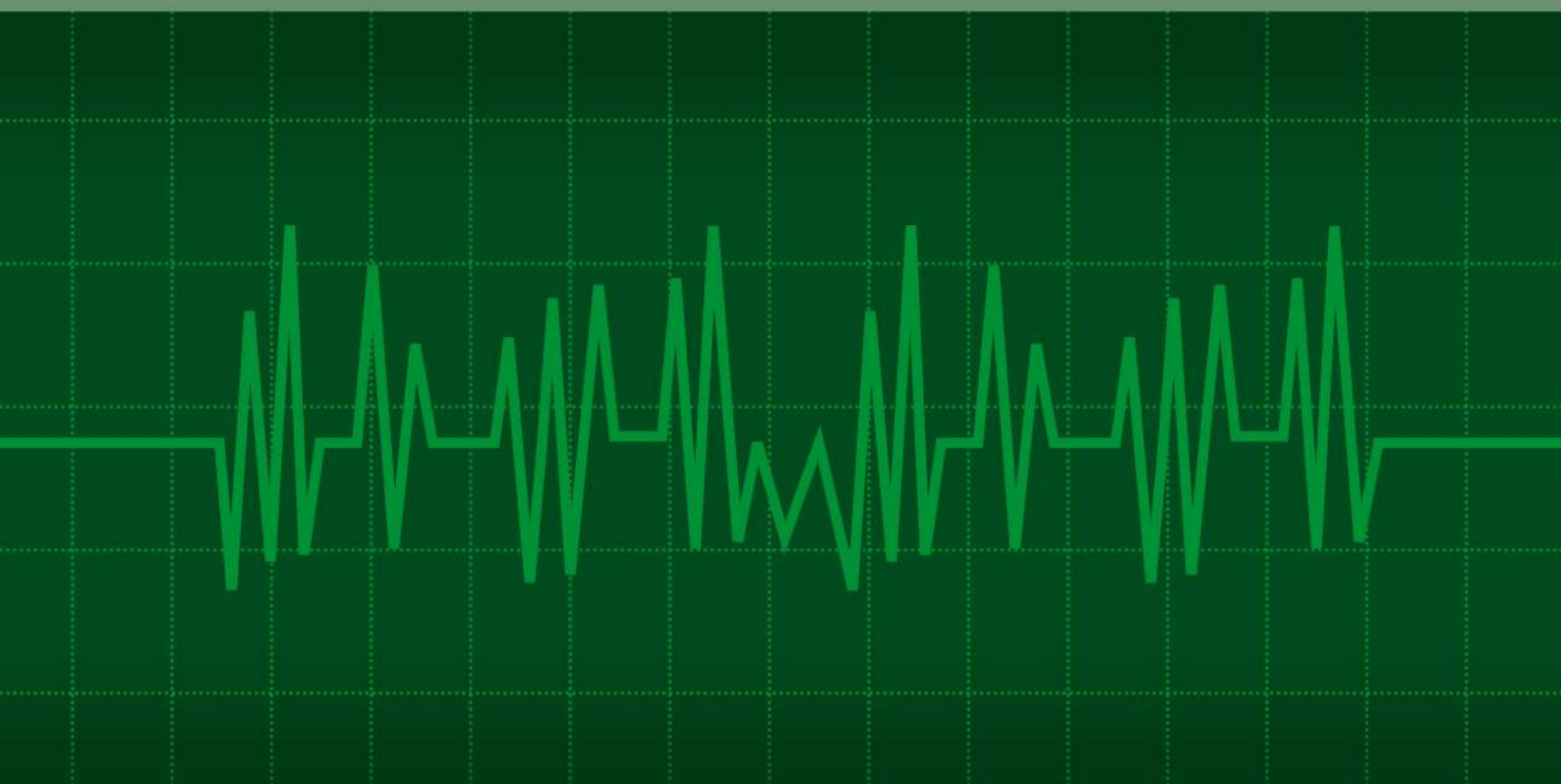


THE TEN PILLARS OF THE PROTECTION OF HUMAN RIGHTS DURING A PANDEMIC



Fundación
ABOGACÍA ESPAÑOLA



Coordinated by **Francisca Sauquillo**



Committed to
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INTRODUCTION

Victoria Ortega Benito

President of the Spanish National Bar Foundation
(Fundación del Consejo General de la Abogacía Española)

The risks and damages that pandemic eventualities entail, as we have seen, can drastically affect the authorities' agenda, also requiring something as complex as refiguring the value that each individual right has in a new pecking order of public interest values.

COVID19 has strongly undermined the way in which society has organized our daily lives and even our coexistence, something European countries had almost forgotten that it could really happen to us. The sacrifices that many workers, freelancers, businessmen, professionals, men and women, families, people in vulnerable conditions have had to suffer or will suffer due to this crisis, put strain on society and the country as a whole. How to minimize them? How much can we prevent them?

What are the legislative tools necessary and provided to restrict fundamental rights when facing a health emergency? Can we guarantee effective judicial protection in the face of these exceptional restrictions? Is a disinformation campaign about the effects of a virus, generated or promoted by a private organization or a government, part of freedom of expression? How much can we paralyze economic activity due to not entirely predictable health risks? What future does the technological capacity that already exists today to fully control, analyse and track our lives holds for our rights?

For the Legal Profession, the human rights framework is the focal point of the complex political exercise that involves the temporary relocation of fundamental legal rights in a serious pandemic. We have brought together a magnificent cast of national experts to answer these questions and to elaborate, with that outlook, these Ten Pillars. Our purpose is to offer public authorities' guidance within these parameters.

The spread of the effects of a disease on the health of people in a more or less uncontrolled way from one country to another constitutes a situation of extreme gravity, which can cost many lives. The scientific community considers that the number of infectious diseases to people may grow in the future, as well as the contagiousness of some of them, as a consequence of environmental erosion and increased human mobility. I want to take advantage of this paper (or screen, depending on the user) to praise science and research and to ask that its warnings not be ignored. Those responsible for public institutions, with the shortcomings and limitations that humans have, must manage the resources under our responsibility, but science allows us to remove obscurantism, falsehoods and superstition in this task.

Finally, I would like to refer to Francisca Sauquillo for her incredible generosity in accepting to hold the reins of coordination in this difficult work, to take up the challenge on issues that are politically and socially very controversial at this time. Without her overflowing energy, her leadership ability and her meticulous judgment these Ten Pillars would not exist.



1 THE LEGAL REGULATION OF THE PANDEMIC MANAGEMENT



Carlos R. Fernández Liesa

Professor of Public International Law at the Carlos III University of Madrid

In dealing with a pandemic, a human rights approach¹ must be followed, taking into account human rights that are limited by the measures that the affected State may be forced to adopt. In addition, the economic restrictions and adjustments that a pandemic may entail must be carried out by monitoring that an appropriate balance is maintained between the financial obligations of the State and the economic situation, and human rights and health obligations².

Likewise, the preventive approach, characteristic of the idea of risk society, should be strengthened in the face of foreseeable potential damage, such as a pandemic, which advises developing prevention and due diligence obligations. With this orientation, it is advisable to review the civil protection law, the national security law and the general health law. Likewise, pandemic prevention protocols must be carried out that are known and applied by the different public and private actors involved.

Addressing the full cycle of the catastrophe makes it advisable to draw up a pandemic law, which allows a comprehensive and coordinated approach to the competences and powers in the autonomous state, in such a way that greater efficiency in management is achieved. This law would require modifying some other rules to the extent that they are incompatible and must be accompanied by a harmonization of all those rules that are applicable to a situation of this nature.

The management of the pandemic should be carried out from the principle of subsidiarity. If a pandemic affects several territories or the State as a whole, the leadership of the response must be taken by the State, temporarily and exceptionally, regardless of the internal administration of competences in health. It is the State that has the appropriate level of action and it is the State that has the obligation to direct, control and supervise operations when facing a catastrophe. Some laws would have to be revised to consolidate this process.

On the other hand, the reaction to the pandemic must be based on scientific-technical criteria which requires the creation of a scientific body, which should be regulated by the pandemic law, independently of political decisions that are duly weighted by all interests present.

The restrictions of rights -ad.ex R.D. 463/2020, of 14-III of the State of Alarm - must be made in accordance with the Spanish Constitution and with the Treaties, so they must be exceptional, when there is danger to the life of the nation and must be adopted in a proportional, necessary and limited to the demands of the situation³ in its duration, geography and material extent.



It would be necessary to develop the law of state of alarm, exception and siege (and incorporate where appropriate the law of pandemics) in accordance with articles 116 and 55 and with the case of this pandemic, to develop standards of action that allow the limitation of rights without resorting to a state of exception, which is not foreseen for pandemics but for situations that seriously alter the public order.



1 In that respect see the draft articles of the ILC on protection of people in the event of disaster, of the United Nations (2016).

2 As the United Nations rapporteurs have pointed out in relation to structural adjustment programs and State debts and human rights.

3 See. General Observation No. 20 of the PDCP, of 31-VII-2001



2 PROTECTING VULNERABLE GROUPS

Natalia Peiro Pérez
Secretary General of Cáritas Spain



The COVID-19 pandemic has shown how a general context of initial inequality among people has shaken the weak bases of integration of many of them and has aggravated the prevalence and entrenchment of severe poverty in many others. In order to delve into a democratic society in which all of us have equal rights, it is necessary to build the bases of listening, finding consensus and protecting the most disadvantaged.

This crisis has made it clear that no pandemic, no matter how global, affects all layers of our society equally and that, once again, the most invisible people have been the most affected and it is them that the apparatus and the community are less able to support in an emergency situation. The humanitarian management of a pandemic cannot solve the deficits of convergence of the institutions, of the capacity of public services and administrations or of the shared responsibility. We have done everything possible, but the existing social bases have aggravated the “run for your life” circumstances in which the most fragile always lose.



When we talk about vulnerable people, we must try to do away with the perception of them as groups, in order to imagine a problem or specific characteristic, as diverse circumstances of exclusion concur. They are people with an absence of networks or support relationships so necessary for care in these situations. They lack sufficient economic resources, they have existing personal and family difficulties and they do not have access to the rights of social protection, housing or education, neither to connectivity nor to political participation. Moreover it is now evident, they lack necessary access to free justice when they are denied a benefit, when they tackle the renewal of administrative documentation, when they suffer the watershed caused by losing their job. They fall again and significantly lower because of legal and regulatory situations that trap them in front of a distant administration, far from its citizens.

And they are not only what they have been, but what they will be, and I say this due to the sad reality of the generational transmission of poverty, in a pandemic that exacerbates it: What will the future be for the boys and girls of families without resources? What priority will we give to reducing the inequalities that have once again alienated the poorest and most excluded? How will the digital divide be shortened when there are no resources nor skills and when they are not available and cannot be accessed on the market?

Therefore, it is necessary to tackle economic inequality with harmonious fiscal measures that guarantee protection, it is necessary to reduce the digital divide in a coordinated and global way to adopt and take advantage of the multiple private initiatives that emerged in the pandemic and, it is essential to protect welfare institutions: the State, the community and the family so that loneliness, disconnection and individualism do not find us again alone in a future pandemic. It is therefore necessary to support a change of values in which we are able to strengthen experiences of solidarity, articulate a space of shared responsibilities among all these institutions towards a context of less tension and greater democracy at the service of those who need it most.

• The elderly

Carlos María Romeo Casabona and José Miguel Rodríguez-Pardo del Castillo

Member of the Scientific Counsel and Director of
the School of Thought of the Mutualidad Abogacía Foundation
(la Escuela de Pensamiento de la Fundación Mutualidad Abogacía)

The elderly are especially vulnerable people, due to the progressive physical or mental deterioration that some may develop, but also in the face of the marginalization and abandonment that they tend to suffer and the feeling of loneliness that they can experience, thus being more prone to abuse and the factual deprivation of their rights for reason or by excuse of their advanced age.

This special vulnerability increases in pandemic situations, such as that caused by the SARS-CoV-2 virus, which is especially aggressive towards the elderly, having led to situations of abandonment and isolation and the deprivation of intensive health care necessary against very serious manifestations of the disease.

The elderly enjoy all the rights that as such are theirs and the effective respect of all of these must be vindicated, particularly those that in the context of a pandemic may be more relevant and enforceable, as detailed in an Annex to the Ten Pillars of this presentation, including:

- Respect for their autonomy as to decisions regarding their medical treatment.
- Non-discrimination in access to intensive care units based on age or other circumstances other than commonly accepted clinical criteria.
- The right to access health, food and other personal care, without being left to their own devices.
- The right of the elderly who live in residences to communicate personally with their friends and family, without detriment to taking on the pertinent preventive measures of contagion for all of them and the care home staff.

The Foundation Mutuality de la Abogacía has developed this text in an annex to the Ten Pillars.

• Persons with disabilities

Luis Cayo Pérez Bueno
President of the CERMI

People with disabilities, along with the elderly, have been the two social groups that have suffered the most from the devastating effects of the massive public health crisis caused by the coronavirus, which almost immediately became an economic and social crisis of yet unpredictable scope and duration.

The greater objective exposure of people with disabilities to the violation and neglect of their rights in critical situations such as emergencies and disasters, requires a vigorous response from the legal system, through the adoption of vigorous legislation for comprehensive protection against these situations, which Spain lacks today.

It is therefore necessary to have a general legislation for vital, social and economic protection in the face of emergencies and massive catastrophes, which considers and defines people with disabilities as a particularly vulnerable group, deserving of more intense protection in all areas.

Among the protective and defence measures for this population group that this new law should contain, would be the absolute guarantee of non-discrimination in access to vital services such as health and healthcare (no triages); the obligation to incorporate universal accessibility in all messages and communications from the powers and authorities arising from the emergency or catastrophe; the duty to ensure support and assistance, as well as basic supplies (food, medicine, care and therapies, etc.) for those that have reduced personal autonomy (walking, communication and understanding of the surroundings), always respecting their will and preferences, and economic and social protection through benefits and public aid necessary to maintain decent living conditions and promote community participation.

This new legislation should establish and regulate an injunction aimed at immediately obtaining effective legal, social and economic protection measures for the person in a situation of vulnerability in times of emergencies and catastrophes.



• People with chronic diseases

Carina Escobar Manero

President of the Platform of Patient Organizations

The protection of the right to health is a guiding principle that obliges public powers to organize and protect public health through preventive measures and the necessary benefits and services (article 43 of the Spanish Constitution), accounting for this health protection in the creation of the Public Health.

System, which guarantees the provision of health care as a public, universal and free service that also recognizes the Ten Pillars of the rights of patients, part of their Citizen's rights.

The obligation of public powers to protect the health of citizens against a pandemic such as COVID-19, and therefore to adopt preventive measures against contagion in addition to the health care that is required, becomes more urgent and necessary for people with chronic diseases, as a group that is especially vulnerable to COVID-19 disease; They need greater attention and follow-up both by the Public Health System itself and by the Occupational Risk Prevention Services or Mutual Societies in the work environment or by the Educational Centres in the case of minors.

It is the obligation of public authorities to promote the protection of the health of employees in the workplace. Thus, it is necessary that there are specific complementary measures for workers with a risk disease, such as providing special personal protection equipment, changing work shifts, the job itself, or finally, agreeing to isolate the worker, through furlough if necessary.

In the field of health care provision, people with chronic diseases have seen how their monitoring and assistance by the National Health System (SNS) have been greatly affected: appointments are cancelled, tests and surgeries suspended, with a lack of programs of specific information aimed at this group. In this situation, the need for continuous monitoring and counselling of the patient and the maintenance of screening and early diagnosis programs is evident.

On the other hand, special attention must be paid to children with chronic diseases. These boys and girls have been deprived of something as basic as being able to attend class. The right to education is a fundamental human right that is at the very heart of UNESCO's mission. In addition, education is a right inextricably linked to the right to health since it is education that guarantees the full development of character, the insertion of the minor in society with equal opportunities, in addition contributing to their economic and social welfare, which will negatively affect mental and physical health.

In this situation, the need to develop protocols aimed at guaranteeing protection at school for minors who suffer from a chronic disease that makes them more vulnerable to contagion is evident, prioritizing them in the delivery of protection equipment, ensure social distancing measures from their classmates or, if their isolation at home is recommended, guaranteeing the follow-up of lessons or through individualized online classes, also prioritizing the delivery of the necessary teaching material if they need it and guaranteeing the internet connection in their homes if they don't have any.



• Children

Carles López Picó

President of Spain's Children's Policy

The Committee on the Rights of the Child, in its recommendations to Spain, has repeatedly set the path to be followed by the different powers in our country. In the first place, the Committee has urgently recommended that Spain advance regulatory standards in order to protect children from violence. This issue, as the different studies⁴ of the ANAR Foundation well point out, has been accentuated during the months of confinement, with the home being the main space where children suffer violence.

On the other hand, the high rates of early school leaving in our country, higher than 17%, placing us at the forefront of neighbouring countries, causes the need to ensure, especially in times of pandemic, the maximum possible attendance at the centres of education as a mechanism to guarantee the right to education, especially for the most vulnerable children.

Furthermore, the high rates of child poverty in our country require measures, especially in times of pandemic, aimed at ensuring the basic needs and personal development of children, a sector especially vulnerable to measures such as confinement or closure of leisure spaces, which can significantly affect their development.

Finally, we cannot forget the need to have the participation of the children themselves in the decision-making process to ensure the best interests of the minor in all cases. In this way, protection of children against violence, guaranteeing the right to education, ensuring the development of children during confinement and having the perspective of the best interests of the minor in the set of public policies that are developed imply fundamental principles in order to take action to protect the rights of children in times of pandemic.



⁴ ANAR Foundation explains that during confinement violence against minors increases. Available at: <https://www.anar.org/dia-mundial-contra-el-maltrato-infantil-fundacion-anar-explica-que-durante-el-confinamiento-aumenta-la-violencia-hacia-los-menores-de-edad/>

• Access to housing

Javier Rubio Gil

Lawyer of the Centre for Counselling and Social Studies and Legal Commission of the Platform for People Affected by Mortgages (PAH)

The right to decent housing contained in the Spanish Constitution (Article 47) is revealed in this crisis as an essential instrument for the containment of the virus. The United Nations Housing Rapporteur, Ms. Leilani Farha, noted in March 2020 that "housing is the first line of defence against the expansion of COVID-19"⁵. In times of the pandemic, the link between



the right to health and the right to housing is confirmed to the point that individual and collective health is put at risk without housing.

In Spain, urgent measures have been established to protect the habitual home (mortgage moratorium, suspension of rental evictions, moratorium on rent in the state of alarm and extensions of rental contracts). However, such measures apply only to those who, as a result of COVID-19, are in a situation of economic vulnerability but do not protect those who were already vulnerable. These are necessary but still insufficient measures.

According to the human rights approach, safe housing occupancy for the entire population must be ensured during a pandemic, so in the short term a moratorium on evictions in the absence of housing alternatives is necessary in any form, agreeing to the compensations to third parties that may exist. But, in the medium term, it is necessary to develop a state plan coordinated with the autonomous communities that establishes a public housing stock sufficient to comply with article 47 of the Constitution in its true meaning.



5 <https://www.ohchr.org/SP/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25727&LangID=S#:~:text=La%20Sra.,discriminaci%C3%B3n%20dentro%20de%20este%20contexto>.

• Prison population

Ángel Luis Ortiz González

Secretary-General of Prison Institutions

The health crisis has tested the Spanish prison system. The deprivation of rights involved in the serving of a custodial sentence has been aggravated by the health protocols and provisions that have been issued to deal with the pandemic.

The outcome of the first months of the pandemic was positive: the mortality rate in prison was 10 times lower than among the general population, the hospitalization rate was 7 times lower and the number of positive diagnosis 4 times lower.

The experience accumulated in recent months has made it possible to know what aspects must be strengthened in order to be able to address with assurance a situation of health crisis similar to the current one. It becomes necessary and in fact work is already being done on measures such as:

- Complete the network of custody units so that all prisons can have sufficient beds in the chosen hospitals.
- To expedite the modification and adaptation of prison spaces- a measure put in

place during the first wave of COVID-19- for quarantine.

- Maintain a sufficient reserve of individual protective equipment.
- Assess on an annual basis the number of vaccines needed.
- To extend telemedicine systems (teleconsultation) in the field of health consultations to all prisons.
- Have their own disinfection equipment, providing continuous training for its application.
- Conduct seroprevalence tests for both professionals and prisoners.
- Permanently implement video conferencing systems with fixed telephone booths and computer equipment, which normally allow for video calls.
- Expand to every day of the week the realization of face-to-face communications to avoid crowding people.
- Finally, strengthen collaboration and coordination with other public health institutions (UME, Ministry of Health, the Ministries of Health of the autonomous communities) while continuing to work on compliance with Law 16/2003 that obliges the transfer of carceral Health to the autonomous communities.

• Migrants and refugees

Estrella Galán Pérez

Secretary General of the Spanish Commission for Refugee Aid (CEAR)

In the current context of crisis, action is needed for all citizens, including migrants, asylum seekers and refugees living in our country, so that COVID-19 does not pose a setback in guaranteeing their rights.

To this end, it is essential to establish a new flexible and effective migration management model with permanent measures that allow people to access regular legal status. Given the exceptional situation of the pandemic, it is necessary to initiate a process of regularization to guarantee the rights of all foreigners residing in our country. There are instruments in the current legislation that allow regularizing in 'exceptional circumstances'.

It is also necessary to prevent the restriction of freedom of movement caused by the closure of borders from infringing human rights and restricting access to asylum, ensuring legal assistance and adequate protection and reception for migrants and asylum seekers arriving on our shores, with a particular focus on the Canary Islands, given the current situation. Access to the international protection procedure should be ensured, avoiding excessive



delays both in the formalization of the application and in the instruction and resolution thereof. It is important that the preventive physical distancing measures established by the authorities at arrival points and care devices such as the Temporary Foreign Care Centres (CATE), Temporary Immigrant Stay Centre (CETI), Ports and Police stations, etc., are met with adequate health care and the transfer of its residents to the Peninsula in a seamless manner. It is time for the final closure of the Foreign Detention Centres (CIDs), applying the alternative measures provided for in the Aliens law put in place these past months and which have proven to be functioning properly.

Finally, to prevent border deaths, legal and safe routes need to be activated by increasing resettlement quotas, access to asylum in embassies and consulates, granting humanitarian visas, and easing family reunification requirements. At European level, Spain must promote the adoption of a secure landing protocol, the strengthening of the principle of solidarity between Member States and the guarantee of access to asylum in compliance with the principle of non-re-return even in situations of health emergency.



3 ACCESS TO MEDICATIONS AND VACCINES

José Vida Fernández

Professor of Administrative Law at the Carlos III University of Madrid



Access to medicines and medical equipment in pandemic situations is a determining factor in ensuring the still unregulated right to health, so it is essential to make the necessary adjustments.

Measures that are established, either by a single standard or in the different ones applicable to it, should cover both medicines (including vaccines) and medical tools (diagnostic tests, ventilators, masks, etc.) that can be just as essential. These measures should be designed in their entirety particularly in those critical aspects.

The authorisation of medicinal products should be a guarantee and not an obstacle, so both their safety and quality and speed of access must be ensured.

- The most appropriate route for authorisation in pandemic situations is a European one, so it is advisable to focus on the centralised authorisation by the European Medicines Agency strengthening the participation of States, and without prejudice to the possibility that it can be secured from them through the decentralised procedure if necessary.



- A comprehensive emergency procedure should be incorporated to shorten deadlines in pandemic situations, both at European and at national level.
- Conditional commercial authorisation, both at European and national level, should also be adjusted, as the specific requirements and obligations planned may be insufficient when the medicinal product is to be supplied in bulk to the entire population.

The patent system is deeply altered in pandemic situations where the public health interest prevails and the dynamics justifying the incentive of private investment by different factors (public financing, early purchase) are altered:

- In the case of essential medicines in a pandemic situation, it is reasonable to support a timely suspension of the patent system globally. Thus, in the case of COVID-19, the vaccine is being promoted to be considered a global “public good” and there is a proposal within the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to suspend the application of patents to facilitate universal access to all vaccines until global group immunity is achieved.
- At the national level, a specific system of compulsory patent licensing should be provided for medicines in a pandemic to guarantee its unprecedented implementation in Spain, through the automatic submission to this regime of the essential medicines necessary after the declaration of the pandemic, which would only apply when the corresponding requirements are met at the time of awarding the licences.

The supply of medicines and medical equipment needed in a pandemic situation must be ensured to allow access by the population on an equal footing:

- The current guarantees for the supply of planned medicines and medical devices are excessively generic, so specific measures should be introduced to ensure their continuity in pandemic situations.
- Supply should be ensured uniformly throughout the national territory, so special coordination missions should be specified at the Ministry of Health in order to implement equality in access for all citizens.

Public funding of medicines and medical equipment guarantees the right of access to everyone without discrimination:

- Medicines needed in a pandemic must be incorporated to the pharmaceutical service, for which criteria must be specified for this type of circumstance that primes health considerations over economic and budgetary considerations.
- Access to these medicinal products must be guaranteed universally to all citizens, regardless of their circumstances (nationality, residence, etc.) and without requirements in this regard (registering, etc.), and their funding must be comprehensive, so the corresponding co-payment should be excluded.
- The use of PPE in pandemic situations (masks, gloves, gowns), which in some cases is a legal obligation, must be guaranteed to all citizens or, at least, to the vulnerable population for health or economic reasons.



4 THE CHARACTERISTICS OF THE HEALTHCARE MODEL

José Ramón Repullo Labrador

Professor of Health Planning and Economics, National School of Health (Carlos III Institute of Health) and Coordinator of the COVID-19 Advisory Commission of the Collegiate Medical Organization

Human rights are not guaranteed by declarations; public services play an essential role in implementing certified guarantees. Health protection, especially in times of pandemic, is conditioned by a number of attributes of its organization and functioning, of which we highlight the following five:

- The Public Health System must have sufficient funding and public provision must be predominant. Because the public, owing to the fact that its mission and direct link to the general interest, has an immediate and unconditional responsiveness that cannot be expected from private health services. A well-funded, well governed and coordinated National Health System (SNS) is a first precondition for health services to respond equitably and appropriately to threats of pandemics and catastrophes. In addition, the SNS must assume a new role of preparation for pandemics, ensuring strategic inputs and promoting greater Spanish sovereignty in the production and access to necessary equipment and medicines.
- The public health structure (health promotion, disease prevention, risk protection and epidemiological surveillance) should be strengthened and kept active; only in this way can outbreaks be controlled early and selectively, preparing communities to improve their health and respond appropriately to the risks of the infectious pandemic, as well as the silent pandemic of chronic illness. The abandonment of public health in the 21st century in Spain is one of the causes of the vulnerability we have suffered against COVID-19; an avoidable and fixable undertaking in the short term.
- You have to reinvest in Primary Care, and revitalize it to really be the heart of the National Health System: its ubiquity allows it to reach the last corner of Spain; and its ability to know personally, treat, care for and accompany patients and their families, make its contribution essential to preventing, assisting and mitigating the effects of the pandemic. Their collaboration with Public Health enhances the ability to identify, contact and trace cases in the event of pandemics.
- Health care in nursing homes, and other social-health centres, must be directly and unequivocally tackled by Primary Care, Emergencies and National Health System Hospitals; it would seek to apply the principle of Health Citizenship for institutionalized persons.
- A network of public hospitals, coordinated, with means, good governance, and autonomy of management, is also a condition for the response to the pandemic; flexibility to adapt to critical care needs, increase support beds, or alternative solutions for contagious patients, should be consolidated into contingency plans, supported by additional investments and resources.



5 THE APPLICATION OF NEW TECHNOLOGIES

José Moisés Martín Carretero

Economist and professor at Camilo José Cela University

The emergence of the pandemic has led to the acceleration of the process of digitization of our economy and society, with the extension of remote working, the increased use of social media as an instrument of communication and information, and the massive use of e-commerce as a consumer formula. All elements that shape a new framework in the exercise not only of our civil and social rights, but also in the configuration of the concept of citizenship itself, which, today, is more digital than ever.

However, the use of technology, which has only consolidated trends that were already emerging in our model of society, also creates new gaps in our rights. The right to disconnection, a digital identity of its own, the privacy and ownership of our data, and social and labour protection in remote working contexts adds to the need to reformulate the concept of fair digital transition, which puts people at the centre of digitization and the use of technologies, in an inclusive way while avoiding imbalances and new economic and social gaps.

Indeed, in a country where digital skills are unevenly distributed, a part of the population faces information and communication technologies without the sufficient tools in terms of security, privacy protection, access to truthful information, or simply as a working tool. The most basic and worst-paid professions are often the least likely to be carried out through remote working and this reality can lead to new social inequalities.

The consolidation of a digitization with abundant rights must start with the incorporation into our legacy of a number of new technology-related rights: the right to fair social and labour protection in remote working contexts, including the right to define working hours and privacy outside of work, the right to protect our e-commerce interests and to ensure its extension does not affect the consumer negatively, the right to one's own image on social media, freedom of expression and truthful and effective information, away from fake news and "bots", the right to security, privacy and ownership of our own data, constantly threatened by algorithms based on "big data", right not to be located using our mobile phones, the right to digital inheritance, or the right to digital inclusion and non-discrimination of those people who by any situation are at a disadvantage. A whole set of rights that, consolidated in the Digital Rights Charter, must be effective through proper regulation and through a set of public policies, most of them still to be developed.

Digital rights must now accompany our process of digitization, which the pandemic has only increased and which must, in any case, serve to deepen a digital transition focused on people.

6 THE WORKINGS OF JUSTICE

Miquel Roca Junyent
Lawyer



A certain success of the consolidation of the rule of law is that it entails, as a result, a significant increase in litigation. Citizens, more aware of their rights, demand the protection of justice be effectual.

A secure society is consolidated, clearly concerned with strengthening the protection of what will define the framework of its well-being, security and freedom. From this starting point, it is clear that our Administration of Justice has been suffering for years from budget cuts, a fact that the crisis generated by COVID-19 makes more evident and sometimes with hints of gravity and urgency. On the one hand, the difficulties and the normal and usual functioning of the Administration of Justice and, on the other hand, the emergence of a whole new problem that does nothing but multiply the need for judicial decisions, puts Judges and Magistrates before a problem that sometimes exceeds their own powers. It is the constitutional principle of effective judicial protection that is currently being put in crisis; the rights of defence accompanying the exercise of constitutional rights and freedoms are called into question in so far as that right to defend the legacy of freedoms of each citizen sometimes cannot be effectively guaranteed.



This opens up a whole new range of reforms that are accompanied by the hint of urgency we discussed. Once again, it highlights the wisdom of opting for alternative dispute resolution measures, not only in the field of civil, commercial or family law, but also in the field of relations with the Administration, thus simplifying problems and circumstances affecting the provision of essential services or the execution of administrative contracts.

The enormous -unexplored- field of digital transformation applied to the Administration of Justice now becomes, no longer a necessity, but a requirement, otherwise we could remain in a degraded situation of guarantees that affect, once again, the fundamental principle of legal certainty as a basic element of any policy of progress and well-being. And this is a matter of enormous significance: the rule of law breaks down when legal certainty can fail as a result of functional and operational deficiencies in the field of the Administration of Justice.

That is why an in-depth reform of the Administration of Justice becomes one of the cardinal priorities of the current political and institutional issues. On many previous occasions this priority has been noted, scheduled and announced. But it has never come to materialize with all the breadth and efficiency it deserved. It is now the whole of the European Union that raises this issue, when political attempts appear that try to control judicial action instead of enhancing its independence. There is much at play and that is why this reform of the Administration of Justice should generate a broad consensus that would ensure its significant role in the consolidation and deepening of our rule of law.



7 THE MAINTENANCE OF ECONOMIC AND BUSINESS ACTIVITY

Jesús Ruiz-Huerta Carbonell

Professor Emeritus of the Rey Juan Carlos University (URJC)

The experience of the recent pandemic has highlighted the close relationship between public health and the functioning of economic activity. In view of the objective of identifying priorities, despite the obvious costs of a disease such as COVID-19 and the means available to combat it, there is no doubt that the protection of health and, in particular, of human life itself, as laid down in Article 3 of the Universal Declaration of Human Rights or Article 2 of the Charter of Fundamental Rights of the European Union, must prevail.

It is true, however, that a pandemic such as the current one has generated and is generating significant economic consequences directly or arising from measures taken to combat it. In this sense, when strict measures are put in place to protect the population, such as strict confinements, some economic activities — those that have been called “essential”— cannot fail to serve during the course of the disease, in the face of the requirement to meet the basic needs of individuals and to ensure the functioning of the country’s essential structures. The obvious consequence is that the first task of the public authorities should be to ensure as much as possible the health security of workers engaged in these sectors, as well as their families.

In the same way, and especially for the duration of the toughest and most general measures of confinement, maintenance of activity through remote working should be made as easy as possible, with working hours and conditions similar to those of face-to-face work.

Once the pandemic has been overcome, the option of remote working should be voluntary for workers, although it is necessary in any case to facilitate the reconciliation of work with the leisure activities of workers, as well as care for their families.

Policy makers should also seek to alleviate the serious negative effects of the disease on the country’s business fabric, establishing relevant mechanisms to protect small businesses, particularly smaller ones, and workers with greater difficulties, and making it as easy as possible to recover their business as soon as possible.

The basic instruments of action in this direction are measures for the temporary protection of employment, the development of unemployment coverage in terms of breadth and duration depending on the pandemic, the extension of individual safety nets ultimately, and the provision and implementation of the means necessary to stimulate the economic and social recovery of self-employed enterprises and workers from the moment the country’s health situation permits it.

The responsibility of public authorities, who are mainly responsible for the fight against the pandemic, should not impinge on their ability to maintain and strengthen their leading role in the field of incentives and aid to various economic activities, as well as mediators in social dialogue, a key factor in getting out of the economic crisis in the most limited timeframe possible.



Similarly, the very situation of the crisis must be used as an opportunity to demand from citizens a commitment to solidarity with their fellow citizens most affected by the pandemic and the economic crisis that has ensued, facilitating and promoting aid activities from the private sector and non-governmental organizations.



8 THE RIGHT TO INFORMATION AND FREEDOM OF EXPRESSION

Soledad Gallego-Díaz
Journalist



The right to receive and freely disseminate information and opinion is at the root of all democratic constitutions in the world. The United States bluntly states that Congress “has no power to restrict expression because of its message, its ideas, its subject matter, or its content. [...]” and in Spain, 190 years later, “the right to freely express and disseminate thoughts, ideas and opinions through the word, writing or any other means of reproduction” is recognized.

However, over the past two decades, and as a result of the development of Internet services and the existence of so-called “online platforms”, which have facilitated new technological systems of connection between people, there is a new phenomenon of intentional dissemination of fake news and opinions whose sole purpose is manipulation. This new situation, which affects the functioning of democracies is causing, in reaction, a debate on the control of freedom of expression.

The main thing is not to confuse mass disinformation campaigns, organized with great technological means, with the simple dissemination, in networks and digital media, of fake



news or iconoclastic or even contemptuous opinions. That right must be respected in any circumstance and cannot be restricted or conditioned, even in pandemic situations.

The problem arises when it is not false information spread by an individual, but when they are genuine disinformation campaigns that reach formidable levels of dissemination, through the use of robots. It is therefore not a problem of an “influencer” or a digital media that propagates so-called “fake news”. In such cases, most experts recommend transparency about owners and shareholders, official “literacy” campaign for citizens on the risk of “fake news”, and support for professional media.

The problem is how to avoid exposure of citizens to disinformation campaigns organized by pressure groups or by interests of countries or powers seeking the destabilization of a given society by systematically spreading hate-alienating lies, violent confrontation or unbearable uncertainty that would lead, for example, to the simultaneous fall of the digital media by computer attacks organized on an election night or mass promotion of inappropriate behaviour in a situation of health alarm. In these cases, the European Commission proposes to have formal monitoring mechanisms, equipped with the necessary technical means to detect and prevent such attacks. In most cases in association with intelligence services. It also proposes agreements with advertising companies to prevent these massive disinformation campaigns, spread by robots, from gaining financial reward by receiving ads that are associated with the number of clicks which are also automatically distributed by robots.

The risks of regulating freedom of expression by claiming the protection of society from lying and manipulation are far greater than the very dangers faced by these societies because of “fake news”. Without pretending to be cynical, a law has never been passed, theoretically, aimed at regulating so-called “yellow media” or sensationalists that has not been immediately applied by political powers to the critics of the press. It will be sufficient to encourage information transparency and to have the right technological instruments, capable of slowing down the gigantic malicious attacks promoted during election periods or moments of great shock, through unusual technological means. And leave freedom of speech as it is. Protected.



9 PERSPECTIVE ON NATIONAL SECURITY

Constantino Méndez Martínez
Lawyer



Security is one of the foundations of the social contract, an essential public good, a responsibility of the public authorities whose provision cannot be detached from other basic principles such as freedom, as provided for in article 17 of our Constitution when it states that “Everyone has the right to freedom and security”. In any case, security must be understood as a dynamic concept that projects its meaning on both national security and human security, with a view that encompasses both the protection of the social whole, its institutions and values, as well as that of its individuals and their personal sphere.

From this dual perspective, the doctrine of security has been developing in recent years trying to adapt to the profound social, political, economic and technological changes induced by the process of globalization, and anticipate the new risks and threats that this process entails.

This effort to adapt and understand a changing context has been systematically reflected in the National Security Strategies adopted since 2011. All of them are based on a holistic all-encompassing approach that conceives security in order to be able to respond to the complex challenges we face and the list of threats under analysis. All of them also refer to



the need to create a culture of prevention in society in which all citizens are actors of the security system.

Among the threats expressed by the National Security Strategies was the risk of possible pandemics. However, the extent of that risk and possible responses were not sufficiently weighted. It is true that no one among us was prepared, but it is clear that in the new global contexts the capacity of the old nation-states to intervene would be insufficient and that the effort to combat these new threats should have been prepared under an effective and efficient model of multinational cooperation.

In any case, we must assume that the impact of COVID-19 has tested our national security system and the resilience of our society and that, beyond the assessment of our successes and mistakes, it is necessary to move forward in adapting our model to the new contexts of globalization and interdependence. This adaptation does not go through limiting guarantees or reducing spaces for the exercise of freedoms, but through the reorientation of the role of institutions towards multi-level governance models that have local and global capacity for intervention and that fight decisively against new forms of vulnerability that cause insecurity in citizens, challenge the role of the State and reduce the spaces of freedoms.

The strategy to be developed will have to be based on the ability to deal with these threats in a multifactorial and transnational way, taking into account the need to prevent them, know their causes, cooperate multilaterally in the eradication of them and develop a culture of security that citizens share in solidarity. A culture of security based on the defence of our common values within the framework of our constitutional order, life, freedom, justice, democracy, social welfare.

10 INTERNATIONAL COOPERATION AND ENVIRONMENTAL PROTECTION

Marta Iglesias and Maite Serrano
NGOD Coordinator for Development



The serious crisis caused by the COVID-19 pandemic confirms that we are interdependent and eco-dependent, living in a world where what happens anywhere on the planet affects us all in the different aspects of life: health, education, employment, food security, education, access to housing, etc. This situation also highlights, along with other crises - such as climate, biodiversity loss, increased hunger and inequality - a vicious cycle that we need to change with policies that put life and the planet at the centre.

To address a global problem like the pandemic, we need global responses based on international cooperation, social and global justice. Responses must also be multisectoral and comprehensive, addressing the interactions of different aspects of the crisis. We cannot rest by trying to control and eradicate the virus only within our borders. We will only be safe from the pandemic when all the countries of the world are safe, forcing us to look at what is happening elsewhere with the same attention with which we look at the impact of the pandemic on our own locale.

In this context, public policy on development cooperation plays a key role as a preferred instrument of foreign policy in helping to address the pandemic and its consequences from



the promotion of human rights, gender equality, the eradication of different discriminations, environmental emergency, the defence of global public goods (such as health, education or the environment) and policy coherence for a sustainable development, as proposed by the 2030 Agenda.

In this regard, we propose the following measures to address the pandemic and its associated crises through a transformative and resourced international cooperation in a coherent external action beneficial to human rights and the environment.

- Reform the cooperation policy in its central institutions, place it at the centre of external action and provide it with sufficient resources to reach 0.7% by 2030.
- Strengthen a state system of emergency and humanitarian aid that is prepared to respond quickly and effectively in the various humanitarian crises. The implementation of a strategy of Spanish Humanitarian Diplomacy will be vital in this objective.
- That Spanish cooperation policy and external action have as their priority objectives:
 - Contribute to strengthening public health systems in partner countries to ensure pandemic control and universal access to health.
 - Strengthen almost non-existent public social protection systems that respond to millions of people dependent on the grey economy and low-income families.
 - Counteract the unequal impact of the standstill of the face-to-face education system, prioritizing the right to education as a policy that promotes equal opportunities.
 - Ensuring that pandemic control measures do not limit political freedoms, especially by monitoring violence against human rights defenders and the reduction of the extent of civil society.
 - Supporting policies of equality and policies against violence against women, violence that has been aggravated by confinements.
 - Contribute to curbing the food crisis and the reconfiguration of the global food system. Contribute to the cessation of food speculation and hoarding of land and fishery resources.
- Contribute to the construction of a European and multilateral policy that promotes sustainable development consistent with all these principles.
- Strengthen the European Union's Instruments for Civil Protection and Humanitarian Action.
- Enhance scientific cooperation and the exchange of experiences and lessons learned between countries.
- With regard to the protection of the environment and human rights, we consider it important that a law on due diligence of companies, human rights and the environment



be passed; reviewing and reorienting free trade and investment agreements as well as public procurement agreements and imported agricultural product standards to strengthen their contribution to sustainability, climate action and human rights.

THE TEN PILLARS OF THE HUMAN RIGHTS OF THE ELDERLY IN SITUATION OF PANDEMIC

School of Thought Mutualidad Abogacía Foundation.

Carlos María Romeo Casabona, member of the Scientific Council, and José Miguel Rodríguez-Pardo del Castillo, President.



The elderly are particularly vulnerable people, due to the progressive physical or mental deterioration that some of them may develop, but also in the face of the marginalization and abandonment they usually face and the feeling of loneliness that they experience. They may be more prone to abuse and factual deprivation of their rights due to the excuse of their advanced age.

This particular vulnerability increases in pandemic situations, such as that caused by the SARS-CoV-2 virus, which is particularly aggressive towards the elderly, which has given rise to situations of abandonment and forced isolation and deprivation of intensive health care required in the face of very serious manifestations of the disease.

The elderly enjoy all the rights which correspond to them and the effective respect of these rights must be demanded, in particular of those which in the context of a pandemic can be more important and relevant.

THEREFORE, THE FOLLOWING RIGHTS ARE CLAIMED :

1 Respect for the dignity possessed by all human beings, including those who, like the elderly, experience situations of greater vulnerability in times of pandemics.

2 The strict observance of the principle of equality of the elderly in any situation in which they find themselves, such as being involved in a pandemic.

3 Access to health care, as the ultimate expression of the rights to health and health protection, which includes person-centered care, and is ensured in the performance of the diagnostic tests available and indicated for the elderly, in the provision of appropriate treatment individually, in the inclusion, on an equal basis, to the prevention programs of contagion for them and their caregivers, such as access to efficient and safe vaccines.

4 Non-discrimination regarding access to intensive care units, based on age or other circumstances other than commonly accepted clinical criteria.

5 The respect of their autonomy with regard to decisions regarding their medical treatment, providing them with the necessary information beforehand so they can make decisions.

6 The right for the elderly to access appropriate food resources according to their individual condition, as well as other basic products or services of a personal nature, without being left to their own devices.

7 For the elderly who live in residences to be able to communicate personally with their friends and relatives, without prejudice to adopting the pertinent preventive measures of contagion for them, nor for themselves nor for the personnel who cares for them.

8 Personal and family privacy and to the protection of your personal data, including those that appear in health records, such as clinical history.

9 Guarantee the free exercise of their social rights, even in situations of restrictions caused by the pandemic, will be exercised on equal terms with the rest of the citizens, such as, among others, mobility, the development of training activities, leisure, recreation and sports, religious practices, contacts with friends and relatives, compliance with public and private obligations of various kinds, participation in institutions, societies and other public or private groups that make decisions that may affect the interests of the elderly, both individually and in the collectivity.

10 The strict observance of the previous rights that also correspond to dependent elderly people, and the others that are specifically attributable to them due to their situation of dependency, both health and social rights, also covering the elderly living in residences.

Madrid, December 10 2020,
Anniversary of the XXVIII
Proclamation of the Universal
Declaration of Human Rights.



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