

book of abstracts

Responses to the COVID crisis in Central and Eastern European Countries

*New Frontiers
of Health Law*



ИФОР

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**RESPONSES TO COVID CRISIS
IN CENTRAL AND EASTERN EUROPEAN COUNTRIES**
NEW FRONTIERS OF HEALTH LAW

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Responses to COVID crisis in Central and Eastern European Countries

New Frontiers of Health Law

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Contents

- 6 ■ **RESPONSES TO HEALTH EMERGENCY**
- 16 ■ **VACCINATION ALLOCATION
IN TIMES OF PANDEMICS**
- 24 ■ **HUMAN RIGHTS IN COVID CRISIS**
- 30 ■ **RIGHT TO HEALTH VS/OR IN LINE WITH
OTHER HUMAN RIGHTS**
- 38 ■ **CHALLENGES BEYOND HEALTH**
- 48 ■ **LIST OF PARTICIPANTS**

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Anti-epidemic Emergency Measures under Polish law in Comparative, Historical and Jurisprudential Perspective

The SARS-CoV-2 crisis of 2020 triggered a number of unprecedented reactions of European States, in particular, based either on constitutional emergency measures (Bulgaria, the Czech Republic, Finland, Hungary, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia), or on statutory anti-epidemic emergency measures (Croatia, Estonia, France, Germany, Italy, Poland, Spain). Poland opted for emergency measures based on the Act of 5.12.2008 on preventing and combating infections and infectious diseases. It will be argued that the evolution of Polish sanitary law (1919, 1935, 1963, 2001, 2008 Acts) suggests that the statutory model of anti-epidemic emergency measures is well-founded. It is also authorized by Art. 68 (4) of the Constitution. The Article 68 (4) of the Constitution reads as follows: "Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment." The Constitutional Tribunal allowed statutory regimes regulating „crisis situations”, falling within the normal functioning of the state (Judgments of: 3.07.2012, Ref. No. K 22/09 and of 21.04.2009, Ref. No. K 50/07.), separate from the constitutional emergency regimes. These can be compared with French, German or Italian statutory regimes. It will be argued that strict material scrutiny of proportionality of sanitary measures is necessary as in decision of District Court in Nysa of 9 November 2020, Ref. No. II W 981/20; judgment of Regional Administrative Court in Białystok of 22 October 2020, Ref. No. II SA/Bk 528/20. C.f. also decisions of German Federal Constitutional Court: 15.04.2020, 1 BvR 828/20 and 29.04.2020, 1 BvQ 44/20.

Keywords: Emergency powers, anti-epidemic measures, delegation of powers, limitations of basic rights, Poland

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In Search of a Fair Balance: Legal Instruments to Deal with COVID Crisis while Preserving the Human Rights Standards – the Romanian Experience

Same as everywhere, once the COVID pandemic became an almost tangible social reality, the Romanian authorities were forced to identify the legal tools which would allow them to adopt the necessary sanitary measures required by the situation: flexible enough and sufficiently adaptable to manage an urgent, often unpredictable, and definitely unique situation, yet capable of ensuring the observance of national and international human rights standards. Indeed, once the special measures were adopted through the presidential decree proclaiming the state of emergency, one of the major preoccupations from the legal perspective concerned the possibility of excessively drastic limitation of fundamental rights and freedoms and a slow movement towards an authoritarian regime. It resulted in a true law-related *saga*, involving Constitutional matters, a fierce debate concerning the nature and the legal force of the acts adopted for the implementation of the state of emergency (followed by the state of alert), the use of the international tools – especially Art. 15 of the European Convention on Human Rights, – culminating with the position expressed by the Romanian Constitutional Court in relation to such emergency measures. In sum, this unprecedented experience opened the possibility to test the use of some of the Constitutional instruments in case of exceptional situations, while trying to avoid excessive limitation of fundamental rights and freedoms.

Keywords: Romanian Constitution, state of emergency/state of alert, European Convention on Human Rights, derogatory measures, Romanian Constitutional Court

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COVID-19: A Stress-test for the Healthcare System and a Necessary Experience for the Bulgarian Legal Order

The article aims to present an overview of legislative action taken by the Bulgarian legislator in response to the COVID-19 pandemic. The first legislative piece adopted was the Act on the Measures and Actions During the State of Emergency, announced by a decision of the National Assembly of 13 March 2020. In less than a year, the first stage of the Vaccination Plan is being implemented.

The article is structured in two main parts. First, the reasons for the institutional conflict between the President and the Council of Ministers are analysed. Namely, the competence of the Council of Ministers to declare the State of Emergency was contested. Subsequently, the effectiveness, efficiency and proportionality of the measures taken in order to preserve the health of the population and the functioning of the healthcare system is analysed.

The second part is focused on the balance of the measures taken to protect public health and the corresponding efforts needed to preserve the national economy and the functioning of the internal market.

The Covid-19 pandemic is a stress test for every economy and legal system of the affected countries. Although consolidated measures at EU level are envisaged, appropriate national action is crucial. The authors of the present article try to analyse the pre-pandemic preparedness of the Bulgarian economy and legislation against the consequent action taken. Some of the other Member States already proved that a timely and efficient legislative reform could be made even in the eye of the storm.

Keywords: Bulgaria, legislative reform, emergency measures, public health, internal market

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Extraordinary Measures in Extraordinary Times: Legal Response to the COVID-19 Crisis in Bosnia and Herzegovina

The COVID-19 pandemic has profoundly affected all aspects of people's daily lives. In response to the pandemic, many countries declared a state of emergency. Extraordinary measures have been implemented to reduce the spread of the new coronavirus. Some of these measures require significant restrictions of fundamental rights and freedoms, such as the right to privacy, freedom of movement, freedom of assembly, freedom of expression etc.

In Bosnia and Herzegovina (BH), the entity authorities adopted decisions to provide a legal basis for implementation of extraordinary measures. The National Assembly of the Republic Srpska (RS) adopted the Decision on the declaration of a state of emergency for the territory of RS on 28 March 2020. The Government of the Federation BH declared the state of disaster on 16 March 2020. The paper deals with the restrictive measures implemented during the COVID-19 crisis in BH and their impact on human rights observation. Measures related to basic human rights are compared with measures implemented in other countries. The relevant decisions of the Constitutional Court of BH are also analysed, including the recently adopted decision in case AP-3683/20 according to which certain restrictive measures are contrary to the right to respect of private life and the freedom of movement, protected by the BH Constitution and the European Convention of Human Rights.

Keywords: COVID-19, state of emergency, legal framework, extraordinary measures, human rights

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COVID-19 Epidemic in Serbia – Challenges of Finding an Appropriate Basis to Respond to a Health Crisis

The Covid-19 pandemic represents a once-in-a-century challenge for health systems and decision makers globally. The World Health Organization declared the pandemic of Covid-19 on March 11, 2020, and Serbian institutions declared the state of emergency (SOE) on March 15, just days after the first case was officially detected in the country. This was done as a part of an unprecedented wave of emergency responses globally and in Europe in particular. As comparative studies demonstrate, states have reacted differently to prevent the spread of the virus. Decision makers in Serbia have opted for declaration of the state of emergency, followed by a series of governmental decrees and ministerial orders. The paper looks into the initial response and measures introduced at the beginning of the pandemic. The legislation that was in force in March 2020 is analysed in order to see the possibilities and instruments that the state authorities could have used. The research especially focuses on legislation governing infectious diseases and disaster responses which would have allowed for a declaration of an emergency situation, still allowing ample space to introduce legitimate restrictions to fight the outbreak. The paper concludes that the full potential of all available measures and instruments has not been exhausted, especially regarding the legislation providing a basis for an emergency situation.

Keywords: COVID-19 pandemic, state of emergency, emergency situation, health crisis, rule of law

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Responses of the Polish Government and Health System to COVID – Legal Tools

The Polish government, like the governments of other states, was surprised by the scale and the range of the new SARS-Cov-2 virus.

Although it was initially received with some disbelief, at the same time it forced the government to make quick decisions and choices under the pressure of uncertainty and without proven data. At the very beginning, a choice had to be made: to keep in place the „regular governance mode” or to reach for the “emergency mode”, equipped with extraordinary legal instruments. This, in effect, would also determine the method of managing public affairs, especially those with a direct impact on shaping the healthcare system model in pandemic times. Regular tools are insufficient for extraordinary times, so the decisions about the appropriate measures in such extraordinary circumstances had to be considered.

The Polish legal system offers choices for dealing with a crisis of such scale. This choice oscillated between a constitutionally established “state of emergency” and a “state of epidemic”, regulated by an ordinary legal act. So far the second option won, which undoubtedly resulted in greater centralization of activities in the healthcare system, use of administrative measures to manage the crisis, as well as dynamic changes in decision-making related to the healthcare system or the need to engage in a wider dialogue with social partners, including modified ways of communicating with the public.

The Polish model of the response to Covid, relating to the healthcare system, still needs to be improved as the situation is dynamic, but the achievements are worth evaluating.

Keywords: state of epidemic, centralization, healthcare system, administrative measures

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Measures Introduced in the Slovak Republic in Response to the Public Health Crisis caused by the COVID-19 Pandemic

The paper focuses on core new legislation, introduced within the field of health law due to the novel coronavirus pandemic, since its outbreak in the Slovak Republic in March 2020. A short description of the major legislative framework concerning communicable diseases control is included, and the role of the government and Public Health Authority is discussed as well. The objective of this paper is an analysis and critical assessment of measures adopted in the field of health law. By a government resolution under the Constitutional Act No. 227/2002 Coll. on security of state, which allows certain rights and freedoms of citizens to be limited for a certain period of time, respecting a principle of proportionality, the government quickly introduced emergency measures, e.g. a curfew and shut-down of schools and non-essential services. Relaxation of restrictions was related to the decrease of incidence of COVID-19. Since July, national borders have been opened again, following the EU demand to renew free movement within the EU. On May 21, 2020, the amendment No. 125/2020 to the Act No. 355/2007 on public health came into force, stating that all subjects have a legal duty to act in accordance with the Measures in Case of Public Health Threat issued by the Public Health Authority. In September 2020, the country experienced a rapid incidence surge. The government again declared a national state of emergency on October 1, 2020, currently extended, and organized population-wide antigen testing at the end of October and in November. On October 15, 2020, the Act No. 286/2020 Coll. amending the Act No. 355/2007 Coll. on public health and other acts, came into force, to strengthen the position of Public Health Authority. Currently, "pandemic fatigue" and economic hardships in the population represent a challenge for the implementation of anti-pandemic measures.

Keywords: pandemic, health law, contagious diseases, population-wide testing, Slovakia

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National Legal Framework to Protect the Right to Health During the Covid 19 Emergency State in Latvia*

A national, as well as global, public health emergency due to the spread of Covid 19 posed extraordinary challenges in every field of our lives, requiring the government to implement extraordinary measures, in an attempt to reduce transmission and minimize the impact of Covid 19. Fundamental rights, including the right to health are important values of a democracy, that must be ensured and adequately protected both under ordinary circumstances and during crises. Integrating human rights protection and guarantees into our shared responses is not only a moral imperative, but also essential to successfully address public health concerns (WHO, 2020). Therefore, it is crucial to study how the human rights-based approach is integrated into national responses to the Covid pandemic. The study presented in this abstract is a part of a research project aimed at exploring the human rights framework as a fundamental structure that can strengthen the effectiveness of efforts addressing the pandemic locally, nationally, and globally.

This paper, first, explores the Latvian national framework for protection of the right to health during the Covid 19 pandemic, in the period from March to June 2020. Second, it provides a legal analysis of emergency legislation concerning the right to health, enacted to curb the pandemic. The legal nature of restrictions limiting availability, accessibility and quality of healthcare services is discussed. Third, it illustrates observed violations of patients' rights in Latvian hospitals, resulting from improper implementation of legal regulations.

The study allows us to conclude that there have been substantial insufficiencies in protection of the right to health during the Covid 19 pandemic in Latvia. The study provides us with knowledge allowing us to develop recommendations embracing human rights as an integral part in responses to the public health crises in future.

Keywords: Covid-19, pandemic, human rights, right to health, Latvia

*This abstract is prepared within the research project "Impact of COVID 19 on the healthcare system and public health in Latvia, ways in preparing the health sector for future epidemics VPP-COVID-2020/1-0011".

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Vaccination from the Human Rights Perspective

In response to the COVID-19 pandemic, at the end of 2020 a number of countries started vaccinating their populations, with the aim of preventing the spread of the disease. The vaccines available up to date include the Pfizer/BioNTech COVID-19 mRNA vaccine that was the first to receive emergency validation from the World Health Organization (WHO) since the outbreak began a year ago. This means that each country should undertake a policy process to decide whether to vaccinate, and who. Unlike a traditional vaccine that uses inactivated or dead virus, or portions thereof, to spur an immune response, the mRNA vaccine is based on a novel technology, whose long-term effects on the health and safety of the recipient are still unknown.

The aim of this paper is evaluating the respect of the human rights norms at the level of the United Nations, the Council of Europe and the European Union related to vaccination. Regarding the implemented methods, Serbia was used as a case study, along with a qualitative content analysis of the collected data, news, literature, laws, and by-laws. The research findings indicate that using a non-licensed vaccine may be considered as an effort to ensure the right of individuals to preventive medical measures. On the other hand, this raises concerns related to the vaccine's quality, safety, and long-term side effects. Related warnings of high officials have already been published. The hazards are particularly high due to the lack of liability of the pharmaceutical industry, particularly concerning vaccines. This practice jeopardises the enjoyment of human rights, such as right to life, health, physical integrity, safety, information, the right to an effective remedy and the right not to be subjected to medical experiment without free consent. Without any doubt, there is a strong need to address the pandemic and protect people's health. However, policy responses should respect the main principle of the medical ethics: *primum non nocere*.

Keywords: COVID-19, Pfizer/BioNTech mRNA vaccine, vaccination, human rights, *primum non nocere*

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Human rights, Vaccination and the Health Crisis

The current pandemic reveals similar underlying issues and conflicts as those seen in 1905 in the U.S. Supreme Court case *Jacobson vs. Massachusetts*, i.e. individual human rights vs. public health and the common good. This contribution focuses on both a legal as well as an ethical perspective of the question of the possibility of mandatory vaccinations. From a human rights perspective, this covers the right to integrity (Art. 3 CFR, “free and informed consent”), where the ECJ has not added much clarity (Case *Široká*). Superseding the EU27, the ECHR adds more clarity in terms of the right to private life (Art. 8), as shown in the *Solomakhin* case (some cases still pending at the ECtHR). This also includes the right to integrity, which can be justified according to well-known requirements, emphasizing proportionality (cf. also Art. 52[1] CFR). This goes in a similar direction as various opinions of different advisory bodies (UK, Germany, Austria, etc.) and scholars looking at the same topic from an ethical perspective. These include the well-known principles of respect for autonomy, non-maleficence, beneficence, and justice (Beauchamp & Childress 2019), as well as precaution (Pierik 2020). Most authors agree that mandatory vaccination has to be assessed on a case-by-case basis, taking into account proven efficacy (scientific evidence), a favourable benefit-risk ratio (for participants), an acceptable cost-benefit ratio (limited public resources), the lowest possible degree of restrictiveness, as well as fair and transparent decision-making procedures (Marckmann 2008; Austrian Bioethics Commission 2015). An answer to the current pandemic issue will have to be found by balancing individual rights vs. the common good, while, at the same time, efforts have to be made to increase public trust through transparent decision-making and public debate.

Keywords: human rights, ethics, right to integrity, right to private life, CFR, ECHR, proportionality

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New Challenges for the Polish System of Preventive Vaccination in Connection with the Availability of a Vaccine against COVID-19

Mandatory vaccinations in Poland have aroused much public controversy for years. The high activity of anti-vaccination movements has resulted in an increase in the percentage of non-vaccinated persons. This results in a high epidemic risk, which is becoming increasingly dangerous during the COVID-19 pandemic.

The COVID-19 pandemic has been a major public health challenge worldwide since it emerged last year. The invention of a vaccine against this disease is a contribution to a return to normality. The way to guarantee the highest possible level of health in society is through a high vaccination rate. Legal steps must be taken to achieve this level. The question arises as to the legal nature of the new vaccine. Should compulsory vaccination against COVID-19 be introduced, or would voluntary vaccination, accompanied by efforts to encourage widespread use of this vaccine, be a better way of achieving high vaccination rates? There is a conflict between the two models of vaccination: mandatory and voluntary.

In Poland, there is an obligation to vaccinate against many infectious diseases (for example: measles, rubella, rabies). There are also recommended vaccinations, for example, for flu. In recent years, however, there has been an increase in the number of people who have evaded compulsory preventive vaccination. The influenza vaccination rate is also low – approximately 3% of the population. In view of these threats, it should be assessed which model of vaccination against COVID-19 would be the most effective and efficient in Polish social reality.

In this paper, Polish legal regulations on preventive vaccination and statistical data showing the scale of the phenomenon of mandatory preventive vaccination evasion are analysed, and vaccination rates for recommended preventive vaccination are presented. This will show the trend in Polish society and allow an assessment of the possible risk of low vaccination against COVID-19.

Keywords: legal approaches relating to vaccinations systems, public health in Poland, evasion of mandatory vaccination, vaccination against COVID-19

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Covid-19 Vaccination and Employment: The Legal Framework in Hungary

Deployment of the COVID-19 vaccine has recently started in EU countries and raised a number of questions about individuals' freedom of choice and consent. The sphere of work and employment is of specific interest: can employers lawfully impose a requirement to get vaccinated against COVID-19 on their employees? Can they make this a hiring requirement, a condition for fulfilling certain positions or awarding bonuses, promotions, etc.? Specifically, can employers use occupational health and safety rules as a legal basis for justifying such decisions? If employers' attempts at voluntary vaccination programs do not achieve their desired compliance level, can they enforce employees' participation in such programs? Are employees entitled to exemptions and on what grounds? How can the law protect employees' rights in such cases?

Although the EU has the competence to adopt binding rules on occupational health and safety, that competence has not provided (so far) the EU legislator with the power to adopt binding rules on vaccination. Immunization policy is currently a competence of national authorities. Having no legal basis for regulation, the EU has been using other tools to influence national policies and action. Examples include strategy development, coordination of national policies and programs, joint action co-funded by the EU health program to increase coverage, joint procurement of vaccines, supporting stakeholders to raise awareness, inform the general public and exchange best practices.

The paper explores the relevance of occupational health and safety rules for the COVID-19 vaccination policy. The analysis starts with an overview of current EU responses and their relevance for national level policy. Afterwards, the analysis moves to the national level by focusing on the case of Hungary. So far, the Hungarian government has stated its intentions to keep the COVID-19 vaccination voluntary. However, the Hungarian legal framework allows for making

immunization mandatory. Following an overview of Hungary's existing policies on immunization, the analysis proceeds with the legal and regulatory frameworks for COVID-19 vaccines deployment. It then zooms into the occupational safety issue and traces the current debate on turning the COVID-19 vaccine into a workplace safety requirement. The legal and policy analysis will be completed by semi-structured interviews conducted with European and national level decision-makers.

Keywords: COVID-19 vaccination, occupational health and safety, employee rights, consent

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Compulsory vaccinations against COVID-19 versus the right to respect for private life

Early in the pandemic's global transmission, Director-General of the WHO said: *All countries must strike a fine balance between protecting health, minimising economic and social disruption, and respecting human rights.* The spread of the pandemic has forced national governments to increasingly intense restrictions. Travel bans, social distancing, quarantine, restrictions on gatherings, contact tracing and many other COVID-related measures adopted around the world have breached or constrained human rights.

The development and marketing authorisation of vaccines against COVID-19 has given the authorities a much-anticipated instrument to fight the pandemic. At the same time, however, for the extinction of the epidemic to become real, according to epidemiologists' estimates, the herd immunity must reach the threshold of 50-70%.

This level will be difficult to achieve in societies which - in the light of a report commissioned by the European Commission (discussed during the presentation) - have a low level of confidence in vaccines. To ensure mass *vaccination*, it should be considered whether a compulsory vaccination against COVID-19 would be an acceptable solution. It is a sensitive issue in the context of the right to self-determination, guaranteed both in Art. 8 The Convention for the Protection of Human Rights and Fundamental Freedoms, as well as most modern constitutions. The aim of this paper is to investigate whether the compulsory vaccination against COVID-19 could be the next step in the fight against the pandemic. In particular, whether the current approach of the ECHR and national courts to compulsory vaccination can be considered adequate in relation to COVID-19 vaccines with a conditional marketing authorization.

It should also be examined whether there are more proportionate measures such as, e.g., public awareness campaigns, the idea of a "vaccine passport" as a requirement for international travel or the condition of the availability of public services.

Keywords: compulsory vaccinations, the right to self-determination, the right to privacy, proportionality of the restrictions, vaccine passport

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Deprivation of Liberty as a Measure of Counteracting the COVID-19 Pandemic. The Human Rights Perspective

Fighting the COVID-19 pandemic has required action by states to limit or stop the spread of the virus. Some commonly used measures, such as the obligation to undergo quarantine or isolation, constitute a drastic restriction of personal liberty and freedom of movement.

From the perspective of human rights, the question arises whether the obligation to undergo home quarantine or isolation, constitutes deprivation of liberty within the meaning of 5 (1) ECHR? There is no doubt that it is an obligation to stay and live in a very limited space (area) for a long period of time. Is the threat of criminal liability for failure to comply with these obligations a coercive measure and should, therefore, quarantine or isolation be treated as a solution similar to house arrest? The ECtHR has already taken the position that the threat of criminal charges in the event of refusal to remain in the indicated place was coercive enough to treat the whole situation as a deprivation of liberty (f.e. case of *Gillan and Quinton v. the United Kingdom*).

Art. 5 (1) (e) of the ECHR allows deprivation of liberty in order to prevent the spread of an infectious disease. If quarantine or isolation is a deprivation of liberty within the meaning of Art. 5 (1) of the ECHR, can the state impose a general (collective) obligation to undergo isolation for the whole society in a statutory law, under the threat of criminal liability, without a court decision? Moreover, how should the state effectively implement procedural guarantees, in particular those resulting from 5 (2) and (4) of the ECHR? The application of measures comprising the deprivation of liberty, even for such an important purpose as counteracting the COVID-19 pandemic, cannot lead to the weakening of the protection of personal liberty.

Keywords: preventive detention, quarantine, home isolation, deprivation of liberty, judicial review

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Regulatory Responses to COVID-19 Pandemic and Impact on Fundamental Rights and Freedoms in Croatia

Decisions, instructions, and security measures affecting rights and freedoms in the context of COVID-19 pandemic in Croatia are mainly based on the Acts on Civil Protection System and on Protection of Population from Infectious Diseases, and on the related authority of the Civil Protection Headquarters to issue them. This authority of the body established by the Government has been heavily disputed, leading to a total of 31 submissions and initiatives for review of constitutionality and legality of its decisions until September 2020. Despite early initiatives of several judges to initiate the review of more decisions and measures, the Constitutional Court decided only on a small number thereof, affirming disputed authority of the Headquarters and declaring only the ban on working on Sundays for shops as unconstitutional (disproportionate). Court decisions were largely criticized in the public and even by the Croatian President. Ever since, new regulatory responses have been scarce until the escalation of the pandemic in Croatia and untimely toward any effective prevention thereof. While many consider the current situation in Croatia catastrophic, a significant number of citizens still see the imposed measures as a significant encroachment of rights and freedoms - including the duty to wear face masks in indoor spaces. Public criticisms of Constitutional Court's decisions undermine the needed public confidence in the efficacy of this Court to protect rights and freedoms, and have an impact on the related behaviour of individuals. On that account, this lecture will examine legal issues surrounding the Court decisions and effects thereof on the system for protection of rights and freedoms that are affected by measures to prevent spread of the disease. It also proposes optimization of proceedings before the Court towards urgent and more efficient handling of similar initiatives and submissions in the future.

Keywords: COVID-19 pandemic, Croatia, fundamental rights and freedoms, constitutional review, optimization of proceedings

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Human Rights in Health Crisis in Hungary

In Hungary, the government declared a state of emergency in March 2020 as a consequence of COVID-19 pandemic. The state of emergency was lifted in June, but pandemic preparedness and health crisis situation were declared, at the same time, by a governmental order. In June 2020, a new Act was also accepted on provisional rules in connection with the termination of the state of emergency and on pandemic preparedness. The Act amended the Health Act of 1997 in a way that made it possible for the government to declare pandemic preparedness and health crisis situation in a governmental order and to introduce several restrictions. These rules are new to the Health Act and encompass wide restrictions. The aim of this paper is to overview these restrictions and investigate how human rights are affected. In the first place, some important patients' rights are to be envisaged as the right to healthcare, right to human dignity, right to keep contact, right to leave the institution, right to be informed, right to self-determination, right to deny healthcare and right to be informed about medical records. Effects of the health crisis on some children's rights are also examined.

Keywords: health crisis, restrictions, patients' rights, human rights, children's rights

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The Application of Advance Directives in Albania during Covid-19

In Albania, the right to health protection and the right to human dignity are two fundamental constitutional principles. In recent months, more than 1.4 % of the total Albanian population have tested positive for Covid-19, further taxing the national healthcare system. In other words, taking into account the current level of infected individuals, the efficiency and efficacy of the Albanian healthcare system have been challenged since there is a limited supply of intensive care beds and ventilators for the high number of patients who need them. This paper studies the right not to be treated in conjunction with the Albanian legislation during the time of a pandemic situation by focusing on the concept of a "living will" as well as the nomination of a surrogate. Although the current Albanian legislation might consider withholding or withdrawing treatment from an unconscious patient a criminal offense, in the existing pandemic situation, the application of the ethical principle of justice, as well as the interpretation of the international treaties ratified by Albania, concludes in the key result of not punishing physicians. Therefore, in the cases of withdrawal or withholding of life-supporting medical equipment from unconscious patients who had previously expressed their autonomy via advance directives, even in the absence of specific rules governing end-of-life decisions, physicians should not be liable for criminal offense. However, also in these cases, while medical treatment might stop, care shall always continue.

Keywords: advance directives, Albania, Covid19, unconscious patient, withdrawing medical treatment

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Effects of Disrupted Health Services on Public Health: Systematic Review

Health professionals in all countries fight the COVID-19 pandemic. Hospitals and Intensive Care Units are overloaded with patients with severe complications. Therefore, it is not surprising that essential health services are reduced, postponed, and frequently not provided. In spite of repeated calls from international organizations, such as WHO or ECDC, healthcare managers supported by politicians are so overwhelmed with the pandemic that little interest is paid to the consequences of this disruption. There are examples from previous public health disasters (Ebola, Balkan war, etc) that demonstrate that ignoring such lessons leads to serious and long-term health consequences for the affected populations. Thus, health politicians and managers call for application of the *Build Back Better* principle once the virus is defeated. The aim of the study is to identify examples of disruptions and their consequences to be used for navigating health policies.

Authors used the methodology of systematic review of published articles to map the situation. Systematic reviews, by their nature, provide a summary of the results of carefully selected studies in a methodologically defined reproducible process. They formulated a set of key words, which they used to scan PUBMED and SCOPUS databases. Computerized literature searches were initiated from 2019 up to January 2021 (inclusive). The searches used a combination of MeSH (medical subject headings) and keywords related to essential health services and COVID-19. Appropriate publications were selected based on pre-defined criteria. Discrepancies were discussed and challenged.

Summary of findings was tabulated, and strength of evidence was evaluated using the Oxford scale to grade the evidence.

Preliminary results identify a number of documents from internation-

al organizations, which should be used to steer individual healthcare policies to maintain essential health services. A number of documents reveal that consequences are extensive and will certainly place substantial burden on societies, healthcare systems as well as individuals. While the vaccination is rolling out, there is still time to implement measures preventing effects of disruptions.

Keywords: consequence, SARS-CoV-2, postpone, impact, health

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The Population Protection System against Infectious Diseases and Covid Crisis

The purpose of this topic is to clarify the assumptions, elements, and consequences of the system of protection against infectious diseases concerning the healthcare services in the Republic of Serbia. The topic is analysed by systematic comparison, as well as by perceptions of past and new issues related to the protection system. The short analysis will focus on essential constitutional rights and the national Act on the Protection of Population from Infectious Diseases, whose first version originates from 2004 and has been revised several times. It also includes changes during the Covid-19 pandemic. It has been shown, although the national legislation of Serbia has taken over and implemented the International Health Regulation (IHR), that there are still shortcomings in the regulations, including laws, by-laws, and clinical protocols. Health procedures are often changed because appropriate standards of practice are still being sought. The reason is insufficient knowledge on the outcome of the pandemic and the characteristics of different patient groups (confirmed patients, high-risk group, intermediated risk group, low-risk group, and no risk group depending on the risk criteria for infection). Is there a gap between regulations and the need to combat the pandemic? In this sense, it is necessary to consider improving the law concerning the prevention and treatment of infectious diseases. Basic rights are a universal and essential value, so they should be guaranteed during the pursuit of any compulsory measures. The concluding remarks point to the need for consistent application of the law, but also to further work towards redefining new legal and ethical issues and raising the standards of health services in terms of governance, emergency medical countermeasures, and human rights aspects.

Keywords: public health, infectious diseases, individual rights, Serbian legislation, system of protection

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The Right of Access to Health during the Fight against Pandemic

Since the pandemic began, the fight against it has been the most important problem of the health system in Turkey. Patients' access to healthcare services has been limited in order to reduce the pressure of the pandemic on the health system. In this context, some hospitals provided only COVID 19 services. In addition, some surgical interventions, treatments, examinations, and polyclinic services were postponed. These measures prevented patients from accessing diagnostics, treatment, and follow-up. As a result, the health status of some patients worsened and some patients could not even be diagnosed. Moreover, since measures were not undertaken to transport patients to health facilities with minimum risk, at-risk patients could not go to health facilities even if they wanted to. The pandemic can cause serious economic, social and health damage. States are obliged to undertake measures to prevent or reduce such damage. It is imperative that the measures taken are planned to cause the least damage. In this context, the measures taken to combat the pandemic should be in line with the right to access health services. In addition, additional measures should be included against the damages that these measures may cause. In my oral presentation, the negative effects of the pandemic on the right to access health services will be evaluated from the perspectives of health law and public health ethics.

Keywords: pandemic, right to access health services, patients' rights, Health Law, public health ethics

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The Legal Aspects of the Unavailability of Treatment during the COVID-19 Pandemic as a Violation of the Right to Health

In addition to various aspects of legal liability of health professionals and/or institutions regarding the prevention, diagnosis and treatment of citizens affected by COVID-19, the lack of access to medical treatment during the pandemic raises the issue of violation of health rights. The right to health includes, inter alia, the right to disease prevention, treatment, and control, as well as equal and timely access to health services such as basic medicines and medical care. Restrictions or difficult access to healthcare and care in the daily treatment or diagnosis of serious diseases, in which time is crucial for cure or survival, were especially pronounced during the so-called lockdown. Although all EU and WHO guidelines indicated that diagnostic and operative procedures should be cancelled whenever possible during the pandemic, the question of responsibility of healthcare workers and institutions for the unavailability of necessary medical care, such as delayed or discontinued oncological medical care, was raised. At the same time, the COVID-19 pandemic poses a huge burden on health systems, as many health facilities face a shortage of staff, leaving health workers overburdened and under high personal risk. It is to be expected that special problems will arise in relation to various aspects of legal responsibility of health professionals and institutions, primarily hospitals, due to the unavailability of treatment and care, e.g. for delayed or discontinued oncological medical care. Such violations of the right to health encroach on the areas of criminal, disciplinary, administrative and compensation liability of health professionals and institutions, and the issue of compensation and criminal liability of natural and legal persons for unavailability of medical care during pandemic conditions is particularly complex. The judiciary will need to take a stance on whether the COVID-19 pandemic is a force majeure, a conflict of duty or an ultimate necessity in all cases of unavailability of medical care, and whether it is an unjustified denial of necessary assistance, which is also a criminal offense.

Keywords: right to health, Covid-19 pandemic, access to medical care, legal liability, unavailability

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Covid 19 and the Judicial Power

On March 15th, 2020, a state of emergency was declared in the Republic of Serbia due to the pandemic caused by the COVID 19 virus. A state of emergency represents a situation resorted to out of extreme necessity, under precisely defined circumstances. It usually requires suspension of certain human rights which are otherwise inviolable, for the sake of the survival of citizens and the state. One of the rights that was partially suspended is the right to a fair trial guaranteed by Article 32 of the RS Constitution and Article 6 of the European Convention on Human Rights and Fundamental Freedoms. Courts were acting in a reduced capacity at the time of “lockdown”, which lasted for 53 days, deciding exclusively on the claims and in the cases that could not be delayed. In order to mitigate the negative effects of the state of emergency on this civil right, the RS Government passed the “Decree on deadlines in court proceedings during the state of emergency” declared on March 15th, 2020, and in the force from March 20th, 2020 (Official Gazette RS, no. 38/2020). It stipulates that all court deadlines related to the submission of initial acts, appeals and objections cease to run during the state of emergency. After termination of state of emergency, these deadlines continued to run. What is unclear at first glance is whether the Decree refers only to the preclusive deadlines, after which the party loses the right to file a lawsuit, or also to the obsolescence claim, which the courts observe only upon the parties’ objections. The answer to this question could be contained in the norms on the standstill of the obsolescence claims deadlines, prescribed by the provisions of Article 383 of the Law on Obligations, as the circumstances of the state of emergency can be compared to insurmountable obstacles.

Keywords: Covid 19, emergency situation, individual rights, Government Decree, Court deadlines

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Health Protection or Human Rights Protection

A pandemic of the new virus Covid-19 affected the entire world, which has led to major changes in all areas of life. In a way, the general situation caused by the pandemic led to a discrepancy between democracy and human rights, on the one hand and the protection of public health, on the other. Due to the equal importance of democratic achievements and human rights principles, these two categories are not and should not be in conflict.

The Government of Montenegro has issued an instruction on undertaking temporary measures for the prevention of cross border transfer of the new coronavirus, its suppressing and prevention of transmission, which entered into the force on March 18, 2020. Instruction was adopted in line with Article 55 of the Law on Protection of the Population from Contagious Diseases. After the adoption of the Instruction, the Government of Montenegro decided to undertake a very risky action, which later turned out to be controversial, publishing the names of persons who are in self-isolation. Lists containing the names became available to citizens via the website of the Government and through dissemination of information through social networks.

This measure was approved by the majority of population. However, it was challenged by some NGOs, which led to the withdrawal of the lists from the government's website and initiation of proceedings before the Constitutional Court of Montenegro to revoke the government's decision, claiming that it is contrary to the Constitution of Montenegro, the Law on Data Protection, the European Convention on Human Rights and Fundamental Freedoms and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Protection of personal data and therefore health is not an absolute right, but a right that should be in accordance with other rights. All of these regulations, both EU and national, provide mechanisms for respecting and balancing between data protection and other rights, and thus, the possibility of limiting the scope of individual rights in relation to the protection of public health in the country.

Keywords: COVID-19, Government of Montenegro, NGOs, pandemic, European Court of Human Rights

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The Impact of Covid-19 on Sports - Selected Legal Issues

The Covid-19 pandemic presents a highly challenging period in our everyday lives. The Covid-19 impacted every sector of society (e.g., labour relations, travelling, education, human relationships). Nowadays, sport represents a significant part of individuals' lives, as well as of the society as a whole. Therefore, the sports also were, are, and will continue to be infected by the Coronavirus.

The global response to the Covid-19 pandemic resulted in an almost total shutdown of competitive sports - even the Olympic Games and European Football Championship have been postponed. Covid-19 infected many sports stakeholders: governing bodies (IOC); sports teams; individual athletes and coaches (impact on employment agreements); insurers; broadcasting; team medical staff; vendors supplying sports equipment or selling tickets; sponsors (events without audience affect the sports sponsorship); local business dependent on any venues (hotels); fans (e.g., those who have season tickets or hold tickets for cancelled events); airlines (with already negotiated flights); betting industry; safety topics... In addition to influencing sports as a whole, the Covid-19 pandemic also affected the individual lives of athletes. For example, Jo-shiko Saibou is the first known case in which a professional athlete has been fired for his behaviour and views on the corona crisis.

In their paper and presentation, the authors will address the impact of the Covid-19 pandemic on sports as a whole and on athletes as individuals. Particular emphasis will be placed on selected sports issues and how they have been impacted by the Covid-19 pandemic in Slovenia.

Keywords: Covid 19, pandemic, shutdown of competitive sport, Olympics, safety

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Tackling the Impact of the COVID 19 Pandemic in Economy and Labour – Toward an Adequate Normative Framework: A case study of Serbian Regulation

The paper deals with the foundations of policy and legal national framework, addressing particularly the adequacy of state measures in the areas of economy and labour as a response to Covid 19 pandemic. By analysing recent soft law documents of international organizations as well as customary international law, it aims to identify the best practice model i.e. to formulate the key elements of policy action as a part of that response. The human-centered, holistic, and integrated approach had been applied, accompanied by a legal normative and comparative method. Current Serbian regulation has been put in the context of the broader international area of policy emergency responses that comprehensive and integrated recommendations ought to be setting. It presupposes balancing support for enterprises with support for workers in terms of pre-pandemic international standards of sustainable development in both economic and social sectors. Government stimulation policy in the area of economy and employment in the Covid 19 crisis must be based on a rapid and reliable assessment of the impact of lockdown or other trade and employment restrictions as well as on medium to longer-term recovery strategies of trade and employment. The principles of global solidarity, public-private partnership and anti-discrimination measures are core elements that need to be incorporated in the proposed legal framework to tackle the impact of the Covid 19 pandemic in the economy and labour sectors.

Keywords: Covid 19 pandemic, international standards, (in)efficiency measures, economy and labour framework, Serbian regulation, best practice model

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Domestic Violence as a Threat to Public Health - Assessment of Legal Safeguards against Domestic Violence during the COVID - 19 Pandemic in Poland

Domestic violence is a threat that cannot be ignored. Hundreds of millions of people around the world experience it every year. The high scale of domestic violence in a country has a negative impact not only on the lives of individuals, but also on the functioning of society. It should be emphasized that domestic violence is a threat to the life and health of individuals. Experiencing domestic violence negatively affects the physical and mental health of victims.

The COVID-19 pandemic has led to social isolation of the population in most countries in the world. Restrictions imposed by states to halt the spread of the virus have had a negative impact on the situation of victims of domestic violence. Countries began to take protective measures, such as forced isolation at home, the maintenance of social distance by individuals, the suspension of schools and selected institutions. The efforts to tackle the COVID-19 pandemic have therefore directly contributed to the intensification of another threat to the life and health of individuals.

The COVID-19 pandemic highlighted the failure of governments to ensure the protection of victims of domestic violence in crisis situations. They are developing ad hoc solutions to ensure the safety of people affected by domestic violence. The aim of the research is to evaluate legal solutions for preventing domestic violence adopted in Poland during the pandemic. The subject of the analysis will also include issues related to the impact of experiencing domestic violence on the life and health of the victims, as well as the increase in the scale of this phenomenon during the pandemic. The research will be conducted on the basis of the formal – dogmatic method, the method of literature analysis, and the method of comparative law.

Keywords: pandemic, protection of life and health, increase in domestic violence, legal counteracting, Poland

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Mobile Applications that Help with Covid-19: Some Legal Considerations

Widespread usage of mobile applications (apps) started to play an important role in facilitating Covid-19 response. The purpose of these mobile apps is to serve as an alternative to “spending” human resources to control the spread of the disease and mitigate its consequences. However, such mobile apps have been criticized for threatening human rights (in particular: rights to privacy, freedom of expression and protection from discrimination.)

Potential threat to human rights depends on the type of mobile apps (quarantine apps, contact tracing apps, self-symptom checkers, informational apps). Usage of such mobile apps can easily be disproportional to the real public health protection objectives. Implementation of such apps (especially if they have a mandatory character) should have to pass a necessity, legality, and proportionality test. Without a doubt, such mobile apps have a legitimate goal: concern for the safety and health of citizens (public health interests). Such invasion of privacy can often be justified, but unlimited privacy compromising could lead to undermining other rights. Another aspect is the stigmatization (the obtained data can be used to stratify population) and discrimination issue (typically vulnerable groups have less access to modern mobile phones or have trouble with their usage).

Keywords: Covid-19; mobile apps, right to privacy, freedom of expression, discrimination

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Introductory Aspects on the Management of Medical Waste generated by Covid-19

Coronavirus (Covid-19) has spread all over the world in a very short period, causing serious concerns for many countries around the world. The pandemic continues to spread, registering more and more cases of infection every day. Covid-19 has a negative impact not only on public health and the global economy, but also on the environment. It is important to note that measures to prevent, protect and combat Coronavirus generate various types of additional medical waste, such as: contaminated masks, gloves, used or expired drugs and other infected protective equipment. The mismanagement of medical waste produced in the fight against Coronavirus could cause unforeseen effects on public health and the environment. From these considerations, Covid-19 raises questions and brings various challenges, including in the field of medical waste management. The most comprehensive international environmental agreement on hazardous and other wastes, which has as its purpose the protection of public health and the environment, is the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, to which the Republic of Moldova became a party in 1998.

An essential element in the situation of the onset of the coronavirus pandemic is the safe handling and final, effective disposal of these wastes to minimize possible side effects on health and the environment. Successful management of hazardous biomedical and medical waste is a complex process involving a wide spectrum of actions: identification; collection; separation; storage; transportation; treatment; appropriate disposal, as well as related important aspects, including disinfection, protection, and staff training.

If we analyse the experience of China, Italy, the United States of America, on the scale of waste associated with Covid-19, we note that the figures are imposing. For example, in Wuhan, where the first cases of Covid-19 infection were recorded, officials needed not only new hospitals capable of coping with the influx of patients, but also had to build new medical waste treatment facilities and organize the op-

eration of 46 mobile waste treatment facilities. Hospitals in Wuhan, with a capacity of generating six times more medical waste at the peak of the outbreak, compared to the pre-crisis period. Thus, the daily production of medical waste during this period had reached 240 metric tons compared to 40 tons before the epidemic.

In order to stop the spread of COVID-19 early and effectively, it is necessary to undertake a series of measures aimed at achieving a successful management of medical waste generated by the Covid-19 epidemic. Effective management involves the early, well-organized, and harmless disposal of medical waste by creating effective mechanisms for the collection, storage, transport, and disposal of particularly dangerous medical waste with a possible risk of infection.

Keywords: Law, management, medical waste, covid-19

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Digitalization in the Conditions of a Pandemic – Legal Regime of Electronic Prescriptions in Bulgaria

The study concerns the period of the extraordinary epidemic situation in the Republic of Bulgaria, announced by Decision № 325 of the Council of Ministers of 14 May 2020, considering the process of adopting amendments to the legal regime of prescribing medicinal products in the Republic of Bulgaria. The crisis caused by Covid 19 catalysed many processes in the Bulgarian legal system, as digitalization and the urgent need for it forced the Bulgarian legislation to meet these needs. The publication analyses the scope of application of electronic prescriptions in Bulgaria, describes retrospectively the slow process of digitalization of Bulgarian healthcare and presents a comparative analysis of European Union countries. It details the potential difficulties that doctors and pharmacists will face in applying the new amendments, giving recommendations for their minimization. It analyses the benefits of e-prescription of medicinal products on both national and European levels. The study also addresses the topic related to the possibility of obtaining medicinal products that have been prescribed in another European country, emphasizing the benefits of this type of supranational prescription in the fight against Covid 19. It gives clear recommendations on the need to improve the Bulgarian legal system in the direction of a wider application of digitalization and expanding the boundaries of telemedicine. It summarizes the potential steps for pan-European measures in order to build a modern and adequate legal system that can meet the needs of the Bulgarian and European society in the fight against Covid 19.

Keywords: electronic prescription system, pandemic, Covid 19, pan-European measures, comparative study

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Assessment of contagious waste management during the health crisis associated to COVID-19 Pandemic in Republic of Moldova

Pandemic coronavirus is a global health crisis that affected all countries and individuals. Due to the restriction measures enacted by Governments, all economic sectors were affected, including the field of human rights.

The COVID-19 Pandemic is a major challenge for Governments in terms of respecting and protecting human rights, as well as providing qualified medical services, to ensure the freedom of movement and the right to social protection to the highest attainable standards of physical and mental well-being.

Management of contagious waste is complex process, which presented a challenge for countries during the COVID-19 pandemic. With the global spread of the SARS-COV-2 virus, a huge quantity of contagious protective equipment waste such as masks, gloves, visors, goggles, and other infected protective equipment was generated. In the Republic of Moldova, the management of contagious waste generated by general population and in the activities of health services/institutions remains a pressing issue. To be solved, it is not only sufficient to respect the legal framework, it is imperative to use efficient mechanisms for its implementation.

Moreover, inadequate waste management of (non)contagious protective equipment put enormous pressure on the waste management system. In this context, were assessed a wide range of actions with increased risk of virus uptake such as: collecting, transporting, storing, processing, treating, using and disposing hazardous waste and other residues, given that improper management of contagious waste poses an enormous risk to human health, the environment and health-care.

Based on national contagious waste research, in most cases, there are separate spaces where contagious wastes are temporarily stored

before being disposed by destruction, incineration or storage. In order to strengthen and ensure efficient management of contagious waste, medical institutions received a set of recommendation and rules. Finally, we can conclude that Moldova, as many other states, has partially failed to fulfill its obligation of taking positive action to ensure basic human rights to its citizens. Central and local medical institutions must pay particular attention to the prompt, correct and efficient management of contagious waste.

Keywords: health right, COVID-19, contagious, waste, protective equipment.

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International conference “Responses to COVID crisis in Central and Eastern European Countries - New Frontiers of Health Law” was held 18-19 March 2021 at the Institute of Social Sciences. Organiser of the conference was the Institute of Social Sciences, Belgrade - Centre for Legal Research, in cooperation with the Erasmus University Rotterdam - School of Law, University of Maribor - Faculty of Law and the Association of Lawyers for Medical and Health Law of Serbia (SUPRAM).

The conference was organised as a review of the first year of different measures introduced as the response to crisis caused by COVID-19 pandemic in European states, with the special emphasize on (non)efficacy of measures and activities undertaken by the Eastern and Central European States to suppress pandemic. The conference gathered Health law scholars who have been dealing with the response to the COVID crisis in the region of Eastern and Central Europe. The research results were presented in the following panels: responses to health emergency, human rights in covid crisis, right to health vs/or in line with other human rights, vaccination allocation in times of pandemics, and challenges beyond health.