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Face Mask Between Social Contract and Freedoms in Covid-19's New Normal

Covid-19'un Yeni Normalinde Toplumsal Sözleşme ve Özgürlükler Arasında Yüz Maskesi

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ABSTRACT

With the emergence of Covid-19, measures such as staying at home, quarantine, social distance and face masks under the state of emergency to prevent the spread of the pandemic are criticized and rejected because they negatively affect lifestyles. However, the face mask, which has become a necessity in many countries, is the most discussed measure in the context of violation of individual freedoms and respect for private life. Also, the social contract, which expresses an agreement or cooperation between members of the society in order to protect the social order by sacrificing individual freedoms, is beginning to be questioned in Covid-19's new normal. A new social contract is called for that will not violate human rights and freedoms.

ÖZ

Covid-19'un ortaya çıkmasıyla birlikte, pandeminin yayılmasını engellemek için olağanüstü hal kapsamında evde kalma, karantina, sosyal mesafe ve yüz maskesi gibi alınan önlemler, yaşam tarzları olumsuz yönde etkilediğinden dolayı eleştirilmekte ve reddedilmektedir. Ancak birçok ülkede bir zorunluluk haline gelen yüz maskesi, bireysel özgürlüklerin ihlali ve özel hayata saygı bağlamında en çok tartışılan tedbir olmaktadır. Bununla birlikte, bireysel özgürlüklerden feda edilerek sosyal düzenin korunması adına toplum üyeleri arasında bir anlaşma veya işbirliğini ifade eden toplumsal sözleşme Covid-19'un yeni normalinde sorgulanmaya başlanmaktadır. İnsan hak ve özgürlüklerini ihlal etmeyecek yeni bir toplumsal sözleşme çağrısı yapılmaktadır.

1. Introduction

On March 11, 2020, the World Health Organization (WHO) classified the coronavirus as a "pandemic" (WHO, Virtual Press Conference). The rapid spread of the coronavirus all over the world pushed countries to take various measures. With the onset of Covid-19, a new period, called "new normal", began. A difficult year in which some did not see their friends and family, annulled marriages, children who

miss school, reduced freedoms, interrupted careers, a feeling of sadness everywhere and many lives lost (Gallagher, 2020). The coronavirus has totally changed the way people live. The restrictions and measures taken against the spread of the virus have shaped our lives. Countries have been forced to adopt strict measures to tackle the coronavirus. Initially, the measures included closing borders and stopping international flights. Subsequently, restrictions on internal transport, curfews and bans on mass mobility were learned.

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The health systems of the countries most affected have been tested by the pandemic. Shortages of medical supplies, drugs and sanitary products have arisen (Aytekin, 2020). Each country has implemented different measures, but some restrictions are enforced by almost all countries. One of the most common measures - although by no means universal - is confinement that imposes restrictions on individual movement, such as limiting people within a certain radius of their home and / or the ban on leaving their place of residence. Some countries have instituted partial lockdowns when the restrictions are at the sub-national level or only apply to certain times of the day, such as a curfew. While restrictions on freedom of movement are permitted to achieve a legitimate objective, such as the protection of public health, states still have a responsibility to ensure that such restrictions are proportionate, evidence-based and time-bound (Onusida, 2020a, 16). Quarantine which involves isolating people who may have been exposed to or are showing symptoms of an infectious disease is also a measure commonly applied by countries to stem the spread of infectious disease. More or less drastic quarantine measures are imposed today, sometimes covering entire cities and regions (Amnesty International, 2020:3).

The mask is also among the preventive measures against the spread of the virus. Wearing a mask is part of a set of anti-infectious measures designed to limit the spread of certain viral respiratory diseases, of which Covid-19 is one. It can allow healthy subjects to protect themselves in the event of contact with an infected person as well as subjects carrying viruses not to transmit them (Organisation Mondiale de la Sante, 2020a: 1). The World Health Organization, in its press release of April 6, 2020, is developing its advice on wearing a mask in the context of Covid-19. It is recommended to wear a mask in collective spaces, during home care and in health facilities in places where cases of Covid-19 have been reported. This advice is intended for the general public, public health and infection control professionals, health administrators, caregivers and community health workers (Organisation Mondiale de la Sante, 2020b: 1). Mask, which was initially recommended, has become an obligation in many countries. However, the wearing of a face mask, like all other measures, is interpreted (Blunt, 2020) as an infringement of freedoms. These measures have been the subject of discord at the level of individual freedoms and human rights.

As United Nations Secretary General Antonio Guterres pointed out that the Covid-19 pandemic is not only an economic, social, and a human crisis, but is also increasingly becoming a human rights crisis (Bussard, 2020). It is certain that decisive measures to control the epidemic and provide the necessary services and diagnostics have been put in place to stop the spread of the virus (WHO, Director-General's). But, as in all acute epidemics, especially with transmission through occasional contact between two people, the response is often not based on human rights principles (Onusida, 2020b:2; 12). This pandemic reveals how a long-term increase in inequality and neglect of public services have weakened the ability of societies to cope with external shocks and created new vulnerabilities in times of crisis. Racial and ethnic minorities, those with weak job protection, including migrant workers, and populations without adequate access to affordable health care are among the

hardest hit. So far, the actions taken have been patchy, short-term and reactive. A pandemic crisis of this magnitude has made it possible to redefine the fundamental role of a government which is to serve and protect its people without forgetting how the reciprocal rights and responsibilities which form the basis of so many democratic systems have been hollowed out. A new, expanded social contract, with health at the center, may well be a legacy of Covid-19 (The Lancet, 2020).

2. Coronavirus Measures and Human Rights

In times of fear and panic, some countries may resort to politically motivated restrictive, stigmatizing and punitive measures. These can include mandatory global restrictions on movement, quarantining large groups of people, reuniting people with and without the virus, publishing the names and details of people with the virus or impose criminal penalties on those who may have violated the restrictions or who have transmitted the virus to others (Onusida, 2020b:3)

The health crisis linked to Covid-19 and the protective measures taken to contain it were immediately analyzed as carrying risks for the respect of the dignity and fundamental rights of people deprived of their liberty: promiscuity and the increased risk of contagion that 'it leads to the difficulty of continuing relations with relatives, the suspension of most activities and the worsening of confinement have increased the constraints weighing on these people (Controleur general des lieux de privation de liberte, 2020:2). According to Bachelet, The UN High Commissioner for Human Rights, many states have adopted justifiable, reasonable and time-limited measures. But there are also extremely disturbing cases where governments appear to be using Covid-19 to violate human rights, further restrict fundamental freedoms and civic space, and undermine the rule of law (Bachelet, 2020).

However, there have been repeated examples of rights violations, especially at the start of the pandemic.

The causes of rights violations can be:

- Those where the policy or guidelines themselves have resulted in rights violations, such as not ensuring access to transportation for medical emergencies.
- A gap between the policy and its implementation, when the policy is sound, but its implementation has resulted in violations of rights, such as the disproportionate use of force by law enforcement agencies.
- When Covid-19 is used as a cover for other rights abuses, such as price scams or targeting marginalized communities. While many of the violations in the first category are corrected early in the response to the pandemic, it is the second and third categories that are likely to persist (Onusida, 2020a:8).

Michelle Bachelet reminds that the state of emergency should not be a weapon used by governments to crush dissent, control the population, or even stay in power. The measures taken must be necessary, proportional and non-discriminatory. They must also be limited in time and strong safeguards must be put in place to prevent excess. But the High Commissioner specifies that there are rights which cannot be derogated from under any circumstances. This is

the case with the right to life, the prohibition against torture and ill-treatment, and the right not to be subjected to arbitrary detention (Bussard, 2020).

In addition, the quarantine measures also affect freedoms. They affect the person's right to free movement and, depending on how they are applied, can also amount to arbitrary deprivation of liberty. There are also reports of people who face additional obstacles in exercising their human rights because they are placed in quarantine, including to obtain basic necessities (food and hygiene products) and for seek treatment, and who see their jobs and wages put at risk because they are unable to go to work. A quarantine measure can have other human rights consequences, such as having a disproportionate effect on poor people, who may not be able to afford food and health items, among other things. They may also not have enough savings to last through a period of unpaid leave. This type of measure is only permitted under international human rights law in limited circumstances (Amnesty International, 2020:3). Like many measures to combat Covid-19, quarantine is also challenged in the name of human rights. In the "No, democracy will not be in quarantine! We demand the restoration of our fundamental freedoms!", petition signed by many French associations, the state of health emergency, decided by the law of March 23, 2020, is seen as an inadmissible attack on democratic freedoms. Indeed, it is said that far from concern only the medical field, these measures imply profound transformations of the functioning of state institutions, and in particular judicial ones. In this context, the state appears to be changing into an increasingly authoritarian form in a large number of areas of social, economic, political and legal life (Non, la démocratie ne sera pas en quarantaine, 2020). While other measures have been brought to justice. The Human Rights League has already won a legal victory, against towns which had instituted a curfew, such as Cholet (or La Roche / Yon in the West). Justice ruled that such a device violated individual freedoms. According to Philippe Legrand, from the Nantes Human Rights League the question is that of the adaptation and the proportionality of things. The state of health emergency restricts the freedoms to come and go. These restrictions must be strictly adapted and proportional to the need for health security (Charles, 2020).

In short, the measures taken as part of the prevention of the fight against the coronavirus have not been applied to the letter by everyone. Hundreds of thousands of people around the world have been arrested for violating orders related to Covid-19. Many countries have introduced new criminal offenses or have relied on existing criminal laws - such as manslaughter or endangering the health of others - to enforce orders. The use of criminal law for public health purposes is, in most cases, a disproportionate and ineffective response that is vulnerable to arbitrary and discriminatory implementation (Onusida, 2020a:19). Based on the history of the epidemic, like HIV, stigma and discrimination negatively impact individuals' physical and mental health as well as their social support. In addition, stigma and discrimination can lead to significant human rights violations and abuses, further pushing aside the most vulnerable. Certain languages and attitudes, privacy breaches and criminal approaches can all lead to stigma and discrimination (Onusida, 2020b:8).

The meteoric progress of the Covid-19 increasingly confirms respect for the fundamental public freedoms of citizens, a principle at the heart of democracies, is hardly compatible with the health management of a crisis of this magnitude. The authorities have just had a bitter experience, which leads them to tighten day after day the restrictions on the gathering and movement of populations in an attempt to stop the transmission of the virus. Freedom-killing measures taken within a perfectly legal framework, that of the right of exception to be able to act in situations where the national interest, the security of populations and public order are seriously threatened, democracies, for a long time, had to establish rules derogating from common law (Vincent, 2020). Bachelet points out that exceptional measures or a state of emergency should be subject to appropriate parliamentary, judicial and public oversight (Bachelet, 2020).

3. Face Mask, An Attack to Individual Freedoms?

With the appearance and spread of the virus, some countries immediately imposed and generalized the wearing of masks in public sphere in order to protect the public health of citizens by limiting the transmission of Covid-19 to finally eradicate it, others have limited to certain areas while others just recommended. But these decisions have been applauded by some and criticized and rejected by others. Citizens less concerned with respect for freedoms or more fearful of the pandemic would like its use to be imposed everywhere. The strong argument is that in this time of a fairly deadly pandemic, medical research has shown that wearing a face mask is effective against the spread of Covid-19 (Bai, 2020). The state cannot impose the wearing of a face mask at home, in the car or in a private enterprise. But in public, the fact that the state can impose the wearing of masks in the streets, in public places, under the pretext of propagation, can be significant and acceptable (Fields, 2020).

Originally claimed to be unnecessary when otherwise virtually unavailable, and now widely used by government decrees, the face mask is becoming a matter of debate. Arguments then emerge against the wearing of this sanitary accessory which claim that its use is not uncontrolled by ordinary citizens, that its effectiveness is not proven, that the measure is disproportionate, that it is the door open to de new anti-freedoms measures (Lugon, 2020). In addition, the entry into force of the obligation to wear a mask in a wide variety of public places in the majority of countries has been challenged on the grounds that this imposed obligation would violate a person's right to liberty. In addition, wearing a mask that prohibits going out to people who have not been able to obtain it concerns the freedom of dress, the freedom to come and go and personal freedom (Mattiussi, 2020). Human rights law states that all human rights are inalienable, universal, interdependent and indivisible. They impose binding obligations on governments, particularly in emergency situations. They apply to all without discrimination and are indivisible. While human rights law allows for the limitation or derogation of certain rights for legitimate purposes, such as the protection of public health, there are strict limits as to when, how and when extent in which the rights may be limited. Any limitation must have a legitimate objective and must be proportional to that objective, necessary (effective and informed by evidence),

limited in time, non-arbitrary (non-discriminatory) and in accordance with the law (Onusida, 2020b:5). This is the reason why the obligation to wear a mask may not apply, for example, to everyone. BC's Human Rights Commissioner recalls that children under a certain age, anyone who cannot wear a mask because of a health problem or a physical, psychological, behavioral, cognitive or emotional impairment, and any person not being able to put on or take off a mask without the help of another person, should be exempt (Office of The Human Rights Commissioner, 2020). Thus, people with severe respiratory problems find it very difficult to wear masks. Masks are also a barrier for people with hearing loss who have to rely on lip reading or facial expressions to communicate. Furthermore, the inability to wear a mask for the reasons cited should not result in automatic negative consequences, such as harassment, discipline, dismissal of employees, or eviction from housing (Alberta Human Rights Commission, 2020). The fundamental rights often involved in public health emergencies are, among others, the right to health, the right to privacy and confidentiality, the right to movement and liberty, the right to employment, the right to non-discrimination, freedom of assembly and expression and the right to information (Onusida, 2020b:5).

The mask is rejected by some in the name of religion and religious freedoms. Among those who protest the wearing of a mask, being forced to wear a face mask violates their religious rights. This is the example of Ohio State Representative Nino Vitale, who publicly refused to wear the mask because covering the face dishonored God. Some religious leaders and pastors have also adopted an anti-mask stance (Smith, 2020). Samuel Perry calls attention to Christian nationalists who are more likely to believe in conspiracy theories, to be wary of the media and scientists, and to feel that there is some sort of conspiratorial agenda behind everything that (Jenkins, 2020). The requirement to wear a mask continues to be the subject of protests in many countries. About 400 people gathered on social media for the group's appeal called 'Virus Madness', opposing the requirement to wear a mask set up throughout Brussels. Their slogans are "no mask", "freedom begins where fear ends", "no dictatorship of health", "you took my breath away". It should be noted that the majority of the group do not wear masks. Protesters argued that the Covid-19 measures taken by the government limited individual freedoms (BelturkHaber, 17.08.2020). Some of the voices against the wearing of masks therefore suggest that this obligation would infringe their freedom of expression, conscience or privacy. At a large rally in Berlin last August, which mobilized some 20,000 people, anti-mask protesters denounced the obligation as a form of slavery and claimed to be "free" (De Sakutin, 2020). Similar protests have taken place in many places around the world. In the United States, Canada, England, France, Belgium, Spain and many other countries, anti-mask movements have organized themselves on social networks to demonstrate in the streets, often without a mask. However, the argument remains unchanged. For the anti-mask movement, the obligation to wear a mask is considered an intolerable attack on their individual freedoms by the government. They are convinced that wearing a mask in public places is an attack on their rights and freedoms.

Face mask has been taken to court in several cities too. This is the example of the decree of May 20, 2020, of the mayor of the municipality of Strasbourg aiming to require people over eleven years old to wear a "general public" or surgical mask covering the mouth and nose to attend the tracks and squares located on the Grande-Ile, the bridges and adjacent tracks, from May 21 to June 2, 2020 from 10 a.m. to 8 p.m. The judge suspended the decree considering that it constitutes an interference with the exercise of the right to respect for private life (Fiat, 2020). Moreover, the Lyon administrative court ruled in favor of an association which denounced the imposition of the wearing of protective masks in such a general and absolute manner. Justice was forced to review its prefectural decree on the compulsory wearing of a mask. Likewise, in Spain, the consumer defense association ACUS has taken legal action against the compulsory use of a mask (Laffon, 2020).

It should be remembered that before Covid-19, many states prohibited the wearing of masks for safety reasons. Following a series of riots in many UK cities in August 2011, the UK temporarily reintroduced anti-mask laws. On June 19, 2013, the Canadian Parliament passed the Prevention of Identity Concealment During Riots and Unlawful Gatherings Act. The Australian state of Victoria passed laws in September 2017 to ban face covering during violent protests. In the United States, at least 15 states ban protesters from wearing masks. The French government introduced an anti-riot law in April 2019, which prohibits covering faces during a demonstration disrupting public order (Agence de presse Xinhua). But France also has a law prohibiting the concealment of the face in public space dating from the early 2010s (Loi n.2010 1192). Veiling or hiding one's face was prohibited until the appearance of the coronavirus. But the Covid-19 has turned the situation around. It is now forbidden to be in public space with face uncovered in several countries.

4. New Social Contract in New Normal

The response to the Covid-19 pandemic, which forces us to be united by being alone, inflicts on human communities across the world a very heavy punishment that of desocialization. Contact is prohibited. Trust is banished. Cooperation is prevented. The public space is empty. "Deconfinement" will not mean, unfortunately, the end of this degradation of the social bond but the crossing of a new stage, that of the advent of the masked society, synonymous with hampered communication. The improbable social contract imposed on us is to leave internal confinement to enter external confinement (Laurent, 2020).

The question of the social contract is largely reflected by Grotius, Pufendorf, Hobbes, Locke who articulates the idea that the state and society are not natural phenomena but the result of a human and voluntary creation. However, Rousseau's work is the first to articulate life in society and freedom. Rousseau recalls that our freedom consists in our participation in the law, and that our dignity consists in going beyond our particular wills to seek the general good. It introduces the ethical dimension which is "to submit to the law is to submit to the universal, to the highest degree of freedom" (Davaris, 2009:27). In *The Social Contract*, Rousseau makes the difference between the state of nature

and the civil state. By passing from one to the other through a social pact, through the rules of society that they set for themselves, human beings rise in a way, replacing natural freedom with moral freedom. For him, the passage from the state of nature to the civil state produces a very remarkable change in man, by substituting justice for instinct in his conduct, and by giving to his actions the morality which they previously lacked. In the case of restrictions and measures imposed by the authorities, the social contract hinders natural freedom, the spontaneous physical conception of freedom. But the consent to temporary and strong collective constraints, in the general interest, can enter the field of moral freedom induced by the social contract. These are the accepted constraints. In awe and fear, measures as drastic as general containment, the closure of non-vital establishments and quarantine are widely accepted and even approved (Lohest, 2020:12). The pandemic has led people to accept restrictive practices, which are often against their will or freedom, in the name of social cooperation and the general interest. This is the reason why the classic conception of the social contract before the period of Covid-19 is called into question in the following period.

The UN Secretary General, António Guterres, mentioned the need to develop a new social contract in the fight against the virus. According to him, "the measures taken to deal with the pandemic, and the general discontent that preceded it, must be based on a new social contract and a new global situation that bring equal opportunities for all and respect for the rights and freedoms of each and every one" (Guterres, 2020). Indeed, the societal impact of the coronavirus crisis is not distributed evenly. In a *carte blanche* drafted by Belgian academics, it is pleaded for a new social contract. It is said that the virus strikes harder in neighborhoods with a rather low socio-economic profile, which are also often densely populated neighborhoods. The confinement also hasn't affected everyone in the same way. More people have to knock on the door of social assistance and food banks. Disadvantaged children and young people also have to endure great hardship. They suffer the most from the "adapted" school regime. Their housing is often precarious and they have little - or no - access to online education (LeSoir, 16.09.2020). These are inequalities and the limitation of rights, especially personal freedoms. In the case of wearing a mask, personal freedom refers to the freedom to appear in public space without a mask. In other words, the freedom to present yourself to others as you see fit in the public sphere. The term individual freedom historically designates the prohibition of arbitrary arrests and detentions, but it has gradually widened to become the exercise of the legitimate will of each within the limits of the necessities of the social order (Mattiussi, 2020).

The rumors that restrictions such as social distance and masks against Coronavirus will soon end with vaccines are not supported by experts. It has been declared that it is not possible for vaccines to change the course of the pandemic in the short term. Scientists explain that vaccination will not remove masks that have been a part of our daily lives for about a year. Although the vaccines that have been introduced seem quite successful in preventing serious diseases, it is not clear how long Covid-19 can stop the asymptomatic spread in the society. However, Turkish scientist Uğur Şahin, founding partner of BioNTech, states

that it may take a year to determine whether the vaccine will stop asymptomatic cases or not (Dahi, 2020). The World Health Organization (WHO) is also advocating for maintaining the mask, including for people who have been vaccinated against Covid-19 (L'avenir, 2020). Voluntary measures taken to reduce interactions between people and increase social distance, as in the case of Covid-19, may be effective in reducing transmission rates. However, any social distancing and containment measure implemented, if deemed necessary, balanced and informed by evidence, must take into consideration the effects it will have on individuals and communities and be adapted to improve the negative consequences (Onusida, 2020b:14). The social contract forged in the aftermath of the Second World War has been called into question by economic and social crises, and by environmental crises. The coronavirus pandemic requires rethinking new balances between social actors (citizens, State, companies), and redefining the social contract (LaGazette, 17.09.2020). Given the possibility that the measures taken against Covid-19 will continue for a while, calls for a more egalitarian and human rights-based understanding of the legal, humanitarian and social dimensions of these restrictions are vital.

5. Conclusion

The world is going through a pandemic where the invisible enemy has killed more than a million people and infects a few million. The impact of the health crisis has been catastrophic. In addition to being a disease itself, the coronavirus goes beyond and affects the psychological, social, economic and political aspects. Governments have had to develop different practices in order to overcome the problem. The measures, which initially were relatively flexible, have become very strict to the point of paralyzing daily life. In addition, the pandemic has exposed the inadequacy of some governments in both health and human rights. Although the World Health Organization has not recommended the implementation of large-scale mandatory restrictive measures such as disproportionate or excessively restrictive bans or freedom of movement, the measures applied have limited movement and access in the public space. Short or long term confinement, sometimes with curfews, is imposed. Wearing a mask is also made compulsory in public spaces. More and more countries are moving forward with recommendations or mandates for wearing masks in public. If no masks, no access to public places such as shops, public buildings, public transport. In many cases, the ban on going out in the streets without masks has even been raised. In short, these restrictions which provided for the safety and well-being of people by protecting them from the virus were seen as discriminatory.

It must be said that the world does not seem to have answers to many of the problems raised by the pandemic. It is not easy to predict the future either. But it is indisputable that a major pandemic like Covid-19 will have short and long term effects with changes made at all levels. However, one thing is certain, is that the way to counter the virus will also determine the post-Covid-19 period. From the outset, human rights should have been placed at the heart of all measures. However, the steps taken from the beginning contradicted the principles of human rights. The pandemic has shown the need to build a new understanding of social well-being. As a

result, many are those who pronounce a social contract revised and adapted to the new situation. The new social contract requires a balance between the policies forged by the conditions of the new Covid-19 period and human rights. Thus, the new social contract aims both to combat and manage the pandemic and to shape the new post-Covid-19 world within the framework of human rights.

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