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Communicating COVID-19: A Linguistic and Discursive Approach across Contexts and Media

Comunicare il COVID-19: un approccio linguistico e discorsivo a media e contesti

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COVID-19-Related Cases before the European Court of Human Rights

A Multiperspective Approach

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Abstract

This study overviews how the COVID-19 pandemic is framed in five cases before the European Court of Human Rights (the ECtHR). By reconstructing the heteroglossic system of genres at the ECtHR, the study contributes to the limited literature on the Court's discursive practices and genres. The analysis looks into the framing of the COVID-19 pandemic as a human rights violation and identifies preferred interpretation schemata across the participation framework of the cases considered using critical discourse analysis and framing. The findings identify a scaffolding of dialogical frames, where most applicants advanced politicized frame systems built on the core denial of the existence or seriousness of COVID-19, framing the governments' actions or omissions as civil and political human rights violations. The Governments built on the general healthcare crisis framing, and counterframed societal limitations as agency stemming from a "health and safety first" frame. The Court refuted most of the politicized framing choices and accepted most healthcare-related frames, operating under the "exceptional and unforeseen circumstances" frame.

Keywords: CDA; COVID-19; European Court of Human Rights; framing; legal discourse; legal genres.

1. Introduction

Law reflects the changes and values of our society in a mirror-like way (Tamanaha 2010), and the changes induced by the COVID-19 pandemic are not an exception. Constraints imposed by the health crisis have

generated multiple legal applications to domestic courts. In the Member States of the Council of Europe some of these complaints – without finding a satisfactory solution in the domestic setting – reached the European Court of Human Rights (ECtHR or the Court). As the ECtHR examines cases that have already exhausted all available domestic remedies, any COVID-19-related cases before this supranational court signal wide-ranging societal disagreements with the interpretation of the situation by different national authorities.

This study analyses how the COVID-19 pandemic was framed in selected cases brought before the European Court of Human Rights, aiming to identify if and how the COVID-19 pandemic was framed as a human rights violation by different actors, and whether different participants (cf. Goffman 1981) interpreted it in different ways. The ECtHR context and its discursive practices are described in section 2 using the notion of *a system of genres*, i.e. "the interrelated genres that interact with each other in specific settings" (Bazerman 1994, 97). To assess whether differences in positions are reflected in the different framings, the research draws on Entman's (1993) and Goffman's (1974) notion of *framing* (section 3), understood here as the selection and foregrounding of certain aspects of reality to promote a particular view of the situation, its interpretation or evaluation in a heteroglossic context (Bakhtin 1981). Selective knowledge representation resulting in interpretation suggestions, bias, slant and even ideological manipulations has been frequently addressed from a critical discourse analysis perspective (van Dijk 1993; Fairclough 1995, 2014; Garzone 2018), which is part of the methodological toolkit. Section 4 describes the study design and materials that include the cases alleging human rights violations on account of and in strict relation to the COVID-19 pandemic. Section 5 reports on the findings organized by participant(s) whose views are expressed – the applicants and the governments (5.1) and the Court (5.2) with discussion and concluding results following in section 6.

2. The system of genres at the European Court of Human Rights

The ECtHR is a judiciary body of the Council of Europe with 46 Member States that rules on alleged violations of the European Convention on Human Rights (the Convention). As every international court, it

operates through a system of legal genres that "interact with each other" (Bazerman 1994, 97). Building on Bazerman (1994), Bhatia (2006, 7) elaborates the concept of a system of genres and distinguishes between the so-called primary (legislation) and secondary genres (case-law, judgments, courtroom genres). In the ECtHR context, the primary genres include the Convention along with national legislation that is referred to in a specific case; these primary genres represent the general legal context, or the outer layer if one applies the metaphor of nesting dolls to the system of legal genres. The secondary genres are conceptualized here as *procedural* genres, in that they are necessary for the unravelling of proceedings and reflect the peculiarities of the ECtHR procedure. As *Figure 1* shows, the main procedural genres include (a) the initial application, typically drafted in the applicant's national language; (b) case communication (Nikitina 2022), prepared by the Court Registry lawyers in one of the ECtHR official languages: English or French, if the application met the admissibility criteria and is to be further processed; (c) written pleadings, i.e. the exchange of observations among the Court, the Applicant (or rather the Applicant's Counsel) and the Government's Agent, which are typically drafted in or translated by the Parties (outsourced translation) into one of the official languages (Nikitina 2018) and offer alternative interpretations; (d) admissibility or inadmissibility decisions that are drafted in one of the official languages and, if flagged as key cases, i.e. a selection of the most important judgments and decisions (Brannan 2021, 219), are translated into the other official language; (e) Chamber Judgments finding or not finding a violation that are drafted in one language and, if selected for law reports, are translated into the other; (f) Grand Chamber Judgments, i.e. judgments rendered by the highest judicial formation of the Court, which are available in both official languages with equal authenticity, even though in practice one of the language versions is typically a translation (Brannan 2018, 172).

Besides procedural genres, the system includes so-called *derived* genres (Nikitina 2019, 59), i.e. those genres that are typically prepared for purposes of knowledge dissemination. They may aim at intra-specialist, inter-specialist and even popularized communication. For instance, bilingual case information notes (CLIN, see Brannan 2021, 219) and legal summaries aimed at legal professionals are typically prepared by the Registry in one of the languages and are translated by the Court's Translation Department. Multilingual factsheets, research reports and case-law guides are examples of mixed target audience genres, aimed at both legal practitioners and laypeople. These are prepared by the press unit

and the Research Department (Brannan 2021, 220). The quintessential derived genre for popularized communication is the press release, which is exploited by other supranational courts, too, for similar purposes (see Tessuto 2021 on institutional press releases of the European Court of Justice). Press releases are typically prepared by the Registry in one of the official languages and are translated by the Court's Translation Department. As Brannan (2021, 219) explains, a wider selection of cases is covered by press releases with a number of functions, ranging from a brief announcement of forthcoming judgments with factual summaries to more detailed press releases, "incorporating a summary of the Court's reasoning, on the day of delivery" (Brannan 2021, 219).

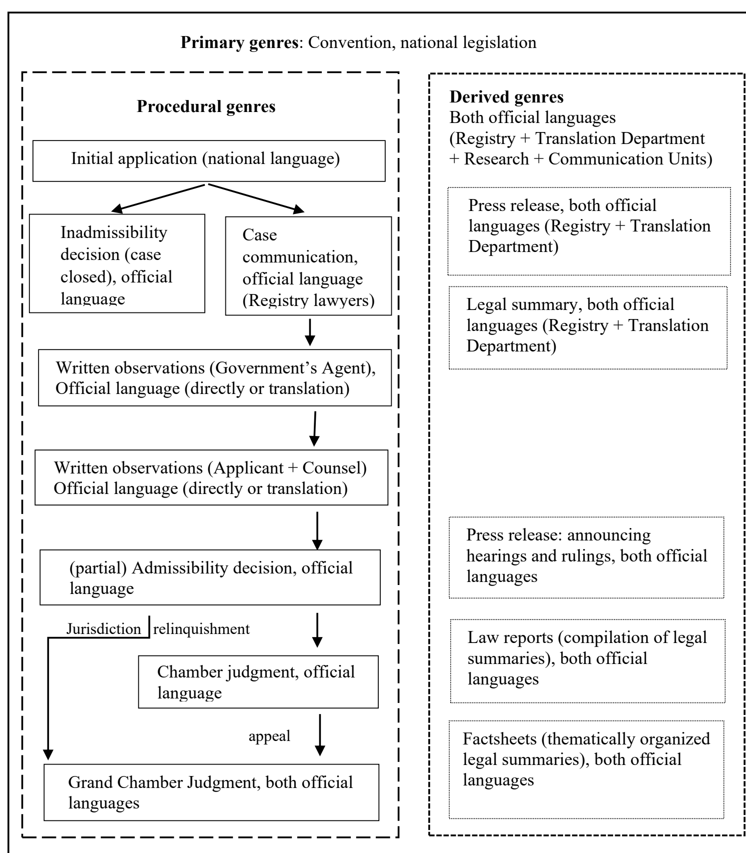

Figure 1. – The system of genres at the ECtHR.

As *Figure 1* shows, the ECtHR system of genres encompasses multiple voices. It can be logically assumed that the opposing parties – Applicants and Governments – may produce duelling framing of events in order to discursively manipulate the case and promote favourable for them positions. Before proceeding with the analysis, it is important to outline how Critical Discourse Analysis is applied to this study along with the notion of framing.

3. Theoretical-methodological framework

This study adopts a multi-perspective approach combining a critical discourse-analytical perspective (van Dijk 1998; Fairclough 2014; Garzone 2018) with the notion of framing. Framing stands for the selection and foregrounding of certain aspects of reality to promote a particular view of the situation, causal interpretation (cf. "schemata of interpretation", Goffman 1974), "moral evaluation" and "treatment recommendation" (Entman 1993, 52). By selecting schemata of interpretation, the participants in the court proceedings – Applicants, Governments and the Court itself – struggle for power over the discursive reconstruction of reality, which may become ideologically invested (Fairclough 1995, 12). To wit, framing may be successfully applied to address power struggle from a critical discourse-analytical perspective. Both perspectives share the same methodological belief that discourse has the potential to affect reality beyond textual boundaries.

A combination of framing and CDA has been invoked to analyse (controversial) representations of disease (Garzone 2021) and previous pandemic representation (Nerlich and Koteyko 2012). With the sudden advent of the COVID-19 pandemic, the notion of framing has resurfaced in linguistic literature overviewing the public response to this situation (Wicke and Bolognesi 2020; Garzone 2021; Semino 2021). Framing has been used to research crisis communication in general (Catenaccio 2007; Mason 2016) and has been applied to study COVID-19 as crisis specifically in combination with CDA (Poirier *et al.* 2020; Wodak 2021).

As illustrated in section 2, the participation framework of the ECtHR cases is heteroglossic (Bakhtin 1981), as there are multiple parties engaged in (alternative) story-telling. Bakhtinian dialogism and polyphony in the legal field have been applied to courtroom interaction (Rubinson 1996), researched from a socio-legal perspective (Valverde

2015) and from a sociolinguistic and discourse analysis standpoint (Goodrich 1987; Etxabe 2022), even though studies applying this perspective to international courts are limited. To elaborate on Bakhtin's theory of language would require space not available for this publication, so a simplified explanation is necessary. For Bakhtin, language is not unitary (1981, 288) as it encompasses different professions, generations, ideas and institutions as well as communities and people. Language is characterized by "heteroglossia" (Russian *raznorečie*), i.e. the presence of a multitude of voices, and "every word is directed toward an answer and cannot escape the profound influence of the answering word that it anticipates" (Bakhtin 1981, 280), a fact which becomes highly relevant in the context of the ECtHR system of genres.

To classify different frames, I adopt Minsky's model of *frame systems*, i.e. "[c]ollections of related frames [that] are linked together" (Minsky 1975, 212), according to which there is a certain hierarchy in framing, with each level adding more detail to the phenomena that are being framed. Although Minsky's research was applied to the field of artificial intelligence, his systemic approach seems highly applicable to analyse framing in a different system: the system of genres, characterized by multiple voices and, thus, potentially by multiple (alternative) layers of framing. Minsky's hierarchy starts with *thematic superframes* (1975, 236) that stand for the most general level of framing. These are followed by *top-level frames* that, despite providing more information, remain quite stereotypical. Finally, the lowest level is occupied by *subframes* which detail the event or situation (Minsky 1975, 223). These different levels of frames may contain legal arguments, because judicial discourse is notoriously argumentative (Santulli 2017). When a certain legal statement or thesis is advanced at a thematic superframe or top-level frame, it typically has to be backed by arguments, which could appear at a subframe level. Although this study does not apply Argumentation theory, I acknowledge a potential methodological overlap.

4. Study design and materials

The corpus was collected in the HUDOC database, i.e. the ECtHR case-law database, using search words "Coronavirus" and "COVID-19". The search yielded twelve results of the "main" procedural genres, five of which were excluded as they were available only in French (see section 2

on the ECtHR alternative bilingualism), with no English procedural documents. Two of the remaining seven cases were also excluded as the applications were lodged before the pandemic, hence it was not the object of complaints. Finally, five cases remained (*Tab. 1*): two Russian cases[1], one Maltese case, one Dutch and one Romanian case.

Table 1. – Corpus composition.

	Avagyan v. Russia 36911/20	*Ilyina v. Russia 21462/21*	*Bah v. the Netherlands 35751/20*	*Fenech v. Malta 19090/20*	*Terheş v. Romania 49933/20*
Application	RUS, jpg extracts retyped: 641	RUS, jpg extracts retyped: 1887	Dutch	ENG 4,767	FRA 7,229
Case communication	985	158	n/a	168	n/a
Government observations	5,593	n/a, tbc	n/a	7,759 3,953	n/a
Applicant observations	6,786	n/a, tbc	n/a	12,890	n/a
Decision	n/a, tbc	n/a, tbc	4,440 (inadmissible)	13,275 (partly inadmissible)	FRA 5,534 (inadmissible)
Judgment	n/a, tbc	n/a, tbc	n/a	23,459	n/a
Press release	n/a, tbc	n/a, tbc	n/a	349 + 2,235	302 + 1,415
CLIN	n/a, tbc	n/a, tbc	605	1,167	838
Total texts	4	2	2	10	5
Total tokens	14,005	2,045	5,045	70,022	15,318

I have also collected the derived genres, where available, and requested access to initial applications and written observations, as these documents are not publicly available in the HUDOC. The applications and written observations were further optically recognized and/or partially retyped, where the file quality did not allow optical recognition. The applications against Malta and Romania were lodged in English and French, respectively, whereas Russian and Dutch applications were lodged in the national languages. As I do not speak Dutch, it was almost impossible to analyse the application against the Netherlands but for the

[1] The materials of this study precede March 16, 2022, when the 47th Council of Europe Member State – Russia – was excluded from the Council of Europe.

excerpts containing the search word "COVID-19" that were retyped and machine-translated to understand the gist of the text.

Before outlining the analytical procedures, a brief description of the cases is needed. *Avagyan v. Russia* was lodged by a woman from Krasnodar who, at the beginning of the pandemic, posted a message on Instagram claiming that there is no coronavirus in Krasnodar. She was fined – allegedly disproportionately – for disseminating fake news. The second Russian case, *Ilyina v. Russia*, deals with the applicant's involuntary placement in a medical institution on suspicion of having COVID-19. At the corpus collection stage, the Russian cases were communicated (*Fig. 1*), but written observations were available only for Avagyan's case. The Dutch case, *Bah v. the Netherlands*, concerns the applicant's inability to be heard in-person in immigration proceedings on account of COVID-19-imposed restrictions. It was declared inadmissible (inadmissibility decision) by the Court, so no other genres are or will be available. The applicant in *Fenech v. Malta* is a suspect in a high-profile murder case who was detained and kept in a detention facility during the pandemic. He claimed that having only one kidney increased his risk of contracting the disease. This case has the most complete set of documents (ten), and brought to the corpus the longest text, the judgment [2]. Finally, *Terheş v. Romania*, marked as "key case", i.e. of heightened importance, was brought before the Court by a Romanian diplomat who claimed that country-wide lockdown in Romania could be equalled to house arrest, amounting thus to deprivation of liberty. Despite being flagged as "key case", which would typically earmark it for translation, only derived genres are available in English for this case. The function of these translated derived genres is most probably "to dissuade would-be applicants from bringing unmeritorious cases" (Brannan 2021, 219), as is often the case with press releases and summaries concerning inadmissible cases. The application and decision in French are kept for analysis. Surprisingly, there were no applications lamenting private life violations as a result of COVID-19 imposed digitalization and data storage (e.g. tracking, video-recording), nor (or not yet) contestations of vaccines or vaccination certificates among the cases brought before the Court by December 2021.

[2] As Brannan (2021, 221) comments drawing on Rietiker (2013, 44, quoted in Brannan 2021, 221), ECtHR judgments combine "civil law formalism with common law length and detail".

Given the multiple languages involved and the optical recognition challenges, some texts were left in their original format (.jpg or .pdf), partially retyping the relevant fragments, thus limiting the use of corpus linguistics software (WordSmith Tools 6.0: Scott 2015) to the provision of general statistics reported in *Table 1*. The uneven number of tokens across various cases was dictated by the desire to work with authentic materials that showed the state-of-the-art situation at the Court, with cases at different stages of proceedings, also based on their urgency and importance. In any case, as this is not a quantitative study, this methodological concession does not affect the analysis. The analysis is carried out in the close reading technique applying the methodology of Critical Discourse Analysis, firstly, to ascertain the broad content of each text and then to identify potentially relevant lexical items that could function as frames and to assess their discursive roles.

5. Findings

5.1. *The Applicants' and the Governments' framing*

The applicants' and the governments' communication within the ECtHR context is intrinsically dialogical. As *Figure 1* above highlights, once the case is accepted and communicated, the respondent Government is invited to answer the Court's questions formulated on the basis of the Applicant's initial application. A scaffolding of dialogically built frames thus emerges, where the applicants lament the alleged violations of their rights through actions or omissions of the governments incorporating indirectly their voices, whereas the governments provide a rebuttal framing and reframing of the events.

On the highest level of abstraction, i.e. thematic superframes, the applicants framed pandemic as a background, against which the government's actions or omissions were portrayed as human rights violations (*Fig. 1*). By contrast, the respondent governments framed the COVID-19 pandemic as a source of agency (cf. legitimation) that can be summarized as follows: the government's actions are not human rights violations because the pandemic created an emergency situation that demanded urgent action (*Fig. 2*). Surprisingly, COVID-19 as a recognized infectious disease posing risks to human health is highlighted

most by the applicant in *Fenech v. Malta* and added with some reservations in *Bah v. the Netherlands*, *Avagyan v. Russia*, *Ilyina v. Russia* and *Terheş v. Romania*.

(1) [...] combined with *the risks of contracting COVID-19 whilst incarcerated* at the Corradino Correctional Facility, *violated his right to life and freedom from ill-treatment*. In particular, that the applicant's medical condition – the previous loss of a kidney (see paragraph 22 below) – placed *the applicant at significant danger to health and survival if he contracted COVID-19*. An expert medical note was relied upon (see paragraph 23 below) that stated, inter alia, that the applicant is *at a higher risk than a normal person* to develop severe complications due to the COVID-19 infection. [*Fenech v. Malta*, Application] [3]

(2) The applicant emphasises that the impugned text concerned *a very serious public health issue – Coronavirus-19 – the whole world pandemic* – and the *shortcomings* of the authorities and Russian medical system. [*Avagyan v. Russia*, Applicant's observations]

(3) Before the moment that the *Dutch state took measures against the spread of COVID-19*, aliens who had been deprived of liberty were either transferred in person to the court in order to attend the hearing of their appeal there, or they were given the opportunity to attend the hearing from the detention centre *through video connection*. [*Bah v. the Netherlands*, Application, post-edited Google Translation]

As announced, top-level frames tend to be quite stereotypical, but it is interesting to observe what they co-occur with or how they are detailed. In (2) the emphasis on the global character of the pandemic serves the purpose of highlighting "the shortcoming of the Russian medical system". In (1) it serves as a premise to frame the situation as violation of right to be protected from the disease, again stressing the fact that the authorities' omissions are interpretable as human rights violations. A different interpretation is promoted in (3): while acknowledging the necessity of anti-contagion measures, the applicant laments the impossibility to attend his hearing in person or through a video-link, de-emphasizing the risks.

As expected, the negative framing is reversed by the governments (4) that, to answer the claim made in (1), frame their operation in terms of

[3] All examples are given in their original form, spelling and grammar. Emphasis is added. Whenever an example is translated from Russian, it is the author's translation. Few examples translated from Dutch are based on the post-edited version of Google Translate. Examples in French are left in the source language.

extensive measures (and not omissions), and in (5) highlight the actions undertaken to tackle the pandemic framed as "a natural and man-made emergency", thus echoing a current framing option of crisis or emergency (Poirier *et al.* 2020).

(4) On the contrary, the authorities put in place *extensive measures* to ensure that any *spread of COVID-19 is avoided*. [*Fenech v. Malta*, Government observations]

(5) In connection with the *threat of the spread of infections* caused by the novel coronavirus COVID-19 in the Krasnodar Region in accordance with *Law* […] *"On protection of the population from natural and man-made emergencies"* by the Decision of the Head of the Administration of the Krasnodar Region dated 13 March 2020 "On the introduction of *a high alert regime* in the Krasnodar Region and *measures to prevent the spread* of a new coronavirus infection". [*Avagyan v. Russia*, Government observations]

Examples (6) and (7) demonstrate how, despite recognizing the pandemic superframe, the applicant subframed being detained as leading to anxiety and fear of death (cf. Wodak 2021), which was skilfully reframed on a higher level of abstraction by the government as fear of unknown, embedding the applicant's framing and bringing it to a more generalizable context.

(6) Due to the absence of any individualised planning around the Applicant's vulnerability, the Applicant's *anxiety and fear of imminent death remains alive and enduring*. Placing a detainee, *vulnerable to death* in the event of a COVID-19 infection, into a cramped cell with a revolving number of up to 6 other prisoners and in the midst of a pandemic cannot fulfil the Government's Article 2 or 3 obligations. [*Fenech v. Malta*, Applicant observations]

(7) The applicant has expressed his fear of contracting COVID-19. *The fear and anxiety that the applicant has felt has been shared and expressed by many throughout the world*, whether they live inside or outside an institution run by Government. *It is the fear of the unknown*, of not knowing whether you could contract COVID-19, and how it would affect you if you did contract the virus. [*Fenech v. Malta*, Government observations]

Even if Terheş and Avagyan later recognize the "limitations as prevention" superframe, their initial applications are different. They claim that Government's actions are disproportionate and argue it using specific subframes "COVID-19 is not lethal" (8) and "COVID-19 is not real" (9),

respectively. They co-occur with theories of conspiracy (10) and government's inappropriate actions or power abuse (11).

(8) Le 11.03.2020, le Président de la Roumanie déclare publiquement *qu'en Roumanie il n'y a que 30 personnes infectées* avec SARS-CoV-2, qui sont *en bonne santé, comme une grippe, que le virus n'est pas du tout meurtrier* et que la crise du Coronavirus prendra *fin en quelques semaines*, tout en écartant la moindre possibilité de proclamer l'état d'urgence. [*Terheş v. Romania*, Application]

(9) The authorities did *not* provide *evidence of the existence of coronavirus in the Krasnodar Territory*. Instead, the courts imposed on the applicant an exorbitant *burden of proving the absence of coronavirus infection in the region, which is obviously impossible*. [*Avagyan v. Russia*, Application, my translation]

(10) There has NOT been a single case of corona[virus] infection in the Krasnodar Region. No patient who tested positive has received a document showing a confirmed virus infection. Think *why the authorities would need it … No one will talk about it, for fear of being fired or killed. Money is being offered for agreeing to list the corona[virus] as a cause of death in the death certificate, everyone knows it …* [*Avagyan v. Russia*, Case communication]

(11) Le 25.10.2020, le Premier Ministre déclare publiquement que toute personne contaminé avec SARS-CoV-2 et décédée *est enregistrée et comptabilisée comme décédée à cause du COVID-19, même si la cause de la mort peut être différente*. [*Terheş v. Romania*, Application]

Example (9) is the Registry's translation [4] of the applicant's post on Instagram, which triggered the applicant's prosecution for disseminating fake news: see (12) for the Government's framing of the post as dissemination of false information. A very similar framing is found in Terheş's case, although it is attributed to the Romanian Prime Minister (11), and not followed by any legal consequences.

(12) During the trial, the courts found that the applicant had *knowingly disseminated false information* and that the disseminated information was socially significant and did create *a threat* specified in […]. […], *a threat to public safety* is a direct or indirect possibility of inflicting

[4] There are two different versions of translations of the same post: one by the Government, which appears to be the product of machine translation, and the other by the Registry lawyers done at the case communication stage, which was further used verbatim also in the Applicant's response to the Government's observations.

damage to human and civil rights and freedoms, material and spiritual values of society. [*Avagyan v. Russia*, Government observations]

(13) In this case the application of Art. 13.15 (9) is more *like a witch hunt* and serves to *intimidate society, suppress public discussions* about the necessity and proportionality of restrictions imposed by the authorities *under the pretext of* combating the coronavirus infection. [*Avagyan v. Russia*, Application, my translation]

After the domestic proceedings (12), in her initial application Avagyan (13) frames Government's actions as power abuse and witch hunt aimed at public intimidation, invoking politicized rhetoric rather than health-related considerations. However, after the Government's written observations (12), Avagyan's counsel shifts the rhetoric completely. There is no denial of the coronavirus anymore, the "COVID-19 is a threat" frame is fully accepted and the conspiracy/witch hunt frame is silenced and replaced by an "insufficient information" frame (14): lack of information as a human rights violation.

(14) [...] *how the Russian authorities dealt with such threat in the context of the pandemic*; her words were *part of an extremely important public debate* focussed in particular on the *insufficient information* the authorities gave the population regarding the level of infection which they had been exposed and the public-health consequences of that exposure. [*Avagyan v. Russia*, Applicant's observations]

A different set of subframes may be added to this picture, where the applicants – based on the same core belief that COVID-19 is neither real (16) nor lethal – frame the Government's response as deprivation of liberty (15), following a simple argument: if the disease is not real, the Government abused their power by imposing unnecessary constraints.

(15) La quarantaine des communes ou des zones géographiques constitue une mesure dérogatoire visant la: liberté de circulation, tandis que l'isolement des personnes, la quarantaine des personnes et la quarantaine des bâtiments sont des mesures dérogatoires concernant *le droit à la liberté et à la sûreté*. [*Terheş v. Romania*, Application]

(16) The court hearing [... on the involuntary placement of the Applicant] took place on February 17, 2020. *All participants in the proceedings, listeners and journalists were without personal protective equipment, the distance among the attendees was not respected*. [*Ilyina v. Russia*, Application, my translation]

Figure 2 graphically reconstructs the clusters of frames by the applicants, showing the prevalence of politicized frames (in light grey) over health-

related frames (dotted). Although frames are typically imagined as something square, I chose to represent them as bubbles to illustrate the overlaps and aggregations: the subframe "COVID-19 is not real/lethal" (in dark grey) is strictly connected to other subframes (lockdown, involuntary placement and conspiracy) that altogether contribute to the top-level politicized frame "Disproportionality and power abuse". Besides representing the reality in a selective way, these frames act as arguments, sustaining the main thesis of most applicants that their Governments are at fault.

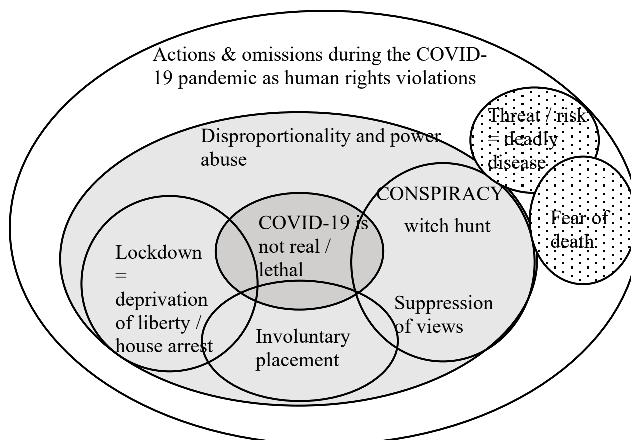

Figure 2. – The Applicants' framing.

The Government's framing system may be graphically summarized in *Figure 3*. At the heart of their representation of reality is the subframe "COVID-19 is deadly" (in dark grey), around which other threat-related subframes cluster in a clear attempt to legitimate the governments' actions (thematic superframe). The system is built dialogically – in an oppositional sense of the word, as a rebuttal of the applicant's story, where from, to quote Bakhtin, the Government "take[s] the word, and make[s] it [their] own" (Bakhtin 1981, 292). At every frame level there are alternative interpretations of the events that either completely counter the applicant's story (e.g. the fake news as a threat as opposed to applicant's frame of oppression of opinions, or movement limitations as extensive measures to prevent the spread as opposed to applicant's deprivation of liberty), at times incorporating some of the applicants' frames (e.g. the fear frame). The core governments' argument concerns

the gravity of the threat, which legitimates actions aimed at protecting society. Health-related frames (in light grey) are aligned with risk- and threat-oriented interpretation of a wider societal nature (in white).

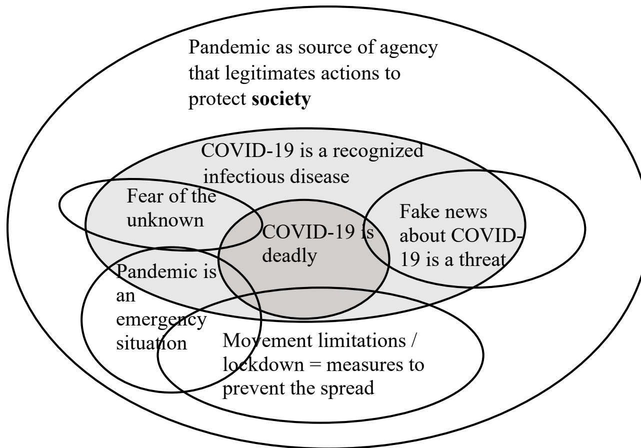

Figure 3. – The Governments' framing.

5.2. *The Court's framing*

Having outlined the claims and frames advanced by the "conflicting" parties, it is especially interesting to trace what frames are adopted by the seemingly neutral party – the Court – which, however, holds the power over the outcome of the cases. Texts that can be attributed to the Court in reality include multiple voices: the voice of the Registry lawyers who process the application and prepare case communications in an official language through complex processes of entextualization and legal translation (Nikitina 2022), the press releases that can be drafted by the Press Unit in cooperation with the Registry lawyers and that are translated into the other official language (for example, in *Terheş v. Romania* the drafting language was French, so the press releases include indirectly also the voices of the translators) and the decision or the judgment that incorporates the voices of the drafting lawyers, judges and, where applicable, also the separate opinions that can be either concurring or dissenting. To wit, the Court's framing is not oppositionally dialogical, but it is undeniably heteroglossic. There is only one judgment (*Fenech*

v. Malta) in the corpus, which also embeds the parties' duelling submissions, already discussed in 5.1.

(17) On 11 March 2020 the World Health Organization declared that the world was facing a pandemic caused by the SARS-CoV-2 coronavirus, responsible for an illness known as COVID-19. [*Terheş v. Romania*, Press release]

As concerns the thematic superframe, the Court makes a factual statement relying on a third authoritative party: the World Health Organization (17). As a matter of fact, the Court makes multiple references to WHO when assessing elements connected to health risk (e.g. "community transmission", information about the contamination capacity, death rate, good governance for prison health, etc.), thus legitimating its stance, discursively constructing an image of impartiality and refuting any potential accuses of argumentativeness. Besides WHO, the Court makes multiple references to other authoritative sources, such as Prof. Richard Coker's *Report on Coronavirus and Immigration Detention*, or OHCHR (quoted in *Fenech v. Malta* judgment, par. 113). It also incorporates mentions of multiple Council of Europe documents on COVID-19 in relation to prisons, adding other – declaredly impartial and external voices – to the system.

The very existence of the pandemic is never disputed by the Court, similarly to the governments and in contrast to some applicants. The Court also distances itself from the applicants' framing of the events in an explicit way (18).

(18) The Court reiterates that *it is master of the characterisation* to be given in law to the facts of the case and that *it is not bound by the characterisation given by an applicant*. [*Bah v. the Netherlands*, Decision]

Despite the heteroglossia outlined above, the Court frames COVID-19 in a strikingly unitary way across multiple genres as an "exceptional context", "emergency situation" or "crisis", stressing its unforeseeable, unprecedented or novel character (19-21), which shows its stance.

(19) In the Court's view, the COVID-19 pandemic was liable to have v*ery serious consequences not just for health, but also for society, the economy, the functioning of the State and life in general*, and the situation should therefore be characterised as an "*exceptional and unforeseeable context*". (*Terheş v. Romania*, Infonote)

(20) The Court notes that the limitations complained of occurred within a very specific context, namely during *a public health emergency* (see

Fenech (dec.), cited above, § 11) and were put in place in view of significant health considerations, not only on the applicant but on society at large. Indeed, the Court has already had occasion to note that *the Covid 19 pandemic* is liable to have very *serious consequences not just for health, but also for society, the economy, the functioning of the State and life in general*, and that the situation should therefore be characterised as an *"exceptional and unforeseeable context"* (see Terheş vv. Romania (dec.), no. 49933/20, 13 April 2021). [*Fenech v. Malta*, Judgment]

(21) This Act provided a legal framework for the *exceptional situation* caused by COVID-19 and section 2(1) of the Act allowed for a hearing through a communication device rather than in person [...]. Given the *difficult and unforeseen practical problems* with which the State was confronted during the first weeks of the COVID-19 pandemic, the fact that the applicant was represented by and heard through his lawyer with whom he had regular contact [...]. [*Bah v. the Netherlands*, Decision]

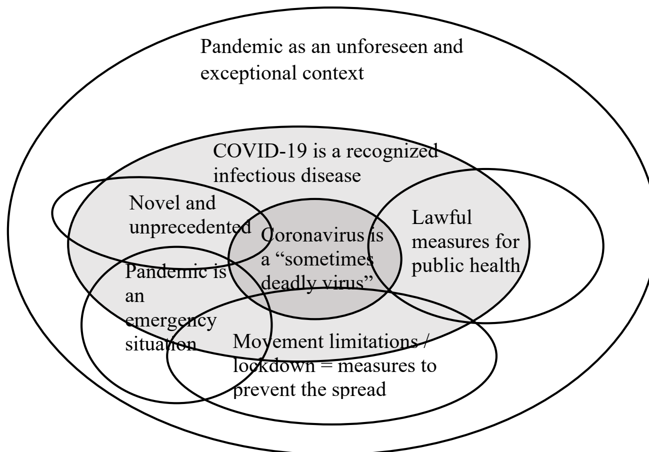

Figure 4. – The Court's framing.

Figure 4 graphically summarizes the Court's framing. In general, the Court seems to refute politicized framing and to accept health- and risk-related frames. It is also noteworthy that only the case framing pandemic as a human rights violation from the health risks standpoint (vulnerable person detained in prison, *Fenech v. Malta*) has been declared admissible, whereas the most politicized framing of lockdown as deprivation of liberty (*Terheş v. Romania*) has been declared inadmissible and

earmarked as a key case, presumably as a deterrent. It is interesting to note that coronavirus is framed as a virus that is potentially – but not always – deadly (in dark grey), downtoning the overly alarmistic nuances and foregrounding the importance of prevention measures. Yet, the Court is cautious is granting a universal "green light" and stresses repeatedly that the actions that were deemed proportionate were considered as such only under the context of an unprecedented emergency situation. Unfortunately, there are no judgments, decisions or press releases concerning the two Russian cases, so it is impossible to assess the Court's framing there.

6. Discussion and conclusions

The ECtHR system does not allow immediate applications because a typical application has to go through all available domestic remedies in order to be admissible [5], which frequently leads to a significant time lag between the time of the disputed events and the decision or judgment. Against this backdrop, even a small number of cases – originating from countries with probably faster judiciary processes – that frame COVID-19-related events as human rights violations is noteworthy. The speed with which the Court processed these cases and the fact that one of them was marked as "key case" are also noteworthy, as the Court preemptively ruled on highly disputed issues to deter other applications. This study has analysed how COVID-19 was framed as a human rights violation, contributing at the same time to literature on the discursive practices and genres within the ECtHR system.

The findings identified a dialogical scaffolding or clustering of frames. The Applicants reflected the societal worries advancing politicized frame systems (detention / house arrest, involuntary placement, witch hunt, threat, state suppression, state conspiracy), built on the core denial of the existence or seriousness of COVID-19, which on a higher level of abstraction let them frame the governments' actions or omissions as civil and political human rights violations. Only one case focussed on healthcare-related frame systems (disease, infection, contagion, death,

[5] With the exception of Rule 39 (Rules of the Court), which allows the applicants in exceptional circumstances to request urgent interim measures, without necessarily exhausting all domestic remedies.

risk, danger, vulnerability), which was surprising given the nature of the pandemic. The low number of health-risk related applications may be interpreted as an attempt to exploit the pandemic and the human rights mechanism in order to advance other, ideologically charged, messages. The Governments built on the general healthcare crisis framing and counterframed societal limitations as agency stemming from "health and safety first" frame, refuting allegations of omissions and foregrounding all the measures taken, against the superframe "pandemic as a source of agency".

The Court refuted most of the politicized framing choices and accepted most healthcare-related frames, operating under the "exceptional and unforeseen circumstances" frame, in a way shifting the blame from the governments. However, in none of the cases analysed was there any legitimation of disproportionate actions. The Court's framing may be interpreted as an ideological choice: by promoting its independence from the political dimension the Court deters future cases that could decide to abuse the supranational mechanism. The Court was careful to include in its reasoning the voices of external health experts, such as WHO, as the matter could clearly question the competence of a judiciary body with no medical experts on board. This multifaceted expert profile and the heteroglossia within the system of genres at the ECtHR are worthy of further investigation. Two Russian cases remain open [6] concerning issues of involuntary placement and fake news, joined by the common framing of the applicants invoking power abuse and conspiratorial overtones, precluding any generalizations as to the Court's position even with this limited corpus.

Meaning-making is a complicated process, involving multiple frames, their scaffolding and evolution. In the corpus at hand, it emerged that the value of higher level – and less disputable – frames and superframes was argued by selective representation of reality at the level of subframes. It would be interesting to analyse the evolution of COVID-19 framing in the ECtHR system of genres, also from a diachronic and, possibly, corpus-assisted standpoint.

[6] Given that Russia is no longer a Member State of the Council of Europe, it is not clear whether these cases will be processed further or not.

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