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Legal Aspects of Measures Implemented for the Management of SARS-Cov-2 Crisis in Greece¹

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Abstract

The management of SARS-CoV-2 pandemic has seen extensive criticism on the subjects of legality, social liberties and general scientific morality. The method used by the Greek state to impose control measures was that of Acts of Legislative Content. The other available alternatives were that of a “state of siege” and the “emergency civil planning”, which were both determined to be legislative disproportionate to the situation and could have, if chosen, a significant potential political cost for the government. The measures were imposed with the justification provided by art. 25 par. 1 of the Constitution which states that the state has the right to claim of all citizens to duty of social and national solidarity, implying that the state is able to request by its citizens to restrict their rights in favor of the above duties. However, the above justification can be considered relevant only in the case of these measures being proportionate to the threat posed by the pandemic. Further research on the subject of proportionality would be necessary to comment on the justification of the measures in regards to the threat posed by the pandemic.

Key Words: Covid-19, SARS-CoV-2, pandemic, control measures, emergency management, legal aspect, crisis management, civil rights.

Introduction

Since the first days of urbanization, humanity has struggled with infectious diseases and their implications on both human pathophysiology and societal structure. In the most recent years, Ebola in West Africa (Ohimain & Silas-Olu, 2021), Zika in Latin America and the Caribbean (Santos et al., 2023), Cholera in Yemen, Haiti and Zimbabwe (Federspiel & Ali, 2018; Piarroux et al., 2022; Cuneo et al., 2017), as well as the H1N1 global influenza pandemic of 2009 (Fineberg, 2014) are but a few examples of infectious diseases, which resulted in several disruptions of the normal societal operations on ethnic, regional and global levels. Often, the measures imposed by the governments or global organizations were seen as invasive and out of proportion compared to the threat posed (Alhaji, 2021). The most notable, and most recent, example is that of the SARS-CoV-2 pandemic. The severity of the measures imposed by ruling authorities in order to limit the impact of the disease has

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widely been criticized as to the actual threat the disease posed to both the individual (in regards to its physical implications) as well as the disruption of the normal societal operations (Tsiliotis, 2020). The aforementioned criticism proposes that these measures unjustly restricted a number of social liberties. The measures implemented have been criticized with regards to three major areas, namely their legality, their social acceptability and their scientific morality.

The importance of studying the above claims lies in the lessons-learned during the current post-crisis phase of the SARS-CoV-2 pandemic (Goh, 2021). The post-crisis phase includes the conclusion of the crisis and the post-evaluation of the situation. Specifically, since the SARS-CoV-2 pandemic nears its end, it is important to reflect on the experience gained through the management of the crisis and identify the cases of mismanagement of the pandemic, so as to apply these lessons-learned to any future situation which might be similar to the one experienced.

From the above, three obvious research questions stem, namely how these measures were adopted, why was the specific method of their adoption chosen and whether there were actual violations of human rights during their implementation. Due to pragmatic reasons, the research will be limited to those measures imposed and enforced in the Greek state and society.

Literature Review

Regarding the case of the Greek population, most scientific studies conducted focus on the acceptance of vaccination (both for initial and booster shots). A study by Karavokyris (2021) argues that the measures imposed by the Greek authorities came under a state of “*emergency law*”, which is provided under art. 44 par. 1 of the Greek Constitution. Specifically, the Constitution states that “*Under extraordinary circumstances of an urgent and unforeseeable need, the President of the Republic may, upon the proposal of Cabinet, issue acts of legislative content. Such acts shall be submitted to Parliament for ratification, as specified in the provisions of art. 72 par. 1, within forty days of their issuance or within forty days from the convocation of a parliamentary session*”. The latter provision is provided under the scope of these extraordinary circumstances prohibiting a parliamentary summit. However, even during the height of the pandemic, the parliament saw no major disruptions in its daily operations. The mention of art. 72 states that these emergency legislative acts of the President of the Republic must be ratified in Plenum and no later than 40 days after their enforcement, otherwise they are voided.

In another relevant study performed by Papadakis and Dimari (2022), a number of legal documents and public announcements produced by the Greek legislative and executive authorities were examined in regard to the justification of the measures imposed suspending public liberties in order

to provide for the physical survival and protection of public health. The article concludes that while the measures enforced were indeed extraordinary in regard to the situation, they were nonetheless proportionate to the threat presented by the pandemic (Dimari & Papadakis, 2022).

Methodology

In order to answer the research questions proposed in the introduction, it is necessary to examine the relevant legislative texts and determine their connection, as well as what their implementation entailed through a pragmatic perspective. In the context of the Greek legislative system, a seniority exists between the different legal texts. The most senior text that exist is the Constitution and its modifications, followed by the European and any international legislation that has been incorporated into the Greek legislation. Specifically, article 28 of the Constitution provides that any international law as of the time that they are ratified shall be considered an integral part of domestic Greek law and prevail any contrary provisions. The EU Regulations and Decisions are automatically binding for all member states, including Greece, while Directives need to be incorporated into the country's legislation by a set date (European Commission a, n.d.; European Commission b, n.d.). Following the constitution and any international legislation incorporated, formal laws are the next step in seniority, followed by Presidential and Royal Decrees. The hierarchy concludes with the decisions of the various agencies, which are analogous to the seniority of the issuing authority. Any legislative or administrative texts belonging to the same seniority level are determined by their chronological order of adoption.

Table 1: Hellenic Legislative Texts Hierarchy		
Seniority Level	Legislative Text	
1	Constitution	
2	Formal Law	
3	Presidential Acts of Legislative Content	
4	Presidential Decree	Royal Decree*
5	Ministerial Decision	Joint Ministerial Decision
6	Agencies' Decisions and Directives, according to the authority's seniority level	

*Royal Decrees were instituted by the King until the abolition of monarchy in 1973. Some of them are still in effect today, as they were never revoked or voided by newer legislation. **Source: Own elaboration**

To answer the research questions, it is necessary to review the legislative acts instituted for the purpose of managing the pandemic emergency and compare them to the Constitution and any relevant previous Formal Laws. All Formal Laws, Presidential Acts of Legislative Content, Presidential Decrees and Ministerial and Joint Ministerial Decisions are being published in the Newspaper of the Government, issued by the National Printing House and are made publicly available at the NPH's website (National Printing House, n.d.). The majority of the Agencies' decisions are made publicly

available through the “DIAVGEIA” Platform (Ministry of Digital Transformation, n.d.). The Constitution and its revisions can be accessed through the webpage of the Hellenic Parliament (Hellenic Parliament, 2019). The legal documents produced specifically for the management of the SARS-CoV-2 pandemic have been conveniently gathered at the Covid-19 government platform (EODY, 2021).

Results and Discussion

The use of the legislative procedure discussed above is seen as optimal for the nature of the threat, as the other two possible alternatives would have been extremely disproportionate to the threat of the pandemic and would also have a notable political impact on the government. Specifically, the two other legislative alternatives which allowed for the implementation of emergency measures include the “*state of siege*” and the “*emergency civil planning*”.

The “*state of siege*” is an extraordinary measure, provided under article 48 of the Constitution. When this article is activated, it is possible for the Parliament to suspend a number of specific articles of the Constitution, including the article 5 par. 4 which permits the free travel of individuals and art. 11, which permits the free and peaceful gathering of individuals, provided that they do not carry arms, restrictions which were enforced during the pandemic. However, in order for the government to activate art. 48 and impose these restrictions, it is necessary for the country to be in a state of war, be under military mobilization or for an active movement to overthrow the democratic government be present.

The “*Emergency Civil Planning*” Legislative Decree No 17 of 1974 is implemented in cases of “*any sudden circumstance resulting from either natural or other events, war-related or not, or any other extraordinary events which have as a result the occurrence or threat of occurrence of damages, loss or destructions of materials and individuals of the Country or the obstruction or disruption of the economical and social procedures of the Country*”. The implementation of the above Decree requires the involvement of the armed forces and explicitly mentions that in order to utilize this state of emergency, it is necessary for the Minister of Defense and the Armed Forces General Staff to recommend its implementation to the Prime Minister. Its implementation involves the declaration of a partial or total civil mobilization, under which any civil entity is obliged to provide assistance and any resources necessary to the armed forces which are put in charge of managing the emergency situation.

From the above analysis of the other two possible legislative alternatives, it is made evident that these, while theoretically are provided for the management of emergency situations even in times of peace,

are mostly oriented for the preparation of the state in case of an armed conflict and the management of an ongoing internal armed conflict. Therefore, they were not suitable to be implemented for the adoption of emergency measures proportional to the situation. Another important factor to be taken into consideration is that the open involvement of the armed forces in the managing of the emergency would come with a severe political cost, which would derive from the events of the 7-year military junta of 1967, which has left a severe impact on the Greek social conscience still visible today, especially if we take into consideration the progress and liberalization of the Greek society.

The Greek Constitution provides in art. 11 par. 1 the right of citizens to assemble peaceable and unarmed. Restrictions to the above can be enforced by decision of the police authority “[...] *if a serious threat to public security is imminent, and in a specific area, if a serious disturbance of social and economic life is threatened, as specified by law*”.

In art. 25 par. 1 it is provided that the rights of all human beings, individuals and as a member of society, and the principle of the welfare state rule of law are guaranteed by the state. However, in the same art. par. 4 it is stated that “*The State has the right to claim of all citizens to fulfill the duty of social and national solidarity*”, implying that the state might request by its citizens to restrict their rights in favor of the duty of social and national solidarity (Tsiliotis, 2020).

The prelude of every legislative text, apart from the Constitution, includes the senior or chronologically previous legal texts the new legislation is based upon. One of the first Acts of Legislative Content to be implemented for the management of the pandemic was the Legislative Act 68/20-03-2020 “*Emergency measures for the management of the consequences of the threat of Covid-19 proliferation, the support of the society and business and the smooth functioning of the public administration*”. The Acts of Legislative Content’s prelude mentions the art. 5 par. 1, 4 and 5, art. 18 par. 3, art. 21 par. 3, art. 22 par. 1, art. 25 par. 4, art. 44 par. 1, and art. 106 par. 1 and 2.

The provisions of art. 11 were fulfilled, as the lockdowns were, especially in the later stages of the pandemic, enforced in a prefecture-basis and were imposed by Presidential Acts of Legislative Content (EODY, 2021), while the provisions of art. 5 par. 4 were used for the restriction of domestic and international travel. Art. 18 was used for the commandeering of resources of the private sector.

In general, the narrative of the prelude focuses mainly on the state’s obligation to protect its subjects (as seen in art. 5 par. 1, 4 and 5, art. 21 par. 3, art. 22 par. 1 and art. 106 par. 1 and 2), rather than the need to restrict their freedoms in order to protect them.

Greece has also ratified by Formal Law (L. 2462/1997) the “*International Covenant on Civil and Political Rights*”. The most relevant provision of the Covenant is that of art. 7 which states that no

individual can be subject to medical experimentation without their consent. Similarly, the Formal Law (L. 2071/1992) “*On the Rights of Hospitalized Patients*”, art. 47 provides that it is within the patient’s rights to consent or deny any diagnostic or therapeutic procedure that they might be subjected into. The main criticism on the subject is that while the vaccination procedure was not made directly mandatory, it was made evident that there was social pressure for the individuals to be vaccinated. A notable example was the instigation of a fine for the unvaccinated population over the age of 60 (L. 4865/2021 art. 24).

Conclusions

In summary, and to answer the research questions set in the introduction, the emergency measures were implemented through the procedure of Acts of Legislative Content. This specific method could be argued that it was chosen due to its simplistic nature and due to the unsuitability of the other two possible alternatives (state of siege and emergency civil planning), as well as the possible political cost the other two would entail.

The potential violation of human rights requires further consideration in the context of the current research approach. Further study would be necessary to determine the basis and nature of expressed criticism. In addition, through a subsequent investigation, we will examine the proportionality of the measures adopted in regards to their scientific justification and effectiveness and in comparison to the actual threat presented by the pandemic. The examination of proportionality is necessary in order to assess the justification for their implementation.

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