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An das

Bundesverwaltungsgericht
Geschäftsstelle 1. Wehrdienstsenat

schmitz.de
04107 Leipzig

Zustellung über das beA

Bei Zahlungen bitte stets angeben:
Rechn.-Nr.:

Bei Antworten bitte stets angeben:
Aktenzeichen: .. / 2022

Selfkant, den 14.3.2022

In the military appeal proceedings

of Mr. ...

AZ. ...

we would first like to thank the Chairman for his kind message of 10.3.2022.

We would like to attend the appointment on 1.4.2022 in person in any case.

As a matter of utmost precaution, we request that you continue to explore the feasibility of conducting a video-based hearing, as this procedure is so important. In the event that cold symptoms or other reasons for prevention were to appear immediately before the hearing date, each of us would like to participate as a substitute, at least in this way.

In order to supplement this presentation one last time before the hearing, I would like to submit the following documents to the Senate as an

Annex 7

the legal opinion of Dr. Brigitte Röhrig on the "Question of the constitutionality of compulsory vaccination against covid-19 from the point of view of pharmaceutical law", as of 22.2.2022.

Their conclusion - from page 55 of their expert report - is clear (quote):

"The following aspects of pharmaceutical law are to be included in the examination of the constitutionality of a vaccination obligation against Covid-19:
1) Mandatory vaccination against Covid-19 is not comparable to "conventional" mandatory vaccination. The definition of a gene therapy medicinal product in Annex I, Part IV, point 2.1 of the Annex to Directive 2001/83/EC64 suggests that the mRNA- and vector-based injections would have to be classified as gene therapy medicinal products if they had not been explicitly excluded from the definition by the express sentence "Vaccines against viral diseases are not gene therapy medicinal products".
2) Due to the mere legal exemption of Covid-19 injections from the definition of "gene therapy medicinal products", the obligation to vaccinate is not an obligation to vaccinate in the conventional sense, but an obligation to tolerate a gene therapy intervention. The different mode of action in the body compared to conventional vaccines must be taken into account when examining constitutionality. A limitation to the considerations of the BVerfG, BGH and also the BVerwG regarding conventional vaccines is not sufficient.

3) Due to the sentence "Vaccines against viral diseases are not gene therapeutics", the particularly strict requirements for proving the quality, efficacy and safety of gene therapeutics do not apply. Further relief is provided by the classification as "vaccines" by the WHO and EU guidelines applicable to vaccines. This has also resulted in lower regulatory dossier requirements for Covid-19 injections compared to standard requirements. Some studies generally required for drug approval, such as safety toxicology, genotoxicity and carcinogenicity to demonstrate safety, did not have to be performed.

4) Further facilitation was provided for Covid 19 injections by opening the scope of conditional marketing authorization for them in a crisis situation, Article 14-a of Regulation 726/2004/EC65. As a result, marketing authorizations were granted despite incomplete quality, preclinical, and clinical data compared with the usual requirements.

5) By appropriate regulations, applicants of all Covid 19 injections were exempted from the requirement to submit environmental impact and risk studies (Regulation 2020/1043/EU66)..

6) The existence of all conditions of approval for the maintenance of conditional approvals, Art. 14-a Regulation 726/2004/EC,:

a.

The applicant is expected to be able to provide the comprehensive clinical data subsequently,

b.

Presence of an emergency situation,

c.

Closure of a "medical care gap".

d.

Positive benefit-risk ratio according to Art. 1 No. 28a of Directive 2001/83/EC.

and

e.

The public health benefit outweighs the risk due to the lack of additional data.

are more than doubtful for Comirnaty® and Spikevax®, in some cases no longer given.

7) The marketing authorization decisions contain numerous special conditions for the proof of proper quality, of which - based on the information on the EMA website - essential parts are not fulfilled until today - at least for Comirnaty® and Spikevax®. Close monitoring is required to ensure compliance with the specific conditions.

The marketing of a qualitatively improper drug is prohibited under German drug law according to Section 8 (1) No. 1 AMG and is a criminal offense according to Section 95 (1) No. 3a AMG and can be punished with imprisonment of up to 3 years, in serious cases from 1 year to 10 years, Section 95 (3) No. 1 AMG. The attempt is punishable, Section 95 (2) AMG.

8) Based on the findings of the BVerfG in the decision 1BvR 2649/21, there are reasonable doubts about the efficacy and safety of Covid-19 injections.

9) In the clinical, placebo-controlled studies for Comirnaty® and Spikevax®, which are the subject of the special conditions for the granting of a conditional approval and must be continued, the control group has been omitted. A placebo-controlled study no longer exists. Consequently, these marketing authorization holders can no longer fulfill their special conditions in this regard. According to Art. 20a of Regulation No. 726/2004, the marketing authorization must be revoked.

10) The conditional approval for Comirnaty® must also be suspended due to the safety report by Pfizer that has become known (see 7.2) and the allegations raised regarding serious violations of the legal requirements for the conduct of clinical trials until the data have been evaluated, the allegations clarified and a renewed benefit-risk assessment carried out.

11) In view of the extensive reports of deaths and serious side effects, there are considerable doubts about a positive benefit-risk balance according to Art. 1 No. 28a of Directive 2001/83/EC and also considerable doubts that the benefit to public health outweighs the risk due to the lack of additional data. Here, too, intervention by the regulatory authorities in accordance with Art. 116 of the Community Code in the sense of a suspension of the marketing authorizations until clear clarification of the interrelationships from the point of view of drug safety is indispensable for the protection of public health.

12) The conditional marketing authorizations for Covid 19 Injections are to be suspended until complete quality, preclinical and clinical documentation has been submitted and a positive risk-benefit assessment has been made on this basis, because

a.

There is no longer an epidemic situation of national significance in Germany; (Signatory's note: and never was, given a worldwide IFR of 0.15% and never threatened health care overload, etc.).

b.

alternative treatment options exist (ivermectin, hydroxychloroquine, and other therapeutics) and thus there is no gap in care,

c.

Covid-19 for the age groups below 85 years is not a severely debilitating or life-threatening disease in the sense of Art. 14-a para. 1 sentence 2 of Regulation 726/2004;

d.

for Comirnaty® and Spikevax® the Special Clinical Conditions from the marketing authorization decisions can no longer be fulfilled due to the discontinuation of the placebo groups in the respective clinical trials.

e.

For Comirnaty® and Spikevax®, the Special Conditions for Quality have not yet been fulfilled to a significant extent in due time.

A statutory duty to vaccinate against Covid-19 with the currently available drugs violates the principle of proportionality and infringes the fundamental right to life and physical integrity. Such a duty is unconstitutional."**(end of quote, underlining added by undersigned)**

The colleague Dr. Röhrig deals in this opinion - from page 10 - also with the decision of the BVerfGs of 10.2.2022 - 1 BvR 2649/21 and confirms my assessment that the BVerfG in this decision meets, "actually already the arguments for the unconstitutionality of a vaccination obligation" are (ibid., page 10). Further it reminds likewise that a "balancing "life against life" is not compatible with the right to life in connection with the human dignity warranty (with reference to judgement of the BVerfGs of 15.2.2006 to Az. 1 BvR 357/05). Finally, it highlights (ibid, on page 11) some of the aspects that the BVerfG obviously did not take into account in its decision of 10.2.22, in particular the fact that vaccinated people have a 251 times higher viral load compared to unvaccinated people.
For the rest, in order to avoid repetition, reference is made in full to the contents of Annex 7, which is thus elevated to the complainant's submission.
The expert opinion of the colleague Dr. Röhrig confirms thereby also some of the conclusions from the already submitted legal opinion of the colleague Beate Bahner of 27.12.2021 to the punishability of the vaccine Comirnaty of Pfizer/Biontech.

With regard to the aforementioned decision of the BVerfG of 10.2.2022, I would merely like to note that the statement to be found there under para. 17 in particular must have a profoundly cynical effect on all those affected:

"However, the law does not inevitably require those affected to be vaccinated. For those who want to avoid vaccination, it may involve temporarily changing their previous job or occupation, or even quitting."

For those affected, this should read as follows: Anyone who does not want to be "vaccinated" or - in reality - undergo a genetic intervention that is associated with such considerable dangers and risks that they are in effect taking part in a game of Russian roulette, can give up their job and then see how they get on, that's their problem. And if someone is therefore no longer able to service his debts and also loses his home, then he can also live in rented accommodation and apply for social benefits. That may comfort him if the family peace is destroyed by such circumstances.

So, according to the message of the highest constitutional guardians, the employee takes part in the Russian roulette of a gene-based intervention with an uncertain outcome, that is now just the price for the job.

One does not have to have studied law at a university to be able to grasp immediately that access to the law has been effectively denied to those working in the health sector

as a result of this case law. Has the judiciary now forgotten that humanity is the highest law?
It is so obvious: Such a de facto compulsory vaccination, which cannot be justified by anything, is - even if it is labeled as an "obligation to tolerate" - neither compatible with the dignity of a human being nor with the freedom of profession.

The BVerfG is apparently "in precarious condition", as the author of a Rubicon article of the same name stated already on 16.3.2021. Hans-Jürgen Papier, the former president of the BVerfG, has also repeatedly publicly criticized the Corona policy and warned of an "erosion of fundamental basic rights." In an online article in the Berliner Zeitung of Oct. 5, 2021, he was quoted as follows, among other things:

""As soon as it is certain that vaccinated people no longer pose a risk of infection, there is no longer any constitutional legitimacy to further restrict those affected in their fundamental rights.""

Source:

thttps://www.berliner-zeitung.de/news/ex-verfassungsrichter-corona-politik-war-irrational-und-kopflos-li.186983

As I said, at its core it is very simple. The conditions for an obligation to tolerate in the sense of § 17 a SG are evidently not present:

There are dozens of reasons which, even when considered in isolation, speak compellingly against an obligation to tolerate coronavirus "vaccination".

<u>In conclusion, I would like to emphasize some of the most important points once again:</u>

The gene-based coronavirus "vaccines" are not "vaccines", not even in the sense of Section 4 (4) AMG. They are an - entirely new - form of "gene therapy".

Any form of "compulsory vaccination" is neither compatible with the Basic Law nor with European and international law.

All coronavirus "vaccines" (also) do not cause sterile immunity, but are associated with such diverse and considerable vaccination complications - up to death - that it is no longer comprehensible from any point of view that the entire coronavirus "vaccination" campaign has not long since been discontinued by the competent authorities.

All coronaviurs "vaccines" are only conditionally approved, so that all those vaccinated are in effect participating in a trial. However, no one may be forced to participate in a study. It is highly questionable whether the requirements for even conditional approval ever existed. It is incomprehensible why the EMA extended the conditional approval in the first place and (still) has not revoked it.

In particular, it should still be emphasized: "Vaccination" is not possible without effective consent, but effective consent necessarily presupposes "voluntariness."

If a soldier is actually coerced into a "vaccination" under the threat of considerable professional and possibly also disciplinary and criminal consequences, then his decision is no longer "voluntary".

Due to this lack of voluntariness, he can no longer effectively consent to this "vaccination". No physician in the German armed forces can ignore this fact. Against such a background, no physician may still carry out such a vaccination.

On the question of the need for legal protection, it should be added that I already have to defend a soldier against the accusation of refusal to obey orders who has refused the order for coronavirus "vaccination".

The BVMg should therefore disclose how many disciplinary and criminal proceedings have already been initiated against soldiers who refused coronavirus "vaccination" despite orders/commands.

Schmitz
Rechtsanwalt