

IMPACT OF THE PANDEMIC ON THE PERSONAL FREEDOM LIMITATION (PERSONAL FREEDOM INCLUDES FREEDOM OF MOBILITY)

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Abstract: The main purpose of the research is to show the actual problems of restricting human freedoms and develop practical recommendations, which would be actual in the current and following years, taking into account improvement of the normative-legal base of administration and medical care standards. Relevance of the issue is substantiated by the lack of modern research, which could reveal the essence of the issue in the constantly changing situation of coronavirus control. Scientific cognition methods were used to study the normative-legal regulation of the fight against the spread of coronavirus.

Keywords: pandemic, freedom restrictions, freedom of movement, vaccination.

1 Introduction

COVID-19 has been a challenge for democracies around the world. Changes in the state order and the order of life occurred in all spheres of social activity. First of all, the economy was affected by restricting international contacts and many companies' internal activities. The medical field was also greatly affected, facing the most extensive threats in a decade. In response to the epidemiological situation, many state and local governments have resorted to a series of measures that have repeatedly restricted freedoms of movement and other personal freedoms of the individual. Such actions reduce the spread of the disease, so they are recognized as effective throughout the world. However, a number of restrictions on movement, labor, entrepreneurship, crossing borders of the country and separate regions, medical services caused discontent on the part of the population. As a consequence, there was a question of the legality of such decisions, so people were dissatisfied and organized mass protests.

However, the continuation of restrictive measures in the face of new risks of disease spread makes further research in this area urgent. It became especially critical during the vaccination period, which should help reduce the spread of the disease. To date, all these issues are understudied. In some ways, those studies that have already been conducted in 2020 have already lost their relevance through the emergence of new medical research, standards, regulations, documents that regulate freedom restrictions during quarantine. Therefore, modern research on the problem and methods of solving it are relevant to the present day. Particularly relevant is the problem of finding a compromise between human freedom and public safety in the current context of coronavirus control.

2 Literature Review

Today, we can say that researchers of movement restrictions and other citizens' freedoms are divided into two sectors. Some justify restricting freedoms to preserve society's health, while others believe that restricting freedoms is unconstitutional. In the early days of quarantine measures to prevent the spread of COVID-19, a great deal of research focused on the legality of such measures. This is not surprising because many people did not understand why their actions were restricted when the spread of COVID-19 was not felt in society. For example, Zolka, Kushnir, Tsarenko, and Havrik (2021) investigated the legality of such measures in Ukraine and compared the authorities' actions to the European Union ones. As a result of legal documents and state decisions analysis, they concluded that the limitation of human rights during quarantine measures is unconstitutional and violates the fundamental rights of human

freedoms (Myronets et al., 2019). Ramji-NogalesIris & Goldner Lang (2020) also examined the restriction of freedoms in European countries and the United States. Finally, Cohen & Kupferschmidt (2020) investigated the main actions that different countries have developed to counter COVID-19. The authors believe that measures to restrict mobility due to COVID-19 pose a serious threat to fundamental principles of democracy in both the EU and the United States. Only the free movement of people without border controls confirms the values of the EU and the United States.

It is necessary to point out that home isolation for many people is a violation of the human rights of movement and risk of intimate partner violence. In various countries, staying at home is not a safe option for many families, as the house is a place where they can be exposed to sexual and other types of violence, including murder, physical, psychological, economic violence, or neglect and coercion. Children who typically live in such settings are also at risk, so if a child would be at increased risk of physical or psychological trauma in the home, they should be isolated from the setting or have their opportunities for such trauma limited. Asi Y. (2021) researched the issue of limiting women's rights to movement. The author emphasizes the possibility of obtaining medical services as an option for resolving restrictions on movement rights.

Isolation is not always a valid method of controlling the spread of disease in all situations. For example, Joseph Amon (2020) researched the issue of counteracting the spread of COVID-19 among prisoners in the context of ensuring their rights to health care, concluding that isolation contributes to the spread of the disease among prisoners.

However, similar studies on the benefits of isolation have been conducted on EU countries (Ortiz, 2021), particularly Spain, which has adopted the strictest restrictions in the Schengen Area. There are also generalized studies on the world as a whole (Simões, 2021). The authors conclude that such limits are legitimate and essential for society, but, at the same time, they point out the necessity of harmonizing one country's measures with others, which would result in eliminating the possibility of repeated outbreaks through increased mobility of citizens between countries. Potemkina O. (2020) investigated the issue of limiting the international mobility of the ordinary population and refugees during the pandemic. As a result, it can be concluded that the restrictions reduce the flow of refugees for a certain time, but as soon as the limits are removed, the flow rapidly increases, which negatively affects the dynamics of the spread of the disease.

Legal research by Zaryaeva & Oliynyk (2021) shows that measures that are applied to combat coronavirus are not clearly defined from a legal point of view; in particular, there is no legal limit and mechanism for its implementation today. If states continue to plan limits of movement, they must justify this at the legislative level, taking into account the balance between private interests and the interests of the public. Mendzhul & Melehanych (2020), Zaryaeva & Oliynyk (2021), Emmons, S. (2020) believe that during a pandemic, such restrictions are necessary, but they must be legal. In particular, personal human rights must be interpreted with the public interest and rights during a strict quarantine. Therefore, legislation must clearly define the circumstances that provide for legitimate restrictions on movement, the limits of possible movement, the means of enforcing such a regime, and the list of available rights and freedoms. It is also essential to have protection mechanisms for the population in the case of restrictions. Habibi et al. (2020) studied the specifics of the application of established medical standards during COVID-19.

As a result, we can conclude that the problem is about legal inconsistencies and medical ones, as they also require reform, amendment, and adaptation to the conditions of restrictions on freedom of movement and isolation.

Thus, the study's main purpose is to show the current problems of movement and personal freedom restrictions during the pandemic. It helps to develop practical recommendations that would be relevant in the current and next years with the improvement of the administration regulatory and legal framework and standards of medical care to the population.

3 Materials and research methods

The research results are based on the study of legal frameworks that regulate the issue of freedom of movement and other freedoms of populations in different countries. European legislation and Ukrainian legislation are considered (as a practical example of integration and adaptation of European standards to combat the spread of viral diseases). To study the practice of restricting freedom of movement and other personal freedoms in the world, we studied analytical reports and news from different countries, which reveal the essence of the problem in the world and methods of its solution.

Given the information on restrictions, the starting point in studying the impact of the COVID-19 pandemic on the state of protection of citizens' rights and freedoms can be a study of public opinion on the relevant issues. In particular, it assesses the state's provision of human and civil rights and freedoms under conditions of the mass spread of coronavirus infection (COVID-19). It is based on the study of citizens' attitudes toward the consequences of temporary restrictions on their rights and freedoms and the authorities' actions, determining the "limits of admissibility" of such restrictions and citizens' readiness to protect their rights. For this purpose, Repucci & Slipowitz (2020) conducted general research worldwide, and Razumkov Center, with the support of the Representative Office of Hans Seidel Foundation in Ukraine, conducted research "Ensuring human rights and freedoms in Ukraine under conditions of the spread of coronavirus infection (COVID-19): specific features and ways of improvement", the results of which are presented in this research (Razumkov Center, 2020). As a result, it makes it possible to solve problems that could meet the personal needs of certain citizens and the needs of society as a whole.

4 Results

The study of restrictions on freedom of movement and other freedoms will begin with studying the legal regulation of this issue. Let's start with the studying of European legislation. According to Article 15 of the Convention (1950) for the Protection of Human Rights and Fundamental Freedoms in time of war or other extraordinary circumstances threatening the life of the nation, either party may take measures derogating from the obligations under this Convention only in view of the high level of criticality of the situation. The main condition for imposing restrictions on freedoms is consistency with other obligations under international law. At the same time, the above provision is not absolute because it cannot be a ground for derogating from certain fundamental rights. Due to the international community's recognition of the appropriateness and legitimacy of restrictive measures in certain circumstances, international organizations have begun to emphasize the need to comply with restrictions that will protect health and protect against the arbitrariness of public authorities. For example, experts from the Organization for Security and Cooperation in Europe (OSCE) have noted that despite the priority of protecting the health and saving lives during a pandemic, restrictions must strike a balance between protecting health and respect for humanity.

To meet human rights standards, restrictions or other measures must:

- Be provided for by law;
- Be necessary for a democratic society;
- be based on sound scientific evidence;
- be neither arbitrary nor discriminatory;
- be subject to examination;
- be limited in time;
- be proportionate to the objectives to be achieved;

– take into account the differential impact on specific categories of the population or marginalized groups (Identified omissions in realization of human rights in Bosnia and Herzegovina, 2020).

The UN has also noted the observance of human rights and freedoms in the case of quarantine. In several speeches and reports, representatives of the organization repeatedly mentioned certain aspects of rights protection in the context of the pandemic, such as increased censorship, suppression of journalists, and criticism of the authorities' actions. These activities are a negative phenomenon, leading to a lack of important information and provoking a worsening epidemiological situation (UN, 2020). Furthermore, the prohibition against unlawful deprivation of liberty and safeguards against abuse by law enforcement should be limited, and a complete ban on leaving home is a criminal offense (UN, 2020). The UN continuously monitors the rights and freedoms of various population groups and has made recommendations for proportionate restrictions that balance the interests between the fight against disease and democratic standards.

Although other international organizations also create a sufficient system of criteria for national governments to consider planned restrictions, each of them involves careful elaboration. The need to respond urgently to unforeseen developments in the epidemic situation has led to the fact that some measures have been unnecessary, illegal, disproportionate, and show disrespect for human rights. As a consequence, there is now a fairly significant practice of appealing the constitutionality of decisions of public authorities, which imposed quarantine restrictions and developed a number of legal positions of constitutional justice bodies on compliance with the principle of proportionality in the case of limitations on the rights and freedoms of man and citizen.

The practice has shown that the issue of imposing democratic rules has affected many countries. According to COVID-19 (Repucci & Slipowitz, 2020), in more than 80 countries, democracy and human rights have weakened compared to the pre-civil rights period. The main problems were registered in African countries, the USA, China, many countries of South America, Belarus, and Ukraine.

It should be noted that people complain most of all about restrictions on movement, active misinformation and promotion of the conspiracy theory, police violence, restrictions on the work of the press, etc. The primary infringements of rights in the world are shown in Figure 1.

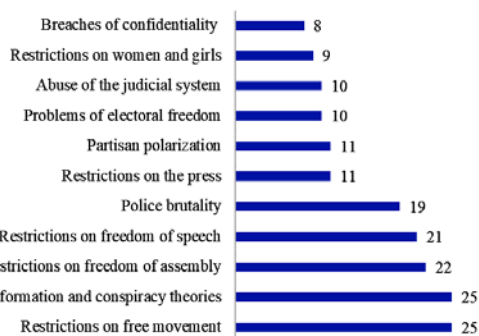


Figure 1 – Opinion of the world population on the negative impact of COVID-19 on established living standards in 2020, %

Source: According to Repucci & Slipowitz (2020)

Given that different countries have used various measures to combat COVID-19, it is helpful to study restrictions on freedoms using specific examples. Let's consider the policies of Ukraine, which, according to an international study, has lowered its level of democracy in the country.

For example, according to the results of the Razumkov survey in Ukraine, 38% of citizens faced restrictions on freedom of movement, restrictions on rest, problems with medical and social protection (Figure 2).



Figure 2 – Opinion of the population of Ukraine about the negative impact of COVID-19 on the established standard of living in 2020, %

Source: Compiled by the authors based on Razumkov Center (2020)

It can be concluded that many problems faced by other countries were not observed in Ukraine. For example, citizens did not feel violence from the police; there were no problems restricting women's freedoms rights, media freedom, etc. At the same time, people felt the problem of employment and doing business, the solution of medical issues.

Overall, 50.3% of the population felt that state and local authorities restricted constitutional rights and freedoms in the process of combating the spread of coronavirus infection (Figure 3).

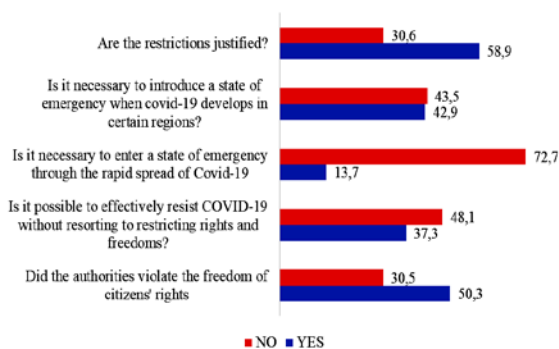


Figure 3 – Opinion of Ukrainian citizens about the actions of the authorities to address the spread of COVID-19 in 2020, %

Source: Compiled by the authors based on Razumkov Center (2020)

58.9% of respondents believe that such measures are justified. It shows that, in general, restrictions on freedoms are necessary, and the population supports such measures. But at the same time, some actions of the authorities were not understood by the citizens; for example, it concerns restrictions to visit parks, use public transport, and stay in the street without documents. Let us consider the primary resistance of the population to the actions of the authorities to prevent the spread of COVID-19 (Figure 4).



Figure 4 – Main resistance of the majority of the population to restrictions of freedoms in Ukraine in 2020, %

Source: Compiled by the authors based on Razumkov Center (2020)

Ukrainians believe that the restrictions on medical care in matters unrelated to COVID-19, social insecurity, the right to privacy, an adequate standard of living, the right to work, study, and engage in entrepreneurial activities are unacceptable.

Thus, in the process of solving the issues of restrictions of freedom of movement and other personal freedoms of a person in certain countries, it is necessary to take into account the point of view of the population of this country, which concerns unjustified or exaggerated prohibitions that cause misunderstanding and protests.

Today, vaccination is considered the primary method of solving the problem of freedom of movement and other restrictions during the pandemic in Ukraine. At the same time, compulsory vaccination is also a restricted form of human freedom, so it is not expedient to solve one issue of democratic importance at the expense of infringement of other rights. Let's consider what methods to fight the problem of restrictions of freedom of movement and other freedoms in different countries and how scientists of the world treat the problem.

5 Discussion

Today the most controversial issue of restrictions on rights and freedoms is considered the issue of restriction of movement. In many countries, this restriction has led to judicial intervention, but different courts have ruled differently. In Russia, for example, restrictions on movement during the fight against coronavirus are not considered illegal because such actions are taken by the authorities in an emergency situation and comply with the recommendations of the World Health Organization (Roudik, 2021). Conversely, in Bosnia and Herzegovina, where restrictions on crossing certain areas and movement restrictions were imposed on people over the age of 65, a court overturned this decision within one hour. The court's decision was based on a violation of human rights, given the principle of proportionality and reasonableness, as well as through the lack of explanation for the total ban on movement and the uncertainty of the grounds for such a decision. Thus, in adjudicating this issue the court relied on the principle of legality and proportionality during quarantine restrictions, violation of which may create a threat of distrust of citizens towards the authorities (Identified omissions in realization of human rights in Bosnia and Herzegovina, 2020).

Restrictions on religious beliefs are no less of an issue. It is one of the natural human rights ensured by international documents and constitutions of all countries, and it is the basis of decision-making in life (Yarmol & Tuchapets, 2015). Restrictions on freedom of religion and attendance at religious gatherings are one of the main restrictions methods in many countries, including Ukraine (Lykhova et al., 2021). But the issue has been most controversial in the United States since the Supreme Court of the United States imposed a ban on such restrictions in 2020. Despite public criticism that the court favored religion over health, the decision to ban religious meetings was deemed cruel. The situation was similar in California and other U.S. states, which have ruled that protecting the constitutional rights of human liberties trumps fighting a pandemic (Becket, 2020).

On the other hand, there have been a number of court sessions where the issue has been decided in favor of public health. For example, a judge has ruled that emergencies that have a real and substantial impact on a crisis do not constitute a clear, significant violation of human rights (Hudson, 2020). According to the authors, such judicial decisions can be the basis for deciding other precedents in the U.S. and other countries facing such a problem.

The problem of banning business work has become another field of discussion. The objective impossibility of providing remote work to everyone who wants to work has formed an active resistance of entrepreneurs to the prohibition of trade and the operation of stores and entertainment centers. For example, in the Czech Republic in a court order (Kučera & Jirí Maršál, 2021) was overturned a ban on the trade in construction materials because anti-crisis measures and restrictions should be based on objective and reasonable justification, which the Czech authorities could not do. The situation in the U.S. was similar, as some states banned gyms while swimming pools

were not closed. Thus, such restrictions were judicially lifted on the grounds of unreasonableness and ensuring equality and fairness (Hull Eikho et al., 2021).

In 2021, the world faced another freedom restriction – compulsory vaccination. It is the main method to combat the spread of COVID-19 and resume the freedoms of citizens. Today, with mass vaccination in Ukraine and many other countries, this issue is the most debated (Mihus et al., 2021).

In more than 100 countries, compulsory vaccination is one of the main methods of fighting disease outbreaks. At the same time, 62 countries have now resorted to different responsibility measures for the lack of habit. Most of the restrictions concern the prohibition of children from attending educational institutions (). In some countries, such as Italy and the Czech Republic, parents of unvaccinated children must pay a fine. In addition to measles, children should be vaccinated against diphtheria, pertussis, tetanus, hepatitis B, polio, hemophilus influenza, chickenpox, mumps, and rubella. Mandatory vaccination against such diseases without fines is present in almost all European states. The U.S. has also supported such disease control methods, so compulsory mass vaccination practices in all 50 states. But despite the fact that the lack of vaccination restricts certain rights and freedoms of citizens, they still resist these decisions, especially in those countries where residents do not trust the authorities.

The issue of trust in mass vaccination has been scientifically studied, particularly by the London School of Hygiene and Tropical Medicine (2021), which showed that pushy recommendations and pressure lead to a natural resistance of people to do anything and to be vaccinated, among other things. So, on the one hand, there is a natural, unreasonable reaction of people to compulsory vaccination against COVID-19. But on the other hand, there is also a justified reaction. This is especially true for health professionals and people who study mass immunization.

Studies of the effects of mass vaccination have only been done on preschool and school-age children. Statistics on vaccinations for adults are available only for influenza, hepatitis A, and B. In some countries, vaccinations against these diseases are recommended by medical professionals, so they are not considered compulsory. Thus, there is no historical precedent for the impact of mass vaccination on disease development in society, so any predictions are not supported by statistical data. A group of Chinese researchers recently conducted another study, which found that people without medical education were more willing to be vaccinated than those with medical education.

The issue of collective immunity is also relevant. Six years ago, the WHO officially declared the UK rubella-free zone and promised to eradicate measles completely. But by 2020, there was a 10-fold increase in the incidence of measles. The collective immunity threshold was 68% for rubella and 92% for measles, so if a small part of the population lowers the measles threshold, the disease becomes particularly active in that region (Voronin, 2021). Unfortunately, there are no studies on the collective immunity threshold for Covid-19.

Professor of the School of Pharmacy at the University of Maryland Peter Doshi (2021) is convinced that compulsory vaccination cannot be raised categorically since all vaccines do not have enough research on the long-term effect. Mandatory vaccination will be possible only with those drugs that can receive a WHO certificate, which will not happen until 2022. Thus, for now, providing compulsory vaccination or restrictions on the rights of people who do not have the vaccine may also resonate in courts. As a result, they will decide whether to maintain or prohibit compulsory vaccination at their discretion. On the other hand, authorities recommend that their residents be vaccinated, providing many advantages in leading active lifestyles compared to unvaccinated people. Restrictions on equality rights can also lead to a number of public discontents, and at this point, states must prepare a legal framework to protect the rights of individuals and society.

6 Conclusions

Thus, the practice of appealing the constitutionality of restrictions on freedoms is not yet fully formed. However, due to the insufficient legal framework and the insufficient level of medical research, it will be up to judges to decide on the legality of government actions restricting freedoms in light of both national legislation and the recommendations and decisions of the WHO.

The possibility of threats to individual freedom to defeat a global pandemic remains a pressing and relevant issue today. Restrictive measures may be recognized as legitimate if imposed according to established procedures, and conversely, if authorities exaggerate their authority, such restrictions will be overturned in constitutional courts. In making different decisions about restrictions on freedoms, it is necessary to rely on current medical research, the level of violation of citizens' freedoms, and, of course, the legal and regulatory framework. But despite the lack of such information, in some countries, the fight against COVID-19 has been put in the first place, so it has created a justification for special powers to the executive branch and poses a number of threats to the violation of the constitutive legality. Therefore, each restriction requires constant, complete monitoring to ensure a balance between ensuring human rights and public health.

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