Since January 2020 Elsevier has created a COVID-19 resource centre with free information in English and Mandarin on the novel coronavirus COVID-19. The COVID-19 resource centre is hosted on Elsevier Connect, the company's public news and information website.

Vacunas

www.elsevier.es/vac

Special article

The vaccine-condition or vaccination passport and its eventual fit into a broad recommended vaccination framework against COVID-19☆

C. Cierco Seira[a]

[a] Departamento de Derecho Público, Universidad de Lleida, Lleida, Spain

ARTICLE INFO

Article history:
Received 13 May 2021
Accepted 27 May 2021
Available online 1 June 2021

Keywords:
Vaccine-condition
Vaccination passport
COVID-19
Nudging
Individual rights
Mandatory vaccination

ABSTRACT

It is important to think about the eventual application of a COVID-19 vaccination certificate as an eligibility criterion to carry out certain activities and to discuss in advance the problems that the use of this tool may pose in legal terms. To this end, we must begin by stating the assumptions that would be necessary to justify its implantation, including scientific consensus on the scope of the immunity granted by COVID-19 vaccines, especially in blocking transmission in the community. Likewise, it emphasizes the importance of broadening the view in the sense of internalizing that the passport or vaccination pass constitutes only one of the many options within a rich catalog of possibilities when it comes to reinforcing the recommended vaccination model through incentives adopted in the Vaccination Strategy against COVID-19, including the use of nudging. In any case, if conditionality is installed and expanded to the extent of significantly influencing daily life, it could lead to a kind of indirect obligation, with the risk of dysfunctions in terms of equality and systemic coherence if the public powers do not contribute to clearly define the legal limits beforehand and to drive a process that in itself could be dispersed and disorderly.

La vacuna-condición o el pasaporte de vacunación y su eventual encaje en un marco general de vacunación recomendada contra la COVID-19

Palabras clave:
Vacuna-condición
Pasaporte de vacunación
COVID-19
Nudging
Derechos y libertades individuales
Mandatos de vacunación

RESUMEN

Es importante pensar en la eventual aplicación del certificado de vacunación contra la COVID-19 como condición para el ejercicio de actividades y reflexionar de manera anticipada acerca de los problemas que en términos jurídicos puede plantear el empleo de esta técnica. A tal efecto, hay que comenzar por significar los presupuestos que serían necesarios para justificar su activación, incluyendo el consenso científico sobre el alcance de la inmunidad concedida por las vacunas COVID-19, señaladamente en su faceta colectiva de bloqueo de la transmisión. Asimismo, se hace hincapié en la importancia de ampliar las

DOI of original article: https://doi.org/10.1016/j.vacun.2021.02.001.
☆ Please cite this article as: Cierco Seira C. La vacuna-condición o el pasaporte de vacunación y su eventual encaje en un marco general de vacunación recomendada contra la COVID-19. Vacunas. 2021;22:82–88.
E-mail address: cesar.cierco@udl.cat
https://doi.org/10.1016/j.vacune.2021.05.002
2445-1460/

miras en el sentido de interiorizar que el pasaporte o pase de vacunación constituye solo una de las muchas opciones dentro de un rico catálogo de posibilidades a la hora de reforzar, mediante incentivos, el modelo de vacunación recomendada y adoptado en la Estrategia de vacunación contra la COVID-19, contando entre ellas con la utilización del *nudging*. En todo caso, de instalarse y expandirse al cabo una condicionalidad en grado de influir significativamente en lo cotidiano, podría desembocarse en una suerte de obligatoriedad indirecta, con el riesgo de disfunciones en términos de igualdad y coherencia sistémica si los poderes públicos no contribuyen a perfilar con claridad antes los límites legales y a encauzar un proceso que de suyo podría ser disperso y desordenado.

Introduction

A feature that has become common to the systems of recommended vaccination is that the voluntary nature of the vaccine is emphasized, that it is not forced on anyone. However, by dint of highlighting this point, one sometimes falls into a certain demagogy. To begin with, because it takes away from the value of the recommendation itself and, subsequently, from the presence of the will and interest of the public authorities in the vaccination being widespread with a view to preserving the general interest of collective prevention, especially wherever it entails herd immunity. In other words, the fact that it is voluntary does not mean that the collective interest has folded to the individual interest; it is simply that it has not been deemed strategically necessary to brandish that interest in order to impose a duty.[1] This means that if voluntary generalization does not come into being, it does not lead to the coverages considered optimal or, simply, there is a pressing need to accelerate it for healthcare reasons, it is likely that the collective interest pressure for it to be channeled, whether by making it mandatory or, if not, by means of other 'watered down' imperative arrangements, such as restricting activities.

Stimulus to receive the vaccination as a complement to the recommendation and projections with respect to COVID-19

In a recommended vaccination model, first of all, one must enhance access to the vaccine. That being said, it can occur that, no matter how smooth and effective the path to vaccination is (publicly provided, free-of-charge, providing the location. . .), it may be necessary to introduce additional incentives to be vaccinated from outside healthcare services. A kind of parallel encouragement that seeks to entice citizens to get vaccinated, combining or resorting to stimuli; inducements that can take on many different formats and that, similarly, must be articulated in many ways, whether with a positive spin, giving a prize or boosting chances to win the prize, or with a negative spin, by losing something or making something more difficult to attain. The encouragement, *lato sensu*, is characterized by its versatility and diversity, as explained in the administrative literature since antiquity. Moreover, I would say that the use of these stimuli has along history as it relates to traditional systematic vaccination; emphasizing, above and beyond everything else, establishing links of varying intensity and modulation between vaccination and enrolling children in school.[2]

Especially because we are more than familiar with the tune, we would be wise to pay attention to the news that we receive on a daily basis about the possible mandatory nature of the COVID-19 vaccination certificate in many spheres: in the labor market, for leisure activities, to travel, and so forth. I am not blind to the fact that some of these news stories strike me as being almost a trial balloon, but the truth is that the 'vaccine passport' is definitely gaining. The language is varied and I am afraid that it is semantically inaccurate – pass, laissez-passer, licence, permit – which is suggestive of the COVID-19 vaccination certificate, record, or card eventaully becoming a precondition to being able to carry out daily activities and, in the end, function normally in social life. There is a clear drive in that direction that has to do, not only with the generalization of immunization, but also with the social and economic needs to generate a more flexible framework that facilitates people's movement and circulation. In this momentum behind the *vaccine passport*, not only is there the concern for protecting the group's health, but the very survival itself or viability of certain social and economic activities where the search for an equitable balance with controlling the pandemic finds this technique to be a way out that enables more intense development to take place.

If the vaccine passport does finally come into being, it goes without saying that a series of problems will arise that we need to be alert to, especially in our country, bearing in mind that our modern systematic vaccination system track record, with childhood rates at excellent levels, has led us to all but abandon the need to ponder this kind of strong instrumental connections between vaccination and certain activities. Only tangentially do we find applications similar to this idea of vaccination passport or laissez-passer. What comes to mind for me now is making enrollment in some preschool daycare centers contingent upon it. In any case, it has nothing to do with countries whose immunizatiobn system does essential rest on these kinds of proposals, such as the United States. This being so, the emergence of the COVID-19 vaccination passport can catch us off guard; hence, the importance of proceeding in reflecting and devising one, even though, later on, its impact might turn out to be less consequential or not even be implemented as a firm condition. In short, what are the issues that surround this instrument?

In light of a hypothetical vaccine passport as a condition: variants and a first draft of problems

To begin with, it is important to determine that the severity of the challenge associated with a hypothetical vaccine passport will be set by how tough or mild the condition is, which, in turn, will depend on the nature of the activities compromised by it A) as well as the existence of affordable and functional alternatives B), not to mention the knock-on or comparative effect that the global character of the pandemia could provoke, especially through international travel C).

A. If the COVID-19 vaccination certificate becomes mandatory to access establishments or to carry out relevant daily activities, it is logical that the model's center of gravity tilt in the direction of it being olbigatory. Not suprisingly, in areas where school enrollment is contingent affected, given its universal vocation, the system is generally thought to be mandatory *de facto* and, clearly, the stricter it is, the greater the friction with individual rights and freedoms: with those that are substantially related to the activity affected (the right to education, freedom of movement, free choice of profession or election of trade, etc.), but also with the underlying freedom of thought or religion, and, above all, with the principle of equality and prohibition of discrimination.

It cannot be overstated that, within the framework of a recommended option, generalizing vaccination cannot be based solely on the reason that justifies the condition. This must be explained against the backdrop of the nature of the activity being constrained and, therefore, of the health interest in decreasing the risk of contagion when performing the activity. It is not a matrix. It is the crux: it is not a matter of choosing the most routine activities to make participating in them contingent up being vaccinated and, in this way, promote the extension of the vaccine by setting up strategic checkpoints, if you will. An approach would be discordant in the sense that it would be incongruent with a general precept based on the recommendation. Prior to that, the tables of the system would have to be turned. What would be coherent is the detection of especially risksy activities, in which upping the precautions associated with transmitting the disease, in this case COVID-19, would be justified on the basis of health. This and only this would be the premise for bolstering and defining whether or not to bring the vaccine passport into effect.

Of course, there is a second specification of interest. The risk of contagion that must justify the requirement of the vaccination in an especially risky activity is largely to care for everyone else. Naturally, this does not mean that the individual aspect must be ignored – it is, of course, present. Without going any further, our laws regarding work risks aimed at protecting the worker are inspired by it, in line with their right to effective health protection at work, when it comes to demanding that the employer make the corresponding vaccine available against the disease to which the worker is exposed while doing their job.[3] Another consideration is, as is the case with the COVID-19 vaccine, that the employer is currently limited by the orderly distribution being the exclusive domain of the healthcare authorities. In fact, in situations such as the one we are currently experiencing, the healthcare authority, in conjunction with the labor authority, as put forth in article 33.2h of the General Law regarding Public Health, is empowered to coordinate the development of preventive and vaccination actions.[4]

In contrast, the vaccine passport responds to or mainly contemplates the collective dimension. It is a matter of neutralizing or minimizing the risk of transmitting it to other, to the people who are going to interact or share space during a given activity. The heart of the matter then, is to identify those especially risky activities, take the appropriate x-ray (instrinsic characteristics, exposure to spread, level of contact, etc.), and draw up an effective strategy. This is a complex undertaking, where, in addition, the nature of the activity and/or the profession in question takes on a very marked reality, undoubtedly highlighting the idiosyncrasy of the world of healthcare.[5,6] From here on, a host of possibilities opens up; among them, of course, the eventual demand for a vaccination certificate as a pre-condition to perform or carry out the activity at hand. But I insist: the vaccination pass is just one of *many* options and, as such, we must bear in mind that there is a series of measures, a repertoire full of possibilities, with more stringest options, such as establishing a duty,[7] but also measures lacking or being less imperative, such as the ones provided by behavioral science through nudging.[8,9] To be sure, one scenario specifically designed to illustrate possibles nudges applied to vaccination against COVID-19 it the one provided in the *Behavioural Considerations for Acceptance and Uptake of Covid-19 Vaccines* document, drafted by the *WHO Technical Advisory Group on Behavioural Insights and Sciences for Health*, in October 2020.[10] Even the technical wording itself of the condition can lead to very diverse expressions of condicionality.[11]

Focusing in on the certificate or proof of vaccination, the truth is that applying this conceptual layout with respect to COVID-19 would not represent the debut of an unprecedented tract in our vaccination panorama. It is apropos to refer to the graphic example of a tattoo and/or piercing. The autonomous government regulation generally requires that anyone who is to perform this activity be vaccinated against certain diseases, such as hepatitis B. That is how it is laid down, for instance, in Catalonia (Decree 90/2008, dated 22 April, art. 11.1); Extremadura (Decree 181/2004, dated 30 November, art. 6.1), or Madrid (Decree 35/2005, dated 10 March, art. 7.1). Given the expansion of the measure and the lack of litigiousness with respect to it, we know that there is a consensus regarding the risk of intravenous transmission of hepatitis B in this context that led to the enactment of a regulatory vaccination madate as a prerequisite to performing [this activity]. It remains to be seen that even within the framework of a system of recommended vaccination imperatives for vaccination can be introduced with a view to exercising certain professions.

In my opinion, dealing with this issue is legally straightforward on an abstract or conceptual plane. Insofar as the legal foundations for such an intervention, it is worth remember that art. 24 of the General Health Lay states that "Public and private activities that, whether direct or indirectly, may negatively impact [people's] health, shall be subject to administrative preventive limitations by the competent bodies, in accordance with the basic regulations of the State". It is therefore a given that insisting on vaccination as a requirement in those places where the risk of spreading the disease is compounded and infecting third parties in carrying out an activity,

while also bearing in mind that, in some cases, those third parties may be particularly vulnerable. Conceptually, I see no reason for this scheme to be altered with regard to COVID-19. I am aware that, when we come down from the abstract to the concrete, the bottom level of the pandemia has the immense disadvantage of being constantly moving. AS a result, the first thing that is needed is a solid scientific consensus to provide the supporting wall; i.e., the scientific foundation that justifies the measure (*a*). Just as I am not blind to the chiaroscuro resulting from the dual soul of the vaccination (*b*) and its disconnected regulation (*c*), and finally, without ruling out that the current scenario is one of a shortage of vaccines, it would not be out of order to establish a condition that is beyond the reach of the person in question (*d*).

a. This *scientific consensus* I am alluiding to must have two clear components. Not only is it imperative that an agreement be reached with respect to the activities where the risk of contagion is significantly compounded, at the same time, there must also be a consensus regarding the virtuality of the vaccines disponibles in order to neutralize or minimize spread. Given that knowledge regarding the sterilizing core and herd immunity afforded by COVID-19 vaccines is still settling in, it is hard to take resolute steps in the imperative direction, especially along the strictest line of making the vaccination certificate an indispensable condition for certain activities or professions. This does not mean either that other, less "harsh" options cannot be explored; this ties in with the previous reflection about the scale of possible measures and the need to shy away from simplistic and reductionist representations with respect to the versatility of the Law in designing and depicting vaccination policies.[12]

b. As I see it, a distinction is not always drawn with the necessary clarity between the two souls, the individual and the colectiva, that vaccination has. At the heart of it, they are inseparable, of course, but, depending on where you place the accent, the responses that the legal framework can lend are highly diverse, especially in terms of the eventual limitation of individual freedoms. The equation is basic: the greater the collective interest, the greater the reason for beaing able to set limits. Naturally, it is not up to the Law to characterize the risk and determination of that extra that would underpin the basis for the demand. It must be understood that said characterization can take its time, as has just been pointed out, until which time it is accepted as evidence in the heart of the scientific community. Therein lies the importance of scientific knowledge surrounding COVID-19 making inroads into certainties and consensus because, undoubtedly, that progress will expedite the mission that the Law must fulfill. Quite another matter is that this dependance of the lex artis or the status of science, in turn, opinging a complex debate surrounding who secures that status, how can it be recognized and, above all, what kind of guarantees can be set up with a view to its sue as the basis for decision making by the healthcare authorities.[13]

c. The last sticking-point results from the *disarry* that the *regulation* of vaccination in Spain suffers. In the absence of a header legal text, wherein the principles are are fixed and a response is given or a framework for response to the main issues, there immediately rises a "stampede" in search of some kind of mooring that can help to disentangle what can or cannot be done, oftentimes endin up in general clauses or regulations that are very distant, because of the subject matter or their age, that lead to hesitation. Hoiw simple it would be for us to resolve these major turning points if a law regarding vaccination were to regulate the possible connections between activity, professions, and vaccines!

d. As long as the horizon of access to COVID-19 vaccines is characterized by *scarcity* and regulated, prioritized access, it is obvious that the field of the vaccine-condition is more conostricted. This is not only because you cannot stimulate sooomeone to do something that, in fact, is not within their hands to do, but also because of the *discrimination* that it would give rise to in the interim, putting the priority groups in a situation of advantage that, perhaps, may have nothing to do with the reasons that justified the precedence. Not in vain, take note that at the heart of some of the apprehensions expressed by international organizations as regards the COVID-19 vaccination passport or pass are precisely the inequalities with respect to access to these vaccines and, what is more, the set of priviledges that can emerge, which is hard to defend under the lens of equality in public health. The status of being vaccinated, far from being a sign of solidarity, might turn into a sign of priviledge. Consequently, it must be very clear that the vaccination pass recognizes beforehand a scenario of universal, genuine, and effective access to COVID-19 vaccines.

B. Precisely if we do not lose sight of the fact that the final aim is to give special protection to carrying out the riskiest activities from a perspective of *alterum non laedere,* within a context of recommended vaccination, can we understand that the vaccine passport cannot be set up as the sole pivot if there are other alternatives in a position of effectively safeguarding that objetive. In order for COVID-19 vaccination to be articulated as an absolute condition, *sine qua non*, with the general rule of thumb being that it is a recommendation, the presence must be ruled out of other paths that are susceptible to yielding analogous guarantees, in both healthcare and operative terms, with a view to neutralizing or decreasing the risk of transmission to the other participants (colleagues at work, users. . .). In other words, as long as COVID-19 vaccination is recommended as a rule, alternative proof of lack of contagion risk can only be excluede if they are not comparable in their preventive virtuality or if their management is unfeasible or compromises the general strategy of the healthcare authority. We know that in this regard, the pandemia poses a unique scenario in comparison to the traditional vaccination system, in that the vaccines that are currently included in the schedule have no "reasonable competitors" that provide similar preventive health guarantees and that are also practicable in a large-scale implementation. That is why it can be subject to following the vaccination schedule, without *tertium genus*, school enrollment in many countries. On the subject of COVID-19, however, the development of detection tests, the assay (PCR, antigens), suggests or, at the very least, enables [us] to posit the existence of an alternative capable of guaranteeing a similar degree of safety that the person does not represent a risk of transmission for the other people participating in the activity – leaving aside the scientific debate surrounding safety they offer depending on the type or use made of them.

Quite another matter is appealing to the existence of a natural path toward achieving immunity by deliberately being exposed to contagion. Leaving aside the doubts that hover

over the properties of the immunity attained in this way, many qualified international bodies, beginning with the World Health Organization, have expressed how a strategy based on achieving populational immunity by means of massive transmission comprises a head-on attack on the principle of equality in public health and places citizens at serious risk, disregarding without further consideration that to achieve natural immunity one must overcome the disease, which is not guaranteed, inasmuch as it can be fatal or incur serious sequelae, that continue to surprise us. In short, it has been considered that this approach falsely represents COVID-19 as a mild illness that only entails minor discomfort. In this regard, the response given by our Supreme Court takes on special interest in light of the proposition of the right to catch COVID-19 that, in turn, would act as a pretext to disregard the distancing measures imposed; specifically, the mandatory use of the mask. The High Court has been categorical in rejecting it: "The health of the citizens is an essential element of general interest that must acquiesce to public policy. In an unarguable situation of pandemic, such as the one cause by the COVID 19 virus that, is fragrantly not limited to Spain, it is clear that the general interest must prevail over the individual; that is, the right to life oof the majority of the citizens over the individual presentense here exercised from contracting the virus to acquire immunity".[14] That is why the clarification of the value given to the proof of having overcome the disease versus that of having been vaccinated in a setting of practical use of the vaccination pass becomes an aspect to be strictly delineated. If this relationship is not properly laid out, it can cause serious dysfunctions along the lines of ultimately promoting the intentional pursuit of contagion.

Getting back to the matte of detection tests, it is not so much a matter of confronting testing vs. vaccine, but, on the contrary, taking advantage of the "competition" to astutely turn it into a stimulus to generalizing the vaccine, making the advantages of this option palpable and improving access to it. Without going further, let us consider the effort that has been made for the test to prevail as an alternative to quarnateen withing the framework of international travel during this pandemic. Exceptions aside, it is clear that the vaccine must aspite to prevail, demonstrating all of its advantages. These advantages, beyond the discourse of solidarity or the philosophical underpinnings attached to the collective dimension of vaccination, must also be sought in practicality itself, in the *tête à tête* with the test in ordinary life. Therein, just to refer to some of the elements of comparison that may be decisive, the economic cost, the duration of the certificate, how long it takes to get it, the scope of its being recognized, etc. Efforts must be made then for vaccination to move forward, in gaining traction as a practial means of proving that [a person is] free of risk of contagion, the end, in addition to advancing in the scientific evidence regarding the immunity conferred, [we] must pursue in making access to the vaccine easier, as well as to the documentation or proof of vaccination.

Although any prognosis is intrinsically risky, it is likely that the limitations in universal access to COVID-19 vaccination can make this scenario of living together a short-term reality. In such a case, the vaccine passport, more than as an imperative, will be positioned as a matter of convenience; that is, that it is useful, timely, and beneficial. As such, this position will be much more sympathetic with the general rule of the recommendation, while at the same time, smoothing the way and facilitating access to vaccination, working more in depth on facets that, without the pressure of this competition, may have perhaps been deemed less relevant.

C. Finally, the dimension of the vaccine against COVID-19 condition may find significant support thanks to foreign healthcare and, most notably, international travel arrangements. This is governed by the provisions of the International Health Regulation that contemplates the possibility that States reasonably demand certificates of vaccination as a precondition to the entrance of travellers.[15] Not in vain, the vaccination certificate has historically found one of its main setting for application in foreign healthcare, with outstanding developments in the area of standardization, for example, of the *carte jaune* or *yellow card* as one vivid manifestation. It goes without saying that the World Health Organization is concerned about the application of the International Health Regulation Reglamento as it pertains to the vaccine against COVID-19 becoming a mottled world map, without agreement, among other reasons for the implications that it would have in terms of equality, in light of the unequal acceso to the vaccine in different places. Hence its being hesitant for the time being. It is worth mentioning that among the temporary recommendations to the States that arose from the sixth meeting of the, convened by the Director General of the World Health Organization (14 January 2021), we find: "At the present time, do not introduce requirements of proof of vaccination or immunity for international travel as a condition of entry as there are still critical unknowns regarding the efficacy of vaccination in reducing transmission and limited availability of vaccines. Proof of vaccination should not exempt international travellers from complying with other travel risk reduction measures".[16]

Final: the importance of the eventual use of the vaccine-condition or vaccine passport being framed by the healthcare authorities in the vaccination strategy

The eventual reception of the mechanism of the vaccine-condition to fight against COVID-19 is not in and of itself incompatible with the general rule of thumb adopted with respect to it being a recommendation, but it may modify the social perception of its being voluntary. To the degree to which the vaccination certificate becomes a pass that is required in the usual social or occupational spheres, the system could lean in favor of making it compulsory. It would not be directly mandatory, expressed in a general legal responsibility to get vaccinated, but it would be indirectly obligatory, based on a constraint that is sensitive to living ordinary life.

A situation in which it is indirectly mandatory can even, as previously stated, lead to the social conviction that, in practice, getting vaccination is imperative to functioning on a daily basis; a situation that, unlike what one may think initially, also does not alleviate the legal issue. Perhaps, in the end, that mantle of "social enforcement" is supposed to suit the recommendation, which would be bolstered by a kind of *opinio iuris sive necessitatis*; that is, a spontaneous social conviction

regarding the obligation that is not impoosed by the public powers. That is the first reading, a superficial one, I would say, of the issue seen that what the recommendation welcomes is not adhesion for the sake of adhesion, but rather the conscious alignment founded on the conviction of the individual and collective virtues of getting immunized. Be that as it may, what should be especially disturbing is indirect obligation becoming consolidated haphazardly; that is, outside the COVID-19 vaccination strategy or plan set forth by the healthcare authorities. In this regard, I would just like to point out that, two of the reasons that, in my opinion, should prompt the legislator to meditate on whether it would be wise to pre-empt this type of situation and take matters into their own hands.

The vaccine-condition must have recognizable margens within the regulations. Without them, we run the very serious risk of vaccination certificate being demanded *sottovoce* or secretly stupulated, unlashing situations of discrimination that are difficult to correct. Therein lies the importance of following the tracking the contexts in which the advisability of demanding the certificate against COVID-19 is already under consideration with the aim of ascertaining whether the legal limits are sufficiently clear. The inconsistencies as to whether such a vaccination requiremente could be offered by means of the devices of occupational risk prevention appear to me to be quite eloquent. Similarly to how the role of nursing staff with respect to the administration of vaccines had to be pinpointed as provided by law, the legislator would be wise to intervene wherever grey areas are detected. Here, the media debates can be taken advantage of as a warning sign, to draw the contours for the sake of legal safety. Bear in mind that not only does vaccination against COVID-19 lack a specific presence in many regulatory sectors that are currently under consideration when talking about the vaccine-condition, it is that in some of those regulatory section, vaccination in general is not even being talked about, which requires risking interpretative operations to be undertaken for the purposes of subsuming the issue in similar suppositions. The cross-sectional nature of public health can, on the other hand, be interpreted withing the general framework of recommendation in a confusing way and jeopardize the cohesiveness of the whole. I am referrring to whether the competent healthcare authorities neglect or abandon their role heading up the immunization policy designing the condicionality that can occur if other authorities or even private operators are the ones developing those conditions under the protection of labor or collegial sectroial regulations. Should this be the case, we will witness possible inconsistencies between the general and the special. We must therefore insist on the importance of the consistency of the whole – that with in the stretegy is summed up with the adjective “common”, which, on the other hand is a carbon copy ot the term applied to the vaccination schedule. With an official policy of immunization that includes the precept of vaccination against COVID-19 as a recommendation, all the parts of the whole, that is to say the imperative expressive, will have to share an underlying consistency. Thus, for spontaneous manifestations of decisive vaccination that made an exception to the recommendation would be disturbing and, consequently, supplant the strategic leadership. Public health is what provides the very best framework to be respected, given its different expressions. No other can give meaning to the existence of a General Law regarding Public Health and, while we tend to advocate for jurisdictional distribution, we would be wise not to lose sight of the fact that it is equally pertinent as regards the relationship between the general and the special. What’s more, there are preventitive measures whose articulation can benefit from a reinfoorced cohesion, such as what, paradigmatically, occurs with vaccination. Therefore, the recommendation is not the minimum available, but rather the strategic option undertaken by the competent authority to lead COVID-19 vaccination. Quite another matter is that this model can admit modulations based on the logic of observing an aggravated or accentuated risk, whlevel, as we have seen. Then, the immunization policy itself can incorpoorate specifics surround conditioonaly, from within, not from without.

The vaccination certificate must be make offical. Whatever use is finally made of it, it is very important that it be a document endowed with the best qualities of being official and, for that very reason, close attention must be paid to the evolution of COVID-19 vaccination registries as a support or basis upon which such a certificate can be generated. Of course, stadardization recommends it, as it is essential in terms of circulation or movement; we are well aware of the pitfalls and barriers that can arise without a standardized model that facilitates mutual recognition or interoperability of the vaccination certificate. However, the problem is that, moveover, the issue of fraud is on the prowl, without ruling out the emergence of a black market of vaccination passes and, at the end of the day, reliability and trust. At this point, I cannot help but recall the seriousness of the “fake vaccine” when vaccination against viruela was beginning, without losing sight of the fact that the vaccination certificate houses health information that must be protected, given how closely lined they are to privacy, so that they may only be used, should the need arise, for the purposes of epidemic prevention.[17]

Two final reasons that should wake the legislator up, making them see the importance of channeling this issue properly, clarifying when, how, and why a vaccination can be demanded if, in fact, this option is finally contemplated within the framework of the COVID-19 vaccination policy or strategy.

Funding

This work is part of the Public Health in Transformation Research Project, funded by the Ministry of Innovation and Science (PID2019-107212RA-I00), the lead investigator of is Professor Laura Salamero Teixidó.

Conflict of interests

The author has no conflict of interest to declare.

REFERENCES

1. Estrategia de vacunación frente a COVID-19 en España. Consejo Interterritorial del Sistema Nacional de Salud (2020). https://www.mscbs.gob.es/profesionales/saludPublica/

prevPromocion/vacunaciones/COVID19/docs/COVID-19_EstrategiaVacunacion.pdf.
2. Cierco Seira C. Vacunación, libertades individuales y Derecho público. Madrid: Marial Pons; 2018. p. 19–40.
3. Real Decreto 664/1997 del 12 de mayo sobre la protección de los trabajadores contra los riesgos relacionados con la exposición a agentes biológicos. https://www.boe.es/buscar/pdf/1997/BOE-A-1997-11144-consolidado.pdf.
4. Ley 33/2011 del 4 de octubre. General de Salud Pública. https://www.boe.es/buscar/pdf/2011/BOE-A-2011-15623-consolidado.pdf.
5. Ley 44/2003 del 21 de noviembre, de ordenación de las profesiones sanitarias. https://www.boe.es/buscar/pdf/2003/BOE-A-2003-21340-consolidado.pdf.
6. Beltran-Aguirre JL. Vacunas obligatorias y recomendadas: régimen legal y derechos afectados. Derecho Salud. 2012;22:9–30.
7. Tolosa-Tribiño C. Problemas legales de la vacunación en España. Diario La Ley. 2021:1–10.
8. Dubov A, Phung C. Nudges or mandates? The ethics of mandatory flu vaccination. Vaccine. 2015;33:2530–5.
9. Attwell K, Smith DT. Hearts, minds, nudges and shoves: (How) can we mobilise communities for vaccination in a marketised society? Vaccine. 2018;36:6506–8.
10. World Health Organization. Behavioural considerations for acceptance and uptake of COVID-19 vaccines. https://www.who.int/news/item/21-12-2020-behavioural-considerations-for-acceptance-and-uptake-of-COVID-19-vaccines.
11. MacDonald N, Harmon S, Dube E, Steenbeek A, Crwoncroft N, Opel DJ, et al. Mandatory infant & childhood immnuzation: rationales, issues and knowledge gaps. Vaccine. 2018;37:5811–8.
12. Paul KT, Loer K. Contemporary vaccination policy in the European Union: tensions and dilemmas. J Public Health Policy. 2019;40:166–79.
13. Esteve Pardo J. La apelación a la Ciencia en el gobierno y gestión de la crisis de la COVID-19. Rev Derecho Público: Teoría Método. 2020;2:35–50 http://www.revistasmarcialpons.es/revistaderechopublico/article/view/272/301
14. Sentencia del Tribunal Supremo de 20 de noviembre de 2020, recurso 140/2020. https://www.poderjudicial.es/search/AN/openCDocument/47c54a4d73e1a196ab37f0205e0a58d86ffe381ae9273000.
15. WHO. International Health Regulations (2005), WHA58.3. 3ª ed. Geneve. https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf.
16. Statement on the sixth meeting of the International Health Regulations (2005). https://www.who.int/news/item/15-01-2021-statement-on-the-sixth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(COVID-19)-pandemic, 2021.
17. Piñas-Mañas JL. Transparencia y protección de datos en el estado de alarma y en la sociedad digital post COVID-19. COVID-19 y Derecho Público. Valencia: Ediciones Tirant lo Blanch; 2020. p. 135–84.