

COVID-PANDEMIC RELATED RESTRICTIONS ON THE FREEDOM OF CIRCULATION IN EUROPE

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Abstract: *Based on a triangulation of the specific analysis in the fields of European studies, law and sociology, the hereby paper aims at creating a comprehensive study on the impact of the restrictive measures following the Coronavirus pandemic at European level and in the member states. The analysis of the positions adopted in the European Union in matters of migration and freedom of movement, starting with February 2020, aimed at limiting the spread of the SARS-CoV-2 virus, will be based on the multilevel governance theory and focused on the responses to the global challenges related to this pandemic. Thus, the study is framed on the three dimensions of this theory, namely the European institutional level, the national level and the sub-national level. Within this framework, the measures undertaken by the European Union, the member states and the local authorities in order to manage the crisis, as well as the way they were received at different levels, will be discussed. Taking into account the fact that, since the establishment of the Freedom of movement as a fundamental principle of the European Union, no such limitations have ever been introduced, the current study proposes an analysis on their impact on the circulation of people across the EU territory.*

Keywords: coronavirus crisis, European legislation, member states, free circulation, multilevel governance.

1. Introduction

The proposed research topic is in line with the broader field of studies on international migration, combining methods specific to the social sciences, tools in the field of legal sciences and European studies. The aim of the research is to analyse the situation of the temporary restriction of the freedom of movement of persons in the European Union, as a result of the challenges imposed by the coronavirus epidemic.

We therefore propose a three-dimensional study to follow, in logical succession, the analysis and decision-making plans, from the supranational to the national, and, further, the local level, in an effort to establish the impact of these restrictions on the dynamics of migration circumscribed to the above coordinates. The theory of multi-level governance specific to the field of European studies can be applied in the analysis of the effects of this crisis on European policies in the field of migration and freedom of movement of persons, thus building the bridge between the three levels of analysis.

Until recently, across the common European territory, regarding the freedom of movement of people, there was a general consensus in matters of decisional process and application of the common rules in the national state-European Union relationship. For the period of time when the sanitary crisis generated by the coronavirus was ongoing in Europe, we can identify an atypical temporary situation, but with mid and long-term effects in terms of precedent creating limitations to the freedom of circulation in the EU. The multilevel governance theory introduced in the European scientific literature by Gary Marks and Liesebet Hooghe (2001), which describes the way in which authority and the influence on policy making are divided among multiple levels of governance, can be used in understanding the way in which the decisional process in matters of intra-EU migration has changed. Although numerous

studies documenting the limitations on the freedom of movement within the European space already exist, the global landscape of restrictions on the space mobility of people generated by such a crisis contain elements of novelty and are worth addressing. Furthermore, effects of these limitations have been observed in various domains of the societies, particularly in the European space, as the last decades of evolution in terms of common market have resulted in a high level of interconnectivity.

For example, the unprecedented context determined by the covid 19 outbreak caused several shortcomings regarding the work domain, like increased unemployment in some sectors and the lack of workforce in others, due to the restrictions for traveling in the case of seasonal, migrant workers (Pogan, 2021a). In addition to this, the limitations on the freedom of movement favoured the development of various types of virtual communication, both in terms of interindividual relations and in the institutional level. A study issued in 2022 (Bularca, Nechita, Sargu, Motoi *et. al.*, 2022: 2) reveals that *“due to its direct impact on peoples’ health, the pandemic indirectly influenced the way organizations operate, with many being forced to constantly adapt and improve their communication”*. All these outcomes of the limitation of freedom of movement are also tackled in numerous other studies (Kassim, 2022; Blauberger, Grabbe & Ripoll Servent, 2022; Eijken and Rijpma, 2021) and are worth analysing in the attempt to evaluate whether the restrictions respected the condition of proportionality, or, in other words, if the costs were worth the result achieved in regard to the prevention of the virus spreading.

2. Objective

Based on a triangulation of the specific analysis in the fields of European studies, law and sociology, the hereby paper aims at creating a comprehensive study on the impact of the restrictive measures following the Coronavirus pandemic at European level and in the member states.

Thus, the purpose of the analysis is to understand whether or not there has been cooperation, negotiated governance, convergence in the measures taken, and a concordance between the decision-makers' discourse and the effective implementation of the measures, in particular related to migration issues.

It is expected that the study of public policy documents and normative provisions will demonstrate whether the localization of the sub-national level within the multi-level Governance is achieved by decoupling from the national level and collaboration with the supranational level, or the state-centred model of authority is predominant.

The secondary objectives of the research are as follows:

- ▶ Analysis of the positions adopted at EU level in the field of migration and freedom of movement, starting with February 2020, in order to limit the spread of the SARS-CoV-2 virus
- ▶ Analysis of the positions adopted at member states' (MS) level in the field of migration and freedom of movement, in order to limit the spread of the SARS-CoV-2 virus
- ▶ Analysis on the impact of these measures on the European citizens

3. Methodology

The theory of multilevel governance in the European Union applied to the situation of the measures taken in response to the global challenges specific to the pandemic.

The design of the proposed research is circumscribed to the three fundamental directions of investigation. Thus, the general framework is provided by the application of the theory of multi-level governance in the European Union, in reference to the specificities of the situation of the measures taken in response to the global challenges specific to the pandemic.

The analysis follows the three dimensions specific to this theory, namely the European institutional level, the national level and the sub-national level. Therefore, the research will

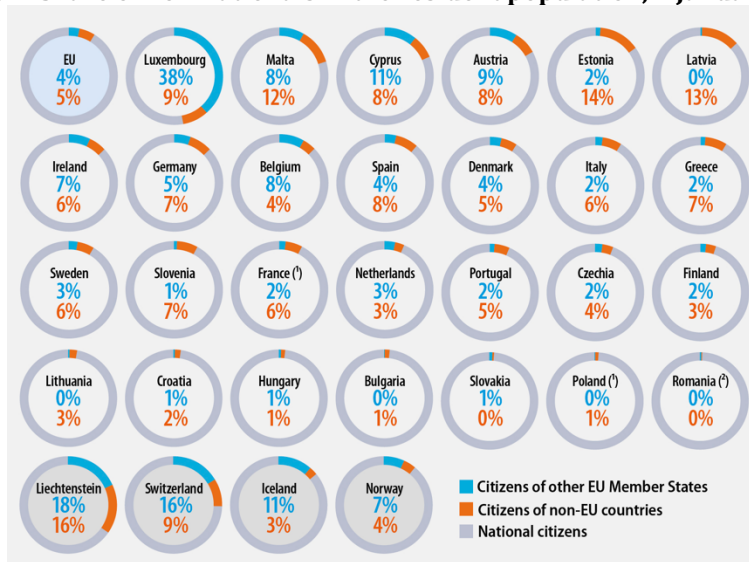
analyse the measures proposed by the European Union, Member States and local authorities for crisis management, as well as their reception at other levels.

In this context, the main arguments of the multilevel governance theory need to be addressed, along with coordinates of the concept of European freedom of movement, and observe in which ways their usual characteristics and evolution were affected by the consequences of the pandemic. Several types of measures were enforced throughout the European Union aimed at limiting the effects of the spread of the virus, and in the following sections they will be examined at different levels.

4. European level measures

The freedom of movement for persons within the European Union, formalised by the Maastricht Treaty of 1992, constitutes the legal basis on which citizens of the Member States of the European Union may move and establish themselves in the territory of a State other than that of which they are nationals. Thus, according to Eurostat figures, on January, 1st, 2021, about 4% of EU citizens lived in Member States other than those of which they were citizens. Compared to the year 2018, before the Coronavirus pandemic, there is a slight growth of 0,1% (Eurostat, 2019). The current situation for each Member State can be observed in the figure bellow.

Figure 1. Share of non-nationals in the resident population, 1 January 2022



Source: Eurostat

In the development of the sanitary crisis associated with the coronavirus there can be observed two stages: one, that started in March 2020, with the closing of the borders and lockdown in most EU countries, and the second, that provided a wider range of rules applicable depending on the evolution of the crisis, after the mass vaccination began in January 2021.

In the first period, there was a low level of coordination amongst EU institutions in creating common rules regarding the free travelling (European Commission, 2020a). Most of the member states decided to close borders. “One explanation for the lack of coordination among EU member states may be that all member states have separately transposed the Free Movement Directive in national legislation, and there has been quite a lot of variation in how the different criteria have been implemented in national legislations (Heinikoski and Hyttinen, 2022: 85)”, is stated in a study that analyses level of cooperation in this matter.

Later on, during the covid pandemic, all EU countries set in motion coordinated response mechanisms aimed at limiting the spread of the virus, including limitations of the freedom of movement. Thus, a colour code was created based on the epidemiological situation in each region, meant to encode various indicators evaluating the number of new cases, the percent of population infested, and so on. Similar colour coding schemes were also considered necessary in other areas of the globe, including the USA, such as a study published in 2020 explains: “In the context of pandemic, where significant modifications to daily life are required and which change with local and regional transmission risk, the time for a color-coded alert system may have finally come” (Coppola and Ryan, 2020). In addition to this, the common measures included, as core action, supporting the research and innovation in creating and distributing vaccines against de virus.

The EU Digital COVID Certificate Regulation (Official Journal of the European Union, 2021) entered into application on July, 1st, 2021. According to this regulation, EU citizens and residents were once again allowed to travel freely across member states based in the Digital COVID Certificates, which was issued after performing the vaccination scheme and which could be verified across the EU. This type of certificate was recognized by all member states, regardless of where the vaccination was performed, and it was meant to ensure the fact that the travelling restrictions that were established could be eliminated in a coordinated manner.

When the Covid-19 pandemic was proclaimed in 2020, the EU institutions reacted rapidly, and the Commission designed regulations that allowed for the adoption of border management elements, such as the reintroduction of border controls, but, at the same time, insisted on the idea of limiting the negative effects on the freedom of moving, by stating that any restrictions should be “proportionate, i.e., not going beyond what is strictly necessary” (European Commission, 2020b). Furthermore, after the appearance of the EU Digital COVID Certificate, any person who could prove the completion of the vaccination scheme exempt from additional restrictions to the freedom of movement. This means that all EU countries were supposed to not introduce additional measures to restrict the travel possibilities of these people, except, of course, for the situation when these were meant to safeguard public health.

However, should such a situation appear, like the case of new variants of the virus that could raise concern, the member state that decided to introduce new limitations was supposed to notify both the European Commission and the other member states, and also provide evidence and arguments in support of such decision.

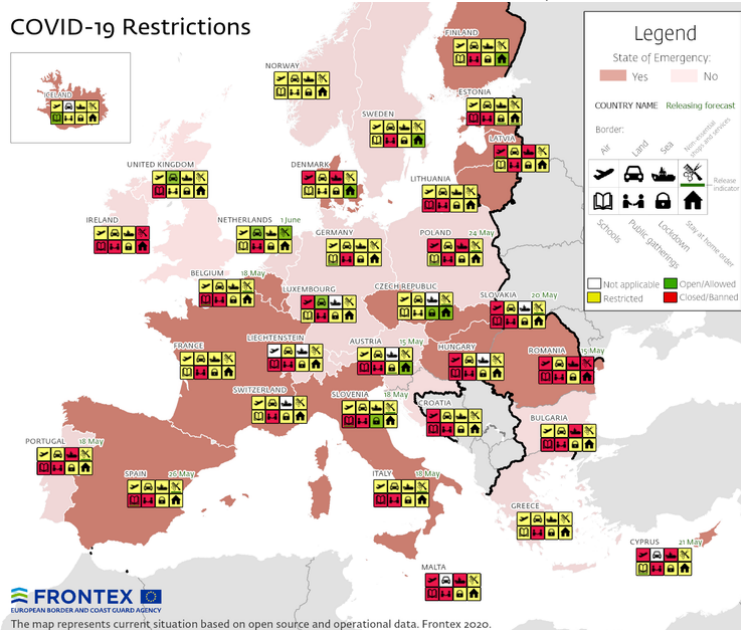
In regard to the Schengen Space, as an area of free circulation, although there are no legal basis authorizing EU institutions to decide upon any kind of limitation on the Schengen territory, being given the common external frontiers, it was somehow logical for the Commission to be given the authority to decide at common level. Furthermore, the European Council supported the adoption of common measures coordinated by the Commission.

5. State level measures

The Covid-19 pandemic brought along challenges that each country attempted to approach using various tools, with the final goal of ensuring the security of its citizens. Due to the effects of globalization and the unprecedented rise in peoples’ circulation worldwide, the virus was rapidly transmitted. In this context, as the United Nations tried to explain, “state authorities are having to deploy maximum resources to combat the spread of the disease and protect lives. Decisions are being made rapidly and, even though well intended, some can inadvertently have adverse consequences” (United Nations: 2020, p.3).

In all the countries severely affected by the COVID-19 pandemic the lockdown has been a common measure, but with different intensity, and it implies the close of borders too. The figure bellow displays the main restrictions on the freedom of circulation enforced in the EU member states in March, 2020, at the beginning of the crisis.

Figure 2. Covid-19 restrictions of free circulation, March 2020



Source: <https://frontex.europa.eu/media-centre/news/news-release/covid-19-restrictions-4IdY3J>

As can be observed in Figure 2, in many EU member states State of emergency was declared. This allowed the adoption of strict measures of border control, and severe limitations to the free circulation. The most important restrictions that were adopted in the beginning of the pandemic were: limiting the circulation on land, air and water, public lock-downs, school closing, stay at home orders, and non-essential shops and other service providers were closed. Also, public gatherings were banned or restricted in all the countries. As the map shows, there were however differences in the application of these measures amongst member states, depending both on the gravity of the virus spread, but also on their sanitary systems' capacity to respond to such a crisis, and other kinds of aspects related to national specificities.

In terms of freedom of movement, during the Covid-19 pandemic, internal border controls were reinstated, and after the introduction of the Covid-19 certificate they allowed for the implementation of controls of the people entering the states, so they respected the criteria for being allowed to travel freely.

The Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (Official Journal of the European Union, 2016) establishes the option for the member states to reinforce border controls at the internal frontiers in case of severe threat for the internal security or public policy of a state. However, Article 26 of the mentioned Code states that “where a Member State decides, as a last resort, on the temporary reintroduction of border control at one or more of its internal borders or at parts thereof, or decides to prolong such reintroduction, in accordance with Article 25 or Article 28(1), it shall assess the extent to which such a measure is likely to adequately remedy the threat to public policy or internal security, and shall assess the proportionality of the measure in relation to that threat.” (Official Journal of the European Union, 2016).

However, this was a temporary situation, as by the middle of June 2020, approximately three months later, controls at the internal borders were eliminated within a coordinated effort, partly due to the subsiding of the first wave of infections, but also due to the economic pressure of saving the European tourist season. Even after this, as various studies and data prove, “free movement within the EU remained subject to a patchwork of national travel

restrictions, including quarantine and test requirements. As new and more contagious strains emerged, Member States continued to restrict mobility within their territories, as well as between them. With the virus continuing to spread globally, non-essential travel to the Schengen area also remained banned for all but a few third countries” (Eijken and Rijpma, 2021: 34-35).

6. Local level of authority

In regard to Romania, the effects of the freedom of movement on intra-EU population mobility are addressed in numerous academic studies, which frequently place our country in the category of source states for migrants (Sandu, 2014; Anghel & Horvath, 2009; Matichescu et al. 2015, Pogan 2021b), a fact also supported by Romania's position in 2016, for example, on the second place among the countries of origin in terms of migration flows to OECD countries (OECD, 2019). Since the Romanian social landscape is severely influenced by factors associated to external migration, ranging from economic input, social transformation, family constitution and so on, any kind of alteration on the normative provisions ruling this sector directly influences the life of the citizens. Furthermore, as various studies assert, in Romania “migration is primarily based on migration networks (a person arriving in a particular destination country facilitates the arrival of others known in that country), is circulatory (most emigrants come and depart regularly from the destination country returning in Romania) and temporary” (Ilie Goga, 2020: 31).

As presented above, during the coronavirus pandemic several restrictions were established, both in our country, and also in other European countries. Some of the most affected states in terms of sanitary crisis, such as Italy and Spain, are preferred destination countries for Romanian emigrants, thus the limitations on the freedom of movement affected this category of people both in regard to the option of leaving Romania, and also referring to the possibility to access certain areas of these countries. Taking into account these coordinates, the restrictions on the free movement of people adopted severely impacted numerous people.

Another reported issue is related to the ways in which the decisions to implement restrictions were announced or adopted: “Since free movement is a core principle of the European Union, it is striking that it is restricted with an announcement in a press conference (Denmark) or as a sidenote in a government decision reintroducing internal border control (Finland), regardless of how good the intentions were.” (Heinikoski and Hyttinen, 2022).

Of course, such situations also occurred in Romania and were reproduced on a larger scale at EU level, as, due to the decades of free circulation, many EU citizens benefit from the right to live, work, study in another member state.

As explained in the section above, many of the measures applied in order to contain the spread of the virus although decided at national level, were implemented on sub-national level, taking into account the specific evolutions in different zones.

7. Conclusions

Although numerous studies documenting the limitations on the freedom of movement within the European space already exist, the coronavirus associated global context regarding restrictions on the space mobility of people was unprecedented. The findings in this paper highlight the fact that one of the fundamental rights of EU citizens, a core value of the European construction, namely the freedom of movement of people, can easily be infringed given a situation of crisis.

In regard to the analysis of the ways in which restrictions were applied, we can observe that, except for the early period of the coronavirus pandemic, which was defined by a perceptible sense of emergency and some anarchy in the relations amongst EU member states, the measures undertaken by the member states were coordinated. One of the most notable results of this coordination can be observed in regard to the effects of vaccination on the free

circulation, where, due to the early implementation of mass vaccination and the funding of the vaccination campaigns, EU countries reported high percent of immunized citizens. Also, in this regard, the good cooperation between the supranational-national-subnational decision-making process ensured positive results and a relative containment of the spread of the virus.

In terms of European integration mechanisms, the application of the subsidiarity principle determined the involvement of all decision and execution levels of authority throughout the period of the pandemic. When the same concerns affected all the member states, centralized decisions were adopted, and assistance tools were used.

Furthermore, another conclusion of our research leads to the idea that the measures that limit the free movement of people were limited to containing the crisis, as the EU regulation require, and, when sanitary conditions allowed, they were either removed or replaced by more permissive regulation. Contrary to the opinions suggesting that “despite the active role of the EU institutions in coordinating national responses and bringing them in line with EU law, ultimately, more binding coordination and regulation is required to ensure legal certainty and manage mobility” (Eijken and Rijpma, 2021: 34), we conclude that the normative provisions and actions of the EU common institutions, as well as the actions of the member states were all directed towards creating a secure space – including the usage of Covid certificates, vaccination, common initiatives to provide social and financial support for the vulnerable categories most exposed to the effects of the pandemic.

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