

## Democracy and Human Rights in Captivity of Security and Covid-19 Pandemics

Pavol HRIVIK<sup>1</sup> – Matej MINDAR<sup>2</sup>

Department of Political Science of the Trenčín University of Alexander Dubček, Studentska 2, 911 50 Trenčín, Slovak Republic  
E-mail addresses: pavol.hrivik@gmail.com<sup>1</sup> matej.mindar@tnuni.sk<sup>2</sup>

### ARTICLE INFO

#### Article history:

Received: 30.6.2021

Received in revised form: 30.8.2021

Accepted: 6.9.2021

#### Keywords:

human rights, democracy, security, public health, pandemics  
Covid-19, limitations of democracy and legally consistent  
state

### Abstract:

*The article deals with issues of human rights, liberty and democracy in the context of a widely perceived concept security, including protection of public health in the European Union and Slovak Republic during the long-term coronavirus pandemics of Covid-19. In the text of contribution, there are critically judged a solitary relation of human rights and democracy in an European rate, reasons of deformation of the agenda of human rights, thereafter some aspects of the contemporary human rights discourse and potential incompatibility in a field of human rights and finally restrictions of human rights and principles of democracy within a fight against Covid pandemics in Slovakia.*

## 1 Introduction

The submitted paper is a contribution into the discussion on limitation of values of democracy and human rights (HR) relating to the security concept (including public health protection) especially in the present-day periods of coronavirus (Covid-19) pandemics in the European Union (EU) and the Slovak Republic.

In the last 30 years, HR and their investigation in the EU have been through evident changeover which manifested itself in proliferating the examined themes, as well as modifications of applied techniques. The discussion on mutual relation of HR and democracy cannot be only limited by any frame of support to democracy. Changeovers in formulating and raising some concrete HR themes and issues such as social-economic inequality, inequality in parentage, slavery, national, ethnic and racial identities, different positions of males and females, or seniors and the young and so on, as well as different consequences of attempts on their reflection in politico-social practice, are in the long-term actual problems, whereby some of them are persisting during some centuries. Despite this, human rights did not use to be exclusively identified with democracy as a model of arranging the public place, as well as undemocratic regimes did not use to be identified with the absence of HR, eventually with encroaching them.

Decisive victory of a liberal version of democracy as fulfilling the democratic ideal in political practice, being appeared in the second half of the 20<sup>th</sup> century, meant starting up a new period of debates of which the central point was an issue of liberalism. Tieng up democracy with emphatic respecting, abiding and protecting HR was anticipated by identification of the liberalism ideology with doctrine of filling up HR mainly in political and civil, economic and social spheres

## 2 Experimental details

Investigation of human rights and their protection allude to several fundamental problems, first of all, to dissonant, ambiguous definition of an examined domain. But there does not exit a general accord on the solitary definition. Scholars markedly divide upon a question why we have human rights. (HOLZER et al. 2013: 17) The contemporary discourse on HR in relation to various forms of security is slightly more elaborate as in case of democracy and creates a more stable basis for further research. Within a context “human security”, a level of an individual and his security is connected to HR which shall be guaranteed through the medium of security. However, the solitary relation is not so trouble-free as it can seem. Many authors regard human rights and security enforce-

ment (irrespective of which form) as antagonistic terms that are in a systematic conflict. It results from simple argumentation that one's security means danger for the other one, and contrarily. A problem is also a different starting position at evaluating both terms relating to adopting a final decision when the approach "security first" is preferred. (GOLD, LAZARUS 2007: 3-4) Some scholars endeavour in this context to reconcile the both terms achieving a state of co-existence, but the relation by itself remains henceforward in imbalance.

The element of security (including protection of public health) can be perceived as a double-edged weapon which, on one hand, represents a necessary condition for further development and confirming the democratic order and legally consistent state, and, on the other hand, undermines democratic and HR principles. Therefore, security should not be in this understanding perceived as an absolute goal, but first as one of elements (though a cardinal one) which underlie democracy. This approach is in considerable contradiction with contemporary tendency of powerful governance in the EU states which posted security within various lockdowns over a level of all other goals of government programs. Likewise, this is also actual in today's Slovakia.

The familiar expression that security can exist without democracy and HR, but democracy and HR without security not, reflects a basic causal relation which in ideal case directs towards creating so-called democratic security. This represents a certain status when a state ensures an objective or subjective sense of security also in case of the contemporary coronavirus pandemics, whereby there shall be coming to a loop check of this activity through democratically elected authorities. Human rights and democracy are in the political and law practice so mutually re-bound, they can be shown that exertation and fortifying principles of democracy and legally consistent state are contemporaneously pursuit of enthroneing or improving HR protection, and contrarily. HR and democracy are most frequently connected with using the key terms "equality" and "dignity" which seem to be directly a definition for both mentioned concepts. And just now this close mutual cohesion of HR and democracy are often distorted by their separation. Anyway, at developing democracy there appears excited paradox of clash of human rights with pro-democratic strategies of which outputs can be either balancing between giving a priority to some right before the other one, or even their denial (e. g. direct responsibility or guilts for serious corrupt, crime whether other social-political causes joined with abusing the might). The bolstering of democracy and legally consistent state can be thus accompanying by constraining or even by ignoring HR. In such a way, in a process of formation of tenable democracy, there can become victims such rights as freedom of speech and movement, a right for personal honour and dignity, right-minded court trial, freedom of enterprise, protection of private property, or a right to administration of public affairs.

On the other hand, various movements for HR often enforce their minority interpretation of human rights, whereby they do not hesitate to work with strategies and tools unrespecting nor procedural, nor material interests of the say a "retarded" majority. The key question, for all that, is forming new human minorities, mainly to where extend borderlines of forming an "in general" admissible human-minority actor. Thus, we find ourselves on an explosive field of discussions on expanding catalogue of phenomena which are under protection of political correctness or argumentation of catching-up some alleged paragons, as well as discussions on contents of arena of human-rights activism and its used tactics. There does not exist a clear borderline behind that the HR politics becomes an aggression jeopardising the open democratic practice.

Human rights have apparent multi-disciplinary characteristics and strong cross-sectional character because each more general social or political problem can be also investigated through the human-rights optics. The criticised specific feature of the HR agenda is a fact, that authors of various publications investigating the monitored issue, are often former or contemporary human rights activists whose goal of their activity (including public or publishing ones) is deepening a respect of HR. Even, before starting their activities they have ahead clear to what result they want to come. Such an a priori guided procedure can have many additional consequences leading to deforming reflection of reality. To the most typical critical reflections belongs mainly mindless or primitive hand-picking the outputs and conclusions of those international human rights organisations and institutions which most pronouncedly support or encourage so-called progressive approaches.

In the last period, HR became a principal tool and a real linguistic instrument in domestic and international politics, as well as to a great extent also in political theory and theory of democracy. The continually growing cluster of political problems, challenges and disputations is framed by the HR language, what naturally leads to warming of uncontrolled expansion of the HR public discourse and activism. In their implication, there threatens spalling a peculiar significance and position of HR, similarly as terminological uncertainty or intricacy. (GRIFFIN 2008: 14) HR are simultaneously closely fastened with democracy, whether for in a political and judicial levels or again within context of its politico-theoretical or constitutional-law reflection.

Though between HR and democracy exist close instrumental and terminological connectedness and relations, in principle is true that HR have achieved a privileged place on the European continent. Strengthening their position can be an expectation as well as an implication of improving democracy, eventually their mutually conditional symbiosis in this process. In conjunction with expansion of a HR debate there grows also significance

and a role of judicial organs that are traditional institutions intended for protection of HR. In the last years, there cannot neglect the phenomenon of so-called judicializing the politics what means steadily bigger and more frequent reliance on decisions of judicial organs in some issues of moral and political significance, and thus on growing importance, influence and mightiness of judiciary. (HIRSCHL 2006)

In connection with relation between a state and HR, there comes to a decisive change in relation between law and politics. Law shall no longer be subordinated to politics and, contrarily, politics again becomes a tool of updating law. Therefore, originally from a clearly political ideal of HR became now a juridical ideal. There so comes to legalization of politics and, at the same time, to politization of law because content of what is wanted as a right by people, it has always an origin in their political attitudes. (FERRAJOLI 2004: 339) Up to now unregulated spheres of life have got under protection of rights, whereby law has started to frame the functioning and evolution of politics. Any social and political conflict is likely to interpret in a language of rights, and hence the decision-making of legal disputes became in paramount a political affair. Acceptation of the rights language can be viewed as an attempt to answer to some demands of various human, civil and political minorities.

Constitutional judges became main protectors of constitutional principles. They should represent a main counterbalance to democratic political majorities – when these majorities, controlling the legislation and executive, are not balanced by anybody and can so easily infringe constitutional principles. According to some scholars, constitutional courts shall even create a supreme power over other authorities because they are guards of the ultimate law of a state – a constitution.

Protecting and abiding HR suppose existence of a certain authority which is able to enforce given norms. In this context, there is a principal entity of a judicial code which esteems HR as a concept and, on its basis, there exists a space for their implementation. However, the HR concept is in a much greater conflict with a concept of security, whereby solitary character of this dispute is possible to determine by a concept of potential inconsistency. This situation is now sensed (mainly in liberal circles) as an urgent intellectual challenge. The HR protection, in this context, is getting into a situation when a character of universality is conditioned by significance of a solitary situation. Implication of this assertion is a state when predominates persuasion that some human rights can be, under certain circumstances, “turned off”. (GOLD, LAZARUS 2007: 4) This is evidently seen e. g. in contemporary Slovakia during Covid-19 pandemics.

This reflection is also reformed into real policies of supporting HR in concrete environments where a tense political situation persists in the state. Protecting HR is, in such cases, frequently complicated, sometimes even impossible. A basic anticipation is unconditionally conclud-

ing any form of violence which directly eliminates protection of HR and principles of democracy. In the context of contravening HR, the conflict in a version of violent interaction can be a reason as well as a consequence of these procedures. A threat is also transforming a conflict into a systematic restriction of HR and principles of democracy (e. g. within a contemporary pandemic situation or lockdowns), when a violent interaction in a form of an imminent political conflict or even a threat of civil war, is getting only other forms and appearances. The problem can be also persisting hostility or a feeling of injustice or an endeavour for vengeance. (SRIRAM, ORTEGA, HERMAN 2009: 4-5)

A legitimacy issue of application of violence in an environment, which is in principle undemocratic and comes within it to constant contravening HR and democracy, is a subject matter of long-term discussions. Apology is connected with solitary qualities of democracy which exceed any variants of a power format. However, a substantial part of scholars is convinced of unsubstantiality of the assumption that regards political and security interventions of governance towards a political opposition as a suitable tool of evolving democracy.

The period of the years 2020 – 2021 in Slovakia is under a badge of the global coronavirus (Covid-19) pandemics which dramatically influenced social-political evolution in the state, a measure of the applying of HR, fundamental freedoms and respecting the principles of democracy. The pandemics markedly deepened disparities in their application and increased sensitivity of the Slovak society to their abusing. This fact is reflected not only to an increased interest of the wide society and media, but also to the amount of submitted instigations of infringement into the hands of some state and independent institutions. The increased number of these instigations means that some anti-pandemic measures meant an expressive intervention into HR, fundamental freedoms and democracy.

Nearly all universal aspects of the political and social life during coronavirus pandemics investigated in the former chapters, referring to HR, freedoms and democracy, have evidently occurred also in the Slovak society, maybe in a more dramatic form than in other EU Member States. The attempts at the change-over of the Slovak society (connected with a fight against corruption, with a so-called cleansing of society from corrupt high-ranging politicians and their hangers-on, influenced oligarchs, mafiosos and criminal elements, as well as also connected with the fight against coronavirus pandemics and so on) promised by the present governance before and after the parliamentary elections (29 February 2020) are running in an extremely explosive environment. The issue of abiding HR, principles of democracy and all democratic forms of security so has become a dangerous cleavage between governance and political or civil opposition in the state.

In accepting measures for handling the pandemic crisis in Slovakia, as well as in some other states of the EU, we have not anywhere seen till now applying democratic security. In time, when pandemics Covid-19 has intervened the whole state in 2020, security in the context of the incoming new governance was more or less apprehended as a part of the promised general alteration during which the social and political order should have been changing in main features. To this change-over, the incoming government made use of the pandemic situation for social, political and economic lockdown which led to the expressive limitation of HR, principles of legally consistent state and democracy. In the pandemic period, there has been ceased to govern by a traditional democratic way – the Slovak parliament became a servant of the government (the government has in deed accounted to nobody), controlling the state has been purposively realized by some documents of low legal force (mostly by some ordinances of the Office of Public Health) by means of which some human rights, freedoms and principles of democracy were constricted.

The lockdown in Slovakia expressively constrained putting into effect of the HR agenda and strengthened misusing power. Into a forefront of the state, there got some cribbers, laggards, double-crossers and mafiosos with an absence of accessories with fundamental moral values, for whose is an authoritative way of governing naturally very close and mainly highly effective. Systematic arresting of many high-ranking people (former or present ones) mainly from the sphere of activities of some law enforcement authorities, the abusing of some financial funds, as well as from the economic sphere where considerable financial means were illegally poured. Politico-powerful manipulations and an active governmental support of the contemporary executive and judicial mightiness for purposive creation and promotion to so-called expiators – corrupt people with their criminal past readily to falsely testify against the politically accused and arrested within a long-term collusive custody in their efforts to rescue themselves from criminal prosecution – are drawing suspicions that the contemporary governance is, at any rate, trying to liquidate political and civil opposition in the state by a governmental way. For this purpose, the existing governance has made do with more or less a purposively announced and the endlessly prolonged hard lockdown which expressively confines fundamental HR, infringes some principles of democratic and legally consistent state and which threatens with hard sanctions, much harder than in the case of a normal status of a social life. Some eccentric forms of putting under arrest of some significant high-ranking people, e. g. two former police presidents, the head of the Special Prosecutor's Office, the head of the Slovak Intelligence Service, the former director of the National Criminal Agency and so on, and their extraordinary long-term retention in a collusive detention only on the basis of purposively prepared depositions of some expiators and without investigatory

acts. Thus, there comes to destruction of law enforcement institutions, mainly security and police units, as well as to big tensions among state force branches what naturally leads to their mutual conflicts and squaring accounts reciprocally. By this means, today's Slovakia approaches any Jacobin form of governance, whereby this governance is under the supervision of some foreign undemocratic bodies. Of course, this is not only a case of Slovakia which can get into a situation that it will not be able to govern itself independently and so there will be inevitably needed interventions (including a financial one) from outside, likewise in Greece.

Fundamental attributes and features of 15-months governing of the new government in the SR from the parliamentary elections'2020 during coronavirus pandemics are evidently connected with counteracting or restricting HR, fundamental freedoms, legally consistent state and democracy. They can be briefly summarized in the following way:

Anti-constitutional measures (also confirmed by the Slovak National Centre for HR) (SNC HR 2021); restraining up till switching off some HR and freedoms during the extraordinary pandemic situation joined with a hard lockdown; fast and flexible prolonging the lockdown according to the "needs" of the government; limitation of ownership rights; ban on gathering and curfew; unrespecting the right for correct and authentic information on a process and fighting against Covid-19 pandemics (e. g. on the full-area testing, purchasing the tests and vaccines, or voluntarily obligatory vaccination); illegal long-term detaining within collusive custody in nonhuman conditions only on the basis of allegations of some corrupt grafters; misusing the institute of the collusive custody in form of a "torturing" tool for fighting against political opposition and for groaning it down; breaking the claim to a fair process of the prosecuted and busted; corruption of some new leading public agents; discrimination in public procurement by direct awarding a tender in millions Euros to some predetermined subjects; disregarding and cecity of some mainstream media to violating many aspects of democracy and legally consistent state, liberty and HR and to abusing a governmental might; long-term serious tensions within the present government coalition at decision-making on sensitive political, economic-financial and social issues leading to a possible, early break-down of unstable governance; and so on.

The tangle of undemocratic elements of authoritative governance, liberal-Nazi and anarchistic features have tragically subscribed under the decrepit state of Slovak society, mainly its economics in which dominates the incompetent judicial power. This situation is possible to interpret as a period of undemocratic governance, when the previous elite expressively weekend and a new elite quickly usurped an exclusive monopoly for using violence and injustice. To this state, there decidedly ministered and still minister also liberal-progressive media and some political non-governmental organizations supported

from the outland. Politically motivated transformation of existing institutions and purposive creation of the new ones in the name of fighting against corruption become irresponsible, not ensuring protection and strengthening democracy, legally consistent state and HR. All of this serves as a support to political provision and ambitions of present governance.

## Results and discussion

The coronavirus pandemics Covid-19 pronouncedly perplexed the social, political and economic evolution in the EU and its Member States. Neither the Union's leadership, nor the States' one was not able to react long time by a suitable way. Their initial quandary in the fight against Covid-19, hasty implementation of full-area testing the people, introducing an emergence state and lockdown, restricting liberty, democracy and some HR, complications connected with vaccination and issuing so-called covid passports for free travelling and so on, are the common attributes of inelasticity and incommensurate ability or competence of the European and national leaders to manage a fight with pandemics. In the context of this fight, there occurs a factor of security and protection of public health which massively intervenes into the agenda of democracy and HR and these are getting into a special, up-to conflicting mutual relation.

Though between HR and democracy exist some instrumental and conceptual relations, there is basically in force that a result of the meeting of these two phenomena is now privileged position of HR, or more precisely HR in their content have "overbuilt" a concept of democracy. At the same time in some European democracies during an emergence state caused by global pandemics, from the agendas of HR and democracy have become any "tear-off calendar" and by means of their purposive limitation, from politics of state power there has become a strategic pressure tool against political and civil opposition. Hence urgently grows a significance of strict conceptualization of the agenda of HR, liberty and principles of democracy in some states, where tradition of rights has relatively very short duration what can limit the misusing of language of these concepts. This extraordinarily pertains exactly to the SR, the sequence of actual events and facts,

appearing in the Slovak society after the last parliamentary elections'2020 till now, confirms it unambiguously.

According to massive dissatisfaction with present contemporary functioning of democracy, legally consistent state and HR in Slovakia, there can seem to be paradoxical that just the ensuring of justice is an ideal which constitutional democracy shall endeavour after. The permanent shifting of this ideal, however, implies enhancement of claims for political conductorship of the state whereby fulfilling these claims is still expressively perceived as an indicator of defectiveness or hybridism of the democratic regime.

## References

- [1] [1] FERRAJOLI, L. (2004): Diritti fondamentali e democrazia costituzionale. – In: Commanducci, P. – Guastini, R. (eds.): *Analisi e diritto 2002-2003. Ricerche di giurisprudenza analitica*. Torino : G. Giappichelli Editore, 2004. pp. 331-350.
- [2] GOLD, B. – LAZARUS, L. (2007): *Security and Human Rights*. Portland, OR : Hart Publishing.
- [3] GRIFFIN, J. (2008): *On Human Rights*. Oxford : Oxford University Press, 2008.
- [4] HIRSCHL, R. (2006): The New Constitutionalism and Judicialization of Pure Politics Worldwide. *Fordham Law Review* 75 (2): 721-753. 2006.
- [5] HOLZER, J. – MOLEK, P. et al. (2013): *Democratization and Human Rights (Central-European Visions)*. Brno – Prag : Sociological Publishers in co-edition with Masaryk University, 2013.
- [6] HRIVIK P. (2015): The Critique of Some Aspects of Human Rights Development in the European Union In: *Political Science Forum* Vol.4, No. 2/2015.
- [7] SNC HR (2021): *Report on respecting human rights in 2020*. Bratislava : Slovak National Centre for Human Rights, 2021. ISBN 978-80-99917-12-6.
- [8] SRIRAM, CH. L. – ORTEGA, O. M. – HERMAN, J. (2009): *War, Conflict and Human Rights: Theory and Practice*. London and New York : Routledge, 2009.