

# The Impact of the Covid-19 Pandemic on Human Rights

Collective Research Project –  
Frederick University

Vasiliki Karagkouni (ed.)

λογος



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# Preface

It is with great pleasure and honor that this publication is delivered, which is the result of a coordinated research effort by Frederick University academic staff to identify the impact of the COVID-19 pandemic on human rights. The project received internal funding from Frederick University due to the timeliness and importance of the results it would reveal. It was implemented mainly by academic staff from the Department of Law, and also by academic staff from the Departments of Nursing, Psychology, Social Work, and Maritime Transport and Commerce. In particular, the following participated:

From the Department of Law:

Dr Panagiotis Degleris, Associate Professor,  
Dr Dimitrios Devetzis, Assistant Professor,  
Dr Vasiliki Karagkouni, Assistant Professor,  
Dr Konstantinos Kouroupis, Assistant Professor,  
Dr Maria Stylianidou Assistant Professor,  
Dr Aikaterini Sykiotis-Charalambakis, Assistant Professor,  
Dr Ioannis Voudouris, Assistant Professor,  
and Dr Ioannis Revolidis, Lecturer, Faculty of Laws, University of Malta.

From the Department of Nursing:

Dr Alexandros Argyriadis, Assistant Professor, Head of the Department.

From the Department of Psychology:

Dr Agathi Argyriadi, Lecturer.

From the Department of Social Work:

Dr Stavros Parlalis, Associate Professor,  
Dr Demetris Hadjicharalambous, Lecturer.

From the Department of Maritime Transport and Commerce:

Dr Nicholas Berketis, Lecturer.

The implementation of the project was made possible with the valuable contribution of Frederick University PhD and undergraduate students, who worked with particular willingness and diligence. In particular, the following participated:

PhD students:

Andreas Christodoulou (Department of Social work, collection of data on employee rights during the pandemic),

Ioanna Georgiou (Department of Social work, collection of data on employee rights during the pandemic).

Undergraduate students:

Stylios Aktoudianakis (Department of Law, collection of data on public procurement during the pandemic),

Eleni Evaggelinou (Department of Law, collection of data on tracing apps during the pandemic),

Nikolaos Mathioudakis (Department of Law, collection of data on gender equality during the pandemic),

Nikoleta Nikolaou (Department of Law, collection of data on personal data during the pandemic),

Andreas Tsikkos (Department of Maritime Transport and Commerce, collection of data on seafarers during the pandemic),

and Fani Yiatrou (Department of Law, collection of data on personal data during the pandemic).

Warm thanks are due to Frederick University for funding and for providing the possibility to carry out the research project and especially to the Head of the Research Service Mr. Alexis Onoufriou, to Professor Christos Clerides for the Introductory note, to all the researchers-authors for the implementation of the project, to the students for their assistance and to the publishing house for the excellent cooperation.

Dr Vasiliki Karagkouni,  
Assistant Professor,  
Department of Law,  
Coordinator of the research project,  
Frederick University.

## 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.

Professor Christos Clerides  
Head of the Law Department of Frederick University  
Jan. 2023

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

IOANNIS REVOLIDIS

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

VASILIKI KARAGKOUNI

**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,<sup>1</sup> despite making up the largest proportion of low-paid part-time workers, with variable working hours, temporary contracts, and precarious working conditions.<sup>2</sup> Furthermore, in the EU, around 33% of women had to interrupt their working careers for at least six months

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<sup>1</sup>European 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>.

<sup>2</sup>Sevilla, 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.<sup>3</sup> Of note, 44% of Europeans still believe that “the most important women’s role is to take care of their home and family”.<sup>4</sup> 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”.<sup>5</sup> Additionally, these goals are outlined as primary law<sup>6</sup> 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”<sup>7</sup> by adopting secondary legislation. EU’s secondary legislation on gender equality in-

<sup>3</sup>Eurostat, Population by effects of childcare on employment and educational attainment level, Last update 24-02-2020, available at: [lfso\\_18stwked](https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&code=sdg10.5.2) and Population with work interruption for childcare by duration of interruption and educational attainment level, available at: [lfso\\_18stlened](https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&code=sdg10.5.2).

<sup>4</sup>European 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>.

<sup>5</sup>[https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU\\_2.3.8.pdf](https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.3.8.pdf).

<sup>6</sup>See 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](http://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.

<sup>7</sup>[https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU\\_2.3.8.pdf](https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.3.8.pdf).

cludes the following: Directive 79/7/EEC on the progressive application of the principle of equal treatment between men and women in social security matters; Directive 76/207/EEC on implementing the principle of equal treatment for men and women with regard to access to employment, vocational training, and promotion and working conditions; Directive 92/85/EEC on the implementation of measures aimed at improving health and safety at work of pregnant, lactating, and lactating workers; Directive 2010/18/EU on the implementation of the revised Framework Agreement on parental leave and repealing Directive 96/34/EC; Directive 2010/41/EU on the implementation of the principle of equal treatment between men and women engaged in self-employed activity and repealing Directive 86/613/EEC; and Directive (EU) 2019/1158 on the balance between work and private life for parents and carers and the repeal of Directive 2010/18/EU.

In order to advance gender equality, the CJEC and later the CJEU have had a significant impact. Much of the relevant case law on equal treatment refers to the interpretation of Directive 76/207/EEC in cases of direct or indirect discrimination in the workplace and permitted exceptions, where due to the nature or specific conditions of activity, gender is a determining factor in its exercise.<sup>8</sup>

In particular, in the *Bilka*<sup>9</sup> judgment, according to the Court, banning part-time employees from an occupational pension plan is “indirect discrimination” if it affects a much larger number of women than men unless it can be shown that such exclusion is justified by objective factors unrelated to any discrimination on grounds of sex. In *Test Achats*,<sup>10</sup> the Court held that for insurance purposes, the same actuarial calculation system should be applied to the determination of premiums and insurance benefits. Moreover, as is well known, dismissal during maternity leave and pregnancy is prohibited as it constitutes direct discrimination on the grounds of sex and, with a few exceptions not related to this situation, is understood in relation to this principle.<sup>11</sup>

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<sup>8</sup>CJEC, 222/84, *Johnston*.

<sup>9</sup>CJEC, 170/84.

<sup>10</sup>CJEU, C-236/09.

<sup>11</sup>CJEU, *Dita Danosa*, C-232/09.

However, according to the Court in the *Marschall*<sup>12</sup> judgment, a national regulation requiring that female candidates be given preference when there are more women than men competing for a position (“positive discrimination”) is not against European law, provided that advantages are not automatically provided, male candidates are considered objectively, and they are not excluded a priori from applying. In the core case *Defrenne*,<sup>13</sup> the Court accepted the direct effect of the principle of equal pay for women and men workers. It considered that this principle not only applies to the actions of public authorities but also covers all contracts aimed at regulating collective labor. It is now, according to settled case law of the Court, the relevant provision of the Treaty that produces direct effects in so far as it gives rise to private rights, which national courts must defend.<sup>14</sup>

Given the imperative nature of the article, the prohibition of discrimination between women and men workers not only is limited to the actions of public authorities but also extends to all contracts aimed at regulating paid work collectively as well as to contracts between individuals.<sup>15</sup> The principle outlined in this section may be brought up before national courts in cases of discrimination resulting directly from legal decrees or collective bargaining agreements, as well as in situations where the job is performed for the same undertaking or service, whether it be one that is given by the government or by the private sector.<sup>16</sup>

## **The principle of equal pay for women and men for equal work or work of equal value in the EU**

As stated above, Article 153 TFEU allows the EU to act in the wider field of equal opportunities and equal treatment in employment. In this context, Article 157 TFEU allows for positive action to strengthen the position of women. Since 1957, the EU Treaties uphold the principal that men and women should be paid equally for work of comparable worth. and is now fundamental in Article 157 TFEU. Employers

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<sup>12</sup>CJEC, C-409/95. See also CJEC, *Kalanke*, C-450/93.

<sup>13</sup>CJEC, 43/75.

<sup>14</sup>CJEC, *Van den Akker*, C-28/93, par. 21, CJEU, *Safeway*, C-171/18, par. 23.

<sup>15</sup>CJEC, *Sass*, C-284/02, par. 25, CJEU, *Praxair MRC*, C-486/18, par. 67.

<sup>16</sup>CJEC, *Defrenne*, 43/75, par. 40, *Allonby*, C-256/01, par. 45.

are already required by secondary EU law to provide equal pay for equal effort or work of equivalent value between men and women. A Commission recommendation on pay transparency was added in 2014.<sup>17</sup> In particular, on the issue of equal pay, this is provided for in Directive 75/117/EEC on the approximation of the laws of the Member States, relating to the application of the principle of equal pay for men and women workers. Directive 2002/73/EC amending 76/207/EEC on the application of the principle of equal treatment between men and women with regard to access to employment, vocational training, and promotion and working conditions was also adopted. The Directive states that the principle of equal pay for working women and men is an essential and integral part of the *acquis communautaire* on sex discrimination. In addition, Directive 2006/54/EC implementing the principle of equal opportunities and equal treatment for men and women in matters of employment (recast) contains Chapter 1 entitled “Equal pay”. Article 4 states that direct and indirect sex discrimination with regard to all components and conditions of remuneration will be prohibited for similar labor or work to which the same value is attributed.

In particular, when an occupational classification system is used to determine remuneration, it is based on common criteria for working men and women and is enforced in a way that excludes discrimination based on sex. Despite the existence of a legal framework, as will be discussed below, the principle of equal pay does not apply and is not fully enforced.<sup>18</sup> The gender pay gap in the EU remains at 13%, according to the latest Eurostat data.<sup>19</sup> The lack of pay transparency is one of the main obstacles to exercising the right as it does not allow employees to compare their average pay with that of their colleagues of the opposite sex, who perform the same job or work of equal value.

In addition, in the absence of payroll transparency, employers do not necessarily review the payroll. It is a fact that the lack of pay transparency favors the perpetuation of gender bias in wage setting. On March 5, 2020, the European Commission adopted the 2020–2025

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<sup>17</sup><https://eur-lex.europa.eu/legal-content/EL/TXT/HTML/?uri=CELEX:32014H0124&from=EL>

<sup>18</sup>[https://ec.europa.eu/info/sites/default/files/swd-2020-50\\_en.pdf](https://ec.europa.eu/info/sites/default/files/swd-2020-50_en.pdf)

<sup>19</sup>[https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender\\_pay\\_gap\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics)

Gender Equality Strategy,<sup>20</sup> setting up an ambitious framework for the next five years on how to promote gender equality in Europe and beyond. As one of the first objectives, the Commission proposed binding measures on wage transparency, presenting a proposal for a Directive “to strengthen the application of the principle of equal pay for equal work or work of equal value between women and men through wage transparency and enforcement mechanisms”.<sup>21</sup>

Wage transparency enables employees to exercise their right to equal pay, affording them access to the necessary information in accordance with the General Data Protection Regulation,<sup>22</sup> so they can assess whether they are discriminated against in relation to their colleagues of the opposite sex performing similar work or work of equal value. In addition, the Commission adopted an action plan for the implementation of the European pillar of social rights, which sets gender equality at its core and ambitious targets for women’s participation in the labor market, among others.<sup>23</sup> Minimum wages that are adequate also aid in closing the gender pay gap as “more women than men are paid the minimum wage”.<sup>24</sup> To this end, in October 2020, the Commission presented a proposal for an EU Directive to ensure that workers in the Union are protected by adequate minimum wages.

Through the Committee for Women’s Rights and Gender Equality in particular, the European Parliament plays a significant role in promoting equal opportunity measures. The recently proposed Directive to improve the application of the principle of equal pay for equal effort or work of equal value between men and women through payroll transparency and enforcement mechanisms is pertinent.<sup>25</sup> Furthermore, both the Court of Justice of the European Communities (CJEC) and the Court of Justice of the European Union (CJEU) have developed a clear case law on this issue. In fact, recently, in June 2021, a judgment of the Court of Justice of the European Union (CJEU)

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<sup>20</sup><https://eur-lex.europa.eu/legal-content/EL/TXT/HTML/?uri=CELEX:52020DC0152&from=EL>

<sup>21</sup><https://eur-lex.europa.eu/legal-content/EL/TXT/HTML/?uri=CELEX:52021PC0093&from=EL>

<sup>22</sup>Regulation (EU) 2016/679.

<sup>23</sup><https://eur-lex.europa.eu/legal-content/EL/TXT/HTML/?uri=CELEX:52021DC0102&from=EL>

<sup>24</sup><https://eur-lex.europa.eu/legal-content/EL/TXT/HTML/?uri=CELEX:52020DC0744&from=EN>

<sup>25</sup>COM(2021)0093.

was issued in Case C - 624/19, referring to a reference for a preliminary ruling submitted by the Court of First Instance of the United Kingdom, with the principle of equal pay for women and men.

The principle of equal pay for women and men is examined as a manifestation of the general principle of gender equality, protected by both primary European law through the TFEU and the Charter, as well as secondary European law. It has been interpreted by the case law of the CJEC and later the CJEU predominant provision of primary EU law, concerning the principle of equal pay for men and women workers in EU law in Article 157 TFEU. This article introduces perhaps the most important application of the principle of gender equality in the EU legal system. It imposes equal treatment of women and men, especially on equal pay for work, indicating clear parameters for equal pay, often interpreted by the CJEU.<sup>26</sup>

Furthermore, Article 23 of the Charter enshrines the principle of equality between women and men. According to the language of Article 23 of the Charter, this section encourages actions to advance true equality as opposed to other clauses that seek to combat and eliminate inequities. Not only are EU institutions and Member States required to combat sexism, but they must also take proactive steps to strengthen and lessen potential negative effects on people's private, social, professional, and economic lives.<sup>27</sup> Although the Union's institutions, particularly the court, are obliged by its application in interpreting other laws, paragraph 1 does not establish an individual right.

Furthermore, it has been held that Article 157 TFEU imposes the principle of equal pay for women and men workers only in the case of similar work or work of equal value.<sup>28</sup> The notion that similar work or work of equal value must be compensated equally, whether performed by a man or a woman, is established by this article. This principle is the specific expression of the general principle of equality,

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<sup>26</sup>See also Xefteri, S. (2019)., Article 23 in: Tzemos, V. (Ed.), Charter of Fundamental Rights of European Union, Nomiki Bibliothiki, p. 319-320.

<sup>27</sup>Schiek, D. (2014), Equality between Women and Men in: Peers, S./Hervey, T./Kenner, J./Ward, A., The EU Charter of Fundamental Rights, A Commentary, p. 36.

<sup>28</sup>CJEC, *Murphy* κ.λπ., 157/86, par. 9.

which prohibits the different treatment of similar situations, unless differentiation is objectively justified.<sup>29</sup>

Furthermore, discrimination based on legislation or collective bargaining agreements can be established through the criteria of work identity and equal pay, as referred to in Article 157 TFEU as opposed to those which can only be ascertained on the basis of more detailed implementing provisions. This also applies in cases of unequal remuneration of women and men workers for similar work, which is performed in the same company or in the same service, private or public. The judge is able to assess all the facts on the basis of which he can judge whether a female employee receives a lower pay than a male employee performing similar work.<sup>30</sup>

Finally, in Barber,<sup>31</sup> the Court ruled that occupational pensions of all kinds constitute remuneration within the meaning of the Treaty, and therefore, the principle of equal treatment also applies to them. In this case, it was decided that men should have the same legal entitlements as female coworkers in terms of pension or surviving spouse benefits.. In Case C-624/19, on a reference for a preliminary ruling under Article 267 TFEU lodged by the Court of First Instance of the United Kingdom in the proceedings in case *K et al. v. Tesco Stores Ltd*, the CJEU issued its decision of June 3, 2021. This application was lodged in a legal dispute between approximately 6,000 employees and Tesco Stores Ltd, which employs or has employed them in its branches, of pay between men and women and concerned the interpretation of Article 157 TFEU.

## **Findings on the impact of the pandemic on women's working life in the EU**

The pandemic has worsened the existing inequalities between women and men and in the labor sector in the EU. Related research has revealed the following: the above-mentioned over-representation of women in lower-wage sectors and occupations, such as tourism, retail, or personal services, made them particularly vulnerable in markets

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<sup>29</sup> CJEC, *Brunnhofner*, C-381/99, par. 27 κα 28, *JämO*, C-236/98, par. 36.

<sup>30</sup> CJEC, *Worringham κα Humphreys*, 69/80, par. 23.

<sup>31</sup> CJEC, C-262/88.

affected by the pandemic. Women experienced greater barriers to reentering the workforce during the summer of 2020's partial recovery, despite the fact that both men and women saw the same 2.4% fall in employment in the second quarter of 2020. Furthermore, women face greater challenges to obtaining benefits from emergency income assistance programs designed to lessen the effects of job loss than men do, particularly in low-wage and low-skilled positions.<sup>32</sup>

About four in ten women (38%) report that the pandemic has had a negative impact on their incomes.<sup>33</sup> This is attributed to the fact that women are working less for pay due to either the wider effects of the pandemic on the labor market or the increase in working from home. During the pandemic, approximately one in five women (21%) considered or decided to permanently reduce the time available for paid work. Linked to this is the finding that women's natural work-life balance was disrupted during the pandemic (44%).<sup>34</sup> Many people believe that telecommuting is a better way to balance work and family responsibilities. Given that schools and child care centers were shuttered and that unpaid work grew significantly, it is debatable whether working from home genuinely enhanced one's work-life balance.<sup>35</sup> Women carried out the majority of unpaid care and house-keeping during the pandemic, despite the fact that a partial shift of care roles was observed during the lockdown with an increase in fathers' engagement in childcare,<sup>36</sup> which included the additional task of overseeing children's online education. On average, women spent

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<sup>32</sup>International Labour organization (2021), ILO Monitor: COVID-19 and the world of work. Seventh edition. Updated estimates and analysis, available at: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms\\_767028.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_767028.pdf).

<sup>33</sup>European Parliament, Flash Eurobarometer 2022, Women in times of Covid-19 available at: <https://europa.eu/eurobarometer/surveys/detail/2712>.

<sup>34</sup>European Parliament, Flash Eurobarometer 2022, Women in times of Covid-19, available at: <https://europa.eu/eurobarometer/surveys/detail/2712>.

<sup>35</sup>Blasko, Z. (2020), Working from Home when Teachers Do the Same – Teleworking and Work-Family Conflicts during COVID-19 Lockdowns, SSRN, available at: <https://ssrn.com/abstract=3729301>.

<sup>36</sup>Wenham, C. (2020). *The gendered impact of the COVID-19 crisis and post-crisis period*, Report commissioned by the European Parliament, available at: <http://www.europarl.europa.eu/supporting-analyses>.

62 hours a week on childcare as compared to 36 hours for men and 23 hours a week on housework as compared to 15 hours for men.<sup>37</sup>

Research conducted during the pandemic showed that “29% of working women with young children found it difficult to concentrate on their work due to family responsibilities as compared to 16% of working men in the same situation”.<sup>38</sup> During the epidemic, women are more likely to cut back on their work hours or stop working altogether to take care of their children,<sup>39</sup> reinforcing traditional gender roles and exacerbating previous imbalances.

Indicative of the multilayered impact of the pandemic on gender equality is the fact that women have been on the front lines of the pandemic at risk of greater exposure to the virus<sup>40</sup> as they make up the majority of frontline workers in health care and other key sectors.<sup>41</sup> With the pandemic, women in these fields have seen an unprecedented increase not only in workload and work–life balance challenges but also in health risk.<sup>42</sup> It is worth noting that these sectors in many member states are still characterized by relatively low wages, which raises the question of whether their contribution is val-

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<sup>37</sup>Eurofound (2020), *Living, working and COVID-19*, Publications Office of the European Union, Luxembourg, p. 23–24, data collected in April and July 2020, available at: [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef20059en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef20059en.pdf).

<sup>38</sup>Eurofound (2020), *Women and the labour market: has COVID rolled back recent gains*, available at <https://www.eurofound.europa.eu/publications/policy-brief/2020/women-and-labour-market-equality-has-covid-19-rolled-back-recent-gains>.

<sup>39</sup>Alon T., Doepke, M., Olmstead-Rumsey, J., Tertilt, M. (2020), ‘This Time It’s Different: The Role of Women’s Employment in a Pandemic Recession’, *IZA Institute of Labour Economics*, Discussion Paper Series No 13562, p. 4, available at <https://covid-19.iza.org/publications/dp13562/>.

<sup>40</sup>European Institute for Gender Equality (2020), *Gender Equality Index 2020: Digitalisation and the future of work*, available at <https://eige.europa.eu/publications/gender-equality-index-2020-digitalisation-and-future-work>.

<sup>41</sup>76% of health workers and 86% of personal care workers in health services. See Bök, B., van Hoof, F., Senden, L., Timmer, A. (2020), ‘Gendering the COVID-19 crisis: a mapping of its impact and call for action in light of EU gender equality law and policy’, *European Equality Law Review* 2020/2, p. 34, available at: <https://www.equalitylaw.eu/downloads/5300-european-equality-law-review-2-2020-pdf-1-446-kb>. See also EIGE (2020), COVID-19 and gender equality: Frontline Workers, available at: <https://eige.europa.eu/covid-19-and-genderequality/frontline-workers>.

<sup>42</sup>Eurofound (2021), *Work, teleworking and COVID-19*, available at: <https://www.eurofound.europa.eu/data/covid-19/working-teleworking>.

ued. A similar case is the food store cashiers who “face similar health risks and disruption of work–life balance”.<sup>43</sup>

After all, the pandemic also negatively affected women's professional decisions, such as changing jobs (29%).<sup>44</sup> It has resulted in approximately one in five women being financially dependent upon their partner, other relatives, or friends<sup>45</sup> despite the admission that increasing women's economic independence is a key measure for addressing violence against women (38%).<sup>46</sup> Additionally, it was noted that there was a need for greater education and awareness initiatives (33%).<sup>47</sup>

Finally, it is stated that during crises, “women's pensions are often used to support their unemployed dependents”.<sup>48</sup> The core of appropriate, durable, and inclusive pension systems should be ensuring a basic income in old age and granting women and men equal access to and savings opportunities.

## Conclusion

Sexism and gender stereotypes prevent women from actively participating in the labor market and entrepreneurship, while leading to lower wages and negatively affecting living standards, quality of life, and social inclusion as well as their professional and personal devel-

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<sup>43</sup>European Institute for Gender Equality (2020), *Gender Equality Index 2020: Digitalisation and the future of work*, p. 28, available at <https://eige.europa.eu/publications/gender-equality-index-2020-digitalisation-and-future-work>.

<sup>44</sup>European Parliament, Flash Eurobarometer 2022, Women in times of Covid-19 available at: <https://europa.eu/eurobarometer/surveys/detail/2712>.

<sup>45</sup>This is the case for more than a quarter of women in Bulgaria (37%), Cyprus (33%), Greece (31%), Romania, Portugal (both 28%), Croatia (27%) and Latvia (26%). European Parliament, Flash Eurobarometer 2022, Women in times of Covid-19 available at: <https://europa.eu/eurobarometer/surveys/detail/2712>.

<sup>46</sup>European Parliament, Flash Eurobarometer 2022, Women in times of Covid-19 available at: <https://europa.eu/eurobarometer/surveys/detail/2712>.

<sup>47</sup>European Parliament, Flash Eurobarometer 2022, Women in times of Covid-19 available at: <https://europa.eu/eurobarometer/surveys/detail/2712>.

<sup>48</sup>European Women's Lobby, ‘Women must not pay the price for COVID-19! Putting equality between women and men at the heart of the response to COVID-19 across Europe’, *EWL Policy Brief* April 2020, available at: [https://www.womenlobby.org/IMG/pdf/ewl-policy\\_brief\\_on\\_covid-19\\_impact\\_on\\_women\\_and\\_girls-2.pdf](https://www.womenlobby.org/IMG/pdf/ewl-policy_brief_on_covid-19_impact_on_women_and_girls-2.pdf).

opment.<sup>49</sup> Despite the fact that there is a plain legal framework of gender equality for working women and men in the EU, existing disparities between men and women in the workforce have gotten worse as a result of the pandemic. However, the vision for Europe as enshrined in primary and secondary EU law and also in ECJ and later CJEU case law rests on the fundamental principle that women should not be subject to stereotypes and have the opportunity to thrive.

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<sup>49</sup>European Parliament, Resolution of 12 March 2013 on eliminating gender stereotypes in the EU, 2012/2116(INI), Sevilla, Almuneda, ‘Gender Economics: An Assessment’, *IZA of Labor Economics*, DP No. 13877, 2020, p.11, available at: <http://ftp.iza.org/dp13877.pdf>.

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# Digital transformation–digitalization in the COVID-19 era

KONSTANTINOS KOUROUPIS

**Abstract:** Undoubtedly, the 11th of March 2020 is considered a landmark day in its modern history of humanity. The World Health Organization declared coronavirus disease 2019 (COVID-19) as a global pandemic. The global community as well as international organizations and institutions adopted several measures in order to tackle against the spread of COVID-19 and the protection of public health. The impact of the pandemic was omnipresent in every field of private and public life: economy, political, workplace, and communications. The period during the pandemic was marked by the lack of physical presence: “social distancing” emerged as the main concept of any national, international, or institutional strategy aiming at protecting global health. Therefore, living in such conditions, the pandemic due to COVID-19 led to an explosion of digitalization. This paper intends to demonstrate the special concept of the term in times of crisis, such as the aforementioned, as well as to put down some critical thoughts regarding the use of technology during the pandemic. The paper is divided into two sections. First, it provides the clarification and analysis of the term, according to the official guidelines of the EU Digital Agenda and European institutions. In addition, the definitions of other similar terms, such as digital transformation and e-governance, are provided. At a second level (Section II), a critical approach of the digitalization is attempted as it has been used in several areas of public life during the pandemic. The legality of the methods is thoroughly examined on the basis of the European regulatory framework and mainly of the General Data Protection Regulation. In terms of conclusion, the paper reveals the special nature and value of digitalization which marks the modern digital society. Having exposed some serious concerns regarding the protection of privacy and fundamental rights raised by the excessive use of technology, suggestions seeking the right balance between boosting scientific evolution and consolidating human rights and freedoms are proposed. The human-centric approach seems to be the key solution and as such would lead to fur-

ther fruitful thoughts stimulating the entire scientific and academic community.

**Keywords:** privacy, digitalization, data rights, GDPR, EU Digital Agenda.

## Introduction

The 11th of March 2020 can undoubtedly be described as a landmark day in its modern history of humanity. The World Health Organization (WHO) declared coronavirus disease 2019 (COVID-19) as a global pandemic. In his official press release, the General Director of WHO announced the following: “We have therefore made the assessment that COVID-19 can be characterized as a pandemic. Pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death. (...) All countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights”<sup>1</sup>. The Secretary-General of the United Nations, Antonio Guterres, has characterized the threat as the most important health crisis that marks the history of the international organization through its 75 years of age and highlighted that solidarity is required<sup>2</sup>.

At the same time, COVID-19 gave a huge boost to the explosion of technology and science reshaping the traditional social structure and introducing new challenges. For example, online education has been massively applied at all levels of education with ever-increasing frequency, teleworking is an equally common practice<sup>3</sup>, and electronic transactions are booming. Additionally, at both state and individual

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<sup>1</sup>The entire text of the press release can be found at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>2</sup>See the announcement of the Secretary-General in his first virtual press conference on 19 March 2020 at <https://news.un.org/en/story/2020/03/1059752>.

<sup>3</sup>According to the official findings provided by the European Commission Coronavirus response measures have accelerated the transition to telework, with the proportion of Europeans who work remotely shooting up from 5% to 40%. In addition, this is unlikely to return to pre-pandemic levels, according to experts since it eliminates the costs for businesses. See more details in S.Ceurstemont, “Teleworking is here to stay – here’s what it means for the future of work”, Horizon- The EU Research and Innovation Magazine, published on 1st September

levels, measures have been implemented to reduce the rate of outbreaks and to respond more effectively to the crisis. Meanwhile, at the official institutional level, European as well as international bodies and institutions have adopted relevant measures on the basis of scientific and technological evolution in order to tackle the situation, protect public health, and defeat the spread of the pandemic<sup>4</sup>.

The ever-changing evolutions are shaping a new reality. New challenges due to the coronavirus crisis arise in the field of data rights processing, having a strong impact on various levels, such as labor and social. On the other hand, privacy is strongly affected since the whole situation causes many problems to the development of our personality, which is an inherent dimension of private life<sup>5</sup>.

It is obvious that the pandemic due to COVID-19 has led to a leapfrog development of digitalization in any area of private and social life. Technological tools have been largely used with a primary goal to prevent the expansion of the pandemic via various ways, such as tracing contacts for COVID-19 or detecting possible cases of COVID-19. Meanwhile, due to the social distance which has been imposed to limit the spread of the pandemic, almost any individual activity or interaction with the public sector encompasses the use of technology.

In this context, digital transformation appears as an inevitable consequence of the pandemic and marks the social evolution. However, this process raises serious concerns for the protection of fundamental rights and freedoms. This study aims to illuminate the content and dimensions of the digital transformation as it marks national and European policies (Section I). In addition, special emphasis will be given on issues of data protection and privacy raised by this process (Section II).

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2020, available at <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/teleworking-here-stay-heres-what-it-means-future-work>.

<sup>4</sup>The institutional policy of European Union and other international institutions below, through section I of the text.

<sup>5</sup>ECHR, *Reklos and Davourlis v. Greece*, application no 1234/05, 15.1.2009, par. 39. See also a thorough analysis of the article 8 of the European Convention on Human Rights to Sisilianos, L.A. (2017), “*European Convention on Human Rights*”, 2nd edition, Athens: Nomiki Bibliothiki, pp. 370-433.

## Defining digital transformation

Digital transformation is not a new or original idea. The third industrial revolution, also characterized as the digital revolution, is the transition from the analog to the digital era. The main features are internet access, mass use of it, and mobile phones. Thus, the communication between people as well as business behaviors are radically changed<sup>6</sup>.

The fourth industrial revolution, which occurs at the beginning of the 21st century, includes new technologies such as artificial intelligence and robotics and systems such as cloud computing and smart devices<sup>7</sup>.

Digitalization is therefore directly connected with the exploitation of scientific progress. In business environment, “digital business transformation” is considered the application of technology to the establishing of new business models, processes, software, and systems that result in the increase of revenue, growth of competition, and higher efficiency. Businesses achieve this by transforming their activities and business models, empowering their workforce and promoting innovative products and services. The extent of achievement of that procedure is a decisive criterion of economic prosperity and progress<sup>8</sup>.

Significant guidelines are given by the European Parliament on this topic. As is explicitly declared, the fundamental components of the digital transformation are the following<sup>9</sup>:

- the integration of digital technologies by companies and the impact of the technologies on society.

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<sup>6</sup>See more about the third industrial revolution in Rifkin, J. (2011), “The third industrial revolution”, St Martin’s Publishing Group.

<sup>7</sup>Nankervis, A., Connell, J., Montague, A., Burgess, J. (2021), “The Fourth Industrial Revolution – what does it mean for Australian Industry?”, Springer.

<sup>8</sup>Regarding the definition of digital transformation see Matarazzo, M., Penco, L., Profumo, G., & Quaglia, R. (2021), “Digital transformation and customer value creation” in *Made in Italy SMEs: A dynamic capabilities perspective*. *Journal of Business Research*, 123, 642–656. <https://doi.org/10.1016/j.jbusres.2020.10.033>, Schwertner, K. (2017), *Digital transformation of business*. *Trakia Journal of Science*, pp388\OT1\textendash393. <https://doi.org/10.15547/tjs.2017.s.01.065>.

<sup>9</sup>See the relevant press release of the European Parliament entitled “Digital transformation: importance, benefits and EU policy”, published on 22 April 2021, available at <https://www.europarl.europa.eu/news/en/headlines/society/20210414STO02010/digital-transformation-importance-benefits-and-eu-policy>.

- Digital platforms, the Internet of Things, cloud computing, and artificial intelligence are among the technologies affecting ...
- ... sectors from transport to energy, agri-food, telecommunications, financial services, factory production and health care, and transforming people’s lives.
- Technologies could help to optimize production, reduce emissions and waste, boost companies’ competitive advantages, and bring new services and products to consumers.

In terms of European Union’s policy on digital transformation, it is included among its highest priorities. At this point, on September 3, 2021, the European Commission issued a Communication named “2030 Digital Compass: the European way for the Digital Decade”<sup>10</sup>. The COVID-19 pandemic has radically reformed the nature of our societies and led to unpredictable situations. In the new environment, the use of digital technologies is necessary for the execution of many services and activities both in public and private area, such as in workplace, education, social activities, health and culture. On the other hand, the massive procession of data accompanied by their circulation to an undefined number of recipients in order to restrain the spread of the coronavirus, the huge and increasing use of non-European technologies<sup>11</sup>, the great evolution of digitalization in our daily life,<sup>12</sup> and the expansion of disinformation and misinformation

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<sup>10</sup>The Communication is available at [https://eur-lex.europa.eu/resource.htm?uri=cellar:12e835e2-81af-11eb-9ac9-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.htm?uri=cellar:12e835e2-81af-11eb-9ac9-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>11</sup>According to the report of the Joint Research Center of the EU “Artificial Intelligence (AI) and digital transformation: early lessons of the COVID-19 crisis” issued on 2020 the coronavirus pandemic has revealed the technological dependence of the European Union on third countries in areas such as artificial intelligence and a lack of digital sovereignty. See the official text of the report at <https://publications.jrc.ec.europa.eu/repository/handle/JRC121305>.

<sup>12</sup>Since most national governments in the EU urged workers to stay at home as much as possible during the pandemic, one of the most visible impacts of the COVID-19 crisis has been the huge increase in teleworking. Companies have been obliged to quickly invest in software platforms that facilitate communication and meetings (such as Zoom and Microsoft Teams) while making changes in production and service provision processes to reduce face-to-face interaction. See Contreras, R.R. (2021), “*COVID-19 and Digitalisation*”, available at <https://www.eurofound.europa.eu/data/digitalisation/research-digests/covid-19-and-digitalisation>.

in times of a pandemic<sup>13</sup> set serious concerns about our digital privacy and security.

This is why Europe needs to develop a digital sovereign policy ensuring the protection of fundamental rights and freedoms and promoting sustainability, prosperity, productivity, and innovation<sup>14</sup>. The ultimate goal is to establish “a human-centric, sustainable vision for digital society throughout the digital decade to empower citizens and businesses”<sup>15</sup>.

Digitalization is the most indicative and consequent element which penetrates the perception of the EU’s Digital Agenda. The introduction and mass use of technology contribute essentially in the reshaping of public administration, the update of the relations between citizens and local authorities, the interactive communication between them, and the enhancement of the democracy. The appropriate terms which ideally describe those processes are the following: electronic administration, electronic government or governance, and electronic or digital democracy<sup>16</sup>.

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<sup>13</sup>Disinformation and misinformation know a great spread in times of crisis, such a pandemic. As Dr Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization, stated at the Munich Security Conference in February 2020, “We’re not just fighting an epidemic; we’re fighting an infodemic”. See Council of the European Union, “*Disinformation during the COVID-19 pandemic*”, 23 July 2020.

<sup>14</sup>Under those circumstances the European Commission on 26 January 2022 issued a Declaration on Digital Rights and Principles aiming at the promotion of a digital transition shaped by European values. The Declaration provide a guide for policy makers and companies when dealing with new technologies. The rights and freedoms enshrined in the EU’s legal framework, and the European values expressed by the principles, should be respected online as they are offline.

<sup>15</sup>See the provisions of EU’s leaders regarding the shaping of EU’s digital agenda at <https://digital-strategy.ec.europa.eu/en/policies/europes-digital-decade>.

<sup>16</sup>Regarding the reformulation of public administration via electronic governance see Leitner, C. (ed.), “*eGovernment in Europe: The State of Affairs*”, European Institute of Public Administration, Fountain, J.E. (2001), “*Building the Virtual State: Information Technology and Institutional Change*”, Brookings Institution Press.

E-governance<sup>17</sup> constitutes a reality and defines decisively the quality of our democracy. Respectfully, according to the Organization for Economic Cooperation and Development (OECD), the use of ICT in the public sector is fundamental to serve the needs of citizens and businesses and can bring governments closer to their citizens and businesses and enhance transparency<sup>18</sup>. Transparency and better accessibility to services increase trust in government.

It becomes apparent from the perception of the nature of the EU's Digital Agenda that the most crucial issue is to find the right balance between technological progress and innovation and protection of online privacy and security (Section II).

## **The impact of digitalization on data privacy and security – A critical approach**

Since there has been a massive use of technology and scientific tools in every field of public and private life during the pandemic, it is of primary interest to investigate how fundamental rights and freedoms are respected. For that reason, a multidimensional and sectorial approach based on the areas of application of digitalization might be useful<sup>19</sup>.

Consequently, starting from the business field, the consequences of the pandemic due to the pandemic of coronavirus are extremely important for the global economy. Businesses and the whole of private and public market suffer significant losses in their profits as due to the nature of compulsory measures implemented by the national state authorities, there is a reasonable reduction in productivity. At the

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<sup>17</sup>According to the Council of Europe's project entitled "Making democratic institutions work" on 2002-2004, "E-governance is about the use of information technology to raise the quality of the services governments deliver to citizens and businesses. It is hoped that it will also reinforce the connection between public officials and communities thereby leading to a stronger, more accountable and inclusive democracy". See <https://www.coe.int/t/dgap/democracy/Activities/GGIS/E-governance/>.

<sup>18</sup>Visit <https://www.oecd-ilibrary.org/sites/c30feb92-en/index.html?itemId=/content/component/c30feb92-en>.

<sup>19</sup>For a critical approach of the European Union's Digital Agenda see Kouroupis, K., Serotila, J. (2022), "*Privacy and Security in light of the European Digital Agenda*", Nomiki Bibliothiki.

same time, in order to combat coronavirus, the employers implement measures and practices which aim not only to boost their productivity but also to protect and operate their business safely. These measures often raise data rights issues which demand solid and practical answers. The legal tool to resolve these issues is the General Data Protection Regulation (GDPR) by its specific provisions at the main level, with the help of special guidelines issued by the Council of Europe and the European Commission.

The most serious concern lies in the legality of adoption of protective measures by the employer in order to prevent the expansion of COVID-19 and protect productivity and economy. In fact, employers often take precautionary measures in order not only to suppress but also to prevent from coronavirus in the workplace. Some of these are, for example, the measurement of body temperature of the employees or the use of special tracking tools, such as wearable devices that vibrate when a worker comes within six feet of another person<sup>20</sup>.

Initially, it should be noted that health data are special categories of personal data (ex sensitive) in accordance with Article 9 of the General Regulation. Consequently, their collection and further processing are prohibited, except for the conditions listed in this provision explicitly. Moreover, in the second paragraph, points (b) and (h) explicitly provide that such data could be processed legally by way of derogation from the general prohibition when “processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law” or when “purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee...” are prescribed.

However, in any case, the data collection and processing are required to comply with all the legal safeguards provided by the relevant provision of Regulation<sup>21</sup>, namely, the principles of lawfulness, objectivity and transparency, purpose limitation, data minimization, accuracy, storage limitation, and integrity and confidentiality. Further-

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<sup>20</sup>See a detailed analysis and study of the use of technology in workplace during COVID-19 in the relevant report accomplished by the UC Berkeley Labor Center entitled “COVID-19 and Technology at Work”, published on 8 June 2020, available at <https://laborcenter.berkeley.edu/covid-19-and-technology-at-work/>.

<sup>21</sup>See article 5 of the Regulation.

more, this is justified on the basis of the principle of accountability of the controller, which penetrates the spirit of the Regulation and is explicitly provided for in the second paragraph of Article 5. In this regard, an impact assessment is also required, in accordance with all that is provided. In addition, it is particularly important to emphasize that the collection and processing of these sensitive data by the employer should also comply with the proportionality test. The data requested should be dictated by the national legislative framework, provided that according to Article 9 of the Regulation, a legislative basis for their processing is the authorization “by Union or Member State law”. Therefore, the measures exercised by the employer can be legitimate and legal if they are predicted by specific national laws in the field of labor law, in order to combat coronavirus.

It should also be noticed that the application of Articles 6 and 9 of the GDPR is valid only when the processing of personal data is being accomplished by either automated means or not and those personal form part of a filing system or are intended to form part of a filing system<sup>22</sup>. In that sense, measurement of body temperature does not fall into the scope of application of GDPR since those data are not intended to form part of a filing system. However, depending on the circumstances, our decision could be different<sup>23</sup>.

More specifically, Article 6 makes the processing of personal data lawful for the purpose of safeguarding the vital interest of not only the data subject person but also another natural person. Therefore, the collection and processing of simple data for the purpose of dealing with coronavirus are considered to be lawful under Article 6, with the consequent provision of all the guarantees demanded for the lawfulness of the processing. With regard to health data, all the aforementioned requirements are applicable.

Certainly, one of the most inevitable consequences of the pandemic was the online education which knew (and it still knows) a great explosion. In particular, the questions that arise are the legality of

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<sup>22</sup>See article 2 of the Regulation which predicts its material scope. In any other cases, such as when, there is an oral recording of personal data or there is not a classification, European Data Protection Legislation does not apply.

<sup>23</sup>For example, if there are cameras in the place of measurement the body temperature and monitor person’s face, General Data Protection Regulation is applied.

compulsory recording of the lectures, their posting on the Internet, the use of cameras by the participants, and other relevant issues of the educational process. As for the obligation to record, this is usually imposed by the state educational authority for the purpose of ensuring the quality of education. In Cyprus, for example, it is compulsory under an explicit Directive of the Agency of Quality Assurance and Accreditation in Higher Education, which is “the competent independent authority responsible to safeguard standards and to support, through the procedures provided by the relevant legislation and the principles underlying the establishment of the European Higher Education Area, the continuous improvement and upgrading of higher education institutions and their programs of study, in order to comply with the ESG and the European policy for mobility and mutual qualification recognition. It also aims at promoting quality culture within the higher education institutions in Cyprus”<sup>24</sup>. Consequently, Article 6§1b and c are the legal basis in this respect.<sup>25</sup> As far as on the possibility of uploading the lecture on the e-Learning platform, it is subject to the prior consent of the participants (professors or students), in accordance with all procedural guarantees that accompany it. Prior consent is not needed if the uploading is imposed by an official instruction of supreme authority or by a special law. If a student does not give its consent, the upload of the lecture is not lawful. However, in order to assure the high quality of the educational process, it is encouraged to motivate the upload.

The same answer should be given to the question of using a camera during the lectures as it is not imposed by any specific regulation<sup>26</sup>. Therefore, for the purpose of ensuring the quality and reliability of the training provided, the presence of participants should be ensured, either by means of electronic chat during video conferencing or by frequent chat. In addition, since the video recording of the lecture

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<sup>24</sup>See the official site of the Cyprus Agency [www.dipae.ac.cy](http://www.dipae.ac.cy)

<sup>25</sup>According to the relative article “*Processing shall be lawful only if and to the extent that*

*(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;*

*(c) processing is necessary for compliance with a legal obligation to which the controller is subject;”*

<sup>26</sup>The use of camera by the professor should be encouraged for the quality assurance of the education.

is compulsory, this automatically means that the controller takes all appropriate and appropriate measures to safely protect personal data. Consequently, their specific storage time and specific space should be set and all required safeguards should be met. Following the last conclusion, it is presumed that further notification of the lecture to third parties is prohibited, especially when that notification serves other purposes compared to the one originally intended<sup>27</sup>.

It should also be underlined that online education hides (indirectly) another one serious concern for the protection of an individual's personality. In fact, the legality of students' evaluation based on technological tools, such as camera surveillance or other similar methods, is strongly dubious. According to Article 22 of the GDPR, "the data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her", unless specific circumstances are applied, such as when the decision is based on the data subject's explicit consent or it is necessary for entering into, or performance of, a contract between the data subject and a data controller or, finally, is authorized by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests<sup>28</sup>. Therefore, digitalization in education might be inevitable and/or should also be encouraged since it often promotes a high level of science and combines theory with practice. However, the profiling of students based exclusively on automated means should be prohibited<sup>29</sup>.

Digitalization was also intensively applied at the public level through the adoption and implementation of national measures in order to restrain COVID-19 and protect public health. For that purpose, in the framework of imposing restrictions of movement, citizens should

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<sup>27</sup>See an intense study regarding the relative matter in Kouroupis, K. (2020), *The impact of General Data Protection Regulation in the field of education*, chapter in the book «Interdisciplinary reflections on socio-cultural issues in the field of education», Oxford Press, p.31-43.

<sup>28</sup>See paragraph 2 of article 22 of the GDPR.

<sup>29</sup>The same conclusion is equally provided by the guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, issued by the Article 29 Data Protection Working Party, adopted on 3 October 2017 and available at <https://ec.europa.eu/newsroom/article29/items/612053>.

send an electronic message to a specific number in case they wished to move, texting a specific reason of movement, such as for buying essential goods/services (e.g., food), visiting a pharmacy or doctor, or exercising physical activity. When sending the SMS, citizens should note personal data, such as the ID number or passport and postal code. Consequently, there is a procession of personal data by automated means which form part of a filing system. Therefore, all the principles relating to processing of personal data must be respected. Despite the prior information of the citizen about the processing of the data, the definition of the purpose of the processing, and the minimization of the data, there is a doubt about the period of their storage as well as about the respect of the principle of proportionality. In fact, there was no information about the application of the aforementioned principles. At this point, the Commissioner for Personal Data of the Republic of Cyprus affirmed the legality of the SMS authorization since “SMSs were sent to, and received from the person’s telecommunications service provider. The provider retained the messages for 72 hours after their receipt. When this measure was waived, we verified that all the SMSs had been deleted”<sup>30</sup>.

Equally provocative can be considered a measure adopted by Poland, according to which a smartphone application is invented in order to help trace people who have come in contact with those infected with the coronavirus and warn them<sup>31</sup>. The compatibility of this measure with the law on personal data protection can be seriously disputed since the respect of both the principles of legal processing and the required impact assessment is in doubt. The principle of proportionality is infringed as other means could be used to verify compliance with restrictive measures, such as making a phone call with a caller ID or visiting police officers at the place of restraint without close physical contact.

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<sup>30</sup>See a general analysis regarding the impact of the pandemic on our digital lives at the relevant presentation provided from the national Commissioner for Personal Data of Cyprus, given on 14 February 2022, available at <https://www.dataprotection.gov.cy/dataprotection/dataprotection.nsf/All/5C4FAC95197ADC68C225886F0032A5EB?OpenDocument>.

<sup>31</sup>See Anna Koper, “Poland works on smartphone app to help stop coronavirus outbreak”, article posted on the official site [www.reuters.com](http://www.reuters.com), date of post: 3 April 2020.

We should also notice Israel’s government policy, which consists of tracking mobile phones of suspected coronavirus cases<sup>32</sup>. The respect of privacy is in danger since several principles of legal processing could be violated, such as proportionality and data storage. On one hand, no other options are taken in mind, and on the other hand, third-party data are infringed because no specific time and storage space are defined. Needless to say, in such a case, an impact assessment is not only urgent but also extremely difficult.

## Conclusions

It became obvious that the pandemic due to COVID-19 brought significant changes in all fields of private and public life. Meanwhile, it led to new challenges for the operation of public administration and reshaped the nature of global community. On that ground, it is more than clear that one of the primary consequences of the pandemic was the imperative need to modernize the rules of economy and the relations between the citizen and state. E-governance<sup>33</sup> corresponds not only to an important strategy and policy but also mainly to the main pillar of the EU Digital Agenda, defining decisively the quality of our democracy. Regarding the interaction between e-governance and democracy, it is crucial to underline that the large use and exchange of technology tools in public administration define the relation between citizens and state’s leaders<sup>34</sup>. Information and communication technologies offer local authorities and public administration new and original opportunities to improve their effectiveness of their services and increase citizens’ participation in public policy making.

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<sup>32</sup>See further details on <https://www.theguardian.com/world/2020/mar/17/israel-to-track-mobile-phones-of-suspected-coronavirus-cases>, “Israel to track mobile phones of suspected coronavirus cases”, article uploaded on 17 March 2020 by Oliver Holmes.

<sup>33</sup>According to the Council of Europe’s project entitled “Making democratic institutions work” on 2002-2004, “E-governance is about the use of information technology to raise the quality of the services governments deliver to citizens and businesses. It is hoped that it will also reinforce the connection between public officials and communities thereby leading to a stronger, more accountable and inclusive democracy”. See <https://www.coe.int/t/dgap/democracy/Activities/GIS/E-governance/>.

<sup>34</sup>For a thorough analysis of the interaction between e-governance and e-democracy as well as for their legal interpretation see Igglezakis, I. (2021), “*Law of Informatics*”, 4th edition, Sakkoulas Publications, 2021, pp.489-503.

The COVID-19 pandemic highlighted not only the great impact of the invasion of technology in our lives but also the need to safeguard fundamental rights and freedoms. Digital society and digital technologies bring with them new ways to learn, entertain, work, explore, and fulfil ambitions. Undoubtedly, the establishment of secure and sustainable digital infrastructures, the promotion of high quality of technology, and the enhancement of cybersecurity and innovative systems, such as artificial intelligence and Internet of Things, play a significant role in the implementation of the European digital agenda.

However, the key factors for a trustworthy environment and the safe transition to the digital era are the consolidation of fundamental rights and freedoms during all these processes. Digital society demands a human-centric vision in the meaning that it is urgent to reincarnate the sense of “digital consciousness” to the citizen. In order to achieve that goal, we need to respect fundamental principles, such as those of legality, proportionality, and necessity, for the application of any technological and scientific tools in a democratic society. In times of crisis, citizens should adopt an active and not passive behavior toward the ongoing challenges and changes. Disinformation, fake news, and cybercrime constitute serious threats for our rights and freedoms and may arise from the malicious use of digital tools. Therefore, it is strongly recommended to incorporate an updated, advanced, and trustful education adapted to the contemporary technological evolution. Then, digital transition to a new era might meet the new nature of digital citizens in favor of the democracy and the protection of fundamental values.

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# The Janus's two faces in the case of tracing apps: Safety v. Privacy

DIMITRIOS DEVETZIS

**Abstract:** The protection of both fundamental rights and public health became an issued point during th COVID-19 pandemic. With the exception of two member states of the European Union, the use of tracing apps was somehow implemented. Typical examples of tracing apps in EU member states are Germany and France. Critical to diagnosing the legality of adoption of related applications is the distinction, on the one hand, between the various technical characteristics that the related applications carry and, on the other, between centralized and decentralized systems of collecting data. The use of tracing apps raises various legal challenging questions relating to guarantees of the individuals' fundamental rights to privacy and data protection. The effectiveness of such apps in the fight against COVID-19 cannot be unequivocally accepted by jurisprudence, since in the case drastic and irreversible dangers and damages of privacy rights may occur.

**Keywords:** COVID-19, France, Germany, legislation, tracing apps.

## Introduction

The COVID-19 pandemic lead the state governments to adopt a series of sanitary requirements and regulatory measures for the protection of the public. Certain measures affected key aspects of private and social life intertwined with the hard core of the protection of privacy and personality rights. As a result, a challenging question rose: it regarded the conditions of an effective, 'golden' balance between the protection of fundamental rights and public health. While discussions have been extensive as regards mandatory vaccination and curfews, some other measures seem not to have been the subject of extensive analysis, – at least not in all legal orders. This is the case of the tracing apps through which contact tracing can be carried out in order to establish any contact between healthy individuals and individuals infected with

the virus, so that the potential spread of the virus can be prevented, through effective diagnosis and prevention of its further spread<sup>1</sup>.

## The problematic of tracing apps in the EU block

### General remarks

It is no coincidence that, with the exception of two member states of the European Union, in the rest of the countries either the use of tracing apps was implemented, or their construction was attempted, or their adoption was strongly discussed. The discussion often involved the cooperation with stakeholders of global influence in the technology field, namely private ‘powerhouse’ companies such as Google and Apple. The Apple/Google co-adopted the Exposure Notification System (ENS), which allows tracking using Bluetooth technology of ‘contact events’ through interoperability between Android and iOS devices and apps. Both companies stated that this system would serve as a platform only for applications made and applied under the supervision of public health authorities<sup>2</sup>. This system was discussed to serve as digital environment for hosting the tracing or other similar apps introduced by the member states.

The vast majority of applications designated by EU member states were released to be used on a voluntary basis. If an application user receives a positive test result for the virus, he or she will have to upload information centrally to an application server together with their unique identifier codes and then the others users may spot him/her among their contacts.

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<sup>1</sup>‘No contact tracing, no lockdown lifting’: As Dr Véran, the French government Health Minister, declared on May 6th at the Senate debate on the ‘stop-covid’ app, anti-COVID-19 measures had to be imposed for a rapid treatment of the pandemic; see F. Rowe, Contact tracing apps and values dilemmas: A privacy paradox in a neo-liberal world, *International Journal of Information Management*, 55 (2020), 1 et seq. In this way, the French government Health Minister emphasized on the preventive role that anti-COVID-19 measures had

<sup>2</sup>See *Apple and Google Partner on COVID-19 Contact Tracing Technology* (Apple press release; April 10, 2020). Available at <https://www.apple.com/uk/newsroom/2020/04/apple-and-google-partner-on-covid-19-contact-tracing-technology> (accessed: June 26, 2023).

## Typical examples of tracing apps in EU member states

**Germany** German Federal Government released an official 'Corona-Warn-App' on June 16, 2020, which was developed by SAP and Telekom on behalf of the German Federal Government. The Corona-Warn-App is being developed based on the Exposure Notification Framework (ENF) provided by Apple and Google, which will use Bluetooth Low Energy (BLE) technology. Furthermore, it is an open-source application.

The Corona-Warn-App was not a mandatory measure of any kind. Although it emanated from a government agency, the use of it remained purely voluntary on the basis of the good will of its potential users<sup>3</sup>.

Until the expiry date of June 1st, 2023, the app had been downloaded more than 48 million times<sup>4</sup>, though nobody knows for sure the number of the actual users, i.e. not just those that downloaded the app without using it or downloaded it repeatedly or on multiple devices<sup>5</sup>.

The architecture chosen was that of the decentralized system. Its function is to activate the sensor of the application in case a healthy user of the application approaches a person infected with the virus. If the contact lasts for more than 15 minutes of the hour, then the two applications will exchange data via BLE.

The use of tracking apps has not met with much criticism or problems. What contributed decisively to this was the fact that it was adopted on a voluntary basis and its use was not made mandatory. There was also another app available in Germany, 'Datenspende-App' launched

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<sup>3</sup>See A.-B. Kaiser, R. Hensel, 'Federal Republic of Germany: Legal Response to Covid-19', in Jeff King and Octávio LM Ferraz et al. (eds), *The Oxford Compendium of National Legal Responses to Covid-19* (OUP 2021), § 86, DOI: 10.1093/law-occ19/e2.013.2

<sup>4</sup>See CWA-Team, *Das Team der Corona-Warn-App sagt „Danke!“* (June 1st, 2023). Available at: <https://www.coronawarn.app/de/blog/2023-06-01-thank-you> (accessed: June 26, 2023)

<sup>5</sup>See A.-B. Kaiser, R. Hensel, *above*.

by Robert Koch Institute (RKI<sup>6</sup>). This app does not yet trace contacts, but only general movement and fitness information<sup>7</sup>.

**France** On May 29, 2020, Decree 2020-650 of May 29, 2020, known as the ‘StopCovid’ decree, passed in France<sup>8</sup>. The decree established the framework for the operation of the application of the same name as the decree, which came into force four days later, on June 2, 2020. A rather interesting fact is that the application in question was created by a state authority, namely the National Institute for Research in Digital Science and Technology (Institut national de recherche en sciences et technologies du numérique, INRIA). A new version of the application named ‘TousAntiCovid’ (‘AllAgainstCovid’) was launched by the French government on October 22, 2020. This new version did not seem to be related to issues that concerned privacy experts, but simply to introduce new features for users, such as e.g. the listing of adjacent nursing centers, etc.

The app was adopted by 9.5 million users and about 13,000 of them said that that it helped them identify their contact with a person who had contracted COVID-19. Its use has been problematic, however, to the extent that just two weeks after its launch, there were complaints about government authorities storing more than necessary data. In particular, contrary to the operating framework of the application which provided for the storage of only those data related to contacts with people who are sick at a distance of one meter for more than 15 minutes, it was found that all the contacts of the application user were being sent to the central server of the application. Concerns about adequate privacy protection have increased since French authorities

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<sup>6</sup>German federal government agency and research institute responsible for disease control and prevention.

<sup>7</sup>See *Contact tracing apps: A new world for data privacy* (Norton Rose Fulbright publication, February 2021) Available at: <https://www.nortonrosefulbright.com/en/knowledge/publications/d7a9a296/contact-tracing-apps-a-new-world-for-data-privacy> (accessed: June 26, 2023).

<sup>8</sup>The exact title in English is Decree n° 2020-650 of May 29, 2020 regarding the treatment of data named ‘AllAgainstCovid’ (Décret n° 2020-650 du 29 mai 2020 relatif au traitement de données dénommé « TousAntiCovid »). It was published in the *Official Journal of the French Republic (Journal Officiel de la République Française)*, n°0131 of May 30, 2020 and it was lastly amended with Decree n° 2023-86 of February 10, 2023.

did not deny allegations of irregular use of the application. The app was also adopted on voluntary basis.

The second version of StopCovid, released at the end of June, fixed this problem, but not permanently. The French Data Protection Authority (the “CNIL”) noted that this second version still contained some shortcomings regarding user information and data processing. Therefore, the CNIL gave a formal notification to the Ministry of Health to correct this on 20 July 2020. After the formal notification, as the CNIL considered that the processing implemented was now in line with the applicable Union and national legislation, it refrained from further imposing measures hereafter<sup>9</sup>.

From the very beginning, the app was designed as time-limited. The original expiry date was six months after the termination of the state of sanitary emergency. This deadline was repeatedly prolonged and, after the last amendment, it is set to expire on June 30, 2023. From that day forward, no storage of data storage takes place (decree n° 2023-86 of February 10, 2023, 3° of article 1).

## Arising legality issues

### Introductory remarks

The choice between freedom and security is not recent. The difficulty of choice expresses the balance desired between the biological survival of the individual from external factors and the preservation of fundamental liberties. This issue has been of intense concern to jurists since it became conspicuous in the beginning of the 21st century with the emergence of large-scale terror threat. Starting with the attack on the Twin Towers of New York in 2001, a clear supremacy of security developed in the USA as a supreme, existential value which entails structural restrictions on personal freedom and privacy in general. This specific cogitation was not limited to the recognition of a legal or, even, legitimate character in the various insults to the personality. On the contrary, it drastically widened the primacy of security, considering it not only a reason for accepting the legality in principle of illegal acts, but also *in abstracto* an in priority protected value over

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<sup>9</sup>See fn. 7.

privacy. This priority consideration often led to excesses, as it was not only limited to the tolerance of invasive practices in private life, i.e. to a quasi-defensive invocation of the hierarchical priority of security, but to an ‘offensive’ view of it and in particular to the enactment of measures to aim at the preventive treatment of its attacks<sup>10</sup>.

The related issues were also highlighted in the European area, in the wake of terrorist attacks that took place in London, a few years later. Just a few years later, the Union enacted Directive 2006/24/EC on the mandatory retention of communication data by providers, which was declared invalid by the European Court of Justice almost a decade after the enactment<sup>11</sup>. The Directive aimed at the retention, and access, of data movement and location of the communications of all users and subscribers of fixed and mobile telephony without exception ‘for the purposes of investigating, ascertaining and prosecuting serious crimes’, while from the provision of Article 15 para. 1 of Directive 2002/58/EC (‘e-Privacy’) the possibility was given to the member states to adopt corresponding provisions for the prevention of criminal offences.

### The distinction between tracing and tracking apps

Critical to diagnosing the legality of adoption of related applications is the distinction between the various technical characteristics that the related applications carry.

A very important difference that must be pointed out in tracing apps compared to other tracking applications lies in the degree of the intervention in privacy. While tracking apps are possible to track a person in real time, through the use of constantly<sup>12</sup> updated geodata<sup>13</sup>, in the case of tracing apps it is possible to identify any physical prox-

<sup>10</sup>See K. Vathiotis, *Tragic dilemmas in the era of the ‘war on terror’: From the board of Karneadis to the ‘Criminal Law of the Enemy’* (in Greek; Nomiki Bibliothiki 2010), *passim*.

<sup>11</sup>See Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland Ltd and Kärntner Landesregierung v Minister for Communications, Marine and Natural Resources et al.*, Judgment, ECLI:EU:C:2014:238 (April 8, 2014).

<sup>12</sup>For example by using GPS programs that record traffic information, the history of which is visible to third parties in real time.

<sup>13</sup>See T. Scantamburlo, A. Cortés, P. Dewitte et al., *Covid-19 and contact tracing apps: A review under the European legal framework*, (v2; May 18,

imity of the persons using the application to people infected with the virus *a posteriori*. The eventual approach of patients in isolation, which could offend the healthy person using the application, is checked afterwards through the assessment of specific quantities, such as the connection via Bluetooth technology of the mobile device with that of a sick person.

The specific connections are detected in hindsight and attributed to the body controlling the application as such. Consequently, the use of these applications is already characterized by a structurally reduced invasiveness in privacy, as there is no question of tracking the application user as an uninterrupted spatiotemporal 'continuum'<sup>14</sup>. This finding, not always clearly perceived in the public debate<sup>15</sup>, is not without consequences at the legal level. This is because the person's freedom of movement and the protection of his personality are affected much less than it might initially be perceived.

As mentioned above, the designation of tracing apps took place within the very first periods of the pandemic era in almost all EU member

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2020), 3, <https://doi.org/10.48550/arXiv.2004.14665>. Available at: <https://arxiv.org/pdf/2004.14665> (accessed: June 26, 2023).

<sup>14</sup>For the pure technical aspects of the technical features of the various applications which could be adopted as a method to trace contacts with individuals infected by the COVID-19 disease and the key features of the tracing app designed to be used in Germany see B. Greif, *Corona App: What's the Difference Between Tracking and Tracing?* (April 29, 2020). Available at: <https://cliqz.com/en/magazine/corona-app-whats-the-difference-between-tracking-and-tracing> (accessed: June 26, 2023).

In general, The European Commission categorized four basic scopes, which these apps tend aim to fulfil:

- (i) informing and advising the public about the virus and the general measures adopted by member states;
- (ii) providing self-assessment questionnaires, symptom checkers or telemedicine functionalities;
- (iii) performing contact tracing to inform people who have been in proximity to an infected patient;
- (iv) providing a communication forum between patient and doctors in situation of self-isolation or where further diagnosis and treatment advice is provided (increased use of telemedicine).

See Commission Recommendation (EU) 2020/518 of 8 April 2020 on a common Union toolbox for the use of technology and data to combat and exit from the COVID-19 crisis, in particular concerning mobile applications and the use of anonymised mobility data (C/2020/3300), *OJ L* 114, 14.4.2020, 7 et seq.; T. Scantamburlo, A. Cortés, P. Dewitte et al., *above*, 4.

<sup>15</sup>See fn. 7.

states. With the exception of some particular cases, such as the tracing apps developed in Spain<sup>16</sup>, which opted in favor of adopting a geolocation technology, the vast majority of the states<sup>17</sup> adopted the model of Bluetooth-based apps. This option was described as ‘digital handshake’<sup>18</sup>.

The second option should be praised in terms of encompassing a more respectful consideration of data protection within the frame of the tracing process. The reason may be found in the technical characteristics of the so-called ‘digital handshake’. As mentioned above, the characteristics of Bluetooth-based tracing apps provide a sufficient short-distance detection of a contact with an infected person, avoiding the capture and the recording of any other data related to the person’s contacts or movement. This is for Bluetooth-technologies being especially beneficial in indoor environments and, as aforementioned, short-distance contacts<sup>19</sup>. Taking into account these facts, tracing apps based on this technology have a rather inherent inability of collecting real time data about a person’s movement, absurdly violating his privacy and overloading the collection of data with ones irrelevant to contacts with infected persons<sup>20</sup>.

If the use of tracking apps was to be considered a technological reflection of physical contact with people infected with SARS-CoV-2, then the functional equivalent, the parallel of the ‘physical handshake’,

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<sup>16</sup>‘Coronamadrid’ and ‘STOP COVID19 CAT’. See Comunidad de Madrid, *We launched the new coronavirus ‘App’ for citizen’ self-assessment* (March 24, 2020), available at: <https://www.comunidad.madrid/en/noticias/2020/03/24/lanzamos-nueva-app-coronavirus-auto-evaluacion-ciudadanos> (accessed: June 26, 2023); Generalitat de Catalunya, Sistema de Salut de Catalunya, *STOP COVID19 CAT*, available at: <https://stopcovid19.cat/en/stop-covid19-cat> (accessed: June 26, 2023).

<sup>17</sup>For example, those were the cases of Stopp-Corona-App in Austria, Stop-Covid in France, ProteGo in Poland, or an app being developed by the National Health Service (‘NHS’) in the UK.

<sup>18</sup>See Ch. Runte et al, *Is a Privacy-Friendly Use of Mobile Applications to Combat COVID-19 our Exit Plan from the Crisis?* (April 17., 2020). Available at: <https://cms-lawnow.com/en/ealerts/2020/04/is-a-privacy-friendly-use-of-mobile-applications-to-combat-covid-19-our-exit-plan-from-the-crisis#> (accessed: June 26, 2023).

<sup>19</sup>Furthermore, this technology offers low power consumption, which allows contact tracing apps to run for hours without shortening mobiles’ batteries too fast.

<sup>20</sup>See T. Scantamburlo, A. Cortés, P. Dewitte et al., *above*, 2.

through live contact, is the 'digital handshake'. For the reasons stated above such a 'digital handshake' corresponds more closely to the logic and structure of the Bluetooth technology.

### **Centralized and decentralized systems of collecting data**

In centralized systems, the user is preregistered with a certain application on the central server. The server generates a temporary identifier (TempID) that preserves privacy for each device. This TempID is then encrypted with a secret key, known only to the host server origin, and sent to the device. Devices exchange these TempIDs, in Bluetooth meeting messages, when they come into close contact with each other. Once a user passes the test, they can volunteer to upload all saved meeting messages to the central server. The server maps the TempIDs in these messages to individuals to identify contacts at risk. In other words, centralized systems generally rely on a single server as a core distribution center in the communication with the end-users<sup>21</sup>.

Decentralized systems eliminate the need for a central entity and rely on multiple servers or end-user devices ("peers")<sup>22</sup> to cooperate and undertake a given task<sup>23</sup>.

### **Privacy guarantees at stake?**

The use of tracing apps raises various legal challenging questions relating to guarantees of the individuals' fundamental rights to privacy and data protection. Such dangers were already regulated as possible cases within the frame of the General Data Protection Regulation

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<sup>21</sup>See S. Rosselo, P. White, Anonymization by decentralization? The case of COVID-19 contact tracing apps, *European Law Blog* (May 25, 2020). Available at: <https://europeanlawblog.eu/2020/05/25/anonymization-by-decentralization-the-case-of-covid-19-contact-tracing-apps> (accessed: June 26, 2023).

<sup>22</sup>See K. Hogan, B. Macedo, V. Macha et al., Contact Tracing Apps: Lessons Learned on Privacy, Autonomy, and the Need for Detailed and Thoughtful Implementation, *JMIR Medical Informatics* 9:7 (2021), 15 et seq. (DOI:10.2196/27449).

<sup>23</sup>See S. Rosselo, P. White, *above*.

(GDPR<sup>24</sup>), which provides us with some basic requirements concerning the legality of the use of tracing apps.

According to Article 4(15) of the GDPR as ‘data concerning health’ are considered data that reveal information about an individual’s health status to be understood. In order to confirm the legality of the processing of personal data pursuant to the GDPR and the relevant national legislation of the member states of the European Union, the conditions of the relevant provisions of the regulation must be met. At this point, one of the most basic problems regarding the legality of data processing, which concerns the partnership between the public and private sectors, can be found. In particular, the question arises as to whether the collusion of tech giants, such as Apple and Google, who volunteered ENS technology in the times of the pandemic to achieve its response can be justified under the grounds listed in the GDPR as legitimate grounds for data processing. The reason the concerns are raised refers to their status as forms of a commercial nature. Besides, their character as private entities—commercial companies, profoundly affects citizens’ confidence in the measures in question<sup>25</sup>.

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<sup>24</sup>Regulation 2016/679/EU on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, *OJ L 119*, 4.5.2016, 1 et seq.

<sup>25</sup>See Ruipeng Lei in: *Joint webinar - Beyond the exit strategy: ethical uses of data-driven technology in the fight against COVID-19* (April 14, 2020). Available at: <https://www.nuffieldbioethics.org/publications/covid-19/webinar-beyond-the-exit-strategy-ethical-uses-of-data-driven-technology-in-the-fight-against-covid-19> (accessed: June 26, 2023). Ruipeng Lei is a Professor of Bioethics, School of the Humanities and Centre for Bioethics, Huazhong University of Science and Technology, Wuhan, China

In China, where Alipay and WeChat hosted the Health Code app used to track coronavirus exposure, those companies have asserted rights contractually to keep the data once the crisis is over. Moreover, as Douglas Busvine points, the idea of passing ‘...all the contacts plus the medical status of citizens around the world ...’ to major multinational companies would put a wide variety of rights at stake, while the efficiency of such measures in regard with tracing COVID-19 cases and – thus – encouraging the successful handling of the pandemic still would be questionable. See D. Busvine, German tech startups plead for European approach to corona tracing app, *Reuters* (April 14, 2020). Available at: <https://www.reuters.com/article/us-health-coronavirus-tech-germany/german-tech-startups-plead-for-european-approach-to-corona-tracing-app-idUSKCN21W20F> (accessed: June 26, 2023).

The involvement of major companies seen as unreliable as far as the handling and processing of personal data is concerned, in projects related to the development of the tracing applications was also underlined as a key factor for the

Article 6 of the GDPR requires organizations to prove the existence of one of the predicted legal bases for processing personal data. Article 9 of the GDPR states that processing of special category data, such as information concerning health, is prohibited, unless a specific exemption applies. Conclusively, there must be two legal bases according to the regulations of the aforementioned articles of the GDPR in order for an entity to be in a position to accept the legitimate use of the personal data: A general one referred to the collection of data and a special one permitting the lawful collection of health data. In the case of multiple controllers<sup>26</sup> of the collected each controller will need to prove his own legal basis.

## Concluding remarks

Setting surveillance technologies, such as contact tracing apps, as a strategic and primary option in the fight against the COVID-19 pandemic constitutes 'an important watershed in the history of surveillance ... signifying a dramatic transition from "over the skin" to "under the skin" surveillance,' as Yuval Noah Harari underlines<sup>27</sup>. Their effectiveness in the fight against COVID-19 cannot be unequivocally accepted by jurisprudence, since in the case drastic and irreversible dangers and damages of privacy rights may occur.

The use of tracking applications cannot be rejected in advance. However, its practical implementation was at least met with reservations by the public, to the extent that both market actors were involved

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relative failure of the adopting of such applications in practice in the USA. See J. Rich, How our outdated privacy laws doomed contact-tracing apps, *Brookings* (28.1.2020) Available at: <https://www.brookings.edu/blog/techtank/2021/01/28/how-our-outdated-privacy-laws-doomed-contact-tracing-apps> (accessed: June 26, 2023).

The doubtful use of such applications, even in the case of state authorities or public entities undertaking the responsibility of the legal processing of the collected data, is presented as reason for them being as lawfully used only as a kind of 'ultimum refugium case'. See L. Taylor, *Joint webinar - Beyond the exit strategy ...*, cited above.

<sup>26</sup>According to article 9 of the GDPR, the data 'controller' is the entity that alone, or jointly with others, determines the purposes and means of the processing of personal data.

<sup>27</sup>See Y.N. Harari, The world after Coronavirus, *Financial Times* (March 20, 2020). Available at: <https://www.ft.com/content/19d90308-6858-11ea-a3c9-1fe6fdca75> (accessed: June 26, 2023).

in its use, and some violations took place in the collection of data, which were not disputed by the states. The justification of the obligation to use tolls on a case-by-case basis or the preference of tracing technology over tracking can be sufficiently justified by invoking the widespread principle of proportionality<sup>28</sup>.

A quite similar approach was undertaken by the European Data Protection Board (EDPB) within the very first stages of the development of tracing apps in its Guidelines<sup>29</sup> in the ‘Guidelines on the use of location data and contact tracing tools in the context of the COVID-19 outbreak’. The Guidelines concern the use of location data and contact tracing tools for two specific purposes:

- to model the spread of the virus so as to assess the overall effectiveness of confinement measures;
- to notify individuals of the fact that they have been in close proximity of someone who is eventually confirmed to be a carrier of the virus.

The EDPB refers to GDPR and Directive 2002/58/EC (the ‘ePrivacy Directive’) and recalls the principles of effectiveness, necessity, and proportionality that must be taken into account for any measure involving the processing of personal data adopted by member states or EU institutions in the fight against COVID-19<sup>30</sup>. Nevertheless, these criteria simply express the different levels of proportionality principle *per se*, as the last one is comprehended and applied in the European legal orders which belong to the Continental Law system.

In conclusion, dangers and risks arising from the use of tracing apps are unavoidable. To this extent, it is no surprise, people did not em-

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<sup>28</sup>For a collective approach of the proportionality principle including its applications in the field of European Law see N. Emiliou, *The Principle of Proportionality in European Law: A Comparative Study* (Springer 1986), *passim*; *The Principle of Proportionality in the Laws of Europe*, ed. by E. Ellis (Bloomsbury Publishing 1999), *passim*; Yu. Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR* (Intersentia 2002), *passim*; D. Šušnjar, *Proportionality, Fundamental Rights and Balance of Powers* (Martinius Nijhoff Publishers 2010), *passim*.

<sup>29</sup>Full title: Guidelines 4/2020 on the use of location data and contact tracing tools in the context of the COVID-19 outbreak (April 21, 2020). Available at: [https://edpb.europa.eu/sites/default/files/files/file1/edpb\\_guidelines\\_20200420\\_contact\\_tracing\\_covid\\_with\\_annex\\_en.pdf](https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_20200420_contact_tracing_covid_with_annex_en.pdf) (accessed: June 26, 2023).

<sup>30</sup>See T. Scantamburlo, A. Cortés, P. Dewitte et al., *above*, 7.

brace their use even in the very first stages of the pandemic, where due to lack of vaccine or other preventive means of protection of medical nature, their use could be quite reasonable and more easily adopted. Furthermore, it is no surprise that even states were quite precautious *apropos* of their establishment as obligatory measures. It seems that their unconditional use would have been implied to be a 'point of no return' in privacy protection and it could have set a precedent in terms of hierarchy against privacy in favour of values of public interest. Nevertheless, their use could on the other hand play an important role against the pandemic bearing in mind that the erupting legal issues arising from their use could be properly answered through the traditional methodology of law.

A proper use and application of the proportionality principle as established in the European jurisprudence encompasses a wide variety of ethically persuasive and legally solid solutions contributing to the achievement of the desired 'golden balance' between privacy and public health and/or safety.

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## Abbreviations

BLE	Bluetooth Low Energy
COVID-19	coronavirus disease 2019
CWA	Corona-Warn-App
DOI	Digital Object Identifier
ECLI	European Case Law Identifier
EDPB	European Data Protection Board
ENF	Exposure Notification Framework
ENS	Exposure Notification System
et seq.	et sequentes (: what follows)
EU	European Union
fn.	footnote
GDPR	General Data Protection Regulation
GPS	Global Positioning System
INRIA	institut national de recherche en sciences et technologies du numérique
IOS	iDevice Operating System
OJ	Official Journal of the European Union
OUP	Oxford University Press
RKI	Robert Koch Institute
SAP	Systeme, Anwendungen und Produkte in der Datenverarbeitung
SARS-CoV-2	Severe acute respiratory syndrome coronavirus 2
TempID	temporary identifier



# Effects of the COVID-19 pandemic crisis on General Population Mental Health

ALEXANDROS ARGYRIADIS, AGATHI ARGYRIADI

**Abstract:** The outbreak of the coronavirus has brought unprecedented anxiety and fear to humanity, while recent research focuses on four main pillars of concern among the population. The first pillar is the possibility of infection by the virus, the second risk is related to the threat of life and health, the third to the biological effects of vaccines and disease, and the fourth factor concerns the impact of the pandemic on mental health and quality of life. The aim of this research was to study the effects of the pandemic crisis on the general population. Specifically, dimensions of physical, interpersonal, mental, and family-related quality of life were examined, while stress management behaviors were also studied. A qualitative methodology was chosen using interviews with an indicative sample of 20 individuals with the ultimate goal of detecting data for the design of a larger study. The results revealed several negative effects on mental health, and immediate strategies for their elimination are needed.

**Keywords:** Pandemic, COVID-19, Mental Health, Pandemic Impact, Crisis.

## Pandemic Crisis COVID-19

The coronavirus pandemic has created an important and unprecedented public health crisis at the international level with adverse effects on health of the global population, physically, mentally, and socially.<sup>1</sup> Thus, the concept of crisis and how it affects the quality of everyday life were highlighted again. The concept of crisis is also of particular interest in trying to examine the best possible ways of managing it. At a broader level, crises refer to phenomena with a wide extent of different characteristics since they can be anthropogenic or

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<sup>1</sup>Spoorthy, M. S., Pratapa, S. K., & Mahant, S. (2020). Mental health problems faced by healthcare workers due to the COVID-19 pandemic—A review. *Asian journal of psychiatry*, 51, 102119.

nonhuman and involve threats to humans or the environment. Thus, crises differ in terms of both their nature and the threats they entail for humans.<sup>2</sup>

A crisis is a threat to people, resources, and the controllability of a situation. The crisis may constitute a low-intensity deviation from normality, and the judgments can be grouped into two subcategories. The first category concerns Python-style judgments. These crises develop gradually and do not involve an immediate threat. For example, a financial crisis may constitute a Python crisis if it develops gradually. On the contrary, other crises develop rapidly and are of immediate danger, leading to a total deviation from normality. Pandemics belong to this particular category, described by the term “Cobra-type crises”.<sup>3</sup>

The main change in public health during the 20th century concerns the effective control of communicable diseases. Improvements in sanitation and vaccination coverage have led to the almost complete elimination of communicable diseases, at least in the developing world, except for sexually transmitted diseases.<sup>4</sup> Thus, the main change in the profile of global morbidity from the beginning of the 20th century to its end concerns the shift of interest from communicable to noncommunicable diseases, the frequencies of which are multiplied.

As early as the beginning of the 21st century, some crises of communicable diseases appeared but did not develop into pandemics. After these first sporadic crises, Anthony (2005) conducted a systematic study of the conditions and consequences of the first communicable disease crises of the 20th century. As he stated, in the coming years, the number of communicable disease crises would increase due to the transition to an internationally interconnected society, that is, due to globalization.

The first case concerns the coronavirus epidemic of severe acute respiratory syndrome (SARS), which was first recorded in November 2002

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<sup>2</sup>Panigirakis, G. (2001). *Modern Management of Public Relations*. Athens: Benou Publications.

<sup>3</sup>Seymour, M., & Moore, S. (2002). *Effective crisis management: Worldwide principles and practice*. London: Cassell.

<sup>4</sup>Darviri, C., Pelekasis, P., Galanakis, M., & Tigani, X. (2015). Demographic and Anthropometric Variables Related to Longevity: Results from a Greek Centenarians' Study. *Journal of Basic & Applied Sciences*, 11, 381.

in China. In total, cases were recorded in 37 countries (N=8,098) and 774 people died. Since 2004, no new case of the SARS virus has been recorded. An estimated 11% of people infected with the virus died.<sup>5</sup>

The second coronavirus was Middle-East respiratory syndrome (MERS). MERS is believed to have first been transmitted to humans from camels, which had previously been infected by bats. MERS is estimated to have a difficult transmission and a mortality rate of 35%, which precludes the development of a global pandemic. It is estimated that 2,519 people have been infected with the virus so far and 866 people have died. Cases of the virus were first identified in 2012 in Saudi Arabia. Incidents have been recorded from time to time in other countries, most notably South Korea.<sup>6</sup>

The third communicable disease crisis of the 21st century concerns the Ebola virus. The Ebola virus is a hemorrhagic fever with the main symptoms being fever, sore throat, headache, and muscle aches. These symptoms are usually accompanied by vomiting, diarrhea, nausea, and reduced liver and kidney function; at a point, some people experience bleeding. The virus is transmitted through blood and body fluids. The virus first appeared in 1976 in sub-Saharan Africa, and 2013–2014 saw a massive spread of the virus in countries such as Liberia, Nigeria, Guinea, and Sierra Leone. Over 50% of patients infected with the virus die.<sup>7</sup>

The fourth related crisis concerns the Zika virus. The Zika virus is transmitted by mosquitoes to humans and has been known since the 1950s. It occurs mainly in tropical regions of Asia and Africa. However, in 2014, this virus spread to French Polynesia and Easter Island and then to Mexico, the Caribbean, and South and Central America. In these areas, the spread of the virus took on greater dimensions. The virus causes microcephaly in newborn infants when transmit-

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<sup>5</sup>Feng, D., De Vlas, S. J., Fang, L. Q., Han, X. N., Zhao, W. J., Sheng, S., ... & Cao, W. C. (2009). The SARS epidemic in mainland China: bringing together all epidemiological data. *Tropical Medicine & International Health*, 14, 4–13.

<sup>6</sup>Hemida, M. G. (2020). The Middle East Respiratory Syndrome Coronavirus (MERS-CoV). In *Animal-Origin Viral Zoonoses* (pp. 241–254). Springer, Singapore.

<sup>7</sup>Gire, S. K., Goba, A., Andersen, K. G., Sealfon, R. S., Park, D. J., Kanneh, L., ... & Wohl, S. (2014). Genomic surveillance elucidates Ebola virus origin and transmission during the 2014 outbreak. *Science*, 345(6202), 1369–1372.

ted from mother to fetus as well as neurological syndromes in adults infected with the virus, such as Guillain-Barré syndrome.<sup>8</sup>

The fifth crisis, which has some common elements with the coronavirus disease 2019 (COVID-19) pandemic, concerns the H1N1 virus, which causes the so-called “swine flu”. This virus first affected pigs. However, a mutation of the virus in 2009 allowed transfer to humans and led to the 2009 swine flu pandemic. The elderly, patients with chronic diseases, children under 5 years of age, and pregnant women are considered high-risk groups for complications and mortality from the disease. The World Health Organization declared a pandemic due to H1N1 on June 11, 2009, after which cases of patients were reported in 214 different countries. The pandemic officially ended on August 10, 2010.<sup>9</sup>

Therefore, the COVID-19 pandemic represents the end, so far, of a dynamic re-emergence of communicable diseases in the 21st century, a phenomenon that had almost completely disappeared during the second half of the 20th century.<sup>10</sup> This pandemic was caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), which was first identified in the Hubei province of China, specifically in Wuhan, in December 2019. This virus is transmitted between people through droplets produced during sneezing. The time from exposure to the onset of symptoms ranges from 2 to 14 days. Symptoms include fever, cough, and breathing problems, while other possible problems are loss of taste and smell. The complications of the disease include pneumonia and acute respiratory distress syndrome. According to the prevailing theory so far, the virus was transmitted from bats to other animals and from there to humans, infecting the local inhabitants who consumed them. Most patients experience mild symptoms, but the elderly and those with chronic diseases are at significant risk

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<sup>8</sup>Al-Qahtani, A. A., Nazir, N., Al-Anazi, M. R., Rubino, S., & Al-Ahdal, M. N. (2016). Zika virus: a new pandemic threat. *The Journal of Infection in Developing Countries*, 10(03), 201–207.

<sup>9</sup>Ali, M. A. F., Amjad, I., & Ali, A. A. (2020). COVID-19 and H1N1-The two pandemics and their consequences on human life: A Mini-Review. *Pakistan Journal of Surgery and Medicine*, 1(3), e186-e186.

<sup>10</sup>Darviri, C., Pelekasis, P., Galanakis, M., & Tigani, X. (2015). Demographic and Anthropometric Variables Related to Longevity: Results from a Greek Centenarians' Study. *Journal of Basic & Applied Sciences*, 11, 381.

of complications and mortality.<sup>11</sup> It is estimated that 2–3% of those infected with the virus die. Weaknesses in the diagnosis and treatment of the disease created significant problems in health systems, especially during the early phase of the pandemic.<sup>12</sup>

## Crisis and Quality of Life

According to Hörnquist (1981), quality of life is directly related to the feeling of satisfaction with life as those who have a higher quality of life deal with various areas of their lives with satisfaction. In his approach, quality of life is a multidimensional concept, related to the degree of satisfaction of various needs, such as physical, material, mental, and social. The person who manages to cover these aspects effectively has higher levels of quality of life but also greater satisfaction with life. Consequently, Hörnquist focuses on the individual's subjective view of the quality of life but also on the feeling of satisfaction with life since these concepts are, according to his perception, related to each other. Another perspective on it is that of Felce & Perry (1995), based on which there are five central parameters of the concept:

- The parameter of material well-being, as material goods are a necessary condition of the individual's well-being;
- The parameter of physical health, which has to do with the absence of disability, disease, and incapacity;
- The parameter of social well-being, meaning the close interpersonal relationships of the individual with others;
- The parameter of psychoemotional well-being, which has to do with the absence of psychiatric disorders and the existence of a satisfactory level of mental well-being;
- The parameter of self-development, which concerns existential self-realization.

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<sup>11</sup>McEwen, B. S. (1998). Stress, adaptation, and disease: Allostasis and allostatic load. *Annals of the New York academy of sciences*, 840(1), 33–44.

<sup>12</sup>Singhal, T. (2020). A review of coronavirus disease-2019 (COVID-19). *The Indian Journal of Pediatrics*, e-pub, published ahead of print.

It is undoubtedly significant the fact that the COVID-19 pandemic has affected negatively the quality of life of the global population.<sup>13</sup>

## Crisis management

During the person's first response to a crisis, they first proceed to a cognitive evaluation of the event to judge whether it is positive, negative, or neutral. The same events under different circumstances can be either positive or negative or neutral. Consequently, the evaluation is carried out based on the circumstances at hand. The occurrence of an event to stress is mediated by two different stages. The first, as mentioned above, refers to the emotional charge of the event. The second refers to the response to the event. The individual during this stage assesses whether the skills and available means are sufficient to manage this threat. Behaviors to cope with stress arise as a function of the emotional charge of the event and the perceived ability of the individual to cope with it.<sup>14</sup>

Cognitive assessment of stress is subjective, although some demographic factors determine it relatively. As Banyard (2002) points out, a strong concern of middle-aged people may be concern about their parents' health or their changing appearance. On the contrary, in student populations, the main concerns may be related to the course of studies and the management of their minimal available financial resources. Therefore, it seems that different age groups have different concerns and different sources of stress.

Managing stress is a multidimensional issue. As McEwen (1998) states, management is a subjective issue because of the very subjectivity in response to stressful stimuli. Despite the relative subjectivity, it is possible to arrive at some common categories of responses. Bracha (2004) distinguishes three related categories. The first category is titled "freeze response". This response refers to "freezing" in front of a stressful stimulus; it is maladaptive and particularly passive. Thus, the person does not develop the behavior of either

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<sup>13</sup>Feng, D., De Vlas, S. J., Fang, L. Q., Han, X. N., Zhao, W. J., Sheng, S., ... & Cao, W. C. (2009). The SARS epidemic in mainland China: bringing together all epidemiological data. *Tropical Medicine & International Health*, 14, 4–13.

<sup>14</sup>Panigirakis, G. (2001). *Modern Management of Public Relations*. Athens: Benou Publications.

confronting the stressful event or escaping away from it. The second category is entitled “flight response”. This category concerns avoidance behaviors, behaviors that are used to “get away” from the stressful stimulus. The third category is described as “fight response”. This category refers to combative responses, thus referring to active initiatives to deal with the stressful stimulus.

Based on the above, a comparative assessment of the effectiveness of the responses of the individual response categories is given. In particular, fight-type responses appear to be associated with self-concept benefits, leading to change in situations through successful behavior and individual initiatives. For example, self-efficacy, that is, the individual’s view that she/he is capable of coping with adversity, is built through active stress management behaviors. On the other hand, flight-type responses are considered functional due to the immediate cessation of confrontation with stressful stimuli, which leads to an improvement in cardiovascular function due to the reduction of stress. Research on populations of centenarians, who have very low levels of stress, finds that a universally observed behavior of theirs, which is responsible for their longevity, is the avoidant management of stressful stimuli.<sup>15</sup>

Based on their frequency, the most important strategies for crisis management are the following:

Taking immediate measures: This category refers to immediate actions aimed at dealing with the conditions that lead to stress. For example, a person with financial problems may look for a second job to deal with the conditions that give rise to the same stress:

- The search for information: This type of response gives the person the possibility of increasing the knowledge about the stressful situation she/he experiences. This strategy is aimed either at directly dealing with the problem itself or at emotional self-regulation. Indeed, information may have both of these different effects, leading to an improvement in the individual’s perceived ability to cope with environmental challenges but also to a reduction in mental burden.

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<sup>15</sup>Banyard, P. (2002). *Psychology in Practice: Health*. Hodder Education.

- Emotional release: This category has to do with the regulation of emotions through dynamic actions. Crying, substance use, physical activity, and so on can be mentioned as such.
- Intracellular processes: The processes in this category include several defense mechanisms, through which the individual modifies the stressful condition and alters the stress levels faced. Such processes are rationalization, denial, and repulsion of the event. The weaker a person perceives himself to be in the active management of stressful conditions, the more intense the adoption of processes of this category.

## **Materials and Method**

The aim of this research was to study the effects of the pandemic crisis on the general population. Specifically, dimensions of physical, interpersonal, mental, and family-related quality of life were examined, while stress management behaviors were also studied. The method chosen was qualitative as a first investigation of the issue and data collection for future larger-scale research design.

The sample for the present study was collected using the convenience sampling method. More specifically, the participants were 20, while the selection of the specific sample was made without any demographic or other characteristics other than their availability. The socio-demographic data of the sample were as follows: gender, age, and length of service, a field of work, marital status, number of children, and the existence of the chronic disease.

As mentioned above, interview was the data collection method of the present study and was carried out using a semi-structured interview guide of 26 open-ended questions, which was grouped into 5 individual thematic areas. During the interview, most of the interviewees, in addition to the main questions, had to be asked secondary explanatory questions, some of which were not included in the interview guide. The secondary questions that arose at the time of the interview were either descriptive questions or opinion questions, thus allowing for relative flexibility in responses, leading to a greater richness of information.

The analysis of the data was carried out based on thematic content analysis. This method is widely used in the health sciences and the social sciences and humanities.<sup>16</sup>

## Results

Answers that emerged from all the interviews were categorized into thematic sections. The first theme based on the data from the participants' transcripts concerned the effects of the COVID-19 pandemic on their physical health. These effects seem to only concern participants with pre-existing illnesses, which are directly related to stress. A second topic concerns the connection between the pandemic and its experience with sleep conditions on the part of the participants. Study participants report a deterioration in their sleep quality due to pandemic conditions. Another level of coding concerns participants' financial well-being and financial security at a family level. In this case, there does not seem to be any negative effect of the pandemic on the income of the participants.

The next theme that emerged from the responses of the participants concerned the effect of the pandemic on family relationships. This effect appears to be attributed to physical distancing due to the current pandemic conditions.

Another level of analysis has to do with participants' hobbies during the pandemic. In this case, a significant variation within the sample was observed. In particular, participants who had hobbies that can be done indoors report a more systematic engagement with them during the pandemic.

In the present study, some main effects of the pandemic on physical health emerged. More specifically, it appeared that the pandemic greatly affected the health behaviors of the participants in terms of the level of physical activity, which was reduced to a minimum due to the restriction measures imposed by the state. It was also found that the restriction measures and the general confinement of the participants at home in combination with the stress and the extended working hours due to their current situation lead to a more over-

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<sup>16</sup>Morrow, R., Rodriguez, A., & King, N. (2015). Colaizzi's descriptive phenomenological method. *The psychologist*, 28(8), 643–644.

all increase in food intake and a more general change in their eating habits increasing physical weight. In addition, the pandemic appeared to affect the health status only of people suffering from physical diseases dependent on mental factors, possibly due to the stress they experience due to the existing situation.

This study also highlighted the negative effect of the pandemic on sleep habits, which is attributed by the participants to the anxiety they experience about the current situation. It was found that the main emotions that overwhelm the participants are anxiety and fear of the possibility that they or their family members will get sick but also the pressure due to the restrictive measures and the overexposure to the issue by the media.

It also seems that the pandemic has affected family relationships in a double way since on the one hand there is some distancing of the participants from their wider family context due to the fear of infection of their relatives and on the other hand there is the psychological and practical support they receive from their family. Additionally, it was found that after the start of the pandemic, family relationships and communication within the family improved, possibly due to the increased time participants spend with their families due to the restrictive measures. Another parameter that was studied was the material and financial well-being at the family level, which due to the stability of the participants' income does not seem to have been affected, but there seems to be concern among the candidates about the evolution of the general economic situation during the pandemic and how it might affect them in the long run.

## Conclusions

From the present study, it emerged that the main emotions experienced by the participants were fear, anxiety, fatigue, agony, frustration, sadness, anger, insecurity, and panic. The effect of the pandemic appeared to be significant also in the part of the interpersonal relationships of the participants. More specifically, several participants experience distancing from their friendly environment and sometimes stigmatization and prejudice due to the nature of their work. Interpersonal relationships between colleagues were also affected in various ways since conflict situations have been reported due to increased

workload but sometimes also optimization of existing relationships and an increase in cooperation and cohesion in the face of the existing situation in their work environment and the common problems they have to face.

Finally, a differentiation was observed regarding how religious beliefs seem to influence how the participants deal with the current situation. More specifically, in some cases, they seem to have a positive influence on people's view of things; however, some participants believe that there is no such effect and they do not perceive any differentiation in terms of their religious beliefs.

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# Employee rights during pandemic in social sciences

STAVROS K. PARLALIS, DEMETRIS HADJICHARALAMBOUS

**Abstract:** All rights and duties in the employer-employee relationship are governed by employment law. The laws and rights governing employees are a major topic of legal conflicts concerning corporations. Employment law deals with legal matters as diverse as discrimination, wrongful termination, pay, overtime, and workplace safety due to the intricacy of employment relationships and the vast range of events that might occur. However, a new era for employee rights has arisen due to the coronavirus disease 2019 (COVID-19) conditions; teleworking, contingent workers, role separation, increased organizational complexity, and overall dehumanization of employees are some of them. Under these circumstances, the conditions at workplace have dramatically changed during the last two years; also, professionals in social sciences (e.g., social workers, psychologists, etc.) faced new changes and standards in their professional practice. Some of the main consequences indicated in the international literature can be summarized to the following points: increased workload, loss of employment, challenges with transition to virtual care, adapting in-person services, redeployment to new settings, and early retirement. This study aims to focus on the challenges faced by professionals in social sciences regarding their labor rights during pandemic and the future of work trends post-COVID-19.

**Keywords:** labor rights, pandemic, work trends, social sciences, distance work.

## Employee rights during pandemic in social sciences

Legal concerns involving discrimination, wrongful termination, salaries, overtime, and workplace safety are only a few examples of those covered under employment law. A review of court filings in the United States from late March 2020 through early May 2020 reveals numerous employment lawsuits based on coronavirus disease 2019 (COVID-19)-related claims that fall into the following broad

categories: whistleblowing/retaliation/wrongful discharge, unsafe working conditions, disability discrimination, family and medical leave act, wage and hour claims, worker adjustment, and retraining notification claims (Diana and Stevens, 2020<sup>1</sup>). Detrimental effects can be seen on workers' fundamental rights, fair working conditions, fair remuneration, working time and work–life balance, health and safety at work, and gender equality (OECD, 2021<sup>2</sup>). On the other hand, the current conditions have also shown how badly broken the system of labor law is, that is to say that it does not give workers a voice so that the only recourse workers have is to take to the streets (Mineo, 2020<sup>3</sup>).

## Employment rights in the new era

However, a new era for employee rights has arisen due to the COVID-19 conditions; teleworking, contingent workers, increased organizational complexity, and overall dehumanization of employees are some of them, which are further elaborated below.

**Teleworking:** The COVID-19 crisis created a sudden need for businesses and their employees to start or increase working from home (OECD, 2021<sup>4</sup>). Coronavirus response measures have accelerated the transition to telework, with the proportion of Europeans who work remotely shooting up from 5% to 40% (European Commission, 2020<sup>5</sup>). Prior to this year, about 5% of people in the EU worked regularly

<sup>1</sup>Diana, Mark and Stevens, Natalie (2020), *Employers beware: COVID-19-Related employment lawsuits are heating up*, Retrieved from: <https://ogletree.com/insights/employers-beware-covid-19-related-employment-lawsuits-are-heating-up/>

<sup>2</sup>OECD (2021), *Future of work and workers' rights post COVID-19*, Retrieved from: <https://www.oecd-forum.org/posts/future-of-work-and-workers-rights-post-covid-19>

<sup>3</sup>Mineo, Liz (2020), *How COVID turned a spotlight on weak worker rights*, *The Harvard Gazette*, Retrieved from: <https://news.harvard.edu/gazette/story/2020/06/labor-law-experts-discuss-workers-rights-in-covid-19/>

<sup>4</sup>OECD (2021), *Teleworking in the COVID-19 pandemic: Trend and prospects*, Retrieved from: <https://www.oecd.org/coronavirus/policy-responses/teleworking-in-the-covid-19-pandemic-trends-and-prospects-72a416b6/>

<sup>5</sup>European Commission (2020), *Teleworking is here to stay – here's what it means for the future of work*. Retrieved from: <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/teleworking-here-stay-heres-what-it-means-future-work>

from home, a figure that had not changed much since 2009, and it is unlikely to return to prepandemic levels, according to experts (European Commission, 2020<sup>6</sup>).

**Contingent workers:** Over the past ten years, as businesses have struggled with growing labor costs and the need for a workforce that can swiftly adjust to market conditions, they have drastically increased their use of contingent employees. In addition, the dynamic nature of marketplace conditions and the talent market are leading organizations to rapidly increase their use of contingent workers, so they will have the flexibility to respond as market conditions quickly change (Deloitte, 2021<sup>7</sup>).

**Increased organizational complexity:** An issue for which there is no established solution is referred to as an adaptive challenge. People work together in novel ways in collaborations for the first time, and these collaborations are marked by divergent opinions (lack of homogeneity). Adaptive challenges are pressures that first cause complexity in organizations. When COVID 19 struck, we observed these complexity demands everywhere, including in the need for social isolation, pressure on governments to declare a state of emergency, forced closures of restaurants and schools, and employee work from home requests due to safety concerns. COVID-19 raises many new questions related to complexity and adaptability (Uhl-Bien, 2021<sup>8</sup>).

**Dehumanization of employees:** The COVID-19 epidemic serves as a harsh reminder of what keeps us human after unparalleled levels of economic prosperity. However, it runs the risk of serving as a reminder of how quickly rising demand may dehumanize some of the most helpless members of society. Human resources (HR) will need to facilitate partnerships across the organization while working with

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<sup>6</sup>European Commission (2020), *Teleworking is here to stay – here’s what it means for the future of work*. Retrieved from: <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/teleworking-here-stay-heres-what-it-means-future-work>

<sup>7</sup>Deloitte (2021), *Contingent Workforce*. Retrieved from: <https://www2.deloitte.com/br/en/pages/human-capital/articles/contingent-workforce.html>

<sup>8</sup>Uhl-Bien, Mary (2021), *Complexity and COVID-19: Leadership and Followership in a Complex World*, *Journal of Management Studies*, 10.1111/joms.12696.

managers to help employees navigate the different norms and expectations associated with these shifts (Baker, 2020<sup>9</sup>).

## COVID-19 consequences on employment

The COVID-19 pandemic has triggered one of the worst job crises in the human history. There is a genuine risk that the crisis will worsen inequality and poverty, with the effects lasting for years. Now, nations must exert every effort to prevent the job crisis from developing into a social disaster. A crucial investment in the future and future generations is the rebuilding of a healthier and more resilient labor market (OECD, 2020<sup>10</sup>). Some of the main consequences indicated in the international literature can be summarized to the following points: increased workload, fewer working hours, loss of employment, challenges with transition to virtual work, adapting in-person services, redeployment to new settings, and early retirement. In more details:

**Working fewer hours:** One in six of the workforce is working fewer hours than previous COVID-19 (Williams et al., 2020<sup>11</sup>).

**Loss of employment:** The danger of leaving a job and having one's employment interrupted has been higher for those performing the lowest skilled occupation. Declines in the lowest skilled, most basic jobs can be used to explain about three fifths of the employment reduction (Williams et al., 2020<sup>12</sup>).

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<sup>9</sup>Baker, Mary (2020), *Gartner identifies nine trends for HR leaders that will impact the future of work after the coronavirus pandemic*, Retrieved from:

<https://www.gartner.com/en/newsroom/press-releases/2020-05-06-gartner-identifies-nine-trends-for-hr-leaders-that-wi>

<sup>10</sup>OECD (2020), *The impact of COVID-19 on employment and jobs*, Retrieved from: <https://www.oecd.org/employment/covid-19.htm>

<sup>11</sup>Williams, M.; Cockett, J.; Boustati, A.; Ebanks-Silvera, D. and Wilson, T. (2020), *The impacts of the coronavirus crisis on the labour market*, *Institute for Employment Studies*, December 2020.

<sup>12</sup>Williams, M.; Cockett, J.; Boustati, A.; Ebanks-Silvera, D. and Wilson, T. (2020), *The impacts of the coronavirus crisis on the labour market*, *Institute for Employment Studies*, December 2020.

**Increased workload:** Numerous studies show that remote work has increased workload, particularly during the COVID-19 emergency (Wang et al., 2020<sup>13</sup>).

**Challenges with transition to virtual work:** There are many references in the international literature underlining many studies highlighting the techno overload during COVID-19 (Molino et al., 2020<sup>14</sup>), while at the same time, the potential for ICT to make users work harder and longer or change work habits is connected to the term “techno overload.” (Ragu-Nathan et al., 2008<sup>15</sup>).

**Adapting in-person services:** The accessibility and effectiveness of remote service delivery were found to be enhanced by many practitioners and service managers. Others expressed uncertainty about whether new service modalities will satisfy the demands of all client groups and represent best practice and raised worries about their ability to assess risk without face-to-face interaction. Results demonstrate that practitioners have had a variety of experiences during this time of fast service innovation and transformation (Cortis et al., 2021<sup>16</sup>).

**Redeployment to new settings:** Even after accounting for a wide range of demographic characteristics, studies indicate that redeployment during the COVID-19 pandemic is significantly linked to risk for sleeplessness, anxiety, and depression. Given that many disorders are chronic and relapsing, it is crucial to keep in mind that some health issues associated with redeployment may have long-term effects (Martinez et al., 2022<sup>17</sup>).

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<sup>13</sup>Wang, B., Liu, Y., Qian, J., & Parker, S. K. (2021), *Achieving effective remote working during the COVID-19 pandemic: A work design perspective*, *Applied Psychology*, 70, 1, 16–59.

<sup>14</sup>Molino, M., Ingusci, E., Signore, F., Manuti, A., Giancaspro, M. L., Russo, V., ... & Cortese, C. G. (2020), *Wellbeing costs of technology use during Covid-19 remote working: An investigation using the Italian translation of the technostress creators scale*, *Sustainability*, 12 15, 5911.

<sup>15</sup>Ragu-Nathan, T. S., Tarafdar, M., Ragu-Nathan, B. S., & Tu, Q. (2008), *The consequences of technostress for end users in organizations: Conceptual development and empirical validation*. *Information systems research*, 19, 4, 417–433.

<sup>16</sup>Cortis, Natasha; Smyth, Ciara; Valentine, Kylie; Breckenridge, Jan and Cullen, Patricia (2021), *Adapting service delivery during COVID-19: Experiences of Domestic Violence practitioners*, Global Social Service Workforce Alliance.

<sup>17</sup>Martinez, M.; Stewart, N.H.; Koza, A.L.; Dhaon, S.; Shoushtari, C. and Arora, V.M. (2022), *The Effect of Redeployment During the COVID-19 Pandemic*

**Early retirement:** Women, in particular, were particularly heavily struck by the COVID-19 epidemic and the ensuing recession, which was substantially worse than previous recessions and far worse than younger demographics (Bui, Button and Picciotti, 2020<sup>18</sup>).

## Consequences on social scientists due to COVID-19

Under these circumstances, the conditions at workplace have dramatically changed during the last two years. Similarly, professionals in social sciences (e.g., social workers, psychologists, etc.) faced new changes and standards in their professional practice. The literature states that the impact to a social worker's employment status could be focused on the following themes: Increased workload, job loss, relocation to new settings, early retirement, worry for one's health and safety, fewer clients seen by social workers in private practice, personal caregiving obligations, restrictions on the employment prospects of recent graduates, and social workers experiencing new opportunities are some of the challenges that social workers face (Ashcroft et al., 2021<sup>19</sup>). In addition, the report published by IFSW (2021<sup>20</sup>) included the following main findings related to social workers' ethical challenges and responses:

1. Building and sustaining connections that are trustworthy, sincere, and empathetic via the phone, online, with proper consideration for privacy and confidentiality, or in person while wearing protective gear.
2. Prioritizing the requirements and expectations of service users, which have changed and increased as a result of the epidemic,

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*on Development of Anxiety, Depression, and Insomnia in Healthcare Workers*, Journal of General Internal Medicine, 37, 4, 1003–1005.

<sup>18</sup>Bui, T., Button, P., & Picciotti, E. G. (2020), *Early Evidence on the Impact of Coronavirus Disease 2019 (COVID-19) and the Recession on Older Workers*, *The Public policy and aging report*, 30, 4, 154–159.

<sup>19</sup>Ashcroft, Rachelle; Sur, Deepy; Greenblatt, Andrea and Donahue, Peter (2021), *The Impact of the COVID-19 Pandemic on Social Workers at the Frontline: A Survey of Canadian Social Workers*, *The British Journal of Social Work*, 2021;, bcab158.

<sup>20</sup>IFSW (2021), *Ethical challenges for social workers during COVID-19: A global perspective*, November 2021.

while resources are scarce or strained and comprehensive evaluations are sometimes unattainable.

3. In order to offer services as effectively as feasible, social workers and others must weigh the rights, needs, and hazards of service users against their own personal safety.
4. Deciding when it is suitable, unclear, or otherwise improper to follow national and organizational rules, procedures, or guidelines and when it is appropriate to apply professional judgment.
5. When working in risky and demanding situations, recognizing and managing feelings, exhaustion, and the need for self-care.
6. Rethinking social work in the future in light of the insights learnt from working during the epidemic.

## Methodology

One of the most popular forms of self-administered surveys is the use of electronic questionnaires and web surveys. Web surveys have a number of advantages over other distribution methods, including lower costs, simpler administration, the capacity to incorporate visual effects (pictures, videos, applications), as well as the designer's adaptability to alter the survey throughout its duration in order to boost response rates or change the questionnaire. Web surveys can ensure the respondents' anonymity and confidentiality, and ultimately, they can produce a new type of data, known as "paradata," which enhances the survey methodology. However, the incapacity of web surveys to generalize the results to the target audience is questioned by the research community. The criticism specifically concerns web surveys that are non-probability-based. Nonprobability web surveys do not involve random selection as probability web surveys do. Although it is frequently challenging for the researcher to assess the sample's level of community representation, this does not always imply that nonprobability samples are not representative of the population. When using non-represented samples, it's possible for some groups to be overrepresented and have their viewpoints emphasized, while other groups could be underrepresented and have their perspectives downplayed. In order to determine if the sample that was selected is typical of the population, the researcher will need to use

other methods, especially in applied social research, because there are some situations where random sampling is not practicable, practical, or convenient.<sup>21</sup>

The experiences, perspectives, and expertise of social scientists have been examined in this online survey regarding their rights during and after the COVID-19 era. The web survey was addressed to Greek-speaking social scientists across the Republic of Cyprus. Nongovernmental organizations, organizations, and other services that employ social scientists were emailed a link to an online questionnaire. The online survey ran from February 2022 to March 2022, a period of two months. At the start of the online survey, participants received a welcome message and an explanation, both of which assured them that their answers would remain anonymous and confidential. Additionally, guidelines were provided regarding potential respondents.

The questionnaire was designed based on a questionnaire created and used by KPMG regarding the working conditions during COVID-19; There were closed-ended, nominal, and ordinal questions in it. The double-translated Greek questionnaire underwent extensive pilot testing before being amended to account for local conditions and achieve maximum question clarity with the least amount of respondent effort. There were four sections to the questionnaire: There were closed questions in the first section to collect data on the respondents' sociodemographic traits; the second section sought to gather the respondents' experiences with distance/virtual working; the third section captured the respondents' perspectives and actions regarding distance/virtual working; and the fourth section, which focused on employees' rights. The online questionnaire took an average of 8 minutes to complete.

Use of IBM SPSS (version 24 for Windows) was made for the analysis of the data. We employed frequencies, central tendency metrics, and dispersion for the descriptive statistics, and hypothesis testing for the inferential measures including t-test of means, one-way ANOVA, post hoc tests, and nonparametric tests were carried out (Mann-Whitney U test and Chi-square test).

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<sup>21</sup>Mavrikiou, P.M., Parlalis, S.K. & Athanasiou, A. Gender Differences in the Sexual Experiences, Attitudes, and Beliefs of Cypriot University-Educated Youth. *Sexuality & Culture* 21, 36–48 (2017). <https://doi.org/10.1007/s12119-016-9377>

## Research findings

In total, 96 questionnaires were considered valid. Some of the sociodemographic descriptive results are the following: the majority of the sample consisted of women aged 25–54 y.o. (73.9%). Responses were lower for the range of younger than 24 y.o. (14.9%) and older than 55 y.o. (11.2%). Of the sample, 19.9% are single and 63.2% are married. In the sample, 30.6% of people do not have children, 12% have one kid, and 30.3% have two. A total of 79.5% of the sample had postgraduate, undergraduate, or college degrees. 91% of the respondents reported that their family budget is considered at least fair. The vast majority of the respondents (84.5%) declared that they were working in distance during the first three months of the lockdown, while there is a stable number of respondents (almost 31%) who still work in distance during the last two years.

The respondents shared their thoughts regarding distance/virtual working during the COVID-19 period. They identified that even if there were many challenges during the first months (74%), there was a positive response to the growing needs and demand for their intervention. The majority of them (86%) believe that they can still work in distance, even when there are no mobility barriers and restrictions. Nevertheless, there should be in place some additional policies and practices which are currently considered as barriers such as “lack of trust towards employees” (82%), “lack of digital documentation” (86%), and “lack of flexibility between some colleagues” (58%).

Social scientists declared that they had increased workload since they worked under extremely anxious conditions and with limited resources. They had to respond to new requests but without using the same working methods and techniques (68%); consequently, they had to “find” or “create” new methods to work with service users (54%). Moreover, some professionals were deployed to new settings since there was a gradual need to support a new need created by the COVID-19 conditions (71%). In addition, professionals had to be careful regarding the personal health and safety, which was considered another difficulty in their daily practice (89%). Last, there were communication difficulties with the service users due to a number of reasons, such as a) lack of proper equipment for direct communication

(e.g., mobile phones, Internet connection) (79%) and b) difficulty to proceed with assessments due to lack of resources (74%).

In the following, respondents expressed their thoughts on the future of distance/virtual working. They declared that distance working would be always an option for the coming years (94%) in any given case, for example, pandemic and/or other crisis, and it seems that in some cases, it might become a normal practice for some organizations (75%), for example, work from distance once a week. Under these conditions, respondents underlined that there are a number of issues concerning their work, such as the existence of relevant law(s) regarding accidents during distance work (67%), issues related to GDPR and protection of personal space and life (73%), and also the assurance of working hours (71%). Overall, the respondents were divided between the three different replies on the question regarding the use of distance working in their organization, like 39% replying positive, 24% negative, and the remaining 37% with mixed feelings.

The last part of the questionnaire focused on employee's rights during the pandemic. More than half of the respondents stated that their labor rights were violated during that period (69%) through actions like change of contract details without any notice (62%), change of working hours without consultation (78%), pause of employment without prior notice (54%), and reduced wage (71%). Also, many references and complaints were made by respondents due to limited health and safety policies employed by their organizations.

## Discussion

In this study, social scientists' experiences regarding distance working were explored. The aim of this study was to reveal the challenges faced by professionals in social sciences regarding their labor rights during the pandemic and the future of work trends post-COVID-19. The findings are rather significant since they represent the first attempt to gather this sort of information regarding social scientists in Cyprus. In general, the findings are consistent with findings from other countries' study.

## COVID-19 consequences on social scientists' employment

The study revealed that social scientists faced new conditions regarding their working hours; in most cases, they had to work fewer hours due to the pandemic. This is in line with the tremendous loss of million jobs and huge reduction in working hours faced in and around the world (ILO, 2020<sup>22</sup>; Venkatesh, 2020<sup>23</sup>). On the other hand, there are references according to which there is a great need for social workers in/during a global pandemic (Lauschus, 2021<sup>24</sup>; Banks et al., 2021<sup>25</sup>), which is not covered by the existing workforce. This is a paradox of our times, which is related to working conditions such as social workers' huge workload, unpaid overtime, and administrative demands (Mithran, 2022<sup>26</sup>). Another challenge for social scientists in Cyprus was the rapid move to online services; international literature illustrates that the impact of moving from face-to-face social work to online social work, virtually overnight, was enormous. This had adverse consequences on both individuals providing and receiving social work, but it also, somewhat surprise, had some favorable benefits (Adetunji, 2021<sup>27</sup>). Services from social workers have to be delivered over the phone or through video calls. Some people were

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<sup>22</sup>ILO (2020), *81 million jobs lost as COVID-19 creates turmoil in Asia-Pacific labour markets*, 15 December 2020. Retrieved from: <https://www.ilo.org/asia/me-dia-centre/news/WCMS-763819/lang--en/index.htm>

<sup>23</sup>Venkatesh, Viswanath (2020), *Impacts of COVID-19: A research agenda to support people in their fight. International journal of information management*, 55, 102197.

<sup>24</sup>Lauschus, Amanda (2021) *The Need for Social Workers in a Global Pandemic, Locus: The Seton Hall Journal of Undergraduate Research: Vol. 4, Article 6*, Retrieved from: <https://scholarship.shu.edu/locus/vol4/iss1/6>

<sup>25</sup>Banks, S.; Cai, T.; de Jonge, E.; Shears, J.; Shum, M.; Sobocan, A.M.; Strom, K.; Truell, R.; Uriz, M.J. and Weinberg, M. (2020), *Ethical Challenges for Social Workers during Covid-19: A Global Perspective, Project Report*, International Federation of Social Workers.

<sup>26</sup>Mithran, Samuel (2022), *Most social workers happy in role despite unpaid overtime, cuts and Covid mental health toll, Community Care*, Retrieved from: <https://www.communitycare.co.uk/2022/03/09/most-social-workers-happy-in-role-despite-unpaid-overtime-cuts-and-covid-mental-health-toll/>

<sup>27</sup>Adetunji, Jo (2021), *The pandemic transformed how social work was delivered – and these changes could be here to stay, The Conversation*. Retrieved from: <https://theconversation.com/the-pandemic-transformed-how-social-work-was-delivered-and-these-changes-could-be-here-to-stay-165993>

uncomfortable with primarily depending on digital technology and believed that the level of service they received dropped (Adetunji, 2021<sup>28</sup>; Ashcroft, 2021<sup>29</sup>; McFadden et al., 2021<sup>30</sup>), an issue that was raised by the current study too. In addition, the issue of not having appropriate IT equipment in order to carry out their duties was one of the main challenges for social scientists. Similarly, there are sources that claim that organizational settings, IT infrastructure, and its functioning and applicability together constitute the foundation of social workers' activity and have a significant influence on their experiences. (Fiorentino et al., 2022<sup>31</sup>). Last, professionals' concerns regarding health and safety issues are similarly underlined in the international bibliography too. UNICEF (2021<sup>32</sup>) indicates that ethical considerations must influence decision-making in relation to carrying out in-person visits during a pandemic. For social workers and other members of the workforce, several countries have national codes of ethics. When creating guidelines and protocols that assist in making decisions on the safety, wellbeing, and provision of in-person services for staff, these should be examined.

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<sup>28</sup>Adetunji, Jo (2021), *The pandemic transformed how social work was delivered – and there changes could be here to stay*, *The Conversation*. Retrieved from: <https://theconversation.com/the-pandemic-transformed-how-social-work-was-delivered-and-these-changes-could-be-here-to-stay-165993>

<sup>29</sup>Ashcroft, Rachele; Sur, Deepy; Greenblatt, Andrea and Donahue, Peter (2021), *The Impact of the COVID-19 Pandemic on Social Workers at the Frontline: A Survey of Canadian Social Workers*, *The British Journal of Social Work*, 2021;, bcab158.

<sup>30</sup>McFadden, P.; Neill, R.D.; Mallett, J.; Manthorpe, J.; Gillen, P.; Moriarty, J.; Schroder, H.; Ravalier, J.; Nicholl, P. and Ross, J. (2021), *Mental well-being and quality of working life in UK social workers before and during the COVID-19 pandemic: A propensity score matching study*. *British Journal of Social Work*, October 2021.

<sup>31</sup>Fiorentino, Vera; Romakkaniemi, Marjo; Harrikari, Timo; Saraniemi, Sanna and Tiitinen, Laura (2022), *Towards digitally mediated social work – the impact of the COVID-19 pandemic on encountering clients in social work*, *Qualitative Social Work*, 11 April 2022.

<sup>32</sup>UNICEF (2021), *Social Service Workforce Safety And Wellbeing During the COVID-19 Response – Recommended Actions*, Retrieved from: <https://www.unicef.org/media/68501/file/Social-Service-Workforce-Safety-and-Wellbeing-during-COVID19-Response.pdf>

## The future of work trends post-COVID-19

Since the pandemic resets critical work patterns, HR directors must reevaluate their strategies for workforce and employee planning, management, performance, and experience. According to a Gartner survey of more than 800 HR leaders, nine HR trends emerge as the long-term result of workforce and workplace changes brought on by the disruption caused by the coronavirus pandemic (Baker, 2020<sup>33</sup>): 1) a rise in working remotely, 2) enlarged collection of data, 3) growth of contingent workers, 4) enlarged employer's social safety net role, 5) division of essential roles and skills, 6) (degradation of workers' humanity,) 7) the appearance of new, elite employers, 8) design for resilience instead of efficiency in the design process, and 9) a rise in the complexity of organizations (Baker, 2020<sup>34</sup>).

In some context, new strategies will be designed and new policies will be employed for social scientists too, especially when it is evident that distance working would always be an option for the coming years (Radović-Marković, Stevanović and Milojević, 2021<sup>35</sup>). The employment of contingent workers will be a reality in the social sciences too; this policy is already evident in Social Welfare Services, in which new employees are hired either with fixed term contracts (e.g., one or two years) or per project (e.g., fixed payment for a fixed number of service users) (Social Welfare Services, 2022<sup>36</sup>).

In addition, this new reality will make even more complicated the divergence between professional roles and responsibilities. For example, it is more than evident the existence of blurred roles between

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<sup>33</sup>Baker, Mary (2020), *Gartner identifies nine trends for HR leaders that will impact the future of work after the coronavirus pandemic*, Retrieved from: <https://www.gartner.com/en/newsroom/press-releases/2020-05-06-gartner-identifies-nine-trends-for-hr-leaders-that-wi>

<sup>34</sup>Baker, Mary (2020), *Gartner identifies nine trends for HR leaders that will impact the future of work after the coronavirus pandemic*, Retrieved from: <https://www.gartner.com/en/newsroom/press-releases/2020-05-06-gartner-identifies-nine-trends-for-hr-leaders-that-wi>

<sup>35</sup>Radović-Marković, M., Stevanović, M., & Milojević, N. (2021), *Remote Working in Terms of COVID-19*, *International Journal of Entrepreneurship*, 25, 1.

<sup>36</sup>Social Welfare Services (2022), *New positions in the Social Welfare Services*, Retrieved from: [http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/dmlvacancies\\_gr/dmlvacancies\\_gr?OpenDocument](http://www.mlsi.gov.cy/mlsi/sws/sws.nsf/dmlvacancies_gr/dmlvacancies_gr?OpenDocument)

professionals holding the title of “Welfare servants” (Λειτουργός Ευημερίας) under which a number of social scientists could be employed, for example, social workers, psychologists, and sociologists. In the new post-COVID-19 reality, the borderline between social scientists will be even more difficult to define it, which is a significant barrier for all related professionals.

Moreover, new policies in social services will lead to the emergence of new top-tier employers, in order to supervise the new distant provision of services. Overall, this practice will lead to even greater organizational complexity, which will eventually create advanced bureaucracy and less flexibility in these organizations.

Last, social scientists will be exposed to numerous possible labor violations related to the protection of personal space and life, the pause of employment according to the external circumstances in any given time, reduction of working hours or unpaid overtime, and other consequences which were faced during the pandemic. In order to safeguard employees’ rights and promote fair working conditions in the post-COVID-19 workplace, it is crucial to recognize the Right to Disconnect and appropriate legislative frameworks for telework (OECD, 2021<sup>37</sup>).

## Conclusion

Overall, it could be illustrated that social scientists are always exposed to numerous labor violations, like other professionals. However, they seem to be even more vulnerable since the nature of their profession requires face-to-face meetings and interaction, which can be suddenly interrupted in times of crisis. Therefore, new studies have to be employed aiming at identifying how social scientists could be empowered in times of crisis and how their labor rights could be safeguarded to the maximum.

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<sup>37</sup>OECD (2021a), *Future of work and workers’ rights post COVID-19*, Retrieved from: <https://www.oecd-forum.org/posts/future-of-work-and-workers-rights-post-covid-19>

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# The impact of COVID-19 pandemic on ship operations, ports, and the rights of seafarers

IOANNIS VOUDOURIS, NICHOLAS G. BERKETIS

**Abstract:** In December 2019, coronavirus disease 2019 (COVID-19), associated with severe acute respiratory syndrome, first appeared in Wuhan, China. This quickly led to a pandemic that caught the World Health Organization off guard. The virus spread rapidly from China to Japan, South Korea, Europe, and the United States, taking on global proportions. As a result, governments worldwide imposed progressive restrictions on various sectors of the economy and society, including mandatory lockdowns and border closures, in an effort to isolate cases and limit the spread of virus transmission.

The COVID-19 pandemic had a significant impact on all sectors, particularly in international shipping. The logistical and ashore support for seafarers were severely affected. This study focuses on two main chapters: (1) the impact of the pandemic on shipping operations and ports and (2) the impact on individual seafarers' rights, with a particular focus on employment (crew change, leave, and repatriation), health (including mental well-being), and economic freedom (underpayment or nonpayment of salary and family aspects). Special references are also made to marine insurance covers.

**Keywords:** COVID-19, maritime industry, human rights, seafarers, ports, shipping operations, crew changes, frustration, force majeure, hardship, stranded seafarers, health, economic status, free pratique, Maritime Labor Convention, MLC, International Labor Organization, ILO, World Health Organization, WHO, International Health Regulations, IHR, Marine Insurance, Protection and Indemnity Clubs (P&I) Clubs.

## Background

The practice of quarantine dates back to ancient times, when societies recognized the imperative to segregate the healthy from the infirm. This age-old custom has been employed throughout history

as a means of preventing the spread of disease and safeguarding public health.<sup>1</sup> In the course of the 21st century, humanity has been beset by three perilous epidemics, each stemming from the emergence of pathogens belonging to the coronavirus family. The first was SARS (severe acute respiratory syndrome) and was limited relatively quickly until the pathogen disappeared. The second matter pertains to the coronary artery disease resulting from MERS (Middle-East respiratory syndrome), which continues to be reported in predominantly Middle-Eastern nations. The third ailment, known as coronavirus disease 2019 (COVID-19), which is attributed to the coronavirus strain named severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), was first detected toward the end of 2019 in the People's Republic of China.<sup>2</sup> All three diseases cause acute respiratory infections, have high transmissibility, and are associated with high morbidity and mortality.<sup>3</sup> Due to the ferocity of the disease, governments resorted to quarantines and similar emergency measures. The state of emergency allows a government to take extraordinary measures to protect its citizens and maintain public order during times of crisis. In such situations, the government is granted additional powers and resources to respond to the emergency and mitigate its impact on society. This principle is based on the idea that in exceptional circumstances, the normal rules and procedures of law may not be

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<sup>1</sup>The contemporary name 'quarantine' derives from the Italian-venetian word of 'quarantena', i.e., the forty-days isolation of ships and seafarers, as a preventative measure against the spread of disease. The Old Testament evidences how individuals affected by diseases were separated from others, and people with leprosy, as Leviticus informs, had to live isolated all their lives. In the 5th century B.C., Hippocratic teaching had established that an acute illness only manifested itself within forty days. See Hippocrates, *Aphorismi* (trsl. Francis Adams) Section V, 15 reads: "Persons who become affected with empyema after pleurisy, if they get clear of it in forty days from the breaking of it, escape the disease; but if not, it passes into phthisis" (text in Greek: «ὀκόσοι ἐκ πλευρίτιδος ἐμπυοὶ γίνονται, ἢν ἀνακαθαρθῶσιν ἐν τεσσαράκοντα ἡμέρησιν, ἀφ' ἧς ἂν ἡ Π' ἤξις γένηται, παύονται: ἢν δὲ μὴ, ἐς φθίσιν μεθίστανται»). See G. F. Gensini, M. H. Yacoub, A. A. Conti, 'The concept of quarantine in history: from plague to SARS' (2004) 49(4), *Journal of Infection* 258. See P. Frati, 'Quarantine, trade and health policies in Ragusa-Dubrovnik until the age of George Armmenius-Baglivi' (2020) 12(1) *Medicina Nei Secoli* 103–127.

<sup>2</sup>Fan Wu *et al.*, 'A new coronavirus associated with human respiratory disease in China.' (2020) 580(7803) *Nature* 266.

<sup>3</sup>Mujeeb Khan *et al.*, 'COVID-19: a global challenge with old history, epidemiology and progress so far'. (2021) 26(31) *Molecules* 10.

sufficient to address the situation at hand. The doctrine of necessity is used in various contexts, including during times of war, civil unrest, epidemics, and other emergencies. The declaration of a state of emergency is typically made by the executive branch of government and is subject to legal and constitutional constraints. It is invoked by governments to justify actions such as the temporary suspension of civil liberties, the imposition of curfews, and the use of military force to maintain order or to defend another public good. Under the state of emergency, freedoms are precluded, particularly the freedom of choice, as it pertains to that which cannot be avoided. Necessity, *ipso facto*, stifles freedoms as that which is necessary is not only imperative but also indisputable. In many respects, this is how the law initially apprehends necessity: as an urgent reality to which legal rules must conform. The maxims ‘no one is held to the impossible’<sup>4</sup> and ‘necessity overrules the law’ express the notion that necessity erodes or even sacrifices the demands of the law, at least those that are accepted in ‘normal’ times. Its use, however, must be carefully balanced against the need to protect individual rights and freedoms and to ensure that the rule of law is upheld.<sup>5</sup> From the fiduciary theory of human rights perspective, states of the western world have a duty to protect their citizens’ equal freedom during emergencies, even if it means derogating from certain human rights norms such as freedom of expression, movement, and peaceful assembly.<sup>6</sup> In accordance with the treaties, the decision of a state to temporarily declare a *state of emergency*, due to extraordinary circumstances, must briefly adhere

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<sup>4</sup>See Thomas Aquinas, *Summa Theologiae IIa-IIae*, q. 1–91 (Paris: 1271, 1272, trsl. by Fr. Laurence Shapcote) q62-a5 (in chapter: ‘Whether restitution must always be made to the person from whom a thing has been taken?’) reads: *nullus tenetur ad impossibile. Sed quandoque aliquis non potest statim restituere. Ergo nullus tenetur ad statim restituendum.* (No man is bound to do what is impossible. But it is sometimes impossible to make restitution at once. Therefore, no man is bound to immediate restitution). The justification for the doctrine of necessity can be traced back to the writings of T. Aquinas and Henry de Bracton. Bracton, a medieval jurist, argued that in certain situations the law must yield to the demands of necessity. This idea was later developed by legal authorities such as W. Blackstone, who suggests on various occasions that the preservation of order and stability was a paramount concern that could justify extra-legal actions by the authorities. See William Blackstone, *Commentaries on the Laws of England, vol I: The rights of persons* (Portland 1807).

<sup>5</sup>*Necessitas vincit legem.*

<sup>6</sup>Criddle Evan J., Fox-Decent Evan, ‘Human Rights, Emergencies, and the Rule of Law’ (2012) 34(39) *Human Rights Quarterly* 40.

to the following essential requirements.<sup>7</sup> Firstly, there must be a “clear and present danger to public safety”. Secondly, the state must follow the designated procedural steps, as described by law; this means to comply with all relevant legal requirements justifying its proclamation, including the demonstration of those exceptional circumstances and the warranty that such action is necessary. Thirdly, the state must establish credible safeguards and control agencies that monitor the prevailing circumstances and provide the administration with advice on possible amendments and changes in the applied policy. Fourthly the state must exercise its taken action in a *proportional* manner to the threat posed and motivated the emergency. The same were emphasized during the COVID-19 pandemic by multiple competent sides.<sup>8</sup> It is clear that even in the midst of a crisis, the judiciary and the parliament play a decisive role in preventing the excessive use of emergency powers and ensuring the adequacy and proportionality of the special measures adopted. Judiciary oversight remains crucial to ensuring the legality, necessity, and proportionality of the measures adopted as the ensuing decisions are characterized by the independence and impartiality of those called to resolve the dispute (the judges) and the fact that the decisions possess legal authority.

Thus, by early 2020, the effects of COVID-19 were felt across all sectors, particularly in international shipping, which caused a disruption to the main pillars of logistical and ashore support for seafarers. Gradually, the Chinese ports started to be affected and supply chain back-

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<sup>7</sup>Article 4 International Covenant on Civil and Political Rights; Article 15 European Convention on Human Rights.

<sup>8</sup>See European Parliament, *Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences* 2020/2616 (RSP) para. 46, where it was stressed the need for measures to be fair and reasonable, directly linked to the current health crisis, time-limited, and regularly reviewed. See Venice Commission, ‘Report on Respect for Democracy, Human Rights and the Rule of Law during States of Emergency’ (19 June 2020) CDL-AD(2020)014, where it was likewise stressed that extreme measures must be only taken in unique situations. These measures must be reasonable and time-defined and their effectiveness should be proper oversight from the courts and the parliament. See Maria Diaz Crego, Silvia Kotanidis, ‘States of emergency in response to the coronavirus crisis. Normative response and parliamentary oversight in EU Member States during the first wave of the pandemic’ (Dec. 2020) *European Parliamentary Research Service* 2–3. See Jan Petrov, ‘The COVID-19 emergency in the age of executive aggrandizement: what role for legislative and judicial checks?’ (2020) 8(1–2) *The Theory and Practice of Legislation* 5, where he analyses the factors of independent justice and the judicial oversight.

logs grew increasingly severe. The dysfunction in the supply chain has made contractual performance very difficult to observe as all parties could not deliver their promises on time because circumstances became radically different from that originally contemplated by the parties. A first notable example of this was the mobile quarantine zones established on large cruise ships, which carry thousands of passengers. Rapidly increasing protection measures (such as port entry bans, strict quarantine restrictions, COVID-19 sampling tests, communication restrictions, isolation requirements, anti-epidemic measures, continuous disinfection of premises, morbidity and mortality due to COVID-19) were the reality for the shipping sector in 2020 for all types of maritime transport. However, airports were closed and international travel was prohibited, and seaports were kept open to facilitate the continuity of global supply chains.<sup>9</sup> During the course of the pandemic, the shipping industry has consistently facilitated the carriage of approximately 90% of goods, including vital supplies such as food, fuel, and various other commodities. This achievement has been accomplished despite the difficult circumstances faced by a significant population of 1.5 million seafarers who have been deployed on vessels during this challenging period. Voyages and operations have been carried out at the expense of compromising both economic and labour rights afforded to these aforementioned seafarers.<sup>10</sup> Many seafarers have been left stranded in remote locations, with no means of repatriation, and have been forced to wait for repatriation for extended periods of time. This has not only had a negative impact on the well-being of seafarers but also caused a breakdown in trust between all parties involved.

## Impact on shipping and port operations

Due to the perilous nature of the maritime business, it is imperative for owners and charterers to anticipate contractual provisions in the event of time loss resulting from unforeseeable circumstances beyond human control.<sup>11</sup> For instance, charterparties typically contain pro-

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<sup>9</sup>Christiaan De Beukelaer, 'COVID-19 border closures cause humanitarian crew change crisis at sea' (2007) 132 *Marine Policy* 104661.

<sup>10</sup>ibid.

<sup>11</sup>At times, unforeseen circumstances such as pandemics, natural disasters, government policies, and other external factors can also lead to business emer-

visions for allocating the risk of certain types of delay, which may be specified, general, or even more unusual, such as the disease, risk of war, or industrial action; hence, parties are usually deterred from easily invoking force majeure.<sup>12</sup> It is noteworthy that the declaration of a state of emergency constitutes an additional ground for the sus-

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gencies. As these emergencies have a direct effect on contractual and tortious liabilities, judges began to consider that *vis major* could excuse (temporarily at least) a failed obligation. The Roman concept of *vis major*, similar to the French force majeure and the Scottish *damnum fatale*, was not limited to natural disasters. Hence, an Act of God is judicially construed as a defense, in the context of the law of obligations against a breach. For example, a tenant would not have to pay rent if the crops were destroyed by *vis major*; violent storms and pirates exempted a captain from responsibility for his cargo. However, maritime business is well familiar with the circumstances causing impossibilities and hardships. Again, calamities occurring at sea through the violence of the elements (*ex marinae tempestatis discrimine*), such as winds, waves, tempests and lightning are clearly acts of God but are normally subsumed under the wider concept of a 'peril of the sea' in charterparties, bills of lading and policies of marine insurance. See Loimer Hermann, 'Accidents and Acts of God: A History of the Terms' (1996) 86(1) *American Journal of Public Health* 104. See C.G. Hall, 'An unsearchable providence: The lawyer's concept of act of God' (1993) 13(2) *Oxford Journal of Legal Studies* 228. See e.g., *Pandorf & Co v Hamilton, Fraser & Co* [1886] 17 QBD 670.

<sup>12</sup>In order to arrive at a mutual understanding that an event constitutes an Act of God, all parties involved, namely the charterer and the carrier—in consultation with the port—must provide substantiating evidence and reach a consensus that the event was beyond human control and could not have been prevented. This process necessitates the involvement of the relevant authority, ideally the court, the port state, or any other competent public agency, which would issue an order/decreed affirming that the event falls within the purview of an Act of God, See. *Tsakiroglou and Co Ltd v Noble Thorl GmbH* [1962] AC 93, where the Suez Canal was closed to navigation due to the military operations by the British and French armed forces against Egypt, and the alternative route via the Cape of Good Hope was almost twice as long and respectively the freightage was more costly. The case became subject to arbitration proceedings and the umpire held that the sellers were in default. His decision was later confirmed and the House of Lords held that the shipping via the Cape of Good Hope did not render the contract fundamentally different and therefore, did not present a frustration of the contract. See Ewan McKendrick, *Force Majeure and Frustration of Contract* (2nd edn. Informa Law from Routledge 2013) 129–130. Lack of clarity may be extremely frustrating for parties who are trying to ensure that their contractual obligations are met. The test for frustration was defined in *Davis Contractors Ltd v Fareham Urban District Council* [1956] UKHL 3 as follows: a) a supervening event, b) that would render it radically different from what was anticipated under the contract. Because there is no litmus test to determine if the entire benefit of the contract has been lost, when it becomes impossible to perform, the persevered impossibility (due to radically different circumstances) is a standalone criterion.

pension of an obligation, in the framework of private and business law. For example, during a state of emergency, businesses may be allowed to temporarily suspend their operations or delay the payment of taxes or other financial obligations. Similarly, individuals may be exempted from certain legal requirements or obligations, such as paying rent or fulfilling contractual obligations, if they are unable to do so due to the emergency situation. Overall, the declaration of a state of emergency provides an additional legal basis for the suspension of legal obligations, which can help to alleviate some of the burdens and challenges faced by individuals and organizations during times of crisis.

The effects of the outbreak of the pandemic on ship and port operations are chronologically divided into two distinct time phases: 'pre-' and 'post-' the official characterization of the outbreak as a pandemic by the World Health Organization (WHO).<sup>13</sup>

During the first two months of the crisis, there was no official declaration by the port states that would have taken the initiative and activated 'hardship' or 'force majeure' clauses or allowed excused redirection of chartered vessels perhaps to safer alternative ports. At the early stages of the outbreak (from November 2019 to March 2020), delays and congestion steadily increased, yet port and flag states, as well as international organizations, were slow to respond to the impending crisis. This failure to anticipate and mitigate the effects of the outbreak is evident. Had an epidemic notice, for instance, been issued by the competent port authorities at an earlier stage, it would have provided carriers, charterers, and ports with the opportunity to deviate from their usual routes and make alternative arrangements. However, in the absence of an official announcement from either the WHO or the port states – or even the involved flag states – carriers

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<sup>13</sup>On the 30th of January 2020, in light of the escalating disease, the World Health Organization (WHO) declared a 'Public Health Emergency of International Concern'. The WHO took approximately three months to officially classify the COVID-19 outbreak as a pandemic on the 11th of March 2020. As anticipated, the WHO's decision had a substantial impact on the global economy and trade, with a demand shock following the initial supply shock experienced by China. See Catrin Sohrabi *et al.*, 'World Health Organization declares global emergency: A review of the 2019 novel coronavirus (COVID-19)' (2020) 76 *International Journal of Surgery* 74–75.

See WHO, 'Coronavirus disease (COVID-19) pandemic: Overview'. Accessed 10 Sept 2022. <https://www.who.int/europe/emergencies/situations/covid-19>

continued to exercise reasonable dispatch in performing the agreed voyages to and from major international loading/discharging ports for a period of three months.<sup>14</sup> As the port services became increasingly inefficient, the disruption of the supply chain was inevitable.

As early as January 2020, legal advisors and marine insurers had warned about the worsening of the problem. They noted that the shipping industry should be prepared for the same problems that arose during outbreaks of other diseases, such as the Ebola virus.<sup>15</sup> The majority of experts also stressed that in the context of charterparties, charterers have an obligation to designate a safe port, an order that shipowners must comply with, unless there is an excessive risk or the port is known to be unsafe.<sup>16</sup> Risks for the crew may make the port unsafe even when there is no real risk of damage to the boat. As a result, a contagious disease may legally make a port to be unsafe.<sup>17</sup> The security of a port depends to a large extent on whether there are appropriate precautions and protection measures to ensure that a ship can approach the port without risking contamination of her crew.<sup>18</sup> Starting in the spring of 2020, international, regional, and national regulators have begun issuing acts of obligation and compliance to create a corresponding legal framework for tackling the COVID-19 pandemic on port security.

In a number of countries, the issue of force majeure caused by disease has been resolved at the legislative level. In reality, however, the pandemic led to extremely unprecedented conditions in the first quarter of 2020, with a severe global shutdown of production processes and logistics. Closed factories, stricter border controls, and restrictions on the freedom of movement of individuals have disrupted the daily lives of people around the world. Among other unfavourable trends, we mention the growing demand for port fee discounts from ship operators and cargo owners on the occasion of the pandemic. At that

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<sup>14</sup>About the pressing obligation (condition) of the shipowner to reach the destination (as per the charterer's orders), see Evi Plomaritou and Papadopoulos Anthony, *Shipbroking and Chartering Practice* (8th edn Oxford & NY: Informa Law from Routledge 2014) 134.

<sup>15</sup>Beth Bradley, 'Shipping needs to prepare for coronavirus restrictions, warns' (2020) *Hill Dickinson Insights*.

<sup>16</sup>Julian Cooke *et al.*, *Voyage Charters* (4th edn, Informa Law from Routledge 2014) 5.65.

<sup>17</sup>Coghlin *et al.*, *Time Charters* (7th edn Informa Law 2014) 10.1 *et seq.*

<sup>18</sup>Bradley *op. cit.*

same time, every week, there were reports of rising freight rates with a huge drop in fuel prices.<sup>19</sup> Cargo operators use methods to combat cost reductions in the event of bookings falling, such as empty routes, that is, cancelled shipments, in which freight shipments are consolidated but port revenues are reduced accordingly. At the same time, the cost of services in ports is increasing due to protection measures, while a percentage of the workforce is being treated or quarantined and the total administrative cost due to COVID-19 prevention measures had almost doubled.<sup>20</sup>

In the midst of this unprecedented situation, port security, international trade supply hubs, and ship crew replacement points became a major impedance for modern global shipping. Overall, the ability of port countries to provide reliable conditions for stable operation during a pandemic has now been an important requisite for economic stability, in addition to the key issue of health and human life.<sup>21</sup> The conservative approach taken by the states to ensure these conditions has gradually begun to protect the world's largest ports from epidemic crises. Accordingly, they have led to the creation and continuous updating of effective protocols and the best practices to ensure the protection of ports and ships and their crews from the pandemic.

As regards the matter of carriage obligations among shipowners and charterers, that port congestion made performance difficult as parties were unable to observe their promises in a timely manner. In light of these unforeseen and unprecedented circumstances, the legal norms of the dispatch, arrived ship, laytime, delivery and redelivery of vessel, and the calculation of hire, demurrage, and despatch were rendered uncertain. In accordance with the standard terms of a charterparty, if circumstances become drastically different from what was originally agreed upon, the parties should assess and discuss the situation and make any necessary changes to the agreement that are reasonable and justified. This could include changes to the timeline, payment terms, or other aspects of the agreement. The purpose is to ensure that all parties are able to fulfil their obligations, even if

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<sup>19</sup>Olha Prokopenko, Radoslaw Miśkiewicz, 'Perception of "Green Shipping" in the contemporary conditions' (2020) 8(2) *Entrepreneurship and Sustainability Issues* 271.

<sup>20</sup>Ibid.

<sup>21</sup>Cleopatra Doumbia-Henry, 'Shipping and COVID-19: protecting seafarers as frontline workers' (2020) 19(3) *WMU Journal of Maritime Affairs* 286.

the circumstances have changed drastically from what was originally agreed upon. For example, in the first three months, because circumstances became radically different from those originally contemplated by the parties, contractual performance was consequently made very hard; as a result, parties could not deliver on promises. Theoretically, in light of the changed circumstances (that could not have reasonably been foreseen at the time of entering into the agreement), the parties could have used the legal tools they were equipped with, to engage in mutual consultation and demonstrate mutual understanding in order to make any necessary adjustments and revisions that may be justified.<sup>22</sup> In practice however, the power of the extended period of uncertainty and shock prevailed, thus affecting legal integrity. As a consequence, hardship, congestion, and disruption to the supply chain reached unprecedented levels, ultimately culminating in its collapse.

From the marine insurance perspective, many cargo issues arising out of this pandemic may involve the insurers' discretion. Overall, the marine insurance association - pools [i.e., Protection & Indemnity Clubs (P&I Clubs)] appeared to be largely pragmatic to shipowners' difficulties. In particular, the majority of cover under the quarantine rules involves several requirements, such as to demonstrate a proximate and predicable (non-remote) causation between the outbreak of a contagious disease and the reported damage (e.g. cargo delivery, health issues among crew and passengers, or loss/damage to the cargo) that cannot be attributed to any other cause. Potential recoverable losses encompass the costs associated with disinfecting both the vessel and her cargo, providing necessary care for individuals on board, as well as compensating for any expenses and revenue loss resulting from quarantine measures.<sup>23</sup>

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<sup>22</sup>For instance, the theory relating to the nomination of a safe port and alternative port. See *ibid.* 134 et seq.

<sup>23</sup>Patrick Donner, 'Insurance Perspective on Places of Refuge' in Aldo Chircop, Olof Linden, *Places of Refuge for Ships. Emerging Environmental Concerns of a Maritime Custom* (Leiden and Boston, Martinus Nijhoff 2006) 331.

## Impact on seafarers

Compared to the majority of land-based workers, seafarers are a genuine example of a weak party, in the context of labour law.<sup>24</sup> They have to rely solely on the shipowner for their safety and well-being. Essentially, a seafarer lacks options as he has to reside, live, and work on a limited space, onboard, cut off from any kind of convenience and daily options that a worker ashore may have. This establishes the core of the contractual obligation of the shipowner who undertakes, within the framework of labour law, the obligation to provide all the necessary resources for the dignified and safe living of the seafarer (i.e., the weak party). However, the problem arises when, due to restrictions such as lockdowns or other difficulties, the shipowner is rendered practically unable to observe these obligations toward the seafarer. Therefore, it is necessary to examine the impact of quarantine on both the seafarer and the shipowner, assuming that the latter is also being restricted from performing his duties. In such circumstances, shipowners may still face legal liability for breach of contract and/or negligence if they fail to provide the necessary resources for the seafarers' safety and well-being, unless they prove force majeure. It is therefore imperative for shipowners to anticipate situations and take all necessary measures to protect the sea, even in the face of quarantine restrictions. This may include providing adequate medical care, food, and other essential resources to seafarers onboard. Failure to do so may result in legal consequences and harm to the seafarer's health and well-being.

Nonetheless, the legal issue at hand pertains to the obligation of shipowners to observe their legal obligations to seafarers despite being deprived of the means to do so due to quarantine measures. It raises the question of whether shipowners are still bound by their legal duties toward seafarers even in situations where compliance is hindered by external factors such as quarantine, or they are exempted from liability.

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<sup>24</sup>See ECJ cases: C-383/95 *Petrus Wilhelmus Rutten v Cross Medical Ltd* [1997] ECLI:EU:C:1997:7, p. I-70. C37/00 *Herbert Weber v Universal Ogdén Services* [2002] ECLI:EU:C:2002:122, p. I-2032. C-384/10 *Jan Voogsgeerd v Navimer* [2011] ECLI:EU:C:2011:842, p. I-13309.

## Impact on crew change

The basic rule as regards the annual leaves of the seafarers derives from the provisions of the Maritime Labor Convention (MLC) 2006. Accordingly, seafarers' paid shore-leave is calculated based on at least two and a half (2.5) days for every thirty (30) days of service onboard. Moreover, for every year of work, seafarers earn ten (10) public holidays that are awarded proportionally. It is also important to stress that the maximum period of service on board ship for seafarers following which they are entitled to repatriation, in accordance, must be less than twelve (12) months.<sup>25</sup> The pandemic has created an unprecedented crew change crisis, which has left hundreds of thousands of seafarers affected and, in many cases, stranded onboard ships after their contracts expired, with no prospect of termination or repatriation, causing a humanitarian crisis at sea. Due to the global curfew, almost the entirety of seafarers was stranded at sea or abandoned to remote locations, unable to repatriate even to resign. During 2021, an equivalent number of people had been stuck at home, unable to replace the 1.5 million stranded crews and commence work, preventing them from entering into new onboard contracts.<sup>26</sup> By October 2020, 400,000 seafarers remained stranded aboard ships (ITF - JND, 2020);<sup>27</sup> by May 2021, this number had reduced to (the non-negligible) 200,000.

It is worth mentioning that in the wake of the pandemic, the WHO suggested that a risk assessment should be made carefully, while restrictive measures that interfere with the international movement of people and goods were justified only at the beginning of a pandemic, giving the necessary time to various countries to take effective preparedness measures.<sup>28</sup> Contrary to WHO proposals, countries had imposed restrictions on the exchange of seafarers, by merely implementing quarantine. In the wake of growing concerns over disease

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<sup>25</sup>Maritime Labour Convention (MLC) 2006, as amended (incl. 2018 amendments), Regulation 2.4, in particular Standard A2.4 and Regulation 2.5, in particular Standard A2.5.1(2b).

<sup>26</sup>Beukelaer op. cit.

<sup>27</sup>International Transport Workers Federation (ITF) and Joint Negotiation Group (JNT), 'Joint Statement: On Seafarers' Rights and the Present Crew Change Crisis'. [5 Oct. 2020].

<sup>28</sup>World Health Organization (WHO), 'Updated WHO recommendations for international traffic in relation to COVID-19 outbreak' (29 February 2020).

transmission, the United States Coast Guard has asked entire crews to remain on board “except for certain activities”. Likewise, the Singapore Maritime and Port Authority announced precautionary measures that explicitly prohibit the exchange of crews and licenses. In due course, China took swift action by implementing restrictions on foreign seafarers’ ability to make crew changes at ports. This proactive approach was soon followed by other countries as well.<sup>29</sup> We assert that the aforementioned measures appear disproportionate in light of the fact that the average complement of crew members present on board does not exceed two dozen individuals. Consequently, targeted testing and quarantine protocols would have been equally effective without resorting to such extreme measures. In essence, the implementation of quarantine was lacking; in fact, the policy, driven by the agony of the moment, resulted in a prolonged abandonment that resembled imprisonment rather than a genuine 40-day quarantine period.

Another exacerbating factor was the prevalent use of air travel for crew changes, resulting in a significant number of seafarers relying on airplanes for transportation to and from ships. The fact that it was not possible for seafarers to travel to board ships made crew changes difficult, or impossible, causing a vicious circle in the crew change crisis.<sup>30</sup> Thus, the limited availability of commercial and international flights caused by the pandemic significantly reduced seafarers’ travel options and resulted in higher fares for ship operators and manning agents, further exacerbating the challenges of changing crews and repatriation of seafarers. Closing the border meant that some could not cross through foreign countries or travel to airports to return home.<sup>31</sup> However, closed borders were not the only

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<sup>29</sup>Shan & Neis op. cit. See Bill Chappell, “Coast Guard Tells Cruise Ships With COVID-19 Cases to Stay Away From U.S. Ports,” *NPR*, 1 April 2020 (accessed 20 Sept 2022) <https://www.npr.org/sections/coronavirus-live-updates/2020/04/01/825205607/coast-guard-tells-cruise-ships-with-covid-19-cases-to-stay-away-from-u-s-ports>

<sup>30</sup>International Maritime Organization (IMO), ‘IMO resolution calls for Government action on crew change crisis’ (22 Sept. 2020).

<sup>31</sup>International Labour Organization (ILO), ‘Information note on maritime labour issues and coronavirus (COVID-19), Including the General Observation of the Committee of Experts on the Application of Conventions and recommendations and joint statements of the Officers of the Special Tripartite Committee

obstacle that kept seafarers stranded at sea.<sup>32</sup> Thus, many seafarers were still unable to return to their homes because they could not be replaced by much-needed crews. As a result, seafarers reported that their contracts were extended for months beyond their original expiration date, forcing them to remain on board instead of being reunited with their families. Travel restrictions and border closures caused significant problems for crew changes, resulting in the seafarers' time being extended several times beyond the legally permissible limit.<sup>33</sup> The continuing global dependence on maritime trade caused considerable hardship to seafarers whose employment contracts had been breached, forcing them to work at sea for far longer periods than expected.

The sheer number of marooned seafarers and congested anchorages denoted the weakness of the system to adequately anticipate and respond against major crises. In fact, crisis as such may occur at any time. The war in Ukraine could be another reminder of a possible disaster. A nuclear incident, for instance, could further jeopardize the safety and well-being of seafarers and erode the trust among the partners, mainly built upon the MLC 2006. Multinational crews, the international nature of companies, and the need to ensure a steady supply of large missions of crews had proved to be the Achilles' heel, in this regard. Maritime business, in theory, assumes that hiring multinational crews, mainly from underdeveloped countries, is an important cost saving factor. Yet, what would be our future stance toward those crews, should a similar crisis arise? Will they again be treated as second-class citizens?

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of the Maritime Labour Convention, 2006, as amended'. Revised version 3.0, Geneva, (3 February 2021).

<sup>32</sup>With the opening of the borders, the shipping companies subsequently faced costly crew changes due to the limited availability of flights for most of 2020.

<sup>33</sup>On 14 April 2020, the European Commission adopted the "*Guidelines on the protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board*". The Guidelines stress (paragraph 3) that "measures must be taken in EU ports to protect maritime transport staff and port workers, as well as seafarers and other persons on board of the ship during their embarkation and disembarkation. In order to ensure their health and safety, in accordance with EU legislation on health and safety at work, all risks must be assessed and appropriate preventive and protective measures implemented". European Commission, 2020/C 119/01, 'Communication from the Commission Guidelines on protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships' (14.4.2020) OJ C 119, p. 1–8.

## Impact on the overall health of seafarers

Naturally, the challenges to the health and safety of seafarers existed even before the pandemic outbreak.<sup>34</sup> The demanding nature of maritime work, adverse weather conditions at sea, psychosocial risks, prolonged separation from family and stable social environments, barriers to communication between crews of different nationalities, sleep, and rest disorders are some of the challenges that are faced by workers in the shipping industry, while an important factor that poses a real risk is fatigue.<sup>35</sup> In general, work at sea remains one of the most dangerous occupations, and several studies show that seafarers face complex risks to their health and safety. Repeated extensions of their contracts have shown that their contracts cannot be maintained without serious consequences for their health and safety and consequently for the safety of the ships they operate and operate on. As regards the marine insurance covers, if a seafarer, sick with COVID-19, must be repatriated or substituted, normal cover applies. Similarly, if a ship must deviate to land a seafarer who has had (or may have) COVID-19, the usual costs should be recoverable, provided the deviation is reasonable. Although there is an ambiguity as regards the effectiveness of the cover,<sup>36</sup> it is admitted that most clubs provide good advice

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<sup>34</sup>See Birgit Pauksztat, Michelle R. Grech, Momoko Kitada, 'The impact of the COVID-19 pandemic on seafarers' mental health and chronic fatigue: Beneficial effects of onboard peer support, external support and Internet access' (2022) 137 *Marine Policy* 104942: pp. 1–9. Birgit Pauksztat, Daniela M. Andrei, Michelle R. Grech, 'Effects of the COVID-19 pandemic on the mental health of seafarers: A comparison using matched samples' (2022) 146 *Safety Science* 105542: pp. 1–11.

<sup>35</sup>In the case "The Eurasian Dream" (*Papera Traders Co. Ltd. and Others v Hyundai Merchant Marine Co. Ltd. and another* [2002] 1 Lloyd's Rep. 719), the ruling judge held that a determinative element impacting the seaworthiness of a vessel, with respect to its crew, is their receipt of adequate training and instruction, coupled with their physical and mental fitness as well as their willingness to competently execute their duties. See the study of Shan & Neis op. cit 169, conducted on Canada's Great Lakes and St Lawrence River, whereby is established that fatigue by the seafarers gives rise to particular safety concerns. See also *William C. Skye v Maersk Line Limited Corporation*, No. 12-164331 (11th Cir. 2014).

<sup>36</sup>See Human Rights at Sea, 'COVID-19, P&I Insurance Coverage and Safarers' Rights' Insight Briefing Note (2020).

about how to deal with difficult cargo-related issues, yet there is no uniform policy as regards the crew quarantine costs.<sup>37</sup>

We indicatively refer to the case of the “PS Diamond Princess” that was prelude of the seafarers’ crisis:<sup>38</sup> In Yokohama port, during February 2020, the highest number of cases occurred on the passenger (cruise) ship “Diamond Princess”, when the outbreak of a case inside the cruise ship evolved into a total quarantine of about 3,700 crew members and passengers.<sup>39</sup> Most of the media and public attention was focused on unfortunate passengers who were isolated on ships or had fallen ill, cruise ship workers, and often carriers of the virus on ships. After the quarantine of the ship began, the crew members continued to perform their duties. Seafarers were unable to maintain social distance in communal living and dining areas, while at the same time, there was a lack of personal protective equipment and a limited right to refuse hazardous work. The quarantine process for the crew was impossible due to a lack of resources and special circumstances. In addition, limited training and insufficient information about the new virus had led ISM officers and crew managers to deal with unprecedented occupational hazards at sea.<sup>40</sup> Basically, the existing legal framework gives a right to a port state to ban foreign cruise ships from docking at its port in favour to its domestic public health safety.<sup>41</sup> From the port state’s perspective, the Japanese government undertook pandemic preventive measures upon passengers on board the ship and complied with its domestic laws.<sup>42</sup> Moreover, the Japanese government had to comply with the latest version of the WHO regulations relating to ‘free pratique’ (i.e., the International

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<sup>37</sup>Michelle Wiese Bockmann, ‘Crew quarantine costs not covered by P&I’ (2020) *Lloyd’s List*.

<sup>38</sup>‘Passenger Ship Diamond Princess’, IMO: 9228198.

<sup>39</sup>Sun Siqi, Lijun Liz Zhao, ‘Legal issues and challenges in addressing the coronavirus outbreak on large cruise ships: A critical examination of port state measures’ (2022) 217 *Ocean Coast Management* 1–2.

<sup>40</sup>Desai Shan, Barbara Neis, ‘Employment-related mobility, regulatory weakness and potential fatigue-related safety concerns in short-sea seafaring on Canada’s Great Lakes and St. Lawrence Seaway: Canadian seafarers’ experiences’ (2020) 121 *Safety Science* 165.

<sup>41</sup>Andrew Tirrell, Elizabeth Mendenhall, ‘Cruise Ships, COVID-19, and Port/Flag State Obligations’ (2021) 52(3) *Ocean Development & International Law* 225–227.

<sup>42</sup>See article 4 of Japan’s Quarantine Act No. 201 of 1956.

Health Regulations 2005 - IHR)<sup>43</sup> and the UNCLOS's 'innocent passage'<sup>44</sup> as Japan is a member state in the IHR and party to UNCLOS.

Basically, free pratique is the authorisation granted by a port authority to a vessel allowing her to enter once it has been certified as disease-free by the competent health authorities. In accordance with articles 1(1) and 28 of the IHR, *free pratique* means "permission for a ship to enter a port, embark or disembark, discharge or load cargo or stores."

The term of free pratique should not be conflated with the provisions on *innocent passage* as described in articles 17–19 of the UNCLOS. Nonetheless, when considered alongside the term of the *place of refuge* for ships requiring assistance,<sup>45</sup> these legal concepts mutually complement each other in terms of ensuring freedom and reinforcing protection for vessels and international shipping in general. In any event, free pratique forms an integral part of the law of carriage by sea as this authorization is part of the necessary formalities for establishing that a vessel has the legal readiness to load or discharge cargo, thereby finalising the paperwork required, for tendering –in theory at least– the vessel's Notice of Readiness (NOR). In practice however, the permission of free pratique is generally considered a mere formality as relatively recent case law established that this particular permission may not serve as an obstacle to the issuance of the notice of readiness (NOR) that is a necessary step for the commencement of laytime and thereafter calculation of possible demurrage,<sup>46</sup> although in practice, charterparties typically contain provisions that

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<sup>43</sup>International Health Regulations (IHR) (3rd edn 2005), Part III articles 21–27, whereby a ship should not be stopped from getting free access and being able to dock at any part of a port for health reasons. This means the ship should still be allowed to conduct cargo, bunkering and supply operations, as well as embark or disembark passengers without any issues.

<sup>44</sup>United Nations Convention on the Law of the Sea 1982, Section 3, subsection A, articles 17–19 et seq.

<sup>45</sup>IMO Resolution A. 949(23) Guidelines on Places of Refuge for Ships in Need of Assistance. See Anthony P. Morrison, *Places of Refuge for Ships in Distress. Problems and Methods of Resolution* (Leiden & Boston, Martinus Nijhoff 2012) 250–251, where he analyses the provisions relating to the protocols implemented by the US authorities.

<sup>46</sup>See *AET Inc. Ltd v Arcadia Petroleum Ltd (The Eagle Valencia)* [2010] EWCA Civ 713; *Odfjell Seachem A/S v Continentale des Petroles et d'Investissements (The Bow Cedar)* [2004] EWHC 2929.

grant owners a certain degree of flexibility.<sup>47</sup> Thus, according to the International Health Regulations (IHR), the default principle is that a foreign vessel must be granted free pratique by a port state and should not have her right to dock denied. This should be done while also balancing the protection of the public against health risks or international public health emergencies. At the same time, such a refusal must be made on the grounds of the available scientific evidence of a risk to human health.<sup>48</sup> When the available evidence is inadequate, it may be necessary to consult with the World Health Organization (WHO) and other relevant organizations, depending on the severity of the situation. In the case of “Diamond Princess”, the Japanese authorities acted accordingly, duly received guidance from the WHO to address the fact that the ship was already an affected conveyance.<sup>49</sup> Despite being a port state, Japan had the discretion to ban passengers and crew affected by COVID-19 from disembarking, the government chose not to exercise this right and allowed the ship to dock at Yokohama port and also ensured that thousands of passengers and crew were treated during this time.<sup>50</sup> From the marine insurance perspective, if seafarers are infected by a contagious disease, such as COVID-19, they will have the same medical cover afforded for any other illness.

In order to facilitate the movement of the seafarers ashore, the ILO adopted a convention establishing a unique identity (travel) document, the Seafarer’s Identity (SID).<sup>51</sup> One of the main objectives of the SID is to make it easier and faster for them to have a short break

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<sup>47</sup>For instance, the requirement for the owner to protest themselves –in case free pratique is not granted– can be seen in clauses 6.3 and 7.3 of the BPVOY4 (tanker voyage charterparty). It is important to note that even if a ship has been granted free pratique, it may still be subject to control directions. In such cases, these control directions will take precedence over the previously granted free pratique, with due consideration for the vessel’s and/or port facility’s safety. See Rupert Herbert-Burns, Sam Bateman, Peter Lehr (eds), *Lloyd’s MIU Handbook of Maritime Security* (CRC Press, Boca Raton, London, NY 2009) 332–333.

<sup>48</sup>John Schofield, *Laytime and Demurrage* (6th edn London & NY: Routledge 2011) 3.179 et seq.

<sup>49</sup>David P. Fidler, Lawrence O. Gostin, ‘The new international health regulations: an historic development for international law and public health’ (2006) 34(1) *Journal of Law, Medicine and Ethics* 86.

<sup>50</sup>Siqi & Zhao op. cit. 6.

<sup>51</sup>International Labour Organization, *Seafarers’ Identity Documents Convention* (Revised 2003), as amended (No. 185).

ashore,<sup>52</sup> being exempted from the regular entry visa (lengthy) procedures; something that is really important for their well-being and health. Technically, shore leave is a part of the sailor's work time on the vessel. During the shore leave, the seafarers get the chance to explore the port city for a brief amount of time. The change in the physical environment that comes with it is much needed for the well-being of the crew who work under severe conditions onboard. Seafaring is an occupation of considerable rigor, necessitating individuals to labour for extended periods, confront adverse weather conditions, and endure prolonged separation from their loved ones. The persistent exposure to these stress-inducing circumstances can adversely impact one's mental well-being if not duly addressed. In this context, shore leaves serve as a vital means of respite for seafarers from the exigencies encountered at sea. They furnish crew members with an opportunity to disembark and partake in activities that bring them pleasure or simply afford them relaxation away from their occupational milieu,<sup>53</sup> i.e. the confined spaces and monotonous routine offshore that consequently lead to acute weariness, indifference and apathy on ships.<sup>54</sup> Observing repetitive goals (such as observing time schedule) constantly under such circumstances results in stress, depression, and home sickness, symptoms that infect the psychological balance of a person and lead to personality disorders and diminish or nullify criminal and tortious liability. As land clearance was restricted or not allowed at all in many ports, it was made more difficult to obtain medical and psychological care and assistance.<sup>55</sup> The above-mentioned challenges were further exacerbated by the heightened fear of infection, increased job insecurity, and pervasive uncertainty.

In this context, the long absence from their families was hard and difficult for seafarers. Despite the big contracts they have signed in the past, the COVID-19 season was something very different and had

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<sup>52</sup>Shore leave means when sailors are allowed some time off from the ship while she docked or anchored in the port area.

<sup>53</sup>Eg. Australian Maritime Safety Authority 'Access to shore leave for seafarers' (Aug. 2022).

<sup>54</sup>Giulio Nittari, Filippo Gibelli, Paolo Bailo, Ascanio Sirignano, Giovanna Ricci, 'Factors affecting mental health of seafarers on board merchant ships: a systematic review' (2022) *Reviews on Environmental Health* 1-10.

<sup>55</sup>Anish Arvind Hebbar, Nitin Mukesh, 'COVID-19 and seafarers' rights to shore leave, repatriation and medical assistance: a pilot study' (2020) 71(4) *International Maritime Health* 220.

a greater impact on mental health and consequently on family life. A study found that 25% of seafarers surveyed showed signs of depression, 17% had high levels of anxiety, and 20% had suicidal ideation.<sup>56</sup> In addition, it has been found that on average, suicides accounted for 5.9% of total deaths among seafarers. Another study, it established that isolation, loneliness, and lack of land clearance led seafarers to a predisposition to mental illness.<sup>57</sup> Seafarers with longer working periods experience significantly higher levels of depression and anxiety during the pandemic but not before it.<sup>58</sup>

For example, Matt, a 35-year-old Chief Engineer from the United Kingdom, could not explain to his children, who always ask him when he will return home (IMO, 2020). The situation at home was cited as a key challenge by interviewed seafarers. This included concerns about family matters, health and financial situation at home, and the situation in their country of origin in general. Reports of limited or impossible communication with family members were important due to expensive or nonexistent available media.<sup>59</sup> It was obvious that the COVID-19 pandemic, in combination with the measures aimed at its reduction, intensified and increased the demanding aspects of maritime work, with negative consequences for the mental and physical health of seafarers.<sup>60</sup>

## Impact on the economic situation of seafarers

The COVID-19 pandemic brought also to light inefficiencies in the way the shipping industry manages and protects seafarers and their families. For example, as seafarers were unable to visit the shore (shore leave), remittances to their families were also restricted. In addition

<sup>56</sup>Rafael Y. Lefkowitz, Martin D. Slade, 'Seafarer Mental Health Study' (Final Report, London ITF Seafarers' Oct. 2019) *Trust & Yale University* 13.

<sup>57</sup>Helen Sampson, Neil Ellis, 'Seafarers' mental health and wellbeing.' (2019) Seafarers International Research Centre, School of Social Sciences, Cardiff University & Institution of Occupational Safety and Health.

<sup>58</sup>Pauksztat *et al.* op. cit. See Fereshteh Baygi *et al.*, 'Prevalence and associated factors of psychosocial distress among seafarers during COVID-19 pandemic' (2021) 21(222) *BMC Psychiatry* 3 et seq.

<sup>59</sup>Pauksztat op. cit.

<sup>60</sup>Desai Shan, 'Occupational health and safety challenges for maritime key workers in the global COVID-19 pandemic' (2022) 161 (2) *International Labour Review* 267–287.

to the numerous reports of isolated workers, there were also workers unable to join the ship because the charterer, in order to find an alternative port, was forced to change the course of the ship and seafarers waiting in the area to join the ship finally failed, with significant financial consequences for themselves and their families.

For example, a 33-year-old Indian father of two tried to board a ship to earn a living for his family but failed. He explained that the pandemic brought financial uncertainty. At the same time, a 26-year-old low-ranking seaman was at home without pay for 10 months because the lack of international commercial flights did not allow him to travel to join the ship. As a result, he found it increasingly difficult to support his parents and younger brother.<sup>61</sup> This caused significant financial problems for themselves and their families.<sup>62</sup>

The events have attracted the attention of all private stakeholders involved in global shipping as well as the WHO and national administrations; yet, it remains a duty for the national administrations (which eventually support shipowners' or charterers' interests) that remain sceptical towards the adoption of improved legislative initiatives. In addition, the question arises as to how the future careers of seafarers will be affected and whether this sector is at risk of limited recruitment of land (office) staff in the worst affected areas, such as cruise, car transport companies, and ferry boats. National measures for the employment of seafarers and land staff are also ineffective. The main challenges are initially related to the fact that the support measures apply only to a part of the seafarers, for example, only for nationals. In terms of office staff, companies can turn to general support programs that are available nationwide, but most of them involve rules that allow them to temporarily suspend employee contracts. Thus, while staff in western countries received financial support, the salary loss in crews was not adequately covered. Additional measures are related to suspensions of social contributions for such staff. It is clear that different parts of the shipping industry need dif-

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<sup>61</sup>See International Maritime Organization (IMO), '400,000 seafarers stuck at sea as crew change crisis deepens' (25 Sept. 2020). International Maritime Organization (IMO), 'IMO formally endorses industry COVID-19 crew change protocols' (12 Nov. 2020).

<sup>62</sup>International Labour Organization, 'Independent High-Level Evaluation of ILO's COVID-19 response 2020–22' (2022). 107–108.

ferent ways of supporting themselves. In general, both national and European Union support are sought.

In view of the above, some further issues need to be addressed, for instance: What happens with the unusable annual leaves and the repatriation costs borne by seafarers? In accordance with the MLC, seafarers are given paid annual leave and be granted shore leave for their health and well-being, as well as repatriation.<sup>63</sup> Evidently, seafarers, who are among the workers most affected by the pandemic, faced a long-term erosion of their rights under the MLC. Extended periods on board undoubtedly pose a greater risk of adverse effects on seafarers' health, including physical and mental health problems. A physically and mentally exhausted seafarer is much more likely to be involved in an incident that causes a maritime accident.<sup>64</sup> Therefore, seaworthiness of a ship is a crucial factor in determining the liability of an insurer in the event of an incident. If a ship is found to be unsafe prior to an incident, the insurer shall not be liable to pay any damage compensations.<sup>65</sup> Compliance with the ILO's regulations is subject to port state control and is in accordance with the relevant laws and regulations governing maritime safety.<sup>66</sup>

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<sup>63</sup>Op. cit. 24.

<sup>64</sup>See Lefkowitz & Slade op. cit. See Sampson & Ellis 2019 op. cit.

<sup>65</sup>Dunt John, *Marine Insurance* (London & NY: Routledge 2009). 8.63 et seq.

<sup>66</sup>ILO, 'Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006' (2009) 49–62, 62.

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# How criminal law helps to tackle the pandemic

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**Abstract:** The recent emergence of the coronavirus disease 2019 pandemic has triggered the need to take and implement a series of measures to ensure a balance between individual rights and public health. As far as the Greek legal system is concerned, these measures are provided in Article 285 of the new Criminal Code, which aims to protect both public health and the dignity and health of citizens from the violation of the measures taken to prevent diseases. The Prosecutor of the Supreme Civil and Criminal Court of Greece has already indicated, through circulars issued, addressing to the prosecutor's offices throughout the country, to be on guard for the observance of legality and the alertness of citizens, regarding the measures against coronavirus, in relation to the fight and the spread of the disease. Article 285 of the CC describes in paragraph 1 thereof a crime of potential danger and prescribes in paragraphs 2 and 3 the felony form of the offence and in paragraph 4 the negligent commission of the criminal action. Consequently, a new circular was issued by the Prosecutor of the Supreme Civil and Criminal Court of Greece, concerning the consequences of the pandemic but also the compulsory law, following which joint ministerial decisions were issued to establish measures for the protection of public health. In this context, Article 183 of the CC is called for to safeguard public order, while Article 191 is introduced to prevent the spread of false news. The provision establishes a potential danger which threatens the socio-economic existence of the State in general and which is caused by the above-mentioned misinformation of the public. In conclusion, it is obvious that criminal law, despite its strict formulations, is called upon to serve as a guardian of public health.

**Keywords:** pandemic, public health, criminal law, measures, penalties.

## Introduction

Historically, pandemics have been recorded, which have had a catalytic effect on the lives of human species and have influenced the basic structures and ethologies of both medicine and law. The 21st century has already been marked by major epidemics. Old diseases such as cholera, plague, and yellow fever have returned, while new ones such as severe acute respiratory syndrome, Middle-East respiratory syndrome, Ebola, Zika, and similar syndromes of particularly high risk to human health such as acquired immunodeficiency syndrome have also appeared. These epidemics and their impact on global public health have convinced the world's governments of the need for collective and coordinated defense against emerging threats to public health and accelerated the revision of the relevant International Regulations.

More specifically, in response to the coronavirus disease 2019 (COVID-19) pandemic, governments around the world are implementing effective physical distance measures with wide-ranging effects. The courts are increasingly confronted with new pandemic-related issues that are significantly changing the criminal justice system.

Globally, the important legal and ethical issues of contagious disease control are coming back to the fore with much greater intensity with the spread of COVID-19 and involve constitutionally guaranteed rights combined with the need to protect public health. In fact, it can easily be argued that the measures that have been taken in Greece in view of the prevention of the transmission of the virus are unprecedented as they lead to a wide restriction of citizens' freedoms and have caused concern in the whole of society regarding the criminal dimension of the prevention of disease transmission. Therefore, it becomes absolutely clear that the choice of measures to achieve the objective of limiting the transmission of COVID-19 should always be made in the light of the constitutionally enshrined principle of proportionality.

## **The provision of the paragraph no. 6 of the article no. 1 of the Legislative Content Act, which was published on 25-02-2020**

The criticality of the situation led the state to the decision to activate the exceptional legislative procedure provided for in the Constitution<sup>1</sup>, with the adoption of the Legislative Content Act of 25/2/2020 (Government Gazette A42/2020), which was ratified by The Article 1 of Law 4682 /2020, which establishes measures for the prevention, health surveillance, and containment of the spread of COVID-19 and which provides that “for the purpose of preventing the risk of occurrence and/or spread of coronavirus that may have serious public health consequences, prevention, health surveillance and containment measures may be imposed”. These measures are indicated in the text of the legislative act as well as the people who are responsible for their specification and compliance. Specifically, these measures, according to paragraph 2, consist of the following:

1. The compulsory submission to clinical and laboratory medical examination, health surveillance, vaccination, medication, and hospitalization of people for whom there are reasonable grounds for suspecting that they may directly or indirectly transmit the disease;
2. the imposition of clinical and laboratory medical checks as well as preventive health surveillance measures, vaccination, medication, and preventive hospitalization of persons coming from areas where a high prevalence of the disease has been observed;
3. the imposition of preventive health checks and clinical or laboratory examination at all or certain points of entry and exit from the country by air, sea, rail, and/or road connections with countries with a high prevalence of the disease;
4. the temporary restriction, in whole or in part, of air, sea, rail, and/or road links with countries with a high prevalence of the disease;

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<sup>1</sup>According to the provision of Article 44(1)(a) of the Constitution, in exceptional cases of extreme urgency and unforeseen need, the President of the Republic may, on the proposal of the Council of Ministers, issue Legislative Content Acts.

5. the temporary confinement of people in cases (a) and (b) under conditions which prevent contact with third persons from which the disease could be transmitted;
6. the temporary prohibition of the operation of school units and all types of educational structures, bodies, and institutions, public and private, of any type and degree; places of religious worship; as well as the temporary prohibition and suspension of movement for any reason whatsoever of educational and other staff and pupils, and students of any of the aforementioned school units, educational structures, bodies, and institutions;
7. the temporary prohibition of the operation of theaters, cinemas, sports and artistic events, archaeological sites and museums, shops of sanitary interest, private businesses, public services, and organizations, as well as public places in general;
8. the temporary imposition of measures restricting the movement of means of transport within the territory;
9. the temporary imposition of house arrest on groups of persons to avoid actions that could cause the spread of the disease.

It is stipulated that when imposing the measures, the competent bodies will choose the mildest possible measure for the fulfilment of its purpose, in the light of the constitutional principle of proportionality.

The above Legislative Content Act was the first one issued to deal with the pandemic, and since then, the prohibitions established by this act have been modified on specific issues, and dozens of Joint Ministerial Decisions have been issued, under which specific issues of implementation of these measures have been defined, the most recent one being that of 30/04/2022 (Dia/GP/oik.23983/Government Gazette B'2137).

The most interesting thing in this study is focused on par. 6 of this Legislative Content Act, which provides that “whoever fails to comply with the measures of this Article shall be punished by imprisonment for two (2) years, unless the act is punished more severely by another provision.”

This provision established a formal crime of abstract endangerment<sup>2</sup> with public health as the protected legal interest. Consequently, the commission of that offence does not require that the risk to public health should have arisen or even that there should have been a potential risk to public health since in that case, Article 285 of the Criminal Code, in favor of which the relative subsidiarity clause contained in the relevant provision<sup>3</sup> operates, may be applied provided that the other conditions are met.

The need to enact such an offence by the above Legislative Content Act, a short time after the broad elimination of abstract risk crimes from the Criminal Code, was dictated by the exceptional circumstances of the given moment in view of the characteristics of the disease in question as the danger is inherent only in the non-compliance of the measures<sup>4</sup>.

## **The provision of Article 285 of Criminal Code and the criminal treatment of COVID-19 transmission**

From the beginning, the provision of article 285 of the New Criminal Code, as it was formed after the enactment of Law 4619/2019, claimed to be the dominant provision for dealing with the relevant issues. The Prosecutor of the Supreme Court requested with the circular no. 4 of 12/3/2020 issued by the Prosecutor's Office of the Supreme Court, the vigilance of the prosecutors around the country

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<sup>2</sup>Naziris, Io., Issues of Substantive and Procedural Law related to the violation of measures to prevent the spread of the SARS-COV-2 coronavirus, Criminal Justice 2020, 378. On the contrary, see Bastounas, G., Remarks in Karditsa One Member Court of First Instance 10/2020, Criminal Justice, Nomiki Bibliothiki, 6/2021, 884 et seq., who accepts that as a crime of abstract endangerment, the crime provided for in Article 1(6) of the 25-02-2020 legislative content act contradicts Articles 7 and 5 paragraph 1 of the Constitution and, therefore, it must be interpreted as a crime of potential danger and in view of the subsidiarity clause contained therein, this provision must be deemed to be effectively inoperative. The above judgment considered an incident in which the defendant had set up a shop of sanitary interest (café) in a village with a limited number of persons, serving drinks and food.

<sup>3</sup>This way Naxos Prosecutor's Report, Papandreou, P. (2021), A 2021/200/30-3-2021, Criminal Justice, Nomiki Bibliothiki, 599.

<sup>4</sup>Self-inflicted, Single-Member Court of First Instance 10/2020, Criminal Justice, Nomiki Bibliothiki, 6/2021, 883, with remarks by Bastounas, G.

for the observance of legality, and the vigilance of citizens regarding the measures against coronavirus. The above circular points out to the prosecutors of the country's appeal courts and through them to the prosecutors of the district courts of their region that the provision of Article 285 of the Criminal Code, which threatens – in conjunction with the terms and with the corresponding gradations – extremely high criminal penalties against those who violate the measures lawfully ordered to prevent the spread of the disease, by their conduct infringing fundamental protected legal rights (life, physical health, etc.) or endangering them, is primarily claimed to be applied. Subsequently, with the 31/3/2020 supplementary circular No. 7 of the Prosecutor's Office of the Supreme Court, the need for vigilance and continuous intervention of the competent prosecution authorities was again highlighted, when the legal measures, either ordered or to be ordered, are violated in relation to the fight and spread of the disease.

Specifically, according to the Article 285 of Criminal Code:

Article 285 Violation of disease prevention measures

1. *Whoever violates the measures prescribed by the law or the competent authority in order to prevent the invasion or spread of a contagious disease is punished: a) with imprisonment of up to three years or a fine if the practice may result in a common danger to animals, b) with imprisonment and a fine if the practice may give rise to a risk of transmitting the disease to an indefinite number of people.*
2. *If the violation resulted in the disease being transmitted to animals, imprisonment of at least three years and a fine shall be imposed, and if it resulted in transmission to a human being, imprisonment of up to ten years shall be imposed.*
3. *If the violation resulted in the death of another person, imprisonment for at least ten years is imposed, and if it resulted in the death of many people, the court may impose life imprisonment.*
4. *In the cases of paragraph 1, whoever violates the measures by negligence, is punished: a) in the case of item a 'with a fine or provision of community ser-*

*vice and b) in the case of item b' with imprisonment of up to two years or a fine<sup>5</sup>."*

The above provision unified the previous provisions of Articles 283–285 of the previous criminal code concerning the spreading of animal diseases and the violation of measures for the prevention of diseases and epizootics, which are not often found in judicial practice. The Article 285 of Criminal Code protects, in its current form, public health, that is, the individual legal right of physical integrity and health of citizens from endogenous attacks and not from external factors (e.g., the use of certain dangerous consumer goods<sup>6</sup>). It is worth noting, however, that this provision, until the adoption of Law No. 4619/2019, concerned the violation of measures for the prevention of epizootic and plant diseases.

According to the above, anyone who violates measures ordered by the law or the competent authority to prevent the spread of disease is punished – if the act of paragraph 1 was committed by negligence, the punishment is lighter. The elements of the crime are a) the violation, b) the violation of measures ordered by law or by the competent authority, and c) the purpose of preventing the invasion or spread of disease. This is a “criminal law in blank”<sup>7</sup> or “lame criminal rule”<sup>8</sup> since the content of the act of infringement of a legal right is determined not by the legal form of the crime itself but by the relevant legal provision or the competent authority to which it refers.

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<sup>5</sup>Paragraph 4 was replaced and Article 285 was amended by Article 55 of Law No. 4855/2021.

<sup>6</sup>Kaiafa-Gbandi, M. (2005), *Commonly dangerous crimes*, 478.

<sup>7</sup>See. Bourmas, G., to Charalambakis, A. (2019), *The new Criminal Code, Interpretation of the Criminal Code, Law no. 4619/2019, Nomiki Bibliothiki*, On the question of “criminal laws in blank” see. Charalambakis, A. (2019), *Criminal Law and Jurisprudence*, 2nd ed., 44 et seq.; Charalambakis, A., *The new Criminal Code, Summary interpretation, Law 4619/2019*, 233.

<sup>8</sup>Naziris, G. (2020), *Issues of Substantive and Procedural Law related to the violation of measures to prevent the spread of the SARS-COV-2 coronavirus*, Armenopoulos, 383; Kaifa-Gbandi, M., who defines it as a “lame” criminal rule. The same ONE, p. 482, considers that the wording is clear and definite therefore it does not violate the constitutional principle of Article 7 paragraph 1 of the Constitution, because the description of the criminal conduct follows from the provision itself, which refers not merely to acts of threat or some vague attack on public health, but to acts specifically related to the invasion or spread of communicable diseases alone.

In the case of criminal laws in blank, the object of prohibition is treated with a general and abstract description in the Criminal Code and acquires a specific content with an act outside the framework of the criminal law<sup>9</sup>. According to the view supported in the theory<sup>10</sup>, although criminal laws “in blank” are unavoidable in some cases, their constitutionality is questionable because the provisions defining their content are not enacted in the same strict terms as criminal laws. In this case, the breach of the measures taken to avoid severe acute respiratory syndrome coronavirus 2 fulfils the objective nature of the offence in question. The difference is that while the crime of article 1, paragraph 6 of the 25-02-2020 Legislative Content Act ratified by Law no. 4682/2020 is committed by the mere violation of these measures, for the commission of the crime of Article 285 of the Criminal Code, it is not enough to violate these measures, but it is also necessary to cause the possibility of danger as a result.

The first paragraph of Article 285 of the Criminal Code provides for the crime of potential risk<sup>11</sup> (“if the act may result in a risk”) of disease transmission to an indefinite number of people; that is, the conduct of the perpetrator alone is not sufficient, but the control of a not concrete but potential risk (“risk of risk”) is required. So, in case a virus carrier violates the measures of personal self-isolation (quarantine) from the community, it must be established that a health risk to other persons could result from this violation. As it is pointed out by Naziris<sup>12</sup>, “it would be difficult to understand the fulfilment of the elements of the legal form of the offence under Article 285 of the Criminal Code by the mere operation of a hairdressing salon, a café or even an entertainment center. The abstract risk of disease transmission from (only) the operation of an establishment is not sufficient, but the existence of other conditions that make the extension of the

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<sup>9</sup>Charalambakis, A. (2021), *Criminal Law, General Part, I*, 113.

<sup>10</sup>Charalambakis, A., *G.P. I*, 113, cf. and Mytilene Court Of First Instance 23/1995, *CrimChr.* 1997, 313.

<sup>11</sup>Naziris, G., *op. cit.* 382, according to whom the provision is more favourable than its predecessor since it introduces in the legal form the element of the possibility of the standardized conduct to cause the risk, standardizing now an offence of “potential” (or abstract – concrete) risk. For the distinction between crimes of concrete and abstract endangerment (see, Charalambakis A. (2021), *Criminal Law, G.M. I*, p. 234 et seq.; Kaiafa-Gbandi, M., *op. cit.* 2005, 46; Simeonidou-Kastanidou, El. (2001), *Criminal Procedure*, 638.)

<sup>12</sup>Naziris, G., 383.

source of the risk to the sphere of legal property immediately visible is also required. Thus, the presence of at least one carrier of the virus in the establishment in operation, or the possibility of transmission of the disease to an indefinite number of persons as a result of that presence, as well as the perpetrator's malicious intent covering those elements, would have to be proven. Even in the case of the operation of an entertainment center which welcomes many people, where the existence of conditions for the transmission of the virus is highly probable, the burden of proof is still on the prosecution, and certainly the invocation of a mere statistical probability could not be a substitute for the establishment of an empirical condition of criminality." And it is a crime in common ("whoever", i.e., the perpetrator is not required to have a special status or relationship) when the measures can be violated by anyone or genuine special when the measures concern specific categories of persons. Furthermore, it is a crime which may appear either as a crime of action or as a crime of genuine omission, depending on the measures provided for, which are violated<sup>13</sup>.

To establish the substantive element of the crime of paragraph 1(b), the measures violated must be relevant to the ways of transmission of the disease and must be appropriate to prevent its spread, and when the perpetrator does not comply with the relevant provisions of the law or the competent authority, then there is a violation of the measures<sup>14</sup>. The violation of the measures results in the possibility of a specific common risk of transmission of the disease to an indefinite number of people. For the commission of the crime of Article 285 of the Criminal Code, it is not enough to violate these measures, but the possibility of danger as a result of the violation is also required<sup>15</sup>. There must be a causal link between the breach of the measures and the result. And in one respect<sup>16</sup>, the crime requires that the criminal conduct must indeed constitute an ad hoc functional and convenient means of spreading an existing communicable disease.

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<sup>13</sup>Bourmas, G., in Charalampakis, A. (2019), *The New Criminal Code, Interpretation Article by Article, Law 4619/2019, Vol.II*, 1964.

<sup>14</sup>Kostas, A. (2007), *Criminal Law, Special Part Compendium*, 636.

<sup>15</sup>Thus, EisPlimZak, Giannakelos, I., 1856/2020, *Armen. 2021*, 495, according to which the mere non-use of a protective mask is not sufficient to establish the crime of Article 285 of the Criminal Code.

<sup>16</sup>Kaiafa-Gbandi, M., 490.

The subsidiarity clause introduced by paragraph 6 of the first article of the Legislative Content Act of 25-02-2020 reflects the intention of the legislator to have in the application of the relevant provision an evaluative correlation of the cases for which the more severe provision of Article 285 of the Criminal Code is deemed applicable, which should be present in cases where, by violating the restraining measures, the perpetrator unleashes uncontrollable forces from which the possibility of causing danger to an unlimited number of people can be described in the attributed category. Therefore, criteria for the establishment of the most serious offence are deemed to be indicative, that they occur in cases of violation of restrictive measures or in areas where outbreaks have been established, or in cases of concentration of many people, whereas small private gatherings in isolated places without outbreaks should fall within the regulatory scope of the Legislative Content Act<sup>17</sup>.

As regards the subjective element, at least possible malice is required for all elements of the objective element of the offences in paragraphs 1 and 2(a).

The second and third paragraphs of the provision establish crimes of a felony degree distinguishable by their effect (“if the violation had an effect”).

The fourth paragraph of Article 285 of the Criminal Code provides for the punishment of negligent crime, which is punishable by imprisonment of up to two years or a fine.

The wording “an indefinite number of persons” creates interpretative problems, and the jurisprudential treatment of this concept in Article 285 of the law is expected with interest.

Finally, it should be noted that as was to be expected given the nature of the legal interest protected, which is public health, the offence under Article 285 of the Criminal Code is prosecuted *ex officio*.

## **Other criminal provisions**

The Prosecutor’s Office of the Supreme Court in its circular No.16/20 refers to the duration of the pandemic with its painful consequences

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<sup>17</sup>Self-inflicted, Single-Member Court of First Instance of Karditsa 10/2020.

which literally imposed on the Greek legal order a peculiar “Law of Necessity” for protection from the immediate dangers of the pandemic. Thus, the Joint Ministerial Decision no. 55339/2020 was issued, followed by many Joint Ministerial Decisions specifying the measures against the spread of coronavirus. With this Joint Ministerial Decision, among other things, the use of nonmedical masks for students during the reopening of schools (Article 2) became mandatory, a measure which was based on a recommendation of the National Committee for the Protection of Public Health against the COVID-19, as well as all the “distancing rules” imposed on a case-by-case basis (a measure which was subsequently extended to other activities of socio-professional life). The above-mentioned circular reiterated the claiming application in criminal prosecution of the provision of Article 285<sup>18</sup> of the Criminal Code, if all the elements of the legal form of the foreseen crime, the gradations of which extend up to the reduction of the act to a felony.

Subsequently, in the same text, the attention of the country’s prosecutors is drawn to focus, among other things, on the investigation of the commission of the crime of Article 183 of the Criminal Code (incitement to disobedience). According to the circular, if the legal conditions are met, that is, when those who oppose the legal measures and attribute to their own considerations for the use of the mask the characteristics of a criminal act, it is an obvious obligation to form a criminal case and follow the self-incrimination procedure of Articles 417 et seq. Under the conditions of the Code of Civil Procedure, if it is not prevented by exceptional reasons, the direct direction of the *ex officio* preliminary investigation (Article 245 § 2 of the Code of Civil Procedure) by the prosecutor of the district court is also required, within the scope of his competence.

Indeed, the head of the Prosecutor’s Office of Thessaloniki asked the police to follow the self-incrimination procedure and form a case for

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<sup>18</sup>According to official data of the Hellenic Police, as published on its website, until 11.01.2022 (since the implementation of the measures of 7 November 2020), 2,900 arrests for violation of Article 285 of the Penal Code have been made nationwide.

incitement to disobedience in cases where Internet users call, through posts, not to apply the measure of self-test<sup>19</sup>.

## Riot in disobedience

The provision of Article 183 of the Criminal Code, according to which 'whoever publicly in any manner or through the internet provokes or incites to disobedience against the laws or orders or against other lawful orders of the authority, shall be punishable by imprisonment for a term not exceeding one year or by a fine', punishes provoking or inciting to disobedience against the laws, orders, or other lawful orders of the authority, as the previous provision did, with the addition of the Internet as a means of making it public (Explanatory Memorandum of New Criminal Code).

The legal interest protected by the provision of Article 183 of the Criminal Code is public order, the orderliness prevailing in a certain social space and respect for the laws<sup>20</sup>. The elements of the crime are public provocation or incitement to disobedience in any manner or via the Internet against the laws or orders or against other lawful orders of the authority. Consequently, laws to which citizens are not subject are those with a public law content. Such laws are, in particular, laws of a police, tax, and criminal nature<sup>21</sup>.

According to the criminal theory, provocation is the direct incitement to others to perform a certain act or omission, while incitement is the indirect influence on the will of others to perform a certain act or omission, by stimulating their emotional world, passions, or instincts. Both, however, achieve the same result, through the stimulation of the person to whom the offender<sup>22</sup> is addressed.

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<sup>19</sup>The prosecutor's order was prompted by reactions in a high school in western Thessaloniki, when a student was not allowed to attend class because he refused to produce the compulsory self-test.

<sup>20</sup>S.C. 944/1998, NoB 1998,1501.

<sup>21</sup>Margaritis, M.- Margaritis, A. (2020), *Criminal Code, Interpretation – Application*, P.N. Sakkoulas, 492.

<sup>22</sup>Kaberou, E., in Charalambakis, A. (2019), *The new Criminal Code, Interpretation article by article, law 4619/2019, First vol.*, 1225.

## Spreading fake news

Finally, another “tool” for limiting the dissemination of fake news is the provision of Article 191 of the Greek Criminal Code. This provision amended Article 191 of the old Criminal Code, in force since 1985 and replaced by the new Criminal Code (4619/19), according to which “(1). Whoever publicly or through the Internet disseminates or spreads in any way false news with the effect of causing fear to an indefinite number of people or to a certain circle or category of persons, who are thus forced to undertake unplanned actions or to abort them, with the risk of causing damage to the economy, tourism or defense capacity of the country or disturbing its international relations, shall be punished by imprisonment for up to three years or a fine. (2). Whoever negligently commits the act of the preceding paragraph shall be punished with a fine or community service.”

According to this provision (as originally introduced by the new Criminal Code), the spreading of fake news was standardized into an offence of effect and damage to public order, for the establishment of which it is necessary to cause fear to an indefinite number of people, or to a certain circle or category of persons, who because of this fear undertake unplanned actions or cancel planned actions, thus damaging public order in its social and political aspect, by creating the possibility of risk of damage to the areas of state activity described in it. Thus, the view was expressed<sup>23</sup> that this provision limited the scope of the offence and defined the scope of the criminal conduct with objective criteria only to those acts that cause damage to public order and endanger the sectors of the economy, tourism, defense capability, and international relations since it no longer criminalized the spreading of simple rumors<sup>24</sup>, as was the case with the previous Criminal Code, but only fake news<sup>25</sup>.

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<sup>23</sup>Kaberu, E., n.p. 1316.

<sup>24</sup>Rumors are announcements that are already in the public domain and come from an unverified source. It is unquestioned information that spreads uncontrollably by word of mouth and does not claim authority and authenticity as presented by the one who spreads or disperses it, Krippas, G. (1996), The crime of spreading false news and rumors, *Criminal Chronicles*, 503–404., Kabero, E., n.d., 1319.

<sup>25</sup>Fake news is news that does not correspond – objectively and not in the perpetrator’s impression – to the truth because it refers to a non-existent event. Article 191 of the Criminal Code does not apply if the disturbance of the citizens’

The above provision as it was in force with Law no. 4619/19 is considered more lenient than the previous Article 191 of the former Criminal Code and more compatible with the freedoms of expression and speech, unlike the previous one which was argued to be one of the greatest barriers to the free movement of information<sup>26</sup>. In this way, the scope of defamation is limited and therefore the scope of criminalization of what one says in the exercise of the Constitutional right to expression is limited.

Crime offends public order in both its social and political aspects<sup>27</sup>. In particular, apart from the social order that lies in the peaceful and tranquil coexistence of citizens, the unimpeded enforcement of the state's will in the specific sectors of the economy, tourism, and the country's defense capacity and its international relations, which are at risk of being damaged due to the reactions of citizens, which are exclusively due to the fear caused by the dissemination or spreading of fake news<sup>28</sup>, are also affected. Its main difference from the corresponding provision of the previous Criminal Code is that the dissemination of fake news capable of causing concern or fear among citizens, of disturbing public confidence, or of shaking the public's trust in the national currency or the armed forces of the country is not sufficient for the completion of the crime, but it is necessary that fear has been genuinely aroused in an indefinite number of people or a certain circle or categories of people who are forced by it to take unplanned actions or to cancel them, with the risk of damage to the economy, tourism, or the defense capacity of the country or of disturbing public relations (Explanatory Memorandum of Draft of Criminal Code). Thus, it becomes necessary to establish a causal link between the individual results standardized in the provision.

Thus, applying the above provision correctly, by means of Order No. 116/04-01-2021 act of the Athens<sup>29</sup> Public Prosecutor's Office, a complaint of EODY was filed due to the nonestablishment of the crimes

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peace and quiet was caused by the citizens' unjustified deception and credulity (Prosecutor's of the Athens Court of Appeal Opinion1-8/2017, 2017, Criminal Procedure 2017,978).

<sup>26</sup>Kapsis, G. (1980), *Censorship – The “Law” in its practice*, Armenopoulos, 97.

<sup>27</sup>S.C 2/2017, *Criminal Chronicles*, 2018,2018.

<sup>28</sup>Kaberu, E., 1316 et seq.

<sup>29</sup>No/. 116/4.1.2021 Athens District Prosecutor's Office (Prosecutor of Athens District Court Kasotakis I.) *Criminal Chronicles*, OA/2021, 637

of spreading fake news (191 Criminal Code), violation of measures for the prevention of diseases (285 Criminal Code), and incitement to disobedience (183 Criminal Code), on the ground that the posting of two publications on the Internet (Facebook and Twitter) with content<sup>30</sup> questioning the validity of the results of the public system of coronavirus infection does not fall within the scope of the above crimes. According to the above filing act, the above reports, untrue as they may be, although they fall within the concept of fake news provided for in Article 191 of the Criminal Code and may cause fear in certain people about the effectiveness of the EODY's action, it has not been found that they can force any person to carry out unplanned actions. In view of the provision of Article 191 of the Criminal Code, it is no longer sufficient to spread fake news or even to cause fear among citizens because of it, but it is also required that due to the fear caused by fake news, they undertake unplanned actions that additionally endanger the economy, tourism, defense, or international relations of the country, which did not occur. According to the filing act, they cannot be included in the objective element of Article 285 of the Criminal Code because they do not constitute a violation of measures that have been ordered, nor did the publications result in provocation or incitement to disobedience; therefore, the publications are not included in the objective element of the crime of Article 183 of the Criminal Code.

But then, the State made again a recent amendment<sup>31</sup> to Article 191 of the Criminal Code, according to which "Anyone who publicly or through the Internet disseminates or spreads in any way false news that is likely to cause concern or fear among citizens or to undermine public confidence in the national economy, the country's defense capacity or public health shall be punished with imprisonment of at least three (3) months and a fine. If the act was committed repeatedly through the press or via the Internet, the perpetrator shall be punished by imprisonment for a term of at least six (6) months and

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<sup>30</sup>A complaint was filed against the complainant by the EODY according to which he posted a message on his personal pages in social media (facebook , twitter) according to which a woman known to him received a phone call from the EODY about a positive test, although she had given her details in order to undergo a coronavirus detection test, she was ultimately not subjected to a test due to the delay observed for the conduct of this test.

<sup>31</sup>With the replacement of article 191 of the Criminal Code by article 36 of Law No. 4855/2021.

a fine. The same penalty shall be imposed on the actual owner or publisher of the medium by means of which the acts referred to in the preceding subparagraphs were committed.”

According to the Explanatory Memorandum accompanying the Draft of the Law, the proposed regulation replaces Article 191 of the Criminal Code and partially restores the form it had under the previous law. Criminal Code, after considering modern requirements, since its current form, which requires citizens to carry out unplanned acts or to abort them, does not contribute to the purpose of the existence of the provision in question, which is to protect public order in the strict sense, that is, the order prevailing in the State because of the general subordination to the legal order.

In addition, the proposed provision explicitly includes public health, an addition that was obviously necessary given the pandemic of COVID-19, and the phenomena of widespread rumor-mongering and the creation of concern and panic among citizens, particularly on public health issues. Finally, paragraph 2 of Article 191 of the Criminal Code, which punishes negligent commission of the act, is repealed because its criminal value is limited to those perpetrators, authors, owners, or publishers, whether apparent or latent, who intentionally and knowingly spread false news.

Thus, a crime of “potential danger”<sup>32</sup> has been restandardized since this fear now only needs to take the form of a potential danger.

The mentioned sectors of tourism and international relations have been deleted, and the sector of public health has been added. In addition, the provision reintroduced the concept of causing “concern” to citizens, whereas under the current Code, the concept of concern had been removed and only the creation of “fear” was required. Concern is an emotion inferior to fear, which is not considered capable of justifying the subsequent actions of citizens.

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<sup>32</sup>According to the definition given in science, crimes of potential risk (or with a different definition abstractly – of specific risk) are those in which the risk is provided for by the legal status not as a given (as in crimes of specific risk) but as a possible occurrence, in other words, for the fulfillment of the legal status of the crime it is not required that the risk actually occurs but the objective possibility of its occurrence is sufficient, see. In this regard, see Androulakis, N., General Part I, 115; Manoledakis, Io. (2004), General Theory of Criminal Law, 272; Brakoumatsos, P. (2008), PoinDik, 763; Morozinis, Io., Criminal Chronicles, 2015, 495; Charalambakis, A. (2021), General Part I, 238.

In the new provision, the reason for linking the criminal offence of spreading fake news to coercing the recipients of the news to take unplanned actions or to cancel them has been completely removed.

A form of complicity was also added in every case of dissemination, for the person who is the actual owner or publisher of the medium of dissemination of fake news.

As regards the punishment of the basic form of the offence, the penalty framework is tightened as instead of imprisonment of up to three years or a fine, imprisonment of at least three months (thus up to 5 years) and a cumulative fine are provided for.

Also, a serious case of repeated commission of the offence was added, where the minimum penalty is increased to six months' imprisonment and the cumulative imposition of a fine.

Regarding the negligent commission of the offence which (as paragraph 2 of Article 191 of the Criminal Code as it was in force with Law 4619/19) was repealed.

## Conclusion

We note, therefore, that in view of the social and health issues arising from the COVID pandemic, the State legislature, by amending the relevant criminal provisions to the strictest extent, by issuing Legislative Content Acts, has tried to create an effective grid for the protection of public health and social order. However, in any case, no matter how suffocating the framework may be, in such matters that have serious social implications, criminal law can only stimulate citizens to voluntarily comply with the existing provisions for the protection of public health. Because no matter how strict the regulations are, the need to comply with them must be reinforced among citizens. The strengthening in this case of the executive at the expense of the other powers is still a worrying phenomenon. On the other hand, the restriction of constitutional freedoms and human rights can only be tolerated up to a certain point, subject to the necessary measure and with respect for the constitutional principle of proportionality.

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# Corruption risks in public procurement in the context of COVID-19

MARIA STYLIANIDOU

**Abstract:** The primary concerns of corruption risks posed by the pandemic in the field of public procurement are examined in this chapter. The COVID-19 epidemic significantly increased the likelihood of corruption. Massive resources were deployed to address the health and economic crises, which presented chances for corruption. Many corruption prevention and enforcement mechanisms were suspended owing to the emergency, however. A number of legal tenets of public procurement law were put into question by the COVID-19 situation, which was unlike any other. Among other things, the traditional belief that direct negotiations between public buyers and sellers should be avoided. The potential of corruption during COVID-19 was a concern with the rule of law in and of itself. At the same time, it jeopardised the pandemic response, eroded much-needed public trust, wasted supplies and money, and slowed down the supply of aid to those in need. Best practices, pertinent standards, and available tools to fight corruption in the public procurement sector during the pandemic response and recovery period are also highlighted in this chapter.

**Keywords:** resilience, emergency state, public procurement, transparency, integrity, infringement, direct awards, corruption.

## Introduction

A crucial part of government operation is public procurement. To fulfil their obligations, public institutions and state-owned businesses must buy commodities, services, and works. In many nations, the benefits of public procurement directly contribute to the wellbeing of their population by funding vital services like healthcare, welfare, education, and other necessities.

One of the areas of government where corruption is most likely to occur is public procurement<sup>1</sup>. The number of transactions and financial interests at stake, the complexity of the process, the tight collaboration between government and business, and the wide range of stakeholders are all important elements that are thought to contribute to this vulnerability<sup>2</sup>.

These weaknesses may be taken advantage of in a number of ways, including embezzlement, improper influence during the needs assessment, bribery of public officials engaged in the awarding process<sup>3</sup>, or fraud in the evaluation of bids, invoicing, or contract obligations. Conflicts of interest in decision-making provide significant corruption risks as well as have the potential to skew the distribution of resources through public procurement<sup>4</sup>. Furthermore, the procurement procedure may be further harmed by bid-rigging and cartel activity.

The COVID-19 pandemic era, however, required governments to act quickly to address the immediate social and public health challenges<sup>5</sup> as well as enact broad and significant economic support and stimulus measures to address the economic impacts. This is when the value of public procurement may have never been more apparent. Certain measures put in place by EU member states made existing problems with public contracting procedures worse. Contracts were awarded via “simplified, accelerated, or restricted procedures, all of which could be open more easily to fraud,” according to the European Anti-Fraud Office<sup>6</sup>. Fast-track procedures raised the likelihood of mismanagement. If we concentrate on EU cases, people observed procurement scan-

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<sup>1</sup>Olken, B. (2007), Monitoring Corruption: Evidence from a Field Experiment in Indonesia. *Journal of Political Economy* 115, no. 2: 200–49.

<sup>2</sup>OECD, Preventing Corruption in public procurement, OECD Public Governance Reviews, OECD Publishing, 2016, [http://www.oecd.org/ethics/corruption\\_2016\\_en.pdf](http://www.oecd.org/ethics/corruption_2016_en.pdf).

<sup>3</sup>Estimates of bribes range from 8% to 25% of the value of procured goods, services, or works.

<sup>4</sup>European Commission (2014a), Report from the Commission to the Council and the European Parliament – EU Anti-Corruption Report, accessed online on 8 June 2016 at [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-humantrafficking/corruption/docs/acr\\_2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-humantrafficking/corruption/docs/acr_2014_en.pdf).

<sup>5</sup>In the EU, even in normal times, 28% of the documented cases of corruption in the health sector are related specifically to procurement of medical equipment. See [http://ti-health.org/wpcontent/uploads/2017/01/Making\\_The\\_Case\\_for\\_Open\\_Contracting\\_TL\\_PHP\\_Web.pdf](http://ti-health.org/wpcontent/uploads/2017/01/Making_The_Case_for_Open_Contracting_TL_PHP_Web.pdf).

<sup>6</sup>The Olaf Report 2020.

dals develop across the continent, exposing instances of politicians profiting from procurement deals, significant contracts being given to firms without prior knowledge of the health care<sup>7</sup>, or even to reputed fraudsters<sup>8</sup>.

In light of this, it is not unexpected that many people are concerned about increased levels of corruption and irregularities in the way government contracts are granted, according to the Global Corruption Barometer – EU survey<sup>9</sup>.

The majority of EU citizens (52%) don't believe that government contracts are awarded competitively. Instead, they believe that bribes or personal ties are frequently used to influence the purchase of goods or services in their nations. At least 50% of people in 16 EU member nations, including France (50%) and Germany, hold this opinion. It

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<sup>7</sup>According to the Organised Crime and Corruption Reporting Project, for instance, open records revealed that on March 26, 2020, Slovenia's government agreed to pay Public Digital Infrastructure d.o.o. 25.4 million euros to provide unnamed "protective equipment" for COVID-19. According to corporate records, the business is a fully owned subsidiary of the Dutch corporation Elektronek Group B.V., which is under the ownership of one of Slovenia's richest men, Joc Peenik. Interblock d.d., one of Peenik's other companies, manufactures and sells gaming gadgets in the American state of Nevada, where he also owns a house. Although Peenik started doing business in Nevada in the early 2000s, the company just received a gaming license there in 2008. Peenik has been a pillar of Slovenia's gambling sector for many years. Public records, however, don't indicate any prior participation in the medical field. Peenik will benefit greatly from the emergency deal, which is the largest coronavirus equipment contract ever issued in Slovenia. Dutch records for 2017, the most recent year for which data is available, show the parent company of the coronavirus contractor made 87.7 million euros. The new agreement, at 25.4 million euros, would account for 29% of that sum. In the final week of March 2020, the Agency for Commodity Reserves awarded contracts totaling over 80 million euros, and about two-thirds of those contracts—including Public Digital Infrastructure—went to just four vendors. Twenty additional businesses each received a portion of the remaining 32%. See, Delić, A./Zwitter, M., (2020), *Opaque Coronavirus Procurement Deal Hands Millions to Slovenian Gambling Mogul*, OCCRP, <https://www.occrp.org/en/coronavirus/opaque-coronavirus-procurement-deal-hands-millions-to-slovenian-gambling-mogul> (accessed on 19 April 2020).

<sup>8</sup>In the midst of the crisis brought on by the spread of COVID-19 across the nation, it was reported that two Italian businesspeople who have been charged with fraud had won governmental contracts for the supply of protective equipment to public bodies. <https://www.occrp.org/en/daily/12007-italy-grants-covid-19-public-contracts-toalleged-fraudsters>.

<sup>9</sup>See <https://www.transparency.org/en/gcb/eu/european-union-2021>.

is most prevalent in Bulgaria (76%)<sup>10</sup> as well as Cyprus (75%) and Greece (74%).

The present paper will focus on integrity challenges in public procurement during the pandemic, on the measures that selected EU countries adopted to face the crisis and finally on the steps that governments must follow to ensure transparency and integrity in public procurement system even in emergencies.

## **Integrity challenges in public procurement during the pandemic**

The COVID-19 crisis<sup>11</sup> created three main integrity challenges for governments in the area of public procurement.

First, in order to fulfil the immediate demands of the health sector and impacted areas, governments hurriedly purchased vast amounts of products and services, including hospital equipment, medical ventilators, hand sanitisers, facemasks, and health services. With rules that authorised and specified specific procedures for emergencies, several governments were creating or strengthening their emergency procurement policies in order to handle this. These clauses made it possible to buy essential products directly from or through a pre-approved list of suppliers, bypassing the customary, if drawn-out, procurement procedures. This could enhance the integrity risks associated with purchasing products and services that fall short of quality requirements or were procured through corrupt means<sup>12</sup>.

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<sup>10</sup>According to Transparency International, Bulgaria is perceived as the most corrupt EU member state. <https://www.transparency.org/en/news/cpi-2021-we-stern-europe-european-union-trouble-ahead-forstagnating-region>.

<sup>11</sup>Past health emergencies and natural disasters have been plagued by corruption challenges. In the United States, for example, the aftermath of Hurricanes Katrina, Rita, and Wilma saw numerous cases of corruption, with over 1,439 people charged by 2011, for crimes including: government and private-sector benefit fraud, fraudulent charities, identity theft, government contract and procurement fraud, and public corruption. See, U.S. Department of Justice Disaster Fraud Task Force, Report to the Attorney General for Fiscal Year 2011, 4 April 2013. <https://www.justice.gov/sites/default/files/criminal-disasters/legacy/2013/04/04/ReportDFTF2011.pdf>.

<sup>12</sup>A March 2020 report from Europol issued a bulletin cautioned against criminal profiteering, fraud, cybercrime, and money laundering in the context of the crisis, noting several cases that are currently being looked into. See Europol's

Although there is always a chance of fraud and corruption in public procurement<sup>13</sup>, the risk is increased during times of emergency<sup>14</sup>. The European Commission issued a Guidance on using the Public Procurement Framework during the COVID-19 crisis<sup>15</sup> on April 1, 2020, acknowledging the extreme and unforeseen urgency with which public procurement must be conducted. It states that according to Article 32 of the EU's public procurement directive 2014/24<sup>16</sup>, a “negotiated procedure without publication” may be utilised in specific situations. This means that, instead of following a standard competitive method (so-called open, restricted, or competitive procedures with negotiation)<sup>17</sup>, a government could award a contract straight to a preselected company during this time. This makes it possible for the public buyers to acquire goods and services in the shortest possible time — a few hours, or even days.

Second, there was a lack of stockpile readiness in many countries, which fuelled international competition for supplies, globally<sup>18</sup>. The

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website at <https://www.europol.europa.eu/publications-documents/pandemic-pr-ofiteering-how-criminals-exploit-covid-19-crisis> on March 27, 2020, for more information.

<sup>13</sup>Delić, A./Zwitter, M. (2020), *Opaque Coronavirus Procurement Deal Hands Millions to Slovenian Gambling Mogul*, OCCRP, op. cit.

<sup>14</sup>For example, Hungary exempted certain purchases of goods (direct purchases from Hungarian sources, not including those from EU sources) that related to coronavirus protection from the country's Public Procurement Act (see Government Decree No. 48/2020). See [https://www.cmslawnow.com/ealerts/2020/03/hungary-relaxes-certain-public-procurement-rules-during-covid-19-crisis?cc\\_lang=en](https://www.cmslawnow.com/ealerts/2020/03/hungary-relaxes-certain-public-procurement-rules-during-covid-19-crisis?cc_lang=en).

<sup>15</sup>Communication from the Commission: Guidance from the European Commission on using the public procurement framework in the emergency situation related to the Covid-19 crisis, 2020/C 108 I/01, OJ C 108 I/1.4.2020, p. 1.

<sup>16</sup>Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94/28.3.2014, p. 65.

<sup>17</sup>However, the Guidance makes clear that the medical needs of hospitals could not have been foreseen before the health crisis, so the swift procedures already provided by the public procurement legislation are applicable. Other consumables or products can be purchased by negotiation without publication for extreme urgency only to the extent that they are absolutely necessary to fight the current pandemic.

<sup>18</sup>It's interesting to note that during the COVID-19 pandemic, demand for some over-the-counter goods, such masks or hydroalcoholic gels, increased both publicly and privately, multiplying demands and escalating competition among potential customers. This imbalance in the market for medical products initially affected the more developed nations since they were better equipped to deal

public and private sectors' mechanisms and negotiating positions were switched in this case<sup>19</sup>. Numerous private entities and thousands of contracting authorities were searching the market for the same goods that were being manufactured at the time by a small number of vendors. Additionally, some of these enterprises' output was halted or negatively impacted by the lockdown measures. Due to increased competition among government organisations and the introduction of haphazard business methods, the market was regarded as being exceedingly chaotic<sup>20</sup>. To meet their own demands, many countries also implemented export restrictions, which had an impact on the availability of goods globally. Due to market dominance, a lot of transactions were off-book, price volatility was considerable, and suppliers frequently demanded sizable upfront payments<sup>21</sup>. In order to obtain necessary products and services, buyers might collude with sellers, which is the opposite of what typically occurs. This could lead to a paradigm shift in corrupt schemes. Furthermore, because

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with the ensuing price increases. The poorest countries, on the other hand, had to deal with different difficulties, including whether the international community would offer vital help as those poorer countries faced dramatically increased prices. This was because the pandemic had not yet spread to those nations. This widening gap in the market was compounded by buyer competition. Early in May 2020, the World Bank planned to help its beneficiary countries using a new method of aid, by introducing vendors to interested governments. This was the World Bank's response to these challenges. See Enzo de Laurentis, COVID-19: How the World Bank is helping countries procure critical medical supplies, [https://blogs.worldbank.org/voices/covid-19-how-world-bank-helping-countries-procure-critical-medical-supplies?cid=ECR\\_E\\_NewsletterWeekly\\_EN\\_EXT&deliveryName=DM63224](https://blogs.worldbank.org/voices/covid-19-how-world-bank-helping-countries-procure-critical-medical-supplies?cid=ECR_E_NewsletterWeekly_EN_EXT&deliveryName=DM63224).

<sup>19</sup>For instance, on March 24, a cross-section of front-line buyers from the Americas and Europe described how the relative power of buyers and sellers had shifted in the COVID-19 pandemic at an international webinar. Public Procurement International's Online Colloquium on Public Contracts and the Coronavirus will be held on March 24, 2020. For more information, see <https://publicprocurementinternational.com/2020/03/16/public-contracts-and-the-coronavirusonline-colloquiummarch-24-2020/>.

<sup>20</sup>Tanfaniand, J./Horwitz, J., Special Report: The Mask Middlemen – How pop-up brokers seek big paydays in a frenzied market, Reuters, <https://www.reuters.com/article/us-health-coronavirus-masksspecialreport/special-report-the-mask-middlemen-how-pop-up-brokers-seek-big-paydays-in-a-frenziedmarket-idUSKBN21I32E> (accessed on 10 April 2020)

<sup>21</sup>Folliot Lalliot L., La concurrence entre États sur l'achat de matériel médical et sanitaire aggrave le problème, *Le Monde* 30/3/2020, [https://www.lemonde.fr/idees/article/2020/03/30/la-concurrenceentre-etats-dans-les-chaines-d-approvisionnement-public-aggrave-la-crise-sanitaire\\_6034848\\_3232.html](https://www.lemonde.fr/idees/article/2020/03/30/la-concurrenceentre-etats-dans-les-chaines-d-approvisionnement-public-aggrave-la-crise-sanitaire_6034848_3232.html).

many of the required supplies depend on scarce raw resources, this risk may spread across the supply chain. In other words, the market crisis triggered a confidence crisis.

Third, governments had to oversee ongoing public contracts. In order to effectively respond to suppliers who were badly impacted by the crisis and its effects on the economy<sup>22</sup>, they had to identify those who were particularly at risk. Governments had to make sure that the suppliers who were most at danger could resume regular contract delivery after the outbreak was contained, together with their contracting authority. Legislation governing public procurement frequently offers special measures, such as allowing certain advance payments or exempting suppliers from fines for poor contract performance, for paying continuing contracts in emergency situations. Should such derogations from accepted norms that regulate contractual agreements not be subject to open guidelines published to all contracting authorities, they could pave the way for corrupt conduct.

## **Procurement in the COVID-19 era: What we learned from selected EU countries**

In an effort to combat the spread of COVID-19, EU countries adopted measures pertaining to the application of public procurement provisions that either :

- (1) included specific legal requirements or
- (2) included interpretation (guidance) given to contracting authorities regarding the application of legal requirements. EU countries had to deal with the operational issues of implementing review processes that were impacted by the outbreak. Economic actors had the

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<sup>22</sup>A procurement policy paper on “Supplier relief due to COVID-19” was published in the UK by the Cabinet Office. The policy paper stated that contracting authorities should pay all suppliers as soon as possible to sustain cash flow and protect jobs in order to guarantee business and service continuity. The statement also stressed the need for suppliers and contracting agencies to cooperate to provide openness throughout this time. Suppliers who received public monies on this basis and during this time frame were required to formally commit to maintaining a “open book” policy. In order to show that payments have been made to the supplier under contract in the intended manner, they were required to make any data, including that from ledgers, cash-flow forecasts, balance sheets, and profit and loss accounts, available to the contracting authority as requested.

right to appeal decisions made by contracting authorities that violated the rules governing public procurement. However, the COVID-19 epidemic had an impact on how the procurement review processes actually worked because of the sanitary precautions that were put in place to combat it. National authorities took action that led to restrictions on direct access to review bodies (such as visits to offices to personally file appeals) and direct participation in hearings held at review bodies' locations, among other things. This paper provides examples of strategies used by a few EU countries to address the aforementioned issues, taking into account the Global Corruption Barometer-EU study.

## **Bulgaria**

The Public Procurement Law (PPL)<sup>23</sup> was modified on March 14, 2020, and a new reason for the PPL's non-application was added<sup>24</sup>. More precisely, a law relating to the procurement by contracting authority for the purchase of medical equipment and personal safety gear required for anti-epidemic measures was introduced in circumstances of proclaimed emergencies. This act was issued by the Minister of Health or the Director of Regional Health Inspection. The outbreak also had an impact on how procurement review procedures were conducted. The authority that reviews procurement in Bulgaria, the Commission for Protection of Competition, temporarily suspended the mandatory public proceedings that were necessary before the approval of its decisions. The National Assembly passed a law on March 13, 2020, with measures that deferred deadlines, including those for challenging contracting agencies' decisions and rulings from the aforementioned review body before the Supreme Administrative Court.

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<sup>23</sup>See <https://www2.aop.bg/obnarodvano-e-dopalnenie-v-zakova-za-obstestvenite-porachki/>

<sup>24</sup>In this legal context, 1,005,602 € were paid for three direct awards for sanitising supplies and Covid-19 testing, according to the data that is currently accessible (for the months of March–June 2020), <https://ted.europa.eu/udl?uri=TED:NOTICE:463745-2020:TEXT:BG:HTML>

## France

The Directorate of Legal Affairs of the Ministry of Finance (DAJ) posted two information notes<sup>25</sup> on its website: one explaining the specifics of COVID-19 and the other outlining the conditions under which the negotiation process was authorized without a contract notice being published<sup>26</sup>. The information note addressed both the execution of contracts that were in place as well as the issue of contract awards in the context of COVID-19. Economic operators may utilise force majeure to excuse problems with the performance of their pending contracts, even if those contracts lack particular sections that would otherwise call for such a defence.

A given event must meet three requirements in order to be classified as a force majeure:

- it must be unexpected, which the pandemic unquestionably was;
- it must be external to both parties, which the pandemic unquestionably was; and
- the economic operator or the contracting authority was utterly unable to perform the contract or any of its components (about deadlines or quantities).

The Government urged the authorities to acknowledge that their partners were experiencing a force majeure scenario as a result.

The Government released an Ordinance on March 25, 2020<sup>27</sup>, outlining a number of actions linked to the change of procurement laws, process, and contract execution brought on by the COVID-19 pandemic. It pertained to contracts subject to the Public Procurement Code's rules and those that were exempt from them. It's interesting to note that the order was applicable to contracts signed after the state of sanitary emergency was declared on March 12, 2020, but

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<sup>25</sup>See <https://www.economie.gouv.fr/daj/passation-et-execution-des-marches-publics-en-situation-decrise-sanitaire>.

<sup>26</sup>In this legal context, and according to the available data (for the months March to September 2020) 254,032,744,8 € were spent for about 240 direct awards for sanitising supplies, protective equipment and Covid-19 tests. See study by an independent team of researchers posted on <https://occrp.org/>

<sup>27</sup>The Emergency Act issued on 23 March 2020, enabled the Executive branch to govern by Ordonnances in several areas.

with the constraint that they could not be more than two months old.

The decree expected the following answers in particular:

- contracting agencies extending the deadlines for receiving bids or requests to participate in processes that were started prior to the proclamation of the state of sanitary emergency. Additionally, a time frame long enough for business owners to submit offers or requests was given. For those contracts that were to be finalised immediately, the aforementioned duty did not apply;
- if the contracting authority could not adhere to the various competition-related solutions envisioned in the procurement documents and in accordance with public procurement rules, during the process, they might be modified as long as the equitable treatment of all economic actors was respected;
- the potential for contracts to be extended beyond their initial term in the following circumstances: a) where a new competitive process could not be planned; b) beyond the maximum term foreseen by the Public Procurement Code (i.e., four years in the public sector and eight years in the utility sectors) in the event of framework agreements);
- Extending the terms of contracts and concessions beyond those outlined in the Public Procurement Code (extensions may not go beyond  $T + 2$  months plus the time required to perform the competitive procedure);
- the potential for changing the terms governing advance payments;
- It is crucial to note that contracting authorities were not required to acquire guarantees from contractors who made the initial request for an advance payment in an amount more than 30% of the contract value. The maximum amount of advance payments was set at 60% of the contract value.
- if the contractor could not fulfill the terms of the execution period for one or more contract clauses, or if fulfilling those clauses on schedule would require the contractor to take actions that would clearly be disproportionately burdensome: The contractor had the right to request an extension of the time limit for

execution for a duration at least equal to  $T + 2$  months, as long as the request was submitted prior to the expiration of the initial contractual time limit(s);

- If the contractor was unable to finish all or part of the contract, particularly if they can demonstrate that they had the essential processes to do so or that adopting them would put an obviously excessive load on them: Despite any exclusivity clause and without the initial contract's party being able to assume, as a result, the contracting authority's contractual responsibility, the contracting authority may enter into a substitute contract with a third party to satisfy those of its needs that cannot be delayed; in that case, the contractor may not be penalized, subject to damages, or have any contractual liability incurred; the contractor party to the original contract cannot execute the replacement contract at their expense or risk;
- The contractor may be compensated by the contracting authority for expenses incurred that were directly related to the performance of a canceled order or a terminated contract in the event that the contracting authority cancelled a purchase order (a call-off in framework agreements) or terminated the contract as a result of administrative actions taken in response to the sanitary emergency.

## Italy

Derogations from the terms of Legislative Decree No. 50/2016 (the Public Procurement Code) were adopted by Decree Law No. 9 of March 2, 2020<sup>28</sup> and other Decrees of the Head of the Civil Protection Department. One such clause that enabled a waiver from the need that economic actors be consulted in advance in cases where contracts do not meet EU criteria is the one relating to personal protective equipment and medical gadgets connected to emergencies. It should be noted that the derogation from the requirement of prior consultation of economic operators is generally only allowed in the

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<sup>28</sup>In this legal context, and according to the available data (for the months March – October 2020), 482,364,808 € were spent for 34 direct awards for sanitising supplies, protective equipment and Covid19 tests. <https://www.occrp.org/en/coronavirus/europes-covid-19-spending-spreed-unmasked>.

case of contracts worth less than €40,000 and in the case of negotiated procedures without prior publication of a contract notice required by extremely urgent circumstances (in those circumstances, it is customary to consult at least five economic operators). By means of deviation from the current regulations, it was allowed to give the supplier the option of receiving the full commission price in advance<sup>29</sup>. However, the Ministry of Justice noted in a note that this derogation raises significant corruption concerns; as a result, careful consideration must be given to the application of the relevant rule, using acceptable justification, in any situation.

## Cyprus

In a circular dated March 26, 2020, the Treasury of the Republic of Cyprus announced a number of actions related to public procurement contracts<sup>30</sup>.

The Treasury made a number of significant decisions on the public procurement process, some of which were announced:

Regarding the completion of publicly granted contracts:

1. *A delay in contract execution or commencement:*

The competent authorities / bodies would proceed with the signature and performance of contracts that had already been awarded but whose signing was still pending. However, if the signing of these contracts was prevented by an extraordinary occurrence, it would be delayed to a later, more convenient date, based on the specifics of each instance.

2. *Bid withdrawal:*

Under certain conditions, bidders would be permitted to back out without having to pay damages or forfeit their deposited participation guarantees in the event that bids for public con-

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<sup>29</sup>See, Dentons Files, COVID-19 and derogations from the procurement code in Italy, 16 mars 2020, <https://www.jdsupra.com/legalnews/covid-19-and-derogations-from-the-52116/>

<sup>30</sup><http://www.treasury.gov.cy>. In this legal context, and according to the available data (for the months April-August 2020), 580.000 € were spent for 14 contracts awarded by restricted procedure or competitive procedure with negotiation, for sanitising supplies, protective equipment and Covid-19 tests.

tracts were withdrawn during the evaluation stage and/or successful bidders asked to proceed with the signing of the contract stated that they were no longer able to perform the relevant obligations due to the situation caused by COVID-19.

3. *Delivery of Certificates and Guarantee Letters*

The appropriate authorities would evaluate the circumstances and might proceed with the signing while requiring the pertinent documents at a later date, delay the signing, or decide that the bidder was unable to perform the contract but not require any compensation as a result of the said circumstances.

Regarding new or outstanding Public Procurement contests:

1. *Expedited methods for completing public contracts*

As a result of the COVID-19 virus, a number of affected authorities and bodies were forced to quickly enter into public contracts in order to carry out urgent and/or additional duties. As a result, the awarding authorities would be able to carry out accelerated public procurement procedures as necessary, always in accordance with the relevant laws and published circulars and procedures.

2. *. Guarantees of Participation / Commitment to Not Withdraw a Bid*

The awarding authority would make an effort to avoid asking for participation guarantees or a pledge to refrain from withdrawing a proposal after the day the circular was issued.

3. *An extension of the bid submission deadline*

In order to make sure that there was enough competition in the public procurement process, the awarding authorities had the authority to consider the possibility of extending the deadline for submission of bids, particularly in situations when this was requested by the pertinent economic operators.

4. *The validity period for bids*

The initial validity period of the bid could possibly be extended by the awarding authority while taking the virus's effects into account. This would only occur if appropriate, required, and

subject to the condition that it would not impose an unreasonably onerous burden on the economic operators.

5. *Economic Operators providing clarifications*

Finally, there would be an extension for responding to any economic operators' clarification requests that were made in respect to public contracts that were still in the bid review stage.

## Greece

In response to the COVID-19 outbreak in the nation, four legislative acts were released between February 25, 2020, and March 20, 2020<sup>31</sup>, introducing, among other things, significant exclusions to the general public procurement laws. Be aware that the fight against the COVID-19 outbreak and all preventive measures taken in this context fall under the definition of “force majeure,” as stated by the Single Public Procurement Independent Authority (HSPPA) on March 12, 2020, in accordance with clarifications provided by the European Commission to Public Procurement Expert Groups on March 18, 2020. As a result, the related circumstances could serve as a justification for the adoption of the aforementioned exemptions from the standard public procurement framework as well as future ones. They could also permit the direct award of public contracts that exceed the thresholds outlined by EU Directives 2014/24 and 2014/25 without prior publication or the prior review of SPPIA, as well as more flexibility in how those contracts are carried out.

The competent Minister or competent Awarding Authority would also take exceptional measures with regard to ongoing tender processes or completed public contracts of any kind up until September 20, 2020, as long as the direct threat for the outbreak or spread of COVID-19 would continue. These measures included the following:

- the adjournment of any tender process;

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<sup>31</sup>In this legal context, and according to the available data for the months January 2020-June 2021 (eprocurement.gov) the number of direct awards corresponds to 65% of all contracts and the allocated is limited to approximately 16% of the € 13.5 billion spent for public procurement.

- If a request for bids was already published before March 20, 2020, the time for submission of offers in ongoing procurement processes may be extended;
- the extension of deadlines, whether a contract is being awarded or being executed;
- the postponement of contractual due dates for a duration to be determined by the relevant decision.

Contracts for the prevention of the spread of COVID-19 should only be reviewed by the Court of Auditors if their value exceeds Euro 900,000 (€900,000), deviating from the general criteria for public procurement.

## **Next steps or how to ensure transparency and integrity in public procurement system even in emergencies**

During the pandemic, the public procurement sector first learnt that it is important to require that procedures remain clear and traceable, at the very least ex post, even in times of emergency. The requirement to publish post-award notices giving important details about the contract promotes transparency.

Although the European Directives may call for a consistently transparent and accountable procedure, especially in times of emergency, the procurement rules of EU Member States do not always uphold these standards. Not to mention that in certain countries that hurriedly exempted COVID-19 contracting from their standard public procurement procedures, transparency and accountability occasionally completely vanished<sup>32</sup>.

Given that more public procurement processes are conducted online, award notices should be posted as soon as possible online, with the data being easily identifiable (for instance, on a frequently visited public website), accessible, and machine-readable in accordance with

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<sup>32</sup>As the above mentioned paradigms are demonstrating.

open contracting best practices<sup>33</sup>. In order to focus accountability during times of disaster, such as the COVID-19 pandemic, the data pertaining to emergency contracting may be gathered on a government web repository specifically for the crisis. This makes it simple to account for the contracts that were sent out to cope with the crisis. For the COVID-19 pandemic, for instance, Lithuania<sup>34</sup> and Greece<sup>35</sup> had established such a platform. Thus, civil society gains from a simpler understanding of public action in terms of good governance and transparency, which helps to quell rumors and, most importantly, restore faith in the legitimacy<sup>36</sup> of the public buyer.

It is important to note that transparency in procurement has an additional unintended benefit when purchasing needs to be redirected as a global crisis spreads: transparent procurement will give other buyers insights about where urgently required products may be stashed. This COVID-19 pandemic lesson reinforced an emerging principle in public procurement: public policy tends to presumptively tilt towards transparency as the transaction costs of transparency decrease due to information technology advancements and market players become more accustomed to transparency and accountability. This is because the positive externalities of transparency are virtually impossible to predict.

The governments should put in place specialised systems to supervise contracting and procurement around new disaster response effort in order to retain public confidence in the utilisation of the resources allocated to handle potential future calamities. Governments will take advantage of a crisis to abandon electronic bidding procedures in favour of direct contracting, which is frequently advocated by the private sector. Rapid decision-making is necessary in times of crisis, however procedures can be changed while still guaranteeing procurement integrity. These controls include measures to prevent and avoid

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<sup>33</sup>Open Contracting Partnership, Open Contracting Data Standard: Documentation (May 2017), <https://standard.open-contracting.org/latest/en/#open-contracting-data-standard-documentation>

<sup>34</sup><https://vpt.lrv.lt/sudarytos-sutartys-kovai-su-covid-19>.

<sup>35</sup>See [https://public.tableau.com/app/profile/hsppa.webadmin/viz/2020-Contracts-forppp\\_4\\_states\\_process/Dashboard2](https://public.tableau.com/app/profile/hsppa.webadmin/viz/2020-Contracts-forppp_4_states_process/Dashboard2)

<sup>36</sup>Stylianidou, M. (2021), Accountability in Public Procurement – Transparency and the role of Civil Society, Newsletter 'In Depth', 2021, Volume 18 Issue 4, pp. 25–28.

conflicts of interest, make known the ultimate beneficial ownership of the suppliers of goods and services, update maps of corruption risks assessments, monitor how resources are used in real time by inspection and audit bodies, and train public officials on how to spot corruption cases early on<sup>37</sup>.

In order to protect law-abiding citizens, governments should provide whistleblowing channels, secrecy and protection, as well as incentive programs for whistleblowers. They should also urge citizens to disclose any corruption or unethical actions. Each citizen has a duty to watch out for others in order to ensure a more just and morally upright government and society<sup>38</sup>.

## Conclusion

The COVID-19 crisis paralysed the world's economies and presented numerous industries with hitherto unheard-of difficulties. Due to process delays, efficiency losses, and financial consequences, this crisis and the related regulatory measures added yet another degree of complexity to sustainable procurement. Investigating strategies for reducing risks and vulnerabilities while boosting the resilience of supply chain networks and operations is crucial. It becomes harder to be ready for and adapt to such disruptions because there is little to no precedent of helping organisations to fully comprehend what the potential future implications may be. This emphasises how important it is to make procurement decisions at the correct time and place in order to be resilient and better situated when the pandemic passes.

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<sup>37</sup>See, [https://developmentgateway.org/wpcontent/uploads/2020/10/DevelopmentGatewayReport\\_EmergencyProcurementCovid19.pdf](https://developmentgateway.org/wpcontent/uploads/2020/10/DevelopmentGatewayReport_EmergencyProcurementCovid19.pdf), pp 29–35.

<sup>38</sup>See also, [https://www.access-info.org/wp-content/uploads/RECORD\\_Transparency-in-EmergencyProcurement.pdf](https://www.access-info.org/wp-content/uploads/RECORD_Transparency-in-EmergencyProcurement.pdf).

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# Epimeter: Pandemic, Law, and State: The constant mutation of the raised issues – Reflections and points to note

PANAGIOTIS DEGLERIS

**Abstract:** Pandemics are a very complex social phenomenon. The coronavirus disease 2019 pandemic tested fundamental rights almost all over the world and brought to light important issues. It is obvious that law, rights, and justice are the big losers in this pandemic. The fact that the anticipated return to normal will be a disaster is undisputable but not obvious. We can avoid this disaster if we change our priorities and many of our beliefs. Pandemics should not be considered suspensions but accelerators of the historical evolution.

**Keywords:** pandemic, law, state, new normal.

## A “matching” of mutations

Coronavirus disease 2019 (COVID-19) mutations seem to be followed – in a way that seems to be a perfect matching – by constant mutations on public debate, legal thinking, and state.

The outbreak of the virus was considered a “local” crisis. However, its spread resulted in a pandemic that caused health, social, and global financial crisis and left a “footprint” of pessimism on the world’s population psychism. In addition, new alarming evidence emerged about its countless impacts.

At the same time, it is worth to highlight that over the centuries (since Black Death), pandemics are a very complex social phenomenon, far beyond infection and treatment <sup>1</sup>.

COVID-19 pandemic and the “quarantine” measures that were imposed in order to prevent the spread of the virus tested Constitutions, Democratic Institutions, and fundamental rights almost all over the

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<sup>1</sup>Snowden, F.M. (2021), “Epidemics and society: From the Black Death to the Present”, Patakis, p. 200 ff.

world. The pandemic is now considered a collective wound, a challenge for our resilience.

The issues that the pandemic brought to light could be described by the following key observations:

1. A severe financial – social crisis
2. A “deterioration” of Democracies
3. A new truth aligned with medical rules (instead of laws)
4. A modern type of states where experts, in the role of oligarchs, are able to change the procedures of democracy and reduce the importance of equality and social justice
5. A “new normal” where fear of the infection and fear of the death have a prevailing position.

There is no doubt that the art of governing has changed – a biopolitical approach toward a new massive threat about what “dangerous other” means<sup>2</sup>.

## **An “emergency period” or a “new state of exception”? – Biopolitics**

For many decades, the state of emergency remained rather “invisible”<sup>3</sup> to constitutional theory as well as to public debate. Its declaration was always a last resort.

The state of exception (Weimar Republic – Carl Schmitt) results in an invocation of emergency where legal restrictions do not exist (the one who decides the exception is the one who dominates).

This is exactly why the necessity of this act is always greeted with skepticism.

Since the Second World War, European Institutions and European citizens have tried to set the “state of emergency” within the limits of Law including always the term of “temporality”. However, the

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<sup>2</sup>Tsoukalas, K. (2021), “The ‘political’ under the shadow of the pandemic”, Kastanioti.

<sup>3</sup>Akrivopoulou, C.M., “Emergency and the boundaries of Democracy and rights”, *Journal of Administrative Law* 5/2020, p. 623 ff.

implementation, even of temporal measures, results in restrictions of freedom.

The prophetic title of the monography of Giorgio Agamben “State of exception: when emergency converts exception into rule” is worthy of special mention. Agamben analyses a state of exception that is not based on Law (Guantanamo) and mentions the Patriot Act that was enacted in direct response to the attacks of 11.9.2001 as a typical example.

“Pandemic created a Brave New World and a new biopolitical paradigm that is made of materials that already existed”, mentions Prof. Xenofon Kontiadis in his book<sup>4</sup>.

At the same time, Foucault’s approach to biopower and biopolitics is a timely tool of analysis.

The concept of biopolitics was introduced by M. Foucault in the late ‘70s, during his lectures at the College of Fance (1978–1979). Biopolitics refers to the tactics that the power uses to administrate and regulate the life and the death of humans. On this basis, power to be has the ability to shape human life to a desirable form, to a form that is necessary for its establishment and better serves its increase despite the fact that its aim should be the regulation of the safety and the prosperity of humans<sup>5</sup>.

Safety is linked to prosperity. Since ideological guidelines do not exist, the only regulation that remains is the regulation of life. Given that the nonpoliticized population is interested only in its own interests, the only way for power to be to deal with it is via fear. In this way, power to be is established and imposes its politics by satisfying its own interests. This is biopolitics, a new chapter in politics of which we were not aware.

It has become obvious that law and rights, democracy, and justice are the big losers in the pandemic. A number of constitutional matters emerged from the “theocracy” of technocrats and the algorithms. The institutional consequences are unpredictable. At the same time, “Constitutional mithridatism” is likely.

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<sup>4</sup>Kontiadis, X. (2020), *Pandemic, Biopolitics and Rights. The world after COVID-19*, Kastanioti.

<sup>5</sup>Kokkinos, G. (2021), *Worthy life – Unworthy life. Eugenics, degeneration, biopolitics: the doctor as social therapist and national re-educator*, Taxideftis.

As professor Vlachopoulos mentions, “As we try to protect our rights, we accept a temporary limitation of our constitutional rights. However, this does not mean that getting addicted to their loss is acceptable”<sup>6</sup>.

## Did new mutations “reveal” a new Leviathan?

The pandemic accelerated enforcing and dominance of already known practices, restrictions, and behaviors.

A short reference to the front cover of the original first edition of “Leviathan”, dated 1651, is perhaps timely. The thoughts of Tomas Hobbes about political community are depicted very successfully on this front cover.

The exact description of this engraving could be expressed as follows:

A giant human figure (man) (from Bible – Old Testament – Book of Job) stands huge above the countryside and the cities.

He wears a crown and holds symbolically a sword in one hand and a scepter in the other.

His body is made of thousands of human figures.

The following phrase is written just above this image: “There is no power on earth to be compared with him”. (Job. 41.24).

Suddenly, under this historical reference and under the new “visibility”, the state appears as a solution, not as a problem. A “new” theocracy is created, and the state returns to a dominant position.

There is no doubt that this evolution is dangerous for the democracies<sup>7</sup>. Nothing can be taken for granted anymore. On the contrary, we must have reservations and express our doubts about the usual “common sense” because the world we have to decode is increasingly complicated.

It is undoubtedly a total deconstruction of consent, social contract, and life.

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<sup>6</sup>Vlachopoulos, Sp. (2020), Constitutional Mithridatism. Individual Freedoms in pandemic eras, Eurasia, p. 35 ff.

<sup>7</sup>The Economist: “The triumph of big government”, November 20th-26th, 2021.

Citizens are active but absents. Leviathan is already visible and expresses “the abolishment of the possibility to express doubts about law”. The moral foundation of democracy recedes. The nonpolitical – neutral – technical and predefined routine appears. It is a new reality where solid values do not exist and solutions are provided by technocrats’ algorithms.

Democracy and justice are the big losers in the pandemic. Moreover, end of the pandemic does not equal end of the crisis. This must be highlighted.

This is the reason why the protection of democratic inclusion (democracy includes rich and poor, workers, bourgeois, homeless, jobless, petty bourgeois, great bourgeois, immigrants) is more necessary than ever.

The means to protect the democratic inclusion are the total implementation of rights, a new demand for participation, new democratic consents, the possibility to control all powers through law and justice, and the existence of a state of justice that targets to social values, to justice, and to the battle against injustice and inequality.

## Conclusion

Reflection is necessary. A new approach to justice that will aim to the convergence (rather than to the divergence) between the lawmaking process and the function of justice is also necessary.

As far as the “return to normality” is concerned, it is remarkable that societies tend to evolve through conflicts, contradictions, and even “explosions”. However, during periods of crisis, “we (completely irrationally) miss” the life as it was before – we probably whitewash the past.

In USA, in 1929, during the great depression, H. Hoover’s slogan (rivaling Fr. Roosevelt) was “Return to normalcy” – not to the established “normality”. This slogan prevails today, most likely uncritically. We do not think of the characteristics of the normality. Moreover, we do not think if a return to the prepandemic imprudent and destructive normality is desirable, tolerable, and achievable. We are looking forward to this return, but any such “return” is going to

be a disaster if we do not change our priorities<sup>8</sup>. Perhaps we should review many of our strong positions regarding the inherent limits of the political. Perhaps we should also believe that the concept of “normality” has become disputable and that “pandemics” should not be considered suspensions but accelerators<sup>9</sup> of the historical evolution.

Suddenly, Karl Max’s 11th thesis on Feuerbach is again timely: “philosophers have only interpreted the world in various ways; the point, however, is to change it”<sup>10</sup>.

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Europe is characterised by developed liberal democracies that put a strong emphasis on the protection of human rights. Since the 1950's, no major political or economic event has put in question the commitment of the European Union or the Member States to upholding the rule of law and to protecting fundamental human rights. The COVID-19 pandemic presented the first major challenge to these commitments. Despite the existing network of rules protecting human rights, it is undisputed that this network has been undermined by the governmental actions taken in response to the pandemic.

This publication is the result of a coordinated research effort by Frederick University academic staff to identify the impact of the COVID-19 pandemic on human rights through doctrinal, comparative, multidisciplinary and empirical research. In particular, the book addresses the following issues: the pandemic as a major challenge for women's working life in the EU; digital transformation in the COVID-19 era; privacy vs public health in the case of COVID-19 tracing apps; effects of the pandemic crisis on general population mental health; employee rights during pandemic in social sciences; the impact of the pandemic on shipping; how criminal law helps to tackle the pandemic; corruption risks in public procurement in the context of COVID-19; and the continuous mutation of the raised issues among pandemic, law and the state.

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