

Challenges Posed by the COVID-19 Pandemic to the Protection of Human Rights

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The COVID-19 pandemic has had consequences in several dimensions within contemporary society. One of them is the protection of human rights and the functioning of human rights protection systems. There is a broad understanding that fighting against the COVID-19 pandemic should not interfere with the protection of human rights. In order to mitigate the spread of COVID-19, governments throughout the world introduced emergency measures which constrain individual freedoms as well as social and economic rights, but demonstrate some global solidarity on the other hand. In doing so, civil obligations are rarely addressed, regardless of how significantly they are impacted by the response to the pandemic. The norms and principles of human rights should guide governments' responses to COVID-19. The author of this article analyses the issue in the context of standards offered by international organisations. He particularly highlights the recommendations offered by the Parliamentary Assembly of the Council of Europe in Resolution 2339 (2020), namely "Upholding human rights in times of crisis and pandemics: Gender, equality and nondiscrimination."

Keywords: COVID-19, pandemic, emergency measures, human rights, international standards, the Council of Europe.

Introduction

Professor Janusz Symonides was undoubtedly one of the most outstanding authorities in the field of international public law, where he was active in several fields, especially in the marine law. However, it is also his contribution in the field of the systems of human rights protection systems that is worth mentioning.¹ This applies to both

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¹ Janusz Symonides, *Międzynarodowa ochrona praw człowieka* (International Protection of Human Rights) (Warszawa: Książka i Wiedza, 1977); *Human Rights – Major International Instruments*, eds. Janusz Symonides, Vladimir Volodin (Paris: UNESCO, 1985); *Human Rights: New Dimension and New Challenges: Manual on Human Rights*, ed. Janusz Symonides (Dartmouth: Ashgate, 1998); *Human Rights: Concepts and Standards*, ed. Janusz Symonides (Brookfield–Paris: Ashgate, 2000); *A Guide to Human Rights: Institutions, Standards, Procedures*, ed. Janusz Symonides (Paris: UNESCO, 2001); *Human Rights: International Protection, Monitoring, Enforcement*, eds. Janusz Symonides, Zdzisław Kędzia (London: Routledge, 2017).

the universal system associated with the United Nations² (especially the Universal Declaration of Human Rights³) and regional systems, including that of Africa⁴ and Asia.⁵ The researcher paid special attention to the functioning of the systems of human rights protection in international organisations, especially in the Council of Europe and in the OSCE.⁶ He analysed the role of NGOs in promoting and protecting human rights.⁷ He also raised some specific issues within human rights protection, such as women's rights,⁸ academic freedom and human rights,⁹ as well as the right to peace.¹⁰ Moreover, he examined the role of Poland in the European systems of human rights¹¹ as well as Poland's performance with regard to obligations relating to human rights.¹²

² Janusz Symonides, "Wkład ONZ w stanowienie i międzynarodową ochronę praw człowieka" (UN Contribution to the Establishment and International Protection of Human Rights), *Sprawy Międzynarodowe* 10 (1985): 63–75.

³ Janusz Symonides, *Les droits de l'homme: cinquante ans après la Déclaration universel* (Paris: Érès, UNESCO, 1998); Glen Johnson, Janusz Symonides, *La déclaration universelle des droits de l'homme: 40e anniversaire 1948-1988* (Paris: L'Harmattan, UNESCO, 1991).

⁴ Janusz Symonides, "Afrykański Trybunał Praw Człowieka i Ludów oraz perspektywy jego instytucjonalnych przekształceń" (The African Court of Human and Peoples' Rights and the Prospects for its Institutional Transformation), in *O prawach człowieka. Księga jubileuszowa Profesora Romana Wieruszewskiego* (About Human Rights. Jubilee Book of Professor Roman Wieruszewski), eds. Grażyna Baranowska, Aleksandra Gliszczyńska-Grabias, Anna Hernandez-Pończyńska (Warszawa: Wolters Kluwer, 2017), 255–274; Janusz Symonides, "Afrykański system ochrony praw człowieka: specyfika, rozwój, wyzwania" (African System of Human Rights Protection: Specificity, Development, Challenges), in *Ochrona praw człowieka w Afryce. Aksjologia, instytucje, nowe wyzwania i praktyka* (Protection of Human Rights in Africa. Axiology, Institutions, New Challenges and Practice), eds. Jerzy Jaskiernia, Kamil Spryszak (Toruń: Wydawnictwo Adam Marszałek, 2017), 159–176.

⁵ Janusz Symonides, "Wartości azjatyckie a prawa człowieka" (Asian Values and Human Rights), in *Azjatyckie systemy ochrony praw człowieka: inspiracja uniwersalna, uwarunkowania kulturowe, bariery realizacyjne* (Asian Systems of Human Rights Protection: Universal Inspiration, Cultural Conditions, Implementation Barriers), eds. Jerzy Jaskiernia, Kamil Spryszak (Toruń: Wydawnictwo Adam Marszałek, 2016), 44–67.

⁶ Janusz Symonides, "System ochrony praw człowieka Organizacji Bezpieczeństwa i Współpracy w Europie" (The Human Rights Protection System of the Organization for Security and Cooperation in Europe), *Stosunki Międzynarodowe* 3–4 (2005): 31–52.

⁷ Magdalena Symonides, Janusz Symonides, "Wkład organizacji pozarządowych w promocję i ochronę praw człowieka" (Contribution of Non-governmental Organizations to the Promotion and Protection of Human Rights), *Stosunki Międzynarodowe* 1–2 (2004): 9–24.

⁸ *Human Rights of Women: A Collection of International and Regional Normative Instruments: Twentieth Anniversary of the Adoption of the United Nations Convention on the Elimination of All Forms of Discrimination against Women 1979–1999*, eds. Janusz Symonides, Vladimir Volodin (Paris: UNESCO, 1999).

⁹ Janusz Symonides, "Wolność akademicka a prawa człowieka" (Academic Freedom and Human Rights), in *Uniwersalny system ochrony praw człowieka. Aksjologia, instytucje, efektywność* (Universal System of Human Rights Protection. Axiology, Institutions, Efficiency), ed. Jerzy Jaskiernia (Toruń: Wydawnictwo Adam Marszałek, 2015), 85–102.

¹⁰ Janusz Symonides, "Towards the Universal Recognition of the Human Right to Peace," *Przegląd Stosunków Międzynarodowych* 1 (2006): 5–19.

¹¹ Janusz Symonides, "Polska w europejskich systemach ochrony praw człowieka" (Poland in the European Systems of Human Rights Protection), *Roczniki Polskiej Polityki Zagranicznej* (2002): 191–212.

¹² Janusz Symonides, "Realizacja przez Polskę zobowiązań międzynarodowych dotyczących praw człowieka w świetle ocen organów traktatowych" (Fulfilment by Poland of International Obligations Regarding

Further, he analysed challenges for human rights in the 21st century,¹³ e.g. in the context of the crisis of liberal democracy.¹⁴ He raised the question of whether the world is entering a post-human-rights chapter.¹⁵

Given his contribution to the field, it seems only right to include the issue of human rights protection in a publication dedicated to the memory of Professor Janusz Symonides, especially since the COVID-19 pandemic has generated a valuable opportunity in this respect.¹⁶

The aim of this article is to analyse how the COVID-19 pandemic has affected the system of human rights protection.¹⁷ Both national authorities and international organisations have been facing the said challenge.¹⁸ It is therefore a very pressing question as to what needs to be done to mitigate the potentially negative effects of the COVID-19 pandemic on the protection of human rights.¹⁹

The consequences of the COVID-19 pandemic for human rights

The COVID-19 pandemic has had consequences for several fields of contemporary society, e.g. health, education, social care, tourism, or business.²⁰ Another such area is the protection of human rights²¹ and the functioning of the human rights

Human Rights in the Light of the Assessments of Treaty Bodies), *Roczniki Polskiej Polityki Zagranicznej* (2001): 75–83.

¹³ Janusz Symonides, “Prawa człowieka wobec wyzwań XXI wieku” (Human Rights in the Face of the Challenges of the 21st Century), *Stosunki Międzynarodowe* 1–2 (2002): 7–19.

¹⁴ Janusz Symonides, “Źródła i przyczyny kryzysu demokracji liberalnej: wyzwania populizmu” (Sources and Causes of the Crisis of Liberal Democracy: Challenges of Populism), in *Powszechny system ochrony praw człowieka w dobie kryzysu demokracji liberalnej* (The Universal System of Human Rights Protection in the Times of Crisis of Liberal Democracy), eds. Jerzy Jaskiernia, Kamil Spryszak (Toruń: Wydawnictwo Adam Marszałek, 2020), 179–195.

¹⁵ Janusz Symonides, Magdalena Symonides, “Czy świat wchodzi w erę post-humanrights?” (Is the world entering the era of post-human rights?), in *Powszechny system ochrony praw człowieka 70 lat po proklamowaniu Powszechnej Deklaracji Praw Człowieka* (Universal System of Human Rights Protection 70 Years after the Proclamation of the Universal Declaration of Human Rights), eds. Jerzy Jaskiernia, Kamil Spryszak (Toruń: Wydawnictwo Adam Marszałek, 2019), 100–119.

¹⁶ A.A. Jensen, *COVID-19* (New York: Nova Science Publishers, 2020), 23.

¹⁷ O.P. Vasylenko, “Covid-19 Is the Latest Challenge for the World and Human Rights: A Legitimate Resistance to the Spread of Infection?,” *Legal Position* 3 (2020): 19.

¹⁸ Conrad Nyamutata, “Do Civil Liberties Really Matter During Pandemics? Approaches to Coronavirus Disease (Covid-19),” *International Human Rights Law Review* 1 (2020): 62.

¹⁹ Serhii Kivalov, “Ensuring the Human Rights and Freedoms in the Context of the Pandemic Covid-19,” *Ius Humani* 2 (2020): 4.

²⁰ Salil Tripathi, “Companies, COVID-19 and Respect for Human Rights,” *Business and Human Rights Journal*, June 8, 2020, 1–9.

²¹ David Patterson, Dineke Z. Paget, “COVID-19 and human rights – why should the public health community be concerned?,” *European Journal of Public Health* 5 (2020): 851; S. Bellizzi, A. Nivoli, L. Lorettu, A.R. Ronzoni, “Human Rights During the COVID-19 Pandemic: The Issue of Female Genital Mutilations,” *Public Health* 185 (2020): 53; Juan P. Bohoslavsky, “COVID-19 Economy vs Human Rights: A Misleading Dichotomy,” *Health and Human Rights* 1 (2020): 383.

protection system.²² During the pandemic, human rights have been compromised in several aspects, and questions have been raised as to the following: legal aspects of lockdowns,²³ the legality of quarantines,²⁴ sheltering-in-place,²⁵ health care²⁶ (e.g. right to health,²⁷ children with disabilities,²⁸ treatment of persons with mental and cognitive impairments²⁹), access to cultural heritage,³⁰ anti-Roma racism,³¹ prisons,³² correctional facilities,³³ or detention³⁴. Also discussed are such specific problems as the struggle for safety and minimum incomes of sex workers.³⁵

There is a broad understanding that combatting the COVID-19 pandemic should be in compliance with the protection of human rights.³⁶ States are subject to obligations arising under Article 12(2)(c) of the International Covenant on Economic, Social and Cultural Rights, and Article 6 of the International Covenant on Civil and Political Rights when conducting preventive, control, and treatment activities related

²² Joseph J. Amon, Margaret Wurth, "A Virtual Roundtable on COVID-19 and Human Rights with Human Rights Watch Researchers," *Health and Human Rights* 1 (2020): 399.

²³ Marianna Mazza, Giuseppe Marano, Carlo Lai, Luigi Janiri, Gabriele Sani, "Danger in Danger: Interpersonal Violence during COVID-19 Quarantine," *Psychiatry Research* 7 (2020): art. 113046.

²⁴ Tehreem Sultan, "COVID-19: Quarantine and Human Rights," *Journal of the Pakistan Medical Association* 5 (2020), no. 70: S157.

²⁵ John M. Openshaw, Mark M. Travassos, "COVID-19, Quarantines, Sheltering-in-place, and Human Rights: The Developing Crisis," *The American Journal of Tropical Medicine and Hygiene* 2 (2020): 578.

²⁶ Jaime Todd-Gher, "Abortion in the Context of COVID-19: A Human Rights Imperative," *Sexual and Reproductive Health Matters* 1 (2020): 175; Jaime Todd-Gher, "Respectful Maternity Care in the Context of COVID-19: A Human Rights Perspective," *International Journal of Gynecology and Obstetrics*, September 18, 2020.

²⁷ Lisa Forman, "The Evolution of the Right to Health in the Shadow of COVID-19", *Health and Human Rights* 1 (2020): 375.

²⁸ Veronica Schiariti, "The Human Rights of Children with Disabilities during Health Emergencies: The Challenge of COVID-19," *Developmental Medicine and Child Neurology* 6 (2020): 661.

²⁹ Kay Wilson, "The COVID-19 Pandemic and the Human Rights of Persons with Mental and Cognitive Impairments Subject to Coercive Powers in Australia," *International Journal of Law and Psychiatry* 6 (2020): 101605.

³⁰ Elżbieta Kuzelewska, Mariusz Tomaszuk, "European Human Rights Dimension of the Online Access to Cultural Heritage in Times of the COVID-19 Outbreak," *International Journal for the Semiotics of Law*, May 4, 2020.

³¹ Margareta Matache, Jacqueline Bhabha, "Anti-Roma Racism is Spiraling during COVID-19 Pandemic," *Health and Human Rights* 1 (2020): 379.

³² Linda McKay-Panos, "Human Rights / Covid-19: Human Rights Implications for Canadians Held in Remand, Prisons and Jails," *Law Now* 5 (2020): 1. Comp.: Lukas M. Muntingh, "Africa, Prisons and COVID-19," *Journal of Human Rights Practice*, August 31, 2020.

³³ Chanissa Ryan, Hollie Sabourin, A. Ali, "Applying an Indigenous and Gender-based Lens to the Exploration of Public Health and Human Rights Implications of COVID-19 in Canadian Correctional Facilities," *Canadian Journal of Public Health*, October 19, 2020, 4.

³⁴ Joseph J. Amon, "COVID-19 and Detention: Respecting Human Rights," *Health and Human Rights* 1 (2020): 36.

³⁵ Ehsan Jozagi, Lorna Bird, "COVID-19 and Sex Workers: Human Rights, the Struggle for Safety and Minimum Income," *Canadian Journal of Public Health* 3 (2020): 406.

³⁶ A.A. Bila-Kyselova, "Respect for Human Rights During the Spread of Covid-19: National and International Experience," *Comparative-Analytical Law* 1 (2020): 635.

to COVID-19.³⁷ It is worth analysing the pandemic in the context of the human rights law,³⁸ e.g. the European Convention on Human Rights.³⁹

In order to mitigate the spread of COVID-19, governments throughout the world have introduced emergency measures that constrain individual freedoms, social and economic rights, and global solidarity. These regulatory measures include the closing of schools, workplaces, and transit systems; the cancellation of public gatherings; mandatory home confinement; and large-scale electronic surveillance. In performing these, human rights obligations are rarely addressed, irrespective of how severely they are impacted by the response to the pandemic. The norms and principles of human rights should guide governments' response to COVID-19, with these rights strengthening the reaction of public health to the pandemic.⁴⁰

Emergencies can threaten human rights by disrupting societies, increasing vulnerabilities, and instigating exceptional measures from governments and other actors.⁴¹ The problem has been raised as to how to operationalise human rights within COVID-19 measures,⁴² together with the question about how public money can be used to help to address challenges connected with the pandemic.⁴³ It has created the quandary as to how to strike the balance between public health measures and human rights.⁴⁴

The COVID-19 lockdowns and curfews imposed by law enforcement officers have contravened some of the fundamental human rights. In many places, security forces have employed overt and immoderate measures to implement the authorities' orders. The imposition of lockdowns and curfews has not been very respectful of human life and human dignity. The COVID-19 emergency declarations in some countries were discriminatory against minorities and vulnerable groups.⁴⁵

³⁷ Sarah Joseph, "International Human Rights Law and the Response to the Covid-19 Pandemic," *Journal of International Humanitarian Legal Studies* 8 (2020): 7.

³⁸ B. Baek, "COVID-19 and the Role of Int'l Human Rights Law," *Seoul International Law Journal* 1 (2020): 29.

³⁹ Jeremy McBride, "Covid-19 and the European Convention on Human Rights," *Meždunarodnoepravosudie* 2 (2020): 3; Oluvatoyin A. Sorinmade, "Highlighting Some of the Challenges COVID-19 Has Posed to the European Convention on Human Rights," *BJPsych Bulletin* 4 (2020): 177.

⁴⁰ Sharifah Sekalala, Lisa Forman, Rooijn Hibbi, Benjamin M. Meier, "Health and Human Rights are Inextricably Linked in the COVID-19 Response," *BMJ Global Health* 9 (2020): e003359.

⁴¹ Nicole De Silva, "A Human Rights Approach to Emergency Response? The Advocacy of Canada's Human Rights Commissions during the COVID-19 Crisis," *Canadian Journal of Political Science / Revue Canadienne de Science Politique* 2 (2020): 265.

⁴² Njak Hostmaelingen, Heidi B. Bentzen, "How to Operationalise Human Rights for COVID-19 Measures," *BMJ Global Health* 7 (2020): e003048.

⁴³ Chimowa Takondwa, "Public Money Creation to Maintain Fundamental Human Rights during the COVID-19 Pandemic," *Health and Human Rights* 1 (2020): 395.

⁴⁴ Ebenezer Duroiaye, Robert D. Nanima, "From Muhammed and Others to De Beer and Others: Striking the Balance Between Public Health Measures and Human Rights During Covid-19 Era in South Africa," *Commonwealth Law Bulletin* (2000): 3.

⁴⁵ Ben Odigbo, Felix Eze, Rose Odigbo, Joshua Kanjag, "COVID-19 Lockdown Controls and Human Rights Abuses: The Social Marketing Implications," *Emerald Open Research* 2 (2020): 45.

Combating the pandemic and the question of human rights protection

The COVID-19 pandemic constitutes a global health emergency that requires immediate effective action by governments in order to protect everyone's health and basic human rights. Challenges raised by the pandemic should be addressed at both the international and the domestic levels.⁴⁶

Under the international human rights law, states can limit the exercising of most human rights if it is necessary to protect the rights of others or the collective interests. The exceptional circumstances caused by the global COVID-19 pandemic have led to more extensive restrictions of human rights than usually, in terms of both their scope and their duration. States are authorised to infringe human rights under the circumstances of a public emergency, and such a condition of a legitimate infringement exists in the context of COVID-19. However, states should also ensure that the general measures they adopt to face the crisis do not harm vulnerable groups disproportionately.⁴⁷

The coronavirus pandemic has emerged as a global health threat. Older adults are amongst the most vulnerable persons, both due to the physiological risks of infection as well as because of the psychosocial offshoots of distancing and lockdown. Loneliness, isolation, abuse, the loss of autonomy, and the restriction of health care access can all accentuate people's frailty and comorbidities. During the pandemic, marginalisation is a probable common pathway for human rights deprivation among older adults. They are at the disproportionate risk of severe infection and mortality as well as they are vulnerable to loneliness and social exclusion. Both age and ageism can act as significant risk factors, increasing the physical and psychosocial burden on the elderly. In this way, marginalisation and the infringement of human rights have both emerged as common pathways of suffering for the elderly during the COVID-19 pandemic.⁴⁸ Expressing his deep concern about the pandemic and its effects on communities and societies, the UN Secretary General António Guterres stated the following:

Beyond its immediate health impact, the pandemic is putting older people at greater risk of poverty, discrimination and isolation. It is likely to have a particularly devastating impact on older people in developing countries [...]. In addition to the much higher mortality rate for older persons, COVID-19 has much broader effects: health care denied for conditions unrelated to COVID-19; neglect and abuse in institutions and care facilities; an increase in poverty and unemployment; the dramatic impact on well-being and mental health; and the trauma of stigma and discrimination.⁴⁹

⁴⁶ Kykie Evans, Nicolas Petrie, "COVID-19 and the Australian Human Rights Acts," *Alternative Law Journal* 3 (2020): 17.

⁴⁷ Audrey Lebret, "COVID-19 Pandemic and Derogation to Human Rights", *Journal of Law and the Biosciences* 1 (2020): Isaa015.

⁴⁸ Migita D'cruz, Debanjan Banerjee, "'An Invisible Human Rights Crisis': The Marginalization of Older Adults During the COVID-19 Pandemic: An Advocacy Review," *Psychiatry Research* 292 (2020): 113369.

⁴⁹ "UN Secretary General Calls for Covid-19 Response that Respects the Rights and Dignity of Elder People," <https://www.age-platform.eu/policy-work/news/un-secretary-general-calls-covid-19-response-respects-rights-and-dignity-older> (accessed on: 09.03.2021).

The pandemic has raised significant concerns for populations' mental health and the effective provision of mental health services in the light of increased demands and barriers to their delivery. Particular attention is being directed towards the possible neuropsychiatric sequelae of both COVID-19 and the stringent societal mitigation measures applied by national governments; these concerns are informed by the historical awareness of the incidence of psychotic disorders following influenza pandemics.⁵⁰

The spread of an infectious disease that overwhelms the healthcare system threatens not only the lives of those who contract the disease and require medical care, but also the right to life and access to healthcare of those individuals who are in need of a continual treatment for other conditions. Public health measures consisting in the enforcement of social distancing – deemed effective in reducing the spread of certain influenza-like diseases, including COVID-19 – clash with a number of individual rights. The enjoyment of the right to personal freedom is affected by the imposition of mandatory quarantines on passengers coming from abroad and by the imposition of isolation on people suspected or known to have tested positive for the new coronavirus. Prohibitions of public gatherings impact the freedoms of assembly and association, while surveillance measures aimed at tracing contacts through the use of mobile data and other artificial intelligence tools pose a challenge to the full enjoyment of the right to a private life. Furthermore, the external dimension of the freedom to manifest one's belief and religion is affected by the closure of places of worship. Limitations to non-absolute rights are allowed when they are prescribed by law, pursuant to a legitimate aim, and when such limitations are necessary in a democratic society and proportionate to the identified legitimate aim, meaning that no alternative – a less restrictive one – is available. While worded in slightly different ways, both the ECHR and the ICCPR identify certain legitimate aims as grounds for limiting a series of rights, such as the right to respect for private and family life (Article 8 ECHR), freedom to manifest one's religion or belief (Article 9 ECHR and Article 18 ICCPR), freedom of expression (Article 10 ECHR and Article 19 ICCPR), freedom of assembly and association (Article 11 ECHR and Articles 21 and 22 ICCPR), and freedom of movement (Article 2 ECHR Protocol no. 4 and Article 12 ICCPR).⁵¹

The COVID-19 pandemic has revealed vulnerabilities and fragilities in global value chains. The worldwide economic lockdowns aiming at containing COVID-19 have led in some industries to unilateral cancellations and suspensions of orders from

⁵⁰ Johannes Thome, Andrew N. Coogan, Frederick Simon, Matthias Fisher, Oliver Tucha, Frank Faltraco, Donatella Marazziti, Hermann Butzer, "The Impact of the COVID-19 Outbreak on the Medico-legal and Human Rights of Psychiatric Patients, *European Psychiatry* 1 (2020): 1.

⁵¹ Allesandra Spadaro, "COVID-19: Testing the Limits of Human Rights," *European Journal of Risk Regulation* 2 (2020), 3. Comp.: Jerzy Jaskiernia, "The Problem of Proportionality in Using Derogations to Deal with the State of Emergency under Article 15 of the European Convention on Human Rights (The Council of Europe's Approach)," in *Księga jubileuszowa dedykowana Profesorowi Krzysztofowi Drzewickiemu* (Jubilee Book Dedicated to Professor Krzysztof Drzewicki), eds. Adam Wiśniewski, Paweł Kwiatkowski, *Gdańskie Studia Prawnicze* 2 (2019): 71.

overseas suppliers by transnational corporations (TNCs). These decisions are argued to contradict the UN Guiding Principles on Business and Human Rights, the Sustainable Development Goals, as well as related national laws, because they have contributed to the risk that the human rights of workers will be violated and that these workers will become victims of modern slavery.⁵²

The impact of economic policy reforms on democratic institutions might compromise the enjoyment of human rights, especially economic, social, and cultural rights (ESC rights). First, economic reform policies driven by international and supranational institutions compromise democratic self-determination. Second, economic reform policies driven by the need to reduce public expenditure might put marginalised groups at risk and hamper their democratic participation. Since the realisation of ESC rights requires a framework for legitimate redistributive decisions, any such impairment of democratic institutions poses a risk to the realisation of ESC rights. Courts are unlikely to fully compensate for this risk. The Guiding Principles on Human Rights Impact Assessments of Economic Reforms (the Guiding Principles) devise a way for jointly strengthening human rights and democracy. They urge states to subject economic policy reforms to democratic control. Human rights impact assessments (HRIAs) might empower the public sphere and shift economic policy reforms from arcane, high-level international negotiations back to democratic processes. Moreover, the Guiding Principles oblige states to design comprehensive and participatory economic policy reforms.⁵³

The United Nations' system-wide response to COVID-19 is based on three pillars: a large-scale, coordinated, comprehensive health response; a wide-ranging effort to safeguard lives and livelihoods; and a transformative recovery process. Following the public health reaction initiated by the World Health Organization, the United Nations launched a coordinated global humanitarian response plan to mitigate the immediate impacts of COVID-19 in some of the world's most vulnerable countries. The COVID-19 Global Humanitarian Response Plan is being implemented by UN agencies in partnership with key local and international partners on the frontlines of the response.⁵⁴

The UN Security Council has adopted a resolution calling for strengthened international cooperation to facilitate equitable and affordable access to COVID-19 vaccines in armed conflict and post-conflict situations as well as during complex humanitarian emergencies. Acting through its special 'silence procedure' enacted

⁵² Hinrich Voss, "Implications of the COVID-19 Pandemic for Human Rights and Modern Slavery Vulnerabilities in Global Value Chains," *Transnational Corporations* 2 (2020): 113.

⁵³ Matthias Goldman, "Human Rights and Democracy in Economic Policy Reform: The European COVID-19 Response Under Scrutiny," *The International Journal of Human Rights* 9 (2020): 1290.

⁵⁴ "The Covid-19 Pandemic Is Not Only the Greatest Health Crisis Since the Creation of the United Nations 75 Years Ago. It Is Also a Humanitarian, Security and Human Rights Crisis," <https://www.un.org/pga/75/special-session-of-the-general-assembly-in-response-to-the-coronavirus-disease-covid-19-pandemic/> (accessed on: 09.03.2021).

during the pandemic, the Council unanimously adopted resolution 2565 (2021), recognising the role of extensive immunisation against COVID-19 as a global public good for health. The document stressed the need to develop international partnerships – particularly to scale-up manufacturing and distribution capabilities – with consideration of differing national contexts. It also reiterated the demand for a general and immediate cessation of hostilities in all situations on its agenda, commanding as well that all parties to armed conflicts immediately engage in a durable, extensive, and sustained humanitarian pause to facilitate the equitable, safe, and unhindered delivery and distribution of COVID-19 vaccinations in the areas of armed conflict.⁵⁵

Refugees and migrants are potentially at increased risk, because they typically live under conditions of overcrowding, often without access to basic sanitation. Since the beginning of the official lockdown for COVID-19, the medical and legal assessment of physical violence related to the obtaining of a status – or other forms of human protection – has been frozen.⁵⁶

The media have been very critical of some East Asian countries' use of digital contact-tracing to control COVID-19. For example, South Korea has been criticised for its use of privacy-infringing digital contact-tracing. However, whether their type of digital contact-tracing was unnecessarily harmful to the human rights of Korean citizens is open for debate. Four principles were originally outlined in the European Court of Human Rights with regard to such measures, namely that they have to be necessary, proportional, scientifically-valid, and time-bounded (European Court of Human Rights 1950). While the use of Korea's digital contact-tracing was scientifically-valid and proportionate (albeit in need of improvements) as well as it meets the requirement of necessity, it is nonetheless too vague to meet the time-boundedness requirement. This paper is one of the first attempts to critically engage with digital contact-tracing in South Korea.⁵⁷

International Instruments of Human Rights recognise that – in the context of serious threats to public health and public emergencies that place life at risk – restrictions on some rights can be justified only when they meet the following requirements: have legal grounds, are strictly necessary, are based on scientific evidence, are neither arbitrary nor discriminatory, are of limited duration, are still respectful of human dignity, are subject to revision, and are proportionate to their objectives (Organization of American States, 2020). In times of war, public danger, or another emergency that threatens the independence or security of a State, the State may take measures derogating from its obligations under the present Convention to the extent and for a period of time strictly

⁵⁵ “Security Council Calls for Increased Global Cooperation to Facilitate COVID-19 Vaccine Access in Conflict Areas, Unanimously Adopting Resolution 2565 (2021),” <https://www.un.org/press/en/2021/sc14454.doc.htm> (accessed on: 09.03.2021).

⁵⁶ A. Lanzarone, V. Tullio, A. Argo, S. Zerbo, “When a Virus (Covid-19) Attacks Human Rights: The Situation of Asylum Seekers in the Medico-legal Setting,” *Medico-legal Journal*, July 23, 2020, 258.

⁵⁷ Mark Ryan, “In Defence of Digital Contact-tracing: Human Rights, South Korea and Covid-19,” *International Journal of Pervasive Computing and Communications* 4 (2020): 383.

required by the exigencies of the situation, provided that such measures are consistent with its other obligations under international law and do not involve discrimination on the grounds of race, colour, gender, sexual orientation, language, religion, or social origin. The foregoing provision does not authorise any suspension of the article stating that the State has the duty ‘to adopt positive, concrete measures aimed at satisfying the right to a decent life, especially when it comes to people in situations of vulnerability and risk, whose attention becomes a priority’ (Inter-American Court of Human Rights, 2005). The activation of the state of exception has rules, e.g. that it must be for a limited time, must be justified, and must be communicated for approval to the General Secretariat of the Organization of American States. The 1984 Syracuse Principles (American Association for the International Commission of Jurists, 1984) and the General Comments of the United Nations Human Rights Committee on States of Emergency and Freedom of Movement, in particular General Comment No. 29 (Office of the United Nations High Commissioner for Human Rights, 2001) also provide authoritative guidance for restrictions of human rights for reasons of public health or national emergency.⁵⁸

In the opinion of the United Nations, human rights are key to shaping the pandemic response, both for the public health emergency and the broader impact on people’s lives and livelihoods. Human rights put people centre-stage. Responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone, and preserving human dignity. However, they also draw our attention to who is suffering the most, why, and what can be done about it. They prepare the ground for the emergence of more equitable and sustainable societies, development, and peace. Guaranteeing human rights for everyone poses a challenge for each country around the world to a differing degree. The public health crisis is fast becoming an economic and a social crisis, as well as a protection crisis and a human rights crisis at the same time. Some ongoing crises, especially in armed conflict, put human rights and other international legal protections under extra pressure. The COVID-19 situation has exacerbated the vulnerability of those who are least protected. It is highlighting deep economic and social inequalities as well as inadequate health and social protection systems that require urgent attention as part of the public health response. Women and men, children, youth, older persons, refugees and migrants, the poor, people with disabilities, persons in detention, minorities, LGBTI people, among others, are all being affected, albeit to a differing extent. This is not time to neglect human rights; it is a time when, more than ever, human rights are needed in order to navigate this crisis in a way that will quickly make it possible to re-focus on achieving equitable sustainable development and the prevailing peace.⁵⁹

⁵⁸ Carlos Valerio, “Human Rights and Covid-19 pandemic”, *JBRA Assisted Reproduction* 3 (2020): 379.

⁵⁹ “Covid 19 and Human Rights. We Are All in This Together,” United Nations, April 2020, 2–3.

In May 2020, the UN Secretary-General António Guterres issued a policy brief, highlighting how human rights are critical to shaping the pandemic responses, as they put people centre-stage while also preserving human dignity. The UN entities stressed that in the context of the pandemic, any data collection by the UN system should be rooted in human rights and applicable international law, data protection, and privacy principles. As they said, ‘Any measures taken to address the COVID-19 pandemic should also be consistent with the mandates of the respective UN System Organizations and take into account the balancing of relevant rights, including the right to health and life and the right to economic and social development.’⁶⁰

That issue of the COVID-19 pandemic is discussed in the context of the protection of human rights within the framework of international organisations. One of them is the Council of Europe (CoE), an organisation specialising in promoting democracy, rule of law, and protection of human rights. The Parliamentary Assembly of the Council of Europe (PACE) discussed that problem on 13 October, 2020, and offered a resolution 2339 (2020), titled “Upholding human rights in times of crisis and pandemics: Gender, equality and non-discrimination.”⁶¹

The Parliamentary Assembly of the Council of Europe decided to analyse the consequences of the COVID-19 pandemic for the protection of human rights. As decided by the PACE’s Bureau,⁶² the Committee of Equality and Non-Discrimination nominated Ms Petra Stienen (Netherlands, ALDE) as a rapporteur. She delivered a report⁶³ which constitutes the base for the PACE’s resolution on that subject. It is worth analysing the basic findings of this report, which seems to be of a great value in the process of identifying basic challenges that the COVID-19 pandemic has done to the protection of human rights.

In the spring of 2020, the pandemic brought the whole world to a halt. People were either ordered or encouraged to remain at home; businesses were required to cease their activities; parliaments’ activities and their scrutiny over the executive were all reduced to a minimum. This storm affected us all, but some of us have been caught closer to its eye, and we have not all had the same means to shelter from it. The existence of far higher death rates and far higher risks of serious illnesses among men, elderly people, and persons with certain comorbidity factors – often including persons with disabilities – is well-documented. Moreover, as COVID-19 spread, and despite a paucity of data collection throughout the most of Europe, it has also emerged that ethnic minorities have been disproportionately affected by the situation, as far

⁶⁰ “UN Agencies Uphold Human Rights Considerations in COVID-19 Data Collection,” <https://news.un.org/en/story/2020/11/1078182> (accessed on: 09.03.2021).

⁶¹ Petra Stienen, “Upholding Human Rights in Times of Crisis and Pandemics: Gender, Equality and Non-discrimination,” <https://pace.coe.int/en/files/28678/html> (accessed on: 09.03.2021).

⁶² Reference 4513 to Committee: Decision of the Bureau of 7 May 2020.

⁶³ PACE Doc. 15129, Report *Upholding Human Rights in Times of Crisis and Pandemics: Gender, Equality and Nondiscrimination*.

higher death rates and far higher proportions of patients requiring hospital care have been recorded among persons belonging to ethnic minorities. Women, persons with disabilities, people of races other than white (including Roma and Travellers, people of African descent, persons belonging to national or ethnic minorities, migrants, refugees and asylum-seekers), LGBTI persons, young people, and elderly people have all been particularly hard-hit as governments have sought to address the pandemic through ‘one size fits all’ measures, failing to take account of specific needs as regards safety during lockdown, access to information, the capacity to implement preventive measures, as well as access to education, employment, housing and health, including sexual and reproductive health.⁶⁴

Many healthcare and other support services have been dramatically disrupted due to the re-allocation of public funding to face the health crisis. This has adversely impacted women’s access to sexual and reproductive services, including access to safe abortion care. As for support services that are essential to many persons with disabilities and elderly people, these have often been severely disrupted. Staff shortages due to illness or confinement measures, as well as a general lack of personal protective equipment, have been signalled. For people who have lost their income due to other measures taken in response to the pandemic, access to medical treatments that are not fully covered by public health insurance has also become much more difficult, or even impossible.⁶⁵

The COVID-19 pandemic is more than a health crisis. It has affected the functioning of our democracies and human rights across the spectrum. From an equality and non-discrimination perspective, it has cast light on the far-reaching structural inequalities existing in our societies, and it has exacerbated them. Governments’ initial response when designing measures to contain and combat the pandemic was often to adopt the ‘one size fits all’ approach. They rarely took sufficiently into account the different situations and needs of women, young people, the elderly, persons with disabilities, persons belonging to national and ethnic minorities, LGBTI people, or other minorities; nor did they consider adequately the different impacts that blanket-style measures would have on different groups.⁶⁶

Generally speaking, those who were the most marginalised due to the pre-existing structural discrimination across societies will also be those hardest-hit by the consequences of the crisis, and across all fields of daily life. The crisis has already been devastating and its far-reaching effects will continue to be felt for a long time to come. However, it also provides us all with an opportunity to transform our societies for the better.⁶⁷

In the light of all these considerations, the Parliamentary Assembly of the Council of Europe called on all Council of Europe member states – as well as observer states

⁶⁴ PACE Doc. 15129, § 1–5.

⁶⁵ PACE Doc. 15129, § 2.6.

⁶⁶ PACE Doc. 15129, § 2.7.

⁶⁷ PACE Doc. 15129, § 6.

and those enjoying the observer- or partner-for-democracy status with the Parliamentary Assembly – to guarantee that immediate crisis responses are comprehensive and inclusive as well as take full account of the diversity within the societies and of the differing impacts that the same measures might have on different groups. In particular, the instructions were as follows:

- 1) to ensure that crisis response bodies not only bring together the necessary technical expertise, but are also gender-balanced and representative of the full diversity within a society, and that they regularly consult equality bodies, civil society organisations, and experts active in researching and promoting equality;
- 2) to base the measures taken to respond to the crisis on objective data, collected and disaggregated by criteria such as gender, race, national or ethnic origin, sexual orientation, gender identity, sex characteristics, disability, age, and health status, while fully respecting the international standards on the protection of personal data, and with full respect for the principles of confidentiality, informed consent, and voluntary self-identification;
- 3) to plan, budget for, and provide additional support to persons who need it, such as speakers of minority languages or non-official languages, or persons with disabilities, in order to offer equal access to information about measures that these groups can take to protect themselves from the crisis, and new obligations stemming from the crisis;
- 4) to plan, budget for, and provide additional support to persons who might face particularly negative consequences of the measures taken in response to the crisis – or new barriers in accessing services on which they depend – due to grounds such as their gender, race, national or ethnic origin, sexual orientation, gender identity, sex characteristics, disability, age, and health status;
- 5) to place the safety of victims of gender-based and domestic violence at the heart of all measures and policies taken in response to the crisis.⁶⁸

Both the analysis and the recommendations adopted by the Parliamentary Assembly of the Council of Europe show that it recognised the threats to human rights protection posed by the COVID-19 pandemic. Such an approach is in line with the character of the Council of Europe as an organisation focusing in particular on creating and implementing standards of democracy, the rule of law, and the protection of human rights. Even if one takes into account that the resolutions and recommendations by the PACE, as acts of a ‘soft law’, are not legally binding, they are of a significant political nature nonetheless. They are an expression of the reflections of an organ which – due to its political representativeness – is called ‘the conscience of Europe’.⁶⁹

⁶⁸ PACE Doc. 15129, § 14.

⁶⁹ Jerzy Jaskiernia, *Parliamentary Assembly of the Council of Europe* (Warsaw: University of Warsaw, 2002), 52.

The recommendations by this body should therefore be treated *de minimis* as an expression of the know-how of a recommended procedure, reflecting the views and experiences of parliamentarians.

Conclusions

While the medical and organisational aspects of controlling the spread of COVID-19 and bringing about its end are critical to the pandemic, the pandemic has had a number of consequences that have become apparent. One of the most serious issues concerns its effects on the protection of human rights. There is no doubt that there are threats which require a response both on the national level and on the international scale. All states of emergency raise the question about to what extent the limitation of human rights related to such states is legitimate. There is important jurisprudence of international courts in this regard, in particular the European Court of Human Rights. This question is also of significance in the case of the COVID-19 pandemic specifically, taking into considering that some states have not decided to declare a state of emergency, and in such a situation it is particularly critical to define the reasons justifying a reduction of human rights.

There is no doubt that, in fighting against the COVID-19 pandemic, states have to use all the available instruments to counter it effectively. The recommendation formulated by the Parliamentary Assembly of the Council of Europe shows what instruments are available in this case and to what extent they can reduce the negative impact of the pandemic on the protection of human rights. As the United Nations has stressed, this is not the time to neglect human rights; it is time when, more than ever, human rights are needed for us to navigate this crisis in a way that will allow us to re-focus on achieving equitable sustainable development and the prevailing peace. The COVID-19 pandemic has become the biggest challenge on the threshold of the third decade of the 21st century. Undoubtedly, this requires the cooperation of all international organisations as well as an effective collaboration with state authorities.