

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

**DRAFTING GROUP ON HUMAN RIGHTS IN SITUATIONS OF CRISIS  
(CDDH-SCR)**

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**REPORT**

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First meeting, Hybrid  
8 – 10 March 2022

**Item 1: Welcome and opening of the meeting**

1. The Drafting Group on Human Rights in situations of crisis (CDDH-SCR) held its first meeting from 8 to 10 March 2022. Due to the COVID-19 pandemic, the meeting was held in a hybrid format with participants present in the meeting room and others following via the KUDO video system. The list of participants is contained in Appendix I.
2. The Chair, Mr Jan SOB CZAK (Poland), opened the meeting and welcomed the participants in the room and online. He invited participants to join him in observing a minute's silence for the victims of the pandemic and of the war in Ukraine.
3. The Secretary of the CDDH, Mr David MILNER, presented the Group's terms of reference and explained how the draft agenda was intended to assist the Group in producing the expected deliverables.
4. The draft agenda was subsequently adopted, as it appears in Appendix II.

**Item 2: Election of the Vice Chair**

5. The Group elected Dr Vahagn PILIPOSYAN (Armenia) by acclamation as Vice Chair and thanked him for his willingness to take on this role.

**Item 3: Presentation of relevant Council of Europe bodies' work on issues within the mandate of the Group**

6. The Group heard presentations by Ms Ana GOMEZ, Directorate of Legal Advice and Public International Law (DLAPIL), Council of Europe; Ms Rachel KONDAK and Mr Hasan BAKIRCI, Registry of the European Court of Human Rights; and Dr Veronika BÍLKOVÁ, member of the European Commission for Democracy through Law (Venice Commission).
7. The presentations of Ms Gomez, Ms Kondak, and Dr Bílková can be found in document CDDH-SCR(2022)01.
8. Mr Bakirci recalled that the Court had examined 11 cases brought against Turkey relating to the state of emergency that followed the attempted coup d'état in 2016, in which the question arose of whether the Turkish derogation met the requirements of article 15. The Court accepted that the attempted coup met the definition of a "public emergency threatening the life of the nation", but the derogation lacked clarity and measures had been taken against the applicants on the basis of legislation dating from both before and after the state of emergency was introduced. The Court had found that these measures went beyond what was "strictly required by the exigencies of the situation" and were thus not proportionate; the derogation therefore did not apply. For example, in one case, the Court noted that the applicant had been detained under a legal provision that required the presence of factual elements establishing strong suspicions of commission of an offence. This provision had not been amended during the state of emergency and thus the applicant had been detained on the basis of the legislation that was applicable before and after the declaration of the state of emergency. The detention thus did not meet the requirements of Article 15 of the Convention, since ultimately no derogation could have applied to the situation. Any other conclusion would negate the minimum 'reasonable suspicion' requirements of Article 5 of the Convention.
9. In the ensuing discussion, Ms Gomez observed that DLAPIL's Memorandum of 16 March 2020, whilst noting that several Convention rights allowed for restrictions in order to protect public health, had recognized that Article 15 of the Convention permitted derogation.

She noted that some States had a practice of informing the Secretary General when declaring a state of emergency or introducing some other exceptional legal regime. Since such notifications did not amount to derogations or relate to any specific treaty, the Treaty Office acknowledged receipt and took note of the information but did not circulate such notifications to other member States, or otherwise publish them.

10. Ms Kondak noted that there had been around 30 Covid-related cases communicated to a respondent State. Most of these related to prisoners; some to companies (such as fitness centres); others to the prison conditions facing prisoners extradited to the United States, or freedom of religion and the closure of places of worship. Only one of these 30 cases concerned a derogation – a case brought by a group of asylum seekers against Serbia, in which the Court had asked the parties whether there had been a “public emergency threatening the life of the nation”, and whether the relevant measures were “strictly required by the exigencies of the situation”. A case concerning compulsory vaccination had been brought against France by a group of fire-fighters. There were also perhaps 10 admissibility decisions in Covid-related cases. Mr Bakirci added that the Court would treat the case against Serbia as an “impact case”, in which its judgment would give general guidance for other States parties. There were currently no indications that the matter would be referred to the Grand Chamber.

11. Mr Bakirci noted that whilst there was no legal requirement for a notification of derogation to indicate the rights and freedoms affected, it must nevertheless be clear enough to allow the Court to assess properly the proportionality of the measures, i.e. whether they were “strictly required by the exigencies of the situation”. A very vague notification could prevent the Court from making a proper assessment. Ms Gomez agreed that legal certainty was needed for other States Parties, who were informed of derogations, as well as the Court and the general public.

#### **Item 4: Organisation of future work**

12. The Group examined the draft ‘plan of activity’ set out in document CDDH-SCR(2022)02. It noted that the deadline of 31 December 2022 for preparation of the second deliverable (a draft toolkit for human rights impact assessment of the measures taken by the State in situations of crisis), in addition to the first deliverable (a draft report on member States’ practices in relation to derogations from the European Convention on Human Rights in situations of crisis), was not feasible, given that there would be only one further meeting in 2022. The unavoidable delay to preparation of the second deliverable would in turn delay the preparation of the third deliverable (a draft non-binding legal instrument on the effective protection of human rights in situations of crisis, based notably on lessons learnt from the Covid-19 pandemic). The Group therefore decided to inform the CDDH that the second deliverable would be submitted following its spring 2023 meeting, and the third and final deliverable following its autumn 2023 meeting.

13. In response to questions from participants, the Secretariat explained that the draft report on derogations as a whole would not be ready for circulation to all CDDH members in advance of the CDDH meeting in June, since the deadline for replying to the questionnaire on which the report would be based (see below) would come after the CDDH meeting. All CDDH members would, however, be given the opportunity to comment on the draft in advance of the next CDDH-SCR meeting in the autumn. Observers would have the usual opportunity to comment on draft documents, both through written consultation in advance of meetings and during the meetings themselves.

14. On this basis, the Group approved the plan of activity as a basis for organising its future work.

15. The Group appointed Ms Cordelia EHRICH (Switzerland) by acclamation as rapporteur to prepare the draft report on member States' practices in relation to derogations from the European Convention on Human Rights in situations of crisis.

**Item 5: Examination and possible adoption of a draft questionnaire to be addressed to the member States**

16. The Group examined the draft questionnaire as set out in document CDDH-SCR(2022)03. The Group also discussed the structure of the report on member States' practices in relation to derogations from the European Convention on Human Rights in situations of crisis, for which the questionnaire would provide necessary factual information.

17. During discussions, members reaffirmed that the report on derogations was not limited to Covid-related derogations. The report should be primarily factual and not involve monitoring or evaluation of States' practice. Some experts wanted the questionnaire to seek information that would allow the report to compare the situation of States that had derogated as a result of Covid-related measures, and those that had not, based on the types of measures that had been taken. Other experts did not think that this issue fell within the Group's mandate. One expert recalled that the Group would inevitably have to address Covid-specific issues, if only when preparing the draft non-binding legal instrument on the effective protection of human rights in situations of crisis, which would be based notably on lessons learnt from the Covid-19 pandemic. The questionnaire should accommodate this fact. The Group agreed not to include any specific question on this issue, considering that relevant information could be provided in response to other, general questions. Concerning question 3, the Group agreed that replies need only refer to situations where consideration of the possibility of derogating had reached a certain degree of seriousness or formality.

18. The revised questionnaire, as adopted, appears in Appendix III to the present report. The preliminary structure, as approved, appears in Appendix IV to the present report.

19. The Group also held a preliminary discussion on the structure for the toolkit for human rights impact assessment of the measures taken by the State in situations of crisis. It noted the importance of experts providing information on any process of human rights impact assessment undertaken by their authorities. It decided to resume its discussion at the next meeting, on the basis of a draft structure prepared by the Secretariat.

**Item 6: Other business**

20. None.

**Item 7: Approval of the meeting report**

21. The Group adopted the present meeting report. It took note that its next meeting is scheduled from 11 to 13 October 2022, subject to confirmation by the CDDH in June.

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Appendix I

**List of participants**

**MEMBERS / MEMBRES**

<b>ARMENIA / ARMÉNIE</b>	<b>Dr. Vahagn PILIPOSYAN</b> Head of International Treaties and Law Department of the Ministry of Foreign Affairs
<b>AZERBAIJAN / AZERBAÏDJAN</b>	<b>Mr Habib ABDULLAYEV</b> Head of the Human Rights Protection Unit of the Law Enforcement Bodies Department of the Administration of the President of the Republic of Azerbaijan  <b>Ms Zhala IBRAHIMOVA</b> Deputy to the Permanent Representative of the Republic of Azerbaijan to the Council of Europe  <b>Mr Şahin ABBASOV</b> Senior consultant, Human Rights Protection Unit, Law Enforcement Bodies Department of the Administration of the President of the Republic of Azerbaijan
<b>BELGIUM / BELGIQUE</b>	<b>Ms Justine LEFEBVRE</b> Gestionnaire de dossiers Direction générale Législation, Libertés et Droits fondamentaux - Service Droits de l'Homme, SPF Justice
<b>CYPRUS / CHYPRE</b>	<b>Ms Aphrodite GREGORIOU</b> Counsel of the Republic Address: Law Office of the Republic of Cyprus
<b>ESTONIA / ESTONIE</b>	<b>Ms Maris KUURBERG</b> Government Agent before the European Court of Human Rights, Legal Department, Ministry of Foreign Affairs
<b>FINLAND / FINLANDE</b>	<b>Ms Krista OINONEN</b> Director, Unit for Human Rights Courts and Conventions, Agent of the Government of Finland before ECHR, Ministry for Foreign Affairs
<b>FRANCE</b>	<b>M. Jean-Baptiste DESPREZ</b> Ministère de l'Europe et des affaires étrangères, Direction des affaires juridiques, Adjoint au sous-directeur, Sous-direction des droits de l'Homme,
<b>GEORGIA / GÉORGIE</b>	<b>Ms Nana TCHANTURIDZE</b> Head of the Litigation Unit of the Department of State Representation in International Courts, Ministry of Justice  <b>Ms Tamta SHAMATAVA</b> Chief Specialist/Legal Adviser of the Litigation Unit of the Department of State Representation in International Courts, Ministry of Justice
<b>GERMANY / ALLEMAGNE</b>	<b>Mr Hans-Jörg BEHRENS, LL.M.</b> Ministerialrat, Leiter des Referats IV C 1, Menschenrechte Verfahrensbvollmächtigter der Bundesregierung vor dem Europäischen Gerichtshof für Menschenrechte Bundesministerium der Justiz
<b>GREECE / GRÈCE</b>	<b>Mr Elias KASTANAS</b> Senior Legal Counselor Legal Department - Public International Law Section - Hellenic Ministry of Foreign Affairs

<b>REPUBLIC OF MOLDOVA / RÉPUBLIQUE DE MOLDOVA</b>	<b>Ms Camarenco NICOLINA</b> Acting Head of Legal Service, Ministry of Environment  <b>Ms Turchin NELEA</b> Senior Consultant of the Policy Analysis, Monitoring and Evaluation Directorate, Ministry of Environment
<b>MONTENEGRO/ MONTÉNÉGRO</b>	<b>Ms Valentina PAVLIČIĆ</b> Representative of Montenegro before the European Court of Human Rights
<b>NORWAY / NORVÈGE</b>	<b>Ms Anette ØDELIEN</b> Ministry of Justice and Public Security, Legal Adviser, Legislation Department
<b>NETHERLANDS / PAYS-BAS</b>	<b>Ms Janine VAN VELDHUIZEN, LL.M</b> Legal advisor human rights - Legal Affairs, Ministry of Justice and Security
<b>POLAND / POLOGNE</b>  <b>(Chair)</b>	<b>Mr Jan SOBCZAK</b> Government Agent, Deputy Director, Legal and Treaty Department, Ministry of Foreign Affairs  <b>Ms Agata PIENKOSZ</b> Criminal Proceedings Section, Expert, Legal and Treaty Department, Ministry of Foreign Affairs  <b>Ms Agata ROGALSKA-PIECHOTA</b> Co-Agent of the Government of Poland in cases and proceedings before the European Court of Human Rights, Head of Criminal Proceedings Section, Legal and Treaty Department, Ministry of Foreign Affairs
<b>PORTUGAL</b>	<b>M. Eduardo André FOLQUE DA COSTA FERREIRA</b> Procureur-Général Adjoint Membre du Conseil Consultatif du Parquet général de la République.
<b>RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE</b>	“By decision of the Ministers’ Deputies of 25 February 2022 at its 1426ter meeting, the rights of representation of the Russian Federation have been suspended.”  « Par décision des Délégués des Ministres du 25 février 2022 lors de leur 1426ter réunion, les droits de représentation de la Fédération de Russie ont été suspendus. »
<b>SPAIN / ESPAGNE</b>	<b>Mr Francisco SAN GANDASEGUI</b> Co-Agent of Spain before the Court and Deputy Director General of Constitutional and Human Rights affairs, Ministry of Justice
<b>SWITZERLAND / SUISSE</b>	<b>Ms Cordelia EHRICH</b> Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ Domaine de direction droit public, Unité Protection internationale des droits de l’homme
<b>TURKEY / TURQUIE</b>	<b>Mr Tolga BAŞBOZKURT</b> Juge rapporteur, Ministère de la Justice  <b>Mr Muhammet HAMZA MUŞ</b> Juge rapporteur, Ministère de la Justice  <b>Mr Ahmet Metin GÖKLER</b> Legal counselor, Représentation Permanente de Turquie, Strasbourg
<b>UNITED KINGDOM / ROYAUME-UNI</b>	<b>Ms Susan DICKSON</b> Legal Counsellor, Foreign, Commonwealth and Development Office and Agent of the United Kingdom  <b>Mr Thibault DUFETEL</b> Senior Policy Advisor, International Human Rights, Ministry of Justice

	<p><b>Mr Fraser JANECZKO</b> Assistant Legal Adviser, Foreign, Commonwealth and Development Office</p>
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## PARTICIPANTS / PARTICIPANTS

<p><b>REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME</b></p>	<p><b>Ms Rachael KONDAK</b> Adviser to the President and the Registrar of the European Court of Human Rights / <i>Conseillère du Président et de la Greffière de la Cour européenne des droits de l'homme</i></p> <p><b>Mr Hasan BAKIRCI</b> Deputy Section Registrar / <i>Greffier adjoint de section</i></p>
<p><b>VENICE COMMISSION / COMMISSION DE VENISE</b></p>	<p><b>Ms Veronika BÍLKOVÁ</b> Lecturer, Law Faculty, Charles University, Prague</p> <p><b>Mr Grigory DIKOV</b> Legal Officer, Venice Commission, Council of Europe</p>
<p><b>DIRECTORATE OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW / DIRECTION DU CONSEIL JURIDIQUE ET DU DROIT INTERNATIONAL PUBLIC (DLAPIL)</b></p>	<p><b>Ms Ana GOMEZ</b> Head of the Public International Law Division and Treaty Office / <i>Chef de la Division du droit international public et Bureau des Traités</i></p> <p><b>Mr Carlos SEVERO ESTEBAN</b> Trainee / <i>Stagiaire</i></p>

## OBSERVERS / OBSERVATEURS

<p><b>EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS / RÉSEAU EUROPÉEN DES INSTITUTIONS NATIONALES DES DROITS DE L'HOMME (ENNHRI)</b></p>	<p><b>Ms Katrien MEUWISSEN</b> Senior Human Rights Officer (Accreditation), Permanent Secretariat</p> <p><b>Ms Lara TIMME</b></p>
<p><b>COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE / CONSEIL DES BARREAUX EUROPÉENS (CCBE)</b></p>	<p><b>Mr Piers GARDNER</b> Chair of the CCBE Permanent Delegation to the European Court of Human Rights</p> <p><b>Mr Nathan ROOSBEEK</b></p>
<p><b>HOLY SEE / SAINT-SIÈGE</b></p>	<p><b>Mme Christine JEANGÉY</b> Experte</p>

**SECRETARIAT / SECRETARIAT**

<p><b>Human Rights Intergovernmental Co-operation Division /</b>  <i>Division de la coopération intergouvernementale en matière de droits de l'Homme</i></p>	<p><b>Mr David MILNER</b>  Head of Division / <i>Chef de Division</i>, Secretary of the CDDH / <i>Secrétaire du CDDH</i></p> <p><b>Mr Daniele CANGEMI</b>  Head of Department / <i>Chef de Service</i>, Department for Human Rights, Justice and Legal Co-operation Standard-settings activities / <i>Service des activités normatives en matière de droits de l'homme, justice et coopération juridique</i></p> <p><b>M<sup>me</sup> Corinne GAVRILOVIC</b>  Assistant / <i>Assistante</i></p> <p><b>Ms Roxanne STEYAERT</b>  Trainee / <i>Stagiaire</i></p>
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**INTERPRETERS / INTERPRÈTES**

<p><b>Ms Pascale MICHLIN</b>  <b>Mr Luke TILDEN</b>  <b>Ms Isabelle MARCHINI</b></p>
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Appendix II**Agenda (as adopted)**

<b>1. Opening of the meeting by the Chair and adoption of the agenda</b>	CDDH-SCR(2022)OJ01
<b>2. Election of the Vice-Chair</b>	
<b>Presentation of relevant Council of Europe bodies' work on issues within the mandate of the Group</b>	
<b>3.</b>	CDDH-SCR(2022)01
<ul style="list-style-type: none"> <li>• <b>Dr Veronika BÍLKOVÁ (Czech Republic), Member of the Venice Commission</b></li> <li>• <b>Ms Ana GOMEZ, Head of the Public International Law Division and Treaty Office</b></li> <li>• <b>Ms Rachael KONDAK and Mr Hasan BAKIRCI, Registry of the European Court of Human Rights</b></li> </ul>	
<b>4. Organisation of future work</b>	<a href="#">CDDH-SCR(2022)02</a>
<b>5. Examination and possible adoption of a draft questionnaire to be addressed to the member States</b>	<a href="#">CDDH-SCR(2022)03</a>
<b>6. Other business</b>	
<b>7. Approval of the meeting report</b>	CDDH-SCR(2022)R1

**Reference documents**

- [Guide on Article 15 of the European Convention on Human Rights – Derogation in time of emergency](#), report prepared by the Registry of the European Court of Human Rights (30 April 2021)
- [Derogation in time of emergency](#) – European Court of Human Rights, Press-Unit, Factsheet, January 2022
- [Informal Chronology of derogations](#) under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms by country between 1 January 2000 and 6 March 2022, prepared by the Directorate For Legal Advice and Public International Law
- [COVID-19 – Derogations under Article 15 of the European Convention on Human Rights](#)
- [ECHR – Article 15 – Registration and notification by Treaty Office](#)
- [Resolution CM/Res\(2021\)3](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods (adopted by the Committee of Ministers on 12 May 2021 at the 1404<sup>th</sup> meeting of the Ministers' Deputies)

## Appendix III

### **Revised questionnaire to member states**

#### **Introduction**

1. The Committee of Ministers of the Council of Europe has asked the Steering Committee on Human Rights (CDDH) to prepare a report on member States' practice in relation to derogations from the European Convention on Human Rights in situations of crisis. This report should be completed by the end of 2022 and will be followed by further work on a Toolkit for human rights impact assessment of the measures taken by States in situations of crisis, then by a non-binding legal instrument on the effective protection of human rights in situations of crisis, based notably on lessons learned from the Covid-19 pandemic. It should be noted that whilst these activities were motivated by the Covid-19 pandemic, the work relates to situations of crisis in general, not only the pandemic or other public health crisis.
2. This work will be prepared by the Drafting Group on human rights in situations of crisis (CDDH-SCR). At its first meeting (8 – 10 March 2022), the CDDH-SCR decided to send a questionnaire to the member States in order to gather information to be used initially in the report on derogations, and subsequently in its other activities.
3. Member States are invited to send their replies to this questionnaire to the Secretariat of the CDDH-SCR by 30 June 2022. Information received will form the basis of a draft report to be examined by the CDDH-SCR at its second meeting (11 – 13 October 2022, dates to be confirmed).

#### **Questions to member States**

##### **Question 1**

- A. In case there is a specific procedure to be followed in your country when considering whether or not to derogate from obligations under the European Convention on Human Rights or other international human rights treaties:
  - i. Please describe it, including its legal basis, the issues examined, the actors involved, and the different stages.
  - ii. Does the procedure involve a human rights impact assessment of the domestic measures in relation to which a derogation is being considered? If so, please describe how this assessment is done.
  - iii. Is a declaration of a 'state of emergency' or some other form of exceptional legal regime under domestic law a necessary precondition for derogating? Does the declaration of some form of 'state of emergency' establish a requirement to derogate?
  - iv. If a derogation is considered necessary, how and by whom is the final decision to derogate taken?

- v. How and by whom is the decision taken on whether or not to renew/extend or to withdraw a derogation?
- vi. Is consideration being given to reviewing the procedure, in the light of recent experience?

OR

- B. In case there is not a specific procedure to be followed in your country: have your authorities ever seriously considered whether or not to derogate from obligations under the European Convention on Human Rights or other international human rights treaties?
- i. Please describe the ad hoc procedure that was followed when considering this question, including any legal basis, the issues examined, the actors involved, and the different stages.
  - ii. Did this ad hoc procedure involve a human rights impact assessment of the emergency measures in relation to which a derogation was being considered? If so, please describe how this assessment was done.
  - iii. Was the declaration of a 'state of emergency' or some other form of exceptional legal regime understood to establish a requirement to derogate?
  - iv. Was consideration given to the need to derogate even in the absence of a declaration of some form of state of emergency?
  - v. If a derogation was considered necessary, how and by whom was the final decision to derogate taken?
  - vi. How and by whom was any decision taken on whether or not to renew/ extend or to withdraw that derogation?
  - vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?

## Question 2

Have your authorities ever actually derogated from obligations under the European Convention on Human Rights or other international human rights treaties? If so, please:

- i. Briefly describe the nature of the crisis which gave rise to the need to derogate.
- ii. Briefly indicate the reasons why it was decided that a derogation was necessary, including by specifying any particular measure taken that made a derogation seem to be necessary.
- iii. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.
- iv. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.
- v. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.

- vi. If a derogation was made in relation to the European Convention on Human Rights but not the International Covenant on Civil and Political Rights or vice versa, was there any particular reason for distinguishing between the two?

**Question 3**

Has there ever been an occasion when your authorities considered derogating from the European Convention on Human Rights or other international human rights treaties but did not derogate? If so, please provide information on relevant situations, including the reasons for this outcome, and specifying any particular measure taken that had given rise to these considerations.

**Question 4**

If your authorities have experience of conducting human rights impact assessments other than when considering whether to derogate, please provide any relevant information on this process, including details of the procedure, the actors involved, and the standards to which reference is made.

Appendix IV

**Preliminary structure of the draft CDDH report  
on member States' practice in relation to derogations from the European Convention  
on Human Rights (ECHR) in situations of crisis**

1. Introduction
  - a. The CDDH-SCR's terms of reference
  - b. The scope and purpose of the report
  
2. Derogations under Article 15 ECHR
  - a. The content of Article 15
  - b. Non-derogable rights
  - c. The Court's case-law on Article 15
  - d. Venice Commission recommendations concerning derogations
  - e. A step-by-step approach to derogation
  
3. National procedures for deciding whether to derogate from the ECHR
  - a. Member States with an established procedure
  - b. Member States that have used an ad hoc procedure
  
4. Derogations in practice
  - a. Situations that have given rise to derogations in the past
  - b. The duration of derogations
  - c. Derogations with limited territorial scope
  - d. The rights affected by derogations
  - e. The content of the notification to the Secretary General of the Council of Europe
  - f. Situations in which derogation was considered but did not take place
  
5. Derogation from other international human rights treaties
  
6. Conclusions

Appendix 1 - Questionnaire to member States