

STATEMENT ON HUMAN RIGHTS CONSIDERATIONS RELEVANT TO “VACCINE PASS” AND SIMILAR DOCUMENTS



Committee on Bioethics (DH-BIO)
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In response to the COVID-19 pandemic, the Council of Europe member states have taken measures, in accordance with their obligations under the provisions of the European Convention on Human Rights (ECHR) and the European Social Charter (ESC), to protect human life and health¹.

Restrictions to certain rights and fundamental freedoms (including the right to freedom of movement, as guaranteed by Article 2 of Protocol 4 of the ECHR), aimed at the protection of public health, are in principle permissible, provided that they are prescribed by law, necessary and proportionate.

In this context, the availability of vaccines, as well as the development of rapid antigen tests are essential tools in the management of the pandemic response.

The discussion regarding COVID-19 “vaccine passes” or similar documents containing information confirming a person has been vaccinated, has had a previous SARS-CoV-2 infection, or has had a non-detected COVID-19 test, has gained momentum with the roll-out of vaccination programmes, and in the context of relaxing public health restrictions, in particular to the right to freedom of movement

When considering this issue, it is important to clarify what is meant by such “passes”, to consider the purposes for which they could be used and to examine the ethical and human rights challenges that such initiative(s) may raise, considering that scientific knowledge remains limited and developments in this field require close attention.

As reaffirmed in our previous [Statement on COVID-19 and vaccine](#)², “*The public health crisis caused by a pandemic and the measures taken to address it must not undermine the respect for human dignity and the protection of human rights.*”

This statement aims at outlining the human rights principles at stake and the critical importance of safeguarding human rights and fundamental freedoms when considering “vaccine pass” or similar documents.

“Vaccination certificates”, “passes” and the purposes of their use

A “vaccination certificate” provides evidence of the administration of a particular vaccine to the person for whom it is issued. It has already been used for medical purposes and required to help preventing the spread of epidemics when travelling (see also Art. 35 and 36 of the International Health Regulation³). In the strategy against the current pandemic it is fully relevant. The work carried out at European and global level to harmonise such certification is to be supported in this context, to facilitate cooperation in the fight against the COVID-19.

The same applies in principle to the introduction of “passes”, which also contain information on whether someone has been previously infected with SARS-CoV-2 or the result of a COVID-19 test; such “passes” can only facilitate the measures which aim to limit the spread of the COVID-19.

¹ to protect the right to life (Article 2 ECHR) and the health of citizens (Article 11 ESC).

² <https://rm.coe.int/dh-bio-statement-vaccines-e/1680a12785>

³ https://www.who.int/health-topics/international-health-regulations#tab=tab_1

On the other hand, using “vaccination certificate” or confirmation of previous infection for non-medical purposes, without any other alternative option such as negative test result and/or quarantine measures raise many/important human rights issues. This is particularly pertinent when used to give exclusive access to services or to specific areas or as a requirement for entering a country i.e. by lifting relevant restrictions on fundamental rights only for persons, who could show a vaccination certificate or prove their previous infection. Individuals who do not have such certification or cannot prove a previous infection, would indeed be excluded from such withdrawal of the restrictions on the enjoyment of fundamental rights.

Any use of “vaccination certificate”, proof of previous infection or test results should not deviate from the purposes of prevention, protection and the health management of the pandemic.

Risks of discrimination

A difference of treatment between persons with different “immune status” is not necessarily unfair if a range of options remains available to make it possible to benefit from the lifting of restrictions to the enjoyment of the exercise of their rights. At a time of shortage, access to vaccines may be limited to prioritised groups, excluding people below a certain age for instance. Subject to the possibility for everyone to access vaccination, the differentiated treatment of vaccinated or immunised persons and those who cannot prove such a status in the exercise of individual freedoms and access to some services would be likely to bring the principle of non-discrimination into play. This includes risks of discrimination in relation to the right to freedom of movement and to freedom of assembly, but also rights to privacy (see below) and risks of stigmatisation, as underlined by the Secretary General in her information document on “[Protection of human rights and the “vaccine pass”](#)”⁴.

One should also take into account those individuals who, for medical or other reasons, cannot be vaccinated, and keep in mind that test results (and in the case of travel also quarantine) provide alternative means to vaccination certificates when withdrawal of some public health measures is considered.

Furthermore, as underlined in our statement on “COVID-19 and vaccine”, referring to the principle of equitable access to healthcare laid down in Article 3 of the Oviedo Convention, particular attention must be paid to individuals in vulnerable situations and to the exacerbation of inequalities within such groups due to the public health crisis, including in their access to vaccination.

Protection of privacy and personal data

“Vaccination certificate” contain sensitive health related data. The same applies to other health-related information that may appear on “passes”. The obligation to disclose such sensitive personal data and their possible repurpose, including for broader surveillance raise concerns about privacy. Furthermore, the processing of such data and information requires a particular high level of protection.

Digital vaccination certificates or machine-readable certificates certainly allow for more user-friendly processing scenarios and can also be more data protection friendly, if i.e. only the mere vaccination status is enclosed. Also, due to digital signatures, which can be cross checked, digital certificates or “passes” can be more trustworthy than certifications on paper. It has to be noted, that existing universal standards - such as the WHO vaccination certificate - must still be kept in place to not exclude persons from countries or regions, that might not yet have access to a digital or machine readable solution.

⁴ [SG/inf\(2921\)11](#)

However, in particular a digital solution must take into account the sensitivity of that data and entail high data protection and data security standards by design and by default as well as offline and online scenarios. Principles of data minimization and strict purpose limitation as well as other principles of data protection must be applied as underlined by the Consultative Committee of the Convention for the protection of individuals with regard to automatic processing of personal data (T-PD) in its Statement on “COVID-19 vaccination, attestations and personal data protection.”⁵

Scientific uncertainties

Scientific uncertainties are increasing the concerns with regard to human rights raised by the use for non-medical purposes of passes. The robustness of scientific evidence on which health risks assessment is based is a relevant feature when considering the proportionality of the measure. In February 2021, the World Health Organisation recalled that there are still many scientific uncertainties about the duration of immunity and the ability of COVID-19 vaccines to limit transmission ⁶. If the risk of reinfection seems very low within the few months after infection it is not clear yet as to whether vaccination induced immunity will last longer. Furthermore, the lack of infectivity, i.e. the absence of risk of transmission to other people, by fully vaccinated persons remains uncertain, taking also into account the emergence of new variants. These elements are important to take into account when considering the use of passes for non-medical purposes which would be based on the assessment of the individual health risks presented by a person.

Impact on social cohesion and solidarity

Vaccines are critical public health interventions as they mitigate disease at the population level by offering protection to individuals and, depending on the mode of action of the vaccine, curbing community transmission in protecting the person concerned from being affected by COVID-19 but also to limit the possibility for this person to transmit the virus responsible to others. Vaccination can be used to illustrate the indissociable link between human rights, in this case to health protection, responsibility i.e. to protect those who cannot benefit from such vaccination, and solidarity, as an intervention carried out also for the benefit of public health. The use of “passes” for non-medical purposes has the potential to undermine this fundamental link between human rights, responsibility and solidarity, which is essential in the management of the health risks with which all of our societies are confronted. Public health and the collective approach taken in understanding and managing health risks could be overridden by an individualised approach to risk that could increase the inequalities already exacerbated by the pandemic.

Beyond the human rights implications, it could also have unintended social and political consequences. Some may consider that it could create a motivation to be vaccinated thereby reducing the impact of the pandemic. However, it may also have other consequences such as decreasing confidence in the health policy defined by national authorities and the vaccine confidence if it is perceived as an indirect way to impose vaccination.

⁵ [T-PD Statement on “COVID-19 vaccination, attestations and personal data](#)

⁶ <https://www.who.int/news-room/articles-detail/interim-position-paper-considerations-regarding-proof-of-COVID-19-vaccination-for-international-travellers>

Conclusions

The Committee on Bioethics notes the current scientific uncertainties regarding the duration of immunity induced by either vaccine or infection, the impact of COVID-19 vaccines on viral transmission and the variability of COVID-19 tests, and in the context of limited vaccine supplies, draws attention on the human rights challenges raised by the use of «passes». It calls for careful deliberation upon these challenges and for steps being taken to ensure that the human rights and fundamental freedoms of all individuals are promoted and protected.

Furthermore, the DH-BIO concurs with the conclusions of the Secretary General of the Council of Europe that *“combating the current pandemic depends, above all, on the increased efforts to produce and administer vaccines, with particular attention to people in vulnerable situations, so that restrictions to individual freedoms and constraints imposed can be progressively reviewed as the population acquires greater immunity, taking into account acquired scientific knowledge.”*