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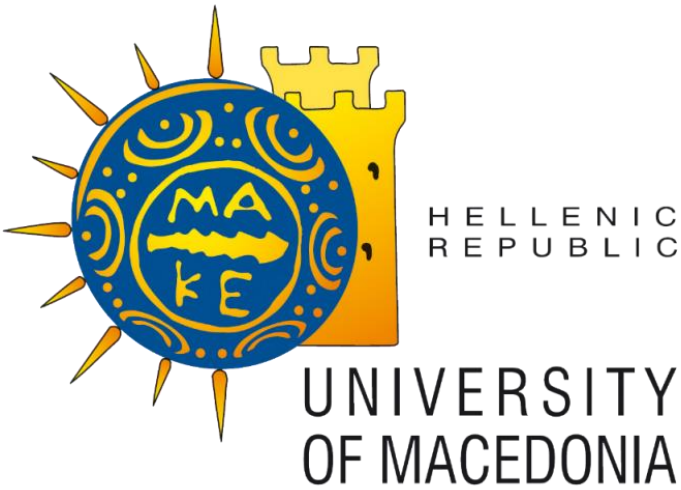

«Covid – 19 pandemic: Human Rights protection under the European Convention on Human Rights»

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Abstract

The aim of the present dissertation is to address the impact on human rights protection of the Covid-19 pandemic in the light of the European Convention on Human Rights. After an overview of the rights engaged by the Covid-19 pandemic and by States' response, the dissertation examines the positive obligations on States and derogation in the context of the sanitary situation. Lastly, what took place is a presentation of the still developing Strasbourg Court case-law on human rights during the health crisis.

The thesis is organized as follows: Part I sets the applicable legal framework established by the Convention. The ECHR rights, mostly affected by the Covid-19 pandemic and by government responses to it, are briefly analyzed, while the balancing of these rights against public interest by the Court is discussed, too. Part II focuses on the recalibration of the human rights during the health crisis. In the first Section, the positive obligations on States are examined, focusing on the protection of life and health and the protection of vulnerable groups. In the second Section, the main points of the discussion about the derogation under Article 15 of the Convention are presented. Last but not least, the third Section is about the ECtHR. On the one hand, the Court's case-law on human rights restrictions during the health crisis is thoroughly demonstrated. On the other hand, its role in times of this crisis is critically illustrated.

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Introductory Remarks

On December 31, 2019, in Wuhan City, Hubei Province, China, a severe acute respiratory syndrome Coronavirus 2 (SARS-CoV-2) was identified and initially reported to the World Health Organization (WHO). Coronavirus disease 2019 (COVID-19) is defined as illness caused by SARS-CoV-2. On January 30, 2020, the WHO declared the Covid-19 outbreak a global health emergency, on March 11, 2020 the WHO declared COVID-19 a global pandemic and till today the WHO determines that the event continues to constitute a Public Health Emergency of International Concern (PHEIC).

The Covid-19 pandemic and the social-economic-political crisis unfolding with it seems that it will be one of the most important events in the history of the twenty-first (21st) century. The entire world was caught unprepared to deal with this crisis situation, while, regarding the European continent and especially the Member-States of the Council of Europe, it is the first time in the history of the European Convention of Human Rights (hereinafter ECHR or Convention) that all the States have been affected simultaneously by the same emergency. There is no doubt that the Covid-19 pandemic and its consequences have impacted on a significant number of human rights and freedoms enshrined in the Convention and that it has posed several difficult legal questions under the Convention. The European Court of Human Rights (hereinafter ECtHR, Court or Strasbourg Court) has already received a large volume of applications relating to the Covid-19 pandemic and measures adopted to face this sanitary crisis.

Revealing of the seriousness of the Covid-19 health crisis both regarding public health and our society is the statement of the Council of Europe Secretary General Marija Pejčinović Burić:

"The virus is destroying many lives and much else of what is very dear to us. We should not let it destroy our core values and free societies."

The *aim of this study* is to investigate the protection status of human rights under the ECHR during the Covid-19 pandemic, especially in the light of the case-law of the Strasbourg Court. It is unnecessary to emphasize how relevant this discussion about the impact of the health crisis on human rights protection is and how important the case-law of the most effective international human rights court in the world for the lawful dealing of this situation is as well. Despite the fact that the Court's case-law on human rights during the sanitary crisis is

still developing, the issued judgments could serve as an inspiration for current and future health emergencies. Consequently, it could be said that the choice of topic was an "easy" decision, following the social and academic topicality, while the *significance of the study* is self-evident. It is obvious that this study would not (and does not seek to) give conclusive answers to the current complex legal issues relating to the pandemic. However, it is an attempt to offer the keys to understanding of the involvement of the provisions of the ECHR in the Covid-19 pandemic, seen through the decisions of the most appropriate interpretive institution, the Strasbourg Court.

For the purposes of this study, the *methodology* chosen was the combination of study and interpretation of recent relevant literature and of course the still developing case-law of the ECtHR, with an emphasis on the latter. Previous decisions of the Court were also utilized as interpretive guide for the applicable legal framework.

The thesis is organized as follows: Part I sets the applicable legal framework established by the Convention. The ECHR rights, mostly affected by the Covid-19 pandemic and by government responses to it, are briefly analyzed, while the balancing of these rights against public interest by the Court is discussed, too. Part II focuses on the recalibration of the human rights during the health crisis. In the first Section, the positive obligations on States are examined, focusing on the protection of life and health and the protection of vulnerable groups. In the second Section, the main points of the discussion about the derogation under Article 15 of the Convention are presented. Last but not least, the third Section is about the ECtHR. On the one hand, the Court's case-law on human rights restrictions during the health crisis is thoroughly demonstrated. On the other hand, its role in times of this crisis is critically illustrated.

At this point, it is considered crucial to make the following explanatory remark: Each of the points of view to be presented recognize the seriousness of the health situation and highlight the importance of an effective response to the SARS-CoV-2 virus, while combining this with the protection of the rule of law, democracy and human rights. Besides, the inevitable impact of the state's management of the pandemic crisis on human, in no way, diminishes the importance of following the necessary health measures by all citizens to protect both their own health and that of their fellow citizens.

PART I: The Legal Framework Established by the European Convention on Human Rights

a. Rights engaged by the Covid-19 pandemic and by States' response and their express definitional restrictions

1. Right to life – Article 2 ECHR

Article 2 of the Convention ranks as one of the most fundamental provisions in the Convention[1] and enshrines one of the basic values of the democratic societies making up the Council of Europe[2]. As such, its provisions must be strictly construed[3].

Article 2 contains two substantive obligations: The first substantive obligation is *the general obligation to protect by law the right to life*: Article 2 § 1 of the Convention enjoins the State to take appropriate steps to safeguard the lives of those within its jurisdiction[4]. This obligation has two aspects: *the duty to provide a regulatory framework* and *the obligation to take preventive operational measures*[5]. Thus, the European Court of Human Rights has found positive obligations to arise under Article 2 of the ECHR in a number of different contexts, including the context of healthcare. In this context, the positive obligations require States to make regulations compelling (public or private) hospitals to adopt appropriate measures for the protection of patients' lives[6] and ensure the effective functioning of the regulatory framework[7], including supervision and enforcement[8]. The second substantive obligation is *the prohibition of intentional deprivation of life.*

Article 2 contains, also, a distinct procedural obligation to carry out an *effective investigation*, which arises in a variety of situations where an individual has sustained life-

[1] Council of Europe, *Guide on Article 2 of the European Convention on Human Rights - Right to life*

[2] *Giuliani and Gaggio v. Italy [GC]* App no 23458/02 (ECHR, 25 August 2009) § 174

[3] *McCann and Others v. the United Kingdom [GC]* App no 18984/91 (ECHR, 27 September 1995) § 147

[4] *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC] App no 47848/08 (ECHR, 17 July 2014)* § 130.

[5] Council of Europe, *Guide on Article 2* (n 1)

[6] *Calvelli and Ciglio v. Italy [GC]* App no 32967/96 (ECHR, 17 January 2002) § 49; *Vo v. France [GC]* App no 53924/00 (ECHR, 8 July 2004) § 89; *Lopes de Sousa Fernandes v. Portugal [GC]* App no 56080/13 (ECHR, 12 December 2017) § 166

[7] Council of Europe, *Guide on Article 2* (n 1)

[8] *Lopes de Sousa Fernandes v. Portugal [GC]* App no 56080/13 (ECHR, 12 December 2017) § 190

threatening injuries, died or has disappeared in violent or suspicious circumstances, irrespective of whether those allegedly responsible are State agents or private persons or are unknown or self-inflicted[9].

Since 6.859.093 deaths by the virus SARS-CoV-2 have reported to World Health Organization (WHO) at the global level[10], at the time of this writing, right to life protected under the Article 2 of the European Convention on Human Rights can be engaged.

2. Prohibition of torture - Article 3 ECHR

Article 3 of the ECHR enshrines one of the most fundamental values of democratic societies[11] and it is closely bound up with respect to human dignity[12].

Article 3 of the Convention may be described in general terms as imposing a primarily negative obligation on States *to refrain from inflicting serious harm on persons* within their jurisdiction[13]. On the other hand, the ECtHR has also considered that States have positive obligations under this Article: On the one hand, the substantive obligations consist of an obligation to put in place *a legislative and regulatory framework of protection and* an obligation to take *operational measures to protect specific individuals against a risk of*

[9]see, for example, *concerning* inter-prisoner violence: *Paul and Audrey Edwards v. the United Kingdom* App no 46477/99 (ECHR, 14 March 2002) § 69;

concerning homicides by prisoners benefiting from early release or social re-integration schemes: *Maiorano and Others v. Italy* App no 28634/06 (ECHR, 15 December 2009) § 123-26;

concerning high-profile assassinations: *Kolevi v. Bulgaria* App no 1108/02 (ECHR, 5 November 2009) § 191-215;

concerning domestic violence: *Opuz v. Turkey* App no 33401/02 (ECHR, 9 June 2009) § 150;

concerning suspicious deaths or disappearances: *Iorga v. Moldova* App no 12219/05 (ECHR, 23 March 2010) § 26; *Tahsin Acar v. Turkey [GC]* App no 26307/95 (ECHR, 08 April 2004) § 226;

concerning suicide: *Trubnikov v. Russia* App no 49790/99 (ECHR, 5 July 2005); *Mosendz v. Ukraine* App no 52013/08 (ECHR, 17 January 2013) § 92; *Vasîlca v. the Republic of Moldova* App no 15944/11 (ECHR, 1 May 2017) § 28.

[10] World Health Organization, 'WHO Coronavirus (COVID-19) Dashboard' <https://covid19.who.int/> accessed 04 March 2023

[11] Council of Europe, *Guide on Article 3 of the European Convention on Human Rights - Prohibition of torture*

[12] *Bouyid v. Belgium [GC]* App no 23380/09 (ECHR, 28 September 2015) § 81

[13] *Hristozov and Others v. Bulgaria* App nos 47039/11 and 358/12 (ECHR, 29 April 2013) § 111

treatment contrary to this provision. On the other hand, the procedural obligation is an obligation to carry out an *effective investigation* into arguable claims of infliction of such treatment[14]

The prohibition under Article 3 of the Convention does not relate to all instances of ill-treatment[15], but it must attain a minimum level of severity if it is to fall within its scope. The assessment of the level of severity is relative and depends on all the circumstances of the case (duration of the treatment, its physical or mental effects and, in some cases, the sex, age and the state of health of the victim)[16]. In order to determine whether the threshold of severity has been reached, what is also taken into account is:

- The purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it –although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3
- The context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions
- Whether the victim is in a vulnerable situation[17]

When assessing the level of severity, particularly when the ill-treatment is administered by private individuals, the Strasbourg Court takes into consideration an array of factors that carry significant weight and presuppose that this treatment was consequence of an intentional act[18]. However, where an individual is deprived of their liberty or, more generally, is confronted with law-enforcement officers, any conduct by the latter vis-à-vis an individual which is considered to diminish human dignity and thus constitute a violation of Article 3 of the Convention[19].

Suffering and illness or lack of medical treatment could –under certain circumstances- fall under the scope of Article 3 of the Convention about prohibition of torture.

[14] *X and Others v. Bulgaria [GC]* App no 22457/16 (ECHR, 2 February 2021) § 178

[15] *Savran v. Denmark [GC]*, 2021 App no 57467/15 (ECHR, 7 December 2021) § 122.

[16] *Muršić v. Croatia [GC]* App no 7334/13 (ECHR 20 October 2016) § 97

[17] *Khlaifia and Others v. Italy [GC]* App no 16483/12 (ECHR 15 December 2016) § 160

[18] Council of Europe, *Guide on Article 3* (n 11)

[19] *Bouyid v. Belgium [GC]* App no 23380/09 (ECHR, 28 September 2015) § 100-101

3. Prohibition of slavery and forced labour - Article 4 ECHR

Article 4 of the Convention, together with Articles 2 and 3, enshrines one of the fundamental values of democratic societies[20]. States have positive obligations under this Article: States' substantive obligations identify *the duty to put in place a legislative and administrative framework* and *the duty to take operational measures,* while States have a procedural obligation *to investigate, where there is a credible suspicion that an individual's rights under that Article have been violated*[21].

Article 4 § 1 of the Convention requires that "no one shall be held in slavery or servitude" and in the scope of "slavery" the Court refers to the classic definition of slavery contained in the Slavery Convention (1926), which defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"[22].

Article 4 § 2 of the Convention prohibits forced or compulsory labour[23] and aims to protect against instances of serious exploitation, irrespective of whether, in the particular circumstances of a case, they are related to the specific human trafficking context[24].

Article 4 § 3 of the Convention is not intended to "limit" the exercise of the right guaranteed by paragraph 2, but to "delimit" the very content of that right, for it forms a whole with Article 4 § 2 and indicates what the term "forced or compulsory labour" is not to include[25].

Needless to say, Article 4 (Prohibition of slavery and forced labour) of the ECHR will only apply to forced labour –no slavery-, in the cases that the State makes people get involved in

[20] *Siliadin v. France* App no 73316/01 (ECHR, 26 October 2005) § 112; *Stummer v. Austria [GC]* App no 37452/02 (ECHR, 7 July 2011) § 116

[21] Council of Europe, *Guide on Article 4 of the European Convention on Human Rights - Prohibition of slavery and forced labour*

[22] *Siliadin v. France* App no 73316/01 (ECHR, 26 October 2005) § 122

[23] *C.N. v. the United Kingdom* App no 4239/08 (ECHR, 13 November 2012) § 65*; Stummer v. Austria [GC]* App no 37452/02 (ECHR, 7 July 2011) § 116

[24] *Zoletic and Others v. Azerbaijan* App no 20116/12 (ECHR, 7 October 2021) § 148

[25] *S.M. v. Croatia [GC]* App no 60561/14 (ECHR, 19 July 2018), § 120

withdrawing the consequences of the Covid-19 pandemic emergency (e.g. requisition private sector doctors[26]).

4. Right to liberty and security - Article 5 ECHR

In proclaiming the "right to liberty", Article 5 of the ECHR contemplates the physical liberty of the person; its aim is to prevent arbitrary or unjustified deprivations of liberty[27]. The right to liberty and security is of the highest importance in a "democratic society" within the meaning of the Convention[28]. In order to determine whether someone has been "deprived of their liberty", the starting point should be their concrete situation and a whole range of criteria should be taken into account (type, duration, effects and manner of implementation of the measure in question)[29].

Article 5 § 1 –first sentence- lays down a positive obligation on the State to take *appropriate steps to provide protection against an unlawful interference* with those rights to everyone within its jurisdiction[30]. No deprivation of liberty will be lawful unless it falls within one of the permissible grounds specified in sub-paragraphs (a) to (f) of Article 5 § 1[31].

Article 5 § 2 of the Convention should be interpreted autonomously and, in particular, in accordance with the aim and purpose of the Article to protect everyone from arbitrary

[26]Reuters, 'Greece could requisition private sector doctors, PM tells paper' <https://www.reuters.com/article/us-health-corovavirus-greece-pm-idUSKBN2BD0F2> accessed 04 March 2023

[27] *Selahattin Demirtaş v. Turkey (no. 2)* [GC] App no 14305/17 (ECHR 22 December 2020) § 311; *S., V. and A. v. Denmark [GC]* App nos 35553/12, 36678/12 and 36711/12 (22 October 2018) § 73; *McKay v. the United Kingdom [GC]* App no 543/03 (ECHR, 03 October 2006) § 30

[28] *Medvedyev and Others v. France [GC]* App no 3394/03 (ECHR, 29 March 2010) § 76; *Ladent v. Poland* App no 11036/03 (ECHR 18 March 2008) § 45

[29] *De Tommaso v. Italy [GC]* App no 43395/09 (ECHR, 23 February 2017) § 80; *Guzzardi v. Italy* App no 7367/76 (ECHR, 6 November 1980) § 92; *Medvedyev Medvedyev and Others v. France [GC]* App no 3394/03 (ECHR, 29 March 2010) § 73; *Creangă v. Romania [GC]* App no 29226/03 (ECHR, 23 February 2012) § 91

[30] *El-Masri v. the former Yugoslav Republic of Macedonia [GC]* App no 39630/09 (ECHR, 13 December 2012) § 239

[31] *Khlaifia and Others v. Italy [GC]* App no 16483/12 (ECHR 15 December 2016) § 88; *Aftanache v. Romania* App no 999/19 (ECHR, 26 August 2020) § 92-100; *I.S. v. Switzerland* App no 60202/15 (06 October 2020) § 46-60

deprivations of liberty[32]. Article 5 § 2 contains the elementary safeguard that any person arrested should know why they are being deprived of their liberty and an integral part of the scheme of protection afforded by Article 5[33].

Article 5 § 3 of the ECHR provides persons arrested or detained on suspicion of having committed a criminal offence with a guarantee against any arbitrary or unjustified deprivation of liberty[34]. Essential feature of this guarantee is the judicial control of interferences by the executive with the individual's right to liberty[35].

Article 5 § 4 is the *habeas corpus* provision of the Convention[36]. It provides detained persons with the right to actively seek a judicial review of their detention[37]. In other words, it entitles an arrested or detained person to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness" -in the sense of Article 5 § 1- of their deprivation of liberty[38].

Article 5 § 5 creates a direct and enforceable right to compensation before the national courts[39]. This right presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Court[40].

Several governments declared/issued movement bans in order to reduce the spread of the virus SARS-CoV-2. These bans differed in scope and intensity, ranging from restricting

[32] Council of Europe, *Guide on Article 5 of the European Convention on Human Rights - Right to liberty and security*

[33] *Khlaifia and Others v. Italy [GC]* App no 16483/12 (ECHR 15 December 2016) § 115

[34] *Aquilina v. Malta [GC]* App no 25642/94 (ECHR, 29 April 1999), § 47; *Stephens v. Malta (no. 2)* App no 33740/06 (ECHR, 14 September 2009) § 52

[35] *Brogan and Others v. the United Kingdom* App nos 11209/84, 11234/84, 11266/84 and 11386/85 (ECHR, 29 November 1988) § 58; *Pantea v. Romania* App no 33343/96 (ECHR, 03 June 2003) § 236; *Assenov and Others v. Bulgaria*, App no 90/1997/874/1086(ECHR, 28 October 1998) § 146

[36] Council of Europe, *Guide on Article 5* (n 32)

[37] *Mooren v. Germany [GC]* App no 11364/03 (ECHR, 9 July 2009) § 106; *Rakevich v. Russia* App no 58973/00 (ECHR, 28 October 2003) § 43

[38] *Khlaifia and Others v. Italy [GC]* App no 16483/12 (ECHR 15 December 2016) § 128; *Idalov v. Russia [GC]* App no 5826/03 (ECHR, 22 May 2012) § 161; *Reinprecht v. Austria* App no 67175/01 (ECHR, 15 November 2005) § 31

[39] *A. and Others v. the United Kingdom [GC]* App no 3455/05 (ECHR, 19 February 2009) § 229; *Storck v. Germany* App no 61603/00 (ECHR, 16 September 2005) § 122

[40] *N.C. v. Italy [GC]* App no 24952/94 (ECHR, 18 December 2002) § 49; *Pantea v. Romania* App no 33343/96 (ECHR, 03 June 2003), § 262; *Vachev v. Bulgaria* App no 42987/98 (ECHR, 8 July 2004) § 78

movement within the borders of a state to prohibiting people from exiting the state. Article 5 of the Convention may be interfered with by these measures[41]. The so-called "lockdowns" (stay-at-home orders, curfews, quarantines, cordons sanitaires etc.) and/or social distancing measures may fall within the definition of a "deprivation of liberty" under this Article.

5. Freedom of movement - Article 2 of Protocol No. 4 ECHR

Article 2 of Protocol No. 4 cannot be invoked in relation to States which have not ratified Protocol No. 4, which are Greece, Switzerland, Turkey and the United Kingdom.

Article 2 of Protocol No. 4 guarantees three rights: (a) Freedom of movement, (b) Freedom to choose one's own residence within a State's territory, (c) Freedom to leave any country, including one's own

These rights are not absolute, but they can be subject to restrictions in accordance with paragraphs 3 and 4 of this provision[42].

Article 2 of Protocol No. 4 of the Convention concerns mere restrictions on liberty of movement[43]. The difference between restrictions on movement serious enough to fall within the ambit of a deprivation of liberty under Article 5 § 1 of the ECHR and mere restrictions of liberty which are subject only to Article 2 of Protocol No. 4 of the ECHR is one of degree or intensity, and not one of nature or substance[44].

The right provided by Article 2 of Protocol 4 (Freedom of movement) is also clearly engaged by the "Covid – 19 lockdowns".

[41] European Parliamentary Research Service, Upholding human rights in Europe during the pandemic

[42] Council of Europe, *Guide on Article 2 of Protocol No. 4 to the European Convention on Human - Rights Freedom of movement*

[43] *Tommaso v. Italy [GC]* App no 43395/09 (ECHR, 23 February 2017) § 80; *Creangă v. Romania [GC]* App no 29226/03 (ECHR, 23 February 2012) § 92; *Engel and Others v. The Netherlands App nos 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72 (ECHR, 8 June 1976)* § 58

[44] *De Tommaso v. Italy [GC]* App no 43395/09 (ECHR, 23 February 2017) § 80; *Guzzardi v. Italy* App no 7367/76 (ECHR, 6 November 1980) § 93; *Rantsev v. Cyprus and Russia* App no 25965/04 (ECHR, 07 January 2010) § 314; *Stanev v. Bulgaria [GC]* App no 36760/06 (ECHR, 17 January 2012) § 115

6. Right to a fair trial - Article 6 ECHR

Article 6 of the ECHR protects the right to fair trial.

Criminal limb: The key principle governing the application of Article 6 is fairness[45]. This means that the Strasbourg Court evaluates the overall fairness of the proceedings[46].

The concept of a "criminal charge" has an autonomous meaning, independent of the categorizations employed by the national legal systems of the member States[47]. "Charge" may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence"[48]. As regards the notion of "criminal", the assessment of the applicability of the Article 6 of the Convention is based on the criteria outlined in *Engel and Others v. the Netherlands*[49]: (a) Classification in domestic law, (b) Nature of the offence, (c) Severity of the penalty that the person concerned risks incurring.

The "right to a court" of Article 6 § 1 of the Convention requires a "tribunal established by law", "independent" and "impartial" of a tribunal (*institutional requirements*)[50]. Article 6 of the ECHR guarantees fairness, public hearing and the reasonableness of the length of proceedings (*procedural requirements*)[51]. Additionally, Article 6 § 2 of the Convention embodies the principle of the presumption of innocence, while the right of the defense laid down in Article 6 § 3.

Civil limb: The concept of "civil rights and obligations" is an "autonomous" concept deriving from the Convention and cannot be interpreted solely by reference to the respondent

[45] *Gregačević v. Croatia* App no 58331/09 (ECHR, 10 October 2012) § 49

[46] Council of Europe, *Guide on Article 6 of the European Convention on Human Rights - Right to a fair trial (criminal limb)*

[47] *Blokhin v. Russia [GC]* App no 47152/06 (ECHR, 23 March 2016) § 179; *Adolf v. Austria* App no 8269/78 (ECHR, 26 March 1982) § 30

[48] *Deweer v. Belgium* App no 6903/75 (ECHR, 27 February 1980) § 42 and 46; *Eckle v. Germany* App no 8130/78 (ECHR, 15 July 1982) § 73; *Ibrahim and Others v. the United Kingdom [GC]* App nos 50541/08, 50571/08, 50573/08 and 40351/09 (ECHR, 13 September 2016) § 249; *Simeonovi v. Bulgaria [GC]* App no 21980/04 (ECHR, 12 May 2017) § 110

[49] *Engel and Others v. The Netherlands* App nos 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72 (ECHR, 8 June 1976) § 82-83

[50] Council of Europe, *Guide on Article 6* (n 46)

[51] ibid

State's domestic law[52]. The judgment in *Grzęda v. Poland*[53] summarized the applicable case-law principles[54]: (a) The existence of a "dispute"[55], (b) The dispute must relate to a "right" which can be said, at least on arguable grounds, to be recognized under domestic law, irrespective of whether it is protected under the Convention, (c) The result of the proceedings must be directly decisive for the "civil" right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 of the Convention into play[56].

A fair and public hearing within reasonable time is the procedural requirements in cases to determine civil rights, too[57].

Throughout the Covid-19 pandemic, States have introduced a range of measures, which caused vast disruption across the entirety of the justice. Within the framework of the measures introduced, access to courts was restricted, while, in some countries, courts shifted to online operations as a means to be able to continue to function[58]. As a result, the right provided by Article 6 of the Convention is engaged.

7. Right to respect for private and family life - Article 8 ECHR

The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority[59]. Therefore, the essential object of this Article is a classic negative obligation[60]. On the other hand, the State also has a

[52] *Grzęda v. Poland [GC]* App no 43572/18 (ECHR, 15 March 2022) § 287

[53] *Grzęda v. Poland [GC]* App no 43572/18 (ECHR, 15 March 2022) § 287

[54] *Grzęda v. Poland [GC]* App no 43572/18 (ECHR, 15 March 2022) § 257-259

[55] in French: "*contestation*"

[56] *Károly Nagy v. Hungary [GC]* App no 56665/09 (ECHR, 14 September 2017) § 60; *Regner v. the Czech Republic [GC]* App no 35289/11 (ECHR, 19 September 2017) § 99; *Naït-Liman v. Switzerland [GC]* App no 51357/07 (ECHR, 15 March 2018) § 106; *Denisov v. Ukraine [GC]* App no 76639/11 (ECHR, 25 September 2018) § 44

[57] Council of Europe, *Guide on Article 6 of the European Convention on Human Rights - Right to a fair trial (civil limb)*

[58] Venice Commission, Observatory on emergency situations <https://www.venice.coe.int/files/EmergencyPowersObservatory//T14-E.htm> accessed 04 March 2023

[59] *Libert v. France* App no 588/13 (ECHR, 02 July 2018) § 40-42

[60] *Kroon and Others v. the Netherlands* App no 18535/91 (ECHR, 27 October 1994) § 31

positive obligation to ensure that Article 8 ECHR *rights are respected even as private parties*[61].

The Strasbourg Court has broadly defined the scope of this Article, even when a specific right is not set out in it. In order to invoke Article 8, an applicant must show that their complaint falls within at least one of the four interests identified in the Article, while some cases span more than one interests. Next, it is examined whether there has been an interference with that right or whether the State's positive obligation to protect the right has been engaged. Limitations are allowed if they are "in accordance with the law" or "prescribed by law" and they are "necessary in a democratic society" for the protection of the objects set out in Article 8 § 2: (a) National security, (b) Public safety, (c) Economic wellbeing of the country, (c) Prevention of disorder or crime, (d) Protection of health or morals, (e) Protection of the rights and freedoms of the others[62].

The COVID-19 pandemic led States to resort to tracking technology and other data-driven tools. The collection, use, sharing and further processing of data derived from phones, emails, banking, social media, postal services, for instance, could help monitor and curb the spread of the virus SARS-CoV-2 and aid in accelerating the recovery. Such data collection and processing may concern personal and non-personal sensitive data. Unfortunately, sometimes these measures are applied for purposes not directly or specifically related to the COVID-19 response[63]. This information falls within the scope of "privacy" illustrated in Article 8 of the Convention. This health crisis poses a huge challenge to the right to privacy, and it may really impact the scope of Article 8.

[61] *Bărbulescu v. Romania [GC]*, App no 61496/08 (ECHR, 5 September 2017) § 108-111

[62] Council of Europe, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life, home and correspondence*

[63] World Health Organization, Joint Statement on Data Protection and Privacy in the COVID-19 Response <https://www.who.int/news/item/19-11-2020-joint-statement-on-data-protection-and-privacy-in-the-covid-19-response> accessed 04 March 2023

8. Freedom of thought, conscience and religion - Article 9 ECHR

Freedom of thought, conscience and religion as enshrined in Article 9 represents one of the foundations of a "democratic society" within the meaning of the Convention[64]. Freedom of religion involves negative rights, that is to say freedom not to belong to a religion and not to practice it[65] and the right to conscientious objection[66]. On the other hand, freedom of religion implies not only individual conscience, but also inter alia freedom to "manifest religion" alone and in private or in community with others, in public and within the circle of those whose faith one shares (worship, teaching, practice, observance)[67].

States are the guarantor of freedom of religion. For this reason, the Member States have the negative obligations *not to impede the normal function of religious organizations* and *to respect the autonomy of religious organizations* and the positive obligation to ensure *the peaceful enjoyment of the rights* guaranteed under Article 9 of the Convention.

Many States banned public gatherings, including religious masses, in order to prevent the spread of the virus SARS-CoV-2. Religious ceremonies were suspended and places of worship were (partially) closed, while a number of States suspended particular ceremonies, such as weddings, or limited the number of attendees, for example, at funerals[68]. These measures constitute a limitation on the freedom of religion, as it is protected in Article 9 of the ECHR.

9. Freedom of expression - Article 10 ECHR

Freedom of expression constitutes one of the essential foundations of a [democratic] society, one of the basic conditions for its progress and for the development of every man[69]. Article 10 of the Convention does not apply solely to certain types of information or ideas or

[64] Council of Europe, *Guide on Article 9 of the European Convention on Human Rights - Freedom of thought, conscience and religion*

[65] *Alexandridis v. Greece* App no 19516/06 (ECHR, 21 February 2008) § 32

[66] Council of Europe, *Guide on Article 9* (n 64)

[67] *Metropolitan Church of Bessarabia and Others v. Moldova* App no 45701/99 (ECHR, 27 March 2002) § 114

[68] European Parliamentary Research Service, Upholding (n 41)

[69] *Handyside v. the United Kingdom* App no 5493/72 (ECHR, 4 November 1976) § 49

forms of expression[70], particularly those of a political nature; it also includes artistic expression[71], the production of a play[72], information of a commercial nature[73] and publication of photographs[74] and even of photomontages[75]. The Court has held that Article 10 is also applicable to forms of conduct[76], to rules governing clothing[77] or to the display of vestimentary symbols[78].

The Court considers that interference with the right to freedom of expression may entail a wide variety of measures, generally a "formality, condition, restriction or penalty"[79]. This interference is analyzed by the Court, in order to examine whether it was "prescribed by law" and it "pursued one of the legitimate aims" within the meaning of the Article 10 § 2 of the Convention, and lastly whether it was "necessary in a democratic society"[80].

Information about risks to health due to virus SARS-CoV-2 and the measures taken by governments to respond to these risks is an essential part of tackling the Covid-19 pandemic. However, the World Health Organization (WHO) described the spread of misinformation and

[70] *Markt intern Verlag GmbH and Klaus Beermann v. Germany* App no 10572/83 (ECHR, 20 November 1989) § 26

[71] *Müller and Others v. Switzerland* App no 10737/84 (ECHR, 24 May 1988) § 27

[72] *Ulusoy and Others v. Turkey* App no 54969/09 (ECHR, 04 November 2019)

[73] *Markt intern Verlag GmbH and Klaus Beermann v. Germany* App no 10572/83 (ECHR, 20 November 1989) § 26; *Casado Coca v. Spain* App no 15450/89 (ECHR, 24 February 1994) § 35-36; *Mouvement raëlien suisse v. Switzerland [GC]* App no 16354/06 (ECHR, 13 July 2012) § 61; *Sekmadienis Ltd. v. Lithuania* App no 69317/14 (ECHR, 30 April 2018)

[74] *Axel Springer AG v. Germany [GC]* App no 39954/08 (ECHR, 07 February 2012); *Verlagsgruppe News GmbH v. Austria (no. 2)* App no 10520/02 (ECHR, 14 March 2007)

[75] *Société de conception de presse et d'édition and Ponson v. France* App no 4683/11 (ECHR, 25 February)

[76] *Ibrahimov and Mammadov v. Azerbaijan* App no 63571/16 (ECHR 13 June 2020) § 166-167; *Semir Güzel v. Turkey* App no 29483/09 (ECHR, 13 September 2016); *Murat Vural v. Turkey* App no 9540/07 (ECHR, 21 January 2015); *Mătăsaru v. the Republic of Moldova* App no 20253/09 (ECHR, 1 February 2022) § 29; *Shvydika v. Ukraine* App no 17888/12 (ECHR, 30 October 2014) § 37-38; *Karuyev v. Russia* App no 4161/13 (ECHR, 18 April 2022) § 18-20; *Bumbeș v. Romania* App no 18079/15 (ECHR, 03 August 2022) § 46

[77] *Stevens v. the United Kingdom*, Commission decision App no 11674/85

[78] *Vajnai v. Hungary* App no 33629/06 (ECHR, 08 October 2010) § 47

[79] *Wille v. Liechtenstein [GC]* App no 28396/95 (ECHR, 28 October 1999) § 43

[80] Council of Europe, *Guide on Article 10 of the European Convention on Human Rights - Freedom of expression*

disinformation as an "infodemic"[81]. Rumors, misinformation and disinformation relating to the virus and its circulation, risks of contamination, number of illnesses/deaths, as well as to those measures which have more remote connection with the policy of social distancing/isolation are likely to cause harm to the public order and health safety[82]. In response to this, the States introduced measures to combat the spread of false or misleading information. Numerous aspects of the right to freedom of expression protected under Article 10 of the ECHR have therefore been affected by these States' responses to the pandemic.

10. Freedom of assembly and association - Article 11 ECHR

The right to freedom of assembly is one of the foundations of a democratic society[83] and it should not be interpreted restrictively[84].

The concept of "assembly" is autonomous and covers gatherings which are not subject to domestic legal regulation, irrespective of whether they require notification/authorization or whether they are exempt from such procedures[85]. Both meetings in public and private meetings are covered by this right, whether static or in the form of a procession; it can, also, be exercised by individual participants or by the persons organizing the gathering[86].

The Contracting States have positive obligations *to ensure the peaceful conduct of an assembly* and *to deter counter-demonstrations.*

The right to freedom of assembly is not absolute, but it can be subjected to restrictions in accordance with Article 11 § 2 ECHR.

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[81] World Health Organization, 'Infodemic' <https://www.who.int/health-topics/infodemic#tab=tab_1> accessed 17 November 2022

[82] Council of Europe, 'Freedom of expression and information in times of crisis' <https://www.coe.int/en/web/freedom-expression/freedom-of-expression-and-information-in-times-of-crisis> accessed 04 March 2023

[83] Council of Europe, *Guide on Article 11 of the European Convention on Human Rights - Freedom of assembly and association*

[84] *Djavit An v. Turkey* App no 20652/92 (ECHR, 20 February 2003) § 56; *Kudrevičius and Others v. Lithuania [GC]* App no 37553/05 (ECHR, 15 October 2015) § 91

[85] Council of Europe, *Guide on Article 11* (n 83)

[86] *Kudrevičius and Others v. Lithuania [GC]* App no 37553/05 (ECHR, 15 October 2015) § 91; *Djavit An v. Turkey* App no 20652/92 (ECHR, 20 February 2003) § 56

In order to prevent spreading of the virus SARS-CoV-2, many states limited public gatherings. Cultural, religious and political events have been forced to cancel and meetings in public and private spaces have either been banned or limited. Restrictions based on public health concerns are justified, where they are necessary and proportionate in light of the circumstances. Regrettably, in several cases, laws and regulations have often been too broad and vague and the processes through which those laws and regulations have been passed have been questionable. Additionally, in many cases, these measures seem to be enforced in a discriminatory manner, with opposition figures and groups, together with vulnerable communities, constituting prime targets[87]. These measures clearly interfere with the rights protected under Article 11 of the Convention.

11. Protection of property - Article 1 Protocol No. 1 ECHR

The concept of "possessions" in Article 1 of Protocol No. 1 is autonomous, covering both "existing possessions" and assets, including claims, in respect of which the applicant can argue that they have at least a "legitimate expectation". The term "possessions" includes rights *"in rem"* and *"in personam"*, while it encompasses immovable and movable property and other proprietary interests[88].

Once the Strasbourg Court is satisfied that Article 1 of Protocol No. 1 is applicable to the circumstances of the case, it embarks on the substantive analysis of the circumstances complained of. This Article comprises three (3) distinct rules:

- The first rule enunciates the principle of the peaceful enjoyment of property *("Every natural or legal person is entitled to the peaceful enjoyment of his possessions"*)
- The second rule covers only deprivation of "possessions" (*"No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law"*)

[87] United Nations, '"States responses to Covid 19 threat should not halt freedoms of assembly and association" – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule' <https://www.ohchr.org/en/statements/2020/04/states-responses-covid-19-threat-should-not-halt-freedoms-assembly-and?LangID=E&NewsID=25788> accessed 04 March 2023

[88] Council of Europe, *Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights - Protection of property*

- The third rule recognizes that the Contracting States are entitled, inter alia, to control the use of property in accordance with the general interest (*"The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*)[89]

The obligation to respect the right to property incorporates both the positive obligation to ensure *the effective exercise of the right to property* through necessary measures[90] and the negative obligation *to protect a person against unjustified interference by the State with the peaceful enjoyment of their "possessions"*[91].

Lockdown measures taken to combat the spread of the Covid-19 pandemic brought closure of businesses, while these businesses which remained open changed how they used to operate[92]. Therefore, the right protected under Article 1 of Protocol No. 1 of the Convention was engaged.

12. Right to education - Article 2 Protocol No. 1 ECHR

The first sentence of Article 2 of Protocol No. 1 of the ECHR (*"No person shall be denied the right to education"*) guarantees an individual right to education. The second sentence (*"In*

[89] *Sporrong and Lönnroth v. Sweden* App nos 7151/75 and 7152/75 (ECHR, 18 December 1984) § 61; *Iatridis v. Greece [GC]* App no 31107/96 (ECHR, 25 March 1999) § 55; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom [GC]* App no 44302/02 (ECHR, 30 August 2007) § 52; *Anheuser-Busch Inc. v. Portugal [GC]* App no 73049/01 (ECHR, 11 January 2007) § 62; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia [GC]* App no 60642/08 (ECHR, 16 July 2014) § 44; *Broniowski v. Poland [GC]* App no 31443/96 (ECHR, 22 June 2004) § 134; *Vistiņš and Perepjolkins v. Latvia [GC]* App no 71243/01 (ECHR, 25 October 2012) § 93

[90] *Broniowski v. Poland [GC]* App no 31443/96 (ECHR, 22 June 2004) § 143; *Sovtransavto Holding v. Ukraine* App no 48553/99 (ECHR, 25 July 2002) § 96; *Keegan v. Ireland* App no 16969/90 (ECHR, 26 May 1994) § 49; *Kroon and Others v. the Netherlands* App no 18535/91 (ECHR, 27 October 1994) § 31; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia [GC]* App no 60642/08 (ECHR, 16 July 2014) § 100; *Likvidējamā p/s Selga and Vasiļevska v. Latvia (dec.)* App nos 17126/02 and 24991/02 (ECHR, 1 October 2013) § 94-113

[91] Council of Europe, *Guide on Article 1 of Protocol No. 1* (n 88)

[92] United Nations, 'The World of Work and COVID-19' <https://unsdg.un.org/resources/policy-brief-world-work-and-covid-19> accessed 04 March 2023

the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions") guarantees the right of parents to have their children educated in conformity with their religious and philosophical convictions[93]. Article 2 of Protocol No. 1 constitutes a whole that is dominated by its first sentence, the right set out in the second sentence being an adjunct of the fundamental right to education[94].

The COVID-19 pandemic has created the largest disruption of education systems in history. States' emergency response to the Covid-19 pandemic was to close schools, universities and training institutions, and to deliver education remotely. Closures of schools and other learning spaces have impacted 94% (per cent) of student population, reducing the opportunities especially for the most vulnerable[95]. The suspension of classes has often regrettably resulted in the unequal access to education of those who have not the digital infrastructure or technical skills to ensure that they can join online courses[96]. It would not be an exaggeration to say that the impact of the Covid-19 pandemic on education protected in Article 2 Protocol No. 1 of the Convention has been huge.

13. Right to free elections - Article 3 Protocol No. 1 ECHR

Article 3 of Protocol No. 1 of the Convention concerns only the choice of the legislature. The "active" aspect of this Article is the right to vote[97] and the "passive" aspect is the right to stand for election.

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[93] Council of Europe, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights - Right to education*

[94] *Campbell and Cosans v. the United Kingdom* App nos 7511/76 and 7743/76, (ECHR, 25 February 1982) § 40

[95] United Nations, Education during COVID-19 and beyond <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/08/sg_policy_brief_covid-19_and_education_august_2020.pdf> accessed 04 March 2023

[96] United Nations Educational, Scientific and Cultural Organization 'Startling digital divides in distance learning emerge' <https://www.unesco.org/en/articles/startling-digital-divides-distance-learning-emerge> accessed 04 March 2023

[97] Council of Europe, *Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights - Right to free elections*

The restrictions imposed during the Covid-19 pandemic have impacted States' ability to hold elections and referendums and candidates' capacity to campaign in them. Governments should decide whether to hold them as originally planned, introducing mitigating measures, put them on hold or postpone them for a later date[98]. The postponing of the voting limited the right to free elections protected under the Article 3 Protocol No. 1 of the ECHR.

[98] European Parliamentary Research Service, Coronavirus and elections in selected Member States

b. Balancing Human Rights against the Public Interest

It is a commonplace that few rights are absolute. Regarding the rights conferred by the Convention, all but four[99] may be restricted. Their non-absolute character is, firstly, reflected in the *express definitional restrictions*[100], which limit the content of each right, the circumstances in which it is applied, or the persons who are entitled to it, as it has been stressed above.

The concept of "public interest" is expressly stated and used to justify interference with two rights of the Convention: Article 1 of Protocol No 1 (*Protection of property)* and Article 2 § 1,4 of Protocol No 4 (*Freedom of movement).*

The first attempts of the Strasbourg Court to interpret the concept of public interest may be found in the partly dissenting opinion of Judge Walsh in *Sporrong and Lönnroth v. Sweden*. As regards the notion of "public interest" in the Article 1 of Protocol No 1, Judge Walsh declared that "The "public interest" in the correct sense necessarily implies a just public interest. If the public interest in question is a just and legitimate interest then the necessary diminution of the private interest required to sustain that public interest cannot in itself be unjust."[101] In the judgment of the case *James and Others v. the United Kingdom*[102], the Court pointed out that "the compulsory transfer of property from one individual to another may, depending upon the circumstances, constitute a legitimate means for promoting the public interest…The taking of property in pursuance of a policy calculated to enhance social justice within the community can properly be described as being "in the public interest". In particular, the fairness of a system of law governing the contractual or property rights of private parties is a matter of public concern and therefore legislative measures intended to

[99] Art. 3 - Prohibition of torture

Art. 4§1 - Prohibition of slavery and servitude

Art. 7§1 – a) *Nullum crimen, nulla poena sine lege* b) no heavier penalty than the one that was applicable at the time the criminal offence was committee

[100] The term is borrowed from Aileen McHarg, 'Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights' [1999] Vol. 62 No. 5 The Modern Law Review 671-696

[101] *Sporrong and Lönnroth v. Sweden* App nos 7151/75 and 7152/75 (ECHR, 18 December 1984) Dissenting Opinion of Judge Walsh § 2

[102] *James and Others v. the United Kingdom* App no 8793/79 (ECHR, 21 February 1986)

bring about such fairness are capable of being "in the public interest", even if they involve the compulsory transfer of property from one individual to another."[103]

On the other hand, the ECtHR seems to recognize that the state and the democratic society may have greater values for the sake of protection of which the fundamental individual rights may be curtailed. Such values constitute public interest[104]. Nevertheless, the Strasbourg Court has not developed a coherent set of criteria for determining when rights prevail over the public interest or vice versa[105]. On the contrary, the ECtHR considers each right separately and attempts to determine its scope according to the purposes it is deemed to serve[106].

[103] *James and Others v. the United Kingdom* App no 8793/79 (ECHR, 21 February 1986) § 40-41

[104] Jaunius Gumbis, 'Public Interest: Problem of Conceptualisation' [2006] Vol. 51 No. 1 Social Sciences 7-16

[105] McHarg (n 100)

[106] Steven Greer, 'Constitutionalizing Adjudication under the European Convention on Human Rights' [2003] Vol. 23 No. 1 Oxford Journal of Legal Studies 405-433

c. Article 15 of the European Convention on Human Rights: Derogation in time of emergency

Article 15 of the Convention is a derogation clause, and it affords to States, in exceptional circumstances, the possibility of derogating, in a limited and supervised manner, from their obligations to secure certain rights and freedoms under the Convention[107].

Article 15 § 1 of the ECHR defines the circumstances in which States can validly derogate from their obligations under the ECHR and limits the measures they may take in the course of any derogation.

Derogation is valid under three conditions:

- Time of war or other public emergency threatening the life of the nation;

The Court has not been required to interpret the meaning of the notion "war"; on the other hand, the natural and customary meaning of "public emergency threatening the life of the nation" refers to "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed"[108]. The emergency should be actual or imminent; a crisis which concerns only a particular region of the State can amount to a public emergency threatening "the life of the nation"[109]; and the crisis or danger should be exceptional in that the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health and order are plainly inadequate[110].

- The measures taken in response to that war or public emergency must not go beyond the extent strictly required by the exigencies of the situation.

Regarding the decision both on the presence of an emergency and on the nature and scope of derogations necessary to avert it, the national authorities are in principle in a better

[107] Council of Europe, *Guide on Article 15 of the European Convention on Human Rights - Derogation in time of emergency*

[108] *Lawless v. Ireland* (no. 3) App no 332/57 (ECHR, 1 July 1961) § 28

[109] Derogations in respect of Northern Irelabd *Ireland v. the United Kingdom* App no 5310/71 (ECHR, 18 January 1978) § 205, and in respect of South-East Turkey in *Aksoy v. Turkey* App no 21987/93 1996 (ECHR, 18 December 1996) § 70

[110] *Denmark, Norway, Sweden and the Netherlands v. Greece* (the "Greek case") Commission report 1969 § 153

position than the international judge to decide both on. In this matter Article 15 § 1 of the Convention leaves those authorities a wide margin of appreciation. Nevertheless, the States do not enjoy an unlimited power in this respect, since the Strasbourg Court is empowered to rule on whether the States have gone beyond the "extent strictly required by the exigencies" of the crisis[111]. In determining whether a State has gone beyond what is strictly required, the ECtHR will give appropriate weight to factors such as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation[112]. These factors will be assessed on the basis of the "conditions and circumstances reigning when [the measures] were originally taken and subsequently applied"[113]. However, it may be that, as with the assessment of whether there is a public emergency, the Court is not precluded from having regard to information which comes to light subsequently[114].

- The measures must not be inconsistent with the State's other obligations under international law.

The Strasbourg Court will consider this limb of Article 15 § 1 of the Convention of its own motion if necessary[115], even if only to observe that it has not found any inconsistency between the derogation and a State's other obligations under international law.

Article 15 § 2 protects certain fundamental rights in the ECHR from any derogation. According to the text of the Article these are: (a) Article 2 (the right to life), except in respect of deaths resulting from lawful acts of war; (b) Article 3 (the prohibition of torture and other forms of ill-treatment); (c) Article 4 § 1 (the prohibition of slavery or servitude); (d) Article 7 (no punishment without law).

There are also clauses which prohibit derogation in three of the additional protocols to the Convention: (a) Article 3 of Protocol No. 6 (the abolition of the death penalty in time of peace and limiting the death penalty in time of war), (b) Article 4 § 3 of Protocol No. 7 (the

[111] *Ireland v. the United Kingdom* App no 5310/71 (ECHR, 18 January 1978) § 207

[112] *Brannigan and McBride v. the United Kingdom* App no 5/1992/350/423-424 (ECHR, 22 April 1993) § 43; *A. and Others v. the United Kingdom [GC]* App no 3455/05 (ECHR, 19 February 2009) § 173

[113] *Ireland v. the United Kingdom* App no 5310/71 (ECHR, 18 January 1978) § 214

[114] In the case *A. and Others v. the United Kingdom [GC]* App no 3455/05 (ECHR, 19 February 2009) § 177 the Court took into consideration the bombings and attempted bombings in London in July 2005, which took place therefore years after the notification of the derogation in 2001

[115] *Lawless v. Ireland* (no. 3) App no 332/57 (ECHR, 1 July 1961) § 40

ne bis in idem principle), (c) Article 2 of Protocol No. 13 (the complete abolition of the death penalty).

The effect of these Articles is that the rights to which they refer continue to apply during any time of war or public emergency, irrespective of any derogation made by a State[116].

Article 15 § 3 sets out the *procedural requirements* that must be followed by any State making a derogation. The purposes of informing the Secretary General are, on the one hand, that the derogation becomes public and, on the other hand, that through the Secretary General the other Contracting States are informed of the derogation[117]. In the absence of an official and public notice of derogation, Article 15 does not apply to the measures taken by the respondent State[118].

In response to the Covid-19 pandemic, ten Council of Europe (CoE) Member States[119] (including a few European Union Member States), activated Article 15 of the Convention and derogated from certain human rights protected under the ECHR[120].

[116] Council of Europe, *Guide on Article 15* (n 107)

[117] ibid

[118] *Cyprus v. Turkey* App no 8007/77 Commission report 4 October 1983 § 66-68.

[119] Albania, Armenia, Estonia, Georgia, Latvia, North Macedonia, Republic of Moldova, Romania, San Marino, Serbia

[120] Council of Europe Portal, 'Degorations Covid – 19' <https://www.coe.int/en/web/conventions/derogations-covid-19> accessed 17 November 2022

PART II: Recalibrating human rights during Covid-19 pandemic

a. Positive obligations on States during Covid – 19 pandemic

1. Protection of life and health

In the context of the Covid-19 pandemic, the duty of the State to protect the individual from the dangers posed by the virus SARS – CoV- 2 arises as positive obligations. The rights in the frontline in the pandemic crisis are: *the right to life and the duty to protect life* and the *right to health and access to health care*[121].

As it was mentioned above, under the ECHR, Article 2 protects the right to life. The positive obligations on States in the context of this global pandemic include: a law-making (regulatory) duty, an operational duty and an investigative duty. Firstly, the *regulatory obligations* under Article 2 ECHR require that States implement a legislative and administrative framework to provide effective protection for the right to life. Under this obligation, it is doubtful whether the "herd immunity" strategy would be compatible with Article 2 ECHR, as in the effort of developing "social" immunity to the SARS-CoV-2 virus; vulnerable people were treated as "side effect"[122]. Secondly, the *operational obligations*[123] reflect a States' duty to take preventive operational measures to safeguard individuals from threats to life arising from "dangerous situations"[124]. Preventive operational measures apply especially in the protection health care personnel, vulnerable patients[125], prison staff and prisoners or detainees[126]. Thirdly, the purpose of the *investigative obligation* is to establish

[121] United Nations, 'COVID-19 and Human Rights: We are all in this together' <https://unsdg.un.org/resources/covid-19-and-human-rights-we-are-all-together> accessed 24 December 2022

[122] Kanstantsin Dzehtsiarou, 'Covid-19 And The European Convention On Human Rights' (2020) Strasbourg Observers <https://strasbourgobservers.com/2020/03/27/covid-19-and-the-european-convention-on-human-rights/> accessed 24 December 2022

[123] The positive obligation '*in certain well-defined circumstances… to take preventive operational measures to protect an individual whose life is at risk…*' was firstly recognized by the ECHR in the case *Osman v United Kingdom [GC]* App no 23452/94 (ECHR, 28 October 1998) [GC] § 115

[124] *Stoyanovi v. Bulgaria* App no 42980/04 (ECHR, 9 November 2010)

[125] Elizabeth Stubbins Bates, 'COVID-19 Symposium: Article 2 ECHR's Positive Obligations–How Can Human Rights Law Inform the Protection of Health Care Personnel and Vulnerable Patients in the COVID-19 Pandemic?' (2020) OpinioJuris <http://opiniojuris.org/2020/04/01/covid-19-symposium-article-2-echrs-positive-obligations-how-can-human-rights-law-inform-the-protection-of-health-care-personnel-and-vulnerable-patients-in-the-covid-19-pandemic/> accessed 24 December 2022

whether the above-mentioned positive obligations have been met. The Covid – 19 crisis and the multiple deaths due to potential systemic failures may reach the threshold for triggering the investigation duty, while limitations of the current system of investigation would be inevitably stressed[127].

Regarding the right to health and access to health care, there is not an explicit protection in the human rights provisions guaranteed under the ECHR. Despite the fact that health is traditionally mentioned only in the context of justifying restrictions and qualifications, the Strasbourg Court has recently been linking the right to health with specific provisions of the ECHR in particular Articles 2, 3 and 8. Regarding Article 2 of the Convention, the Court does not derive individual rights to health (care) directly from it. Nevertheless, in the case of patients who are in a life-threatening condition –patients with Covid – 19 or other conditions, the responsibility of the State may arise pursuant to Article 2 of the ECHR[128]. A typical case concerns the lack of proper and adequate medical care, which constituted a violation of Article 2 of the Convention in both its substantive and procedural aspects[129]. Additionally, in the cases *Powell v. the United Kingdom*[130] and *Calvelli and Coglio v. Italy*[131], the Court ruled that the principle of the first sentence of Article 2 par. 1 of the Convention, which enjoins –*inter allia*- that the State take appropriate steps to safeguard the lives of those within its jurisdiction, apply also to the area of public health. An analogous reasoning was adopted by the Court in the case *Aydoğdu v. Turkey*[132], where the Court found violation of Article 2 of the ECHR due to lack of coordination among health-care professionals, structural deficiencies in the hospital system and no access to appropriate emergency treatment. Furthermore, the ECtHR expanded the scope of Article 3 of the Convention in

[126] Paul Bowen QC, 'Learning lessons the hard way – Article 2 duties to investigate the Government's response to the Covid-19 pandemic' (2020) U.K. Const. L. Blog <https://ukconstitutionallaw.org/2020/04/29/paul-bowen-qc-learning-lessons-the-hard-way-article-2-duties-to-investigate-the-governments-response-to-the-covid-19-pandemic/> accessed 24 December 2022

[127] ibid

[128] Ok. Nawrot, J. Nawrot, V. Vachen, 'The right to healthcare during the covid-19 pandemic under the European Convention on human rights' [2020] The International Journal of Human Rights, https://doi.org/10.1080/13642987.2022.2027760

[129] *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC]* App no 47848/08 (ECHR, 17 July 2014)

[130] *Powell v. the United Kingdom* App no 45305/99 (ECHR, 4 May 2000)

[131] *Calvelli and Ciglio v. Italy [GC]* App no 32967/96 (ECHR, 17 January 2002)

[132] *Aydoğdu v. Turkey* App no 40448/06 (ECHR, 30 October 2016)

regard to degrading treatment, which could have negative impact on health. As a result, if State's actions aimed at fighting COVID-19 pandemic, result in restricted access to medical care, which in turn translates into intensification of the patients' –mental or physical- suffering, State's responsibility, pursuant to Article 3 of the ECHR, may arise[133]. It is indicative that in the case *D v. the United Kingdom* the Court qualified as inhuman treatment the removal and deportation of a person in the final stage of AIDS (Acquired Immune Deficiency Syndrome), as it would have meant exposing them to the real danger of loss of life[134]. Moreover, the ECtHR has considered the issue of health (care) as an individual right by the light of Article 8 of the Convention. In the case of *Georgel and Georgeta Stoicescu v. Romania*[135] the Court pointed out that the State's failure to take general and preventive measures for protecting the applicant's health constituted a violation of Article 8 of the Convention, while in the case *R.R v. Poland*[136] the right of access to health information was brought out. Nevertheless, it should also be taken into consideration that pursuant to Article 8 par. 2 of the ECHR, a public authority may limit the rights arising from the first paragraph of the mentioned Article if it is in accordance with the law and is necessary in a democratic society for the protection of health. This leads to what phenomenally looks like a paradox limiting the right to health in order to protect health. An individual's rights to health (care) may be limited due to the need to protect the public interest *if* the resulting limitations do not create life-threatening situations or serious health hazards[137].

On the other hand, some authors pursue to extract a positive obligation of the Member States to act proactively towards health protection from the Article 5 par. 1 of the ECHR[138]. This approach reflects the general securitization of health, which is not a new phenomenon, but it is experiencing rapid acceleration during the Covid-19 pandemic. The problematic nature of the securitization lies in its ability to become a permanent approach that justifies

[133] Nawrot, Nawrot, Vachen (n 128)

[134] *D. v. the United Kingdom* App no 30240/96 (ECHR, 02 May 1997)

[135] *Georgel And Georgeta Stoicescu V. Romania* App no 9718/03 (ECHR, 26 October 2011)

[136] *R.R. v. Poland* App no 27617/04 (ECHR, 28 November 2011)

[137] Nawrot, Nawrot, Vachen (n 128)

[138] S. Bachmann, J. Sanden, 'COVID-19 And The Duty of A State to Protect the Public's Health and Security During A Pandemic - A European Convention on Human Rights Perspective' [2020] Vol. 7 No. 3 Indonesian Journal of International & Comparative Law 407-430, https://ssrn.com/abstract=3688784

ever-stricter policies that gradually curtail basic freedoms and affect subjects of rights during otherwise normal time[139].

In the context of application relating to the Covid – 19 health crisis, the decision *Le Mailloux v. France*[140] concerned the applicant's objections to the handling by the French State of the Covid-19 health crisis. He complained of the failure by the State to fulfill its positive obligations to protect the lives and physical integrity of persons under its jurisdiction. Invoking Articles 2, 3, 8 and 10 of the Convention, the applicant particularly complained of restrictions on access to diagnostic tests, preventive measures and specific types of treatment, and interference in the private lives of individuals who were dying of the virus on their own. The ECtHR recalled that the right to health is not as such among the rights guaranteed under the ECHR. Nevertheless, States have a positive obligation to take appropriate steps to safeguard the lives of those within its jurisdiction and to protect their physical integrity, including in the public-health sphere. In the present case, however, the Court observed that the applicant's complaints related to the measures taken by the French State to curb the propagation of the Covid-19 virus among the whole population of France but had not shown how he was personally affected. As a result, the application amounted to an *actio popularis* and the applicant could not be regarded as a victim of the alleged violations (Article 34 ECHR). The application was inadmissible.

2. Protection of vulnerable groups

The pandemic has been capable of exacerbating and compounding already-existing inequalities, particularly among vulnerable groups[141]. On the other hand, the Covid-19 crisis and the measures against it have established new forms of inequality, especially due to the digital divide[142]. The case law of the European Court of Human Rights and the concept of

[139] Dorota Anna Gozdecka, 'Human Rights During the Pandemic: COVID-19 and Securitisation of Health' [2021] Vol. 39, No. 3 Nordic Journal Of Human Rights 205–223, https://doi.org/10.1080/18918131.2021.1965367

[140] *Le Mailloux v. France* App no 18108/20 (ECHR)

[141] Council of Europe, 'Human rights protection in the time of the pandemic: new challenges and new' (2022) judicial seminar <https://www.echr.coe.int/Pages/home.aspx?p=events/ev_sem&c=> accessed 11 February 2023

[142] A. Zissi, S. Chtouris 'The Covid-19 Pandemic: Accelerator of Inequalities and Installer of New Forms of Inequalities' (in greek) [2020] Vol. 154 The Greek Review of Social Research 65–73, https://doi.org/10.12681/grsr.23229

"vulnerable groups" as outlined in it could be a potential navigator for the setting of public policy for the protection of fundamental rights of these groups during the (post)pandemic era[143].

The Strasbourg Court introduced the concept of "vulnerable groups" in 2001 to refer to the Roma minority[144] and observed that the vulnerable position of "Gypsies" as a minority means that some special consideration should be given to their needs and their different lifestyle both in the regulatory framework and in reaching decisions[145]. Chapman's articulation of vulnerability put the elements that shaped the ECtHR's later formulation of the concept of "vulnerable groups", while gradually this concept's content and scope was broadened and refined[146]. The Court's use of vulnerability has increased in the past few years[147] and the list of "vulnerable groups" was extended to: persons with mental disabilities[148], people living with HIV[149], people belonging in the LGBTQI+ community[150], prisoners or detainees[151], asylum seekers[152] and victims of domestic violence[153].

Through the development of the notion of "vulnerability", the Court achieves to face the complexities of modern life, the realities of disadvantage and stigma, which are often unforeseeable[154]. In other words, the emphasis on group vulnerability represents a crucial step towards an enhanced anti-discrimination case law[155] and has manifested itself:

[143] Natalia Panou, '"Vulnerability" in the case-law of the European Court on Human Rights and the (post?)pandemic era' (in greek) [2023] e-ΠΟΛΙΤΕΙΑ (forthcoming)

[144] *Chapman v. UK [GC]* App no 27238/95 (ECHR, 18 January 2001)

[145] *Chapman v. UK [GC]* App no 27238/95 (ECHR, 18 January 2001) § 96

[146] L. Peroni, Al. Timmer, 'Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law' [2013] Vol. 11 No.4 International Journal of Constitutional Law 1056-1085 DOI: 10.1093/icon/mot042

[147] Yussef Al Tamimi, 'The protection of vulnerable groups and individuals by the European Court of Human Rights' [2015] Vol. 5 European Journal of Human Rights 561-583

[148] *Alajos Kiss v. Hungary* App no 38832/06 (ECHR. 20 May 2010) § 42

[149] *Kiyutin v. Russia* App no 2700/10 (ECHR, 15 September 2011) § 64

[150] *Identoba v. Georgia* App no 73235/12 (ECHR, 12 May 2015) § 72

[151] *Denis Vasilyev v. Russia* App no 32704/04 (ECHR, 17 December 2009) § 115

[152] *M.S.S v. Belgium and Greece* App no 30696/09 (ECHR, 21 January 2010) § 232

[153] *Opuz v. Turkey* App no 33401/02 (ECHR, 9 June 2009) § 160

[154] Michael O' Boyle, 'The notion of "vulnerable groups" in the case law of the European Court of Human Rights' (2015) Conference: The Constitutional Protection of Vulnerable

- The special positive obligations established by the Articles 2 ECHR, 3 ECHR[156], 8 ECHR[157] and 2 of Protocol No. 1 (in conjunction with Article 14)[158]. The Strasburg Court has embraced State's duty not only to refrain from discrimination but also to take proactive role and to adopt positive steps to promote equality[159].
- The margin of appreciation in Article 14 ECHR direct discrimination cases is narrowed[160]. The ECtHR's emerging vulnerable groups approach under Article 14 ECHR could be seen as a developed tool to bolster its reasoning[161], which is also followed by strict scrutiny regarding discrimination.
- The harm inflicted on the applicant carries more weight in Article 3 ECHR scope analysis[162] and in Article 8 ECHR proportionality analysis[163].
- Despite the fact that the inclusion of vulnerability does not guarantee a favorable outcome, it increases the applicant's chances to obtain protection[164].

The lessons of the case-law of the ECtHR, as mentioned above, point out, not only the social need, but also the State's obligation to place at the center of its interest the protection of the fundamental rights of the vulnerable population. As it is already mentioned, the State is required to take measures in order to ensure the life and health of the citizens. In particular,

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groups: A Judicial Dialogue <https://www.venice.coe.int/webforms/documents/?pdf=CDL-LA(2016)003-e> accessed 11 February 2023

[155] Peroni – Timmer (n 146)

[156] *Alexandru Marius Radu v. Romania* App no 34022/05 (ECHR, 21 July 2009) § 48

Opuz v. Turkey App no 33401/02 (ECHR, 9 June 2009)

[157] *Chapman v. UK [GC]* App no 27238/95 (ECHR, 18 January 2001)

V.C. v. Slovakia App no 18968/07 (ECHR, 8 November 2011) § 154

[158] *D.H. and Others v. the Czech Republic [GC]* App no 57325/00 (ECHR, 13 November 2007) par. 207

[159] Peroni – Timmer (n 146)

[160] *Kiyutin v. Russia* App no 2700/10 (ECHR, 15 September 2011) § 63

Alajos Kiss v. Hungary App no 38832/06 (ECHR. 20 May 2010)

Kozak v. Poland App no 13102/02 (ECHR, 2 March 2010)

Genderdoc – M v. Moldova App no 9106/06 (ECHR, 12 June 2012)

X. v. Turkey App no 24626/09 (ECHR, 9 October 2012)

[161] Oddný Mjöll Arnardóttir, 'Vulnerability under Article 14 of the European Convention on Human Rights: Innovation or Business as Usual?' [2017] Vol. 4 No. 3 Oslo Law Review 150-171, DOI: 10.18261/issn.2387-3299-2017-03-03

[162] *M.S.S v. Belgium and Greece* App no 30696/09 (ECHR, 21 January 2010) § 232

[163] *Yordanova and Others v. Bulgaria* App no 25446/06 (ECHR, 24 April 2012)

[164] Peroni – Timmer (n 146)

however, regarding socially vulnerable groups, the positive obligations are specific and expanded, as they are citizens with a "special" socioeconomic - and often legal status - who need increased protection. On the other hand, the interpretation of Article 14 ECHR in the light of the concept of "vulnerability", indicates that States have a limited margin of appreciation in these cases and, therefore, any measures imposed on vulnerable groups cannot consist additional - beyond the proportionate - restrictions on their rights, especially seen in relation to the restrictions that are imposed to the general population[165].

In other words, the abovementioned case law of Strasbourg Court underlines that: On the one hand, the distribution of the social resources should aim at creating conditions of social justice, emphasizing the needs of vulnerable groups. The "next day" of the pandemic should prioritize the protection of fundamental rights and decent living conditions for all members of the society and, proportionally, even more for the most vulnerable among them. On the other hand, there should be weighty reasons to justify any restrictions that will be imposed specifically on vulnerable groups[166].

In the context of application relating to the Covid – 19 health crisis, the Court had the opportunity to examine several cases regarding individuals deprived of their liberty:

The case *Feilazoo v. Malta*[167] concerned the conditions of the immigration detention of a Nigerian national, including time spent in *de facto* isolation and a subsequent period where the applicant had been placed with new arrivals in Covid-19 quarantine. The ECtHR held that there had been a violation of Article 3 of the Convention on account of the applicant's inadequate conditions of detention.

On the other hand, the Court held that there had been no violation of Article 3 ECHR in the case *Fenech v. Malta*[168], which concerned the conditions of detention of the applicant in the Corradino Correctional Facility and whether the Maltese authorities had taken adequate measures to protect him from contracting Covid-19 whilst in prison, in particular, because he had only one kidney.

[165] Panou (n 143)

[166] ibid

[167] *Feilazoo v. Malta* App no 6865/19 (ECHR)

[168] *Fenech v. Malta* App no 19090/20 (ECHR)

The case *Ünsal and Timtik v. Turkey*[169] regarding the compatibility of the conditions of detention with a detainee's state of health given a hunger strike during the Covid-19 pandemic and the management of the situation by the authorities was declared inadmissible as being manifestly ill-founded.

Numerous applications relating to detention conditions mostly under Article 3 of the Convention are currently pending before the Court[170]. Additionally, in several other pending cases, the applicants complain under Article 8 ECHR of long-lasting prohibitions on family visits in prisons, in connection with the Covid-19 pandemic[171].

[169] *Ünsal and Timtik v. Turkey* App no 36331/20 (ECHR)

[170] *Hafeez v. the United Kingdom* App no 14198/20 (ECHR); *Maratsis and Others v. Greece* App no 30335/20 and *Vasilakis and Others v. Greece* App no 30379/20 (ECHR); *Vlamis and Others v. Greece* App no 29655/20 and four other applications App nos. 29689/20, 30240/20, 30418/20 and 30574/20 (ECHR); *Rus v. Romania* App no. 2621/21 (ECHR); *Riela v. Italy* App no 17378/20 (ECHR); *Faia v. Italy* App no 17378/20 (ECHR); *Krstić v. Serbia* App no 35246/21 and six other applications (ECHR); *Khokhlov v. Cyprus* App no 53114/20 (ECHR)

[171] *Michalski v. Poland* App no 34180/20 (ECHR); *Guhn v. Poland* App no 45519/20 (ECHR)

b. COVID-19 pandemic and derogation to human rights

As it is already mentioned, a noticeable minority of the Member States informed the Secretary General of the Council of Europe of their decision to use Article 15. Nevertheless, the majority of the Council of Europe of the member states of the Council of Europe decided that derogation from the Convention is not necessary. The fact that the COVID-19 pandemic is impacting all members of the Council of Europe and these diverging positions created a fertile ground for comparison and brought to light one of the most trending academic discussions during the pandemic: the desirability of derogation under Article 15 of the Convention. Taking into consideration that the restrictions placed in different countries were quite similar in nature and extent, this debate is about their legal regime and which of them could effectively quarantine these emergency restrictions.

At this point, three introductory-explanatory remarks are considered necessary:

Firstly, Article 15 ECHR does not create a Schmittian state of exception. This article constitutes a different regime of legality, rather than a zone of lawlessness[172]. In fact, legality in the state of emergency should follow the same logic as in the absence of such a state[173].

Secondly, limitations and derogations of human rights should be seen as a continuum. Member States should resort to the latter only as an *ultimum refugium*, only when limitations have proven to be insufficient to respond to emergency[174]. Covid-19 crisis fits in the criteria of the Article 15 "public emergency", with an actual and imminent threat to all individuals' rights to health and the right to life[175]. Nevertheless, it is for each State to assess whether the measures it adopts are justified on the ground of the usual provisions of the

[172]Alan Greene, 'Derogating from the European Convention on Human Rights in Response to the Coronavirus Pandemic: If not Now, When?' [2020] Vol. 2020 No. 3 European Human Rights Law Review 2020 262-276, https://ssrn.com/abstract=3593358 or http://dx.doi.org/10.2139/ssrn.3593358

[173] R. Valutytė, D. Jočienė, R. Ažubalytė, 'Legality of Human Rights Restrictions During the COVID-19 Pandemic Under the European Convention on Human Rights' [2021] Vol. 26 No. 1 Tilburg Law Review 1–15, DOI: https://doi.org/10.5334/tilr.245

[174] ibid

[175] Audrey Lebret, 'COVID-19 pandemic and derogation to human rights' [2020] Vol. 7 No. 1 Journal of Law and the Biosciences https://doi.org/10.1093/jlb/lsaa015

ECHR, or they are of exceptional nature and may require derogations from the States' obligations under the Convention[176].

Thirdly, the Court has not dealt with a health emergency such as the Covid – 19 pandemic. Although some scholars have pointed out that its case law is easily applicable to the situation of the pandemic[177], one cannot draw predictive parallels from military to health emergencies. COVID-19 pandemic and military emergencies have the following legally important differences[178]:

1. COVID-19 pandemic and a military emergency are different in their nature and character, as pandemic is more predictable and does not depend on human ill-will.
2. The difference in nature reflects the difference in the type of measures adopted during the pandemic in comparison to the ones utilized in the aftermath of a *coup d'état* or terrorist attacks.
3. The pandemic affects almost everyone in a society[179], in all members of the Council of Europe. This has not been the case in relation to military emergency since World War II.

Regarding the appropriateness of derogating from the ECHR in response to Covid-19, some commentators opined that Member States should have derogated in order to effectively quarantine the emergency measures. This opinion is based on the premise that, as soon as the emergency status is over, the derogation will be lifted, the normalcy will fully be

[176] Council of Europe, 'Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis - A toolkit for member states' SG/Inf(2020)11 <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40> accessed 11 February 2023

[177] Sanja Jovičić, 'COVID-19 restrictions on human rights in the light of the case-law of the European Court of Human Rights' [2021] Vol. 21 ERA Forum 545–560 https://doi.org/10.1007/s12027-020-00630-w

Sean Molloy, 'Covid-19 and Derogations Before the European Court of Human Rights' (2020) Verfassungsblog <https://verfassungsblog.de/covid-19-and-derogations-before-the-european-court-of-human-rights/> accessed 11 February 2023

[178]Kanstantsin Dzehtsiarou, 'Article 15 derogations: Are they really necessary during the COVID-19 pandemic?' [2020] Vol. 4 European Human Rights Law Review 359-371 https://livrepository.liverpool.ac.uk/id/eprint/3088451

[179] The disproportionate influence of the pandemic on some social groups is a side effect of their socio-economic status and the adopted measures took only into consideration the "clinical" vulnerability see Panou (n 143)

restored[180]. Other commentators opined that the ECHR has a mechanism of natural accommodation of emergencies and shall act within their margin of appreciation, which could be broader than usual due to the magnitude of the crisis. At the same time, the symbolic and political cost of derogation is considered quite substantive. For these reasons, derogation under the Article 15 is presumed neither necessary nor desirable[181]. The "principle of normalcy" appears as a counterbalance to the new restrictions upon human rights on the basis of a pressing social need created by the Covid – 19 pandemic[182].

The ECtHR will probably be called upon to rule on measures taken during the Covid-19 pandemic. In the judgment of Communauté Genevoise D'action Syndicale (CGAS) v. Switzerland[183] the Court found that the restrictions on public gatherings, aimed at tackling the spread of Covid-19 pandemic, amounted to a violation of Article 11 of the ECHR. The Strasbourg Court took into consideration the fact that Switzerland had not had recourse to Article 15 and, as a result, it had been required to fully comply with the requirements of Article 11 of the Convention.

[180] See, for example, Greene (n 172)

[181] See, for example, Dzehtsiarou (n 178)

[182] Martin Scheinin, 'COVID-19 Symposium: To Derogate or Not to Derogate?' (2020) OpinioJuris <http://opiniojuris.org/2020/04/06/covid-19-symposium-to-derogate-or-not-to-derogate/> accessed 11 February 2023

[183] *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* App no 21881/20 (ECHR, 15 March 2022)

c. Covid 19 and the European Court on Human Rights

1. Covid – 19 restrictions on human rights in the light of the case-law of the European Court on Human Rights

i. Lockdown, confinement and curfew measures

The decision of *Terheş v. Romania*[184] concerned a 52-day general lockdown ordered by the Romanian government from 24 March to 14 May 2020 to tackle the Covid-19 pandemic, which entailed restrictions on leaving one's home. The applicant was elected as a member of the European Parliament. He was in Romania at the time of the Covid-19 pandemic outburst and contended that the lockdown imposed in Romania, with which he had been required to comply, amounted to a deprivation of liberty.

The Court noted that the applicant had not relied on Article 2 of Protocol No. 4 of the Convention in the proceedings before it, as he sought to demonstrate that the general lockdown had constituted a deprivation of liberty (Article 5 § 1 (e)) and not simply a restriction of the right to freedom of movement.

In order to ascertain whether the measure complained of by the applicant amounted to a deprivation of liberty, the Court examined his individual situation in the light of the criteria established by its case-law. The ECtHR observed that the preventive measures had been general, applied to everyone by means of legislation enacted by the various authorities in Romania and no individual measure had been taken against the applicant. As a result of the implementation of the measure, the applicant had been obliged to stay at home, only being allowed to leave for the reasons expressly provided for in the legislation, and with the relevant exemption form. Consequently, the applicant had not been subject to individual surveillance by the authorities and did not claim to have been forced to live in a cramped space, nor had he been deprived of all social contact. On the contrary, he could freely leave his home for various reasons and could go to different places at whatever time of the day the situation required. Accordingly, in view of its degree of intensity, the measure in question could not be equated with house arrest. Additionally, the Strasbourg Court attached importance to the fact that the applicant had not provided any specific information describing his actual experience of lockdown.

[184] *Terheş v. Romania* App no 49933/20 (ECHR)

In the Court's view, the level of intensity of the restrictions on the applicant's freedom of movement had not been such that the general lockdown ordered by the authorities could be deemed to constitute a deprivation of liberty. The ECtHR held that the application was incompatible with the provisions of the ECHR and should therefore be rejected.

This decision was criticized as a harbinger of an ECtHR approach that does not take seriously into consideration the danger of normalizing the exception. Since the Covid-19 pandemic constitutes an exceptional threat, we must be careful that the exceptional response does not become unexceptional, and the Strasbourg Court should be acutely aware of how its pandemic jurisprudence may be deployed outside the pandemic for less bona fide reasons[185].

In *Magdić v. Croatia*[186] the applicant complained, *inter alia*, that a lockdown imposed by the Croatian authorities to tackle the COVID-19 pandemic violated his right to liberty of movement (Article 2 § 1 of Protocol No. 4).

The Court reiterates that, in order to be able to lodge an application under Article 34 of the Convention, a person, non-governmental organization or group of individuals must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure: the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights it contains or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. The Court reiterates in this context that, in order for applicants to be able to claim victim status, they must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur; mere suspicion or conjecture is insufficient in this respect. The Court observes in this regard that the applicant in his application did not provide any information about his personal situation beyond his identity and occupation. He provided no information to show how exactly the impugned measures affected, or would be likely to affect him directly, or target him because of his possible individual characteristics. For example, he complained of the breach of his

[185] Alan Greene, 'Falling At The First Hurdle? Terheş V Romania: Lockdowns And Normalising The Exception' (2021) Strasbourg Observers <https://strasbourgobservers.com/2021/06/18/falling-at-the-first-hurdle-terhes-v-romania-lockdowns-and-normalising-the-exception/> accessed 11 February 2023

[186] *Magdić v. Croatia* App no 17578/20 (ECHR)

freedom of movement without mentioning where and when he intended to travel but could not, because of the impugned measures. The complete absence of any such individual particulars makes it impossible for the Court to conduct an individual assessment of the applicant's situation. It follows that the present application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and that it must be rejected pursuant to Article 35 § 4 of the Convention.

The communicated cases of *E.B. v. Serbia* and *A.A. v. Serbia*[187] concerned the measures put in place by the Serbian authorities during a declared state of emergency between 15 March and 6 May 2020, in order to prevent the spread of COVID-19, which temporarily restricted the free movement of refugees, asylum seekers and migrants accommodated in asylum and reception centers. The applicants, asylum seekers who were accommodated in an asylum centre in the Republic of Serbia at the relevant time, complained, in particular, that their freedom of movement was restricted in a disproportionate manner in the context of emergency legislation at the beginning of the Covid-19 pandemic (Article 5 § 1, 2, 3, 4, in conjunction with Article 14 of the Convention). The first applicant also complained that the disproportionate measures in question were in contravention of her right to liberty of movement as guaranteed by Article 2 of Protocol No. 4 of the ECHR, since -as a consequence of these measures- she and her husband lost their jobs, her two sons could not attend the school classes and the family suffered physically and mentally as they were not allowed to go out to buy the essentials for daily life.

Bracci v. San Marino[188] concerned the fine imposed on the applicant for allegedly breaching the curfew measures put in place in the light of the pandemic. The applicant complains, in particular, that she was denied access to a court to challenge the fine in question. The Court gave notice of the application to the Government of San Marino and put questions to the parties under, in particular, Article 6 § 1 of the Convention.

[187] *E.B. v. Serbia and A.A. v. Serbia* App nos. 50086/20 and 50898/20 (ECHR)

[188] *Bracci v. San Marino* App no. 31338/21 (ECHR)

ii. Freedom of assembly and association

In *Communauté genevoise d'action syndicale (CGAS) v. Switzerland*[189] the applicant association, which declared aim is to defend the interests of workers and of its member organizations, especially in the sphere of trade-union and democratic freedoms, complains of being deprived of the right to organize and participate in public events following the adoption of government measures to tackle Covid-19 under Ordinance "O.2 COVID-19", enacted by the Federal Council on 13 March 2020. Based on that ordinance, public and private events were prohibited with effect from 16 March 2020. Failure to comply with the prohibition was punishable by a custodial sentence or a fine. As of 30 May 2020, the ban on gatherings was relaxed (maximum of 30 participants). Events involving more than 1,000 participants continued to be prohibited until the end of August 2020. On 20 June 2020 the ban on public events was lifted although participants were required to wear a mask.

On the question of victim status, the Court found that the applicant association – which had been obliged to alter its behavior and even to refrain, in order to avoid criminal penalties, from organizing public events that would have contributed to the achievement of its declared aim – could claim to be a victim of a violation of the Convention. With regard to the exhaustion of domestic remedies, the ECHR noted that at the relevant time the applicant association had not had an effective remedy, available in practice, by which to complain of a violation of its right of assembly within the meaning of Article 11 of the Convention. In particular, although federal ordinances could normally be the subject of a preliminary ruling on constitutionality by the Federal Supreme Court, including in the absence of any current interest, that court, in the very particular circumstances of the general lockdown declared by the Federal Council as part of efforts to tackle Covid-19, had not examined freedom-of-assembly applications on the merits and had not assessed the compatibility of Ordinance O.2 COVID-19 with the Constitution. The Court therefore declared the application admissible.

In Chamber judgment, the ECtHR held, by majority (4 votes to 3), that there had been a violation of Article 11 (freedom of assembly and association) of the ECHR: The Strasbourg Court, while by no means disregarding the threat posed by Covid-19 to society and to public health, nevertheless held, in the light of the importance of freedom of peaceful assembly in

[189] *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* App no 21881/20 (ECHR, 15 March 2022)

a democratic society, and in particular of the topics and values promoted by the applicant association under its constitution, the blanket nature and significant length of the ban on public events falling within the association's sphere of activities, and the nature and severity of the possible penalties, that the interference with the enjoyment of the rights protected by Article 11 had not been proportionate to the aims pursued. Meanwhile, access to workplaces had continued even when they were occupied by hundreds of people, which the government had not explained. The Court further observed that the quality of parliamentary and judicial review was of particular importance in assessing the proportionality of this measure. While it might not be expected, given the urgency of the situation, that very detailed discussions would be held at domestic level, especially involving Parliament, prior to the adoption of the measures, independent and effective judicial reviews were thereby all the more vital. Yet no such scrutiny had been performed by the domestic courts. Additionally, Switzerland had not made derogation under the Convention.

The respondent State had thus overstepped the margin of appreciation afforded to it in the present case. Consequently, the interference had not been necessary in a democratic society within the meaning of Article 11 of the Convention. On 5 September 2022 the Grand Chamber Panel accepted the Swiss Government's request that the case be referred to the Grand Chamber.

Since the *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* was one of the first Covid-19 cases in which the Strasbourg Court has found violation of the ECHR, the judgment could lead to a further extension of the potential victim doctrine (with hitherto unknown consequences). And the majority's findings on the proportionality of the COVID-19 measure are also likely to have major implications, to the extent that other COVID-19 measures are vulnerable to the same reasoning[190].

Magdić v. Croatia –see above- also concerned the prohibitions on public gatherings comprising more than five people and the suspension of religious gatherings. The applicant alleges that the measures breached, inter alia, his right to freedom of religion and freedom of peaceful assembly.

[190] Stijn Smet, 'First Violations In A Covid-19 Case: Communauté Genevoise D'action Syndicale (CGAS) V. Switzerland' (2022) Strasbourg Observers <https://strasbourgobservers.com/2022/05/09/first-violations-in-a-covid-19-case-communaute-genevoise-daction-syndicale-cgas-v-switzerland/> accessed 11 February 2023

Nemytov v. Russia[191] concerned the prohibition of public events in Moscow introduced in response to the spread of the Covid-19 pandemic. Each of the applicants participated in a series of solo demonstrations while the ban was in place and were subsequently subjected to administrative arrest and/or sentencing to an administrative fine. One of the applicants staged his demonstration wearing a mask and gloves, when a major part of the restrictions had been eased in Moscow, but the ban on public events remained in place. The Court gave notice of the applications to the Russian Government and put questions to the parties under, in particular, Articles 10 and 11 of the Convention.

In *Jarocki v. Poland*[192]*,* the applicant was prohibited from holding a planned walking protest with around a thousand people, in the light of the COVID-19 situation and the resultant risk to the health and life of the participants and the public. He submitted detailed calculations of the risk of infection with Covid-19 during an open-air gathering of a thousand people and alleges that the refusal to authorize a demonstration that he wished to hold in August 2020 breached his right to freedom of assembly. The Court gave notice of the application to the Polish Government and put questions to the parties under Article and 11 of the Convention.

The case *Central Unitaria de Traballadores/as v. Spain*[193] concerned the right to organize and take part in a peaceful demonstration during the COVID-19 pandemic. The applicant, a workers union, proposed to apply appropriate sanitary measures to prevent the spread of the virus and expressed its willingness to adopt any other measures that might be suggested, but the administrative authorities refused to authorize the demonstration. The Court gave notice of the application to the Spanish Government and put questions to the parties under Articles 10 and 11 of the Convention.

iii. Freedom of religion

The case *Constantin-Lucian Spînu v. Romania*[194] concerned a refusal by the Romanian authorities, based on measures taken during the Covid-19 pandemic, to let a prisoner, who

[191] *Nemytov v. Russia* App no1257/21 (ECHR)

[192] *Jarocki v. Poland* App no 39750/20 (ECHR)

[193] *Central Unitaria de Traballadores/as v. Spain* App no 49363/20 (ECHR)

[194] *Constantin-Lucian Spînu v. Romania* App no 29443/20 (ECHR)

identified as a member of the Seventh Day Adventist Church, attend religious services outside Jilava Prison (Bucharest). The applicant relied on his freedom of religion.

The Court noted that before the beginning of the public health crisis, the prison authorities had granted the applicant leave to attend church under the regulations in force. The Court therefore accepted that the matters complained of by the applicant had amounted to an interference with his right under Article 9 of the Convention.

Regarding the *grounds of the interference*, the Court noted that it had been prescribed by law which contained provisions allowing restrictions to be placed on day release arrangements for prisoners because of the COVID-19 pandemic.

Regarding the *legitimate aims* relied on by the Government, the ECtHR accepted that the measure in issue had been taken to protect the health and safety of prisoners and anyone who might come into contact with them, and to protect public health in general. It pointed out that the protection of public health was one of the aims listed in Article 9 of the Convention as capable of warranting a limitation on the freedom to manifest one's religion.

As to whether the interference had been *necessary in a democratic society*, the Strasbourg Court noted that the limitation on the applicant's right to freedom of religion had been directed only at a single dimension of the exercise of that right in that it had concerned only his participation in religious worship at his church outside the prison. It was not the applicant's case that he had been prevented from practicing his religion in any other way while in prison or that he had made other requests that had been denied. The Court also observed that the church's activities had been affected by the public health crisis during the relevant period, since attendance at religious services had been made subject to certain requirements, or suspended outright, for all members of the applicant's religious community and representatives of the faith.

Furthermore, the ECtHR felt that the changing and unforeseeable nature of the public health situation must have posed a number of challenges to the prison authorities in relation to the organization and supervision of prisoners' religious activities. Accordingly, it took the view that those authorities had to be afforded a wide margin of appreciation, especially as the applicant in this case had been seeking permission to leave the prison and interact with people who were not themselves inmates or staff of the prison. Specifically, the value of the principle of social solidarity had to be considered in the particular context of the prison

setting. The Court accepted that the authorities had been in a difficult position to respond instantaneously to the public health situation, let alone to each new development the moment it arose. In addition, the Court took into account the alternatives that had been offered and the fact that Jilava Prison had introduced the use of video-conferencing for Adventist worship. The Court noted the applicant's refusal to take part in the online activities and his failure to explain the reasons for that refusal in his submissions to the Court. While it was true that such measures could not entirely take the place of unmediated participation in religious services, the Strasbourg Court found that the national authorities had exercised reasonable efforts to counterbalance the restrictions imposed during the pandemic. Lastly, the Court noted that the applicant's complaint concerned a situation at a particular juncture rather than a continuing situation which would have exempted him from the requirement to pursue the legal avenues open to him under domestic law or at least to resubmit his requests in the light of the shifting course of the pandemic. In the ECtHR's view, the unforeseeable and unprecedented nature of the health crisis entitled the prison authorities to considerable leeway and would have made it hard for them to establish an immediate response protocol on their own initiative. It further noted that the applicant had not provided any concrete details concerning his situation post-July 2020, including the manner in which he had thereafter exercised his freedom of religion. Consequently, the Court concluded that the prison authorities' decision to deny the applicant leave to attend his church's religious services outside the prison had not been taken without considering his individual situation and the changing circumstances of the public health crisis. Having regard to the margin of appreciation that was to be afforded to the national authorities under the specific, novel circumstances of the crisis, the Strasbourg Court determined that the applicant's right to manifest his religion had not been infringed. Accordingly, there had been no violation of Article 9 of the Convention.

The communicated case of *Association of orthodox ecclesiastical obedience v. Greece*[195] concerned the inability to judicially review a temporary prohibition on collective worship in the light of the pandemic, on the grounds that the restriction was no longer in force when the application was examined by the domestic court. The Court gave notice of the application to the Greek Government and put questions to the parties under Article 6 and Article 9 of the Convention.

[195] *Association of orthodox ecclesiastical obedience v. Greece* App no 52104/20 (ECHR)

The Court communicated the case *Mégard v. France*[196] to the French Government. This case concerns the prohibition of any gathering or meeting within religious establishments -with the exception of funeral ceremonies- within the limit of thirty people, in the context of Covid-19 pandemic. The Court gave notice of the application to the French Government and put questions to the parties under Article 9 and Article 34 of the Convention.

The case *Figel' v. Slovakia*[197], which was communicated to the Slovakian Government, concerns in particular the ban on public religious services during the Covid-19 health crisis. The Court gave notice of the application to the Slovakian Government and put questions to the parties under Article 9 of the Convention.

iv. Vaccination, "vaccine pass" and sanitary measures

The case *Zambrano v. France*[198] concerned a university lecturer who complained about the "health pass" introduced in France in 2021 and who created a movement to protest against it. On his website, he suggested that visitors complete a pre-filled form in order to increase the number of applications to the European Court and thus lodge a sort of collective application, while emphasising, in quite unambiguous terms, that his aim was to trigger "congestion, excessive workload and a backlog" at the Court, to "paralyse its operations" or even to "force the Court's entrance door" "in order to derail the system". The applicant complained of a law, which, introduced a transitional regime for lifting the public-health state of emergency and authorized the Prime Minister, among other measures, to limit travel and the use of public transport and to impose protective measures in shops. It also broadened the use of the health pass to other areas of daily life, such as bars and restaurants, department stores and shopping centers. In his opinion, the law was essentially intended to compel individuals to consent to vaccination. He also alleged that, by creating and imposing a health pass system, these laws amounted to a discriminatory interference with the right to respect for private life. The applicant relied on Articles 3, 8 and 14 of the Convention, and on Article 1 of Protocol No. 12.

[196] *Mégard v. France* App no 32647/22 (ECHR)

[197] *Figel' v. Slovakia* App no 12131/21 (ECHR)

[198] *Zambrano v. France* App no 41994/21 (ECHR)

The Strasbourg Court declared the application inadmissible for several reasons, in particular, the failure to *exhaust the domestic remedies*. The applicant had not submitted an appeal on the merits to the administrative courts against the regulatory acts which were the implementing decrees in respect of the contested Laws. In consequence, the application was in any event inadmissible for failure to exhaust the domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention. While this conclusion was in itself sufficient to find an application inadmissible, the Court nevertheless considered it useful, even essential in the specific circumstances of this case, to examine whether the present application was liable to be incompatible with other admissibility criteria. The ECtHR considered that the applicant's approach was clearly *contrary to the purpose of the right of individual petition*. The applicant had chosen to oppose the introduction of the health pass in France by inviting visitors to his internet site to join him in lodging a collective application with the Court. The ECtHR reiterated that it had been dealing with mass litigation arising out of different structural or systemic problems in the Contracting States for nearly two decades and that these human rights deficiencies in the Contracting States gave rise to constantly growing numbers of applications to the Strasbourg Court. Nonetheless, the Court sought to ensure the long-term effectiveness of the human-rights protection system set up by the ECHR, while maintaining the right of individual petition, the cornerstone of this system, and access to justice. It was clear that a major surge in applications such as those submitted in support of the applicant's objective was liable to affect the Court's ability to fulfill its mission in relation to other applications, lodged by other applicants, which did fulfill the conditions for allocation to judicial formations and, prima facie, the admissibility conditions provided for in the Convention, including those referred to above. In view of these findings, and especially the objectives openly pursued by the applicant, the approach that he had taken was manifestly contrary to the purpose of the right of individual application. He was deliberately seeking to undermine the ECHR system and the functioning of the Strasbourg Court, as part of what he described as a "legal strategy" and which was in reality contrary to the spirit of the Convention and the objectives pursued by it. Finally, regarding the *victim status*, the Court noted that the applicant had not provided detailed information about his own situation and did not explain in practice how the national authorities' alleged violations were likely to affect him directly or to target him on account of any personal characteristics.

Similarly, in the case *Thevenon v. France*[199]*,* a firefighter refused to comply with the Covid-19 vaccination requirement imposed on workers in certain occupations by a law of 5 August 2021 on the management of the health crisis, without claiming a medical exemption and was suspended from both his professional and volunteer duties. He applied directly to the European Court, complaining of the vaccination requirement imposed on him by virtue of his occupation, and of the fact that his refusal of the Covid-19 vaccine had led, as of 15 September 2021, to his suspension from work and the complete loss of his pay. The Court declared the application inadmissible for failure by the applicant to exhaust his domestic remedies before applying.

The case *Pasquinelli and Others v. San Marino*[200], which was communicated to the Government of San Marino on 12 December 2022, was about twenty-six applicants, health care and social health workers, employed with the San Marino social security service and other public entities complaining about the obligation to be vaccinated against Covid-19 imposed by law to their professional sector. The applicants had refused to be vaccinated against Covid-19. As a result, in line with the law in question, they were temporarily suspended from their functions without pay and deployed elsewhere at a pay of 600 Euros (€) per month. The Strasbourg Court gave notice of the application to the Government of San Marino and put questions to the parties under Article 8 of the Convention.

In the communicated case of *Grgičin v. Croatia*[201] the first applicant boarded a train without wearing a face mask, in breach of official instructions that public transport passengers wear a mask. After refusing to put on a mask or leave the train, he was apprehended by police officers who carried him off the train and handcuffed him. The scene was witnessed by his son, the second applicant. The applicants were then escorted to the police station and stayed there for another two hours before release. The applicants complained under Article 3 of the Convention that the police used disproportionate force and that investigations into their allegations have not been effective at domestic level. They further complained that the violent arrest of the first applicant and keeping the second applicant at the police station without care, exposed the latter to inhuman and degrading treatment.

[199] *Thevenon v. France* App no 46061/21 (ECHR)

[200] *Pasquinelli and Others v. San Marino* App no 24622/22 (ECHR)

[201] *Grgičin v. Croatia* App nos 6749/22, 7154/22 (ECHR)

The case *Árus v. Romania*[202] was communicated to the Romanian Government and concerned the obligation to wear a mask in public spaces in the context of the Covid-19 pandemic. The Court gave notice of the application to the Romanian Government and put questions to the parties under Article 2 of Protocol No. 4 to the Convention.

Although not related to a Covid-19 vaccination, the case *Vavřička and Others v. the Czech Republic*[203] is particularly important, as the Court has dealt with the issue of compulsory vaccination of children under the conditions of the Covid-19 pandemic and in the midst of a gradual introduction and implementation of Covid-19 vaccine plan in Europe[204].

The case concerned the statutory duty to vaccinate children against diseases well known to medical science and the consequences for the applicants of non-compliance with it. The first application was lodged by a parent on his own behalf, complaining about the fact that he had been fined for failing to have his school-age children duly vaccinated. The other applications were lodged by parents on behalf of their underage children after they had been refused permission to enroll them in preschools or nurseries.

A wide *margin of appreciation* was to be applied on the following grounds:

Firstly, no vaccinations had been administered against the applicants' will, nor could they have been, as compliance could not have been forcibly imposed under the relevant domestic law. Secondly, the ECHR noted that a general consensus existed among the Contracting Parties, strongly supported by international specialized bodies, that vaccination was one of the most successful and cost-effective health interventions and that each State should aim to achieve the highest possible level of vaccination. On the other hand, there was no consensus over a single model of child vaccination but rather a spectrum of policies, ranging from one based wholly on recommendation, through those that made one or more vaccinations compulsory, to those that made it a matter of legal duty to ensure the complete vaccination of children. The Czech Republic's more prescriptive approach had been shared by three of the intervening Governments and had been recently followed by several

[202] *Árus v. Romania* App no 39647/21

[203] *Vavřička and Others v. the Czech Republic* App nos. 47621/13 and 5 others (ECHR, 8 April 2021)

[204] Apostolos Vlachogiannis, 'The compatibility of compulsory vaccination with the ECHR – Decision Vavřička and Others v. the Czech Republic' (in greek) (2021) Syntagmawatch <https://www.syntagmawatch.gr/trending-issues/h-symvatothta-tou-ypoxrewtikou-emvoliasmou-me-thn-esda-apofash-vavricka-and-others-v-the-czech-republic/ > accessed 11 February 2023

other Member States due to a decrease in voluntary vaccination and a resulting decrease in herd immunity. Of course, the sensitive nature of the childhood vaccination duty was not limited to the perspective of those disagreeing with this duty, but also encompassed the value of social solidarity, the duty's purpose being to protect the health of all members of society, particularly those who were especially vulnerable with respect to certain diseases and on whose behalf the rest of the population was asked to assume a minimum risk in the form of vaccination. If nothing else, healthcare policy matters came within the margin of appreciation of the national authorities, as they were best placed to assess priorities and social needs.

The issue to be determined was not whether a different, less prescriptive policy might have been adopted, as in some other European States. Rather, it was whether, in striking the particular balance as they had done, the Czech authorities had remained within their wide margin of appreciation in this area.

A mandatory approach to vaccination represented the Czech authorities' answer to the pressing *social need* to protect individual and public health against the diseases in question and to guard against any downward trend in the child vaccination rate. It had been supported by relevant and *sufficient reasons*. In addition to the weighty public health rationale, the general consensus between States and the relevant expert data, the Court also had regard to the question of the best interests of children. According to the Court's well-established case-law, in all decisions concerning children their best interests were of paramount importance; this reflected the broad consensus expressed notably in Article 3 of the Convention on the Rights of the Child. It followed that there was an obligation on States to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development. When it came to immunization, the objective should be that every child be protected against serious diseases; this was achieved, in the great majority of cases, by children receiving the full schedule of vaccinations during their early years. Those to whom such treatment could not be administered were indirectly protected against contagious diseases as long as the requisite level of vaccination coverage was maintained in their community, i.e. their protection came from herd immunity. Thus, when a voluntary vaccination policy was not considered sufficient to achieve and maintain herd immunity, or such immunity was not relevant due to the nature of the disease, a compulsory vaccination policy might reasonably be introduced in order to achieve an

appropriate level of protection against serious diseases. Based on such considerations, the respondent State's health policy was thus consistent with the best interests of the children.

Regarding *proportionality*, in the first place, the Court examined the relevant features of the national system:

- the vaccination duty concerned ten diseases against which vaccination was considered effective and safe by the scientific community.
- albeit compulsory, the vaccination duty was not absolute and allowed exemptions either on grounds of a permanent contraindication or on grounds of conscience. In accordance with the Constitutional Court's case-law, the circumstances of each individual case were to be rigorously assessed. However, none of the applicants had relied on either exemption.
- compliance with the vaccination duty could not be directly imposed but, as with arrangements made in the intervening States, the duty was enforced indirectly through the application of sanctions. In the Czech Republic, the sanction was relatively moderate, consisting of a one-off administrative fine. In the first applicant's case the amount had been towards the lower end of the relevant scale and could not be considered as unduly harsh or onerous. In so far as the child applicants were concerned, their non-admission to preschool aimed to safeguard the health of young children and was thus essentially of a protective rather than punitive nature.
- procedural safeguards were provided for in domestic law and the applicants had been able to make use of administrative and judicial remedies.
- the legislative approach employed made it possible for the authorities to react with flexibility to the epidemiological situation and to developments in medical science and pharmacology.
- no issue had been shown over the integrity of the policy-making process or transparency of the domestic system.
- with regard to safety, acknowledging very rare but undoubtedly very serious risk to the health of an individual, the Court reiterated the importance of necessary precautions before vaccination, including the monitoring of the safety of the vaccines in use and the checking for possible contraindications in each individual case. In each of those respects, there had been no reason to question the adequacy

of the domestic system. Moreover, some leeway was allowed regarding the choice of vaccine and the vaccination timetable.

- although as a general proposition, the availability of compensation in case of injury to health caused by vaccination was relevant to the overall assessment of a system of compulsory vaccination, this issue could not be given any decisive significance in the context of the present applications as no vaccines had been administered. Further, the applicants had not raised this issue in the domestic proceedings and for most of them, the facts had occurred at a time when compensation had been available under domestic law.

Secondly, the Court proceeded to consider the intensity of the impugned interference with the applicants' enjoyment of their right to respect for private life:

- in so far as the first applicant was concerned, the administrative fine imposed on him had not been excessive in the circumstances and there had been no repercussions on his children's education.
- as to the remaining applicants, their exclusion from pre-school meant the loss of an important opportunity to develop their personalities and to begin to acquire social and learning skills in a formative and pedagogical environment. However, this had been the direct consequence of their parents' choice not to comply with the vaccination duty, whose purpose was to protect health, particularly in that age group. Moreover, the possibility of attendance at preschool of children who could not be vaccinated for medical reasons depended on a very high vaccination rate among other children against contagious diseases. It could not therefore be regarded as disproportionate for a State to require those for whom vaccination represented a remote health risk to accept this universally practised, protective measure, as a matter of legal duty and in the name of social solidarity, for the sake of the small number of vulnerable children who were unable to benefit from vaccination. It had thus been validly and legitimately open to the Czech legislature to make this choice, which was fully consistent with the rationale of protecting the health of the population. The notional availability of less intrusive means to achieve this purpose, as suggested by the applicants, did not detract from that finding. Further, the applicants had not been deprived of all possibility of personal, social and intellectual development, even if at additional effort and expense on their

parents' part, and the consequences had been limited in time as their subsequent admission to primary school had not been affected by their vaccine status.

In conclusion, the measures complained of by the applicants, assessed in the context of the domestic system, stood in a reasonable relationship of proportionality to the legitimate aims pursued by the respondent State, which had not exceeded its margin of appreciation, through the vaccination duty. They could therefore be regarded as being "necessary in a democratic society". As a result, the Court found no violation of Article 8 of the Convention.

v. Freedom of expression, information disorder and the media

The communicated case *Avagyan v. Russia*[205] concerned an applicant, who posted in May 2020 an online comment on Instagram, alleging that there had been no real cases of Covid-19 in the Krasnodar Region of Russia. She was subsequently convicted for disseminating untrue information on the Internet and sentenced to pay a fine of 30,000 Russian roubles (approximately 390 euros), against which she appealed unsuccessfully. The applicant complains, *inter alia*, under Article 10 of the Convention that the impugned law fails to distinguish between dissemination of untrue information and sharing value judgments, that her opinion was based on other Internet publications and posed no risk to public health or security, and that the fine imposed upon her was excessive. The Court gave notice of the application to the Russian Government and put questions to the parties under Article 6 § 1 and Article 10 of the Convention.

The communicated case *Jeremejevs v. Latvia*[206] concerned criminal proceedings against the applicant, a social and political activist who regularly posts on social media, with respect to the offence of hooliganism for having posted videos on Facebook containing his interviews with health-care professionals concerning the Covid-19 infection and the Government's control and prevention measures. He complains of a violation of his right to freedom of expression under Article 10 and the Court gave notice of the application to the Latvian Government and put questions to the parties under this Article.

[205] *Avagyan v. Russia* App no 36911/20 (ECHR)

[206] *Jeremejevs v. Latvia* App n. 44644/21(ECHR)

The ECtHR communicated the case *Petrova v. Bulgaria*[207] to the Bulgarian Government. In the early weeks of the Covid-19 pandemic the applicant stated publicly on social media (Facebook) that she would go out to protest against the financial effects of the measures imposed by the authorities to prevent the spread of the disease and called on others to join her. The applicant complains that the police admonished her not to go out to protest, summoned her for an interview at the precise time when she had stated that she would go out to protest, and conducted a criminal investigation against her in relation to that. She further alleges that she did not have an effective remedy in that respect. The Strasbourg Court gave notice of the application to the Bulgarian Government and put questions to the parties not only under Article 10, but also Article 11 and Article 13 of the Convention.

vi. Data protection and privacy

The Court has so far had little opportunity to examine the matter of the protection of individuals' data and privacy regarding contact tracing applications and digital health passes. Nevertheless, other Council of Europe bodies have provided guidelines and principles for member States[208].

vii. Protection of property

The case of *Toromag, S.R.O. v. Slovakia*[209] concerned the issue of financial damage to businesses caused by the COVID-19 pandemic. The applicants were forced to close their

[207] *Petrova v. Bulgaria* App no 938/21 (ECHR)

[208] Council of Europe, Joint Statement on the right to data protection in the context of the COVID-19 pandemic <https://rm.coe.int/covid19-joint-statement/16809e09f4> accessed 11 February 2023

Council of Europe, Joint Statement on Digital Contact Tracing <https://rm.coe.int/covid19-joint-statement-28-april/16809e3fd7> accessed 11 February 2023

Council of Europe, Statement Covid-19 vaccination, attestations and data protection <https://rm.coe.int/t-pd-bur-2021-6rev2-statement/1680a25713> accessed 11 February 2023

Council of Europe, Declaration by the Committee of Ministers on the need to protect children's privacy in the digital environment <https://search.coe.int/cm/pages/result_details.aspx?ObjectId=0900001680a2436a> accessed 11 February 2023

[209] *Toromag, S.R.O. v. Slovakia* App no 41217/20 and 4 other applications (ECHR)

business by virtue of measures adopted from 15 March 2020 until 19 May 2020 by the Slovak Public Health Authority (Úrad verejného zdravotníctva – "PHA") to prevent the spread of the virus. The applicants allege under Article 1 of Protocol No. 1 that they have thereby incurred pecuniary damage and lost future income as well as clientele.

The Court reiterates that an application may be rejected as an abuse of the right of individual application, if, among other reasons, it was knowingly based on false information or if significant information and documents were deliberately omitted either where they were known from the outset or where new significant developments occurred during the proceedings. Turning to the present case, the ECtHR noted that the applications were introduced several months after the applicants had lodged their constitutional complaints. Nevertheless, in their applications, the applicants explicitly stated that they had been unable to have the impugned measures reviewed by the domestic courts, including the Constitutional Court. Moreover, they failed to inform the Strasbourg Court of this circumstance and of the subsequent outcome of the constitutional proceedings. Lastly, the Court did not consider that the information in question did not concern the core of the case, as the question of whether the measures were reviewable by the Constitutional Court, or any other court is directly related to the complaints made by the applicants. Moreover, the constitutional complaints were directed against one of the PHA's measures challenged also before the Court, invoked Article 1 of Protocol No. 1 to the Convention and contained almost identical legal argumentation. The Court, thus, concludes that the applicants deliberately withheld significant information and documents known from the outset and failed to inform it about new significant developments that occurred during the proceedings. In view of the foregoing, the applications are inadmissible for their abusive nature. Accordingly, they must be rejected in accordance with Article 35 § 3 and 4 of the Convention.

viii. Education

The case *M.C.K. and M.H.K.-B v. Germany*[210] and three other applications were communicated to the German Government. These applications were about Covid-19-related restrictions on and prohibition of in-class lessons under Section 28b § 3 of the German

[210] *M.C.K. and M.H.K.-B v. Germany* App no 26657/22 (ECHR)

Protection Against Infection Act (the "IfSG"). The Court gave notice of the applications to the German Government and put questions to the parties under Article 2 of Protocol No. 1 to the Convention and Article 8 of the ECHR.

2. The role of European Court of Human Rights in times of Covid – 19 pandemic

i. Interim measure requests

Between March 2020 and January 2023, the Strasbourg Court processed around 380 interim measures requests related to the Covid-19 health crisis, mainly brought by persons detained in prison or kept in reception and/or detention centers for asylum seekers and migrants. These requests were very diverse. While requests under Rule 39 of the Rules of Court usually concern deportations or extraditions, those received since mid-March 2020 are mainly from applicants requesting the ECtHR to take interim measures to remove them from their place of detention and/or to indicate measures to protect their health against the risk of being infected by Covid-19. In the vast majority of cases, these are individual applications. Many of them were rejected either for not being sufficiently substantiated or because the applicants would be vaccinated before being removed. In several other cases, the Court adjourned its decision and requested information from the Government concerned. In some cases, Rule 39 was applied in line with the usual criteria, in the case of the most vulnerable persons (unaccompanied minors or persons with serious medical conditions, pregnant women, in particular)[211].

- *Requests lodged against Greece*: These requests were lodged by the asylum seekers and migrants held in reception and identification centers. They requested to be transferred from the centers due to the overcrowding, lack of infrastructure and the threat of COVID-19. Rule 39 was applied in fifteen applications and only for particularly vulnerable persons such as women with advanced pregnancy, women with newborns, old persons and unaccompanied minors with mental health issues. In those cases, despite the fact that the applicants asked to be transferred from the reception and identification centers, the ECtHR did not ask the Government of Greece to transfer the applicants. The interim measures applied were to guarantee

[211] Council of Europe, Factsheet – Covid-19 health crisis (January 2023)

to the applicants living conditions compatible with their state of health and to provide the applicants with adequate healthcare compatible with their state of health. In coming to its decision, the Strasbourg Court took into account the applicants' vulnerability and the general living conditions (overcrowding, lack of infrastructure etc.)

- *Requests lodged against Italy*: These requests were mainly lodged by prisoners who wished to be released due to the alleged risk of contracting COVID-19 in prisons. In a number of cases the ECtHR adjourned the examination of those requests and requested the parties to provide factual information. After having received information from the parties, the Court rejected those requests.
- *Requests lodged against Turkey*: These requests were also filed by prisoners who wished to be released due to the alleged COVID-19 risks in prisons. Most of those requests were incomplete and hence the applicants were asked to complete their requests. Interim measure requests which could be examined by the Court (as they were complete) were all rejected, since the applicants failed to show that they were under the risk of contracting COVID-19 in the places where they were detained.
- *Requests lodged against France*: Most of the interim measure requests against France were lodged by either prisoners or migrants/asylum seekers in detention centers and were rejected.
- *Request lodged against Russia*: In an application against Russia, where there was a riot in a prison against the measures taken by the prison authorities within the context of COVID-19 pandemic, the Court applied Rule 39 for a limited period of time and asked the Government to have the applicant be examined by medical doctors and to ensure that the applicant has access to his lawyers. The interim measure was subsequently lifted, and the application was declared inadmissible.

The Strasbourg Court also received a handful of COVID-19 related interim measure requests against Belgium, Bulgaria, Cyprus, Germany, Malta and Romania lodged by prisoners. These interim measure requests were also examined on a case-by-case basis and were rejected.

On the other hand, the ECtHR received requests for interim measures concerning vaccination schemes[212], lodged by medical professionals, employees working in medical

[212] see, for example, *Cohadier and 600 Others v. France* App no 8824/22; *Abgrall and 671 Others v. France* App no 41950/21; *Kakaletri and Others v. Greece* App no 43375/21; *Theofanopoulou and*

facilities and firefighters, who challenged the compulsory vaccination. The requests were rejected for being out of scope of application of Rule 39. In a number of other requests, applicants challenged the use of Covid-19 certificates which stipulated that only people in possession of the certificates[213] would be allowed to attend public places and, in some cases, to use public transport. The requests were also rejected for being out of scope of application of Rule 39.

One of the first COVID-19 related interim measure requests was brought to the Court by an Italian company in April 2020. The company complained that, after having regularly paid for a stock of 125.000 medical face masks for the subsequent distribution in Italian public hospitals, Turkish authorities had blocked the supply at customs at the airport of Ankara. The request was rejected by the ECtHR.

Lastly, the Court also received an interim measure request, in April 2020, from an association asking the Court to urge the Government of Spain to take all necessary measures to enforce a complete lockdown in Madrid, not allowing any person to leave or enter the city. This request was rejected.

ii. Proceedings before European Court of Human Rights

At the height of the sanitary crisis, the Strasbourg Court required to take measures – in accordance with the terms of the ECHR and the Rules of the Court- to maintain the exercise of its core, adjudicative functions (Article 19 ECHR) and ensure that it was not put in peril. The Strasbourg Court maintained its essential activities, including the handling of priority cases and the examination of urgent requests for interim measures. For applications introduced during a certain time period, the six-month time limit for the lodging of applications (Article 35 ECHR) was suspended[214].

The ECtHR has continued to hold hearings, which are customarily organized in Grand Chamber cases and more exceptionally in other Chamber cases, and preserve their public

Others v. Greece App no 43910; *Concas and Others v. Italy* App no 18259/21; *Piperea v. Romania* App no 14073/21

[213]see *Mahut v. France* App no 55120/21; *Mensi v. Italy* App no 58126/21; *Livi and Others v. Italy* App no 59682/21; *Scola v. Italy* App no 3002/22

[214] Council of Europe, 'Human rights protection in the time of the pandemic… (n 141)

character. The building of the Strasbourg Court was closed to external visitors due to sanitary restrictions, but the hearings were ensured via webcasting, while the public character of the proceedings was preserved by videoconferencing, which was available on Court's website. During the first lockdown periods in France the Court conducted ten public hearings via videoconference[215].

iii. Appraising the European Court of Human Rights Approach

The Court's case-law on human rights during the Covid-19 pandemic is still developing. A large number of applications are received and pending before the Court of Strasbourg, while due to the evolving nature of this health crisis it is forecast to continue expanding its Covid-19 case-law in the next years.

In its decided cases, the Strasbourg Court has been relatively reluctant to scrutinize the responses of national authorities to Covid-19 health crisis. The court has rejected the substance of a majority of complaints, while, regarding cases involving more general challenges to measures, (lockdowns and sanitary measures), the ECtHR has discarded cases altogether, often on procedural grounds[216]. The Court's attitude towards allegations of a general negative impact of measures is quite persistent and defined: the applicants should clearly prove a negative impact of such restrictions on their personal rights under the ECHR[217].

Despite the fact that many scholars have argued that international courts should assess state action regarding respect of human rights during the Covid-19 pandemic[218], the ECtHR gave national authorities leeway to establish their strategies against Covid-19. As the reasons why the Strasbourg Court has decided to follow this path, amongst possible reasons, two could be highlighted:

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[215] ibid

[216] Lewis Graham, 'Challenging State Responses To The Covid-19 Pandemic Before The ECtHR' (2022) Strasbourg Observers <https://strasbourgobservers.com/2022/10/18/challenging-state-responses-to-the-covid-19-pandemic-before-the-ecthr/> accessed 11 February 2023

[217] Ivan Yatskevych, 'Human Rights And Covid-19 Pandemic Challenge: What Is The ECHR Approach?' [2021] eKMAIR https://doi.org/10.18523/2617-2607.2021.8.92-96

[218] Alessandra Spadaro, 'COVID-19: Testing the Limits of Human Rights' [2020] Vol. 11 No. 2 European Journal of Risk Regulation 317-325 doi:10.1017/err.2020.27

- Prioritization – Self-restrain: the interpretation of human rights law, especially before emergencies, involves tragical (in the Hegelian sense) dilemmas. In the context of the sanitary crisis, the main dilemma is related to lockdown policies, it is between lockdown as a measure to protect life and health and its social and economic consequences. The Strasbourg Court tackling this dilemma faces an obvious risk, the risk of judicial politicization. In order to put its political preferences aside while deciding a case, the ECtHR preferred the so-called "judicial self-restraint", giving states a broad margin of appreciation regarding the policies against the pandemic[219]. This reason concerns the broader question of authority and legitimacy of the Courts[220].
- Subsidiarity: The ECtHR, as international court has a subsidiary role. Subsidiarity can be divided into "substantive" (=the Court cannot second-guess state's decisions, but they should seriously be taken into account) and "procedural" (=exhaustion of domestic remedies admissibility criteria)[221]. In the context of Covid-19 pandemic, the majority of cases were dealt at the national level. On the one hand, people affected by the rapid response and the extraordinary nature of the measures –naturally- first seek redress before national courts. On the other hand, it is a consequence of the fact that the ECtHR comes to the scene only when the national courts had a chance to deal with a human rights violation[222]. The Strasbourg Court is called to decide a case ex post facto[223].

However, this approach comes with a cost, as it undermines ECtHR's *raison d' être*. It is quite its task to ensure the respect of human rights in normal circumstances, and it is much more necessary to do that during a (health) crisis[224]. Further, there would be great benefit were the Strasbourg Court to put the ECHR compatibility to state measures against Covid-19

[219] V. Tzevelekos, K. Dzehtsiarou, 'Normal as Usual? Human Rights in Times of covid-19' [2021] European Convention on Human Rights Law Review https://ssrn.com/abstract=3934983

[220] Vassilis P. Tzevelekos, 'Herd Immunity And Lockdown: The Legitimacy Of National Policies Against The Pandemic And Judicial Self-Restraint By The ECtHR' (2020) Strasbourg Observers <https://strasbourgobservers.com/2020/05/11/herd-immunity-and-lockdown-the-legitimacy-of-national-policies-against-the-pandemic-and-judicial-self-restraint-by-the-ecthr/> accessed 11 February 2023

[221] F. de Londras, K. Dzehtsiarou, *Great Debates on the European Convention on Human Rights* (1st, Bloomsbury Publishing 2018)

[222] Tzevelekos – Dzehtsiarou (n 219)

[223] Tzevelekos (n 220)

[224] Tzevelekos – Dzehtsiarou (n 219)

pandemic via a full and reasoned judgment[225]. The ECtHR Covid-19 case-law would have "pedagogical" value and would contribute to the ECHR *acquis*[226]. This body of jurisprudence could serve as inspiration for current and future responses to emergency health situations[227].

[225] Tzevelekos (n 220)

[226] Tzevelekos – Dzehtsiarou (n 219)

[227] Council of Europe, 'Human rights protection in the time of the pandemic… (n 141)

Conclusion

The Covid-19 pandemic has highlighted human vulnerability. The arrogant illusion of the "indestructibility" of the human body, as it prevailed in the technologically and scientifically advanced Western world, was shattered by the global health crisis that (again) brought humanity face to face with the biological foundations of its existence. During the global pandemic crisis, the main priority of both the state and the larger part of the population was the survival and the self-preservation, leaving aside the pursuit of a life with human dignity for all the members of the society.

Regarding the protection of human rights, the threat to health posed by the Covid-19 pandemic, and the urgent measures that needed to be taken by governments in response to this crisis, have given rise to unprecedented challenges. Despite the fact that the pandemic is (hopefully) yesterday's crisis, the various corresponding government responses and their impact on human rights, rule of law and democracy remain a subject under continual review from a legal perspective.

This thesis does not, therefore, seek to answer every possible legal question that has arisen or that would have arisen because of the Covid-19 pandemic. Instead, it provides an overview of the Convention rights affected, positive obligations potentially arisen under the Convention and the ECtHR's response to this health crisis.

States are under an obligation to respond to the Covid-19 crisis in an ECHR compliant manner. Regardless of whether States chose limitations or derogations, a careful assessment of their interference with human rights is necessary. Additionally, the imposed restrictions should pass the test of being "necessary in a democratic society", since this phrase is one of the most important clauses in the entire Convention. The protection of human rights and the maintenance of democracy should not be viewed as an obstruction to the protection of health. On the contrary, the protection of health can be actualized only through the protection of human rights and the democratic route. The provisions of the Convention and the recent (and future) case-law of the Court could provide helpful guidance regarding the interests that should be taken into consideration before a sanitary crisis and a useful framework within which to structure decisions that involve these competing interests.

The Covid-19 health crisis is definitely an extraordinary situation. This is no reason to disregard the requirements under the Convention to safeguard human rights. Instead, the application of the ECHR and the protection of human rights turn out to be even more crucial before this extraordinary situation.

CASES

A

A. and Others v. the United Kingdom [GC] App no 3455/05 (ECHR, 19 February 2009)

Abgrall and 671 Others v. France App no 41950/21

Adolf v. Austria App no 8269/78 (ECHR, 26 March 1982)

Aftanache v. Romania App no 999/19 (ECHR, 26 August 2020)

Aksoy v. Turkey App no 21987/93 1996 (ECHR, 18 December 1996)

Alajos Kiss v. Hungary App no 38832/06 (ECHR. 20 May 2010)

Alexandridis v. Greece App no 19516/06 (ECHR, 21 February 2008)

Alexandru Marius Radu v. Romania App no 34022/05 (ECHR, 21 July 2009)

Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia [GC] App no 60642/08 (ECHR, 16 July 2014)

Anheuser-Busch Inc. v. Portugal [GC] App no 73049/01 (ECHR, 11 January 2007)

Aquilina v. Malta [GC] App no 25642/94 (ECHR, 29 April 1999)

Árus v. Romania App no 39647/21

Assenov and Others v. Bulgaria, App no 90/1997/874/1086(ECHR, 28 October 1998)

Association of orthodox ecclesiastical obedience v. Greece App no 52104/20 (ECHR)

Avagyan v. Russia App no 36911/20 (ECHR)

Aydoğdu v. Turkey App no 40448/06 (ECHR, 30 October 2016)

Axel Springer AG v. Germany [GC] App no 39954/08 (ECHR, 07 February 2012)

B

Bărbulescu v. Romania [GC], App no 61496/08 (ECHR, 5 September 2017)

Blokhin v. Russia [GC] App no 47152/06 (ECHR, 23 March 2016)

Bouyid v. Belgium [GC] App no 23380/09 (ECHR, 28 September 2015)

Bracci v. San Marino App no. 31338/21 (ECHR)

Brogan and Others v. the United Kingdom App nos 11209/84, 11234/84, 11266/84 and 11386/85 (ECHR, 29 November 1988)

Broniowski v. Poland [GC] App no 31443/96 (ECHR, 22 June 2004)

Bumbeș v. Romania App no 18079/15 (ECHR, 03 August 2022)

C

Calvelli and Ciglio v. Italy [GC] App no 32967/96 (ECHR, 17 January 2002)

Campbell and Cosans v. the United Kingdom App nos 7511/76 and 7743/76, (ECHR, 25 February 1982)

Casado Coca v. Spain App no 15450/89 (ECHR, 24 February 1994)

Central Unitaria de Traballadores/as v. Spain App no 49363/20 (ECHR)

Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC] App no 47848/08 (ECHR, 17 July 2014)

Chapman v. UK [GC] App no 27238/95 (ECHR, 18 January 2001)

C.N. v. the United Kingdom App no 4239/08 (ECHR, 13 November 2012)

Cohadier and 600 Others v. France App no 8824/22

Communauté genevoise d'action syndicale (CGAS) v. Switzerland App no 21881/20 (ECHR, 15 March 2022)

Concas and Others v. Italy App no 18259/21

Constantin-Lucian Spînu v. Romania App no 29443/20 (ECHR)

Creangă v. Romania [GC] App no 29226/03 (ECHR, 23 February 2012)

Cyprus v. Turkey App no 8007/77 Commission report 4 October 1983 § 66-68

D

De Tommaso v. Italy [GC] App no 43395/09 (ECHR, 23 February 2017)

Denisov v. Ukraine [GC] App no 76639/11 (ECHR, 25 September 2018)

Denis Vasilyev v. Russia App no 32704/04 (ECHR, 17 December 2009)

Deweer v. Belgium App no 6903/75 (ECHR, 27 February 1980)

D.H. and Others v. the Czech Republic [GC] App no 57325/00 (ECHR, 13 November 2007) par. 207

Djavit An v. Turkey App no 20652/92 (ECHR, 20 February 2003)

D. v. the United Kingdom App no 30240/96 (ECHR, 02 May 1997)

E

E.B. v. Serbia and A.A. v. Serbia App nos. 50086/20 and 50898/20 (ECHR)

Eckle v. Germany App no 8130/78 (ECHR, 15 July 1982)

El-Masri v. the former Yugoslav Republic of Macedonia [GC] App no 39630/09 (ECHR, 13 December 2012)

Engel and Others v. The Netherlands App nos 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72 (ECHR, 8 June 1976)

F

Faia v. Italy App no 17378/20 (ECHR)

Feilazoo v. Malta App no 6865/19 (ECHR)

Fenech v. Malta App no 19090/20 (ECHR)

Figel' v. Slovakia App no 12131/21 (ECHR)

G

Georgel And Georgeta Stoicescu V. Romania App no 9718/03 (ECHR, 26 October 2011)

Genderdoc – M v. Moldova App no 9106/06 (ECHR, 12 June 2012)

Giuliani and Gaggio v. Italy [GC] App no 23458/02 (ECHR, 25 August 2009)

Gregačević v. Croatia App no 58331/09 (ECHR, 10 October 2012)

Grgičin v. Croatia App nos 6749/22, 7154/22 (ECHR)

Grzęda v. Poland [GC] App no 43572/18 (ECHR, 15 March 2022)

Guzzardi v. Italy App no 7367/76 (ECHR, 6 November 1980)

H

Hafeez v. the United Kingdom App no 14198/20 (ECHR)

Handyside v. the United Kingdom App no 5493/72 (ECHR, 4 November 1976)

Hristozov and Others v. Bulgaria App nos 47039/11 and 358/12 (ECHR, 29 April 2013)

I

Iatridis v. Greece [GC] App no 31107/96 (ECHR, 25 March 1999)

Ibrahimov and Mammadov v. Azerbaijan App no 63571/16 (ECHR 13 June 2020)

Ibrahim and Others v. the United Kingdom [GC] App nos 50541/08, 50571/08, 50573/08 and 40351/09 (ECHR, 13 September 2016)

Idalov v. Russia [GC] App no 5826/03 (ECHR, 22 May 2012)

Identoba v. Georgia App no 73235/12 (ECHR, 12 May 2015)

Iorga v. Moldova App no 12219/05 (ECHR, 23 March 2010)

Ireland v. the United Kingdom App no 5310/71 (ECHR, 18 January 1978)

I.S. v. Switzerland App no 60202/15 (06 October 2020)

J

J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom [GC] App no 44302/02 (ECHR, 30 August 2007)

James and Others v. the United Kingdom App no 8793/79 (ECHR, 21 February 1986)

Jarocki v. Poland App no 39750/20 (ECHR)

Jeremejevs v. Latvia App n. 44644/21(ECHR)

K

Kakaletri and Others v. Greece App no 43375/21

Károly Nagy v. Hungary [GC] App no 56665/09 (ECHR, 14 September 2017)

Karuyev v. Russia App no 4161/13 (ECHR, 18 April 2022)

Keegan v. Ireland App no 16969/90 (ECHR, 26 May 1994)

Khlaifia and Others v. Italy [GC] App no 16483/12 (ECHR 15 December 2016)

Khokhlov v. Cyprus App no 53114/20 (ECHR)

Kiyutin v. Russia App no 2700/10 (ECHR, 15 September 2011)

Kolevi v. Bulgaria App no 1108/02 (ECHR, 5 November 2009)

Kozak v. Poland App no 13102/02 (ECHR, 2 March 2010)

Krstić v. Serbia App no 35246/21 and six other applications (ECHR)

Kroon and Others v. the Netherlands App no 18535/91 (ECHR, 27 October 1994)

Kudrevičius and Others v. Lithuania [GC] App no 37553/05 (ECHR, 15 October 2015)

L

Ladent v. Poland App no 11036/03 (ECHR 18 March 2008)

Lawless v. Ireland (no. 3) App no 332/57 (ECHR, 1 July 1961)

Le Mailloux v. France App no 18108/20 (ECHR)

Libert v. France App no 588/13 (ECHR, 02 July 2018)

Likvidējamā p/s Selga and Vasiļevska v. Latvia (dec.) App nos 17126/02 and 24991/02 (ECHR, 1 October 2013)

Livi and Others v. Italy App no 59682/21

Lopes de Sousa Fernandes v. Portugal [GC] App no 56080/13 (ECHR, 12 December 2017)

M

Magdić v. Croatia App no 17578/20 (ECHR)

Mahut v. France App no 55120/21

Maiorano and Others v. Italy App no 28634/06 (ECHR, 15 December 2009)

Maratsis and Others v. Greece App no 30335/20 and *Vasilakis and Others v. Greece* App no 30379/20 (ECHR)

Markt intern Verlag GmbH and Klaus Beermann v. Germany App no 10572/83 (ECHR, 20 November 1989)

Mătăsaru v. the Republic of Moldova App no 20253/09 (ECHR, 1 February 2022)

McCann and Others v. the United Kingdom [GC] App no 18984/91 (ECHR, 27 September 1995)

M.C.K. and M.H.K.-B v. Germany App no 26657/22 (ECHR)

McKay v. the United Kingdom [GC] App no 543/03 (ECHR, 03 October 2006)

Medvedyev and Others v. France [GC] App no 3394/03 (ECHR, 29 March 2010)

Mégard v. France App no 32647/22 (ECHR)

Mensi v. Italy App no 58126/21

Metropolitan Church of Bessarabia and Others v. Moldova App no 45701/99 (ECHR, 27 March 2002)

Michalski v. Poland App no 34180/20 (ECHR); *Guhn v. Poland* App no 45519/20 (ECHR)

Mooren v. Germany [GC] App no 11364/03 (ECHR, 9 July 2009)

Mosendz v. Ukraine App no 52013/08 (ECHR, 17 January 2013)

Mouvement raëlien suisse v. Switzerland [GC] App no 16354/06 (ECHR, 13 July 2012)

M.S.S v. Belgium and Greece App no 30696/09 (ECHR, 21 January 2010)

Müller and Others v. Switzerland App no 10737/84 (ECHR, 24 May 1988)

Murat Vural v. Turkey App no 9540/07 (ECHR, 21 January 2015)

Muršić v. Croatia [GC] App no 7334/13 (ECHR 20 October 2016)

N

Naït-Liman v. Switzerland [GC] App no 51357/07 (ECHR, 15 March 2018)

N.C. v. Italy [GC] App no 24952/94 (ECHR, 18 December 2002)

Nemytov v. Russia App no1257/21 (ECHR)

O

Opuz v. Turkey App no 33401/02 (ECHR, 9 June 2009)

Osman v United Kingdom [GC] App no 23452/94 (ECHR, 28 October 1998) [GC]

P

Pantea v. Romania App no 33343/96 (ECHR, 03 June 2003)

Pasquinelli and Others v. San Marino App no 24622/22 (ECHR)

Paul and Audrey Edwards v. the United Kingdom App no 46477/99 (ECHR, 14 March 2002)

Petrova v. Bulgaria App no 938/21 (ECHR)

Piperea v. Romania App no 14073/21

Powell v. the United Kingdom App no 45305/99 (ECHR, 4 May 2000)

R

Rakevich v. Russia App no 58973/00 (ECHR, 28 October 2003)

Rantsev v. Cyprus and Russia App no 25965/04 (ECHR, 07 January 2010)

Regner v. the Czech Republic [GC] App no 35289/11 (ECHR, 19 September 2017)

Reinprecht v. Austria App no 67175/01 (ECHR, 15 November 2005)

Riela v. Italy App no 17378/20 (ECHR)

R.R. v. Poland App no 27617/04 (ECHR, 28 November 2011)

Rus v. Romania App no. 2621/21 (ECHR)

S

Savran v. Denmark [GC], 2021 App no 57467/15 (ECHR, 7 December 2021)

Scola v. Italy App no 3002/22

Sekmadienis Ltd. v. Lithuania App no 69317/14 (ECHR, 30 April 2018)

Selahattin Demirtaş v. Turkey (no. 2) [GC] App no 14305/17 (ECHR 22 December 2020)

Semir Güzel v. Turkey App no 29483/09 (ECHR, 13 September 2016)

Shvydika v. Ukraine App no 17888/12 (ECHR, 30 October 2014)

Siliadin v. France App no 73316/01 (ECHR, 26 October 2005)

Simeonovi v. Bulgaria [GC] App no 21980/04 (ECHR, 12 May 2017)

S.M. v. Croatia [GC] App no 60561/14 (ECHR, 19 July 2018)

Sovtransavto Holding v. Ukraine App no 48553/99 (ECHR, 25 July 2002)

Sporrong and Lönnroth v. Sweden App nos 7151/75 and 7152/75 (ECHR, 18 December 1984)

Stanev v. Bulgaria [GC] App no 36760/06 (ECHR, 17 January 2012)

Stephens v. Malta (no. 2) App no 33740/06 (ECHR, 14 September 2009)

Stevens v. the United Kingdom, Commission decision App no 11674/85

Storck v. Germany App no 61603/00 (ECHR, 16 September 2005)

Stoyanovi v. Bulgaria App no 42980/04 (ECHR, 9 November 2010)

Stummer v. Austria [GC] App no 37452/02 (ECHR, 7 July 2011)

S., V. and A. v. Denmark [GC] App nos 35553/12, 36678/12 and 36711/12 (22 October 2018)

T

Tahsin Acar v. Turkey [GC] App no 26307/95 (ECHR, 08 April 2004)

Terheş v. Romania App no 49933/20 (ECHR)

Theofanopoulou and Others v. Greece App no 43910

Thevenon v. France App no 46061/21 (ECHR)

Tommaso v. Italy [GC] App no 43395/09 (ECHR, 23 February 2017)

Toromag, S.R.O. v. Slovakia App no 41217/20 and 4 other applications (ECHR)

Trubnikov v. Russia App no 49790/99 (ECHR, 5 July 2005)

U

Ulusoy and Others v. Turkey App no 54969/09 (ECHR, 04 November 2019)

Ünsal and Timtik v. Turkey App no 36331/20 (ECHR)

V

Vachev v. Bulgaria App no 42987/98 (ECHR, 8 July 2004)

Vajnai v. Hungary App no 33629/06 (ECHR, 08 October 2010)

Vasîlca v. the Republic of Moldova App no 15944/11 (ECHR, 1 May 2017)

Vavřička and Others v. the Czech Republic App nos. 47621/13 and 5 others (ECHR, 8 April 2021)

V.C. v. Slovakia App no 18968/07 (ECHR, 8 November 2011)

Verlagsgruppe News GmbH v. Austria (no. 2) App no 10520/02 (ECHR, 14 March 2007)

Vistiņš and Perepjolkins v. Latvia [GC] App no 71243/01 (ECHR, 25 October 2012)

Vlamis and Others v. Greece App no 29655/20 and four other applications App nos. 29689/20, 30240/20, 30418/20 and 30574/20 (ECHR)

Vo v. France [GC] App no 53924/00 (ECHR, 8 July 2004)

W

Wille v. Liechtenstein [GC] App no 28396/95 (ECHR, 28 October 1999)

X

X and Others v. Bulgaria [GC] App no 22457/16 (ECHR, 2 February 2021)

X. v. Turkey App no 24626/09 (ECHR, 9 October 2012)

Y

Yordanova and Others v. Bulgaria App no 25446/06 (ECHR, 24 April 2012)

Z

Zambrano v. France App no 41994/21 (ECHR)

Zoletic and Others v. Azerbaijan App no 20116/12 (ECHR, 7 October 2021)

BIBLIOGRAPHY

Books and/or Journals

Yussef Al Tamimi, 'The protection of vulnerable groups and individuals by the European Court of Human Rights' [2015] Vol. 5 European Journal of Human Rights 561-583

S. Bachmann, J. Sanden, 'COVID-19 And The Duty of A State to Protect the Public's Health and Security During A Pandemic - A European Convention on Human Rights Perspective' [2020] Vol. 7 No. 3 Indonesian Journal of International & Comparative Law 407-430, https://ssrn.com/abstract=3688784

F. de Londras, K. Dzehtsiarou, *Great Debates on the European Convention on Human Rights* (1st, Bloomsbury Publishing 2018)

Kanstantsin Dzehtsiarou, 'Article 15 derogations: Are they really necessary during the COVID-19 pandemic?' [2020] Vol. 4 European Human Rights Law Review 359-371 https://livrepository.liverpool.ac.uk/id/eprint/3088451

Dorota Anna Gozdecka, 'Human Rights During the Pandemic: COVID-19 and Securitisation of Health' [2021] Vol. 39, No. 3 Nordic Journal Of Human Rights 205–223, https://doi.org/10.1080/18918131.2021.1965367

Alan Greene, 'Derogating from the European Convention on Human Rights in Response to the Coronavirus Pandemic: If not Now, When?' [2020] Vol. 2020 No. 3 European Human Rights Law Review 2020 262-276, https://ssrn.com/abstract=3593358 or http://dx.doi.org/10.2139/ssrn.3593358

Steven Greer, 'Constitutionalizing Adjudication under the European Convention on Human Rights' [2003] Vol. 23 No. 1 Oxford Journal of Legal Studies 405-433

Jaunius Gumbis, 'Public Interest: Problem of Conceptualisation' [2006] Vol. 51 No. 1 Social Sciences 7-16

Sanja Jovičić, 'COVID-19 restrictions on human rights in the light of the case-law of the European Court of Human Rights' [2021] Vol. 21 ERA Forum 545–560 https://doi.org/10.1007/s12027-020-00630-w

Audrey Lebret, ‘COVID-19 pandemic and derogation to human rights’ [2020] Vol. 7 No. 1 Journal of Law and the Biosciences https://doi.org/10.1093/jlb/lsaa015

Aileen McHarg, ‘Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights’ [1999] Vol. 62 No. 5 The Modern Law Review 671-696

Oddný Mjöll Arnardóttir, ‘Vulnerability under Article 14 of the European Convention on Human Rights: Innovation or Business as Usual?’ [2017] Vol. 4 No. 3 Oslo Law Review 150-171, DOI: 10.18261/issn.2387-3299-2017-03-03

Ok. Nawrot, J. Nawrot, V. Vachen, ‘The right to healthcare during the covid-19 pandemic under the European Convention on human rights’ [2020] The International Journal of Human Rights, https://doi.org/10.1080/13642987.2022.2027760

Natalia Panou, ‘"Vulnerability" in the case-law of the European Court on Human Rights and the (post?)pandemic era’ (in greek) [2023] e-ΠΟΛΙΤΕΙΑ (forthcoming)

L. Peroni, Al. Timmer, ‘Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law’ [2013] Vol. 11 No.4 International Journal of Constitutional Law 1056-1085 DOI: 10.1093/icon/mot042

Alessandra Spadaro, ‘COVID-19: Testing the Limits of Human Rights’ [2020] Vol. 11 No. 2 European Journal of Risk Regulation 317-325 doi:10.1017/err.2020.27

V. Tzevelekos, K. Dzehtsiarou, ‘Normal as Usual? Human Rights in Times of covid-19’ [2021] European Convention on Human Rights Law Review https://ssrn.com/abstract=3934983

R. Valutytė, D. Jočienė, R. Ažubalytė, ‘Legality of Human Rights Restrictions During the COVID-19 Pandemic Under the European Convention on Human Rights’ [2021] Vol. 26 No. 1 Tilburg Law Review 1–15, DOI: https://doi.org/10.5334/tilr.245

Ivan Yatskevych, ‘Human Rights And Covid-19 Pandemic Challenge: What Is The ECHR Approach?’ [2021] eKMAIR https://doi.org/10.18523/2617-2607.2021.8.92-96

A. Zissi, S. Chtouris ‘The Covid-19 Pandemic: Accelerator of Inequalities and Installer of New Forms of Inequalities’ (in greek) [2020] Vol. 154 The Greek Review of Social Research 65–73, https://doi.org/10.12681/grsr.23229

Websites

Paul Bowen QC, 'Learning lessons the hard way – Article 2 duties to investigate the Government's response to the Covid-19 pandemic' (2020) U.K. Const. L. Blog <https://ukconstitutionallaw.org/2020/04/29/paul-bowen-qc-learning-lessons-the-hard-way-article-2-duties-to-investigate-the-governments-response-to-the-covid-19-pandemic/>

Kanstantsin Dzehtsiarou, 'Covid-19 And The European Convention On Human Rights' (2020) Strasbourg Observers <https://strasbourgobservers.com/2020/03/27/covid-19-and-the-european-convention-on-human-rights/>

Lewis Graham, 'Challenging State Responses To The Covid-19 Pandemic Before The ECtHR' (2022) Strasbourg Observers <https://strasbourgobservers.com/2022/10/18/challenging-state-responses-to-the-covid-19-pandemic-before-the-ecthr/>

Alan Greene, 'Falling At The First Hurdle? Terheş V : Lockdowns And Normalising The Exception' (2021) Strasbourg Observers <https://strasbourgobservers.com/2021/06/18/falling-at-the-first-hurdle-terhes-v-romania-lockdowns-and-normalising-the-exception/>

Sean Molloy, 'Covid-19 and Derogations Before the European Court of Human Rights' (2020) Verfassungsblog <https://verfassungsblog.de/covid-19-and-derogations-before-the-european-court-of-human-rights/>

Michael O' Boyle, 'The notion of "vulnerable groups" in the case law of the European Court of Human Rights' (2015) Conference: The Constitutional Protection of Vulnerable groups: A Judicial Dialogue <https://www.venice.coe.int/webforms/documents/?pdf=CDL-LA(2016)003-e>

Reuters, 'Greece could requisition private sector doctors, PM tells paper' <https://www.reuters.com/article/us-health-corovavirus-greece-pm-idUSKBN2BD0F2>

Martin Scheinin, 'COVID-19 Symposium: To Derogate or Not to Derogate?' (2020) OpinioJuris <http://opiniojuris.org/2020/04/06/covid-19-symposium-to-derogate-or-not-to-derogate/>

Stijn Smet, 'First Violations In A Covid-19 Case: Communauté Genevoise D'action Syndicale (Cgas) V. Switzerland' (2022) Strasbourg Observers

<https://strasbourgobservers.com/2022/05/09/first-violations-in-a-covid-19-case-communaute-genevoise-daction-syndicale-cgas-v-switzerland/>

Elizabeth Stubbins Bates, 'COVID-19 Symposium: Article 2 ECHR's Positive Obligations–How Can Human Rights Law Inform the Protection of Health Care Personnel and Vulnerable Patients in the COVID-19 Pandemic?' (2020) OpinioJuris <http://opiniojuris.org/2020/04/01/covid-19-symposium-article-2-echrs-positive-obligations-how-can-human-rights-law-inform-the-protection-of-health-care-personnel-and-vulnerable-patients-in-the-covid-19-pandemic/>

Vassilis P. Tzevelekos, 'Herd Immunity And Lockdown: The Legitimacy Of National Policies Against The Pandemic And Judicial Self-Restraint By The ECtHR' (2020) Strasbourg Observers <https://strasbourgobservers.com/2020/05/11/herd-immunity-and-lockdown-the-legitimacy-of-national-policies-against-the-pandemic-and-judicial-self-restraint-by-the-ecthr/>

Apostolos Vlachogiannis, 'The compatibility of compulsory vaccination with the ECHR – Decision Vavřička and Others v. the Czech Republic' (in greek) (2021) Syntagmawatch <https://www.syntagmawatch.gr/trending-issues/h-symvatothta-tou-ypoxrewtikou-emvoliasmou-me-thn-esda-apofash-vavricka-and-others-v-the-czech-republic/ >

Texts of International Organizations

Council of Europe, Declaration by the Committee of Ministers on the need to protect children's privacy in the digital environment <https://search.coe.int/cm/pages/result_details.aspx?ObjectId=0900001680a2436a>

Council of Europe Portal, 'Degorations Covid – 19' <https://www.coe.int/en/web/conventions/derogations-covid-19>

Council of Europe, Factsheet – Covid-19 health crisis (January 2023)

Council of Europe, 'Freedom of expression and information in times of crisis' <https://www.coe.int/en/web/freedom-expression/freedom-of-expression-and-information-in-times-of-crisis>

Council of Europe, *Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights - Protection of property*

Council of Europe, *Guide on Article 2 of the European Convention on Human Rights - Right to life*

Council of Europe, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights - Right to education*

Council of Europe, *Guide on Article 2 of Protocol No. 4 to the European Convention on Human - Rights Freedom of movement*

Council of Europe, *Guide on Article 3 of the European Convention on Human Rights - Prohibition of torture*

Council of Europe, *Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights - Right to free elections*

Council of Europe, *Guide on Article 4 of the European Convention on Human Rights - Prohibition of slavery and forced labour*

Council of Europe, *Guide on Article 5 of the European Convention on Human Rights - Right to liberty and security*

Council of Europe, *Guide on Article 6 of the European Convention on Human Rights - Right to a fair trial (civil limb)*

Council of Europe, *Guide on Article 6 of the European Convention on Human Rights - Right to a fair trial (criminal limb)*

Council of Europe, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life, home and correspondence*

Council of Europe, *Guide on Article 9 of the European Convention on Human Rights - Freedom of thought, conscience and religion*

Council of Europe, *Guide on Article 10 of the European Convention on Human Rights - Freedom of expression*

Council of Europe, *Guide on Article 11 of the European Convention on Human Rights - Freedom of assembly and association*

Council of Europe, *Guide on Article 15 of the European Convention on Human Rights - Derogation in time of emergency*

Council of Europe, 'Human rights protection in the time of the pandemic: new challenges and new' (2022) judicial seminar <https://www.echr.coe.int/Pages/home.aspx?p=events/ev_sem&c=>

Council of Europe, Joint Statement on Digital Contact Tracing <https://rm.coe.int/covid19-joint-statement-28-april/16809e3fd7>

Council of Europe, Joint Statement on the right to data protection in the context of the COVID-19 pandemic <https://rm.coe.int/covid19-joint-statement/16809e09f4>

Council of Europe, 'Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis - A toolkit for member states' SG/Inf(2020)11 <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>

Council of Europe, Statement Covid-19 vaccination, attestations and data protection <https://rm.coe.int/t-pd-bur-2021-6rev2-statement/1680a25713>

European Parliamentary Research Service, Coronavirus and elections in selected Member States

European Parliamentary Research Service, Upholding human rights in Europe during the pandemic

United Nations, 'COVID-19 and Human Rights: We are all in this together' <https://unsdg.un.org/resources/covid-19-and-human-rights-we-are-all-together>

United Nations, Education during COVID-19 and beyond <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/08/sg_policy_brief_covid-19_and_education_august_2020.pdf>

United Nations, '"States responses to Covid 19 threat should not halt freedoms of assembly and association" – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule' <https://www.ohchr.org/en/statements/2020/04/states-responses-covid-19-threat-should-not-halt-freedoms-assembly-and?LangID=E&NewsID=25788>

United Nations, 'The World of Work and COVID-19' <https://unsdg.un.org/resources/policy-brief-world-work-and-covid-19>

United Nations Educational, Scientific and Cultural Organization 'Startling digital divides in distance learning emerge' <https://www.unesco.org/en/articles/startling-digital-divides-distance-learning-emerge>

Venice Commission, Observatory on emergency situations <https://www.venice.coe.int/files/EmergencyPowersObservatory//T14-E.htm>

World Health Organization, 'Infodemic' <https://www.who.int/health-topics/infodemic#tab=tab_1>

World Health Organization, Joint Statement on Data Protection and Privacy in the COVID-19 Response <https://www.who.int/news/item/19-11-2020-joint-statement-on-data-protection-and-privacy-in-the-covid-19-response>

World Health Organization, 'WHO Coronavirus (COVID-19) Dashboard' <https://covid19.who.int/>