

Health or Freedom? A dilemma for democracy

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**Conference on: Human Rights in Pandemic Times
Political Exceptionalism, Social Vulnerability & Restricted Freedoms**

Brussels, Egmont Palace, 7 September 2021

First of all, let me thank the **Egmont Institute** for this opportunity to talk about human rights in pandemic times, in particular in relation to the exercise of democracy and the Rule of Law.

I take this occasion to commend **Belgium** for its recent surge in vaccination rates in view of reaching herd immunity. Even if still geographically patchy, it represents an extraordinary comeback after a difficult start.

Ladies and gentlemen,

I wish to underline from the outset that **Covid-19 is a fundamental rights issue of the first order**. Fundamental rights have been part of the picture from the start and will continue to do so, just think about the Covid-triggered impact on world economy that is generating new inequalities around the globe. What we are learning from this experience is **instrumental in improving the way we will deal not just with future outbreaks but with public health issues in general**.

We have gone through an exceptional period during which a number of rights that we took for granted were, and still are, suspended. In many countries we have witnessed a concentration of power in the hands of the Executive branch - often the single man at the top - in parallel to defused checks and balances. The

mutation of the rules of democracy should always concern us. Think about the new practice of Members of Parliament voting from remote, or the disruptions in judicial proceedings that risk jeopardizing the right to a fair trial, or the possibility that special measures enforced to fight the pandemic are later maintained to counter migration flows or even to target opposition parties, free press, ethnic or religious minorities, etc...

I want to be clear: the urgency of saving lives - itself a core fundamental rights obligation - justifies temporary compression of some rights, such as freedom of movement or freedom of assembly. Polls have demonstrated popular support to restrictive measures in many countries during lockdowns, but social acceptance tends to diminish if measures begin to be perceived as excessively disproportionate and intrusive, especially when economic hardship and an uncertain future start to weigh upon millions of people. A situation which, if not properly managed, can degenerate in extreme behaviors as we have seen when **conspiracy theorist groups** protested against what they call **“health dictatorship”**.

If, on one hand, we must remain vigilant to avoid that emergencies become **short-cuts** for oppressing dissent or for introducing authoritarian norms, on the other hand “No Mask/No Vax/No Pass” activists should be squarely told that **the liberty they claim is unavailable simply because it is harmful to others**. Freedom of expression and the right to demonstrate peacefully must always be upheld; **intolerance and violence, instead, are not acceptable**. How to reach the balance between public interest and individual rights **should feed into the public debate, not fuel invectives**. This was my first point.

My second one is that the pandemic experience powerfully underlines that human rights and public health are not an **“either/or”** choice, as correctly pointed out by the European Fundamental Rights Agency. We know from experience, in responding to other epidemics, that public health measures that respect human rights will prove to be most effective in terms of health outcomes. However, as they constantly change in light of circumstances, measures that restrict rights need to be rigorously assessed in terms of their **necessity, proportionality and non-discrimination**.

While Covid-19 affects all of us, **we need to recognize that populations are not homogeneous**. Measures have not impacted on everyone in a similar way: vulnerable people are specially hit, with asymmetrical effects on those at risk of poverty and exclusion. These include not self-sufficient people, in particular

housebound elderly people, persons with disabilities, Roma population, asylum seekers left in a limbo because of suspended procedures, prison inmates and people deprived of their personal freedom confined in overcrowded detention centres with no possibility to practice physical distancing or follow hygienic measures, to name a few. A fundamental rights approach to the pandemic can ensure that they remain to the forefront of our attention so that government measures respond to the needs of our populations in all their diversity.

Online disinformation also needs to be strongly countered for the perverse effects it produces often damaging the weakest. Moreover, from the beginning of isolation in Europe, there was an **increase in crimes** that, if not sanctioned, risk further eroding the Rule of Law. I am referring to cases of corruption, to the flourishing of illegal money-lending activities, to the increase in domestic violence, especially against women, and other crimes that have found their way through the **cracks of restrictions**.

Technology is being held up as a crucial component of so called 'exit strategies'. These technologies, such as the apps to trace Covid-19 cases, raise profound fundamental rights issues. It is positive that most governments have actively consulted with data protection authorities, clearly keeping in mind the boundary conditions. Any limitation on rights linked to these apps must have a sound basis in law. Using them must always be the free choice of each individual and data collected can only ever be used for the purpose for which it was collected.

A word on "**vaccine diplomacy**". Without doubt, the pandemic has posed an enormous challenge to the ability of political systems to cope with social and economic disruptions caused by the virus. At the same time, instead of favoring co-existence among States, it has generated competitive dynamics in the international arena, notably between democracies and autocracies. Vaccine diplomacy, however, should not be about business penetration or about political dominance but rather about ensuring that the highest number of people all over the world are vaccinated and that public health always remains at the top of national and international agendas. Debt forgiveness should be considered in order not to overburden recipient countries in their fight against the pandemic. The end result should be that of **building trust in science**, and in scientific discoveries especially that are to be welcomed rather than demonized out of fear of progress.

So, I stress once again: international humanitarian law allows for the limitation of certain rights, especially when addressing a major health crisis. States can legally

introduce emergency laws when exceptional circumstances arise. These laws can derogate from human rights conventions, but they need to be in force for a limited time and in a supervised manner, by Parliaments primarily. **States need to formally notify derogations to the relevant Treaty body.** Once the exceptional circumstances are over, governments must lift the emergency measures.

Which brings me to my last point. A recent survey by the **Centre for the Future of Democracy** at Cambridge University shows that the young generation is the one less satisfied by the performance of democratic governments. What impact this can have on the long term is too early to say. In the meantime, many countries are slowly reopening, gradually lifting some of the measures and introducing new ones. People are returning to work, children are starting back at school, and many of us visit our families and friends once more. However, **we are not out of the woods yet.** The Delta variant is far from beaten. For instance, the Covid surge in the US registered just a few days ago, probably due to vaccine hesitancy, has sparked a threat to reinstate travel restrictions to Europe. Some among us – again elders, persons with disabilities, homeless people, people in precarious employment – remain particularly vulnerable. Continuing to protect their rights, now and in the future stages of the pandemic, will be **a litmus test** of the functioning of our democracies and of our commitment to all members of our diverse societies.

Thank you.