

International Institute for Middle East and Balkan Studies **IFIMES** from Ljubljana, Slovenia, regularly analyses developments in the Middle East, Balkans and also around the world. **Ivana Lima** is a research fellow from the Rio-based Universidade Candido Mendes. In her text entitled “**Vienna process 2021: In times of crisis in Europe the Rule of Law needed more than ever**” she prepared a summary of the address of the Spanish Public Prosecutor, **Carlos López-Veraza Perez** at the international conference on the topic of the rule of law in the times of crisis.



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In times of crisis in Europe the Rule of Law needed more than ever

On the historic date of March 08th 2021 (*International Women’s Day*), a large number of international affairs specialists gathered for the second consecutive summit in Vienna, Austria¹. Along with the two acting State Presidents, the event was endorsed by the keynote of the EU Commissioner for European Neighborhood and Enlargement, Excellency **Olivér Várhelyi**.

Some of the most anticipated talks were grouped around *Panel II: Rule of Law, Health to Education, Social compact, Cross-generational and Economic greening, etc.* A long-time insider, Spanish Public Prosecutor, **Carlos López-Veraza Perez**, addressed the audience on this topic. Here is a short summary of his address.

The Panelist Carlos López-Veraza made a general analysis of the impact of Covid (C-19) on both the rule of law and fundamental rights in Europe. In the last year, he has worked until September as a prosecutor in Spain and then at the European Court of Human Rights, which gives him a global vision of the challenge in question. And although he does not say anything controversial, he made it clear that everything he says is his personal opinion, and in no way binds either the Spanish Prosecutor's Office or the Council of Europe. The speaker gave a generic analysis of the rule of law situation in Europe due to the pandemic. During crises, the state's powers do not usually decrease, but on the contrary, increase what has sometimes been called the ratchet effect. And it is at this point that the counterweight of states must be the rule of law and human rights. The relationship between the rule of law and human rights is increasingly recognized at the international level, not only at the European level but also by the United Nations itself. For this reason, the author considers it essential to explain the rule of law in terms of its relationship with human rights.

He has analyzed the topic in the light of the answers given by the European Union, the Council of Europe, but also from the point of view of a Spanish public prosecutor.

In Spain, public prosecutors have, in addition to their criminal functions, the legal mission of safeguarding legality and the fundamental rights of citizens. In this context, he notes that from his point of view as Prosecutor, he has observed from the beginning of the pandemic challenges to fundamental rights that are sometimes not so obvious. We are all aware of the consequences of the drastic impact on fundamental rights that C-19 has had on rights such as the right to demonstrate, the right of assembly, and the right to mobility, among others. But this cannot make us overlook other challenges such as guaranteeing the health of people in prisons and of any person deprived of liberty for any reason, rights of migrants, rights of persons with disabilities, as well as the need to guarantee procedural rights during trials. But there is also another fundamental challenge that arises mainly from confinement regarding the victims of crimes. In this context, and bearing in mind that it is women's day, he highlights the situation of women victims of gender violence who have been forced to live 24 hours a day with their aggressors. But also, victims of trafficking in human beings, who are increasingly difficult to detect due to lockdowns adopted by states as a way of combating the pandemic. The confinement makes it difficult for victims to ask for help or to be detected by the police or social agents, which is a serious challenge. And he recalls that Article 4 of the European Convention on Human Rights prohibits slavery and that countries are obliged to take effective measures to prevent and eradicate slavery, as the European Court of Human Rights ruled in, among others, *Siliadin v. France*.

In the second part of the presentation, he has given a brief overview of the measures taken by European states. According to a report of the Venice Commission of the Council of Europe, most EU Member States have resorted to states of emergency to limit rights. The main control measures have been parliamentary controls and the fact that the related measures are temporary in duration and often have a sunset clause. Only 14 states of the EU have not declared a state of emergency.

The author highlights that during states of emergency, there is a shift in the distribution of powers at both a horizontal and vertical level. The powers of the executive tend to be temporarily strengthened vertically and horizontally. Therefore, it is so important the scrutiny and oversight of emergency measures and, in any case, respect for fundamental rights. At this point, even if it is an ex-post control, the European Court of Human Rights will have to rule on the measures agreed by states if citizens come before the court in opposition to the actions taken to combat C-19, especially those that may have affected human rights.

That is why the author reports that the Secretary-General of the Council of Europe, Ms. **Marija Pejčinović Burić**, issued on April 2020 a toolkit for governments across Europe on respecting human rights, democracy, and the rule of law during the C-19 crisis and recalling first of all the possibility of invoking Article 15 of the European Convention if the States deem it appropriate. According to Article 15 of the Convention of Human Rights, 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, only a few states have made use of it. It remains to be seen whether this will have consequences for citizens' applications to the European Court of Human Rights about measures agreed by states to combat the pandemic.

There are some restrictive measures adopted by member states that may be justified on the ground of the usual provisions of the European Convention on Human Rights (Convention) relating to the protection of health (see Article 5 paragraph 1e, paragraph 2 of Articles 8 to 11 of the Convention and Article 2 paragraph 3 of Protocol No 4 to the Convention), measures of exceptional nature may require derogations from the states' obligations under the Convention. It is for each state to assess whether the measures it adopts warrant such a derogation; any derogation will be assessed by the European Court of Human Rights (Court) in cases that will be brought before it.

However, certain Convention rights do not allow for any derogation: the right to life, except in the context of lawful acts of war (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3), the prohibition of slavery and servitude (Article 4§1) and the rule of “no punishment without law” (Article 7). There can be no derogation from the abolishment of the death penalty or the right not to be tried or punished twice (Protocols Nos 6 and 13 as well as Article 4 of Protocol No 7).

Additionally, the Council of Europe has given in the mentioned toolkit some guidelines to ensure the rule of law and the fundamental rights during the pandemic, such as:

- Ensuring the principle of legality;
- The establishment of a limited duration of the regime of the state of emergency and the emergency measures.
- Limited scope of the emergency legislation.
- The principle of necessity
- Distribution of powers and checks on the executive action during the state of emergency regime

In conclusion, the speaker highlights that C-19 and the rule of law is a tricky balancing act. Laws must make the appropriate balancing of the interests at stake concerning human rights. A fair balance between compulsion and prevention is the most appropriate way to comply with the Convention. And as the panelist said – and the Final Document of the Vienna Process endorsed, too, even in an emergency, the rule of law must always prevail.

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¹ This leg of the Vienna Process titled: “Europe – Future – Neighbourhood at 75: Disruptions Recalibration Continuity”. The conference, jointly organised by the Modern Diplomacy, IFIMES and their partners, with the support of the Diplomatic Academy of Vienna, was aimed at discussing the future of Europe and its neighbourhood in the wake of its old and new challenges. This highly anticipated conference gathered over twenty high ranking speakers from three continents, and the viewers from Australia to Canada and from Chile to Far East. The day was filled by three panels focusing on the rethinking and revisiting Europe and its three equally important neighbourhoods: Euro-Med, Eastern and trans-Atlantic (or as the Romano Prodi’s EU Commission coined it back in 2000s – “from Morocco to Russia – everything but the institutions”); the socio-political and economic greening; as well as the legacy of WWII, Nuremberg Trials and Code, the European Human Rights Charter and their relevance in the 21st century.