

Under Article 15 of the European Convention on Human Rights (the Convention), Contracting States may derogate from most of their obligations under the Convention: “[i]n time of war or other public emergency threatening the life of the nation”. Some rights, however, are declared non-derogable by Article 15. These are the so-called “absolute rights”: the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, and of slavery, and the *nullum crimen, nulla poena sine lege* principle.

When an emergency situation pertains and a Contracting State wishes to use its power of derogation, it is imperative for the State in question to make a formal derogation under Article 15 indicating the rights and the territory to which the derogation applies.

Moreover, in case of such derogation, the third paragraph of Article 15 requires that the State concerned keep the Secretary General of the Council of Europe fully informed of the measures that it has taken and the reasons for doing so, as well as when such measures have ceased to operate. These rules have generally been complied with by the Contracting States.

Procedure:

Beginning of Derogation

A Notification of Derogation is received from the Ministry for Foreign Affairs or the Permanent Representation, either in paper form or by e-mail followed by an original paper copy:

1. Date of effect

The date of effect of the derogation is the date of registration of the document by the Secretariat General, even if the derogation indicates an earlier date.

2. Internal information

An e-mail, together with a pdf copy of the document, is then immediately sent to the Private Office, the Secretariat of the Committee of Ministers, the Registry of the Court, the Secretariat of the Parliamentary Assembly, and the Director of Human Rights (DGI)

3. Official Notification

A copy of the Derogation and its cover letter, as well as a translation into the other official language, is then sent electronically, on the same day if possible, to:

- all member States, with copy to the State concerned;
- the President of the European Court of Human Rights;
- the President of the Parliamentary Assembly.

4. Website

The information is published on the Treaty Office website.

End of Derogation

A Notification of Withdrawal or of End of Derogation is received from the Ministry for Foreign Affairs or the Permanent Representation, either in paper form or by e-mail followed by an original paper copy.

1. Date of effect

The date of effect of the withdrawal of the Derogation is the date of end of effect indicated in the document or, in the absence of a specified date, the date of registration of the document by the Secretariat General.

2 to 4: same procedure.