

Point of View

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Human Rights in a Pandemic

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ABSTRACT. *The article is focused on the problem of human rights (HRs), limited or derogated from, due to the Covid-19 pandemic. While addressing some HRs limitations, derogations and even abuses, and their consequent problems, the aim is to try to analyze policy, social, moral and personal dilemmas of HRs restrictions as well as motivations behind the types of public and social behavior, in the course of the pandemic, in response to the public measures of sanitation, social distancing and confinement, travel restrictions and social assistance, recommended by the WHO and selectively followed by governments. Learning from some old experience and deriving new lessons from the pandemic, as well as from public and social actions and reactions, the purpose of the present article is to assess whether or not public health policies in this context, implemented nationally or internationally, can promote change in the HRs paradigm in the face of the existing dilemmas and dichotomies in HRs, aggravated by the pandemic. The conclusion is that the extant HRs paradigm should be rede-*

fined to address better the political, social, economic, environmental and, especially, existential exigencies of “rainy times”, thus leading to the creation of a new universal HRs code or to harmonizing the existing one.

KEY WORDS: *pandemic, human rights, comparative law, comparative politics, HRs dilemmas and dichotomies, solidarity, right to equity*

Introduction

The article has been written in the midst of the pandemic Covid-19, without any definitive results and all known consequences of this world catastrophe. Nevertheless, since the outbreak of the disease, that caught the world unawares, many developments are already known as well as some results of the fight against it provide enough evidence to permit reflection and analysis and to draw some tentative conclusions on the topic of the study.

The present pandemic was preceded by an epidemic of the Ebola virus, also a fatal coronavirus. It appeared in 1976 in two simultaneous outbreaks, one in Nzara, Sudan, and the other in Yambuku, Democratic Republic of Congo, in a village near the Ebola River, a borrowing to the name of the disease. The 2014–2016 outbreak in West Africa was the largest Ebola epidemic. Starting in Guinea and then crossing land borders to Sierra Leone and Liberia, it undermined public health response activities and provoked a pandemic alert by the WHO. Fortunately, the anti-Ebola vaccine, elaborated by laboratories in different countries, the first in Russia, reduced drastically the spread of the disease, helping to successfully control it, thus avoiding to transform the Ebola into a pandemic.

At the end of 2019, a new coronavirus, called SARS-CoV-2 and classified as COVID-19, emerged, rapidly multiplying and causing a growing number of pneumonia cases in the city of Wuhan in China. The contagion spread locally and then globally. There was little information on its natural history or on effective measures for clinical treatment of the disease. What, however, was soon discovered was that the virus possesses high transmissibility, provokes an acute respiratory illness, that varies from lighter cases – about 80% – to extremely grave cases of respiratory insufficiency – from 5 to 10%. Lethality has varied according to different age groups and associated clinical (pre-)conditions in different countries and in different proportions, roughly from 0,2 % to 14,8 of deaths of the infected [Coronavirus Covid-19 2020, p. 3].

Despite the badly learnt lessons of the Sars, Mers, Swine flu, Ebola, Dengue, Zika, Chicungunha or other quite recent epidemics and regardless of the international vigilance of the WHO Emergencies Program, active since 2015, most countries of the world have proven strikingly unprepared for the global viral onslaught on

the world population and health systems. “COVID-19 is threatening the whole of humanity,” Antonio Guterres, UN Secretary General said, at the very start of the pandemic, emphasizing that “Global action and solidarity are crucial. Individual country responses are not going to be enough.” The pandemic intensified and accelerated in many ways the already existing global and national threats and challenges. Thus, global institutions, such as the United Nation and its agencies, as well as World Bank, G20, were all put on standby [Steinbach 2020], although the UN Security Council was completely ineffective in its approach, as if human biological security were not an integral part of its realm of action; at first, it delayed discussion on the matter and then convened an unproductive meeting that did not yield any results [Bhatia 2020].

India, Russia and Australia asserted themselves and coaxed G20 chair, Saudi Arabia, to convene the G20 virtual summit [Bhatia 2020]. Similarly to the response to the financial crisis of 2008, the leaders of the Group of 20 major economies committed themselves to do “whatever it takes” to tackle the new coronavirus outbreak, putting a stress on solidarity of action: “Combatting this pandemic calls for a transparent, robust, coordinated, large-scale and science-based global response in the spirit of solidarity” [Kenny 2020]. Noting that the pandemic is a “powerful reminder of the interconnectedness and vulnerabilities” of G20 countries”, they admitted that the absolute priority of G20 was to overcome the health, social and economic impacts of COVID-19, by injecting over \$5 trillion into the global economy [Kenny 2020].

There was also a solidary action among the BRICS countries, due to which two important loans were approved in the framework of a common COVID-19 Emergency Program: first, to South Africa, in June 2020; second, to Brazil, in July 2020,

each one worth one billion US\$. The loan to South Africa was meant to roll out its healthcare response to coronavirus and alleviate the economic impact of the disease containment measures on vulnerable groups of populations. The resources provided by the NDB to Brazil were directed to safeguard the income of about five million people in vulnerable situations, including informal, self-employed and unemployed workers [NDB 2020].

Beside the number of human lives already lost, exceeding one million at the time of the conclusion of this article, the pandemic dealt severe blows to economies, industries, financial markets, energy consumption, trade, tourism, civil aviation, entertainment, social interaction. States and governments declared quarantines, lockdowns, social isolation, put checks and limits on travel and displacements, closed down vitally non-essential services to citizens. Expanding virus contagion, shrinking economies and rising unemployment provoked national political and social reactions and mobilized international bodies. But, whereas urgent assistance measures and legitimate limitations of civil, political, economic, social activities were being introduced, there emerged a host of authoritarian, nationalist, extremist and individualist trends that caused unlawful limitations and abuses of HRs, and, in some extreme cases, attacks on democracy and its institutions.

The theme of HRs limitations was chosen as a focus for addressing various political, social and human phenomena, which have taken place in different countries, regions and continents during the pandemic crisis. They raise questions about HRs as to their universality, interdependence and indivisibility, as well as to the inevitability, to some extent, of their limitations and derogations, during and after the pandemic, in the conditions of a “new normality”.

The methodology used to address the research issue implied a comparative po-

litical approach (See [Ragin 1987; Wiarda 2007]), correlating grouped cases of HRs practices of limitations and derogations, with HRs dilemmas and dichotomies, in a series of countries during the pandemic. The purpose of the research was aimed to regard an extant dichotomy between individual and collective/communitarian rights, much more evident in a pandemic than in a normality, as a hindrance to harmonizing and “solidarizing” HRs paradigm. The goals of the research aimed to: a) demonstrate a failure of public institutions to sustain an equitable enjoyment of HRs; b) address HRs in terms of the existing inequity, resulting from the dichotomies in HRs, and c) compare political experience of different countries facing the pandemic from the point of view of HRs equity.

The literature on concepts of solidarity and equity embraces Hedley Bull's [Bull 2012] and Tim Dunne's [Dunne 1998] solidarism premises for the world society, Kurt Bayerzt [Bayerzt 1999] and Graham Crow's [Crow 2002] views on social and communitarian solidarity, John Rawls' “theory of justice” [Rawls 1971], Amartya Sen's “Development as Freedom” [Sen 2000], offering arguments in favor of solidarity and “fair” justice as principles for erasing existing inequities “between as well as within nations” [Sen 2001]. William Felice [Felice 1996] writes on differences between individual and collective rights, while Mervyn Frost [Frost 2002] underscores glaring incoherences between individual rights and those of migrants and refugees, between ethnic, national, tribal communities and democratic states' societies, between state autonomy and global commons, between sovereignty norms and HRs norms. Existential reasons for HRs derogations were approached on the basis of a philosophical essay of Ortega e Gasset [Ortega e Gasset 1966], as well as of futuristic projections of Richard Falk [Falk 1966] and Konstantinos Doxiadis [Martins 1980].

Some special literature on HRs, on legal and technical aspects of the covid-19 pandemic, was perused to support the arguments of dichotomies and inequities in HRs in the pandemic on such topics as: economic/social and civil/political rights, gender and race discrimination; anti-discrimination laws, minority rights, indigenous communities, vulnerable groups, limitations and derogations of HRs; reports of medical and research institutions (See [Falco 2020; Flaxman et al. 2020; Jaguaribe 2020; Muller 2009; Lebrete 2020; Pugh 2020; Spadaro 2020; Sancci 2020; Santos et al. 2020; Xiang Gao et al. 2020; Vergondy et al. 2020]).

The data-base included facts of HRs limitations and derogations, as well as public social reactions to them, in a series of countries, during the pandemic-covid-19.

The list of documents on Human Rights, alluded to, included the Universal Declaration of Human Rights [Rights 1948], the International Covenant on Civil and Political Rights (ICCPR) (1966), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), the Convention Against Corruption (2004), the Convention on the Rights of Persons with Disabilities (2006), the Final Document of the United Nations Conference on Human Rights (1993), the Final Document of the World Summit for Social Development (1995), the Millennium Declaration (2000), MDGs (2000), SDGs (2015), Global Compact on Refugees and on Migration (2018). The UN Declarations on indigenous people, minorities, older people were also relevantly considered. To estimate limitations and derogations from HRs during the pandemic several pertinent documents were also examined: The Siracusa Princi-

ples on the Limitation and Derogation Provisions in the ICCPR, The CCPR General Comment No 29: Article 4: Derogations during a State of Emergence; The CESCR General Comments No 3 on The nature of States Parties obligations (1990); No 7 on the Right to adequate housing (art 11) (1997); No 12 on The right to adequate food (art 11) (1999); No 14 on The right to the highest attainable standard of health (art 12) (2000); No 15 on The right to water (arts 11 and 12) (2003); No 20 on Non-Discrimination in economic, social and cultural rights (articles 2 (2) (2009).

The article is structured as having an introduction, an argumentative part and concluding remarks. The argumentative part is comprised of three sections. The first section deals with some conceptual approaches to and historical analogies of analyzing the impact of the pandemic on international bodies and democratic institutions. The second one addresses dilemmas and dichotomies, referent to HRs incompatibilities during the pandemic. In the third section, the presented cases of recent empirical evidence have the purpose to estimate limitations and derogations from HRs enjoyment and to evaluate their possible consequences in the light of the covid-19 pandemic.

Impact of the pandemic on democracy and HRs

from the beginning of the pandemic the countries and their leaders forecast different major scenarios for individual countries and global development: at the extremes, one projected that everything would change, another that nothing would change, while the others tried to figure out a golden middle between the two extremes, suggested by historical examples and scientific projections [Kissinger 2020; Haas 2020; Joint Session of the Eurasian Online-Seminar and China Seminar with Yang Jiemian 2020; Jaguaribe 2020].

There are comparisons of the covid-19 pandemic with the Spanish flu, the World War II, the 2008 financial crisis economic situation and an artificial biological attack with an artificial man-made virus (See [Kind *et al.* 2020; Tovar 2020; Falco 2020; Bhardwaj 2020]).

The supposition that the Covid-19 virus is man-made, allegedly produced by China to hurt the United States and the West in its global quest for power, was, essentially, a US conspiracy theory to demonize China, an allegation that lacked any scientific proof or solid factual grounding. Following allegations that there was a delay in providing the reports from China, the WHO informed that the first unexplained cases of a pneumonia-like illness were reported to the WHO's office in Beijing on December 31, and detailed information about the “viral pneumonia of unknown cause” on January 3. China agreed to receive international scientific commissions in its virologic laboratories, demonstrating exemplary transparency and commitment to accountability with respect to the international community [Timeline of WHO's Response to COVID-19 2020].

The natural origin of all virus is exhaustively dealt with in Jared Diamond anthropological study [Diamond 1999]. Citing,

“... diverse epidemic diseases of humans evolved in areas with many wild plant and animal species suitable for domestication, partly because the resulting crops and livestock helped feed dense societies in which epidemics could maintain themselves, and partly because the diseases evolved from germs of the domesticated animals themselves” [Diamond 1999, pp. 86–87].

And, despite the experience with the Spanish flu, a pandemic very similar to the present one though a century-old, which caused the deaths of anywhere from ten to twenty or many more millions, in what

statistics are imprecise or inexistent, there are reasons to believe that, notwithstanding the interdependence, global communications and multiple flows of the modern world being several orders higher than those of a hundred years ago, the 21st century's progress of medicine and science and the inventions of a vaccine would permit significant reduction in the number of victims – from tens of millions to hundreds of thousands.

Against the backdrop of an uncertain and disturbing virus infection scenario, different political and social blueprints for the battle with the coronavirus and wishful predictions for the post-pandemic changes, seized the hearts and minds of political leaders, scientists and citizens alike. What caught the attention of many was a stress on an authoritarian backlash on international and national institutions who countered effectively the pandemic onslaught (See [Kissinger 2020; Sancci 2020]).

Ante omnia, I would like to allude to the writings of Thucydides [Thucydides 1910], who, a survivor of the plague epidemic during the Peloponnesian War, described how that natural disgrace and other emergencies shattered Hellenic democratic institutions. It is remarkable that Pericles' funeral speech, pronounced as a kind of liturgy in honor of the buried Athenians, who fell in combat for their city, was, in fact, dedicated to the values of freedom of Athens, a “school of democracy”, that served as an example for other Hellenic city-states and, thus, was worth to fight for and defend.

When Athens fell under a siege and the plague came to reign in the city, Pericles altered his narrative, saying that the survival of the city is dependent on the strength of the “empire”, which included the city-state and the allies, and that the survival of the “empire” is a survival of the Athenians as well. After being questioned on the defeats of the city by those who were victimized by the war and by the plague, he

defended, first and foremost, “the safety of the commonwealth”: “You should remember also that what you are fighting against is not merely slavery as an exchange for independence, but also loss of empire and danger from the animosities incurred in its exercise [Thucydides 1910, 2.63.1] ... For what you hold is, to speak somewhat plainly, a tyranny; to take it ... was wrong, but to let it go is unsafe [Thucydides 1910, 2.63.2]”.

Thus, the narrative of democracy degenerates into an imperial oligarchic discourse, which holds that a city of democratic rule should be maintained through an imperial order. To affirm it, Thucydides asserts, alluding to Pericles: “In short, what was nominally a democracy became in his hands government by the first citizen.” [Thucydides 1910, 2.65.9].

We see a contrast or a dichotomy between the glorification of the democratic institutions of the city-state of Athens and a justification of an imperial or a tyrannical rule, in the conditions of anarchy, chaos or disorder, provoked by the dual calamity of the plague and of the war. Citing Thucydides, “men, not knowing what was to become of them, became utterly careless of everything, whether sacred or profane” [Thucydides 1910, 2.52.3], and “Fear of gods or law of man there was none to restrain them” [Thucydides 1910, 2.53.3].

A restriction of rights of the Athenians, as to confinement, the temples’ isolation, rationing, *metics*’ rights impairment, the issuing fines, together with an “imperial” rule inside and outside the city, overwhelmed by the birthmark of the Hellenic democracy – the slavery, constituted the predicament of the “walled city”. On the one hand, Athens contained anarchy, averted chaos and saved the community. On the other, it forged a democratic “imperial” rule that not only extended beyond the city-state onto the allies and the already conquered adversaries, as is described in Thucydides’ Delian dialogue,

but also contributed to the later transformation of Hellenic democratic institutions into oligarchic ruling bodies, thus damaging civic laws, nurtured by the Athenian democracy.

Many recent writings in the West recall this ancient lesson, with respect to the menace the pandemic poses to democracy, to Western values and institutions. Henry Kissinger wrote the following when the pandemic had just started:

When the Covid-19 pandemic is over, many countries’ institutions will be perceived as having failed. ... the political and economic upheaval it has unleashed could last for generations. ... A global retreat from *balancing power with legitimacy* will cause the social contract to disintegrate both domestically and internationally” [Kissinger 2020].

Predicting a change of the game and a failure of democratic institutions, he supposes that the struggle for power, inside states and in the international system, will cease to be restrained, in the long term, either by national laws or by the international law and order.

Objecting to Henry Kissinger’ saying that “The reality is the world will never be the same after the coronavirus”, Richard Haas does not foresee abrupt changes in the post-covid future, but recognizes that new arrangements would certainly take place in the international order, as had happened after WWII:

... the world following the pandemic is unlikely to be radically different from the one that preceded it. COVID-19 will not so much change the basic direction of world history as accelerate it. Ideally, the crisis would bring renewed commitment to building a more robust international order, much as the cataclysm of World War II led to arrangements that promoted peace, prosperity, and democracy for nearly three-quarters of a century. Such an or-

der would include greater cooperation to monitor outbreaks of infectious diseases and deal with their consequences, as well as greater willingness to address climate change, set rules for cyberspace, assist forced migrants, and tackle proliferation and terrorism” [Haas 2020].

In Haas’s perception, an “anarchic”, “post-American” world order, that had gone out of joint, would or should return to a new global normality, that will be more robust and globalized than before the pandemic.

In one of the Chinese views, that I would describe as “*politics as usual*” + reform” and which follows in the wake of Haas’s proposition, a thesis of continuity and change, of lasting world tendencies and of a new quest for reforms, is discussed by Yang Jiemian. The Covid-19, that has threatened life and health of the world in transition, emphasizes the deficiencies of the major power leaderships and the weaknesses of international and global institutions. Quite in line with the Chinese Confucian posture, the author says that the covid-19 showed the need for the world to take advantage of the crisis by using the opportunity to reform the international order, even to create new international bodies, in order to prepare ourselves for “rainy days”¹ [Joint Session of the Eurasian Online-Seminar and China Seminar with Yang Jiemian 2020].

In both of the Western authors’ arguments, the main concern with the pandemic is primarily with the democratic institutions and values, although global hegemonic stability and power balance legitimacy are also critical. According to H. Kissinger and R. Haas, a democratic void, a lack of balance between right and might are felt harder, especially when they do not

provide the necessary social balance and leave the door open to arbitrary, authoritarian decisions, that can lead to civil unrest. According to Kissinger,

The founding legend of modern government is a *walled city* (our italic) protected by powerful rulers, sometimes despotic, other times benevolent, yet always strong enough to protect the people from an external enemy. Enlightenment thinkers reframed this concept, arguing that the purpose of the legitimate state is to provide for the fundamental needs of the people: security, order, economic well-being, and justice. Individuals cannot secure these things on their own. The pandemic has prompted an anachronism, a revival of the *walled city* (*idem*) in an age when prosperity depends on global trade and movement of people. [Kissinger 2020].

Pari-passu with H. Kissinger, R. Haas says that “the pandemic is likely to reinforce the democratic recession, evident for the past 15 years” [Haas 2020].

Another EU-centered view is that of the French President Emmanuel Macron. In his opinion, “the crisis is an existential event for humanity that will change the nature of globalization and the structure of international capitalism”. It is important that the topic of capitalism enters the debate, because the “trauma of the pandemic will bring countries together in multilateral action to help the weakest through the crisis”. He thinks, on the one hand, that the cataclysm prompted governments “prioritize human lives over economic growth as an opening to tackle environmental disasters and social inequalities that were already threatening the stability of the world order”. On the other hand, in a parallel with Kissinger’s

1 A time or period of unforeseen difficulty, trouble, or need. (an idiom).

“walled city” and Haas’s “democratic recession”, he is preoccupied that “border closures, economic disruption and loss of confidence in democracy will strengthen the hand of authoritarians and populists who have tried to exploit the crisis, from Hungary to Brazil”. In his view, abandoning freedoms to tackle the disease would pose a threat to Western democracies [Mallet *et al.* 2020].

In one of the most impacting speeches about the “inequality pandemic”, UN Secretary General Antonio Guterres made a global appeal, conscious that, though “the COVID-19 is a human tragedy, it has created a generational opportunity to build back a more equal and sustainable world”. In his recent Mandela lecture, he said: “The response to the pandemic, and to the widespread discontent that preceded it, must be based on a New Social Contract and a New Global Deal that create equal opportunities for all and respect the rights and freedoms of all” [Secretary-General’s Nelson Mandela Lecture 2020].

The idea of a “New Social Contract” on a global level must be a universal response to break the HRs dichotomy through a global effort, a “New Global Deal”, while erasing inequalities inside states and among states, establishing a “climate justice”, closing the gap between social-economic and civil-political rights, between individual and collective rights, between those of races, gender, classes, communities, groups, in order to stop and further prevent the evolution, according to Guterres, of a “two-speed world”.

The discussion in this article covers not only those individual rights and freedoms, that were derogated from or restricted for a significant part of the world population due to the pandemic (freedoms of assembly, of movement), but also those collective and communitarian rights, which have to do with health, work, education, gender and racial equality, indigenous and minority rights, healthy environment, sus-

tainable development, human settlements, access to water and others issues.

In a discussion about what is “might” and what is “right”, about how much HRs are buttressed by law and in what HRs are ignored by the “might”, exercised by States, it must be clear that a decision, by national governments, to limit or to lift temporarily a certain HR, affects profoundly societies, citizens and theirs rights. At the same time, a huge number of proclaimed, accepted and ratified HRs, that are not legally limited or derogated from, are simply not met. That is why the pandemic presents a tragic opportunity to revisit the issue and to assess, if anti-pandemic measures and the reactions to them can be used as a motive to discuss the existing dichotomies and the disparities of implementation between different clusters of HRs.

The pandemic shed the light on a dichotomy or, to put it mildly, on extant differences of enjoyment between a) civil/political (about freedom), b) economic/social/cultural (about equality), and c) collective/communitarian (about solidarity) HRs, and again and again showed a priority of individuals rights over those of collectivities. That is why the hypothesis of this article is that overvaluing and prioritizing individual HRs in the HRs paradigm to the detriment of and without harmonizing and balancing them with collective/communitarian rights can constitute a threat to the life, to the development, to the Nature and to the very survival of communities and, in the long run, of the humanity as a whole.

Dilemmas and dichotomies of HRs in “rainy times”

It is useful to describe some of the dilemmas which emerged in the context of the decisions taken in the present pandemic crisis, so that the incoherencies or dichotomies among HRs could be better understood.

Writing on the Bombay plague of 1896, Tim Willasey-Wilsey rightly points out: “There will be no escaping the final statistics: how many people died and how figures compare with other countries“. He summarizes the policy dilemmas that accountable governments should face in the pandemic: “a) how transparent to be with their citizens. The balance is always between avoiding complacency, on the one hand, and causing panic, on the other; b) how to weigh the public health aspects against economic considerations. While it seems indecent to consider money at a time of human distress, economic activity is essential to human well-being; c) whether to rely on the people’s innate common sense or resort to stringent measures to enforce inspections, quarantines, curfews, and anti-hoarding legislation; d) how to manage the narrative, and ultimately, whether and who to blame” [Willasey-Wilsey 2020].

It could seem ethically incorrect to measure the covid-19 with logical metrics derived from the end of the 19th century’s experience, although the above-mentioned governments’ complacency and expectation of accountability are much present in public policies today. I will try to expand on and take into account the complexities in the set of HRs dilemmas that governments and societies had to face in the 21st century pandemic, without claiming to exhaust the subject.

1. The first dilemma rises from a democratic choice that ruling elites, faced with the covid-19 pandemic, were to make between securing civil-political, on the one hand, and social-economic-cultural HRs, on the other. It must be pointed out that when a civil-political right was secured, it did not mean that a social-economic-cultural one was equitably addressed. Nevertheless, as the Declaration of the Right to Development (1986) rightly notes: “a respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights

and fundamental freedoms” and the Final Declaration of Vienna Conference calls all the HRs “interdependent and interrelated”. To detail this problem, a few more theses should be specified.

The dilemma surges from derogability or non derogability of certain HRs in a state of emergency or calamity. According to the Siracusa principles on the justification of limitations and derogations, “A State party may take measures derogating from its obligations under the ICCPR pursuant to article 4 ... only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation”, (E/CN.4/1985/4 Annex: 39, 58) fully excepting from this norm the non-derogable rights. According to the Article 4 (2) of the ICCPR, no derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. These are: Right to life (art 6); – Prohibition of torture, cruel, inhuman and degrading treatment (art 7); – Prohibition of medical or scientific experimentation without consent (art 7); – Prohibition of slavery, slave trade and servitude (art 8); – Prohibition of imprisonment because of inability to fulfil contractual obligation (art 11); – Principle of legality in criminal law i.e. the requirement that criminal liability and punishment is limited to clear and precise provisions in the law, that was in force at the time the act or omission took place, except in cases where a later law imposes a lighter penalty (art 15); – Recognition everywhere as a person before the law (art 16); – Freedom of thought, conscience and religion (art 18). Furthermore, under the Second Optional Protocol (art. 6), there can be no derogation from the prohibition on the death penalty. But even if some provisions of the ICCPR have been listed in article 4(2), as not being subject to derogation, the Covenant does not permit that derogable articles be subject to dis-

proportionate or unlawful derogations, even where a threat to the life of the nation exists.

On the contrary, the ICESCR does not contain a clause of non-derogable rights, but has a general limitation clause (Art.4), thus being presumed that this cluster of rights is non-derogable. According to the General Comment 3 of the CESCR, States are bound by a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights provided in the ICESCR, but “The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time”, although “the provision of judicial remedies” is only recommended in the comment. A criterion of evaluation of “retrogressive measures” under article 2(1) was developed to allow states not to comply with these HRs when they face severe resource constraints.

In the ICESCR (Art. 2.1), it is the State Party that fulfills the enjoyment of economic, social and cultural rights “to the maximum of its resources, with a view to achieving the full realization of the rights ... by all appropriate means, including the adoption of legislative measures”. As Felice [Felice 1996, p. 20] puts it, writing on collective or “group” rights, “meeting these rights depends upon positive actions of the state”. But “the maximum of resources” and an achievement “by all appropriate means” of “full realization” of the rights are entirely dependent on States’ material capacities and commitments, which are not fully guaranteed and achievable. There is also a glossy omission in the ratification status of the ICESCR, that characterizes the USA approach to economic and social rights.

Thus, the economic/social/cultural rights can be “derogated” from as a matter of fact, when states are unable to comply

faithfully with those obligations not only in conditions of emergency or calamity, but also in a normality, due to constraints, caused by inequalities and racial, gender, minorities discrimination and to high levels of poverty and unemployment in developing countries.

2. According to Muller, “the right to be free from hunger, to basic health care, clothing and shelter are of utmost importance for the protection of human dignity and the survival of human beings in emergency situations – a fact also highlighted by the inter-relatedness of these rights with the non-derogable right to life” [Muller 2009, p. 601]. In this very sense, one most crucial dilemma arose in the form of an internal conflict between the political survival of governments and the physical safety of human populations, in a form of the trade-off between the possibility of an economic recovery and the rise in human mortality, infringing directly upon the right to life. In large federations, such as the United States, Russia, India, Brazil, the dilemma was restaged as a negotiation between the central government and local authorities over the decision-making power and consequent responsibility for dispensing the health policies and looking after the welfare of the population during the pandemic. Decisions on HRs limitations and derogations were transferred to regional and municipal levels and the responsibility for HRs limitations was decentralized and diffused, but, nevertheless, it only meant resetting the struggle between power and life on a lower level.

A variation of the conflict was referent to the unjustified introduction of flexibilization of sanitary measures, supposedly as a function of flattening the new infections/mortality curve, which amounted to a veiled preference for desired economic recovery at the expense of the health and the lives of the citizens. Therefore, the right to life was exposed

to a risk of a matter-of-fact derogation. Such an understanding provoked complaints to International Criminal Court on the accusation of genocide. In one of those complaints, a group that represented more than one million Brazilian medical professionals urged investigations into the President of Brazil Jair Bolsonaro's (non) handling of the coronavirus pandemic, that allegedly constituted a "crime against humanity". The plea was not recognized by the ICC under the pretext that such a claim should be a matter of the Inter-American HRs system.

The question of transparency and information grew in importance as pandemic statistics started to be explicitly manipulated by state officials as were also the interpretations for these obfuscations, revealing a conflict between scientific and sanitary evidence and political ambitions and objectives of prioritizing economic recovery over and above health safety, all for the sake of imminent national or municipal elections or other political goals. That reflected also upon a HR that should not be limited or derogated - the right to information. For example, a limitation of information by changing the method of statistics and the time of publications, as well as underreporting the number of the dead and the infected caused a public outcry in Brazil and a special ruling of the Federal Supreme Court on the issue of transparency of publications on the Covid-19 data [Medida Cautelar 2020].

Thus, having tolerated the conflict between politics/economy vs. the right to life, some States did not comply with their legal duty to prevent, investigate, prosecute, punish and redress violations of the right to life in an emergency, threatening the life of nations.

3. Another dilemma is one between national and international interests with respect to securing the necessary material to deal with the pandemic successfully. Often, a sort of Darwinism in politics, rather

than international cooperation, took place, leaving a hegemonic mark on countries interactions. When questions of national interests arose, international solidarity and cooperation of the "rainy times" were quickly superseded by ruthless power struggle and unethical competition for scarce equipment, as in the case of the acquisition of face masks, respirators, remedies, needed medical supplies, vaccine research and its anticipated procurement by "more privileged" countries. At the same time, international institutions, especially the World Health Organization (WHO), were accused of undermining international cooperation in combatting the pandemic by putting too much faith in China, where the disease originated. Going to extremes, the United States announced a withdrawal from WHO, to become effective in 2021, without robust proofs for bias on the part of the international organization, thus fueling further a new "cold war" with the emerging Eastern superpower [Buckley *et al.* 2020]. While the collective right to health in some countries was propped up by solidarity actions from China, Russia, Germany, Cuba to Italy and Spain, an afore-mentioned conflicting way of conducting international affairs damaged the individual rights to health and to information of the US citizens, enjoyed through cooperation and recommendations by means of the WHO. To counter the rising threat of 'vaccine nationalism', the covid-19 vaccine allocation plan (Covax), co-led by the WHO, was set up to ensure that the research, purchase and distribution of any new vaccine is shared equally between the world's richest countries and those in the developing world [Beaumont 2020].

4. Another dilemma was of a psychological nature on an individual level: between: a) a self-indulgence and a disrespect to other people's lives, while consciously or through ignorance spreading the disease and b) a solitary self-limita-

tion with the aim to preserve other people's lives, by consciously avoiding the spread of the disease. To quote from Alexander Pushkin's "A Feast in the City of the Plague"², in an English translation of Alexander Werth, one tries to understand the motives of the self-indulgent, of the willfully irresponsible and, we could say, of the immoral behavior of persons during life-threatening events:

In walking over an abyss,
In gazing down a precipice
There is a wild delight: -
Havoc in battle, roaring death,
A cyclone on the Arabian heath
And pestilence's deadly breath
Gives us no fright.
...
So Mistress Plague, receive our cheer!
An open tomb we do not fear,
Thy call gives no offence.
We raise the cups of sparkling spray,
And drink our loves' sweet breath away,
Though full of pestilence.
[Pushkin et al. 1927].

If for Pushkin's personage, rejecting the dread of the Plague meant acting with a daredevil attitude, recklessly challenging the unmastered danger and taunting death itself, reveal the will to stand one's ground and to fight against, then it can be said that Thucydides' characters stood firmly on their feet and "... resolved to spend quickly and enjoy themselves, regarding their lives and riches as alike things of a day" [Thucydides 1910, 2.53.2]. For them, solidarity, honor and ethics meant nothing: "Perseverance in what men called honor was popular with none, it was so uncertain whether they would be spared to attain the object; but it was settled that pres-

ent enjoyment, and all that contributed to it, was both honorable and useful" [Thucydides 1910, 2.53.3]. Thus, self-indulgence, moral apathy or plain immorality, irresponsibility and a lack of empathy and of solidarity with one's kindred, accompanied by explicit transgressive or anti-social behavior, encouraged by official tolerance on the part of governments and states, interested in their political fortunes, have been among the reasons that made impersonal and narcissistic yearning for individual rights and freedoms morph into more than egoistic and hurtful, but inhuman behavior.

There was a clear-cut conflict between HRs – the right to life and the right to freedom of expression (e.g., not wearing masks, not maintaining distancing) and freedom of assembly (e.g., crowding in protests, in social events). One right should have been limited to allow another right to be enjoyed, to assure the fundamental right to life.

5. One more example of a moral dilemma is the result of the conflict between honest, responsible service to a country and to its health system and the depredation and corruption in public procurement under conditions of wholesale national emergency and global calamity leading to critical shortages of hospital material and disruption of essential services during the pandemic, such as insufficient respirators, overpricing of contracts, misappropriation of public funds, etc. (See [Subcommittee 2020]). The corruption undermines HRs – the right to development, the right to be free from want, the right to live in dignity. It hampers basic services, causes inequality and injustice, aggravates poverty, producing the negative effects on society and on sustainable development (UNGA Res. 58/4/2003, Art. 62).

2 Alexander Sergeyevich Pushkin partially translated and adapted, from John Wilson's "The City of the Plague", one of his four "Little Tragedies", during his "Boldino's autumn", a three months' quarantine in a distant Russian province during the cholera epidemic of 1830.

6. In everyday life, collective HRs can come into conflict with the individual's freedom to travel and the policies of self-isolation or self-quarantining, self-imposed travel restrictions, among other recommendations for keeping safe during the pandemic. In the first place, when freedom is a pure moral choice, social isolation can be voluntary and consciously chosen or rejected. The reason for such an ethical choice may not be merely selfish (for the sake of self-preservation), but may entail an empathetic or altruistic attitude as well, that is, to preserve one's fellow citizens. As Anna Jaguaribe writes, "...COVID-19 highlights the resilience of human solidarity and empathy in all affected communities..."³ [Jaguaribe 2020, p. 4, free translation].

When there are restrictions on personal freedoms under conditions of a quarantine, a lockdown or a travel ban, the welfare of the community depends on the choice of some individuals to undertake personal risks in order to secure the dispensing of essential services to society. This constitutes a moral choice, as exemplified by healthcare providers, physicians, assistance personnel, government employees, social workers, rural workers, urban services providers, policemen and innumerable other citizens, who consciously assumed the personal health and life risk and risk to their own families, for the sake of the welfare of all. One of such communities was the network of nuclear energy workers that provided electric energy, an essential service, to the public, enhancing safety and security of this hazardous and dangerous field, supervised by the IAEA, which "included quarantine of new workers, temporarily halting construction work at nuclear power plants, operating with reduced work-

force and carrying out standard operating procedures to minimize COVID-19's impact" [Strohal 2020].

The loss of numberless health-care workers and other essential services personnel testifies to the tragic cost of the moral choices made by them and to their moral glory of not abandoning their posts in spite of the lack of necessary equipment and protection and of the fear to transmit the disease and infect their loved ones.

José Ortega y Gasset is remembered for his reference to the relation of an individual with his social dimension: "*Yo soy yo i mi circunstancia, y si no la salvo a ella no me salvo yo*"⁴ [Ortega y Gasset 1966, p. 322]. If an individual does not save his physical, historical, social, cultural context, which includes his community, he cannot save himself. This is a holistic explanation for the need for solidarity, respect and empathy for humankind. An individual right does not in and of itself protect or preserve a regime of rights for all others. An individual right does not necessarily create a symbiose with a collective-communitarian right. But this must happen to protect and safeguard the individual as well as the community. The question that goes together with Ortega y Gasset's argument: does an individual possess such a specific dignity, the value of which stands above any political, economic or social circumstance of a community, a collectivity or a humanity?

There is, of course, an opposite alternative, not to consider the welfare of others and to be guided by one's own preferences alone, irrespective of the consequences to others. In a free exercise of individual rights of freedom of movement, of assembly, of peaceful manifestations, during the pandemic, accompanied by a non-

3 O COVID-19 evidencia a resiliência da solidariedade e empatia humana em todas as comunidades afetadas.

4 "I am I and my circumstance; and if I do not save it, I do not save myself" (free translation).

acceptance of confinement and self-imposed isolation, of challenging regulations or sanitary authorities like not wearing masks, not maintaining distancing, not avoiding crowding in any form, whether a queue, a protest or a religious cult, we see anti-solidarist and anti-humanitarian motives, threatening the right to life of a family, a tribe, a community, a city, of vulnerable groups. These individual rights must be derogated from, in a due proportion, in a state of exceptional threat, as a pandemic, in our case.

7. One broadly discussed infringement on HRs has been the question of privacy in “rainy times”, when the location or movement of people can be tracked through their cell phones and the individuals’ personal data can be freely accessed by governments as well as by corporate private bodies, under the pretext of contact tracing for purposes of controlling the covid-19 contagion. Such invasions and abuses of privacy were observed in China and some other countries.

But a similar situation of abuse, when a privacy of citizens was invaded, was witnessed in India more than a century ago, during the above-cited plague. According to Willasey-Wilsey,

“... a Plague Committee was formed with authority to search private homes, segregate the sick and evacuate, disinfect, and sometimes, burn possessions and homes. On occasion, British officials and troops entered Indian housing and inspected potential sufferers, causing considerable offence, especially in cases of women in purdah. Indians with their strong family networks also objected to forcible separation. ... In March 1898 the levels of unrest were sufficient for corpse inspections and military searches to be suspended. Responsibility for home inspections was given to Indians and the Special Plague Commission was abolished” [Willasey-Wilsey 2020].

The Patriot Act in the United States saw a resemblant development, when it was revoked in 2015, in the wake of Edward Snowden’s revelations about the US government wholesale spying on its citizens and their social and private lives.

The Special Rapporteur on the freedom of opinion and expression, in his report on the disease pandemic, emphasizes five areas of concern: limitations to the right to access, impart and receive information; restrictions to Internet access; threats to journalism; public health disinformation and an increasing use of surveillance tools. The report concludes that “the free flow of information, unhindered by threats and intimidation and penalty, protects life and health and enables and promotes critical social, economic, political, and other policy discussions and decision-making” (A/HRC/44/49).

In the above-mentioned cases social, cultural and private rights of people were not respected and probably abused through spying and invasions into their privacy, disregarding cultural and religious norms. However, during the covid-19 pandemic, if some policies of electronic tracking of people were not undertaken, then the collective rights of people to life, health and the survival of collectivity could have been jeopardized (See [Xiang Gao *et al.* 2020]).

8. During the pandemic, more so than at any other time, we have heard and read about the sufferings of the poor, of the discrimination of and violence towards women, of black, migrant and indigenous people and of those of different walks of life, of the older or the homeless, not only in one’s own country, but all over the world. As Felice [Felice 1996, p. 1] writes, “while individual rights are near universally accepted, “peoples” rights and “group” rights remain controversial”.

In normal conditions, if that is the appropriate term for the pre-pandemic period of the unprivileged people, we have

been subject to discourses, that put shutters on our eyes, displacing humanitarian contingencies and concerns from one's individual self-indulgent and self-centered outlook.

The biggest dichotomy in HRs is between the long-existing systemic and newly-produced globalized inequalities and injustices, and the disproportion between prioritized and legally protected HRs and freedoms, on the one side, and, on the other, not fully met or unmet and only partially protected social, economic and cultural rights, as well as hugely unattained communitarian/collective/minorities rights. This dichotomy is perceived not only more acutely, but also more violently, as evidenced by the recent civil unrests on the issue of racial discrimination in the United States, naively thought to be a part of history of an exemplary democracy. "Human suffering", Felice [Felice 1996, p. 3] says, "is caused by regression of and discrimination towards certain groups".

According to some HRs legists, the present state of individual and group models of antidiscrimination HRs does not display sufficient protection to discriminated minorities and groups. A comparative analysis of the anti-discrimination law and the law of minorities, in view of the universalist and particularistic perspectives, confirms that the two HRs clusters focus different subjects: in the first case, an individual protection, in the second, a protection of minority.

Collective rights started to be recognized since the late 80s, with the Declaration on the Right to Development (1986), without still mentioning that it was a collective right, the Convention on the Rights of the Child (1990), the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), the UN Principles for Older Persons (1991), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and

Linguistic Minorities (1992), this one understood as a significant step to recognition of the collective rights of minorities, the Convention on the Rights of Persons with Disabilities (2006). The Declaration on the Rights of Indigenous Peoples (2007) stated that "indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples" (UNDRIP: preamble). In spite of a significant host of documents on the collective rights, also reinforced in the Final Document of Vienna Conference on Human Rights (2003), the three above mentioned Conventions are unevenly accepted by the community of states: judging by ratifications, two of them, on the Rights of the Child and of the Persons with Disabilities are ratified by an overwhelming majority of States, while the third one, on the Rights of Migrant Workers, is ratified by fewer than one third of the whole number of states, predominantly by those with developing or transitional economies. The problem about such an inconsistency is understood through the following reasoning: children and persons with disabilities are treated by states as national individuals with their specific individual HRs, that the states are obligated to address, while migrants and their families' rights are looked upon in the developed states through the lens of collective rights, referent to immigrant ethnic family groups, whose vulnerability owes "to their absence from their State of origin", also aggravated by "irregular migration" (the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. (1990: Preamble)

Speaking about the declarations on collective rights, we understand that the many States' national interests, even if they are driven by human security imperatives, are not built wholly upon socially inspired humanitarian prerogatives.

More HRs for some and less HRs for many

Many HRs, such as the rights to freedom of movement, freedom to peaceful assembly, the right to work, to education, to health, to development and many others were limited, derogated from or merely not met, due to the covid-19 pandemic, depending on what national, economic, social, gender or other group, an individual person or a given community pertained to.

Freedom of movement was the right most affected by derogations, for travels outside as well as inside countries. Lock-downs were temporarily imposed in many cities and regions in countries all over the world. In the UK, Italy, France, Spain, Russia, Israel, individuals could not but leave their houses only in exceptional circumstance or a necessity, declaring their domiciles. Shelter-in-place orders were issued in the USA.

The coronavirus pandemic has become a HRs crisis and has brought about authoritarian responses, state surveillance, closing of borders and many other rights limitations. In such circumstances, a new dilemma, that emanated from HRs dichotomy, surfaced, the one between the right to health and democracy.

In the congressional hearing on the testimony before a House subcommittee on the Trump administration's coronavirus response, on 31, July, 2020, Dr. Fauci, a US leading infectious disease expert, did not respond directly to the question posed by Jim Jordan, a Republican congressman, as to whether or not violent protests, like those in Portland (Ore.) or in Chicago, should be limited because of the pandemic, as was done in the case of religious worship in churches, a practice which was limited or forbidden in several states. Both freedom of assembly and religious worship are guaranteed by two amendments of the US Constitution. Fauci's answer was am-

biguous: crowding should be avoided and prohibited, because it boosts coronavirus transmission, however nothing specific was said about the protests [Fauci on Limiting Protests 2020]. If he had answered that, because the referred protests with their unjustified violence and mass gathering of people disseminated the virus widely, have been harmful to the health, life, movement and security of the population, therefore, they must be barred, this would have constituted disrespect for the democratic rights to assembly and to freedom of expression. Conversely, if the answer were that protests, as freedom of expression, should be allowed, that would have constituted a threat to the individual's right to life and to the collective right to health.

Many protests and ensuing violence, inspired by on-line misinformation and the dissemination of fallacious theories and fake news on the pandemic has been blamed on foreign conspiracy or on the globalized "communavirus" [Araújo 2020], provoking jingoistic passions and anti-Semitic sentiments in many countries. UN Secretary General Antonio Guterres touched on the issue when speaking of a "tsunami of hate and xenophobia, scapegoating and scare-mongering", that was unleashed during the pandemic [Heren 2020] Migrants and refugees have been demonized as sources of the virus and denied medical treatment. According to him, "With older persons among the most vulnerable, contemptible memes have emerged suggesting they are also the most expendable" [*ibidem*]. It was revealed that hate crimes against people of Chinese background had risen nearly threefold in the first three months of 2020.

As said previously, the pandemic was an accelerator of many trends, among which all kinds of discontent, in very different forms, from Portland to Chicago to New York to Belgrade to Hong King to Lima to Khabarovsk to Santiago de Chile to Beirut to Minsk to Bishkek and other plac-

es, stemming from different causes, inspired by dissatisfaction with the pandemic derogative measures, health system collapse, general unemployment, hunger and increasing poverty. George Floyd's death sparked civil unrests that vented publicly the long-standing discontent with racial discrimination in the United States. The protests testified to the negative assessment and growing rejection with respect to how governments address their populations' rights and needs. In many cases cited above, authoritarian measures were taken, also under the pretext of the pandemic, resulting in restricting protests, sometimes, violently and arbitrary decisions were taken on limiting and abusing HRs.

What did all these expressions of anger, unrest and dissatisfaction in so many countries have in common? They were reactions to unmet or trampled human rights, either political-civil or economic-social-cultural or communitarian-collective, galvanized into action by the pandemic and its limitations.

The people who suffered most were the poor, the unemployed, women, elderly people, persons with comorbidities, with disabilities, indigenous people, minorities, immigrants, refugees, the homeless, the detainees and other vulnerable groups, like gay and transgender people were touched structurally by racial inequalities.

According to data released by the Brazilian Institute of Geography and Statistics, in the survey "Social Inequalities by Color or Race in Brazil", the inequalities between those who auto-declare themselves whites, on the one side, and blacks and browns, on the other, are too profound in jobs, incomes, education, housing, in numbers of victims of violence and in numbers of political representation, making those ine-

qualities greater for women, than for men [Desigualdades Sociais por Cor ou Raça no Brasil 2018].

What is important to assert is that the unprivileged groups in some countries as the USA and Brazil, like the poor, homeless, detainees, contain a bigger proportion of people of African descent, subject to racial discrimination and consequently to a greater covid-19 impact. *Quilombola*⁵ communities in Brazil have up to 30% of older people, more vulnerable to the covid-19 pandemic, and old-age pensioners of African descent live predominantly in smaller cities with a diminished access to healthcare (See [Santos et al. 2020, pp. 229, 232–234]).

What attracted public attention was a spread of coronavirus into defenseless, in terms of health immunity, Indian and other indigenous tribes and communities in the Amazon, causing a high rate of mortality among them. In Brazil, the outbreaks of covid-19 in indigenous communities were caused mainly by way of illicit activities of *grileiros*⁶ and *garimpeiros*⁷, who burnt and exploited forests and lands of Indian reservations and of *quilombolas* with impunity, insufficiently impeded by the government.

What has been until recently quite absent from constituent HRs documents is the objective of overcoming poverty, which under extreme conditions causes hunger, disease and the waste of lives. In the Copenhagen and in the Millennium declarations, an appeal to "free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty", a "freedom from hunger" and a "solidarity ... in accordance with basic principles of equity and social justice" [United Nations Millennium Declaration 2000, pp. 6, 11] are the principles and goals that

5 Communities of descendants of fugitive African slaves.

6 In Brazil, ones who get hold of private or public land by forging documents of property.

7 Illicit gold miners in Amazon region.

are now filling *de facto* the gap between individual HRs and a sufferings-ridden collective reality.

Hunger was a pandemic's deadly side-effect. Just one example, among many others, of sufferings of poor people during the pandemic, just in one country, was the waving of white flags by people along roads in Guatemala, thus signaling they needed food [Abbott 2020]. The coronavirus lockdown and the economic fallout of the pandemic affected millions of poor people all over the world. It violated essential rights and freedoms, to work and to be free from hunger.

The CESCR General Comment No 12 underscores:

More than 840 million people throughout the world, most of them in developing countries, are chronically hungry; millions of people are suffering from famine as the result of natural disasters, the increasing incidence of civil strife and wars in some regions and the use of food as a political weapon. ... while the problems of hunger and malnutrition are often particularly acute in developing countries, malnutrition, under-nutrition and other problems which relate to the right to adequate food and the right to freedom from hunger also exist in some of the most economically developed countries. Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, *inter alia* because of poverty, by large segments of the world's population.

The United Nations launched a desperate appeal to the international community and financial institutions (IMF, WB) to raise funds for providing food and agricultural commodities to be sent urgently to the developing countries. According to Antonio Guterres, the most affected individuals should receive help, singling out women, older people, children and low-

wage earners, among others. While developed countries can cater on their needy on their own, the United Nations must massively increase the resources to be made available to the developing world [UN Chief Renews Call 2020].

The pandemic's impact on economies caused severe food shortages, pushing millions in Africa, South America and Caribbean and Asia to the brink of starvation. And it was not just a mere coincidence that the UN World Food Program won the Nobel Prize for Peace in 2020.

The right to work was one of the most affected HRs in the pandemic, when hundreds of millions of people were dismissed, lost jobs and had to rely on unemployment reliefs, or to queue up for social assistance benefits in order to survive. A bigger exposure to the covid-19 pandemic among vulnerable and marginalized people used to occur because they used to work in casual jobs and lacked necessary financial resources for self-isolation. At the same time low-income populations with little access to health care needed to choose between staying at home without food or taking risks of going to work to support themselves and their families [Estrela *et al.* 2020]. At the same time, the plugged companies of the Information Age were working on-line. They increased further their competitive edge, making ever greater profit, thus growing richer in the pandemic. Not surprisingly, it has been the digital exclusion, responsible for the kind of inequality that divides people with respect to their right to work.

One more universal right was badly hit and undercut: the right to education. Schools and universities have been shut down leaving two billion schoolchildren and university student without classes and catering in schools. But in many usually private educational institutions, classes continued on the basis of IT frameworks in the form of remote and distance education. But the on-line education embraces just

a tiny section of students, while a majority of them, especially in developing countries, those without access to the Internet or to an equipment for broad band signal, have been unable to benefit from remote education (See [Vergondy 2020, pp. 51–53]). So, there were the few privileged and the many unprivileged groups of people with respect to access to education, a universal human right which the pandemic has undercut.

The difficulty of access to health services, the prejudice, the minimization of complaints reflected a severe impact of the covid-19 upon the vulnerable group, victims of forced evictions. Even though some governments have put in place temporary bans on forced evictions, many people continue to lose their homes. More than 11,000 people were thrown out of their homes in Brazil and Kenya, and more are at risk of eviction. Forced relocation is a threat in countries like Haiti and increasing in many others. In the CESCR General comment 7 The right to adequate housing (Art.11.1): forced evictions, it is said:

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.

The right to water is a newly born collective right, recognized by the UNGA in 2015 and included in the SDGs, although it was claimed that in the Art. 11 and 12 of the ICESCR this question had been treated before, in the framework of environmental problems. It was said in the CESCR General Comment No 15 about the right to water:

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. Over one billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to water. The continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty.

But as the number of covid-19 infections grew, handwashing in the developing countries became a problem. In 2019, the WHO reported that 784 million people lacked a basic drinking water service. Hundreds of millions of people had no access to hand-washing facilities at home [Townsend 2020].

There are more than one billion people living with disabilities worldwide. The Covid-19 pandemic disproportionately affected these individuals, putting them at risk of increased morbidity and mortality [Armitage et al. 2020]. Human Rights Watch has documented poor conditions in private and state institutions for people with disabilities in Brazil, Croatia, Kazakhstan, Russia, Serbia, Ghana, Indonesia, Nigeria and Somaliland.

Detainees were another group of vulnerable people whose lives were put into risk of covid-19 contagion because of impossibility of distancing in places of confinement. In this regard, the recent refusal of a district judge in the UK to consider Julian Assange's request for bail highlighted the exposure of detainees. The judge found in late March that "[a]s matters stand today this global pandemic does not, of itself, yet provide grounds for Mr. Assange's

release” [Julian Assange Denied Bail 2020]. Such a refusal, probably made for political reasons, could mean a breach of the European Convention on Human Rights.

During the pandemic, individual and collective rights were limited or derogated from. In some countries, even such a basic existential right – the right to life, a State’s dire responsibility – has come under threat. Even in most developed countries, like the USA, the UK and the EU states, a sense of helplessness and panic overcame public services due to the scope of the pandemic, for the onslaught of which their health-care systems were not prepared. But when the shock was over and necessary provisions were taken, there were many delays in the deployment of medical facilities, in providing special respiratory equipment, in the production of masks, gloves and protective gear for the medical personnel and in finding the appropriate sets of medication for patients. Aggravated further by the political discourse of suspicion of and mistrust in medical knowledge and recommendations, those delays were due to the overconfidence in a “normal” course for the epidemic and to suspicions of conspiracy and the waging of a war of words with China. The cost has been paid by the many lives that could have been spared but were not, in many countries, especially in the United States, in Brazil and in the UK.

Some countries – USA, Brazil, Sweden, Belarus, Nicaragua, Turkmenistan, were criticized for downplaying the threat of the coronavirus to public health, thus, causing a serious damage to their populations [Shipani *et al.* 2020] and, thus, putting in cheque the right to life of their citizens.

In many countries, but especially in the USA and Brazil, government and medical authorities prescribed and promoted the use of (hydro)chloroquine, scientifically proven to be neutral or useless to some categories, but harmful to others. In Brazil, two health ministers were dismissed for disagreement with the president as to

the health policy, leaving the position, occupied by an interim minister for months.

Some leaders attempted to underplay the seriousness of the pandemic, calling it a “small flu” [“Gripezinha” e “histeria” 2020], challenging WHO recommendations and those of national medical authorities. Their attitudes, encouraging mass concentrations of people, appearing in public without masks, disregarding social distancing and greeting people with handshakes and hugs, and, thus, showing, by deliberate postures, contempt for medical science, for proper governmental authorities protocols, for local authorities protection measures and for the proper behavior of citizens, undermined the health system work to maintain the pandemic under control.

Recommendations of the US Center for Disease Control and Prevention were not infrequently challenged by the US president. The untimely and not scientifically justified opening of industries, trade, schools, non-essential services and domestic travels brought the pandemic to the highest levels of infection in the world: the USA and Brazil occupy the 1st and the 2nd place in the pandemic anti-ranking with respect to the numbers of the dead.

It was just a matter of time before the leaders who contested the sanitary norms caught the covid-19 pandemic, as were the cases of disease of Brazilian, Belorussian and the US presidents.

A counter example is the so-called German exception, when testing, tracking, a robust public health care system and a trust in government’s recommendations on social isolation, distancing, the wearing of masks, yielded some of the best results in the world for combatting the pandemic, not to mention New Zealand’s or South Korea sanitary protective measures. A study of the London Imperial College, published in “Nature”, estimated that social isolation prevented the deaths of about three million people, across Europe alone,

since the beginning of the pandemic up to the month of July.

By comparing the deaths predicted under the model with no interventions to the deaths predicted in our intervention model, we calculated the total deaths averted in our study period. We find that across 11 countries 3.1 (2.8–3.5) million deaths have been averted owing to interventions since the beginning of the epidemic [Flaxman *et al.* 2020, p. 260].

Nevertheless, a relaxation of restriction measures in several countries of Europe, after the decrease of the covid-19 contagion when the death toll was reduced to a *plateau*, provoked new surges of the disease some two months later.

While in Italy, in France and especially in the UK sanitary measures were taken after much delay, in Portugal and in Spain they were quite timely, though Spain was much more afflicted for several reasons, analyzed in a report of the Spanish Real Instituto Elcano. The pandemic, according to the report, put too much pressure on women, responsible for childcare, for domestic work, who, on top of this, were victims of gender violence. The report said that, “the most vulnerable are those who suffer more because of the economic consequences of the pandemic and of the confinement” [Powell *et al.* 2020, 4.3.2., free translation].

There were difficulties of women’s access to reproductive services in time of emergency, although a public health crisis could not have been used as a pretext to legitimate unnecessary derogations from women’s rights.

In the UK, Italy, Spain and Brazil in early stages of the pandemic, because of the lack of equipment, some medical protocols for rationing life-sustaining treatment (See [Savulescu *et al.* 2020] indicated a preference for respirators usage for younger covid-19 patients, thereby resem-

bling practices of gerontocide, and the increase in the proportion of elderly victims among the deceased.

In US, Italian, Spanish hospices the number of covid-19 victims was much higher than among elderly people who were in hospitals or self-isolated themselves in their homes. Many more older people suffered and died, than people of other ages, because they were more susceptible to the covid-19. Many of them were massively contaminated in hospices. The explanation was that these countries had a much greater proportion of ageing population.

Many governments announced and implemented programs of economic assistance to populations, while creating huge budget deficits and appealing to international financial institutions. The European Union had to overcome a long-lasting resistance of the “frugal four” – Sweden, Denmark, Austria and the Netherlands, along with Finland – to adopt a plan of economic recovery, worth € 7,5 billion, whose main beneficiaries were Italy and Spain, which suffered most from the pandemic in the EU.

Nevertheless, governments’ assistance in many countries to the unemployed and groups of inactive and poorer citizens during the pandemic was duly perceived and typified as “provisional solidarity” [Coutinho 2020], meaning *ad hoc* political interests (calamity, election, campaign etc.), that would be dispensed after the interest or the “solidarity” disposition is no longer present on the agenda. Nevertheless, politicians took advantage of such a solidarity to gain popularity and to play up their image.

Travels and frontier-crossing were prohibited or restricted, thus undermining world tourism and transport industries and reducing international trade. The travel bans put in place by the USA, were initially deemed scandalous in Europe, although this perception diminished sub-

stantially after the USA rose to the first place in the pandemic anti-ranking. The same measures, introduced by other countries, complicated the lives of those looking for a job, a refuge, a family union or having a health problem, and put to a check the global flow of travelers who had got used to “wipe out” countries they visited from the world map. The travel ban was treated as a big annoyance by the better-off and middle-class tourists and travelers alike, who considered the pandemic a “mild flu” and the attendant limitations to be a violation of the universal right to come and go at will. But these potential globetrotters should be reminded that already in Peru, in France, in Italy, visits to famous tourist sites as Machu Picchu, Tour Eiffel, Venice had already been restricted, because neither the sites nor the local communities could support huge influx of visitors. Who could imagine that the number of scheduled passengers boarded by the global airline industry would jump from one billion in 1990 to over 4.5 billion people in 2019?

In “A Study of Future Worlds”, Richard Falk writes with forethought, that “to remove travel and residence policy from the control of national governments ... , ... to entrust local communities with the authority to control population size and degrees of contact with outsiders” would be possible to achieve, when “values associated with mobility” could be reconciled with “those connected with individual and community autonomy” [Falk 1975, p. 25]. Once again, we meet with a contradiction of a universal human right of travel with a communitarian right to conserve natural, cultural and historic values.

The problem of human settlements is another topic that should be discussed in a pandemic paradigm. More than a half of the world is an urban community. In 2050 about two thirds of the world population

will live in cities. The number of inhabitants of the world ten biggest megacities is now over 300 million. Ideally, urban settlements must provide essential services and guarantee the full enjoyment of human rights to populations. However, equitable enjoyment of HRs in the current urban reality is quite utopic, because big cities, especially in the developing world, have a sizable proportion of inhabitants living in slums, without access to sanitation, to healthcare, to communication, to transport, and even to treated water. The slum areas are rife with crime, especially drug trafficking, and subjected to police violence. Life in big cities, more so in slums than in the well-to-do quarters, is under greater threat through the easier virus dissemination in the crowded living condition, than in rural areas. So, HRs in big cities are very unequally enjoyed by the haves and the have-nots.

No wonder countries with a lower incidence of the disease were those with less populational density and connectedness, while, by contrast, higher rates of contagion occurred in large urban centers, with intense traffic and multiple external connections, high concentrations in living spaces and crowded public transportation. Thus, such cities as New York, Madrid and Barcelona have been and still are the most affected by the pandemic.

The dream of Constantinos Doxiadis, the author of *ekistics* (a science of human settlements), to build an *ecumenopolis*⁸ with little more than 69 billion of inhabitants, that would occupy 2.5 per cent of the land space leaving the rest to be a global garden and a global system of water, thus achieving a global ecological balance [Martins 1980, pp. 143–144], could become a reality where all of humankind could share equitably and enjoy the common and indivisible rights, secured by solidary states.

8 A world city (in Greek).

The spread of HRs and liberties has gone far beyond state frontiers and bear on how we deal with Nature and our planet. Never in the history of humanity has there been such an impressive number of people living on Earth so densely yet traveling around the globe as never before, producing and consuming incomparably more than ever, but also polluting and destroying the natural environment on an unprecedented scale. While the problem of natural limitations to the exploration of the Earth's resources has been, for long, in discussion among ecologists, economists, anthropologists, demographers, sociologists, politicians, it must be quite a new topic in the HRs epistemological community. How far can HRs expand in terms of their balance with nature, humanity, states, communities, minorities?

The reduction of CO2 emissions by 0,3% since the beginning of the pandemic was met with irony by some and with hope by others, and the fact that the Antarctic was the only continent without any contagion from the disease, was seen as just a happy anomaly. What was thus missed or played down was that Nature was giving us a dire warning about the impending climate crisis.

The above-mentioned examples show to what extent government policies were responsible for the health and wellbeing, on the one hand, or the diseases and demise of their citizens, on the other, and how the dilemmas rooted in the HRs dichotomy have contributed to greater losses of our first antipandemic responders.

Conclusion

The accorded principles of the Vienna Declaration prove that the international community was driven by a common will to strike a holistic attitude to HRs, when formulating a nexus of interdependency of democracy, HRs law and development, ap-

pealing to states to abide by it: "5. All human rights are universal, indivisible and interdependent and interrelated." ... and "... it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." "8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing". The right to development was universalized at the Vienna Conference on Human Rights.

Notwithstanding this common will to create an internationally and nationally recognized and workable covenant of indivisible and universal rights, these continue to be divided and clustered. The experience with the observance of HRs during the pandemic shows that individual rights are considered as more absolute and non-derogable rights, while economic, social and cultural rights are dealt with as more relative rights, factually "derogable" from, differently in different countries. Collective/communitarian rights are still perceived as the rights in formation, looked at ambiguously and, not rarely, with fear, prejudice and intolerance.

The forces of globalization, of modernity, of democratic transitions in the 20th century promoted individual human freedoms and liberties, first nationally, in democratic states, then beyond national border, conquering regions and continents and, finally, globally, through recognized national and international legal instruments. Never before have people enjoyed HRs as much as nowadays, as a result of the widespread implementation of universal freedoms and democratic guarantees by all kinds of political and constitutional regimes, including authoritarian and culturally distinctive countries and societies. At the same time, HRs have not been equally and fully accessible to the citizens of all countries and to individuals without exception, because glo-

balization, with its free market asymmetrical development, the historical legacy of wars, colonialism, imperialism, exploration, structural inequality is responsible for remaining racial and gender discrimination, increasing poverty and inequality, underdevelopment, natural resources depletion and climate change, a growing loss of global commons, a continued production of arms of mass destruction, including bacteriological and biological weapons, capable of unleashing unimaginable and lethal manmade pandemics and eventually bioterrorism.

It has already been stated by microbiologists and virologists: the coronavirus has come to stay in human societies and will frequently and easily attain global scale infections as a result of the very process of globalization, population growth, the density of human settlements, climate change, unsustainable economic development and irresponsible exploitation of Nature.

But enjoyment of some civil and political rights, based exclusively on individual values, can threaten a survival of human communities. A resistance to vaccination, for example, as an individual right of expression, may deem to be dangerous to families, communities and bigger collectivities of people, to their right to life. That was proved by the history of vaccinations against polio, smallpox, other lethal viruses, when persons and communities had resisted to vaccinations and perished. According to Pugh,

The question of compulsory vaccination raises salient human rights questions ..., potentially engaging the right to freedom of religion (Art 9), freedom of expression (Art 10), right to private life (Art 8), and possibly the right to freedom from inhuman and degrading treatment (Art 3). However, if a vaccine proves to be the most viable exit strategy from our current predication, the pandemic may yet require us to confront the question whether com-

pulsory vaccination could be a necessary and proportionate response do this public threat, and how far we might be willing to revise existing limits to regulations ... [Pugh 2020, p. 14].

If we live in a global society, so the freedom of each one is limited by the rights of others – of many other people and many communities, as well as by the “circumstance”, for the sake of solidarity and equity of the humankind.

But if the individual rights are enjoyed in defiance of collective/communitarian rights, this will prevent peoples and communities from taking full advantage of their rights and freedoms and working to achieve a more harmonious, democratically governed world society.

Building a normative concept of global human equity should drive states to eliminate a “great divide” between HRs public politics and HRs universality and indivisibility.

That divide, which creates an abyss of inequities, separates

- the commitment to abide by the existing system of Covenants on political, civil and economic, social and cultural rights and of non-discrimination treaties, from
- governments’ matter-of-fact “derogations” from the commitments to provide equal basic necessities of employment, food, shelter, health care, education and protect individuals and communities from discrimination, torture, slave and forced labor, in developing and well as in developed countries.

The Global Green New Deal, contributions to the UN multi-donor fund, debt restructuring and debt forgiveness, directing G20 support to the Global South, refraining from defensive trade and intellectual property measures [Falco 2020, p. 237] are extremely important for alleviating the burden of the developing countries, but

these are subsidiary measures that do not change the essence of the divide, that is, the broken HRs relationship between individuals and collectivities/communities. The answers consist in reducing inequality, giving equal status with civil and political to economic and social human rights, giving priority to sustainable development, fighting racial discrimination and gender inequality and, first and foremost, reforming human rights in the sense of its true interrelatedness and interdependence with equity and solidarity. “A Global New Deal” may deem necessary to attain such a goal.

Balancing, interrelating and equalizing individual rights with collective/communitarian/minorities rights in order to promote one’s people, one’s culture, one’s minority, one’s freedom from poverty, hunger, disease, violence, inequality, injustice and intolerance, to protect one’s global commons from a planetary collapse, through a comprehensive reform and a revision of all HRs Conventions and acts, must be an Ariadne’s thread. The pandemic is teaching us a lesson that we must learn to know how to embrace all the HRs in a comprehensive code of rights of and for all the humankind, a Global Pact of Human Rights, to be arrived at by all states and their citizens, to be internalized by them and supervised by a global authority, one that would help to bridge the gap between the two unequal worlds. This must not be a Pact valid only for emergencies or for “rainy times”. These are the “rainy times” that drive us to come to such a conclusion.

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Права человека в эпоху пандемии

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АННОТАЦИЯ. В данной статье обсуждается проблема прав человека, которые были ограничены или частично отменены во время пандемии COVID-19. При рассмотрении некоторых их ограничений, отмен и даже злоупотреблений, а также их последствий необходимо попытаться осмыслить политические, социальные, моральные и личные дилеммы ограничения прав человека, а также мотивы общественного и социального поведения во время пандемии с учетом санитарных мер, социального дистанцирования, изоляции, ограничения на поездки, социальной помощи, рекомендованных ВОЗ и избирательно принятых к соблюдению правительствами. Данная статья анализирует прошлый опыт и новые уроки пандемии, а также государственные и общественные меры и реакцию на них; она направлена на то, чтобы оценить, стимулирует ли антипандемическая политика, проводимая как государствами, так и на международном уровне, изменения в парадигме прав чело-

века в виду усугубленных в ней дилемм и дихотомий в период пандемии. Вывод заключается в том, что нынешняя парадигма прав человека должна быть пересмотрена с политических, социальных, экономических, экологических, и, особенно, с экзистенциальных позиций «тяжелых времен» с целью создания нового или усовершенствования существующего универсального кодекса этих прав.

КЛЮЧЕВЫЕ СЛОВА: пандемия, права человека, сравнительное право, сравнительная политика, дилеммы и дихотомии прав человека, солидарность, право справедливости

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