

**Universitatea Babeș-Bolyai Cluj-Napoca**  
**Facultatea de Istorie – Filosofie**  
**Școala Doctorală de Relații Internaționale și Studii de Securitate**

# **ABSTRACT**

# **PhD THESIS**

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# **Considerations (Perspectives) on Human Rights in the European Union in the Pandemic context (2020-2022)**

**Coordonator științific:**

**Prof.univ.dr. Ioan HORGA**

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**2023**

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## ABSTRACT

The COVID-19 pandemic was one of humanity's major challenges and had a major impact on fundamental human rights and freedoms both at the national level and at the level of the European Union. An important role is to know the evolution of human rights in the European Union until in 2019, the presentation of the international and European institutions involved in the protection of fundamental rights as well as an analysis of the types of response to the exceptional situation created.

During the research I sought to find the most recent opinions that are tangential to the subject of my thesis. Thus, Klaus Schwab and Thierry Malleret, in the book COVID - 19. The Great Reset gives a very clear answer to the question whether during the Pandemic will social inequalities increase or decrease? in the sense that these inequalities will increase even more. Consequently, in our opinion, fundamental human rights will also suffer. Klaus Schwab and Thierry Malleret support their answer based on the following considerations: the pandemic has highlighted the major degrees of difference in the risk exposure of different social classes; the inequality between the nature and value of the work performed by most of our peers, the economic reward of this work (telework much better paid than actual work); the discrepancy between the preferential treatment enjoyed by the rich and which is likely to cause riots, which could lead, in our opinion, to an even more rigorous control of certain human rights.

Another book that helped structure my research in the context of the Pandemic debate is Fareed Zakaria's 10 Lessons for a Post-Pandemic World. The American specialist in international relations brings up the same theme of inequalities, which in his opinion will also increase. Fareed Zakaria believes that the world will be divided in two by "places with good health and places without" or by "tax codes in many Western countries that favor capital more than labor". Or, only taking into account the two examples of inequalities mentioned above, we can say that the pandemic and especially the post-pandemic world is predisposed, under the mentioned conditions, to seek, either on the one hand, to make fundamental human rights a means of rebalancing inequalities, whether as a result of the exceptional situation created by the Covid-19 pandemic, to continue to limit a number of

fundamental rights. Through the lens of the two works that I have cited, we believe that the research that we have carried out will contribute to the understanding of the importance of Fundamental Human Rights (FHR) both in the management of the pandemic crisis, but especially in the design of the post-pandemic society.

An important aspect of the research is the analysis of the impact of the activation of art. 15 of the ECHR, of how the most important fundamental rights were restricted (freedom of movement, freedom of association, the right to education, the right to religious freedom, the right to protection of vulnerable people) and the effects of these restrictions.

The implementation of the mandatory vaccination certificate brought a new perspective in the approach to human rights as well as the need to reconceptualize human rights.

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This summary provides a brief overview of the main elements of the thesis, on each chapter. It also includes the content of the doctoral thesis, the approaches and concepts used and a bibliographic selection of the main sources consulted in the development of the arguments and research within the doctoral thesis on Considerations (Perspectives) on Human Rights in the European Union in the context of the Pandemic (2020-2022).

## **1. The general objective of the PhD thesis**

Given the fact that the Covid-19 Pandemic is an exceptional event experienced by all of humanity, it has a major impact on Fundamental Human Rights (FHR), a fact noted by various specialists. According to the opinion of Jean-Louis De Brouwer Director of the European Affairs Programme<sup>1</sup>, human rights have not been in a similar crisis since September 11, 2001.

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<sup>1</sup> Jean-Louis De Brouwer, Speech to Egmont Institute Conference on: *Human Rights in Pandemic Times Political Exceptionalism, Social Vulnerability & Restricted Freedoms*, Brussels, Egmont Palace, 7 September 2021

Taking into account these socio-political circumstances, with implications in all fields, we proposed during our doctoral research to carry out, on the one hand, an evaluation of the application of fundamental human rights in the context of the Pandemic (2020-2022) by the EU and member states and, on the other hand, to explore what will be the post-pandemic developments of the issue of fundamental human rights, both from a legal and a political perspective.

Although our two directions of action appear to be independent, they are found in a continuous interpenetration throughout our approach, being, on the one hand, difficult to separate from each other, and on the other hand, reality requires that they go as a unitary whole.

Looking at it this way, the general objective is revealed to us even more deeply by assigning it four secondary objectives, which represent, in our opinion, the most solid logical and knowledge support, on the one hand, to develop the established general objective, and on the other part, to place it in a wider context of knowledge, in order to individualize it at the same time.

We consider it necessary:

1. Assess how Fundamental Human Rights (FHR) have been affected by the pandemic crisis at EU level
2. Let's evaluate which FHRs were the most affected during the quarantine period (2020)
3. To track the effects on FHR at European and Member State level in the context of vaccine administration measures (2021).
4. Let's draw conclusions on the future of FHR in the post-pandemic period.

Given that the world in general and the EU, in particular, faced an exceptional crisis situation in a first hypothesis, we approached the issue of derogations from the application of the European Convention on Human Rights taken in 2020 based on the following research questions:

- a) Why was it necessary to activate art. 15 of the European Convention on Human Rights in the context of the COVID 19 pandemic?
- b) What were the international and especially European institutions involved in the management of the pandemic?

c) What were the types of responses taken by the European Union in the context of managing the COVID pandemic?

d) How were FHR defended in the context of the state of emergency and especially the quarantine?

The second hypothesis considered an assessment of FHRs that were affected in an unusual way in the first part of the Pandemic respectively during 2020 and this assertion gave rise to the following research questions:

a) What are the fundamental rights most affected by the pandemic crisis?

b) Are we dealing with top-down responses from the international level to the European and then the national level, or is it a parallel phenomenon?

c) Are we dealing with unilateral - national responses to the pandemic, through FHR limitations?

d) Are we dealing with bottom-up responses to the pandemic, through FHR limitations?

We consider, within the third hypothesis, that in addition to the derogations from the application of the Human Rights Convention, the pandemic management measures in the EU in 2021 and 2022 have also amplified the limitations of fundamental human rights. So again we had to look for answers to the following questions:

a) Was equal access to the vaccine done without discrimination?

b) Is compulsory vaccination included or not in the thesis that claims that FHR does not represent an obstacle for taking solid measures to stop the pandemic?

c) Mandatory vaccination between FHR abuse and crisis solution?

d) If there are variables of FHR limitation through the introduction of the Green Certificate?

## **2. Theoretical setting and conceptual approaches**

During the research I sought to find the most recent opinions that have a tangent to the topic of my thesis. Thus, Klaus Schwab and Thierry Malleret, in the book COVID -19. The Great Reset gives a very clear answer to the question whether during the Pandemic will social inequalities increase or decrease? in the sense that these inequalities will increase

even more. Consequently, in our opinion, fundamental human rights will also suffer. Klaus Schwab and Thierry Malleret support their answer based on the following considerations: the pandemic has highlighted the major degrees of difference in the risk exposure of different social classes; the inequality between the nature and value of the work performed by most of our peers, the economic reward of this work (telework much better paid than actual work); the discrepancy between the preferential treatment enjoyed by the rich and which is likely to cause riots, which could lead, in our opinion, to an even more rigorous control of certain human rights.

Another book that helped structure my research in the context of the Pandemic debate is Fareed Zakaria's *10 Lessons for a Post-Pandemic World*. The American specialist in international relations brings up the same theme of inequalities, which in his opinion will also increase. Fareed Zakaria believes that the world will be divided in two by "places with good health and places without" or by "tax codes in many Western countries that favor capital more than labor".

Or, only taking into account the two examples of inequalities mentioned above, we can say that the pandemic and especially the post-pandemic world is predisposed, under the mentioned conditions, to seek, either on the one hand, to make fundamental human rights a means of rebalancing inequalities, whether as a result of the exceptional situation created by the Covid-19 pandemic, to continue to limit a number of fundamental rights. Through the lens of the two works that I have cited, we believe that the research that we have carried out will contribute to the understanding of the importance of Fundamental Human Rights (FHR) both in the management of the pandemic crisis, but especially in the design of the post-pandemic society.

At the same time, new concepts appeared during the pandemic that I explained during the research, such as: *biosurveillance*, *total quarantine (lockdown)*, *digital vaccination certificate (vaccine pass)*, *quarantine/isolation (quarantine)*, *contact tracing*, *health dictatorship*, *biopower*, *vaccine diplomacy*, *sound governance*, *vaccine nationalism*, *epidemiological surveillance*, *the International (Global) Pandemic Treaty* or *mandatory vaccination*.

### **3. The PhD thesis structure**

In the first chapter, entitled Fundamental Human Rights (FHR) in the European Union from the tradition of normality to the exceptional trials of the pandemic crisis, I first made a foray into the evolution of human rights in the EU until the outbreak of the pandemic, starting from a retrospective of their legislation to an analysis of how FHRs were legislated and managed in the decade leading up to the Pandemic.

I then reviewed the international and European Union institutions with attributions in the implementation of human rights legislation, focusing more on those that had greater relevance through involvement from the perspective of our theme during the Covid-19 Pandemic: the Office of the High Commissioner for Human Rights Human Rights (OHCHR), European Court of Human Rights (ECHR), European Commission for Democracy through Law (Venice Commission), European Union Agency for Fundamental Rights (AUEFD), European Ombudsman.

In the third part of this chapter I briefly analyzed the types of measures taken at the European level to manage the pandemic crisis and seek to maintain an optimal level of human rights protection. From the point of view of the management of the health crisis, we considered that there are three stages, in which measures were taken in two directions - emergency measures and relaxation measures. The stages that I have highlighted as the beginnings of the state of emergency look like this: March-June 2020, October 2020-April 2022, September 2021-March 2022.

In the penultimate part of the chapter, we focused on the types of responses to the pandemic situation taken at the national level in the EU. Thus, we noticed that there are three types of countries, which differ according to the answers they gave in the process of managing the pandemic: countries where the emphasis was placed on the risk of contamination; countries where the focus was on risks related to the implementation of pollution protection measures; countries where a balance between the two types of measures was applied.

In the last sub-chapter I made an analysis on the relationship between Fundamental Human Rights and the state of emergency in the context of the pandemic, observing the following from the perspective of control in compliance with the FHR: the importance of parliaments in controlling the executive power on how it manages the state of emergency; the importance of judicial control in the legality of measures taken in the state of necessity; the importance of external control in the defense of FHR.

We dedicated Chapter II to Fundamental Rights and Freedoms in the first stage of the Pandemic (March 2020 – March 2021), seeking to make a selection among the rights on which the sanitary measures had the greatest impact.

In a short presentation, I discussed the activation of Article 15 of the European Convention on Human Rights in the context of the COVID-19 pandemic, in which I showed that Article 15 expands the scope of action for governments in exceptional situations and allows them to effectively resolve the crisis. At the same time, Article 15 imposes clear limits on the action of the executive power and thus guarantees respect for fundamental rights and values.

The second part consists of the study of the most important rights affected: freedom of movement, the right to freedom and security, freedom of association, the right to education, freedom of conscience and religion, the right to protection of vulnerable people.

From the analysis of this set of freedoms, we highlighted that in 2020 there were a series of inequalities or acts of discrimination at the EU level, issues arising both from some socio-economic imbalances that still persist in European society, as well as the result of some voluntarist attitudes and without professional expertise in the face of such a resilient situation.

I also showed that these shortcomings from the first phase of the pandemic will be seen later in the phase in which the solution to limit or stop the pandemic was found through the vaccination action (February 2021-March 2022).

The last chapter, entitled Fundamental human rights in the EU and mandatory vaccination (March 2021 – April 2022) were analyzed mainly the rights related to the state of existing as human beings, on the one hand, due to the situation with multiple unknowns generated by the most wide Pandemic of this century and where the problem of physical existence was in the first place under the threat of the Covid-19 virus. From this perspective,

the first part of the chapter was dedicated to the issue of Access to the vaccine as an inalienable and universal human right, with all the associated determinations and nuances.

On the other hand, due to the fact that the degree of infection was increasingly high, and the virulence of the cases required the intervention of the authorities, which beyond the free will of each individual who wanted to be vaccinated, we have a new perspective of human rights and this was determined by the Mandatory vaccination and which gave birth to the right to oppose, the theme that was occupied in the economy of the chapter in the second place.

In order to make a connection with the set of human rights that were affected during the quarantine period presented in the previous chapter, I ended this chapter with the issue of fundamental rights from the perspective of a real situation, but which was very often at the limit of interpretation - The legality of limiting some rights if you are not vaccinated.

In conclusion, in this chapter we have tried to capture an issue that, in our opinion, has sparked the greatest controversies in terms of human rights, accompanied by the widest protest movements, which have taken multiple forms: taking positions political, online protests on social networks - full of anti-vaccine advice or full of information related to conspiracy theories - street protests, etc.

In the final conclusions, we tried to make a synthesis of how fundamental rights were affected, as well as the need for a common health policy at the EU level, but also the hypothesis of the adoption of an International Pandemic Treaty for the best possible administration of similar situations that unfortunately can appear at any time.

#### **4. Analysis of the sources**

During the research and writing of the thesis I used, on the one hand, primary sources - consisting of official documents of some international bodies (UN, World Health Organization, etc.), of some European bodies (Council of Europe, European Commission, European Court of Justice, the European Committee for Social Rights, etc.), national reports on the management of human rights during the pandemic, reports of some NGOs, etc.

On the other hand, I used a wide range of secondary sources, which included books that addressed general issues, but also books focused on the research theme. Also, a number

of articles completed the bibliographic table that helped me either with the familiarization of the conceptual apparatus, or with certain examples used in arguing the formulated opinions.

## **5. The research limits**

Carrying out a research regarding the aspects generated by the Covid-19 pandemic was a challenge because, on the one hand, I had the chance in real time to follow the evolution of respect for human rights, and on the other hand, the possibility of having access to official documents as soon as they were made public but also to a rich literature especially on the quarantine period of 2020.

But precisely these advantages sometimes also represented obstacles, which limited the course of the research.

First, the flood of information was difficult to sift through scientific tools that had to be created or learned. It was only in 2021 that I came to understand a number of aspects related to the functioning of European and national institutions vis-à-vis how to treat human rights in an exceptional situation, when analyzes and interpretations by some reputable specialists began to appear.

Secondly, at a closer look it can be seen that the issue of human rights in the context of the introduction of mandatory vaccination and the vaccination certificate, does not have the same accuracy neither in information nor in analysis, because it was only towards the end of 2022 that they began to appear more elaborate reports and interpretations of the phenomenon, which somewhat limited the possibility of a deeper analysis.

Finally, the wealth of information, direct observation and literature that began to appear I perceived at first as a great chance, but having to use it in a critical way, it took me a long time to select it respectively what was most relevant to answer the general objective of the thesis.

However, this research opened my appetite to continue the investigation in the future as I had initially proposed to address other aspects such as those related to changes in the philosophy of human rights in the post-covid EU, how certain institutions should be reformed defenders of human rights so that they can be adapted to other exceptional situations, etc.

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