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ARTICLE

Fragile Responsibilization: Rights and Risks in the Bulgarian Response to Covid-19

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ABSTRACT. This article discusses the Bulgarian response to the Covid-19 pandemic. The Bulgarian case is characterized by an ineffective constitution of the individuals as subjects of responsibility for the health of the population, which resulted in a vaccine coverage considerably lower than the European average. The article argues that the fragile responsibilization is an effect of the response to the pandemic that, building on older post-socialist regulations of the access to healthcare, instead of restricting the circulation of bodies in general, tried to differentiate between economically productive and unproductive circulation and to limit only the latter by progressively increasing its differential costs (both in terms of time and efforts and in terms of risks). An analysis of the legal actions against quarantine violators, however, suggests that such a strategy stimulated the public to respond to the pandemic by calculating risks, and if the social actors nevertheless behaved irresponsibly, it was often because they took into account not only the risks posed by the virus but also smaller-scale risks affecting their social support networks. The authorities, however, tried to repair the unreliable responsibilization by articulating an *ad hoc* right to health defined at the level of the population. That biopolitical right to health was crucial to the implementation of certificate requirements. It was harmonized with individual rights by opening up fields of choice such as the choice between vaccination and daily testing. However, since the differential costs of the higher-risk options seemed irrational, the constellation of individual rights and right to health left a growing residue of irresponsible conducts justifying a further intensification of control.

Keywords: Biopolitics, Responsibilization, Control, Risk, Right to health, Covid-19, Bulgaria

INTRODUCTION

In the course of the Covid-19 pandemic, the public authorities implemented measures that cut deeply into everyday life. The measures could only work if the people were involved. Therefore, it seemed vital to constitute each and every person as a subject of responsibility

for the health of the population. In the case of the Balkan countries, however, responsibilization brought about unexpected effects: a significant share of vaccine hesitancy, low vaccination rates, and widespread neglect of sanitary measures. The effects are particularly salient in the case of Bulgaria, which is the focus of this article. I will argue that the responsibilization of the Bulgarians went awry notwithstanding that they recognized their responsibility for the health of others. Responsibilization was infelicitous because the meaning of responsibility was underdetermined by risks that could not be generalized beyond the everyday-life situations of the social actors and hence were indiscernible in the scale of population.[1] Since the health authorities did not take into account such smaller-scale risks, they explained the unintended effects of the pandemic regulations in terms of a lack of responsibility, and they tried to prevent irresponsible behavior by progressively increasing the risk of sanctions. The government and the judiciary justified that approach by referring to a right to health defined *ad hoc* in terms of risks for the population. In the course of the enforcement of that biopolitical right, the health authorities attuned it to individual rights in such a way that the latter were incorporated into an apparatus of security that both reproduced and extended the rationality of postsocialist biopower.

The first section of the article describes the pandemic strategy of the Bulgarian authorities. The second section examines the rationality of the allegedly irresponsible behavior on the basis of particular legal actions against quarantine violations. The third section outlines the reinterpretation of the right to health as a collective rather than individual right in the context of the pandemic, and it argues that the apparatus of biopolitical security triggered by the pandemic has the potential to transform rights into a mechanism of control.

THE BULGARIAN RESPONSE

The medical authorities confirmed the first Bulgarian cases of Covid-19 on March 8, 2020.[2] A couple of days later, the Parliament declared an emergency. The government had to

[1] Comparable arguments based on calculations of underdefined quantities can be discerned, for example, in the analysis of the rationality of the U.S. anti-quarantine movements in James Meeker, "The political nightmare of the plague: The ironic resistance of anti-quarantine protesters," in *COVID-19* (2020), 109-121.

[2] The current account of the Bulgarian response to the pandemic is based on Ekaterina Markova, *Obshtestvo pod Kliuch: Problemi na Sociologicheskoto Izsledvane v Systoianie na Kriza* [The Lockdown Society: Problems of Sociological Research in Times of Crisis] (2021), Dimityr Stoykov et al., "Upravlenie na Pandemiata ot Covid-19: Podhodi, Merki, Rezultati," [Governing the Covid-19 Pandemic: Approaches, Measures, Outcomes], (2020). Both studies argue that the pandemic regulations have had unintended effects on Bulgarian society, whose cohesion has been already eroded by high levels of individualism and anomie. The studies describe in detail the timeline of the measures taken by the government and incorporate the findings of nationally representative surveys of attitudes towards the regulations, such as Gallup, "Osnovni Izvodi i Hipotezi ot Nacionalno Prouchvane na Obshestvenoto Mnenie 'Cennosti, Solidanost i Obshtestvenite Naglasi po Vreme na Koronakrizata'," [Basic Findings and Hypotheses of the National Survey "Values, Solidarity and Social Attitudes During the Coronacrisis], Gallup International. https://www.kas.de/documents/286758/286807/Gallup+Bulgarisch.pdf/f7fb6513-b7e6-e1c8-4509-0dbc9020a1db?version=1.0&t=1592561631839 (accessed June 2, 2020); Gallup, "Veroyatni niva na razprostranenie na

respond, otherwise it would seem irresponsible towards life itself. An epidemic, however, is more than a number of individual cases; it implies the transformation of individual cases into numbers and the quantification of an open series of epidemiological events into rates, probabilities, losses, and risks.[3] To respond, the government needed to calculate. Since the number of the Bulgarian cases was still small, the authorities turned to global calculations. The latter were tainted by uncertainty because the accumulation of a sufficiently large number of cases was still in progress. Nevertheless, there was no doubt that, instead of focusing on the inward flows of air, water and food to healthy bodies, as in classical sanitary science,[4] the response should rather target the outward flow of the virus from contagious bodies. Hence, the National Crisis-Management Staff tried to limit contact with contagious bodies by putting in a three-week quarantine for the infected, their contact persons and the arrivals from high-risk countries. As Covid-19 could be asymptomatic, and it was impossible to identify the infected exhaustively, the authorities placed a ban on public gatherings, closed shopping malls, nightclubs, and gyms, made masks and social distancing mandatory, and recommended working from home or shifting to distance learning. Additionally, since the global calculations differentiated the contagion risks by correlating them to variables such as age and underlying medical conditions, the National Crisis-Management Staff advised the vulnerable social groups to stay at home, and they later introduced a two-hour shopping window reserved exclusively for aged persons. Nevertheless, it seemed reasonable to assume that a population of spreaders roamed through the country and left contagious traces on things, putting healthy bodies into a mediated contact with the disease.

A population is more than just numerous bodies; it is a body of numbers.[5] Normally, to calculate the numbers that characterize a particular population, for example, morbidity or mortality, one needs a mass of registrations of individual cases on a definite territory

koronavirusa u nas i gotovnost za vaksinirane," [Probable levels of Covid-19 transmission in the country and attitudes to vaccination] (2021); Gallup, "Lipsata na dostatachno dostoverna informatsiya za vaksinite sreshtu COVID-19, preboleduvane na virusa i nalichie na hronichni zabolyavaniya sa sred nay-chesto nazovavanite prichini za otkaz ot vaksinatsiya sreshtu COVID-19 kam momenta," [The lack of sufficiently reliable information on Covid-19 vaccines, recovery from disease as well as chronic conditions are the most frequent motivations for refusing to vaccinate against Covid-19 at the moment], Gallup International. https://www.gallup-international.bg/44426/possible-levels-of-coronavirus-dissemination-and-willingness-to-vaccinate/ (accessed February 18, 2021); Alpha Research, "Godina sled nachaloto na Covid pandemiata: Kak se promeni zhivotyt ni," [A year after the start of the Covid pandemic: How has our life changed], Alpharesearch.b. https://alpharesearch.bg/post/976-godina-sled-nachaloto-na-kovid-pandemiata-kak-se-promeni-jivotut-ni.html (accessed February 28, 2021); Trend, "Naglasi na balgarite spryamo koronavirusa i konspirativni teorii," [Attitudes of the Bulgarians to Covid-19 and conspiracy theories], Trend. https://rctrend.bg/project/нагласи-на-българите-спрямо-конспира/ (accessed June 30, 2020).

[3] Michel Foucault, *The Birth of the Clinic: An Archeology of the Medical Perception* (1973), 26, 29; the concept of risk in this article is drawn from François Ewald, "Insurance and Risk," in *The Foucault Effect: Studies in Governmentality* (1991), 199; for a discussion of risks in the context of biopolitics, see Dušan Marinković and Sara Major, "COVID-19 and the Genealogies of Biopolitics: A Pandemic History of the Present," *Sociologija* 62:4 (2020), 494.

[4] David Armstrong, *A New History of Identity: A Sociology of Medical Knowledge* (2002), 8-10.

[5] See, for example, Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-1978* (2007), 99.

during a definite period of time. During the pandemic, however, the national health inspectorate registered spreaders only sporadically, and since it was unable to localize them precisely, it associated the spreaders with the cities conceived of as open milieus rather than as definite territories. Hence, the numbers that characterized the spreaders (such as transmission rate or level of exposure) turned out to be incalculable. Therefore, the health inspectorate described this underdefined group mostly by indefinite quantities as 'many', 'often', 'usually'. Nevertheless, the authorities treated the spreaders as a population characterized by regularities that were in the process of being established. For instance, during the first months of the pandemic, the National Crisis-Management Staff assumed that the high-risk spreaders were young people with extensive and frequent social contacts spending a lot of time in parks or schoolyards. Furthermore, the inspectorate believed that although the spreaders could not be defined or described statistically, they would be identified in a piecemeal fashion in the course of the gradual accumulation of results from rapid antigen tests. As a consequence, in contrast with the territorialized, statistically defined, molar populations, which are the normal object of biopolitics, the health authorities conceived of the spreaders as a deterritorialized, statistically underdefined and in that sense molecular population. That population involved risks that were also molecular insofar as such risks were statistically incalculable and could be evaluated only in terms of indefinite quantities.[6]

To stop the transmission of the virus, the government had to control the activity of the spreaders. The contagious population, however, could not be captured by the partitioning grid of the quarantine. Furthermore, the movement of the spreaders could not be restricted without stopping the circulation of bodies in general, which would amount to restricting the circulation of goods and labor and hence to hampering economic growth and incurring losses.[7] The limitations on free movement brought about economic risks, and the authorities had to balance them with health risks. To that end, the Crisis-Management Staff made a distinction between economically productive and unproductive circulation of bodies and focused on the latter.[8] In effect, the measures were limited so as to

[6] This is intended as a reference to the distinction between molecular and molar derived from the works of Gilles Deleuze and Félix Guattari (see *Anti-Oedipus: Capitalism and Schizophrenia* (1983), 89, 183). The interpretation of the concept of molecular is shaped by the argument about the transposition of biopolitics from molar to molecular plane developed by Nikolas Rose and Paul Rabinow (see Paul Rabinow and Nikolas Rose, "Biopower Today," *Biosocieties* 1 (2006), 212; Nikolas Rose, *The Politics of Life Itself: Biomedicine, Power and Security in the 21st Century* (2007), 4).

[7] The Bulgarian government was able only to a limited extent to cover such losses by transforming them into public debt, as most European countries, and the emergency funding promised by the European Commission, tied up with the green transition, was not enough to compensate for the potential losses.

[8] In contrast with more popular categories such as essential or first-line workers, the distinction between productive and unproductive circulation actually retraces the dividing line between production and services. For example, textile factories, which provide a significant share of female employment outside of the cities, can hardly be considered essential in times of pandemic. Nevertheless, the authorities deemed the accumulation of bodies on the shopfloor productive and consequently allowed the factories to work on the condition that seamstresses wore masks and maintained social distance. The approach to industry did not change even after the outbreaks of infection in some factories (the health authorities responded to the latter by putting the workers into quarantine). However, one should also take into account that the rationality of the Bulgarian approach to the pandemic has not been explicitly articulated. The discussion in this section is intended as an

cover mostly the unproductive movement: as quarantine amounted to a loss of labor, the Staff gave a restricted definition of contact as cohabitation that excluded coworkers; the health authorities did not limit the accumulation of bodies at the workplace or on public transport, and even the strictest regulations allowed outdoor dining on the condition that customers maintained social distance.

The distinction between productive and unproductive bodies, however, did not solve the problem of how to control the movement of the contagious population in the open milieu of the cities; it actually exacerbated the problem. Although the Staff hoped to compensate for the health risks brought about by the circulation of bodies by sanitary measures such as masks and social distancing, which supposedly widened and protected corporal borders, the hope soon faded.[9] In response, the Staff tried to restrict the unproductive movement of bodies further. To that end, the authorities resorted to a rationality developed in the course of the post-socialist healthcare reforms that can be summarized along the following lines. Access to healthcare during the socialist period was free. After the shock liberalization and the 1997 hyperinflation crisis, free healthcare no longer seemed economically affordable. Hence, access had to be severely limited. However, it felt impossible to draw a dividing line between the population whose life was valuable enough to get access to care and the population exposable to the risks of poverty, disease and death.[10] Instead, access to healthcare was limited by transforming it into a market. Thus, medical care differentiated into a spectrum of services of graded costs, quality and risk reflecting the dissimilar economic and social capital of the consumers.[11] In effect, "the

account of what would have made the response rational. Although the response of the authorities is essentially a compromise between the rationality of biopolitical apparatuses of security and disciplinary mechanisms as quarantine, one should neither describe it as a compromised response nor evaluate it by postulating a norm, registering the deviations from the norm and then explaining them by corruption, inability or the irrationality of the population. A Foucauldian approach should rather consist in explaining the rarity (Michel Foucault, *Archeology of Knowledge* (1972), 134-135) of the response, how the compromise between heterogeneous rationalities is shaped by a balance of power or, more properly, by a balance between power mechanisms, conflicting knowledges, incongruent regimes of jurisdiction and veridiction.

[9] On sanitary science as a regime of protection of the boundaries of the body, see Armstrong, *A New History of Identity,* 10-11).

[10] In *Society Must Be Defended: Lectures at the Collège de France, 1975-76* (1997), Michel Foucault argues that biopolitical apparatuses transform the sovereign power of life and death into racism. Of course, Foucault's concept of racism is irreducible to "the traditional form of a mutual contempt or hatred between races" (268), racism is rather "inscribed as a basic mechanism of power, as it is exercised in the modern states" (264). To simplify, characteristic features of racism as a biopolitical mechanism are: reconceptualization of the right to take life as a right to expose to the risk of death (256); establishment of a caesura within the population (255); intensification of the life of one segment of the population by exposing the other, disqualified segment to significant risks (255). If the post-socialist authorities reduced public healthcare expenditure by establishing a caesura between a segment of the population enjoying health services and a disqualified, excluded segment exposed to an asymmetric risk of death, such an approach would amount to social racism. The transformation of healthcare into a market, however, stratified the population and exposed the lower-income strata to asymmetric risks without triggering the mechanisms of state racism. In that sense, the market has dissociated the death-function (258) from the sovereign right of life and death as well as from sovereignty in general.

[11] The emergence of a healthcare market was conceived of as a "shock therapy". In contrast to the markets studied by conventional economics, it was created in a short period of time by means of legislative norms

right to equal health for all was caught in a mechanism which transformed it into an inequality".[12] The city underclass and the population of the distant, particularly mountainous areas became virtually excluded from the system, and not because their right to healthcare was curtailed but rather because they could not afford to pay the price of its exercise (additionally increased by the cost of administrative procedures and traveling). In sum, the 1997-2001 healthcare reform has invented a situated, post-socialist solution to the problem of how to limit claims for the betterment of life if they exceed the available resources:[13] to associate medical care with a market mechanism modulating the costs of implementing the right to health.[14]

The response to the pandemic was shaped by a similar rationality transposed onto the plane of security. In the context of the pandemic, security should not be reduced to maintaining order or eliminating threats. Its imperative rather consists in the intensification of life. Biopolitical security is the machine of collective wellbeing, and quite like inoculation, instead of preventing crises, it operates amidst the crises and tries to cancel them out by acting on risk factors.[15] To overcome the health crisis caused by Covid-19, the Bulgarian health authorities tried to differentiate the cost of access to nodes where numerous individual trajectories converged. At the very beginning of the pandemic, the Minister of Health quickly closed shopping malls, gyms, dancing schools, and nightclubs, and later prohibited access to seemingly more innocent attractions such as parks, beaches and the mountains. The measures, however, provided a number of exceptions: for outdoor events, important services at the malls, markets, libraries, galleries, museums, driving lessons, swimming pools, dog owners, and assisted reproduction; and during the course of the pandemic, the exceptions multiplied further. More importantly, the police started to control the nodes of the road network with the heaviest passing traffic. The idea was first tested for two weeks in the ski resort Bansko. A couple of days after the start of the blockade of Bansko, the police were tasked to control the outward flows of people from all the cities. The control, however, did not amount to a quarantine, because it was again intended to split circulation into the productive and unproductive and to minimize only the latter. Workers could enter or leave the cities if they handed over a declaration by their employers at the police checkpoint, while business owners enjoyed an unrestricted freedom of movement as long as they took the effort to certify themselves. Since the outward

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and unrestrained privatization. The transformation of healthcare into a market funded by private health insurance brought about a rapid devaluation of public assets, such as the existing hospitals, and a severely restricted access to health services. On the unintended effects of "shock therapy" on post-socialist economies in general, see Grzegorz Kolodko, *From Shock to Therapy: The Political Economy of Postsocialist Transformation* (2000), 101-107.

[12] Michel Foucault, "The Crisis of Medicine or the Crisis of Antimedicine?" *Foucault Studies* 1 (2004), 18.

[13] It is important to note that such claims do not have an internal limiting principle; see Michel Foucault, "The Risks of Security" [1985], in *The Essential Works of Foucault, 1954-1984. Vol. 3. Power* (1997), 373.

[14] The concept of differential vulnerability proposed by Daniele Lorenzini, ("Biopolitics in the Time of Coronavirus," *Critical Inquiry* 47 (2021), 543) describes the effects of the link between the right to health and biopolitical control. This article hopes to develop the concept further by discussing the security function of markets and the effects of the differential distribution of risks.

[15] On inoculation as a privileged example of biopolitical security, see Foucault, *Security, Territory, Population*, 24, 86-88.

flows from the cities decreased less than expected, the authorities suspected that many travelers were using fake documents, so they threatened an investigation and significantly increased the sanctions for violating the emergency measures. The regulations, however, once again failed to bring about the expected effect, and the Staff started to progressively increase the sanctions in the hope of making the control more efficient.

In general, the concept of control covers heterogeneous mechanisms. Perhaps the mechanisms of control share a family resemblance that one can describe as modulation of flows, in contrast to the binary logic of inclusion/exclusion.[16] Nevertheless, modulation can work differently, and in the context of the Bulgarian pandemic regulations, the control consisted neither in blocking population flows, as was the case, for example, with early-modern quarantine,[17] nor in maximizing the positive and reducing the negative elements of the circulation, as in the case of modern apparatuses of security.[18] In the context of the Bulgarian response to the pandemic, controlling meant limiting the circulation by means of increasing its differential costs, both in terms of time or efforts invested in the preparation of the necessary documents and in terms of risks such as being turned back by the police, investigated or even punished. Such a regime of control limited the movement of social groups that did not have enough administrative, educational or social capital to certify their right to leave or enter the cities as well as the movement of vulnerable molecular populations such as pensioners, precarious workers, and commuting unskilled workers whom employers did not take care to certify or refrained from certifying (often because the company did not want to expose itself to the risk of an investigation). Nevertheless, such impoverished or vulnerable populations had not been excluded from circulation, as they could still get in and out of the cities if they managed to pay the additional, non-monetary cost of movement (for instance, if they risked forging a declaration or putting in the time and effort to avoid major roads). The control through increased differential costs did not prevent movement; it only reduced the probability that the unproductive populations would choose to travel instead of staying at home.[19]

FRAGILE RESPONSIBILIZATION

The measures against Covid-19 could not be imposed by force, because they permeated the texture of everyday life. The measures could work only to the extent that each and every person recognized their responsibility for the health of the population (in that sense,

[16] Gilles Deleuze, "Postscript to the Societies of Control," in *Negotiations* (1995), 178-179; Gilles Deleuze, *Foucault* (1988), 72. The concept of control developed by Gilles Deleuze has the advantage that it emphasizes the cumulative effects of molecular forces, including molecular risks and subjectivities, on the functioning of biopolitical apparatuses of security. Since the molecular plane of the pandemic regulations is important to the argument of this article, in the hope of making it more coherent, I have substituted control for the Foucauldian concept of security.

[17] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (1977), 197-198; *Security, Territory, Population*, 24.

[18] Foucault, *Security, Territory, Population*, 34.

[19] After the weakening of the first wave of the pandemic, the police control of outward traffic was abandoned, but the police still blocked the Roma neighborhoods of the capital on account of being high-risk zones.

their biopolitical responsibility) and complied with the regulations they were subjected to. In the Bulgarian case, that recognition was a cumulative effect of different mechanisms: the orders of the Minister of Health that constituted the individuals as subjects of legal responsibility enforced by the police and the courts, the media that interpellated the public through incessant declarations of war on the virus, anxious accounts of the dangers of contagion, appeals for personal and collective responsibility, and reproaches for irresponsible conduct. In effect, by the end of the first wave of the pandemic, an overwhelming majority of more than 80% of the respondents in a national survey declared that they recognized their responsibility for the containment of the virus.[20] Nevertheless, there was a widespread perception that a significant population of irresponsible spreaders ignored in practice the sanitary measures which they approved of in theory.[21] The perception was confirmed by surveys carried out by the Ministry of the Interior, registering a stubborn, banal, everyday-life resistance to police control that could be illustrated by the following statement of an officer working at one of the traffic checkpoints:

> We [the Bulgarians] are undisciplined: I am reprimanding boys without masks and they are responding: "What now, are you the one who is going to fine us?" We will not recognize the danger until it affects us. I am not an expert; I cannot say if the virus is real. The fine of 300-500 leva [approximately 150-250 EUR], however, is real and appropriate, but the Minister of Defense breaks the regulations, they give him the minimum fine of 300 leva, and then he is saying on all the TV talk shows that he is going to pay the fine later, when he has the money. … How can one expect the people to respect the regulations when a minister behaves like that.[22]

The inefficiency of the responsibilization, notwithstanding the general recognition that each and everyone was responsible for the containment of the virus, became even more salient after the start of the immunization campaign. The global demand for vaccines exceeded the supply dramatically and the government bought them at the price of a particularly scarce, in a sense luxurious commodity, yet the national demand was so sluggish that, although vaccines were distributed free of charge, the coverage reached 10% only at the end of May 2021. The first surveys of the attitudes to vaccination registered significant amounts of hesitation even with the massive information campaigns launched by the government and later by the European Commission. The first nationally representative survey actually made the motives behind vaccine hesitancy even less clear. The survey found that 28.5% of unvaccinated respondents declared that they had recovered from Covid-19 and 25.9% expressed distrust of mRNA vaccines, but the motives of 48.1% of the respondents resisted classification since they provided heterogeneous and often conflicting

[20] 81% of the respondents in a May 2020 national survey agreed to that, as opposed to 8% who approved the statement that the government was responsible and 11% who declined to answer the question. See Gallup, "Osnovni Izvodi i Hipotezi," [Basic Findings and Hypotheses], 21.

[21] NCPR, "Obshtestveni Naglasi po Vyprosi, Svyrzani s Covid-19," [Social Attitudes on Covid-19 Related Issues] (2020).

[22] MVR, "Izsledvane v Hoda na Dejstvieto: Obshtestvenite Naglasi v Situacia na Kriza" [Survey in the Course of Development: Social Attitudes in a Critical Situation] (2020), 7.

justifications.[23] In effect, at the peak of the Delta wave in the autumn of 2021, the vaccination rate in the country was about 20%, far less than the EU average of 70%.[24]

The authorities considered the violations of the pandemic regulations and the unwillingness to vaccinate as "irresponsibility and criminal individualism".[25] Experts explained it through deep distrust in the public authorities,[26] through conspiracy theories,[27] and even through hybrid operations of devious enemies.[28] Despite the seductive banality of such accounts, however, they bring up difficult questions: How can irresponsibility coexist with a general recognition of the individual and collective responsibility for the biopolitical risks of the pandemic? If irresponsibility is irrational, then how can we explain its pervasiveness? Should we transpose psychiatric concepts such as hysteria from the

[23] See Gallup, "Lipsata na dostatachno dostoverna informatsiya…" [The lack of sufficiently reliable information…] (2022); the respondents usually combined a reference to a medical condition (often irrelevant to vaccination, such as hypertension, lung or heart problems) with the argument that they did not need to vaccinate because they did not have many social contacts or with the claim that they had postponed immunization because of their practical circumstances or because they needed more information about the mRNA vaccines. Vaccine hesitancy in Bulgaria differs from the situation in other EU countries mostly because of the large share of underdetermined justifications. An EUrobarometer survey identified in Bulgaria (69%), Romania (63%), Slovakia (55%), Croatia (54%), Latvia (51%) and Greece (48%) levels of vaccine hesitancy significantly higher than the European average (31%; EUrobarometer, "Public Opinion in the European Union," Standard EUrobarometer, 95 (2021), T123). A Croatian study found that the most salient reasons to refuse or postpone immunization were distrust in the efficiency of vaccines (66%) combined with a belief in natural immunity (71,9%) and a disbelief that Covid-19 posed a significant health risk (66,4%; see Dragan Bragić et al., "Determinants and reasons for coronavirus disease 2019 vaccine hesitancy in Croatia," *Croatian Medical Journal* 63:1 (2022), 89-97). A Romanian study identified as a most salient motive the anxiety about long-term side-effects of the mRNA vaccines that could not have been detected in the relatively short period of clinical trials (Loredana Manolescu et al., "Early Covid-19 Vaccination of Romanian Medical and Social Personnel," *Vaccines* 9 (2021), 1927). A broader literature review of studies on vaccine hesitancy in Eastern Europe mentions as reliable predictors conspiracism, misinformation, religious or spiritual attitudes (Popa, Adelina et al., "Determinants of the Hesitancy toward COVID-19 Vaccination in Eastern European Countries and the Relationship with Health and Vaccine Literacy: A Literature Review," *Vaccines* 10 (2022), 672). However, the studies and the literature review do not report a share of respondents whose motives have been difficult to classify, perhaps because of the methodological design of the studies.

[24] BNR, "Balgariya uskori vaksinatsiyata s 14% za 10 dni," [Bulgaria has accelerated vaccination with 14% in 10 days], Balgarsko Nacionalno Radio. https://bnr.bg/burgas/post/101509313 (accessed August 6, 2021).

[25] Ljubomira Nikolaeva-Glomb, "Zaradi Bezotgovornost Mozhe da se Pojavi Bylgarski Variant na Koronavirusa," [The Irresponsibility Can Cause the Emergence of a Bulgarian Variant of Covid-19], Bulgaria on Air. https://www.bgonair.bg/a/36-sutreshen-blok/239901-mozhe-da-se-poyavi-balgarski-variant-na-koronavirusa-zaradi-bezotgovornost-kam-obshtestvoto (accessed September 21, 2021).

[26] Margarita Bakracheva, Martin Zamfirov, Cecka Kolarova, and Elena Sofronieva, *Zhivot vyv Vreme na Kriza (Covid-19)* [Life at Times of Crisis (Covid-19)] (2020), 17-18.

[27] Boyan Zahariev and Ivajlo Yordanov, *Naglasi kym Vaksinite i Vaksiniraneto sreshtu Covid-19 v Pet Romski Obshtnosti v Stranata* [Attitudes towards Vaccines and Vaccination against Covid-19 in Five Roma Communities in the Country] (2021), 49.

[28] Aleksander Nikolov, "Rusia Prevyrna Krizata s Covid-19 v Oryzhie za Hibridno Maroderstvo i Psihologicheski Terorizym," [Russia Has Weaponized the Covid-19 Crisis for Hybrid Marauding and Psychological Terrorism], Factor.bg. https://faktor.bg/bg/articles/rusiya-prevarna-krizata-s-kovid-19-v-orazhie-za-hibridno-maroderstvo-i-psihologicheski-terorizam (accessed May 10, 2021).

individual to the biopolitical plane?[29] Should we assume that people are immature and need to be subjected to an authority "in areas where the use of reason is called for"?[30] I find the first approach uncritical and the second critically dangerous to any emancipatory politics. Yet, if irresponsibility is rational, then what is its rationality?

Tormented by the last question, I started to collect court decisions on violations of the quarantine. In the first month of the pandemic, the General Prosecutor's Office started more than 50 legal actions of that type. Most were settled, but even when it came to trial, the defendants did not contest their responsibility but tried to explain to the court the rationality of their irresponsible behavior. The minutes of the trials are still inaccessible, yet the court decisions occasionally summarize the explanations given by the accused, and their rationalizations can be extrapolated to other types of behavior that evaded biopolitical responsibilization in the course of the pandemic. Let us look at the summaries of three typical cases:[31]

> Erkan (pseudonym) was working abroad, and since he lost his job due to the pandemic regulations, he returned to his home village in the north-east. He was quarantined there. A couple of days later, two relatives of Erkan who lived in the same village decided for unknown reasons to visit another member of the family in a nearby village. Since there was no public transport connecting the two villages and only Erkan had a driver's license, the relatives asked him to drive them. The police stopped the car at a road checkpoint, reported a violation of the quarantine, and in consequence Erkan was sentenced to six months' probation. The judge decided not to fine him "because of his dire material circumstances".[32]
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> When the pandemic broke out, Boris (pseudonym) was working in the United Kingdom. He lost his job and came back home. He was put in quarantine at his permanent address in a village near the town of Kazanlak. However, Boris did not have any money. Thus he decided to go to a pawn shop in the town and, using his stereo speakers as collateral, he got a loan of 100 leva (approximately 50 EUR). At the same time, the police checked his home address. At the court, Boris did not deny either his responsibility or the fact that he violated the quarantine. Hence, the judge sentenced him to 6 months' probation and fined him 10000 leva (approximately 5000 EUR).[33]
>
> Angel (pseudonym) entered the country from Turkey. He was quarantined for two weeks in his hometown, but on the following day a local police patrol recognized him while he was drinking soda at the bus station. At the court, Angel explained

[29] See, for example, Elaine Showalter, "Hystories Revisited: Hysterical Epidemics and Social Media," in *Performing Hysteria: Contemporary Images and Imagination of Hysteria* (2020).

[30] Michel Foucault, "What is Enlightenmen" [1984], in *The Essential Works of Foucault, 1954-1984. Vol. 1. Ethics, Subjectivity and Truth* (1997), 305.

[31] This is a personal evaluation that is not based on a quantification or formalization of the cases, as the account of the rationality of irresponsible behavior below. It is reliable to the extent it is convincing.

[32] Case No. 77/2020, Tervel District Court.

[33] Case No. 873/2020, Kazanlak District Court.

> that he needed to go out to buy some food. A couple of witnesses confirmed that, yet they also mentioned that he said explicitly that he planned to have a coffee after the shopping. Thus the judge decided that Angel was aware that his behavior posed a risk to society and intentionally incurred that risk. In consequence, Angel was sentenced to six months' probation. The judge commented that although Angel deserved an effective prison sentence, the penalty was reduced because of his very old age.[34]

The accounts that the accused in quarantine violations give of their irresponsible behavior reproduce a series of incomplete, partially defined functional relationships that can be summarized in the following diagram: The responsibility imposed by the pandemic regulations is a responsibility to others. More importantly, it is a responsibility to virtual others represented as numbers, to numeric others, to a population inhabiting a territory that extends beyond the horizon of everyday life. In 31.1% of cases in the first pandemic year, the offenders explained that they breached their duty to the population because they responded to the demands of close others. In another 28.6% of cases, the defendants violated the regulations because no one responded to their needs.[35] In both types of cases, the accused recognized their biopolitical responsibility before the court, and in that sense they were successfully constituted as responsible subjects. Yet, the offenders were also responsive subjects; they needed to respond to or get a response from close others, and their responsiveness outweighed the legal responsibility imposed by the sanitary regulations as well as the symbolic responsibility imposed by the media. The overpowering of responsibility by responsiveness cannot be explained by the inability of the defendants to make rational calculations or to take risks into account. On the contrary, the offenders recognized their individual responsibility and responded to the appeal to calculate risks, and if their calculations nevertheless seemed irrational to the court, it was because they took into account molecular risks ignored by the health authorities.[36] As many others in a society in which social rights have been devalued and the access to public goods has been graded according to economic and social capital, the offenders relied on a social support network that redistributed, lowered, and occasionally even covered the cost of failure, infirmity or

[34] Case No. 699/2020, Kazanlak District Court.

[35] In the other 40.3% of cases, the defendants did not provide any justification for their behavior.

[36] Several studies on the attitudes to pandemic regulations captured comparable forms of reasoning, mostly in marginalized groups such as the Indian migrant workers who tried to incorporate in their risk calculations the uncertain duration of the lockdown or the Pakistani respondents taking into account the risk posed by the hospitals themselves (which many considered higher than the risk of Covid-19; see Muhammad Rahman et al., "Mental Distress and Human Rights Violations During COVID-19: A Rapid Review of the Evidence Informing Rights, Mental Health Needs, and Public Policy Around Vulnerable Populations," *Frontiers in Psychiatry* 11:603875 (2021). A review of literature on trust in Covid-19 vaccines identifies as important factors the decision to postpone vaccination, the concerns about commercial profiteering, and the general attitude towards risk (Alessandro Sapienza and Rino Falcone, "The Role of Trust in COVID-19 Vaccine Acceptance: Considerations from a Systematic Review," *International Journal of Environmental Research and Public Health* 20:1 (2023), 665), and one can hypothesize that, in responding to the impassioned, dry questions in the surveys, the subjects tried to express indefinite quantities such as "still too much risk" or "already too much profit" emerging out of molecular calculations of the acceptable levels of risk or of the right moment for vaccination.

accidents. Such networks do not coincide with the nuclear or wider family but are molecular rather than molar, and thus often exclude relatives while including neighbors, friends, and coworkers. More importantly, social support networks function as gift economies imposing upon the actors the obligation to give, to receive and to reciprocate, all of which involve an obligation to respond.[37] Thus, from the perspective of the defendants, failing to respond to close others meant shirking an obligation incurred by a series of gift exchanges that they could not afford to stop; or, alternatively, their irresponsible behavior was motivated by the lack of response from close others and the public authorities, an unresponsiveness that threatened to turn everyday life into a struggle for survival.

To sum up, the responsibilization in the course of the pandemic failed in cases in which small-scale, situated, underdetermined risks to the social network outweighed the biopolitical risks.[38] Consequently, the subjects recognized that it was true that they were responsible for the health of the population conceived of as a virtual other but nevertheless ignored that responsibility because of the need to respond to or get a response from others.[39]

RIGHT TO HEALTH AND INDIVIDUAL RIGHTS

In the hope of achieving widespread vaccination, the health authorities fell back once again on the strategy to stimulate responsible behavior by progressively increasing the sanctions against and hence the risks of irresponsibility. At the end of 2021, the Minister of Health introduced green certificates to access shopping malls, hypermarkets, public institutions, and indoor public activities. The measure was widely criticized because the

[37] Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies* (1966), 10-11. The national and international authorities do not distinguish such gift economies from corruption as long as some of the persons involved in the exchange are state employees or hold a public office. It is perhaps the reason why corruption seems so pervasive that it is justifiable to consider Bulgarian society in general as abnormal, potentially dangerous, and it produces a perception of vulnerability shared by both the public and the authorities.

[38] I believe that a similar rationality shaped reluctance to vaccination because the social actors calculated the reduced risk of severe illness together with molecular risks associated with the costs of traveling to the city, of taking a day off at work, of waiting for vaccination together with many, possibly contagious others, the chance to offset the risk of infection by limiting contacts or by avoiding the accumulation of people, the stories about a brief indisposition or tiredness after immunization circulating in many social and personal networks, the risk that the vaccines, being based on a new technology, could involve risks that were still unknown and therefore incalculable. Of course, this is once again a generalization based on personal observations rather than on quantifiable data.

[39] On the other hand, the subjects treated the biopolitical risks as a matter of everyday-life importance if they were mediated by the social support networks. Due to the lack of relevant sources on the effects of the mediation of biopolitical risks by social support networks, I will illustrate that point by a personal story. I am living in a relatively large village in the foothills of a mountain. My neighbors generally ignored the pandemic regulations because they did not seem to matter due to the very limited social contacts as well as the fact that although the mortality increased significantly during the pandemic, it seemed to be an effect of the restricted access to urgent care medicine. However, a neighboring family got infected, and the grandfather, who was in his sixties with a heart condition, did not survive the virus. Then, tragically, responsibility no longer seemed an abstract problem. On the contrary, the members of the family are still trying to decide on responsibility in recurring conflicts over who brought the virus home, who should have been less negligent, who was imprudent, reckless, and unresponsiveness to the others, how the tragedy could have been avoided, and if vaccination would have made a difference.

vaccination coverage was below 25%, and the certification of the recovered was still non-functional. The authorities justified the limitations on free movement by a reference to a right to health.

Michel Foucault associated the emergence of the right to health (irreducible to the right to life) with the redistribution of the costs of healthcare by public insurance in the wake of the Beveridge report.[40] International law, which still justifies the right to health by deriving it from the right to life, provides it with different aspects, such as the right to healthy working conditions or the right to access healthcare.[41] The most relevant conceptualization in the context of the pandemic, however, is art. 12 of the International Covenant on Economic, Social and Cultural Rights, which declares the "right of everyone to enjoy the highest attainable standard of physical and mental health"[42] and obliges the national governments to control epidemics. Furthermore, according to art. 25 of the Syracuse Principles,[43] the need to protect public health is a legitimate ground for limitations or derogations of human rights. Bulgaria has ratified both documents. Additionally, the constitution of the country obliges the government to defend the health of the citizens.[44] Therefore, after the outbreak of the Covid-19 pandemic, the government claimed that the entitlement to limit individual rights flowed from its international and constitutional duties (although, unlike the other Balkan countries, it did not comply with the precondition to notify the UN Human Rights Committee of a derogation of human rights).[45]

The situation, however, was changing rapidly, and to save the time needed for a sanction by the parliament, in May 2020 the government pushed through an amendment of art. 63 of the Health Act.[46] The previous version of the act stated that in case of an "exceptional epidemic situation", the Minister of Health could introduce sanitary measures, and

[40] Foucault, "The Crisis of Medicine or the Crisis of Antimedicine," 5-6.

[41] For a review of the legal framework of the right to health provided by international law, see United Nations (Committee on Economic, Social and Cultural Rights), "Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights," E/C.12/2020/1 (2020), retrieved from https://digitallibrary.un.org/record/3856957; Dainius Pūras et al., "The right to health must guide responses to Covid-19," *The Lancet* 395:10241(2020), 1-3; Lisa Forman and Jillian Kohler, "Global health and human rights in the time of Covid-19: Response, restrictions, and legitimacy," *Journal of Human Rights* 19:5 (2020), 547-556.

[42] United Nations (General Assembly), International Covenant on Economic, Social, and Cultural Rights. *Treaty Series,* vol. 999, Dec. 1966, retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights. Sadly, the individual right to health recognized by international law is limited by the available resources. See Lisa Forman and Jillian Kohler, "Global health and human rights in the time of Covid-19: Response, restrictions, and legitimacy," 548.

[43] United Nations (Economic and Social Council), *Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. Geneva: United Nations Commission on Human Rights, 1985, Art. 25.

[44] Constitution of Republic of Bulgaria, 56 *State Gazette* (13.07.1991), retrieved from https://www.parliament.bg/bg/const., Art. 52, &3.

[45] See Audrey Lebert, "Covid-19 pandemic and derogation to human rights," *Journal of Law and the Biosciences* (2020), 3.

[46] Health Act. 44 *State Gazette* (13.05.2020), retrieved from https://www.mh.government.bg/media/filer_public/2021/03/08/zakon_za_zdraveto.pdf. The parliament actually avoided the problem of potential limitations of human rights by referring to the constitutional duty of the government to defend public health. See *Parliamentary Record*, 44th Parliament, 21st extraordinary sess., 08.05.2020, https://parliament.bg/bg/plenaryst/ns/55/ID/10295.

citizens were obliged to cooperate with the health authorities. The new version empowered the minister to declare an exceptional epidemiological situation and to impose restrictions on individual rights (including the right to free movement). The constitution, however, granted the power to declare the suspension of normal legal order to the parliament, and the amendment to the Health Act did not specify the acceptable limitations of human rights. The president attacked it at the Constitutional Court. The latter supported the bill and argued that the declaration of an exceptional epidemiological situation did not constitute a state of exception because it did not undermine the division of power.[47] Instead, the Court construed the pandemic as a disaster and accordingly took the opinion that the emergency powers of the health minister did not violate the constitution. As to limitations of rights, the Court followed the Syracuse Principles and declared that they were justified insofar as the government responded to a pressing need, pursued a legitimate aim, and the limitations were proportional to that aim.[48] Since the president attacked the amendment to the Health Act also on the ground that the limitations were of an unspecified nature and duration, the Court supported the bill with the argument that the emergency authority granted to the health minister reflected the nature of pandemic risk; since risk was measured in epidemiological variables such as rate of reproduction or mortality that changed too rapidly, it was impossible to incorporate a definition of unacceptable risk into law.

The decision of the Constitutional Court, however, opened up a number of gaps in the seamless web of law. (1) A defining feature of sovereignty consists in creating a zone of undecidability in which facts pass over into norms and norms merge into facts.[49] The Court has transformed the fact of the pandemic into an incomplete norm that had to be supplemented with more facts to become applicable. Insofar as the norm entitles the health minister to define the facts which determine the application of the norm, he is granted a sovereign power. That sovereign power, however, is not the power of a sovereign; the minister is only able to exercise it as a member of a coalition of actors, which includes governmental agencies, public institutions, and experts in epidemiology, medicine, statistics, and sociology. In that sense, the exceptional powers granted to the health minister amount to a sovereignty without a sovereign. They are inscribed in the normal legal order as an underdetermined entitlement to defend the life of the population, almost a blank lettre du cachet to be filled in accordance with the development of the epidemiological situation.[50] Nevertheless, since that sovereign entitlement is recognized as an

[47] Nevertheless, the exceptional epidemiological situation constitutes a state of exception in the sense of Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, (1998), 18.

[48] United Nations (Economic and Social Council), *Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, Art. 10. A detailed discussion of the history and legal interpretation of the standards of necessity and proportionality can be found in Alessandra Spadarro, "Covid-19: Testing the Limits of Human Rights," *European Journal of Risk Regulation* 11 (2020), 317–325.

[49] Agamben, Giorgio, *State of Exception* (2005), 29.

[50] On lettre du cachet as a form of dissemination of sovereignty beyond the figure of the sovereign, see Michel Foucault, "Truth and Juridical Forms" [1973], in *The Essential Works of Foucault, 1954-1984*. Vol. 3. *Power* (1997), 373, 65-67. On lettre du cachet in relation to psychiatric expertise, see Michel Foucault, *Abnormal: Lectures at Collège de France 1974-1975* (2003), 37.

element of the normal legal order, and since it is not included in it as an exception, it has to be based on a corresponding right rather than on the might of the sovereign. (2) The Covenant on Economic, Social and Cultural Rights articulates the right to health as an individual right. The Bulgarian Constitutional Court, however, felt that the right to declare an epidemiological state of exception could not be justified on the basis of individual rights because it went far beyond the familiar national and international practice of imposing limitations on health grounds. Hence, the Court reinterpreted the Syracuse Principles as an implicit recognition that the population was a subject of a right to health. To that end, the constitutional judges made a distinction between individual and collective health,[51] and they argued that although the latter was not associated with a legal right in itself, it was a higher-order value because individual lives were unthinkable without the community; therefore, health as a public value imposed obligations on the individual citizens reflected in the emergency powers of the health minister.[52] (3) As it was mentioned above, the Constitutional Court construed the pandemic as a form of natural disaster. In consequence, the declaration of an exceptional epidemiological situation fell under the scope of the Defense Against Natural Disasters Act. The Act, however, defined the grounds for declaring a state of exception in terms of danger.[53] The Court reinterpreted danger as risk and in effect recognized risk as the basis for the collective right to health. However, in contrast with danger, which can be described as actual or imminent, risk is potential and ineradicable; it is essentially a probability that can never reach the full absence of 0 or the full presence of 1.[54] Even when the risk is minimal, it inescapably exists or insists, and the concept of an exceptional epidemiological situation would be meaningless if it does not refer to some magnitude of risk or to some threshold beyond which the epidemiological situation becomes exceptional. The existing legislation, however, described that threshold in indefinite quantities such as "serious threat"[55] or "significant effects".[56] Since the application of the relevant norms depended on indefinite quantities that could not be defined by law, the Court decided that the threshold of unacceptable risk should be defined by experts. In effect, the emergency powers to limit individual rights came to be distributed among a coalition of epidemiologists, clinicians, statisticians,

[51] The legal formula used by the Constitutional Court was 'right of the community to health'.

[52] Any right imposes an obligation. If one has the right to do something, the others are obliged not to interfere (see, for example, the authoritative discussion in Wesley Hohfeld, "Some Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal* 16 (1913), 552-556). If one transposes that classical concept of rights in the strict sense to the context of the pandemic, then, insofar as the population has a right to health, and the individuals are not the population, they are obliged not to interfere with regulations intended to protect the public health. Thus individuals are subjects of duties rather than of rights, and the right to health splits into two planes: the individual plane of responsibilities, and the biopolitical plane of entitlements.

[53] Defence Against Disasters Act, 60 *State Gazette* (07.07.2020) https://lex.bg/bg/laws/ldoc/2135540282, Art. 48, &1.

[54] On the other hand, the transposition of the concept of risk into the field of law transformed the concept itself because the Constitutional Court conceived of it as a fact rather than as a calculation. In that sense, risk was reified.

[55] United Nations (Economic and Social Council), *Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, Art. 25.

[56] Defence Against Disasters Act, Art. 48, &3B.

politicians and administrators. (4) Because of the gaps that the decision of the Constitutional Court opened up in the web of law, the obligation to defend public health turned into a right to health defined by biopolitical variables calculable only at the level of the population (such as reproduction rates, daily confirmed cases per thousand people, number of Covid-19 patients in intensive care per million, estimated cumulative excess deaths, and share of the population who completed the vaccination protocol). In consequence, the decision of the Constitutional court rearticulated the individual right to health as a properly biopolitical right.[57]

It was that biopolitical right to health that provided the legal basis for the implementation of green certificates. The measure, however, provoked an unexpected form of opposition. The Bulgarian Helsinki Committee filed a claim against the government for infringement on the children's rights to education and argued that green certificates were already unnecessary at this point of the pandemic. The Committee also criticized the disproportionate pressure on disadvantaged social groups and the unfair advantage of the industrial sector, which was allowed to operate without restrictions.[58] The national ombudsman threatened to take the government to court since it failed to provide free tests for all who did not want to vaccinate.[59] Additionally, a survey among the industrial employers found that more than 30% of the respondents believed that green certificates infringed on human rights.[60] Since the opposition to green certificates turned out to be very popular, the nationalist parties tried to capitalize on it by organizing protests, and one of the parties almost started a legal action on the grounds that green certificates were a form of segregation.[61] Later on, together with the major opposition party GERB, the nationalists

[57] The biopolitical right to health is not merely an extension of the parallel individual right, and one can argue that in the context of the pandemic they could actually conflict (see for example Patrycja Dąbrowska-Kłosińska, "The Protection of Human Rights in Pandemics - Reflections on the Past, Present, and Future," *German Law Journal* 22 (2021), 1032).

[58] "BHC obzhalva zapovedta na Ministerstvoto na zdraveopazvaneto v chastta, zasjagashta zatvarjaneto na uchilishtata." [BHC files a complaint against the section of act of the Minister of Health concerning the lockdown on schools], *BHC*. https://www.bghelsinki.org/bg/news/20211026-press-bhc-challenges-covid-19-school-closures (accessed 26.10.2021). The BHC appeal actually reproduced one of the most effective legal arguments against the pandemic regulations, referring to their disproportionate effects on vulnerable populations. For an analysis of the argument and its effects on the US management of the pandemic, see Audrey Lebert, "Covid-19 pandemic and derogation to human rights", 8-9.

[59] Zdrave, "Ombudsmanat poiska vednaga bezplatni antigenni testove i sertifikat za antitela," [The Ombudsman Demands Immediately Free Test and T-Cell Certificates], Zdrave24.bg. https://www.24zdrave.bg/article/10309384 (accessed 20.10.2021).

[60] The bulk of the respondents, however, declared that they supported the measure as long as it provided an exemption for industrial labor. See Econ, "Spored edna treta ot rabotodatelite s"s zeleniJa sertifikat se narushavat choveshki prava," [According to one third of the employers, the green certificate is an infringement on human rights], Econ.bg. https://econ.bg/Новини/Според-една-трета-от-работодателите-със-зеления-сертификат-се-нарушават-човешки-права_l.a_i.791463_at.1.html (accessed November 4, 2021).

[61] Dnes, "'Vazrazhdane' gotvi zhalba do KS zaradi zelenija sertifikat v parlamenta," [The Renaissance party is planning to appeal to the Constitutional Court because of the requirement of green certificates for entering the Parliament]. Dnes.bg. https://www.dnes.bg/politika/2022/01/07/vyzrajdane-gotvi-jalba-do-ks-zaradi-zeleniia-sertifikat-v-parlamenta.516300 (accessed January 7, 2022). Blagoevgrad24, "VMRO: Vavezhdaneto na zelen sertifikat e socialen genocid! Kacarov da popade ostavka!" [The VMRO party: The implementation of green certificates is a social genocide! Kacarov shoud resign!] Blagoevgrad24.bg.

appealed to the Constitutional Court against the green certificate requirement for entering the parliament (the requirement, however, was annulled before the Court was able to consider it).[62]

The opponents of green certificates voiced important concerns. Indeed, was the ambition to increase vaccination coverage a legitimate goal in the sense of the Syracuse Principles? Were the limitations proportionate? Was the measure necessary if the current wave of the pandemic already subsided? What if the health authorities implemented the certificates in response to the emergency visit of the EU Health Commissioner Thierry Breton, who reproached the government for being irresponsible towards EU partners and warned that the country could give rise to a new and more dangerous Covid-19 variant?[63] The opponents of the green certificates, however, relied on a concept of individual rights that did not take into account the biopolitical justification of the measure. The latter depended on the threshold of unacceptable risk defined by experts, and the experts almost unanimously supported the implementation of the certificates. Since the opponents were unable to base their criticism on alternative calculations, their arguments seemed baseless. Therefore, although no one had managed to file a formal appeal, the chairwoman of the Constitutional Court declared that, judging by the available risk evaluations, the green certificates did not violate human rights.[64] Relying on her authoritative opinion, the Sofia first-level court alone rejected more than twenty legal actions by private citizens claiming that the measure infringed on their right to free movement.[65] Let us illustrate the nature of the legal actions by two cases:

> Todor (pseudonym), a stagehand at the National Theater, filed a complaint that the government announced the implementation of green certificates on a Friday afternoon and the restrictions came into effect on the Monday, thus he was unable to vaccinate, and there were no available testing options at the city center. Todor decided to go to work regardless, but the guards did not let him in. Then he tried to sneak into the theater together with a group of colleagues, but the guards caught

https://www.blagoevgrad24.bg/novini/Bylgaria/VMRO-Vuvezhdaneto-na-zelen-sertifikat-e-socialen-genocid-Kacarov-da-popade-ostavka-1138343 (accessed October 20, 2021).

[62] DeFacto, "Sas stanovishte na trima sadii Konstitutsionniyat sad prekrati deloto za zeleniya sertifikat," [An opinion of three judges puts an end to the appeal against the green certificate to the Constitutional Court], DeFacto.bg. https://defakto.bg/2022/03/24/с-три-особени-мнения-конституционния/ (accessed March 24, 2022).

[63] Actualno, "Evrokomisar predupredi, che Balgarija mozhe da se prevarne v iztochnik na nov variant na COVID-19," [An EU Commissioner Warned that Bulgaria Can Become the Source of a New Covid-19 Variant], Actualno.com. https://www.actualno.com/healthy/evrokomisar-predupredi-che-bylgarija-moje-da-se-prevyrne-v-iztochnik-na-nov-variant-na-covid-19-news_1673533.html (accessed November 19, 2021).

[64] Mediapool, "Predsedatelkata na KS: Zelenijat sertifikat ne ogranichava prava," [The Chairwoman of the Constitutional Court: The Green Certificate does not Infringe on Human Rights], Mediapool. https://www.mediapool.bg/predsedatelkata-na-ks-zeleniyat-sertifikat-ne-ogranichava-prava-news330000.html (accessed December 12, 2021).

[65] BTV, "Delata sreshtu zyelyeniya sertifikat: Administrativniyat sad v Sofiya otkhvarli zhalbitye," [The Lawsuits against the Green Certificate: The Sofia Administrative Court Dismisses the Claims], Btvnovinite.bg. https://btvnovinite.bg/bulgaria/delata-sreshtu-zelenija-sertifikat-administrativnijat-sad-v-sofija-othvarli-zhalbite.html (accessed 01.11.2021).

> him, which caused a scandal, and he was consequently fired. The court rejected his complaint with the argument that the collective right of health imposed obligations on the individuals that could not be trumped by the right to free movement.[66]
>
> Maria (pseudonym) appealed to the Commission for Defense Against Discrimination that her right to free movement was unjustifiably restricted because she had already recovered from Covid-19, but the national registry of recovery certificates was still inoperative. Although the government tried to compensate for that by issuing recovery certificates on the basis of T-Cell tests, her T-cells turned out slightly below the threshold, so she was refused certification. The Commission rejected the appeal, citing her obligation to comply with the measures in the name of the public right to health. Dissatisfied, Maria started a legal action against the Commission. The court, however, dismissed her claim on the ground that she failed to define the particular legal norms violated by the Commission or the Minister of Health.[67]

However, the argument against green certificates was weak not only because it did not refer to alternative risk evaluations. Both the government and the courts argued that a certificate requirement did not limit the individual right to free movement because it gave one a choice. However, it was precisely because it did not violate individual rights and precisely because it opened up a field of choice that the implementation of green certificates led to the identification of an irrational population. The alternatives to vaccination have different costs: since one could get a jab at the mall or on the way to work, it took an insignificant amount of time and effort; since the mechanism of public debt had deferred the costs of mass immunization to the future, vaccines seemed to be almost gifts; in contrast, daily testing consumed considerably more time, effort and money, and restricting one's movement and social life amounted to marginalization. Insofar as the differential costs of vaccination were significantly lower, it was irrational to choose the alternatives. Moreover, against the background of the media interpellation that to vaccinate meant to act responsibly, choosing the alternatives seemed irresponsible. Therefore, the actors who avoided vaccination displayed irrational and irresponsible conduct. The national Covid-19 database, and the databases of applications such as Covidcheck or ViruSafe, registered the instances of such conducts, put them together, calculated their health, economic or political risks, and correlated the risks to quantitative phenomena such as morbidity, mortality, virus transmission rate, and conspiracist attitudes, phenomena which are characteristic of a kind rather than of individuals. In effect, the subject of irresponsible conduct was conceived of as a population. To the health authorities, that population represented a point of concentration of risks threatening to bolt into an epidemiological crisis. Hence, the authorities found it rational to reduce the risks by further increasing the differential costs of irresponsible and irrational conducts, and a month later, the National Crisis-Management Staff already discussed the implementation of a mandatory certificate

[66] Case No. 72583/2021, Sofia District Court.
[67] Case No. 1653/2022, Burgas Administrative Court.

requirement for public employees, medical personnel, and school teachers,[68] and if that failed to produce a significant effect, for public transport.[69] As a result, the harmonization of green certificates and individual rights brought about an intensification of control.

CONCLUSION

The pandemic has implemented a powerful security apparatus. It is both similar to and different from the regimes of power described by Michel Foucault: like sovereign power, it defends the public order; like disciplines, it trains individual bodies; like biopolitics, it acts on populations characterized by phenomena irreducible to individual cases, such as vaccination coverage, virus transmission or mortality rates. Yet, in contrast with disciplinary power, the security apparatus of the pandemic does not operate in a closed space decomposed into a grid of individual positions; in contrast with biopolitics, it acts on molecular, individualized populations that, due to the accumulation of big data, one can break down even into a set of populations of one (insofar as individual behavior displays quantifiable regularities). In contrast with sovereign power, the pandemic security a pparatus does not counter threats; rather, it acts on risks that cannot be eliminated because they are intrinsic to the population, quite like mortality or morbidity. In the Bulgarian case, the health authorities tried to control the risks of the pandemic by intervening at points at which they intensified beyond the normal levels: attractions such as parks or shopping malls; the nodal points of the traffic network; the slowdown of economic growth; quarantine violations; vaccine hesitancy. The government hoped to reduce such excessive risks by increasing the differential cost of high-risk behaviors (not only in monetary terms but also in terms of time, effort and risk of sanctions).

The public and legal authorities justified that approach by reference to an *ad hoc* right to health whose implementation depended on biopolitical phenomena such as the virus reproduction number. That biopolitical right to health did not conflict with individual rights. On the contrary, individual rights were an important element of its mechanism: the sanitary measures could work only if each and every person was constituted as a subject of responsibility for the health of the population; individual rights opened up fields of choice and therefore constituted the individuals as subjects of responsibility for their choices. Since some choices involved excessive risk for the population, they contradicted the responsibility imposed by the right to health, and if one nevertheless made such choices, then one displayed irresponsible behavior for which she or he could be held responsible precisely because he or she enjoyed individual rights.

[68] See BTV, "Na praga na novi merki: Obsyzhda se zelen sertifikat za uchiteli, socialni rabotnici i medici," [At the threshold of new measures: The authorities are discussing a green certificate for teachers, social workers and medics] Btvnovinite.bg. https://btvnovinite.bg/bulgaria/na-praga-na-novi-merki-obsazhda-se-zelen-sertifikat-za-uchiteli-socialni-rabotnici-i-medici-obzor.html (accessed October 18, 2021).

[69] See Alexandar Dimitrov, "Ako zelenite sertifikati ne srabotjat, oshte po-strashni merki skovavat Balgaria," [If green certificates do not work, even more fearsome measures are going to freeze life in Bulgaria], Blitz. https://blitz.bg/zdraveopazvane/ako-zelenite-sertifikati-ne-srabotyat-oshche-po-strashni-merki-skovavat-blgariya_news847975.html (accessed October 26, 2021).

Furthermore, the data accumulated in the course of the pandemic allowed the health authorities to articulate the subjects of such irresponsible conducts as molecular, under-determined and deterritorialized populations: quarantine violators; spreaders evading the restrictions on movement; young people gathering at malls or parks despite the fines; and the unenlightened and distrustful masses postponing or refusing vaccination.[70] To act on the irresponsible populations, the health authorities started to increase progressively the differential cost of their choices. Since such interventions ignored the small-scale, situated risks whose accumulation shaped high-risk conduct, the latter seemed not only irresponsible but also irrational; it indicated an immaturity and an inability to exercise individual rights which, in turn, justified further restrictions on free movement and social life. The growing pressure on the irresponsible populations, however, left a growing residue of irresponsible behaviors. As a result, the attempts to control the risks of the pandemic brought about a self-extending control whose power, justified by the need to defend the life of the population, grew in proportion to risk.

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[70] Any regime of responsibilization articulates discursive figures of irresponsibility representing conducts discarded as noise, a worthless residue, an absence of work (in the sense of Foucault, *Society Must Be Defended*, 12; "Madness, the Absence of Work," *Critical Inquiry* 21:2 (1995), 295). Such figures mark the limits in which it is possible to pose and solve the issues of responsibility. In that sense, the figures of imprudent behavior are a condition of possibility of responsibilization as a discursive practice. For instance, when Louis-Paul Abeille, at the dawn of modern security apparatuses, argued that the risk of famine should be contained by the free play of market forces rather than by state intervention, he assumed that the economic agents will make prudent choices taking into account their own interests if not the interests of others. Yet, since the assumption was too abstract to be based on individual cases and too concrete to be deduced from general concepts, Abeille defined it by contrasting rational economic behavior to the irresponsible conduct of the masses that looted the warehouses instead of making the calculation that, after only a couple of months, the market would cancel out the shortage of wheat and reduce the risk of hunger in the following years (see Foucault, *Security, Territory, Population*, 66).

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