



## COVID-19: Mitigating Impact and Overcoming the Crisis – Fundamental Rights and Rule of Law Aspects

10 December 2020 | 14:30-16:30 | EESC

### Summary

- Opening

The hearing was introduced by **Cristian Pîrvulescu**, president of the EESC Fundamental Rights and Rule of Law (FRRL) Group. He recalled that the hearing was taking place at an important symbolic moment, on Human Rights Day. He hoped that this event would allow civil society to be heard regarding its key role in overcoming the COVID-19 crisis. The agenda provided for two sessions, both moderated by FRRL Group vice-presidents, **Ozlem Yildirim** and **Helena De Felipe Lehtonen**, respectively.

- Session 1 | Mitigating impact during the crisis

Emergency measures: what impact for employers?

**Javier González López**, Social Affairs Department, CEPYME (Spanish Confederation of SMEs), explained the legal background behind the March 2020 activation of the *state of alarm* in Spain. The lockdown led to the closure of an estimated 100 000 companies. Mr González López reported that Small and Medium Enterprises (SMEs) were those that suffered the most, in particular in the commerce, catering, leisure and tourism sectors. Although regretting that decision-making affecting employers had not been sufficiently transparent and proportionate, Mr González López praised the temporary employment adjustment scheme put in place by the government, as it helped companies survive in terms of their labour force. In July 2020, the management of the pandemic was handed over by the central government to the regional governments, which took new measures in October to face the second wave. Mr González López held up management by the Madrid Region as an example of best practice, implementing confinement measures that were tailored to the actual situations in neighbourhoods and villages. According to him, this approach made it possible to take action without imposing the uniform closure of all businesses.

### Emergency measures: what impact for workers?

**Nicola Countouris, Director of Research Department, European Trade Union Institute (ETUI)**, set the context by recalling that Articles 15 of the [European Convention on Human Rights](#) and 52 of the [Charter of Fundamental Rights of the EU](#) provided for derogations and limitations of rights. However, such limitations should be exceptional, to address situations that "threaten the life of the nation" and should in any case be proportionate, time-limited, and properly scrutinised. While governments were granted a certain margin of appreciation in deciding on such limitations, they did not have "*carte blanche*" and should in any case remain within the limits of the rule of law. Mr Countouris illustrated his point with concrete situations taken from the [ETUC study on human rights and COVID-19](#). He highlighted for example the fact that a vague definition of "essential sectors for production" could lead to disproportionate restrictions being imposed by law. Following this presentation, the panel Moderator mentioned good practices entailing full involvement of trade union confederations at all stages of decision-making, which contributed to the legitimacy and relevance of the measures.

### Emergency measures: what impact for Civil Society Organisations?

**Alexis Deswaef, Vice-President of FIDH (International Federation for Human Rights)**, thanked the EESC for offering Civil Society Organisations a much needed space for interaction and dialogue with EU institutions. He explained that CSOs had already faced a complicated situation before COVID-19. The pandemic amplified the phenomenon of "shrinking space" for civil society that has affected many countries. According to his analysis, CSOs (in particular those working in the area of solidarity with migrants) have been facing criminalisation of their activities in some countries. Such restrictions were not limited to countries that have been under rule of law scrutiny by the EU, but concerned countries with long-standing human rights traditions. CSOs were also confronted with increasing difficulties in accessing funding. Mr Deswaef insisted that attention should be maintained to avoid the pandemic being used as an excuse to depart from respect of international Conventions and national Constitutions. Referring to the [FIDH COVID-19 tracker](#), he gave multiple examples of the impacts of COVID-19 and response measures. Mr Deswaef insisted that they have particularly weighed upon specific groups like the elderly, homeless people, migrants, detainees, and the youth – in particular in disadvantaged neighbourhoods. He concluded by stressing that the essential role of civil society in the response to the crisis should be further supported.

## • Session 2 | Overcoming the crisis

### The institutional response

**Alvaro De Elera, Member of Cabinet of Věra Jourová, Commissioner for Values and Transparency**, presented the most recent European Commission activities contributing to the strengthening of the trypsic of democracy, fundamental rights and rule of law. The [Democracy Action Plan](#) was conceived as one of the responses to phenomena like the rise of populism or interferences in democratic processes by internal and external actors. This Action Plan would be the basis for proposals for legislation in the areas of elections, media freedoms and the fight against disinformation. The new [Strategy on Fundamental Rights](#) aimed to increase awareness and access to remedies for European citizens. While the Strategy reinforced the implementation of the Charter in the work of EU

institutions, it particularly insisted on its implementation in Member States and on the empowerment of local authorities, judges, Human Rights Defenders and CSOs in that regard. Mr De Elera also referred to the first [Rule of Law Report](#) published in September 2020, which aimed to be a preventive tool encouraging multilateral dialogue in the areas of justice, anti-corruption, media and checks and balances. Mr De Elera insisted that, while the European Commission played a particular role as guardian of the Treaties, upholding the rule of law and other EU values was a joint responsibility shared with other EU institutions and Member States. He concluded with a perspective on exiting from the COVID-19 crisis, making the point that the objective should not be limited to simply preserving EU values. Rather, the EU should strive to recover from the crisis with stronger democracy, rule of law and fundamental rights.

#### The question of rule of law conditionality

**Terry Reintke, Member of the European Parliament, Committee on Civil Liberties, Justice and Home Affairs (LIBE)**, reflected upon the emergency and restrictive measures enforced by Member States. She pointed out that some governments have been using the COVID-19 crisis as a pretext to curb fundamental rights and limit parliamentary control. She made the point that rule of law conditionality in relation to the protection of the EU budget and the recovery fund was not so much a new concept, as the direct application of EU values as enshrined in the Treaties. Ms Reintke insisted that the acceptance of the EU values was an explicit choice made by Member States upon accession. She recalled that the position of the European Parliament on rule of law conditionality was ambitious, entailing notably a preference for reverse qualified majority voting at the Council. Ms Reintke concluded by asserting that legal decisions, not political declarations, should be the sole benchmark for the implementation of rule of law conditionality. She also called for a reinforcement of the use of other instruments such as the infringement and Article 7 procedures.

#### Exit strategies from urgency frameworks through the rule of law

**Dr Joelle Grogan, Middlesex University London, member of the RECONNECT H2020 Project**, first cited a [study under the 'Re:constitution' programme](#), which depicted the variety of States' responses to the crisis under the perspective of the rule of law. While some State authorities have relied on emergency provisions, some others have favoured ordinary health laws. Beyond the type of framework used, the key aspect that has impacted on public trust has been the lack of clarity and certainty of rules in some instances. Dr Grogan therefore thought it essential that COVID-19 management plans be certain, transparent and inclusive of civil society, including the social partners. Furthermore, she drew attention to the August 2020 [RECONNECT Policy Brief](#) which highlighted good practices in areas such as decision-making, transparency, public communication, legal certainty, and non-discrimination. Dr Grogan considered that such best practices should be central to the phase of crisis management that would concern the exit of the crisis and a return to normality. Key questions to pay attention to would be the risks of a power shift in favour of executive branches and the risk of permanent modifications of legal frameworks, for example criminal codes. In her view, increased cooperation between authorities and civil societies would be essential to ensure that best practices are implemented and risks addressed.

- **Discussion**

In reply to a question on the European Commission's plans to address disinformation, which has soared in the COVID-19 context, Mr Alvaro De Elera mentioned that the priority would be put on citizens' awareness. This was central to his view because there could not be genuine democratic debate without a previous agreement on what facts were. He also mentioned that the trend was to move away from self-regulation towards more binding measures in that area. In reply to points made about the European Commission's action to address rule of law challenges, he pointed to the high frequency of rule of law-related infringement procedures led by the EC.

Replying to a question on the risks of situations of "permanent emergencies", Dr Grogan pointed to the fact that the form of the law (ordinary versus emergency law) was not the most important criterion for detecting an abuse. In her view, the essential aspect to consider was the concrete risk of a shift of power away from parliaments and judiciaries to executives. She called for increased monitoring to watch out for a possible normalisation of emergency laws and decision-making. Mr Alvaro De Elera indicated that the European Commission was paying attention to these risks and recalled that constitutional changes should not take place during emergency situations.

- **Conclusion**

**FRRL Group President Cristian Pîrvulescu** thanked the participants for their rich contributions. They allowed the FRRL Group to approach the issue of the fundamental rights and rule of law aspects of the COVID-19 crisis from the viewpoints of employers, workers and CSOs and to benefit from valuable discussions with institutions, in addition to academic analysis. He considered that such public hearings were important to feed into the work of the FRRL Group.

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