

## THE VIRTUAL ENVIRONMENT DURING “THE STATE OF EMERGENCY”

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**Abstract:** *The line between respecting and violating fundamental rights, in the context of a state of emergency, becomes rather thin due to ignorance and/or the incorrect enactment of European Union and national policies. This article summarizes two of the essential rights of European citizens, which were constantly violated during the COVID 19 pandemic.*

**Keywords:** *COVID-19, human rights, European Court of Human Rights, misinformation, conspiracy.*

### 1. INTRODUCTION

The normal life and daily routines of each of us took a break or underwent radical changes, with the emergence of the pandemic virus known as "COVID-19"/"SARS-CoV2"/ "CORONA VIRUS". This virus is believed to have appeared first in the most populous city in central China, Wuhan, the capital of Hubei Province, and it soon spread around the World.

There are several hypotheses regarding its origin: that the virus reached the human body through food, or that it is of animal origin and the animal was bought from a fish market in this city and consumed, but the fact that the most modern institute of virology in central China is only 30 kilometers away from the market leads many to believe that the virus was accidentally or even intentionally released from the laboratory where the most dangerous and infectious diseases are researched.

However, and surprisingly in large numbers, there are also people who are absolutely convinced that this virus does not exist and that everything is nothing more than a global manipulation in order to gain world supremacy. There are still not enough factual data to establish with certainty how the virus appeared, but what we all know and feel is that it really exists and is making more and more victims around the World every day.

In Europe, in order to limit the spread and to eliminate the virus, a number of extreme measures have been taken which have proved to be effective, but which have also undermined fundamental human rights, including the right to free movement, as a result of the general rules on social distancing, and the right to free speech. In such circumstances, as the many people who do not believe in the virus could influence others and nullify the doctors' effort against the virus, or could affect the right to the protection of personal information, the authorities are using all possible means to monitor the population and keep under control a climate of public order and safety during this period.

The aim of this essay is to present contemporary human rights issues in the context of the current Covid-19 pandemic, the first part highlighting general notions concerning human rights, European policies on the right to express opinions and the right to the protection of personal information, followed by current examples of infringements of these rights and, finally, by the conclusions reached after analyzing all the issues presented.

## 2. EU HUMAN RIGHTS POLICIES

### Theoretical considerations on human rights

**General human rights notions.** The concept of "Human Rights" came into being when the Persian king Cyrus II the Great, after the conquest of Babylon in 539 BC, freed slaves and gave people the freedom to choose their religion. All these ideas were contained in the "Cylinder of Cyrus" (a code of laws that included the said human rights). His ideas spread rapidly in India, Greece, and later in the Roman Empire, influencing modern philosophers who noticed that human beings were inclined to follow certain rules – what we call today "Natural law" – but which were always diminished by those in power. It took thousands of years before the "Magna Carta" was adopted in England in 1215 (the document stipulates that nothing and no one, including rules and rulers, should burden human rights).

Another major document on human rights was the "British Petition for Right" adopted in 1628, which reaffirmed the idea that English citizens should be entitled to their rights. Between 1776 and 1778, the "The United States Declaration of Independence" has been adopted, which stipulated the recognition of equality between people, and in 1789, the French Revolution developed the concept of human rights and insisted that our rights must be invented. Between 1800 and 1814, Napoleon destroyed the fragile French Democratic System, but European countries were defeated and the idea of human rights became a central topic for debate after the Napoleonic Wars, even if it remained a local topic in Europe.

The rest of the World did not enjoy these rights, but the Europeans conquered and invaded the World, turning these vast territories into empires. The year 1915 brings Mahatma Gandhi about, who considered this local viewpoint on human rights to be unjust and led the protests in India against the British Empire. Gandhi believed that all people have rights, which also influenced Europeans. These events were not enough, the whole World was shaken by two World Wars, and Hitler enacted his racial ideology which resulted in millions of people being killed. This also seemed to lead to the disappearance of the very idea of human rights. Fortunately, at the end of World War II, in 1945, the countries of the World cooperated to form the United Nations (UN), an institution that aimed to defend World peace and reaffirm the idea of human rights in their full dignity and value. The year 1948 marks a crucial moment in the evolution of human rights, as the UN adopted the "Universal Declaration of Human Rights", a document which contains 30 articles, promoting the most important human rights that can be applied to all, regardless of geographical area or cultural and personal difference.

In 1949, the "Council of Europe" has been established, with the aim of defending human rights, democracy and the rule of law in Europe. These states have adopted the European Convention on Human Rights, laying the foundations for a single system that provides for a mandatory oversight mechanism. Thus, the "European Court of Human Rights" was created in 1959.

The court expresses the desire of states to never again experience the atrocities committed in the mid XX<sup>th</sup> Century. At first, the Convention was signed by twelve states, and now there are almost 50 signatory states.

The court is located in Strasbourg and is composed of judges (one for each member state of the Council of Europe). Elected by the Parliamentary Assembly, the judges are completely independent and do not represent any National Interest. They are to be assisted by qualified staff from all Member States to deal with the application of their decisions. The Court receives hundreds of letters and phone calls every day.

When the requests arrive in Court, they are forwarded to one of the clerk units who prepare the cases for the judges. They shall meet in full by a single judge, in a committee of three judges, in a chamber of seven or in a grand chamber of 17 judges for the most important cases. The procedure is written, but in exceptional cases, the Court meets in public hearings, all video recorded and broadcasted on the Internet. The Court receives a considerable number of applications each year; however, the vast majority is rejected at the admissibility stage, as the conditions for being able to apply to the Court are not met. For example, this is the case for claims in which the applicants did not apply to the National Courts before coming to the European Court. For this reason, the Court decides only in a small number of cases compared to the large number of applications it receives. It shall then decide whether there has been a violation of the Convention or not and may award financial compensation. The Convention protects a number of rights, the most important being the right in front of the road. The death penalty is no longer applicable in any Member State in Europe. The rights and freedoms enshrined in the Convention are formulated in a general way and the Court must interpret them in the context of today's societies, in order to avoid the conventional transformation of a text, i.e. in the context of modern concerns. Thus, it has ruled on subjects unimaginable at the time of conventional adoption, such as, for example, the cases concerning the technological legacy of the new generations. In one such situation, Turkey was convicted for blocking citizen's access to the "Google" site. The Court found that this is a restriction on internet access and affects people's freedom of expression.

The Committee of Ministers is the executive body of the Council of Europe that ensures compliance with decisions and is composed of the ministers of foreign affairs of the Member States of the Council or of the Permanent Representatives of those states. The Committee meets regularly to monitor the execution of the Court's verdicts. The examination of each case is concluded only when the Court is satisfied with the measures taken by the convicted State, and the governments must take steps to ensure compliance with the Convention in their country. During all this time and for more than half a century, the European Court of Human Rights has been the bastion of human rights in Europe, the ultimate defense court for millions of people.

During the Nice council, the European Commission, the European Parliament and the Council of the European Union proclaimed on the seventh of December 2000 the "Charter of Fundamental Rights of the EU", a document set to acquire in 2007 the value of primary law of the EU. The Union institutions and the Member States are compelled to guarantee these rights. The purpose of the document is to recognize and develop rules on human rights, rights that are also found in the common international obligations of the Member States, such as the European Convention on Human Rights. Compared to the Convention, which is limited to civil and political rights, the Charter is intended to cover other areas as well, thus being used by the European Court of Human Rights for the modern interpretation of the provisions of the European Convention on Human Rights, and by this, extending the scope of the Convention.

The provisions of the Charter take precedence over National Law, except in cases where domestic provisions are more favorable.

### **The difference between "Human Rights" and "Fundamental Rights"**

The main difference is territorial. Human rights are universal, without any limitations. Instead, a fundamental right exists in a specific legal system, with the limitations that the law grants. Therefore, the concept of fundamental rights predominates in state laws. A fundamental right is, above all, a right that the Constitution creates. For this reason, the pre-existence of a right must be taken into account in order to form a fundamental right. Human rights function in a much broader context than fundamental rights. The distinction between human rights and fundamental rights is important because not all human rights have been recognized as fundamental rights. Thus, we see that in the internal ordinances of the state, and especially in the Constitutional Doctrine, there is a distinction between fundamental rights and human rights. Therefore, this distinction has a number of consequences for the internal regulation of states.

Examples of rights contained in the EU Charter of Fundamental Rights:

- The right to life;
- The right to the integrity of the person;
- Prohibition of torture;
- Respect for private and family life;
- The right to marriage;
- The right to family;
- Freedom of thought, religion and conscience with all subsequent components:
  - Freedom of speech;
  - The right to education;
  - The right to work;
  - The principle of equality and non-discrimination;
  - The preservation of various cultural, religious and linguistic activities;
  - The right to social security;
  - Consumer's protection;
  - Environment protection;
  - The right to defense;
  - The right to a fair trial.

All human rights are, in principle, seen as unconditionally due to every person, but there are also situations in which a large part of these rights can be suspended, except for the right to life, the right not to be subjected to torture and ill-treatment, the right not to be subjected to slavery and forced labor and the right not to be subjected to a punishment not provided for by law. For cases of emergency, **Article 15 of the European Convention on Rights Derogation** stipulates that:

*"1. In the event of war or other public danger threatening the life of the Nation, the Contracting Party may, in any case, take measures to ensure that the obligations are waived when agreed, in strict compliance with the situation or immunity and its conditions taking action may run counter to other obligations under international scrutiny.*

*2. The preceding provision shall not permit derogation from Article 2, except in the case of acts resulting from the lawful act of war, nor from Article 3 (1) and (7).*

*3. Any High Contracting Party exercising this right of derogation shall be informed of the exceedance by the Secretary-General for all European Parties of the measures taken and of the reasons therefore.*

*Determination - It is also necessary to inform the Secretary-General in order to make them available to Europe and of the date on which the measures are to be taken into account and to be uploaded in force, and to make it available to the Convention for new applications".[10]*

### **Contemporary issues related to EU human rights policies in the context of the current Covid-19 pandemic**

#### **EU policies on the right to freedom of opinion**

Freedom of opinion and expression is a complex right that includes the right to seek, receive and share information and ideas of all kinds, regardless of the environment and without the imposition of sanctions or censorship. When a person's right to express his/her ideas and transmit information is violated, another person's right to receive information is implicitly violated as well. These are indispensable rights to dignity and individual development and are at the foundations of democracy.

The media would not have the capability of objectivity without this right; therefore, the veracity of the information would be questionable and would cause more uncertainty than security. The EU guarantees, within its borders, the defense, observance and promotion of this right and aims to address and prevent its violation in a timely manner. The International Covenant on Civil and Political Rights (ICCPR) emphasizes that no one should suffer because of his or her views. Personal opinion can be expressed through any means such as newspapers or books and through any form of audio, visual or internet expression. However, through the information provided and the ideas presented, the person concerned is not allowed to harm the dignity of others or endanger the integrity of the body or health of others by developing false information that could adversely affect others. The law also prohibits any incitement to religious, racial or national hatred or inciting discrimination, violence or hostility.

Article 10 in the "Human Rights Act" stipulates the following as far as the freedom of expression is concerned:

*"1. Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from subjecting broadcasting, cinematographic or television undertakings to an authorization regime.*

*2. The exercise of these freedoms involving duties and responsibilities may be subject to formalities, conditions, restrictions or sanctions provided by law, which, in a democratic society, constitute measures necessary for national security, territorial integrity or public safety, the defense of order and the prevention of crime, the protection of the health, morals, reputation or rights of others, to prevent the disclosure of confidential information or to guarantee the authority and impartiality of the judiciary."*  
[11]

#### **EU policies on the right to the protection of personal information**

The right to the protection of personal data is a right recognized by the "Charter of Fundamental Rights of the European Union", which provides in Article 8 that:

*"1. Everyone has the right to the protection of personal data concerning them.*

*2. Such data must be processed correctly, for the purposes specified and based on the consent of the person concerned or based on another legitimate reason provided by law. Everyone has the right of access to data collected concerning him or her and the right to obtain rectification thereof.*

3. *Compliance with these rules shall be subject to control by an independent authority.* "[12]

At the same time, this right is closely linked to Article 8 of the “European Convention on Human Rights”, which states that:

*"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. The interference of a public authority in the exercise of this right shall be admissible only in so far as it is provided for by law and constitutes, in a democratic society, a measure necessary for national security, public security, the economic well-being of the country, defense of order and the prevention of criminal acts, the protection of the health, morals, rights and freedoms of others".* [12]

The right to the protection of personal information can also be violated in the virtual environment; therefore, it was necessary to create a set of rules on the storage of personal data online. The EU argues that the personal data of every EU citizen are protected whenever it is necessary to use them (online shopping, CVs for employment, etc.), and these rules apply to both public and private companies, inside and outside and outside the EU. All these aspects are included in the General EU Data Protection Regulation (RGPD) and describe the possible situations in which the collection or reuse of personal information is allowed, including the following conditions:

- The existence of a contract between the company providing the service and the person concerned.
- When there is an obligation on the company to store personal data.
- When the processing of personal data is a vital action for that person.
- The existence of a legitimate interest.

Apart from these situations, the company is obliged to request the user's consent for the collection of personal data, the expression of the agreement being made through a very clear action, such as checking a "YES" or "NO" answer. The company also has the obligation to present the following information in a clear and accessible way:

- The reason for collecting personal data.
- Details of the company that will process the personal data, which includes the contact details of the data protection officer, if any.
- Period of storage of personal data.
- Information about a possible other company that will take possession of the data.
- Information regarding the right to delete, modify or withdraw consent.
- The user has the right to request access at any time to his personal data held by a company and may request a copy of the data, the company being obliged to respond to the request within one month and make known how the data was used.

### **Examples of violations, in the virtual environment, of the rights to opinion and the protection of personal information, following the onset of the state of emergency in the EU**

In response to the SARS-Cov2 pandemic (Covid-19), some governments have improved surveillance, increased censorship, and restricted the free flow of information. As everyone's lives have shifted from the public to the digital realm, many freedoms have also been suspended, while the burden of liability for violations has fallen on citizens, as governments have imposed restrictions that in many cases have violated normal human rights standards.

Given that, after the establishment of the State of Emergency, the predominant activity of people shifted towards the online environment. As simply limiting the movement and contact between people was no longer enough to stabilize the situation created by the pandemic, the affected states had to adopt strict rules on the activities carried out in the virtual environment, in order to avoid the misinformation of the population.

However, the imposition of these rules consequently entails the violation of fundamental human rights, such as the right to free expression of opinion and the right to the protection of personal information.

One of the clearest examples of violations of these rights is the case of one of the most controversial figures of the moment, a person the authorities are constantly paying attention to: namely Brian Rose, the founder of the live channel "London Real", which mainly aims to present interviews with various influential people. Following the publication of an interview that featured David Icke, the authorities permanently blocked all his accounts, channels and websites. David Icke is a journalist, writer, conspiracy theorist and vaccine activist. For a long time, many people thought he was neither a reliable source or a reasonable person, but there were enough people who supported him, as well. Following the outbreak of the Covid19 pandemic, he made his own ideas public through a video recording posted via "YouTube" and attracted tens of thousands of views, but the site's administrators immediately deleted the content. Journalist Brian Rose took advantage of the situation and published a 2-hour interview in which he presented David Icke's conspiracy theories – this video being also deleted a few tens of minutes later. Subsequently, he tried to publish the interview online again, this time obtaining a record number of views, but the video had the same quick outcome from the authorities. Currently, Brian Rose is raising funds to create a new platform to provide uncensored information to all users.

In Romania, there were and there are actions to restrict the right to express opinions by blocking sites such as "genocid.ro", "r.news-romania24.xyz" or "news-romania24.xyz" by the Romanian Authorities, as they consider that false information has been presented which could endanger the safety of citizens. In addition, in Romania, the publication of false information regarding Covid-19, claiming its non-existence, blocked the news site "romania-veche". The information was redistributed over 170,000 times on the social networking site "Facebook" before the site was blocked.

Another site in Romania that came to the attention of the authorities is "ortodoxinfo.ro", which was blocked due to the support and promotion of information discouraging the due national protection measures against Covid19. Conspiracy theories related to the pandemic were exposed in Romania through the site "bpnews.ro", which was permanently closed due to the persistence of published information related to this topic.

"Reporters without borders" claims that states have used the context of the pandemic to limit the press, thus violating the rights to disclose real information related to the global spread of the pandemic, and, consequently, people's lives are put at risk.

Bulgarian politician Volen Siderov was detained after inciting citizens to disobey the authorities' recommendations, and another arrest case comes from Hungary, where a citizen was arrested for claiming online that the corona virus epidemic did not exist and that the whole situation is just a cover for a secret entity's taking control of the world.

The rights to the protection of personal information are violated by the actions of states monitoring the population by means of drones or applications installed in the mobile phone system, through which State Authorities have the opportunity to obtain not only the personal data of users, but also their exact location in real time, in order to detect the violation of the norms of social distancing or quarantine, this subject being a hot one in Croatia since the beginning of the pandemic.

### 3. CONCLUSION

As expected, following the onset of the State of Emergency, to limit the spread of infections caused by the virus "SARS-CoV2" among the population, certain rules and restrictions have been implemented that have led to the restriction of fundamental human rights, such as the right to free movement, to the protection of personal information or even the right to the free expression of one's opinions.

Not all these rules can be characterized as abusive, as they were adopted during a State of Emergency, thus being protected by Article 10 of the European Convention on Human Rights.

But despite the fact that there are well-meaning people who have suffered because of these restrictions upon human rights, the steps taken by states in this regard, in such a period, are necessary to come out well of the difficult moments brought by the pandemic – and as quickly as possible.

In the absence of a response from the State Authorities to the false information leaked online about the non-existence of the virus, the misinformation created could expose the entire population to a general state of uncertainty and chaos. Therefore, although the entire planet is in a period of severe physical and mental trial which affects each and every individual, the best option is to listen to the advice of doctors and authorities and not to promote and believe in conspiracy theories.

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