

THE COVID-19 PANDEMIC AND THE FUNDAMENTAL RIGHTS IN THE EU

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Abstract: *The year 2020 and also 2021 brought both progress and setbacks in terms of fundamental rights protection. The COVID-19 Pandemic triggered multiple crises not only at the sanitary level. In this context, people in Europe and also all over the world had the impress that their fundamental rights are not respected and limited. The paper offers a perspective about the impact of COVID-19 on human rights and emphasis some highlights weaknesses.*

Key words: *Pandemic, COVID-19, Fundamental Rights, European Union*

1. Introduction

Covid-19 affected the population of several countries at the beginning of last year, 2020. Starting from a laboratory in Wuhan China, air transmits this virus in a quick time in the countries. However, for two years we have been facing Covid-19, which produces casualties and induces a state of insecurity in the world's population. This insecurity is not just at the sanitary level but also at concerning of the respect of the human rights level.

The crisis caused by the COVID-19 virus is an emergency situation which demands certain extraordinary measures to protect public health, including restrictions on fundamental civil and political rights.

The governments of countries around the world have introduced various emergency rules on the territory of their states as a measure to contain the pandemic, but is important to know if such restrictions permissible?

We are wondering if the restrictions are legal and necessary as well, under the international human rights standards?

2. Methods

The present study employed general scientific (as: deduction, analysis, and synthesis) and specific scientific methods (as: comparative legal, formal legal).

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3. Discussion

Article 15 of the European Convention on Human Rights (ECHR) allows countries to declare a state of emergency “in times of war or other public emergency threatening the life of the nation” (UK Parliament, 2002).

A state must fulfill three elements for a valid derogation and justified restrictions on human rights, according to Article 15 of the European Court of Human Rights (ECHR):

1. it must be in time of war or other public emergency threatening the life of the nation;
2. the measures taken in response to that war or public emergency must not go beyond the extent strictly required by the exigencies of the situation;
3. the measures must not be inconsistent with the State’s other obligations under international law (European Court of Human Rights, 2021, p. 6).

The COVID-19 pandemic affects everyone, young, elder people and kids. It concentrated the politics of the Governments’ priority on urgent measures to curb its spread to safeguard public health and provide medical care to those who need it. Even all this politics derives from the principles of defending the human rights of health and the right at life, the pandemic proved these measures limited the human and fundamental rights to an extent experienced before and such limitations often contested if those are consistent with the legal safeguards.

At the European level the fundamental and human rights consecrated in the constitutions and legislation of EU Member States and the EU Charter of Fundamental Rights, the European Convention on Human Rights (ECHR), the treaty system of the European Social Charter and also in a few other instruments adopted in the United Nations (UN), such as the International Covenants on Civil and Political Rights (ICCPR) and on economic, social and cultural rights.

Given all these legal instruments, the EU Charter of Fundamental Rights is of particular importance in the EU context. The Charter of Fundamental Rights of the European Union brings together the fundamental rights of everyone living in the European Union.

This Charter sets out the full range of civil, political, economic and social rights based on: the fundamental rights and freedoms recognized by the European Convention on Human Rights; the constitutional traditions of the EU Member States; the Council of Europe’s Social Charter; the Community Charter of Fundamental Social Rights of Workers; international conventions to which its Member States are parties. The Charter became binding on EU Member States when the Treaty of Lisbon entered force in December 2009 (Equality and Human Rights Commission, 2021).

The essential rights highlighted in the Charter’s first eight articles reaffirm human rights are fundamental rights and freedoms that all individuals have and based on values which including dignity, fairness, equality, respect, and independence.

Those eight rights are human dignity (Article 1), right to life (Article 2), right to the integrity of the person (Article 3), prohibition of torture and inhuman or degrading treatment or punishment (Article 4), prohibition of slavery and forced labour (Article 5),

right to liberty and security (Article 6), respect for private and family life (Article 7), protection of personal data (Article 8) (EUR-Lex, 2012).

The pandemic with COVID-19 and the implicit public health crisis of the EU Member States became the responsibility of the EU institutions and to implement of EU law.

The core values of the European Union arise from Article 2 of the Treaty on European Union (TEU) referring to 'human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities' (European Parliament, 2021).

The nondiscrimination and equality in accessing rights as regard healthcare, education, services, social protection, the freedom of movement within the EU, the internal market and working conditions, data protection, or asylum and migration are just a few rights, seriously affected starting with the beginning of the pandemic with COVID-19.

The pandemic with COVID-19 obvious has affected the groups in many societies because of the vulnerable socioeconomic and health status, even for decades are enshrined the principle that all individuals shall treated equally no matter of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This ongoing special period, characterized by public emergency, demand some punctual measures like to suspend certain rights but under the principles of legality, and with full respect for the non-discrimination clauses of international human rights law.

The emergency measures taken at the international level, not just at the European level, have implications for human dignity, the function of democratic institutions, rule of law and the overall respect for human rights and seriously contested by the civil society in many states; these measures have affected also the right to liberty, freedom of association, and freedom of movement.

According to United Nations, emergency powers should used within the parameters provided by international human rights law, the International Covenant on Civil and Political Rights (ICCPR) but should be time-bound and only exercised temporarily with the aim to restore a state of normalcy.

Even without formally declaring states of emergency, states can adopt exceptional measures to protect public health that may restrict certain human rights, respecting of the requirements of legality, necessity and proportionality, and be non-discriminatory (United Nations, 2020, p. 1).

Certain civil and political rights can only be suspended in particular conditions in a period of emergency that threatens the nation's life. The right to life, the prohibit of torture and the principle of legality in criminal law, cannot be derogated from even during states of emergency and continue to apply in all situations.

More detailed, Article 4, paragraph 2, of the Covenant specifies that no derogation from the following articles may be made: right to life, prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent, prohibition of slavery, slave-trade and servitude, prohibition of imprisonment because of inability to fulfill a contractual obligation, the principle of legality in the field of criminal law, the recognition of everyone as a person before the law, freedom of thought, conscience and religion.

The rights enshrined in these provisions are non-repealed and we understand that the quality of a Covenant provision as a non-repealed one does not mean that no limitations or restrictions would ever be justified.

Even in times of most serious public emergencies, states that interfere with the freedom to manifest one's religion or belief must justify their actions (United Nation, International Covenant, 2001).

Human dignity and the Universal Declaration of Human Rights is at the core of the UN's work, and as Secretary-General António Guterres pointed out, nowadays, the world is facing "the biggest international crisis in generations"; he emphasized that "people and their rights must be front and centre", and that human rights "can and must guide COVID-19 response and recovery" (United Nation. Information Centre, 2020).

According to Dunja Mijatović (Council of Europe Commissioner for Human Rights), 2020 has been a disastrous year for human rights in Europe, the COVID-19 pandemic has sped up the erosion of the democratic fabric of our society, on which protection of human rights depends; has also provided many governments with an ideal pretext to exploit fears and crackdown on dissent, restrict people's rights and pass emergency legislation that risks having long-term consequences, beyond the health crisis (Council of Europe, 2020).

The recent studies show that besides the dramatic effects of quarantines and lockdowns on freedom of movement and travel, the pandemic is affecting human rights in four areas of particular concern related to:

1. the discriminatory and unequal treatment of certain minority or vulnerable groups;
2. the infringements on core political and civil rights of freedom of expression and peaceful assembly;
3. concerns regarding the right to privacy in the digital age;
4. the prisoners and other people involved in the criminal justice system demand special handling from a rights-based perspective (World Justice Project, 2021, p.3).

Also, several restrictions imposed were identified in some states with the beginning of the pandemic with COVID-19. The following human rights were subjected to the greatest restrictions: the right to freedom and security of person (Article 9 of the ICCPR, Article 5 of the ECHR); the right to free movement (Article 12 of the ICCPR); the right to liberty and security of person (Article 9 of the ICCPR); prohibition of discrimination (Article 26 of the ICCPR) (Harisovich & Sinyavskiy, 2020).

According to United Nations, states can take emergency measures in pandemic time, but in Guidance is mentioned that states must enforce exceptional measures humanely, respecting the principle of proportionality when imposing penalties for violations and ensure that penalties are not imposed in an arbitrary or discriminatory way. For example, persons with disabilities or victims of domestic violence should not be subjected to penalties should they violate COVID-19 emergency measures to protect themselves (United Nations Human Rights Office, p. 4).

The same Guidance had other specific measures to regulate misinformation on COVID-19 because should be crafted with care, as they may lead to censorship of unpopular or

minority opinions and UN considers that criminal penalties for information offenses should be avoided (United Nations Human Rights. Office, p. 4).

4. Conclusions

Marcel Fafchamps, professor of economics and senior fellow at the Center on Democracy, Development and the Rule of Law at Stanford University, consider that “civil liberties were severely curtailed during COVID-19.

New tools and technologies were introduced to control people better, including phone apps that identify likely social interactions between people ... As a result, democracy will be on the defensive, its spread will be reversed in many parts of the world, and democracies themselves will infringe more on civil liberties. We are entering a post-democratic era” (Pew Research Center, 2021).

Because of the novelty of the Corona virus and the uncertainties about its spread, states faced a major dilemma when deciding on what would be the effective restrictive measures; the reason a restriction affecting fundamental freedoms is unlikely to be proportionate and less restrictive as regard the fundamental freedoms.

Given that the COVID-19 pandemic is still affecting the whole globe, European states (but not only) should coordinate better and disseminate best practices on applying limitations to avoid additional disproportionate limits of human rights, that would need adaptation to changing circumstances.

It is vital to comply with current regulations, although simultaneously developing new international human rights and health instruments in order to manage the ongoing COVID-19 pandemic.

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