

**Case C-219/24**

**Request for a preliminary ruling**

**Date lodged:**

22 March 2024

**Referring court:**

Riigikohus (Estonia)

**Date of the decision to refer:**

12 March 2024

**Applicants:**

A and Others

**Defendant:**

Tallinna linn

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**RIIGIKOHUS (Supreme Court)**

**CIVIL CHAMBER**

**ORDER**

[...]

[...]

**Subject**

**Action brought by A, B, C, D, E, F, G, H, I, J, K, L, M and N against Tallinna Linn (the city of Tallinn) seeking a declaration of invalidity of the premature termination of their employment contracts as well as damages and default interest**

<b>Parties</b>	Applicant A Applicant B Applicant C Applicant D Applicant E Applicant F Applicant G Applicant H Applicant I Applicant J Applicant K Applicant L Applicant M Applicant N [...] Defendant: City of Tallinn, represented by: Tallinna Kiirabi (Tallinn Emergency Medical Service) [...]
[...]	[...]
<b>Basis of the proceedings before the Riigikohus (Supreme Court, Estonia)</b>	Appeal on a point of law brought by the City of Tallinn (represented by: Tallinna Kiirabi) [...]

## **OPERATIVE PART**

**1. The Court of Justice of the European Union is requested to make a preliminary ruling on the following question:**

**Can Article 14(3) of Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work and points 1 and 2 of Annex VII thereto, read in conjunction with recital 8, Article 1(1) and Article 3(1) and (2) of that directive, be interpreted as compatible with a provision whereby employers are entitled to require their employees who are exposed to biological agents to undergo vaccination?**

**Explanatory questions:**

**(a) Does vaccination constitute a measure of health protection at work within the meaning of Article 14(3) of Directive 2000/54/EC which the employer may order in the context of an existing employment contract without the consent of the worker exposed to biological agents?**

**(b) Is it compatible with Article 1(3), Article 6(1) and (2)(a) and (g), and Article 9(1)(a) and (b) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and**

**health of workers at work and with Article 3(1), Article 31(1) and Article 52(1) of the Charter of Fundamental Rights of the European Union for an employer to make vaccination compulsory in the context of an existing employment contract?**

[...] [Stay of proceedings]

**FACTS OF THE CASE AND COURSE OF PROCEEDINGS**

1. The applicants were employed by the defendant's emergency medical service as ambulance personnel (operational staff). On 30 January 2020, the World Health Organization proclaimed a public health emergency of international concern, thereby formally declaring as a global pandemic the COVID-19 outbreak caused by the spread of the SARS-CoV-2 virus. On 4 March 2021, the defendant produced an assessment of the risks to the working environment, including an action plan which provided, among other things, for the vaccination of workers to reduce the risk of their contracting a dangerous communicable disease, for example becoming infected with the SARS-CoV-2 virus, and mitigate the attendant risks. On 16 April 2021, the defendant amended the job descriptions of the staff of the emergency medical service by prescribing vaccination against dangerous communicable diseases as a condition of employment. The defendant set a time limit for the applicants to furnish proof of vaccination against the SARS-CoV-2 virus or of a contraindication to that vaccination, stating that failure to furnish such proof could lead to termination of their employment contract. The applicants did not provide the defendant with proof of vaccination or of contraindication. The defendant prematurely terminated the applicants' employment contracts in July 2021 on the grounds that, because of the particular nature of activity in the emergency medical service, vaccination of staff was essential and justified and that, since other measures were not sufficient to protect the health of patients, other employees and the relevant staff themselves, only vaccinated personnel could engage in the work of the emergency medical service.

2. The applicants challenged the premature termination of the employment contracts and applied to the defendant for financial compensation for unlawful dismissal. Primarily, they argued that the defendant could not terminate the employment contracts because it was not entitled to require them to have themselves vaccinated against the SARS-CoV-2 virus. The applicants' obligation to have themselves vaccinated, they stated, was neither prescribed by law nor stipulated in the employment contracts concluded between the parties. In Estonia, they argued, vaccination was voluntary unless the Riigikogu (Parliament of Estonia) decided otherwise. They asserted that the decision to impose a vaccination requirement on workers was not for their employer to make.

3. The defendant, for its part, primarily contends that it was entitled to terminate the employment contracts prematurely. Under Paragraph 8(2) of the Töötervishoiu ja tööohutuse seadus (Law on occupational health and safety; 'the

TTOS'), an employer must implement measures to provide protection from biological hazards present in a workplace, taking into account the infectiousness of the hazard. Until the risk assessment was completed, the defendant required all of its employees to comply with hygiene rules, to wear personal protective equipment and, if necessary, to take a PCR test which would detect the SARS-CoV-2 virus. In the light of the risk assessment findings, the action plan also provided for the vaccination of workers in order to reduce the danger of infection and mitigate the risks. Although the applicants could not work for the defendant without being vaccinated against the SARS-CoV-2 virus, the defendant stated that they did not furnish the proof which it required.

4. By judgment of 29 September 2022, the Harju Maakohus (Harju Court of First Instance) upheld the applicants' claim in part. It held that the termination of the employment contracts had been invalid on the ground that the defendant had not been entitled to impose the vaccination requirement unilaterally. It ordered the defendant to pay an amount of compensation which was lower than that claimed by the applicants.

According to the decision of the Court of First Instance, the defendant is not authorised by any law or statutory instrument to require the applicants to have themselves vaccinated. It found that, although the employer could, to some extent, unilaterally modify safety requirements in the workplace (Paragraph 13(2) of the TTOS), this could only be done with regard to particular work processes or to the application of protective measures that did not fundamentally alter employees' working conditions or their ability to perform their duties. The imposition of a vaccination requirement, the court held, presupposed the existence of an agreement between the parties (Paragraph 12 of the Töölepingu seadus (Law on employment contracts; 'the TLS')); no such agreement, however, existed between the parties.

5. The applicants appealed against the judgment of the Court of First Instance in respect of the compensation claims that had been dismissed. The defendant challenged the judgment of the Court of First Instance in so far as the applicants' claims had been upheld.

6. By judgment of 26 May 2023, the Tallinna Ringkonnakohus (Tallinn Court of Appeal) set aside part of the judgment of the Court of First Instance concerning the amount of compensation awarded to the applicants. In its judgment, the Court of Appeal altered the amount of compensation which the defendant was required to pay to the applicants. However, it confirmed the position of the Court of First Instance that the defendant had not been entitled to impose a vaccination requirement.

According to the judgement of the Court of Appeal, neither Paragraph 13(5) to (7) of the Nakkushaiuste ennetamise ja tõrje seadus (Law on the prevention and control of communicable diseases; 'the NETS'), Paragraph 13(1) and (2) of the TTOS nor Paragraph 6(2)(7) and (3) of the Vabariigi Valitsuse 5. mai 2000. a

määrus nr 144 'Bioloogilistest ohuteguritest mõjutatud töeskkonna töötervisiu ja tööhutuse nõuded (Estonian Government Regulation No 144 of 5 May 2000 on occupational health and safety requirements in a working environment affected by biological hazards; 'the Biological Hazards Regulation') entitled the defendant to require the applicants to have themselves vaccinated. It held that, since the imposition of a vaccination requirement constituted a profound interference with the physical integrity of persons, such a requirement had to have a legal basis; that is to say there had to be a specific enabling provision in a law that authorised the executive to impose a vaccination requirement.

## **ARGUMENTS OF THE PARTIES**

7. By means of an appeal on a point of law, the defendant moves that the Supreme Court set aside the judgment of the Court of Appeal and dismiss the action in its entirety in a new judgment or refer the case back to the Court of Appeal for a new hearing.

One of the pleas is that the courts wrongly found that the defendant had no authority to introduce a vaccination requirement. The defendant submits that the Riigikohus (Supreme Court) has held, in Administrative Case No 3-21-2241, that Paragraph 13(2) of the TTOS and Paragraph 6(2)(11) of the Biological Hazards Regulation constitute a sufficient basis for the employer to introduce a vaccination requirement by means of an internal regulation. The defendant argues that it was therefore entitled to impose the vaccination requirement.

8. The appellants contest the appeal on a point of law and move that it be dismissed.

The defendant, they maintain, was not authorised by law to introduce a vaccination requirement. They argue that the position adopted by the Supreme Court in Administrative Case No 3-21-2241, which related to the vaccination requirement for members of the armed forces, is not transposable to the present case. They submit that there exists between the parties an employment relationship governed by private law and based on freedom of contract, in which the reciprocal rights and obligations of the parties are agreed between them and cannot be imposed unilaterally by the employer.

## **POSITION OF THE CHAMBER**

9. The Chamber is of the opinion that the resolution of the civil dispute requires a request for a preliminary ruling on the interpretation of Article 14(3) of Directive 2000/54/EC and points 1 and 2 of Annex VII thereto, read in conjunction with recital 8, Article 1(1) and Article 3 of that directive, Article 1(3), Article 6 and Article 9(1)(a) and (b) of Directive 89/391/EEC and Article 3, Article 31(1) and Article 52(1) of the Charter of Fundamental Rights (Article 267(1)(b) of the Treaty on the Functioning of the European Union).

Proceedings are to be stayed pending a decision on the request for a preliminary ruling [...].

10. In order to resolve the civil dispute, it is necessary, among other things, to answer the question whether the defendant was entitled to require the applicants to be vaccinated against SARS-CoV-2 as a condition for them to remain in employment with the emergency medical service or whether such a requirement necessitated an agreement between the parties. In the view of the Chamber, the answer to that question depends in particular on whether vaccination is to be regarded as a health and safety at work provision or as a measure taken unilaterally by the employer.

The Chamber begins by presenting a summary of Estonia's national legal framework on the matter at issue and the provisions of the relevant directives (I), then briefly examines the interference with physical integrity caused by the vaccination requirement (II) and, finally, discusses the parties' arguments and the issues raised (III).

## I

11. Unlike those of many other Member States, neither the Estonian legislature nor the Government of the Republic of Estonia has adopted legislation determining the sectors or occupations in which employment requires vaccination against the SARS-CoV-2 virus. Employers' obligations with regard to the suppression of communicable diseases are regulated in the NETS. The health and safety at work provisions, the rights and obligations of employers and workers in the creation and maintenance of a safe working environment and the organisation of health and safety at work are chiefly set out in the TTOS, while the Biological Hazards Regulation enacted on the basis of the TTOS provides, among other things, for the option of worker vaccination as a measure for reducing risks to health.

11.1. Under Paragraph 24(1) to (4) of the NETS, employers are required to create working conditions which are as safe from infection as possible for employees working in areas where there is a risk of becoming infected with a communicable disease, ensure that the requirements established for safety from infection are met at the workplace, ensure that employees working in areas where there is a risk of becoming infected with a communicable disease are immunised and, if necessary, provided with preventive treatment and permit employees to undergo medical examinations for the detection of communicable diseases or carrier states and to receive emergency immunisations during working hours.

11.2. Employers must ensure that employees' working conditions accord with health and safety at work provisions in all work-related situations (Paragraph 28(2)(6) of the TLS, read in conjunction with the first sentence of Paragraph 12(1) of the TTOS). To that end, Paragraph 13 of the TTOS defines the rights and obligations of employers (subparagraph (1)) and authorises employers

to apply more stringent rules in their undertaking than those prescribed by health and safety at work legislation (subparagraph (2)). In particular, employers are required to identify the risks related to the working environment, to assess the risks to the health and safety of workers and to take measures to prevent and reduce risks to workers' health (Paragraphs 13(1)(3) and 134(1) and (2) of the TTOS). Under Paragraph 2(1) of the TTOS, occupational health protection within the meaning of that law includes the application of medical measures to prevent damage to the health of employees.

11.3. Employers must implement measures to provide protection from biological hazards present in a workplace, such as viruses causing communicable diseases, taking into account the infectiousness of the hazard (Paragraph 8(2) of the TTOS). Under Paragraph 8(3) of the TTOS, the occupational health and safety requirements for working environments affected by biological hazards are established by the Government of the Republic [of Estonia]. Under Paragraph 6(2)(7) of the Biological Hazards Regulation, enacted on the basis of that provision, if the findings of its risk assessment show that the working environment is affected by biological hazards, the employer must prevent risks to the health of workers or minimise the risk to health as far as possible, in particular by ensuring that workers exposed to biological hazards against which there is an effective vaccine can be vaccinated. Under Paragraph 6(2)(11) of that regulation, which entered into force on 17 August 2021, employers are required to ensure that there is no risk of transmission by workers who come into contact with other persons in the event of the spread of the SARS-CoV-2 virus in the workplace; this can be done, in particular, by ensuring that workers are vaccinated against COVID-19, by checking SARS-CoV-2 status passes or by providing for SARS-CoV-2 testing of workers. With effect from 15 March 2022, the abovementioned provision was supplemented by an employer's right to check the certificate attesting to the worker's recovery from COVID-19. Paragraph 24(3) of the NETS likewise requires employers to ensure that employees working in areas where there is a risk of becoming infected with a communicable disease are immunised and, if necessary, provided with preventive treatment.

11.4. In addition, employers and employees are required by law to cooperate with a view to ensuring a safe working environment (Paragraph 12(3) of the TTOS). One of the employees' obligations in that regard is to contribute to the creation of a safe working environment by observing the occupational health and safety requirements (Paragraph 14(1)(1) of the TTOS).

12. In particular, the TTOS transposed Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work ('the Framework Directive') and Directive 2000/54/EC of the European Parliament and of the Council on the protection of workers from risks related to exposure to biological agents at work ('the Biological Agents Directive').

12.1. The Framework Directive lays down general principles for the improvement of the safety and health of workers at work without prejudice to national and Community provisions which are more favourable to protection of the safety and health of workers at work (Article 1). Under Articles 6(1) and 9(1)(a) and (b) of the Framework Directive, within the context of their responsibilities, employers are to take the measures necessary for the safety and health protection of workers and to decide, for example, on the implementation of the protective measures and the use of the protective equipment necessitated by particular risks.

12.2. According to recital 8 of the Biological Agents Directive, preventive measures should be taken for the protection of the health and safety of workers exposed to biological agents, and, in accordance with its Article 1(1), the directive lays down particular minimum provisions for the protection of workers and their health. Under Article 3 of the Biological Agents Directive, workers' exposure to biological agents must be determined in order to make it possible to assess any risk to the workers' health or safety and to lay down the measures to be taken. The assessment should identify those workers for whom special protective measures may be required, and, when necessary, effective vaccines should be made available for those workers who are not already immune to the biological agent to which they are exposed or are likely to be exposed. When employers make vaccines available, they should take account of the recommended code of practice set out in Annex VII to the directive (Article 14(3)).

12.3. Under points 1 and 2 of Annex VII to the Biological Agents Directive, where there is a risk to the health and safety of workers due to their exposure to biological agents for which effective vaccines exist, their employers should offer them vaccination, to be carried out in accordance with national law and/or practice, and the workers are to be informed of the benefits and drawbacks of both vaccination and non-vaccination. The foregoing applies to the activities specified in the indicative list set out in Annex I to the directive, particularly to work in healthcare (Article 4(2) and point 4 of Annex I). Commission Directive (EU) 2020/739 amended Annex III to the Biological Agents Directive by adding SARS-CoV-2 to the list of biological agents known to infect humans.

## II

13. Under Article 3 of the Charter of Fundamental Rights of the European Union (2016/C 202/02), everyone has the right to respect for his or her physical and mental integrity; in the fields of medicine and biology, Article 3 prescribes, in particular, respect for the free and informed consent of the person concerned, according to the procedures laid down by law (Article 3(2)(a)). Under Article 31(1) of the Charter, every worker has the right to working conditions which respect his or her health, safety and dignity. Under Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made

only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

14. Relying on the case-law of the European Court of Human Rights ('the ECtHR'), the Riigikohus has repeatedly held that both direct and indirect vaccination requirements interfere with a person's physical integrity.

Physical integrity is primarily protected as part of everyone's entitlement to inviolability of his or her private and family life under Paragraph 26 of the Põhiseadus (Estonian Constitution; 'the PS'), Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the ECtHR judgment in *Paradiso and Campanelli v. Italy* (CE:ECHR:2015:0127JUD002535812), § 159. The risks associated with vaccines are detrimental to the right to protection of health guaranteed by Paragraph 28(1) of the PS and may be fatal in extreme cases (Paragraph 16 of the PS). The profundity of the interference was not diminished by the fact that it served secondarily to protect those affected by the restrictions. The imposition of vaccination requirements to protect the health of a person with legal capacity without affecting the rights of other persons or the public interest, for instance by placing a burden on hospitals, would not be legitimate in a liberal democratic state and would not be consistent with the principle of human dignity (RKHKm [order of the Administrative Chamber of the Riigikohus] of 25 November 2021, ref. 3-21-2241/11, paragraphs 20-22, and RKPSJVKo [judgment of the Constitutional Review Chamber of the Riigikohus] of 31 October 2022, ref. 5-22-4/13, paragraph 48). However, both the Riigikohus and the ECtHR found that the vaccination requirement could be justified, for example, by the need to protect public health (RKHKm of 25 November 2021, ref. 3-21-2241/11, paragraph 36, and judgment of the ECtHR in *Vavříčka and Others v. the Czech Republic* (CE:ECHR:2021:0408JUD004762113), §§ 281 to 284.

15. Since the defendant introduced the requirement of vaccination as a condition of employment in the emergency medical service and terminated the applicants' employment contracts on the ground that the applicants had not furnished evidence of vaccination against the SARS-CoV-2 virus or a contraindication of such vaccination, what is at issue here is at least an indirect vaccination requirement (see also RKHKm of 25 November 2021, ref. 3-21-2241/11, paragraph 20 et seq., and judgment of the ECtHR in *Vavříčka and Others v. the Czech Republic* (CE:ECHR:2021:0408JUD004762113), §§ 258 to 260).

### III

16. In its appeal, the defendant relies on the fact that the Administrative Chamber of the Riigikohus did not rule out the possibility that a vaccination requirement might be introduced on the basis of a law by means of secondary legislation. When assessing the legal basis of a vaccination requirement in the armed forces, the Administrative Chamber took the view that, for persons involved in the performance of public duties in the public service and through

other channels, the introduction of a vaccination requirement by means of a legal act adopted on the basis of Paragraph 13(2) of the TTOS and Paragraph 6(2)(11) of the Biological Hazards Regulation, such as an internal administrative act, could be envisaged (RKHKm of 25 November 2021, ref. 3-21-2241/11, paragraphs 23 and 24 and the case-law cited therein). The defendant emphasises that the emergency medical service provides a vital service and that maintaining its capacity to act and react is similar in importance to guaranteeing the essential functions of the state, such as national defence. The defendant therefore considers that it was entitled to impose the vaccination requirement unilaterally.

17. In response, the applicants argue that the defendant could not introduce the vaccination requirement without their consent since, in an employment relationship governed by private law, an employment contract may be amended only by agreement between the parties (Article 12 of the TLS).

18. Employment law forms part of the law of contract governed by the law of obligations (Paragraph 1(1) of the Völaðiguseadur [Law of Obligations Act; ‘the VÖS’] and Paragraph 1(3) of the TLS), in which the principle applies that concluded contracts must be honoured (*pacta sunt servanda*). This is expressed in Paragraph 12 of the TLS, which states that an employment contract may be amended only by agreement between the parties. The terms of an employment contract which must be agreed are those which are essential to the parties and which, by having been agreed, warrant the assessment that an employment contract has been concluded (job description, remuneration, place of work, working hours, etc.) (Paragraph 4(1) of the TLS and Paragraph 9(1) of the VÖS). Article 12 of the TLS therefore applies in particular to any amendments to those terms. However, the TLS provides for a number of exceptions allowing the employer to amend the terms agreed in the employment contract without the worker’s consent, such as the content of the employee’s work (Paragraph 17(4) of the TLS), the organisation of working time (Paragraph 47(4) of the TLS) and the amount of remuneration (Paragraph 37(1) of the TLS).

19. Although the employer’s duty of protection towards the employee is based on a contract concluded between the parties, which requires them to cooperate (see, for example, Paragraph 28(2)(6) of the TLS and the first sentence of Paragraph 12(1) of the TTOS), the occupational health and safety provisions stem from legal acts. The occupational health and safety requirements, including more stringent provisions than those prescribed by legislation, are established by the employer (Paragraph 13 of the TTOS).

20. In the present case, after conducting a risk assessment, the defendant ordered the applicants to have themselves vaccinated against the SARS-CoV-2 virus on the basis of the occupational health and safety provisions which transpose the Framework Directive and the Biological Agents Directive. When deliberating on the case, the Chamber had doubts as to whether a national provision which permits employers to require their employees, as a condition for continued employment, to undergo vaccination without having given their consent is

consistent with the Framework Directive and the Biological Agents Directive and with the right to integrity of the person enshrined in Article 3 of the Charter of Fundamental Rights.

21. On the one hand, the scope for vaccination of workers in order to ensure their health and safety at work is governed by the Biological Agents Directive, from Article 14(3) and Annex VII of which it may be concluded that vaccination should be optional for workers and that the employer is required only to guarantee the possibility of vaccination and to inform workers of the benefits and drawbacks of vaccination and non-vaccination. Article 3(2)(a) of the Charter of Fundamental Rights also indicates that medical interventions affecting a person's physical integrity are permitted only with the voluntary consent of the person concerned.

On the other hand, it is clear from both Article 1(3) of the Framework Directive and Article 1(1) of the Biological Agents Directive that those directives lay down only minimum requirements for health and safety at work and do not exclude the application of provisions which are more favourable to protection of the safety and health of workers at work. It is also possible, therefore, to interpret the right of employers to require their employees without their consent to undergo vaccination as a potential measure for the protection of health and safety at work which is more favourable to protection of workers' health and safety. For the reasons set out above, the Chamber, when deliberating on the case, had doubts as to whether the provisions of the Framework Directive and the Biological Agents Directive, read in the light of the principles of the Charter of Fundamental Rights, supported the view that an employer of any worker exposed to biological agents was entitled to require his or her vaccination, in other words to introduce a vaccination requirement into an existing employment relationship without the worker's consent, in order to ensure the protection of health and safety at work.

22. In the view of the Chamber, the lawfulness of the premature termination of the applicants' employment contracts and of the decision on the related claims for compensation cannot be assessed without waiting for the Court to state its position on the interpretation of the Framework Directive and the Biological Agents Directive. In the view of the Chamber, if the imposition of a vaccination requirement by means of occupational health provisions were contrary to the directives, the TTOS and the Biological Hazards Regulation enacted by the Government of the Republic of Estonia would have to be interpreted, in accordance with the directives, as not authorising employers to introduce a vaccination requirement for workers unilaterally, which would mean that the termination of the applicants' employment contracts had no legal basis.

23. Although the Biological Agents Directive lays down minimum requirements for the protection of workers and, in accordance with Annex VII to that directive, vaccination is carried out in accordance with national legislation and/or practice, and employers may, under Estonian law, lay down more stringent rules than those prescribed by the provisions of legal acts governing occupational health and

safety, this does not eliminate the need for the Riigikohus to obtain clarity regarding the interpretation of the directives.

[...]

WORKING DOCUMENT