



FLASH NEWS

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COVID-19

OVERVIEW OF DECISIONS IN THE PERIOD JANUARY TO FEBRUARY 2022



France – Council of State

Public health - Condition of access to a political meeting - Presentation of a 'health pass'

In its decision of 21 January 2022, the Constitutional Council ruled on the law strengthening health crisis management tools and amending the Public Health Code. It accepted the conformity with the Constitution of the provisions making access to certain places subject to the presentation of a 'vaccination pass' by requiring that this be terminated as soon as it is no longer necessary. On the other hand, on the grounds of an inadequate legislative framework, it censured a provision making access to a political meeting conditional on the presentation of a 'health pass'.

Conseil constitutionnel, [decision of 21/1/2022, No 2022-835 DC \(FR\)](#)
[Press release \(FR\)](#)



Cyprus – Nicosia District Court

Public health - Ban on access to leisure facilities without vaccination certificate

Nicosia District Court rejected the request of 64 citizens for a stay of execution of government decrees banning people without a vaccination certificate from leisure facilities. According to this court, the contested measure aims to protect the life and health of the population as a whole, which is a primary obligation of the State. However, granting a stay of execution would result in an uncontrolled spread of the virus with harmful consequences for collective health.

In any event, the court dismissed the request as inadmissible as it constituted an *actio popularis* that is not admitted in the Cypriot legal system.

Επαρχιακό Δικαστήριο Λευκωσίας, order of 24/1/2022 (GR), decision not available

[Press release \(GR\)](#)



France – Council of State

Public health - Right of any French national to return to the national territory - Limits

In a decision dated 28 January 2022, the Council of State ruled that restrictions of any kind put in place, with a view to preserving the health situation on national territory, on the fundamental right of any French national to return to that territory, can only be legally taken if their benefit for the protection of public health manifestly exceeds the infringement of that right and cannot have the effect of permanently impeding its exercise. The Council of State therefore annulled a measure requiring unvaccinated French nationals coming from a country classified as a red or orange zone to prove compelling personal or family reasons, an emergency health reason or a professional reason that cannot be postponed for entering French territory.

Conseil d'État, [decision of 28/1/2022, No 454927 \(FR\)](#)

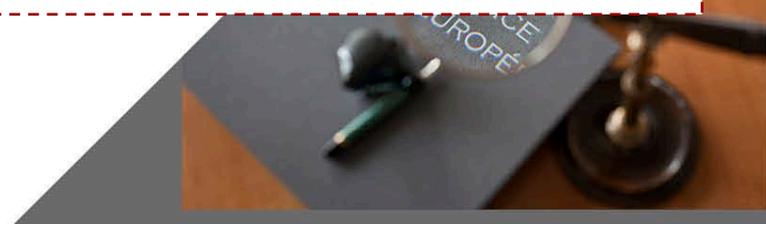


Portugal – Constitutional Court

Education - Containment measures - No valid legal basis

A decision of the Portuguese government empowered the health authorities to impose, by administrative order without judicial review, the prophylactic isolation of citizens who had been in contact with persons infected with COVID-19. On the basis of this decision, a child had been placed in isolation because of a positive case in his class. The Court of First Instance ended his isolation on the grounds that the government was not competent to grant this empowerment as it was a matter for Parliament. Because of this violation of jurisdiction, the high court ruled that the article in question contained in the decision was not in keeping with the Constitution.

Tribunal Constitucional, [judgment of 1/2/2022, No 89/2022 \(PT\)](#)





Lithuania – Vilnius Regional Court

Public procurement market - Purchase of rapid tests - Principle of transparency

In its judgment of 2 February 2022 (currently under appeal), Vilnius Regional Court imposed a fine on the state public health laboratory for failure to comply with the principle of transparency in a public procurement procedure for the purchase of COVID-19 rapid tests.

The national court noted that, in the context of this public procurement procedure, the rational use of public funds was not ensured. In determining the amount of the fine, the court took into account the fact that the public procurement procedure in question was organised in a situation of urgency linked to COVID-19.

Vilniaus apygardos teismas, decision not available

[Press release \(LT\)](#)



Czech Republic – Supreme Administrative Court

Public health - Entry to certain establishments limited to vaccinated or recovered customers

The Supreme Administrative Court annulled the provisions of an emergency measure of the Ministry of Health, according to which, in essence, only customers who had been vaccinated or had recovered from COVID-19 could enter restaurants, leisure facilities and hotels. Such a restriction is not provided for by law. Moreover, the high administrative court noted that this measure cannot aim to make vaccination against COVID-19 indirectly compulsory, such that unvaccinated persons wishing to live a normal daily life would have no other choice than to be vaccinated.

Nejvyšší správní soud, judgment of 2/2/2022, No 8 Ao 2/2022-53 (CS)

[Press release \(CS\)](#)



Poland – Supreme Administrative Court

Economic activity - Situation likely to jeopardise the existence of a sector

The spokesperson for small and medium-sized enterprises had requested, in the first instance, the suspension of the decision of the health inspector of the city of Bydgoszcz ordering the limitation of access to sports clubs. In particular, the spokesperson underlined the dramatic situation of this sector, leading de facto to serious and irreversible consequences such as probable cessations of activity and job losses.

The Supreme Administrative Court rejected the appeal against the decision of the first instance, stating that the mere negative impact of legal acts issued in the context of the pandemic on a sector of economic life cannot be a reason for suspending the execution of a decision taken by public administration bodies.

Naczelny Sąd Administracyjny, order of 8/2/2022, II GZ 12/22 (PL)



Lithuania – Constitutional Court

Declaration of a 'State of Emergency' - National measures taken in connection with the management of the pandemic - Case not proceeding to judgment

By decision of 9 February 2022, the Constitutional Court dismissed a case brought by a group of Lithuanian MPs in which they challenged the government decree adopted in 2020 on the declaration of a 'State of Emergency' linked to COVID-19. They argued that several provisions of the decree, in particular those aimed at categorising people, restricting their access to contact professions and their right to participate in events, were contrary to the Constitution.

The high court took into consideration the fact that, on 2 February 2022, the Lithuanian government had adopted a new decree by which the regulation in question had been repealed and concluded that there was no longer any need to rule on this case.

Lietuvos Respublikos Konstitucinis Teismas, judgment of 9/2/2022, KT17-A-S17/2022 (LT)



Germany – Federal Constitutional Court

Public health - Obligation for healthcare workers to be vaccinated

From 15 March 2022, only healthcare workers with either a vaccination certificate or a certificate of contra-indication to vaccination, or proof of recovery, will be able to work in certain healthcare facilities.

A number of persons who appealed to the Federal Constitutional Court against this regulation requested the suspension of its application in summary proceedings. The high court refused this suspension, considering that the summary proceedings were brief in nature and that, consequently, the serious risks incurred by vulnerable patients, such as the disabled, chronically ill or immunodeficient, outweighed the lesser risks associated with vaccination and the temporary impossibility of working as a carer without being vaccinated.

Bundesverfassungsgericht, order of 10/2/2022, 1 BvR 2649/21 (DE)/(EN)
[Press release \(DE\)/\(EN\)](#)



Croatia – Constitutional Court

Education - COVID-19 measures - Autonomy of higher education institutions

The Constitutional Court found the decision to impose mandatory COVID-19 testing and specific measures requiring proof of testing, vaccination or recovery for access to public-law bodies in the period from 16 November 2021 to 1 March 2022 to be partially unconstitutional.

Considering that it is not acceptable that higher education institutions, asserting their autonomy, can decide otherwise, it annulled in particular the exemption from the application of this decision to students belonging to these institutions.

*Ustavni sud, [decision of 15/2/2022, U-II-7149/2021 \(HR\)](#)
[Press release \(HR\)](#)*



Slovenia – Constitutional Court

Public Health - Limitation of access to services and activities to those vaccinated, recovered or tested

The Constitutional Court found that certain provisions of the regulation on temporary measures for the prevention and control of infections by COVID-19 were in keeping with the Constitution. First of all, the high court rejected the argument of the applicants, who were neither vaccinated nor recovered, according to which the limitation provided for by this regulation on access to certain services and activities reserved solely for vaccinated, recovered or tested persons would amount to an obligation to vaccinate.

In this respect, it noted that in Slovenia there are several centres offering the possibility of being tested. Secondly, it pointed out that the possibility of prescribing mandatory tests has a legal basis, namely the Law on infectious diseases. Finally, stressing inter alia that the right of individuals to a healthy life includes the obligation to protect others, in particular vulnerable persons, the Constitutional Court rejected the applicants' argument that the obligation to be tested was disproportionate.

*Ustavno sodišče Republike Slovenije, decision of 17/2/2022 (SL),
decision not available*