

Introduction on the impact of the COVID-19 pandemic on human rights

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Since 2019, the outbreak of the coronavirus disease 2019 (COVID-19) pandemic has put Western democracies under severe pressure. In the face of such an existential threat, it was to be expected that national governments and regional organizations need to take bold action. The necessity of such action is not questioned. What is complicated, nonetheless, is the chosen mode of operation. This is not a plain policy and governance question. It immediately transcends into a legal crisis indeed. In emergencies, such as pandemics, human rights are inevitably curtailed by the measures taken to deal with them. Although such measures were initially taken on an interim basis and for a short period of time, the declaration of a state of emergency and the restrictions of basic rights and freedoms are now maintained for longer periods, threatening the enjoyment of human rights for extended time periods, if not permanently. In times of crisis, human rights law allows exceptional measures to be taken, which may restrict the enjoyment of some of them for the purpose of protecting public health. However, such restrictions should be imposed only when necessary and in accordance with the principle of proportionality. The aim of this project is to provide a comparative and multidisciplinary review and reflection of the legal impact of the coronavirus in Europe. It explores the human rights impact of the pandemic through doctrinal, comparative, multidisciplinary, and empirical research.

Europe is a continent characterized by developed liberal democracies that put a strong emphasis on the protection of human rights. The bitter experiences of the 20th century, especially the constant warfare between European powers and the destruction they have caused, as well as the rise of totalitarianism within the continent during the same period, have provided the necessary societal pressure that propelled the political reaction of European countries toward the creation of a more stable and functional economic, legal, and political landscape indeed. Since the 1950s, Europe has been a bastion of freedom and fundamental rights, and during this period, no major political or eco-

conomic event has put the commitment of the European Union (EU) or the Member States (save for brief exceptions within certain Member States such as Greece, Portugal, and Spain, which suffered from totalitarian outbreaks) to the upholding of the rule of law and the protection of fundamental rights under serious question. The COVID-19 pandemic is the first major challenge that might question this observation. The uncontrolled spread of the disease combined with the open border policies of the Union and the high level of globalization has created an unprecedented situation, one that has not appeared within the European continent for at least a century. Vast sectors of social activity came under existential threat as traveling, conducting business, delivering education, exercising religious activities, and so on came to a sudden halt, a consequence of the inefficiencies that have been building up within the national health systems of European States. In order to avoid a complete collapse of social structures, due to the fact that national healthcare systems have not been adequately prepared to anticipate a health crisis of the current magnitude and the continuation of normal social and economic activities would force them to seize their operations, national governments imposed heavy limitations on fundamental rights. The involvement of the EU has been minimal since it does not have the competence and the authority to overtake central action in the name of the Member States. It was, therefore, the national governments that had to carry the burden and the responsibility to find functional solutions against the current pandemic. At the same time, nonetheless, the mode of operation of national governments came into the spotlight. While bold action on the part of national governments was to be expected, the conformity of governmental action with human rights during the pandemic is not self-evident. Countries have declared a state of emergency, briefly in the beginning, but all the more persistent subsequently, social and economic activities were banned, citizens are monitored and punished for lack of conformity with COVID-19 measures, certain age and national groups are being discriminated on the basis of their vulnerability to the virus, wide sectors of the economy are prohibited from functioning, and so on. This limited way of life is now the “new normal”, but this “new normal” appears to be a full-scale impediment of the enjoyment of the most basic fundamental rights and freedoms.

There are multitude legislative layers of protection of human rights within Europe. The European Convention of Human Rights (ECHR), the Charter of the Fundamental Rights of the EU (the Charter), and the national state guarantees of human rights are the most basic and profound of these layers. No matter the layer of protection, nonetheless, certain key fundamental rights are guaranteed across the border: the right to healthcare, the right to liberty and security, the right to education, the right to the protection of family and private life (including the protection of personal data), the freedom of assembly and association, the right to a judicial remedy, and the principle of equality before the law. Despite the network of rules protecting these rights, it is undisputed that governmental actions against COVID-19 have undermined their free and unhindered exercise. The irony of the situation, at least from a legal point of view, is that the restrictions of fundamental rights imposed by governmental responses are justified by the protection of an overarching (at least thus it appears to be) right, that to public healthcare. What has not been adequately explored, nonetheless, is the conformity of governmental action in the name of public health with the majority of the human rights listed above.

Points of friction and debate are plentiful and cannot be ignored. One needs only a few examples in order to illustrate the complexity of the situation. A reflection through the lenses of the most basic rights at risk is already telling. The freedom of movement, for example, has historically given birth to the market, politics, public space, freedom of thought, expression, dissemination of ideas, and religious freedom. When physical activity is necessarily restricted – in order to protect the major good of life and health – prohibitions are automatically imposed on economic freedom, freedom of the market, that is, freedom of trade and industry, freedom of profession and business, and freedom of work. Restrictions are imposed on related fundamental freedoms of the Union, that is, the free movement of persons, capital, and goods and services; the freedom of establishment; and the freedom to provide services.

Equality before the law is also at risk. Movement, business, travel, and other prohibitions do not appear to have been distributed equally among the population of the continent. A recent Council of Europe

Commission against Racism (ECRI) report identified four challenges faced by Europe in 2020:

- the mitigation of the disproportionate impact of the coronavirus pandemic on vulnerable groups,
- tackling deep-rooted racism in public life,
- the fight against racism against Muslims and anti-Semitism, and
- treating the reactions against the protection of the rights of LGBTQI individuals.

In order to control the spread of the virus and to monitor the respect of the governmental measures against it, governments have created a significant number of digital tools, such as contact tracing apps, the very functionality of which demands a constant monitoring of citizen activities. It goes without saying that such digital tools put an enormous pressure on the right to one's privacy and data protection.

Even the right to healthcare is not necessarily properly respected, despite serving as the basic excuse for extreme and unprecedented governmental measures. To begin with, the inefficiencies of public healthcare systems, dramatically revealed during the outbreak of the virus, have condemned all other activities to a sudden (hopefully temporary) death. This is a strong indication that for many years, governments did not properly prepare. At the same time, vaccination, being, at least in theory, the most effective medical solution, comes with its own human rights problems. Medical intervention in general, no matter its kind, shall be based on the consent of each individual. Is it possible to compromise this demand with mandatory state vaccination programs? Is such a mandatory medical regime compliant with the right to one's private life (including one's personal integrity)? Can the exercise of other fundamental rights be made conditional upon being vaccinated? These are but a few of the questions that revolve around the issue.

Last but not least, who is responsible to control governmental arbitrariness? A major impact of the pandemic has been the immediate prohibition of court proceedings. Citizens have lost a major institutional guarantee to their freedoms as not only do they now lack access to justice in general but they are also unable to challenge the measures

of the executive power, no matter how ill-designed and ill-executed they are. Is such a situation compliant with the rule of law?

There are currently no scientific works that address the legal impact of the COVID-19 pandemic. That does not mean, however, that piecemeal publications are lacking. There is currently an important gap in the legal analysis of the COVID-19 pandemic. Due to the sudden, violent, everchanging, and widely disparate nature of governmental reaction across Europe, there has been no possibility for a general overview of the compliance of national measures with the basic fundamental rights approaches. At the same time, the reaction of literature (no matter whether academic, stemming from the industry, or from policy organizations) has adopted a piecemeal and concealed approach and the holistic, wider, or lasting implications of the pandemic on human rights have not been explored as of today. At the same time, there has been no systematic reflection and effort for the creation of human rights conforming pandemic responses in terms of legislative and policy measures. It is these pressing existing gaps that the current proposal aims to cover, securing a high level of innovation and of added value for human rights researchers.

The project aims to explore the human rights impact of the COVID-19 pandemic in a multidisciplinary, comparative, and synergetic way. Apart from reviewing existing laws, legal literature, and case law, the volume adopts a holistic approach; that is, it will not remain with the limits of pure doctrinal analysis, but it will back up the research results with empirical data.

This volume contains the findings on several issues concerning human rights and in particular the COVID-19 pandemic as a major challenge for women's working life in the EU (Chapter I), Digital transformation–digitalization in the COVID-19 era (Chapter II), Privacy vs public health in the case of COVID-19 tracing apps (Chapter III), Effects of the COVID-19 pandemic crisis on general population mental health (Chapter IV), Employee rights during the pandemic in social sciences (Chapter V), The impact of the COVID-19 pandemic on ship operations, ports, and the rights of seafarers (Chapter VI), How criminal law helps to tackle the pandemic (Chapter VII), Corruption risks in public procurement in the context of COVID-19 (Chapter VIII), and an epilogue: Pandemic, Law, and State – the continuous mutation of the raised issues.

