DEROGATION FROM HUMAN RIGHTS: FREEDOM OF EXPRESSION IN TIMES OF PANDEMIC

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This paper aims to explore the legal aspects in which freedom of expression was affected during the pandemics, with particular attention paid to the ongoing COVID-19 pandemic. It explores the concepts and mechanisms of the right to freedom of expression, the derogation clause and how these two legal notions collided in times of public emergencies that took the form of pandemics. Therefore, the historical, theoretical and, importantly, practical aspects of the freedom of expression and the derogation provisions will be analysed and addressed.

The pandemics, with special reference to the unfolding coronavirus (COVID-19), have caused public health emergencies which led to the instauration of a "state of emergency" in many countries [1, p.45]. As a mechanism to fight against the immediate threats to the national security imposed by the pandemics, states can use the derogation clause which is enshrined in the international legal tools in order to enforce efficient measures that would normally infringe the fundamental human rights.

There are, obviously, various degrees of requirements and conditions that are meant to prevent the abuse of the derogation from human rights. These requirements include procedural requirements, such as the instauration of a state of emergency throughout an official act, notification of the relevant international institution about the intention and reasons for derogation along with the post-notification of its termination [2], – and the substance requirements that are echoed in the principles of international law, such as legality, proportionality, necessity and non-discrimination [3].

Freedom of expression has a dual character. The right to hold an opinion is non-derogable and no one, under any circumstances, can violate an individual's right to hold an opinion. The right to express the opinion does, however, have its limitations when the public

interest is set above the interest of an individual. In the context of the pandemics, no authority should bend the previously stated basic rules.

Although mechanisms of protecting public safety were set well in advance, when the COVID-19 pandemic struck many of them proved to be far from efficient in real life. In the century of globalization, it hits as a surprising occurrence to find such limited international collaboration and lack of solidarity when it comes to fighting against an infectious and silent, but still common, enemy.

The right to freedom of expression, which includes the right to hold opinions without interference, the right to seek and receive information, the right to impart information, – were limited in the context of interests of the authorities. Freedom of expression in times of pandemics also conditioned the creation of the concepts of "infodemics" which related to the overabundance of information [4], and "infodemiology" [5] which represents the area of science research focused on scanning the internet for user created health-related content. The online community rapidly became flooded with cascades of fake news, conspiracy theories and blunt forums discussing even blunter ideas.

This occurrence conditions a double-edged outcome: firstly, the general public will lack information regarding events and phenomena that have a direct and strong impact on their lives, such as the case of censorship in China. Secondly, the absolute abstention from interfering with the circulation of news across the media proved to lead to a chaos of unfiltered information which ultimately resulted in the loss of public trust in relation to the vaccination.

Freedom of expression in times of pandemics proved to be a very delicate subject to approach. International actors such as the WHO, CDC, and the Human Rights Committee have repeatedly emphasized on the importance of freedom of expression in terms of giving space to the general public to access information, to form opinions and to distribute them further to the public. That does not, however, mean that a chaos of information is welcome. On the contrary, freedom of expression is limited to the point that it bears the responsibility to primarily protect the public safety and health and morals of the people.

To this end, a paradigm can be observed. Given that no law can possibly anticipate all case scenarios however brilliantly and flawlessly it is formulated, it remains for the mechanisms to pour solutions into the cracks of laws. To this end, we can distinguish two aspects when it comes to the derogation to human rights, specifically in the context of freedom of expression.

So, on one side, the law sets forth the basic provisions regarding the rights, the limitations and the possibilities of derogations from human rights. These provisions must be formulated as specific as possible, but at the same time, their application should be as general as possible. Considering these rhetorical contrast parameters, international instruments such as the ECHR, ICCPR, ACHR and ESC solved the task at hand in a rather applaudable way.

On the other side, subjects are bound to transform the above set of provisions into a reality. In doing so, their actions must not breach any other international laws or non-derogable human rights. Therefore, the burden to carry on legal provisions falls onto the states to apply or, if the case so requires, enforce them.

As observed in the present research, somewhere between elaborating the provisions and bringing their enforcement to life a void appears and disturbs the whole process. While investigating this peculiar discrepancy between *what ought to be* and *what actually is*, we consider that one approach to plugging the puncture would be to review the process of implementation.

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