RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY
AT THE TIME OF THE COVID-19 PANDEMIC

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Abstract

The freedom of peaceful assembly is not an absolute human right. International documents provide restrictions that may be invoked in specific circumstances by States Parties, which are obliged to bring their national legislation into line with international standards. In the period of the global COVID-19 pandemic, restrictions on freedom of assembly have been a rule rather than an exception in many countries worldwide. Some countries have managed to strike a balance between the freedom of assembly and the need to protect human health. Other states have been blamed for undue interference with the freedom of peaceful assembly, which ultimately resulted in proceedings in front of domestic and international courts. In this paper, the authors underscore the need to maintain a balance between the freedom of peaceful assembly and the duty of the state to protect public health. To this effect, the authors indicate some novelties in decision-making processes at the international level and analyze the recent case law of the European Court of Human Rights (ECtHR) on this subject matter. On the basis of the presented considerations, the authors ultimately draw conclusions on whether this balance has been achieved in the circumstances of the COVID-19 pandemic.

Keywords: freedom of peaceful assembly, COVID-19 pandemic, international documents, human rights.

1. INTRODUCTION

Human rights proclaimed in both national and international documents often contain some restrictions which may be invoked under certain conditions. A restriction cannot be interpreted as a rule but only as an exception, which is applicable only when it is deemed necessary. Even then, there is a need to strike a fair balance between the competing interests. In effect, a restriction implies the possibility to reduce the scope of a particular right to a permissible level, while concurrently ensuring that the right at issue is not completely derogated.

The right to peaceful assembly is one of the fundamental human rights prescribed in many international documents. First, the freedom of assembly and association is explicitly

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guaranteed in Article 11 of the European Convention on Human Rights (1950)\(^4\) (hereinafter: ECHR). As such, it is subject of consideration in front of the European Court of Human Rights (hereinafter: ECtHR). Second, the right to peaceful assembly is also guaranteed in Article 21 of the UN International Covenant on Civil and Political Rights (1966)\(^5\)(hereinafter: ICCPR), which recognized the right to peaceful assembly as well as the legitimate aims for potential restrictions on this right. However, with the outbreak of Coronavirus disease (COVID-19) and its rapid global spread, it was necessary to establish new international principles which would additionally clarify the actual scope of protection of this right to peaceful assembly and specify the restrictions, conditions, rules and responsibilities applicable in the circumstances of the global pandemic. To that effect, acting within the framework of the ICCPR, in 2020, the UN Human Rights Committee adopted General Comment no. 37 (2020) on the right of peaceful assembly (Article 21 ICCPR)\(^6\), with the aim of facilitating the consideration of current problems in the circumstances of the COVID-19 pandemic.

The adoption of this document has contributed to resolving numerous issues, but it has also generated an increasing number of applications that were filed with the ECtHR on the legal ground of violation of Article 11 ECHR (freedom of peaceful assembly and association). Due to the excessive caseload, a vast majority of these cases are currently in the decision-making phase. It means that the Court case law on this matter will be established in the forthcoming period. It further implies that the first judgment on this matter will be a kind of pilot decision for applications that are likely to be submitted in the future.

2. ACTIVITY OF THE UN HUMAN RIGHTS COMMITTEE

Article 21 of the International Covenant on Civil and Political Rights (1966) expressly recognizes the right to peaceful assembly and specifies that restrictions may be imposed only if they are “in conformity with the law” and if they are “necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals, or the protection of rights and freedoms of others” (Article 21 ICCPR). In the past few years, in response to the threats of the global pandemic caused by the SARS-CoV-19 virus (hereinafter: COVID-19), many states have resorted to imposing unprecedented restrictions on human rights. The right to peaceful assembly has also been the subject matter of such restrictions. Many states throughout the world have advocated and supported the opinion that citizens’ right to peaceful assembly must be restricted, particularly bearing in mind that the contagious COVID-19 disease spreads much faster and more easily if “social distancing” measures are not observed; they also noted that a violation of such measures is expected in the case of mass gatherings.

As a result, different states rendered various decisions in an attempt to address the emerging problems, but the decisions on the freedom of assembly differed from one country to another. The major difference in their approach was whether the ban on gatherings applied to open or closed spaces, whether that kind of action included additional restrictions or it

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\(^{4}\) The European Convention on Human Rights (1950), as amended by Protocols Nos. 11, 14 and 15, and supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, Council of Europe, Strasbourg, France.


only referred to a restriction pertaining to a maximum number of people who can be in the same place at the same time, whether it included the social distancing and mask-wearing, etc. The state-imposed restrictions on human rights generated new problems. In order to ensure public health protection, states resorted to imposing bans more often, which triggered citizens’ dissatisfaction and resulted in numerous protests and riots. Instead of prescribing spatial and temporal restrictions, mask-wearing (etc.), some countries opted for additional human rights restrictions by prescribing bans on protests, which were justified by reasons of public health protection. Thus, state restrictions created a vicious circle.

Considering the circumstances amidst the global pandemic, the potential systematic violations of the right to freedom of assembly and the prevalent citizen discontent, on 27 July 2020, the UN Human Rights Committee (hereinafter: the HR Committee) adopted the General Comment no. 37 on the right of peaceful assembly, envisaged in Article 21 of the ICCPR. The Committee established additional criteria regarding the right to peaceful assembly, justifying them by necessity, particularly bearing in mind the increasing number of mass protests, many of which ended in riots either owing to the actions of the participants or due to the unjustified use of force by law enforcement authorities (Just Security, 2020).  

First, it should be noted that Item 6 of the General Comment no. 37 stipulates that peaceful gatherings that are protected under Article 21 ICCPR include: “demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs”, regardless of where they take place: “outdoors, indoors or online, in public or private spaces, or a combination thereof. Item 8 of the Comment explicitly states that, although the state prescribes restrictions on this right, these restrictions cannot override this right completely, as “there are limits on the restrictions that may be imposed”. This unequivocally clarifies the primary question that was posed worldwide: whether state authorities may ban any form of gathering in order to protect public health or impose restrictions only within the prescribed limits. This solution underscores the balance between the two conflicting rights. On the one hand, the state has the right to take measures to prevent the spread of infectious diseases and protect the population (the right to public health protection); on the other hand, the citizens’ right to peaceful assembly does not remain a dead letter of the law.

Moreover, Item 46 of the General Comment no. 37 specifies that restrictions must prove to be proportionate, which further entails evaluation and “balancing the nature and extent of interference against the reason for interfering”. Accordingly, in the event of a contagious disease, states may restrict the freedom of assembly by calling upon the protection of public health because gatherings can be dangerous for the population in general. This restriction is also justified if there is a significant risk for the participants of the gathering, as well as for the wider population. Looking into the stipulated rules, we can address two problems.

2.1. Deterrent effect

The first problem arises due to the so-called "deterrent effect". In addition to stipulating that the restriction has to meet the requirements of legality, necessity, proportionality and non-discrimination, Item 36 of the General Comment no. 37 clearly specifies that state-imposed restrictions on the freedom of assembly, must not be aimed at

discouraging participation in assemblies or causing a chilling effect”. Urging or pleading to citizens not to attend assemblies of any kind in the circumstances of the pandemic, followed by an unequivocal explanation that mass gatherings contribute to spreading the deadly disease and increasing the number of deaths, may be a deterrent effect. In spite of the fear that may arise from such a message, every citizen has the right to exercise his/her right to peaceful assembly, while state authorities have to set potential boundaries to protect both the participants and other citizens.

Another deterrent effect may be embodied in the state-imposed acts establishing an absolute ban on gatherings and specifying that any conduct contrary to the imposed ban will be punished. At the outbreak of the COVID-19 pandemic, the most common forms of punishment for inobservance of the ban were fines and imprisonment. There is no doubt that such decisions were in conflict with the international standard that freedom of assembly should not be banned but only restricted. The threat of punishment, in case an individual or a group of persons exercise their guaranteed human rights, is impermissible and clearly illustrates the unnecessary and disproportionate interference of the state.

2.2. Restriction by the State
Another problem is whether the states, in setting their boundaries, have respected the adopted international legal standards. One of the greatest dilemmas today is whether the states have the right to limit the number of people in public gatherings and whether gatherings can be limited in terms of time and place. Thus, this problem generates other problems. As a matter of fact, restrictions on the freedom of assembly automatically entail restrictions on the freedom of movement; thus, the accumulated problems are further compounded. In some countries, the state response to potential violations of the ban or movement restrictions often led to the arbitrary detention of citizens, without considering whether the decisions at the state level were in accordance with the national laws and international documents.

2.2.1. Limiting the number of people in one place
In the circumstances of the global pandemic, many states resorted to limiting the number of people per square meter. This was one of the most common measures which was applied to prevent mass gatherings, ensure social distancing and provide for public safety. In some countries, such as Germany, the USA and Australia, there were protests against the government decisions on compulsory mask-wearing and social distancing (Civicus, 2021).8 It was determined that the number of people during the gathering could be limited (General Comment no. 37, Article 49), only for the reasons that are strictly stated in the Article 21 of the ICCPR, where the protection of public health is unequivocally classified. Item 47 of the General Comment no. 37 refers to the legitimate grounds for restrictions on the right to peaceful assembly, which are expressly enlisted in Article 21 of the ICCPR: national security, public safety, public order, protection of public health, and protection of rights and freedoms of others. Item 49 of the General Comment no.37 further specifies that public safety may be invoked as a ground for restrictions on the right to peaceful assembly if the gathering creates a significant and immediate risk or danger to one’s life, physical integrity and personal safety. It follows that the number of people in a gathering may be

limited only for reasons explicitly listed in Article 21 of the ICCPR, which include the protection of public health and public safety.

In many states, the limited number of people in the same space was justified by scientific facts established by experts from relevant scientific fields, who purported that the pandemic would not be reduced to the level of an epidemic and human life would not be brought back to “normal” unless the spread of the COVID-19 virus was rapidly prevented. Scientists also claimed that the virus would spread much faster if there was no physical distance between people, which is logically more difficult to ensure if there is a huge and uncontrollable number of people per square meter. Accordingly, it may be concluded that such a state-imposed restriction is in accordance with international law, but it does not exclude the obligation of the state to regulate this matter by enacting national legislation.

2.2.2. Restriction of freedom of assembly and freedom of movement

Another commonly practiced restriction on the right to freedom of assembly entails limiting the duration of the specific gathering. Here, the freedom of peaceful assembly overlaps with the freedom of movement. Thus, the states that opted for restrictions on freedom of movement by instituting lockdowns (prohibiting their citizens from leaving their homes at certain times of the day or prohibiting them to leave their place of residence due to the ban on travel from one city to another within state borders) automatically restricted their citizens’ freedom of assembly. Item 54 of the General Comment no. 37 specifies that restrictions regarding the precise date, timing, duration, or frequency of a gathering “raises concerns about their compatibility with the ICCPR”. Thus, if a state decides to restrict the freedom of movement, it has concurrently restricted the freedom of assembly of its citizens. If an individual or a group of citizens decide to organize a gathering at a time when the assembly is strictly prohibited, they run the risk of being punished by the competent state authorities. In such cases, they may be held liable for the violation of both rights: the freedom of peaceful assembly and the freedom of movement.

2.2.3. Restriction on freedom of assembly and arbitrariness in depriving citizens of their liberty

In addition to the cumulative violation of the previously described human rights, there were concerns about the violation of other guaranteed human rights. At the outset of the COVID-19 pandemic, we could witness a huge increase in the application of temporary apprehension or detention measures, which were aimed at preventing citizens’ participation in gatherings. Item 93 of the General Comment no. 37 clearly stipulates that preventive detention of targeted individuals in order to prevent them from participating in an assembly as well as the indiscriminate arrest of a large number of protesters before, during, or after an assembly may constitute an arbitrary deprivation of liberty and illegal act of state authorities. Such actions are incompatible with internationally guaranteed human rights, including the right to peaceful assembly, regardless of whether the national legislation envisages detention in such situations. This conclusion is based on the analysis of the entire document (General Comment no. 37), particularly bearing in mind that states are clearly obliged to refrain from taking radical measures, which can be taken only in the case of violence which cannot be prevented or ended in any other way. Ordering detention based on the assumption that riots may occur during a gathering, and in order to protect public health during the pandemic, undermines the guaranteed right to peaceful assembly, particularly having in mind the provisions that clearly prohibit intimidation of individuals by the state.
2.3. Inadequacy of applied measures

Statistical data collected by the NGO “Human Rights Watch” show non-compliance with international principles by countries around the world. Since January 2020, more than 83 countries have violated a number of human rights, justifying their impermissible actions by the COVID-19 pandemic. The imposition of restrictive measures by state authorities indisputably contributed to the restriction of human rights and triggered people's dissatisfaction. According to the collected data, over a dozen countries arbitrarily banned or stopped protests, including Turkey, Ukraine, Russia, Hong Kong, and many others (HRW, 2021).9

On the basis of all provisions of the General Comment no. 37, we may deduce that such actions constituted a disproportionate interference of states, as it clearly and unambiguously states that any kind of public gathering cannot be completely banned due to the COVID-19 pandemic. According to Item 59 of the General Comment No. 37, restrictions that may be considered and allowed, on the basis of proved legitimate grounds and for the purpose of protecting public health and safety, include limiting the number of people in gatherings and/or keeping physical distance. Notably, Item 13 of the General Comment no. 37 reiterates that the exercise of the right to peaceful assembly extends to online gatherings, which are explicitly protected in Article 21 of the ICCPR. Therefore, we can conclude that many countries banned protests in order to prevent the spread of dissenting views which were contrary to the official government policy. The bans resulted in violations of freedom of speech, thus creating a new vicious circle of systematic violations. Instead of imposing absolute bans on gatherings, states could have approached the problem in line with Item 13 of the General Comment no. 37, for example, by inviting people to express their opinions through any online platform (virtually), which would preclude the need for physical gatherings.

2.4. Violation of the right to privacy of participants in demonstrations

Anonymity is a crucial element of the right to privacy, which should be protected in both physical and virtual environments. The right to privacy may be infringed not only by violating one’s anonymity but also by failing to provide for one’s personal data protection (Items 34, 60, 61 of the General Comment no. 37). As data protection issues have surfaced at a time of greater technological achievements and greater modernization of society, international documents and national acts on this subject matter have provided an opportunity to individuals to protect their private data; thus, each individual should give express consent to competent authorities or entities for the collecting and processing of personal data, in every single case. However, major problems arise with using modern technology for surveillance purposes, monitoring individual social media profiles, recording and identification of protesters (Items 61 and 62 of the General comment no 37). There were cases where private data of specific individuals (names, surnames, addresses, etc.) were collected by recoding protesters and using facial recognition technology; after processing the data collected in such a manner, the assembly participants were charged and punished.

In the context of using new technologies, Item 60 of the General Comment no. 37 has resolved several issues: first, whether the use of a mask, hood or any other clothing item aimed at concealing one’s identity may indicate the potentially violent behavior of that

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individual; second, whether these individuals are wearing such clothing in order to prevent the competent law enforcement authorities to detect the potential perpetrators of a criminal offence or misdemeanour. Given the fact that such practices constitute a direct violation of the presumption of innocence, Item 60 of General Comment No. 37 clearly states that any kind of clothing, face covering or disguises (masks or hoods) aimed at ensuring the anonymity of assembly participants should be allowed unless the participants’ violent conduct or other compelling reasons (such as carrying weapons or dangerous tools) constitute a reasonable ground for intervention and arrest.

Considering that we have witnessed the actions of state governments around the world, where peaceful protesters were targeted and punished for participating in protests despite the fact that they did not use any form of force and violence, we may pose the question of how the personal data of those protesters were collected. Considering that all public assemblies shall be secured by law enforcement authorities to ensure public peace and safety, there is an issue of who was responsible for collecting and storing the recorded data. Moreover, the analysis of such recordings for the purpose of detecting one’s identity constitutes a violation of one’s right to anonymity, whereas detention and punishment constitute a deprivation of one’s right to peaceful assembly.

2.5. Inadequate use of force

In order to justify its actions, such as more or less extensive restriction of human rights and possible punishment of the participants in a peaceful assembly, the state shall prove that its activities have been based on legitimate grounds and supported by appropriate evidence. In order to ensure the freedom of peaceful assembly and provide for adequate protection of assembly participants from arbitrary actions of competent state authorities, Item 9 of the General Comment no. 37 prescribes the obligation of the state to ensure the protection of other overlapping rights: freedom of expression, association and political participation, without unwarranted interference. Item 91 of the General Comment no. 37 obliges the states that any use of force by law enforcement officials must be recorded in a transparent report, which is absolutely necessary as factual evidence of events; in case of any injury or damage, it will be used in assessing whether the use of force was necessary and proportionate. In that context, the information in the report should be relevant and detailed, including the reasons for the use of force, the effectiveness and consequences of its use.

In the circumstances of the COVID-19 pandemic, such a rule was necessary because state restrictions were based on the need to protect public health and the use of force was often applied as a rule rather than an exception, even when riots were not caused by assembly protesters. Item 36 of the General Comment no. 37 specifies that restrictions must never impair or violate the very essence of the right to peaceful assembly; thus, any unnecessary and disproportionate limitations or measures, including the use of such force against peaceful protesters, constitute a gross violation of Article 21 of the ICCPR.

3. RECENT CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

The provisions of Article 11 of the European Convention on Human Rights (ECHR) guarantee the freedom of assembly and association, specifying that restrictions on the exercise of these rights may occur provided that they are prescribed by law, that they have a legitimate aim, and that they are “necessary in a democratic society in the interests of national security or public safety, for prevention of disorder or crime, for the protection of
health or morals, or for the protection of the rights and freedoms of others” (Article 11, para. 2, ECHR). In order to ensure the guaranteed protection of the right to peaceful assembly, the European Court of Human Rights (ECtHR) has to decide on the merits of each individual application by taking into account three cumulative factors: whether the organizers of the gathering call for violence; whether the gathering was peaceful; whether the applicant himself had used violence during the rally, and whether he had inflicted bodily harm on anyone (ECtHR, Shmorgunov and Others v. Ukraine, § 491). In addition to all the mentioned criteria, it is also necessary to examine the issue of public health protection as one of the legitimate goals that is dominant today in the circumstance of the global pandemic.

In recent years, since the spread of the COVID-19 in early 2020, the dominant question referred to the ECtHR has been as follows: do the State Parties have the right to restrict or even deny the possibility of enjoying the rights envisaged in Article 11 of the ECHR even if the three cumulative conditions above have been met and if there is a risk of further spread of a contagious disease.

Under the ECHR, a number of proclaimed human rights are subject to restrictions under certain conditions. Thus, Article 15 (para. 1) of the ECHR (Derogation in time of emergency) unequivocally provides the possibility for High Contracting States to derogate from certain guaranteed rights in times of war, in case of danger or other public emergency threatening the survival of the nation. With reference to Article 15 (para. 2) of this Article, we may infer that this provision is also applicable to Article 11 of the ECHR which prescribes the right to peaceful assembly. However, despite the fact that the majority of States acted in accordance with Article 15 (para. 3) ECHR, informing the Secretary General of the Council of Europe about the taken measures and derogation of the enumerated rights, we cannot ignore the fact that Article 15 (para. 1) ECHR does not provide the opportunity for the States to fully suspend human rights and freedoms. The danger or other public emergency threatening the survival of the nation is a broader concept, but its interpretation should not be too extensive. Regardless of the existing situation, the very essence of the guaranteed right cannot be neglected, which further means that the minimum requirements must be preserved even in emergency situations. Even though many states opted for the total suspension of human rights at the outset of the pandemic, the ECHR only allows for some permissible deviations. It is clearly indicated in Article 15 (para. 2) ECHR, which states that Article 15 (para. 1) ECHR does not allow a complete derogation of human rights.

In previous sections of this paper, the authors pointed out the most common failures of states in determining restrictions on the freedom of assembly in the circumstances of the COVID-19 pandemic. Many states considered that citizens’ human rights were not violated and that in line with government decisions aimed at protecting public health and safety each individual had to put up with certain restrictions on his/her rights. Due to the growing dissatisfaction of citizens who did not find protection and relevant legal remedy at the national level, the number of applications filed with the ECtHR was growing. An example that indicates the Court’s excessive caseload is the case of Zambrano v. France (2021), which was declared inadmissible. This decision was made after it was established that the applicant had abused his right to submit an application; namely, dissatisfied with the introduction of Covid-passes which limited many human rights and freedoms, he invited

10Shmorgunov and Others v. Ukraine, app. no. 15367/14, ECHR, Information Note on the Court’s case-law 247, 21 January 2021; https://hudoc.echr.coe.int/fre#{%22itemid%22:%2202-13107%22}.
people who visited his website to fill out a form and join him in lodging a collective application with the ECtHR by submitting multiple applications through an automatically generated and standardized application form. As a result, almost 18,000 applications had already been sent to the Court. Considering the comments which were publicly available through the site, it was revealed that the goal of this deliberate action was to increase the Court workload, cause “congestion”, delay and “derail its operations”, in order to undermine the Convention system and the operation of the Court (Zambrano v. France41994/21).

At the outbreak of the COVID-19 disease and the outset of global spread, the restriction on certain human rights, including the right to freedom of assembly, may be understood to some extent. In order to prevent the spread of the infectious disease, state authorities resorted to imposing certain restrictive measures, such as wearing masks, restricting movement, introducing Covid-passes, etc.). The problem occurred when citizens decided to express their dissatisfaction with the imposed measures through protests. In these circumstances, instead of considering the benefits or drawbacks of the imposed restrictions, states authorities opted to tighten and expand the already taken measures, by banning or restricting the freedom of movement and assembly. It actually created a vicious circle of events: derogation of certain rights by the state; organization of protests by citizens; introduction of bans or restrictions on the right to assembly; frustration and anger on the part of citizens who opposed the state-imposed rules by violating the imposed bans; mass protests against certain restrictive measures; and state reaction embodied in detention, criminal or misdemeanour charges and convictions. In reference to these facts, it is particularly important to provide a clear answer to the following question: whether states have the right to fully deny the freedom of peaceful assembly, or whether they only have the power to restrict the right if such a restriction has a legitimate aim.

In the case Berladir and others v. Russia (2006)\textsuperscript{12}, the ECtHR considered that there was interference with the exercise of the rights provided in Article 11 ECHR if the demonstration is officially approved by competent state authorities but under the condition that the assembly has to be organized at an alternative location, or if the approval is accompanied by a designation of a shorter period than planned, or if the state prescribes a limit on the duration (Berladir and others v. Russia, §§ 47-51). In the circumstance of the COVID-19 pandemic, most states were prone to completely suspend the freedom of peaceful assembly until the pandemic situation calmed down; thus, they neglected the possibility of applying less restrictive measures. An example of a positive approach to this issue and dubious consideration of less restrictive measures may be found in the Republic of Ireland, which opted for granting permits for local protests over Corona-virus health issues but recommended wearing masks and keeping social distance (\textit{Independent. ie 2020}).\textsuperscript{13}

During the first half of 2020, a dozen High Contracting States which are signatories to the ECHR forwarded a notification to the Secretary General of the Council of Europe on

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\textsuperscript{12} Berladir and others v. Russia, app.no. 34202/06, ECtHR judgment 10 July 2012 (§§ 47-51);https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-112101%22]}.

the derogation of certain guaranteed rights due to the COVID-19 pandemic. Some of these states are Lithuania, Romania, Macedonia, Albania, Serbia, and others. The most frequent derogations concerned the rights envisaged in Articles 5 (liberty), 8 (privacy) and 11 (expression) of the ECHR, as well as the rights envisaged in Protocols No. 1, 2 and 4 to the Convention (Jovičić, 2020: 547). Consequently, in a vast majority of applications, the Court has been requested to rule on the violation of the aforesaid Articles. As previously mentioned, only a small number of judgments have been rendered final, which most commonly refer to cases where it has been unequivocally determined that the application is inadmissible, most frequently due to the abuse of the right to petition.

Analyzing the available data on the applications which the ECtHR has taken into consideration, we will refer to several interesting cases that ruled on the subject matter but the judgment is still not rendered final. The first case is Communauté genevoise d'action syndicale (CGAS) v. Switzerland, 21881/20, where the applicant (labour union association) claimed to have been deprived of the right to organize peaceful public demonstration at the outset of the COVID-19 pandemic. The state measures aimed at preventing the further spread of the pandemic imposed an absolute ban on freedom of assembly, and thus the freedom to organize and participate in demonstrations, and prescribes fines or imprisonment for a violation of the ban. Under threat of criminal sanctions, the association had to withdraw its request for approval of the planned demonstrations and was denied the right to express its views for a long period of time, particularly considering the association’s sphere of activity; the applicant also claimed that some demonstrators were prosecuted for violating the ban in other organized demonstrations. After considering three significant issues (the applicant’s victim status; exhaustion of domestic remedies; and proportionality of state interference with the right to freedom of peaceful assembly), ECtHR ruled that there was a violation of Article 11 on all these issues (ECtHR, Communauté genevoise d'action syndicale (CGAS) v. Switzerland, 21881/20).

Similarly, the case Central Unitaria de Traballadores/AS v. Spain concerns the right to organize and participate in a peaceful demonstration during the Covid-19 pandemic. In Spain, the right to peaceful assembly was banned. The applicant (a workers’ union) notified the authorities of its intention to hold a demonstration on Labour Day (1 May 2020), proposed to apply sanitary measures to prevent the spread of the virus, and expressed willingness to adopt further measures as advised. The administrative authorities refused to authorize the demonstration, stating that it would endanger people’s lives and worsen the existing pandemic situation. The domestic court took the stand that the decision to suspend the applicant’s rights was justified considering the serious circumstances of the raging pandemic (Central Unitaria de Traballadores/AS v. Spain). The case is still pending adjudication before the ECtHR.

The ECtHR decisions in these first adjudicated cases will be crucial for incoming cases, particularly in terms of applying the provisions of General Comment no 37. Uniform case law and uniform international legal standards in particular may significantly reduce the likelihood of human rights violations, even in the unforeseeable circumstances or emergency situations (such as pandemics) that states may encounter in the future. At the outbreak of the

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14Communauté genevoise d'action syndicale (CGAS) v. Switzerland, app. no. 21881/20, ECtHR, Information Note on the Court’s case-law 260, March 22, 2022; https://hudoc.echr.coe.int/fre#{%22itemid%22:%22002-13596%22}.

COVID-19 disease, countries worldwide largely decided to impose restrictions on human rights at the very beginning of the pandemic, in an attempt to fight against a new contagious disease of unknown origin that was spreading fast on the global scale and affecting the entire population with most severe consequences. This attitude could justify the State's position to temporarily limit certain human rights for the benefit of preserving the public health and safety of the entire population. However, when science started providing answers to many questions about Covid-19, it remains unclear why States prevented individuals from exercising their internationally guaranteed rights, particularly given the fact that the virulence was enhanced even during the periods of total lockdowns.

4. CONCLUSION

The issue presented in this paper unequivocally indicates that new international standards were necessary in the new epidemiological situation caused by the COVID-19 pandemic. States Parties to the ICCPR are required to comply with the provisions of this document. Restrictions on human rights must be an exception rather than a rule. Thus, there must be a clear distinction between what is actually a restriction and what is a suspension. Although many cases are still pending before the ECtHR, it can already be concluded that many countries have exceeded the limits of their discretionary authority to assess what kind of restrictive measures are in accordance with the provisions of the ECHR or not.

In the circumstances of the global pandemic, it is indisputable that the ECtHR will not have a dilemma about the existence or non-existence of immediate danger to the survival of the nation, but it does not mean that it will find justification for some extremely restrictive measures. The burden of proving the proportionality of the measures taken to protect public health and safety rests on the States. Although their good intentions are not disputed, they will have difficulties in proving them and justifying the imposed restrictive measures. The measures taken at the very beginning of the pandemic may be justified by the need to protect the population affected by the largely unknown contagious disease. However, after learning more about Covid-19 and taking measures to reduce the virulence of the virus, it remains unclear why state authorities persisted in imposing restrictions on human rights, including the blockade of entire cities, limited freedom of movement, assembly, expression, etc. It also casts doubt on their further actions and measures because the question arises whether such restrictive measures were necessary.

In anticipation of final ECtHR decisions in cases pertaining to the period of the COVID-19 pandemic, it is up to the States to harmonize their laws, actions and measures aimed at protecting their population from the spread of infectious diseases with the international documents which they have acceded to. Although human health is imperative, it is necessary to strike a fair balance between ensuring the exercise of the guaranteed human rights in full and restricting them only to the extent necessary, for the purpose of achieving a legitimate goal.

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ECtHR *Case law*

*Beraldir and others v. Russia*, app. no. 34202/06, ECtHR judgment 10 July 2012 (§§ 47-51); https://hudoc.echr.coe.int/eng?i=001-112101


*Communauté genevoise d'action syndicale (CGAS) v. Switzerland*, app. no. 21881/20, ECtHR, March 22, 2022 Information Note on Court’s case-law 260; https://hudoc.echr.coe.int/fre?i=002-13596


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