

Introductory note

The book on “*The impact of the COVID-19 pandemic on Human Rights*” constitutes an important contribution to the knowledge of the subject. It is a well written book by members and associates of the staff of the Frederick Law Department and obviously the outcome of research in the field.

The COVID-19 pandemic brought with it a number of collateral changes in many fields. It certainly brought into light the need to use technology in communication and changed the character of the legal profession and the Courts’ handling of cases. Online Dispute Resolution has become part of our lives, and it is in the pipeline in Cyprus where it is expected to be introduced within 2023. Already, amendments of the Civil Procedure Rules and Court Practice have taken place, which allow handling of cases at the pretrial level electronically. Meetings with clients through electronic means have become part of daily routine with virtual offices also becoming a new phenomenon which may in the not-so-distant future replace the standard law chambers to a great extent. The impact of COVID-19 on Human Rights has been of great importance and has brought into light the strengths and weakness of the system of protecting Human Rights in Europe and worldwide.

The need to promote public health and to afford the necessary protection counterbalanced against the need to safeguard important human rights such as the right to private life, family life, public meetings and gatherings, court hearings, court proceedings, and the administration of justice have all become crucial during this crisis of 2020–2022.

The book deals with aspects of the pandemic and its impact on human rights such as women’s working life, inequalities and challenges at school communities, digitalization in the area of COVID-19, the right to privacy, the responsibility of the states at the national level, corruption risks in procurement, the response of the criminal law, employees’ rights, and even seafarers’ rights.

The response of the judiciary varies from country to country, with some judicial systems responding more quickly in rendering decisions, and in others, the weaknesses of the system and lack of efficient and prompt response were revealed. The European Court of Human

Rights dealt with a number of cases involving alleged violations of Human Rights as a result of national measures and emphasized the need to keep a fair balance between Human Rights and the need to protect public health. The doctrine of proportionality plays a leading role in the Court's jurisprudence.

Academic writings are very important and certainly play their role in influencing judicial thinking and policy making. This book is commendable, and I congratulate the researchers for their effort and the outcome, which certainly will be of great assistance to all of us.

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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.

The impact of the COVID-19 pandemic on women's working life in the EU

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Abstract: The vision for Europe as enshrined in primary and secondary European Union (EU) law and also in ECJ and later CJEU case law rests on the fundamental principle that women should not be subject to stereotypes but have the opportunity to thrive. Equality for working women and men and the principle of equal pay for equal work or work of equal value are provided for plainly. However, sexism and gender stereotypes prevent women from actively participating in the labor market and entrepreneurship, while leading to lower wages, negatively affecting living standards, quality of life, and social inclusion as well as their professional and personal development. The pandemic has worsened the existing inequalities between women and men in the labor sector in the EU. Findings on job loss, income, the balance of a professional and private life, financial independence as consequences of the pandemic are presented in this chapter.

Keywords: gender equality, pandemic, equal pay, working life, financial independence.

Introduction

Prior to the outbreak of the coronavirus disease 2019 (COVID-19) pandemic, employment and economic growth in the European Union (EU) had been improving. However, women still did not have equal access to employment and equal working conditions as compared to men,¹ despite making up the largest proportion of low-paid part-time workers, with variable working hours, temporary contracts, and precarious working conditions.² Furthermore, in the EU, around 33% of women had to interrupt their working careers for at least six months

¹European Commission (2020), *Proposal for a Joint Employment Report 2021 from the Commission to the Council*, p. 62, available at <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8351&furtherPubs=yes>.

²Sevilla, A. (2020), 'Gender Economics: An Assessment', *IZA of Labor Economics*, DP No. 13877.

to take care of their children as compared to just over 1% of men.³ Of note, 44% of Europeans still believe that “the most important women’s role is to take care of their home and family”.⁴ Despite the fact that there is a plain legal framework of gender equality for working women and men in the EU, the pandemic has made already existent gender disparities in the workforce worse.

The legal framework of gender equality for working women and men in the EU

The values upon which the EU is built include equality, and as a result, equality between men and women. (Articles 2 and 3 (3) of the Treaty on European Union (EU Treaty)). Article 8 of the Treaty for the Functioning of the European Union (TFEU) entrusts the EU with the task of eliminating inequalities and promoting equality between women and men in all its actions, while Article 19 TFEU “provides for the adoption of legislation to combat all forms of discrimination, including on the basis of sex”.⁵ Additionally, these goals are outlined as primary law⁶ in Articles 21 et seq. of the EU Charter of Fundamental Rights (hereinafter the Charter).

Article 153 TFEU allows the EU “to act in the wider field of equal opportunities and equal treatment in employment”⁷ by adopting secondary legislation. EU’s secondary legislation on gender equality in-

³Eurostat, Population by effects of childcare on employment and educational attainment level, Last update 24-02-2020, available at: [lfs0_18stwked](https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&plugin=1) and Population with work interruption for childcare by duration of interruption and educational attainment level, available at: [lfs0_18stlened](https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&plugin=1).

⁴European Commission (2018), 2018 Report on equality between women and men in the EU, p. 12, available at <https://op.europa.eu/en/publication-detail/-/publication/950dce57-6222-11e8-ab9c-01aa75ed71a1/language-en>.

⁵https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.3.8.pdf.

⁶See Tzemos, V. (2019), Introduction-Preamble in: Tzemos, V., (Ed.), EU Charter of Fundamental Rights, Nomiki Bibliothiki, p. 1, Tzemos, V. (2018), General Theory of Fundamental Rights and primary EU law, Public Law Journal, (www.publiclawjournal.com) p. 211, Karagkouni, V. (2018), The EU Charter of Fundamental Rights as applicable primary European law in: Deligianni-Dimitrakou, Chr./Gaitenidis, N./Koniaris, V. (Ed.), Fundamental Rights protection - Critical issues in Europe, Papazisi, p. 15–23.

⁷https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.3.8.pdf.