

PERSONAL SECURITY AND FREEDOM OF MOVEMENT OF CITIZENS: CHALLENGES IN THE CONTEXT OF THE GLOBAL PANDEMIC IN 2020

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Abstract: *This article analyzes the impact of the global COVID-19 pandemic, which hit the world in early 2020, on the fundamental right to freedom of movement in the EU and Ukraine. The issues of personal security of the population and ensuring their rights in the conditions of restrictions imposed by countries in these conditions are considered in detail. The authors examine whether the conditions of quarantine are not a restriction of the right to freedom of movement or even a deprivation of liberty.*

The purpose of this article is to clarify international standards of the right to freedom of movement, permissible restrictions on the right to freedom of movement in order to ensure personal and public safety in a pandemic COVID-19. The article has to become an interesting contribution to the debate about the restrictions imposed on the right to freedom of movement in the COVID-19 crisis. The review also aims to point out the white spaces or opportunities for further research on involvement of personal safety of citizens.

Keywords: *Pandemic; personal security; human rights; public safety; quarantine; freedom of movement.*

Introduction

In early 2020, the world faced unprecedented challenges for personal, social, national and international security. The rapid spread of the SARS-CoV-2 virus from China to European countries, as well as to all countries of the world, has changed the domestic and foreign policies of states. The

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EU countries and Ukraine began to feel this threat at the end of February 2020, and in March the borders were closed, as a result of which citizens of many countries were restricted in their freedom of movement in terms of both inside and abroad travel. One government after another is imposing new restrictive measures to reduce the spread of COVID-19 and save people. On March 11, 2020, the WHO declared a global pandemic, and as of November 2020, there were more than 46 million infected in the world. EU countries remain the epicenter of an outbreak and the situation with limited movement of people may change in the following months. In Ukraine, the situation is similar to neighboring European countries. However, as UN Secretary General Antonio Guterres noted on Twitter: "COVID-19 is a health crisis that is rapidly becoming a human rights crisis". Guterres added that people and their rights should be the focus¹. In support of this view, the website of the UN High Commissioner for Human Rights contains an appeal by Michelle Bachelet stating: "Emergency measures, which restrict the right to freedom of movement, should be proportionate to the risk, time-bound, and safe"². That is why the issue of human rights in the context of a global pandemic and quarantine measures needs attention.

The purpose of this article is to clarify international standards of the right to freedom of movement, permissible restrictions on the right to freedom of movement in order to ensure personal and public safety in a pandemic COVID-19. The article has to become an interesting contribution to the debate about the restrictions imposed on the right to freedom of movement in the COVID-19 crisis. The review also aims to point out the white spaces or opportunities for further research on involvement of personal safety of citizens.

The study is based on an interdisciplinary approach to the analysis of the problem of applying measures to combat the COVID-19 pandemic by different states and the admissibility of such measures to interfere with the right to freedom of movement through dialectical, comparative legal, systemic methods. Survey results and statistics were also used. Most of the publications are laws and international legal acts, ECtHR case law. The

¹ COVID-19 and Human Rights. We are all in this together, April 2020, United Nations. <https://cutt.ly/PuPRLyb>

² Michelle, Bachelet, *Letter High Commissioner for Human Rights*, 31 March 2020. <https://cutt.ly/luPGi9j>

primary focus of the review lies on academic, peer-reviewed articles, monographs, or proceedings by distinguished authors.

COVID-19 pandemic and personal safety of citizens

Whereas freedom of movement and personal security were previously more closely linked to certain external and internal threats to national security, a new aspect has emerged. This aspect has important role in the formation and implementation of public policy, identification of challenges to governance and security sector reform, determining the priorities of national policies in protecting the lives of citizens.

It is noteworthy that according to a 2017 survey, 82.3% of Ukrainians did not consider themselves protected from natural disasters, but 75.6% from epidemic diseases. In today's conditions, we can consider the COVID-19 pandemic an epidemic disease. The feeling of personal security of respondents is most affected by: the armed conflict in eastern Ukraine (40% of respondents), the economic situation (38.1%) and the criminogenic situation (34.1%). It is unfortunate that Ukrainians pay very little attention in their assessments (6%) to the observance of fundamental rights and freedoms as one of the key prerequisites for security and development. However, regional, age and gender differences are not statistically significant³.

With the spread of coronavirus, the issue of personal security has become relevant for all countries. It is worth mentioning that according to the results of the study conducted in Ukraine in 2017, the citizens of Ukraine feel most safe in a familiar environment (their own apartment, house and yard, in their area). In most cases, men claim a higher level of security than women. There is also a clear tendency for the level of security to decrease with the age of the respondents. The feeling of security is greatly influenced by two main factors: the assessment of the relevance of each of the threats to their own security and the level of expectations of the citizen regarding the reliability of protection by the State⁴. Although the study was conducted several years before the pandemic, it confirms that the personal safety of citizens is best ensured in the isolation of the home. And it is such measures that most countries now rely on. This is confirmed by the results of our survey of experts in

³ Citizens of Ukraine on security: personal, national and its components, 2017, Kiev (Ukraine), (in Ukrainian). <https://cutt.ly/vuPR5a8>

⁴ Ibid.

Ukraine, where the three key factors in the sense of personal safety of citizens in quarantine include the availability of remote work, permanent income and staying at home.

The right to freedom of movement as the basis of personal freedom

Freedom of movement of the person is a universally recognized right, guaranteed at the level of both international acts and national legislation of European states and Ukraine. Freedom of movement at the international level was first enshrined in the Universal Declaration of Human Rights (Article 13), and subsequently also in the International Covenant on Civil and Political Rights (Article 12).

It was in the Universal Declaration of Human Rights that the substantive elements of freedom of movement were formed, in particular: the right to move and choose one's place of residence freely, as well as the right to leave any country, including the state of which he or she is a national and return to this country. The International Covenant on Civil and Political Rights has already supplemented this right with a guarantee that no one may be arbitrarily deprived of the right to enter the State of which he is a national. That is why, even in a pandemic, depriving a person of the right to return to the State of which he or she is a national would be a gross violation of Article 12 of the International Covenant on Civil and Political Rights.

The origin of the right to free movement can be traced in the ancient concept of recognizing free movement as a basic element of personal freedom. There is still a debate among scholars about the concept and content of freedom of movement. Adam Hosein proposes to distinguish between "freedom of movement" and "freedom of international mobility"⁵. The scholar also concludes that freedom of movement does not apply to individual autonomy, but rather to democracy and political equality, and the scholar does not support the idea of open borders in modern conditions⁶. Although the study was published by the author in 2013, there is a very limited chance to start discussions about removal of borders in the nearest future, but on the contrary, restrictions on interstate

⁵ Adam, Hosein, Immigration and freedom of movement, *Ethics & Global Politics*, Vol. 6, 2013, № 1, p. 25-26. <https://www.tandfonline.com/doi/pdf/10.3402/egp.v6i1.18188>

⁶ *Ibid*, pp. 35-36.

movement and increased border controls seem quite realistic due to the threat of continuation of the COVID-19 pandemic or its recurrence.

Ukrainian scholars justify the narrow and broad meaning of the term "freedom of movement". In a broad sense, freedom of movement includes: the right of a citizen to move freely within the State; the right to choose the place of residence; the right to leave the country freely; the right to return to one's country without obstacles⁷. The narrowed concept of freedom of movement is reduced only to the free mobility of a person who is legally in the State within its territory⁸. Article 3 of the Law of Ukraine "On Freedom of Movement and Free Choice of Residence in Ukraine" enshrines the narrowest understanding of freedom of movement only within the State⁹. Council Directive 2004/38/EC of 29 April 2004 on freedom of movement also includes the right to leave the country freely¹⁰.

In our opinion, the approach of Mykolayenko Y.I. is correct, as he suggested that: "the right to freedom of movement means a guaranteed and regulated at the national and international legal levels possibility of a person within its legal status and on legal basis to move freely and without any obstacles within the territory of Ukraine, to leave the territory of Ukraine freely and return to Ukraine"¹¹.

At the same time, for some reason, the freedom of movement is limited to the territory of Ukraine, which does not give a definition of a universal nature. In the already mentioned our own study, half (20 people) of researchers indicate that the closure of borders can be considered a restriction of personal human rights, 11 believe that it is not

⁷ Olena Kokhanovs'ka, Problems of realization of the right to freedom of movement in Ukraine and the practice of the European Court, *Chasopys tsyvilistyky*, (in Ukrainian), No. 18, 2015, p. 158.

⁸ M.O. Lyubchenko, Constitutional and legal regulation of the right to freedom of movement in Ukraine, *Sudova apelyatsiya*, (in Ukrainian), No. 3(40), 2015, pp. 66-67.

⁹ On freedom of movement and free choice of residence in Ukraine: Law of Ukraine, 11.12.2003, No. 1382-IV, (in Ukrainian). <https://zakon.rada.gov.ua/laws/show/1382-15>

¹⁰ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32004L0038>

¹¹ Yuriy Mykolayenko, *Theoretical and legal principles of implementation of the right human being to freedom of movement and free choice of residence in Ukraine*, Kiev (Ukraine), (in Ukrainian), 2019, p. 12.

"a restriction" and 9 people consider it a partial restriction of rights. At the same time, the question "Can quarantine measures in countries be considered a restriction of personal human rights?" the answers are somewhat different. Affirmative answer was given by 17 people, which is 42.5%, negative – 13 (32.5%) and 10 people consider such measures be a partial restrictions. Thus, most scholars believe that the closure of borders has more impact on the restriction of personal rights than restrictions in internal travels within the country.

The right to leave the country is not absolute and cannot be equal to the right to permanent migration, but it must allow movement on a temporary basis and ensure the exercise of other rights¹². Freedom of movement within the country is not absolute either. It is Article 12, paragraph 3, of the International Covenant on Civil and Political Rights that contains the criteria for the admissibility of restrictions on freedom of movement, in particular those provided for by law and necessary to protect public safety or public health.

Convention for the Protection of Human Rights and Fundamental Freedoms¹³ does not contain the right to freedom of movement, it is enshrined in Article 2 of Protocol 4¹⁴ and corresponds in content to the provisions of other international instruments, the only one on restrictions, then Part 3 also adds that they must be necessary in a democratic society, and Part 4 allows restrictions in certain areas. Article 45 of the Charter of Fundamental Rights of the European Union states that every citizen of the EU has the right to move freely within the territory of the Member States and that this right may be granted to third-country nationals legally residing on the territory of any Member State¹⁵.

In its General Comment No. 27 the HRC has provided an authoritative interpretation: "liberty of movement is an indispensable condition for the free development of a person. ... Freedom to leave the

¹² Jane Mcadam, *An Intellectual History of Freedom of Movement in International Law: the Right to Leave as a Personal Liberty*, *Melbourne Journal of International Law*, Vol 12, 2011, p. 29. <https://cutt.ly/nuPIfXe>

¹³ Convention for the Protection of Human Rights and Fundamental Freedoms, 04.11.1950, (in Ukrainian). https://zakon.rada.gov.ua/laws/show/995_004

¹⁴ Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees certain rights and freedoms not provided for in the Convention and in the First Protocol thereto of 16 September 1963, (in Ukrainian). https://zakon.rada.gov.ua/laws/show/994_059

¹⁵ Charter of Fundamental Rights of the European Union, (in Ukrainian). https://zakon.rada.gov.ua/laws/show/994_524

territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. Thus travelling abroad is covered as well as departure for permanent emigration. Likewise, the right of the individual to determine the State of destination is part of the legal guarantee¹⁶.

In our opinion, the right to freedom of movement and the right to free choice of residence are separate rights. Freedom of movement is a fundamental right that derives from human dignity and is an element of the general concept of individual freedom, and enshrining this right at the level of international instruments has become only an additional guarantee for its implementation and limiting state arbitrariness to interfere in this right. Freedom of movement implies the right of a person to move freely both within the state of which such a person is a citizen or resides in it on legal grounds, and to leave the borders of the State and return to its territory.

Grounds for restricting the right to freedom of movement in the context of the COVID-19 pandemic

Given that many countries have closed their borders under quarantine conditions, migration policy and the living conditions in which migrants find themselves deserve special attention. Migration policy can affect the exercise of almost all human rights guaranteed by international instruments, but has a direct regulatory effect on a person's freedom of movement.

There is no doubt that in conditions of threat to both the personal safety of citizens and public safety due to the risk of infection with COVID-19, the State may rely on various measures that restrict the rights of individuals. In this part we will consider the legitimacy and admissibility of restrictions on freedom of movement, the regulation of which is the basis of migration policy.

Restrictions on freedom of movement within the EU are permissible under Articles 27 and 29 of Directive 2004/38/EC in the case of "diseases with epidemic potential", but measures taken on grounds of public security "must comply with the principle of proportionality"¹⁷. The

¹⁶ Human Rights Committee, General Comment N 27: Freedom of movement (article 12), CCPR/C/21/Rev.1/Add.9, 1 November 1999, para 1, 8, hereinafter HRC, General Comment No. 27.

¹⁷ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside

European Commission has stated that such measures should not discriminate against EU citizens, should not prohibit the entry of an EU citizen or a third-country national residing on the territory of an EU Member State, should facilitate the transit of other EU citizens and returning residents to home. At the same time, there exist a number of problems in practice. For example, in Hungary, as of March 17, 2020, only Hungarian citizens or persons with a permanent residence permit were allowed to enter the country. To solve the problem of impossibility for a person with a Schengen visa of an EU Member State to leave due to the closure of borders, the term of such a visa may be extended or a national visa, a temporary residence permit¹⁸.

In the context of the pandemic, the European Commission has published for all EU citizens the COVID-19 Guide on the implementation of temporary restrictions on non-essential travel to the EU, on simplifying the transit regime for repatriation of EU citizens and on the impact on visa policy and ensuring the availability of goods and basic services, the Commission Notice on temporary restrictions on non-essential travel to the European Union, and COVID-19; Temporary restriction on non-essential travel to the EU. In particular, one of these documents states the following: while travel restrictions are generally not seen by the World Health Organisation as the most effective way of countering a pandemic, the rapid spread of COVID-19 makes it essential that the EU and Member States take urgent, immediate and concerted action not only to protect the public health of our population, but also to prevent the virus from further spreading from the EU to other countries, as it has been observed in recent weeks. Travel restrictions should focus on drastically reducing incoming people flows at the external borders of the Union, thereby also slowing transmission to other countries on travellers' return, and discouraging outgoing travel of EU citizens and other persons residing in the EU+ area. The EU's external border has to act as a security perimeter for all Schengen States¹⁹.

freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. <https://cutt.ly/yg2aGK6>

¹⁸ Coronavirus Pandemic in the EU – Fundamental Rights Implications, Bulletin No. 1, Non-discrimination Racism Fundamental Rights EU Charter of Violence against women, 20 MARCH 2020, Luxembourg: Publications Office of the European Union, 2020. <https://cutt.ly/CuPbrBK>

¹⁹ Communication from the Commission COVID-19: Temporary Restriction on Non-Essential Travel to the EU, 16.03.2020. <https://cutt.ly/XuPILpO>

In Ukraine, freedom of movement is guaranteed primarily by Article 33 of the Constitution of Ukraine. From the analysis of this norm, it can be concluded that freedom of movement does not depend on citizenship, sufficient legal grounds for a person to stay in Ukraine is enough, and it includes the right to leave Ukraine freely, except for restrictions to be established by law. Moreover, citizens of Ukraine cannot be deprived of the right to return to Ukraine at any time. With this in mind, the decisions to close Ukraine's borders concern only the entry of foreigners into Ukraine, and in no way concern the return of citizens to Ukraine. At the same time, in order to prevent infection spread in duly justified cases such citizens may be obliged to a certain period of self-isolation or even observation, which will be legitimate restrictions on freedom of movement in view of the Law of Ukraine "On Protection of Infectious Diseases"²⁰.

The situation of emergency (not the state of emergency) was introduced in Ukraine on March 25, 2020²¹. The issue of the situation of emergency is not regulated at the constitutional level, unlike the state of emergency and according to Article 64 of the Constitution of Ukraine even in a state of emergency a number of rights cannot be restricted, while Article 33 establishing freedom of movement may be limited. According to the Civil Protection Code of Ukraine, in the event of an emergency situation, citizens must comply with the anti-epidemic regime, which also allows for quarantine and restriction of traffic. That is, in an emergency situation, the regime imposed may in fact restrict the exercise of a number of human rights, and if there are legitimate grounds for the competent authority to take a decision providing for statutory measures, such interventions will meet the rule of law as required by the Convention on the Protection of Human Rights and fundamental freedoms and the practice of the ECtHR.

In general, the restriction of the right to freedom of movement will be lawful and permissible if it is justified by legal rules, is necessary in a democratic society and for a legitimate purpose.

With regard to Ukraine, in general, the quarantine procedure on March 11, 2020 was legitimate, introduced in accordance with Article 29 of

²⁰ On protection of the population from infectious diseases: Law of Ukraine, 06.04.2000, № 1645-III, (in Ukrainian). <https://zakon.rada.gov.ua/laws/show/1645-14>

²¹ Order of the Cabinet of Ministers of March 25, 2020 № 338-r. "On the transfer of a single state system of civil protection in an emergency situation", 25 bereznya 2020 r, № 338-r, (in Ukrainian). <https://cutt.ly/UuPbdV0>

the Law of Ukraine "On Protection of the Population from Infectious Diseases"²² by the competent authority – the Government²³.

As of June 2020, ten States have made a declaration of withdrawal from their obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms under Article 15: Latvia (16 March), Romania (18 March), Armenia (20 March), Estonia (20 March), Moldova (20 March), Georgia (23 March), Albania (1 April), Macedonia (2 April), Serbia (7 April) and San Marino (14 April)²⁴. Ukraine has not yet made such a statement. States, which have derogated on the basis of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms must inform the Secretary General of the Council of Europe of the measures taken. At the same time, it is necessary that the restrictions on rights introduced be proportionate, despite the allegations of derogation. In the case of "Mehmet Hasan Altan v. Turkey" the ECtHR argued that a declaration of derogation did not imply the possibility of imposing measures without legal grounds and without respecting the constitutional guarantees established in the State (paragraph 140)²⁵.

The Council of Europe in "Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis" noted: "Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis A derogation under Article 15 is not contingent on the formal adoption of the state of emergency or any similar regime at the national level. At the same time, any derogation must have a clear basis in domestic law in order to protect against arbitrariness and must be strictly necessary to fighting against the public emergency. States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort should be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness. While derogations have been accepted by the

²² On protection of the population from infectious diseases: Law of Ukraine, 06.04.2000, № 1645-III, (in Ukrainian). <https://zakon.rada.gov.ua/laws/show/1645-14>

²³ Resolution of the Cabinet of Ministers of March 11, 2020 № 211 "On prevention of the spread of coronavirus COVID-19 in Ukraine", № 211, (in Ukrainian).

<https://cutt.ly/HuPxb4>

²⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), Notifications under Article 15 of the Convention.

<https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354>

²⁵ Case of Mehmet Hasan Altan v. Turkey, Application No. 13237/17, 20, March 2018. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-181862%22%7D>

Court to justify some exceptions to the Convention standards, they can never justify any action that goes against the paramount Convention requirements of lawfulness and proportionality"²⁶.

Given the domestic situation and measures to combat the pandemic, the governments of a number of States have already withdrawn their derogations and the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms are fully operational again. The following countries have withdrawn the derogation: Albania (25 June 2020), Armenia (16 September 2020), Estonia (18 May 2020), Latvia (10 June 2020), Romania (15 May 2020), North Macedonia (30 June 2020), San Marino (8 July 2020) i Serbia (13 October 2020). Georgia retains the already notified derogations from certain obligations under Articles 5, 6, 8, 11 of the Convention, Articles 1 and 2 of Protocol 1 to the Convention, Article 2 of Protocol 4 to the Convention until 1 January 2021²⁷.

The revocation of the derogations by the States is extremely positive, as it confirms the State's understanding of compliance with the Convention's obligations to protect fundamental human rights, especially in emergency situations.

In the case of "A. and Others v. the United Kingdom" The European Court of Human Rights has analyzed the following issues: "Whether there had been a "public emergency threatening the life of the nation?". ECtHR noted that: "While it was striking that the United Kingdom had been the only Convention State to have lodged a derogation in response to the danger from al'Qaeda, the Court accepted that it had been for each Government, as the guardian of their own people's safety, to make its own assessment on the basis of the facts known to it. Weight had, therefore, to be attached to the judgment of the United Kingdom's Government and Parliament, as well as the views of the national courts, who had been better placed to assess the evidence relating to the existence of an emergency. ... The Court considered that the House of Lords had been correct in holding that the extended powers of detention were not to be seen as immigration measures, where a distinction between nationals and non-nationals would be legitimate, but instead as concerned with national

²⁶ Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, A toolkit for member states, 7 April 2020. <https://cutt.ly/Ig2aIMI>

²⁷ Notification - JJ9086C Tr./005-265 - 16 July 2020 - Communication related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5). <https://rm.coe.int/16809efedd>

security. ... In conclusion, therefore, the Court, like the House of Lords, found that the derogating measures had been disproportionate in that they had discriminated unjustifiably between nationals and non-nationals. It followed that there had been a violation of Article 5 § 1 in respect of all but the Moroccan and French applicants²⁸.

Therefore it is necessary to have a legitimate goal, in this case – the protection of national security against the threat of terrorism, in the case of the COVID-19 pandemic – the protection of national security against the threat to the health of the nation.

As of June 1, 2020, according to the WHO, 6,057,853 people were infected and 371,166 died. As of November 1, 2020, the number of infected people was 45,968,799, and 1,192,911 people died. Given the need to ensure not only personal but also public safety due to the threat of infection of the population with a new type of coronavirus infection, the need to protect health, the introduction of measures restricting the freedom of movement of the person was performed for legitimate purposes.

The need to restrict the right to freedom of movement to ensure public and personal safety

Further we intend find out whether the implemented measures are necessary in a democratic society. To do this, it is necessary to analyze the data on the extent to which the implemented measures have affected the level of infection of the population and the prevention of the spread of the virus.

Following the WHO declaration of the SARS-CoV-2 virus pandemic on 11 March 2020, the EU and Ukraine have taken various measures to prevent the spread of infection and ensure public and personal safety, including: mandatory observation (most countries); application of liability for violation of quarantine rules (usually administrative, but criminal liability is also possible); closure of educational and entertainment facilities, as well as public catering services (remote operation of educational establishments is allowed, as well as operation of public catering establishments with food delivery); introduction of wearing masks; prohibition of movement by groups of persons (for example, in Ukraine the maximum movement of a group of two adults is allowed,

²⁸ Grand Chamber judgment *A. and Others v. the United Kingdom*, 19, February 2009. <https://cutt.ly/Qg2aEw5>

without limiting the number of children they accompany); ban on visiting parks and recreation areas; maximum transfer of employees to remote work; ban on most companies (introduced by Italy and Spain); closing borders; curfew (for example, in Italy, Spain and Georgia); self-isolation of persons belonging to risk groups. Ukraine has implemented all these measures, except for curfew and closure of all companies²⁹.

European Commission for Democracy Through Law (Venice Commission) notes: "...in a quarantine the focus is usually on keeping infected, or possibly infected, people in a small area; certain territorial areas or regions may be temporarily closed down. Covid-19 is a high threat to older people, and certain other risk groups, and the focus has partially shifted to keeping these non-infected people isolated from potentially infected people"³⁰.

Establishing of borders between states and restricting migration is an important element of political self-determination of the State³¹. To this argument we would also add the need to ensure national security. Following the enlargement of the Schengen area, the EU has focused on protecting its external borders, including preventing illegal migration and fighting against terrorism³². Within the Schengen area, the restoration of internal borders in the event of an emergency is also allowed.

Many of the restrictions specified above are called the "hard model", as opposed to the "soft model" (or liberal), which closes only schools, isolates patients and restricts the movement of people at risk (for example, in South Korea³³), or recommend social distancing, isolation of patients and do not close educational institutions (Belarus³⁴ and Sweden³⁵).

²⁹ Quarantine measures, Cabinet of Ministers of Ukraine, (in Ukrainian). <https://covid19.gov.ua/karantynni-zakhody>

³⁰ Respect For Democracy, Human Rights And The Rule Of Law During States Of Emergency –Reflections, European Commission for Democracy Through Law (Venice Commission), 26 May 2020. <https://cutt.ly/eg2anOZ>

³¹ Adam Hosein, Immigration and freedom of movement, *Ethics & Global Politics*, Vol. 6, 2013, № 1, p. 25-26. <https://www.tandfonline.com/doi/pdf/10.3402/egp.v6i1.18188>

³² Freedom of movement and the Schengen, Icelandic human rights centre. <https://cutt.ly/JuPxQq5>

³³ Dennis Normile, Coronavirus cases have dropped sharply in South Korea. What's the secret to its success? <https://cutt.ly/euPx3VG>

³⁴ Minsk surrendered to the coronavirus and imposed broad restrictions, (in Ukrainian). <https://cutt.ly/RuPcytK>

Both models restrict the right to freedom of movement. But while the "hard model" restricts freedom of movement more seriously, the liberal ("soft") model only slightly interferes with the right to free movement. The question arises as to the legitimacy of such restrictions.

State of infection in some countries³⁶:

Country	The total number of infected / Percentage of the infected to the total population (1.04. 2020)	The total number of infected / Percentage of the infected to the total population (01.06 2020)	Total died / The percentage of deaths from the total number of infected (01.06 2020)	The total number of infected / Percentage of the infected to the total population (01.11 2020)	Total died / The percentage of deaths from the total number of infected (01.11. 2020)	Total population
USA	163 199/ 0,05%	1 734 040/ 0,52%	102 640/ 5, 91%	8 952 086/ 2,7%	228 185/ 2,54%	330 627 484
Spain	94 417/0,2%	239 801/ 0,51%	29 045/ 12,11%	1 185 678/ 2,53%	35 878/ 3,02%	46 754 778
Italy	105 792/0,17 %	233 019/ 0,38%	33 415/ 14,34%	679 430/ 1,12%	38 618/ 5,68%	60 461 826
France	51477/0,07%	148 524/ 0,22%	28 746/ 19,35%	1 331 808/ 2,07%	36 473/ 2,73%	65 273 511
Germany	67 366/ 0,08%	181 815/ 0,21%	8 511/ 4,68%	532 930/ 0,63%	10 481/ 1,96%	83 783 942
The United Kingdom	25 154/ 0,03%	274766/ 0,4%	38 489/ 14,0%	1 011 664/ 1,49%	46 555/ 4,6%	67 886 011
Sweden	4435/ 0,04%	37542/ ,37%	4395/11,7%	124 355/1,23%	5 938/ 4,77%	10 099 265
Republic of Korea	9887/ 0,19%	11 503/ ,02%	271/ 2,35%	26 635/ 0,05%	466/ 1,75%	51 260 707
Poland	2311/ 0,006%	23 786/ 0,06%	1 064/ 4,47%	362 731/ 0,95%	5 631/ 1,55%	37 846 611
Romania	2245/ 0,012%	19 257/ 0,1%	1 262/ 6,55%	241 339/ 1,25%	6 968/ 2,88%	19 237 691
Czechia	3308/ 0,03%	9 273/ 0,08%	320/ 3,45%	335 102/ 3,12%	3 251/ 0,97%	10 708 981
Ukraine	669/ 0,001%	24 012/ 0,05%	718/ 2,99%	395 440/0,9%	7 306/ 1,84%	43 733 762
Belarus	152/ 0,001%	42 556/ ,44%	235/ 0,55%	99 459/1,05%	985/ 0,99%	9 465 300
Hungary	492/ 0,005%	3 876/ 0,04%	526/13,57 %	79 199/0,82%	1 819/ 2,29%	9 660 351
Slovakia	363/ 0,006%	1 522/ ,027%	28/ 1,83%	57 664/1,05%	219/0,38%	5 459 642

³⁵ Mikhail Sal'nikov, A pandemic without quarantine: how Sweden can withstand the coronavirus without tough restrictions, Yevropeys'ka pravda, (in Russian). <https://www.eurointegration.com.ua/rus/articles/2020/04/3/7108302/>

³⁶ Coronavirus disease 2019 (COVID-19), Situation Report - 72. <https://cutt.ly/NuPbZo6>; Coronavirus disease 2019 (COVID-19), Situation Report - 133. <https://cutt.ly/iuPb73D>; COVID-19 Weekly Epidemiological UpdateData as received by WHO from national authorities, as of 1 November 2020, 10 am CEST. <https://cutt.ly/Wg2agb4>; European Countries by population, 2020. <https://cutt.ly/suPnul4>; United States Population. <https://cutt.ly/HuPnsS8>; South Korea Population. <https://cutt.ly/MuPnjBK>

That is why the indicator on the number of infections to the total population of Sweden is quite relevant, and as of June 1, 2020 it was 0.37%, it will be recalled that this country has set quite liberal restrictive measures. On the other hand, in the number of European countries with strict measures, this figure is higher (in Spain - 0.51%, Italy - 0.38%, Great Britain - 0.4%).

The countries of Eastern Europe have imposed rather strict measures, and as of June 1 have reached a fairly low level of infection in relation to the total population, in particular: in the Czech Republic - 0.08%, Romania - 0.1%, Poland - 0.06%, Hungary - 0.04% and Slovakia - 0.02%.

It is important to study statistics in dynamics. As of November 1, the rate of infection in the population has increased in all states and is in: USA - 2.7%, Spain - 2.53%, Italy - 1.12%, France - 2.07%, Germany - 0.63%, The United Kingdom - 1.49%, Sweden - 1.23%, Republic of Korea - 0.05%, Poland - 0.95%, Romania - 1.25%, Czechia - 3.12%, Ukraine - 0.9%, Belarus - 1.05%, Hungary - 0.82%, Slovakia - 1.05%. At the same time, compared to June 1, as of November 1, the mortality rate (to the number of infected) decreased significantly: in the USA from 5.91% to 2.54%, Spain - from 12.11% to 3.02%, Italy - from 14.34% to 5.68%, France from 19.35% to 2.73%, Germany from 4.68% to 1.96%, The United Kingdom from 14% to 4.6%, Sweden - from 11.7% to 4.77%, the Republic of Korea - from 2.35% to 1.75%, Poland - from 4.47% to 1.55%, Romania - from 6.55% to 2.88%, Czechia - from 3.45% to 0.97%, Ukraine - from 2.99% to 1.84%, Hungary - from 13.57% to 2.29%, Slovakia - from 1.83% to 0.38%.

These statistics are important because they can show the importance of measures taken to restrict freedom of movement to reduce the level of infection among the population in order to ensure personal and public safety. In addition, according to statistics, measures are being taken to liberalize quarantine restrictions on citizens of other countries. These data may be the subject of analysis in the European Court of Human Rights in case of appeal against the legality of measures to restrict freedom of movement and other rights. In our opinion, the increase in the number of infected in a pandemic is objective, this figure will continue to grow. The level of mortality reduction, which occurred both in the states that imposed severe restrictions (including border closures, curfews, which restricted freedom of movement), and in those states that did not.

Kanstantsin Dzekhtsyarov came to the right conclusion that the European Court of Human Rights has a limited set of tools to influence the current emergency situation, so other political bodies of the Council of

Europe can have better responding tools to it¹. At the same time, the Convention for the Protection of Human Rights and Fundamental Freedoms should not be underestimated, as the very prospect of carefully examining the actions of Council of Europe Member states in the event of potential appeals to the ECtHR is already a precautionary factor.

Moreover, scholars are already studying whether the restrictions imposed on stopping the spread of the coronavirus are merely an interference with freedom of movement or imprisonment. At the same time, they note that detention at home, even if conditions are much better there than in prison, can mean imprisonment, referring to the Judgment of the Grand Chamber in *Buzadji v. Moldova* dated July 5, 2016. It is also noted that it is necessary to take into account the possibility of leaving the house for shopping, sports, as well as deterrents, including large fines or imprisonment for violating quarantine requirements². Certainly, in the case of recourse to the ECtHR, all measures taken will be carefully analyzed, including their feasibility and effectiveness in order to prevent the spread of coronavirus. And it will be important to find a fair balance between the measures taken and the necessary restrictions on rights. In our opinion, the creation of conditions that lead to the impossibility to buy food, medicine, return to their own homes, own State can not be considered as proportionate.

Conclusion

Thus, the question of the proportionality of the measures taken by the State to counter the COVID-19 pandemic may be considered by the ECtHR regardless of whether the State has made a declaration of derogation and the recognition of the violation of the right to freedom of movement will depend on the country, scope and duration of the implemented measures, as well as their feasibility and effectiveness. In addition, measures imposed in the State that restrict freedom of movement may not be discriminatory (for example, against the Roma community, citizenship, social or economic status, political beliefs or any other feature).

From the point of view of the analysis of the case law of the ECtHR, it can be concluded that the long duration of measures restricting rights may

¹ Kanstantsin Dzehtsiarou, *What Can the European Court of Human Rights Do in the Time of Crisis? Strasbourg Observers*, April 14, 2020. <https://cutt.ly/UuPnLQF>

² Jeremy McBride, *Chambers, Monckton, An Analysis of Covid-19 Responses and ECHR Requirements*, 27 March 2020. <https://cutt.ly/8uPn0dg>

be the grounds for recognizing such measures disproportionate. Therefore, the position of a number of European states on the gradual lifting of restrictive measures is quite justified. Analyzed statistics, which show a reduction in mortality in all states and those that did not apply harsh measures, allow us to conclude that it is inexpedient to introduce harsh measures (closing borders, restricting movement within the state, curfew) to all persons without exception. Restrictions on the right to freedom of movement are possible only for persons who are ill and should be temporary (for the period of illness).

In our opinion, the prospects for further research may be new challenges to restrict the right to freedom of movement, including to ensure personal and public safety, as well as the feasibility and legality of controlling the movement of a person using the latest information and computer technology.

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