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## VACCINATION OF CHILDREN BY COVID-19: OBLIGATION OR FACULTY OF PARENTS TO SUBMIT THEIR CHILDREN?

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**Abstract:** The aim of this research is to address the right to mandatory vaccination against COVID-19 for children and adolescents, provided for in Brazilian constitutional law, from a civil perspective. It highlights to the legal community and other interested citizens whether it is possible or obligatory for children to be vaccinated. It discusses the fundamental social right to children's health, as well as family power and its limits in relation to the immunization of underage children, emphasizing the principles inherent in the subject. The role of the Guardianship Council, the Public Prosecutor's Office and the Judiciary in securing the right to vaccination for children will be studied and analyzed, as well as the legal consequences for parents or guardians when they choose, by their personal judgment, not to vaccinate their minor children or their guardians. Throughout the work, judicial decisions on the subject of the research will be analyzed, and it should be noted that the Inductive Method was used in the Research Phase, the Cartesian Method in the Data Processing Phase, and the Report of the Results expressed is composed on the basis of inductive logic. The Referent, Category, Operational Concept and Bibliographic Research techniques were used in the various phases of the research.

**Keywords:** right to health; compulsory vaccination of children and adolescents; legal consequences.

## INTRODUCTION

The purpose of this work is to assess compulsory vaccination of children and adolescents from a civil point of view, especially the specifics of family power and the legal consequences of non-compliance with the law.

As a result of the current immunization scenario on a global scale, the aim of the research will be to analyse and demonstrate how family power is not uncontestable when it comes to the rights of children and the interests of the community.

The following questions were raised for this research:

- 1 - Is the vaccination of children and adolescents considered a compulsory right to health?
- 2 - Can parents' personal judgments limit children's and adolescents' right to vaccination?
- 3 - Does failure to vaccinate underage children have legal consequences for their parents or legal guardians?

Based on the questions raised, the following conjectures were put forward: the vaccination of children and adolescents is a right to health guaranteed in the Brazilian legal system; therefore, family power is not absolute with regard to the vaccination of children and adolescents and; finally, failure to vaccinate, which is mandatory, generates legal consequences for parents or guardians.

With a view to confirming or not the hypothesis, the concept of social rights will be discussed, and then health will be addressed, characterizing it as a fundamental social right, presenting its application to the population, thus elucidating the Unified Health System, addressing the creation of the National Immunization Program. We discuss the effects of family power in relation to the obligation to immunize children under the age of majority. The limits of family power in relation to compliance with compulsory vaccination of children and adolescents are examined. The work of the Guardianship Council and the Public Prosecutor's Office is highlighted, in relation to monitoring the protection, health and vaccination of children and adolescents, as well as explaining Brazilian case law decisions on the subject.

This research report concludes with the Final Considerations, in which the main points are presented, followed by a stimulus for further studies and reflections on the vaccination of children and adolescents.

## ANALYSIS AND DISCUSSION

The 1988 Constitution of the Federative Republic of Brazil (CRFB/88), based on the Declaration of Human Rights and called the Citizen Constitution by Ulysses Guimarães, highlights its democratic legitimacy in the preamble, stating that it was made by representatives of the people. In its 2nd Title, it defines Fundamental Rights and Guarantees as a set of rights that ensure human dignity and guarantee minimum conditions for life and development, such as respect for life, freedom and equality, rights inherent to every human being from birth.

For Vasconcelos (2019), Fundamental Rights are “provisions inserted in a given legal system that recognize and guarantee the minimum existential of the human being, thus rejecting the abuses perpetrated by public authorities, limiting the power of the State.”<sup>1</sup>

The Social Rule of Law must guarantee positive freedoms for individuals, as set out in Article 6 of the 1988 Federal Constitution, which refers to education, health, work, social security, leisure, safety, maternity and childhood protection and assistance to the destitute, with the aim of social equality.

According to Vasconcelos, the objectives of the social rights set out in the CRFB/88,

The primary purpose of social rights is to reduce social inequality by improving the living conditions of the individual, creating a mechanism for the less fortunate to be helped and protected through state investment and joint help from society.<sup>2</sup>

It can therefore be concluded that social rights are inherent in every citizen and cannot be negotiated or refused.

The right to health emerged after the Second World War, when it ended there was concern about the human conditions that existed during that period. The first movement came from the United Nations (UN), which in the Declaration of Human Rights established in its article 25,

Art.25 Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and essential social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other loss of livelihood in circumstances beyond his control.<sup>3</sup>

Health is a crucial issue, and the post-war constitutions guaranteed the right to health, but Brazil adopted this idea late. In the constitutions of 1824 and 1891, the expression “right to health” was not used, despite the country facing various diseases such as yellow fever, malaria, smallpox, cholera, bubonic plague and tuberculosis.

With the CRFB/88, health began to be treated and recognized by the Brazilian legal system and consequently as a fundamental right, according to article 196 of the CRFB/88,

Art. 196. Health is the right of all and the duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other illnesses and universal and equal access to actions and services for its promotion, protection and recovery.<sup>4</sup>

In the current Constitution, the right to health is related to the principle of equality, implemented by the Unified Health System (SUS) to reach all of society. This right is established in various laws, such as the Organic Health Law, the Brazilian Traffic Code and the Statute of the Child and Adolescent, and the State has a legal duty to guarantee its fulfillment.

1. VASCONCELOS, C. **Course in constitutional law**. 6. ed. São Paulo: Saraiva, 2019, p 124

2. VASCONCELOS, C. **Course in constitutional law**. 6. ed. São Paulo: Saraiva, 2019, p 274

3. UN - United Nations Organization. UN Universal Declaration of Human Rights. Available at: <https://www.oas.org/dil/port/1948%20Declara%C3%A7%C3%A3o%20Universal%20dos%20Direitos%20Humanos.pdf>

4. BRAZIL. **Constitution of the Federative Republic of Brazil**. Brasília, DF: Senado Federal, Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)

The Unified Health System (SUS) was established by the Brazilian Constitution (CRFB/88) with guidelines of decentralization, community participation and comprehensive care, and must be followed by all spheres of government to guarantee health for all, according to articles 198 to 200 of the CRFB/88. The SUS is national, with state and municipal subsystems, and is considered one of the most successful models of decentralization and social participation in the Brazilian public service.

As Mendes and Branco say,

In creating the SUS, the original constitution broke with the tradition that had existed until then and adopted a regionalized and hierarchical network, according to the criterion of subsidiarity, as a way of better realizing this social right.<sup>5</sup>

It's still available,

Both the public and private networks end up forming a regional network to better adapt to local particularities, thus implementing the guidelines of the World Health Organization itself and observing a set of principles that govern the system - comprehensiveness, equality and community participation.<sup>6</sup>

It is worth noting that the Ministry of Health was created in 1953, through Law No. 1,920<sup>7</sup> and that for Vasconcelos (2019), "it is the body linked to the Federal Executive Branch in charge of organizing and drawing up plans and public policies aimed at promoting, preventing and assisting the health of Brazilians."<sup>8</sup>

Created in 1973, the National Immunization Program (PNI) played a crucial role in eradicating various diseases, such as smallpox and polio, and was recognized as a social hu-

man right even before the SUS. Law No. 6.259 of 1975 gave the Ministry of Health the power to determine compulsory, free and systematic vaccination, with the PNI carrying out vaccination campaigns against meningitis in 1974 and against polio in 1980.

Nowadays, the National Immunization Program offers 44 (forty) types of immunobiologicals free of charge, of which 19 (nineteen) are included in the routine calendar for all age groups. The Program is considered an international public policy reference that was regulated by Law<sup>o</sup> 6.259 and Decree<sup>o</sup> 78.321, which implemented the National Epidemiological Surveillance System (SNVE).

A major event occurred in 2019, causing the 21st century and everyone who lives to go through a worldwide pandemic, generating a large number of deaths never seen before, it was a new disease established in our world, which was called Covid-19 or SARS-CoV-2, it is still possible to feel its power of devastation today, both in terms of diseases and in terms of the world economy.

The coronavirus is a severe acute respiratory syndrome, becoming an infectious disease, as explained by the World Health Organization (WHO), on "December 31, 2019, in Wuhan, China, the first cases of pneumonia caused by an unknown agent were described and reported to health authorities"<sup>9</sup> and days later on January 7, 2020, announced the sequencing of the viral genome and on January 12, China shared the genetic sequence with the WHO and other countries through the international database Global Initiative on Sharing All Influenza Data (GISAID).

5. MENDES, G. F.; BRANCO, P. G. G. **Constitutional Law Course**. 17. ed. São Paulo: Saraiva, 2022. p.1957

6. MENDES, G. F.; BRANCO, P. G. G. **Constitutional Law Course**. 17. ed. São Paulo: Saraiva, 2022. p.1967

7. BRAZIL. **Law n. 1.920, of July 25, 1953**. Creates the Ministry of Health and makes other provisions, DF, July 29, 1953. Disponível em [http://www.planalto.gov.br/ccivil\\_03/leis/1950-1969/l1920.htm#:~:text=LEI%20No%201.920%2C%20DE%2025%20DE%20JULHO%20DE%201953.&text=Cria%20o%20Minist%C3%A9rio%20da%20Sa%C3%BAde,problemas%20atinentes%20C3%A0%20sa%C3%BAde%20humana](http://www.planalto.gov.br/ccivil_03/leis/1950-1969/l1920.htm#:~:text=LEI%20No%201.920%2C%20DE%2025%20DE%20JULHO%20DE%201953.&text=Cria%20o%20Minist%C3%A9rio%20da%20Sa%C3%BAde,problemas%20atinentes%20C3%A0%20sa%C3%BAde%20humana).

8. VASCONCELOS, C. **Course in constitutional law**. 6. ed. São Paulo: Saraiva, 2019, p 618

9. Pan American Health Organization (PAHO). **History of the Covid-19 Pandemic**. Available at: <https://www.paho.org/pt/covid19/historico-da-pandemia-covid-19>

In Brazil, the “first case of Covid-19 happened on February 26, 2020 in the state of São Paulo,”<sup>10</sup> Brazil and the world adopted actions of social distancing and isolation, in which classes and face-to-face work were interrupted.

Due to the lack of a specific and effective method against COVID-19, its treatment was initially supported by symptomatic control and the offer of ventilatory support, and the search for an effective cure has moved the scientific community to succeed in finding an effective remedy for the case.

With this in mind, in the first half of 2021 and after the approval of the use of vaccines by the regulatory agencies, in Brazil the National Health Surveillance Agency - Anvisa, the country began to receive the first doses to be used. The vaccine is seen as one of the most effective and cost-effective public health policies, and is used to prevent and control diseases.

The Federal Constitution of 1988 brought about a profound paradigm shift in Family Law. The institution of marriage has given way to affection. “The principle of affection is now a pillar of all family relationships, alongside the principles of human dignity and personality.”<sup>11</sup> The concept of a family entity has adapted to the changes in society.

Considered to be one of the most important principles in Family Law and Law in general, the principle of the dignity of the human person is laid down in the Constitution of the Federal Republic of 1988, which states, “Art. 1 The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, is a Democratic State of Law and has as its four-

ndations: III- the dignity of the human person “<sup>12</sup>, and is therefore considered one of the most primordial principles, to guarantee the protection of a dignified life for all and Dias argues that,

Family law is umbilically linked to human rights, which are based on the principle of human dignity, an axiological version of human nature. The principle of human dignity ultimately means equal dignity for all family entities. It is therefore unworthy to give different treatment to the various forms of filiation or the various types of constitution [...].<sup>13</sup>

The principle of the dignity of the human person recognizes human beings as capable of developing their freedom, placing them at the center of the legal system and preventing discrimination that harms their development and freedom. The principle of the best interests of children and adolescents, according to article 227 of the CRFB/88 and article 4 of the ECA, guarantees their rights to life, health, food, education, leisure, dignity, respect, freedom and family life, as Dias states,

Its aim is to guarantee the full and complete development of the personality of minors, bringing with it the right to full protection and absolute priority, providing them with education, health, leisure, culture, respect, freedom, family life and ensuring their intellectual, psychological, emotional and social development. Valuing the affective identification of family members with children and adolescents. It is the responsibility of the family, society and the state to guarantee the dignity and well-being of developing minors.<sup>14</sup>

10. MINISTRY OF HEALTH. **Panel of cases of coronavirus disease 2019 (Covid-19) in Brazil by the Ministry of Health.** Brasília: Ministry of Health; 2020. <https://covid.saude.gov.br>

11. LEÃO, Fernanda Freitas de. **Evolution of the law and the concept of family.** Available at: <https://www.migalhas.com.br/depeso/255144/evolucao-do-direito-e-do-conceito-de-familia>

12. BRAZIL. **Constitution of the Federative Republic of Brazil.** Brasília, DF: Senado Federal, Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao)

13. DIAS, Maria Berenice. **Manual of family law.** 12. ed. São Paulo: Revista dos Tribunais, 2017, p. 74.

14. GONÇALVES, Carlos Roberto. **Brazilian civil law: family law.** 12. ed. São Paulo: Saraiva, 2015.p. 413



The Statute of the Child and Adolescent follows the Integral Protection Theory, which provides for the interests of minors, based on the protection of their fundamental rights and guarantees, where minors are considered to be individuals who are still developing, and thus have the need for special care and privileges, as provided for in Article 3 of the Statute of the Child and Adolescent,

Art. 3: Children and adolescents enjoy all the fundamental rights inherent to the human person, without prejudice to the comprehensive protection dealt with in this Law, ensuring them, by law or by other means, all the opportunities and facilities in order to allow them to develop physically, mentally, morally, spiritually and socially, in conditions of freedom and dignity.<sup>15</sup>

The CRFB/88 ensures that parents have a duty to care for, protect and assist their children in every way, and to avoid any kind of discrimination, exploitation and embarrassment that their children may suffer.

The Brazilian Civil Code provides for the possibility of suspension, extinction and deconstruction in relation to the protection of fundamental rights of children and adolescents, when parents, through abusive or unfavorable conduct towards their children, cause the loss of Family Power.

Suspension and removal from family power are sanctions applied to parents for breaches of their duties, although they do not serve as a penalty for the offending parent. Their purpose is not punitive. The aim is much more to preserve the interests of the children, keeping them away from harmful influences.<sup>16</sup>

As article 24 of the Child and Adolescent Statute states,

Art. 24: The loss and suspension of family power will be decreed by the courts, in an adversarial procedure, in the cases provided for in civil legislation, as well as in the event of unjustified non-compliance with the duties and obligations referred to in art. 22.<sup>17</sup>

With regard to deconstitution, according to Diniz (2015), “the loss of family power is a more far-reaching sanction and corresponds to the breach of a more relevant duty, being an imperative measure, not an optional one”.<sup>18</sup>

Deconstitution of family power occurs when the parents act under certain conditions described in Article 1.638 of the Civil Code,

Art. 1.638. The father or mother who:  
I - punishing their child immoderately;  
II - leaving the child unattended;  
III - perform acts contrary to morals and good customs;  
IV - repeatedly incurring the faults provided for in the previous article.<sup>19</sup>

The termination of family power is provided for in Article 1635 of the Civil Code, which sets out the legal cases that cause termination,

Art. 1.635. Family power is extinguished:  
I - the death of a parent or child;  
II - by emancipation, under the terms of art. 5º, sole paragraph;  
III - by the age of majority;  
IV - by adoption;  
V - by court decision, pursuant to Article 1.638.<sup>20</sup>

15. BRAZIL. **Law n. 8.069, of July 13, 1990.** Provides for the Statute of the Child and Adolescent and makes other provisions. Official Gazette of the Federative Republic of Brazil, Brasília, DF, September 27, 1990. Available at: <[http://www.planalto.gov.br/ccivil\\_03/leis/l8069.htm](http://www.planalto.gov.br/ccivil_03/leis/l8069.htm)>.

16. DINIZ, M. H. **Manual de direito das famílias.** 10. ed. São Paulo: Revista dos Tribunais, 2015, pg. 470

17. BRAZIL. **Law n. 8.069, of July 13, 1990.** Provides for the Statute of the Child and Adolescent and makes other provisions. Official Gazette of the Federative Republic of Brazil, Brasília, DF, September 27, 1990. Available at: <[http://www.planalto.gov.br/ccivil\\_03/leis/l8069.htm](http://www.planalto.gov.br/ccivil_03/leis/l8069.htm)>.

18. DINIZ, M. H. **Manual de direito das famílias.** 10. ed. São Paulo: Revista dos Tribunais, 2015, pg. 472

19. BRAZIL. **Law No. 10.406, of January 10, 2002.** Establishes the Civil Code. Official Gazette of the Federative Republic of Brazil, Brasília, DF, January 11, 2002. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406compilada.htm#3A~3Atext%3DLEI%20](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm#3A~3Atext%3DLEI%20)

20. BRAZIL. **Law No. 10.406, of January 10, 2002.** Establishes the Civil Code. Official Gazette of the Federative Republic of Brazil, Brasília, DF, January 11, 2002. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406compilada.htm#3A~3Atext%3DLEI%20](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm#3A~3Atext%3DLEI%20)

The grounds for suspension are set out in Article 1637 of the Civil Code,

Art. 1.637. If the father or mother abuses their authority, fails to fulfill the duties inherent to them or ruins their children's property, it is up to the judge, at the request of a relative or the Public Prosecutor's Office, to adopt the measure that seems necessary for the safety of the child and their property, even suspending family power when appropriate.

Sole paragraph. The exercise of family power shall also be suspended for fathers or mothers convicted by unappealable sentence of a crime for which the sentence exceeds two years' imprisonment.<sup>21</sup>

Diniz states that,

Suspension of family power is a less serious measure, so much so that it is subject to review. Once the causes that provoked it have been overcome, it can be canceled whenever family coexistence is in the best interests of the children. Suspension is optional and the judge may not apply it.<sup>22</sup>

As previously pointed out, there are limits to the Family Power imposed by Brazilian law, which is a limitation on the actions of parents in the lives of their children, which can be dismissal, suspension and extinction, since it should be noted that the power attributed by parents is not definitive, for many the State intervenes to take care of this minor for their best interests and care

As Grunspun states,

It has become common to see parents who, for ideological or religious reasons, or simply for lack of education, refuse to vaccinate their children. However, this attitude goes against the interests of the child, so the bodies of the System for Guaranteeing the Rights of Children and Adolescents, especially the Guardianship Council and the Public Prosecutor's Office, have an obligation to intervene and ensure that children and adolescents are vaccinated.<sup>23</sup>

Parents' refusal to vaccinate their children confronts the principle of the best interests of the child and goes beyond the limits of family power. With the enactment of the 1988 Federal Constitution, the Guardianship Council gained autonomy and began to act in conjunction with the community, as provided for in article 131 of the Statute of the Child and Adolescent:

Art. 131. The Guardianship Council is a permanent, autonomous, non-judicial body charged by society with ensuring compliance with the rights of children and adolescents, as defined in this Law<sup>24</sup>

Silva believes that,

The Guardianship Council is the most legitimate instrument of pressure and prevention to ensure that the Statute is actually implemented in this country, as it forces the implementation of the necessary mechanisms to provide dignified care for the rights of all Brazilian children and adolescents, regardless of the situations in which they are involved.<sup>25</sup>

21. BRAZIL. **Law No. 10.406, of January 10, 2002.** Establishes the Civil Code. Official Gazette of the Federative Republic of Brazil, Brasília, DF, January 11, 2002. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/2002/L10406compilada.htm#%3A~%3Atext%3DLEI%20](http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm#%3A~%3Atext%3DLEI%20)

22. DINIZ, M. H. **Manual de direito das famílias.** 10. ed. São Paulo: Revista dos Tribunais, 2015, pg.471

23. VERONESE, J. R. P.; SILVEIRA, M.; CURY, M. (Coord.). **Estatuto da Criança e do Adolescente Comentado; Comentários jurídicos e sociais.** 13. ed. São Paulo: Malheiros, 2018.p 166

24. BRAZIL. **Law n. 8.069, of July 13, 1990.** Provides for the Statute of the Child and Adolescent and makes other provisions. Official Gazette of the Federative Republic of Brazil, Brasília, DF, September 27, 1990. Available at: [http://www.planalto.gov.br/ccivil\\_03/leis/l8069.htm](http://www.planalto.gov.br/ccivil_03/leis/l8069.htm).

25. VERONESE, J. R. P.; SILVEIRA, M.; CURY, M. (Coord.). **Estatuto da Criança e do Adolescente Comentado; Comentários jurídicos e sociais.** 13. ed. São Paulo: Malheiros, 2018.p 906

The Public Prosecutor's Office is a body that is governed by the following principles: unity, functional independence and indivisibility. Article 127 of the Federal Constitution of 1988 states that the Public Prosecutor's Office performs a function that is essential to justice, and is responsible for "defending the legal order, the democratic regime and unavailable social and individual interests."<sup>26</sup>

Therefore, vaccination of children and adolescents in Brazil has been mandatory since the enactment of Law No. 6.259/75, which established the National Immunization Program, which provides in its article 3,

Art. 3 The Ministry of Health is responsible for drawing up the National Immunization Program, which will define vaccinations, including those of a compulsory nature.

Sole paragraph. Mandatory vaccinations will be practiced systematically and free of charge by public bodies and entities, as well as by private entities subsidized by the Federal, State and Municipal Governments, throughout the national territory.<sup>27</sup>

It is worth noting that the Statute of the Child and Adolescent, as far as it is concerned, establishes the obligation to vaccinate minors in cases that the health authority recommends, as stated in article 14, paragraph 1.<sup>28</sup>

Having said that, here are some case laws on the subject discussed throughout this work, in which we have cases where the role of

the Guardianship Council is to guarantee the rights of minors, however, they are not always successful, as presented in a report to the Public Prosecutor's Office, as found in judgment n. 1.0518.18.007692-0/001 of the Court of Justice of the State of Minas Gerais,

The lawsuit was filed after receiving a report from the Guardianship Council for the Rights of Children and Adolescents - South/West Region, in which it was noted that the couple, even after hours of guidance and warnings, refused to vaccinate their children due to the supposed risks of vaccination.<sup>29</sup>

Similarly, the interlocutory monocratic decision of the Court of Justice of the State of Santa Catarina refers to the actions of the Guardianship Council set out in the case file of Interlocutory Appeal No. 4020087-02.2019.8.24.0000338,

[...] the Guardianship Council carried out a home visit, where the mother reported that she was not going to vaccinate her children, since according to her and her husband, the vaccines contain mercury and various substances that are harmful to her children.<sup>30</sup>

As a result, the Guardianship Council first tries to advise parents about the importance of vaccinating their underage children and, when it is unsuccessful, it forwards a report to the Public Prosecutor's Office so that it can take the appropriate legal action.

26. BRAZIL. **Constitution of the Federative Republic of Brazil**. Brasília, DF: Senado Federal, Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)

27. BRAZIL. **Law n. 6.259 of October 30, 1975**. Provides for the organization of Epidemiological Surveillance actions, on the National Immunization Program, establishes rules on compulsory notification of diseases, and makes other provisions. Official Gazette of the Federative Republic of Brazil, Brasília, DF, 31 Oct. 1975. **Disponível em:** [http://www.planalto.gov.br/ccivil\\_03/leis/l6259.htm#:~:text=Disp%C3%B5e%20sobre%20a%20organiza%C3%A7%C3%A3o%20das,doen%C3%A7as%2C%20e%20d%C3%A1%20outras%20provid%C3%A7%C3%A3o](http://www.planalto.gov.br/ccivil_03/leis/l6259.htm#:~:text=Disp%C3%B5e%20sobre%20a%20organiza%C3%A7%C3%A3o%20das,doen%C3%A7as%2C%20e%20d%C3%A1%20outras%20provid%C3%A7%C3%A3o)

28. BRAZIL. **Law n. 8.069, of July 13, 1990**. Provides for the Statute of the Child and Adolescent and makes other provisions. Official Gazette of the Federative Republic of Brazil, Brasília, DF, September 27, 1990. Available at:

29. BRAZIL. Court of Justice of Minas Gerais. **Civil Appeal AC XXXX80076920001 MG**, from the District of Poços de Caldas. Reporting Judge Dárcio Lopardi Mendes, Available at: <https://www.jusbrasil.com.br/jurisprudencia/tj-mg/793583412/inteiro-teor-793583539>

30. BRAZIL. Court of Justice of the State of Santa Catarina. **Interlocutory Appeal n. 4020087- 02.2019.8.24.0000** of the Court of the Family, Orphans, Successions, Children and Youth of the District of Rio do Sul. Reporting Judge Carlos Roberto da Silva, July 8, 2019. Available at: <https://tj-sc.jusbrasil.com.br/jurisprudencia/731716522/agravo-de-instrumento-ai-40200870220198240000-rio-do-sul-4020087-0220198240000/inteiro-teor-731716609>



Therefore, in this civil appeal, from the District of Paulínia, number 1003284-83.2017.8.26.0428268, in which the member of the Public Prosecutor's Office sought judicial protection to ensure the regularization of the vaccination of the child O.Z.C, the President of the Criminal Law Section and rapporteur Fernando Torres Garcia, certified that,

[...] the collective interest is observed in such rules, identifying in mandatory vaccination not only the individual protection of children, but also an indirect protection of the entire community, especially in terms of reducing the exposure to risk of other people, children or not, who may not be vaccinated due to medical impediments. After all, the existence of a population that is mostly immune to certain diseases will result in the cessation of circulation of the viruses that cause the diseases and, consequently, even non-immunized individuals would not be exposed to contamination.<sup>31</sup>

He continues,

The protection of the child's health has absolute priority when it comes to protecting the interests of minors, taking precedence over private interests or those arising from the parents' own ideological positions.

In other words, choices made by parents based on their private and individual convictions, which have an effect on their minor children, must not cause them any harm in relation to the greater interests described in the Federal Constitution and the Statute of the Child and Adolescent.

The fact is that the limits to the exercise of these individual rights and family organization come up against public order rules and, in this case, the effects of these choices on someone other than the person who made them. In this case, the child who will suffer if the parents choose not to vaccinate will be the one who, because of his young age, has no choice.<sup>32</sup>

It can be seen that the principle of collective protection takes precedence over the principle of individual autonomy, so the personal conviction of parents is inert in the face of the principle of collective protection, and when parents choose not to vaccinate their children, this behavior can be described as negligence.

I refer to the amendment to the aforementioned ruling by the São Paulo State Court of Justice, regarding compulsory vaccination,

FAMILY POWER COMPULSORY VACCINATION ACTION BROUGHT BY THE PUBLIC PROSECUTOR'S OFFICE TO IMPOSE ON PARENTS THE OBLIGATION TO CARRY OUT COMPULSORY VACCINATION OF THEIR MINOR CHILD SENTENCE THAT DOES NOT RECOGNIZE THE OBLIGATION, ON THE GROUNDS OF THE EXISTENCE OF A CONCRETE RISK OF VACCINATION, FREEDOM OF CONSCIENCE AND FAMILY ORGANIZATION, AS WELL AS THE LACK OF OMISSION PARENTS' OBLIGATION TO VACCINATE MINOR CHILDREN, WHICH STEMS FROM A RULE OF PUBLIC ORDER CONCRETE LACK OF EVIDENCE INDICATING THE RISK OF VACCINATION INTERNATIONAL BODIES THAT RECOGNIZE THE LACK OF SERIOUS RISK AND BENEFITS FROM VACCINATION STANDARDS INDICATING THAT MANDATORY VACCINATION IS PART OF A SET OF RULES OF PUBLIC ORDER, PROTECTS NOT ONLY THE HEALTH OF THE CHILD, BUT ALSO THAT OF THE COMMUNITY DENIAL OF VACCINATION CONSTITUTES A HEALTH INFRACTION CONFLICT OF FUNDAMENTAL RIGHTS THAT MUST BE DECIDED BY THE PREVALENCE OF THE INTERESTS OF THE CHILD AND THEIR HEALTH, PHILOSOPHICAL AND RELIGIOUS FREEDOMS THAT ARE NOT ABSOLUTE WHEN THEY AFFECT THIRD PARTIES OBLIGATION OF THE PARENTS TO REGULARIZE VAC-

31. BRAZIL. Court of Justice of the State of São Paulo. **Civil Appeal n. 1003284 83.2017.8.26.0428** of the District of Paulínia. Reporting Judge Fernando Torres Garcia, July 11, 2019. Available at: <https://migalhas.com.br/arquivos/2019/8/art20190813-12.pdf>.

32. BRAZIL. Court of Justice of the State of São Paulo. **Civil Appeal n. 1003284 83.2017.8.26.0428** of the District of Paulínia. Reporting Judge Fernando Torres Garcia, July 11, 2019. Available at: <https://migalhas.com.br/arquivos/2019/8/art20190813-12.pdf>.

CINATION POSSIBILITY OF TEMPORARY SUSPENSION OF FAMILY POWER FOR THE REGULARIZATION OF THE CHILD'S VACCINATION BY THE GUARDIANSHIP COUNCIL REFUSAL OF THE PARENTS TO COMPLY WITH THE JUDICIAL DETERMINATION THAT MUST BE MET THROUGH THE SEARCH AND SEIZURE OF THE CHILD AND HIS REFERRAL TO A PUBLIC HEALTH SERVICE FOR VACCINATION REGULARIZATION APPEAL UPHOLD TO UPHOLD THE ACTION.<sup>33</sup>

In the same vein, there is the Extraordinary Appeal with Interlocutory Appeal, in the São Paulo Court of Justice, in which the rapporteur, Roberto Barroso, was in favor of the application of the Covid-19 vaccine,

Constitutional law. Extraordinary appeal. General repercussion. Compulsory vaccination of children and adolescents. Illegitimacy of parents' refusal to vaccinate their children on grounds of philosophical conviction. (1) Appeal against judgment of the São Paulo State Court of Justice (TJSP) which ordered vegan parents to submit their minor child to the vaccinations defined as mandatory by the Ministry of Health, despite their philosophical convictions. (2) The fight against epidemics is an old chapter in history. Although Brazil and the world are currently experiencing the biggest pandemic in a hundred years, Covid-19, other highly contagious diseases have already challenged science and public authorities. In countless scenarios, vaccination has proved to be an effective preventative method. And, in some cases, it was responsible for eradicating the disease (such as smallpox and polio). Vaccines have proven to be a great invention of medicine for the benefit of humanity. 3 Freedom of conscience is constitutionally protected (art. 5, VI and VIII) and is expressed in the right of every person to make their own existential choices and to live their own ideal of a good life. It is common sen-

se, however, that no right is absolute, finding its limits in other constitutional rights and values. In this case, freedom of conscience needs to be weighed against the defense of life and health for all (arts. 5 and 196), as well as the priority protection of children and adolescents (art. 227). (4) Brazilian law has made vaccination compulsory for a long time. It is currently provided for in various laws in force, such as Law No. 6.259/1975 (National Immunization Program) and Law No. 8.069/90 (Statute of the Child and Adolescent). This provision has never been deemed unconstitutional. More recently, Law 13.979/2020 (on measures to deal with the Covid-19 pandemic), initiated by the Executive Branch, established a similar command. (5) It is legitimate to impose the compulsory nature of vaccines that have been registered with a health surveillance agency and on which there is medical-scientific consensus. Several grounds justify the measure, including: a) the state can, in exceptional situations, protect people even against their will (dignity as a community value); b) vaccination is important for the protection of society as a whole, and individual choices that seriously affect the rights of third parties are not legitimate (need for collective immunization); and c) family power does not authorize parents to put their children's health at risk by invoking philosophical conviction (CF/1988, arts. 196, 227 and 229) (best interests of the child). 6) Dismissal of the extraordinary appeal, establishing the following thesis: "It is constitutional to make immunization compulsory by means of a vaccine which, registered with the health surveillance agency, (i) has been included in the National Immunization Program, or (ii) has its compulsory application determined by law or (iii) is the object of a determination by the Union, State, Federal District or Municipality, based on medical-scientific consensus. In such cases, there is no violation of the freedom of conscience or philosophical conviction of the parents or guardians, nor of family power."<sup>34</sup>

33. BRAZIL. Court of Justice of the State of São Paulo. **Civil Appeal n. 1003284- 83.2017.8.26.0428** of the District of Paulínia. Reporting Judge Fernando Torres Garcia, July 11, 2019. Available at: <https://migalhas.com.br/arquivos/2019/8/art20190813-12.pdf>.

34. BRAZIL. Federal Supreme Court. **Extraordinary Appeal with Interlocutory Appeal: 1.267.879-** São Paulo, Rapporteur: Roberto Barroso, December 17, 2020, Available at: <https://>

This issue is still under discussion in the Rio Grande do Sul Court of Justice,

CIVIL APPEAL. CHILD AND ADOLESCENT LAW. PROTECTION MEASURE PROMOTED BY THE PUBLIC PROSECUTOR'S OFFICE. RIGHT. TO HEALTH. VACCINATION OF A CHILD, ONE (1) YEAR OLD, IN ACCORDANCE WITH THE NATIONAL IMMUNIZATION PROGRAMME OF THE MINISTRY OF HEALTH. MANDATORY VACCINATION. THE PARENTS' CHOICE NOT TO VACCINATE THEIR UNDERAGE CHILD FOR REASONS OF RELIGION, IDEOLOGY AND LIFESTYLE CANNOT BE ALLOWED TO OVERRIDE PUBLIC HEALTH POLICIES THAT HAVE BEEN USED FOR MANY YEARS. THE BEST INTERESTS OF THE CHILD PREVAIL. MANDATORY VACCINATION OF CHILDREN IN CASES RECOMMENDED BY HEALTH AUTHORITIES. GENERAL REPERCUSSION RECOGNIZED. APPARENT CONFLICT OF NORMS THAT IS RESOLVED BY THE SUPERIORITY OF THE INDIVIDUAL RIGHT OF THE CHILD, STILL WITHOUT DISCERNMENT. MATTER FIRMED IN GENERAL REPERCUSSION STF: THEME 1.103, It is the duty of the family, the community, society in general and the Public Power to ensure, with absolute priority, the realization of the rights relating to life and health for children, adolescents and young people, by constitutional provision, as provided for in arts. 4; 100, sole paragraph II; and 227 CF, reaffirmed by art. 3 of the ECA. Vaccines are not new, nor are they experimental and have been widely tested for years - basic assumptions - and can be distributed and applied to end users who do not have the capacity and discernment to choose not to be vaccinated and suffer any consequences of not having been vaccinated, and parents cannot fail to vaccinate their children in such circumstances. Vaccinating children is a mandatory rule, obligatory in the cases recommended by the health authorities, and those responsible must observe the schedule stipulated by the Ministry of Health, who-

se protection begins with newborns, in the case of vaccines that have been in existence for many years, studied implants, observing all the relevant protocols. In this case, there is no contraindication to vaccinating the child, who is two (2) years old, a circumstance that does not exempt the child from compulsory vaccination. The existence of a report from the Judicial Medical Department to the effect that it is much more likely that a person will fall ill from a vaccine-preventable disease than from the vaccine itself, far outweighing the risk and benefits of immunization, and there is no reason to fail to comply with the Vaccination Calendar recommended by the Ministry of Health, a public policy for the eradication of mass diseases, as it is a protective measure for children born in the country. The best interests of the child prevail, fully safeguarding his right to health, which prevents the parents from condoning the conduct of those who, out of personal, religious convictions and life ideology, chose not to vaccinate their underage son. Weighing up the fact that any risk posed by vaccinating the protected child would be the same as that posed to all children who are subject to the official vaccination schedule, the individual right of the minor, who does not have the capacity for discernment, prevailing in the apparent conflict of rules. Application of §1 of art. 14 of the ECA; art. 3, caput and sole paragraph, of Law no. 6.259/75; and art. 29 of Decree no. 78.231/76. Precedents from the TJMG and TJSP ordering the vaccination of children in similar cases. Recognition of constitutional character and general repercussion. Analysis of the right to health of children and adolescents in line with the judgment with general repercussion. STF Theme 1.103 published in the DJe on XXXXX-04-2021.<sup>35</sup>

In view of this, we can see that the Public Prosecutor's Office is of great importance, due to its function granted to it by the State, as is set out in the Statute of the Child and Adolescent in article 201.

35. BRAZIL. Court of Justice of Rio Grande do Sul. **Civil Appeal: AC XXXXX-70.2021.8.21.7000** from the District of Gaurama. Reporting Judge Carlos Eduardo Zietlow Duro, August 23, 2021. Available at: <https://>

In view of the above, it is essential that the Public Prosecutor's Office and the Guardianship Council take action when the parents or guardians of a minor, be they a child or adolescent, do not want to vaccinate them, in which case they are going against a fundamental and constitutional right of the minor, as discussed throughout the research.

Therefore, there are still some sanctions for those who do not carry out the immunization that is recommended by the National Immunization Program for these minors, some of which are the temporary suspension of Family Power as mentioned in the previous chapter, which is provided for in art. 1637 of the Civil Code, which provides for the suspension of Family Power.

We have the Criminal Offence which is a sanction for not immunizing your children, depending on each situation, they are predisposed, in theory, to Article 268 of the Penal Code.

However, it is clear that compulsory vaccination is not only a protection for individual children, but also an indirect protection for the whole community, so failure to vaccinate can have serious consequences for those who refuse to immunize their children.

However, actions like these can lead to the return of diseases that have already been eliminated, due to the spread of false information generated by the anti-vaccine movement, since there is no scientific evidence to indicate the real danger of mandatory vaccination.

Therefore, we can see that family power is not absolute and that vaccination is essential and is a fundamental right for everyone, especially children and adolescents, as well as for the community, which takes precedence over the personal will of the parents or guardians of these minors, who are subject to legal sanctions if they fail to vaccinate a child or adolescent.

## FINAL CONSIDERATIONS

The aim of this research was to assess compulsory vaccination of children and adolescents from a civil perspective, especially the specificities of family power and the legal consequences of non-compliance with the law.

To this end, the following hypotheses were put forward,

- 1 - Is the vaccination of children and adolescents considered a compulsory right to health?
- 2 - Can parents' personal judgments limit children's and adolescents' right to vaccination?
- 3 - Does failure to vaccinate underage children have legal consequences for their parents or legal guardians?

In view of the above, the search for answers to the hypotheses listed above, this research was divided into three chapters to help with a better response, in which, it asserted that the vaccination of children and adolescents is mandatory, in accordance with our legal system, also comprising the obligation of parents or guardians of underage children, to carry out the immunization determined in the National Vaccination Calendar.

As a result, the first hypothesis was confirmed, given that the vaccination of children and adolescents is a fundamental and social right, linked to health, and is mandatory. Parents or guardians therefore have a duty to ensure that the children and adolescents in their care are immunized against the diseases for which vaccines are available.

In the second hypothesis, which refers to the parents or guardians, it was found throughout the research that the interests of the child and adolescent, as well as the interests of the community, outweigh the ideals of the parents or guardians, so it can be seen that family power is not absolute, thus affirming the second hypothesis of this research.



Having seen, in the course of the research, the various legal consequences analyzed, which can be applied to parents or guardians who do not vaccinate their underage children, having as consequences the application of the temporary suspension of family power, as well as the possibility of characterizing a criminal offense, since the third hypothesis was confirmed.

This research was of great importance to the academic, as she obtained relevant knowledge regarding the best interests of the child or adolescent, in relation to their right to health, especially in relation to compliance with compulsory vaccination of minors, however the studies do not end here, since the theme has great relevance for society, especially in the area of health, as this theme can be further explored in future research.

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