Human Rights, the Challenges of the Last Decade and New Regulations[1]

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Abstract

When we consider the future of human rights and whether they will be considered more or less important in the years to come, many potential challenges come to mind: climate change, nationalism, inequality, growing authoritarianism and, last but not least, crises. Finally, many of these different threats are interlinked in complex ways - for example, inequality has stimulated nationalism, and climate change can increase inequality.

Keywords: *human rights threats, human rights challenges, importance of the human rights, COVID-19 crisis*

JEL Classification: [K38]

After a long and difficult journey over many decades, after reaching many levels of refinement and maturation, fundamental human rights have come to the point where they seem to be reduced to zero, in the context of a health crisis caused by the COVID-19 pandemic. Free movement of persons, the right to work, the right to education, and the protection of personal data are just some of the rights shaken by the new regulations that have emerged in the crisis management process.

This paper aims to analyze human rights concerns and progress in this area in the decade leading up to the health crisis created by the COVID-19 pandemic and the extent to which fundamental rights have been affected by this.

This research paper is considered to be a review of the efforts made in recent years to achieve human rights objectives and the degree to which they have been achieved, but also in order to provide an overview of the most important measures taken during the COVID-19 crisis that too many seemed like a violation of international law and human rights. This approach is useful because it studies

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a topical issue that we still live in and we see the effects of its conclusions, already established and guaranteed.

The spread of COVID-19 has not stopped, and its effects continue, including those regarding human rights. Therefore, this paper cannot list all the question marks regarding human rights problems that occur during the spread of COVID-19.

The main element restoring new rules for the free movement of persons is the adoption by the European Parliament and the Commission of the Regulation on the green COVID certificate.[2] Beyond the form proposed by the Regulation, the states have given these certificate powers regarding the exercise of fundamental rights such as the right to education, the right to work or the right to the protection of personal data.

The most pressing human rights issues

In 2020, the world has entered a new decade. Unfortunately, previous years have not been the best for human rights. Research, such as the 2021 rule of law index[3] , showed us that there are threats to human rights in two thirds of the 113 countries surveyed. Since 2016, the index has reported declining scores. Many human rights issues generate others. As one becomes more significant, so do the other correlated ones:

Trafficking in human beings
Human being trafficking is increasing worldwide. According to UNODC (United Nations Office on Drugs and Crime) figures, there has been a growing global trend since 2010. The chief executive stressed that armed groups and terrorists are using human trafficking to spread fear. Victims often end up working in the sex trade or in other forced labor activities. Trafficking in human beings is not limited to certain countries. Of the trafficked, women and girls make up the majority. As the problem becomes more serious and widespread, the international community must step up its efforts.

Refugee crises
According to the UN General Secretary, the world has faced "the highest levels of displacement in recent years". Reasons include climate change and armed conflict. Refugees fleeing their homes also face persecution and

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[2] Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on the framework for the issuance, verification and acceptance of interoperable certificates for vaccination, testing and cure of COVID-19 (EU digital certificate on COVID) facilitate free movement during the COVID-19 pandemic

[3] World Justice Project Rule of Law Index, https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2021

discrimination. Statistics indicate that this phenomenon will continue to develop in the future, which will involve considerable financial efforts to manage it. Global Humanitarian Overview 2019[4] estimated that the 132 million people which were displaced by the conflicts in South Sudan, Yemen, Nigeria and Somalia need more than $ 20 billion in order to survive. As climate change and armed conflict are not easy to tackle, refugee crises appear to be among the biggest human rights issues of the future.

Workers' rights

Article 23.1 of the Universal Declaration of Human Rights established that "the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment" is to be guarded for all. These rights have been and continue to be threatened around the world in a variety of ways. Injustices such as unfair wages, underpayment, after work time exploitation, discrimination and physical endangerment occur all the time. Work systems can make it difficult to balance work and private life, affecting the mental health of employees. In many places, inadequate payment is also a problem. In many states, the minimum wage has remained the same for a decade.

Gender equality

Gender inequality has been a human rights issue for centuries. Even with decades of progress, the World Economic Forum believes that the world may need another century to meet the goal of gender equality. It is a complex and complicated issue, because not only one root of evil needs to be cut. Access to education, political representation, reproductive rights, economic opportunities and much more contribute to gender inequality. Making significant changes and monitoring progress in this area will remain a priority for the rights in the future.

Human rights and technology

Compared to the past, technological innovations and digitalization are developing at a rapid pace. Inventions like the internet influence the way we communicate and how ideas develop. Technology is also changing our relationship with strong institutions. Unfortunately, cyber security and the legal framework for the protection of people in the digital space have not developed as fast yet. The future must be of great concern for human rights when it comes to the confidentiality of data, the definition of hate speech, surveillance and digital security.

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[4] Available at https://www.unocha.org/publication/global-humanitarian-overview/global-humanitarian-overview-2019

Threats for the press and spreading misinformation

The concept, definition and spread of "fake news" will continue to be a major issue for companies around the world. False news, defined as misinformation and propaganda, provokes divisions and endangers a free press. Journalists face significant obstacles and dangers to their work and lives. 2018 was the worst year for journalists, according to Reporters Without Borders. Human rights as a whole suffer when truth and the free access to information are jeopardized.

Climate change

The climate crisis will worsen as time goes on. Our current state reflects the most unfavorable scenarios of climate scientists. The answer to this phenomenon will require the involvement, in a real and proactive way, of the whole world. In a 2019 report of the UN Conference on Trade and Development[5] stated that the energy industry needs a smooth transition. Otherwise, the loss of money in the energy industry could lead to destabilization "domestically, regionally and even internationally". However, a transition is essential for the survival of humanity. How to respond to humanitarian crises caused by climate change will also be a significant human rights issue.

Human rights in times of crisis

The transition to a new decade should have been an opportunity for the international community to demonstrate a renewed commitment to human rights. However, the year 2020 was a profound destabilization of all that human rights has meant so far because, to a greater or lesser extent, states around the world have disregarded and seriously violated fundamental rights of man.

As the world entered the second year of the COVID-19 pandemic, both states and international organizations have made desperate efforts to find ways out of some of the restrictive measures on physical distance and mobility restrictions imposed to control the spread of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Since the beginning of mass vaccination campaigns in early 2021, the idea of granting special privileges to those who have been immunized has gained momentum around the world.

Pioneers in adopting a broad definition of vaccination certificates were Israel, Switzerland and China, in their attempt to reopen the borders for travelers, to unfroze economies from costly setbacks and restore the appearance of a "new normal". The purpose of these certificates is for individuals to be exempt from physical restrictions and to be able to regain full access to socio-economic life (for example, return to work or school, gain access to public or private services,

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[5] Available at https://unctad.org/webflyer/trade-and-development-report-2019

including holiday resorts), as well as on national and international journeys (for example, to be allowed to board a plane, train or cross borders by car or other means of transport), without - in theory - endangering others.

Although there was no international consensus on how - or why - such certificates should be used or how they should be designed and applied, an increasing number of countries as well as regional trading areas, such as the European Union, have moved towards the introduction of COVID-19 certificates in one form or another (physical, digital or both). In particular, the European Union has initiated a COVID-19 certificate which covers not only people vaccinated against covid-19, but also those who have been tested negative, as well as those who have recovered from infection (natural immunization).[6] Both international and national health organizations have refused to support such certificates, warning that the adoption of their introduction cannot be a magic formula for successfully managing the risks associated with COVID-19.

The introduction of vaccination and recovery certificates was not compatible with the temporary recommendations of the World Health Organization (WHO) for international travel,[7] WHO states that: "WHO's position is that national authorities and carriers should not introduce requirements for proof of vaccination against COVID-19 for international travel as a condition for departure or entry, as there are still unknown information on the effectiveness of vaccination in reducing transmission ".[8] The scientific community has also taken a skeptical and cautious approach. Both the German Bioethics Council[9] as well as the Royal Society of Great Britain[10] have published a long list of criteria that should be met in order for such certificates to fulfill their stated function: to protect both personal and public health.

However, despite these cautionary demands from both the WHO and the scientific community, enthusiasm for these documents has grown globally. At the June 2021 G7 Summit, reunited leaders called for mutual recognition of such

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[6] Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable vaccination, testing and recovery certificates COVID-19 (EU Digital Certificate COVID) to facilitate free movement during COVID-19 pandemic (Text with EEA relevance), PE / 25/2021 / REV / 1, OJ L 211, 15.6.2021, pp. 1–22.

[7] WHO recommendations for international trafficking in connection with the outbreak of COVID-19 (29 February 2020).

[8] See interim position paper: Considerations on evidence of vaccination against COVID-19 for international travel (5 February 2021).

[9] The common recommendations and recommendations on the various positions, as well as the full text of the Opinions, are available at https://www.ethikrat.org/fileadmin/Publikationen/ Stellungnahmen/deutsch/stellungnahme-immunitaetsbescheinigungen.pdf

[10] The Royal Society, "Twelve criteria for the development and use of COVID-19 vaccine passports" (14 February 2021) <https://royalsociety.org/-/media/policy/projects/set-c/set-c-vaccine-passports.pdf>; see also the opinion of the Nuffield Council on Bioethics <https:// www.nuffieldbioethics.org/assets/pdfs/Immunity-certificates-rapid-policybriefing.pdf>.

certificates, which were essential to "help travel and global trade recover from the pandemic shock".[11] This approval of the COVID-19 certificate as part of the "Cornwall Consensus" served to legitimize it as a valid model within and beyond the G7, and *de facto* was imposing it on the rest of the world. Governments have been pressured by the private sector, such as technology giants Microsoft and Oracle, to team up with tourism industry partners such as the International Air Transport Association (IATA) to create a digital and global health certificate. Meanwhile, the pandemic black market has grown, promoting fake vaccination / testing certificates.[12]

Proponents of COVID-19's certificates say they play a key role in ending restrictions to reduce the spread of the pandemic, at least in the wake of widespread access to vaccines.[13] It is also envisaged that this measure will boost those who are reluctant to be vaccinated ("No vaccine, no certificate, no access, no life"). This challenge has become increasingly relevant in rich countries where the problem is not the availability and distribution of vaccines, but quite another: the reluctance of the population to get vaccinated[14] leading to the creation of an anti-vaccine trend.[15]

Uneven vaccination is one of the factors highlighted by opponents of COVID-19 certificates, noting that, along with their considerable scientific, practical and legal challenges, they also risk exacerbating existing inequities. The use of such certificates - in physical or electronic form - would simply exacerbate the harm caused by COVID-19 to already vulnerable populations, especially in regions of the world where no vaccines or tests are available.[16] Even in those

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[11] The statement from the G7 Ministries of Health (June 3-4, 2021) states: "We are committed to working as G7 countries for the process of mutual acceptance of COVID-19 certificates." See also Carbis Bay G7 Summit, "Our Shared Agenda for Global Action to Build Back Better" (June 11-13, 2021).

[12] J Grierson, „ Fake Covid vaccine and test certificate market is growing, researchers say"" (*The Guardian* , 16 mai 2021).

[13] Public support for COVID-19 certificates is relatively high in all countries. See, for example, IPSOS and World Economic Forum, "Global public backs COVID-19 vaccine passports for international travel" (April 28, 2021). See also YouGov, which shows that in the UK, six out of ten Britons (61%) support the idea of COVID certificates - including over a quarter (28%) who strongly support such plans, available at <https://docs.cdn. yougov.com/oe2nlxn3h9/YouGov%20The%

20Times% 20COVID% 20certificates.pdf>.

[14] MS Razai, UAR Chaudhry, K Doerholt, L Bauld și A Majeed, „COVID-19 vaccination hesitancy" (2021).

[15] J Ashton, „COVID-19 and the anti-vaxxers" (2021) 114(1) Journal of the Royal Society of Medicine 42–43.

[16] While vaccine coverage in most high-income countries was close to 50% or more, it remained below 2% in the rest of the world - see Financial Times, "Letter: G20 vaccine pledges are a fraction of what we need" (June 8 2021). See also The Economist Intelligence Unit (EIU), "More than 85 poor countries will not have widespread access to coronavirus vaccines before 2023" (January 27, 2021).

countries with mass vaccination campaigns, such as the United Kingdom, there was significant opposition to the implementation of "vaccination certificates", such as the report of members of the Parliamentary Committee on Public Administration and Constitutional Affairs, stressing that such certificates "could discriminate against citizens on the basis of race, religion and socio-economic background, as well as on the grounds of age due to the succession of the vaccine".[17] Based on this, opponents argue that COVID-19 certificates should not be used either within a State or as a tool to unblock international travel.[18]

Green certificate policy

The COVID-19 certificate cannot be studied separately from all the regulations on the COVID-19 pandemic, which have been characterized by widespread limitations on various human rights. These have ranged from mobility limitations to the closure of educational institutions and commercial activities, which have been increasingly challenged.[19]

The reason for the creation of COVID-19 certificates must therefore be found in the need to alleviate some of the restrictions imposed on the population. As such, COVID-19 certificates are the direct result of the regulatory response to COVID-19 and represent a compromise solution that strikes a balance between two conflicting objectives: individual freedom on the one hand versus public freedom and health protection on the other part.

In examining the many implications of introducing these documents, it is essential to recognize the existence of several models, distinguishing them according to their coverage (eg recovery, testing, vaccination etc.) and use (eg. domestic and / or cross-border travel).). Each of them involves specific ethical, socio-economic and legal concerns. Due to its uniqueness in terms of coverage and innovative nature, the EU COVID digital certificate offers a comprehensive case study.

The EU COVID digital certificate comes to ensure the free movement not only of those who have been vaccinated, but also of those with a negative COVID-19 test - either by a molecular or antigenic test - as well as those who

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[17] R Syal, „Covid passports will be discriminatory and must be scrapped, say MPs" (*The Guardian* , 12 iulie 2021) disponibil la < https://www.theguardian.com/politics/2021/jun/12/covid-passports-will-be-discriminatory-and-must-be-casat-spune-mps> .

[18] See, e.g., A Alemanno and L Bialasiewicz, "The Dangerous Illusions of an EU Vaccine Passport" (OpenDemocracy, March 9, 2021).

[19] See, e.g., A Gross, "Like a dystopian nightmare: human rights, democracy, and oliticization and securitization of health in constitutional and global health law in the shadow of the COVID-19 crisis" (Mishpat Umimshal, 2021); TH Brandes, "A year in review: COVID-19 in Israel: a tale of two crises" (Verfblog, April 13, 2021) https://verfassungsblog.de/a-year-in-review-covid-19-in -israel /.

have recovered from infection with COVID-19. As Iris Goldner Lang points out, "in this way, EU certificates will promote individual risk assessment for public health justifications, rather than general restrictions, quarantines or tests [polymerase chain reaction (PCR)] for all the world" [20] . At the same time, the main mission of the EU's digital COVID certificate is to try to keep vaccination, testing and recovery certificates interoperable between EU Member States. In other words, as many EU countries have begun to set up their own national (and even regional) certification systems in the spring of 2021, the EU has stepped in to ensure that they will be fully interoperable, in order to do not further create restrictions on free movement within the Union. Despite this stated purpose, as the conditions for issuing the COVID-19 certificate vary from Member State to Member State, there have been situations where the holder of a COVID-19 certificate has been subject to additional "national" requirements, such as quarantine or testing, which defies the stated purpose of the certificate to release for free circulation.

Secondly, there is an important geopolitical dimension to the way COVID-19 certificates are developed. While the often repeated mantra of political leaders continues to be "interoperability" and "mutual recognition" (either in the case of the EU's COVID digital certificate or also globally, as stated at the last G7 Summit), such a projected acceptance comes with its own forms of exclusion. As Dimitri Vladimirovich Kochenov and Jacquelyn Dietrich Veraldi present in their contribution, the EU COVID digital certificate not only creates forms of exclusion between vaccinated / recovered and unvaccinated / unrecovered, but also "explicitly allows for additional discrimination between those who *are* vaccinated"[21] , by excluding from certification those who are vaccinated with a "non-European" vaccine (which is not approved by the European Medicines Agency - EMA). Indeed, the COVID digital certificate cannot be issued for vaccines not approved by the EMA, and therefore, as the authors point out, there is an effective punishment of Member States for free will on the best strategies to save the lives of their own citizens. in the context of the pandemic, in a way that is able to fully comply with EU law. Certification policy in the EU is, in fact, closely linked to broader geopolitical orientations (either towards Russia or China), with political leaders in Member States such as Poland explicitly stating that they would not give up free movement restrictions for citizens. EU inoculated with Russian-made

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[20] I Goldner Lang, *„EU COVID-19 Certificates: A Critical Analysis"*, European Journal of Risk Regulation, (June 15, 2021).

[21] D. Kochenov and J. Veraldi, *„The Commission Against the Internal Market and EU Citizens Rights: Trying to Shoot down Sputnik with the 'Digital Green Certificate'?"* (April 14, 2021). (2021) 12 European Journal of Risk Regulation, 2021

[21] Reuters, *„Poland does not plan to buy Russian vaccine, says minister"* (*Reuters* , 4 martie 2021) < https://www. reuters.com/article/us-health-coronavirus-poland-russia-idUSKBN2AW1WC> .

Sputnik V vaccine[22] (this represents, at the time of writing, a considerable percentage of citizens).[23] In such positions, "interstate relations policy seems to go beyond the stated public health concerns".

Thirdly, the fragmented policy and geopolitics of vaccine certification in the EU are further accentuated when we look at the global scale. We can take as an example the case of Taiwan, applauded in the early stages of the pandemic for its success in managing the spread of the virus, and later penalized for the difficulties encountered in obtaining vaccines, these being largely caused by the complex geopolitical positioning of this island nation. Not only is the island nation excluded from participating in the WHO because of its controversial political status, but due to Taiwan's relatively successful pandemic response and gross domestic product (GDP), it is also considered a low priority in vaccine distribution through the international program to facilitate global access to the COVID-19 vaccine (COVAX).

During all this time, has Taiwan been caught up in the strategic and economic competition between the US and China, directly reflected in the domestic political debates about which vaccines can and should be purchased - those made in China - Sinovac or American - Pfizer-BioNTech? With its long-held fate over geopolitical competition, Taiwan's limited access to vaccination has marginalized it even more in the context of the international adoption of COVID-19 certificates.

Purpose of the green certificate

One of the common features of COVID-19 certificates is the lack of clarity regarding their policy objectives. The decision-makers were (and remain) unclear about the exact purposes for which the COVID-19 certificate policy was intended to serve them. While some emphasize the protection of human and public health in order to minimize restrictions and facilitate the safe reopening of economic and social sectors, others have argued that this policy also aims to encourage vaccination and overcome the hesitation of vaccination.[24]

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[22] https://www.euronews.com/2021/06/07/slovakia-is-second-eu-country-to-roll-out-russia-s-sputnik-v-covid-19- vaccin> .

[23] In the public health literature, "hesitation to vaccinate" refers to delays or denials of vaccination that could be caused by various reasons, including lack of time, knowledge, awareness or access. See R Butler, NE MacDonald, and SAGE Vaccine Hesitation Working Group, "Diagnosing the determinants of vaccine hesitancy in specific subgroups: the guide to tailoring immunization programs (TIP)" (2015) 32 (34) Vaccine <https: // www.sciencedirect.com/ science / article / pii / S0264410X15005022>.

[24] WHO, "Interim position paper: considerations regarding proof of COVID-19 vaccination for International travelers" (February 5, 2021).

This ambivalence as regards the objectives pursued is extremely problematic as it affects the legality and in particular the assessment of the proportionality of such certificates. In other words, any imbalance of rights inherent in any change of proportionality presupposes a clear identification of the objective followed by the contrary measure and the purpose pursued by the latter. Thus, test or recovery certificates pose similar problems to vaccination certificates; however, due to the different type of incentive they offer, they may be even more unacceptable from a legal and ethical point of view. In any case, whether it is a matter of accessibility, administrative opportunity, hesitation, distrust or other reasons, public authorities must take into account the exclusive dimension of the lack of a vaccination certificate, especially for the most vulnerable. disadvantaged groups with a long history of discrimination.

We can reasonably expect the legality of COVID-19 certificates to be challenged and challenged, given their inherently discriminatory nature and other indirect consequences that may arise. Although the existing requirements of COVID-19 Certificates are implemented for a limited number of public activities, this policy could be dramatically extended, and could lead to more significant rights violations. In the context of the creation of the COVID-19 Certificate and the presentation of this document as a precondition for the exercise of free movement within the Union, it is in conflict with the principle of free movement consecrated within in the Treaty and the Schengen Code.

However, if we look at the existence of a less selective method for traffic during the pandemic, while maintaining the same level of protection of public health, we see that in the world of COVID-19, the alternative to digital green certificates is not unrestricted free movement, but and several restrictions, such as quarantine, self-isolation and / or testing for everyone, or even complete entry bans.

Moreover, vaccination against a disease or recovery from a disease (or lack thereof) as a state of health is a relatively new concept for legal protection, despite historical examples of the discriminatory impact of immuno-privileges, such as the management of the yellow fever epidemic. from New Orleans during the 19th century. That is why the International Health Regulations (IHR) exceptionally contain provisions for yellow fever as the only disease for which countries can request proof of vaccination.[25]

Finally, the introduction of these measures must then be understood in the context of the pressure that governments may have faced from companies wishing to adopt policies to recover their workforce. In the US, many colleges and universities have already stated that they ban unaccompanied

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[25] WHO, "Interim position paper: considerations regarding proof of COVID-19 vaccination for International travelers" (February 5, 2021).

students,[26] while some military bases impose additional restrictions on soldiers refusing vaccination. Employers have also begun to subject the unvaccinated to stricter diets than the vaccinated. This raises a deeper issue. Although they retain the choice, these measures make *de facto* vaccination mandatory for citizens and the certificates help to institutionalize such an approach.

Green certificate and unequal mobility

Just as infection and the impact on individuals' health differed by area and population, the different impacts of coronavirus disease were reflected in the measures taken by states and international bodies to manage the pandemic. The regulations and restrictions on individual liberties described in section I above have not had the same impact everywhere. As a political geographer, Anne-Laure Amilhat-Szary wrote at the end of the first year of the pandemic: "Paradoxically, those who are able to isolate themselves in good conditions today are exactly the same people who had access to freedom of movement in pre-COVID times. In other words, the same people who have a degree of global autonomy that allows them to choose the interactions they globalize. "[27] Such individuals possess what Amilhat-Szary described as an increased ability to put up barriers.[28] As she noted in the case of the pandemic, the "barrier" manifested itself in *the* ability to cross borders, thanks to the ability to isolate oneself, which ultimately stems from the same process as the ability to cross a border legally.

Just as pandemic restrictions have affected individuals and populations in different ways on their different capacities to isolate themselves, COVID-19 certificates as border instruments risk further exacerbating such inequalities. The danger of "passporting" the vaccine or the state of immunity, stating that "in a world of" passport apartheid "[29] any new passport - electronic or physical, required or "optional" - is always a supplement to the list of grounds for possible exclusion and discrimination, while new "vaccine passports" are presented, as are national passports, as uniform and standardized (and, as such, "democratic"). COVID-19 certificates even risk a ranking of citizens traveling from countries with access to the vaccine and those who want to travel from disadvantaged areas. Although

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[26] Also, creating other forms of exclusion, as only certain vaccines are accepted: see <https://www.nytimes.com/2021/06/03/us/coronavirus-vaccine-college-students.html>.

[27] AL Amilhat-Szary, "Those who are confined are also the most mobile!" in C Wille and R Kanesu (eds), frontier in Pandemic Times: Perspectives in the Covid-19 Lockdown, UniGR-CBS Borders in Perspectives, the thematic issue, (University of Luxembourg and University of Trier 2020).

[28] AL Amilhat-Szary and F Giraut, Borderities and the Politics of Contemporary Mobile Borders (London, Palgrave Macmillan 2015).

[29] D Kochenov, „*Ending the passport apartheid. The alternative to citizenship is no citizenship – a reply*" (2020) 18(4) International Journal of Constitutional Law 1525–1530.

the European Commission is keen to emphasize that "persons without such a certificate must be able to travel further and that being in possession of a certificate is not a precondition for the exercise of the right to free movement or other fundamental rights",[30] Such concessions are not extended to undocumented or undocumented migrants, let alone those seeking to enter the EU to seek asylum or protection.

From a historical point of view, we notice that pandemics were times when new racial boundaries were imposed, and disease regulation also served as a powerful tool for regulating populations. Using the COVID-19 pandemic as an excuse, both class and race-based mobility restrictions were accentuated. These have been noted in national border controls, but also in the uneven application of sanitary borders within states (such as roadblocks and other similar measures). States have implemented a variety of discriminatory isolation measures, limiting migrants, invoking double protection, both for themselves and for nationals. An eloquent example is the Italian state, which has illegally isolated migrants from quarantine ships.

Pandemic management using personal data

The risks of uneven border shapes being exacerbated by the use of COVID-19 certificates are further exacerbated by the way in which personal and health data are used to create these "pandemic passports". We have already noted in Section III some of the questions raised regarding the precise purpose and duration of these instruments. The risk is that the Certificate will become a "general purpose infrastructure" whose operational structure as well as database with highly sensitive personal information will withstand the pandemic and can be easily reused for a variety of needs, from health profiling to national security. The speedy adoption of the Certificate by the European Commission as an "emergency" measure, without a full impact assessment and without detailed technical specifications developed under existing EU legislation,[31] raises a variety of questions regarding data protection and security.

Comparing the EU's attempts to develop the COVID Certificate with the challenges faced by the Chinese Codified Health System (HCS), implemented since 2020, although in a completely different geopolitical and legislative environment, we identify some "algorithmic vulnerabilities" inherent in implementing such of certificates aimed at improving the management of public health and social protection through the storage and processing of data.

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[30] European Commission, "Communication from the Commission - a common path to a secure and sustained recovery" >.

[31] See, for example, Article 5 GDPR.

Algorithms that have been designed to support large healthcare systems risk reinforcing existing vulnerabilities and forms of exclusion, while having the potential to create new irregularities. It is very important to note the direct collaboration between private and public actors in the design and implementation of certificates. What guarantee is there against the potential future misuse of data, both by the state and by corporations involved in the collection, exchange and processing of data. Certificate development involves a variety of technology companies, digital platforms and networks that operate "in a poorly regulated and high-risk ecosystem".

The broader risks of data infrastructure management could divert regulatory power from government agencies to for-profit entrepreneurs. The proposed COVID-19 certificates are simply the latest in a series of risk lowering technology solutions that have characterized the response to the COVID-19 crisis from the outset: from national contact tracking applications to public health monitoring and social regulation, to software analysis on the predictability of strategic decision makers, such as the imposition of lockdowns and selective territorial access. All these tools - many of which are still in use - are part of a growing set of regulatory functions for the governance of social life and the political and economic environment. COVID-19 digital certificates as part of this larger infrastructure are marked by a variety of risks. First, they establish hierarchies between certified and non-certified, establishing individual immunological profiles. Second, they create exclusive markets (and therefore regulatory power) for the actors involved in the development and implementation of the technology. Third, they contribute to the further creation of forms of exclusion by calling for another rhetoric of individual freedom and the "right" to live unobstructed by the restrictions of COVID-19 - a rhetoric that risks undermining the collective response and solidarity needed to combat the negative effects of the pandemic on communities: local, national or global.

In addition to these risks, another crucial aspect of the certificate is that it can act as a strong security performance - performance whose effects are, however, very real.

However, the performance aspect of COVID-19 certificates is based on an extremely problematic fixation of individual hazard and safety profiles. In establishing a COVID-19 digital immunity profile, certificates set out what is a discursive object of scientific research in an attribute that runs across contexts and applications. This "stamp of immunity" effectively introduces the idea for the first time that someone can be certified as immune, rather than just vaccinated.

This is a new, marketed identity, which in turn has value for both the individual and the authorities who certify them - a value different from most general public health contribution, reducing the communicability of COVID-19 in general." . This is problematic for several reasons: most notably because, as recent

studies have shown,[32] the ability to sustain immunity to COVID-19 is highly variable. Indeed, from a scientific point of view, immunity is a moving target, as the immune response fades and viral variants can escape existing immune protection (autonomous as well as vaccine-generated). Immunity for the purpose of certification cannot thus be considered a static status that refers to an individual and as such can be "passported", but is rather an uncertain group, situated in context, of indicators that refer primarily to the best assumption of the risk of transmission ".

Conclusions

Growing evidence shows that the spread of COVID-19 has been profoundly uneven around the world, with some places and populations more likely to be exposed to the virus, to become seriously ill[33] and do not have adequate health resources, including, now, access to vaccination. Although the new COVID-19 certificates seem to promise a magic solution for unlocking cross-border mobility and reopening the economy, they do risk creating new borders and new forms of inequality through an exclusive sorting and profiling mechanism that delimits "safe" bodies from those. "Insecure" based on differential access to "immuno-privilege" - but also differentiated forms of "bio-security".

The stated purpose of the COVID-19 certificates to "facilitate safe free movement" (as in the case of the EU COVID digital certificate) must thus be assessed in its many major implications. These certificates justify a temporary critical review not only of the instruments for regulating and governing the pandemic, but also of the potential implications for the wider governance and regulation of populations and territories, including regulating access to fundamental rights and using persuasive government power - as opposed to of the most traditional - coercive.[34]

We conclude that some of the measures taken by the countries to deal with the COVID-19 pandemic constituted – in the strict post-cold war sense - human rights violations and did not comply with the legal conditions for restricting human rights. Indeed, the COVID-19 pandemic has shown ugly fractures in

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[32] K Vanshylla et al., "Kinetics and correlations of neutralizing antibody response to SARS-CoV-2 infection in humans" (2021) Cell Host & Microbe.

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public health systems, health inequities, racism and discrimination, undermining the right to freedom of expression and the right to access information, and gross negligence in protecting detainees from COVID 19 infection, all of which constitute clear violations of the principles of international human rights law.

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