



Communications and Press Office of the Constitutional Court

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*Press Release of 9 February 2023*

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COVID-19: BASED ON THE SCIENTIFIC EVIDENCE AVAILABLE, MANDATORY VACCINATION WAS IMPOSED ON HEALTHCARE WORKERS. SWAB TESTS COULD NOT REPLACE VACCINATION IF INFECTION WAS TO BE PREVENTED.

[Judgment No 15 of 2023](#) filed today (author Stefano Petitti), previously announced by the [press release of 1 December 2022](#), ruled that the mandatory vaccination imposed on workers in residential health and social care facilities to prevent SARS-CoV-2 infection, in lieu of the obligation to undergo testing (so-called swab), does not amount to an unreasonable and disproportionate measure in the face of the scientific evidence available.

In response to the questions of constitutionality raised by the Ordinary Courts of Brescia, Catania and Padova, the Court held that the balancing in the challenged rules of an individual's right to freedom of healthcare choice against the co-existent and reciprocal right of the others as well as the public interest was not unreasonable, considering that at the time measures were to be adopted to protect healthcare facilities from the risk of not being able to provide their essential services.

The sacrifice imposed on healthcare workers was not excessive since it was indispensable for reaching the public goal of reducing the spread of the virus. It was constantly adjusted to reflect the evolution of the health situation and proved appropriate to curb contagion.

Failure to comply with mandatory vaccination affected the rights and duties arising from employment contracts and temporarily prevented workers from performing tasks requiring interpersonal contacts or entailing the risk of spreading the virus in any other form.

According to the same judgment, neither the legislative decision not to oblige employers to assign alternative tasks to healthcare workers who opted against vaccination, unlike the provisions applying to workers exempted from vaccination for health reasons or teaching and education staff, is contrary to the principles of equality and reasonableness. The Constitutional Court deemed such decision to be justified by the higher risk of contagion in healthcare professions, both for individuals and the community.

Finally, the judgment also held that the challenged provisions – under which workers opting against vaccination were not entitled to compensation or any other form of remuneration or emoluments in the suspension period – justified the fact that a maintenance allowance not exceeding half of their salary was not paid to suspended workers. The Court found that the status of workers refusing vaccination is not comparable to the status of workers suspended pending criminal or disciplinary proceedings; in the latter case, maintenance allowance may be paid.

In particular, the Court ruled out that it was constitutionally mandatory to charge employers with the payment of solidaristic welfare contributions for the benefit of workers who refused to be vaccinated and were therefore temporarily unfit to perform their jobs.

Rome, 9 February 2023