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**HUMAN RIGHTS POLITICS DURING THE PANDEMIC:
THE FRAGILE NATURE OF THE ORDER
OF RIGHTS AND FREEDOMS**

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Abstract

Throughout history; humanity, which has been subjected to the devastating or fatal effects of outbreaks that threaten public health many times, has been experiencing one of these disasters this time because of the Covid-19 outbreak. The time when the humanitarian crisis caused by the Covid-19 will end and its social, political and economic costs for the nations of the world remains uncertain. This crisis does not only threaten our public health, it carries the risk of infecting every area of our lives, from social psychology to the economy, from education to healthcare, from judicial justice to the legal system, from public order to human rights, from social justice to freedom.

This study focuses on the transformation of the political mind and administrative practices that govern a traumatized society under the threat of human health, by the pandemic which we can see as the history of a transformation in terms of law and human rights politics. As a result of extraordinary measures, a new assessment of basic paradigmatic criteria of the classical human rights doctrine, such as the freedom-security balance, the principle of proportionality, the principle of lawfulness and the principle of the expediency, will be made. The transformation in human rights policy will be highlighted by taking into consideration the states practices over these principles. In addition, it is aimed to evaluate the trace of the transformation in human rights politics in terms of the possible dynamics of the post-pandemic period, through the tense relationship between the top-organizational mind and the national practices that govern the pandemic process.

Keywords: Covid-19 virus, outbreak, global pandemic, state of emergency, human rights, policy of human rights.

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1. Introduction

The COVID-19 virus was first detected in Wuhan, Hubei Province, China, in December 2019. It impacted the entire world physically, spiritually, and socially within a fairly short period of time. In roughly a single month, this new type of coronavirus had gone beyond being an epidemic limited to the country and region in which it had appeared and it turned into a pandemic that would virally affect the whole world. Throughout history, humanity has been subjected to the devastating or even fatal effects of many similar epidemics or pandemics that have threatened public health. For example, the so-called Spanish flu, which killed nearly one million people in the early 20th century, was a major pandemic and significant tragedy in human history. The deadly pandemic conditions that have affected the world over time have undoubtedly brought about fundamental transformative ruptures in human history. Pandemics that have affected entire generations both physically and socially have led to serious mental transformations, onto-epistemic ruptures, paradigmatic breaks, and socio-cultural changes in the following eras.

The question of when the humanitarian crisis caused by the COVID-19 virus will end remains unclear. Unsettling predictions about the social, political, and economic costs of this crisis for the nations of the world are timidly voiced. This vortex of fear caused by pandemics is brought about by the unpredictable and uncertain conditions and it hurls humanity into a sea of erraticism. Some also think that this global infection, which has paralyzed the people of the world with all its unknowns and uncertainties, can be interpreted as the birth pains of a new world emerging on a dark horizon.

A common concern and social expectation of humanity is the hope of returning to pre-pandemic conditions, or to 'normal', in terms of socio-economic structures, the financial order, the administrative routines of established political orders, political priorities, essential state agendas, economic policies, routinized societies, social practices, individual life practices, and popular tastes.

The pandemic, which has interrupted the flow of 'normal' life, has created an opportunity to reckon with the past and reflect on what has been done. The COVID-19 pandemic has provided opportunities to reflect on humanity's global gluttony, endless greed, and destructive insatiability. These times, worsened by forced social isolation, which is contrary to the ontic nature of human beings, have provided opportunities for people to reflect on their lack of solidarity. The forced reclusion due to social isolation has given humanity the possibility of enlightenment that comes with tranquility. If taken into consideration and properly made use of, this

opportunity may allow for comprehensive intellectual processes regarding various issues such as economic management, investment strategies, industrialization endeavours, legal policy, education and training, urbanization policies, culture and arts policies, and public order. Thus, the nations of the world have the chance to turn this crisis into an opportunity or to create a 'crisis economy'. When evaluated with prospective reflexivity, it is seen that the pandemic, the destructive effects of which are still persisting, harbours possibilities for the establishment of a constitutive mindset in its aftermath. However, it is apparent that the myth of a return to 'normal' that reflects our pre-pandemic mental universe is blind to those possibilities.

The fact that the 'metaphysics of possibility', as imagined through rather unrealistic optimism about the aftermath of the pandemic, is naive is proven by the confrontational discourses and hostile language established by global hegemonies in the midst of the pandemic crisis. Therefore, for the sake of realism, it is a vital responsibility of public intellectuals to reveal the costs of this viral pandemic that has infected our social structures with a traumatic destructiveness on a global scale. These costs have been worsened by causing a wide range of vulnerabilities and exceptional conditions in terms of social psychology, economy, education, health services, judicial justice, legal systems, public order, human rights, social justice, and freedom and rights. Administrative steps and extraordinary measures that need to be taken in the name of public order and health may find grounds for social legitimacy in the face of the dire threats posed by the pandemic. There are still questions regarding the social traumas that may arise in the post-pandemic era due to the social isolation and restrictions on rights and freedoms.

This study focuses on the transformation of the political reason and administrative practices that govern societies traumatized by the pandemic's grave threat to human health. The extraordinary measures and restrictions that have been taken were legitimized through ideas of public health and order. The majority of citizens developing and adopting adaptive social attitudes in the face of these extraordinary measures further strengthened that legitimacy. Looking past all of the legitimizing factors, the pandemic period can be considered as the beginning of a transformation in terms of law and human rights politics. The measures taken should be considered in terms of the basic paradigmatic criteria of classical human rights doctrine, such as the balance between freedom and security, the principle of proportionality, the principle of legality, and the principle of expediency. This study aims to highlight the transformation in human rights politics by considering practices adopted by different countries with these principles and guidelines.

Before doing so, the human rights acquis, which envisages these states of exception, will be discussed in the framework of contractual texts, norms, and judicial precedents. The cautionary declarations and recommendations of supranational institutions and organizations regarding this process will subsequently be discussed and then the effectiveness of these declarations and recommendations will be illustrated with examples of practices adopted by different countries. Finally, the impact of the transformation in human rights politics will be evaluated in terms of the possible dynamics of the post-pandemic period through the tense relationship between supra-organizational wisdom and national practices governing pandemic processes.

2. Normative Contractual Framework of the Human Rights Regime and States of Exception

The human rights regime, whose theoretical framework was constructed by the abstractive collective mind of humanity on the basis of natural rights, has a contractual nature maintained by founding nations. The modern human rights canon is constituted by multiple conventions and additional protocols, human rights precedents, and national or constitutional norms. Both the theory of the human rights regime and the institutional mechanisms that established this regime were structured through a historical process. Considering the historical background of this unique acquis that procedurally emerged, human rights can be considered as a field of normative achievements that have accompanied some class struggles and some severe tragedies.

When the fundamental contractual texts of the international human rights canon are examined, it is seen that 'human dignity' constitutes the focal point of the normative achievements, such as the right to life. Considering Jellinek's classical classification in the literature, the way in which the state limits its superior power over individuals as per the set of rights considered as 'negative rights'¹ highlights the obligation of the state to refrain from interfering with individuals. The set of rights considered as 'positive rights', on the other hand, obliges the state to meet the expectations of individuals regarding their rights or to enable them to realize those rights themselves. In this respect, 'positive obligations' constitute a public responsibility for the state.

These positive obligations are generally associated with economic, social, and cultural rights. Such rights usually necessitate public responsibilities with financial

1 Kapani, Münci, *Kamu Hürriyetleri*, Yetkin Yayınları, Ankara, 1993, p. 6.

implications, such as the provision of health services as per the right to health. Regarding these obligations, the European Court of Human Rights (ECtHR) also adheres to the typology of negative and positive obligations. It should also be noted that a triadic typology of obligations to respect human rights, to protect human rights, and to fulfil human rights has become established by human rights precedents.² With their doctrinal systematics, judicial practice, and institutional structure, human rights are structured as a regime of rights and freedoms wherein rights are regulated through sets of responsibilities. The normative framework of this regime is built upon an intellectual foundation that also takes into account extraordinary conditions. In fact, the exceptional nature of extraordinary periods that threaten fundamental rights and freedoms in any nation has led to the existence of a human rights regime.

States of emergency,³ which are regulated thoroughly by public law doctrine, are states of exception. The states of exception are defined in the doctrine as unexpected, sudden, unpredictable states of crisis that usually involve danger and require immediate action. Thus, states of emergency, which involve cognitivism, temporality, and existentiality, are states of exception that require urgent action in the face of unpredictability. Of these components, cognitivism refers to the 'unexpected, sudden, and unpredictable' nature of states of emergency, while temporality refers to these states necessitating 'immediate action' limited to a set period of time. Existentiality, on the other hand, refers to situations that 'involve danger' and pose a significant threat to the existence, integrity, or continuity of the legal and political order. States of emergency entail exceptional forms of government used to deal with extraordinary events such as disasters, uprisings, and wars that cannot be handled with ordinary administrative practices, acts, and legal regulations.⁴

National constitutions around the world take three main systemic approaches⁵ to determining the normative framework of administrative states of exception. The first of these is seen in constitutions that do not include any provisions on states of

2 See Harris, D. J., O'Boyle, M., Bates, E. P., & Buckley, C. M., *Law of the European Convention on Human Rights* (Turkish translation by H. Dinçer), Council of Europe, Strasbourg, 2013, p. 19.

3 Doehring, Karl, *Allgemeine Staatslehre* (Turkish translation by A. Mumcu), 4th Edition, İnkılâp Kitapevi, İstanbul, 2002, p. 248.

4 See Esen, Selin, *Karşılaştırmalı Hukukta ve Türkiye'de Olağanüstü Hal Rejimi*, Adalet Yayınevi, Ankara, 2008, pp. 5-6. In addition, for explanations regarding due conditions for the limitation of rights and freedoms in state of emergency regimes, see Gözler, Kemal, *İnsan Hakları Hukuku*, Ekin Basım Yayın Dağıtım, Bursa, 2017, pp. 244-248.

5 For detailed information on the organization of state of emergency governments in Türkiye's constitutional system, see Özbudun, Ergun, *Türk Anayasa Hukuku*, 10th Edition, Yetkin Yayınları, Ankara, 2009, p. 355 et seq.

emergency.⁶ The second is seen in constitutions that include general provisions on states of emergency and the third in constitutions that thoroughly regulate states of emergency.⁷

States of emergency can be declared upon the detection of a threat or danger to the well-being of nations. According to the doctrine, these threats can be political, economic, or social crises.⁸ The state of emergency laws that would result from these situations, defined as states of crisis or depression, are public issues that necessitate an existential struggle.⁹ In such extraordinary circumstances that threaten the existence or security of a state, it becomes impossible to protect the order of freedoms as they exist in ordinary times. Crises of the modern age can even create paradoxical relationships between the protection of freedoms and authoritarian rule.¹⁰

Apart from the general reasons that lead to public crises as mentioned above, natural disasters that cause severe destruction such as earthquakes, floods, volcanic events, droughts, landslides, fires, and pandemics are also grounds for states of emergency.¹¹ Extraordinary administrative mechanisms are envisaged to manage such extraordinary and unpredictable human or natural catastrophes.

While the restriction or suspension of rights and freedoms in times of crisis, which necessitates extraordinary administrative mechanisms, did not pose a problem for states before the passing of human rights conventions, this situation changed following the introduction of regional or international conventions.¹² In fact, the international human rights regime put forth a number of binding treaty norms and principles for concerned nations that determine the laws of extraordinary periods. The foremost of these is the UN International Covenant on Civil and Political Rights dated 1976. Pursuant to Article 4(1) of this covenant, "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may

6 The most obvious example of such a constitutional system is the American constitution, which does not include any regulatory norms on state crises. Nevertheless, the Supreme Court has issued several decisions limiting the powers of some state organs and giving power to others in the event of a crisis. See Doehring, Karl, *Allgemeine Staatslehre*, p. 249.

7 Doehring, Karl, *Allgemeine Staatslehre*, p. 248.

8 Esen, Selin, *Karşılaştırmalı Hukukta ve Türkiye'de Olağanüstü Hal Rejimi*, p. 38.

9 Doehring, Karl, *Allgemeine Staatslehre*, p. 246.

10 Kapani, Münci, *Kamu Hürriyetleri*, p. 242.

11 Esen, Selin, *Karşılaştırmalı Hukukta ve Türkiye'de Olağanüstü Hal Rejimi*, p. 39.

12 Kapani, Münci, *İnsan Haklarının Uluslararası Boyutları*, 4th Edition, Bilgi Yayınevi, İstanbul, 2011, pp. 111-112.

take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.¹³

The interpretation of this provision of the covenant highlights the fact that states can suspend their obligations or take measures contrary to their obligations only temporarily and in exceptional circumstances. States that will proclaim a state of exception based on the relevant article are expected to first fulfil two fundamental conditions. Accordingly, the state of emergency must threaten the public life of the relevant nation and the existence of the state of emergency must have been officially declared. The second condition establishes a basis for upholding the principles of legality and the rule of law. Parties to the covenant are expected to act within the framework of constitutional provisions and other legal rules governing the powers exercised in the event of the declaration of a state of emergency that would lead to derogation from treaty obligations. As per the first paragraph of Article 4 of the covenant, measures derogating from covenant obligations may be taken only to the extent required by the emergency. This requirement is related to the duration, nature, and geographical extent of the state of emergency and the derogation measures invoked by the state of emergency. According to the first paragraph of Article 4, measures derogating from obligations under this covenant cannot contradict obligations under international law, and especially international humanitarian law. Article 4 would not justify the derogation of certain provisions of the covenant if the state's suspension of its obligations under the covenant or the adoption of measures derogating from those obligations would result in the breach of another international convention to which that state is a party or of a general international law obligation.¹⁴

The Siracusa Principles of 1984 on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights provided the grounds for the admissibility of derogations in states of emergency in certain circumstances of urgency. The first of these sets of circumstances entail public emergencies that threaten the life of the nation. In order for measures derogating from obligations to be taken, the threat to the life of the nation must be of a nature that 'affects the whole of the population and either the whole or part of the territory of the state' or

13 <https://www.resmigazete.gov.tr/eskiler/2003/07/20030721.htm#2>.

14 United Nations, 'International Covenant on Civil and Political Rights, General Comment on Article 4'.

'threatens the physical integrity of the population, the political independence or the territorial integrity of the state or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the Covenant'. According to the Siracusa Principles, 'a state party derogating from its obligations under the Covenant shall make an official proclamation of the existence of a public emergency threatening the life of the nation'. Article 4 also rules that 'on the termination of a derogation pursuant to Article 4 all rights and freedoms protected by the Covenant shall be restored in full'.¹⁵

The relevant principles also allow these derogations only under absolute necessity. Accordingly, 'the severity, duration, and geographic scope of any derogation measure shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent'. In these cases, 'The principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present, or imminent danger and may not be imposed merely because of an apprehension of potential danger'.¹⁶

Another text that sets out a relevant fundamental contractual framework is the European Convention on Human Rights (ECHR). According to Article 15(1) of this convention, titled 'Derogation in time of emergency', 'In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law'. However, the second paragraph of the same article stipulates that the first provision, which legitimizes the state of exception, shall not allow measures contrary to the right to life (Article 2), the prohibition of torture (Article 3), the prohibition of slavery and forced labour (Article 4/1), and the principle of no punishment without law (Article 7).¹⁷ Article 5/1-e of the covenant on the right to liberty and security of the person allows for 'the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants' in order to protect public health.¹⁸ After these explanations regarding the contractual frameworks and doctrines, recommendations and suggestions

15 UN Commission on Human Rights, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights', 28 September 1984.

16 UN Commission on Human Rights, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights', 28 September 1984.

17 European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf.

18 See Harris, D. J., O'Boyle, M., Bates, E. P., & Buckley, C. M., *Law of the European Convention on Human Rights*, p. 123.

by supranational actors and organizations governing the current globalized crisis should also be discussed.

One of these organizations, the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), has appealed to all member states to address the rights of prisoners and detainees during the coronavirus pandemic, particularly in penal and correctional institutions. The SPT Subcommittee further advised that member states reduce the population in prisons and other places of detention wherever possible by implementing early, conditional, or provisional release of detainees that can be safely released, taking into full account non-imprisonment measures as set out in the Tokyo Rules.¹⁹ It was also recommended that the use of migrant detention centres and closed refugee camps be reviewed during this process in order to minimize their populations as much as possible. It was suggested that release from detention should be subject to screening in order to ensure that appropriate measures are put into place for those who are particularly vulnerable to infection. The SPT Subcommittee also advised that whenever visitation policies are restricted for health-related reasons, sufficient compensatory alternative methods should be provided for detainees to maintain contact with their families and the outside world, such as by telephone, internet or email, video communications, and other appropriate electronic means. It was also recommended that, with the aim of preventing 'the use of medical isolation taking the form of disciplinary solitary confinement', 'medical isolation must be on the basis of an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards. It should be ensured that all detainees and staff receive reliable, accurate and up to date information concerning all measures being taken, their duration, and the reasons for them'.²⁰

Within the framework of its global mission,²¹ the World Health Organization (WHO) has made a number of recommendations to be considered while setting public

19 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990), <https://www.un.org/ruleoflaw/blog/document/united-nations-standard-minimum-rules-for-non-custodial-measures-the-tokyo-rules/>. These standard minimum rules for the treatment of prisoners set out basic principles for improving the use of non-custodial measures and minimum protection for persons subject to alternatives to imprisonment. These rules are intended to promote greater community involvement in the administration of criminal justice, in particular in the treatment of offenders, and also to foster a sense of responsibility towards society among offenders.

20 The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), 'Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic', March 2020.

21 Driven by the motto of 'working for better health for everyone, everywhere', WHO has made it its mission to 'make high standards of health care accessible to all people everywhere, regardless of race, religion, political opinion, economic or social status'. See https://apps.who.int/gb/bd/pdf_files/BD_49th-en.pdf#page=7.

health and social measures for COVID-19. Accordingly, WHO recommended that all suspected cases be identified, tested, isolated, and cared for and that the contacts of those patients be identified, monitored, and quarantined. The organization also stressed that decisions on public health and social measures should be based on scientific evidence and real-world experience. WHO has advised taking into account other critical factors, such as economic and security factors, human rights, food security, and public awareness and compliance. The organization has emphasized that the principle of gradualism should be adhered to while taking these measures. It has also highlighted the pivotal importance of protecting vulnerable populations in decisions on the adoption of preventive measures. WHO recommended that preventive measures be taken in workplaces, including appropriate directives and capacities to promote and enable standard COVID-19 prevention measures such as physical distancing, hand washing, respiratory etiquette, and potential thermal monitoring. It was also recommended that remote work, staggered shifts, and other practices that reduce overcrowding be encouraged.²²

WHO has also provided guidelines for the prevention and control of COVID-19 among asylum seekers and migrants in camps and camp-like settlements. Accordingly, the organization first highlighted the positive obligation of states to ensure the right to the enjoyment of the highest attainable standard of physical and mental health. WHO reminded all states of their obligation to protect and promote the right to health for all, including refugees and migrants sheltering within their national borders, without any discrimination. In order to ensure the rights of these vulnerable groups, the organization recommended that the right to COVID-19 preparedness, prevention, and control be guaranteed through comprehensive and non-discriminatory child- and gender-sensitive legislation and national policies and practices. WHO also noted that national health systems should aim to provide culturally, linguistically, and gender- and age-sensitive COVID-19 services that are accessible to all communities. It was envisaged that states must fulfil their positive obligations to protect international labour standards and the fundamental rights of refugee and migrant workers.²³

The Council of Europe, on the other hand, has put forward a framework warning states to respect the principles of democracy, the rule of law, and respect for

22 WHO, 'Considerations in adjusting public health and social measures in the context of COVID-19: interim guidance', April 2020, <https://www.who.int/publications-detail/considerations-in-adjusting-public-health-and-social-measures-in-the-context-of-covid-19-interim-guidance>.

23 WHO, 'Preparedness, prevention and control of coronavirus disease (COVID-19) for refugees and migrants in non-camp settings', April 2020, [https://www.who.int/publications-detail/preparedness-prevention-and-control-of-coronavirus-disease-\(covid-19\)-for-refugees-and-migrants-in-non-camp-settings](https://www.who.int/publications-detail/preparedness-prevention-and-control-of-coronavirus-disease-(covid-19)-for-refugees-and-migrants-in-non-camp-settings).

human rights during the pandemic. The Council highlighted four key points in this framework, the first of which is the right to derogation in times of emergency as set out in Article 15 of the ECHR. The scope and implementation of national measures in the face of the pandemic may vary from state to state. While some restrictive measures taken by member states may be justified on the basis of the ordinary protection of health provisions of the ECHR, exceptional measures may constitute a deviation from states' obligations under the Convention. In order to eliminate administrative arbitrariness regarding these measures, the Council stated that derogations must have a clear basis in domestic law and must have a certain use case in combating public urgencies. It was noted that all measures taken by states should seek to protect the democratic order against threats and states should make every effort to preserve the values of democratic societies, such as pluralism, tolerance, and open-mindedness.²⁴

The second key point that the Council put forth was that states must respect the rule of law and democratic principles in times of emergency. The Council set out four principle frameworks for this obligation. The first framework is related to the principles of legality and rule of law, which stipulate that the actions of governments must adhere to the law even in a state of emergency. The second framework is related to the state of emergency regime and the fact that emergency measures must be limited to a certain period of time. The main objective of emergency regime is to control a crisis and return to normalcy as soon as possible. The extension of state of emergency regime can only be decided on by the relevant national assembly and only in necessary cases. The third framework is related to the principle of necessity. This framework stipulates that emergency measures should achieve their objectives with minimal changes to the normal rules and procedures of democratic decision-making. The fourth principle is related to the distribution of powers and control over executive actions during a state of emergency regime. The executive authorities of states should be able to act quickly and efficiently. This may necessitate the adoption of simpler decision-making procedures and the attenuation of some checks and balances. However, parliaments should retain the power to monitor executives' actions by verifying whether the executives' emergency powers are justified or by intervening temporarily to modify or annul the executives' decisions. Thus, the basic functions of the judiciary, and especially the constitutional judiciary, should be preserved. Judges being able to examine the most serious restrictions of human rights imposed by emergency legislation also

24 Council of Europe, 'Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis', April 2020.

carries importance. This could legitimize adjournments, facilitate fast-tracking, or allow certain categories of cases to be dealt with as a group.²⁵

The third key point highlighted by the Council of Europe is related to human rights standards. In relation to this point, attention was first drawn to the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, and the right to protection of health (Article 11 of the revised European Social Charter). Among these, the right to life and the prohibition of torture and inhuman or degrading treatment or punishment are fundamental rights enshrined in the ECHR and cannot be subject to any derogation, even in cases of emergencies such as COVID-19. Under both the Convention and the European Social Charter, states are obliged to inform the public about the known risks associated with the pandemic and the measures taken to prevent the spread of the disease. Secondly, the Council drew attention to the right to liberty and security (Art. 5) and the right to a fair trial (Art. 6). Accordingly, it was highlighted that Article 5.1 (e) provides that a person may be deprived of liberty on grounds of prevention of the spread of a communicable disease. Before resorting to such measures, however, states are expected to provide a relevant legal basis for the measure and to consider whether measures related to deprivation of liberty are strictly necessary when less stringent alternatives are available. States are also generally obligated to ensure that proceedings meet the fundamental requirement of fairness (such as equality of arms) and respect the presumption of innocence, and to ensure that there are no measures taken which interfere with the independence of judges.²⁶

The Council also drew attention to the rights to private life, freedom of conscience, freedom of expression, and freedom of association. The unrestricted enjoyment of these rights and freedoms as guaranteed in Articles 8, 9, 10, and 11 of the Convention is a benchmark of modern democratic societies. Restrictions of these rights are only permissible under lawful grounds and in proportion to the legitimate aim pursued, which includes the protection of public health. The Council also drew attention to standards on non-discrimination and the principles of diversity and inclusion. Finally, the fourth key point noted by the Council is related to protection from crime and protection of victims of crime. Policies of isolation and incarceration have led to an increase in domestic sexual and gender-oriented violence and, accordingly, to incidents that demonstrate the need for greater

25 Council of Europe, 'Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis', April 2020.

26 Council of Europe, 'Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis', April 2020.

protection against these threats. In relation to these issues, the Council of Europe should provide information on practices that have been put into place by member states, such as allowing alternative ways of reporting incidents of violence.²⁷

3. Measures to Combat the Pandemic in Relation to Human Rights Jurisdiction

Within the framework of states of emergency regimes, the governments of democratic political systems are granted the authority to take measures under certain conditional principles in cases of extraordinary situations that endanger public life, such as natural disasters, as well as pandemics. These conditions of legitimacy for democratic politics are legality, notification, cause, certainty of who has authority, and the limitation of duration and location.²⁸ The doctrine exemplifies some preventive measures that can be taken by governments in the case of such exceptions. Some of these measures are 'prohibiting entry to and exit from certain settlements in a region', 'suspending education in public and private education and training institutions of all degrees and closing student dormitories for a certain or indefinite period of time', and 'inspecting places such as casinos, restaurants, beer halls, taverns, cinemas, and theatres; determining and limiting the opening and closing times of these places; and closing them when necessary'.²⁹ Within the framework set out for regimes of states of emergency, as mentioned above, governments may also resort to other measures depending on the urgency and nature of the situation. As the declaration issued by the Council of Europe points out, the measures to be taken may vary due to national dynamics.³⁰ However, it is of utmost importance that the measures taken adhere to the proportionality principle of human rights law and that their expediency be open to judicial review.

No judicial processes related to the COVID-19 pandemic, the effects of which still persist,³¹ have been brought before human rights judiciary bodies as of the time

27 Council of Europe, 'Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis', April 2020.

28 For detailed information, see Esen, Selin, *Karşılaştırmalı Hukukta ve Türkiye'de Olağanüstü Hal Rejimi*, pp. 34-43.

29 Esen, Selin, *Karşılaştırmalı Hukukta ve Türkiye'de Olağanüstü Hal Rejimi*, p. 188.

30 Council of Europe, 'Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis', April 2020.

31 According to World Health Organization data from 13 May 2020, there were 4,179,479 confirmed COVID-19 cases worldwide. The number of confirmed deaths at that time was 287,525.
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>, Date of Access: 13.05.2020.

of writing.³² However, it is apparent that we will witness the opening of lawsuits, the start of trial processes, and the shaping of jurisprudence regarding human rights violations during the pandemic in the near future. Thus, whether the measures taken by national governments to manage the crisis caused by the pandemic were in line with the principles of proportionality and expediency will be subject to judicial review. In addition, it is expected that serious human rights violations such as racism and discrimination, which have become increasingly severe with the pandemic on a global scale, will also be subject to judicial review.

The 2005 ECtHR case of *Enhorn v. Sweden* on the expediency of the measures taken by the government to combat epidemics on a national scale or in a specific case is a typical precedent related to this issue. Although there are differences between the COVID-19 pandemic and the HIV pandemic in terms of transmission risk, spread impact, mortality and morbidity rates, and relevant preventive measures, both are considered global pandemics. The applicant of *Enhorn v. Sweden* was a person infected with HIV who had infected others. In this case, the district health officer issued certain instructions to the applicant under the Infectious Diseases Regulations³³ of 1988. The applicant did not attend several scheduled appointments. Accordingly, the district health officer applied to the district administrative court for the applicant to be compulsorily detained in a hospital for up to 3 months in accordance with the relevant regulations. The applicant's compulsory isolation was extended once every 6 months and lasted for a total of 1.5 years. The ECtHR ruled that the compulsory isolation imposed on the applicant was not a last resort to prevent him from spreading the HIV virus, less serious measures were not considered, and the situation was not sufficient to argue for the protection of the public interest. Furthermore, the ECtHR ruled that by extending the applicant's compulsory isolation order for a period of nearly seven years, with compulsory hospitalization for a total of almost 1.5 years, the authorities failed to strike a 'fair balance' between the need to ensure that the HIV virus did not spread and the applicant's right to liberty, and that Article 5§1 of the ECHR had been violated.³⁴

32 The Directorate of Anti-discrimination of the Council of Europe noted that discriminatory acts of the police, including racial profiling, have been reported, in particular with regard to the application of quarantine and lockdown measures. See Directorate of Anti-discrimination of the Council of Europe, 'The Anti-discrimination, Diversity and Inclusion Dimensions of the Response to COVID-19', Strasbourg, April 2020.

33 Smittskyddslagen, <https://www.riksdagen.se/sv/global/sok/?q=Smittskyddslagen&st=1&p=3>, Date of Access: 13.05.2020.

34 European Court of Human Rights, Application No: 56529/00 dated 25 January 2005, *Case of Enhorn v. Sweden*, <http://hudoc.echr.coe.int/eng/?i=001-68077>.

In the aforementioned case, the ECtHR recognized that the actions of the government were underlined by public health and safety goals. The detention measure imposed on the applicant of this case was 'based on a court order for non-compliance with voluntary measures introduced to protect other members of the community under the application of public health law'. Thus, the reason for the measure of detention was to prevent the applicant from spreading HIV through sexual intercourse. The ECtHR therefore recognized that the detention had a basis in domestic law.³⁵ However, it set out two criteria for determining the lawfulness of detention for 'communicable diseases' under Article 5(1)(e) of the ECHR. The first of these criteria was whether the spread of the communicable disease would be dangerous to public health or safety. The second criterion set by the ECtHR was whether the detention of the carrier of the infectious disease would be a last resort to prevent the spread of that disease, whereby less drastic measures would be deemed insufficient to protect the public interest.³⁶ The court ruled on a precedent on measures to combat epidemics by issuing a violation decision within the framework of these specific criteria.

Another judicial precedent on a national scale was established in the United States with the case of *Kaci Hickox v. Christopher James Christie*. Hickox was detained at the Newark Airport for several days after she returned from West Africa, where she had treated Ebola patients, and the Ebola test that she was administered there yielded a negative result. After being detained at the airport, Hickox was held in a field tent in a garage at the University Hospital in Newark. Even after her blood test was negative, the state of New Jersey detained Hickox for 2 additional days, thus extending her incarceration to more than 3 days. In 2015, she filed a lawsuit alleging false imprisonment. As a result of that lawsuit, a settlement was reached with the state of New Jersey.³⁷ This settlement led to new regulations on quarantines. Under the relevant regulations, quarantine or isolation could only be imposed for medical support purposes and when epidemiologically necessary to prevent the spread of Ebola.³⁸

The decision of the Turkish Constitutional Court on a case seen on the basis of an individual application with file number 2014/19081 also created an interesting

35 See Harris, D. J., O'Boyle, M., Bates, E. P., & Buckley, C. M., *Law of the European Convention on Human Rights*, pp. 155-156.

36 See Harris, D. J., O'Boyle, M., Bates, E. P., & Buckley, C. M., *Law of the European Convention on Human Rights*, p. 155.

37 *Kaci Hickox v. Christopher James Christie*, Case No. 2: 15, https://www.courts.maine.gov/news_reference/high_profile/hickox/verified_petition_for_public_health_order.pdf.

38 https://www.aclu-nj.org/files/4615/0119/3665/2017_7_27_Hikox_settlement_agreement_opt.pdf.

precedence. The applicant of that case who applied to the Constitutional Court was a labourer who was HIV-positive. The applicant filed a lawsuit with the Labour Court for non-discrimination compensation and non-pecuniary damages.³⁹ The applicant claimed that he was first suspended and then unfairly dismissed from his workplace due to his health condition and that this constituted discriminatory treatment, that he had proved with medical reports that his illness did not have a negative impact on his working life and did not pose a risk to other employees, and that for these reasons his rights under Articles 10, 17, 20, 35, 36, 40, and 49 of the Turkish Constitution were violated. The Court of Cassation and the Labour Court focused on the 'contagious' nature of the disease in their decisions and ruled that the only solution to prevent this risk from occurring was to remove the employee from the workplace. However, the Constitutional Court also stated that the employer had an obligation to assess the possibilities of employing the applicant in other positions in the workplace that would not pose a risk to other employees. In addition, as stipulated in the Labour Law, the Court decided that 'it is necessary to accept the legitimate expectation of the applicant that he can continue to work legally as long as he does not commit an act that will lead to his dismissal' and accepted that the claim that the applicant was intentionally not employed for several months after the employer learned that he was HIV-positive was true and that he was subjected to unequal treatment. The Constitutional Court ruled that the claim of violation of the right to private life, which was considered together with the principle of equality, was admissible and that these rights were violated.⁴⁰

39 Article 5 of Labour Law No. 4857 of Türkiye regulates the principle of equal treatment. According to this article, 'No discriminations based on language, race, colour, sex, disability, political opinion, philosophical belief, religion and sect and similar reasons shall be made in employment relationships. Unless there are substantial reasons, the employer shall not treat a full-time employee differently from a part-time employee or an indefinite-term employee differently from a fixed-term employee. The employer shall not treat an employee differently, directly or indirectly, on the grounds of sex or pregnancy while forming, deciding the conditions of, executing and terminating an employment contract, unless the employer is obliged to do so for biological reasons or reasons related to the nature of the work'. See <https://www.mevzuat.gov.tr/MevzuatMetin/15.4857.pdf>. Article 10 of the Constitution of Türkiye regulates the principle of equality before the law. According to this article, 'Everyone is equal before the law regardless of language, race, colour, sex, political opinion, philosophical belief, religion, sect or similar reasons'. Article 64 of Public Health Law No. 1593 of Türkiye rules that: 'In the event that any disease other than those mentioned in Article 57 takes an invasive form or such a danger arises, the Ministry of Public Health and Welfare is authorized to announce that the notification of said disease or any form of disease is compulsory in all or part of the country, and to apply all or some of the measures mentioned in this law against that disease'. See <https://www.mevzuat.gov.tr/MevzuatMetin/13.1593.pdf>.

40 Turkish Constitutional Court, Application No. 2014/19081, Decision Date 1/2/2017, J.A.T. Application, <http://www.kararlaryeni.anayasa.gov.tr/Content/pdfkarar/2014-19081.pdf>.

4. Human Rights Politics and the Fragility of Rights and Freedoms

The devastating impact of the COVID-19 virus, which created a pandemic with unpredictable global risk factors and costs, has the potential to create a heavy long-term burden on human rights politics. In the midst of the global health care struggle against the pandemic, we are witnessing violations in multiple categories of human rights and freedoms. Violations in a large number of areas of rights such as the right to life, the right to health, the right to a healthy environment, the right to travel, the right to protection of personal data, the right to work in safe and healthy conditions, the right to social security, and the right to privacy demonstrate the changing dynamics and fragile nature of human rights politics. Under such extraordinary emergencies that threaten the life of nations, international human rights law allows for the suspension of certain rights.

However, states of emergency must be officially declared and the relevant measures must meet certain conditions for these rights to be suspended. These conditions were repeatedly stated by the UN at the beginning of the COVID-19 pandemic. The first of these conditions is that measures shall only be taken to the extent strictly necessary. Secondly, measures shall not be inconsistent with other obligations under international law. Thirdly, measures taken shall be limited to certain periods of time. Finally, measures taken in these cases shall not lead to any discrimination.⁴¹ It is imperative that the measures taken be limited to a certain period of time and do not become permanent. Within this framework, people's personal data should be protected. In addition, discrimination against ethnic and religious minorities and other marginalized groups should be taken into account and mitigated.⁴²

While there are legal grounds for states to suspend certain human rights obligations in times of emergency, they cannot suspend their obligations regarding certain fundamental rights even under these circumstances. During pandemics and similar extraordinary circumstances, states cannot take emergency measures in a discriminatory manner. In line with international human rights, governments must follow specific steps to take full account of the impact of the state of emergency, and particularly the impact on vulnerable groups, and to mitigate the disproportionate impact on the vulnerable groups concerned.⁴³

41 United Nations, 'COVID-19 and Human Rights-We are all in this together', April 2020, p. 17.

42 Rights and Security International, 'Covid 19: Toolkit for Civil Society Partners', p. 14.

43 Rights and Security International, 'Covid 19: Toolkit for Civil Society Partners', p. 20.

Some countries have introduced practices that undermine human dignity through the excessive use of force in the response to COVID-19. Some countries have utilized disproportionate and degrading punishments for violations of quarantine measures, such as placing curfew violators in cages. Violations such as the use of a 'shoot-to-kill' policy for violations of quarantine in the Philippines, the deportation of migrant workers in Singapore, the excessive use of police force in virus prevention measures in South Africa and Kenya, and the spraying of chemicals on migrant workers for disinfection in India can be given as examples of these punishments.⁴⁴ Under the guise of combating misinformation, the governments of Thailand, Indonesia, Morocco, and Hungary enacted 'fake-news laws' to silence groups criticizing the government's response to the pandemic. Jordan, Egypt, and China have also suspended freedoms of the press in relation to public information regarding the pandemic. Similar violations have occurred in Indonesia, where the government has monitored social media and punished those who criticized the president's decisions regarding COVID-19 measures.⁴⁵

Some countries have introduced measures to facilitate surveillance and the collection of personal data to track the spread of COVID-19. While communications technology is an important tool for managing public health crises, digital surveillance and aggressive personal data collection can have negative impacts on privacy, freedom of expression, and freedom of association. Thus, it is important that the measures taken to combat the pandemic be transparent, legal, necessary, and proportionate. All surveillance and data collection measures or authorizations in response to COVID-19 must have legal grounds and be necessary for and proportionate to legitimate public health objectives.⁴⁶

The crisis caused by the pandemic has undoubtedly aggravated the extent of human rights violations, especially for vulnerable groups. Indeed, as an indicator of this, the problematic practices reported to date by the Anti-discrimination Department of the Council of Europe highlight the tragic situation. In relation to this issue, it has been reported that the police have committed acts of gross discrimination against Roma people, including overt racial profiling, throughout the implementation of quarantine and lockdown measures. It was also noted that pandemic-related information and instructions in languages other than the official language or languages of certain states were inaccessible. In addition, it

44 Rights and Security International, 'Covid 19: Toolkit for Civil Society Partners', p. 17.

45 Rights and Security International, 'Covid 19: Toolkit for Civil Society Partners', pp. 17-18.

46 Rights and Security International, 'Covid 19: Toolkit for Civil Society Partners', p. 14.

was reported that the maintenance of social distancing in refugee camps and Roma settlements was impossible.⁴⁷ These practices contravene the prohibition of discrimination stipulated in fundamental contractual human rights texts.⁴⁸ The prohibition of discrimination, which 'prohibits persons or groups of persons in the same situation to be treated differently and persons or groups of persons in different situations to be treated in the same way',⁴⁹ is set out in Article 14 of the ECHR. This article rules that: 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.⁵⁰

The relevant article of the ECHR guarantees equality in the exercise of the material rights guaranteed by this convention. Furthermore, Protocol No. 12 of the ECHR, which entered into force in 2005, broadened the scope of non-discrimination to include any rights guaranteed at the national level, even those not covered by the ECHR.⁵¹ The legal interests protected by the EU's non-discrimination directives are explicitly limited to gender, racial or ethnic origin, age, disability, religion or belief. The legal interests protected under the ECHR, on the other hand, are open-ended and can be further interpreted per concrete case.⁵²

47 Directorate of Anti-discrimination of the Council of Europe, 'The Anti-discrimination, Diversity and Inclusion Dimensions of the Response to COVID-19', Strasbourg, April 2020, p. 2.

48 International legislations on non-discrimination: 'Convention for the Protection of Human Rights and Fundamental Freedoms' (4 November 1950), 'International Covenant on Civil and Political Rights' (16 December 1966), 'International Covenant on Economic, Social and Cultural Rights' (16 December 1966), 'United Nations Convention against Torture' (9 December 1975), 'United Nations Convention on the Elimination of All Forms of Racial Discrimination' (4 January 1969), 'United Nations Convention on the Elimination of Discrimination Against Women' (18 December 1979), 'United Nations Convention on the Rights of Persons with Disabilities' (13 December 2006), 'United Nations Convention on the Rights of the Child' (20 November 1989), 'Universal Declaration of Human Rights' (10 December 1948). See European Union Agency for Fundamental Rights, Council of Europe, *Avrupa Ayrımcılık Yasağı Hukuku El Kitabı*, 2010, p. 145. https://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_TR.pdf.

49 European Union Agency for Fundamental Rights, Council of Europe, *Avrupa Ayrımcılık Yasağı Hukuku El Kitabı*, 2010, p. 22.

50 ECHR, https://www.echr.coe.int/Documents/Convention_ENG.pdf.

51 European Union Agency for Fundamental Rights, Council of Europe, *Avrupa Ayrımcılık Yasağı Hukuku El Kitabı*, 2010, p. 57. https://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_TR.pdf.

52 European Union Agency for Fundamental Rights, Council of Europe, *Avrupa Ayrımcılık Yasağı Hukuku El Kitabı*, 2010, p. 119. https://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_TR.pdf.

5. Vulnerable Groups in the Pandemic Period

The COVID-19 pandemic has tended to exacerbate existing inequalities in access to health and welfare services, education, and employment as well as other problems faced by disadvantaged groups.⁵³ In relation to these issues, disadvantaged groups face many vital problems that can be considered as deprivations. The first of these are the challenges faced by the homeless or poor population. Homeless individuals are more likely to suffer from severe diseases that compromise the immune system.⁵⁴

It is also possible that quarantine measures could lead to mass migrations of migrant workers, which would be an additional stress for migrant workers and ultimately increase the risk of the spread of infection. Most migrants who are not identified as key workers by the United Kingdom's National Health Service are denied access to state support under the Home Office's 'Hostile Environment' policy. Migrant workers in Lebanon are similarly victimized. The victimization of these migrant workers occurs due to the need to procure a number of costly documents in order to be tested for COVID-19.⁵⁵

Refugees who face extreme hardships and severe humanitarian crises (including food, water, and health care shortages), as well as other individuals in areas that experience severe humanitarian crises, are clearly at extreme risk for COVID-19. The coronavirus poses a serious risk to food and health care security, especially for those in war zones.⁵⁶ Refugees and migrants need to be included in the general population as part of holistic efforts to combat the COVID-19 pandemic. The need for these efforts to be aligned with the objectives of the global response to the pandemic is highlighted by many legal texts, including international human rights obligations, refugee law, international labour standards, and other relevant international and regional instruments and standards.⁵⁷

Another vulnerable group put at risk by the pandemic is prison inmates. Prisoners and detainees may face real risks of infection and lack of access to appropriate health care. Immigration detainees in Immigration and Customs Enforcement (ICE)

53 Directorate of Anti-discrimination of the Council of Europe, 'The Anti-discrimination, Diversity and Inclusion Dimensions of the Response to COVID-19', Strasbourg, April 2020, p. 2.

54 Rights and Security International, 'Covid 19: Toolkit for Civil Society Partners', p. 20.

55 Rights and Security International, 'Covid 19: Toolkit for Civil Society Partners', p. 20.

56 Rights and Security International, 'Covid 19: Toolkit for Civil Society Partners', p. 21.

57 WHO, 'Preparedness, prevention and control of coronavirus disease (COVID-19) for refugees and migrants in non-camp settings', April 2020.

centres in the United States and detention centres in the United Kingdom are more exposed to infection due to administrative limitations.⁵⁸ Public authorities should take urgent measures to address overcrowding in prisons, including measures that take into account WHO guidelines on social distancing and other health measures. In particular, the release of persons detained for crimes not recognized under international law should be prioritized.⁵⁹

It should be ensured that persons deprived of their liberty can receive health care after undergoing a medical examination when they need it. The purpose of health screening is to protect the health of the detainee, detention centre staff, and other detainees and to ensure that any infection is dealt with immediately to prevent the spread of the virus. Replacing family visits with other solutions such as teleconferences, electronic communication, and telephone calls may require prolonged institutional efforts by detention centre administrations. Prisoners should be informed about the suggested solutions in this process. There should be no arbitrary or unlawful interference with privacy or family life.⁶⁰

Furthermore, isolation and quarantine measures in detention centres must be lawful, proportionate, necessary, timely, and subject to review. These preventive measures should not turn into de facto solitary confinement. Quarantines should be limited to specific durations of time. These practices, which are put into place by the relevant administrations to prevent the spread of infection, should only be implemented when there are no other alternative protective measures left.⁶¹

6. National Human Rights Practices During the Pandemic

Under the extraordinary conditions of the pandemic that have threatened public health, different countries have imposed various preventive measures and restrictions on the human rights regime at national levels. Some of these national measures have restricted the fundamental rights and freedoms of individuals. Here, some noteworthy national practices that may lead to violations will be discussed.

58 Rights and Security International, 'Covid 19: Toolkit for Civil Society Partners', p. 22.

59 UN Office of the High Commissioner for Human Rights/World Health Organization, 'Interim Guidance: Covid-19: On Persons Deprived of their Liberty', March 2020.

60 UN Office of the High Commissioner for Human Rights/World Health Organization, 'Interim Guidance: Covid-19: On Persons Deprived of their Liberty', March 2020.

61 UN Office of the High Commissioner for Human Rights/World Health Organization, 'Interim Guidance: Covid-19: On Persons Deprived of their Liberty', March 2020.

China, the country where the virus that caused the pandemic first emerged, set the first examples of measures to be taken in the fight against this crisis. One of these measures was the software that China has required its citizens in hundreds of Chinese cities to install on their smartphones, which detects whether they need to be quarantined or refrain from entering public places based on their personal information and travel details. This software tracks the locations of users and shares the data with law enforcement agencies.⁶² Similarly, the Argentine Ministry of Security has established 'cyber patrols' to carry out surveillance and control social media to prevent information pollution, particularly in relation to the pandemic.⁶³

The procedural management of the pandemic crisis, which has condemned the whole world to multifaceted despair, is of critical importance. It should be noted that this procedural management involves multiple aspects beyond health services and medical care. One of the important aspects of this procedural management is communication. It is imperative that the relevant administrative unit or national government in charge of the process inform both the global and national public in an accurate and continuous manner in line with the principle of transparency. In addition, regulations that can eliminate the 'infodemic'⁶⁴ that has occurred during this period should be put into place.

In Australia, the COVID-19 Emergency Response Legislation Amendment Act amended Western Australia's Emergency Management Act of 2005 to allow the government to install surveillance devices in homes to prevent those who need to be quarantined during the coronavirus crisis from interacting with the public. Those who have failed to comply with these restrictions have been subject to fines of \$12,000 or imprisonment for up to one year.⁶⁵ Bahrain, which was developing a digital/electronic monitoring and surveillance mechanism to combat the pandemic, has put the BeAware application, into play. Bahrain has required quarantined people to wear an electronic bracelet that informs a monitoring station when they are 15 meters away from their phones. Self-isolating individuals

62 <https://www.icnl.org/covid19tracker/#>, Date of Access: 1.05.2020.

63 <https://www.icnl.org/covid19tracker/?location=&issue=10&date=&type=>, Date of Access: 1.05.2020.

64 Infodemics are defined as excessive amounts of information about a problem that make it difficult to identify a solution. Infodemics can hinder effective public health processes and create mistrust by spreading misinformation, disinformation, and rumours in health emergencies. To manage infodemics, WHO has developed an innovative communication initiative called the Network for Information in Epidemics (EPI-WIN). WHO identifies reliable sources through the EPI-WIN. <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200305-sitrep-45-covid-19.pdf>, <https://www.who.int/dg/speeches/detail/director-general-s-remarks-at-the-media-briefing-on-2019-novel-coronavirus---8-february-2020>, Date of Access: 13.05.2020.

65 [https://www.parliament.wa.gov.au/Parliament/Bills.nsf/5924018EEA598B994825853B001C0B08/\\$File/Bill179-1.pdf](https://www.parliament.wa.gov.au/Parliament/Bills.nsf/5924018EEA598B994825853B001C0B08/$File/Bill179-1.pdf), Date of Access: 1.05.2020.

using the application must identify their isolation location by selecting 'Set Home Location' upon arrival.⁶⁶

France, one of the countries in Europe that has suffered the costs of the pandemic the most, enacted Emergency Law No. 2020-290 due to the COVID-19 outbreak. With the relevant law, a health emergency was declared for two months due to the COVID-19 pandemic in accordance with Article 38 of the French Constitution. This state of health emergency allowed the Prime Minister to issue decrees restricting individuals' freedom of movement and assembly and to take any other regulatory measures necessary to address the pandemic crisis.⁶⁷ In Germany, which is one of the countries in Europe that has managed the pandemic in a particularly disciplined manner, the Decree of the Federal Heads of State of 15 April was issued. This decree extended the joint resolutions of 12 and 22 March, which banned gatherings and restricted people from spending time in public spaces.⁶⁸ The government of Hong Kong has also made it mandatory for quarantined people to wear electronic bracelets for effective monitoring and supervision.⁶⁹

Among EU member states, Hungary implemented a controversial legal regulation on the powers related to the state of emergency period. With the Coronavirus Protection Act, the government extended its emergency powers indefinitely and suspended elections during this period. This law ruled that the government can effectively decide on issues by decree without being bound by applicable laws. It also gives the government the power to punish anyone who provides 'false' information about the pandemic with a five-year prison sentence.⁷⁰

In India, which has followed an interesting course in the process of combating the pandemic, a cell phone monitoring mechanism was introduced to monitor people under home quarantine orders. The state government of Karnataka has made it mandatory for all people in quarantine to take and send a 'selfie' from home every hour. The directive ruled that the selfie image must contain location coordinates to report the location of the sender. The state government of Karnataka would verify every selfie sent by people quarantined at home. The state government

66 <http://www.iga.gov.bh/en/article/the-iga-begins-distribution-of-electronic-bracelets-compatible-with-beaware-app>, Date of Access: 1.05.2020.

67 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746313&categorieLien=id#>, Date of Access: 1.05.2020.

68 <https://www.bundeskanzlerin.de/bkin-de/aktuelles/bund-laender-beschluss-1744224>, Date of Access: 1.05.2020.

69 <https://www.icnl.org/covid19tracker/#>, Date of Access: 1.05.2020.

70 <https://www.icnl.org/covid19tracker/#>, Date of Access: 1.05.2020.

also released a mobile app that identified the addresses of COVID-19 patients.⁷¹ The state government of Maharashtra, also in India, put into place a practice of stamping the hands of individuals who need to be quarantined. The hand stamps state that the person with the stamp must stay at home for two weeks and they specify the dates on which the person is expected to isolate himself or herself.⁷²

Another country that has taken controversial measures to combat the pandemic is Israel. The Israeli government has developed a system for monitoring individuals' cell phone data. The related regulation allows security forces to monitor the cell phones of coronavirus patients or those suspected of being infected without a court order.⁷³

In Italy, the country in Europe that has suffered the costs of the pandemic most dramatically, the Emergency Measures to Contain and Manage the Epidemiological Emergency of COVID-19 law package was implemented. The issued Decree No. 8 gave the President of the Council of Ministers the power to take measures to prevent the spread of COVID-19 in certain areas of Italy, the so-called red zones, including restricting the travel and movement of individuals. All public and private gatherings or other gatherings were banned and people who had been in contact with confirmed cases of coronavirus were monitored.⁷⁴

Spain, another one of the European countries with the highest numbers of casualties due to the pandemic, issued Royal Decree 463/2020 declaring a state of alarm for the management of the health crisis caused by COVID-19. With this decree, a 15-day nationwide state of alert was declared due to the pandemic. Among other measures, the decree restricted individuals to only travel for certain basic activities, such as obtaining food or medical care. Accordingly, non-essential businesses were suspended and control of health care and other critical government functions was centralized.⁷⁵

71 <https://www.icnl.org/covid19tracker/#>, Date of Access: 1.05.2020.

72 <https://www.icnl.org/covid19tracker/#>, Date of Access: 1.05.2020.

73 <https://www.icnl.org/covid19tracker/#>, Date of Access: 1.05.2020.

74 <https://www.gazzettaufficiale.it/eli/id/2020/03/08/20A01522/sg>, Date of Access: 1.05.2020.

75 <https://www.icnl.org/covid19tracker/#>, Date of Access: 1.05.2020.

The UK, which adopted a pandemic management policy of 'herd immunity' at the beginning of the crisis,⁷⁶ later adopted a policy in line with the overall global response strategy when the number of cases spiralled out of control by enacting a COVID-19 response law known as the Coronavirus Act 2020. The relevant law provided UK authorities with emergency powers aimed at combatting the pandemic, including the power to detain individuals deemed potentially infectious and place them in isolation facilities.⁷⁷ In the US, the global power where this crisis has caused the most losses of life and undermined the entire health system, a number of measures have also been put into place. Within this framework, measures affecting state archive requests and public meeting requirements were enacted. Accordingly, federal agencies and state and local governments have issued a series of policy directives, orders, and laws regarding the impact of COVID-19 on government archive requests and public meeting requirements. Some states and cities, such as New Jersey and Washington D.C., suspended deadlines for public record requests for the duration of the state of emergency.⁷⁸ Within the framework of the National Defence Law, the Jordanian Council of Ministers suspended the printing and sale of newspapers for the reason that they spread COVID-19.⁷⁹

Since the first case was identified on 10 March 2020, Türkiye has taken an administrative approach based on scientific principles. An effective central management practice was developed in line with the recommendations of the Coronavirus Scientific Advisory Board,⁸⁰ which manages COVID-19 processes on a scientific basis. Within this framework, the Ministry of Health launched the Pandemic Isolation Tracking Project to ensure that COVID-19 patients followed quarantine measures. For coronavirus patients, downloading the app is mandatory. Patients who have had positive COVID-19 test results are warned via automated text messages and calls if they leave their place of residence.⁸¹ In addition, the Turkish Ministry of Interior imposed restrictions on people over the age of 65,

76 Patrick Vallance, a scientific advisor to the UK government, explained the 'containment' plan to the BBC as follows: 'Our aim is to try and reduce the peak, broaden the peak, not suppress it completely. Also, because the vast majority of people get a mild illness, to build up some kind of herd immunity so more people are immune to this disease'. <https://www.bbc.com/turkce/haberler-dunya-51927577>, Date of Access: 13.05.2020.

77 http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga_20200007_en.pdf, Date of Access: 1.05.2020.

78 <https://docs.google.com/spreadsheets/d/e/2PACX-1vTyXoIXI2whyI9akO7WT5tL9dzUdwOfFJZC9K-DHu1C7JhmD-R5QM4EMe2k9gmBrY5c3-P08qhs8ijW/pubhtml#>, Date of Access: 1.05.2020.

79 <https://www.icnl.org/covid19tracker/#>, Date of Access: 1.05.2020.

80 <https://www.saglik.gov.tr/TR,63605/koronavirus-bilim-kurulu-bakan-koca-baskanliginda-toplandi.html>, Date of Access: 13.05.2020.

81 <https://www.iletisim.gov.tr/english/haberler/detay/director-of-communications-altun-shares-a-post-on-pandemic-isolation-tracking-project>, Date of Access: 1.05.2020.

citizens with chronic diseases, and children under the age of 20. These citizens were prohibited from walking in public areas such as parks or roads and traveling by public transport.⁸²

Many countries have taken a number of financial and economic measures to mitigate the negative impacts of COVID-19 on their populations with their available resources. Some countries have taken positive measures, such as supplying emergency water to shanty settlements, suspending housing evictions for unpaid rent during the crisis, providing emergency shelter for the homeless, providing childcare for essential service workers, and providing unemployment benefits.⁸³ The Turkish government also decided to provide financial support of 1,000 Turkish lira to two million Turkish households in need who received regular social aid. During the COVID-19 pandemic, the Ministry of Family, Labour, and Social Services decided to provide accommodation to people who were not at security risk and applied to women's guesthouses only for shelter.⁸⁴ The National Solidarity Campaign was launched with the slogan 'We Are Enough for Us, Türkiye' to provide additional support for those in need who may have been victimized due to the measures taken against COVID-19.⁸⁵

In addition, with the Economic Stability Shield Package, the withholding tax, VAT, and premium payments of more than two million taxpayers were postponed for six months; financial support was provided to companies and real persons by postponing their loan payments for a minimum of three months; 'business continuation loan support' was given to all companies affected by the pandemic, provided that they did not reduce their number of employees; a flexible and remote working model was introduced in the public and private sectors; a short-term working allowance was provided for employees of workplaces affected by the coronavirus in order to prevent layoffs; and three-month salary support was provided via a short-term working allowance for citizens working for businesses that decreased or stopped their activities.⁸⁶ With the Law on Mitigating the Effects of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life and the Law Amending Certain

82 <https://www.icisleri.gov.tr/65-yas-ve-uzeri20-yas-altikronik-rahatsizligi-bulunan-kisilerin-sokaga-cikma-kisitlamasi-istisnasi-genelgesi>, Date of Access: 1.05.2020.

83 United Nations, 'COVID-19 and Human Rights-We are all in this together', April 2020.

84 <https://www.ailevecalisma.gov.tr/tr-tr/basin-aciklamalari/2-milyar-liralik-nakdi-yardim-ile-ilgili-basin-aciklamamiz/>, <https://www.ailevecalisma.gov.tr/tr-tr/haberler/covid-19-pandemisi-surecinde-kadinlari-barinma-hizmeti/>, Date of Access: 13.05.2020.

85 <https://bizbizeyeteriz.gov.tr/>, Date of Access: 13.05.2020.

86 COVID-19 Economic Stability Shield Package and Other Measures, <http://www.isim.org.tr/content/upload/attached-files/covid-19-ekonomik-istikra-20200414170956.PDF>, Date of Access: 14.05.2020.

Laws, published in the Official Gazette dated 17.04.2020, an emergency decree was added to Labour Law No. 4857 dated 22.5.2003. This decree ruled that all kinds of employment or service contracts, regardless of whether they are within the scope of the Labour Law or not, could not be terminated by the employer for a period of three months as of the effective date of the article, except for situations that did not comply with the rules of morality and goodwill and similar reasons as set out in subparagraph II of the first paragraph of Article 25 and the relevant provisions of other laws.⁸⁷

Some countries granted temporary residency rights to all irregular migrants and asylum seekers to ensure full access to the country's health services as the pandemic escalated, thereby reducing wider public health risks. Some other countries have made all coronavirus treatments free for everyone. Some governments have taken measures to mitigate the impact of COVID-19 on their prison populations by releasing a number of prisoners. Many countries have held daily press briefings to inform the public about the situation and response to the pandemic.⁸⁸

The city of Lublin was the first city in Poland to initiate procedures allowing foreigners to obtain social security numbers to purchase medicines from pharmacies and use services provided by the state or local authorities. In countries such as Italy, Georgia, Germany, and Norway, information about COVID-19 is being translated and published in all main minority and immigrant languages.⁸⁹

7. The Pandemic Period and Human Rights Policies

In a policy brief titled 'COVID-19 and Human Rights', the United Nations stated that certain policies should be considered. First, the UN underlined that human rights must be at the centre of attention in the fight against COVID-19. The UN has put forth three fundamental rights that are at the forefront in the current pandemic. These are the right to life and the duty to protect life, the right to health and the right to access health services, and the freedom of movement in the context of pandemic-related challenges. Controlling the virus and protecting the right to life requires breaking the chain of infection. To achieve this, it is necessary to stop people from coming into contact and interacting with each

87 The Law on Mitigating the Effects of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life and the Law Amending Certain Laws, <https://www.resmigazete.gov.tr/eskiler/2020/04/20200417-2.htm>.

88 United Nations, 'COVID-19 and Human Rights-We are all in this together', April 2020.

89 Directorate of Anti-discrimination of the Council of Europe, 'The Anti-discrimination, Diversity and Inclusion Dimensions of the Response to COVID-19', Strasbourg, April 2020.

other. The most common public health measure taken by governments against COVID-19 is restricting the freedom of movement through quarantines or stay-at-home orders. Within the scope of the right to health, it was emphasized that everyone should have access to the health services they need, regardless of their socio-economic status. International law allows some restrictions on freedom of movement, including in cases of national emergencies such as security and medical emergencies, provided they are proportionate and non-discriminatory. Effective and generalized testing, monitoring, and quarantine measures can reduce the need for indiscriminate restrictions. Secondly, the UN has emphasized the long-term importance of building economic and social rights that are resilient to crises. Finally, it was stated that practices during this crisis need to be 'equalitarian, non-discriminatory and inclusive'.⁹⁰

In line with their principle of 'people first', Amnesty International also set out a number of principles regarding COVID-19. This organization emphasized the need to protect and respect the fundamental rights of all those affected by the pandemic and to consider the rights of the most vulnerable people and groups without discrimination. In this regard, it was stated that the implementation of national laws should not involve any form of violence or coercion. The organization also highlighted that everyone should have equal global access to medical, material, and financial support during this crisis. In line with the principle of proportionality, the organization envisioned that it should be ensured that all possible measures are taken to deal with the crisis and its effects. However, Amnesty International also stated that all measures must be time-bound and reviewed at set intervals to determine their continuing validity in light of human rights. The organization has emphasized the need for relevant institutions or administrations to effectively inform all sectors of society about the fight against COVID-19 while respecting the principle of accountability and transparency.⁹¹ The organization has also recommended that all countries in need in the face of the worldwide depression caused by the COVID-19 pandemic, which has become a global crisis in its own right, should be supported. Regarding this issue, Amnesty International noted that 'global solidarity, cooperation and resource sharing'⁹² are key priorities to

90 United Nations, 'COVID-19 and Human Rights-We are all in this together', April 2020.

91 Amnesty International, 'Covid-19 Response and Rebuilding Principles', April 2020.

92 According to the statement of the Presidential Communications Directorate on 3 May 2020, Türkiye had provided humanitarian aid to nearly 60 countries around the world, including the USA, Spain, Italy, the UK, Iran, Bulgaria, and Pakistan. Many aid items, including personal protective equipment, were sent to the aforementioned countries. https://www.iletisim.gov.tr/turkce/dis_basinda_turkiye/detay/fahrettin-altun-muttekiflerimizi-dostlarimizi-ve-dunyada-ihhtiyac-olanlari-desteklemeye-devam-edecegiz, Date of Access: 13.05.2020.

overcome or minimize the devastating effects of the pandemic. The organization also emphasized the need to strive to create a more just, resilient, and sustainable economic structure, health system, and social fabric through future-oriented short-, medium-, and long-term measures to be taken.⁹³

8. Human Rights Policies and the Possible Dynamics of the Post-pandemic Period

German sociologist Ulrich Beck claimed that civilizational risks are being globalized, arguing that the social structure transformed by the progressive and developmental dynamics of the modernization process has created a new typology of society called the 'risk society'. According to him, this typology of society has produced a unique social form within the continuity of modernity. This new social typology 'evolving towards another modernity' is defined by the concept of risk. These globalized risks indiscriminately threaten all of humanity. Concisely, Beck expressed this reality as follows: 'poverty is hierarchical, smog is democratic'.⁹⁴ Emphasizing that the ruinous effects of modernization that destroy nature, the environment, and the ecological order and other threats and dangers have become globalized, Beck noted that this reveals a 'social boomerang effect' and impacts the actors of modernization. According to him, 'even the rich and those in power will no longer be safe from risks'.⁹⁵ Despite the development of modern medicine and health services, epidemics and pandemics, destructive effects of which have become more complicated in modern times, have become a threat to all humanity as unlimited risk factors, as is evident with the COVID-19 pandemic.

With all its devastating effects, the pandemic has created a state of exception and helplessness on a global scale. This extraordinary situation, which has thrown all central powers of every kind into despair, has suddenly called into question the structural dynamics and institutional wisdom of the global world. From nation-state structures to federal states, regional unions (such as the European Union), international organizations (such as the UN, WHO, Amnesty International, and the International Organization for Migration), democratic political systems, and authoritarian regimes, the institutional structures and structural dynamics of the modern world are now being debated. The 'equalitarian' destructive and infectious power of the pandemic has indiscriminately captured the whole world, including the rich and poor, powerful and powerless, and Eastern and Western. Undoubtedly,

93 Amnesty International, 'Covid-19 Response and Rebuilding Principles', April 2020.

94 Beck, Ulrich, *Risk Society: Towards a New Modernity* (Turkish translation by Kâzım Özdoğan & Bülent Doğan), 2nd Edition, İthaki Yayınları, İstanbul, 2016, p. 49.

95 Beck, Ulrich, *Risk Society: Towards a New Modernity*, p. 50.

this destructive capture will cause new intellectual perspectives and different communities and structural dynamics to permeate the aftermath of the pandemic.

Thus, it can be predicted that the post-pandemic period will create grounds for reckoning, especially in the case of political systems. We are witnessing the dawn of an era in which the questioning of the world order guided by neoliberal policies that deepen social injustice is becoming more systematic. We are observing a search for new perspectives on the meaninglessness of the war industry, which constitutes the centre of gravity of the investment policies of the global capital order, during the pandemic period. We are witnessing a painful reminder of the responsibility of the social state, which requires states to make public investments as a positive obligation in line with the right to health. Accordingly, it is anticipated that we may witness the functional transformation of the state apparatus after the pandemic. We are seeing signs of the possibility of the political economy being transformed in order to repair the heavy costs inflicted by the pandemic and economic policies that are far from sustainable with a view to establish social justice.

The helplessness of the supply chain and investment policies structured by the global economy under the devastating impact of the pandemic created the impetus for state actors to turn towards building a new economic order. The modern era, which is becoming more and more digitalized with the dramatic development of information technology, created opportunities to reach a new phase in the pandemic period. The effective use of the possibilities offered by the digitalized world, which came to the rescue in meeting basic human needs during quarantine periods, has likewise given new impetus to the digitalization movement of the post-pandemic world. Thus, the journey towards a world in which many public services, and especially justice services, will be available in the digital universe has been accelerated exponentially.

It is apparent that the reality of this pandemic, which has plunged humanity into a great crisis, also involves many concerns for the post-pandemic period. Agamben analysed these concerns within the framework of the concept of 'state of exception', which was elaborated on through the political philosophy of Carl Schmitt,⁹⁶ who defined the sovereign as 'the one who decides on the state of emergency'. In his analysis of the pandemic, based on data from the Italian National Research Council (NRC), Agamben noted that although COVID-19 is not much different from the flu in terms of the risks posed by the virus, the media and authorities spread a state of

96 Schmitt, Carl, *Political Theology: Four Chapters on the Concept of Sovereignty* (Turkish translation by Emre Zeybekođlu), 2nd Edition, Dost Kitapevi, Ankara, 2005, p. 13.

panic and therefore provoked a real state of exception with severe restrictions on movement and the suspension of daily life in all regions. Questioning this situation, Agamben emphasized that such a disproportionate reaction can be explained with two factors. The first and foremost of these factors is the tendency of states of exception to become the normal paradigm of governance. The other is fear, which in recent years has clearly spread among individuals and has become an authentic need in situations of 'collective panic', for which the pandemic has once again provided an ideal justification. Thus, in a perverse vicious cycle, restrictions on freedom imposed by governments are accepted due to the desire for security created by governments themselves.⁹⁷ This desire for security, provoked by a climate of collective fear, gives rise to powers that can suspend norms related to the right to freedom. This can destroy the balance of freedom and security, which is an ideal principle of a rights-based political order. In relation to this, criticisms arguing that the metaphor of 'balance' with its positive semantic content is sometimes used as a magic word to restrict freedom in favour of security without an objective justification, just a mere rhetorical justification, must also be taken into account.⁹⁸

Agamben noted that in contemporary politics, the 'tendency for the state of exception to become the dominant paradigm of governance' is gaining force. He stated that the transformation of a temporary and exceptional measure into a form of governance radically changes the understanding of constitutional political systems. Agamben furthermore remarked that all technologies of extraordinary power and states of exception 'became a threshold of indeterminacy between democracy and absolutism'.⁹⁹ Regarding the indeterminacy of states of exception, Agamben argued that these states, which are problematic to define, are 'neither outside nor inside the legal order' but instead 'a threshold or a zone of indeterminacy where the inside and the outside are not mutually exclusive, but rather determine each other'.¹⁰⁰

This state of exception, which justifies itself with the individual and social abnormalities experienced due to the pandemic, carries the risk of causing a serious break in human rights politics in the post-pandemic period. Another frightening risk

97 Agamben, Giorgio, 'The Invention of an Epidemic', <https://www.journal-psychoanalysis.eu/coronavirus-and-philosophers/>, Date of Access: 1.05.2020.

98 See Neocleous, Mark, *Critique of Security* (Turkish translation by Tonguç Ok), NotaBene Yayınları, Ankara, 2014, p. 23 et seq.; Kılıç, Muharrem, 'Onto-Politik Bedenlenme: Politik Alanın İnşası ve Güven/lik Toplumu', *Hukuk ve Adalet Eleştirel Hukuk Dergisi*, Vol. 10, Issue 23, 2018.

99 Agamben, Giorgio, *State of Exception* (Turkish translation by Kemal Atakay), Ayrıntı Yayınları, İstanbul, 2018, p. 11.

100 Agamben, Giorgio, *State of Exception*, p. 35.

factor is the continued use of surveillance technology, which has been utilized actively by national governments during the pandemic, in the 'new normal'. As a spectre of modernization, the surveillance practices carried out by states using surveillance technologies create an atmosphere of dystopian anxiety. Indeed, the famous writer George Orwell creatively subjected such a situation to a poetic analysis relatively early on in his classic novel *Nineteen Eighty-Four*. We have witnessed many digital quarantine measures that are reminiscent of the totalitarian power of Orwell's telescreen,¹⁰¹ which not only functions as a receiver and transmitter in the novel but also as a viewer, monitoring and controlling the individual. This surveillance-supervision technology, which originated from Bentham's architecture of creative surveillance or the principle of surveillance, keeps the subject and society under a destructive siege.

Bentham noted that the building design he created was based on the principle of surveillance as a supervision-surveillance mechanism that could be used in a large number of public sectors. According to him, this technology could be applied in 'punishing the incorrigible, guarding the insane, reforming the vicious, confining the suspected, employing the idle, maintaining the helpless, curing the sick, instructing the willing in any branch of industry, or training the rising race in the path of education: in a word, whether it be applied to the purposes of perpetual prisons in the room of death, or prisons for confinement before trial, or penitentiary-houses, or houses of correction, or work-houses, or manufactories, or mad-houses, or hospitals, or schools'.¹⁰² This supervision technology is based on people believing that they are being watched at all times, or not being able to be sure that they are not being watched, or convincing themselves that they are being watched. According to Bentham, the main purpose of the 'inspection house' design is to keep people under control through coercive processes such as 'detention, imprisonment, isolation, forced labour, and education'.¹⁰³

This conception of power, which defines the social sphere based on the premise of insecurity, has produced a control system where surveillance is ensured through supervision technology. This apparatus of surveillance power, which spies on everyone everywhere, is among the fundamental reflections of modernity.

101 Orwell, George, *Nineteen Eighty-Four* (Turkish translation by Celâl Üster), 55th Edition, Can Sanat Yayınları, İstanbul, 2016, p. 15.

102 Bentham, Jeremy, 'Panopticon or the Inspection House' (Turkish translation by Zeynep Özarslan), in *Panopticon: The Eye of Power* (Turkish edition prepared by Barış Çoban & Zeynep Özarslan), 2nd Edition, Su Yayınları, İstanbul, 2016, p. 12.

103 Bentham, Jeremy, 'Panopticon or the Inspection House', p. 13.

Surveillance power has extensively expanded and deepened its sphere through information technologies such as those of banks or the virtual world. In fact, the 'panopticon' design that Foucault inherited from Bentham in his analysis of power highlights this order of totalism.¹⁰⁴ Foucault argued that Bentham thought that 'the optical procedure was a great innovation for the convenient and easy exercise of power'. This governance mechanism based on the principles of visibility and surveillance has been widely used by states since the end of the 18th century. However, Foucault emphasized that the technologies of power put into practice in modern societies have more numerous, diverse, and rich portfolios.¹⁰⁵

The transformative essence inherent to all these technologies of supervision has also transformed modern societies' conceptions of security. In a sense, modern society has produced a security consciousness with a highly sensitive perception of risk. Bauman noted that this society '*does not believe that one can stay safe without taking conscious measures to ensure safety*'. These measures, in turn, have created a state of control in itself, which is primarily 'the direction and control of human behaviour, which can mean social control'.¹⁰⁶ Under the dominance of the principle of complete and indivisible security, modern social categories have been turned into soldiers of the current order, which is the order of speed, in which the state increasingly controls the hierarchy of the 'pedestrian to missile, metabolic to technological'.¹⁰⁷ Speed, which is characterized as the hope of modern Western society ('*Speed is the hope of the West*'¹⁰⁸), has created new 'motivated societies' with its technologies of super-surveillance and control.

Giddens uniquely tabulated these perceptions of risk and security of modern societies or cultures. He presented a comparative schema of trust and risk environments in pre-modern and modern cultures. According to him, the risk environment in the pre-modern period was defined as 'threats and dangers arising from nature, such as the prevalence of infectious diseases, unreliable climate, floods or other natural disasters'. In contrast, he argued that the risk environment of the modern period and modern society consists of 'threats and dangers arising from

104 See Foucault, Michel, *Dits et écrits* (Turkish translation by Işık Ergüden & Ferda Keskin), 3rd Edition, Ayrıntı Yayınları, İstanbul, 2011, pp. 126, 135, 224-225, 237-240; Foucault, Michel, *The Eye of Power* (Turkish translation by Işık Ergüden & Osman Akinhay), Ayrıntı Yayınları, İstanbul, 2007, pp. 86-87, 91-97; Kılıç, Muharrem, 'Onto-Politik Bedenlenme: Politik Alanın İnşası ve Güven/lik Toplumü'.

105 Foucault, Michel, *The Eye of Power*, p. 87.

106 Bauman, Zygmunt, *Freedom* (Turkish translation by Kübra Eren), Ayrıntı Yayınları, İstanbul, 2015, p. 19.

107 Virilio, Paul, *Speed and Politics* (Turkish translation by Meltem Cansever), Metis Yayınları, İstanbul, 1998, pp. 115-116.

108 Virilio, Paul, *Speed and Politics*, p. 52.

the reflexivity of modernity'.¹⁰⁹ When the risk profiles of both societies are analysed, it is seen that the phenomenon of the 'globalization of intensity of risk' is present, as mentioned above. In relation to this issue, Giddens drew attention to nuclear wars that threaten the existence of humankind.¹¹⁰ However, the impact of the COVID-19 pandemic has demonstrated that the risk of infectious diseases, which Giddens characterized as specific to pre-modern societies, remains devastatingly relevant. It can even be hypothesized that this risk has become more significant due to the possibility of producing diseases in laboratories.

In fact, many of these inquiries that have arisen and that will continue to come up with the pandemic are not new. Modern Western thinkers strongly criticized the world of meaning and action that modernity created in a deep-rooted intellectual tradition and school. One of these figures, Touraine, pointed out that we are facing a major transformation leading to the end of society and even the abandonment of the idea of society. He analysed the factors that lead to the crisis causing the end of society, the abandonment of the idea of society, and the resulting deep emptiness. He observed that there was no wisdom that could either foresee these global crises or ensure the necessary measures against them. He determined that political reason was inadequate to resolve and manage these crises.¹¹¹

Unfortunately, the COVID-19 pandemic will go down in history as a global failure of governance that supports that prediction. We are witnessing this crisis leading to the dissolution of 'society' and fundamentally undermining modern founding values and order, such as the human rights regime. The tragic picture of some states' discriminatory 'security-based activisms' during the pandemic worryingly seem to be evolving into a systematic political attitude.

This concern is being deepened by the purposeful perversion of the ideal of human rights, which were gained as a result of revolutionary victories won through great struggles. As Douzinas described it in *The End of Human Rights*, this acquis, embodied in a spirit of revolutionary struggle, is being dragged further towards an essential extinction with 'more and more declarations, treaties and diplomatic dinners'.¹¹² This can be explained in part by the dynamic and self-destructive nature

109 Giddens, Anthony, *The Consequences of Modernity* (Turkish translation by Ersin Kuşdil), 8th Edition, Ayrıntı Yayınları, İstanbul, 2018, p. 103.

110 Giddens, Anthony, *The Consequences of Modernity*, p. 124.

111 See Touraine, Alain, *The End of Society* (Turkish translation by Olcay Kunal), Yapı Kredi Yayınları, İstanbul, 2017, pp. 29-33.

112 Douzinas, Costas, *The End of Human Rights* (Turkish translation by K. Akbaş & U. D. Tuna), Dipnot Yayınları, Ankara, 2018, pp. 410-411.

of pragmatic human rights politics that dampens rights and freedom-based demands. This self-destructive political practice creates a state of exception for itself by developing a discourse that obscures the truth through a technocracy of communication. Undoubtedly, this inauthentic discursive system makes the order of rights and freedoms more fragile with each passing day, and this leads to unbearable human traumas, especially for vulnerable groups.

9. In Lieu of a Conclusion

Our world was organically, psychosomatically, and sociologically infected with a global pandemic in a very short period of a few months. Human history has witnessed the heavy cost of deadly epidemics in different eras as long-lasting and deadly epidemics killed tens or hundreds of thousands of people. The lack of socio-economic means to combat these epidemics and pandemics, both in terms of health knowledge and established health systems, condemned people to helplessness in overcoming the deadly devastation of these historical diseases.

The 'modern world', which separated from the 'old world' with a radical rupture, especially with the Industrial Revolution, has forcefully turned villages into cities, cities into regions, regions into countries, and all countries into compulsory interdependence within the global world in the process of globalization that has evolved through its own inherent dynamics. This totalizing network, which integrates all sectors of individual and public life, has evaporated subjectiveness and negated tradition with its relatively facilitating and encompassing power. In line with Orwell's fiction, this 'new world' has brought about 'new rules of discourse'.¹¹³ The deepest paradox of the new world built on those new rules of discourse has been that every step or leap taken with faith in 'progressive' ideology has turned into a retreat. The technological progress of the modern 'new world' in all its fields has put invisible shackles on the human spirit and body.

The global actors of industrialization that automatized all sectors have recklessly brought the world to ecological destruction. War plots provoked with the development of conventional warfare technologies have rendered certain parts of the globe uninhabitable. Defenceless peoples, condemned to the destructive fates of their homelands, have been exiled in hunger, misery, blood, and tears. The peoples of the world who are helpless in the face of this picture of destruction have sadly discovered that the human rights acquis based on the abstractive ideas of humanity is far from a protective shield for them. This theoretical ground and the

113 Orwell, George, *Nineteen Eighty-Four*, p. 323.

meta-discourse inherent in human rights, which allows for fundamental exclusivism, have transformed the set of rights and freedoms, which are the normative core area of the theoretical ground and meta-discourse, into a finite political ideology. This dangerous situation persists not only for social groups defined or stigmatized as 'others', such as migrants, but also for those who are 'us' or 'insiders'. The social climate created by the pandemic crisis, which is the subject of this study, encourages the production of human rights politics that hover on the dangerous borders of this threat to both groups. Indeed, despite all the international directives and recommendations noted above, some examples of the drive to turn this extraordinary crisis into a state of exception or grounds for arbitrary governance can be observed in the practices of some governments.

This has shown that no supra-institutional structure or organization that embodies the normativity of the idea of human rights has the institutional authority to guarantee rights- and freedom-based human rights politics. We have witnessed that the system of rights and freedoms achieved through arduous struggles, resulting in tragedies, is being sacrificed to pragmatic global political dynamics at every moment of crisis. Indeed, the historical crises that we have already witnessed in this millennium, such as 9/11 and the 2008 financial crisis, have imposed themselves on some nations as a state of exception and a new politics of order. The potential of the COVID-19 pandemic crisis to legitimize this apoliticism is evident in some practices of various governments.

The volatile ideological backdrop of the current human rights politics, which already shows signs of turning into pandemic violence, has the risk of posing a grave threat in the post-pandemic period. It is a historical reality that the mental codes produced through the distinctive social and political situations created by great crises in history have a prospective effect that spills over into the aftermath. This shocking reality of human history has given rise to new discourse mechanisms and socio-political systems. Minimizing the destructive effects of this reality on human rights politics in the post-pandemic period requires in-depth work regarding a wide range of issues from the correction of the supra-institutional and organizational practices that corrupt the idea of human rights to discursive authenticity.

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