

## Research Article

### COMPLY HUMAN RIGHT LAW WHEN IMPLEMENTING VACCINE PASSPORT

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#### ABSTRACT

The Covid-19 pandemic, which has lasted for more than a year, has caused negative impacts on people's lives worldwide. Some basic human rights have been restricted to prevent the pandemic, such as the lockdown, social distancing, which has restricted citizens' freedom of movement between countries and regions, hindering some society activities, and the development of the global economy. To solve this problem, many countries have now applied for the Vaccine Passport. In this article, the authors will analyze issues related to ensuring the enforcement of human rights law when implementing the Vaccine passport. The authors use a number of documents and statistics as well as facts about Covid-19 and Vaccine Passport, legal theory on human rights.

**Keywords:** covid-19, Vaccine passport, human rights law, compliance.

#### INTRODUCTION

"Vaccine passport" is a very new legal concept nowadays. It is a certificate that allows citizens to participate in daily activities such as work, sports, and other recreational activities like normal life before Covid-19 pandemic. More and more countries around the world are promoting the "vaccine passport" model in the hope of helping to revive the economy and help people's lives continue in the complicated developments of Covid-19 pandemic. However, there is an issue when implementing the Vaccine Passport. It is still controversial among researchers and scientists as well as policy makers around the world. The application of the Vaccine Passport not only has an impact on socio-economic life, but also relates to the enforcement of human right law and public policies of each country. Therefore, in this article, our studying about the implementation of the Vaccine Passport to ensure compliance with human right law is essential in the current period.

#### METHODOLOGY OF RESEARCH

To do this paper, the author used many kinds of methodologies of research to analysis international and national legal policy and documents (law and regulations) related to the compliance of human rights laws when implementing Vaccine Passport. Besides, the authors base on the hypotheses developed in the study show how to use law and regulation to comply human rights laws when implementing Vaccine Passport. To examine these relationships, the authors developed some hypotheses and tested these hypotheses using some empirical models. The developed models confirm the assumptions and demonstrate that increasing the compliance of human rights laws when implementing Vaccine Passport. The hypotheses which are personal views regarding the relationship between independent and dependent variables based on the literature review. Moreover, statistic and survey are also used to finish this research. The authors used the poll to survey the Vietnamese citizens who live in Vietnam. The authors also sent the questionnaires to them to ask them some question related to the

compliance of human rights laws when implementing Vaccine Passport. The research of this paper is finished base on combining all of methodologies above. However, because of time and finance limitation, the article still lacks of some information. The authors hope to take the opinion of audience and reviewer to do better for the next time.

#### LITERATURE REVIEW

##### Freedom of movement and residence right

Everyone has "the right to freedom of movement and freedom of residence within the territory of a State" and "the right to leave in a country, including his home country, and to return to his own country". Freedom of movement includes aspects [1]:

- the right to freedom of movement within the borders of a country (also known as "freedom of movement within the country");
- the right to leave any country, including one's own (also known as the "right to exit or to emigrate"); and
- the right to return to one's home country (also known as the "right of entry or right of immigration")

Thus, according to the provisions of the Universal Declaration of Human Rights (UDHR 1948), the subject of the right to freedom of movement is everyone, including foreigners. A foreigner who resides or is lawfully present in a country also has the right to lawfully move freely within the territory of that country without restriction or impediment. Nowadays, freedom of movement is also considered an important part of cooperation and exchange between countries, contributing to the spirit of solidarity, promoting peace, exchanging values of humanity and the common prosperity of nations and peoples all over the world. In addition, the right to freedom of movement is also recognized and enforced very early in the constitutions and laws of most countries, typically the United States, Canada, and European Union (EU), Australia, Singapore. In the constitutions of many countries, the right to freedom of movement is not only the right of each citizen of that country, but also the right of foreigners.

However, freedom of movement is not an absolute right, there are exceptions, whereby the right to freedom of movement may be restricted under certain circumstances and conditions. Some countries often enact regulations to prevent a person from using the right to freedom of movement to avoid liability in the event of a violation of the law. Following the international human rights law, the right to freedom of movement may be restricted if the exercise of this right arises in conflict with other actual rights and interests. For example, it is possible to spread diseases that affect the health of the community, or affect national safety, security, public order, etc. Specifically, Article 12 of the International Covenant on Civil and Political Rights [2] recognizes that the right to freedom of movement may be subject to statutory restrictions and is necessary for the protection of national security, public order, and the community health or morals or the liberties of others. However, the imposition of restrictions on the right to freedom of movement can only be made provided that such restrictions are reasonable, provided for in law, and are widely accepted in a free and civil society. In Vietnam, the right to freedom of movement is recognized in the Constitution as a basic human right. It is also a fundamental right of citizens. Specifically, the 2013 Constitution states: "Citizens have the right to freely move and reside in the country, have the right to go abroad and return home from abroad". Thus, the right to freedom of movement in accordance with Vietnamese law has recorded the same contents as those of international law. These are the rights to freedom of movement within their own territory, the right to go abroad (the right to exit) and the right to return to the country (the right to enter). Regarding the issue of entry and exit, depending on the provisions of law or international treaties that Vietnam has signed or acceded to, Vietnamese citizens are granted passports or travel documents to enter and exit the Vietnamese territory. For foreigners, the 2013 Constitution of Vietnam stipulates that foreigners residing in Vietnam are entitled to protection of their lives, property and legitimate rights and interests under Vietnamese law, including the right to self-determination. According to the current law on entry and exit of Vietnam, foreigners are entitled to:

- If enter Vietnam with a passport or valid international travel document and a visa, if you enter unilaterally without a visa, your passport must be valid for at least 6 months and must be separated from the time of exit Vietnam last time at least 30 days;
- transit when holding a passport or valid international travel document; vehicle tickets suitable for the journey to the third country; visas of third countries, except in cases of visa exemption;
- exit when having a passport or valid international travel documents; temporary residence certificate or valid temporary residence card or permanent residence card; are not subject to temporary suspension of exit as prescribed by law.

Thus, the implementation of the Vaccine Passport that allows citizens of each country to freely travel in their country and cross the border to exit and enter other countries is contributing to the implementation of the provisions of the law. Laws on protection and enforcement of the right to freedom of movement and residence are basic human rights recognized in the national and international legal system.

### National treatment (NT)

The principle of national treatment is a principle in international law. This principle provides for the equal treatment of foreigners as citizens of the host country. According to the principle of national treatment, if a state grants special rights, benefits or privileges to its citizens, it must also grant those rights to foreigners while they are

present in that country. Basing on the provisions of international treaties, a country must commit to treat equally with citizens of other countries that are parties of the convention. According to this principle, when implementing Vaccine Passport, it is necessary to ensure fair treatment between citizens of the host country and foreigners residing in that country. It means the host country that allows foreigners with a vaccine passport will be allowed to freely travel, work and perform recreational activities anywhere without being prevented from its citizens with vaccine passports of that country.

### Most favored nation principle (MFN)

Most favored nation (MFN) principle is the most important legal principle of international law. The MFN principle is understood that if a country grants a member country certain preferential treatment, it must also accord that preference to all other member countries. Usually, the MFN principle is stipulated in international treaties. When the MFN principle is applied multilaterally to all member states of an international treaty, it is also synonymous with the principle of equality and non-discrimination because all countries will give each other the "reciprocity". the most favorable treatment". The MFN principle does not have absolute applicability, it has exceptions. Accordingly, each country has the right to declare not to apply all provisions of the Agreement to another member country. Several international conventions provide important exceptions and waivers to the MFN principle. For example, Article XXIV of GATT stipulates that member countries in regional trade agreements may accord each other more preferential treatment of a discriminatory nature to third countries; or two exemptions for special and more favorable treatment for developing countries. According to this principle, when implementing Vaccine Passport, it is necessary to ensure equal treatment between foreigners of different nationalities residing in that country. This means that the host country allows any foreigner with a vaccine passport to be allowed to freely travel, work and perform recreational activities anywhere without being prevented must not discriminate against foreigners of different nationalities while they are residing in that country.

### Right of access to information and freedom of information

The right of access to information (hereinafter referred to as financial information) including the right to freedom of information is one of the basic human rights. "Everyone has the right to freedom of speech and expression; including freedom to hold opinions without interference; as well as freedom to seek, receive and impart ideas and information through any media and regardless of frontiers"<sup>1</sup> and everyone has the right to hold opinions without to interfere, have the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, whether oral or written, print, either in the form of art or through any other mass media of their choice. The right to information is one of the basic rights of people and citizens belonging to the group of civil - political rights recognized in the Universal Declaration of Human Rights of the United Nations in 1948 and the 1966 International Covenant on Civil Rights to which Vietnam was a member. The right to financial information has been continuously affirmed in many other international treaties such as the United Nations Convention against Corruption, the Rio Declaration on Environment and Development, and the UNECE Convention on Environmental Regulation. The right to financial information includes the right to receive necessary information through publicly available communication channels without having to request. This right goes hand in hand with the responsibility to ensure the publicity of information and activities on a

<sup>1</sup>Article 19 Universal Declaration of Human Rights (UDHR) 1948

regular basis. The right to seek information and to request competent authorities to provide information that citizens need or are interested in, to the extent permitted by law. In international law, the right to access information or the right to freedom of information is not an absolute right. The exercise of this right is subject to statutory limitations and exceptions. For example, respecting the rights or reputation of others; Protect national security or public order, public health or morals; or prohibit propaganda for war; advocates inciting, inciting national, racial or religious hatred. Freedom of information is an important factor in engaging the public in social work. The right to financial information helps the public to understand the basis of policy decisions, thereby enhancing the ability to support, reduce misunderstandings and public opposition to the policies and activities of the state apparatus. Freedom of information contributes to the protection of other human rights. In fact, in the countries that have enacted the Approach of information laws, freedom of information helps to enhance the ability to enforce other human rights in civil, political, economic, social and cultural fields. Freedom of information promotes the rule of law and governance, making government agencies work better. The 2013 Vietnamese Constitution inherits the 1992 Constitution's provisions on citizens' right to information and amends them to become citizens' rights to access information: "the citizens have the right of meetings, associations, demonstrations. The exercise of these rights is prescribed by law". At the first time, the 2013 Constitution stipulates principles for the implementation of human rights and citizens' rights, including the right to access to information. The State guarantees and promotes the People's right to mastery; recognize, respect, protect and guarantee human and citizen rights. According to this right of access regulation, when a country applies the vaccine passport, it is necessary to publicize and be transparent about that policy so that everyone can know and understand the regulations on this issue. Standards and guidelines on vaccine passports must be propagated and disseminated in an understandable manner in the mass media.

### Concepts of vaccine passport

A "vaccine passport", also known as a Green Certificate in paper or digital form, is a proof that the holder has been vaccinated with a licensed vaccine and has a negative result for the vaccine COVID-19 after being tested or after recovering from illness. The term "vaccination passport", or a series of other related concepts such as "digital green pass", "green pass" can be understood as a record of personal health data, including documents, papers proof of vaccination or negative test certificate, verified on a digital basis. The goal of the Vaccine Passport is to promote the early opening of borders between countries, ensuring the safety of all citizens in the world.

## FINDINGS AND DISCUSSION

### Some facts of the implementation of the Vaccine Passport around the world

Currently, the World Health Organization (WHO) has not recommended the application of a "vaccine passport". In the world so far, only Singapore is piloting on a very narrow scale, some countries have raised this issue but have not yet applied it. The European Union (EU) is negotiating with the US on a European Digital Green Certificate program. This issue has been raised in the meeting of the Health Ministers of the World's Most Advanced Industries (G7) since March 2021. Thereafter, discussions among allied nations continued on a standardized approach to the issue. The UK plans to adapt the National Health Service phone app - used to access medical records, book appointments and order prescriptions, act as a vaccination

verification tool and digital test. The World Health Organization (WHO) is working on its own version called the Smart Immunization Certificate. Meanwhile, Israel is considering making the Green Pass, which allows vaccinated Israelis to go to restaurants, gyms, concerts and sporting events, in effect for tourists' international calendar. South Korea is the latest country to officially announce that it will issue a "vaccine passport" in a digital form through a smartphone application, which integrates information on the status of Covid-19 vaccination of citizens. The application of the "vaccine passport" will help people feel the normal rhythm of life again. The e-certification system will be urgently completed within this month. Before Korea, Thailand, China, Japan and the European Union (EU) also approved this plan. In particular, after many disagreements among member states, the EU has also come to an agreement on the issuance of "vaccine passports". It is expected that the European Parliament (EP) will approve the proposal on the application of the "vaccine passport" in its plenary session in June 2021. Before the EU reached this unification, a number of member states issued digital certificates certifying immunizations due to their eagerness to recover the tourism industry in particular and the economy in general after a long period of hardship because of the pandemic. In the world, some countries have high vaccination rates, like Israel, where 50% of the population has been vaccinated, people have gradually returned to normal life because they can go to restaurants, theaters, gyms exercise when presenting a "green card" proving vaccination. The Government of Canada supports the concept of a "vaccine passport" and will introduce a form of certification that will allow Canadians who have received the COVID-19 vaccine to travel internationally. Vietnam has also planned to use the "vaccine passport" and conducted research on the application form, building a software to manage vaccination subjects using QR codes, in order to ensure the authenticity of vaccination information. Competent state agencies have also stepped in to prepare the infrastructure for the application of the "vaccine passport". The deployment of the "vaccine passport" in Vietnam will be done step by step, balancing benefits and risks. The benefit is to facilitate economic development, the risk can still be community transmission. The application of the "vaccine passport" in Vietnam must meet the requirements of facilitation but safety above all.

### Ensure compliance with human rights law when implementing vaccine passport

In order to create fairness and ensure basic human rights when issuing the Vaccine Passport certification, countries around the world or WHO need to establish a common standard for the application of the Vaccine Passport to be able to apply the Vaccine Passport applied equitably to all subjects in society, regardless of nationality, skin color and sex. One advantage of the "vaccine passport" is the creation of a health app that allows individuals to securely and privately store their health records on their phones. Extracting data via QR code when it is necessary to provide information to the competent authority is also a superior measure to help quickly authenticate information as well as ensure information safety for tourists. At the same time, if a common recognition system is formed between countries, the movement and conduct of passenger travel between countries will become extremely convenient and fast for passengers as well as passengers to the authorities in the two countries while still ensuring safety for epidemic prevention and control. However, the application of the "vaccine passport" model has revealed divisions between countries, when each country promotes its own interests. The EU can be taken as an example. The EU's proposed "vaccine passport" would only accept vaccines that have been approved by the European Medicines Agency (EMA), but leave the door open for other Chinese and Russian vaccines. The Covid-19 vaccine program in Europe currently mainly uses vaccines from

Pfizer/BioNTech. This shows that the EU has not implemented the MFN principle when it comes to discriminating against the trade in vaccines originating from different countries. This can be detrimental and harmful to the EU as they cannot have enough vaccines to use as well as choose the right vaccines for them, both in terms of price and quality. Therefore, countries need to strictly implement the principle of ensuring fairness, not discriminating between domestic and foreign vaccines or not discriminating between other foreign companies when they supply vaccine. Not only the EU, China also has violations of international law when it is only allowed to enter foreigners if they receive Chinese vaccines. Thus, the question is whether governments around the world will accept unapproved vaccines within their borders. In addition, countries need to have similar standards for Vaccine Passports and must transparent and share information with each other on this issue. If only promoting the use of "vaccine passports" without considering the relevant issues, there may not be cross-acceptance between countries. This will greatly affect and hinder the exercise of the right to freedom of movement and residence of citizens of each country. Currently, the authorities are researching countries around the world to build a number of test models in small areas such as golf courses or small tourist areas. The WHO has just launched a fundraising campaign called "Go Give One", calling for individuals to contribute \$7 to buy a dose of vaccine for someone living in a low-income country, through the Covax program. We need a way to collaborate globally, faster than ever, to significantly increase the number of vaccines that will be available in 2021 and early 2022. However, the task is not easy. The problem is not only building more factories with better production capacity in more countries, but also requires the coordination of a series of factors, including technology and manpower transfer, raw material transportation and loosen intellectual property rights. Covax needs rich countries to share vaccines. They can contribute the number of vaccines that have been hoarded like the US, which currently has about 73 million doses of Covid-19 vaccine in stock. However, experts say that it is best for countries to contribute before the vaccine batches are delivered. The United States is arguably capable of doing this. Researchers at Duke University estimate that there will be at least 300 million doses of the vaccine left over by July, and assume they will keep enough doses to inject the majority of children. The private sector has a huge need to contribute to solving this serious global problem, so the campaign was born to meet that. In Vietnam, the Ministry of Health has proposed three groups of subjects that can apply for vaccine passport implementation. In particular, the first group of subjects is Vietnamese people stranded abroad. The second group of subjects are foreigners who enter Vietnam to invest and do business. The third target group is international tourists.

## CONCLUSION AND RECOMMENDATION

In conclusion, the compliance of Vaccine Passport for citizens is very necessary for citizens of each country. It shows the progress and responsiveness as well as solutions to face the Covid-19 pandemic of human. When implementing the Vaccine Passport, countries should pay attention to ensuring the implementation of legal provisions on human rights such as equal rights among domestic citizens, between domestic citizens and foreigners, between foreigners each other to ensure the freedom of movement and residence rights of people. The correct and effective application of the Vaccine Passport policy will contribute to the early re-establishment of a new normal life, thereby recovering and developing production and business for each country's economy. Vaccination can prevent and control diseases in the long period, but to be able to resume normal activities quickly, it is necessary to apply technology of the 4<sup>th</sup> Industrial Revolution in certifying that the vaccine has been vaccinated or has had a negative test. Using a vaccine passport, combined with those who have

negative PCR test results, is an effective solution to restart socio-economic activities back to as normal as before the pandemic. In addition, the use of electronic data will limit data falsification and prevent frauds that can spread disease in society.

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