

C. Essays

COVID-19—From a Health Crisis to a Humanitarian Crisis

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These pages offer some reflections on the health and humanitarian crisis, after the roundtable organized by Prof. Larry Catá Backer to discuss the actual situation of COVID-19. As researchers specialized on business and human rights as well as transnational litigation in cases of serious violations of fundamental rights and environmental damages, with particular attention to vulnerable groups, we are concerned with the current health crisis due to its multiple impacts on societies³. On this last point, as notes of hope, we can mention some recent judicial developments on transnational human rights litigation,

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³ Social impact of the COVID-19. “We are facing a global health crisis unlike any in the 75-year history of the United Nations — one that is killing people, spreading human suffering, and upending people’s lives. But this is much more than a health crisis. It is a human, economic and social crisis. The coronavirus disease (COVID-19), which has been characterized as a pandemic by the World Health Organization (WHO), is attacking societies at their core”. See: UN Department of Economic and Social Affairs Social Inclusion, “The Social Impact of COVID-19 (6 April 2020); available [<https://www.un.org/development/desa/dspd/2020/04/social-impact-of-covid-19/>].

in the US⁴, Canada⁵ and also in the European Union⁶; we think that they can make great strides on the issue of holding large corporations accountable for activities that violate human and/or labor rights and the environment.

Related to our first line of research, business and human rights, it has become critical to evaluate the impact of the industrial activities in our societies. Especially, we must monitor the responsibility of these corporations with regard to their commitments against human rights abuses. As we have put forward in different publications⁷, the corporate systems of governance have failed to cope with the new responsibilities that they face.

In the last few years, most transnational corporations have introduced [corporate](#) social responsibility and sustainable principles in their strategies. They have also made different statements about the importance of respecting human and labor rights in almost all the companies that operate in their global supply chains. Nevertheless, during this crisis, our social networks and mass media have been overwhelmingly sending information about abuses and unethical behavior in developing

⁴ Among others, Maria Chiara Marullo and Francisco Javier Zamora Cabot, "Transnational human rights litigations. Kiobel's touch and concern: a test under construction", *Papeles el tiempo de los derechos*, 1, 2016. Available at: [\[https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2765068\]](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2765068))fort hcoming two articles related to the Vedanta case and Kiobel III).

⁵ On this topic, among others, see our contribution at *Papeles el Tiempo de los Derechos: Empresas multinacionales y DD.HH.: ¿Hacia el fin de la impunidad? Apuntes a la decisión del Tribunal Supremo canadiense en Nevsun Resources Ltd. v. Araya*, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3583939.

⁶ See: Covington, "Business and Human Rights: Global Developments" (29/05/2020); available at [\[https://www.cov.com/-/media/files/corporate/publications/2020/05/business-and-human-rights-global-developments.pdf\]](https://www.cov.com/-/media/files/corporate/publications/2020/05/business-and-human-rights-global-developments.pdf).

⁷ More recently: Francisco Javier Zamora Cabot, "Gobernanza mundial y el binomio empresas-derechos humanos", , *Anales de la Real Academia de Doctores*, num. 1. vol. 5. pp. 87-113. 2020; and "Las grandes empresas y su incidencia sobre el sistema democrático, Francisco Javier Zamora Cabot, Maria Chiara Marullo, *Papeles el Tiempo de los Derechos*. Num. 18. pp. 1-17. 2019; available [\[https://www.researchgate.net/publication/337223983_Papeles_el_tie mpo_de_los_derechos_LAS_GRANDES_EMPRESAS_Y_SU_INCIDENCIA_S OBRE_EL_SISTEMA_DEMOCRATICO_BIG_BUSINESS_AND_ITS_IMPACT_ON_THE_DEMOCRATIC_SYSTEM\]](https://www.researchgate.net/publication/337223983_Papeles_el_tie mpo_de_los_derechos_LAS_GRANDES_EMPRESAS_Y_SU_INCIDENCIA_S OBRE_EL_SISTEMA_DEMOCRATICO_BIG_BUSINESS_AND_ITS_IMPACT_ON_THE_DEMOCRATIC_SYSTEM).

countries⁸, where many corporations have relocated their activities and where the majority of the population does not have sufficient income to survive nor adequate health-care systems. An example is the problem related to Covid-19 outbreaks in the meat industry in the US⁹, Germany¹⁰ and Morocco¹¹. It is showing the poor living and working conditions of employees, most foreigners, often “housed en masse in unhealthy dormitories”¹², where no health or safety measures are respected¹³.

The way in which industries carry out economic activities on a global scale is far from the ideal of sustainability

⁸ See the report on the impacts of covid-19 on Bangladesh garment industry, at: <https://edition.cnn.com/2020/04/22/business/bangladesh-garment-factories/index.html>.

⁹ Vincent ter Beek, “Covid-19: US pig markets still suffer; Europe feels effects too”, *Pig Progress* (8 May 2020); available [https://www.pigprogress.net/Health/Articles/2020/5/Covid-19-US-pig-markets-still-suffer-Europe-feels-effects-too-580432E/].

¹⁰ Rebecca Staudenmaier, “Germany’s meat industry under fire after COVID-19 outbreak”, *DW* (19 May 2020); available [https://www.dw.com/en/germanys-meat-industry-under-fire-after-covid-19-outbreaks/a-53502751]. See also, “Germany: Cabinet proposes new regulations to better protect meatpacking workers following COVID-19 outbreaks at slaughterhouses”, Business and Human Rights Resource Centre (29 May 2020); available at [https://www.business-humanrights.org/en/germany-cabinet-proposes-new-regulations-to-better-protect-meatpacking-workers-following-covid-19-outbreaks-at-slaughterhouses].

¹¹ “El foco más grave de COVID-19 en Marruecos aparece en dos empresas españolas”, *La Vanguardia* (20 June 2020); available [https://www.lavanguardia.com/internacional/20200620/481857338454/marruecos-coronavirus-brote-empresas-espana.html].

¹² “The trend is starting to expose an uncomfortable reality: much of the cheap meat on Western supermarket shelves is slaughtered by migrant workers who earn low wages, often live together in dorms and operate in crowded working conditions even in the midst of a pandemic. See Natalie Huet, “COVID-19 outbreaks in German slaughterhouses expose grim working conditions in meat industry,” *EuroNews* (13 May 2020); available [https://www.euronews.com/2020/05/12/covid-19-outbreaks-in-german-slaughterhouses-expose-grim-working-conditions-in-meat-indust].

¹³ Christina Marrone, “Coronavirus, perché si diffonde così facilmente nei mattatoi”, *Corriere della Sera* (21 June 2020); available [https://www.corriere.it/salute/malattie_infettive/20_giugno_21/coronavirus-perche-si-diffonde-cosi-facilmente-mattatoi-d69a2ac2-b3c5-11ea-af5b-39ef34d55a35.shtml].

promoted by international summits. Time has come for businesses to change their model of corporate groups' management, to guarantee the implementation of their internal systems, to monitor the accomplishment of international human and labor standards. In fact, "the purpose of business is to profitably solve problems of people and planet, and not profit from causing problems"¹⁴.

Therefore, corporations must introduce mechanisms to effectively reduce their social impacts and, at the same time, the international community needs to eradicate corporate impunity in cases of human rights abuses and environmental damages¹⁵. In line with the co-responsibility framework, sponsored by the 17 Sustainable Development Goals¹⁶ in an alliance between public and private sectors, it is crucial for corporations with effective control or influence within their groups, to guarantee that labor protections are not rolled back in this dramatic moment. In this way a very interesting initiative was launched by the UK Government¹⁷ through the Global Resources Initiative (GRI). This initiative, that we hope that could serve as an example for other countries, aims to draw a strategic pathway and a package of measures intended to "introduce a mandatory due diligence obligation"¹⁸, "reduce the impacts on deforestation and land conversion associated with the UK's

¹⁴Please refer to: "The British Academy proposes principles for the age of purposeful business" (27 Nov. 2019); available [<https://www.thebritishacademy.ac.uk/news/british-academy-proposes-principles-age-purposeful-business>].

¹⁵ Maysa Zorob and Andrea Hearon, "What are the avenues for corporate liability for COVID-19-related human rights abuses?", *Business & Human Rights Resource Centre* (16 June 2020); available [<https://www.business-humanrights.org/en/what-are-the-avenues-for-corporate-liability-for-covid-19-related-human-rights-abuses>].

¹⁶ See: United Nations, Sustainable Development Goals, Goal 17: Revitalize the global partnership for sustainable development.; available [<https://www.un.org/sustainabledevelopment/globalpartnerships/>].

¹⁷ See: Global Resource Initiative Taskforce.: The Global Resource Initiative Taskforce (GRI) considered how we can reduce the climate and environment effects of key UK supply chains; available [<https://www.gov.uk/government/publications/global-resource-initiative-taskforce>].

¹⁸ Global Resource Initiative, "Global Resource Initiative Final Recommendations Report 2020 (March 2020); available [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876465/gri-taskforce-executive-summary.pdf], executive summary], p. 3..

commodity imports and domestic consumption”¹⁹ and “Mobilize global funds, public and private, to tackle deforestation and land-use conversion and support sustainable production and trade in agricultural and forestry products”²⁰.

It is clear that in these extraordinary times, and before we can find a suitable vaccine or treatment for this disease, more engagement of the leading company is needed in all types of industries. Their supply chains will start functioning again in the next months and, as such, the major company of the group must take the lead for a safer and fairer industry governed by binding and enforceable due diligence mechanisms on workers’ safety and health²¹. In this line, we support the proposal to re-evolve towards the global *Green New Deal plans*²², which will allow us to better manage risks and minimize the environmental impacts of the industries’ activities. Those plans post COVID-19 crisis could contemplate how to restart the global economy and include new strategies for “renewable energy, batteries

¹⁹ *Ibid.*, p. 14.

²⁰ *Ibid.*, p. 3

²¹ See Valerie Nelson, Professor Olga Martin-Ortega and Michael Flint, Report: “Making Human Rights Due Diligence Work: An Analysis of Impact and Legal Options”, Sustainable Trade and Responsible Business (STRB) Development Programme of the Natural Resources Institute (NRI) and the Business, Human Rights and the Environment Research Group (BHRE) (8 June 2020). In the report, the authors present the current evidence on the impact of human rights due diligence on the ground in two sectors: agriculture and textiles. More information available [<http://www.bhre.org/current-news/2020/6/5/making-human-rights-due-diligence-work>].

²² “The Green New Deal plans were released as part of the ruling party’s election manifesto in March. They were presented as a way to meet the country’s obligations set down in the international Paris Climate Agreement: to submit updated carbon reduction plans to 2030, and long-term goals by the end of the year. Although there is no agreed definition of a ‘Green New Deal’, the manifesto referred explicitly to the US Democratic Party’s Green New Deal proposals, and the EU’s ‘Green Deal for Europe’. It also sets the goal for getting to net zero emissions by 2050 – the same as the UK’s target, although the UK government has not explicitly outlined any kind of green deal”. See Helle Abelvik-Lawson, “In the world’s first ‘Coronavirus elections’, South Korea voted for climate action,” Greenpeace (23 April 2020); available [<https://www.greenpeace.org.uk/news/south-korea-green-new-deal-coronavirus-elections/>].

technology and hydrogen fuel to reduce regional air pollution”²³. As an important step towards this change in paradigm, on April 29, 2020, the European Commission has announced that it will introduce a specific legislation on mandatory sustainable due diligence for companies as part of the Commission’s 2021 work plan and the European Green Deal:

The announcement came during a high-level online event hosted by the European Parliament’s Responsible Business Conduct Working Group, during which the Commissioner presented the findings of the Commission study on due diligence requirements through supply chains. This encouraging announcement is the result of a sustained campaign by civil society, including Global Witness, for the EU to introduce binding cross-sectorial laws requiring companies and financial institutions to identify, prevent, mitigate and account for human rights abuses and environmental damage linked to their operations, subsidiaries or value chains²⁴.

Related to the protection of vulnerable groups, this is a crisis without precedent in our recent history, and strongly related to migration. Especially dramatic are two situations: the current inequality, discrimination and xenophobia²⁵ against

²³ See: John Barry, “Coronavirus: how economic rescue plans can set the global economy on a path to decarbonisation”, Greenpeace (23 April 2020); available [https://www.greenpeace.org/new-zealand/story/coronavirus-how-economic-rescue-plans-can-set-the-global-economy-on-a-path-to-decarbonisation/].

²⁴ See, Global Witness, “Important step towards greater corporate accountability as European Commission commits to new EU rules to regulate supply chains” (29 April 2020); available [https://www.globalwitness.org/en/press-releases/important-step-towards-greater-corporate-accountability-european-commission-commits-new-eu-rules-regulate-supply-chains/?utm_source=hootsuite&utm_medium=twitter_].

²⁵ “Government leaders and senior officials in some instances have directly or indirectly encouraged hate crimes, racism, or xenophobia by using anti-Chinese rhetoric. Several political parties and groups, including in the United States, United Kingdom, Italy, Spain, Greece, France, and Germany have also latched onto the Covid-19 crisis to advance anti-immigrant, white supremacist, ultra-nationalist, anti-Semitic, and xenophobic conspiracy theories that demonize refugees, foreigners, prominent individuals, and political leaders”. More information at: “Covid-19 Fueling Anti-Asian Racism and Xenophobia Worldwide: National Action Plans Needed to Counter Intolerance”, Human Rights

migrants located in Western countries²⁶ and the lack of protection for incoming migrants, including climate ones, and other displaced persons during this crisis.

Many concerns have been raised due to the precarious conditions that many persecuted minorities or indigenous people²⁷ face every day, especially those that are forced to leave their territory. The Rand Corporation on Research and Development²⁸ created an Index, supported by some governments and international agencies, *The Infectious Disease Vulnerability Index*, to identify the countries which are most vulnerable to epidemics. As expected, conflict zones or the territories where the minorities are persecuted are in a critical situation because of their poor health and sanitation systems²⁹.

Watch (12 May 2020); available [https://www.hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide].

²⁶ Esther Mamadou Youssef, M. Ouled Isabelle and Mamadou Lydia Vicente Márquez, "Crisis sanitaria Covid-19, Racismo y xenofobia durante el estado de alarma en España", Rights International Spain and Equipo de Implementación del Decenio Afrodescendiente en España; available [http://www.rightsinternationalspain.org/uploads/publicacion/d0b782ac0452e9052241b17a646df19ad4edf12c.pdf].

²⁷ An example: "The COVID-19 pandemic has strongly affected many people and in many ways. This does not exclude indigenous peoples who are frequently regarded as the poorest and may live below normal standards of living compared to other people in the world. In Uganda in the 1990s, the majority of the indigenous Batwa people were evicted and displaced from their ancestral land, the forests which they depended on for survival. As a result, the majority of Batwa people now live in a poor status and have to depend on others for survival through offering cheap labour. They can only eat when they have worked". More information at: UOBDU, "Increased hunger and poverty among the Batwa amidst COVID-19 in Uganda", Forest Peoples Programme (7 May 2020); available [https://www.forestpeoples.org/en/increased-hunger-and-poverty-for-Batwa-in-Uganda-amid-covid-19].

²⁸ See: Melinda Moore, Bill Gelfeld, Adeyemi Theophilus Okunogbe, Christopher Paul, *Identifying Future Disease Hot Spots Infectious Disease Vulnerability Index* (Washington, D.C., Rand, 2016); available [https://www.rand.org/pubs/research_reports/RR1605.html].

²⁹ "Communities who have already displaced due to violence are highly vulnerable to COVID-19, and check points set up by armed groups can prevent vital food and medical supplies from reaching those most in need. In the Philippines, pupils and teachers who had moved to Manila three years ago to escape the conflict in their home province of Mindanao are now trapped by the lockdown. According to the Asia Indigenous Peoples Pact (AIPP), there are 68 indigenous students and teachers among them,

The refugee camps in Bangladesh are a powerful example of this situation. These camps are one of the world's largest refugee settlements, where more than 900,000 Muslim Rohingyas have been displaced³⁰ without any possibility to return to Myanmar in the near future. A large study of our own on the *Rohingya's genocide* is approaching publication, and we have worked in order to identify the actors, the states and also the businesses involved in the crimes against this community and the possible solutions to address the specific problems related to this crisis³¹. Currently, these people live in isolation and without the hygienic-sanitary conditions necessary to avoid contracting the virus³². Recently, the Bangladesh "refugee relief and repatriation Commissioner" issued orders restricting services and facilities in the Rohingya refugee camps and provided specific norms for the arriving migrants:

Under international law, public health measures taken in response to the Covid-19 pandemic must be proportionate, nondiscriminatory, and based on available scientific evidence. It may be reasonable to subject those who arrive to a period of isolation or quarantine. But the pandemic cannot justify a blanket ban such as Bangladesh's refusal to allow any Rohingya now or in the future to disembark. Forcing them to remain on the boat also risks their right to health³³.

some as young as 11, and the cramped living conditions in the city are making social distancing impossible".

More information at: Vicki Brown and Caroline de Jong, "Covid-19 pandemic heightens risks for forest peoples already in threatening situations", Forest Peoples Programme (24 April 2020); available [<https://www.forestpeoples.org/en/covid-19-heightens-risks-for-forest-communities-already-in-threatening-situations>].

³⁰See: "Life for the Rohingya in the world's largest refugee camp", Reuters (August 2019); available [<https://news.trust.org/packages/life-for-the-rohingya-in-the-worlds-largest-refugee-camp/>].

³¹Francisco Javier Zamora Cabot and Maria Chiara Marullo, "El conflicto Rohingya y sus proyecciones jurídicas: aspectos destacados", *Ordine internazionale e diritti umani*, (2020) (forthcoming).

³²More information at: "Global: Ignored by COVID-19 responses, refugees face starvation", Amnesty International (14 May 2019); available [<https://amnesty.ca/news/global-ignored-covid-19-responses-refugees-face-starvation>].

³³"Bangladesh: Rohingya Refugees Stranded at Sea", Human Rights Watch (25 April 2020); available

As such, the impacts of the COVID-19 are devastating in this area, especially if the International Community does not take urgent measures³⁴. A similar critical situation is happening in the Gaza Strip³⁵, where medical facilities are unavailable to face the pandemic. Unfortunately, it is now not necessary leaving Europe to find regrettable conditions at migrant camps in Greece³⁶ where there are at least 110,000 people³⁷ in this moment. Just across the Mediterranean Ocean, too, we can find the Libyan migrant's camps, where the risks linked to health crises, added to other human rights abuses, are enormous so the impacts of COVID-19 could be catastrophic as well³⁸. Along these lines, the recent decisions of the Italian Government³⁹ are worrisome: on April 7, 2020 the Italian ports have been

[<https://www.hrw.org/news/2020/04/25/bangladesh-rohingya-refugees-stranded-sea>].

³⁴ Muhammad Nazrul Islam, Toki Tahmin Inan, MSc and Najmul Islam, "COVID-19 and the Rohingya Refugees in Bangladesh: The Challenges and Recommendations", *Asian Pacific Journal of Public Health* 32(5):283-284; available [https://journals.sagepub.com/doi/full/10.1177/1010539520932707].

³⁵ See: Aiswarya Murali "COVID's March towards the Gaza Strip. Quality Health Care, a Right or a Privilege?" International Law Blog (28 April 2020); available [https://internationallaw.blog/2020/04/28/covids-march-towards-the-gaza-strip-quality-health-care-a-right-or-a-privilege/].

³⁶ See: Katy Fallon, "Greece: 148 refugees test positive for COVID-19, all asymptomatic", Aljazeera (21 April 2020); available [https://www.aljazeera.com/news/2020/04/greece-148-refugees-test-positive-covid-19-asymptomatic-200421134039733.html]. See also, Margarita Elías, "Grecia expulsa colectivamente a más de 700 solicitantes de asilo ante el silencio cómplice de la Unión Europea", Público (3 June 2020); available [https://www.publico.es/sociedad/violencia-refugiados-grecia-grecia-expulsa-colectivamente-700-solicitantes-asilo-silencio-complice-union-europea.html].

³⁷ See: Renee Maltezou, "Greece quarantines second migrant camp after COVID-19 case confirmed", Reuters (5 April 2020); available [https://www.reuters.com/article/us-health-coronavirus-greece-camp-idUSKBN21N06B].

³⁸ See: Niall McGlynn, "Ignoring COVID-19 cases at Libya migrant centers will have dire consequences for Europe", Euronews (16 April 2020); available [https://www.euronews.com/2020/04/16/ignoring-covid-19-cases-libya-migrant-centres-will-have-dire-consequences-for-europe-view].

³⁹ M. Inf. Uffgab.Reg.Decreti.R.0000150.07-04-2020; available [https://www.avvenire.it/c/attualita/Documents/M_INFR.GABINETTO.REG_DECRETI(R).0000150.07-04-2020%20(3).pdf].

declared unsafe for the landing of refugees from foreign civilian and military ships⁴⁰.

What will happen to these people? Probably their destiny could be death, or to become victims of human trafficking activities, or be pushed back to the migrant's camps, where they risk being tortured.

The European Union—based supposedly on the rule of law and founded on values of freedom, democracy, respect for human dignity and human rights, including the rights of minorities⁴¹—is accused of turning a blind eye on this situation, even if urgent action is needed due to the risk of the pandemic in camps added to other human rights violations, torture and forced labor⁴². These problems add to the one about the internal

⁴⁰ "We note that, with a ministerial decree dated 7 April, the Italian government has also declared that the country cannot be regarded as a place of safety for the purposes of disembarking people rescued outside Italy's SAR region. Albeit in this letter we wish to focus on Malta, we consider that Italy's decision, which we have publicly criticized alongside other NGOs, has contributed to render the situation in the central Mediterranean more dangerous for refugees and migrants and to undermine the law of the sea and international human rights and refugee law". More information at: Eve Geddie, "Concerns about pushbacks of refugees and migrants at sea and closure of sea ports", Amnesty International Letter to Ylva Johansson, Commissioner for Home Affairs, European Commission, Ref. B1996 (21 May 2020); available [<https://www.amnesty.eu/wp-content/uploads/2020/05/B1996-Letter-to-Commission-on-pushbacks-and-port-closures.pdf>].

⁴¹ Cf. EU Treaties website; available [https://europa.eu/european-union/law/treaties_en].

⁴² On this point, it is very interesting the recent document: *European Union and its values: Freedom, solidarity and democracy* (Agnieszka Kos, Jan Misiuna, Marta Pachocka, Aleksandra Szczerba-Zawada, eds.) Warsaw: Polish European Community Studies Association (PECSA), 2020; available [<http://www.pecsa.edu.pl/sites/default/files/PECSA%20European%20Union%20and%20its%20values.pdf>]. In particular the chapters: "Refugee crisis and the limits of the EU's human rights norm promotion" de Sinem Bal, pp.71-84. "EU, states, and NGOs – multi-agency response to refugee crisis and its challenges for EU values" de Mateusz Krepa, pp.85-94; "Solidarity in EU asylum policy: perpetual or extraordinary call?", de Danai-Georgia Koutsopoulou, pp.95- 104; "Why EU should urgently review its cooperation with Turkey on migration?" de Marta Górczynska, pp. 105- 114; working towards inclusion of refugees: NGOs in the Netherlands – the case of the Dutch Council for Refugees", de Violetta Gul-Rechlewicz, pp.115-124 and "The refugee crisis, the illiberal

division in the Continent. There are two *Europes* with different values, principles and economies: the northern Europe and the Mediterranean countries. This internal division stands in the way of the development of policies based on solidarity and common values⁴³. Even if, at a given moment, they share a “rather negative- strategy” on the treatment due to migrants and refugees.

This leads us to reflect on the role that the European Union should be playing as an outstanding international, legislative and strategic actor, in order to the development and protection of human rights. But, unfortunately, it is clear to us that its priorities revolve mainly around economic interests and the protection of the European and State member’s markets. Due to this, the European Institutions have found no effective solutions to the migration problem in the last six years. The only determination was to achieve critical deals with Turkey and Libya to cut refugee and migrant’s flows from Turkey or North Africa to Greece, Malta, Italy or Spain. So, this humanitarian crisis, aggravated by the current health situation, requires coordinated actions to effectively protect and guarantee migrant and refugees’ rights.

Finally, moving on to another concern that worries us, almost three months have passed since lockdown measures and restrictions on individual freedoms began to be activated in Europe to face the pandemic. Among other countries, in Spain, the place where we live and work, where these measures have been very drastic and have led to the confinement of the total population throughout the territory, without discrimination of the number of infected and fatal victims from the different

populist challenge and the future of the EU: is illiberal democracy on the march? The case of Hungary, de Edina Lilla Mészáros, pp.125-140.

43 “The COVID-19 pandemic is demonstrating all too well that unequal societies go hand-in-hand with human suffering, fragile economies and delicate democracies. Solidarity must be the bedrock of Europe’s response to this crisis: to fighting the pandemic and protecting all people, to managing the social and economic consequences, and to defending democracy. Solidarity goes beyond borders and should not be limited to European Union countries”. More information at Amnesty International, “For a Europe that cares for all – during the COVID-19 pandemic and beyond”, available [https://www.amnesty.eu/wp-content/uploads/2020/04/For-a-Europe-that-cares-for-all-during-the-COVID-19-pandemic-and-beyond.pdf].

autonomous communities⁴⁴. These measures have surely achieved the main objective of reducing contagion and taking pressure off the health system to be able to care for the people affected by this disease. However, they have also led to many restrictions as well as the establishment of important sanctions in case of non-compliance.

Without going into an assessment of the reasons that led the Spanish Government to act in this way, nor doubting that the only purpose has been public health and the protection of the most vulnerable people, some questions arise, especially related to the proportionality of the measures. It is obvious that during health crisis, in order to prevent the spread of dangerous diseases, governments can introduce some limited and beyond a reasonable time period, restrictions on fundamental rights and freedoms, to protect public health. However, this does not mean that these freedoms or rights are suspended. It is clear that the State may only interfere, with specific restrictive measures enacted to reduce the negative impacts of the pandemic, adequately and proportionately. As a matter of example, since the declaration of state of emergency, we, as citizens, assumed that the right of demonstrations and peaceful protests could be banned because of the pandemic.

Related to this, the Spanish Constitutional Court has recently upheld the prohibition of demonstrations in Vigo, appealing that the right to life is above the right to demonstrate⁴⁵. The Court explains that the fundamental right of assembly is not an absolute or unlimited right, but that there must be “well-founded reasons” for its alteration. The decision has been criticized by different lawyers due to the fact that during the last weeks there have been many contradictory resolutions issued by different judicial instances. Controversy has arisen over what should prevail: “the protection of public health or the rights of assembly and demonstration”.

⁴⁴ More information at the Comparative COVID Law website; available [<https://comparativecovidlaw.com/spagna/>].

⁴⁵ See: Angela Martialay and Manuel Marraco, “El TC avala prohibir manifestaciones del 1 de Mayo que sí autorizan tribunales superiores,” *El Mundo* (30 Abril 2020); available [<https://www.elmundo.es/espana/2020/04/30/5eaaf952fdddff0d5a8b4582.html>].

Regarding this specific point, we would like to underline also that the position of the German Constitutional Court is quite different. Some weeks ago, it defended the right to demonstrate, even in times of pandemic: “Strengthen health instead of weakening fundamental rights”⁴⁶. The said Court does not authorize directly the protests, but affirms that the limitations introduced by State’s ordinances to combat the coronavirus must not contain an absolute prohibition on the concentration of more than two people, so the authorities cannot prohibit demonstrations or protests in general, but only in cases where it is difficult to maintain the distance or wear masks.

This court reaffirmed the imperative of respecting civilian and political rights also during this crisis, because, as the United Nations High Commissioner for Human Rights Michelle Bachelet said: “If the rule of law is not upheld, then the public health emergency risks becoming a human rights disaster, with negative effects that will long outlast the pandemic itself”.

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⁴⁶ See: Joseph Nasr, “Germans have right to protest during coronavirus pandemic: court”, Reuters (16 APRIL 2020); available [<https://www.reuters.com/article/us-health-coronavirus-germany-protests-idUSKCN21Y220>].

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