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'Justified by public interest': How Switzerland could make vaccines compulsory ✎

Helena Bachmann in Geneva

news@thelocal.ch

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Covid-19 vaccines

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To mandate or not to mandate, that is the question being raised in Switzerland about Covid vaccines. .Photo by Mufid Majnun on Unsplash

The issue of a vaccine mandate in Switzerland is not new and is becoming particularly relevant as the epidemiological situation in the country is deteriorating. Could the government decide to take this drastic step after all, and under what circumstances?

Since the beginning of the vaccination campaign in late 2020, the Swiss government has been emphatic in stressing that the Covid vaccine would remain voluntary, a position health officials have reiterated many times since then.
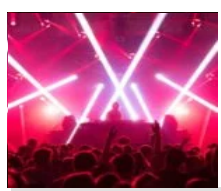
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Health Minister Alain Berset has repeatedly said that no one in Switzerland can be vaccinated against their will, a view shared by a legal expert.

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"There is currently no legal basis for this," said Andreas Glaser, professor of constitutional law at the University of Zurich, according to newspaper 20 Minuten.

However, earlier in December incoming Swiss president Ignazio Cassis said he "didn't want to categorically rule out nationwide mandatory vaccinations" as a last resort.

"Mandatory vaccinations can be useful" Cassis said, but warned it meant a "massive cut in personal freedom".

Switzerland's Alpine neighbour changed its tune in late 2021, saying that compulsory vaccination would come into effect from February, 2022.

Germany, which ruled out compulsory vaccination for more than a year, has also promised a parliamentary conscience vote on the issue in early 2022.

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Why would introducing a vaccine mandate in Switzerland be difficult?

From the cultural point of view, Swiss people value highly their civil liberties, which include the constitutional right to "self-determination" — the freedom to choose one's own destiny.

This emphasis on independence and the importance of individual choice is especially prevalent among more conservative and traditional members of the population.

The right-wing Swiss People's Party, for

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instance, is adamantly opposed not only to compulsory vaccinations, but also to obligatory testing — that is, anything that is imposed rather than chosen freely.

As a Geneva daily, Le Temps, wrote in its editorial, "In Switzerland we will never see [president] Guy Parmelin haranguing the people and summoning them to be vaccinated. It is absolutely not in Swiss DNA. Here, we must take into account the different cantonal, cultural or societal sensitivities. The injunction does not work".

But what if the health situation continues to worsen and hospitals become overburdened with mostly unvaccinated coronavirus patients?

The answer is a complex one, but there seems to be some legal basis to mandate inoculations under certain tightly defined conditions.

From the constitutional standpoint, "compulsory vaccination would affect various fundamental rights", Dr. Nicole Vögeli Galli, a lecturer at the School of Management and Law at Zurich University of Applied Sciences (ZHAW), told The Local on Monday.

Restrictions on fundamental rights are permissible only if they have legal basis — that is, restrictions must be provided for in the law itself.

"In addition, the interference with fundamental rights must be justified by public interest or by the protection of the fundamental rights of third parties", and must be necessary and reasonable, Vögeli Galli added.

"Public health, the protection of particularly vulnerable people, and ensuring a functioning health system, could be considered as 'public interest', she said.

And in a context other than the Covid pandemic, the Swiss Federal Court has already affirmed the admissibility of mandatory vaccination

under certain conditions.

Also, according to the Epidemics Act, both the cantons and the Federal Council can — after consulting with cantons — mandate vaccination of groups at risk, people who are particularly exposed, and those who carry out certain activities, Vögeli Galli said.

The Federal Council could consider compulsory vaccination as a last resort if the current measures do not prevent the health system from being overburdened.

"For this to be the case, there must be a considerable danger or a special situation, which is the case given a pandemic situation with increasing infections and deaths despite existing measures and new, more aggressive variants of the virus", she pointed out.

However, compulsory vaccination has to be limited in time and may not be carried out by means of physical coercion. Also, law does not provide for any sanctions if someone refuses to get their shots despite the mandate.

Would Switzerland's population accept obligatory vaccination?

Some would and others would oppose it.

In a recent nationwide survey, 53 percent of respondents said they are in favour of compulsory vaccination for all. And 69 percent support vaccine mandate for certain professional sectors.

On the political front, some have spoken in favour of the mandate as well.

"After twenty months of the pandemic, no measure can be excluded", said Cédric Wermuth, co-president of the Social Democratic Party.

Mauro Poggia, the Geneva cabinet minister responsible for health care, is also urging MPs to consider implementing the mandate.

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Others, however, are against this measure.

Swiss Freedom Movement (MLS) association has filed an initiative — called "For Freedom and Physical Integrity" — for a nationwide vote to prevent mandatory vaccination. The referendum will be held at some point in 2022.

It calls for the inclusion in the constitution of the fundamental right of each individual to determine for themselves what can be injected or implanted in their body.

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