

**Statement 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
(SUMMARY)**

✦ **Description of the complaints**

The Statement was deemed necessary because a number of citizens had addressed to the Commissioner complaining about the measures taken and continuing to be taken by the state to combat the new coronavirus (COVID-19). Specifically, until the date of the submission of the statement on 29/7/2021, 51 such complaints had been submitted.

Because the complaints generally claimed that the measures in question taken by the State violated fundamental human rights of the citizens, the Commissioner intervened/positioned in her capacity as the National Human Rights Institution (NHRI).

In particular, the complaints focused on the following measures:

- a. The obligation for 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 go to work.
- c. The requirement for compulsory examination of high school students to Rapid Test, in order to return to schools and attend classes in person.
- d. The pressure 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 moving to overcrowding sites, which, as argued,

constitutes a distinction between vaccinated and non-vaccinated, 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 have asked the Commissioner to comment or inform them, in general, about whether it is legal for people who do not want to be vaccinated against coronavirus to be forced to do so, and complaints have been received about the content of the messages promoted by the Ministry of Health to promote / encourage the population to be vaccinated - which present vaccination as the only option and create, as has been 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 being 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 privacy, 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 investigation first established that the measures in question were taken by Decrees of the Ministry of Health, of a definite duration, on the basis of the Quarantine Law, Cap (260), the most recent of which was issued on July 19, 2021.

This Decree provided, inter alia, for the following:

- The introduction / adoption of the safety certificate (SafePass), by persons aged 12 and over, and its presentation to be able to enter areas of increased congestion (indoor and outdoor), where,

subject to distance measures, there was a possibility of gathering of more than 20 persons, including employees. SafePass is defined as providing evidence for one of the following:

- a. Negative laboratory test or Rapid Test for COVID-19 disease, with sampling done within 72 hours.
 - b. Vaccination certificate for COVID-19 at least one dose and provided that 3 weeks have elapsed since the date of vaccination.
 - c. Evidence of release from persons who suffered from COVID - 19 disease, 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 in the maximum number of people indoors from 350 to 450 people, meaning 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 laboratory test or a Rapid Test with sampling done within 72 hours, or a vaccination certificate for COVID disease -19 at least 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 initial positive their diagnosis.

In addition, the Council of Ministers decided on 2/7/21 that the free antigen test program (rapid test) be terminated from 1 August 2021 for unvaccinated people. 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.

¹ The general rule excluded persons under the age of 12 as well as persons aged 16 and over who could not be vaccinated due to a medical problem, who provided 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:

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 promote their vaccination as part of their corporate social responsibility⁴.

✦ **Institutional framework**

In her Statement, 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, however, the provisions contained in these texts were recorded and analyzed, which independently guarantee the individual and collective right to high quality health, but those that 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 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

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

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.

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).

At the level of case law, reference has been made to judgments of the European Court of Human Rights (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, it 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.

A special reference was made to the Positioning in a recent decision of the ECHR (Case of Vavříčka and Others v. The Czech Republic, dated 8/4/21), in which it examined the appeal of parents of children, who were not admitted to kindergartens in the Czech Republic, because were 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, in April 2021, the ECHR adopted the "**principle of social solidarity**", which, as it justified, can defend the imposition of vaccination, even to those who feel less threatened by the disease, from when the issue of protecting the most vulnerable is raised ".

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*

¹⁰ Cases: *Acmanne and Others v. Belgium*, *Boffa and Others v. San Marino*, *Salveti 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*, date. 8/4/21

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

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 Management, in which the positions were expressed as follows:

- In exercising its discretionary power, the Management must take into account and weigh all the interests directly involved in the case, use means that are commensurate 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 on the one hand the introduction of unjustified and arbitrary discrimination, but allows the Management and the legislator to create reasonable and arbitrary discrimination when the "nature of things" allows it.¹³

✦ **General Findings**

In view of the nature of the measures in question and the purpose for which they were taken, the Commissioner studied and recorded in the Position, the positions formulated and the proposals submitted by various international scientific organizations to limit the spread of the pandemic.

As it turned out, the World Health Organization (WHO), being the UN body responsible for the protection of public health, has repeatedly recommended:¹⁴ the use of protective masks, keeping distance and avoiding crowded places, vaccination as soon as possible with one of the insured and effective vaccines against COVID-19 which has been approved, conducting diagnostic tests for early diagnosis of cases that are positive for the virus (including diagnostic tests in the school environment, students and teaching staff) to avoid distance education¹⁵.

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, EJB ER AYDIN v. Department of Population Records and Immigration 95/2013 etc.

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> .

It also recommended, in light of the increase in cases due to the Delta variant of the virus, the increase of access to free tests, so that the confirmed cases are isolated, the traces are intensified and the transmission chains are broken.

As it was also found, 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 - other scientific organizations have stated, such as 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 Position underlined that, according to the data published by the Ministry of Health, the vast majority of people who are forced to be treated for COVID-19 (about 85%) are people who have not been vaccinated or have not completed their vaccination circle¹⁸, as well as the fact that correspondingly high rates of hospitalization of the unvaccinated are recorded in other countries as well¹⁹.

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

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://politis.com.cy/politis-news/ipa-covid19-parakolythoyme-tin-pandimia-ton-anemvoliaston/>

²⁰ <https://www.tovima.gr/2021/03/31/world/italia-y-poxreotikos-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->

✿ **Final Positions / Conclusions**

The Position stressed that the COVID-19 pandemic has caused millions of deaths and other adverse effects on global health, as well as that efforts to combat it have severely restricted the basic individual rights of millions of people, such as restrictions 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 of 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 informed consent of the individual. However, she added, with the exception of the absolute prohibition of torture and degrading and inhuman treatment, all other civil rights may be restricted by law as are necessary in a democratic society to protect the individual rights and freedoms of others, such as public health.

In particular, as the Commissioner pointed out, both the international human rights texts referred to 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, have a legitimate aim and are absolutely necessary in a democratic society.

In addition, she pointed out that under human rights law, states have obligations that are not limited to abstaining from actions or omissions that could jeopardize the protection of individual rights (negative obligation), but also include a positive obligation to take appropriate

<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-yeionomikoy-prosopikoy>
<https://politix.com.cy/politix-news/ellada-kinitra-ypochreotikos-emboliasmos-se-omadese-ergazomenon-kleistoi-choroi-mono-gia-emboliasmenoys-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-yeionomikoy-prosopikoy>

under the circumstances of measures (administrative and legislative nature), which in practice ensure the enjoyment of human rights by citizens.

Consequently, the Commissioner argued, the creation of conditions in which to protect as much as possible the fundamental rights to health and well-being, not only individually but also collectively, is a legal obligation for the Cypriot state.

In the light of the above, the Commissioner examined, separately, 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 on workers to be vaccinated*

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

However, she considered it appropriate to note the fact 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 or threats by employers to vaccinate 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 justified as necessary and proportionate seeking.

❖ *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 (i.e., 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 Infection Cleaning and were of a definite duration.
- The measures to deal with the pandemic were taken after consulting a team of 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 around the world.
- 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". Characteristic, as the Commissioner noted, is the case law of the ECHR in *Acamanne and Others v. Belgium*, in which it 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 protection of other people's rights 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 recognize that the person is not only a bearer of rights, but also a bearer of obligations towards the rest of society²¹. In fact, in its relevant case law, in a case concerning the obligation to vaccinate, in the Czech Republic 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, 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 securing a **safety certificate (SafePass)** for the purpose of moving to 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:

- The measure was decided on July 19, 2021, in the light of the then epidemiological picture of the country, 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 implementation by the states, measures to adopt safety certificates (SafePass), which relieve their holders of certain restrictions on the protected rights and freedoms taking into account the risk of transmission of the virus by each category of SafePass holders and the current epidemiological situation in each country.

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

- Both in Cyprus and internationally, the majority of people who are now forced to be 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. It is available to everyone, vaccinated or not, even with different criteria.
- The division of SafePass into the specific three subcategories 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 does not (seems to) discriminate between vaccinated and unvaccinated EU citizens, as all travelers can obtain it with a negative coronavirus test or recovery certificate.

According to the Commissioner, a crucial element for an overall assessment of the legality of all the controversial and, no doubt, painful measures taken by the state to combat the pandemic, is their degree of compatibility with the **principle of proportionality**, which, in this case, presupposes a fair balance between respect for the rights and freedoms of the individual and the protection of the interests of society, as well as fundamental rights between them. Depending on the case and the balance of the rights in question, should to be judged which of them is more superior each time.

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, which **rejected** requests submitted by citizens for the issuance of temporary restraining orders in relation to measures received by the state to limit/prevent the transmission of the Covid -19 virus. In the second case, in fact, the request concerned the issuance of a temporary injunction by the State to require SafePass to enter certain areas and to require the use of a protective mask. These Decisions stated, inter alia, that the circumstances justified the Ministry of Health's taking the specific measures to deal with the pandemic, that the procedure for issuing the Decrees was legal and that the power given to the Minister of Health to issue was in accordance with the Constitution and current legislation. According to the Commissioner, these Decisions confirmed the necessity of taking measures to address the purpose

which is none other than the positive obligation of the state to safeguard public health.

Notwithstanding the above, however, the Commissioner expressed my concern that the ban on people without SafePass entering places where more than 20 people can gather was universal and did not take into account the specifics of some places in the service of basic needs of citizens. 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 their content is in line with the recommendations made by scientific organizations, for vaccination of the population as soon as 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 the light of the above, the Commissioner concluded that there is no scope for any 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 that the persons who are exempted from the obligation to pay a fee for the examination²² did not include members of the economically vulnerable groups of the population (e.g. persons receiving a Minimum

²² 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.

Guaranteed Income, long-term unemployed, single parents, low-income retirees, national guardsmen) who do not want to be vaccinated.

In such cases, the Commissioner argued, the frequent payment of the relevant fee may not be possible, limiting their ability 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 SafePass, the Commissioner expressed doubts as to whether the different treatment of the disputed decision between vaccinated and non-vaccinated citizens is, under the circumstances, necessary and proportionate to the intended purpose, while due to the different treatment between access to a free vaccine and non-access to a free rapid antigen screening, a distinction is made between citizens in the same General Health System. After all, the Commissioner added, not providing a free *rapid antigen detection test* not only encourages vaccination (as is the goal of the State), but **also prevents the detection of cases, their reduction, the detection of the transmission chain and consequently preventing pandemic control and reducing cases.**

In the 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*

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

- From the legal texts that have been analyzed in the Positioning, the **general rule** emerges that any vaccination, (like any medical procedure), should not be imposed and can be done only with the free and informed consent of the affected person. This rule is explicitly provided for in the provisions of Article 6 of the Oviedo Convention of the CoE, while it is also dictated, according to the Commissioner, in the context of the protection of the personal autonomy and privacy of the individual, 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 politically pressured socially or otherwise to be vaccinated if he/she does not wish to be vaccinated.
- 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 necessary in a democratic society in the interest, inter alia, of protection of the public health or the rights and freedoms of other persons.
- *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 communicable 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 Position, the Commissioner made the following recommendations / suggestions:

- In the context of the positive obligation of the state to protect the collective good of health from the effects of the COVID-19 pandemic, it must be ensured that all the measures taken by the Cypriot state to this end are in line with the principles of the human rights analyzed in the Positioning.
- In particular, it must be ensured that the measures taken to combat the pandemic, in particular those intended to restrict the individual rights of citizens, respect, in any case, the principles of necessity, proportionality and non-discrimination, as well as the temporary nature of the measure.
- The measures applied should take into account the specific circumstances of people with increased vulnerability (such as low-income people, the unemployed, people with an immigrant background, etc.), in which the effects of the measures may be greater and worse compared to the rest of the population.
- The messages sent to the society, but also the measures themselves, should not function as a means of separation and discrimination of the citizens, should not divide the society in camps between persons who have been vaccinated and persons who do not want to be vaccinated and not create polarization, tensions and social stigma.
- To reconsider the measure of banning entry to persons without SafePass which includes only vaccinated and sick, to include other forms of examination, while this should not create discrimination in access to services and goods.
- To **reconsider the decision to abolish the free provision of rapid antigen detection test from 1 August 2021**, after taking into account the Commissioner's concerns, in conjunction with 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 Statement was forwarded for the purposes of information, reflection and implementation of the Commissioner's recommendations to the Minister of Health.