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# ETHICAL FRAMEWORK

## A HUMAN RIGHTS APPROACH TO EVALUATING AND RESPONDING TO ETHICAL CHALLENGES AND DILEMMAS DURING A PANDEMIC

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### OVERVIEW

- Human rights law provides a clear hierarchy of rights which helps address ethical dilemmas regarding the impact of Covid-19 measures on fundamental interests.
- Under this hierarchy, the right to life takes precedence. So, in the first wave of a pandemic, or in case of a new variant, the government has the duty to impose (even tough) restrictions (e.g. lockdowns) to protect it.
- Now, other measures such as mass vaccination or targeted restrictions appear more proportional.
- Government resistance to vaccine mandates might violate the rights to life or freedom of vulnerable citizens, if the virus' wider circulation significantly impacts their health or everyday life.
- The European Court of Human Rights authorises proportional restrictions to personal freedom and the right to refuse vaccines for public health reasons.

Human rights can be a useful ethical framework to evaluate interventions and practically manage situations such as those we have seen throughout the Covid-19 crisis. They are widely, and legally, recognised. And they are designed to provide guidance for policy makers, practitioners and lay persons on how to identify and protect the public interest while safeguarding individual interests (e.g. liberty, dignity, equality). In times of crisis, they are particularly useful because they allow us to establish a hierarchy among potentially conflicting principles. Therefore, this review will focus on the following question:

#### **How can we resolve conflicts among competing interests during the pandemic through human rights?**

The aim of this review is to:

- Summarise human rights provisions relevant to ethical dilemmas in the Covid-19 crisis;
- Clarify what such provisions imply in concrete terms;
- Present clear criteria to balance conflicts between fundamental rights; and
- Guide authorities in establishing what measures, when, and for whom are acceptable, under human rights, in

the reopening phases of the pandemic or in case of a problematic new variant.

Addressing such questions is important both for evaluation of what has happened and in planning for the future. Thanks to vaccines and the Omicron variant's milder symptoms, now Covid-19 seems to have a lower impact. Nonetheless, it is still dangerous for vulnerable individuals and infections remain high. [1] In this situation, it can be even more challenging to establish when restrictions or vaccine mandates may be justifiable than in times when no-one was vaccinated: when the failure to impose adequate measures results in high numbers of deaths their importance is more evident, than when only a minority of vulnerable individuals who do not make headlines is affected. In addition, there is the ongoing risk of new, vaccine-resistant variants. Finally, public inquiries are being carried out into whether the government has breached human rights with their Covid-19 policies. [2] [3] [4] In combination, these points explain why it is so useful to clarify what human rights obligations are in the first place, given how fundamental human rights are to understanding them.

## 1. COVID-19 AND HUMAN RIGHTS

Covid-19 restrictions have heavily impacted (and continue to impact) citizens' fundamental interests such as freedom, health, privacy, education and employment. [4] Lockdowns have significantly restricted individuals' freedom of movement and forced non-essential businesses to close with severe consequences on many people's employment. Moreover, while special powers and emergency measures have been vital to ensure the survival of the state and its citizens during the pandemic nonetheless they have posed the risk of a populist and authoritarian shift. Therefore, clear safeguards and principles of action are needed to avert the challenges that we have faced, and will face. [5]

In this context, human rights are often engaged. However, in the last two years they have been cited both to endorse and oppose the different measures that have been implemented. For example, lockdowns have been justified by the government, public health authorities and various ethicists in light of the protection of the right to life, [4] but other legal and ethics experts have branded them as unacceptable infringements of fundamental liberties. [6] With regard to Covid-19 vaccinations, those in favour of vaccine mandates cite the fundamental right to health (or again to life), [7] while those against them appeal to the fundamental right to freedom of choice. [8] So, it is crucial to clarify how these (apparent) contradictions can be resolved.

## 2. THE ADDED VALUE OF HUMAN RIGHTS

This review adopts the perspective of human rights as understood in domestic (i.e. UK) law and international (i.e. European) human rights law. Human rights law provides a hierarchical system of principles, constructed through large international consensus. Moreover, the application of such principles has been progressively refined by judicial and quasi-judicial bodies when adjudicating or monitoring those rights through concrete contexts rather than abstract discussions. Therefore, human rights law provides a consolidated route to navigate many dilemmas in which there seem to be valid arguments in favour of all views put forward. In this sense, human rights law principles can be powerful heuristic tools to navigate also ethical dilemmas which do not end up in court. Here I will focus on the principles of the European Convention on Human Rights (ECHR), as by virtue of the Human Rights Act 1998, which incorporates the Convention's provisions into UK law, they are legally enforceable by UK courts. It should be noted that relevant principles are affirmed also in other human rights documents such as the European Social Charter (ESC, 1961) and the UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), albeit these are not directly applicable at a domestic level, and thus have had a lesser impact in Covid-19-related debates in the UK.

Human rights law can be particularly useful because it:

- Focuses on the individuals' wellbeing as a whole, while during the pandemic the discourse has often been monopolised by a narrow medicalised approach, [9] missing an engagement with the wider social factors impacting people's everyday life;
  - Establishes a hierarchy among rights, helping to select what policy options to prefer in times of conflict or tension between principles;
  - Prioritises the dignity of the individual, which is particularly important during a pandemic, as public health considerations often emphasise the collective interest and consequentialist ethical theories focusing on good outcomes for the highest number of people, [10] risking the sacrifice of some individuals in the process. This does not mean that a collectivist public health ethics approach, looking at wider social structures and outcomes and avoiding an overly-individualistic focus is not a right approach in a pandemic (indeed it is promoted by human rights); [11] simply, in such a context, there are situations in which sacrificing some fundamental individual interests would negate even the bare minimum level of dignity of everyone that must be recognised.
- Was born from the ashes of World War II, and is accordingly equipped to protect people in times of crisis;

### Human Rights checklist for Covid-19 policies

Scholars [5] and independent organisations have developed human rights checklists which can guide Covid-19 policies and help to navigate dilemmas. These checklists require, among other things, that governments:

- Provide equitable access to healthcare and testing;
- Introduce compulsory measures only if proportional, evidence based and respectfully enforced;
- Counter discrimination and address the digital divide;
- Guarantee access to education and free school meals;
- Make sure privacy is protected in case of tracing systems monitoring people's movements;
- Guarantee access to news and information;
- Amend labour and social security laws to guarantee people's income;
- Make public transport safe;
- Ease overcrowding in prisons;
- Always provide procedural and judicial safeguards; and
- If in doubt, err on the side of assuring protection of human rights.

## 3. A HIERARCHY OF RIGHTS

The ECHR recognises a number of fundamental rights of the individual which need to be respected at all times by the State, private citizens and organisations. However, especially in a public health crisis, such rights can appear in conflict with each other. Therefore, it is crucial to have a framework to deal with such conflicts. The Convention distinguishes between different hierarchical categories of rights, confirmed by a consolidated line of case law and scholarly opinion: [12]

- **Unqualified and non-derogable rights**, which cannot be limited, even in time of crisis; to this category belong for example the rights to life (Article 2 ECHR) and freedom from ill treatment (Article 3 ECHR) which are interpreted extensively to include the right to health;
- **Rights derogable in time of war or other public emergency** such as the right to liberty (Article 5 ECHR); and
- **Qualified rights**, which may be limited by law if the limitation is a proportionate means to achieve a legitimate aim (such as protection of health); included in this category is the right to private and family life (Article 8 ECHR). In this context, a restriction is judged as proportional if:

a) the objective is sufficiently important;

b) the limitation is rationally connected to that objective;

c) a less intrusive measure is not available; and

d) a fair balance has been struck between the rights of the individual and the interests of the community. [13]

In light of this hierarchy the right to life prevails over the others. Therefore, the government or other authority could not avoid or lift restrictions, or refrain from preventative interventions when the life of even a small group of people is at risk. This would be even more so if the restrictions imposed are of relatively low impact to the rest of the population.

### Key Points

- Human rights law distinguishes among categories of rights depending on whether and to what extent they can be limited to protect competing rights.
- The Right to Life has generally taken precedence over other rights (e.g. Liberty or Privacy).
- Lifting light restrictions (e.g. compulsory face-masks or social distancing) while the virus poses serious risks even only for a minority of people appears to go against human rights.

## 4. TO WHAT EXTENT DOES THE STATE HAVE A DUTY TO PROTECT PEOPLE'S LIVES?

### 4.1 Interpreting the Right to Life

The European Court of Human Rights (ECtHR), which is in charge of adjudicating human rights violations in Europe and has jurisdiction over the UK as well, has stressed that, when there is a threat to life of which a State knows or ought to know, [14] Article 2 requires the State to put in place 'all reasonable steps' [15] to prevent one or more citizens' life being avoidably put at risk. [16] Therefore, governments have not only a negative duty not to kill, but also a positive obligation to prevent reasonably avoidable deaths. [16] [17] [18] In particular, actions required from a government can consist of both regulatory measures of prevention and of adequately informing the public about life-threatening emergencies. [19, pp. para. 89-118]

However, a government does not have a duty to absolutely avoid any possible risk. The ECtHR has clarified that Article 2 obligations cannot consist of an 'impossible or disproportionate burden' on national authorities. [14, p. para 116] In this, the Court recognises that national authorities should have a large margin of appreciation [14] (i.e. scope to determine what measures are or are not needed) as they are 'better placed than the Court to evaluate the relevant demands in view of the scarce resources'. [20, p. para. 175]

However, this does not allow States to use, for example, a lack of resources as an excuse not to fulfil their Article 2 obligations.

In this regard, the ECtHR case law shows that, in order to free a government from liability, an intervention must be not just costly but exceedingly or unreasonably costly. The ECtHR found States had violated Article 2 ECHR, independently of resource constraints, in a number of cases in which either:

- A citizen's life was knowingly put in danger by denial of life-saving emergency treatment; or
- There was a systemic dysfunction in hospital services of which national authorities ought to have known. [20]

Such cases have concerned, among other things:

- Denial of health care which the State had made available to the rest of the population; [21]
- The death of a child who had been refused care due to lack of space in several hospitals; [22]
- Disregard of expert advice leading to construction of dwellings destroyed by a landslide. [19]

In the case *Budayeva and others v. Russia*, relating to the context of natural disasters, the ECtHR provides useful indications that may be applied in the Covid-19 crisis. [17]

#### *Budayeva and others v. Russia (2008)*

Here the ECtHR affirmed that the Russian government had violated the right to life of some of their citizens in the face of a catastrophic mudslide, having failed to maintain mud-protection infrastructures to contain the slide, inform the population on how to avoid the slide, start a public enquiry and take other precautions.

Of course, there is always room for debate as to what are 'reasonable steps' to protect citizens' right to life in any concrete case. The answer to the question depends, on the one hand, on the seriousness of the threat and the extent to which an intervention can reduce the risk of mortality, and, on the other hand, on the intervention not being unreasonably costly. Nonetheless, the measures the Courts required from Russia in the *Budayeva* case appear comparable to many Covid-19 containment measures, both requiring containment and information on how to avoid a harmful natural agent.

The ECtHR has dealt with Covid-19-related measures in the case *Fenech v Malta*. The judgement concerns detention conditions during Covid-19, so it might not be squarely applicable to Covid-19 containment outside prisons. [23] Nonetheless it gives an idea of what measures might be acceptable in a pandemic.

*Fenech v. Malta (2022)*

A prisoner, who only had one kidney, complained both that the restrictions imposed to contain Covid-19 in the prison made his detention conditions in breach of Article 3 ECHR (the right not to be subjected to inhuman or degrading treatment), and that the prison had not done enough to protect him against Covid-19. The ECtHR rejected the claim stating that:

- Suspending access to the gym, family visits, church or other activities was a legitimate measure to contain the virus;
- The prison had the obligation to put in place measures to deal with Covid-19 provided this did not pose an excessive burden in view of the practical demands of imprisonment;
- The prison had discharged their obligation because:
  - the prison was in lockdown, with external visitors not allowed in, and staff wearing protective equipment and working weekly shifts to limit exposure to outside factors;
  - the prison was constantly disinfected and face masks were provided;
  - officials could not enter the facility without a temperature check, and inmates were transferred to a 'quarantine zone' in case of fever;
  - Covid-19 vaccination was available to inmates from early 2021.

#### 4.2 Actions necessary and proportional to protect the right to life

### Lockdowns and containment measures

In light of the criteria above, Article 2 ECHR seems to justify lockdowns and other severe restrictions in the first wave of the pandemic. Indeed, they appeared proportional (at least temporarily) in light of global mortality data, pressure on hospitals and lack of treatment/vaccines.

- Some scholars consider there to have been a human rights violation in the UK government's delay in enacting measures even milder than a full lockdown in February to the first half of March 2020 (e.g. mandating, rather than just advising face masks, social distancing and working from home). [24] Indeed, in light of the news coming from China, South Korea, Iran and Italy, the seriousness of the threat appeared foreseeable. Moreover, also in light of the precautionary principle, [25] which, in the absence of precise data, requires public authorities to take the safer route, even strict measures at this stage could have been proportionate. In light of the number of victims and disruption of health services the virus was creating at that time, even very high costs would have been justifiable at least in the acute phase of the epidemic. This is made evident also by the fact that, in the first wave of the pandemic, the UK had one of the highest death counts internationally, despite been touched relatively late by the virus, [26] and that countries such as South Korea [27] and New Zealand, [28] which imposed timely containment measures, suffered much less from Covid-19.

- Now, after two years, in light of the milder symptoms caused by the Omicron variant and with better knowledge on virus transmission and symptoms, and better means to contrast them, the seriousness of the threat is as such that Covid-19 lockdowns would at this stage indeed seem disproportionate. Therefore, we can rely on other tools such as mass vaccination (complemented with face masks).
- However, the choice, made by the UK government for England, on 19th July 2021, and then again after the Christmas Omicron spike, to lift the duty to wear masks in public places, despite significant infection rates seems in contrast with human rights. This consideration applies no matter how low the number of people who get seriously ill due to Covid-19. Indeed, what's important is the single individual's health and anyway, face masks mandates are a low cost measure which does not infringe competing rights.
- In addition, now, in light of the new spike of infections in June 2022 and the appearance of new variants, [29] it is concerning that the government does not seem to have a defined plan ready to (re-)enter into force should infections constitute again a threat to the health of some categories of citizens or to the regular functioning of public services.
- More tricky would be the case when a new lockdown could be on the cards (e.g. because of a new variant); these measures might be justifiable if absolutely necessary, but they impact on other fundamental rights (e.g. liberty or respect for private life), so we have to look at the conditions under which these rights can be limited and sit at the boundaries of Article 2 ECHR.

## Vaccine Mandates

The UK government's decision to refrain from imposing vaccine mandates while infections are still high and the NHS is struggling with long waiting lists [30] could have been against Article 2 ECHR. It is estimated that Covid-19 vaccines can diminish the probability of transmitting the virus up to 40-50% [31] and do very significantly diminish the probability that someone who is infected will end up in hospital due to Covid-19; [32] after more than 11 billion doses distributed in the world we can now also say that they pose a low risk of adverse events.

- Vaccine mandates are often branded as an unjustifiable infringement of the autonomy of those who do not want to get vaccinated. However, not imposing them could impact the autonomy and the right to life of vulnerable citizens. Therefore, there might be a human rights argument in favour of vaccine mandates, if failing to impose them might put in danger the lives of vulnerable citizens or force them to significantly limit their freedom to not endanger their lives. This might be so even if infections or ICU occupancies are momentarily low. Indeed, vaccinations are a treatment administered, ideally, in a moment of calm to prevent future infections. Therefore, the test should be whether the Covid-19 threat is likely to be serious in the future, rather than only if it is serious at the moment. In this regard, in light of the raising number of infections, it is also concerning that public and media attention on the Covid-19 vaccination is fading away and that, meanwhile vaccine induced immunity is decreasing, there does not seem to be a clear plan for further boosters for people under 65.
- Even firmly liberal and libertarian thinkers recognise that individual autonomy can be limited to prevent harm to others. [33] In a recent case on vaccine mandates for children (see below section 5) the ECtHR has stressed that 'the Court has since long recognised that in democratic societies it may be necessary to place restrictions on an individual's freedom in order [...] to ensure that everyone's rights are respected'. [18] Not taking into account such considerations would result in the (mis)use of classical individualist clinical ethics paradigms (rather than robust public health ethics frameworks), which are not equipped to deal with pandemics [11] and in which we have seen the shortcomings during the Covid-19 emergency.
- The Nuffield Council on Bioethics expressed opposition to the initially-proposed vaccine mandates for health and social care workers, arguing that not enough had been done to inform and persuade people to get vaccinated, and that the government should try that before jumping directly to vaccine mandates. [34] The argument has a lot of merit from an ethical perspective, in line with the Nuffield Council's idea that governments should approach public health measures against the idea of escalating a ladder of increasingly burdensome interventions. However, human rights are about giving immediate protection, while persuasion campaigns take time (and do not necessarily work). Therefore, under human rights norms, the government could not refrain from acting simply because mandates could be avoided by less controversial actions they have not, in the event, put in place.

## 5. THE RIGHT TO LIBERTY AND TO A PRIVATE AND FAMILY LIFE

In light of the points made above, the question then emerges of when the rights to liberty or to autonomy should be protected. With regard to the former, Article 5 ECHR states that no one shall be deprived of their liberty, other than in exceptional cases including 'the prevention of the spreading of infectious diseases'. [35] In such a case, a detained person needs to be clearly informed of why and how long they will be detained and has to be guaranteed the right to challenge their status in front of a Court.

The case *Enhorn v. Sweden*, concerning the detention for public health purposes of a person with HIV, specifies that the deprivation needs to be in accordance with domestic law, that such a law needs to set out clear rules and be predictable in its implementation (especially with regard to the duration), that the deprivation needs to be necessary (that is, there are no viable, less restrictive measures that could be taken) and proportional (that is, its costs should not outweigh the benefits). [36]

The ECtHR has specified that these limitations are 'not concerned with mere restrictions on liberty of movement' but only with outright deprivations of liberty. [35]

Therefore, in order to see if a certain Covid-19 restriction might clash with Article 5 ECHR we need to ask:

- Is there a deprivation of liberty (and not a mere movement restriction)?
- If yes, is it directed to/necessary for stopping the spread of Covid-19?
- Is it established by law?
- Are all safeguards respected?

In light of the case law of the European Court of Human Rights and the UK Supreme Court (who in the case *Cheshire West* laid down the ‘acid test of liberty deprivation’ [37]) to establish if someone has been deprived of their liberty we have to consider if they are:

- Able to maintain relations with the outside world; [35]
- Confined to a restricted area; [35]
- Under coercion; [38] [39]
- Made unable to work; [40]
- Under complete supervision and control and not free to leave (the ‘acid test’); [37]
- Under movement restrictions ‘in the interests of the common good’. [35]

As noted by Dominic Ruck Keene, in light of these criteria the lockdowns that we have seen in England (and by analogy in other parts of the UK) do not appear to be a deprivation of liberty and are acceptable under Article 5 ECHR (also considering that they were imposed by law and were needed to contain a pandemic). Indeed:

- People were not prevented from working, only encouraged to work from home and allowed “to travel for the purposes of work or to provide voluntary or charitable services” (Coronavirus Restrictions (England) Regulations 2020 6(2)(f));
- People were not prevented from having social contact through, for example telephone, email, video;
- People could still change their home where reasonably necessary; and
- There was no supervision or monitoring within the home. [41]

For similar reasons the ECtHR has declared inadmissible an appeal against the Romanian lockdown declaring that it did not constitute a deprivation of liberty. [42] Likewise, the High Court and the Court of Appeal have dismissed appeals against the lockdown in Northern Ireland. [43]

Of course, also in this case measures have to be proportional. Some scholars have argued that Covid-19 lockdowns were disproportionate, especially in relation to vulnerable groups such as women, children or older people to whom the lockdowns themselves might have done equal if not worse harm (e.g. due to loneliness and vulnerability to domestic violence) than Covid-19. [6] [44] However, also here we have to observe the principle of precaution, which lowers the proportionality bar. [25] Indeed, when lockdowns had been imposed we could not really know whether milder measures would have worked. In addition, in relation to vulnerable categories, the question would have been not so much whether to impose a general lockdown, but how to organise it. Indeed, where the UK government has probably violated human rights is in failing to really monitor the impact of restrictions on vulnerable people and adjust rules and support services accordingly.

Nonetheless, measures potentially constituting a deprivation of liberty were those contained in Schedule 21 of the Coronavirus Act 2020. During the acute phases of the pandemic, authorised delegates of the health secretary, public health consultants, police constables and immigration officers, were empowered through this Schedule to detain a person in a specified place for a specified period and keep them in isolation, if they had reasonable grounds to believe they were infectious and if this was judged necessary and proportional to prevent the spread of ‘Sars-Cov2’. However, such measures seem in line with the criteria in *Enhorn v Sweden*, as they are established according to clear criteria set out in the law. Indeed, the Coronavirus Act specified a 14-day limit which could be exceeded if the person was still infectious, but only subject to a daily review. It also outlined extensive procedural safeguards and a court-based appeals process. [45] Doubts were expressed in relation to the fact that the powers contemplated in Schedule 21 could have been exercised also by people without specific expertise in public health. [45] This concern had merit in the first months of the pandemic, but probably was made less serious by the emergence of PCR and LAT flow tests, allowing also non-medically trained people to make judgements on someone’s Covid-19 infection status.

However, in the case of *Communauté Genevoise D’Action Syndicale (CGAS) v Switzerland*, the ECtHR declared that the Swiss ban on public gatherings was not a proportional means to protect public health and the right to life. [46] The Court’s arguments centred on the length of the measures and the seriousness of the sanctions.

### *Communauté Genevoise D'Action Syndicale (CGAS) v Switzerland (2022)*

A trade union complained of the deprivation of the right to organise public demonstrations by a Covid-19 measure by the Swiss government which banned all demonstrations for ten weeks. The Court upheld the claim considering the Swiss ban disproportionate in light of the:

- Importance of freedom of assembly;
- Absence of a previous judicial review;
- Absolute nature of the ban;
- Excessive duration;
- Excessive sanctions which entailed a custodial sentence of up to three years; and
- Fact that other indoor gatherings were still permitted.

This judgement has proven controversial and was far from unanimous, with three of the seven judges dissenting (disagreeing with the decision). In their dissenting opinions these judges criticise the majority, observing in particular how, in light of the unpredictable development of the pandemic, a 10 week ban could not have been seen as too long, and that the Court had in the past approved stricter public health measures. Probably, the decision was indeed triggered by a consciousness of how risky blanket anti-demonstration measures are and by some inconsistencies and shortcomings in the design of the specific policy, which indeed could have created the suspicion that the pandemic was rather being used as an excuse for silencing dissent. Anyway, it seems more of a question of how containment measures should be imposed rather than if they are allowed at all.

With regard to autonomy, the ECtHR is clear that the fundamental right to refuse medical treatment is

protected under Article 8 ECHR (Right to Respect for Private and Family Life). Therefore, the question arises of whether mandatory Covid-19 vaccination can violate human rights. Article 8(2) ECHR allows interferences with the right to private and family life if they are:

- Imposed by law;
- Necessary in a democratic society to further legitimate aims among which there are 'public safety' and 'health'.

The case of *Vavříčka and Others v. the Czech Republic* [18] seems to conclude that vaccine mandates meet such requirements and comply with human rights. The judgement concerns vaccination of children, so it does not constitute a specific precedent in relation to Covid-19 vaccination mandates for the whole adult population. However, the Court's reasoning seems to provide a legal basis to justify such measures too.

### *Vavříčka and Others v. the Czech Republic (2020)*

The case, started in 2013, concerned six families who challenged the legitimacy of vaccine mandates imposed on school children in relation to vaccinations against tuberculosis, poliomyelitis, hepatitis B and other diseases. The ECtHR concluded that:

- Compulsory vaccination constitutes an interference with the right to respect for private life;
- However, such an interference is legitimate (even not in a pandemic or public health crisis) as it protects against infectious diseases, especially for those who cannot get vaccinated or remain at risk even if vaccinated, in line with Articles 2 and 8 ECHR
- Vaccine mandates are legitimate even if there are rare severe side-effects;
- The State has a duty to put in place all precautions to avoid these side-effects (e.g. checking for possible contraindications) and allow for necessary exemptions;
- In this case, the vaccine is in the best interests of the children as it will provide a secure means of protection against serious diseases they might catch.

It may be objected that mandating a vaccination for children, who lack capacity to decide for themselves and whose best interests it serves, is quite different from imposing a mandate on adults who have a fairly low probability of suffering seriously from a certain disease (as in the case of Covid-19 for most 20-30 year-olds). However, the main justification at the basis of the Court's decision centres not on the incapacity and best interests of the individuals concerned, but on the principle of solidarity binding all members of society, and on the duty of every citizen to protect/not harm others. Indeed, the ECtHR stresses that 'it cannot be regarded as disproportionate for a State to require those for whom vaccination represents a remote risk to health to accept this universally practised protective measure, as a matter of legal duty and in the name of social solidarity' (para. 306) and that 'a restriction, in the form of an obligation to vaccinate, may be placed on the applicants' right

## 6. CONCLUSION

In summary, human rights provide an important framing for ethical evaluation, not least as they're legally binding, morally based, and aimed specifically at understanding the balance between individual and public interest, and the responsibilities of governments. In this sense, a failure to have regard to rights is not acceptable in any liberal and democratic society. Human rights make it clear that there is a hierarchy of rights and that during a crisis it is crucial that policies conform to a proportionality standard. Covid-19 has presented multiple situations in which there is disagreement on the ethics of policy decisions. Nevertheless, by looking into the detail of how human rights arguments operate in practice, we can achieve a firmer understanding that can guide both evaluation and practice. A close examination of relevant principles and case law show that most measures to contain the Covid-19 emergency endorsed by public health experts are compliant with human rights law. Therefore, the concerns expressed in this sense by some scholars, politicians, anti-mask and anti-vax movements are often not justified. Nonetheless, such policies remain politically and ethically sensitive. Therefore, policy-makers, on top of putting in place measures to protect the right to life, need to make sure they properly communicate them to their citizens, they involve the public as much as possible in such choices and put also in place the necessary measures to soften the impact of their policies on the citizens' liberty, private life and income.

to physical integrity in order to protect the health of all members of society' (para. 2 of the First Concurring Opinion). It would be quite strange if such solidarity duties would disappear once one becomes an adult or the circumstances require that also adults get vaccinated to protect society from infections.

### Key Points

- Lockdowns do not violate the Right to Liberty.
- Lockdowns and movement restrictions were proportional in the first wave of the pandemic.
- Vaccine mandates are in line with human rights.

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#### About this submission

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#### About the UK Pandemic Ethics Accelerator

The UK Ethics Accelerator is a UKRI/AHRC-funded initiative that aims to bring UK ethics research expertise to bear on the multiple, ongoing ethical challenges arising during a pandemic emergency. We provide rapid evidence, guidance, and critical analysis to decision-makers across science, medicine, government, and public health. We also facilitate public stakeholder deliberation around key ethical challenges.