

Editorial

Editors-in-Chief, Managing Editors** and Director*

1. Aims and Scope

The editors-in-chief, managing editors and director are excited to share with you the first Volume (issues 1, 2, 3) of Legal Policy & Pandemics (LPPJ), an open-access publication of the Global Pandemic Network (GPN)¹ designed to host and promote comparative debate on the legal and social issues related to pandemics.

The focus starts with the current COVID-19 pandemic, recognized as ‘the greatest challenge we have faced since World War II’² emerged in Asia in late 2019 and rapidly spread to Europe, Africa, the Americas, and Oceania.

It undoubtedly represents the major global health crisis of our time still unresolved after two years,³ despite the wide range of measures adopted at all levels of governance to respond to it.⁴

Healthcare systems in all countries have proven inadequate, compromising people’s access to treatment and medical services.⁵ Globally, the COVID-19 pandemic showed the weakness of the international health architecture, also in its relationship to non-health sectors (e.g., environment, trade, travel, migration).⁶

But, as widely recognized, COVID-19 is not just a health crisis.⁷ It has induced severe social, economic, and institutional challenges,⁸ including links to the ecological crisis.⁹

Early data¹⁰ shows a national and global recession, increase in absolute poverty and inequality,¹¹ job losses, a devastating impact on education and the enjoyment of many fundamental rights, civil, political, and ecological,¹² particularly affecting those least able to cope, such as women,¹³ youth, low-skilled workers, vulnerable communities, and

* Antonio Herman Benjamin, Paola Iamiceli, Emmanuel Kasimbazi, Jolene Lin, Nicholas Robinson, Elisa Scotti.

** Cristiana Lauri and Maria Antonia Tigre.

¹ Global Pandemic Network. <<https://www.globalpandemicnetwork.org>>. See below § 2.

² United Nations Development Programme (UNDP). COVID-19 Pandemic. Humanity Needs Leadership and Solidarity to Defeat the Coronavirus. 2020. <<https://www.undp.org/content/undp/en/home/coronavirus.html>> accessed 10 October 2021.

³ WHO Coronavirus (COVID-19) Dashboard <<https://covid19.who.int>> accessed 10 October 2021.

⁴ The Articles in the first section of this Volume provide a wide overview of the government response around the world.

⁵ GHS. The Global Health Security Index. <<https://www.ghsindex.org/>> accessed 10 October 2021.

⁶ IDI, 12th Commission, S. Murase (rapporteur) Report on Epidemics and International Law, May 2021, <<https://www.idi-ii.org/app/uploads/2021/05/Report-12th-commission-epidemics-vol-81-yearbook-online-session.pdf>> accessed 10 October 2021. Resolution 2/2020 Global health law, International law Association, Kyoto <<https://disaster-law.ifrc.org/sites/default/files/media/disaster-law/2021-01/Resolution%202%20Kyoto%202020%20Global%20Health%20Law%20FINAL.pdf>> accessed 10 October 2021.

⁷ United Nations Development Programme (UNDP). COVID-19 Pandemic. Humanity Needs Leadership and Solidarity to Defeat the Coronavirus. 2020. <<https://www.undp.org/content/undp/en/home/coronavirus.html>> accessed 10 October 2021.

<<https://www.undp.org/content/undp/en/home/coronavirus.html>> accessed 10 October 2021.

⁸ *Ibidem*.

⁹ OECD ‘The long-term environmental implications of COVID-19’ <https://read.oecd-ilibrary.org/view/?ref=1095_1095163-jpelnkdei2&title=The-long-term-environmental-implications-of-COVID-19> accessed 10 October 2021. David Quammen, *Spillover: Animal Infections and the Next Human Pandemic* (Norton, W. W. & Company, Inc, 2013).

¹⁰ OHCHR, ‘COVID-19 and its human rights dimensions’ <<https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>> (accessed on 10 October 2021). World Bank, Global Economic Prospects, June 2021, <<https://www.worldbank.org/en/publication/global-economic-prospects>> accessed 10 October 2021.

¹¹ OHCHR ‘COVID-19 and its human rights dimensions’ <<https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>> accessed 7.9.2021; World Bank, Global Economic Prospects, June 2021, <<https://www.worldbank.org/en/publication/global-economic-prospects>> accessed 10 October 2021.

¹² Maria Antonia Tigre and others, Environmental Protection and Human Rights in the Pandemic. Position Paper, in this Volume, Section III.

¹³ UNGA resolution 16 December 2020 n. 75/157, Women and girls and the response to the coronavirus disease (COVID-19) <[https://undocs.org/pdf/symbol=en/A/RES/75/157](https://undocs.org/pdf/symbol/en/A/RES/75/157)> accessed 10 October 2021.

indigenous peoples.¹⁴ These inequalities are predicted to persist,¹⁵ even though states have adopted exceptional budgetary measures, liquidity, and aid policies through recovery plans to provide relief to citizens and sectors particularly affected and stimulate recovery.¹⁶ According to the current estimations,¹⁷ about 100 million people will have fallen back into extreme poverty by the end of this year despite the (uncertain and uneven) recovery. Additionally, in an expected scenario of persisting global inflation, climbing food prices may compound rising food insecurity in low-income countries and communities.¹⁸

At the institutional level, governments appeared to be unprepared to face the risk of a pandemic outbreak.¹⁹ The response, uneven, has been based on emergency procedures that derogate from the ordinary competencies of representative assemblies, strengthens the executive and central power, highlights the complexity of multilevel governance of digital society, and restricts fundamental rights in ways that are challenging jurisdictional systems²⁰ and reshaping the post-pandemic State.²¹

The link between the pandemic and the environmental crisis has come to the fore. This link is not limited to the risk that the pandemic economic recovery may hinder the pursuit of environmental goals.²² It concerns, first and foremost, the causes of

the pandemic and, therefore, its prevention strategy.²³ As broadly acknowledged, the COVID-19 pandemic reflects the ecological crisis, a zoonotic disease resulting from a spill-over from animals to humans driven by the loss of biodiversity and disruption of natural habitat.²⁴ It is not the first, nor will it be the last. In particular, what is drawing attention is the intensifying emergence of zoonotic diseases over the previous fifty years. This increase is driven by the growing anthropogenic impact on nature and, in particular, loss of biodiversity, disruption of natural habitat, and increasing rate of wildlife-human contacts.²⁵ We now realize that 'the next pandemic is here'.²⁶ We must act immediately to prevent future pandemics with an integrated approach by protecting the health of animals, humans, and the ecosystem together.²⁷ Planetary health should be at the center of the strategy for a more resilient world.²⁸

The reaction against COVID-19, which is also essential to analyze given any potential future pandemic, touches on all these aspects. While we are still struggling with COVID-19 from a health perspective, we should also try to recover and rebuild a more resilient society against the various institutional, economic, social, and ecological risk factors. The declared intentions of the public²⁹ and private sectors³⁰ are aligned in this direction.

¹⁴ Maria Antonia Tigre and others, 'The Inter-American system during COVID-19: Development of Green Human Rights on Indigenous Cases' (2021) 15 *Revista de Derecho Ambiental* 7.

¹⁵ World Bank, *Global Economic Prospects*, June 2021, <<https://www.worldbank.org/en/publication/global-economic-prospects>> accessed 10 October 2021.

¹⁶ OECD, 'The COVID-19 Recovery Dashboard', <<https://www.oecd.org/coronavirus/en/recovery-dashboard>> accessed on 10 October 2021.

¹⁷ See footnote no. 15.

¹⁸ *Ibidem*.

¹⁹ See all the contribution in Sections I and II of this Volume and, in Section III, the reports on this matter.

²⁰ F. Cafaggi and P. Iamiceli, 'Global Pandemic and the Role of Courts. Opening Survey', in this Volume, Section II.

²¹ Frances Z. Brown, Saskia Brechenmacher and Thomas Carothers, 'Coronavirus Reshape Democracy and Governance Globally? Carnegie Endowment for International Peace' <<https://carnegieendowment.org/2020/04/06/how-will-coronavirus-reshape-democracy-and-governance-globally-pub-81470>> accessed 10 October 2021. For the large-scale intervention of the state in the economy see OECD, 'The COVID-19 Recovery Dashboard', <<https://www.oecd.org/coronavirus/en/recovery-dashboard>> accessed 10 October 2021.

²² UNDP Green Recovery Data Platform, <<https://data.undp.org/greenrecovery/>> accessed 10 October 2021.

²³ Maria Andotina Tigre, 'COVID-19 and Amazonia: Rights-based approaches for the pandemic response' (2021) *Review of European, Comparative & International Environmental Law* 30 162.

²⁴ David Quammen (n. 9).

²⁵ *Ibidem*.

²⁶ Nicholas A. Robinson, 'The Next Pandemic is Here', *The Environmental Forum*, 2020 <<https://www.globalpandemicnetwork.org/wp-content/uploads/2020/11/ZoonosisEssayEnvForumEliNov2020.pdf>> accessed 10 October 2021.

²⁷ FAO/OIE/WHO (2017) 'The Tripartite's Commitment. Providing multi-sectoral, collaborative leadership in addressing health challenges' <https://www.who.int/zoonoses/tripartite_oct2017.pdf> accessed November 30, 2021.

²⁸ Nicolas A. Robinson, 'Juridical Principles to Sustain Planetary Health. Pathway to the 2022 Declaration Blog', 5 May 2021 <www.pathway2022declaration.org/?post_type=article&p=621> accessed 10 October 2021.

²⁹ See, for example, the Recovery Plan for Europe. <https://ec.europa.eu/info/strategy/recovery-plan-europe_en#introduction> accessed on 10 October 2021; the US Recovery Plan <<https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-biden-announces-american-rescue-plan/>> accessed 10 October 2021; for the People's Republic of China approach see 'Fighting COVID-19 and Leading Economic Recovery Through Solidarity and Cooperation', Remarks by the President H.E. Xi Jinping at the APEC Informal Economic Leaders' Retreat, 16 July 2021 <https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1895056.shtml> accessed 10 October 2021.

³⁰ See the Larry Fink's 2021 letter to CEOs <<https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>> accessed 10 October 2021 and the BlackRock's 2021 letter to clients <<https://www.blackrock.com/corporate/investor-relations/blackrock-client-letter>> accessed 10 October 2021.

Many are the paradigm shifts implied, influenced mainly by public policies and state plans attempting to recover from the crisis and transition towards more robust and resilient economic, social and institutional paradigms.

Against this backdrop, 'legal policy and pandemics' has rapidly emerged as a crucial cross-sectoral field of inquiry. The question of how pandemics are re-shaping public policy and how to increase the systemic resilience of our society to the many risks it faces (not only limited to health) is becoming a priority. Relatedly, it is essential to consider how to bring policies, law, and science into a balanced relationship with a preventive and precautionary perspective.

What is a resilient society is indeed a complex issue that starts from the recognition, in the Anthropocene era, of the importance of a holistic and adaptive perspective that considers the mutual interdependence and inseparability of social and ecological systems.

Stimulating comparisons and a global discussion on these common issues in the social sciences is therefore of particular importance today, not only in academic research but also to offer a valuable contribution to the ongoing transitions towards a more resilient society. To this end, it will be essential to verify the changes in the nineteenth and twentieth-century paradigms of the rule of law, economic freedoms, and fundamental rights. Moreover, legal comparisons are crucial to grasp the most important trends and foster pluralism of ideas and methods, an essential asset that the freedom of academic research provides.

2. The Global Pandemic Network (GPN)

In 2020, a group of scholars from various universities founded the GPN,³¹ an international network in the humanities, intending to bring together young researchers alongside distinguished academics and experts to mutually exchange research and information on pandemics, engage in in-depth discussions, and propose solutions to decision-makers based on the analysis of best practices and the comparison of experiences in the field of law and policy of pandemics. The field of study and comparison are the following thematic focuses: COVID-19 and government response, human rights, environment, cities, competition, digital society, taxation, health systems, public management, international organizations, international investment.

The intention is to develop resilience models based on environmental protection, respect for human rights, and sustainable economic paradigms.

As a stimulus to debate and confrontation in full respect of differences and recognition of their fundamental value, the GPN is also intended as a tool for resilience, able to contribute to the ongoing transition process through debates, discussions, and academic reflections, focusing on the creativity of young scholars and stimulating the establishment of international teams working together on different aspects of the response. Working groups have been established on cities, human rights, the environment, and governmental response. GPN activities include webinars, scientific reports, and academic studies, and founding this Journal.

3. The WHO Litigation Project

The GPN had the opportunity to partner with the Covid-19 litigation project³² through fruitful collaboration.

The COVID-19 litigation project is supported by the WHO and coordinated by Trento University. The project's main goal is to collect, organize, and present a worldwide collection of relevant cases concerning the disputes arising from the governments' adoption of public health measures to address the COVID-19 pandemic.

This project is aimed at enabling access by public and private stakeholders to these decisions, mainly:

- governments and institutions that need to adopt measures in emergency contexts like the present one;
- courts that need to address unprecedented conflicts between the right to health and other fundamental rights, fundamental freedoms and other rights;
- lawyers and other legal experts, who need to assist persons/institutions affected by these decisions and measures;
- scholars who engage in legal and interdisciplinary research in the field of public health and related fields.

To this end, an online open-access archive (Co-Lit Database) will be set up and constantly updated to classify and present relevant case law collected worldwide.

At a different level, this work also aims to compare different approaches and techniques for balancing the governmental police power and the right to health with other fundamental rights, fundamental freedoms, and other rights, and the possible definition of guidelines on balancing techniques in these challenging situations.

The approach is selective and not comprehensive. The selection is based on two pillars:

³¹ See footnote n. 1.

³² COVID-19 Litigation (Development preview) <<https://www.covid19litigation.org/>> accessed 10 October 2021.

- representativeness within the context of the country litigation;
 - relevance in respect to some focal points adopted in this initiative, namely:
 - o The extent to which emergency leads to a revision of power allocation (division) among public authorities (part. legislative v. administrative; central v. peripheral powers);
 - o The identification of conflicts between (fundamental) rights and freedoms, generated by the adoption of containment measures;
 - o The different techniques used by courts to strike a balance between the right to (public) health and other (fundamental) rights and freedoms whenever they conflict with each other;
- Additional criteria for selection relate to case relevance in respect of:
- o the type of court involved (supreme courts' decisions are favored);
 - o the type of procedure (heading to a balanced mix between interim/urgency procedures and final ones);
 - o the kind of measures/remedies sought (so that different measures/remedies are dealt with in selected cases);
 - o the case result (so that decisions in which the claim is upheld or the challenged act is annulled are considered distinct from those in which the claim is rejected or the challenged act is upheld).

Based on a long-term experience developed in judicial training projects at the EU level, the current initiative builds on close cooperation between judges and academics. This cooperation extends from project design to project results; the role assigned to the International Network of Judges and Scholars³³ reflects this methodological choice.

4. The Journal

The Legal Policy & Pandemics Journal (LPPJ) is a publication of the GPN designed to host research on the legal and social issues related to pandemics.³⁴

More specifically, the research topics included are in the area of social sciences and cover law, political science, sociology, and the history of institutions. LPPJ hosts contributions on pandemics and government responses; sustainable development; markets and the circular economy; digitalization; climate change, environmental protection, and human rights.

With its mission to reflect on issues related to systemic changes driven by the pandemic, LPPJ strives to be at the forefront by stimulating debate, encouraging reflection, and shaping discussions on the most important and relevant legal issues

through a rigorous selection, peer review, and editing process.

Without renouncing the scientific rigor of the contributions hosted, LPPJ is open to reflections of scholars and experts from universities, institutions, professions, and social spheres that have experience in these issues.

LPPJ is intended to serve as essential reading for scholars, policymakers, advocates, institutions, NGOs, public officials, and the general public interested in learning more about the global response to pandemics and a wide range of related issues.

It is structured in three parts.

The first part (Articles), edited by the Journal's editors-in-chief and managing editors, features articles by scholars from different parts of the world, aiming for an original and critical examination of the issues addressed while respecting different research methodologies. This objective is balanced with the need to understand a new and constantly changing reality and the related need for speed, given the intention of reflecting on ongoing issues and stimulating debate.

The second part (COVID-19 Litigation) edited by Fabrizio Cafaggi and Paola Iamiceli, focuses on the litigation generated by COVID-19. This section is linked to the COVID-19 Litigation project mentioned above and will be inaugurated by the introductory article by both editors. This section examines the role of courts in overseeing the adoption and implementation of governmental policies to contrast the pandemics. National and international courts have been quite relevant to ensuring the preservation of the rule of law and respecting democratic values during pandemics. Courts have been custodians of fundamental rights when overseeing the constitutional validity of legislation and the conformity of administrative acts. However, they face new challenges when adjudicating cases in which individuals and organizations claim compensation for losses suffered due to the pandemic or the adoption of restrictive measures. Courts are also scrutinizing the vaccination campaign and its impact on fundamental freedoms through the lenses of proportionality, self-determination, and non-discrimination.

This section will also compare different approaches of judicial oversight and investigate the relationship between governments and courts during the various stages of pandemics. Moreover, it will explore the role of science and decision-making control in conditions of uncertainty and lack of consolidated medical and scientific knowledge. Finally, the section will monitor the evolution of case law in a comparative perspective combining surveys and

³³ International Network of Judges and Legal Scholars, <<https://www.covid19litigation.org/international-network-judges-and-legal-scholars>> accessed 10 October 2021.

³⁴ See above paragraph 1.

articles focusing on specific aspects or legal domains.

A third section (Report) is devoted to the reports of the GPN working groups and is edited by the coordinators of the group involved.

As a global journal, it represents the different areas of the world in its editorial, scientific, and management committees. It has a strong presence of young scholars in international research groups that form its stimulating backbone.

In the context of such a wide-ranging discussion, the fundamental approach of the Journal is pluralism and mutual respect for all visions and different methodological traditions, subject to strict compliance with criteria of research quality and originality guaranteed by anonymous referencing according to international standards and the prior verification of the coherence of the articles submitted with the research areas of the Journal.

5. The first Volume

The first Volume we present here (issues 1,2,3) is devoted to the legal response to COVID-19 and the comparison between different systems, the first significant challenge to which the pandemic has subjected our legal community, and to the impact of COVID-19 on cities, which are on the 'front lines managing zoonotic diseases, since most of the world's people live in cities', so that 'spatial planning of cities and new developments determines environmental security'³⁵. It features analyses from several countries representing world regions: Europe, Asia, Africa, North America, and South America.

The theme is institutional, and is discussed from a legal perspective. How different systems have reacted to the crisis and what strengths and weaknesses have emerged will be examined in the first section with contributions on individual countries by C. Fraenkl Haeberle and Elena Buoso for Germany, M. Fermeglia and S. Van Garsse for Belgium, Y. Drossos for Greece, M. Gnes for Italy, E. Kazimbasi for Uganda, T. Qin for mainland China, A. Gao for Taiwan, L. Sulistiawati for Indonesia, U. Shankar for India, A. Harrington for the USA.

The need for a Code of Conduct for local urban governments that should consider a range of interconnected civil rights and political rights is explored by the two essays authored by Ronald Car and other members of the 'COVID-19, Cities and Civil Rights' Working Group.

The litigation section investigates how jurisprudence has reacted to the central issues of personal freedoms, data protection, and vaccinations with

contributions by S. Fassiaux, C. Angiolini, G. Sabatino. The section is opened by an in-depth and wide-ranging contribution of a methodological framework by Fabrizio Cafaggi and Paola Iamiceli.

The impact of Covid-19 on cities, fundamental rights and the environment will be examined in the third section, with an extensive and in-depth report by the 'COVID-19, Cities and Ecological Rights' Working Group led by Maria Antonia Tigre. This section will also feature reports from the working group on government response focusing on case study analyses.

The Volume builds on two global webinars organized by the GPN and supported by Un-Habitat: 'Covid-19 and cities. Building resilience on human rights and environmental protection' (July 2020) and 'Supernational, national and regional responses. Building resilience through comparative experiences' (March 2021). Both webinars hosted a comprehensive discussion with authoritative academics from diverse regions of the world and, in open sessions, meetings of global scholars and international working groups (coordinated and participated by Giovanni Antonelli – GPN co-founder, Flaminia Aperio Bella, Ittai Bar-Siman-Tov, Ronald Car, Gianluca Crispi, Martin Crook GPN co-founder, Chiara Feliziani, Matteo Fermeglia, Anton Ming-Zhi Gao, Valina Geropanta, Maria Luisa Gomez Jimenez, Emma Guernaoui, Cristiana Lauri - GPN co-founder, Eduardo Parisi, Maciej M. Sokolowski, Maira Tito, Maria Antonia Tigre) to reflect and discuss the topic. We are particularly grateful to them for their enthusiasm, innovation, cohesion and inspiration, making the GPN and the LPPJ a place open to the participation of all those interested in the debate and joining our project. We look forward to engaging with our authors and reviewers and receiving feedback from our readers.

³⁵ Nicholas A. Robinson, 'The Next Pandemic is Here' (2020) The Environmental Forum <<https://www.globalpandemicnetwork.org/wp-content/uploads/2020/11/ZoonosisEssayEnvtForumEliNov2020.pdf>> accessed 10 October 2021.