently preventing pandemic control and reducing cases.

²³ e.g. minors who do not have the choice or consent of their guardians to be vaccinated, people who have completed their vaccination schedule, etc.

In light of the above, the Commissioner concluded that the decision to abolish the free rapid antigen detection test should be reconsidered.

Obligation to get Vaccinated

The Commissioner noted that in Cyprus, unlike other countries, vaccination against COVID-19 has not become mandatory for any group of the population. In view of this, she summarized the basic principles of human rights law in relation to this particularly difficult and complex, as she stated, issue, as follows:

- From the legal texts that were analyzed in the present Statement/Opinion, the **general rule** which emerges is that any vaccination, (like any medical procedure), should not be imposed and can be performed only with the free and informed consent of the affected person. This rule is explicitly stated in the provisions of Article 6 of the Oviedo Convention of the CoE, while, according to the Commissioner it also derives from the right of personal autonomy and privacy, which stipulates that everyone is free and responsible for the care of their own health, deciding freely on medical procedures that concern him / her.
- Similar approaches have been expressed in Resolutions 2361 (2021) and 2383 (2021) of the CoE Parliamentary Assembly, which state the general position that, vaccination against COVID-19 is not mandatory and that no one should be pressured in a political, social or other manner to be vaccinated, if he/she does not wish to do so .
- At the same time, however, Article 26 of the Oviedo Convention provides for the possibility of imposing restrictions on the exercise of the rights protected by the Convention, and in particular restrictions prescribed by law and that are necessary in a democratic society in the interest, inter alia, of the protection of the public health or the rights and freedoms of others.
- *The European Court of Human Rights* has recognized the possibility of imposing restrictions on the general right not to be vaccinated for the purpose of protecting public health against transmissible diseases through its case law, and, in particular, through its judgments in *Acamanne and Others v. Belgium*, *Solomakhin v. Ukraine* and *Vavricka and Others v. Czech Republic*.

Recommendations

Based on all that was mentioned in the Statement/Opinion, the Commissioner made the following recommendations / suggestions:

- 1) In the context of the positive obligation of the state to protect public health from the effects of the COVID-19 pandemic, it must be ensured that all the measures taken by the Cypriot state are, to this end, in line with the principles of the human rights that are analyzed in the Statement .

In particular, it must be ensured that the measures taken to combat the pandemic, in particular those which restrict the individual rights of citizens, are, in any case, in conformity with the principles of necessity, proportionality and non-discrimination, and are of a temporary nature.

- 2) The measures applied should take into account the specific circumstances of people with increased vulnerability (such as low-income people, the unemployed, people with a migration background, etc.), for whom the negative effects of the measures may be greater, compared to the rest of the population.
- 3) The measures themselves, but also the messages given to the society by the state, should not function as a means discriminating against citizens, should not divide the society in opposition groups of persons who have been vaccinated and persons who do not wish to be vaccinated and they must not create polarization, tensions and social stigma.
- 4) The measure of allowing, in some places, entry to persons with a SafePass for the categories should be reconsidered so as not to discriminate in the field of access to essential services and goods.
- 5) **The decision to abolish the free provision of rapid antigen detection test from 1 August 2021**, should be reconsidered, in light of the Commissioner's observations and the recent recommendations of the World Health Organization (which recommended the increase of access to free tests) and the EU Fundamental Rights Agency (which stated that diagnostic tests should be universal, accessible, timely and free).

The Public Statement of the Commissioner was forwarded for the purposes of information, reflection and implementation of her recommendations, to the Minister of Health.