

# Restrictions on Human Rights During the COVID-19 Pandemic in the Western Balkans

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## **Abstract**

*This paper analyzes some human rights restrictions due to the COVID-19 pandemic. At the beginning of 2020, the world faced a situation that caused a global imbalance at all levels. It was not just a public health crisis, but also a situation that brought about an economic, social, and humanitarian crisis. The pandemic, as an extraordinary situation, forced the limitation of some fundamental freedoms and rights, such as freedom of movement, assembly, religion, information, etc. which greatly affect the dignity of individuals. In the first part of the paper, we will extensively discuss when measures to limit human rights can be taken, and what the exceptional situations for their limitation are, specifically addressing the extraordinary situation of the COVID-19 pandemic. At the end of the paper, we will raise some issues for discussion and conclusion, which should receive great attention from all national and international political, economic, and social actors.*

**Keywords:** restriction of rights, COVID-19 pandemic, state of emergency, healthcare protection, global emergency, restrictive measures.

**JEL Classification:** K32, K38

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## **1. Introduction**

State organization relies on the fundamental principles of democratization and protection of human rights. The compilation of the legal framework is done by taking into account the principle of separation of powers in horizontal lines (legislative, executive, judicial) and vertical lines (central and local power) which aim to balance the competencies for the realization of the human rights catalog, defining cases of their exclusion from limitation<sup>3</sup>. The principle of the rule of law constitutes one of the

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<sup>3</sup> See some details in Savchenko, V., I. Michurin, and V. Kozhevnykova. 2022. "Restrictions on Human Rights Due to Covid-19 Outbreak." *Access to Justice in Eastern Europe*, 2022 (3): 73–86.

fundamental guarantees for respecting human rights, as a non-interference state behavior in the direct application of the rights provided for in the Constitution and international acts. On the other hand, the state remains the guarantor of non-interference with fundamental rights, explicitly providing for cases of limitation. The principle of the rule of law is one of the fundamental elements of democracy as a form of governance. Ensuring through constitutional norms and other legal acts as well as the implementation of this principle in daily life are necessary conditions for the functioning and development of a free society, for peace and social security, the increase in prosperity for all layers of the population, and the better respect for individual fundamental rights and freedoms. Contemporary constitutions acknowledge and define such a concept of the rule of law, which simultaneously contains formal and material elements. This is dictated especially because of the need and importance of reflecting in these documents the catalog of human rights, as generally defined by key international acts and documents in this field.<sup>4</sup>

Democracies engaging in law enforcement must respect the constitutional legal framework of their country when implementing restrictions during emergencies such as a pandemic. There is considerable concern that countries with fragile democracies, lacking consolidated institutions, are more likely to pose serious threats to democracy, including adopting measures that violate human rights standards as a result of the pandemic<sup>5</sup>. The implementation of approved security measures for citizen protection should be proportional and balanced, ensuring that human rights are used as security measures as a last resort, considered less restrictive than all options that may be applied. During this period, the power of specific institutions to address this emergency has changed. Considering that democracy and the rule of law are necessary conditions for respecting human rights and that the legal nature of limitations on these rights may directly impact the democratic systems of states, reaffirms the fundamental role of the independence and actions of public authorities and oversight institutions, especially the judiciary and the legislative one, whose operations must be ensured even in the context of a pandemic.<sup>6</sup> The state of emergency is a significant threat to constitutionality and constitutional government. Due to the complexity of this situation in which the country may find itself and the very high risk present in the state of emergency, the risk of arbitrariness, constitutional provisions on this situation should usually be specified with great clarity and accuracy.<sup>7</sup>

The biggest problem encountered during the pandemic was precisely the abuse of limiting human rights under the alleged reason of paramount and public interest. Western Balkan countries are considered to have fragile democracies, where legislative and governance institutions are not properly consolidated, and the space for "abuses" is

<sup>4</sup> Zaganjori Xh., Anastasi A., Çani E., *Shteti i së drejtës në Kushtetutën e Republikës së Shqipërisë*, Conrad Adenauers – Stiftung, Albania. 2017, p. 17.

<sup>5</sup> Westminster Foundation for Democracy (WFD), *Siguria publike V/S. Mbrojtja së të drejtave të njeriut në situata emergjente*. 2020, p.12. Available online at: [https://www.wfd.org/sites/default/files/2021-12/Siguria-Publike-Te-drejtat-e-njeriut-FINAL-ALB\\_0.pdf](https://www.wfd.org/sites/default/files/2021-12/Siguria-Publike-Te-drejtat-e-njeriut-FINAL-ALB_0.pdf), last access on February 25, 2024.

<sup>6</sup> Inter-American Commission on Human Rights, OAS-More rights for more people, "Resolution No.1/2020 Pandemic and Human Rights in the America".

<sup>7</sup> *Ibid*, p. 15

larger. The term "abuses" can also be paralleled with the lack of experience and adequate capacities to manage emergencies such as COVID-19. What can be analyzed for these countries is that the cases of limiting fundamental rights are well defined constitutionally and legally, even the Western Balkan countries, such as Albania and others, have ratified international conventions for the protection of human rights. This means that in case of emergencies, appropriate legal measures are taken by every international recommendation. However, the problem lies in how the limitation is implemented due to the situation that dictated it. What could be the possible risk of these actions despite the consolidation of democratic institutions in the long term in these countries?

Article 15 of the European Convention on Human Rights, states: "In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law."<sup>8</sup> Therefore, according to this clause, the limitation of rights must be proportionate to the situation that dictated it. At this moment, the question arises: who decides what is such a crucial public interest that human rights must be restricted? Looking at the legal regulation of some countries, the authority for limiting rights may lie with the Parliament, but there are also cases where it may be decided by the judiciary system.

Regarding limitation, in some doctrines, it is described as such a relationship: the more important the individual right is, the more important the public interest for which it will be restricted. The limitation must pass several tests. The first test is that of compelling interest. In this case, the limitation of human rights must be to the extent necessary to fulfill public and governmental interests. The second test is the test of reasonableness, therefore of a reasonable limitation.<sup>9</sup> It should be emphasized that a public policy based on human rights for the prevention, care, and control of the pandemic requires a broad, multidisciplinary approach based on strengthening mechanisms for international cooperation between countries.<sup>10</sup>

<sup>8</sup> See some connections in Carreño, Ignacio, Tobias Dolle, Lourdes Medina, and Moritz Brandenburger. (2020). "The Implications of the COVID-19 Pandemic on Trade." *European Journal of Risk Regulation* 11(2): 402–10. DOI: 10.1017/err.2020.48; Popa Tache, C. E., & Săraru, C. S. (2024). „Evaluating today’s multi-dependencies in digital transformation, corporate governance and public international law triad”. *Cogent Social Sciences*, 10(1). <https://doi.org/10.1080/23311886.2024.2370945>.

<sup>9</sup> Anastasi A., Omari L., *E drejtë kushtetuese*, Tiranë ABC 2010, p. 82. Also see Chiozza, Giacomo, and Jeffrey King (2022). "The State of Human Rights in a (Post) COVID-19 World." *Journal of Human Rights* 21 (3): 246–62. DOI: 10.1080/14754835.2022.2051450; Korenica, Fisnik, and Bardhyl Hasanpapaj (2022). "Limitation of Rights in the Times of the COVID-19 Pandemic: A View from Kosovo’s Constitutional Court’s ‘Shaky’ Jurisprudence." *The International Journal of Human Rights* 27 (5): 872–95. DOI: 10.1080/13642987.2022.2066081.

<sup>10</sup> Inter-American Commission on Human Rights, OAS-More rights for more people, Resolution No.1/2020 Pandemic and Human Rights in the Americas (Adopted by the IACHR on April 10, 2020). Available online at: <http://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>, last access on February 24, 2024.

## 2. Methodology

Various secondary sources were used to collect information for the paper, including analyses published by international institutions. General qualitative and descriptive methods were employed. By using certain methods, it has become possible to summarize the definitions of human rights restrictions, cases of such restrictions, and the rights that can be restricted. These methods can also be used to assess how different countries managed the COVID-19 emergency and their impact on human rights violations, as well as their social, political, and economic consequences. Through the methods mentioned above, we were able to formulate research questions.

1. Was the restriction of rights made by the dictated situation?

2. During the Sars Covid-19 pandemic, were the emergency measures adopted by the principles of legality and the rule of law?

In the first part of the paper, it will be discussed in detail when measures can be taken to restrict human rights, and what are the exceptional situations of their restriction. Speaking specifically about the exceptional situation of the Covid-19 pandemic. The restrictions can be justified by the dictated situation. All the measures taken by different states, with the greatest focus on the Western Balkans, were either recommended by international and internal legal guidelines or not. In this way, we can also answer the questions research raised above.

Regarding the research hypothesis: "Restrictive measures during COVID-19 were based on the principle of not infringing the essence of basic rights and freedoms", through the entire analysis of specific issues, making the relevant deductions, we will be able to confirm the hypothesis raised to prove or disprove. At the end of the paper, we will raise some issues for discussion and give conclusions, which should receive a great deal of attention from all political, economic, social, national, and international actors.

## 3. Criteria for limiting fundamental rights and freedoms

When discussing the limitation of human rights, it is clearly and specifically outlined in international instruments regarding the cases of limitation and the conditions that must be met. All this is to avoid misinterpretation or abuse by different states. Article 15 of the European Convention on Human Rights, it is stated: "In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law." With this statement, it is understood that cases of limitation will depend on the situation dictated by it, without compromising the essence of rights and freedoms.

As a result, this concept serves as a "guarantee of the essence" for freedoms and rights, intending to uphold their integrity and avoid distortion. In this instance, the challenge is figuring out what exactly makes up an unalienable constitutional right. This may result in case-by-case discussions. In continuation of Article 17, it is stated that:

"No one may use the rights guaranteed by this Convention to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention." States are not permitted to go over the restrictions outlined in this Convention in these situations.<sup>11</sup>

In some countries, the restriction of rights, without exceeding the limitations provided for in the Convention, is provided for in ordinary laws or the Constitution. Taking the case of Albania, it is expressly provided for in its Constitution in Article 17, which states more specifically: Restrictions on the rights and freedoms provided for in this Constitution may only be established by law for a public interest or the protection of the rights of others. The restriction must be proportionate to the situation that dictated it. These restrictions cannot undermine the essence of freedoms and rights, and in no case can they exceed the limitations provided for in the European Convention on Human Rights. Indeed, in the legislation of every state, it is explicitly provided which rights can be restricted and which cannot.

Article 17 of the ECHR is a characteristic guarantee only for the Constitution of Albania. There are different experiences worldwide regarding the status given by the ECHR. Another international guarantee is provided through ratified international agreements, which have binding legal force. In terms of their universality, the effective protection of human rights requires collective protection and international solidarity. Acknowledging that states have different resources norms, laws, and guidelines on human rights can provide a basis for assessing how well government measures promote people's rights while protecting public health.<sup>12</sup> We must agree that limitations on human rights must comply with the requirements of legality, necessity, appropriateness, and proportionality. These requirements can serve as fundamental principles when assessing certain restrictive measures.<sup>13</sup>

The pandemic has prompted reflections and discussions in all countries, from various perspectives. While the right to life is absolute, there is no hierarchy of rights, so violations or consequences of specific rights should not be treated in isolation from other rights. No human right is more important than another. Interconnectedness means that all human rights are intertwined. However, it must be emphasized that human rights have limitations or restrictions imposed by public authorities, and authorities exercise

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<sup>11</sup> For a comparative view see Soyaltin-Colella, Digidem, and Deniz Sert. 2024. "The Strategic Use of Narratives and Governance of the COVID-19 Pandemic in Major Autocratisers in Europe." *Journal of Balkan and Near Eastern Studies* 26 (4): 565–83. DOI:10.1080/19448953.2024.2307820.

<sup>12</sup> Oxfam Discussion Paper: *Covid-19 and Human Rights States "obligations and businesses" responsibilities in responding to the pandemic* Available online at: <https://www.althingi.is/pdf/erindimals/?lthing=151&malnr=2010051>, last access on February 26, 2024. Also see Popa Tache, C. E., Săraru, C. S. & Kouroupis, K., „Different perspectives concerning the right not to use the internet and some analogies with education”, *European Journal of Privacy Law & Technologies*, Issue 2024/1, Focus Section available here: <https://universitypress.unisob.na.it/ojs/index.php/ejplt/index>, last access on August 20, 2024.

<sup>13</sup> Mingazov, L. H., Sinyavskiy, A. A., „The Restrictions of Human Rights During COVID-19 Pandemic”. *Utopía y Praxis Latinoamericana*, vol. 25 (12), 2020, p. 151.

these limitations in various ways.<sup>14</sup>

States should follow four key democratic legal principles for restricting rights:

The first principle, the principle of legality, implies that the rule of law should take precedence even during an emergency. States must adhere to constitutional provisions when enacting new legislation and executive decrees. New laws enacted during the pandemic should be in line with the country's constitution and international standards.

The second principle applied during a pandemic is the limited duration of the state of emergency and its measures.

The principle of necessity dictates that emergency measures must achieve their goals with as few changes as possible to normal democratic rules and procedures. Furthermore, measures should be as limited as possible in their scope of action and should not create a situation where "the legislature gives the executive *carte blanche* (complete freedom)".

The fourth principle that states must apply during an emergency refers to the distribution of competencies and controls over executive action.<sup>15</sup>

#### 4. Restricted rights and freedoms during COVID-19

As mentioned above, one of the most unusual situations regarding the restriction of fundamental rights and freedoms was undoubtedly the COVID-19 Pandemic. Faced with such an unprecedented situation, the world was unprepared for its management. International acts clearly outlined which rights should be restricted in case of an emergency, but we had not faced such a large number of rights that needed to be restricted.

When compared to previous outbreaks, COVID-19 is the worst disaster in human civilization history. All impacted nations have swiftly implemented additional regulations, which differ depending on the nation, in response to the UN's standard protocol.<sup>16</sup> Every nation needs to achieve a harmonious equilibrium between safeguarding public health, reducing economic and social disparities, and upholding human rights. Human rights frameworks offer an essential framework that can improve the efficacy of international efforts to combat the epidemic. Promoting and defending the health and human rights of people everywhere has faced special and quickly changing problems as a result of the global and national responses to COVID-19.<sup>17</sup> The crisis has demonstrated the need to adapt existing standards to new realities. Developing new universal and regional international standards for human rights and health can

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<sup>14</sup> Magendzo, A., Osler, A., „The Covid-19 pandemic: a challenge and an opportunity for human rights educators”. *Human Rights Education Review*, 3 (2), 2020, p. 68–82.

<sup>15</sup> Ibid.

<sup>16</sup> Sulbadana, Palipadang L., Purnamasari A. I, Supriyad, „The potential of human rights violations in the management of Covid-19”. *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 24, (3), 2021, p. 30-34.

<sup>17</sup> World Health Organization, *Addressing Human Rights as Key to the COVID-19 Response*, 2020. Available online at: <https://iris.who.int/bitstream/handle/10665/331811/WHO-2019-nCoV-SRH-Rights-2020.1-eng.pdf?sequence=1>, last access on February 26, 2024.

address the fragmented approach to their restriction in the event of a pandemic and prepare the world for new threats.<sup>18</sup>

The Office of the United Nations High Commissioner for Human Rights has issued five principles that should be followed during the state of emergency of the COVID-19 pandemic, which are:

I. Equality and non-discrimination;

II. Participation. Participation in decision-making affecting people's lives reflects the concept of human dignity.

III. Proportionality. The principle of proportionality is common, although the details may vary from one system to another.

IV. Dignity and human care.

V. Rights to freedom of expression, assembly, and information.<sup>19</sup>

Human rights violations have crossed the globe and the complete gamut of rights between the pandemic's beginnings and the present. The majority can be divided into two categories: the first is the pervasive violation of civil and political rights; the second is the extremely unfair and discriminatory effects of COVID-19, of which the most notable is "vaccine apartheid," which is more common in high-income nations like the USA and Europe but lags far behind in low-income nations across the globe. Irregular arrests of marginalized communities occurred in numerous nations. Instead of governments abusing their power, some of the most heinous human rights violations during the epidemic resulted from their inability to lessen the effects of prejudice that was already deeply ingrained in healthcare systems and other institutions.<sup>20</sup> However, it is worth noting that the activation of a state of emergency, as is known, has rules. The reason is that restricting rights is an extremely sensitive issue for individual rights and democracy.<sup>21</sup> It is essential to provide some of the rights and freedoms that were restricted during Covid-19.

***The right to life and the right to personal integrity.*** With its roots in the notion of upholding human dignity, the right to personal integrity is often regarded as one of the essential standards of human rights.<sup>22</sup> All human rights are impacted by the pandemic in different ways, but some are more severely affected than others. These include the rights to life, health, and personal security as well as the rights to employment, social security, education, food, water, and shelter. Keeping in mind that, given inter-American standards on this matter, states have a considerably stronger need to respect and guarantee human rights in the context of economic activities within the framework of the pandemic, including the extraterritorial application of this

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Friedman E. A., Clinton C., Gostin L. O. *Human Rights at the centre of the COVID-19 Pandemic*. Think Global Health 2023. Available online at: <https://www.thinkglobalhealth.org/article/human-rights-center-covid-19-pandemic>, last access on February 22, 2024.

<sup>21</sup> Valerio C., „Human Rights and Covid-19 pandemic”. *JBRA Assisted Reproduction* 24 (3), 2020, DOI:10.5935/1518-0557.20200041.

<sup>22</sup> Carraro V., „The effects of the COVID-19 pandemic on violations of the right to the integrity of the person”. *Journal of International Humanitarian Action*. 9, 5, 2024 DOI: 10.1186/s41018-023-00148-z.

obligation.<sup>23</sup>

**Freedom of movement.** Article 2 of Protocol 4<sup>24</sup> provides that: Everyone lawfully within the territory of a State shall, within that territory, have the right to move freely and to choose his residence freely. Every person shall be free to leave any country, including his own. The exercise of these rights shall not be subject to any restrictions other than those which are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or the protection of the rights and freedoms of others. Some restrictions may be imposed by the law and justified by the public interest in a democratic society. Even in this provision, it is envisaged that the restriction of freedom of movement shall only be made for reasons that are justified and for the protection of the public interest.

Government measures to protect public health implied that the majority of European citizens remained isolated in their homes. This is a clear interference with their right to freedom of movement, protected by the ECHR, which includes the right to leave the territory of a country, to enter their own country, and to move freely within the territory of a country where they have lawfully entered. Travel restrictions may have the effect of denying the right to seek and receive asylum or absolute prohibition of return.<sup>25</sup>

**Restriction of Civil and Political Rights in the Context of Covid-19.** To protect public health, international human rights law permits limitations on civil liberties, including the freedom of movement, the right to family and private life, and the freedoms of assembly and association, so long as these limitations are reasonable, justified by the law, and applied in a way that is impartial and non-discriminatory.

In addition to these legal constraints on human rights, public health measures have frequently gone beyond them. Particular human rights concerns are raised by digital surveillance and the application of penal law to compliance. In addition, emergency measures have been used by authoritarian governments more often to target political opponents and restrict civil liberties.<sup>26</sup>

**Violations of the right to life and healthcare during the Covid-19 pandemic.** Indeed, the COVID-19 pandemic has revealed glaring fractures in healthcare systems, healthcare inequalities, racism, and discrimination, the minimization of the right to freedom of expression and access to information, and gross negligence in protecting prisoners from COVID-19 infection; all of these constitute clear violations of

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<sup>23</sup> Ibid.

<sup>24</sup> Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides for several rights and freedoms beyond those already included in the Convention and in Protocol 1 to the Convention.

<sup>25</sup> The AIRE Center (Advice on Individual Rights in Europe), *Covid-19 dhe ndikimi te të Drejtat e Njeriut*, 2020. Available online at: <https://www.rolplatform.org/wp-content/uploads/2020/05/Covid-19%20and%20the%20WB%20-%20ALB.pdf> last access on February 26, 2024.

<sup>26</sup> Bueno de Mesquita, J., Kapilashrami A., Meier B. M., *Human Rights Dimensions of the COVID-19 Pandemic*. The Independent Panel for Pandemic Preparedness and Response, 2021. Available online at <https://theindependentpanel.org/wp-content/uploads/2021/05/Background-paper-11-Human-rights.pdf>, access on February 22, 2024.



international human rights principles,<sup>27</sup> the right to life, and the highest attainable standard of health. Adopting evidence-based public health measures to protect the right to health, tailored to support the needs of different population groups, is also an integral component of the right to health; however, many countries experienced delays in implementing necessary measures or failed to address the situation of vulnerable and marginalized populations.

**Violations of the right to freedom of thought and expression during the Covid-19 pandemic.** The right to access information is one of the rights falling within civil and political rights, as everyone has the freedom to access, seek, receive, and impart information and ideas of all kinds, orally, in writing, in print, or electronically, in the form of art or by any other means.<sup>28</sup>

**Gender equality and prevention of violence against women.** Existing gender and social inequalities worsened by COVID-19 affect girls and women differently from men and boys. Women and girls' exposure is likely influenced by social norms and expectations around their caregiving roles, both in terms of caring for the sick at home and in the healthcare workforce. Reports have emphasized that stay-at-home measures put women at increased risk or those in abusive relationships at increased risk of domestic violence or intimate partner violence. Violence against women and girls is a serious violation of human rights. Governments should recognize the heightened public health risk to women and girls from violence.<sup>29</sup>

One of the most well-known and serious consequences of human rights during the pandemic has been an extraordinary increase in cases of domestic violence, often observed in connection with lockdowns and other mobility restriction measures. Strict mobility restrictions and school closures also had a disproportionate impact on women in other ways. Women are disproportionately more likely to work in the informal sector and service industries, making them economically more vulnerable to isolation measures, quarantine, social distancing, and the slowdown of economic activity. When women have the opportunity to work from home, online work and education require access to the internet first and foremost. Even when they have such access, gender inequalities may result in fewer opportunities for them to use it for reasons related to cost, limited socialization, and family pressures.<sup>30</sup>

**Rights to freedom of religion and belief were also restricted.** Individuals were not allowed to visit their places of worship gather in groups to practice their religious rituals or be visited in their homes by those providing pastoral care. Additionally, freedom of expression and the right to receive and disseminate information were limited. However, the specific importance of the right to information in a pandemic situation where everyone's health is at risk must be taken into account in imposing these

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<sup>27</sup> Elshobake, M.R.M., „Human rights violations during the COVID-19 pandemic”. *International Journal of Human Rights in Healthcare*, Vol. 15 No. 4, 2022, p. 324-339, DOI: 10.1108/IJHRH-11-2020-0097.

<sup>28</sup> Ibid.

<sup>29</sup> World Health Organization, *Addressing Human Rights as Key to the COVID-19 Response*, 2020. Available online at: <https://iris.who.int/bitstream/handle/10665/331811/WHO-2019-nCoV-SRH-Rights-2020.1-eng.pdf?sequence=1>, last access on February 26, 2024.

<sup>30</sup> Ibid.

restrictions.<sup>31</sup>

**The right to education.** The extent to which the right to education is violated when learning is suspended to prevent transmission should be underlined. It should be mentioned that several nations have permitted the use of distant learning platforms for remote learning as an addition to normal school attendance. It does, however, carry some discrimination because a sizable portion of students lacked the appropriate technological tools to participate in distance learning.<sup>32</sup>

Throughout the COVID-19 outbreak, discrimination has been pervasive.<sup>33</sup> Human rights models have been shaped in practice by discrimination and inequality. This has affected how marginalized and vulnerable groups, such as racial and ethnic minorities, the elderly, people with disabilities, women, children, migrants, refugees, institutionalized people, indigenous peoples, and LGBTI+ people, have responded to COVID-19.<sup>34</sup> These groups face multiple, intersecting barriers to their fundamental human rights. The regional countries should adopt an interdisciplinary approach when implementing emergency control measures to combat the COVID-19 pandemic. They should also pay close attention to the unique requirements and effects of these measures on the human rights of historically marginalized or high-risk groups, including the elderly and people of all ages with pre-existing medical conditions, people deprived of liberty, women, indigenous peoples, people in situations of human mobility, children and adolescents, LGBTI people, and people of African descent.<sup>35</sup>

**Support for vulnerable populations.** The threat and experience of COVID-19 varied for different groups. According to WHO guidelines, the health risk from COVID-19 for older adults and people with certain pre-existing conditions was considered greater than that for the general population. However, even within these vulnerable groups, there were differences and they could not fully enjoy their rights.<sup>36</sup>

**Other economic, social, and cultural rights.** These rights, which are also social determinants of health, include the following: employment; social security; education; a living standard that includes access to food, shelter, water, and sanitary facilities; and the advancement of science.<sup>37</sup> Policies about general public health can be especially difficult for underprivileged groups. When viewed through the lens of human rights, public health measures aim to safeguard the most marginalized elements of society; but,

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<sup>31</sup> Ibid.

<sup>32</sup> Magendzo, A., Osler, A., „The Covid-19 pandemic: a challenge and an opportunity for human rights educators”. *Human Rights Education Review*, 3 (2), 2020, p.68–82, DOI:10.7577/hrer.3996.

<sup>33</sup> Ibid.

<sup>34</sup> The Independent Panel for Pandemic Preparedness and Response, “Human Rights Dimensions of the COVID-19 Pandemic”, 2020.

<sup>35</sup> Inter-American Commission on Human Rights, OAS-More rights for more people, Resolution No.1/2020 Pandemic and Human Rights in the Americas (Adopted by the IACHR on April 10, 2020). Available online at: <http://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>, last access on February 24, 2024).

<sup>36</sup> Ibid.

<sup>37</sup> Bueno de Mesquita, J., Kapilashrami A., Meier B. M., *Human Rights Dimensions of the COVID-19 Pandemic*, 2021. The Independent Panel for Pandemic Preparedness and Response. Available online at <https://theindependentpanel.org/wp-content/uploads/2021/05/Background-paper-11-Human-rights.pdf>, last access on February 22, 2024.

in actuality, the result could be the opposite. For those most at risk of disease transmission, illness, and mortality, a pandemic response that is not only fairer but also more implementable and sustainable can be made possible by evaluating public health actions for COVID-19 in light of the needs of vulnerable groups and giving priority to their needs.<sup>38</sup>

Regarding the responsibilities for international collaboration and aid during COVID-19, many high-income economies have suffered, and the people and economies of low- and middle-income nations are probably going to suffer much more.<sup>39</sup>

## 5. The restrictions on human rights in the Western Balkans

Regarding the impact of COVID-19 on human rights, the AIRE Center (Advice on Individual Rights in Europe) has developed a study focusing on the Western Balkan countries during the period when we were just facing the pandemic. In its report, it is stated that the measures taken by governments to address the COVID-19 pandemic not only constitute an effort to avoid an epidemic but may also have long-term implications for human rights standards in the field of public health and condition the effectiveness of human rights norms in protecting these rights in emergencies soon. These developments may initiate a transformation of the relationship between individual rights and public rights in general.<sup>40</sup> The study includes countries such as Albania, Serbia, North Macedonia, etc. The analysis is based on key principles and ways of responding to and managing the situation, and recommendations provided by the WHO and other international actors.

In the Western Balkans, some marginalized groups of individuals, such as the LGBT community, face discrimination in accessing healthcare. This discrimination also affected their ability to be tested or treated for COVID-19, resulting in these marginalized individuals being at risk of more severe illness or even loss of life as a result of COVID-19.<sup>41</sup>

As mentioned previously in this research paper, states must adhere to four key democratic legal principles during the restriction of fundamental rights and freedoms:

- The first principle is the principle of legality.
- The second principle is the limited duration of the state of emergency and its measures.
- The third principle of necessity determines that emergency measures must achieve their goals with as few changes as possible to normal democratic rules and procedures.
- The fourth principle of the distribution of competencies and controls over

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<sup>38</sup> Zweig S.A. Alexander J., Beyrer C., Guhasapir D., Ad Haar Rohini J., „Ensuring Rights while Protecting Health Approach in Implementing Public Health Responses to COVID-19”, *Health and Human Rights*, Vol. 23, (2), 2021, p. 173-186.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

executive action.<sup>42</sup>

Albania adhered to the first and second principles of the letter. The Albanian government, however, only partially complied with the third criterion of necessity in accomplishing its objectives with the least amount of modification to customary democratic norms and practices. Human rights advocates have sometimes criticized the disproportionate responses.

There are various problems with comparing the responses of the Western Balkan countries to the outbreak. Above all, the hybrid democracies of North Macedonia, Serbia, and Albania were the ones who proclaimed a state of emergency or a similar status. The COVID-19 outbreak exposed pre-existing flaws in democratic institutions and the rule of law, particularly in these countries. First of all, it was challenging for the parliaments in these nations to supervise the executive regulations and their application. In Serbia, the government proclaimed a state of emergency without parliamentary approval. Serbia thus only partially satisfied with the criterion of need complied with the principle of the set duration for emergency measures and did not fully comply with the principles of legality and the separation of powers through checks on presidential actions. As the virus progressed, North Macedonia was getting ready for legislative elections when the country's parliament was dissolved. A state of emergency was proclaimed by the President since North Macedonia was unable to secure consent from the parliamentary branch. The interim caretaker government led North Macedonia through decrees, while the President extended the state of emergency four times without parliamentary approval.<sup>43</sup>

In Albania, Serbia, and North Macedonia, the state focused on implementing physical distancing through coercive measures, including high fines during the early days of the Covid-19 crisis. Governments attempted to control the media more in Albania, Serbia, North Macedonia, and, after the change of government.<sup>44</sup> The governments of Albania and Serbia also used restrictions imposed by the emergency to limit the space for civil society activism. Albania banned protests and mass gatherings as part of extraordinary measures to prevent COVID-19 infections.<sup>45</sup>

In general, the role of expertise and political accountability was more prominent in consolidated democracies during extraordinary measures. For example, in Slovenia and Greece, the government followed expert analysis regarding the adoption and implementation of measures early in the pandemic's spread. In contrast, in the hybrid regimes of Albania, Serbia, and North Macedonia, the role of experts varied from one country to another during emergency measures. In North Macedonia, medical expertise was used to make decisions. In Albania, crisis management was led by the Ministry of

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<sup>42</sup> Westminster Foundation for Democracy (WFD), *Siguria publike VS. Mbrojtja së të drejtave të njeriut në situata emergjente* 2021. Available online at: [https://www.wfd.org/sites/default/files/2021-12/Siguria-Publike-Te-drejtat-e-njeriut-FINAL-ALB\\_0.pdf](https://www.wfd.org/sites/default/files/2021-12/Siguria-Publike-Te-drejtat-e-njeriut-FINAL-ALB_0.pdf), last access on February 25, 2024.

<sup>43</sup> The AIRE Center (Advice on Individual Rights in Europe), *Covid-19 dhe ndikimi te të Drejtat e Njeriut*, 2020, p. 36. Available online at: <https://www.rolplatform.org/wp-content/uploads/2020/05/Covid-19%20and%20the%20WB%20-%20ALB.pdf>, last access on February 26, 2024.

<sup>44</sup> *Ibid*, p.37

<sup>45</sup> *Ibid*, p.38

Health and the Ad-hoc Committee of Experts.<sup>46</sup>

In general, besides the study conducted by the AIRE center, studies carried out by other institutions such as the UN and WHO, have reached the result that these countries faced deficiencies in managing the Covid-19 pandemic. In countries like those in the Western Balkans and beyond, which are in a prolonged period of transition with non-consolidated democracies, it is observed that although measures were taken for physical distancing to prevent the spread of the virus, the issue lies in the severity of the restriction of human rights. Were such restrictions necessary to protect the public interest?

## 6. Discussions

Based on all that has been discussed above, in this section, we will raise some questions and attempt to provide the appropriate answers for a more accurate analysis. The first question that arises is: To what extent can the protection, respect, and guarantee of human rights be bypassed to enable the protection of citizens? From all the gathered information, when it comes to protecting the public interest, depending on the specific situation, it is necessary to apply several restrictions on fundamental rights and freedoms that inevitably may occur. However, this must be done without undermining the essence of freedom. It is precisely in the latter that cases of abuse during restriction or misinterpretation may be encountered.

If we focus on the right to life and the right to personal integrity, we would notice that in different countries, the boundary of respecting the non-derogative essence of rights and freedoms has been exceeded. Violations of integrity were quite widespread. Regarding freedom of movement, linked with the rights to freedom of religion and belief, we can say that it was somewhat justified. Although the restriction of movement resulted in the non-realization of other rights, such as asylum requests, etc. Freedom of religion and belief was only infringed upon regarding collective religious rituals. But we can say that the rights that were most violated during the COVID-19 pandemic were: the right to education; gender equality and prevention of violence against women; violations of the right to life and health care; violations of the right to freedom of thought and expression; discrimination.

The other issue that needs to be delved into regards the other question. Were the emergency measures adopted in line with WHO recommendations? From the survey conducted, it is observed that in the majority of countries, including those in the Western Balkans, with some exceptions, all emergency measures were taken in line with WHO recommendations.

Two research questions were raised in the methodology, to which we will provide answers.

*Question 1:* Was the restriction of rights in line with the relevant and current situation? Here, we can certainly say that the global situation during COVID-19 justified the restriction of fundamental rights and freedoms.

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<sup>46</sup> Ibid, p.39

*Question 2:* During the COVID-19 pandemic, were emergency measures approved by the principles of legality and the rule of law? There are different reactions regarding this issue. In many countries, the Constitution and domestic laws were respected, as well as international acts, by the prescribed procedures and the principles of legality. On the other hand, there are also many countries, including those in the Western Balkans, which bypassed legal procedures for the implementation of emergency measures.

What is crucial in this section is to assess the hypothesis presented: "The restrictive measures implemented during COVID-19 were based on the principle of not infringing upon the essence of fundamental rights and freedoms". The gathered information provides us with some insight into verifying this hypothesis. The restrictive measures taken were undoubtedly in the public interest, aimed at safeguarding the health and lives of every individual. However, measures such as movement restrictions, bans on gatherings, and limitations on freedom of thought and expression may have infringed upon fundamental rights due to the exceptional circumstances. Nevertheless, it is precisely these rights and others that were subject to abuse during their infringement, with numerous cases of unlawful arrests reported.

COVID-19 presented an opportunity to learn valuable lessons from international actors concerning the restriction of fundamental rights and freedoms, aiming to prevent abuses and mismanagement in the future.

## **7. Conclusions**

Based on the summary and analysis of the paper regarding the restriction in the application and the implementation of human rights in general and the limitations during the COVID-19 pandemic in particular, we reached these relevant recommendations and conclusions:

The limitation of human rights is clearly and specifically provided for in international instruments regarding the cases and conditions that must be met. This is to prevent misinterpretation or abuse by different states.

Democracies committed to the rule of law must respect the constitutional legal framework of their country when implementing restrictions during such emergencies as a pandemic. To ensure effective protection of human rights, collective and international solidarity is necessary.

The implementation of approved security measures for the protection of citizens in similar cases of emergencies should be done in a proportional and balanced manner, ensuring that the use of human rights is considered as security measures, as a last resort option, being considered less restrictive than all possible options that could be applied.

Restrictions on rights and freedoms can only be imposed by law for the public interest or the protection of the rights of others. The limitation must be proportionate to the situation that dictates it, and these limitations cannot undermine the essence of freedoms and rights. We need to refer on a case-by-case basis to what the situation dictates and what the essence of rights and freedoms is that cannot be infringed upon.

The Western Balkan countries are considered countries with fragile democracies, where legal and governance institutions are not as consolidated as they should be, and the space for "abuses" is larger. The term "abuses" can also be paralleled with the lack of experience and proper capacities to manage emergencies like that of COVID-19.

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