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STEERING COMMITTEE FOR HUMAN RIGHTS

COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME
(CDDH)

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DRAFTING GROUP ON HUMAN RIGHTS IN SITUATIONS OF CRISIS

GROUPE DE RÉDACTION SUR LES DROITS DE L'HOMME EN SITUATIONS DE CRISE

(CDDH-SCR)

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COMPILATION OF THE REPLIES RECEIVED FROM MEMBER STATES[1] TO THE QUESTIONNAIRE ON THEIR PRACTICE IN RELATION TO DEROGATION FROM THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN SITUATIONS OF CRISIS

COMPILATION DES REPONSES REÇUES DES ÉTATS MEMBRES[2] AU QUESTIONNAIRE SUR LEURS PRATIQUES EN MATIÈRE DE DÉROGATION Á LA CONVENTION EUROPÉENNE DES DROITS DE L'HOMME EN SITUATIONS DE CRISE

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[1] Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Italy, Latvia, Lithuania, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Slovak Republic, Spain, Switzerland, Türkiye, United Kingdom.

[2] Andorre, Arménie, Autriche, Azerbaïdjan, Belgique, Bosnie-Herzégovine, Croatie, Chypre, République tchèque, Danemark, Estonie, Finlande, France, Grèce, Italie, Lettonie, Lituanie, Monténégro, Pays-Bas, Macédoine du Nord, Norvège, Pologne, Portugal, République slovaque, Espagne, Suisse, Türkiye, Royaume-Uni.

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?

A. S'il existe une procédure spécifique établie dans votre pays lorsqu'il s'agit d'envisager de déroger ou non aux obligations découlant de la Convention européenne des droits de l'homme ou d'autres traités internationaux relatifs aux droits humains :

i. veuillez la décrire, y compris sa base juridique, les questions examinées, les acteurs impliqués et les différentes étapes.

ii. La procédure implique-t-elle une évaluation de l'impact sur les droits humains des mesures nationales pour lesquelles une dérogation est envisagée ? Si tel est le cas, veuillez décrire comment cette évaluation est effectuée.

iii. La déclaration d'un « état d'urgence » ou d'une autre forme de régime juridique exceptionnel au titre du droit interne est-elle une condition préalable nécessaire à la dérogation ? La déclaration d'une forme quelconque d'« état d'urgence » entraîne-t-elle une obligation de dérogation ?

iv. Si une dérogation est jugée nécessaire, comment et par qui la décision finale de dérogation est-elle prise ?

v. Comment et par qui est prise la décision de renouveler/prolonger ou non, ou de retirer, cette dérogation ?

vi. Est-il envisagé de réexaminer la procédure, à la lumière de l'expérience récente ?

ANDORRA / *ANDORRE* - *(Appendix / Annexe pg 93)*

i. <u>Veuillez la décrire, y compris sa base juridique, les questions examinées, les acteurs impliqués et les différentes étapes</u>.

La Constitution de la Principauté d'Andorre du 14 mars 1993, prévoit au sein de son Titre II et, plus concrètement, dans son <u>Chapitre VII relatif aux garanties des droits et des libertés</u> la possibilité de légiférer, via une loi organique, l'état d'alerte ou d'urgence.

Cette disposition est prévue spécifiquement à <u>l'article 42 de la Constitution</u> (voir traduction de l'article 42 jointe dans le document annexe) qui établit la possibilité de limiter ou de suspendre temporairement l'exercice de certains droits fondamentaux uniquement au moyen de la déclaration des états d'alerte et d'urgence. Cet article détermine :

- les circonstances de fait qui rendent possible l'un ou l'autre état, et
- les droits qui peuvent être limités ou suspendus en cas de déclaration de l'un des deux états.

Jusqu'en 2020, la Principauté d'Andorre n'a pas fait usage de cette possibilité accordée par sa Constitution. Malheureusement, du fait des risques liés à l'expansion de la pandémie causée par le SARS-CoV-2, le 23 mars 2020, le Parlement andorran a approuvé la loi organique 4/2020 des états d'alarme et d'urgence afin de doter l'état andorran d'un instrument légal lui permettant d'agir en cas de propagation incontrôlée du virus, en vue d'éviter la saturation des services médicaux et de sauvegarder les intérêts vitaux de l'état ainsi que la santé de sa population.

L'état d'alerte et d'urgence n'étant pas synonymes, ils ont vocation à répondre à des situations différentes et sont, en conséquence, soumis à des conditions distinctes. Ce texte se compose de trois chapitres, le premier est consacré à l'état d'alerte, le deuxième chapitre est quant à lui, spécifique à l'état d'urgence et le troisième chapitre expose les règles communes aux deux cas. Malgré que, conformément à la Constitution, les droits fondamentaux soumis à limitation ou suspension ne sont pas les mêmes lors de la proclamation de l'état d'alerte et lors de la proclamation de l'état d'urgence, la loi a prévu la possibilité que les deux déclarations puissent coexister simultanément, à condition que les conditions constitutionnelles inhérentes à chaque état soient remplies.

La déclaration de l'état d'alerte (article 1) a pour finalité de permettre au Gouvernement de répondre aux situations d'une gravité particulière causées par des « *tremblements de terre, inondations, crues ou pluies torrentielles, glissements de terrain, avalanches, incendies urbains ou de forêt, accidents d'ampleur, épidémies, pandémies ou crises sanitaires, et autres catastrophes naturelles* ».

La déclaration de l'état d'alerte permet au Gouvernement de restreindre temporairement :

- La liberté de circulation sur le territoire national,
- Le droit à la libre entrée et sortie de la Principauté et le droit à la propriété privée,
- Pratiquer des réquisitions temporaires de marchandises,
- Limiter ou rationner la consommation d'articles ou de services de première nécessité,
- Intervenir et occuper temporairement des industries, usines, ateliers, fermes, entreprises ou locaux de toute nature, à l'exception des habitations privées.

La déclaration doit ainsi être formulée par le Gouvernement, via décret, pour un délai maximum de quinze jours. Toute prolongation de ce délai ou modification des mesures initialement prévues doit compter avec l'autorisation expresse du Conseil général (parlement andorran).

La proclamation de l'état d'urgence (article 7) vise également à permettre au Gouvernement de répondre à des situations d'une gravité particulière ayant pour effet une interruption du fonctionnement normal de la coexistence démocratique.

Au sens de l'article 7, il est considéré que « *le fonctionnement normal de la coexistence démocratique est interrompu par les situations dans lesquelles le libre exercice des droits et libertés des citoyens, le fonctionnement des services publics essentiels à la collectivité, le fonctionnement des institutions démocratique, la fourniture des produits de première nécessité ou tout autre aspect de l'ordre public sont si gravement altérés que l'exercice des pouvoirs ordinaires de l'Administration ne suffit pas à le rétablir et à le maintenir* ».
Dans ce cas précis, les moyens d'y faire face peuvent être la suspension :

- Des libertés d'expression, de communication et d'information,
- De l'inviolabilité du domicile et le secret des communications,
- Des droits de réunion et de manifestation,
- Des droits des employeurs et des travailleurs à défendre leurs intérêts économiques et sociaux,

- Du droit à la libre circulation sur le territoire national et du droit à la libre entrée et sortie de la Principauté,
- Du doit relatif à la durée maximale d'une garde à vue.

Il convient de souligner que pour les deux états, les mesures prises par le Gouvernement doivent être les stricts nécessaires pour pallier aux effets de la catastrophe, assurer le rétablissement de la normalité et de l'ordre public. Elles doivent être proportionnées à la gravité des circonstances (article 5.2 et 9.2).

ii. La procédure implique-t-elle une évaluation de l'impact sur les droits humains des mesures nationales pour lesquelles une dérogation est envisagée ? Si tel est le cas, veuillez décrire comment cette évaluation est effectuée.

Mis à part la situation exceptionnelle induite par le virus SARS-CoV-2, jusqu'à ce jour la Principauté d'Andorre n'a pas été confrontée à des situations demandant la nécessité d'envisager de déroger à des obligations découlant de la Convention européenne des droits de l'homme ou d'autres traités internationaux relatifs aux droits humains.

Les procédures prévues par la loi 4/2020 ne précisent pas formellement de méthode d'évaluation de l'impact potentiel sur les droits humains des mesures nationales. Il s'agit d'une loi récente qui a été approuvée en urgence et à mode préventif afin de disposer des moyens d'action nécessaires pour contenir une éventuelle expansion incontrôlée du SARS-CoV-2 en Andorre. L'effet recherché était donc de se préparer à répondre à une urgence sanitaire. Malgré ce fait, la loi 4/2020, dans ses articles 4 et 9 relatifs aux modifications, prolongations et fin des états d'alarme et d'urgence, prévoit explicitement l'obligation de compter avec l'approbation préalable du parlement. Le pouvoir législatif exerce, de fait, un contrôle sur les mesures prises par le Gouvernement, leur évolution et leur impact.

Il convient aussi de mentionner le fait que, en vertu du Règlement du *Consell General* (parlement andorran), tout projet ou proposition de loi qui est présenté devant le parlement pour son approbation doit être accompagné d'un « mémoire justificatif et économique » permettant de justifier les mesures proposées dans ses articles.

iii. La déclaration d'un « état d'urgence » ou d'une autre forme de régime juridique exceptionnel au titre du droit interne est-elle une condition préalable nécessaire à la dérogation ? La déclaration d'une forme quelconque d'« état d'urgence» entraîne-t-elle une obligation de dérogation ?

En effet, à ce jour, la seule possibilité d'envisager formellement une limitation éventuelle à des droits fondamentaux reconnus par la Constitution andorrane et par la Convention européenne des droits de l'homme ou par d'autres traités internationaux relatifs aux droits humains est celle de déclarer l'état d'alarme et/ou d'urgence prévu par la Constitution et par la loi 4/2020. Aucun autre texte de l'ordonnancement juridique andorran ne cite explicitement la possibilité de déroger ou de limiter des droits considérés comme fondamentaux.

Le libellé de la loi 4/2020 permettant au Gouvernement de déclarer l'état d'alarme ou d'urgence est rédigé de façon à encadrer l'action du Gouvernement afin de ne prendre que les mesures nécessaires pour pallier aux effets d'une catastrophe naturelle, d'un trouble à l'ordre public, d'une épidémie ou d'une rupture de la normalité démocratique. Ces mesures doivent être guidées à tout moment par un souci de proportionnalité en tenant compte de la gravité des circonstances (article 5.2 et 10.2 de la loi 4/2020). Cette loi donne donc la possibilité d'agir au Gouvernement en énumérant les droits et libertés qui peuvent l'objet de mesures mais ne contraint pas ce dernier à les adopter toutes à la fois. On ne peut donc pas parler en ces termes d'obligation de déroger.

Au-delà de la loi 4/2020, il parait raisonnable de citer la loi organique 30/2018, du 6 décembre 2018 de sureté publique et la loi générale de santé du 20 mars 1989. Ces deux textes visent à doter le Gouvernement de moyens d'action dans leur champ d'application respectifs :

- L'article 4.3 de la loi 30/2018 prévoit que pour des motifs de santé publique, le Gouvernement peut restreindre « *le nombre de personnes pouvant se réunir physiquement dans les espaces et locaux publics et privés, à condition que cela soit nécessaire à cette fin, de manière proportionnée et pour une durée n'excédant pas un mois* ». Toute prolongation doit compter avec l'autorisation du parlement.
- L'article 59 de la loi générale de santé permet au Gouvernement de prendre les mesures préventives « *appropriées, qui doivent toujours être toujours proportionnées aux objectifs poursuivis, les mesures restrictives relatives à la libre circulation des personnes et des biens et de la liberté d'entreprise, seront, dans chaque cas, les strictes nécessaires* ».

Bien qu'aucune de ces deux lois ne fasse de référence explicite à la possibilité de limiter ou suspendre des droits ou des libertés fondamentales, elles permettent d'adopter des mesures, exclusivement liées à des questions de santé publique, qui indirectement peuvent avoir des effets sur certains droits fondamentaux. Il faut toutefois garder à l'esprit que les deux textes sont antérieurs à la loi 4/2020 et n'ont pas la même vocation.

iv. <u>Si une dérogation est jugée nécessaire, comment et par qui la décision finale de dérogation est-elle prise</u> ?

En vertu de l'article 20 de la loi 4/2020, la compétence en matière de déclaration de l'état d'alarme et d'urgence revient au Chef du Gouvernement (cap de Govern). Il existe toutefois une possibilité de délégation, partielle ou totale, sur l'un ou divers ministres qui composent le Gouvernement.

L'état d'alarme et d'urgence ne peuvent être déclarés que par un décret du Gouvernement. Dans le cas précis de l'état d'urgence, le Gouvernement devra compter avec l'approbation préalable du *Consell General* (article 8 loi 4/2020). Afin d'obtenir cette autorisation il devra soumettre au parlement toute l'information relative aux circonstances qui rendent nécessaire la déclaration de l'état d'urgence, le champ d'application territorial et une énumération exhaustive des mesures qu'il envisage de prendre (article 8).

Toute décision de limiter ou de suspendre d'autres droits non initialement prévus ou toute modification des mesures initiales doit aussi compter avec l'autorisation préalable du parlement.

v. <u>Comment et par qui est prise la décision de renouveler/prolonger ou non, ou de retirer, cette dérogation</u> ?

L'initiative de renouveler, modifier ou prolonger ou retirer une limitation ou suspension des droits et libertés fondamentales revient au Gouvernement. Cependant, il ne peut agir qu'avec l'autorisation préalable du parlement. En tout état de cause, le Gouvernement est obligé de motiver en droit et en fait les circonstances qui justifient toute demande de renouvellement ou de prolongation et d'exposer les mesures qu'il envisage de prendre afin d'obtenir l'aval du législateur.

La décision de prolongation, modification ou retrait, une fois l'approbation parlementaire obtenue, est prise par décret du Gouvernement.

vi. <u>Est-il envisagé de réexaminer la procédure, à la lumière de l'expérience récente</u> ?

Dans les faits, la Principauté d'Andorre n'a pas fait usage des prérogatives que lui accorde la loi 4/2020 et a pu gérer la pandémie de SARS-CoV-2 sans avoir à déclarer l'un des deux états lui permettant de déroger à des droits fondamentaux.

Cependant, toute initiative visant à modifier la procédure prévue par la loi organique 4/2020, ne pourrait aboutir que par un amendement de la loi organique et selon les dispositions de droit interne prévues à cet effet.

ARMENIA / *ARMÉNIE*

RA Constitution

Article 76: Restrictions on fundamental rights and freedoms during a state of emergency or martial law

The fundamental human and civil rights and freedoms in the event of a state of emergency or martial law may be temporarily suspended or further restricted in accordance with the law only to the extent required by the situation within the framework of international obligations to deviate from obligations during a state of emergency or martial law. Fundamental rights envisaged by articles 23-26; 28-30; 35-37; article 38(1); article 41(1); the first sentence in article 47(5), article 47(8); article 52; article 55(2); article 56; article 61, articles 63-72 shall not be suspended or further restricted.

Article 119: Martial law

1. In case of an armed attack on the Republic of Armenia, the imminent danger thereof or a declaration of war, the Government shall declare martial law, address the people and may announce a general or partial mobilization.
2. In case of declaration of martial law, a special session of the National Assembly shall be convened immediately by force of law.
3. The National Assembly may, by a majority vote of the total number of its members, abolish martial law or cancel the implementation of measures envisaged by the legal regime thereof.
4. The legal regime of martial law is defined by law, which is adopted by a majority vote of the total number of member of the National Assembly.

Article 120: State of emergency

1. In case of imminent threat to the constitutional order, the Government declares a state of emergency, takes measures arising from the situation, and addresses the people.
2. In case of declaration of a state of emergency, a special session of the National Assembly shall be convened immediately by force of law.
3. The National Assembly may, by a majority vote of the total number of its members, abolish the state of emergency or cancel the implementation of measures envisaged by the legal regime thereof.
4. The legal regime of a state of emergency is defined by law, which is adopted by a majority vote of the total number of members of the National Assembly.

A number of basic rights and freedoms provided for by the Constitution of the Republic of Armenia may be restricted only by law, for the purpose of state security, economic welfare of the country, preventing or disclosing crimes, protecting public order, health and morals or the basic rights and freedoms of others. For example the right to inviolability of Private and Family Life, Honour and Good Reputation (Article 31(2) of the Constitution of the RA)

Restrictions on basic rights and freedoms may not exceed the restrictions prescribed by international treaties of the Republic of Armenia. (Article 81(2) of the Constitution of the RA).

i. 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.

N/A

ii. 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?

Based on the constitutional provisions mentioned above, it can be concluded that yes, in order to suspend or restrict fundamental rights, a declaration of martial law or state of emergency must proceed.

iii. If a derogation is considered necessary, how and by whom is the final decision to derogate taken?

Article 9(1) of the RA Law on the legal regime of a state of emergency: Measures and means to ensure the legal regime of the state of emergency
In order to ensure the legal regime of a state of emergency, the efforts and means of state authorized institutions of police, national security and defence may be used. By the decision of the Government of the Republic of Armenia on declaring a state of emergency, or in the cases envisaged by said decision, by the decision of an appointed guardian, other institutions of the public administration system, organizations established by the Republic of Armenia or with the participation of more than 50% by the Republic of Armenia as well as local government authorities may be involved in the implementation of measures envisaged by the legal regime of the state of emergency.

Article 9(1) of the RA Law on the legal regime of martial law: Authorities ensuring the legal regime of martial law
The forces and means of the Republic of Armenia's defence, national security, police, justice, health, civil defence, emergency and other state authorized institutions shall be used to ensure the legal regime of martial law.

iv. How and by whom is the decision taken on whether or not to renew/extend or to withdraw a derogation?

A derogation can be withdrawn or renewed/extended by the decision of the Government of the Republic of Armenia regardless the fact that the state of emergency and martial law can be abolished by the National Assembly.

v. Is consideration being given to reviewing the procedure, in the light of recent experience?

No such consideration.

AZERBAIJAN / *AZERBAÏDJAN - (Appendix / Annexe pg 94)*

There is not a specific procedure to be followed in the Republic of Azerbaijan when considering whether or not to derogate from obligations under the European Convention on Human Rights.
Nevertheless, there was a case of derogation from certain obligations under the European Convention on Human Rights due to declaration of martial law in the country in accordance with relevant legislation of the Republic of Azerbaijan.

On 27 September 2020 after having resorted to series of political and military provocations and undermining any perspective for a peaceful settlement of the then Armenia-Azerbaijan conflict, Armenia attacked the positions of the Armed Forces of Azerbaijan along the frontline, as well as the residential areas of Azerbaijan by using large-caliber weapons, mortar launchers and artillery.

As a result, there have been casualties among the military servicemen and civilians of Azerbaijan. Extensive damage has been inflicted on many houses and other civilian infrastructure.

The act of aggression by Armenia against Azerbaijan was the continuation of the previous provocations of Armenia, including the attempt to an armed attack in the direction of Tovuz region of Azerbaijan on 12-16 July 2020, the provocation in the direction of Goranboy region, illegal settlement policy in the occupied territories of Azerbaijan, as well as the provocative statements and activities of Armenian leadership.

In order to repel the military aggression by Armenia and ensure the security of civilians and densely populated residential areas, the Armed Forces of Azerbaijan launched a counter--offensive operation which lasted 44 days. The operation was conducted solely within the internationally recognized borders of Azerbaijan in strict compliance with international law, including humanitarian law.

The act of aggression of Armenia during the 44-day war was accompanied by serious war crimes, crimes against humanity and state terror, such as deliberate targeting of civilians, civilian infrastructure, including schools, kindergartens and medical facilities in densely populated residential areas located far from the conflict zone. Large cities of Azerbaijan, such as Ganja and Barda were targeted with ballistic missiles and cluster munitions, in some instances even from the territory of Armenia. As a result of direct and indiscriminate attacks on residential areas, 101 Azerbaijani civilians, including 12 children were killed, 423 civilians were wounded.

Taking into consideration the situation, pursuant to Article 109, paragraph 29 and Article 111 of the Constitution of the Republic of Azerbaijan, starting from 00:00 on 28 September 2020 martial law throughout the country was declared by the Decree of the President of the Republic of Azerbaijan No. 1166 dated 27 September 2020, which was subsequently approved by the Decision of the Parliament of the Republic of Azerbaijan N0.165-VIQR dated 27 September 2020 (see Annex 3).

During the martial law, curfew was introduced from 21:00 until 06:00 in Baku, Ganja, Sumgayit, Yevlakh, Mingachevir, Naftalan cities, Absheron, Jabrayil, Fuzuli, Aghjabadi, Beylagan, Aghdam, Barda, Terter, Goranboy, Goygol, Dashkasan, Gadabay, Tovuz, Shamkir, Gazakh and Aghstafa districts of the Republic of Azerbaijan.

Taking the situation into consideration, on 28 September 2020 the Government of the Republic of Azerbaijan exercised the right of derogation from its obligations under Articles 5, 6, 8, 10 and 11 of the European Convention on Human Rights, Articles 1 and 2 of the Protocol No.1 to the Convention, and Article 2 of the Protocol No.4 to the Convention. The Azerbaijani side notified, in accordance with Article 15, paragraph 3 of the Convention the Secretary General of the Council of Europe about the derogation (see Annex 1).

The military activities ended on 10 November 2020 with the signing of a Trilateral Statement by the leaders of Azerbaijan, Armenia and Russia. The Statement announced the end of all military activities between Armenia and Azerbaijan and envisaged the withdrawal of Armenia from remaining occupied territories of Azerbaijan.

The martial law throughout the country was lifted starting from 00:00 on 12 December 2020 by the Decree of the President of the Republic of Azerbaijan No. 1201 dated 7 December 2020, which was subsequently approved by the Decision of the Parliament No. 210 dated 11 December 2020.

On 15 December 2020, the Republic of Azerbaijan, by notifying the Secretary General of the Council of Europe in accordance with Article 15, paragraph 3 of the European Convention on Human Rights, declared that the situation which necessitated the derogation ceased to exist and Articles 5, 6, 8, 10 and 11 of the Convention, Article 1 and 2 of the Protocol No. 1 to the Convention, and Article 2 of the Protocol No.4 to the Convention are again being fully executed (see Annex 1).

It should also be noted that on 28 September 2020, for the same reasons stated above, the Government of the Republic of Azerbaijan exercised the right of derogation from its obligations under Articles 9, 12, 14, 17, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) pursuant to Article 4 (1) of the ICCPR (see Annex 2).

On 15 December 2020, the Republic of Azerbaijan, by notifying the Secretary General of the United Nations in accordance with Article 4(3) of the ICCPR, declared that the situation which necessitated the derogation ceased to exist and Articles 9, 12, 14, 17, 19, 21 and 22 of the ICCPR are again being fully executed (see Annex 2).

BOSNIA AND HERZEGOVINA / *BOSNIE-HERZÉGOVINE*

No

CROATIA / *CROATIE*

Article 17 of the Constitution of the Republic of Croatia prescribes that individual constitutionally-guaranteed freedoms and rights may be curtailed during a state of war or any present danger to the independence and unity of the Republic of Croatia or in the event of any natural disaster**.**

But, **the extent of such restrictions must be adequate** to the nature of the threat, and may not result in the inequality of citizens with respect to race, colour, gender, language, religion, national or social origin. Even in cases of present danger to the existence of the state, no restrictions may be imposed upon the provisions of the Constitution stipulating the right to life, prohibition of torture, cruel or unusual treatment or punishment, and concerning the legal definitions of criminal offences and punishment, and the freedom of thought, conscience and religion.
The **competent authority** in the Republic of Croatia for proclaiming the above restriction is the Parliament of the Republic of Croatia which makes the decision by a two-thirds majority of votes of all of its members. If they cannot convene, the decision is made by the President of the Republic of Croatia, at the proposal of the Government and co-signed by the Prime Minister.

Also, in accordance with **Article 101 of the Constitution**, during a state of war, the President of the Republic may issue regulations with the force of law on the basis and within the limits of the powers conferred thereto by the Croatian Parliament. In the event of a present danger to the independence and integrity of the state, the President of the Republic may, at the proposal of and co-signed by the Prime Minister, issue regulations with the force of law.

As a Party to the European Convention on Human Rights, the Republic of Croatia has never made use of the right ensuing from **Article 15 of the European Convention on Human Rights** which prescribes the possibility that in time of a public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention. To the contrary, if the Republic of Croatia had ever made such a decision, it would have notified the derogation (from human rights) to the Council of Europe via diplomatic note and would have submitted a list of articles to which the derogation refers.

CYPRUS / *CHYPRE*

There is no specific procedure to be followed in the Republic of Cyprus in order to consider whether or not to derogate from obligations under the European Convention on Human Rights or other international human rights treaties.

FINLAND / *FINLANDE*

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.

If the situation cannot be managed with the regular powers of public authorities, the Government is entitled to exercise powers under the Emergency Powers Act (1552/2011). The purpose of the Act is to protect the population, to secure its livelihood and the national economy, to maintain legal order and fundamental and human rights, and to safeguard the territorial integrity and independence of the State in emergency conditions.

In Finland, the Government must submit to Parliament decrees concerning the use of powers under the Emergency Powers Act. These decrees specify the provisions of the Emergency Powers Act that will become applicable. Parliament decides whether the decrees concerning the use of powers under the Emergency Powers Act may remain in force or whether they should be repealed.

The Government and the competent authorities implement the decisions and recommendations in accordance with the Emergency Powers Act and other legislation. The competent authorities issue further instructions falling under their competence.

The Emergency Powers Act may justify derogations from human rights treaties binding on Finland, especially the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

However, of the five emergency condition situations defined in section 3 of the Emergency Powers Act, derogation from human rights obligations is limited to the most serious military crises threatening the existence of the state: (1) an armed or equally serious attack against Finland and its immediate aftermath; or (2) a considerable threat of an armed or an equally serious attack against Finland such that preventing its effects requires the immediate use of emergency powers provided by the Act.

In respect of the other emergency conditions defined in section 3, public authorities must act within the flexibility margin allowed by the human rights treaties, *i.e.* the so-called acceptable restrictions, temporarily and in accordance with the proportionality principle. This was the case for the COVID-19 infectious disease pandemic, too.

According to section 5 of the Emergency Powers Act, when applying this Act, the international obligations binding on Finland and the generally recognised rules of international law shall be complied with.

The States parties to the International Covenant on Civil and Political Rights shall be informed of the initiation of the application of part II of the Emergency Powers Act in the emergency conditions referred to in section 3, paragraphs 1 and 2, and of the termination of

the application, through the intermediary of the Secretary-General of the United Nations, as provided in article 4, paragraph 3 of the Covenant. The Secretary General of the Council of Europe shall be kept informed of the initiation of the application of part II of the Act in the emergency conditions referred to in section 3, paragraphs 1 and 2, and of the termination of the application, as provided in Article 15, paragraph 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

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.

Yes - The use of the powers under the Emergency Powers Act is based on strong and transparent parliamentary control in Finland. The Constitutional Law Committee of Parliament has stressed compliance with human rights obligations in the application of the Emergency Powers Act. Thus, Parliament requires the Government to carry out a human rights impact assessment.

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?

Yes - The Government, jointly with the President of the Republic, must declare emergency conditions referred to in section 3 of the Emergency Powers Act (1552/2011).

iv. If a derogation is considered necessary, how and by whom is the final decision to derogate taken?

The decision to issue derogations is made at a plenary session of the Government (section 3, paragraph 22 of the Government Rules of Procedure).

The Ministry for Foreign Affairs submits a memorandum to the plenary session of the Government, which specifies the provisions of the Covenant and the European Convention on Human Rights proposed to be derogated from and indicate the provisions and measures taken under them that give rise to the derogations. The memorandum must provide reasoning for the necessity and proportionality of the proposed derogations. Drafts of the notifications to be submitted must be appended to the memorandum.

An announcement of the Ministry for Foreign Affairs concerning the derogation from the provisions of the Covenant and the European Convention on Human Rights and the cessation of the derogation will be published in the Treaty Series of the Statute Book of Finland. The national contact point for providing additional information is the Legal Service of the Ministry for Foreign Affairs.

v. How and by whom is the decision taken on whether or not to renew/extend or to withdraw a derogation?

Decisions on derogations, including decisions on the withdrawal of derogations, are made at a plenary session of the Government (section 3, paragraph 22 of the Government Rules of Procedure).

vi. Is consideration being given to reviewing the procedure, in the light of recent experience?

The Government has launched a comprehensive reform of the Emergency Powers Act in February 2022. The aim of the reform is to bring the Emergency Powers Act in line with the current view of the comprehensive security of society and the factors threatening it as well as the identification of various threats and disruptions with serious effects.

The objective is to create a consistent, up-to-date set of regulations that are in harmony with the Constitution of Finland and that provide the prerequisites for making correctly timed decisions to manage different emergencies and includes appropriate and sufficient powers to implement these decisions.

ITALY / *Italie* *(Voir les réponses de la Présidence du Conseil des Ministres et du Ministère de la Justice dans la rubrique Annexe pages 112 et 115)*

Sur ce point, en réponse aux questions 1 et 2, il est indiqué qu'en général, il n'existe pas dans l'ordre juridique italien une procédure ad hoc, différente et complémentaire de celle prévue à l'article 15 de la Convention, à suivre pour déroger aux obligations conventionnelles et que l'Italie, en ce qui concerne spécifiquement l'urgence de la pandémie de Covid-19, n'a pas évalué l'opportunité d'activer une telle procédure, bien qu'elle ait formellement déclaré l'état d'urgence.

En effet, si la crise sanitaire a imposé l'adoption de mesures exceptionnelles pour contrer la propagation du virus et protéger la santé et la vie des personnes, la priorité de l'État a été de concilier ces interventions d'urgence avec la protection des droits fondamentaux, dans le respect de la Convention et de la Charte constitutionnelle, tout en garantissant également le principe de légalité formelle, la proportionnalité, la prévision de délais prédéterminés et le contrôle de l'activité gouvernementale.

Le 30 janvier 2020, l'Organisation mondiale de la santé (OMS) a déclaré que l'épidémie de coronavirus en Chine constituait une urgence de santé publique de portée internationale. Le lendemain, le Gouvernement italien a proclamé l'état d'urgence et mis en œuvre les premières mesures pour contenir la contagion dans tout le pays. Le 17 mars 2022, le Conseil des Ministres a approuvé un décret-loi qui introduit des dispositions urgentes pour surmonter les mesures de lutte contre la propagation de l'épidémie, en conséquence de la fin de l'état d'urgence le 31 mars 2022.

LATVIA / *LETTONIE*

B. 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.

Article 4 of the *Law on Emergency Situation and State of Exception* defines 'emergency situation' and establishes the procedure for declaring such a situation. Namely,

'(1) Emergency situation is a special legal regime, during which the Cabinet has the right to restrict the rights and freedoms of State administration and local government authorities, natural persons and legal persons, as well as to impose additional duties to them.

(2) Emergency situation may be declared in case of such threat to national security, which is related to a disaster, danger thereof or threat to the critical infrastructure, if safety of the State, society, environment, economic activity or health and life of human beings is significantly endangered.'

Article 5 of the same *Law* states that

> '(1) Emergency situation shall be declared by the Cabinet for a definite time period, but no more than three months.
>
> (2) The Cabinet shall revoke a decision to declare emergency situation (hereinafter - decision on emergency situation) prior to the determined term, if threat to national security has been prevented or overcome. The Cabinet shall notify the decision on emergency situation to the Presidium of the Saeima.
>
> (3) Depending on the type, intensity and nature of the threat to national security, as well as upon changes in the size of the endangered territory, the Cabinet shall make relevant amendments to the decision on emergency situation. The Cabinet has the right, if necessary, to extend the emergency situation for a time period not exceeding three months.'

Whereas, Article 8 of this *Law*, *inter alia*, states that

> (1) In declaring emergency situation, the Cabinet has the right to stipulate:
>
> > [..] 10) complete or partial suspension of execution of the liabilities laid down in international agreements, if execution thereof may have a negative impact on the ability to prevent or overcome threat to national security. [..]'

Consequently, when declaring an emergency situation, the Cabinet of Ministers can indicate in the Order declaring the emergency situation that, if necessary, the Government may derogate from international treaties, including the Convention or the International Covenant on Civil and Political Rights ('ICCPR').

The decision on whether to actually derogate remains with the Ministry responsible for the execution of the obligations of a particular treaty. In case of the Convention and the ICCPR, in Latvia, it is the Ministry of Foreign Affairs. The assessment is made on the basis of the scope and nature of the measures taken by the Cabinet of Ministers in addressing the emergency, and in the light of the case law of the Court in the application of the relevant provisions of the Convention and the Human Rights Committee in the application of the relevant provisions of the ICCPR.

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.

See, response to Question 1i and Question 4. In the determination of whether the Government should derogate from the provisions of the Convention or the ICCPR, the *ex-ante* impact assessment reports and case law of the Court and the Human Rights Committee are taken into account.

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?

Article 8 of the *Law on Emergency Situation and State of Exception* provides that when declaring a state of emergency, the Cabinet of Ministers may fully or partially suspend the fulfilment of Latvia's international obligations if their continued fulfilment might have a negative impact of the possibility to eliminate or overcome the threat posed to the State. However, while the *Law on Emergency Situation and State of Exception* does not *expressis verbis* establish that derogations can be made only if a special regime is implemented, in the recent Covid-19-related Orders of the Cabinet of Ministers declaring

an emergency situation, and Article 4, paragraph 4, of the *Law on the Management of the Spread of COVID-19 Infection* such a precondition was adopted.

Therefore, in practice, a special regime (a declaration of a state of emergency/ emergency situation) is necessary for the Government to derogate from its obligations under the Convention and/or the ICCPR. *Inter alia*, this principle is taken from Article 4 of the ICCPR, which states that derogation from the provisions of the ICCPR can be made only in emergency situations/ states of emergency that have been officially declared.

Moreover, a derogation is submitted for a certain period of time, usually for the period of time during which the measures that have necessitated the derogation are in force. The measures creating restrictions are under constant review, and any change in the measure that had caused a derogation triggers review of the continued necessity of the derogation. Should the measures be eased, the derogation is immediately retracted, and the provisions of the Convention and the ICCPR continue to apply in full. Consequently, the derogations are consistently reviewed, and in case restrictions are no longer necessary, they are lifted automatically calling for the retraction of the derogations.

iv. If a derogation is considered necessary, how and by whom is the final decision to derogate taken?

The Ministry of Foreign Affairs on the basis of the measures adopted by the Cabinet of Ministers.

v. How and by whom is the decision taken on whether or not to renew/extend or to withdraw a derogation?

The Ministry of Foreign Affairs on the basis of the measures adopted by the Cabinet of Ministers.

vi. Is consideration being given to reviewing the procedure, in the light of recent experience?

The procedure has been reviewed and improved in the light of the measures to address the Covid-19 pandemic (see, response to Question 1iii).

NETHERLANDS / *PAYS-BAS*

In the Netherlands, there is not a specific procedure to be followed when considering whether or not to derogate from obligations under the ECHR or other international human rights treaties. There is, however, a specific procedure for declaring a state of emergency (articles 1 and 2 of the Coordination Act Exceptional Situations (*Coördinatiewet uitzonderingstoestanden*)) and a possibility to separately activate emergency legal provisions (so outside a state of emergency). See, for instance, article 2 of the Population Relocation Act (*Wet verplaatsing bevolking*).

However, there is no procedure specifically aimed at a derogation from the ECHR or other international human rights instruments. Generally, the assessment of interferences with human rights is incorporated in the decision-making process to apply emergency law.

NORWAY / *NORVÈGE*

There is no such specific procedure.

SPAIN / ESPAGNE

i. Please describe it, including its legal basis, the issues examined, the actors involved, and the different stages.

Law 25/2014, of 27 November, on Treaties and other international agreements regulates the denunciation and suspension of international treaties in its article 37. This precept could be applicable in a case of suspension of one or some of the obligations of the European Convention on Human Rights (or of any other international treaty that the Spanish State has concluded).

Article 37 of the Law on Treaties and Other International Agreements provides for the following:

> "1. The Council of Ministers may decide to denounce or suspend the application of an international treaty, at the proposal of the Minister of Foreign Affairs and Cooperation, in coordination with the ministry responsible for the subject matter of the treaty, in accordance with the rules of the treaty itself or the general rules of international law.
> 2. On duly justified grounds of urgency, the Minister for Foreign Affairs and Cooperation, where appropriate in coordination with the ministry competent in relation to the subject matter of the treaty, may decide to suspend the application of a treaty, and shall immediately seek the approval of the Council of Ministers.
>
> 3. Notwithstanding the provisions of the preceding paragraphs, the international treaties included in Articles 93 and 94(1) of the Spanish Constitution may only be denounced with the prior authorisation of the Parliament, in accordance with the provisions of Article 96(2) of the Spanish Constitution.
>
> 4. The Government shall immediately inform the Parliament of the denunciation or suspension of the application of an international treaty.
>
> 5. When it is agreed to suspend the application of an international treaty whose authorisation has been approved by the Parliament, the Government shall immediately request ratification of the suspension by the Parliament. If the Parliament does not approve this ratification, the Government shall revoke the agreement to suspend the application of the treaty.

The content of this provision on the suspension of international treaties is summarised below:

- **BODY AGREEING TO THE SUSPENSION:**
  - **Non-urgent suspension**: The Council of Ministers, on a proposal from the Minister of Foreign Affairs and Cooperation, in coordination with the ministry responsible for the subject matter of the treaty, in accordance with the rules of the treaty itself or the general rules of international law.
  - **Justified urgent suspension**: The Minister of Foreign Affairs and Cooperation, where appropriate, in coordination with the ministry responsible for the subject matter of the treaty. In this case, the approval of the Council of Ministers shall be sought immediately.
- **OBLIGATION TO IMMEDIATELY INFORM THE PARLIAMENT ABOUT THE SUSPENSION OF AN INTERNATIONAL TREATY BY THE GOVERNMENT.**
- **THE NEED FOR RATIFICATION OF THE DECISION OF THE EXECUTIVE POWER TO SUSPEND AN INTERNATIONAL TREATY BY PARLIAMENT IN CERTAIN CASES.**

These are cases of treaties that have required authorisation from the Parliament in order to ratify them. Compliance with this procedure would be necessary in the case of suspension of one or some of the contents of the European Convention on Human Rights, as this Convention required authorisation from the Parliament for its ratification.

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.

The provisions on the suspension of international treaties in the Spanish legal system do not foresee any procedure for assessing the impact that such suspension may have on human rights. However, in Spain, there are institutions and mechanisms that allow for the evaluation of this impact. Some of the most important of these are listed below:

- The existence of institutions for the protection of human rights which could play a key role in relation to human rights impact analysis in cases of suspension of international treaties, and in particular in the case of suspension of one or some of the contents of Article 15 of the European Convention on Human Rights. In this respect, mention should be made of the **Ombudsperson.** There are also institutions with a more limited scope of cognition that ensure the protection of specific rights (e.g. the Data Protection Agency).
- On the other hand, **Parliament** would be the venue for political discussion and debate on the human rights impact of the suspension of an international treaty.
- The **government** has also assumed particular obligations in the area of human rights. We can refer to the elaboration of National Human Rights Plans for four-year periods, which require a diagnosis of the human rights situation in order to subsequently make decisions or plan the design and implementation of policies aimed at the respect, promotion and protection of human rights.

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?

The Spanish legal system does not provide that the declaration of states of emergency constitutes a precondition for the suspension of international treaties.

iv. If a derogation is considered necessary, how and by whom is the final decision to derogate taken?

This question has been answered in detail in question A(i) and we refer to it.

v. How and by whom is the decision taken on whether or not to renew/extend or to withdraw a derogation?

- **Renewal of the suspension:**

The international treaties to be signed could contain, in their articles, a procedure for suspension by providing, for example, for its renewal from time to time.

However, in such cases, the Spanish legal system does not regulate any procedure applicable at the domestic level for notifying the renewal of a suspension previously agreed in relation to a certain content or contents of an international treaty. It could be understood that the procedure for the original suspension decision explained in the answer to question A(i) is applicable in such cases.

- **Extension of suspension:**

The Spanish legal system does not establish a specific procedure in this respect.

However, the extension of the suspension to other treaty content in respect of which a previous suspension has been notified may be considered to constitute a new suspension which, as such, requires the use of the procedure described in the answer to the question under A(i).

- **Revocation of suspension:**

The Spanish legal system does not establish a specific procedure for the revocation of the suspension. However, insofar as the revocation of the suspension of the content of human rights treaties is favourable to those treaties, it could be understood that, in order to lift it, it would only be necessary to inform the Parliament.

On the other hand, it is recalled that, according to Article 37 of the Law on Treaties and Other International Agreements, the decision of the Executive Power to suspend an international treaty requires ratification by the Parliament when the conclusion of the treaty has also previously required the authorisation of the Parliament. If the Parliament does not ratify the Executive's decision to suspend an international treaty, the Government must revoke the suspension agreement.

vi. Is consideration being given to reviewing the procedure, in the light of recent experience?

No review of the procedure for derogation from any or some of the international treaty obligations is being considered.

TÜRKIYE

i. Please describe it, including its legal basis, the issues examined, the actors involved, and the different stages.

Article 5 of the Constitution entitled "*Fundamental aims and duties of the State*" is as follows:

"*The fundamental aims and duties of the State are to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy, to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence.*"

Article 13 of the Constitution entitled "*Restriction of fundamental rights and freedoms*" is as follows:

"*Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality.*"

Article 15 of the Constitution entitled "*Suspension of the exercise of fundamental rights and freedoms*" is as follows:

"*In times of war, mobilization, a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.*

Even under the circumstances indicated in the first paragraph, the individual's right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable except where death occurs through acts in conformity with law of war; no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling"

Article 119 of the Constitution entitled "*Administration of State of Emergency*" is as follows:

"*Article 119 – (As amended on April 16, 2017; Act No. 6771*

In the event of war, the emergence of a situation necessitating war, mobilization, an uprising, strong rebellious actions against the motherland and the Republic, widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation, emergence of widespread acts of violence aimed at the destruction of the Constitutional order or of fundamental rights and freedoms, serious deterioration of public order because of acts of violence, occurrence of natural disasters, outbreak of dangerous epidemic diseases or emergence of a serious economic crisis; the President of the Republic may declare state of emergency in one region or nationwide for a period not exceeding six months.

The decision to declare state of emergency shall be published in the Official Gazette on the date of the decision and shall be submitted for approval to the Grand National Assembly of Turkey on the same day.

If the Grand National Assembly of Turkey is in recess, it shall be immediately summoned; The Assembly may reduce or extend the period of, or lift, the state of emergency.

The Grand National Assembly of Turkey may extend the period for a maximum of four months each time at the request of the President of the Republic. In the event of war, four-month limit shall not apply.

The financial, material and labour obligations to be imposed on citizens, the manner of restriction and temporary suspension of fundamental rights and freedoms in line with the principles of the Article 15, and the provisions to be applied and actions to be carried out in the event of state of emergency shall be regulated by law.

In the event of state of emergency, the President of the Republic may issue presidential decrees on matters necessitated by the state of emergency, notwithstanding the limitations set forth in the second sentence of the seventeenth paragraph of the Article 104. Such decrees which have the force of law shall be published in the Official Gazette, and shall be submitted for approval to the Grand National Assembly of Turkey on the same day.

Except in the case of inability of the Grand National Assembly of Turkey to convene due to war or force majeure events, presidential decrees issued during the state of emergency shall be debated and decided in the Grand National Assembly of Turkey within three months. Otherwise presidential decrees issued during the state of emergency shall be repealed automatically."

In Article 13 of the Constitution, restriction of fundamental rights and freedoms has been stipulated. Fundamental rights and freedoms may be restricted only by law and for reasons mentioned in the relevant articles of the Constitution. The inviolability of the right's essence has

been guaranteed in relation to the restrictions to be made within this scope. Furthermore, the restrictions to be made shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic social order and the secular republic and the principle of proportionality.

In Article 15 of the Constitution, suspension of the exercise of fundamental rights and freedoms has been stipulated. In times of war, mobilization, a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken. An intervention to be made within this scope shall not violate the obligations under international law. Additionally, the intervention shall be to the extent required by the exigencies of the situation. Even under the circumstances, the areas not allowed to be interfered with are as follows:

- The individual's right to life, the integrity of their corporal and spiritual existence shall be inviolable, except where death occurs through acts in conformity with the law of war.
- No one shall be compelled to reveal their religion, conscience, thought or opinion, nor be accused on account of them.
- Offences and penalties shall not be made retroactive.
- No one shall be held guilty until proven by the court.

The declaration of the state of emergency is first and foremost included in the Constitution. Article 119 of the Constitution stipulates the basic principles of the State of Emergency. The fifth paragraph of the said Article contains the provision regarding *the financial, material and labour obligations to be imposed on citizens, the manner of restriction and temporary suspension of fundamental rights and freedoms* in cases of emergency, as well as how to limit or suspend fundamental rights and freedoms in accordance with the principles of the Article 15, which provisions to apply and how to conduct procedures. In line with this provision, detailed legal arrangements on the state of emergency have been included in the State of Emergency Law No. 2935 dated 25/10/1983.

The state of emergency can be declared by the President in the following cases;

- Outbreak of war or a situation necessitating war,
- Mobilization, uprising, a strong and active attempt against the homeland or the Republic,
- Spread of violent movements that endanger the indivisibility of the country and the nation, internally or externally.
- Emergence of widespread violent movements aiming to abolish the constitutional order or fundamental rights and freedoms, serious disruption of public order due to violent incidents,
- Occurrence of a natural disaster or a dangerous epidemic or a severe economic depression. State of emergency can be declared in the entire country, as well as in one region. State of emergency can be declared for a period not exceeding six months.

The decision to declare the state of emergency shall be published in the Official Gazette and submitted to the approval of the Grand National Assembly of Türkiye (GNAT) on the day it has been issued. If the GNAT is in recess, it shall be convened immediately and shall make its final decision.

During the state of emergency, the President will be able to issue a Presidential decree for the matters required by the state of emergency, without being subject to the limitations set out in the second clause of the seventeenth paragraph of Article 104 of the Constitution. These decrees shall be published in the Official Gazette and submitted for Parliamentary approval on the same day.

At the end of this process, the suspension of the rights and obligations set out in the United Nations International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (the “ECHR”) shall be reviewed by the competent authorities who decide on the declaration of the State of Emergency pursuant to the authority provided for them by the competent authorities. If the decision for suspension is taken, the notification of suspension will be transmitted by the Ministry of Foreign Affairs to the Secretary General of the Council of Europe / the Secretary General of the United Nations in accordance with the provisions of the relevant international convention (Article 4 § 3 of the ICCPR and Article 15 § 3 of the ECHR).

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.

Pursuant to Article 119 of the Constitution, the President may decide on the declaration of the state of emergency all over the country or in one region of the country, in the following cases, providing that the duration does not exceed six months:

- Outbreak of war or a situation necessitating war,
- Mobilization, uprising, a strong and active attempt against the homeland or the Republic,
- Spread of violent movements that endanger the indivisibility of the country and the nation, internally or externally.
- Emergence of widespread violent movements aiming to abolish the constitutional order or fundamental rights and freedoms,
- Serious disruption of public order due to violent incidents,
- Occurrence of a natural disaster or a dangerous epidemic or a severe economic depression.

The decision to declare a state of emergency is published in the Official Gazette on the day it is issued and submitted to the approval of the GNAT on the same day. Even if the GNAT is in recess, it shall be immediately summoned to meet. The GNAT may, if it deems it necessary, shorten or extend the duration of the state of emergency or lift the state of emergency. Thus, supervision by the legislative power is ensured.

The GNAT may extend the period, without exceeding four months at a time, at the request of the President. In case of war, the four-month period shall not apply.

The following shall be regulated by law: *the financial, material and labour obligations to be imposed on citizens, the manner of restriction and temporary suspension of fundamental rights and freedoms* in cases of emergency, as well as how to limit or suspend fundamental rights and freedoms in accordance with the principles laid down in Article 15, which provisions will apply and how to conduct procedures.

In cases of emergency, the President may issue a Presidential decree on matters required by the state of emergency, without being subject to the limitations set out in the second sentence of the seventeenth paragraph of Article 104 *("The fundamental rights, human rights and duties contained in the first and second chapters of the second part of the Constitution and the political rights and duties contained in the fourth chapter cannot be regulated by a Presidential decree")*. These decree laws shall also be published in the Official Gazette and submitted for the GNAT’s approval on the same day.

First of all, the competent authorities deciding on the declaration of the state of emergency, assess the extent, nature, political, social and economic impacts of the danger against the public order. Therefore, with the declaration of the state of emergency, whether it will continue or new

measures will be taken, and what measures will be abolished shall be assessed by the relevant and competent institutions, supervised and decided in the Assembly.

Except for the fact that GNAT cannot convene due to war and force majeure, Presidential decrees issued during the state of emergency shall be discussed and decided in GNAT within three months. Otherwise, the Presidential Decree issued in the state of emergency shall be repealed automatically.

Political review is the first-stage supervision for Decree Laws. The Decree Laws passed by the Government during the state of emergency, shall immediately be submitted to the Assembly, in line with the constitution and shall be politically supervised, subject to parliamentary approval. As a matter of fact, besides approval, the Assembly also has the authority to approve after amending them or not approving at all.

The second type of supervision is judicial. Decree Laws becoming law at the end of the approval process are subject of a concrete norm review in the Constitutional Court. For example, the state of emergency, which was put into effect on July 21, 2016, expired on July 18, 2018 and the State of Emergency Decrees approved by GNAT have become law, which makes them accountable to the Constitutional Court. Review by the Constitutional Court has not simply been an abstract review which is only on paper. The Constitutional Court examined a large number of provisions that became law in this manner and repealed some of them during this process. To give an example of such decisions to repeal, the provision that in respect of those being reinstated, the titles which were held prior to their becoming administrators shall be taken into account when reinstating their positions by Decree Laws was repealed by the Constitutional Court. This repealing decision provided an opportunity for the people who were dismissed from their jobs by Decree Laws, to be appointed back as administrators if they were reinstated. There are more repealing decisions apart from this example, and access to these decisions by the public is allowed.

On the other hand; the Constitutional Court has decided, on the date of November 4, 2019, with the Law No 7069 on the Adoption, with Certain Amendments, of the Decree Law on Making Certain Arrangements under the State of Emergency in the case no. 89/2018, that the rules against those who are affiliated to or in contact with terrorist organizations concerning their admittance to the positions of notary publics, mediators and legal experts, are not contrary to the Constitution.

The Constitutional Court, in the case no. E.2017/18 on July 25, 2019, decided that the stipulation in Article 104 of the Law No. 6756 on the Adoption, with Certain Amendments, of the Decree Law on Taking Some Measures Under the State of Emergency and Establishing a National Defence University and Amending Some Laws, *"War Academies, military high schools and non-commissioned officer training schools have been closed."* and the section in Article 105 of the same law *"…by the Ministry of National Education, to schools suitable for their status, taking into account the secondary education placement scores obtained on the dates of the entrance exams,"* were not inconsistent with the Constitution and that the pleas filed for its repeal were rejected.

Finally, the Inquiry Commission on State of Emergency Measures was established during the State of Emergency period, which was put into effect on 21 July 2016. In addition to being subject to political review by the Assembly and judicial review by the Constitutional Court, it has been made possible to apply to the Commission against some decisions or procedures arising from these Decree Laws. The decisions of this Commission which is a new domestic remedy to be exhausted according to the European Court of Human Rights (ECtHR), are also subject to judicial review.

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?

In this context, the derogation notifications made in Türkiye in the 90s and most recently after the heinous coup attempt of July 15, have been made upon the declaration of State of Emergency.

vii. If derogation is considered necessary, how and by whom is the final decision to derogate taken?

Decision for the declaration of a State of Emergency is taken by the President. The decision to declare a state of emergency shall be published in the Official Gazette on the day it is issued and submitted to the approval of GNAT on the same day. Provided that GNAT is in recess, it shall convene immediately and take its final decision.

At the end of this process, whether or not the rights and obligations regulated in the ICCPR and the ECHR are suspended based on the power granted by the competent authorities shall be assessed by those authorities deciding on the declaration of the State of Emergency. If a decision on derogation is taken, the notice of derogation shall be forwarded by the Ministry of Foreign Affairs to the Secretary General of the Council of Europe/ United Nations in accordance with the provisions of the relevant international conventions.

viii. How and by whom is the decision taken on whether or not to renew/extend or to withdraw a derogation?

The decision to declare a state of emergency shall be published in the Official Gazette on the day it is issued and shall be submitted to the approval of GNAT on the same day.

If GNAT is in recess, it shall convene immediately and if it deems necessary, it shall be able to shorten, extend or abolish the state of emergency.

Upon the President's request, GNAT can extend this period for a maximum of four months every time. In case of war, the four-month period shall not apply. It may be decided to extend or to lift the derogation from the Convention by the competent authorities.

ix. Is consideration being given to reviewing the procedure, in the light of recent experience?

Regarding the failed coup attempt on 15 July 2016, Articles 120 and 121 of the Constitution, which were repealed by the referendum held on 16 April 2017 but had been in force during the State of Emergency declaration on 20 July 2016.

The repealed Article 120 of the Constitution entitled *"Declaration of state of emergency due to widespread acts of violence and serious deterioration of public order*" is as follows:

"*In the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months."*

The repealed Article 121 of the Constitution entitled *"Rules Relating to the State of Emergency* ", is as follows:

"*In the event of a declaration of a state of emergency under the provisions of Articles 119 and 120 of the Constitution, this decision shall be published in the Official Gazette and shall be submitted immediately to the Turkish Grand National Assembly for approval. If the Turkish Grand*

National Assembly is in recess, it shall convene immediately. The Assembly may alter the duration of the state of emergency, extend the period, for a maximum of four months only, each time at the request of the Council of Ministers, or may lift the state of emergency.

The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and, applicable according to the nature of each kind of state of emergency, the procedure as to how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sort of powers shall be conferred on public servants, what kind of changes shall be made in the status of officials, and the procedure governing emergency rule, shall be regulated by the Law on State of Emergency.

During the state of emergency, the Council of Ministers meeting under the chairmanship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of emergency. These decrees shall be published in the Official Gazette, and shall be submitted to the Turkish Grand National Assembly on the same day for approval; the time limit and procedure for their approval by the Assembly shall be indicated in the Rules of Procedure."

The National Security Council convened most recently on 20 July 2016 following the coup attempt on 15 July 2016. During the aforementioned meeting*, the Government was advised to declare a state of emergency in order to "effectively take measures to protect democracy, the rule of law and the rights and freedoms of citizens*". Following this meeting, the Council of Ministers declared, by the decision taken on 20 July 2016, a state of emergency for ninety days, effective from 21 July 2016, in accordance with the repealed Article 120 of the Constitution.

In this context, it should be noted that significant amendments were made to the provisions of the Constitution, regarding the suspension of fundamental rights and freedoms upon transition to the Presidential Government System with the referendum held on 16 April 2017.

The repealed Article 119 of the Constitution envisaged the declaration of a state of emergency due to natural disasters and severe economic crisis, and the repealed Article 120, contained the declaration of state of emergency due to widespread violence and serious deterioration of the public order.

In the repealed Article 120 of the Constitution, the Council of Ministers, which convened under the Chairmanship of the President, could declare a state of emergency after receiving the opinion of the National Security Council. Following the transition to the Presidential Government system, it was regulated that the State of Emergency would be declared by the President, and the regulation on receiving the opinion of the National Security Council was repealed.

Additionally, Article 122 of the Constitution, which regulates the extraordinary management procedure in the event of martial law, mobilization and war, has been repealed by the same amendment. In the current situation, all these have been merged in Article 119 of the Constitution. Pursuant to Article 119 of the Constitution, which is currently in force, it has been regulated that a state of emergency may be declared in all or part of the country, for a period not exceeding six months by the President, in cases of war, the onset of a situation that requires war, mobilization, insurrection, a strong and active uprising against the homeland or the Republic, the spread of violent movements that endanger the indivisibility of the country and the nation internally or externally, the emergence of widespread violent movements aimed at eliminating the constitutional order or fundamental rights and freedoms, the serious deterioration of the public order due to violence, the emergence of a natural disaster or dangerous epidemic disease or severe economic crisis.

Finally, it should be stated that in the repealed Article 121 of the Constitution, if the decree-laws issued by the Council of Ministers, which were convened under the presidency of the President during the State of Emergency, are not decided by the GNAT, while there is no clear regulation on the legal status of these decrees, it is clearly emphasized that the Presidential decrees issued

during the State of Emergency will be discussed and decided by the GNAT within three months; otherwise the Presidential decree issued during a state of emergency will be automatically repealed.

UNITED KINGDOM / *ROYAUME-UNI (Appendix / annexe pg 119)*

Please note that the information provided only relates to the laws and practices of the Government of the United Kingdom. It is not intended to report on the specific laws and practices of the devolved administrations in Wales, Scotland and Northern Ireland.

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.

The United Kingdom (UK) does not have a set procedure governing the decision to derogate from its obligations under the European Convention on Human Rights (ECHR). However, the procedure under which a derogation is given effect under UK law, known as "designation", is set out in sections 14 and 16 of Human Rights Act 1998 (HRA).

A derogation by the UK from an article of the ECHR is "designated" under the HRA by an order of the Secretary of State (a Cabinet Minister). This can happen either after the Government has taken the decision to derogate or in anticipation of a proposed derogation.

The order designating a derogation must be approved by a resolution of each House (chamber) of Parliament within 40 days (not counting extended adjournments, etc.). It ceases to have effect after five years if not further renewed with Parliament's approval, or at the point at which the derogation is withdrawn by the UK.

If the designation of a derogation ceases to have effect (or is never approved in the first place), the relevant right under the HRA has full effect for the purposes of domestic law (i.e., domestic courts regard this right as if it were not subject to derogation), but the derogation itself could continue to be valid under international law, for the purposes of the European Court of Human Rights (ECtHR).

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.

The derogation from an article of the ECHR or the designation of a derogation by the Secretary of State is not subject, by law, to a human rights impact assessment. However, measures for which a derogation was lodged by the UK could involve primary legislation, and it is the Government's practice to produce an analysis of any issues to which any new Bill (draft primary legislation) may give rise under the ECHR. This is often done in the Explanatory Notes to the Bill concerned, at the point of its introduction in Parliament. Where the human rights issues raised by the Bill are significant enough to require more than a few paragraphs, the Government will usually provide a separate memorandum with this analysis.

The parliamentary debates involved in the process of approving a designation order (as per the procedure set out in response to question i) also provide an opportunity for the human rights impacts of a derogation to be considered and discussed.

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?

A declaration of a state of emergency or other form of exceptional legal regime under domestic law is not a necessary precondition for derogating or designating a derogation. The UK does not have a separate process (outside of that inherent in derogating from obligations under the Convention) for declaring a "state of emergency", or a legal definition of a "state of emergency". There is also no legal requirement to derogate from the Convention under any form of exceptional legal regime.

iv. If a derogation is considered necessary, how and by whom is the final decision to derogate taken?

The decision to derogate from the ECHR and to lodge notice of that derogation with the Secretary General of the Council of Europe lies with the Government. Initiative for this decision will often be taken by the Government department (ministry) responsible for the policy or legislation concerned by the derogation, and will generally be approved by the rest of the Government through a process of collective agreement. In making this decision, the Minister concerned will seek the advice of his or her department's civil servants. Any legislation put forward for which a derogation is made (but not the derogation itself) is also subject to the scrutiny of the Parliamentary Joint Committee on Human Rights and has to be approved by Parliament before it can be enacted.

The designation of derogations under the HRA is made by a Secretary of State subject to approval by both Houses of Parliament, under the procedure set out in response to question

v. How and by whom is the decision taken on whether or not to renew/extend or to withdraw a derogation?

The renewal, extension or withdrawal of a derogation under the ECHR follows the same process as the decision to make a derogation.

The designation of a derogation under the HRA ceases as soon as the Government withdraws the derogation. However, a designation can only be renewed or extended with Parliament's approval, following the procedure set out in response to question i.

A derogation may in some circumstances also be challenged before the domestic courts (as well as the European Court on Human Rights). This happened in the cases of *A and Others v the Secretary of State for the Home Department* – the cases concerned the detention of foreign nationals who had been certified by the Home Secretary as "suspected international terrorists" but could not be deported without breaching Article 3. They were detained without charge or trial in accordance with a derogation from Article 5(1) put in place following the attacks of 9/11. In a judgment of 16 December 2004, the House of Lords (in its then judicial formation) decided to quash the Government's order designating the derogation on the basis that it was not a proportionate means of achieving the aim sought and could not therefore fall within Article 15.

vi. Is consideration being given to reviewing the procedure, in the light of recent experience?

There is currently no plan to review Government practice with regards to the making of a decision to derogate from the Convention.

We have considered the procedure for designating derogations under section 14 of the HRA as part of wider plans to reform the UK's domestic human rights framework and introduce a Bill of Rights replacing the HRA. The Government however has not proposed to amend in substance the existing arrangements, and the Bill as introduced on 22 June 2022 reflects the provisions in the HRA, albeit with some minor amendments to make the provisions clearer.

OR	*OU*
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?	B. S'il n'existe pas de procédure spécifique à suivre dans votre pays : vos autorités ont-elles déjà sérieusement envisagé ou non de déroger aux obligations découlant de la Convention européenne des droits de l'homme ou d'autres traités internationaux relatifs aux droits humains.
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.	i. Veuillez décrire la procédure ad hoc suivie pour aborder cette question, y compris sa base juridique, les questions examinées, les acteurs impliqués et les différentes étapes.
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.	ii. Cette procédure ad hoc impliquait-elle une évaluation de l'impact sur les droits humains des mesures d'urgence pour lesquelles une dérogation était envisagée ? Si oui, veuillez décrire comment cette évaluation a été effectuée.
iii. Was the declaration of a 'state of emergency' or some other form of exceptional legal regime understood to establish a requirement to derogate?	iii. La déclaration d'un « état d'urgence » ou d'une autre forme de régime juridique exceptionnel a-t-elle été interprétée comme entraînant une obligation de dérogation ?
iv. Was consideration given to the need to derogate even in the absence of a declaration of some form of state of emergency?	iv. La nécessité de déroger même en l'absence d'une déclaration d'une certaine forme d'état d'urgence a-t-elle été envisagée?
v. If a derogation was considered necessary, how and by whom was the final decision to derogate taken?	v. Si une dérogation a été jugée nécessaire, comment et par qui la décision finale de dérogation a-t-elle été prise ?
vi. How and by whom was any decision taken on whether or not to renew/ extend or to withdraw that derogation?	vi. Comment et par qui a été prise la décision de renouveler/prolonger ou non, ou de retirer, cette dérogation ?
vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?	Est-il envisagé de réexaminer la procédure, à la lumière de l'expérience récente, par exemple en établissant une procédure spécifique ?

AUSTRIA / *AUTRICHE*

The European Convention on Human Rights has constitutional law status in Austria. Austrian constitutional law, however, does not provide for the derogation of human rights in situations of crisis. It is thus the prevailing view that – as a consequence of the safeguard rule of Art. 53 of the Convention – Art. 15 of the Convention is not applicable in Austria.

Moreover, the Austrian Federal Constitution foresees neither legislative emergency or fast-track-procedures nor government ordinances in lieu of federal laws. Whenever there is a need for an expeditious process, an informal consensus is sought between political groups in both parliamentary chambers on expediting the procedures commonly in place.

BELGIUM / *BELGIQUE*

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.

In response to the Covid-19 crisis, administrative police measures were initially adopted by the Minister of Interior on the basis of the law of May 15th 2007 on civil security, the law of December 31th 1963 on civil protection and the law of August 5th 1992 on the police function. These administrative police measures are by nature measures that restrict the exercise of individual rights and freedoms. In this regard, the question arose as to whether the measures that were considered in the beginning of the pandemic necessitated the activation of Article 15 of the European Convention on Human Rights. The Belgian authorities considered that the limitations to fundamental rights induced by the administrative police measures could be justified under the substantive provisions of the Convention and consequently, did not constitute a derogation from the Convention for which article 15 would have to be activated.

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?

The Belgian Constitution does not contain a provision on the state of emergency and does not allow any suspension of its provisions. Therefore, the declaration of a state of emergency to derogate from human rights is neither a requirement, nor a possibility in Belgium.

In addition, the pandemic law provides the possibility to declare a state of 'epidemic emergency' in response to an epidemic after which restrictive measures (that are enumerated in this law) can be adopted to protect public health. This law was adopted on August 15th 2021 during the Covid-19 pandemic. However, these enumerated administrative police measures do not constitute a derogation from human rights but merely restrict the individual rights and freedoms in order to protect public health. Moreover, the necessity, adequacy and proportionality of these measures have to be sufficiently motivated. Therefore, the declaration of an epidemic emergency can neither be regarded as a requirement, nor a possibility to derogate from the European Convention on Human Rights (or other international human rights treaties).

iv. Was consideration given to the need to derogate even in the absence of a declaration of some form of state of emergency?

As previously mentioned, the Belgian legal system does not provide the possibility to declare a state of emergency but the pandemic law enables the executive power to declare a state of epidemic emergency by royal decree, which subsequently has to be confirmed by the Parliament within 15 days. However, the administrative police measures that were considered and/or adopted before declaring this state of epidemic emergency on October 28th 2021 did not amount a derogation from human rights. These police measures adopted on the basis of the law of May 15th 2007 on civil security, the law of December 31th 1963 on civil protection and the law of August 5th 1992 on the police function (which served as a legal basis for the Covid-19 measures

before the pandemic law was enacted) are restrictive by nature but cannot be qualified as a derogation from human rights.

v. If a derogation was considered necessary, how and by whom was the final decision to derogate taken?

(not applicable)

vi. How and by whom was any decision taken on whether or not to renew/ extend or to withdraw that derogation?

(not applicable)

vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?

BOSNIA AND HERZEGOVINA / *BOSNIE-HERZÉGOVINE*

No.

CYPRUS / *CHYPRE*

The authorities of the Republic of Cyprus have never seriously considered whether or not to derogate from obligations under the European Convention on Human Rights or other international human rights treaties**.**

CZECH REPUBLIC / *RÉPUBLIQUE TCHÈQUE*

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.

The question did arise in spring 2020. No specific procedure existed at that time (and the situation has not changed since then). A discussion at the working level between the Ministries of Justice and Foreign Affairs took place. There was in particular an exchange of letters between the Government Commissioner for Human Rights and the Minister of Foreign Affairs which can be described as follows.

On 23 March 2020 the Commissioner pointed to a certain number of provisions of human rights treaties, in particular of the Convention and the Covenant (ICCPR). According to her, some of the anti-pandemic measures that had been taken interfered with certain guarantees stemming from the treaties, some of the measures being covered by exceptions or limitations set out by the treaties. She went on to state that an alternative step, legally stronger, would be to derogate from the treaty obligations (Article 15 of the Convention, Article 4 of the Covenant). She considered that the Covid-19 crisis was an emergency, moreover an emergency officially proclaimed (Article 4 of the Covenant; there was indeed a national state of emergency), and that a derogation would create a wider margin of appreciation for the State in the light of its international commitments. She concluded that some Eastern European countries had started to derogate from their

obligations under the Convention; while the majority of them was applying milder measures than the Czech Republic, it was advisable for the latter to contemplate derogating since it would otherwise send a signal that our country wished to be assessed according to ordinary standards, and not in light of the standards of an emergency situation.

The Minister of Foreign Affairs replied on 9 April 2020 that the issue of derogation had been considered since the adoption of the anti-pandemic measures, and consultations had taken place at the working level with the Government Agent before the Court as well as with partners from other States and relevant international organisations. The Minister affirmed that his ministry did not find sufficient reasons for making derogations and that the rights affected by the anti-pandemic measures could be limited by virtue of the limitation clauses in the Convention and the Covenant. The Minister added that the same conclusion had been reached by the majority of EU Member States and was supported by the Secretariat of the Council of Europe. The States that had derogated seemed to do so as a precautionary measure. The Minister concluded that it was important for the Czech Republic to be perceived as a country fully respecting its human rights commitments, and that he perceived the derogation as premature at that moment.
In sum, a very light procedure was followed and the issue has not arisen again since spring 2020.

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.

See above. It was a very light human rights impact assessment which to our knowledge did not result in any analytical document.

iii. Was the declaration of a 'state of emergency' or some other form of exceptional legal regime understood to establish a requirement to derogate?

It is a requirement under the Covenant, but apparently not under the Convention.

iv. Was consideration given to the need to derogate even in the absence of a declaration of some form of state of emergency?

Not applicable.

v. If a derogation was considered necessary, how and by whom was the final decision to derogate taken?

Not applicable. However, the decision would likely to be taken by the Government as a constitutional authority (i.e. the Prime Minister and the ministers as a collective body), but this step was not formally proposed for decision.

vi. How and by whom was any decision taken on whether or not to renew/ extend or to withdraw that derogation?

Not applicable.

vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?

Not to our knowledge, but it would probably be quite advisable.

DENMARK / *DANEMARK - (Appendix / Annexe pg 103)*

i. Please describe the ad hoc procedure that was followed when considering this question, including any legal basis, the actors involved, and the different stages.

No formal procedure for considering whether to introduce derogations from the European Convention on Human Rights (ECHR) exists in Denmark.

However, in accordance with national practice, Danish national authorities should consult the Ministry of Justice when proposing measures that may interfere with the rights and obligations under the ECHR and other human rights treaties. Upon consultation, the Ministry of Justice assesses the proposed measure and its compliance with ECHR, including if relevant need and possibility to derogate under article 15.

ii. Did this 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.

Yes. When consulted, the Ministry of Justice assesses the impact of the proposed measure in regard to the relevant rights and obligations of the ECHR and other human rights treaties. The assessment consists of relevant information on the measure from the relevant national authorities and case law of the European Court of Human Rights.

iii. If a derogation was considered necessary, how and by whom was the final decision to derogate taken?

No derogation has been considered necessary.

iv. How and by whom was any decision taken on whether or not to renew/ extend that derogation?

Not relevant.

ESTONIA / *ESTONIE*

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.

The Foreign Relations Act (FRA)[3] regulates the foreign relations of the Republic of Estonia, the competence of the bodies conducting foreign relations and internal proceeding of treaties. Taking measures derogating from its obligations under international human rights treaties and informing the depositary of the treaty about the measures taken and the reasons thereof form an integral part of implementation of the treaty and general principles of the Foreign Relations Act are applicable.

According to Article 9 (2) of the FRA in relations with international organisations, the Ministry of Foreign Affairs shall:

…

2) manage and coordinate, within the limits of its competence, the relations of governmental authorities with international organisations and participation in the work thereof;

…

[3] https://www.riigiteataja.ee/en/eli/517012014001/consolide.

4) present statements, declarations and communications concerning foreign relations which do not fall within the competence of the Riigikogu or the Government of the Republic on behalf of the Government of the Republic, or accede thereto.
…

According to Article 9 (5) of the FRA, in the protection of the interests of the Republic of Estonia and persons, the Ministry of Foreign Affairs shall:
…
3) organise the representation of the Republic of Estonia at the UN International Court of Justice, the Permanent Court of Arbitration, the European Court of Human Rights, the European Court of Justice and the Court of First Instance and other international institutions for settlement of disputes

The referred competence includes communications with international organisations (UN, CoE etc), and with depositories of international treaties and human right treaty bodies, including the Court of Human Rights. The Ministry of Foreign Affairs coordinates its respective communications with other ministries under whose competence the issue in question falls. If need be, the Government Office (*Riigikantselei)*[4] and the Government of Estonia are involved.

Estonia has seriously considered whether or not to derogate from obligations under the European Convention on Human Rights or other international human rights treaties once (see below B (ii)). The considerations were related to the COVID-19 pandemic and took place after Estonia had declared an emergency situation in the administrative territory of Estonia on 12 March 2020. The issue was examined by the Ministry of Foreign Affairs and the Government Office. Also the Chancellor of Justice's Office was involved.

The respective notes to the Secretary General of the Council of Europe were submitted by the Ministry of Foreign Affairs, via the Permanent Representation of Estonia to the Council of Europe in Strasbourg.
Notification (submitted 20 March 2020): https://rm.coe.int/16809cfa87.
Withdrawal (submitted 16 May 2020): https://rm.coe.int/16809e6409.

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.

In the Order by which the COVID-19 pandemic-related emergency situation was declared in Estonia on 12 March 2020, the Government noted that the emergency caused by the spread of the virus could not be resolved without the governance arrangements provided for in the Emergency Act for emergency situations.[5]
When the emergency situation was declared, the Government set six goals: (i) to prevent the further spread of the virus to Estonia; (ii) to prevent the local spread of the virus in Estonia; (iii) to ensure the capacity of the healthcare system to control the virus and treat the disease caused by it; (iv) to raise people's awareness of how to prevent the spread of the virus and treatment of the

[4] Government Office´s mission is to support the Government of the Republic and the Prime Minister in policy drafting and implementation.
[5] The Constitution of Estonia distinguishes three special situations: state of war (sõjaseisukord, § 128), state of emergency (erakorraline seisukord, § 129) and emergency situation (eriolukord, § 87 clause 8). An emergency situation – which is relevant in the present COVID-19 pandemic situation – is regulated by the Emergency Act. According to § 2 (1) of the Emergency Act, an emergency is an event or a chain of events or an interruption of a vital service which endangers the life or health of many people, causes major property damage, major environmental damage or severe and extensive interference with the continuity of vital services, and resolution of which requires prompt coordinated activities of several authorities or persons involved by them, the application of a command organization different from the usual and the involvement of more persons and means than usual.

disease caused by it; (v) to ensure that the population can cope with the indirect effects of the virus; (vi) to ensure the functioning of the Estonian economy as normally as possible.

By 20 March 2020, when Estonia informed CoE about its derogation the following measures had already been taken under the emergency situation regime. Suspension of regular studies in all educational institutions and introduction of distance learning. All public gatherings, film screenings, night clubs, shows/performances, concerts and conferences and sports and exercise events were prohibited. Visiting museums and other exhibitions was prohibited. Visits to social welfare institutions, hospitals and penitentiary institutions were prohibited. Special restrictions on movement regarding Estonian islands were introduced. Additional restrictions were imposed on spending leisure time and it was ordered that all sports halls, sports clubs, gyms, spas, swimming pools, water centres, day centres and children's play rooms remain closed. Restriction on the movement of people arriving in Estonia from abroad was imposed. It was recommended to handle litigation, where possible, in writing. Also, holding hearings via technical means of communication was promoted. However, if the latter was impossible, it was for the judge to decide whether to hold a hearing based on the circumstances of the particular case or to postpone it. Etc.

The above-mentioned examples demonstrated that the Government had taken various restrictive measures which had an impact on everyone in Estonia, regardless of their personal situation or state of health. Although these measures were in accordance with the Estonian Constitution, as well as necessary and proportionate to protect the life and health of people in the context of the COVID-19 pandemic, the situation was not 'ordinary' or 'normal'. It was also implied by the Government that if the number of infected people were to grow, additional measures could be taken in the following days and weeks. Taking into account the unprecedented situation, and that the restrictive measures were applied to everyone, Estonia found it proper to also inform the Secretary General of the Council of Europe of the situation that corresponded to a 'public emergency threatening the life of the nation'.
In doing that, Estonia noted that some of these measures *may involve* a derogation from certain obligations of Estonia under the Convention for the Protection of Human Rights and Fundamental Freedoms, not that Estonia definitely will derogate.

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?

The specific declaration made on 20 March 2020 was related to the fact that Estonia had declared an emergency situation in the administrative territory of Estonia on 12 March 2020. There is no express obligation to derogate under Article 15 of the Convention on Human Rights (or under any other international instrument) if an emergency situation is declared. However, the overall scope of the measures taken was unprecedented, thus the notification of a possible derogation was found to be appropriate.

v. If a derogation was considered necessary, how and by whom was the final decision to derogate taken?

With reference to B (i) above, it is in the competence of the Ministry of Foreign Affairs. The text of the declaration was coordinated with the Government Office and the Chancellor of Justice's Office.

vi. How and by whom was any decision taken on whether or not to renew/ extend or to withdraw that derogation?

The decision not to extend the derogation and to withdraw it from 18 May 2020 was directly linked to the end of the official emergency situation in Estonia. According to the declaration, as of 18 May 2020, the measures which were imposed by the Government of Estonia and by the Prime Minister, as the person in charge of emergency situation, for the duration of the emergency situation, ceased to operate as emergency situation measures. Therefore, according to the declaration on withdrawal, Estonia did not exercise its right to derogate from its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms and the provisions of the Convention were again being fully executed as of 18 May 2020.

vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?

Lessons learned exercise of the law and practice related to COVID-19 and emergency situation legislation and measures have been carried out. Consideration has also been given to review the procedure but at this point of time it has not been found necessary to introduce a specific procedure.

FRANCE

La direction juridique du Ministère de l'Europe et des affaires étrangères, lorsque des mesures d'urgence ont pu être adoptées, a étudié à chaque fois leur degré d'ingérence dans les droits garantis par la Convention européenne des droits de l'Homme, et la proportionnalité de cette ingérence avec les faits qui avaient motivé l'adoption de ces mesures (risque terroriste, émeutes, crises sanitaires).

Cette évaluation est faite en lien avec les ministères qui portent l'adoption des mesures en cause, généralement le ministère de l'intérieur et le ministère de la Justice et parfois – comme pour la pandémie de Covid-19 – avec le ministère chargé de la santé. Le ministère des outre-mer, du fait des spécificités de la législation locale, est également consulté.

Le travail d'évaluation fait par les différents ministères est multi référentiel :

- Il permet une évaluation de l'effet de ces mesures au regard des standards internes – notamment constitutionnels – ;
- Il évalue également les mesures au regard des règles issues de la Convention européenne des droits de l'Homme, telles qu'interprétées par la Cour européenne des droits de l'Homme.
- Il évalue enfin l'effet au regard des règles des autres conventions internationales auxquelles la France est partie, notamment le Pacte international relatif aux droits civils et politiques

Au terme de cette première analyse, des échanges sont effectués avec le Secrétariat général du gouvernement, secrétariat placé auprès du Premier ministre, qui a notamment pour mission de coordonner le travail de l'administration, et si besoin d'arbitrer. Une réunion interministérielle peut être organisée, comme ça a été le cas en novembre 2015, afin d'arbitrer entre les différentes options possibles concernant les mécanismes de notification d'un état de crise (article 15 Conv. EDH et 4 du PIDCP) et de préciser l'appréciation de chaque ministère impliqué sur cette question.

Cette procédure correspond en réalité à celle qui est suivie en règle générale pour toutes les décisions importantes adoptées par la France au regard des normes internationales. Elle permet de mêler expertise au regard :

- des mesures d'urgence adoptées (ministères de l'Intérieur, de la Justice et/ou de la Santé généralement),
- des exigences européennes et du respect des droits de l'Homme (ministère de l'Europe et des affaires étrangères)
- et expertise profonde de l'ensemble du corpus de norme, avec possibilité d'arbitrages (par le secrétariat général du gouvernement à l'échelon administratif, le Premier ministre pour le choix politique).

Le suivi de cette procédure permet également une réaction rapide vis-à-vis des organes internationaux, et en parallèle de l'adoption des mesures nationales d'urgence.

A titre d'exemple, la notification de l'usage de l'article 15 en 2015 a eu lieu dès le 24 novembre, soit moins de 10 jours après les attentats du 13 novembre 2015. Un décret, sur lequel avait travaillé le ministère de l'intérieur et le secrétariat général du gouvernement, avait été adopté le 14 novembre 2015 pour décréter l'état d'urgence en application de la loi du 3 avril 1955.

ii. Cette procédure *ad hoc* impliquait-elle une évaluation de l'impact sur les droits humains des mesures d'urgence pour lesquelles une dérogation était envisagée ? Si oui, veuillez décrire comment cette évaluation a été effectuée.

Cette évaluation est faite par la sous-direction des droits de l'homme de la direction juridique du ministère de l'Europe et des affaires étrangères, en lien avec les évaluations faites par les ministères concernés sur les mesures nationales. En effet, dès lors que les ministères étudient la possibilité d'adoption des mesures nationales au regard du corpus national (Constitution, Déclaration des droits de l'Homme et du Citoyen), leur appréciation peut utilement orienter la sous-direction des droits de l'Homme.

Cette évaluation globale est toutefois adaptée par le ministère de l'Europe et des affaires étrangères au regard en particulier des règles du Conseil de l'Europe, et singulièrement de la Convention européenne des droits de l'Homme. Elle permet à la fois de produire une analyse sur les mesures qui peuvent être adoptées en interne, et le cas échéant, de conseiller le recours à l'article 15 si les mesures envisagées pour répondre aux circonstances particulières sont susceptibles d'excéder ce que la Convention permet.

iii. La déclaration d'un « état d'urgence » ou d'une autre forme de régime juridique exceptionnel a-t-elle été interprétée comme entraînant une obligation de dérogation ?

La France dispose de plusieurs états d'exception, selon la gravité de la situation et les modalités de la crise rencontrée.

L'article 16 de la Constitution, qui n'a été utilisé qu'une fois et avant la ratification de la Convention européenne par la France, prévoit : « *Lorsque les institutions de la République, l'indépendance de la Nation, l'intégrité de son territoire ou l'exécution de ses engagements internationaux sont menacées d'une manière grave et immédiate et que le fonctionnement régulier des pouvoirs publics constitutionnels est interrompu, le Président de la République prend les mesures exigées par ces circonstances, après consultation officielle du Premier ministre, des Présidents des Assemblées ainsi que du Conseil constitutionnel*. ».

L'état de siège, prévu à l'article 36 de la Constitution, permet la substitution des autorités militaires aux autorités civiles dans le maintien de l'ordre. Il n'a jamais été décrété depuis la Seconde guerre mondiale.

L'état d'urgence a été institué par la loi 3 avril 1955 et modifié plusieurs fois, en particulier par l'ordonnance du 15 avril 1960 et la loi du 20 novembre 2015. Décidé par décret en conseil des ministres, il peut être déclaré sur tout ou partie du territoire soit en cas de péril imminent résultant d'atteintes graves à l'ordre public, soit en cas de calamité publique (catastrophe naturelle d'une

ampleur exceptionnelle). D'une durée initiale de 12 jours, l'état d'urgence peut être prolongé par le vote d'une loi votée par le Parlement.
Ce régime d'exception a été appliqué huit fois entre 1955 et 2015, notamment lors des attentats pendant la guerre d'Algérie, au moment des événements en Nouvelle Calédonie (1984), lors des violences urbaines en 2005 et à la suite des attentats terroristes de novembre 2015 à Paris et Saint-Denis.

L'état d'urgence sanitaire est également un régime juridique d'exception, créé en 2020, pouvant être décidé en cas de catastrophe sanitaire. Ce dispositif a été introduit dans le code de la santé publique par la loi du 23 mars 2020 pour faire face à l'épidémie de Covid-19. Dans le cadre de l'état d'urgence sanitaire, le Premier ministre peut prendre par décret des mesures listées par la loi : ordonner un confinement à domicile, des réquisitions, interdire les rassemblements... Il peut aussi prendre des mesures temporaires de contrôle des prix de certains produits, permettre aux patients de disposer de médicaments et décider toute limite réglementaire à la liberté d'entreprendre. Le ministre chargé de la santé peut, par arrêté, fixer les autres mesures générales et des mesures individuelles. Les préfets peuvent être habilités à prendre localement des mesures d'application.
Etats d'urgence divers en France – chronologie :

Liés à la guerre d'Algérie :
1. État d'urgence en Algérie (3 avril – 16 décembre 1955) ;
2. État d'urgence en métropole (17 mai – 1er juin 1958) ;
3. État d'urgence en métropole (22 avril 1961 – 24 octobre 1962) ;

Liés à des crises dans les outre-mer :
4. État d'urgence en Nouvelle-Calédonie et dépendances (12 janvier – 30 juin 1985);
5. État d'urgence à Wallis et Futuna (29 octobre – 30 octobre 1986) ;
6. État d'urgence en Polynésie française (24 octobre – 5 novembre 1987) ;

Emeute urbaine (fin 2005), terrorisme (2015-2017) puis Covid19 (2020-2021) :
7. État d'urgence en métropole (8 novembre 2005 – 4 janvier 2006) – dans 25 départements, du fait d'émeutes urbaines ;

8. État d'urgence antiterroriste (14 novembre 2015 – 1er novembre 2017) : suite aux attentats du 13 novembre 2015

9. État d'urgence sanitaire (23 mars 2020 – 1er juin 2021, sauf en Guyane où il est prolongé jusqu'à fin septembre 2021

Depuis la ratification de la Convention, l'état d'urgence a été employé six fois, et l'état d'urgence sanitaire une fois.

Toutefois, ces états d'urgence n'impliquent pas, en droit français ou dans la pratique, l'activation de l'article 15, les questions se posant pour l'usage de cet état d'urgence et l'activation de l'article 15 étant distinctes. Ainsi, certaines mesures adoptées au titre des états d'urgence peuvent être estimées par le Gouvernement déjà conformes à la Convention européenne des droits de l'Homme, et en particulier proportionnées au péril en cause, et ainsi ne pas nécessiter de recourir à l'article 15.

C'est cette appréciation, au regard de l'évaluation multi-ministères sous l'égide du ministère de l'Europe et des affaires étrangères, présentée plus haut, qui explique que l'article 15 n'a, par exemple, pas été employé en 2005 alors que l'état d'urgence l'était, ou pendant la crise de la Covid-19 lors de l'emploi de l'urgence sanitaire.
L'article 15 a été activé :

- Du 24 novembre 2015 au 1er novembre 2017 ;
- En 1985, pour le seul territoire de la Nouvelle-Calédonie. (Notification le 7 février 1985 de l'emploi de l'article 15, à compter de l'emploi de l'état d'urgence en Nouvelle-Calédonie. La

sortie de l'état d'urgence au 30 juin 1985 fut notifiée, elle, le 2 septembre 1985 au Conseil de l'Europe).

iv. La nécessité de déroger même en l'absence d'une déclaration d'une certaine forme d'état d'urgence a-t-elle été envisagée?

Une telle dérogation n'a de fait pas été envisagée.

Cette absence d'emploi de l'article 15 en l'absence d'usage de dispositions d'exception nous semble correspondre à l'appréciation que la Cour européenne des droits de l'Homme fait lors de l'examen d'une affaire dans le cadre de l'emploi de cet article.

En effet, afin de déterminer si l'État a excédé la « *stricte mesure des exigences* » de la crise, au sens de l'article 15, la Cour indique qu'elle doit d'abord attacher le poids qui convient à des facteurs pertinents tels que la nature des droits touchés par la dérogation, la durée de l'état d'urgence et les circonstances qui l'ont créé (*Brannigan et McBride c. Royaume-Uni,* précité, §43, *A. et autres c. Royaume-Uni* précité §173).
Elle examine pour cela plusieurs facteurs, et notamment la question de savoir si des lois ordinaires auraient été suffisantes pour faire face à la situation de danger public, si les mesures constituaient une véritable réponse à la situation de danger public, si elles ont été utilisées pour le but pour lequel elles ont été adoptées, si la dérogation était de portée limitée, les motifs qui l'étayaient, l'existence d'un contrôle juridictionnel et de garanties, la question de savoir si elles constituaient une discrimination injustifiée et si elles avaient un fondement légal (voir, entre autres, *Brannigan et McBride c. Royaume-Uni, A. et autres c. Royaume-Uni*, *Mehmet Hasan Altan c. Turquie*).

Par suite, si l'usage de lois ordinaires est suffisant, il semble que l'article 15 de la Convention ne peut être utilement employé pour laisser une marge d'appréciation aux Etats membres.

Le Gouvernement souligne toutefois que cette appréciation pourrait conduire les Etats parties à la Convention à utiliser des lois d'exception afin de pouvoir utilement utiliser l'article 15, alors même que les lois ordinaires pourraient être – au moins partiellement dans le cas d'une crise - utilisées. Cette conception excessivement formelle, qui est portée par la Cour mais pas forcément figée – au regard du faible nombre de cas d'usage de l'article 15 sur lesquels la Cour s'est prononcée – inciterait à l'emploi de mesures exceptionnelles, au détriment de la sécurité juridique et en complexifiant le droit des Etats parties à la Convention. Le CDDH-SCR pourrait examiner cette question, et recommander une acception moins formaliste de l'examen de l'usage de l'article 15.

Enfin, le propre des situations de crise est qu'elles sont imprévisibles et nouvelles. Partant, cette analyse, qui a jusqu'alors conduit à l'absence d'emploi de l'article 15 en l'absence d'état d'urgence déclaré au sens de dérogation aux lois ordinaires, pourrait bien sûr être modifiée du fait de circonstances qui n'ont jusque-là pas été envisagées. Encore une fois, les analyses de l'usage des états d'urgence en droit interne et de la notification de l'article 15, si elles se font de manière concertée entre les ministères, soulèvent des questions distinctes.

v. Si une dérogation a été jugée nécessaire, comment et par qui la décision finale de dérogation a-t-elle été prise ?

La décision finale, proposée après l'examen précisé dans le i., est prise par le Gouvernement, responsable devant le Parlement. Les ministres intéressés, avec l'arbitrage éventuel du Premier ministre, prennent cette décision.

vi. Comment et par qui a été prise la décision de renouveler/prolonger ou non, ou de retirer, cette dérogation ?

L'examen en continu de la nécessité de prolonger l'emploi de l'article 15 est fait par les mêmes services que ceux mentionnés au i. de la présente question, et également décidé à l'échelon politique – le Gouvernement, responsable devant le Parlement démocratiquement élu.

Sont pris en considération en particulier :

- L'évolution de la menace qui a motivé l'usage d'un état d'exception ayant appelé à l'emploi de l'article 15 ;
- L'incorporation dans les normes ordinaires des dispositions permettant de faire face à la menace, lorsque cette incorporation est faite. Ce fut le cas entre 2015 et 2017, des dispositions ayant été adoptées pour que le droit commun permette de répondre efficacement à la menace terroriste, sans recourir à l'état d'urgence et par conséquent avec un contrôle plus strict encore par les juridictions internes ;
- Toutes modifications des circonstances qui modifieraient l'évaluation de l'atteinte aux droits opérée initialement par les services compétents.

vii. Est-il envisagé de réexaminer la procédure, à la lumière de l'expérience récente, par exemple en établissant une procédure spécifique ?

Une telle évolution n'est pas étudiée actuellement. Les présents travaux du Conseil de l'Europe, et les bonnes pratiques des autres Etats parties, seront toutefois précisément étudiés.

GREECE / *GRÈCE*

There is not a specific procedure to be followed in Greece with regard to derogations under the ECHR or other international human rights treaties. The Greek authorities have not actively considered whether or not to derogate from the country's obligations under the European Convention on Human Rights or other international human rights treaties. Hence, there is no practice of an ad hoc procedure being followed in this respect.

It is to be noted that measures taken against the Covid-19 pandemic were considered as permissible restrictions under the ECHR or other international human rights treaties. As a result, it was not deemed necessary to derogate from the abovementioned treaties.

The Greek National Commission for Human Rights, in its report entitled "Recommendations to the State regarding the impact of the pandemic and the measures taken to address it on human rights. Extraordinary times call for extraordinary responses", adopted on 19.5.2021, welcomed the fact that the Greek Government had not resorted to the most drastic institutional measures in order to deal with the pandemic, activating, for example, Article 48 of the Constitution on the "state of siege" or the "derogation clause" of Article 15 ECHR.

vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?

Currently, the establishment of a specific procedure related to possible derogations under the ECHR or other international treaties is not under consideration.

LATVIA / *LETTONIE*

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

During the Covid-19 pandemic, the measures taken to limit the spread of the virus had an impact on the full enjoyment of the rights enshrined in the Convention. In light of the nature of these measures, Latvia derogated from Articles 8, 11 of the Convention, Article 2 of Protocol No.1 to the Convention, and Article 2 of Protocol No.4 to the Convention.

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.

Considering that the provisions of the Convention and the ICCPR allowing for limitations to the rights enshrined in these instruments should be interpreted as narrowly as possible, as well as the importance that the Court places on the necessity to ensure individual assessments and specific criteria for the adoption of one or another decision that affects the rights of an individual,[6] one of the principles that were followed in determining whether to derogate was whether the measure adopted foresaw any assessment for its application or whether it was a total prohibition without exceptions. For example, when the Cabinet of Ministers decided to ban any and all forms of public gatherings without foreseeing an individual assessment, it was decided that derogation from Article 11 of the Convention and Article 21 of the ICCPR was necessary.

iii. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.

1. First derogation:

   15 March 2020 – 14 April 2020 (Articles 8 and 11 of the Convention, Article 2 of Protocol No.1 to the Convention and Article 2 of Protocol No.4 to the Convention); extension of those measures (and the derogations) until 13 May 2020; partial withdrawal of derogations (Article 11 of the Convention) and extension until 9 June 2020 of other derogations; partial withdrawal of derogation on 2 June 2020 – Article 2 of Protocol No.1 to the Convention; complete withdrawal of derogations on 9 June 2020. The derogations were accompanied by a translation of the Cabinet of Ministers' Order on the State of Emergency into English.

2. Second derogation:

   30 December 2020 – 6 February; extension until 6 April (Article 11 of the Convention).

3. Third derogation:

   21 October 2021 – 15 November 2021 (Article 11 of the Convention).

iv. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.

The Convention: Articles 8 and 11 of the Convention; Article 2 of Protocol No 1; and Article 2 of Protocol No.4;

The ICCPR: Articles 12, 17 and 21 of the ICCPR.

[6] *E.g. Affaire Communauté Genovoise d'Action Sydicale (CGAS) v. Switzerland* (application no.21881/20), judgment of 15 March 2022.

v. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.

See the replies to Question 2 iv. The second and third derogations concerned only Article 21 of the ICCPR.

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?

Unlike the Convention, the ICCPR does not provide for the right to education (*cf.* Article 13 of the International Covenant on Economic, Social and Cultural Rights). Thus, no derogation from the ICCPR in this respect was made.

LITHUANIA / *LITUANIE*

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.

When on 11 March 2020 the WHO characterised COVID-19 as a pandemic, the Lithuanian Government considered whether there was a necessity to derogate under Article 15 of the Convention; however, after thorough consideration of the issue among the Ministry of Foreign Affairs and the Ministry of Justice, including the Government Agent before the ECtHR, and having regard to the Memorandum of 16 March 2020 issued by the DLAPIL, as well as the statement of the spokesperson for the Secretary General of the COE (20-23 March 2020), it was decided not to notify a derogation, as in fact no measures were imposed that would not be covered by the relevant Articles of the Convention. It should be noted, that no state of emergency was ever declared in the Republic of Lithuania in relation to the COVID-19 pandemic; however, this was not a decisive factor when considering the possibility of derogation.

There were numerous consultations between the Ministry of Foreign Affairs and the Ministry of Justice, including the Government Agent before the ECtHR, and the Permanent Representation of the Republic of Lithuania to the COE.

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.

Yes, human rights implications of the measures introduced in order to contain the pandemic were considered, but, as mentioned above, it was agreed on the national level, that any measures, possibly derogating from the usual enjoyment of human rights, were already covered by the relevant Articles of the Convention.

iii. Was the declaration of a 'state of emergency' or some other form of exceptional legal regime understood to establish a requirement to derogate?

No.

iv. Was consideration given to the need to derogate even in the absence of a declaration of some form of state of emergency?

Yes, please see ii above.

v. If a derogation was considered necessary, how and by whom was the final decision to derogate taken?

N/A

vi. How and by whom was any decision taken on whether or not to renew/ extend or to withdraw that derogation?

N/A

vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?

No.

MONTENEGRO / *MONTÉNÉGRO*

Montenegro faced with a large-scale health crisis, caused by COVID-19 pandemic, which has deeply reflected on the respect of fundamental democracy values, the rule of law and the very notion of human rights whose protection shall be guaranteed by the Convention. Giving priority to the protection of the rights to life and health, Montenegro, like most of the countries, adopted various legitimate measures of varying intensity and scope that restricted specific fundamental human rights, primarily the freedom of movement, the right to a private and family life and the freedom of assembly.

Montenegrin authorities considered on a regular basis the measures undertaken by the National Coordination Body for the Suppression of Infectious Diseases (NCB), with the aim of preventing the expansion of the pandemic within its own territory, as a huge challenge in terms of the broadness of its own democracy, having done its best to avoid that such measures lead to the reduction of fundamental rights and freedoms, derogate the rule of law, and eventually, envisage all relevant dangers through a proactive approach.

However, Montenegro has never seriously considered derogating 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.

No ad hoc procedure was established given the fact that Montenegro had not officially considered derogating from obligations under the European Convention on Human Rights or other international human rights treaties, even though various adopted measures, undertaken as response of Montenegro to COVID-19 pandemic, were extremely strict and in accordance with the legal and constitutional framework.

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.

As already mentioned in the above presented lines, no ad hoc procedure in considering the possible derogation from obligations under the European Convention was established, and consequently, no human rights assessment of the emergency measures was involved in this procedure.

iii. Was the declaration of a 'state of emergency' or some other form of exceptional legal regime understood to establish a requirement to derogate?

In case of Montenegro, no 'state of emergency' was declared, while legal regime was modified in accordance with the applicable COVID-19 measures at that time, therefore, the application of such exceptional or partly modified legal regime due to COVID-19 was not understood to establish a requirement to derogate with respect to Montenegro.

iv. Was consideration given to the need to derogate even in the absence of a declaration of some form of state of emergency?

No consideration was given to the need to derogate and no declaration of some form of state of emergency had been announced at all.

v. If a derogation was considered necessary, how and by whom was the final decision to derogate taken?

The derogation was not considered necessary with respect to Montenegro, thus Montenegro did not proceed to the final stage of taking the final decision to derogate.

vi. How and by whom was any decision taken on whether or not to renew/ extend or to withdraw that derogation?

In compliance with the above presented statements related to the absence of derogation with respect to Montenegro, no derogation specific mechanisms in terms of the duration of derogation were established.

vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?

No consideration is being given to reviewing the procedure at this moment.

NETHERLANDS / *PAYS-BAS*

It appears that there are no examples in the Netherlands of situations in which the authorities ever seriously considered whether or not to derogate from obligations under the ECHR or other international human rights treaties. However, some general remarks can be made about regulations concerning the declaration of a state of emergency and the possibility to derogate from certain fundamental rights in the Dutch Constitution.

In the Netherlands, it is possible to derogate (*afwijken*) from certain specific fundamental rights in the Constitution if a state of emergency has been declared (see article 103 of the Constitution). The term 'derogation' as used in article 103, second paragraph, of the Constitution refers to the possibility provided to the legislator to impose more far-reaching restrictions than those that are already possible on the basis of the fundamental rights provisions concerned. Such derogations are only possible with regard to the in article 103 included fundamental rights and in an exceptional situation (*uitzonderingstoestand*).

In the absence of a declaration of a state of emergency, such derogations from fundamental rights in the Constitution are thus not possible (i.e. derogations are also not possible if emergency legal provisions are activated separately without a state of emergency, see also under A above).

The declaration of a state of emergency is laid down further in the Coordination Act Exceptional Situations (*Coördinatiewet uitzonderingstoestanden*). For the declaration of a general or limited state of emergency, the procedure in articles 1 and 2 of the Coordination Act Exceptional

Situations (*Coördinatiewet uitzonderingstoestanden*) needs to be followed. The declaration is done by royal decree, followed by a notification thereof to the States General. In a limited state of emergency, other (less) emergency legal provisions can be effectuated than in a general state of emergency.

A state of emergency ends by royal decree, or after a decision on this is taken by the States General. This then applies to the entire state of emergency, and not to the individual implementation of provisions within that state of emergency (see article 7 of the Coordination Act Exceptional Situations (*Coördinatiewet uitzonderingstoestanden*)). The instrument of political responsibility applies.

There are thus no specific regulations with regard to derogation from the ECHR or other international human rights instruments, but there are regulations as regards derogation from certain specific fundamental rights in the Dutch Constitution. Since the above described system has been in place (1996), no derogations of the Constitution have been made.

NORTH MACEDONIA / *MACÉDOINE DU NORD*

vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?

Article 54 of the Constitution of the Republic of North Macedonia stipulates that the human rights and fundamental freedoms can be limited only in cases determined by the Constitution. The human rights and fundamental freedoms can be limited during a state of war or emergency, according to the provisions of the Constitution. Limitation of freedoms and rights cannot be discriminatory on the basis of sex, race, skin color, language, religion, national or social origin, property or social position.

The restriction of freedoms and rights cannot refer to the right to life, the prohibition of torture, inhuman and degrading treatment and punishment, the legal certainty of criminal acts and punishments, as well as the freedom of belief, conscience, thought, public expression of thought and religion.

The provision of paragraph 1 of article 54 is significant because it establishes that a possible restriction of human rights and fundamental freedoms can occur only in cases where this is provided for by the Constitution. This cannot be subject to regulation by another act lower than the Constitution. Also, this provision refers to the fact that the Constitution provides for two types of restrictions on human rights and freedoms: restrictions that are exhaustively determined when guaranteeing individual freedoms and rights, and a general provision for limiting freedoms and rights during a war or emergency period. The first type of restrictions is provided for the following freedoms and rights: the inviolability of human freedom (Article 12 of the Constitution); the secrecy of letters (Article 17 paragraph 1 of the Constitution); freedom of association (Article 20 of the Constitution); the right to peaceful assembly (Article 21 of the Constitution); the inviolability of the home (Article 26 of the Constitution); the right to free movement on the territory of the Republic and to freely choose the place of residence (Article 27 of the Constitution); the right to property (Article 30 of the Constitution); the right to establish trade unions (Article 37 of the Constitution); and the right to strike (Article 38 of the Constitution).

The terms state of war and state of emergency are defined by the Constitution (Articles 124-126 of the Constitution). According to Article 124: "Martial law occurs when there is an immediate military danger of an attack on the Republic or when the Republic is attacked or war is declared against it. Martial law is declared by the Parliament with a two-thirds majority vote of the total number of MPs upon a proposal by the President of the Republic, the Government or at least 30 MPs. If the Assembly cannot meet, the President of the Republic makes a decision to declare

martial law and submits it to the Assembly for confirmation as soon as it is able to meet. "A state of emergency occurs when major natural disasters or epidemics occur. The existence of a state of emergency in the territory of the Republic of Macedonia or part of it is determined by the Assembly on the proposal of the President of the Republic, the Government or at least 30 deputies. The decision determining the existence of a state of emergency is made with a two-thirds majority vote of the total number of deputies and is valid for a maximum of 30 days. If the Assembly cannot meet, the president of the Republic makes a decision on the existence of a state of emergency and submits it to the Assembly for confirmation as soon as it is able to meet. (Article 125) In the event of a state of war or emergency, the Government, in accordance with the Constitution and the law, adopts decrees with legal force. The Government's authority to enact decrees with legal force lasts until the end of the state of war or the state of emergency, which is decided by the Parliament. (Article 126) The decree with legal force will not suspend the constitutional provisions, which means neither the corresponding rights, but only a stricter and more restrictive regime for their realization (for example, in relation to freedom of movement, etc.) can be foreseen.

In 2021 a draft law on the state of emergency was prepared, which regulates the state of emergency in accordance to the principles of the rule of law. For the preparation of this legal solution, the Ministry of Justice, upon consultation and submitted reports from several institutions and from the civil sector, prepared an analysis of the experiences of the institutions during the state of emergency and decrees with legal force. Also, the legislative experiences of the member states of the EU, the USA and the states from the region were comparatively reviewed. At the same time, the initial version of the draft law was submitted to the Venice Commission, which positively evaluated it in its opinion that the standards for regulating this situation were observed, and also the improvements proposed by the Commission were fully incorporated into the draft text of the law, which is currently pending adoption.

NORWAY / *NORVÈGE*

The Norwegian authorities have never seriously considered whether or not to derogate from obligations under the European Convention on Human Rights or other international human rights treaties.

POLAND / *POLOGNE*

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.

In Poland, there are no regulations specifically governing the procedure of derogation under Article 15 of the Convention. However, other general rules could be taken into consideration, in particular the application of the rules related to the suspension of the treaty.

The rules and procedures for concluding, ratifying, approving, announcing, executing, terminating and changing the scope of applicability of international treaties are regulated by the Constitution of the Republic of Poland of 2 April 1997, the Act of 14 April 2000 on International Treaties (hereinafter referred to as ”the International Treaties Act”) and the ordinance of the Council of Ministers of 28 August 2000 on the implementation of certain provisions of the International Treaties Act.

Under this procedure, the actors to be involved in a decision-making process whether or not to suspend any treaty (and, hence, obligations under the European Convention on Human Rights or other international human rights treaties (in particular the International Covenant on Civil and Political Rights) include the sectorial minister responsible for the matters covered by the international treaty at stake, the minister of foreign affairs, the Council of Ministers, the Parliament (the Sejm and the Senate) and the President (the latter two actors come into play only when the treaty was ratified with a prior consent of the statute – which would normally be the case with respect to human rights treaties).

According to Article 20 § 1 of the International Treaties Act, the minister in charge of the department of government administration competent for matters covered by an international agreement shall be responsible for the performance of duties and the exercise of the rights resulting from this international treaty for the Republic of Poland. Pursuant to § 2 of this Article the minister referred to in § 1 shall notify the minister of foreign affairs about cases of non-performance or irregularity in performance of an international treaty.

Furthermore, Article 23 point 3 of this Act provides that the minister in charge of the department of government administration competent for matters covered by an international treaty, after consultation with ministers involved, shall submit to the Council of Ministers, through minister competent for foreign affairs, a request to suspend or reinstate the application of an international treaty (*wniosek o zawieszenie lub przywrócenie stosowania umowy międzynarodowej*).

As a general rule, the motion to suspend the application of an international treaty should be approved by the Council of Ministers, the President (if the treaty in question was a ratified one), as well as the Parliament – if it initially gave its consent to ratify the treaty (notably treaties concerning civic freedoms, rights or duties specified in the Constitution). The requirement of a prior statutory consent would therefore apply in case a suspension or derogation from obligations under the European Convention on Human Rights or other international human rights treaties were proceeded[7].

In consequence, it may be assumed that, in accordance with Article 25 § 1 point 1 of the International Treaties Act, the decision on suspension of the application of the European Convention on Human Rights should be taken by the President on motion of the Council of Ministers upon consent of the Parliament expressed by statute. The following steps could be identified in the decision-making process:

- initiative of the sectorial minister to suspend the relevant obligations from the Convention,
- interministerial consultations,
- motion for suspension to the Council of Ministers – lodged by the competent sectorial minister through intermediary of the Minister for Foreign Affairs,
- resolution of the Council of Ministers on the submission of the European Convention on Human Rights to the President of the Republic of Poland for suspension,
- motion to the Parliament to consent to the suspension of the Convention in the form of statute – submitted by the Minister for Foreign Affairs with a relevant bill and justification,
- adoption and entry into force of statute (according to the ordinary legislative procedure),
- submission (by the Minister of Foreign Affairs) to the President the resolution of the Council of Ministers upon the consent of the Parliament,
- decision of the President on the suspension of some of the provisions of the Convention,

[7] Pursuant to Article 25 § 1 point 2 and 3 of the International Treaties Act, the change of the scope of applicability of an international treaty, the ratification of which had required a prior consent [of the Parliament] in form of a statute (*zgoda wyrażona w ustawie*), shall require as well a prior consent in the form of a statute before a motion for the change of the scope of applicability is forwarded to the President.

- publication of the information on the suspension in the Journal of Laws.

In the context of Covid-19 pandemic the Ministry of Foreign Affairs was also considering a possibility of applying an *ad hoc* procedure based exclusively on Article 15 of the Convention (which has the status of a universally binding legal act in Poland). According to the concept of such an *ad hoc* procedure, the decision on the derogation would be taken by the Council of Ministers upon the initiative of the minister responsible for the introduction of the restrictions at stake.

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.

The procedure stipulated in Article 23 § 3 and Article 25 of the International Treaties Act is of a general character and does not define what assessments should be done in its context (and this can vary depending on the subject matter of the treaty concerned).

According to general rules applicable in the context of the decision-making process, in view of the subject matter of the procedure concerning the suspension of the Convention, the human rights impact assessment should constitute its integral part (see more information on the practice applied in reply to question no. 4). Two recent examples illustrate the practice of conducting human rights assessments.

Firstly, following the introduction of the state of epidemic (in connection with Covid-19 threat) the Ministry of Foreign Affairs sent an urgent letter with information to all other ministers, including in particular the Ministry of Health, recalling that any restrictions on human rights and fundamental freedoms should be introduced and applied in compliance with the Convention (and other relevant international treaties) in the light of its interpretation by the European Court of Human Rights. The Ministry of Foreign Affairs further enumerated possible rights and freedoms that might be affected by Covid-19 measures and explained general rules applicable to restricting those rights and freedoms stemming from the Convention. On this basis the Ministry of Foreign Affairs called upon all other ministries to analyse the compatibility with the Convention of the restrictions imposed for which they were competent and to report back. At the same time the Ministry of Foreign Affairs recalled that a possibility of derogation under Article 15 of the Convention was available if the restrictions going beyond the scope of limitations allowed by the Convention were necessary. In response, other ministries carried out relevant analyses, informed about the measures introduced to tackle the Covid-19 threat and expressed an opinion that those measures could be considered as compatible with the Convention as the restrictions imposed remained in the scope of restrictions normally admitted by the Convention. The Ministry of Health also expressed doubts as to whether a derogation would be admissible given that no state of emergency had officially been declared. In consequence, no procedure for the suspension of the Convention was launched.

Secondly, in connection with a sudden and massive influx of migrants from Belarus and the formal declaration of a state of emergency on the parts of the Polish territory, the Ministry of Foreign Affairs asked the Ministry of the Interior and Administration to analyse the need for derogation under Article 15 of the Convention in view of the restrictions introduced, especially regarding certain rights and freedoms defined by the Convention. In response, the Ministry of the Interior and Administration informed that the scope of the restrictions introduced was as limited as possible and it could be argued that they remained in the limits of restriction clauses provided by the relevant provisions of the Convention. It also noted that the Court was in any case empowered to examine and effectively challenge the validity of the derogation as such. It also recalled that the application of derogation under Article 15 of the Convention is not automatic but constitutes a sovereign decision of a State-Party which may decide to be bound by the obligations stemming from the Convention despite the introduction of a state of emergency. In sum, the Ministry did not express a need to launch a derogation procedure. In consequence, no further steps were taken.

iii. Was the declaration of a 'state of emergency' or some other form of exceptional legal regime understood to establish a requirement to derogate?

As the Polish domestic law does not refer directly to the derogation under Article 15 of the Convention, there is also no regulation that would make it dependent on the prior declaration of a state of emergency. In particular, the procedure of suspension of a treaty under the International Treaties Act does not refer to any such conditions.

On the other hand, according to the Polish regulations the declaration of the state of emergency does not establish an automatic requirement to derogate from the obligations under the Convention. Derogation should thus be made by an explicit decision.

The introduction of the state of emergency is regulated by the Constitution and the Act of 21 June 2002 on State of Emergency (hereinafter referred to as the "State of Emergency Act") on the basis of the premises defined there which are not necessarily the same as those envisaged by Article 15 of the Convention (see below information on the Polish regulations on the state of emergency).

According to the analysis applied in the context of the state of emergency introduced in 2021 on the parts of the Polish territory adjacent to Belarus, the decision to introduce certain necessary restrictions on individual freedoms in that area in order to protect vital interests of the Polish state confronted with the sudden and massive influx of migrants from Belarus, should not automatically be interpreted as a wish of the Polish authorities to suspend the application of the control mechanisms set up by the Convention. The wording of the Convention may justify a conclusion that a possible resorting to the derogation mechanism constitutes a sovereign and autonomous decision of the State Party to the Convention which may decide to remain bound by all provisions of the Convention despite the measures applied in an emergency situation.

At the same time, Article 7 of the State of Emergency Act provides that *the Minister of Foreign Affairs shall notify the Secretary General of the United Nations and the Secretary General of the Council of Europe of the introduction and termination of the state of emergency*. The *ratio legis* of this provision is mainly to keep the Council of Europe – and through its intermediary – other Council of Europe member states and their citizens informed about the possible human rights restrictions introduced on the Polish territory in connection with the state of emergency. Nothing in the *travaux prèparatoires* of this Act, or in its explicit wording, would suggest the existence of a link between this notification and the derogation under Article 15 of the Convention.

On this basis, Poland officially informed the Secretary General of the Council of Europe about the introduction (and then extension) of the aforementioned state of emergency on part of the Polish territory in the areas neighbouring with Belarus[8]. Poland also explained that its notification did not amount to the derogation under Article 15 of the Convention.

According to Article 2 § 1 of this law, *the Council of Ministers may adopt a resolution to refer to the President of the Republic of Poland a request for introduction of a state of emergency, in the situation of extraordinary threat to the constitutional system of the State, citizens' security or*

[8] Pursuant to the Article 7 of the Law of 21 June 2002 on State of Emergency (Journal of Laws of 2002, No. 113, item 985, as amended), on 3 September 2022, the Permanent Representation of the Republic of Poland to the Council of Europe in Strasbourg informed the Secretary General of the Council of Europe by note verbal that the President of the Republic of Poland ordered, pursuant to Article 230 § 1 of the Constitution and Article 3 of the Act of 21 June 2002 on State of Emergency, on 2 September 2021, in connection with the particular threat to the security of citizens and public order, related to the current situation on the state border of the Republic of Poland with the Republic of Belarus, the introduction of a state of emergency in the area of parts of the Podlaskie Voivodship and parts of the Lubelskie Voivodship for a period of 30 days from the date of publication of the ordinance. The ordinance was published on the same day in the Journal of Laws (item 1612 of 2021). Subsequently, the Permanent Representation of the Republic of Poland to the Council of Europe in Strasbourg informed the Secretary General of the Council of Europe, by a note verbal of 5 October 2021, about the prolongation of above described state of emergency and, by a note verbal of 22 December 2021, about its termination on 30 November 2021.

public order, including those caused by terrorist activity or activities in cyberspace which cannot be removed by use of ordinary constitutional measures. According to Article 2 § 3, it is the Council of Ministers' task to *define the reasons for the introduction and the necessary duration of the state of emergency, the area in which the state of emergency shall be introduced, as well as the types of limitations on human and civil freedoms and rights, appropriate to the degree and nature of the threat, to the extent permitted by this law.*

Pursuant to Article 3 of the State of Emergency Act, *the President of the Republic of Poland shall immediately consider such resolution of the Council of Ministers and then shall issue an ordinance on the introduction of a state of emergency for a specified period of time not longer than 90 days or shall decide to refuse to issue such an ordinance. The ordinance on the introduction of the state of emergency shall be presented to the Sejm by the President of the Republic of Poland within 48 hours of signing it. The ordinance shall specify the reasons for introducing a state of emergency, the duration and the area in which the state of emergency is introduced, and, to the extent permitted by this law, types of limitations on human and civil rights and freedoms. According to Article 4 of this law, the state of emergency takes effect from the date of publication of the ordinance in the Journal of Laws of the Republic of Poland.*

According to Article 233 of the Constitution:

§ 1 The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para.4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children).

§ 2. Limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry or property shall be prohibited.

§ 3. The statute specifying the scope of limitations of the freedoms and rights of persons and citizens during states of natural disasters may limit the freedoms and rights specified in Article 22 (freedom of economic activity), Article 41, §§ 1, 3 and 5 (personal freedom), Article 50 (inviolability of the home), Article 52 § 1 (freedom of movement and sojourn on the territory of the Republic of Poland), Article 59 § 3 (the right to strike), Article 64 (the right of ownership), Article 65, para. 1 (freedom to work), Article 66 § 1 (the right to safe and hygienic conditions of work) as well as Article 66§ 2 (the right to rest).

It should be noted that the scope of non-derogable human rights under the Polish Constitution is broader as compared to the Convention.

iv. Was consideration given to the need to derogate even in the absence of a declaration of some form of state of emergency?

It should be noted that in the context of the COVID-19 crisis the Government Agent reminded the ministries responsible for the introduction of the relevant restrictions that the measures at stake could affect the rights and freedoms protected by the Convention possibly resulting in the submission of many applications with the Court and the delivery of its judgments. The Government Agent also recalled the relevant standards stemming from the Convention with regard to limiting the rights and freedoms and explained that if measures going beyond the restrictions admitted by the Convention were necessary, there was a possibility to derogate certain (but not all) obligations under its Article 15.

However, no ministry has ever identified any urgent need for a derogation.

v. If a derogation was considered necessary, how and by whom was the final decision to derogate taken?

In case, the procedure of suspension of a treaty under the International Treaties Act would be applied it should be noted that in accordance with Article 25 § 1 point 1 of the International Treaties Act, if an international treaty was ratified, the final decision on change of the scope of its applicability is taken by the President of the Republic of Poland. However the President cannot take such a decision autonomously but should act upon consent of the Polish Parliament and a motion of the Council of Ministers.

Since the Convention with the Government statements related to it was published in the Journal of Laws, the Government information on the President act of the change of the scope of applicability of the international treaty would be published in the same procedure as the statute – namely in the Journal of Laws.

In case an *ad hoc* procedure based exclusively on Article 15 of the Convention (which has the status of a universally binding legal act in Poland) were applied, the decision on the derogation would be taken by the Council of Ministers upon the initiative of the minister responsible for the introduction of the restrictions at stake.

vi. How and by whom was any decision taken on whether or not to renew/ extend or to withdraw that derogation?

The same procedure would be applied as described in point v.

vii. Is consideration being given to reviewing the procedure, in the light of recent experience, for example by establishing a specific procedure?

No formal process to change the procedure is envisaged at this moment.

PORTUGAL

Although there is no specific procedure to be followed when considering or not the derogation from obligations under the European Convention on Human Rights or other international rights treaties, under Portuguese law, we describe the constitutional regime concerning restriction (article 18) and suspension (article 19) of fundamental rights:

i. The legal regime applicable to the restriction of rights, freedoms and guarantees is set out in the Constitution of the Portuguese Republic (CRP).

It follows from the provisions of paragraphs 2 and 3 of article 18, together with the provision of paragraph b) of paragraph 1 of article 165 of the CRP, that restrictions on rights, freedoms and guarantees may only be effected through a law of the Parliament - *Assembleia da República* or a Government decree-law authorized by the Parliament.

According to the provisions of paragraph 3 of Article 18 of the CRP, the restrictive law must be general and abstract; it cannot have retroactive effect; and it cannot diminish the extension and scope of the essential content of the norm that declares the right.

Article 18(2) determines that the law may only restrict rights in cases expressly provided for in the Constitution. However, implicit legal restrictions may be permitted in the event of a collision between rights or between these and constitutionally protected interests.

It should be noted that the same paragraph 2 of Article 18 makes the restriction of rights, freedoms and guarantees subject to the principle of proportionality, i.e. the restriction must be necessary and appropriate to safeguard another fundamental right or a constitutionally protected public interest with greater weight or relevance.

ii. No. Law No. 44/86, of 30 September (establishing the state of siege and state of emergency legal framework) and Organic Law No. 1-B/2009, of 7 July (National Defence Law), and both several times amended, do not contemplate any provisions on human rights impact assessment of the domestic measures.

iii. Yes, according to article 19 of the CRP the sovereign bodies may not, jointly or separately, suspend the exercise of the rights, freedoms and guarantees, except in the case of a "state of siege" or "state of emergency", declared in the manner provided for in the CRP.

iv. Article 19 of the CRP establishes a detailed set of safeguards for the declaration of the state of exception, namely the definition of the material assumptions, the setting of material requirements for the declaration (grounds and specification) and material limits of the state of exception and the special procedure for the declaration.

v. The declaration falls under the competence of the Head of State – *Presidente da República*, in accordance with Article 134(d). To do so, he or she must first consult the Government and obtain authorization from Parliament.

vi. No

SLOVAK REPUBLIC / *RÉPUBLIQUE SLOVAQUE* - *(Appendix / Annexe pg 116)*

There is no specific national mechanism of procedure to be followed when considering whether or not to derogate from obligations under the European Convention on Human Rights or other international human rights treaties in the legal system of the Slovak Republic.

During the COVID-19 pandemic Slovakia didn't invoke derogation clause under Article 15 of the European Convention on Human Rights. The reason for this was that existing legal framework of the Slovak Republic is sufficient to apply measures respecting protection of human rights and fundamental freedoms in the area of application of so called „second paras" – this means the part of the ECHR that in its Articles 8 – 11 directly regulates the limitations of the exercise of the protecting rights.

SWITZERLAND / *SUISSE*

i. Veuillez décrire la procédure ad hoc suivie pour aborder cette question, y compris sa base juridique, les questions examinées, les acteurs impliqués et les différentes étapes.

Le 16 mars 2020, le Conseil fédéral a qualifié la situation en Suisse d'« extraordinaire » au sens de l'art. 7 de la loi fédérale sur la lutte contre les maladies transmissibles de l'homme (loi sur les épidémies). Cela lui a permis, conformément aux art. 184 et 185, al. 3, de la Constitution fédérale, d'édicter différentes ordonnances limitées dans le temps pour lutter contre la pandémie de Covid-19. Le même jour, le Conseil fédéral a adopté différentes mesures de protection de la population, notamment une interdiction de toutes les manifestations publiques ou privées ainsi que la fermeture de tous les magasins, marchés, restaurants, bars et établissements de divertissements, avec certaines exceptions. Le 20 mars 2020, le Conseil fédéral a également interdit les rassemblements de plus de cinq personnes.

Lors de l'adoption de ces mesures, la question d'une dérogation à la CEDH et au Pacte II de l'ONU a été discutée au niveau technique au sein des offices compétents du Département fédéral des affaires étrangères et du Département fédéral de la justice et de la police. Tous les acteurs impliqués, y compris au niveau de la Direction des Offices, étaient d'avis que les mesures adoptées s'inscrivaient dans le cadre des restrictions admissibles aux garanties de la Convention et du Pacte II puisqu'elles reposaient sur une base légale, à savoir la Constitution fédérale et la loi sur les épidémies, poursuivaient des intérêts publics légitimes et étaient proportionnées au but poursuivi, notamment du fait qu'elles étaient limitées dans le temps. Les Offices compétents ont ainsi estimé que la question d'une dérogation ne devait pas être examinée plus avant.

Au vu de cette appréciation unanime au niveau technique, aucune décision formelle n'a été adoptée à ce sujet. De même, la question de la procédure à suivre pour déroger n'a pas été concrètement examinée.

ii. Cette procédure ad hoc impliquait-elle une évaluation de l'impact sur les droits humains des mesures d'urgence pour lesquelles une dérogation était envisagée ? Si oui, veuillez décrire comment cette évaluation a été effectuée.

Cette question n'a pas été examinée, puisque les réflexions se sont arrêtées à un stade préliminaire (cf. ci-dessus B.i).

iii. La déclaration d'un « état d'urgence » ou d'une autre forme de régime juridique exceptionnel a-t-elle été interprétée comme entraînant une obligation de dérogation ?

Non (cf. ci-dessus B.i).

iv. La nécessité de déroger même en l'absence d'une déclaration d'une certaine forme d'état d'urgence a-t-elle été envisagée?

Non.

v. Si une dérogation a été jugée nécessaire, comment et par qui la décision finale de dérogation a-t-elle été prise ?

vi. Comment et par qui a été prise la décision de renouveler/prolonger ou non, ou de retirer, cette dérogation ?

vii. Est-il envisagé de réexaminer la procédure, à la lumière de l'expérience récente, par exemple en établissant une procédure spécifique ?

Aucune réflexion en ce sens n'a été menée ou n'est prévue jusqu'ici.

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:	Vos autorités ont-elles effectivement dérogé aux obligations découlant de la Convention européenne des droits de l'homme ou d'autres traités internationaux relatifs aux droits humains ? Si tel est le cas, veuillez :
vii. Briefly describe the nature of the crisis which gave rise to the need to derogate.	i. décrire brièvement la nature de la crise ayant donné lieu à la nécessité d'une dérogation.
viii. 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.	ii. Indiquer brièvement les raisons pour lesquelles il a été décidé qu'une dérogation était nécessaire, y compris en spécifiant toute mesure prise ayant donné lieu à la nécessité de déroger.
ix. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.	iii. Indiquer les dates de mise en œuvre et de retrait des mesures qui ont donné lieu à la nécessité d'une dérogation.
x. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.	iv. Indiquer les dispositions de la Convention européenne des droits de l'homme ou d'autres traités internationaux relatifs aux droits humains sur lesquelles la/les dérogation(s) a/ont porté.
xi. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.	v. Indiquer les dates et décrire brièvement le contenu de la / des notification(s) envoyée(s) au bureau compétent, tel que spécifié dans le traité concerné.
xii. 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?	vi. Si une dérogation a été faite à la Convention européenne des droits de l'homme mais pas au Pacte international relatif aux droits civils et politiques ou vice versa, existait-il une raison particulière d'opérer une distinction entre les deux ?

ANDORRA / *ANDORRE* - *(Appendix / Annexe pg 93)*

<u>Vos autorités ont-elles effectivement dérogé aux obligations découlant de la Convention européenne des droits de l'homme ou d'autres traités internationaux relatifs aux droits humains ? Si tel est le cas, veuillez</u> :

Tel qu'il a été indiqué précédemment, la Principauté d'Andorre, depuis l'avènement de sa Constitution en 1993, n'a pas connu d'évènements ayant entrainé la nécessité d'envisager la dérogation aux droits fondamentaux reconnus par les principales conventions multilatérales portant sur les droits humains. Plus concrètement, depuis l'entrée en vigueur pour l'Andorre de la Convention européenne des droits de l'homme le 22 janvier 1996, il n'a jamais été prévu de recourir à l'application de l'article 15 permettant une dérogation en cas d'urgence.

Cependant, la pandémie de SARS-CoV-2 que nous avons traversé a obligé le Gouvernement et le Parlement andorran à développer la loi organique prévue par l'article 42 de la Constitution afin de disposer de moyens d'action nécessaires en cas d'extrême urgence. Comme nous l'avons

exposé dans la question 1, l'approbation de la loi 4/2020 répondait à une finalité préventive et à ce jour, ni l'état d'alarme, ni l'état d'urgence n'ont été déclarés en Andorre.

Les mesures prises par les autorités andorranes pendant la pandémie ont eu uniquement pour objet de protéger la santé de la population et ont été guidées à tout moment par le principe de proportionnalité. Elles ont eu pour unique objet que de restreindre certaines activités et de contenir certains comportements considérés à risque aux vues de la propagation du virus SARS-CoV-2. En ce sens, celles-ci, ne peuvent constituer une dérogation aux dispositions de la Convention tel qu'il a été établi dans divers arrêts de la Cour dont *Chagnon et Fournier* CEDH 17 juill. 2010. Les mesures de contention de la propagation du virus n'ont duré que le temps nécessaire pour lutter contre l'épidémie et ont eu pour unique objet de protéger la santé publique.

Les mesures effectivement prises par le Gouvernement de la Principauté d'Andorre l'ont été sur la base de la loi générale de santé du 20 mars 1989 et de la loi 30/2018 de sureté publique.

- L'article 58 de la loi générale de santé prévoit que le Gouvernement doit intervenir en prenant les mesures appropriées pour préserver la santé publique en cas d'urgence, de catastrophe ou de risque pour la santé publique. L'article 59, quant à lui, stipule que les mesures préventives adoptées doivent être appropriées et toujours proportionnées aux objectifs poursuivis.
- L'article 4.3 de la loi 30/2018 prévoit que pour des motifs de santé publique, le Gouvernement peut restreindre « *le nombre de personnes pouvant se réunir physiquement dans les espaces et locaux publics et privés, à condition que cela soit nécessaire à cette fin, de manière proportionnée et pour une durée n'excédant pas un mois* ».

Ces deux textes de loi ont doté le Gouvernement de moyens suffisants pour contrôler la propagation de la pandémie en Andorre sans devoir recourir à la déclaration de l'état d'alarme ou d'urgence afin de limiter ou de suspendre l'application de certains droits fondamentaux.

ARMENIA / *ARMÉNIE*

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

The necessity of the derogation was preconditioned by the following reasons:

1. spread of the novel coronavirus diseases (COVID-19) in the world and in the Republic of Armenia;
2. the fact that the Director General of the World Organisation has characterised this infection as pandemic;
3. the epidemic situation posed a threat to the life and health of the population and might have resulted in the disruption of the normal living conditions of persons.

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.

The need of derogation was based on the following:

1. the principle of priority of securing the life and health of people;
2. the necessity to take special sanitary and preventive and quarantine measures for the protection of the population;
3. preservation of the health of the population and improvement of the state of health thereof;
4. introduction of special conditions and regime for prevention of spread of the infection and elimination thereof;

5. the need of organisation and implementation of preventive activities and measures for the protection of the population in timely, due, efficient and effective manner.

iii. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.

Once the Decision of the Government of the Republic of Armenia of 16 March 2020, N 298-N on Declaring State of Emergency in the Republic of Armenia was adopted, the Republic of Armenia notified the Council of Europe on derogation in line with Article 15 of the European Convention.

The state of emergency, instituted on 16 March 2020 in the Republic of Armenia in response to the global outbreak and spread of COVID-19 virus, has been extended several times and finally has expired on 11 September 2020 and therefore, it was the date of withdrawal of the derogations.

iv. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.

The following restrictions were posed during the state of emergency:

1. Restrictions on the right of persons to free movement and movement of vehicles (special regime of movement), and inspections thereof;
2. Restrictions on the rights to property of persons;
3. Restrictions and prohibitions on assemblies and public events;
4. Restrictions on transporting goods from the Republic of Armenia;
5. Restrictions on separate types of economic activities and provision of services, activities of educational institutions;
6. Prohibitions of separate publications, reports through the mass media.

v. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.

1. 20 March 2020 - Declaration related to the Convention for the Protection of Human Rights and Fundamental Freedoms
2. 17 April 2020 - Communication related to the Convention for the Protection of Human Rights and Fundamental Freedoms (information on the state of emergency, instituted on March 16, 2020 in response to the global outbreak and spread of COVID-19, for 30 days, till May 14, 2020)
3. 15 May 2020 - Communication related to the Convention for the Protection of Human Rights and Fundamental Freedoms (information on the state of emergency, instituted on March 16, 2020 in response to the global outbreak and spread of COVID-19, for 30 days, till June 13, 2020)
4. 16 June 2020 - Communication related to the Convention for the Protection of Human Rights and Fundamental Freedoms (information on the state of emergency, instituted on March 16, 2020 in response to the global outbreak and spread of COVID-19, for 30 days, till July 13, 2020)
5. 15 July 2020 - Communication related to the Convention for the Protection of Human Rights and Fundamental Freedoms (information on the state of emergency, instituted on March 16, 2020 in response to the global outbreak and spread of COVID-19, for 30 days, till August 12, 2020)
6. 13 August 2020 - Communication related to the Convention for the Protection of Human Rights and Fundamental Freedoms (information on the state of emergency, instituted on March 16, 2020 in response to the global outbreak and spread of COVID-19, for 30 days, till September 11, 2020)

7. 16 September 2020 - Withdrawal of Derogation related to the Convention for the Protection of Human Rights and Fundamental Freedoms

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?

N/A

Reservations and Declarations for Treaty No.005 - Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005)

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

Early in the morning on September 27 the Azerbaijani armed forces launched large-scale airborne, missile and land attack along the entire line of contact with the Republic of Artsakh (Nagorno-Karabakh Republic). Azerbaijani army has resorted to the use of tanks, helicopters, heavy artillery, unmanned aerial vehicles (UAV), multiple launch rocket system, such as Grad and Smerch as well as other types of weaponry in its possession. Moreover, the town of Vardenis in the east of the Republic of Armenia has also been subjected to the UAV and missile attacks.

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.

As a result of the operations undertaken by the Republic of Azerbaijan, there was an imminent threat of armed attacks against the Republic of Armenia and invasion of its territory threatening the sovereignty, security, territorial integrity of the Republic of Armenia. The life and safety of peaceful citizens were under threat and call for emergency measures.

iii. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.

Derogation was instituted by the Note verbale No. 3201/C-308/2020, dated 29 September 2020, registered at the Secretariat General on 29 September 2020.
It has been withdrawn in the Note verbale No. 3201/C-124/2021, dated 12 April 2021, registered at the Secretariat General on 14 April 2021.

iv. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.

The given restrictions related to the temporary derogations from the obligations under Articles 8, 10 and 11 of the Convention, Article 1, Protocol 1 of the European Convention and Article 2, Protocol 4 of the European Convention

v. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.

N/A

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?

N/A

DEROGATION OF MARCH 2008

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

A series of anti-government riots took place in Armenia following presidential elections held on 19 February 2008. Protests broke out in the Armenian capital Yerevan.

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.

In order to prevent the threat to the constitutional order in the Republic of Armenia, to protect the rights and lawful interests of the population.

iii. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.

1 March 2008 after the state of emergency in the city of Yerevan the Ministry of Foreign Affairs of Armenia notified to the Council of Europe on the derogations from the European Convention under Article 15 of the Convention.

The state of emergency and the derogation were lifted respectively on 20 March and 21 March 2008.

iv. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.

By the Decree of the Republic of Armenia NH-35-N, dated on 01 March 2008, the following restrictions were posed:

1. Prohibition of meetings, rallies, demonstrations, marches and other mass events;
2. Prohibition of strikes or other measures to terminate the activities of organizations;
3. Restriction of movement of persons and vehicles, if appropriate;
4. It was prohibited for the media to publish false or destabilizing information on state or domestic political issues or to call for the participation of uninformed (illegal) events.

v. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.

N/A

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?

N/A

AUSTRIA / *AUTRICHE*

No.

BOSNIA AND HERZEGOVINA / *BOSNIE-HERZÉGOVINE*

No.

CROATIA / *CROATIE*

Despite the option referred to in Article 17 of the Constitution, the Republic of Croatia **did not proclaim a *"state of emergency"*** (note: this terminology is not used in our Constitution) **at any moment on its territory during the COVID-19 pandemic,** as was done by some other countries, both neighbouring and from the wider vicinity. Despite the complexity of the situation and the difficult circumstances, it was assessed that such an extreme measure was not necessary to protect the population from the impacts and effects of a global pandemic.

However, justification for **the adoption of concrete measures** in the fight against the COVID-19 pandemic was found in the Act on the Civil Protection System and the Act on the Protection of the Population from Infectious Diseases, as well as other laws. In this sense, the Government did not declare a state of natural disaster or a state of catastrophe either, but amended the Act on the Civil Protection System by introducing a state of *"occurrence of special circumstances involving an event or a particular condition that could not have been anticipated and that could not have been influenced, posing a threat to the lives and health of the population, endangering property of greater value, having a significant negative impact on the environment, businesses or causing great economic damage".*

All measures that were continuously adopted during the COVID-19 pandemic and adapted to the new situation were not in conflict with other obligations of the Republic of Croatia under international law, including the International Covenant on Civil and Political Rights (which also provides for the possibility of derogation).

Also, on 20 February 2020, the **Civil Protection Headquarters** of the Republic of Croatia was established to prevent the spread of coronavirus infection.

In addition, the new **Act on the Execution of Prison Sentences** (2021) prescribes that in cases of large-scale epidemics, the minister competent for justice is authorised to take measures in the prison system that are not determined by this Act until the end of extraordinary circumstances. Since no so-called "state of emergency" was ever proclaimed in Croatia due to the COVID-19 pandemic, this provision was never activated. However, during the pandemic, the full functioning of the prison system was ensured, and all the recommendations of the Croatian Institute of Public Health and the competent epidemiological services were respected. All the measures are of limited duration and depend on the epidemiological situation and are tightened or loosened as necessary.

CYPRUS / *CHYPRE*

The Republic of Cyprus has never derogated from obligations under the European Convention on Human Rights or other international human rights treaties.

CZECH REPUBLIC / *RÉPUBLIQUE TCHÈQUE*

Not applicable.

DENMARK / *DANEMARK - (Appendix / Annexe pg 103)*

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

Denmark has not introduced derogations from the ECHR or other human rights treaties.

ii. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.

iii. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.

iv. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office *(e.g. the Secretary General of the Council of Europe, in the case of the European Convention on Human Rights)*.

v. 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?

ESTONIA / *ESTONIE*

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

Estonia declared an emergency situation to protect the life and health of its people and fight the spread of the viral disease COVID-19 on 12 March 2020, after which the respective notification under Article 15 of the Convention on Human Rights was submitted to the Secretary General of the Council of Europe on 20 March 2020 (see above Q 1 B (ii)).

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.

See above Q 1 B (ii)-(iv).

iii. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.

Notification was submitted on 20 March 2020: https://rm.coe.int/16809cfa87.
Withdrawal was submitted on 16 May 2020, and took effect on 18 May 2020: https://rm.coe.int/16809e6409.

iv. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.

In the notification Estonia first referred to the measures taken due to the COVID-19 related emergency situation. Thereafter it was noted that some of these measures *may involve* a derogation from certain obligations of Estonia under Articles 5, 6, 8 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 1 and 2 of Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 2 of Protocol No.4 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

In listing the provisions reference was made both to the articles which include exception clauses and allow restrictions on health grounds and to those which do not set out any such exceptions. This was based on the Court's case law, which did not give much guidance on whether health-related restrictions, which have been allowed in individually assessed cases, would be valid in a situation affecting the life of a nation as a whole; that is, in a situation where generalized measures are applied to every person, regardless of their personal situation. Without the guidance of comparable established case law and proceeding from the fact that the final assessment whether the measures taken have violated the Convention or not is the sole prerogative of the Strasbourg Court, Estonia found it to be clearer and more transparent to inform the Council of Europe that the extraordinary measures taken *may not* comply with some articles of the Convention and its Protocols.

Also, by submitting the declaration under Article 15 of the Convention, Estonia sent a signal that it did not consider the pandemic situation and related restrictions as a normality and indicated that the measures it was temporarily taking may involve a derogation from the Convention.

v. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.

Notification (submitted 20 March 2020): https://rm.coe.int/16809cfa87.
The content has been reflected above, see Q 1 - B (i), Q 2 (iv).

Withdrawal (submitted 16 May 2020): https://rm.coe.int/16809e6409.
The content has been reflected above, see Q 1 – B (vi).

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?

The Secretary-General of the United Nations under the International Covenant on Civil and Political Rights was also informed.

Notification, see C.N.113.2020.[9]
Withdrawal, see C.N.177.2020.[10]

FRANCE

i. décrire brièvement la nature de la crise ayant donné lieu à la nécessité d'une dérogation.

Notifications de l'usage de l'article 15 :

1985, pour la seule Nouvelle-Calédonie :
Protestations des indépendantistes portés très principalement par les populations se revendiquant « kanaks »[11], contre le statut de la collectivité de Nouvelle-Calédonie.

[9] https://treaties.un.org/doc/Publication/CN/2020/CN.113.2020-Eng.pdf.
[10] https://treaties.un.org/doc/Publication/CN/2020/CN.177.2020-Eng.pdf.

2015-2017 : suite à l'application de l'état d'urgence, au lendemain des attentats du Bataclan qui ont fait 130 morts et ont révélé des organisations en lien avec Daech en Syrie, pour perpétrer des attentats importants sur le sol français.

ii. Indiquer brièvement les raisons pour lesquelles il a été décidé qu'une dérogation était nécessaire, y compris en spécifiant toute mesure prise ayant donné lieu à la nécessité de déroger.

Dans les deux cas, la loi du 3 avril 1955 sur l'état d'urgence a été employée.
Sans entrer dans des précisions sur les dispositions permises par cet état d'urgence, qui font l'objet d'un contentieux actuel (Domenjoud c. France, n^{os} 34749/16 et 79607/17) il peut être indiqué brièvement que l'état d'urgence – présenté brièvement plus haut – est une forme d'état d'exception prévu par la loi de 1955, qui a plusieurs fois évolué, et qui permet aux autorités administratives (ministre de l'Intérieur, préfet) de prendre des mesures restreignant les libertés comme l'interdiction de la circulation ou la remise des armes à feu de certaines catégories. Les mesures les plus sévères sont les assignations à résidence, la fermeture de certains lieux, l'interdiction de manifester et les perquisitions administratives. Ainsi, il dessaisit l'autorité judiciaire de certaines de ses prérogatives, avec un contrôle des mesures administratives par le juge administratif qui présente les mêmes garanties d'indépendance.

iii. Indiquer les dates de mise en œuvre et de retrait des mesures qui ont donné lieu à la nécessité d'une dérogation.

Activation de l'article 15 en 1985 :
Etat d'urgence du 12 janvier (puis prolongé par un vote du Parlement le 24 janvier, loi déclarée conforme à la Constitution par le Conseil constitutionnel le lendemain) au 30 juin 1985. Il peut être signalé qu'en plus, un couvre-feu a été installé du 12 janvier au 14 juin 1985 dans les mêmes territoires.

Activation de l'article 15 en 2015 – 2017 :
Etat d'urgence sur le fondement de la loi du 3 avril 1955 modifié, employé du 14 novembre 2015 au 1er novembre 2017.

iv. Indiquer les dispositions de la Convention européenne des droits de l'homme ou d'autres traités internationaux relatifs aux droits humains sur lesquelles la/les dérogation(s) a/ont porté.

Le Gouvernement n'a pas visé de dispositions particulières dans ses dérogations, mais les mesures pouvaient porter sur des champs couverts par les articles 6 (dès lors que le contrôle est assuré par le juge administratif plutôt que par le juge judiciaire, ce qui a pu entrainer des critiques de requérants), 8 et 11 de la Convention (s'agissant d'assignation à résidence ou de limitation de manifestations), l'article 1er du Premier protocole additionnel (s'agissant de la remise d'armes aux autorités) et l'article 2 du protocole 4 (s'agissant de limites à la liberté de circuler et assignation à résidence).

v. Indiquer les dates et décrire brièvement le contenu de la / des notification(s) envoyée(s) au bureau compétent, tel que spécifié dans le traité concerné.

2015 – 2017 :
Notification sur le fondement de l'article 15 de la Convention, et 4 du PIDCP.

Les notifications de prolongation informaient les autorités notifiées que, la menace persistant, la reconduction était nécessaire.

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[11] Le peuple kanak (parfois nommé canaque en français) est un peuple autochtone mélanésien français de Nouvelle-Calédonie dans le Pacifique Sud. Il constitue la population majoritaire de la province Nord (72,2 %) et de la province des îles Loyauté (94,6 %)

La substance de la première notification était ainsi formulée :
« *Le 13 novembre 2015, des attentats terroristes de grande ampleur ont eu lieu en région parisienne.*
La menace terroriste en France revêt un caractère durable, au vu des indications des services de renseignement et du contexte international.
Le Gouvernement français a décidé, par le décret n° 2015-1475 du 14 novembre 2015, de faire application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence.
Les décrets n° 2015-1475, n° 2015-1476 et n° 2015-1478 du 14 novembre 2015 et n° 2015-1493 et n° 2015-1494 du 18 novembre 2015 ont défini plusieurs mesures pouvant être prises par l'autorité administrative.
La prorogation de l'état d'urgence pour trois mois, à compter du 26 novembre 2015, a été autorisée par la loi n° 2015-1501 du 20 novembre 2015. Cette loi modifie par ailleurs certaines des mesures prévues par la loi du 3 avril 1955 afin d'adapter son contenu au contexte actuel.
Le texte des décrets et des lois susmentionnés sont joints à la présente lettre.
De telles mesures sont apparues nécessaires pour empêcher la perpétration de nouveaux attentats terroristes.
Certaines d'entre elles, prévues par les décrets du 14 novembre 2015 et 18 novembre 2015 ainsi que par la loi du 20 novembre 2015, sont susceptibles d'impliquer une dérogation aux obligations résultant de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales. C'est pourquoi je vous prie de bien vouloir considérer que la présente lettre constitue une information au titre de l'article 15 de la Convention. »

1985
De la même manière, la France a notifié l'usage de l'article 15 sans viser d'article précis, le 7 février 1985. La sortie de l'état d'urgence au 30 juin 1985 fut notifiée, elle, le 2 septembre 1985 au Conseil de l'Europe. L'article 15 a alors été utilisé en visant le seul territoire de la Nouvelle-Calédonie.
Aucun contentieux sur ces faits n'a, à notre connaissance, été porté devant la Cour EDH.

vi. Si une dérogation a été faite à la Convention européenne des droits de l'homme mais pas au Pacte international relatif aux droits civils et politiques ou vice versa, existait-il une raison particulière d'opérer une distinction entre les deux ?

En 2015-2017, les dérogations ont été faites de manière parallèle concernant les deux traités. L' article 15 de la Conv. EDH précisant que les dérogations ne doivent pas être « en contradiction avec les autres obligations découlant du droit international », il semble que cet article lui-même invite à faire usage également de l'article 4 du Pacte.
En 1985, la dérogation de l'article 15 de la Conv. EDH a été notifiée. En revanche, aucune notification n'a eu lieu sur le fondement de l'article 4 du PIDCP. L'ancienneté de cette dérogation ne permet pas d'expliquer avec certitude cette absence d'usage, mais elle est probablement due :

- Au caractère récent de la ratification de ce Pacte par la France (Entrée en vigueur le 23 mars 1976, conformément aux dispositions de l'article 49, mais adhésion par la France le 4 novembre 1980 et publication permettant l'entrée en vigueur le 29 janvier 1981

- Au fait que la possibilité de communication individuelle devant le Comité des droits de l'Homme était extrêmement récente, tout comme l'affirmation de l'effet direct des stipulations (les communications individuelles ont été permise par un protocole facultatif, auquel France a adhéré le 17 février 1984, avec publication le 25 mai 1984 ; l'effet direct des stipulations a été rapidement affirmé, avec notamment l'arrêt de la première Chambre civile de la Cour de cassation, du 28 novembre 1984 (au visa de l'article 12§2 du PIDCP)).

GREECE / *GRÈCE*

There has been only one case of derogation from Greece's obligations under the ECHR, which took place in very specific and abnormal circumstances, as it was submitted by the military junta, following the coup of 21 April 1967.

The abovementioned derogation was examined by the then European Commission of Human Rights, in the context of the inter-state applications submitted by Denmark (case no. 3321/67), Norway (case no. 3322/67), Sweden (case no. 3323/67) and The Netherlands (case no. 3344/67) against Greece, known as "The Greek Case". The Commission concluded that the conditions for the application of Article 15 of the Convention were not met (there was no "public emergency threatening the life of the nation", the legislative measures and administrative practices of the military government had breached a number of Convention provisions and had not been justified on the basis of Article 15 of the Convention).

It is to be noted that the military government, in order to avoid a finding by the Committee of Ministers of violation of the ECHR as well as the "expulsion" of Greece from the Council of Europe, decided to denounce the Convention and to withdraw from the Organisation. Greece re-joined the Council of Europe in 1974, following the restoration of democracy.

LATVIA / *LETTONIE*

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

During the Covid-19 pandemic, the measures taken to limit the spread of the virus had an impact on the full enjoyment of the rights enshrined in the Convention. In light of the nature of these measures, Latvia derogated from Articles 8, 11 of the Convention, Article 2 of Protocol No.1 to the Convention, and Article 2 of Protocol No.4 to the Convention.

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.

Considering that the provisions of the Convention and the ICCPR allowing for limitations to the rights enshrined in these instruments should be interpreted as narrowly as possible, as well as the importance that the Court places on the necessity to ensure individual assessments and specific criteria for the adoption of one or another decision that affects the rights of an individual,[12] one of the principles that were followed in determining whether to derogate was whether the measure adopted foresaw any assessment for its application or whether it was a total prohibition without exceptions. For example, when the Cabinet of Ministers decided to ban any and all forms of public gatherings without foreseeing an individual assessment, it was decided that derogation from Article 11 of the Convention and Article 21 of the ICCPR was necessary.

iii. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.

4. <u>First derogation:</u>
   15 March 2020 – 14 April 2020 (Articles 8 and 11 of the Convention, Article 2 of Protocol No.1 to the Convention and Article 2 of Protocol No.4 to the Convention);

[12] *E.g. Affaire Communauté Genovoise d'Action Sydicale (CGAS) v. Switzerland* (application no.21881/20), judgment of 15 March 2022.

extension of those measures (and the derogations) until 13 May 2020; partial withdrawal of derogations (Article 11 of the Convention) and extension until 9 June 2020 of other derogations; partial withdrawal of derogation on 2 June 2020 – Article 2 of Protocol No.1 to the Convention; complete withdrawal of derogations on 9 June 2020. The derogations were accompanied by a translation of the Cabinet of Ministers' Order on the State of Emergency into English.

5. Second derogation:
   30 December 2020 – 6 February; extension until 6 April (Article 11 of the Convention).
6. Third derogation:
   21 October 2021 – 15 November 2021 (Article 11 of the Convention).

iv. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.

The Convention: Articles 8 and 11 of the Convention; Article 2 of Protocol No 1; and Article 2 of Protocol No.4;

The ICCPR: Articles 12, 17 and 21 of the ICCPR.

v. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.

See the replies to Question 2 iv. The second and third derogations concerned only Article 21 of the ICCPR.

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?

Unlike the Convention, the ICCPR does not provide for the right to education (*cf.* Article 13 of the International Covenant on Economic, Social and Cultural Rights). Thus, no derogation from the ICCPR in this respect was made.

LITHUANIA / *LITUANIE*

No.

MONTENEGRO / *MONTÉNÉGRO*

Montenegro has never derogated from obligations under the European Convention of Human Rights or other international human rights treaties.

NETHERLANDS / *PAYS-BAS*

In the Netherlands, there has been no occasion when the authorities derogated from obligations under the ECHR or other international human rights treaties.

NORTH MACEDONIA / *MACÉDOINE DU NORD*

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?

In 2020 North Macedonia exercised the right to derogation from its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms in accordance with Article 15, on the entire territory of the country (Notification to SG on 1 April 2020). On 27 March 2020 at its thirtieth session the Government adopted the "Information about the need to report to the Secretary General of the Council of Europe for the derogation of Republic of North Macedonia from certain articles of the European Convention on Human Rights, in accordance with art. 15 of the Convention, and as a consequence of the pandemic COVID-19."

Following the announcement of the World Health Organization of 11 March 2020 confirming the COVID-19 coronavirus pandemic, and taking into account the significant danger its spreading has posed to the public health, on 18 March 2020, the President of the Republic of North Macedonia has adopted a *Decision to establish the existence of state of emergency* on the entire territory of the Republic of North Macedonia. The state of emergency has been established for a period of 30 days with a view to preventing the spread and coping with the consequence of the COVID-19 coronavirus. The Decision was signed by the President of the Republic, in accordance with Article 125 of the Constitution, published in the Official Gazette of the Republic of North Macedonia No. 68, dated 18 March 2020 and subsequently submitted to the Assembly of the Republic of North Macedonia to be verified as soon as the Assembly was in position to meet. It must be born in mind that the Assembly of North Macedonia had been dissolved prior to the coronavirus crisis, on 16 February 2020, for the purpose of convening early parliamentary elections on 12 April 2020. During the state of emergency, the Government of the Republic of North Macedonia, in accordance with the Constitution and relevant laws, adopts Decrees with the force of law. Before the expiration of the 30 days the Government is obliged to submit to the President a detailed report for the effects of the measures that had been taken and a reasoned proposal for the need of potentially extending the state of emergency for additional 30 days. The decisions for prolongation of the state of emergency were also reviewed by the Constitutional Court and deemed as constitutional.

The Government has publicly announced that certain human rights and fundamental freedoms guaranteed under the Constitution may be temporarily suspended or restricted for the duration of state of emergency, but only to the extent required by such circumstances and as much as the measures adopted do not create any discrimination on the basis of race, sex, ethnic origin, language, religion, political or other conviction, social status, education and other personal circumstances.

Since the first case of COVID-19 was detected on the territory of the Republic of North Macedonia on 24 February 2020, the Government of the Republic of North Macedonia gradually has adopted a set of decisions, conclusions and has been taking concrete preventive measures to protect the public health. The measures adopted by the Government of the Republic of North Macedonia, among others included: suspension of regular classroom instruction in primary, secondary and vocational schools and universities, to be replaced with distance home learning, restriction of public assemblies, cancelling all public events, meetings and gatherings, closing of museums, theatres and cinemas for visitors, cancellation of performances and conferences, suspension of international passenger air traffic, establishing special rules of isolation and state-organized quarantine for citizens entering the territory, ban on and special regime of movement in parts and on the entire territory of the country, as well as additional movement restrictions.

It was deemed that the application of these measures may influence the exercise of certain rights and freedoms under the Convention and in some instances give reason for the necessity to derogate from certain obligations of the Republic of North Macedonia under Article 8 and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The measures adopted by the Government were proportionate and targeted, required by the exigencies of the situation and were not inconsistent with other obligations under international law.

The State of emergency in the entire territory of the Republic of North Macedonia, prolonged on four occasions for 30 days or less, has ceased to exist as of 22 June 2020. Pursuant to Article 15 of the Convention on the Protection of Human Rights and Fundamental Freedoms, the Government of the Republic of North Macedonia therefore withdrew its derogations under Article 8 and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of the Protocol of Human Rights and Fundamental Freedoms and Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms and declared that provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms are fully implemented again (Notification to SG on 29 June 2020).

NORWAY / *NORVÈGE*

The Norwegian authorities have never derogated from obligations under the European Convention on Human Rights or other international human rights treaties.

POLAND / *POLOGNE*

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

Poland has never derogated from obligations under the European Convention on Human Rights since its adherence thereto.

PORTUGAL

Not to our knowledge

SPAIN / *ESPAGNE*

No.

TÜRKIYE

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

As it has already been made public, on July 15, 2016, a group consisting of members of the Fetullah Terrorist Organization/Parallel State Structure (FETÖ/PDY) within the Turkish Armed Forces, attempted to destroy the democratic constitutional order by using force and violence together with the organization's civilian administrators and members of FETÖ/PDY who infiltrated the police, gendarmerie and other public institutions.

The organizers of the coup attempt used a large number of fighter planes, helicopters, ships, tanks, heavy armoured vehicles with high destructive power. In the statement made by the General Staff, according to the initial findings, more than 8,000 military personnel participated in the relevant coup attempt, and 246 armoured vehicles including 35 aircraft, 3 ships, 37 helicopters, 74 tanks and approximately 4,000 light weapons were used.

During the attempt, bomb attacks were perpetrated against many public institutions and organizations, especially the Presidential Complex, GNAT building, the General Staff, the Centre of Police Special Operations of Ankara, the National Intelligence Organization and the Security Directorate of Ankara. Those who attempted the coup also attempted to assassinate the President of the Republic of Türkiye. The Bosphorus Bridge and airports were closed to traffic by tanks and armoured vehicles, and many public institutions were occupied by the armed forces.

Those who attempted the coup targeted the civilians who took to the streets to show their reactions to the coup and to prevent it. Aircraft, helicopters and tanks opened fire on civilians. Bomb attacks were also carried out in areas where civilians had gathered. During the coup attempt, 251 people lost their lives and 2,194 people were injured.

Those who attempted the coup also occupied the Turkish Radio Television Corporation and read a statement on behalf of “the Council for Peace at Home” via television broadcast. In the related statement, the issues included in the “martial law directive” were mentioned. During the attempt, attacks were carried out against relevant institutions and organizations, including TÜRKSAT Satellite Communication and Cable TV Operations Company (TÜRKSAT), in order to cut off television broadcasts and internet access throughout the country. Those who attempted the coup occupied the premises of many private television channels and prevented them from broadcasting.

After the military coup attempt our country faced on July 15th, 2016, it was decided to declare a state of emergency across the country on July 21st, 2016. The state of emergency ended on July 19th, 2018. Public authorities and judicial bodies assessed -based on facts- that behind this attempt, there was a structure that was operating in Türkiye for many years and was called the FETÖ and/or the PDY in recent years (See *Mehmet Baransu* (3) decision of the Constitutional Court, App. No: 2016/1138, 26/12/2018, § 9).

During and after the coup attempt, investigations were conducted by the Chief Public Prosecutors’ Offices across the country, regarding the organizations of the armed terrorist group FETÖ/PDY within the public institutions, as well as its structuring in different areas such as education, health, commerce, civil society and media, even if it was not directly related to the coup attempt; custody and detention measures were implemented against many people (*Mehmet Baransu* (3) decision of the Constitutional Court mentioned above, § 10).

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.

The Council of Ministers convened on July 20, 2016 and declared a state of emergency for 90 days as of July 21, 2016. The procedures regarding the state of emergency are specified in (repealed) Articles 119 and 122 of the Constitution of the Republic of Türkiye. The state of emergency was lifted at 12:00 hrs. on Thursday, on July 19th, 2018, after being extended few times by the decisions taken every three months by the Council of Ministers.

Since it is the State's responsibility to bring those who involved in the armed coup attempt to justice and to hold them accountable, and also to take measures to prevent a further attack against the national will, and in this context, to weaken the influence and power of the organisation before the public eye and national and international arena,, the authority, which is enacted in (repealed) Article 120 of the Constitution, was used to thwart the ongoing threat of coup. The state of emergency was declared to protect democracy, human rights and the rule of law, and to completely eliminate possible future threats. As a matter of fact, the measures taken during the state of emergency did not cause any change in daily life. There were no restrictions imposed on fundamental rights and freedoms that would affect daily life.

Due to the conditions that Türkiye was under at the time, the state of emergency constituted a necessity. It is known that some member states of the Council of Europe resort to this method even in less severe terrorist incidents. The situation that our country faced was at a level which could not be compared with these states. The state of emergency declared under these conditions was also approved by GNAT.

In order to eliminate the state of emergency encountered later and to re-establish public order, some measures were taken under the decree-laws which were adopted. In the measures taken, the obligations arising from the international agreements to which our country is a party was complied with to the maximum extent; and strict attention was paid to ensure that the measures meet the criteria of necessity and proportionality.

Examples of measures taken in this context are as follows:

According to Articles 91 et al. Code of Criminal Procedure (CCP) No. 5271, as a rule, the detention period cannot exceed twenty-four hours; however, in crimes committed collectively, due to the difficulty in collecting evidence or the large number of suspects, the Public Prosecutor may issue a written order to extend the detention period for three days, not exceeding one day at a time. However, in order to collect the evidence on the crime by examining them properly and carry out a fair trial due to the high number of members of the FETÖ terrorist organization participating in the coup attempt, pursuant to subparagraph (a) of the first paragraph of Article 6 of the Decree-Law No. 667; in terms of crimes defined in the Book Two, Section Four, Fourth, Fifth, Sixth and Seventh Chapters of the Turkish Penal Code No. 5237, and crimes within the scope of the Anti-Terror Law No. 3713 and crimes committed collectively, during the state of emergency, it has been enabled that the detention period is applied in a way not exceeding thirty days from the moment of arrest, excluding the mandatory period for the suspect to be sent to the judge or court that is nearest to the place of arrest.

The 30-day detention period, which is allowed to be implemented during the state of emergency, is not applied to every suspect in an absolute manner. This regulation regarding the detention period is implemented to the extent required by the state of emergency and the investigation. So far, almost no one has been detained for 30 days, and in 80-90% of coup investigations across the country, suspects are generally detained for 4 or 5 days. Although the Decree-Law does not require a doctor's report to be taken during the detention review process, the detention status reports of the suspects detained for 1 to 3 days, and the reports of entry into and exit from the detention centre are also completely established.

On the other hand, with the Decree-Law No. 684 published in the Official Gazette on January 23, 2017, the duration of detention was determined as 7 days and this period was enabled to be extended for 7 days, subsequently the detention periods were reduced with the Law on the Amendments to Certain Laws and Statutory Decrees Dated July 25, 2018 and No. 7145. Within the scope of this law, to be implemented for a period of 3 years from the effective date of the Law, in terms of crimes against the Constitutional order or terror crimes, the detention period was set as 48 hours. In terms of collective crimes, this period will be applied as 4 days. These detention periods, to be determined by the Public Prosecutor, can be extended maximum twice upon a decision of the judge. As it is seen, the detention periods have been reduced for both individual crimes and collective crimes, according to the periods specified in the Decree Law No. 684.

In this process;

- It is possible to appeal against the detention decision.
- Release can be requested at any time during detention. Upon request, the decision will be made by the Criminal Judgeship of Peace.
- Legal assistance in custody is possible.
- A medical report must be received upon entry into and exit from the detention centre.

In the Turkish legal system, detainees have the right to object to detention orders during the state of emergency, as in the pre-state of emergency period, in accordance with Article 104 of the Criminal Procedure Law. At every stage of the investigation and prosecution phases, the suspect or the accused may request his release. The continuation of detention or release of the suspect or of the accused shall be decided by the judge or the court. These decisions can be appealed against. The right to appeal is available not only before the courts of first instance, but also before the Regional Court of Justice and the Court of Cassation.

During the State of Emergency, in accordance with Article 6/1- ı of the Decree Law No 667, it has been stipulated that the review of detention, appeal against detention and requests for release could be decided by studying the detainee's file. Taking into account the state of emergency period, local courts have been granted discretion in this regard.

Depending on the workload, it is possible to conduct both an examination by studying the detainee's file and an examination by trial. In this matter, discretion has been given over to the independent and impartial judiciary – the local courts – which are in a position to better assess the current work state and the concrete trial conditions.

It should also be noted that if the court evaluating the objection of the suspect or the accused has decided to reject the request, it sends the file to a higher court. Thus, the decision is submitted to the supervision of another judicial authority as well. Likewise, in accordance with the Article 108 of the CCP a decision is taken by the Justice of the Criminal Court of Peace, upon the request of the Public Prosecutor, whether the continuation of detention is required during the suspect's stay is in detention centre in the investigation phase and for thirty days at the most. Even if the suspect does not have a request, the Criminal Judgeship of Peace conducts ex officio this examination upon the request of the Public Prosecutor.

iii. Indicate the dates of the introduction and withdrawal of the measures that led to the need to derogate.

During the state of emergency, all necessary measures have been taken to fight against terrorism and to eliminate the consequences of the henious coup attempt, within the framework of Article 15 of the Constitution of the Republic of Türkiye. All the measures taken during the state of emergency by Decrees (with Force of Law) have been regularly notified to the General Secretary of the Council of Europe.

It is possible to access detailed information about the notifications from the links below:

- Decree Law No. 667, dated 22 July 2016, on the measures to be taken under the state of emergency, available at: https://rm.coe.int/09000016806969b0.
- Decree Law No. 668, dated 27 July 2016, on the measures to be taken under the state of emergency, available at: https://rm.coe.int/090000168069792d.
- Decree Law Nos. 670 and 671, dated 17 August 2016, on measures to be taken under the state of emergency, available at: https://rm.coe.int/090000168069f414.
- Decree Law Nos. 672, 673 and 674, dated 1 September 2016, on the measures to be taken under the state of emergency, available at: https://rm.coe.int/09000016806a2ef7.
- Decree Law Nos. 675 and 676, dated 29 October 2016, on the measures to be taken under the state of emergency, available at: https://rm.coe.int/09000016806b93b9.
- Decree Law Nos. 677 and 678, dated 22 November 2016, on the measures to be taken under the state of emergency, available at: https://rm.coe.int/09000016806cd21a.
- Decree Law Nos. 679, 680 and 685 on the measures to be taken under the state of emergency, available at: https://rm.coe.int/09000016806ee865.
- Decree Law Nos. 682, 683, 684, 686 and 687 on the measures to be taken under the state of emergency, available at: https://rm.coe.int/09000016806fa1f7.
- Decree Law No. 690 dated 29 April 2017 on the measures under the state of emergency, available at: https://rm.coe.int/090000168072abda.
- Decree Law No. 691 dated 22 June 2017 on the measures under the state of emergency, available at: https://rm.coe.int/090000168091f585.
- Decree Law No. 692 dated 14 July 2017 on the measures under the state of emergency, available at: https://rm.coe.int/090000168091f587.
- Decree Law No. 696 dated 24 December 2017 on the measures under the state of emergency, available at: https://rm.coe.int/090000168077fa4d.
- Decree Law No. 701 dated 8 July 2018 on the measures under the state of emergency, available at: https://rm.coe.int/09000016808ccc04.

  The measures taken with Decree Laws enacted within the scope of the state of emergency are of a nature strictly required by the situation arising from the large-scale bloody coup attempt in line with the principle of proportionality. All measures are aimed at the legitimate purpose of protecting national security. In terms of parliamentary supervision, the Decree Laws issued during the state of emergency in accordance with the Article 119 of the Constitution were submitted to the approval of GNAT on the day they were published in the Official Gazette, and all of them entered into force after having been adopted by GNAT.

  The measures taken during the derogation period are in line with Türkiye's other obligations arising from international law. In this regard, the Government has submitted its notification of derogation to the Secretary General of the Council of Europe, pursuant to Article 15 of the ECHR, following the declaration of the state of emergency.

iv. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) is related.

Article 15 of the ECHR entitled *"Derogation in time of emergency"* is as follows:

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when

such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 4 of the ICCPR (International Covenant on Political and Civil Rights), is as follows:

1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

v. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.

The National Security Council convened on July 20, 2016 after the coup attempt. During the said meeting, the Government was advised to declare a state of emergency in order to "*take measures effectively to protect democracy, the rule of law and the rights and freedoms of citizens*". Thereupon, in line with the repealed article 120 of the Constitution, the Council of Ministers declared a state of emergency on July 20, 2016 for a period of ninety days, effective from July 21, 2016.

Within this context, a derogation notification was made to the Secretary General of the Council of Europe on July 21, 2016, with respect to the Article 15 of the ECHR. A similar notification was also made to the United Nations Secretary General, with regard to the Article 4 of the ICCPR.

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?

The latest derogation notification was made both to the Secretary General of the Council of Europe pursuant to the Article 15 of the ECHR and to the United Nations Secretary General pursuant to the Article 4 of the ICCPR.

UNITED KINGDOM / *ROYAUME-UNI (Appendix / annexe pg 119)*

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

The UK has only very rarely derogated from the European Convention on Human Rights. The Government has on record eight derogations.[13] All of these related to the threat of terrorism. They may be categorised as follows:

[13] This excludes historical derogations in relation to former British colonies. For completeness, copies of these derogations are contained in the Annex below under the heading Category (4) Historic Derogations relating to former British Colonies.

(1) A 2001 derogation which applied to the UK to detain non-nationals suspected of international terrorism but who could not be deported. The derogation was withdrawn in 2005.

(2) A 1988 derogation (subsequently amended) which applied to the UK and Crown Dependencies relating to powers to detain suspected terrorists in relation to Northern Ireland. This was withdrawn in respect of the UK in 2001 and in respect of the Crown Dependencies in 2006.

(3) A series of derogations which applied in respect of Northern Ireland dated 1957, 1969, 1971, 1973 and 1975 and 1978 respectively, concerning extra-judicial detention relating to the Troubles in Northern Ireland. These were withdrawn in 1984.

The UK has also very rarely derogated from the International Covenant on Civil and Political Rights (ICCPR). UK derogations under the ICCPR mirror in substance and timing those outlined above, except that the first derogation in respect of Northern Ireland was made in 1976.

If so, please:

i. Briefly describe the nature of the crisis which gave rise to the need to derogate.

All eight of the UK's derogations related to powers to detain suspected terrorists.

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.

Derogations were required to ensure that the introduction and exercise of powers under domestic law did not conflict with the UK's treaty obligations.

iii. Indicate the dates of the introduction and withdrawal of the measures that gave rise to the need to derogate.

See above, and **annex** for further details regarding dates.

iv. Indicate the provisions of the European Convention on Human Rights or other international human rights treaties to which the derogation(s) related.

Article 5 ECHR. Articles 9, 10,(2), 10(3), 12(1), 14, 17, 19(2), 21 and 22 ICCPR.

v. Indicate the dates and briefly describe the content of the notification(s) given to the relevant office, as specified in the treaty concerned.

In general, the notifications of derogation describe the nature of the public emergency; the domestic measures; and the resulting need to derogate. See **annex** for further details.

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?

The discrepancy in the dates between the UK's ECHR and ICCPR derogations is due to the fact that the ICCPR entered into force for the UK in 1976 (hence there are no UK ICCPR derogations before that date).

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.	Vos autorités ont-elles déjà été confrontées à une situation où elles ont envisagé de déroger à la Convention européenne des droits de l'homme ou à d'autres traités internationaux relatifs aux droits humains mais n'ont pas dérogé ? Si tel est le cas, veuillez fournir des informations sur les situations en question, ainsi que les raisons de cette décision, et veuillez spécifier toute mesure particulière prise qui a mené à ces considérations.

ANDORRA / *ANDORRE* - *(Appendix / Annexe pg 93)*

Au début du mois de mars 2020, les premiers cas de SARS-CoV-2 ont été détectés en Andorre. Les chiffres relatifs à la propagation du virus ont fait prendre conscience aux autorités andorranes de la nécessité de développer un texte de loi sur la base de l'article 42 de la Constitution (ce qui n'avait jamais été fait auparavant) afin de pouvoir réguler les états d'alarme et d'urgence et les conséquences qui en découlent.

Comme il a été indiqué dans la question 2, la Principauté d'Andorre a approuvé le 23 mars 2020 la loi organique 4/2020 portant sur les états d'alarme et d'urgence à mode préventif afin de disposer, en cas d'extrême urgence, de moyens d'actions suffisants pour affronter une expansion incontrôlée de la Pandémie de SARS-CoV-2.

Cependant, au fil des mois suivants et finalement, pendant toute la période affectée par la pandémie, la Principauté a pu adopter un certain nombre de mesures de contention (sur la base de loi générale de santé du 20 mars 1989 et la loi 30/2018 de sureté publique) sans avoir à envisager la déclaration effective de l'un de ces deux états ni d'envisager de recourir à l'article 15 de la Convention européenne des droits de l'homme. En effet, les mesures prises ont eu exclusivement pour but de sauvegarder la santé publique andorrane, celles-ci n'ont duré que le temps exclusivement nécessairement pour combattre l'épidémie et ont toujours été adoptées dans un strict respect du principe de proportionnalité.

ARMENIA / *ARMÉNIE*

N/A

AUSTRIA / *AUTRICHE*

No.

BELGIUM / *BELGIQUE*

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.

Following the emergence of the COVID-19 virus, many countries were confronted with a health crisis that soon became a worldwide crisis. On January 30th 2020, the World Health Organisation declared the international state of emergency for public health and subsequently, qualified the COVID-19 virus as a pandemic in March 2020. As the virus spread over the European territory, including Belgium, it resulted in an exponential increase in the number of infections and mortalities. Belgium was confronted with an important deterioration of the epidemiological situation: the hospital occupancy rates (in particular for intensive care units) became critical, regular health care was suspended and mortalities significantly increased. Restrictive measures were regarded indispensable to slow down and reduce the spread of the COVID-19 virus, and hence, avoid a further deterioration of the epidemiological situation. Moreover, this would in turn provide scientist more time to develop efficient treatments and vaccines.

The restrictive measures adopted in the fight against the COVID-19 virus were first introduced on March 13th 2020, after the federal phase regarding the coordination and management of the crisis coronavirus COVID-19 was declared in Belgium. The measures that were adopted included, among others, the prohibition on gatherings, the prohibition from being on public roads and in public places (except in cases of necessity and for urgent reasons), the suspension of education, as well a mandatory quarantine for certain categories of people. These measures were deemed necessary and proportionate to the risks for public health. In addition, all restrictions were adopted after deliberation by the Council of Ministers.

The question arose as to whether these measures necessitated the activation of Article 15 of the European Convention on Human Rights. The Belgian authorities considered that the limitations to the fundamental rights induced by the administrative police measures were covered by the ECHR, that they could be justified under the substantive provisions of the Convention (see for example Art. 11.2, which stipulates that the freedom of assembly and association referred to in this article may be subject to limitations "prescribed by law and necessary in a democratic society ... for the protection of public health") and that therefore Belgium should not activate article 15.

The adopted measures were strengthened, loosened or lifted, depending on the epidemiological situation in Belgium. On July 15th 2021, the Federal Parliament approved the pandemic law in its plenary session. This law provided another specific legal basis for the adoption of administrative police measures in the context of the COVID-19 pandemic. The Council of State, as well as several courts and courts of appeal, had repeatedly confirmed the legality of the measures adopted since March 2020, but the public opinion and the Parliament were nonetheless calling for a specific legal framework to manage an epidemic emergency.

On March 11th 2022 the aforementioned federal phase was lifted. Following a substantial improvement of the epidemiological situation in Belgium, it was no longer deemed necessary to manage this health crisis at the national level.

BOSNIA AND HERZEGOVINA / *BOSNIE-HERZÉGOVINE*

No.

CYPRUS / *CHYPRE*

The authorities of the Republic of Cyprus have never seriously considered derogating from obligations under the European Convention on Human Rights or other international human rights treaties.

CZECH REPUBLIC / *RÉPUBLIQUE TCHÈQUE*

Not applicable.

ESTONIA / *ESTONIE*

In March 2021, when the COVID-19 related situation was becoming more critical and restrictive measures had to be applied, it was discussed whether derogation under Article 15 should be renewed. However, as no emergency situation was declared in the territory of Estonia, it was decided not to derogate under Article 15 either.

FINLAND / *FINLANDE*

No.

FRANCE

En 2005, l'état d'urgence a été déclaré par deux décrets du 8 novembre 2005, suite à des violences urbaines dirigées contre des personnes et des biens qui avaient éclaté le 27 octobre précédent.
Une information avait été envoyée au Secrétaire général du Conseil de l'Europe, qui avait pris note de cette information par lettre du 17 novembre 2005 et, relevant que le Gouvernement estimait que les mesures mises en œuvre restaient dans le cadre des restrictions autorisées par les articles 8 et 11 de la Convention, l'article 1er du Premier protocole additionnel et l'article 2 du protocole n°4, il en a déduit que le Gouvernement n'avait pas estimé nécessaire de faire usage de la faculté de dérogation prévue à l'article 15 de la Convention.

C'est donc parce que les restrictions telles qu'effectivement appliquées restaient dans le cadre des dispositions de la Convention que l'article 15 n'a pas été utilisé.

De la même manière, une information a été envoyée à l'ONU concernant l'article 4 du PIDCP, avant qu'il leur soit précisé que ce n'était pas la faculté de dérogation qui était activée, dès lors que les mesures restaient dans les marges normales permises par cet article.

La raison de l'absence d'usage des dérogations a donc été l'analyse, en termes de droits de l'homme, de l'impact des mesures effectivement prises dans le cadre de ces violences urbaines.

Cette analyse a été confirmée par les juridictions internes. A cet égard, il convient de noter que selon le Conseil d'État, le décret du 8 novembre 2005 instituant l'état d'urgence n'a pas été pris « *en contradiction avec les stipulations de l'article 15 de convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales* » (Conseil d'État, arrêt d'assemblée Rolin et Boisvert du 24 mars 2006, requête nº 286834)

Covid : de la même manière, et ainsi qu'il a été précédemment exposé, c'est l'analyse fine, au regard de l'immense péril que constituait la pandémie de Covid pour les systèmes de soin, et partant pour la santé publique, qui a conduit à ne pas faire usage de l'article 15. Malgré la gravité et le caractère totalement inédit de la situation, il a été fait le choix de lutter contre la pandémie dans le respect des droits de l'homme, par une approche la plus proportionnée possible des mesures prises, ce qui explique notamment le choix de ne pas déroger à la Convention.
On peut toutefois ajouter, même si cette considération n'est pas celle qui a présidé à la décision de non dérogation, et que le Gouvernement est conscient de l'analyse pragmatique de la Cour EDH fondée sa technique d'analyse *in concreto*, que les termes de l'article 15 ne renvoient pas explicitement au cas de pandémie qui touche les populations, dès lors qu'il mentionne le cas de guerre ou « *d'autre danger public menaçant la vie de la nation* » (« life of the nation » dans la version anglaise), sans que les termes de *vie de la nation* soient explicites. Le Gouvernement espère que les décisions qui pourront être prises par la Cour, s'agissant notamment des Etats qui ont fait usage de l'article 15, permettront de préciser ces termes en ce sens.

LATVIA / *LETTONIE*

No.

LITHUANIA / *LITUANIE*

Yes, see answer to Question 1 B (i) above.

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.

Following the announcement of the World Health Organization of 11 March 2020 that COVID-19 had been confirmed as a pandemic and taking into account the significant danger the spread of COVID-19 has posed to public health, on 14 March 2020, the Government of the Republic of Lithuania declared civil safety level three (full readiness) and quarantine regime in the entire territory of Republic of Lithuania. The aim of the declaration was to ensure epidemiological safety and restrict the spread of COVID-19. The quarantine regime commenced on 16 March 2020 and remained in force until 16 June 2020. Among the measures adopted by the Government of Lithuania, the transboundary and inland movement was restricted, activities of public and private sectors was restricted, attendance of cultural, leisure, entertainment, sporting venues was restricted, events and gatherings taking place in open and closed spaces were restricted, in-class learning at all educational institutions, day care centres and employment centres was suspended (later – transferred online), access of third persons to hospitals, social care institutions and places of detention was restricted, etc. The application of those measures gave reasons for the consideration of the necessity to derogate from certain obligations of the Republic of Lithuania

under Articles 8 and 11 of the Convention, Article 2 of Protocol No. 1 to the Convention and Article 2 of Protocol No.4 to the Convention. However, being of the view that the use of the usual restriction clauses related to the protection of health should be sufficient to justify the adopted measures under the Convention, no notification of a derogation was considered necessary.

MONTENEGRO / *MONTÉNÉGRO*

Although there has not been a serious occasion on which Montenegro truly considered derogating from the European Convention on Human Rights, Montenegro as a member state of the Council of Europe and the state party to the European Convention on Human Rights, took a structural and systemic view of the unpredictable circumstances imposed by the expansion of the coronavirus, which process led to the broader application and the duration of the restriction of human rights, finally resulting in the overall changes with respect to the protection of an individual, giving priority to the protection of the right to life and health as a milestone of the European democracy. The possibility provided as a sovereign right of the states to derogate from the Convention in the state of emergency is not absolute, but in a certain extent limited and supervised by the European Court. The case-law up to this date indicates that if there were complaints with respect to the violation of the Convention related standards and guaranteed rights during the period in which the statement on the derogation was delivered, the Court shall firstly examine the specific case in the merits, namely, whether the measure which resulted in the breach of certain right guaranteed by the Convention can be justified on the grounds of the very Article of the Convention which regulates such a rights.

Montenegrin courts ruled on the cases concerning respect for the right to private life in the context of the measures the relevant authorities were undertaking to fight coronavirus. In July 2020, the Constitutional Court of Montenegro delivered its Decision U-II No. 22/20 voiding the Decision of the National Coordination Body for the Suppression of Infectious Diseases (NCB) on the publication of the names of individuals ordered into self-isolation, since it was incompatible, *inter alia*, with Article 8 of the Convention. The Constitutional Court's Decision led to the filing of a large number of claims by individuals, whose right to respect for private life had been violated. The courts of general jurisdiction ruled on these claims by reference to the Montenegrin Constitutional Court's Decision, as well as to the already developed case-law standards of the European Court of Human Rights. Consequently, the State of Montenegro concluded court settlements with about 2,720 individuals for compensation for violation of personal rights by publishing personal data in the amount of 300 euros each.

NETHERLANDS / *PAYS-BAS*

In the Netherlands, there appears to have been no occasion when the authorities considered derogating, but did not do so.

NORTH MACEDONIA / *MACÉDOINE DU NORD*

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.

NORWAY / *NORVÈGE*

To our knowledge, derogation has never seriously been considered. Instead, Norway has aimed at implementing measures that amount to permissible limitations on the Convention rights. The proportionality of the measures has been continuously reviewed and has resulted in rapid and frequent legislative changes throughout the pandemic.

POLAND / *POLOGNE*

On two occasions recently the Polish authorities have considered derogating from the Convention or other international human rights treaties (namely the International Covenant on Civil and Political Rights) but eventually no decision was taken to derogate.

At the same time, for the purpose of preparing the report on member States' practice in relation to derogations from the European Convention on Human Rights in situations of crisis, the following additional information might be of relevance.

1. Covid-19 preventive measures.

The first cases of disease Covid-19 caused by the SARS-CoV-2 virus was diagnosed in Poland on 4 March 2020. In the period from 14 to 20 March 2020, the state of epidemiological threat was in force in Poland, and from 15 March 2020, a sanitary cordon was introduced at the Polish borders, significantly limiting border traffic. From 20 March 2020 to 16 March 2022 the state of epidemic was in force in Poland.

No state of emergency under the State Emergency Act was ever introduced during the Covid-19 pandemic. It was decided that the introduction of the state of the epidemiological threat first, and later on, the state of epidemic was a sufficient measure adopted to the degree and the nature of the threat and compatible with the principle of proportionality.

Major regulations related to the state of epidemiological threat and the state of epidemic in relation to Covid-19 in Poland encompassed the Law of 5 December 2008 on Preventing and Combating Human Infections and Infectious Diseases, the Ordinance of the Minister of Health of 13 March 2020 on Proclamation of the State of Epidemiological Threat on the Territory of the Republic of Poland, the Ordinance of the Minister of Health of 20 March 2020 on Proclamation of the State of Epidemic on the Territory of the Republic of Poland, the Ordinance of the Council of Ministers of 31 March 2020 Establishing Specific Limitations, Orders and Bans in Relation to the State of Epidemic. In the course of the epidemic in Poland the above mentioned regulations were subject to multiple amendments and revisions required by the exigence of the situation.

When considering whether to derogate from obligations under the Convention or other international human rights treaties, the Government followed the Council of Europe information document no. SG/Inf(2020)11 of 7 April 2020 on respecting democracy, rule of law and human rights in the framework of the Covid-19 sanitary crisis. In addition, the Ministry of Foreign Affairs provided other ministries with the relevant information on the Convention standards in the context of anti-Covid-19 restrictive measures (see the reply to question no. 1 above).

A further example of a view that emergencies such as an epidemic emergency should not automatically justify lowering the standards of protection of rights and freedoms referred to in the Convention and other acts of international law, is a resolution adopted by the Senate of the Republic of Poland on 4 June 2020 calling for the observance of the principle of equality before the law in the context of the enforcement by public authorities of restrictions on the exercise of the right to public assembly.

2. State of emergency in relation to the crisis on Polish-Belarusian border introduced on 2 September 2021

After preliminary inter-ministerial consultations and legislative works related to the assessment of the necessary duration of the state of emergency, the area in which the state of emergency was to be introduced, as well as the types of limitations on human and civic freedoms and rights, appropriate to the degree and nature of the threat, the procedure described in response to the question 1 point B i was not initiated.

PORTUGAL

The Portuguese authorities considered derogating from the application of the European Convention on Human Rights in the wake of the COVID 19 pandemic crisis but following an assessment it did not occur.

SPAIN / *ESPAGNE*

There has been no occasion on which the Spanish authorities have considered the idea of suspending the European Convention on Human Rights or any other human rights treaty.

SWITZERLAND / *SUISSE*

Cf. réponse à la question 1, Bi, ci-dessus. Les réflexions sur la nécessité d'une dérogation se rapportaient en particulier à l'interdiction de toutes les manifestations publiques ou privées.

TÜRKIYE

Non applicable.

UNITED KINGDOM / *ROYAUME-UNI (Appendix / annexe pg 119)*

This information is not held centrally.

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.	Si vos autorités disposent d'une expérience en matière d'évaluation de l'impact sur les droits humains autre qu'au moment d'envisager une dérogation, veuillez fournir toute information pertinente sur ce processus, y compris les détails de la procédure, les acteurs impliqués et les normes auxquelles il est fait référence.

ANDORRA / *ANDORRE* - *(Appendix / Annexe pg 93)*

Non, la Principauté d'Andorre ne dispose pas d'expérience en matière d'évaluation de l'impact sur les droits humains autre que la situation induite par la pandémie de SARS-CoV-2 qui a été décrite dans les questions précédentes.

ARMENIA / *ARMÉNIE*

N/A

AUSTRIA / *AUTRICHE*

Austria has put in place an advanced system of regulatory impact assessments, for both *ex-ante* and *ex-post* evaluation of legislation. Legislative proposals by the Government are, as a general practice, submitted to an open public consultation published on Parliament's website, in which a number of key stakeholders are explicitly invited to contribute for as long as the parliamentary legislative process has not been completed. The institutions explicitly invited to submit opinions on these proposals comprise a wide range of public and private institutions and interest groups, which usually include all other ministries, Land Governments, the Austrian Court of Audit, the Supreme Courts, the chambers of commerce, the federation of industries, the chamber of labour, unions, religious communities, universities, other entities likely to be affected, and expert groups such as NGOs.

Thus, national authorities (in particular the Federal Chancellery's Constitutional Service), citizens, specialised ngos and experts in general assess whether draft legislation is in conformity *inter alia* with the *constitutional* human rights requirements. The Austrian Constitution provides comprehensive guarantees of fundamental rights and freedoms. A basic catalogue of fundamental rights (the so-called Fundamental Law concerning the general rights of citizens [Staatsgrundgesetz] of 1867) forms part of the Austrian Constitution since 1920, and there are several other fundamental rights enshrined in different legal provisions or international treaties with constitutional status. The European Convention on Human Rights plays a particularly important role in Austrian legislation and jurisprudence as a pillar of fundamental rights protection. It equally forms part of the Austrian Constitution since 1964. In addition, the EU-Charter of Fundamental Rights is broadly adopted and applied in Austria.

While all comments received are to be published on the Parliament's website, those from private individuals are only published with their consent.

BOSNIA AND HERZEGOVINA / *BOSNIE-HERZÉGOVINE*

No.

CYPRUS / *CHYPRE*

The Secretariat of the Council of Ministers of the Republic of Cyprus, the Ministry of Foreign Affairs of the Republic of Cyprus, the Ministry of Justice and Public Order of the Republic of Cyprus and the Ministry of Health of the Republic of Cyprus were contacted in order to provide answers to this questionnaire.

In relation to the fourth question the Ministry of Foreign Affairs has stated that within its sphere of competence and knowledge, the authorities of the Republic of Cyprus have no experience of conducting human rights impact assessments.

The Ministry of Justice and Public Order has stated in its answer that during the crisis of the Covid-19 pandemic the exercise of human rights was affected. Specifically, it stated that some restrictions were placed on the exercise of human rights, which were considered necessary in order to deal effectively with the consequences of the crisis and to safeguard the right to health. Under the emergency circumstances of the pandemic crisis the restrictive measures taken within the sphere of responsibility and competence of the Ministry of Justice and Public Order did not negate the protective core of the human rights themselves or the rule of law. In order to take the restrictive measures, their effects were evaluated and the restrictive measures were examined under the principle of proportionality. It also stated that during the adoption of the measures their suitability and appropriateness were examined and it was sought that those measures would be the least burdensome and would burden in a way that would not be excessive in the exercise of human rights.

It must be noted that according to Article 35 of the Constitution of the Republic of Cyprus the legislative, executive and judicial authorities of the Republic of Cyprus have the obligation to secure, within the limits of their respective competence, the efficient application of the provisions of Section II of the Constitution which provides for the fundamental rights and freedoms in favour of natural or legal persons in the jurisdiction of the Republic of Cyprus. Additionally, this obligation of the authorities of the Republic of Cyprus to respect human rights also derives from Article 169.3 of the Constitution which vests a concluded (ratified by law in accordance with Article 169.2 of the Constitution) and published in the Official Gazette of the Republic (in accordance with 169.3 of the Constitution) international convention/treaty (including those related to human rights) with superior force over any other domestic law (with the exception of the Constitution). Such a convention vested with superior force is *inter alia* the European Convention on Human Rights[14] and its ratified by law protocols as well as the International Covenant on Civil and Political Rights[15] and its ratified by law protocols. It is noted that human rights conventions/treaties like the aforementioned are applicable to and binding on the authorities of the Republic and the principle of reciprocity provided by Article 169.3 of the Constitution does not apply; meaning that it is irrelevant whether the rest of the parties to such a convention/treaty respect their legal obligations deriving from it.[16] Furthermore, the obligation also arises from the ratification[17] of the EU

[14] Ratified by Law 39/1962. The obligation of the Republic of Cyprus to respect the European Convention on Human Rights and its Protocol of 1952 derives also from Article 5 of the Treaty of Establishment of the Republic of Cyprus.

[15] Ratified by Law 14/1969.

[16] See Judgment of the Supreme Court in Civil Appeal No. 6616, Toulla Y. Malachtou v. Christodoulos K. Armefti and another, (1987) 1 CLR 207.

[17] Mainly by Law 35(III)/2003 and Law 17(III)/2008.

Treaties, which ratification makes legally binding – via Article 6 of the Treaty on European Union - the Charter of Fundamental Rights of the European Union. Article 51.1 of the Charter of Fundamental Rights obliges Member States to fulfill the fundamental rights it provides when implementing any other (apart from the Charter) EU law provision.[18]

Therefore, the Ministries of the Republic of Cyprus when preparing a draft of primary or secondary legislation have the obligation to ensure that the draft legislation is in accordance with the fundamental rights and freedoms in favour of natural or legal persons in the jurisdiction of the Republic of Cyprus. This means that the draft primary or secondary legislation must not affect human rights which are absolute and, therefore, are not subject to any restrictions. When a human right is subject to restriction under certain conditions prescribed by the legal provision or the legal text representing it, then the legislative drafter within the Ministry has the obligation to ensure that the draft legislation restricts the right only within the prescribed specifications and on the basis of the principal conditions for the legitimate restriction of a human right; i.e. that the restriction must be prescribed by law, it must pursue a legitimate aim and must be necessary in a democratic society. According to its response, the Ministry of Justice and Public Order has stated that in the context of compatibility check - with other fundamental legislation - of the draft legislation it prepares which affects/concerns human rights, the abovementioned information is *inter alia* taken into account.

The compatibility of a draft legislation with human rights obligations is also safeguarded during the vetting of the draft legislation by the Law Office of the Republic of Cyprus.

No information was provided specifically as to the conduct of human rights impact assessments.

CZECH REPUBLIC / *RÉPUBLIQUE TCHÈQUE*

Not to our knowledge.

ESTONIA / *ESTONIE*

There are different institutions in Estonia tasked with ensuring the compliance of legislation with the Constitution and the Convention, i.e. human rights impact assessment in that respect should always be carried out when draft laws are processed.

FINLAND / *FINLANDE*

Under section 22 of the Constitution of Finland, the public authorities shall guarantee the observance of basic rights and liberties and human rights. Legislation is a key instrument in the implementation of the obligation to safeguard fundamental and human rights. According to the Bill drafting instructions (2019), fundamental and human rights must be addressed in government proposals, both in the rationale for enactment and in the section on impact assessments, if the proposal has an impact on the realisation of fundamental and human rights. In recent years, the Finnish Council of regulatory impact analysis and the Chancellor of Justice have stressed that

[18] See para. 10 of the Recommendations of the Court of Justice of the EU to national courts and tribunals in relation to the initiation of preliminary ruling proceedings. Official Journal of the EU, C257, 20.7.2018, p.1.

more attention should be paid to the fundamental and human rights impacts of legislative proposals in the legislative drafting process.

According to the Programme of Prime Minister Sanna Marin's Government, the competence of law drafters in fundamental and human rights issues will be systematically strengthened. Inter-ministerial support will be increased to ensure that the impacts of legislation on people's livelihoods, the environment, equality, human rights and operating conditions for businesses can be thoroughly assessed. The Government Programme states that the status of the Constitution of Finland and the independence of its interpretation will be respected and strengthened at the same time as the assessment of the constitutionality and impacts of legislative proposals is enhanced and expanded.

As part of the Government Action Plan on Fundamental and Human Rights 2020-2023 (Government resolution, adopted on 23 June 2021), the competence of law drafters in fundamental and human rights will be strengthened and support for assessing the fundamental and human rights impacts of legislative proposals will be increased. According to the Action Plan, the assessment of fundamental and human rights impacts will be strengthened as part of the development of the Government's legislative drafting, for example through guidelines and training for law drafters and by strengthening cooperation between authorities in the field of human rights impact assessment.

In the Government Report on Human Rights Policy (2021), the Government also undertakes to promote systematic and developing assessment of the impacts of fundamental and human rights in all activities of the authorities.

In 2020, the Ministry of Justice published a memorandum on the consideration of fundamental and human rights in legislative drafting. The purpose of the memorandum was to clarify how fundamental and human rights should be dealt with in different sections of government proposals.

In 2020, the Ministry of Justice set up a project with the aim of producing new, up-to-date guidelines for assessing the impact of legislative proposals for the use of those drafting the Government proposals. The new guidelines will be published in 2022, and the assessment of fundamental and human rights impacts will be taken into account better than before as part of the overall impact assessments.

Due to the increased importance of the assessment of fundamental and human rights impacts, the aforementioned memorandum of the Ministry of Justice on fundamental and human rights in legislative drafting published in 2020 should be reformed and expanded into a more practical guide that supports the processing of fundamental and human rights, especially as part of the impact assessment of proposals.

In the Government's training sessions on legislative drafting, fundamental and human rights are discussed both in the training course on legislative drafting and in the basic course on legislative drafting. The focus of these courses is on the Constitution and the rationale for enactment. The aim of the project is to explore how fundamental and human rights issues could be dealt with more diversely and extensively as part of law drafting training.

FRANCE

En premier lieu, et sauf exceptions prévues par la loi organique n° 2009-403 du 15 avril 2009, tous les projets de loi sont accompagnés d'une étude d'impact, réalisée par le Gouvernement, définissant les objectifs poursuivis, exposant les motifs du recours à une nouvelle législation, l'état actuel du droit dans le domaine visé, l'articulation du projet avec le droit européen, l'évaluation des conséquences économiques, financières, sociales et environnementales des dispositions du projet et les modalités d'application envisagées ainsi que leurs conséquences.

L'articulation avec le droit européen et nécessairement le droit constitutionnel en particulier permet une évaluation au regard des droits fondamentaux.

En second lieu, et outre ce qui a été déjà présenté, il est possible de mentionner la Commission nationale consultative des droits de l'Homme (CNCDH) – mais son rôle est difficilement conciliable avec le mécanisme de l'article 15, car la crise qui nécessite son recours implique généralement l'urgence. Toutefois, l'avis de la CNCDH peut porter sur la prolongation de l'état d'urgence et donc implicitement sur la continuation de la dérogation à ce titre.
La CNCDH est l'Institution nationale de promotion et de protection des droits de l'Homme française créée en 1947.

La CNCDH favorise le dialogue et le débat entre le gouvernement, le parlement, les institutions et la société civile dans le domaine des droits de l'homme, du droit et de l'action humanitaire. Elle est rapporteur national indépendant en matière de lutte contre le racisme sous toutes ses formes, de lutte contre la traite et l'exploitation des êtres humains, de lutte contre la haine anti-LGBTI et sur la thématique « Entreprises et droits de l'homme ».

Assimilée à une Autorité administrative indépendante (AAI), elle est une structure de l'Etat qui assure en toute indépendance, auprès du Gouvernement et du Parlement un rôle de conseil et de proposition dans le domaine des droits de l'Homme, du droit et de l'action humanitaire et du respect des garanties fondamentales accordées aux citoyens pour l'exercice des libertés publiques.
A ce titre, ses grandes missions sont les suivantes :

- Veiller au respect par la France de ses engagements institutionnels et internationaux ;
- Conseiller le gouvernement et le parlement sur des projets et propositions de loi ;
- Favoriser la concertation entre les pouvoirs publics et la société civile ;
- Alerter l'opinion et sensibiliser le grand public.
- Participer à l'éducation et à la formation au respect des droits de l'homme

GREECE / *GRÈCE*

There are human rights impact assessment tools at the law-drafting stage. More specifically, the Committee for Quality Assessment of the Legislative Process conducts a systematic review of the constitutionality of the proposed regulations and their compatibility with the law of the European Union and international law, in particular the ECHR, where required. Such review is also conducted by the Legislative Department of the Secretariat General for Legal and Parliamentarian Affairs, on the basis of the Regulatory Impact Analysis Report, which contains questions on the compatibility of the proposed legislation with relevant provisions of EU law (including the EU Charter of Fundamental Rights) and international treaties (with a specific field dedicated to the ECHR), as well as on the relevant case-law and decisions of national, European and international courts and national independent authorities. The views of the Greek National Commission for Human Rights, independent authorities, civil society actors, associations and unions are also regularly requested at the consultation and/or parliamentary stage. It is also to be noted that a number of national action plans in the field of human rights have recently been adopted; the implementation of the measures contained therein is regularly monitored and evaluated by the relevant bodies.

LATVIA / *LETTONIE*

During the process of legislation, *i.e.* adoption of legal enactments, at all levels (including, for example, the Order of the Cabinet of Ministers declaring the emergency situation), there is a requirement to examine the compatibility of the particular draft legal enactment with the obligations of Latvia under EU law, international treaties, including international human rights treaties, for example, the Convention. There is a specific section in the *ex-ante* impact assessment report for such an evaluation, and it is done, firstly, by the initiator of the legal enactment, and then by other institutions and bodies that are involved in this examination of the draft. The public may, if they so wish, also contribute to this question by submitting proposals as regards both, the legal enactment itself, and its impact assessment report. Another aspect that is considered in this examination is the case law of the Constitutional Court (in cases related to human rights issues).

The standards applied in the examination of the draft's compatibility with the human rights obligations are taken from the Court's case law and the practice of the UN Human Rights bodies, the CPT, and other bodies of international organizations that examine questions pertaining to human rights.

LITHUANIA / *LITUANIE*

No.

MONTENEGRO / *MONTÉNÉGRO*

The Protector of Human Rights and Freedoms of Montenegro (Ombudsman) drafted a report on the impact of COVID-19 pandemic on mental health of children, with a special focus on the right to education, as one of the fundamental rights, guaranteed under the European Convention. This report produced a set of non-binding recommendations and conclusions, addressed to the relevant institutions, in particular the Ministry of Educaton, Science, Culture and Sports, emphasizing the need to provide the adequate measures in order to guarantee all children an effective protection and implementation of the right to education.

The United Nations in Montenegro, in cooperation with the relevant state authorities and institutions of Montenegro, conducted three Rapid Social Impact Assessments of the COVID-19 Outbreak in Montenegro, for the purpose of providing a deeper insight into the social impact of the evolving COVID-19 crisis on the general population, as well as the evidence for decision-makers to tailor an ongoing and future policy and programmatic interventions to alleviate the negative consequences of the pandemic on the people of Montenegro, with a particular focus on protecting the fundamental rights of most vulnerable target groups.

Numerous seminars, round tables, conferences and various other educational activities had been carried out by Montenegrin authorities and non-governmental organisations during COVID-19 pandemic, aiming to raise the awareness of COVID-19 impact on human rights, and the need for their protection during this unprecedented crisis. The most important measures taken may be summarised, as follows.

In October 2020, the AIRE Centre and Civil Rights Defenders hosted the Seventh Regional Rule of Law Forum for South-East Europe which brought together the President of the European Court

of Human Rights, the Council of Europe Commissioner for Human Rights, and judges and former judges of the European Court of Human Rights. Representatives from across the region met at national working hubs in Belgrade, Podgorica, Pristina, Sarajevo, Skopje, Tirana and Zagreb, where attendees included presidents and judges of supreme and constitutional courts, ombudspersons, government agents before the Strasbourg Court, representatives of judicial centres/academies, representatives of NGOs, and prominent legal experts from the region.

The Forum was an interactive event, where the participants from across the region connected and engaged with the attendees from the central conference, and with each other, via video technology. The Forum was supported by the UK Government, the Government of Sweden, the Konrad Adenaur Foundation, and the Ministry of Foreign Affairs of the Kingdome of the Netherlands.

The topic for the Forum was Covid-19 and the rights protected by the European Convention on Human Rights. The Covid-19 pandemic is one of the greatest global crises since World War II. Governments all over the world took unprecedented measures to deal with the challenges posed by the pandemic and to limit the dangers posed to life and health. It is also the first time in the history of the Convention that many Member States have been affected concurrently by the same exceptional crisis situation, and by one which affects so many Convention rights.

An understanding of the existing, relevant ECtHR case-law can help provide the keys to overcome new challenges and provide a useful framework within which to address new legal questions.

The Forum provided an opportunity to reflect on how existing ECtHR case-law may be applied to the novel legal questions and factual situations which have arisen in the context of the pandemic. It brought together experts in the field to discuss the extent of the positive obligations which Member States might be under, and when exactly such obligations might arise. The Forum also facilitated the conversation regarding the main threats to human rights which have been encountered in the context of the pandemic and provided an opportunity for the participants to share their insights into best practice solutions to these challenges based on their experience dealing with the pandemic so far. As always, the Forum encouraged the collaboration among participants to develop solutions on how to manage the challenges which they continuously face and/or which may appear in the future.

The Human Rights Action (HRA) in cooperation with the British Embassy in Podgorica implemented the project “Monitoring Application of Human Rights Standards during COVID-19 Outbreak’, with the aim to support people whose rights to freedom of expression and privacy may be endangered and violated by state authorities through these and similar measures and to provide a reasoned critique of the actions of public authorities during the first wave of coronavirus, in order to ensure that same violations of freedom of expression and privacy do not reoccur.

The Training Center in the Judiciary and State Prosecutor's Office of Montenegro, in cooperation with its international partners and the EJTN organized certain seminars, in an online format, on the topic of human rights and COVID-19, with a particular emphasis on the freedom of movement (Article 2 of the Protocol no. 4 to the European Convention of Human Rights) and the derogation in extraordinary circumstances, and the protection of right to privacy. The case-law of the European Court of Human Rights has been particularly dynamic, therefore, these seminars were aimed at getting the judges, state prosecutors and attorneys, in the circumstances under the auspices of the pandemic, acquainted with its influence on human rights and the very case-law of the European Court of Human Rights with respect to the pandemic, the right to derogation in extraordinary circumstances, the influence on the freedom of movement and right to privacy, as well as the stigmatization and discrimination of certain individuals.

The lecturers in the seminar on the topic of freedom of movement were the relevant experts in this field, such as: Ms. Mirjana Lazarova Trajkovska, the judge of the Constitutional Court of the Northern Macedonia and the former judge of the European Court of Human Rights, Ms. Valentina Pavličić, the Government Agent of Montenegro before the European Court of Human Rights and

Mr. Siniša Bjeković, the Protector of Human Rights and Freedoms of Montenegro. The specific topics discussed were as follows: The impact of COVID-19 on human rights and the case-law of the European Court of Human Rights; Article 15 of the Convention – The right of High Contracting Parties on the derogation of the Convention in case of the health crisis; The conceptual meaning of the term isolation, quaranteene and their influence on the respect of democracy, the rule of law and human rights in the circumstances of the health crisis; Human rights whose derogation is not admissible; The impact of the pandemic COVID-19 on the freedom of movement (Article 2 of the Protocol no. 4 to the European Convention on Human Rights); Standards and the relevant case-law of the European Court of Human Rights; Stigmatization and discrimination of persons in connection with COVID-19, the right to respect of private life; Establishing balance between the protection of health of population and the respect of human rights. The seminars were attended by judges, state prosecutors, civil cervants from the State Prosecutor's Office and attourneys.

NETHERLANDS / *PAYS-BAS*

As mentioned above, the assessment of interferences with human rights (outside of a situation of derogation) is incorporated in the decision-making process to apply emergency law.

In general, impact on human rights in legislation or policy may be assessed at various stages and by various actors.

First of all, policy makers and legislative lawyers are made aware through the 'Integral Assessment Framework' (*Integraal Afwegingskader, IAK*) of the standards which policy and legislation have to meet. Among many things, the IAK draws attention to fundamental rights.

Secondly, the Ministry of Justice and Security has primary responsibility for reviewing legislation on several aspects, e.g. constitutional and administrative quality (legislative review according to the Guidelines for legislation). The Ministry of Justice and Security works closely with the Ministry of the Interior and Kingdom Relations for the constitutional review of legislation and with the Ministry of Foreign Affairs for review of legislation in light of international and European law. On the basis of the Drafting instructions for legislation[19], the Ministry of the Interior and Kingdom Relations is responsible for carrying out a constitutional review of draft legislation. A constitutional assessment by the Ministry of the Interior and Kingdom Relations can be requested when new legislation is being prepared involving (potentially) constitutional issues.[20] Insofar as a legislative proposal concerns human rights aspects or standards, such as the ECHR, the primacy for assessment lies with the Ministry of Justice and Security. Insofar as it concerns (more) the assessment against national fundamental rights that also have an international law equivalent, primacy lies with the Ministry of the Interior and Kingdom Relations.

Thirdly, the Advisory Division of the Council of State provides the government with independent advice on all bills introduced in Parliament by the government; all orders in council, before they are promulgated by the Crown; all treaties that the government puts before Parliament for approval; all matters on which its advice is required by law; and other matters on which the government seeks the Council's advice. In its advice, the Advisory Division can address legal issues, such as compatibility with higher law: the Constitution, treaties such as the human rights conventions and European law.

[19] See (in English; PDF): Drafting instructions for legislation (2018) (kcbr.nl).
[20] See (in Dutch; PDF): Handreiking Constitutionele Toetsing | Praktische handvatten voor wet- en regelgeving (kcbr.nl).

NORTH MACEDONIA / *MACÉDOINE DU NORD*

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.

NORWAY / *NORVÈGE*

The Norwegian Constitution includes a catalogue of human rights that all measures must keep within. In addition, the Human Rights Act elevates five key human rights conventions to a special status in Norwegian law. These are the ECHR, ICCPR, ICESCR, CEDAW and CRC. Under Article 3 of the Human Rights Act, these conventions prevail in the event of a conflict with regular domestic legislation.

According to the Section 2-1 of the Instructions for Official Studies, any official study shall answer the question of which fundamental questions are raised by the examined measures. The following is noted in the guidance notes on the Instructions for Official Studies (page 18 ff.):

> «Under Question 3, we are required to consider whether the measures held to be relevant for study may raise fundamental questions. An assessment of fundamental questions implies that one must establish whether the formulation of measures is subject to absolute limitations that must not be exceeded. Furthermore, one must shed light on how the measure impacts, both positively and negatively, on key societal values or fundamental considerations.
>
> Fundamental questions may for example relate to personal data protection and personal integrity, due process, questions of conscience/faith, questions of equal opportunities/discrimination, or measures affecting, in particular, indigenous populations or minorities.
>
> If a measure has effects that come into conflict with one or more principles, the study may have to conclude that such measure cannot be implemented, irrespective of how beneficial it might otherwise be. Limitations on the formulation of measures will often emanate from the human rights obligations Norway has assumed through international treaties. Consequently, a study of fundamental questions will often comprise a systematic review of such obligations, through which one clarifies the scope of said obligations and what freedom of action is available. In some cases, there may be an element of mutual tension between different human rights obligations, which will need to be clarified and traded off in a balanced and integrated manner.
>
> Fundamental questions are not limited to those violating our human rights obligations, or statutory rights. Even if measures fall within the legal scope of government measures, it may be important to bring out how these impact, both positively and negatively, on key societal values or fundamental considerations. These can include effects that are difficult to assess and balance against other effects under Question 4, for example the effect of a measure on minority rights or on vulnerable individuals. Independent analysis of such effects or considerations is needed in these cases. Fundamental assessments relating to, for example, due process, equal treatment or individual self-determination can be described as part of such an analysis. It is important to avoid any special ideological stance in descriptions and assessments of key societal values and fundamental

considerations. These have to be based on values that are widely shared in society, preferably as laid down in documents endorsed by the Storting.

All fundamental questions need to be presented and examined in a systematic, balanced and integrated manner. In some cases, different principles may come into conflict with each other, and it is important for the study to clarify this. It follows from Section 2-2 of the Instructions that Question 3 shall be examined thoroughly for any measures raising important fundamental questions (see Chapter 2.2).»

Accorting to Section 2-2 of the Instructions for Official Studies, the study shall be as comprehensive and thorough as required. Such assessment shall be based on whether a measure raises important fundamental questions, how significant the effects of such measure are expected to be, and the time available. If the measure raises fundamental questions, the study shall discuss these in a balanced, systematic and integrated manner.

Green papers, proposed laws and regulations, as well as proposed measures with major effects shall normally be circulated for consultation, cf. Section 3-3 of the Instructions for Official Studies. Such consultations shall be open to input from anyone. The deadline for submitting consultative comments shall be tailored to the scale and importance of the measure. The deadline for submitting consultative comments shall normally be three months, and no less than six weeks.

POLAND / *POLOGNE*

One of the stages of the legislative process is the assessment of the effects of the legislative activities, in particular identification of the entities that will be affected by the proposed provisions and the analysis of such impact. Pursuant to Article 1 *§* 1 and 2 of the Ordinance of Prime Minister of 20 June of 2002 on Principles of Legislative Technique *a decision to initiate the preparation of a draft act shall be preceded by analysis of the current legal regulations in force, including European Union law, international agreements by which the Republic of Poland is bound, including agreements on the protection of human rights, the legislation of international organizations and bodies of which the Republic of Poland is a member.*

Law-making process should therefore take into account international human rights standards by which the Republic of Poland is bound. In accordance with Article 31 § 3 of the Constitution *any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.*

The procedures for elaboration of government documents, including an obligation to prepare and consult regulation impact assessment (RIA), are set out in the Regulations of Work of the Council of Ministers. Additional document comprehensively presenting the scope and standards of impact assessment and public consultations are the Guidelines for Impact Assessment and Public Consultations under the Government Legislative Process, adopted by the Council of Ministers on 5 May 2015.

In order to standardise the method of presenting the results of the impact assessment process, the RIA form was introduced which presents, in a synthetic and orderly manner, the assumed effects of the State's intervention. At the same time, bearing in mind the need to standardise the form of evaluation of individual state interventions, a standardized *ex-post* regulatory impact assessment form (*ex post* RIA) was introduced. This form ensures the formal integrity of *ex post* RIA with RIA prepared at the stage of designing the regulation, and from the functional point of view, it enables a clear comparison of the expected and actual effects. The list of effects is the basis for developing recommendations for further actions.

Human rights impact assessments is however not specifically marked in the standardised regulation impact assessment form, nevertheless such remarks may be indicated in any relevant part of this form, most often in first part of the form together with the description of the issue to be solve by given legislative proposal. Obviously, they may also be referred to in the justification to the draft act.

In the course of intra-ministerial phrase of the legislative procedure, the Ministry of Foreign Affairs – the Legal and Treaty Department (where the Government Agent is placed), among others, is in charge of systematically screening the legislative proposal's consistency with the obligations under the European Convention on Human Rights, other international human rights treaties and the jurisprudence of European Court of Human Rights. If a possible incompatibility with the Convention is identified by the Government Agent, a ministerial letter with an opinion is sent to the ministry responsible for the draft in question. Such opinion is further considered by the minister who initiated legislative process and if the minister objects to the suggested changes, the opinion is subject to discussions and decisions on the forum of Steering Committee of the Council of Ministers. Ultimately, the Council of Ministers decides.

At the next phase of the legislative procedure, a legislative proposal is reviewed by the legislative offices of the Sejm and Senate and/or by the relevant parliamentary commissions. The consistency with the obligations under international treaties is one of the points of reference for such reviews.

According to the established practise legislative proposals are often subject of non-obligatory and non-binding consultations with other institutions whose statutory tasks relate to human rights issues, including the Ombudsman, the Ombudsman for Children, local governments, courts and associations of representatives of individual legal professions, as well as organizations dealing with human rights issues.

After the new legislation enters into force, the human rights impact assessments may also be conducted in specific fields if the new legislation contains additional provisions requiring it. For example, in the matters related to protection of environment, environmental impact assessment of the project is conducted in accordance with Ordinance of the Council of Ministers of 9 November 2010 on projects that may significantly affect the environment (Journal of Laws of 2016, item 71, as amended). It can be also conducted with *ex post* RIA on the basis of § 152 of the Regulations of Work of the Council of Ministers.

The Polish legal system also provides for mechanisms for the *ex-post* judicial evaluation of legal provisions, namely a possibility of verification by the Constitutional Tribunal of regulations' and laws' compatibility with the Constitution and ratified international treaties, also in terms of their impact on human rights protection guaranteed by the Constitution, Convention and other ratified international treaties.

PORTUGAL

Outside the context of derogations to the European Convention on Human Rights, human rights impact assessment can arise during the legislative procedure. For some time now, we have guidelines for assessing the legislative impact (*ex ante* and *ex post* assessment), which aim to measure the impact of legislative initiatives on people's lives and on business activity (particularly micro, small and medium-sized enterprises). An overview of the measures undertook over the years to measure and strength the impact of legislative initiatives can be consulted here.

Gender impact of legislation (which is governed by Law No. 4/2018, of 9 February) and conditions for participation and social integration of citizens with disabilities, for instance, are subject matters that have to be considered when legislating. But naturally all the legal framework (whether domestic or international) regarding the matters to which the draft law relate has to be

considered. This means that the assessment has to examine all the relevant legal instruments to the legislative procedure under way and its respective compatibility.

It should be noted that, within the Presidency of the Council of Ministers, the Competence Centre for Planning, Policy and Foresight in Public Administration Public Administration (PlanAPP) plays a special role on the impact assessment of legislation.

In accordance to paragraph 6 of Article 19 of the CRP, «in no case may a declaration of a state of siege or a state of emergency affect the rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of the criminal law, accused persons' right to a defence, or the freedom of conscience and religion».

On the other hand, the President of the Republic retains, during the state of emergency, the power to send to the Constitutional Court the norms that he considers may harm fundamental rights (Article 278).

While a state of siege or state of emergency is in force, citizens maintain their full right of access to the courts, in accordance with the general law, to defend their rights, freedoms, and guarantees that have been injured or threatened by any unconstitutional or illegal measures. (Article 6 from Law No. 44/86, of 30 September), namely application for a habeas corpus order.

Also the Attorney General's Office and the Ombudsman's Office shall remain in continuous functioning, with a view to the full exercise of their powers to defend democratic legality and citizens' rights (Paragraph 2 of Article 18).

SPAIN / *ESPAGNE*

In 1993, the Vienna Conference on Human Rights included the elaboration of national plans of action as one of the measures to be taken by states to improve the promotion and protection of human rights.

Spain has elaborated two National Human Rights Plans (2008-2012 and 2019-2023) and is currently preparing the III National Human Rights Plan.

These National Human Rights Plans first require a diagnosis of the human rights situation in the country. On the basis of this diagnosis, a plan is drawn up, which takes the form of a series of human rights actions to be implemented in the coming years.

In Spain, there is not yet a specific procedure for fundamental rights impact assessment, but there is an informal procedure that includes the competences of the executive and advisory bodies of the government and the courts, including the Constitutional Court and the Parliament. These bodies intervene both in the elaboration of legal rules and in the adoption of specific decisions and analyse their compatibility with the Spanish Constitution and the Convention.

TÜRKIYE

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.

The decision on a state of emergency declaration is submitted to the approval of the GNAT on the same day and is also published in the Official Gazette. Even if GNAT is in recess, it

is immediately summoned. GNAT may extend or shorten the duration of the state of emergency or lift the state of emergency if it deems necessary. Thus, legislative review is ensured.

Upon the request of the President, GNAT may extend the duration on the condition that it does not exceed four months. In case of war, the four-month period shall not apply. In this context, assessment of the state of emergency is made by GNAT within the periods of four months in case it is extended.

During states of emergency, the President may issue a Presidential Decree without being subject to the limitations specified in the second sentence of the seventeenth paragraph of Article 104 ("*The fundamental rights, individual rights and duties in the first and second chapters of the second part of the Constitution and political rights and duties in the fourth part may not be regulated by Presidential Decrees*.") on the matters required by the state of emergency. These Decree Laws shall be also published on the Official Gazette and submitted to the approval of the Assembly on the same day.

Except for the event that GNAT cannot convene due to a war or force majeure, Presidential Decrees issued during the state of emergency shall be discussed and concluded in GNAT within three months. Otherwise, the Presidential Decree issued in the state of emergency shall be repealed automatically.

Decree Laws issued during the period of the state of emergency are subject to political review of the Parliament and judicial review of the Constitutional Court.

Political review is the initial oversight of the Decree Laws. Decree Laws passed by the government shall immediately be submitted for Parliament's approval. In fact, the Parliament has the authority to repeal or approve through amendments, as much as the power to approve.

The second type of supervision is judicial review. Decree Laws which become a law at the end of the approval procedure become the subject of concrete norm review at the Constitutional Court.

On the other hand, the Inquiry Commission on State of Emergency Measures has been established in order to examine and conclude certain applications regarding the provisions of Decree Laws after the state of emergency declared in 2016. Decisions of the Commission, which is an effective remedy according to ECtHR is also open to judicial review.

The findings in the ECtHR's decision on Köksal (Application no. 70478/16, 12 June 2017) regarding the Commission are considered important.

Concerning the decision on Köksal, ECtHR found out that the Inquiry Commission on State of Emergency Measures, having the authority to decide upon many procedures including removal from public office, had been established within the scope of the Decree Law no. 685 and respective Decree Laws issued under the state of emergency. In addition, the Court determined that public officers affected by the procedures of Decree Laws may apply to the Inquiry Commission on State of Emergency Measures within 60 days, and they may file an action for the annulment of the decisions of the Commission before administrative courts.

ECtHR emphasized that the Decree Law no. 685 was adopted in order to find a solution to a major problematic condition arising not only from the failures in the decision making process about the procedures that were the subject matter of complaint, but also from the vagueness regarding the judicial review of these procedures, as it was stated on the opinion of Venice Commission No. 865/2016.

Considering the characteristics of the Decree Law no. 685 and the background in which it was issued, ECtHR has stated that the remedy created by the Decree Law No. 685 constitutes an

a priori accessible remedy, there is no fact indicating that the new remedy will not be able to provide a chance of sufficient compensation for the applicant's complaints or offer a reasonable opportunity for success. In this regard, the Court has considered that decisions of the said Commission, which does not have the characteristics of a judicial body, are subject to judicial review; and it has unanimously declared the application inadmissible since the domestic remedies had not been exhausted.

Hence, even after the Köksal decision, the Court has declared tens of thousands of applications similar to Köksal application inadmissible on account of the fact that the domestic remedies were not exhausted.

Finally, it is necessary to state that the measures taken within the scope of the state of emergency can be eased to the extent required by the circumstances. For example, in terms of the crimes committed in accordance with subparagraph (a) of Paragraph 1 of Article 6 of the Decree Law No. 667 and defined in the Fourth, Fifth, Sixth and Seventh Chapters of the Fourth Part of the Second Book of Turkish Penal Code No. 5237, for crimes within the scope of Anti-Terror Law No. 3713 and for crimes committed collectively, during the continuation of the state of emergency, the detention period shall be applied in a manner that does not exceed thirty days from the moment of arrest, excluding the mandatory period for the suspect to be sent to the judge or court that is nearest to the place of arrest.

By the Decree Law No. 684 published in the Official Gazette on 23 January 2017, the detention period was specified as 7 days; it was also allowed to extend this period for another 7 days, and the detention periods were reduced by the Law on Amendment on Certain Laws and Decree Laws No. 7145 dated 25 July 2018. Within the scope of this law, to be implemented for the period of 3 years as of the date when the law enters into force, the detention period was determined as 48 hours in terms of the crimes against the constitutional order and terror crimes. This time period shall be implemented as 4 days in terms of collective crimes. These detention periods determined by the Public Prosecutor may be extended at the most two times by judicial decision. As it is seen, evaluations about detention periods have constantly been made by the authorities and detention periods have been shortened during the process.

As another example, in accordance with Article 3/1 of the Decree Law regarding the Measures Taken within the State of Emergency no. 667, the General Assembly of the Council of Judges and Prosecutors decided that judges and prosecutors whose adherences and connections to FETÖ were found established, should not continue exercising their profession and be removed from office.

The judicial remedy to be taken against this decision has been clarified by the Decree Law No. 685 published in the Official Gazette on 23 January 2017.

Within the scope of the Article 11 of the Decree Law No. 685 on the Establishment of the Inquiry Commission on State of Emergency Measures , which entered into force by being published in the Official Gazette dated 23 January 2017 and then became a law by the Law No. 7075, of paragraph 1 of Article 3 of the Decree Law No. 667, dated 22 July 2016, on the Measures Taken within the scope of the State of Emergency and of paragraph 1 of Article 3 of the Law No. 6749 dated 18 October 2016 on the Adoption, With Certain Amendments, of the Decree Law on the Measures Taken within the State of Emergency, it was determined that those against whom the decisions of removal from office and dismissal from the profession have been made, can file a lawsuit before the State Council as a court of first instance, within sixty days after those decisions become final.

In conclusion, impact assessments on the measures taken within the state of emergency have constantly been made during the process and necessary changes have been made and implemented without delay.

UNITED KINGDOM / *ROYAUME-UNI (Appendix / annexe pg 119)*

As per our response to question 1.A.ii, it is settled Government practice to produce a memorandum – known as an "ECHR memorandum" – along with any Bill introduced in Parliament, where this Bill raises significant human rights issues. In other cases, an analysis of human rights impacts is simply included in the Bill's Explanatory Notes. Both an ECHR memorandum and Explanatory Notes to a Bill are public documents, and the former is shared with Parliament's Joint Committee on Human Rights (JCHR). The JCHR is composed of parliamentarians from both Houses of Parliament, and supported by a secretariat including a team of legal counsellors.

The issues identified in the ECHR memorandum or in the Explanatory Notes to a Bill should also be set out in a separate document, known as the Legal Issues Memorandum. The Legal Issues Memorandum is not published but shared by the department concerned with the Government's Parliamentary Business and Legislation Committee and informs its decision of whether to agree to the introduction of a Bill.

In drafting an ECHR memorandum, Government lawyers and other civil servants will often consult with the Government Legal Department's Centre of Excellence for human rights which can provide expert advice on, inter alia, the compatibility of draft provisions with the ECHR. They may also engage with the JCHR.

In some cases, the JCHR will undertake in-depth scrutiny of the human rights implications of a specific Bill, through an inquiry process. This was for example the case for the Police, Crime, Sentencing and Courts Bill, introduced on 9 March 2021. The Government will usually be invited to provide evidence to the Committee, and a range of non-governmental organisations and individuals will take part in the inquiry process. An inquiry is concluded by one or several reports of the Committee, to which the Government is required to provide a response.

APPENDICES / *ANNEXES*

ANDORRA / *ANDORRE*

Annexes aux réponses apportées par la Principauté d'Andorre au questionnaire envoyé aux états membres par le groupe de rédaction sur les Droits de l'Homme en situation de crise (CDDH-SCR) en vue de la préparation du projet de rapport du CDDH sur les pratiques des états membres en matière de dérogation à la Convention Européenne des Droits de l'Homme en situation de crise.

Annexe 1 :

Traduction non officielle de l'article 42 de la Constitution de la Principauté d'Andorre du 15 mars 1993 :

« Article 42

1. Une loi qualifiée réglemente l'état d'alerte et l'état d'urgence. Le premier peut être déclaré par le gouvernement en cas de catastrophe naturelle, pour une durée de quinze jours, et fait l'objet d'une notification au Conseil général. Le second est également déclaré par le gouvernement, pour une période de trente jours, en cas d'interruption du fonctionnement normal de la vie démocratique, après autorisation préalable du Conseil général. Toute prorogation de ces dispositions requiert nécessairement l'approbation du Conseil général.

2. Pendant l'état d'alerte, l'exercice des droits reconnus aux articles 21 (libre circulation dans le territoire national / droit de fixer sa résidence en Andorre) et 27 (droit à la propriété privée) peut être limité. Pendant l'état d'urgence, les droits mentionnés dans les articles 9.2, 12 (liberté d'expression, communication et d'information), 15 (inviolabilité du domicile), 16 (droit de réunion et de manifestation), 19 (droit pour les travailleurs et les chefs d'entreprise de défendre leurs intérêts économiques et sociaux) et 21 peuvent être suspendus. L'application de cette suspension aux droits contenus dans les articles 9.2 et 15 doit toujours être effectuée sous le contrôle de la justice, sans préjudice de la procédure de protection établie à l'article 9.3 (Habeas Corpus). »

AZERBAIJAN / *AZERBAÏDJAN*

Annex 1: ECHR derogation and withdrawal of the derogation of 28 September 2020 and 15 December 2020

Withdrawal of Derogation, contained in the Note verbale No. 5/11-4331/01/20 from the Ministry of Foreign Affairs of the Republic of Azerbaijan, registered at the Secretariat General on 15 December 2020 – Or. Engl.

The Ministry of Foreign Affairs of the Republic of Azerbaijan presents its compliments to the Secretary General of the Council of Europe and with reference to its Note Verbal 5/11-3283/01/20 of 28 September 2020, has the honour to inform that martial law throughout the country was lifted starting from 00:00 on 12 December 2020 by the Decree of the President of the Republic of Azerbaijan dated 7 December 2020, approved by the Decision of the Milli Majlis (Parliament) of the Republic of Azerbaijan.

Pursuant to Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Government of the Republic of Azerbaijan declares that situation which necessitated a derogation from certain obligations under the Convention ceased to exist and Articles 5, 6, 8, 10 and 11 of the Convention, Article 1 and 2 of the Protocol to the Convention, and Article 2 of the Protocol No.4 to the Convention are again being fully executed.

The Ministry kindly requests to consider this communication as a notification on termination of the derogation in accordance with Article 15 (3) of the Convention.

Period covered: 15/12/2020
Articles concerned: 5 6 8 10 11 15

Derogation contained in the Note verbale No. 5/11-3283/01/20 from the Ministry of Foreign Affairs of Azerbaijan, dated 28 September 2020, registered at the Secretariat General on 28 September 2020 – Or. Engl.

The Ministry of Foreign Affairs of the Republic of Azerbaijan presents its compliments to the Secretary General of the Council of Europe and has the honour to inform that on September 27, 2020 the armed forces of Armenia blatantly violating the ceasefire regime have launched another aggression against Azerbaijan, by intensively shelling the positions of the armed forces of Azerbaijan along the frontline, as well as the villages of Qapanli of Terter district, Chiragli and Orta Garavend of Aghdam district, Alkhanli and Shukurbeyli of Fizuli district and Jojuq Merjanli of Jabrayil district, using large-caliber weapons, mortar launchers and artillery.

As a result there have been casualties among the civilians and military servicemen of Azerbaijan. Extensive damage has been inflicted on many houses and other civilian infrastructure.

The new act of aggression by Armenia against Azerbaijan is the continuation of the latest provocations of the Armenian side, including the attempt to an armed attack in the direction of Tovuz region on 12-16 July, 2020, the provocation in the direction of Goranboy region, illegal settlement policy in the occupied territories of Azerbaijan, as well as the provocative statements and activities of Armenian leadership.

In order to repel military aggression by Armenia and ensure the security of civilians and densely populated residential areas deep inside the internationally recognized territories of Azerbaijan, the armed forces of the Republic of Azerbaijan undertake counter-offensive measures within the right of self-defence and in full compliance with the international humanitarian law.

Taking into account the occupation of the Nagorno-Karabakh region of the Republic of Azerbaijan and its adjacent districts by the armed forces of the Republic of Armenia, armed attacks against the Republic of Azerbaijan and regular military provocations, martial law was declared throughout the country starting from 00:00 on 28 September 2020 according to the Article 109 paragraph 29 and Article 111 of the Constitution of the Republic of Azerbaijan by the Decree of the President of the Republic of Azerbaijan dated September 27, 2020 approved by the Decision of the Mitli Majlis (Parliament).

During the martial law, curfew shall be introduced from 21:00 hrs. to 06:00 hrs. in Baku, Ganja, Sumgayit, Yevlakh, Mingachevir, Naftalan cities, Absheron, Jabrayil, Fuzuli, Aghjabadi, Beylagan, Aghdam, Barda, Terter, Goranboy, Goygol, Dashkasan, Gadabay, Tovuz, Shamkir, Gazakh and Aghstafa districts of the Republic of Azerbaijan.

Pursuant to Article 15 paragraph 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Ministry informs that during the martial law the Government of the Republic of Azerbaijan exercises the right of derogation from its obligations under Articles 5, 6, 8, 10 and 11 of the Convention, Article 1 and 2 of the Protocol to the Convention, and Article 2 of the Protocol No.4 to the Convention, and kindly requests the Secretary-General to disseminate the above-mentioned information among other States Parties to the Convention.

It is hereby specified that the measures taken by the Government are proportionate and targeted. Pursuant to Article 15 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the measures are required by the exigencies of the situation and consistent with the State's other obligations under international law.

Furthermore it is hereby declared that in accordance with Article 15 paragraph 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the measures derogating from the obligations under the Convention are adopted in full compliance with the rights and obligations laid down in its Articles 2, 3, 4 (paragraph 1) and 7.

The Ministry will inform the Secretary General about future developments with regard to martial law and will notify her on the date on which Azerbaijan terminates the derogation.

Annex

1. Decree No. 1166 dated September 27, 2020 of the President of the Republic of Azerbaijan on declaration of martial law.
2. Decision dated September 27, 2020 of the Milli Majlis (Parliament) of the Republic of Azerbaijan on approval of the Presidential Decree on martial law.
3. Extracts from the Law of the Republic of Azerbaijan “On martial law” (Article 10) 530-VQ dated February 14, 2017.

AZƏRBAYCAN RESPUBLİKASI
XARİCİ İŞLƏR NAZİRLİYİ

REPUBLIC OF AZERBAIJAN
MINISTRY OF FOREIGN AFFAIRS

№ 5/11-3284/01/20

The Ministry of Foreign Affairs of the Republic of Azerbaijan presents its compliments to the Secretary-General of the United Nations and has the honour to inform that on September 27, 2020 the armed forces of Armenia blatantly violating the ceasefire regime have launched another aggression against Azerbaijan, by intensively shelling the positions of the armed forces of Azerbaijan along the frontline, as well as the villages of Qapanli of Terter district, Chiragli and Orta Garavend of Aghdam district, Alkhanli and Shukurbeyli of Fizuli district and Jojuq Merjanli of Jabrayil district, using large-caliber weapons, mortar launchers and artillery.

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The new act of aggression by Armenia against Azerbaijan is the continuation of the latest provocations of the Armenian side, including the attempt to an armed attack in the direction of Tovuz region on 12-16 July, 2020, the provocation in the direction of Goranboy region, illegal settlement policy in the occupied territories of Azerbaijan, as weii as the provocative statements and activities of Armenian leadership.

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Taking into account the occupation of the Nagorno-Karabakh region of the Republic of Azerbaijan and its adjacent districts by the armed forces of the Republic of Armenia, armed attacks against the Republic of Azerbaijan and regular military provocations, martial law was declared throughout the country starting from 00:00 on 28 September 2020 according to the Article 109 paragraph 29 and Article 111 of the Constitution of the Republic of Azerbaijan by the Decree of the President of the Republic of Azerbaijan dated September 27, 2020 approved by the Decision of the Midi Majlis (Parliament).

SECRETARY-GENERAL
OF THE UNITED NATIONS
NEW YORK

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Pursuant to Article 4 paragraph 1 of the International Covenant on Civil and Political Rights, the Ministry informs that during the martial law the Government of the Republic of Azerbaijan exercises the right of derogation from its obligations under Articles 9, 12, 14, 17, 19, 21 and 22, and kindly requests the Secretary-General to disseminate the above-mentioned information among other States Parties to the Covenant.

It is hereby specified that the measures taken by the Government are proportionate and targeted. Pursuant to Article 4 paragraph 1 of the International Covenant on Civil and Political Rights, the measures are required by the exigencies of the situation and consistent with the State's other obligations under international law.

The Ministry will inform the Secretary-General about future developments with regard to the martial law and will notify him on the date on which Azerbaijan terminates the derogation.

The Ministry of the Foreign Affairs of the Republic of Azerbaijan avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

Baku, September 28, 2020

Annex:

1. Decree No. 1166 dated September 27, 2020 of the President of the Republic of Azerbaijan on declaration of martial law.
2. Decision dated September 27, 2020 of the Milli Majlis (Parliament) of the Republic of Azerbaijan on approval of the Presidential Decree on martial law.
3. Extracts from the Law of the Republic of Azerbaijan "On martial law" (Article 10) 530-VQ dated February 14, 2017.

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017

Reference: C.N.576. 2020.TREATIES-IV.4 (Depositary Notification)

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

NEW YORK, 16 DECEMBER 1966

AZERBAIJAN: NOTIFICATION UNDER ARTICLE 4 (3)

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 16 December 2020.

(Original: English)

"N° 5/11-4332/01/20

The Ministry of Foreign Affairs of the Republic of Azerbaijan presents its compliments to the Secretary-General of the United Nations and, with reference to its Note Verbal 5/11-3284/01/20 of 28 September 2020, has the honour to inform that martial law throughout the country was lifted starting from 00:00 on 12 December 2020 by the Decree of the President of the Republic of Azerbaijan dated 7 December 2020, approved by the Decision of the Milli Majlis (Parliament) of the Republic of Azerbaijan.

Pursuant to Article 4 of the International Covenant on Civil and Political Rights, the Government of the Republic of Azerbaijan declares that situation which necessitated a derogation from certain obligations under the Covenant ceased to exist and Articles 9, 12, 14, 17, 19, 21 and 22 of the Covenant are again being fully executed.

The Ministry kindly requests to consider this communication as a notification on termination of the derogation in accordance with Article 4 (3) of the Covenant.

The Ministry of the Foreign Affairs of the Republic of Azerbaijan avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

Baku, 15 December 2020"

***

31 December 2020

Unofficial translation

Decree of the President of the Republic of Azerbaijan
on declaring martial law
19:05, 27 September 2020

Taking into account that on September 27, 2020, the Armed Forces of the Republic of Armenia again violated the norms of international law, firing on the settlements and military positions of the Republic of Azerbaijan from several directions using various weapons, including heavy artillery, resulting in civilian and military casualties and taking into account the presence of wounded and the fact that the Azerbaijani Army has launched counter-offensive operations to prevent these attacks, guided by Article 109, paragraph 29 and Article 111 of the Constitution of the Republic of Azerbaijan, I decide:

1. Due to the occupation of the Nagorno-Karabakh region and surrounding regions of the Republic of Azerbaijan by the Armed Forces of the Republic of Armenia, armed attacks against the Republic of Azerbaijan and regular military provocations, martial law throughout the Republic of Azerbaijan from 00:00 on September 28, 2020 is declared.

2. To take measures provided for in the Law of the Republic of Azerbaijan “On martial law" in order to ensure martial law,

3. To apply curfew from 21:00 to 06:00 during the martial law in Baku, Ganja, Sumgayit, Yevlakh, Mingachevir, Naftalan cities, Absheron, Jabrayil, Fuzuli, Agjabadi, Beylagan, Agdam, Barda, Tartar, Goranboy, Goygol, Dashkasan, Gadabay, Tovuz, Shamkir, Gazakh and Agstafa districts. In areas where curfew is applied:

3.1 to prohibit persons from being on the streets and in other public places without special permits and identity documents;

3.2 to apply a special entry-exit regime, to take measures to restrict the movement of vehicles.

4. The Ministry of Internal Affairs of the Republic of Azerbaijan shall provide implementation of the measures following from application of curfew.

5. Measures envisaging partial and temporary restriction of the rights and legitimate interests of departments, enterprises and organizations regardless of ownership and organizational-legal form, rights and freedoms of citizens during martial law, shall be applied within the limits of the situation and in accordance with the Constitution of the Republic of Azerbaijan, international agreements and laws of the Republic of Azerbaijan.

6. To send this Decree to Midi Majlis of the Republic of Azerbaijan for approval.

7. The Ministry of Foreign Affairs of the Republic of Azerbaijan shall provide the implementation of the duties following from Article 25 of the Law of the Republic of Azerbaijani "On martial law".

Ilham Aliyev

President of the Republic of Azerbaijan

Baku city, September 27, 2020.

Unofficial translation

DECISION OF THE MILLI MAJLIS OF THE REPUBLIC OF AZERBAIJAN

On approval of the Decree of the President of the Republic of Azerbaijan "On declaring martial law"

In accordance with paragraph 8 of Article 95 and Article 111 of the Constitution of the Republic of Azerbaijan, the Milli Majlis of the Republic of Azerbaijan decides:

To approve the Decree of the President of the Republic of Azerbaijan dated September 27, 2020 of No. 1166 "On declaring martial law".

Unofficial translation

**LAW OF THE REPUBLIC OF AZERBAIJAN
ON THE MARTIAL LAW**

**Chapter 2
Ensuring martial law**

Article 10. Measures aimed at ensuring martial law

10.1 The following measures may be taken during martial law:

10.1.1 use of allocated (reserved) state material resources;

10.1.2 strengthening the protection of public order and public safety, military and important state facilities, facilities providing safe living conditions for the population, transport, telecommunication networks, facilities and properties, postal facilities, water supply and sewerage systems, power supply enterprises, main energy transportation systems, special facilities that are a source of high danger to the people and environment;

10.1.3 transfer of departments, enterprises and organizations to a special mode of operation, regardless of ownership and organizational-legal form;

10.1.4 evacuation (relocation) of the population, economic and social facilities, material and cultural resources to safe areas on the condition of settlement in stationary or temporary settlements;

10.1.5 inspection of buildings and rooms, vehicles belonging to departments, enterprises and organizations, regardless of the property and organizational-legal form suspected of violating the martial law regime;

10.1.6 suspension of the activities of political parties, trade unions, public associations, foundations and other non-governmental organizations that prevent the elimination of the circumstances that led to the declaration of martial law and the implementation of certain measures;

10.1.7 compliance with special rules for the use of communications, strengthening control over the stability of telecommunications networks, facilities and properties, postal facilities;

10.1.8 change of the working regime or termination of the activity of educational institutions;

10.1.9 application of quarantine, compulsory sanitary-hygienic, anti-epidemic and veterinary measures;

10.1.10 implementation of measures aimed at strengthening the confidentiality regime during martial law;

10.1.11 restriction or prohibition of the sale of weapons, ammunition, special means, toxic or explosive substances, establishment of a special regime for the circulation of drugs, psychotropic substances and their precursors or substances, medical products containing strong substances, alcohol, temporary seizure of firearms and cold weapons, ammunition, poisonous or explosive substances from individuals, as well as training military equipment and radioactive substances from legal entities

10.1.12 application of special rules in the acquisition (sale) of daily consumer goods, including food and industrial products;

10.1.13 internment f relevant persons

10.1.14 prohibiting or restricting the holding of meetings, rallies, street marches, demonstrations and pickets, as well as other mass events;

10.1.15 application and provision of a special entry-exit regime to the territory (territories) where

martial law has been declared;

10.1.16 application of special rules of entry to the Republic of Azerbaijan and departure from the Republic of Azerbaijan;

10.1.17 restriction of the right to choose the place of residence or location;

10.1.18 restriction of traffic;

10.1.19 prohibition of persons on the streets or in other public places at certain times of the day without special permits and identity documents with the application of curfew;

10.1.20 inspection of special permits and identity documents of persons, inspection of their personal belongings, apartments and vehicles on the grounds provided by law, detention of persons and vehicles;

10.1.21 expulsion of persons violating the martial law regime and not living in the territory where martial law is applied;

10.1.22 military censorship of media information and materials;

10.1.23 application of a special regime of mass media in the territory (territories) where martial law is applied, submission of proposals to the relevant bodies on restriction or suspension of their activity if there are legal grounds;

10.1.24 regulation of the activity of mass media in the frontline zone;

10.1.25 rehabilitation of facilities providing safe living conditions of the population in full compliance with the norms and rules of labor protection, involvement of individuals and legal entities in the elimination of the consequences of fires, natural and man-made disasters;

10.1.26 prohibition of suspension of activities of departments, enterprises and organizations by strikes or other means, regardless of ownership and organizational-legal form;

10.1.27 mobilization of forces and labor resources of departments, enterprises and organizations, regardless of their ownership and organizational-legal form, change of their type of production activity or work mode in accordance with mobilization plans (tasks) in order to ensure the fulfilment of defense needs (including) overtime work, non-use of leave or rescheduling of leave), directing to the production of military and important civilian products on the basis of concluded contracts;

10.1.28 acquisition or use of movable and immovable property used and owned by individuals and legal entities in accordance with the procedure established by law, with compensation, and movable and immovable property owned by the state for defense purposes free of charge.

10.2 The results of planning for the organization of civil defense and territorial defense in the area where the martial law will be applied shall be taken into account when determining the measures aimed at ensuring the martial law regime.

10.3 Measures aimed at ensuring the martial law established by this Law shall be implemented in accordance with The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 1954 and the Second Protocol to that Convention.

DENMARK / *DANEMARK*

Types of measures introduced	Was this particular measure introduced in your country (please reply with YES/NO)?	Was a derogation Under Article 15 of ECHR or any other international instrument concerning this measure introduced?	Please provide any additional information (e.g. the extent of restrictions imposed)
• Measures related to Article 5 and Article 2 of Protocol no. 4 of ECHR			
General restrictions of freedom of movement (depending on type of places, purpose of movement, number of persons walking or running together, physical distance between them)	Yes	No	Restrictions in relation to freedom of movement were imposed beginning in march 2020, including measures to reduce social contacts, isolation, bans on staying in specific public areas, travel restrictions, restrictions on major events, repatriation of public employees, closure of cultural services, church buildings, schools, etc. (see further below). During 2020 and 2021 covid-19 restrictions were continuously changed and lifted in response to the development of the pandemic. Since March 2022 all Danish restrictions have been lifted.
Obligation to undergo preventive quarantine on return from abroad	Yes	No	The requirement to undergo preventive quarantine for 10 days after entering Denmark from abroad was first introduced on 7 February 2021 and has differentiated over time. The requirement was initially targeted everyone aged 15 or older entering Denmark except for travellers who had been previously infected. Travellers could break the quarantine after a negative covid-19 test taken no earlier than 4 days after entry. As covid-19 vaccines were introduced, people who were fully vaccinated would also be exempt from requirements of isolation, unless they were travelling from “red countries”, i.e. countries with covid-19 variants of concern. Restrictions were further eased and as of the 1st of March 2022 there have been no covid-19 related requirement of isolation after entering Denmark.

Obligation to undergo preventive quarantine following a contact with an infected person	No	No	There has been no general obligation to undergo preventive quarantine following contact with an infected person. However, according to Danish law the Danish Patient Safety Authority will under certain circumstances be able to issue an enforcement notice to anyone who suffers from or could suffer from a disease which is either considered dangerous to public health or critical to society to undergo isolation (the epidemic Act Chapter 5, §§ 12 and 15)
Isolation of infected person based on a non-judicial decision	Yes	No	In accordance with Danish law, the Danish Patient Safety Authority will under certain circumstances be able to issue an enforcement notice to anyone who suffers from or could suffer from a disease which is either considered dangerous to public health or critical to society to undergo hospitalization (The epidemic Act, chapter 5, §§ 12 and 14) for a maximum period of 4 weeks. The decision can be extended for 4 weeks at a time. Further according to Danish law, the Danish Patient Safety Authority will under certain circumstances be able to issue an enforcement notice to anyone who suffers from or could suffer from a disease which is either considered dangerous to public health or critical to society to undergo isolation (the epidemic Act Chapter 5, §§ 12 and 15) for a maximum period of 4 weeks. The decision can be extended for 4 weeks at a time. In relation to the above-mentioned decisions, The Danish Patient Safety Authority may request, for example, a public or private institution to ensure its implementation. The Danish Patient Safety Authority may in that regard and on the request of the institution allow the use of retention and locking of premises in which the person is located (the epidemic Act Chapter 5, § 21).
Preventive quarantine based on a non-judicial decision	Yes	No	In accordance with Danish law, the Danish Patient Safety Authority will under certain circumstances be able to issue an enforcement notice to anyone who suffers from or could suffer from a disease which is either considered dangerous to public

			health or critical to society to undergo hospitalization (The epidemic Act, chapter 5, §§ 12 and 14) for a maximum period of 4 weeks. The decision can be extended for 4 weeks at a time. Further according to Danish law, the Danish Patient Safety Authority will under certain circumstances be able to issue an enforcement notice to anyone who suffers from or could suffer from a disease which is either considered dangerous to public health or critical to society to undergo isolation (the epidemic Act Chapter 5, §§ 12 and 15) for a maximum period of 4 weeks. The decision can be extended for 4 weeks at a time. In relation to the above-mentioned decisions, the Danish Patient Safety Authority may request, for example, a public or private institution to ensure its implementation. The Danish Patient Safety Authority may in that regard and on the request of the institution allow the use of retention and locking of premises in which the person is located (the epidemic Act Chapter 5, § 21).
The existence of the right of appeal to court against decisions on quarantine or isolation	Yes	No	In accordance with Danish law, the Danish Patient Safety Authority is obligated to refer its decisions on enforcement notices concerning test, hospitalization or isolation to the court within 5 weekdays from the decision is taken (The epidemic Act § 65).
Limitations on the right of appeal to court against decisions on quarantine or isolation	No	No	
• <u>Measures related to Article 8 of ECHR</u>			
Prohibition of visits: - in prisons, and other places of deprivation of liberty - in hospitals - in social-care establishments - in other public establishments	Yes	No	<u>Regarding prisons:</u> During a period in 2020 where covid-19 has been categorized as a disease presenting a threat to society, visits in prisons were prohibited with an exception for visits from priests and lawyers. <u>Regarding hospitals:</u> The Danish Patient Safety Authority may under certain circumstances issue an enforcement notice to regions

			ordering these authorities to issue prohibitions on visits in hospitals and social care establishments. Furthermore, the government may issue such prohibitions/restrictions by executive order if the disease is categorised as a threat to society. Regarding social-care establishments and other public establishments: It has not been possible to collect information in these subjects within the deadline for replying to the current hearing.
Restrictions on visits: - in prisons, and other places of deprivation of liberty - in hospitals - in social-care establishments - in other public establishments	Yes	No	Regarding hospitals: The Danish Patient Safety Authority may under certain circumstances issue an enforcement notice to regions ordering these authorities to issue restrictions on visits in hospitals and social care establishments. Furthermore, the government may issue such restrictions by executive order if the disease is categorised as a threat to society. The mentioned restrictions could be, e.g., limits on visitors, proof of a negative test, previous infection or vaccination) and use of face masks. During several periods in 2020-2022 where covid-19 has been categorized as a disease presenting a threat to society, there have been different restrictions on visits in hospitals such as requirements of a “covid-19 passport” (i.e. proof of a negative test, previous infection or vaccination) and use of face masks. Regarding prisons: During several periods in 2020-2022 where covid-19 has been categorized as a disease presenting a threat to society, there have been different restrictions on visits in prisons such as requirement of a “covid-19 passport” and use of face masks. Regarding social-care establishments and other public establishments: It has not been possible to collect information on these subjects within the deadline for replying to the current hearing.
Obligation to use applications/devices allowing tracking of movement	No	No	The “smittestop-app”, which is a contact tracing app that can be used on a voluntary basis, was introduced. Neither public authorities nor private companies have access

			to information about who a citizen has been in close contact with. They also do not have access to any information in case a citizen receives an alert in the app saying that a citizen has been near someone who has reported being diagnosed with covid-19. The smittestop-app is compliant with the data protection law and rules.
Prohibitions to organize private gatherings	No	No	There have been no general prohibitions nor restrictions on gatherings in private homes. However, there have been restrictions (assembly ban, both outdoor and indoor) on the number of people gathering in public spaces, which has continuously changed in response to the development of the pandemic. The last assembly ban was lifted on 1 August 2021.
Restrictions of private gatherings (depending on the number of persons, size of the venue available)	Yes	No	There have been no prohibitions to organize gatherings in private homes. Restrictions on gatherings in public spaces depending on the number of people were introduced, including in restaurants, amusement parks etc. The restrictions have been depending on the venue, distance, etc., and have been adjusted several times in line with the situation under the pandemic.
Prohibition of attending the funerals	No	No	
Restrictions of attending the funerals	Yes	No	Different restrictive measures were introduced in relation to public funerals, including periodic restrictions on the maximum number of people allowed to attend the funeral and requirements for the use of face masks and proof of a “covid-19 passport”. The measures also included that people attending public religious events for most parts had to sit down and be in divided into certain sections.
Obligations to undergo mandatory vaccination	No	No	
Restrictions related to the fact that the person has not been vaccinated or has not produced a negative test or a proof that he/she already had covid-19	Yes	No	Restrictions were imposed for persons who were unable to show a valid “covid-19 passport”. A corona passport was, for example, a requirement for cultural institutions, restaurants, shops etc. A valid covid-19 passport could be obtained by showing proof of vaccination, negative test or proof of recovery from covid-19.

			The specific conditions regarding the acquisition of a valid covid-19 passport were adjusted over time, e.g. the timeframe of a valid test. Exceptions to the requirement for showing a valid covid-19 passport were made for persons who were unable to undergo covid-19 testing following certain physical or mental conditions.
Access to certain rights related to the fact that the person has not been vaccinated or has not produced a negative test or a proof that he/she already had covid-19	No	No	
• <u>Measures related to Article 9 of ECHR</u>			
Prohibition of participation in public religious worship	No	No	
Restrictions on participation in public religious worship (depending on the number of persons, size of the venue, distance etc.)	Yes	No	Different restrictive measures were introduced in relation to religious worship in public spaces owned by national church or by other religious denominations. These restrictions included limitations on the maximum number of people attending events and requirements for the use of face masks and proof of a “covid-19 passport”. The restrictions also included that people attending public religious events for most parts had to sit down and be divided into certain sections.
• <u>Measures related to Article 10 of ECHR</u>			
Prohibition of reporting on COVID-19 matters	No	No	
Restrictions on reporting on COVID-19 matters	No	No	
• <u>Measures related to Article 11 of ECHR</u>			

Prohibition of public assemblies	No	No	In response to covid-19 there have been several restrictions on public assemblies, including a ban on assemblies in public spaces depending on the number of people and prohibited or limited access in relation to cultural and sports events, restaurants, night life, shops, schools etc. The restrictions on public assemblies have been depending on the venue, distance, etc., and have been adjusted several times in line with the situation under the pandemic. The Danish Patient Safety Agency may in certain circumstances order a specific area to be closed off so that contact to the surroundings is prevented.
Restrictions on public assemblies (depending on the number of persons, size of the venue, distance etc.)	Yes	No	In response to covid-19 there have been several restrictions on public assemblies, including a ban on assemblies in public spaces depending on the number of people and prohibited or limited access, in relation to cultural and sports events, restaurants, night life, shops, schools etc. The restrictions on public assemblies have been depending on the venue, distance, etc., and have been adjusted several times in line with the situation under the pandemic. For instance, demonstrations and professional athletes were excepted from the restrictions on public assemblies.
• <u>Measures related to Article 1 of Protocol no. 1 of ECHR</u>			
Prohibitions of business activities (depending on the number of persons, surfaces, distances imposed etc.); please indicate the types/areas of prohibited activities)	Yes	No	Temporary prohibitions on businesses in the form of regulation that closes certain businesses within individual periods of time has previously been implemented. These measures have been assessed as proportional in regard to the outbreaks of covid-19 at the time and have been implemented on the basis of epidemiological expert recommendations. Businesses being periodically closed include: department stores, restaurants, service professionals, amusement parks, etc.
Restrictions on business activities (depending on the	Yes	No	In regard to covid-19 restrictions that affect private businesses with the

number of persons, surfaces, distances imposed etc.); please indicate the types/areas of restricted activities			purpose of containing outbreaks has previously been implemented. These measures were implemented on the basis of epidemiological expert recommendations and in re-gard to proportionality. The measures implemented have been restrictions on businesses such as requirements for the use of face masks and other protective equipment; the use of corona passport when entering businesses; signing with information about covid-19; restrictions on the number of persons allowed in one place at the time; requirements for distance between people within larger assemblies such as conferences etc. and restrictions on closing times for restaurants etc. .
• Measures related to Article 2 of Protocol no. 1 of ECHR			
On-line teaching at primary schools	Yes	No	Danish schools have been providing emergency learning (nødundervisning) in periods with high levels of infection. For most pupils emergency learning has been given as distance teaching, including online teaching. With exceptions, primary and lower secondary schools were closed down for 2-3 months from mid-March 2020, for 4-5 months from mid-December 2020 and for 3 weeks from mid-December 2021. The exceptions include pupils with special needs who were not in a situation conductive to distance learning. Schools reopened successively with younger pupils and graduating pupils returning first.
On-line teaching at secondary schools	Yes	No	Danish schools have been providing emergency learning (nødundervisning) in periods with high levels of infection. For most pupils emergency learning has been given as distance teaching, including on-line teaching. With exceptions, primary and lower secondary schools were closed down for 2-3 months from mid-March 2020, for 4-5 months from mid-December 2020 and for 3 weeks from mid-December 2021. The exeptions include pupils with special needs who were not in a situation conductive to distance learning. Schools reopened

			successively with younger pupils and graduating pupils returning first. With few exceptions, all activities at institutions of upper secondary education and vocational schools were shut down 2-3 month from medio March 2020 and again 4-5 month from medio december 2020. More or less all teaching was moved to an online setting, the possibility depended on the subject and content. All legislative measure related to on-line teaching had a sunset clause.
On-line teaching at universities	Yes	No	With few exceptions, all activities at institutions of higher education were shut down from 13 March 2020, due to covid-19 and more or less all teaching was moved to an online setting. With exceptions for a partial reopening during the summer 2020 higher education institutions were in general closed for physical presence until spring 2021. For more specific details see: https://ufm.dk/en/education/higher-education/information-about-covid-19-corona-virus?set_language=en&cl=en
Which other human rights have been limited/ restricted in your country during the Covid-19 pandemic?			

ITALY / *ITALIE*

Présidence du Conseil des Ministres

Types of measures introduced	Was this particular measure introduced in your country (please reply with YES/NO)?	Was a derogation Under Article 15 of ECHR or any other international instrument concerning this measure introduced?	Please provide any additional information (e.g. the extent of restrictions imposed)
• Measures related to Article 5 and Article 2 of Protocol no. 2 of ECHR			
General restrictions of freedom of movement (depending on type of places, purpose of movement, number of persons walking or running together, physical distance between them)	YES		
Obligation to undergo preventive quarantine on return from abroad	YES		
Obligation to undergo preventive quarantine following a contact with an infected person	YES		
Isolation of infected person based on a non-judicial decision	YES		
Preventive quarantine based on a non-judicial decision	YES		
The existence of the right of appeal to court against decisions on quarantine or isolation	YES		
Limitations on the right of appeal to court against decisions on quarantine or isolation	NO		
• Measures related to Article 8 of ECHR			
Prohibition of visits: - in prisons, and other places of deprivation	YES		

of liberty - in hospitals - in social-care establishments - in other public establishments			
Restrictions on visits: - in prisons, and other places of deprivation of liberty - in hospitals - in social-care establishments - in other public establishments	YES		
Obligation to use applications/devices allowing tracking of movement	NO		
Prohibitions to organize private gatherings	YES		
Restrictions of private gatherings (depending on the number of persons, size of the venue available)	YES		
Prohibition of attending the funerals	YES		
Restrictions of attending the funerals	YES		
Obligations to undergo mandatory vaccination	YES		
Restrictions related to the fact that the person has not been vaccinated or has not produced a negative test or a proof that he/she already had covid-19	YES		
Access to certain rights related to the fact that the person has not been vaccinated or has not produced a negative test or a proof that he/she already had covid-19	YES		
• <u>Measures related to Article 9 of ECHR</u>			
Prohibition of participation in public	YES		

religious worship			
Restrictions on participation in public religious worship (depending on the number of persons, size of the venue, distance etc.)	YES		
• Measures related to Article 10 of ECHR			
Prohibition of reporting on COVID-19 matters	NO		
Restrictions on reporting on COVID-19 matters	NO		
• Measures related to Article 11 of ECHR			
Prohibition of public assemblies	YES		
Restrictions on public assemblies (depending on the number of persons, size of the venue, distance etc.)	YES		
• Measures related to Article 1 of Protocol no. 1 of ECHR			
Prohibitions of business activities (depending on the number of persons, surfaces, distances imposed etc.); please indicate the types/areas of prohibited activities)	YES		
Restrictions on business activities (depending on the number of persons, surfaces, distances imposed etc.); please indicate the types/areas of restricted activities	YES		
• Measures related to Article 2 of Protocol no. 1 of ECHR			
On-line teaching at primary schools	YES		

On-line teaching at secondary schools	YES		
On-line teaching at universities	YES		
Which other human rights have been limited/ restricted in your country during the Covid-19 pandemic?			

Ministère de la Justice

judicial decision			
The existence of the right of appeal to court against decisions on quarantine or isolation			
Limitations on the right of appeal to court against decisions on quarantine or isolation			
Measures related to Article 8 of ECHR			
Prohibition of visits. in prisons, and other places of deprivation of liberty in hospitals in social-care establishments in other public establishments	NO		
Restrictions on visits. in prisons, and other places of deprivation of liberty in hospitals in social-care establishments in other public establishments	YES		According to the Decree Law n. 19 Published on the Official Journal — General series n. 79 on 25-3-2020 "restricting the access of relatives and visitors .. ...as well as to penal institutions and penal institutions for minors"
Obligation to use applications/devices allowing tracking of movement			
Prohibitions to organize private gatherings			

SLOVAK REPUBLIC / *RÉPUBLIQUE DE SLOVAQUIE*

Types of measures introduced	Was this particular measure introduced in your country (please reply with YES/NO)?	Was a derogation Under Article 15 of ECHR or any other international instrument concerning this measure introduced?	Please provide any additional information (e.g. the extent of restrictions imposed)
Measures related to Article 5 and Article 2 of Protocol no. 2 of ECHR			
General restrictions of freedom of movement (depending on type of places, purpose of movement, number of persons walking or running together, physical distance between them)	yes	no	Depending on purpose or destination, no limit on numbers or distance
Obligation to undergo preventive quarantine on return from abroad	yes	no	Implemented
Obligation to undergo preventive quarantine following a contact with an infected person	yes	no	Implemented
Isolation of infected person based on a non-judicial decision	yes	no	
Preventive quarantine based on a non- judicial decision	yes	no	

The existence of the right of appeal to court against decisions on quarantine or isolation	no	no	
Limitations on the right of appeal to court against decisions on quarantine or isolation	no	no	As there is no right to appeal to court
Measures related to Article 8 of ECHR			

Prohibition of visits: - in prisons, and other places of deprivation of liberty - in hospitals - in social-care establishments - in other public establishments	yes	no	Only short-term
Restrictions on visits: - in prisons, and other places of deprivation of liberty - in hospitals - in social-care establishments - in other public establishments	yes	no	
Obligation to use applications/devices allowing tracking of movement	no	no	Implemented for 2 weeks, for trial period
Prohibitions to organize private gatherings	no	no	
Restrictions of private gatherings (depending on the number of persons, size of the venue available)	no	no	
Prohibition of attending the funerals	no	no	
Restrictions of attending the funerals	yes	no	Only facemasks, social distancing
Obligations to undergo mandatory vaccination	no	no	
Restrictions related to the fact that the person has not been vaccinated or has not produced a negative test or a proof that he/she already had covid-19	yes	no	

Access to certain rights related to the fact that the person has not been vaccinated or has not produced a negative test or a proof that he/she already had covid-19	no	no	
Measures related to Article 9 of ECHR			
Prohibition of participation in public religious worship	no	no	
Restrictions on participation in public religious worship (depending on the number of persons, size of the venue, distance etc.)	yes	no	
Measures related to Article 10 of ECHR			
Prohibition of reporting on COVID-19 matters	no	no	
Restrictions on reporting on COVID-19 matters	no	no	
Measures related to Article 11 of ECHR			
Prohibition of public assemblies	no	no	
Restrictions on public assemblies (depending on the number of persons, size of the venue, distance etc.)	yes	no	
Measures related to Article 1 of Protocol no. 1 of ECHR			

Prohibitions of business activities (depending on the number of persons, surfaces, distances imposed etc.); please indicate the types/areas of prohibited activities)	yes	no	Closure of certain business acitvities
Restrictions on business activities (depending on the number of persons, surfaces, distances imposed etc.); please indicate the types/areas of restricted activities	yes	no	Number of people, social distancing, limited number of people per m2
Measures related to Article 2 of Protocol no. 1 of ECHR			
On-line teaching at primary schools	yes	no	
On-line teaching at secondary schools	yes	no	
On-line teaching at universities	yes	no	
Which other human rights have been limited/ restricted in your country during the Covid-19 pandemic?	none	no	

UNITED KINGDOM / *ROYAUME-UNI*

Contents

UK ECHR Derogations

Category (1) 2001 Derogation

Derogation contained in a Note Verbale from the Permanent Representation of the United Kingdom, dated 18 December 2001, registered by the Secretariat General on 18 December 2001 - Or. Engl.Engl. - and withdrawn by a Note verbale from the Permanent Representation of the United Kingdom dated 16 March 2005, registered at the Secretariat General on 16 March 2005 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in order to ensure compliance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 5 November 1950.

Public emergency in the United Kingdom

The terrorist attacks in New York, Washington, D.C. and Pennsylvania on 11th September 2001 resulted in several thousand deaths, including many British victims and others from 70 different countries. In its resolutions 1368 (2001) and 1373 (2001), the United Nations Council recognised the attacks as a threat to international peace and security.

The threat from international terrorism is a continuing one. In its resolution 1373 (2001), the Security Council, acting under Chapter VII of the United Nations Charter, required all States to take measures to prevent the commission of terrorist attacks, including by denying safe haven to those who finance, plan, support or commit terrorist attacks.

There exists a terrorist threat to the United Kingdom from persons suspected of involvement in international terrorism. In particular, there are foreign nationals present in the United Kingdom who are suspected of being concerned in the commission, preparation or instigation of acts of international terrorism, of being members of organisations or groups which are so concerned or of having links with members of such organisations or groups, and who are a threat to the national security of the United Kingdom.

As a result, a public emergency, within the meaning of Article 15 (1) of the Convention, exists in the United Kingdom.

The Anti-terrorism, Crime and Security Act 2001

As a result of the public emergency, provision is made in the Anti-terrorism, Crime and Security Act 2001, *inter alia*, for an extended power to arrest and detain a foreign national which will apply where it is intended to remove or deport the person from the United Kingdom but where removal or deportation is not for the time being possible, with the consequence that the detention would be unlawful under existing domestic law powers. The extended power to arrest and detain will apply where the Secretary of State issues a certificate indicating his belief that the person's presence in the United Kingdom is a risk to national security and that he suspects the person of being an international terrorist. That certificate will be subject to an appeal to the Special Immigration Appeals Commission ("SIAC"), established under the Special Immigration Appeals Commission Act 1997, which will have power to cancel it if it considers that the certificate should not have been issued. There will be an appeal on a point of law from a ruling by SIAC. In addition, the certificate will be reviewed by SIAC at regular intervals. SIAC will also be able to grant bail, where appropriate, subject to conditions. It will be open to a detainee to end his detention at any time by agreeing to leave the United Kingdom.

The extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001 is a measure which is strictly required by the exigencies of the situation. It is a temporary provision which comes into force for an initial period of 15 months and then expires unless renewed by the Parliament. Thereafter, it is subject to annual renewal by Parliament. If, at any time, in the Governments' assessment, the public emergency no longer exists or the extended power is no

longer strictly required by the exigencies of the situation, then the Secretary of State will, by Order, repeal the provision.

Domestic law powers of detention (other than under the Anti-terrorism, Crime and Security Act 2001)

The Government has powers under the Immigration Act 1971 ("the 1971 Act") to remove or deport persons on the ground that their presence in the United Kingdom is not conducive to the public good on national security grounds. Persons can also be arrested and detained under Schedules 2 and 3 to the 1971 Act pending their removal or deportation. The courts in the United Kingdom have ruled that this power of detention can only be exercised during the period necessary, in all the circumstances of the particular case, to effect removal and that, if it becomes clear that removal is not going to be possible within a reasonable time, detention will be unlawful (R. v Governor of Durham Prison, ex parte Singh [1984] All ER 983).

Article 5(1)(f) of the Convention

It is well established that Article 5(1)(f) permits the detention of a person with a view to deportation only in circumstances where "action is being taken with a view to deportation" (Chahal v United Kingdom (1996) 23 EHRR 413 at paragraph 112). In that case the European Court of Human Rights indicated that detention will cease to be permissible under Article 5(1)(f) if deportation proceedings are not prosecuted with due diligence and that it was necessary in such cases to determine whether the duration of the deportation proceedings was excessive (paragraph 113).

In some cases, where the intention remains to remove or deport a person on national security grounds, continued detention may not be consistent with Article 5(1)(f) as interpreted by the Court in the *Chahal* case. This may be the case, for example, if the person has established that removal to their own country might result in treatment contrary to Article 3 of the Convention. In such circumstances, irrespective of the gravity of the threat to national security posed by the person concerned, it is well established that Article 3 prevents removal or deportation to a place where there is a real risk that the person will suffer treatment contrary to that article. If no alternative destination is immediately available then removal or deportation may not, for the time being, be possible even though the ultimate intention remains to remove or deport the person once satisfactory arrangements can be made. In addition, it may not be possible to prosecute the person for a criminal offence given the strict rules on the admissibility of evidence in the criminal justice system of the United Kingdom and the high standard of proof required.

Derogation under Article 15 of the Convention

The Government has considered whether the exercise of the extended power to detain contained in the Anti-terrorism, Crime and Security Act 2001 may be inconsistent with the obligations under Article 5(1) of the Convention. As indicated above, there may be cases where, notwithstanding a continuing intention to remove or deport a person who is being detained, it is not possible to say that "action is being taken with a view to deportation" within the meaning of Article 5(1)(f) as interpreted by the Court in the *Chahal* case. To the extent, therefore, that the exercise of the extended power may be inconsistent with the United Kingdom's obligations under Article 5(1), the Government has decided to avail itself of the right of derogation conferred by Article 15(1) of the Convention and will continue to do so until further notice.

Period covered: 18/12/2001 - 14/03/2005
Articles concerned: 15
Withdrawal of derogation contained in a Note verbale from the Permanent Representation of the United Kingdom dated 16 March 2005, registered at the Secretariat General on 16 March 2005 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council of Europe, and has the honour to refer to Article 15, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 5 November 1950, as well as to the notification made by the then United Kingdom Permanent Representative to the then Secretary General under Article 15, paragraph 3, dated 18 December 2001.

The provisions referred to in the 18 December 2001 notification, namely the extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001, ceased to operate on 14 March 2005. Accordingly, the notification is withdrawn as from that date, and the Government of the United Kingdom confirm that the relevant provisions of the Convention will again be executed as from then.

Period covered: 16/03/2005
Articles concerned: 15

Category (2) 1988 Derogation
Derogation contained in a letter from the Permanent Representative of the United Kingdom, dated 23 December 1988, registered at the Secretariat General on 23 December 1988 - Or. Engl. - and withdrawn by a Notification from the Permanent Representation of the United Kingdom, dated 19 February 2001, deposited with the Secretary General on 19 February 2001 - Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in order to ensure compliance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 5 November 1950.

There have been in the United Kingdom in recent years campaigns of organised terrorism connected with the affairs of Northern Ireland which have manifested themselves in activities which have included repeated murder, attempted murder, maiming, intimidation and violent civil disturbance and in bombing and fire raising which have resulted in death, injury and widespread destruction of property. As a result, a public emergency within the meaning of Article 15(1) of the Convention exists in the United Kingdom.

The Government found it necessary in 1974 to introduce and since then, in cases concerning persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland, or of certain offences under the legislation, who have been detained for 48 hours, to exercise powers enabling further detention without charge, for periods of up to five days, on the authority of the Secretary of State. These powers are at present to be found in Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984.
Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 provides for a person whom a constable has arrested on reasonable grounds of suspecting him to be guilty of an offence under Section 1, 9 or 10 of the Act, or to be or to have been involved in terrorism connected with the affairs of Northern Ireland, to be detained in right of the arrest for up to 48 hours and thereafter, where the Secretary of State extends the detention period, for up to a further five days. Section 12 substantially re-enacted Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1976 which, in turn, substantially re-enacted Section 7 of the Prevention of Terrorism (Temporary Provisions) Act 1974.

Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984 (SI 1984/417) and Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 (SI 1984/418) were both made under Sections 13 and 14 of and Schedule 3 to the 1984 Act and substantially re-enacted powers of detention in Orders made

under the 1974 and 1976 Acts. A person who is being examined under Article 4 of either Order on his arrival in, or on seeking to leave, Northern Ireland or Great Britain for the purpose of determining whether he is or has been involved in terrorism connected with the affairs of Northern Ireland, or whether there are grounds for suspecting that he has committed an offence under Section 9 of the 1984 Act, may be detained under Article 9 or 10, as appropriate, pending the conclusion of his examination. The period of this examination may exceed 12 hours if an examining officer has reasonable grounds for suspecting him to be or to have been involved in acts of terrorism connected with the affairs of Northern Ireland.

Where such a person is detained under the said Article 9 or 10 he may be detained for up to 48 hours on the authority of an examining officer and thereafter, where the Secretary of State extends the detention period, for up to a further five days.

Copies of Section 12 of the 1984 Act and the said Articles 9 and 10 are enclosed.

In its judgment of 29 November 1988 in the Case of Brogan and Others, the European Court of Human Rights held that there had been a violation of Article 5(3) in respect of each of the applicants, all of whom had been detained under Section 12 of the 1984 Act. The Court held that even the shortest of the four periods of detention concerned, namely four days and six hours, fell outside the constraints as to time permitted by the first part of Article 5(3). In addition, the Court held that there had been a violation of Article 5(5) in the case of each applicant.

Following this judgment, the Secretary of State for the Home Department informed Parliament on 6 December 1988 that, against the background of the terrorist campaign, and the over-riding need to bring terrorists to justice, the Government did not believe that the maximum period of detention should be reduced. He informed Parliament that the Government were examining the matter with a view to responding to the judgment. On 22 December 1988, the Secretary of State further informed Parliament that it remained the Government's wish, if it could be achieved, to find a judicial process under which extended detention might be reviewed and where appropriate authorised by a judge or other judicial officer. But a further period of reflection and consultation was necessary before the Government could bring forward a firm and final view.

Since the judgment of 29 November 1988 as well as previously, the Government have found it necessary to continue to exercise, in relation to terrorism connected with the affairs of Northern Ireland, the powers described above enabling further detention without charge, for periods of up to 5 days, on the authority of the Secretary of State, to the extent strictly required by the exigencies of the situation to enable necessary enquiries and investigations properly to be completed in order to decide whether criminal proceedings should be instituted. To the extent that the exercise of these powers may be inconsistent with the obligations imposed by the Convention the Government has availed itself of the right of derogation conferred by Article 15(1) of the Convention and will continue to do so until further notice.

Period covered: 23/12/1988 - 26/02/2001
Articles concerned: 15
Communication contained in a letter from the Permanent Representative of the United Kingdom, dated 23 March 1989, registered at the Secretariat General on 28 March 1989 - Or. Engl. - and withdrawn by a Notification from the Permanent Representation of the United Kingdom, dated 19 February 2001, deposited with the Secretary General on 19 February 2001 - Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information.

In his communication to the Secretary General of 23 December 1988, reference was made to the introduction and exercise of certain powers under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental

Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984.

These provisions have been replaced by section 14 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989, which make comparable provision. They came into force on 22 March 1989. A copy of these provisions is enclosed.

Appendices to the Communication

DETENTION PENDING EXAMINATION ETC.

6. (1) A person who is examined under this Schedule may be detained under the authority of an examining officer :

(a) pending conclusion of his examination ;

(b) pending consideration by the Secretary of State whether to make an exclusion order against him ; or

(c) pending a decision by the Director of Public Prosecutions or Attorney General or, as the case may be, the Lord Advocate or the Director of Public Prosecutions or Attorney General for Northern Ireland whether proceedings for an offence should be instituted against him.

(2) Subject to sub-paragraph (3) below, a person shall not be detained under sub-paragraph (1) above for more than forty eight hours from the time when he is first examined.

(3) The Secretary of State may, in any particular case, extend the period of forty-eight hours mentioned in sub-paragraph (2) above by a period or periods specified by him, but any such further period or periods shall not exceed five days in all and if an application for such an extension is made the person detained shall as soon as practicable be given written notice of that fact and of the time when the application was made.

(4) A person liable to be detained under this paragraph may be arrested without warrant by an examining officer.

(5) A person on board a ship or aircraft may, under the authority of an examining officer, be removed from the ship or aircraft for detention under this paragraph ; but if an examining officer so requires, the captain of the ship or aircraft shall prevent from disembarking in the relevant territory any person who has arrived in the ship or aircraft if the examining officer notifies him either that that person is the subject of an exclusion order or that consideration is being given by the Secretary of State to the making of an exclusion order against that person.

(6) Where under sub paragraph (5) above the captain of a ship or aircraft is required to prevent a person from disembarking he may for that purpose detain him in custody on board the ship or aircraft.

(7) A person may be removed from a vehicle for detention under this paragraph.

(8) In sub paragraph (5) above "the relevant territory" has the same meaning as in paragraph 6 of Schedule 2 to this Act.

PART IV - ARREST, DETENTION AND CONTROL OF ENTRY

14. (1) Subject to subsection (2) below, a constable may arrest without warrant a person whom he has reasonable grounds for suspecting to be :

(a) a person guilty of an offence under section 2, 8, 9, 10 or 11 above ;

(b)a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this section applies ; or

(c) a person subject to an exclusion order.

(2) The acts of terrorism to which this section applies are :

(a) acts of terrorism connected with the affairs of Northern Ireland ; and
(b) acts of terrorism of any other description except acts connected solely with the affairs of the United Kingdom or any part of the United Kingdom other than Northern Ireland.

(3) The power of arrest conferred by subsection (1)(c) above is exercisable only :

(a) in Great Britain, if the exclusion order was made under section 5 above ; and

(b) in Northern Ireland, if it was made under section 6 above.

(4) Subject to subsection (5) below, a person arrested under this section shall not be detained in right of the arrest for more than forty eight hours after his arrest.

(5) The Secretary of State may, in any particular case, extend the period of forty eight hours mentioned in subsection (4) above by a period or periods specified by him, but any such further period or periods shall not exceed five days in all and if an application for such an extension is made the person detained shall as soon as practicable be given written notice of that fact and of the time when the application was made.

(6) The exercise of the detention powers conferred by this section shall be subject to supervision in accordance with Schedule 3 to this Act.

(7) The provisions of this section are without prejudice to any power of arrest exercisable apart from this section.

Period covered: 23/03/1989 - 26/02/2001
Articles concerned: 15

Derogation contained in a letter from the Permanent Representative of the United Kingdom, dated 12 November 1998, registered at the Secretariat General on 13 November 1998 - Or. Engl. - and withdrawn by a letter from the Permanent Representative of the United Kingdom, dated 4 May 2006, registered at the Secretariat General on 5 May 2006 - Or. Engl.

In communications from this Delegation to the then Secretary General of 23 December 1988 and 23 March 1989, reference was made to the introduction and exercise of certain powers under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984 and to the replacement of those provisions by Section 14 and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989.
These powers were previously extended by Order in Council to cover the Channel Islands and the Isle of Man. Following the adoption, by the authorities in Jersey, Guernsey and the Isle of Man of legislation making comparable provision, the relevant Orders in Council have been repealed. A copy of the new legislation for the Isle of Man, Guernsey and Jersey is enclosed.

In respect of the Isle of Man the relevant provisions are Section 12 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism Act 1990 which entered into force on 1 December 1990. In respect of Guernsey the relevant provisions are Section 12 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Bailiwick of Guernsey) Law 1990 which entered into force on 1 January 1991. In respect of Jersey the relevant provisions are Article 13 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Jersey) Law 1996 which entered into force on 1 July 1996.

APPENDIX TO THE COMMUNICATION

PREVENTION OF TERRORISM ACT 1990 - PART 4 - ARREST, DETENTION AND CONTROL OF ENTRY

12- Arrest and detention of suspected persons
[P/1989/4/14]

1. Subject to the following provisions of this section, a constable may arrest a person whom he has reasonable grounds for suspecting to be:

a. a person guilty of an offence under section 2, 6, 7, 8 or 9;

b. a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this section applies; orc. a person subject to an exclusion order.

2. The acts of terrorism to which this section applies are:

a. acts of terrorism connected with the affairs of Northern Ireland; and

b. acts of terrorism of any other description except acts connected solely with the affairs of the Island, the United Kingdom or any part of the United Kingdom other than Northern Ireland.

3. Subject to subsection 4, a person arrested under this section shall not be detained in right of the arrest for more than 48 hours after his arrest.

4. The Governor after consultation with the Chief Minister or the Minister for Home Affairs may, in any particular case, extend the period of 48 hours mentioned in subsection 3 by a period or periods specified by him, but any such further period or periods shall not exceed 3 days in all, and if an application for such an extension is made, the person detained shall as soon as practicable be given written notice of that fact and of the time when the application was made.

5. The exercise of the detention powers conferred by this section shall be subject to supervision in accordance with Schedule 3.

6. The provisions of this section are without prejudice to any power of arrest exercisable apart from this section.

7. The power of arrest under this section may be exercised:

a. under the authority of a warrant issued under subsection 8; or

b. without a warrant if the circumstances make it impracticable to apply for such a warrant.
8. If a Deemster or High Bailiff is satisfied that there are reasonable grounds for suspecting that a person is liable to arrest under this section, he may grant a warrant authorising a constable to arrest that person.

Schedule 5 - Port Control - *Detention pending examination etc.*

6. (1.) A person who is examined under this Schedule may be detained under the authority of an examining officer:

a. pending conclusion of his examination;

b. pending consideration by the Governor whether to make an exclusion order against him; or

c. pending a decision by the Attorney General whether proceedings for an offence should be instituted against him.
(2.) Subject to sub-paragraph 3, a person shall not be detained under sub-paragraph 1 for more than 48 hours from the time when he is first examined.

(3.) The Governor may, in any particular case, extend the period of 48 hours mentioned in sub-paragraph 2 by a period or periods specified by him, but any such further period or periods shall not exceed 3 days in all, and if an application for such an extension is made the person detained shall as soon as practicable be given written notice of that fact and of the time when the application was made.

(4.) A person liable to be detained under this paragraph may be arrested without warrant by an examining officer.

(5.) A person on board a ship or aircraft may, under the authority of an examining officer, be removed from the ship or aircraft for detention under this paragraph; but if an examining officer so requires, the captain of the ship or aircraft shall prevent from disembarking in the Island any person who has arrived in the ship or aircraft if the examining officer notifies him either that that person is the subject of an exclusion order or that consideration is being given by the Governor to the making of an exclusion order against that person.

(6.) Where under sub-paragraph 5 the captain of a ship or aircraft is required to prevent a person from disembarking he may for that purpose detain him in custody on board the ship or aircraft.

(7.) A person may be removed from a vehicle for detention under this paragraph.

THE PREVENTION OF TERRORISM (BAILIWICK OF GUERNSEY) LAW, 1990 - PART IV - ARREST, DETENTION AND CONTROL OF ENTRY

12. (1.) An officer of police may arrest without warrant a person who he has reasonable grounds to suspect:

a. is guilty of an offence under section 2, 6, 7, 8 or 9;

b. is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this section applies; or

c. is subject to an exclusion order.

(2.) The acts of terrorism to which this section applies are:

a. acts of terrorism connected with the affairs of Northern Ireland; and

b. acts of terrorism of any other description except acts connected solely with the affairs of the Bailiwick or any part of the United Kingdom other than Northern Ireland.

(3.) Subject to subsection 4, a person arrested under this section shall not be detained in right of the arrest for more than 48 hours after his arrest.
(4.) Her Majesty's Procureur may, in any particular case, extend the period of 48 hours mentioned in subsection 3 by a period or periods specified by him, but any such further period or periods shall not exceed 5 days in all; and if an application for such an extension is made, the person detained shall as soon as practicable be given written notice of the fact and of the time when the application was made.

(5.) The powers of detention conferred by this section are subject to supervision in accordance with Schedule 3.

SCHEDULE 5 - PORT CONTROL - *Detention pending examination*

6. (1.) A person who is examined under this Schedule may be detained under the authority of an examining officer:

a. pending conclusion of his examination;

b. pending consideration by the Lieutenant-Governor of whether to make an exclusion order or a deportation order against him; or

c. pending a decision by Her Majesty's Procureur of whether proceedings for an offence should be instituted against him.

(2.) Subject to sub-paragraph 3, a person shall not be detained under sub-paragraph 1 for more than 48 hours from the time when he is first examined.

(3.) Her Majesty's Procureur may, in any particular case, extend the period of 48 hours mentioned in sub-paragraph 2 by a period or periods specified by him, but any such further period or periods shall not exceed 5 days in all; and if an application for such an extension is made, the person detained shall as soon as practicable be given written notice of that fact and of the time when the application was made.

(4.) A person liable to be detained under this paragraph may be arrested without warrant by an examining officer.

(5.) A person on board a ship or aircraft may, under the authority of an examining officer, be removed therefrom for detention under this paragraph; but the captain shall prevent any person who has arrived in the ship or aircraft from disembarking in the Bailiwick if an examining officer so requires and notifies him either that the person is the subject of an exclusion order or that consideration is being given by the Lieutenant-Governor to the making of an exclusion order against him.

(6.) Where under sub-paragraph 5 the captain of a ship or aircraft is required to prevent a person from disembarking, he may for that purpose detain him in custody on board.

(7.) A person may be removed from a vehicle for detention under this paragraph.

PREVENTION OF TERRORISM (JERSEY) LAW, 1996 - PART V - Powers of arrest, detention and control of entry

Article 13 – Arrest and detention of suspected persons

1. Subject to paragraph 2, a police officer may arrest a person whom he has reasonable grounds for suspecting to be:

a. a person guilty of an offence under this Law;

b. a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this Article applies; or

c. a person subject to an exclusion order.
2. The acts of terrorism to which this Article applies are:
a. acts of terrorism connected with the affairs of Northern Ireland; and

b. acts of terrorism of any other description except acts connected solely with the affairs of the Island, or any part of the United Kingdom other than Northern Ireland.

3. Subject to paragraph 4, a person arrested under this Article shall not be detained in right of the arrest for more than forty-eight hours after his arrest.

4. The Attorney General may, in any particular case, extend the period of forty-eight hours mentioned in paragraph 3 by a period or periods specified by him, but any such further period or periods shall not exceed five days in all and if an application for such extension is made, the person detained shall as soon as practicable be given written notice of that fact and of the time when the application was made.

5. The exercise of the powers of detention conferred by this Article shall be subject to supervision in accordance with the Third Schedule.

FIFTH SCHEDULE - PORT CONTROL - *Detention pending examination, etc.*

6. (1.) A person who is examined under this Schedule may be detained under the authority of an examining officer :

a. pending conclusion of his examination;

b. pending consideration by the Lieutenant Governor whether to make an exclusion order against him or to serve him with notice of a decision to make a deportation order against him under the Immigration Act; or

c. pending a decision by the Attorney General whether proceedings for an offence should be instituted against him.

(2.) Subject to sub-paragraph 3, a person shall not be detained under sub-paragraph 1 for more than forty-eight hours from the time when he is first examined.

(3.) The Attorney General may, in any particular case, extend the period of forty-eight hours mentioned in sub-paragraph 2 by a period or periods specified by him, but any such period or periods shall not exceed five days in all and if an application for such extension is made the person detained shall as soon as practicable be given written notice of that fact and of the time when the application was made.

(4.) A person liable to be detained under this paragraph may be arrested without warrant by an examining officer.

(5.) A person on board a ship or aircraft may, under the authority of an examining officer, be removed from the ship or aircraft for detention under this paragraph; but if an examining officer so requires, the captain of the ship or aircraft shall prevent from disembarking in the Island any person who has arrived in the ship or aircraft if the examining officer notifies him either that the person is the subject of an exclusion order or that consideration is being given by the Lieutenant Governor to the making of an exclusion order against that person.

(6.) Where under sub-paragraph 5 the captain of a ship or aircraft is required to prevent a person from disembarking, he may for that purpose detain him in custody on board the ship or aircraft.

(7.) A person may be removed from a vehicle for detention under this paragraph.

Period covered: 12/11/1998 - 05/05/2006
Articles concerned: 15
Withdrawal of derogation contained in a Note Verbale from the Permanent Representative of the United Kingdom, dated 19 February 2001, handed to the Secretary General on 19 February 2001 - Or. Engl. - and completed by a letter from the Permanent Representative of the United Kingdom, dated 4 May 2006, registered at the Secretariat General on 5 May 2006 - Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to refer to Article 15, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, as well as to the notification made by the then United Kingdom Permanent Representative to the then Secretary General under the Article 15, paragraph 3, and dated 23 December 1988 and 23 March 1989.
The provisions referred to in the March 1989 notification, namely section 14 and paragraph 6 of Schedule 5 to the Prevention of Terrorism Act 1989, have been replaced by section 41 and paragraph 6 of Schedule 7 to the Terrorism Act 2000. Under section 41 a person who has been arrested by a constable upon reasonable suspicion of being guilty of an offence under Sections, 11, 12, 15 to 18, 54 and 56 to 63 of the Act, or of being concerned in the commission, preparation or instigation of acts of terrorism, can be detained by virtue of the arrest for up to 48

hours and thereafter, where a judicial authority extends the detention period, for up to a further five days. The judicial authority will extend detention only to the point strictly necessary for the completion of investigations and enquiries or to preserve relevant evidence in order to decide whether criminal proceedings should be instituted. Under paragraph 6 of Schedule 7 to the Act a person who is being examined at a port or in a border area by an examining officer for the purpose of determining whether he is a person who is or has been involved in the commission, preparation or instigation of acts of terrorism, or for the purpose of determining whether his presence in the border area is connected with his entering or leaving Northern Ireland, may be detained pending the conclusion of his examination. The period of his detention under this power shall not exceed nine hours. No extension of detention is possible.

In the light of these developments, the measures referred to in the notificaions dated 23 December 1988 and 23 March 1989 will cease to operate as of Monday, 26 February 2001. Accordingly, the two notifications are withdrawn as from that date, and the Government of the United Kingdom confirms that the provisions of the Convention will again be executed as from then.

However, this withdrawal of the derogation only applies to the United Kingdom of Great Britain and Northern Ireland. It is not yet possible to withdraw the derogation in respect of the Crown Dependencies, that is the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. The Crown Dependencies are actively considering enacting or amending their current Prevention of Terrorism legislation to reflect the changes in the United Kingdom legislation made under the Terrorism Act 2000. (The letter from the Permanent Representative of 12 November 1998 to the previous Secretary General explains the position in relation to the legislation in the Crown Dependencies.)

Period covered: 26/02/2001 - 05/05/2006
Articles concerned: 15

Withdrawal of derogation contained in a letter from the Permanent Representative of the United Kingdom, transmitted by the Permanent Representation and registered by the Secretariat General on 5 May 2006 - Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council of Europe, and has the honour to refer to Article 15, paragraph 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, as well as to the notification made by the United Kingdom under that provision dated 23 December 1988 and 23 March 1989, and to the further communication in that regard made on 12 November 1998.
By a letter from the then Permanent Representative of the United Kingdom to the then Secretary General dated 19 February 2001, the derogation referred to in the above-mentioned notifications was withdrawn as from that date in respect of the United Kingdom of Great Britain and Norther Ireland only.

It has now also become possible to withdraw the derogation referred to in those notifications and in the above mentioned letter of 12 November 1998 in respect of the Crown Dependencies, that is the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. Accordingly, the derogation is withdrawn in respect of those territories with immediate effect, and the Governement of the United Kingdom confirm that the relevant provisions of the Convention will again be executed there.

Period covered: 05/05/2006
Articles concerned: 15

Category (3) 1957 Derogation *et seq*
Derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 27 June 1957, registered at the Secretariat General on 27 June 1957 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in order to ensure compliance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950.

A public emergency within the meaning of Article 15(1) of the Convention exists in a part of the United Kingdom, namely, Northern Ireland.

Owing to the recurrence in Northern Ireland of organised terrorism, certain emergency powers have been brought into operation at various dates between June 16, 1954, and January 11, 1957, in order to preserve the peace and prevent outbreaks of violence, loss of life and damage to property; for these purposes the Government of Northern Ireland, to the extent strictly required by the exigencies of the situation, have exercised powers to detain persons, to search and seize, and to prohibit the publication and distribution of certain printed matter, which may involve derogations in certain respects from the obligations imposed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

[Note by the Secretariat: See also the United Kingdom's declarations dated 25 September 1969, 20 August 1971, 23 January 1973, 16 August 1973, 19 September 1975, 12 December 1975, 18 December 1978 and 22 August 1984.]

Period covered: 27/06/1957 - 22/08/1984
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 25 September 1969, registered at the Secretariat General on 25 September 1969 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information with reference to the communication of the 27th June, 1957, giving notice on behalf of the Government of the United Kingdom, for the purposes of Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the existence of a public emergency within the meaning of Article 15(1) in a part of the United Kingdom, namely, Northern Ireland, and of the bringing into operation therein of certain emergency powers.
Serious civil disturbances have occurred in various parts of Northern Ireland in the month of August this year as a result of which the Government of Northern Ireland has found it necessary to exercise certain of such emergency powers, to the extent strictly required by the exigencies of the situation.

In the course of that month twenty-four persons were detained in custody without judicial process. Four of such persons have been charged with criminal offences, and the remainder were released from detention within, at most, 14 days of their being first detained.

[Note by the Secretariat: See also the United Kingdom's declarations dated 20 August 1971, 23 January 1973, 16 August 1973, 19 September 1975, 12 December 1975, 18 December 1978 and 22 August 1984.]

Period covered: 25/09/1969 - 22/08/1984
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 20 August 1971, registered at the Secretariat General on 20 August 1971 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to refer to the communication of the 27th June, 1957, giving notice on behalf of the Government of the United Kingdom, for the purposes of Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the existence of a public emergency within the meaning of Article 15(1) in a part of the United Kingdom, namely, Northern Ireland, and of the bringing into operation therein of certain emergency powers, and also to the further communication of 25th September, 1969, in respect of serious civil disturbances which had recently occurred in various parts of Northern Ireland.

Over recent months in Northern Ireland there has been a series of acts of terrorism, including murders, attempted murders, maimings, bombings, fire-raising and acts of intimidation, and more recently violent civil disturbances. The Government of Northern Ireland has therefore found it necessary since 9th August for the protection of life and the security of property and to prevent outbreaks of public disorder, to exercise, to the extent strictly required by the exigencies of the situation, powers of detention and internment.

Copies of the relevant Regulations under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 are being sent to you separately **[*]**. Particular attention is drawn to those provisions of Regulation 12 which provide for the establishment of an Advisory Committee in respect of persons who are subject of an internment order.

[Notes by the Secretariat: See also the United Kingdom's declarations dated 23 January 1973, 16 August 1973, 19 September 1975, 12 December 1975, 18 December 1978 and 22 August 1984.
[*] The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 20/08/1971 - 22/08/1984
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 23 January 1973, registered at the Secretariat General on 24 January 1973 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to refer to the communication of the 20th of August 1971 in which he informed the Secretary General, pursuant to Article 15 of the Convention, of the exercise of certain powers of detention and internment for the protection of life and the security of property and to prevent outbreaks of public disorder

in Northern Ireland. Subsequently, copies of relevant legislation, being regulations under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922, were sent to the Secretary General.
On the 1st of November 1972 an Order was made under the Northern Ireland (Temporary Provisions) Act 1972 which revoked certain of the regulations under the Act of 1922 and made new provision in their place. This Order, the Detention of Terrorists (Northern Ireland) Order 1972, has been approved by both Houses of Parliament. It was approved by the House of Lords on the 7th of December 1972 and the House of Commons on the 11th of December 1972. Under the new provisions a person can be detained if it is shown to the satisfaction of a legally qualified Commissioner that the person in question has been concerned in the commission or attempted commission of an act of terrorism or the direction, organisation or training of persons for the purpose of terrorism and (in any such case) his detention is necessary for the protection of the public. Provision is made for an appeal against any order for detention made by a Commissioner. Copies of the Order are enclosed herewith **[*]**.

[Notes by the Secretariat: See also the United Kingdom's declarations dated 16 August 1973, 19 September 1975, 12 December 1975, 18 December 1978 and 22 August 1984. **[*]** The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 24/01/1973 - 22/08/1984
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 16 August 1973, registered at the Secretariat General on 17 August 1973 – Or. Engl.

The United Kingdom Acting Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information with reference to the communications of the 27 June 1957, 20 August 1971 and 23 January 1973, giving notice for the purposes of Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the existence of organised terrorism and violent civil disturbances constituting a public emergency in Northern Ireland, and of the exercise therein of certain emergency powers.

Those communications referred to the exercise of powers pursuant to regulations made under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and to the Detention of Terrorists (Northern Ireland) Order 1972 made under the Northern Ireland (Temporary Provisions) Act 1972.

The first of these Acts is now repealed by the Northern Ireland (Emergency Provisions) Act 1973 and, in consequence, the regulations made under the 1922 Act cease to have effect. Parts II and III of the 1973 Act contain new provision in respect of arrest, detention, search and seizure and in respect of offences against public security and public order. The 1973 Act also repeals and replaces (with certain modifications) the Detention of Terrorists (Northern Ireland) Order 1972. The modifications include a provision which adds (in addition to the present provision for a discretionary review by the Secretary of State of cases of detention) a requirement for a compulsory reference to a Commissioner for review of the case of a person who has been detained for one year, or for six months from the date of the previous review.

The Northern Ireland (Emergency Provisions) Act 1973 was enacted on 25 July 1973 and came into force on 8 August 1973. By virtue of section 30, the emergency powers remain in force for a period of one year unless continued in force thereafter, by order of the Secretary of State, for a period not exceeding a year; such an order is required to be approved by both Houses of the United Kingdom Parliament. Copies of the Act are enclosed herewith **[*]**.

[Notes by the Secretariat: See also the United Kingdom's declarations dated 19 September 1975, 12 December 1975, 18 December 1978 and 22 August 1984.

[*] The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 17/08/1973 - 22/08/1984
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 19 September 1975, registered at the Secretariat General on 23 September 1975 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information with reference to the communications of the 27 June 1957, 20 August 1971 and 23 January 1973, giving notice for the purposes of Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the existence of organised terrorism and violent civil disturbances constituting a public emergency in Northern Ireland and of the exercise therein of certain emergency powers.

In a further Note dated 16 August 1973, the United Kingdom Acting Permanent Representative gave notice of the enactment of the Northern Ireland (Emergency Provisions) Act 1973. That Act was extended for a period of six months by an Order made the 17th day of July 1974. Two further extensions of six months each were made by Order on the 17th day of December 1974 and 27th day of June 1975 respectively. Five copies of each of these Orders are enclosed herewith.

The 1973 Act has now been amended by the Northern Ireland (Emergency Powers) (Amendment) Act 1975 which was enacted on 7th August 1975 and came into operation on 21st August 1975. The 1975 Act, inter alia, makes further provision in respect of the trial of certain criminal offences and the powers of the security forces and introduces additional offences against public security. It also sets out new procedures for the detention of persons suspected of being terrorists. Copies of the Act are enclosed herewith **[*]**.

[Notes by the Secretariat: See also the United Kingdom's declarations dated 12 December 1975, 18 December 1978 and 22 August 1984.
[*] The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 23/09/1975 - 22/08/1984
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 12 December 1975, registered at the Secretariat General on 12 December 1975 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information. In his communication of the 20th August 1971, the United Kingdom Permanent Representative informed the Secretary General that, having regard to certain events in Northern Ireland, it was necessary to exercise there, to the extent strictly required by the exigencies of the situation, powers of detention and internment. Subsequent communications were made, in particular those of 23rd January 1973 and 16th August 1973, informing the Secretary General that the enactments under which powers of detention and internment had been exercised had been repealed and that the power of detention was currently exercisable under the Northern Ireland (Emergency Provisions) Act 1973.

On the 5th day of December 1975, the Secretary of State for Northern Ireland signed Orders for the release from detention of all 75 remaining persons then held in detention under the

provisions of the Northern Ireland (Emergency Provisions) Act 1973. All those persons, except for such of them as were currently remanded in custody on criminal charges, or serving a sentence of imprisonment, were forthwith released, with the consequence that there are now no persons held in detention under the Act of 1973.

[Note by the Secretariat: See also the United Kingdom's declarations dated 18 December 1978 and 22 August 1984.]

Period covered: 12/12/1975 - 22/08/1984
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 18 December 1978, registered at the Secretariat General on 20 December 1978 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information with reference to the communications of the 27 June 1957, 20 August 1971 and 23 January 1973, giving notice, for the purposes of Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the existence of organised terrorism and violent civil disturbances constituting a public emergency in Northern Ireland and of the exercise therein of certain emergency powers.

In a further Note dated 16 August 1973, the United Kingdom Acting Permanent Representative gave notice of the enactment of the Northern Ireland (Emergency Provisions) Act 1973. In a further Note dated 19 September 1975, the United Kingdom Permanent Representative gave notice of the enactment of the Northern Ireland (Emergency Provisions) (Amendment) Act 1975. The Acts of 1973 and 1975 with some exceptions and certain other related enactments have now been consolidated into one Act by the Northern Ireland (Emergency Provisions) Act 1978. The greater part of this Act lapses unless renewed every six months; such renewal requires a resolution of each House of Parliament. Copies of the Act are enclosed herewith **[*]**.

[Notes by the Secretariat: See also the United Kingdom's declaration dated 22 August 1984. **[*]** The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 20/12/1978 - 22/08/1984
Articles concerned: 15

Withdrawal of derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 22 August 1984, registered at the Secretariat General on 22 August 1984 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information with reference to the communications of the 27 June 1957, 25 September 1969, 20 August 1971, 23 January 1973, 19 September 1975, 12 December 1975 and 18 December 1978, giving notice, for the purposes of Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, of the existence of organised terrorism and violent civil disturbances in Northern Ireland constituting a public emergency threatening the life of the nation. In those notices, the United Kingdom Government indicated that they had found it necessary, from time to time, to take certain measures which might involve derogations, in certain respects, from the obligations imposed by the Convention.

The United Kingdom Government are mindful of the importance of ensuring that any derogation from any of their obligations under the Convention should be maintained only so long as is strictly required by the situation and, to this end, have kept the position under review.

The United Kingdom Government, taking account of developments in the situation over the period covered by the notices referred to above and in the measures taken to deal with it, have come to the conclusion that it is no longer necessary, in order to comply with its obligations under the Convention, for the United Kingdom to continue, at the present time, to avail itself of the right of derogation under Article 15, and, accordingly, the Government hereby give notice, in accordance with Article 15(3), that, in the opinion of the Government, the provisions of the Convention are being fully executed.

Period covered: 22/08/1984 - 23/12/1988
Articles concerned: 15

Category (4) Historic Derogations relating to former British Colonies

Derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 24 May 1954, registered at the Secretariat General on 24 May 1954 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in accordance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th November 1950.

A state of emergency exists in the following territories for whose international relations Her Majesty's Government in the United Kingdom are responsible.

Federation of Malaya and Colony of Singapore. A State of Emergency in the Federation of Malaya was declared on the 18th June, 1948, and a few days later in the adjacent territory of the Colony of Singapore, owing to a conspiracy to overthrow the lawfully constituted governments of those territories by armed force.

Kenya. A State of Emergency was proclaimed in the Colony and Protectorate of Kenya on the 20th October, 1952, owing to the crimes of violence, including murder and mutilation, and the attempted subversion of the lawfully constituted government, by terrorists known by the name of Mau Mau.

British Guiana. Emergency powers were brought into operation in the Colony of British Guiana on the 8th October, 1953, owing to a dangerous crisis in public order and in the economic life of the territory and in order to prevent the subversion of the lawfully constituted government.

A State of Emergency was declared on the 30th November, 1953, in the Province of Buganda in the Uganda Protectorate following a constitutional crisis. The State of Emergency was terminated on the 31st March, 1954.

The United Kingdom Permanent Representative has the honour to state that under legislation enacted to confer upon them powers for the purpose of bringing the emergency to an end, the governments of the Federation of Malaya, the Colony of Singapore, the Colony and Protectorate of Kenya, the Uganda Protectorate and the Colony of British Guiana have respectively taken and, to the extent strictly required by the exigencies of the situation, have exercised or are exercising powers to detain persons which involve derogating in certain respects from the obligations imposed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The United Kingdom Permanent Representative has however the honour to add that all persons now in detention have been permitted in accordance with the provisions of the relevant Regulations to have their cases reviewed by a Committee under a judicially qualified chairman.

[Note by the Secretariat: The dates registered by the Secretariat General as concluding these derogations to the Convention are, respectively :

- Buganda: 31 March 1954 as indicated in the present declaration;
- Kenya: 12 December 1963, date of its Independence. See also the United Kingdom's declaration dated 19 September 1960;
- British Guiana: 23 November 1957, date of withdrawal of the derogation by a Note verbale from the Permanent Representation of the United Kingdom dated 15 December 1958, registered at the Secretariat General on 16 December 1958 – Or. Engl. See also the United Kingdom's declarations dated 27 November 1964, 1 March 1965 and 12 July 1965;
- Federation of Malaya: 31 August 1957, date of its Independence;
- Singapore: 16 September 1963, date of its Independence. See also the United Kingdom's declaration dated 11 May 1960.]

Period covered: 24/05/1954 - 12/12/1963
Articles concerned: 15

Derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 7 October 1955, registered at the Secretariat General on 7 October 1955 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in accordance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th November 1950.

A public emergency within the meaning of Article 15(1) of the Convention exists in the following territory for whose international relations Her Majesty's Government in the United Kingdom are responsible.

Cyprus. Certain emergency powers were brought into operation in the Colony of Cyprus on the 16th of July, 1955, owing to the commission of acts of violence including murder and sabotage and in order to prevent attempts at the subversion of the lawfully constituted government.

The United Kingdom Permanent Representative has the honour to state that under legislation enacted to confer upon them powers for the purpose of bringing the emergency to an end, the Government of the Colony of Cyprus have taken and, to the extent strictly required by the exigencies of the situation, have exercised or are exercising powers to detain persons which involve derogating in certain respects from the obligations imposed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The United Kingdom Permanent Representative has however the honour to add that all persons now in detention are permitted in accordance with the provisions of the relevant Regulations to have their cases reviewed by a Committee under a judicially qualified chairman.

[Note by the Secretariat: See also the United Kingdom's declarations dated 13 April 1956 and 21 January 1959.]

Period covered: 07/10/1955 - 19/06/1959
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 13 April 1956, registered at the Secretariat General on 20 April 1956 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following

information in accordance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th November 1950.

A public emergency within the meaning of Article 15(1) of the Convention exists in the following territory for whose international relations Her Majesty's Government in the United Kingdom are responsible.

Cyprus. Certain further emergency powers were brought into operation in the Colony of Cyprus on the 26th of November, 1955 owing to the commission of acts of violence including murder and sabotage and in order to prevent attempts at subversion of the lawfully constituted Government.

The United Kingdom Permanent Representative has the honour to state that under legislation enacted to confer upon them powers for the purpose of bringing the emergency to an end, the Government of the Colony of Cyprus have exercised powers to deport persons from the Colony of Cyprus to the Colony of Seychelles; and the government of the Colony of Seychelles have taken, and to the extent strictly required by the exigencies of the situation are exercising powers to detain those persons, which involve derogating in certain respects from the obligations imposed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[Note by the Secretariat: See also the United Kingdom's declaration dated 21 January 1959.]

Period covered: 26/11/1955 - 19/06/1959
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 21 January 1959, registered at the Secretariat General on 22 January 1959 – Or. Engl. – and withdrawn by a Note verbale from the Permanent Representation of the United Kingdom, dated 16 June 1959, registered at the Secretariat General on 19 June 1959 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and, with reference to his Note Verbale of the 7th of October 1955, and the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, has the honour to convey the following information.

The Government of the Colony of Cyprus have taken and, to the extent strictly required by the exigencies of the situation, have exercised or are exercising, powers to detain persons in accordance with the following legislative measures (copies of which are appended hereto **[*]**) introduced by the Government of the Colony:

1. The Detention of Persons Law, 1955, (Law No. 26 of 1955), enacted on the 15th of July, 1955. Under this Law, the Governor of Cyprus is empowered to order the detention of any person if he is satisfied that it is necessary so to do on any of the grounds set out in Section 2 of the Law. By Section 4 of the Law, any person who is aggrieved by the making of a detention order against him is permitted to make objection to an advisory committee appointed by the Governor. The duration of the Law has been extended from time to time by orders of the Governor in Council made under Section 5.

2. The Detention of Persons (Amendment) Law, 1955, (Law No. 53 of 1955), enacted on the 26th of October, 1955, which made a minor amendment to the Detention of Persons Law, 1955.

3. Regulation 6 of the Emergency Powers (Public Safety and Order) Regulations, 1955 (hereinafter referred to as "the principal Regulations") made on the 26th of November, 1955, which permitted the Governor to order the detention of persons in certain circumstances.

Paragraph (4) of Regulation 6 also provided for an advisory committee to whom objections could be made.
4. The Emergency Powers (Public Safety and Order) (Amendment No. 6) Regulations, 1956, made on the 13th of April, 1956, amended Regulation 6 of the principal Regulations by the deletion of the word "recently" from paragraph (1) (a) thereof.

5. The Emergency Powers (Public Safety and Order) (Amendment No. 4) Regulations, 1957, made on the 8th of August, 1957, revoked Regulation 6 of the principal Regulations.
6. The Emergency Powers (Public Safety and Order) (Amendment No. 3) Regulations, 1958, made on the 21st of July, 1958, re-introduced in substance Regulation 6 of the principal Regulations.

7. The Emergency Powers (Public Safety and Order) (Amendment No. 1) Regulations, 1956, made on the 12th of January, 1956, amended Regulation 3 of the principal Regulations so as to provide that the period of detention following arrest might be extended for an additional period not exceeding 14 days (making a maximum period of 16 days). For convenience of reference, a copy of Regulation 3 of the principal Regulations is appended thereto **[*]**.

8. The Emergency Powers (Arrest and Detention) (Temporary Provisions) Regulations, 1958, made on the 21st of July, 1958, provided that, in certain circumstances, persons arrested under powers conferred by these regulations might be detained for a period not exceeding 28 days. These Regulations were expressed to remain in force for a period of two months, but their duration was extended for a further two months by the Emergency Powers (Arrest and Detention) (Temporary Provisions) (Amendment) Regulations, 1958, made on the 30th of August, 1958.

9. The Emergency Powers (Public Safety and Order) (Amendment) (No. 6) Regulations, 1958, made on the 17th of November, 1958, revoked the Emergency Powers (Arrest and Detention) (Temporary Provisions) Regulations, 1958, and a new Regulation 3 was substituted for the existing Regulation 3 of the principal Regulations. The new Regulation 3 permitted persons arrested under the Regulation to be detained in certain circumstances for a period not exceeding 28 days.

[[*] Note by the Secretariat: The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 22/01/1959 - 19/06/1959
Articles concerned: 15

Derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 16 August 1957, registered at the Secretariat General on 19 August 1957 – Or. Engl.

The United Kingdom Acting Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in order to ensure compliance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th November, 1950.

In or about September 1956, a public emergency within the meaning of Article 15(1) of the Convention arose in the following territory for whose international relations Her Majesty's Government in the United Kingdom are responsible.

Northern Rhodesia. Certain emergency powers were brought into operation in the Western Province of the Protectorate of Northern Rhodesia on 11th September, 1956, in order to preserve the peace and prevent outbreaks of violence, loss of life and damage to property; for these purposes the Governor of the Protectorate of Northern Rhodesia, to the extent strictly required by the exigencies of the situation, exercised powers to detain persons which may involve

derogations in certain respects from the obligations imposed by the Convention for the Protection of Human Rights and Fundamental Freedoms. However, there are at the present time no persons under detention pursuant to these powers.
[Note by the Secretariat: See also the United Kingdom's declaration dated 16 November 1962.]

Period covered: 19/08/1957 - 16/11/1962
Articles concerned: 15

Withdrawal of derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 16 November 1962, registered at the Secretariat General on 16 November 1962 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council and, with reference to the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, has the honour to convey the following information.

A public emergency threatening the life of the nation arose in the Protectorate of Northern Rhodesia in May, 1960, as a result of political unrest, culminating in the middle of 1961 in large-scale disturbances which involved over one thousand separate incidents of violence both to persons and to property. Damage was caused by arson, by the use of explosives and in other ways to buildings, railways, bridges and motor-vehicles, and there were many serious assaults on individual persons. In order to bring this emergency to an end, the Governor of Northern Rhodesia was obliged to make certain regulations under the Preservation of Public Security Ordinance, 1960. These regulations included regulations conferring power to detain persons, the exercise of which might involve derogation from the obligations imposed by the Convention. The regulations made by the Governor, as amended from time to time, were re-issued on the 26th of September, 1961, in a consolidated form as the Preservation of Public Security Regulations, 1961, and the regulation which authorised the detention of persons was then reproduced, without any amendment of substance, as regulation 11 of those consolidated regulations. A copy of the Preservation of Public Security Regulations, 1961, is annexed hereto **[*]**.

The power conferred by sub-regulation (1) of regulation 11 to direct that a person shall be detained has not in fact been exercised, but the power conferred by sub-regulation (6) on certain senior administrative and police officers to arrest a person in respect of whom they have reason to believe that there are grounds which would justify his detention under regulation 11 and to order that he be detained for a period not exceeding twenty-eight days pending a decision whether a detention order should be made against him has, to the extent strictly required by the exigencies of the situation, been exercised in two cases. In one of these cases, the person concerned was released before the expiry of the twenty-eight days as soon as it was found that there was insufficient evidence to warrant the making of a detention order against him, and in the other case evidence came to light before the expiry of the twenty-eight days as a result of which it was possible to prosecute the arrested person in the ordinary way for a criminal offence.

The powers in regard to the direction of labor conferred by regulation 21 have not been exercised.

As a result of an improvement in the situation in Northern Rhodesia, the Governor was able on the 1st of November, 1961, to revoke several of the Preservation of Public Security Regulations, 1961, including the whole of regulation 11 and regulation 21. Accordingly, the United Kingdom Permanent Representative to the Council of Europe has the honour to state that the provisions of the Convention are again being fully executed in the Protectorate of Northern Rhodesia.

[Note by the Secretariat: The date registered by the Secretariat General as concluding this communication is the one from which the United Kingdom ceased to be responsible for the international relations of the said territory.

[*] The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 16/11/1962 - 24/10/1964
Articles concerned: 15
Derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 25 May 1959, registered at the Secretariat General on 26 May 1959 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and, with reference to the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, has the honour to convey the following information.

A public emergency threatening the life of the nation has arisen in the Protectorate of Nyasaland in the following circumstances. A systematic campaign involving the deliberate flouting of lawfully constituted authority has led to grave disorders culminating, in mid-February, 1959, in serious rioting in several places in the Protectorate. Further serious incidents occurred on subsequent dates, resulting in loss of life and numerous casualties and in substantial damage to Government and private property. Intimidation and threats of violence have been rife, and information which reached the Government of the Protectorate, and which was of such a nature that that Government could not ignore it, indicated the existence of plans for further widespread violence and murder directed towards the disruption of law and order and the over-throw of the duly constituted authorities.

For the purpose of bringing the emergency to an end, the Government of the Protectorate of Nyasaland have enacted certain Emergency Regulations conferring powers to detain persons the exercise of which may involve derogation from obligations imposed by the Convention, and, to the extent strictly required by the exigencies of the situation, have exercised and are exercising those powers.

The relevant Emergency Regulations (copies of which are annexed **[*]**) are as follows:

1. Regulation 24 of the Emergency Regulations, 1959, which were enacted on the 2nd of March, 1959, and which came into operation on the 3rd of March, 1959. Under this Regulation, the Governor may make a detention order against any person if he is satisfied that for the purposes of maintaining public order, it is necessary to exercise control over him. By virtue of sub-regulation (4) of this Regulation, any person aggrieved by the making of a detention order against him may make his objections to an Advisory Committee presided over by a person who holds or has held judicial office, and may also make representations direct to the Governor. By sub-regulation (7) of this Regulation, any authorised officer may arrest any person in respect of who he has reason to believe there are grounds which would justify his detention under the Regulation and may order such person to be detained for a period not exceeding twenty-eight days. The Governor is obliged by sub-regulation (8) of this Regulation to review every detention order at least every six months.

2. Regulation 26 of the Emergency Regulations, 1959. This Regulation confers upon certain officers in certain circumstances the power to arrest a person whom they reasonably suspect of having acted or of being about to act or of being likely to act in a manner prejudicial to the public safety or the preservation of the peace or of being about to commit an offence against the Regulations and to detain that person pending enquiries. No person may be detained under this power for more than twenty-four hours except with the authority of a Magistrate or a senior Police Officer who may authorise him to be detained for a further forty-eight hours, but if such a Magistrate or Police Officer is satisfied that it is necessary so to do in order to permit the necessary enquiries to be completed, he may direct the person to be detained for a further period not exceeding seven days.

[Notes by the Secretariat: See also the United Kingdom's declarations dated 11 January 1961 and 15 March 1961.
[*] The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]
Period covered: 26/05/1959 - 16/03/1961
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 11 January 1961, registered at the Secretariat General on 13 January 1961 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and, with reference to the Note Verbale of the 25th of May, 1959 and to the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, has the honour to convey the following information bringing up-to-date the contents of the earlier Note referred to above.

The Government of the Protectorate of Nyasaland have taken and, to the extent strictly required by the exigencies of the situation, have exercised or are exercising powers to detain persons in accordance with the following legislative measures introduced by that Government.

By about June, 1960, the security situation in the Nyasaland Protectorate has so improved that the Government of the Protectorate felt able to dispense with the powers conferred by the measures described in the Note Verbale of the 25th of May, 1959. Accordingly on the 13th of June, 1960, the Governor of the Nyasaland Protectorate signed a Proclamation under the Emergency Powers Order in Council, 1939, (as amended), the effect of which was to terminate as from 16th of June, 1960, the operation of those measures. A copy of this Proclamation is appended hereto **[*]**. There was, however, a small number of persons who were still so likely to resort to violence and intimidation for the accomplishment of their aims that it would not be safe, in the present state of affairs in Nyasaland, to allow them to be at large there. The Nyasaland legislature therefore enacted on the 17th of May, 1960, the Detained Persons (Special Provisions) Ordinance, 1960 (Ordinance No. 2 of 1960) which was brought into operation on the 15th of June, 1960. Under subsection (1) of section 3 of the Ordinance, the Governor is empowered, for securing the public safety and the maintenance of public order, to make regulations to provide, so far as appears to him to be strictly required by the exigencies of the situation in the Protectorate , for the detention of "specified persons" (as defined in section 2 of the Ordinance); but it is specifically provided that any such regulations shall also require the case of each detained person to be reviewed at least once in every six months with a view to securing his release as soon as this can be done without serious prejudice to the securing of the public safety and the maintenance of public order, due regard being had to the extent to which the detained person is no longer likely to commit or to instigate others to commit or to be the cause of others committing acts of violence or public disorder and to the likely effect of his release on the necessity to keep other detained persons in custody. The text of section 3 and of subsection (1) of section 3 of the Ordinance is appended hereto **[*]**. The power conferred on the Governor by subsection (2) of section 2 was not in fact exercised and has now lapsed. The power conferred on the Governor by section 3 of the Ordinance was exercised by the enactment on the 15th of June, 1960, of the Detained Persons Regulations, 1960. Regulation 3 of these Regulations empowers the Governor to order the detention of any "specified Person" if he is satisfied with respect to that person that it is necessary to exercise control over him for securing the public safety and the maintenance of public order. Regulations 6, 7, 8, 9, 10 and 11 of the Regulations provide for the establishment of an Appeal Tribunal, regulate the mode of appeal by a detained person, and provide for the periodic review of the case of each detained person. The text of Regulations 3, 6, 7, 8, 9, 10 and 11 is appended hereto **[*]**.

[Notes by the Secretariat: See also the United Kingdom's declaration dated 15 March 1961. **[*]** The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 13/01/1961 - 16/03/1961
Articles concerned: 15
Withdrawal of derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 15 March 1961, registered at the Secretariat General on 16 March 1961 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and, with reference to its Note Verbale No. 1 of the 11th of January, 1961, and to the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, has the honour to convey the following information concerning the situation in Nyasaland.

A certain number of persons was detained by virtue of orders made under the Regulations, of which details are given in the third paragraph of the Note Verbale in question, but this number was reduced as quickly as the exigencies of the situation permitted and the last persons so detained were released on the 27th of November 1960. No persons are now in detention in Nyasaland.

Accordingly, the United Kingdom Permanent Representative has the honour to state that the provisions of the Convention are again being fully executed in the Nyasaland Protectorate.

[Note by the Secretariat: The date registered by the Secretariat General as concluding this communication is the one from which the United Kingdom ceased to be responsible for the international relations of the said territory.]

Period covered: 16/03/1961 - 06/07/1964
Articles concerned: 15

Derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 5 January 1960, registered at the Secretariat General on 5 January 1960 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and, with reference to the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, has the honour to convey the following information.
A public emergency threatening the life of the nation has occurred in the Colony of Aden in the following circumstances. In the early part of 1958 a terrorist campaign broke out in the Colony. This campaign, which, it is believed, was organised and fomented by persons who had come from outside the Colony, manifested itself chiefly in the form of bomb-throwing and explosions which were aimed at a variety of targets, including oil pipelines, the local broadcasting service, water and electricity supplies, a bank, the printing press of a local newspaper, a church, cafes frequented by troops and the home of a local police officer. As a result of these outrages there was some loss of life and injury to persons and also some damage to property.

For the purpose of bringing the emergency to an end, the Government of the Colony of Aden enacted certain emergency regulations conferring powers to detain persons the exercise of which may have involved derogation from obligations imposed by the Convention, and, to the extent strictly required by the exigencies of the situation, have exercised those powers.

The relevant emergency regulations (copies of which are annexed **[*]**) are as follows:

1. Regulation 4 of the Emergency Regulations, 1958, enacted on the 2nd of May, 1958 (as amended by Regulation 2 of the Emergency (Amendment) Regulations, 1958, enacted on the 18th of August, 1958). Under this Regulation, the Governor was empowered to direct, by order under his hand, that any person named in such order should be detained for such period as might be specified in the order.
2. Regulation 5 of the Emergency Regulations, 1958, (as amended by Regulation 2 of the Emergency (Amendment) (No. 2) Regulations, 1958, which came into force on the 31st of October, 1958). This Regulation empowered certain officers to arrest a person in respect of whom they had reason to believe that there were grounds which would justify his detention under the provisions of Regulation 4 or his deportation from the Colony or his prosecution for an offence and to hold such person in custody pending a decision as to whether a detention order should be made against him or whether he should be deported or prosecuted. No person might be held in custody under this Regulation for a period exceeding seven days, excluding the day on which he was arrested.

The Emergency having been brought to an end, the Government of the Colony of Aden terminated the operation of the above Regulations on the 1st of October, 1959; the powers conferred by these Regulations had, in fact, not been exercised for some time before that date. Accordingly, the United Kingdom Permanent Representative to the Council of Europe has the honour to state that the provisions of the Convention are again being fully executed in the Colony of Aden.

[[*] Note by the Secretariat: The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 05/01/1960 - 05/01/1960
Articles concerned: 15

Derogation contained in a letter from the Permanent Representation of the United Kingdom, dated 30 August 1966, registered at the Secretariat General on 1 September 1966 – Or. Engl.

I am directed by Her Majesty's Principal Secretary of State for Foreign Affairs, in accordance with the provisions of paragraph (3) of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, to convey to you the following information regarding measures taken in the Colony of Aden as a result of the existence of a public emergency threatening the life of the nation.

Because of a campaign of organised terrorism in the Federation of South Arabia (of which the Colony of Aden is now part), manifesting itself in the form of grenade-throwing, sniping, and mine-laying in which many people, including both Arab civilians and British Service personnel, lost their lives, the Government of the Federation of South Arabia declared a state of emergency throughout the Federation on 10 December, 1963.

For the purpose of bringing the emergency to an end, the Supreme Council of the Federation of South Arabia enacted certain Emergency Decrees. Under Section 7 of the Public Emergency Decree, 1963, as amended by the Public Emergency (Amendment) Decrees of 1963, 1964, 1965 and 1966, the Minister of Internal Security may make a detention order against any person (a) with a view to preventing his acting in a manner prejudicial to public safety or public order; (b) if the person concerned has been a member of an organisation subject to foreign influence or control or a member of an organisation which has acted in a manner prejudicial to public safety or public order; or (c) if the person is an undesirable alien. Sections 3 and 6 of the 1963 Decree, as so amended also conferred certain emergency powers concerned respectively with arrest and detention and with restriction of movement.

In exercise of the powers conferred upon him by the Federation of South Arabia (Accession of Aden) Order, 1963, the High Commissioner for Aden and the Protectorate of South Arabia has by regulation enacted on the 5th of June, 1965, the Aden Emergency Regulations, 1965, regulation 4 of which confers on him in Aden the same power of detention as the Minister of Internal Security holds in the Federation of South Arabia, i.e. to detain persons in Aden for the same reasons as those for which the Minister of Internal Security of the Federation of South Arabia can order detention. These Regulations also confer on him by regulation 6 a corresponding power with regard to restriction of movement.

There are, therefore, two states of emergency in Aden, and in consequence emergency legislation can be promulgated by both the Federal Supreme Council and the High Commissioner. Since the emergency declared by the latter is expressed to run concurrently with that declared by the Supreme Council, however, the High Commissioner's Regulation and subsidiary legislation are in fact complementary to the Federal Legislation in force in Aden. The powers taken as a result of this emergency are being exercised to the extent strictly required by the exigencies of the situation.

Copies are attached of [*]:

i. Declaration of a State of Public Emergency made under Section 36 of the Constitution of the Federation of South Arabia on the 10th of December, 1963.
ii. Sections 3, 6 and 7 of the Public Emergency Decree, 1963, of the Federation of South Arabia.
iii. Section 2 of the Public Emergency (Amendment) Decree, 1963.
iv. Sections 2, 5 and 6 of the Public Emergency (Amendment) Decree, 1964.
v. Sections 2 and 3 of the Public Emergency (Amendment) Decree, 1965.
vi. Sections 2 and 3 of the Public Emergency (Amendment) (No. 2) Decree, 1966.
vii. Sections 3, 4, 5, 6 and 7 of the Aden Emergency Regulations, 1965.

I am also instructed to draw your attention to the Public Emergency (Places of Detention) Order, 1965, and the Aden Emergency (Places of Detention) Order, 1965, which regulate the administration of places of detention. Copies of these Orders are attached **[*]**. You should also know that a Review Tribunal has been appointed in accordance with the provisions of Regulation 5 of the Aden Emergency Regulations, 1965; that a Committee of Inspection has been appointed under paragraph 7 of the Aden Emergency (Places of Detention) Order, 1965, and has paid regular visits to the detention centres at Al Mansoura; that allowances are paid to the dependants of detainees under the provisions of Regulation 4(5) of the Aden Emergency Regulations, 1965; and that the Delegate-General of the International Red Cross Committee periodically visits the detainees.

[Notes by the Secretariat: The date registered by the Secretariat General as concluding this communication is the one from which the United Kingdom ceased to be responsible for the international relations of the said territory.
[*] The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 01/09/1966 - 30/11/1967
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 11 May 1960, registered at the Secretariat General on 11 May 1960 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and, with reference to his Note Verbale of the 7th of May, 1954, and the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on the 4th of November, 1950, has the honour to convey the following information bringing up to date the contents of the earlier Note.

The Government of the Colony of Singapore (now the State of Singapore) have taken, and, to the extent strictly required by the exigencies of the situation, have exercised or are exercising powers to detain persons, in accordance with the following legislative measures introduced by that Government.

1. Regulation 20 of the Emergency Regulations, 1948
(The Emergency Regulations, 1948, were made on the 28th of July, 1948 and were subsequently amended from time to time. The text of Regulation 20 is appended hereto in the form in which it remained from the 23rd of October, 1953, when the Convention was first extended to Singapore under the provisions of Article 63 thereof, until the 21st of October, 1955, when the Emergency Regulations, 1948, lapsed **[*]**).

Under Regulation 20 the Colonial Secretary (subsequently styled the "Chief Secretary") of the Government of the Colony was empowered to order the detention of any person for a period not exceeding two years in any case where it appeared to him to be necessary or expedient for securing the public safety or for maintaining public order. The Regulation provided for a person so detained to make his objections against such an order to an advisory committee appointed by the Governor and presided over by a person holding or having held the office of Judge or District Judge, and it also provided for the subsequent periodic review of each case by the advisory committee upon application therefore being made by the detainee (Appendix I **[*]**).

2. The Preservation of Public Security Ordinance, 1955. (Ordinance No. 25 of 1955)
In 1955, the Government of the Colony decided to allow the Emergency Regulations, 1948 to lapse but to replace certain of them by Ordinances of temporary duration. Accordingly, the Emergency Regulations, 1948, (including Regulation 20) lapsed on the 21st of October, 1955, and at the same time the Preservation of Public Security Ordinance, 1955, which had been enacted on the 18th of October, 1955, was brought into operation. Its duration has been extended from time to time by amending Ordinances. Section 3 of the Ordinance empowered the Chief Secretary to order the detention of any person for a period not exceeding two years in any case where it appeared to the Governor in Council that it was necessary to do so with a view to preventing that person from acting in any manner prejudicial to the security of Malaya or the maintenance therein of essential services. Section 5 of the Ordinance gave any person ordered to be detained the right to appeal to an Appeal Tribunal, which under section 6, was to consist of not less than three persons appointed by the Chief Justice of whom two should be Judges and one a District Judge. Section 7 of the Ordinance provided that the Appeal Tribunal, on hearing an appeal, might in its discretion revoke, amend or confirm a detention order. Section eight of the Ordinance provided for a Reviewing Officer to review each case not less often than once in every six months and to report thereon to the Governor in Council. Section 9 provided that the Reviewing Officer should be a person qualified to be appointed as a Judge. The text of sections 3, 5, 6, 7, 8 and 9 of the Ordinance is appended hereto. (Appendix II **[*]**).

3. The Preservation of Public Security (Amendment) Ordinance, 1958, (Ordinance No. 35 of 1958) enacted on the 14th of October, 1958
Section 3 of this Ordinance amended subsection (1) of section 3 of the Preservation of Public Security Ordinance, 1955, by permitting the extension of an initial period of detention for further periods not exceeding twelve months at a time. The text of section 3 is appended hereto. (Appendix III **[*]**).

4. The Preservation of Public Security (Amendment) Ordinance, 1959, (Ordinance No. 65 of 1959) enacted on the 17th of October, 1959
Section 3 of this Ordinance further amended section 3 of the Preservation of Public Security Ordinance, 1955, in certain minor respects. Sections 5, 6 and 7 of the Ordinance made certain amendments affecting sections 5, 6, 7 and 8 of the Preservation of Public Security Ordinance, 1955. The effect of these amendments was to replace the Appeal Tribunal by an Advisory Committee appointed by the Yang di-Pertuan Negara and presided over by a person qualified to be a judge. The text of sections 3; 5, 6 and 7 is appended hereto (Appendix IV **[*]**).

5. The Criminal Law (Temporary Provisions) Ordinance, 1955, (Ordinance No. 26 of 1955) which was enacted on the 18th of October, 1955, and which came into operation on the 21st of October, 1955

This Ordinance was one of those which replaced certain of the Emergency Regulations, 1948. It is of temporary duration but its duration has been extended from time to time by amending Ordinances. In 1958 it was amended by the Criminal Law (Temporary Provisions) (Amendment) Ordinance, 1958, (Ordinance No. 25 of 1958). This added certain new sections to the Criminal Law (Temporary Provisions) Ordinance, 1955, for the purpose of permitting, inter alia, the detention of members of secret societies and similar criminal gangs whose activities, including assault and murder, had become a serious threat to the life of the nation in Singapore but against whom it was usually impossible to proceed under the ordinary criminal law because of the intimidation of witnesses. Of the new sections which were added by the Criminal Law (Temporary Provisions) (Amendment) Ordinance, 1958, to the Criminal Law (Temporary Provisions) Ordinance, 1955, section 47 empowered the Chief Secretary, with the consent of the Public Prosecutor, to order the detention of any person for a period not exceeding six months if he was satisfied that that person had been associated with activities of a criminal nature and that it was necessary that he be detained in the interests of public safety, peace and good order; section 48 required each detention order to be referred to an Advisory Committee for a report; section 50 empowered the Governor in Council to extend the validity of a detention order for periods not exceeding six months at any one time up to a maximum total to two years; and section 51 provided for the composition of the Advisory Committee. The text of sections 47, 48, 50 and 51 as added by the Criminal Law (Temporary Provisions) (Amendment) Ordinance, 1958, is appended hereto (Appendix V **[*]**).

6. The Criminal Law (Temporary Provisions) (Amendment No. 2) Ordinance, 1959, (Ordinance No. 56 of 1959) which was enacted on the 8th of September, 1959, and which came into operation on the 25th of September, 1959

Section 7 of this Ordinance amended section 47 of the Criminal Law (Temporary Provisions) Ordinance, 1955, (hereafter in this paragraph referred to as "the principal Ordinance") by, *inter alia*, extending to one year the period for which a person might be ordered under that section to be detained; section 8 made a minor amendment to section 48 of the principal Ordinance; section11 made certain minor amendments to section 50 of the principal Ordinance, including some amendments consequential on the amendment made to section 47; and section 12 made a minor amendment to section 51 of the principal Ordinance. The Text of Section 7, 8, 11 and 12 is appended hereto (Appendix VI **[*]**).

7. Regulations 27 and 28 of the Emergency Regulations, 1948

These Regulations permitted certain senior police officers in certain circumstances to authorise the extension of the period of detention following arrest for an additional period not exceeding fourteen days (making a maximum period of sixteen days in all). The text of Regulations 27 and 28 as in force between the 23rd of October, 1953, and the 21st of October, 1955, is appended hereto (Appendix VII **[*]**).

8. Section 17 of the Preservation of Public Security Ordinance, 1955

This repeated with certain minor variations the substance of Emergency Regulations 27 and 28. The text of section 17 is appended hereto (Appendix VIII **[*]**).

9. Section 55 of the Criminal Law (Temporary Provisions) Ordinance, 1955, as added by the Criminal Law (Temporary Provisions) (Amendment) Ordinance, 1958

This section made provision in respect of the detention following arrest of persons whom it might be necessary to detain under section 47 of the Ordinance equivalent to the provision made by section 17 of the Preservation of Public Security Ordinance, 1955, in respect of the detention following arrest of persons whom it might be necessary to detain under the latter Ordinance. Again, such detention cannot exceed 48 hours save with the authority of certain senior police officers and cannot exceed a period of 16 days in all. The text of section 55 is appended hereto (Appendix IX **[*]**).

[Notes by the Secretariat: The date registered by the Secretariat General as concluding this communication is the one from which the United Kingdom ceased to be responsible for the international relations of the said territory.
[*] The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 11/05/1960 - 16/09/1963
Articles concerned: 15

Communication contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 19 September 1960, registered at the Secretariat General on 21 September 1960 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and, with reference to the Note Verbale of the 24th of May, 1954, and the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, has the honour to convey the following information bringing up to date the contents of the earlier Note referred to above.

The Government of the Colony and Protectorate of Kenya have taken and, to the extent strictly required by the exigencies of the situation, have exercised or are exercising powers to detain persons in accordance with the following legislative measures introduced by that Government.

1. Regulation 2 of the Emergency Regulations, 1952
The Emergency Regulations, 1952 (hereinafter referred to as "the principal Regulations") were enacted on the 20th of October, 1952, and were subsequently amended from time to time. Under Regulation 2 of the principal Regulations in the form in which it was in force as at the 23rd of October, 1953, when the Convention was first extended to Kenya under the provisions of Article 63 thereof, the Governor was empowered if he was satisfied that, for the purpose of maintaining public order, it was necessary to exercise control over any person, to make a detention order against that person. The Regulation provided for a person so detained to make his objections to an advisory committee appointed by the Governor and presided over by a person holding or having held judicial office and also to make representations direct to the Governor. Sub-regulation (6) of Regulation 2 also permitted a person who had been arrested in the reasonable belief that there were grounds justifying his detention under the Regulation to be detained for a period not exceeding 28 days pending a decision whether a detention order should be made against him. The text of Regulation 2 as in force on the 23rd of October, 1953, is appended hereto **[*]**.

2. Regulation 3 of the Emergency Regulations, 1952
This Regulation (in the form in which it was in force on the 23rd of October, 1953) permitted police officers, in certain circumstances, to detain a person pending enquiries but the Regulation laid down that no such person might be so detained for more than 24 hours without the authority of a Magistrate or certain senior police officers on whose directions he might be detained for a further period of 48 hours, and in certain circumstances, for a further period not exceeding seven days. The maximum period for which he might be detained under this Regulation was thus 10 days. The text of Regulation 3, as in force on the 23rd of October, 1953, is appended hereto **[*]**.

3. The Emergency (Amendment) (No. 39) Regulations, 1953
Regulation 2 of these Regulations, which were enacted on the 26th of November, 1953, amended sub-regulation (6) of Regulation 2 of the principal Regulations, by permitting persons detained thereunder to be so detained in a place other than a police station. The text of Regulation 2 of these Regulations is appended hereto **[*]**.

[Notes by the Secretariat: The date registered by the Secretariat General as concluding this communication is the one from which the United Kingdom ceased to be responsible for the international relations of the said territory.
[*] The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 21/09/1960 - 12/12/1963
Articles concerned: 15

Derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 5 December 1961, registered at the Secretariat General on 6 December 1961 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and, with reference to the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, has the honour to convey the following information.

A public emergency threatening the life of the nation has occurred in the Zanzibar Protectorate in June and still continues. Civil disturbances which led to serious rioting and loss of life began in Zanzibar town on the 1st of June, 1961, during the election poll. The disturbances, which were the result of tension between the two main political party groups, started with a number of isolated incidents which took place at polling stations in Zanzibar town. The situation quickly deteriorated and subsequently the disturbances spread to the rural areas of Zanzibar. The situation was later brought under control but tension still remains high.

For the purpose of bringing the emergency to an end, the Government of the Zanzibar Protectorate has enacted certain Emergency Regulations conferring powers to detain persons the exercise of which may involve derogation from obligations imposed by the Convention, and, to the extent strictly required by the exigencies of the situation, have exercised and are exercising those powers.

The relevant Emergency Regulations (copies of which are annexed **[*]**) are as follows:

(i) Regulation 2 of the Emergency (Miscellaneous) Regulations, 1961, which are enacted on the 2nd of June, 1961, and came into operation on the same day. This regulation confers upon certain officers in certain circumstances the power to arrest a person whom they reasonably suspect of having acted or of being about to act in a manner prejudicial to the public safety or the preservation of peace or of being about to commit an offence against the Regulations and to detain that person pending enquiries. No person may be detained under this power for more than twenty-four hours except with the authority of a magistrate or a senior Police Officer who may authorise him to be detained for a further forty-eight hours, but if such a magistrate or Police Officer is satisfied that it is necessary so to do in order to permit the necessary enquiries to be completed, he may direct the person to be detained for a further period not exceeding seven days.

(ii) Regulation 2A of the Emergency (Miscellaneous) Regulations, 1961. This regulation came into force on the 10th of June, 1961. Paragraph (1) thereof confers on the British Resident the power to make a Detention Order against any person over whom he considers it necessary, for the purposes of maintaining public order, to exercise control. Such persons may be detained in a Detention Camp. There is a right of appeal to the Resident and also, and independently of such right, a right of appeal to an Advisory Committee presided over by a person with legal qualifications. Paragraph (6) of Regulation 2A provides that a police officer not below the rank of Assistant Inspector may arrest without warrant and may detain a person up to 28 days pending the making of a Detention Order by the Resident.

Regulation 2 has not been used since the 21st of June, 1961, and arrests thereafter have been made in accordance with the ordinary law.

The powers conferred by paragraph (1) and paragraph (6) of regulation 2A have been and are being exercised.

[Notes by the Secretariat: See also the United Kingdom's declaration dated 14 March 1963. **[*]** The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 06/12/1961 - 20/12/1962
Articles concerned: 15

Withdrawal of derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 14 March 1963, registered at the Secretariat General on 18 March 1963 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following additional information with reference to his Note Verbale No. 3 dated the 5th of December, 1961, in which was notified, in accordance with Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, certain action taken in the Zanzibar Protectorate involving derogation from obligations imposed by the Convention.

Having regard to the improved situation in the Zanzibar Protectorate, the state of public emergency was brought to an end by proclamation on the 20th of December, 1962, and at the same time the Emergency (Miscellaneous) Regulations 1961 were repealed. All Detention Orders made under Regulation 2A of those regulations have been revoked before that date.

The provisions of the Convention are accordingly now again being fully complied with in the Zanzibar Protectorate.

[Note by the Secretariat: The date registered by the Secretariat General as concluding this communication is the one from which the United Kingdom ceased to be responsible for the international relations of the said territory.]

Period covered: 18/03/1963 - 10/12/1963
Articles concerned: 15

Derogation contained in a letter from the Permanent Representative of the United Kingdom, dated 27 November 1964 , registered at the Secretariat General on 30 November 1964 – Or. Engl.

I have the honour to convey to you, with reference to the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, the following information regarding the Colony of British Guiana.

A public emergency threatening the life of the nation has arisen in British Guiana in the following circumstances. In February, 1964, the Guyana Agricultural Workers Union declared a strike in support of their claim to replace the long-established Man Power Citizens Association as their recognised union for all sugar workers in the territory. From the outset the strike was accompanied by intimidation, arson and general violence which increasingly assumed a racial character. Although the strike itself has now ended, this violence has continued and has led to considerable loss of life, personal injury and damage to public and private property.

For the purpose of bringing the emergency to an end, the Governor of British Guiana has enacted certain Emergency Regulations. One of these (Regulation 75 of the Emergency Powers Regulations 1964 as inserted by Regulation 3 of the Emergency Powers (Amendment) (No. 2) Regulations 1964) (Annex B) permits the detention of any person with respect to whom the Governor is satisfied that it is necessary to make a detention order with a view to preventing him acting in any manner prejudicial to public safety, order or defense. Another Regulation (Regulation 44 of the Emergency Powers Regulations 1964, as amended by Regulation 2 of the Emergency Powers (Amendment) (No. 5) Regulations 1964 and Regulation 2 of the Emergency Powers (Amendment) (No. 7) Regulations 1964 (Annex A as amended by Annexes C and D) authorises any member of the Police Force or any member of Her Majesty's Forces acting in the course of his duties as such, to arrest any person who he has reasonable ground for suspecting has acted or is acting or is about to act in a manner prejudicial to public safety or to public order or has committed or is committing or is about to commit an offence against the Emergency Powers Regulations and to detain him in custody for the purpose of inquiries. Any person so arrested may not be detained for more than 24 hours unless a magistrate or senior police officer is satisfied that the inquiries cannot be completed within that time, in which case he may authorise his detention for a further period not exceeding 7 days. The exercise of these powers may involve derogation from obligations imposed by the Convention. To the extent strictly required by the exigencies of the situation, the Governor of British Guiana has exercised and is exercising these powers.

Article 15 of the Constitution of British Guiana (Annex E) provides that a person who is detained in the circumstances envisaged by Regulation 75 of the Emergency Powers Regulations 1964 shall have the right to have his case reviewed by an independent and impartial tribunal presided over by a legally qualified chairman. Accordingly, paragraph (2) of Regulation 75 authorises the Governor to establish such an Advisory Tribunal for this purpose and this has been done by the Emergency Powers (Advisory Tribunal) Order 1964 (Annex F). The tribunal consists of a Chairman appointed by the Chief Justice from among the persons authorised to practice in British Guiana as advocates or solicitors, and two members appointed by the Governor in consultation with the Judicial Services Commission. Copies of the regulations referred to above are annexed **[*]**.

[Notes by the Secretariat: See also the United Kingdom's declarations dated 1 March 1965 and 12 July 1965.
[*] The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 30/11/1964 - 26/05/1966
Articles concerned: 15

Communication contained in a letter from the Permanent Representation of the United Kingdom, dated 1 March 1965 , registered at the Secretariat General on 2 March 1965 – Or. Engl.

I have the honour to refer to my letter (43) of the 27th of November in which I transmitted to you (in accordance with Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950,) a Notice of Derogation concerning the Colony of British Guiana.

Regulation 44 of the Emergency Powers Regulations, 1964, as amended, to which reference is made in paragraph 3 of the Notice of Derogation, has been further amended by the making of the Emergency Powers (Amendment) (No. 10) Regulations, 1964 on the 16th of October, 1964. A copy of the Regulations is annexed **[*]**. Under the superseded Regulation a person could be detained for a period in excess of 24 hours, but not exceeding a further 7 days, on the authority of a senior police officer or of a magistrate. The effect of the new Regulations is that the detention of a person in excess of 24 hours may be authorised by a senior police officer or a magistrate for a further period of 24 hours. Only a magistrate may now authorise detention in

excess of 48 hours; he must be satisfied that enquiries cannot be completed within a further period of 24 hours previously authorised, and may authorise detention for an additional further period not exceeding six days.

[Notes by the Secretariat: See also the United Kingdom's declaration dated 12 July 1965. **[*]** The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 02/03/1965 - 26/05/1966
Articles concerned: 15

Communication contained in a letter from the Permanent Representation of the United Kingdom, dated 12 July 1965 , registered at the Secretariat General on 15 July 1965 – Or. Engl.

I have the honour to refer to Mr. Porter's letter (43) of the 27th of November 1964, in which he transmitted to you, in accordance with Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, a Notice of Derogation concerning the Colony of British Guiana. Mr. Porter conveyed to you a modification of this Notice in his letter (1731) of the 1st of March 1965.

Because of a recent revival of incidents of sabotage directed against public and other buildings and installations in the Colony, Regulation 44 of the Emergency Powers Regulations 1964, as amended, to which reference is made in paragraph 3 of the Notice of Derogation, has been further amended by the making of the Emergency Powers (No. 3) Regulations 1965, on the 18th of May, 1965. The effect of the amendment is that while a person who has been arrested under Regulation 44 may ordinarily be detained only for a period not exceeding 24 hours, either a magistrate or a police officer not below the rank of Assistant Superintendent, may now, if satisfied that the necessary enquiries cannot be completed within the 24 hours, direct that such person be detained for such further period, not exceeding seven days, as is required for the completion of these enquiries.

[Note by the Secretariat: The date registered by the Secretariat General as concluding this communication is the one from which the United Kingdom ceased to be responsible for the international relations of the said territory.]

Period covered: 15/07/1965 - 26/05/1966
Articles concerned: 15

Derogation contained in a Note verbale from the Permanent Representation of the United Kingdom, dated 17 September 1965, registered at the Secretariat General on 20 September 1965 – Or. Engl.

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and, with reference to the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, has the honour to convey the following information regarding the Colony of Mauritius.

A public emergency arose lately in Mauritius in the following circumstances. In recent months there had been growing tension in Mauritius as a result of debate between the political parties on the Island's constitutional future. This tension has been aggravated by communal feeling owing to the composition of the population. May Day rallies led to a number of stone-throwing and other incidents in which a man was killed by a stone. Tension continued for several days and eventually rioting and other disorders occurred in the course of which two men, one of them a policeman, were killed and a number of persons, including policemen, injured. In order to bring the situation under control and restore public confidence, a state of emergency was declared.

For the purpose of bringing the emergency to an end, the Governor of Mauritius enacted certain Emergency Regulations on 14th May 1965. One of these (Regulation 4 of the Emergency Powers (Detention, Arrest, Entry, Search and Prosecution of Offenders) Regulations 1965) authorised any member of the police force or any member of Her Majesty's Forces, acting in the course of his duty as such, to arrest any person reasonably suspected of having acted or of acting or of being about to act in a manner prejudicial to public safety or to public order or of having committed or of committing or of being about to commit an offence against Emergency Regulations. Any person so arrested was required to be brought as soon as reasonably possible before a senior officer of the police force or (as the case may be) of Her Majesty's Forces who was empowered to order him to be detained for the purpose of inquiries for a period not exceeding 14 days. The exercise of these powers may have involved derogation from obligation imposed by the Convention. The Government of Mauritius exercised these powers to the extent strictly required by the exigencies of the situation.
A copy of the Emergency Regulations is attached **[*]**.

The Emergency Regulations ceased to operate as from 1st August 1965 and the provisions of the Convention are again being fully executed.

[[*] Note by the Secretariat: The additional information appended to this communication from the United Kingdom are available upon request to the Treaty Office.]

Period covered: 20/09/1965 - 20/09/1965
Articles concerned: 15

UK ICCPR Derogations
17 May 1976 [DEROGATION]
https://treaties.un.org/doc/Publication/CN/1976/CN.193.1976-Eng.pdf

"The Government of the United Kingdom notify other States Parties to the present Covenant, in accordance with article 4, of their intention to take and continue measures derogating from their obligations under the Covenant.

"There have been in the United Kingdom in recent years campaigns of organised terrorism related to Northern Irish affairs which have manifested themselves in activities which have included murder, attempted murder, maiming, intimidation and violent civil disturbances and in bombing and fire-raising which have resulted in death, injury and widespread destruction of property. This situation constitutes a public emergency within the meaning of article 4 (1) of the Covenant. The emergency commenced prior to the ratification by United Kingdom of the Covenant and Legislation has, from time to time, been promulgated with regard to it.

"The Government of the United Kingdom have found it necessary (and in some cases continue to find it necessary) to take powers, to the extent strictly required by the exigencies of the situation, for the protection of life, for the protection of property and the prevention of outbreaks of public disorder, and including the exercise of powers of arrest and detention and exclusion. In so far as any of these measures is inconsistent with the provisions of articles 9, 10 (2), 10 (3), 12 (1), 14, 17, 19 (2), 21 or 22 of the Covenant, the United Kingdom hereby derogates from its obligations under those provisions."

22 August 1984 [WITHDRAWAL OF DEROGATIONS]
See p8: https://treaties.fcdo.gov.uk/awweb/pdfopener?md=1&did=68264

Termination forthwith of derogations from articles 9, 10 (2), 10 (3), 12 (1), 14, 17, 19 (2), 21 and 22 of the Covenant.

23 December 1988 [DEROGATION]
https://treaties.un.org/doc/Publication/CN/1988/CN.319.1988-Eng.pdf

[The Government of the United Kingdom of Great Britain and Northern Ireland] have found it necessary to take or continue measures derogating in certain respects from their obligations under article 9 of the Covenant. (For the reasons of that decision, see paragraph 2 of a previous notification of 17 May 1976, which continue to apply) .

Persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland, or of offences under the legislation and who have been detained for 48 hours may be, on the authority of the Secretary of State, further detained without charge for periods of up to five days.

Notwithstanding the judgement of 29 November 1988 by the European Court of Human Rights in the case of Brogan and Others the Government has found it necessary to continue to exercise the powers described above but to the extent strictly required by the exigencies of the situation to enable necessary enquiries and investigations properly to be completed in order to decide whether criminal proceedings should be instituted. [This notice is given] in so far as these measures may be inconsistent with article 9 (3) of the Covenant.

31 March 1989 [REPLACEMENT DEROGATON]
https://treaties.un.org/doc/Publication/CN/1989/CN.93.1989-Eng.pdf
(Dated 23 March 1989)
Replacement as from 22 March 1989, of the measures indicated in the previous notification of 23 December 1988 by section 14 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989, which make comparable provisions.

18 December 1989 [DEROGATION]
https://treaties.un.org/doc/Publication/CN/1989/CN.343.1989-Eng.pdf
(Dated 12 December 1989)
"The Government of the United Kingdom have [previously] found it necessary to take and continue [various measures], derogating in certain respects from obligations under Article 9 of the International Covenant on Civil and Political Rights.
On 14 November 1989 the Home Secretary announced that the Government had concluded that a satisfactory procedure for the review of detention of terrorist suspects involving the judiciary had not been identified and that the derogation notified under Article 4 of the Covenant would therefore remain in place for as long as circumstances require."

21 February 2001 [WITHDRAWAL OF DEROGATION: UK only]
https://treaties.un.org/doc/Publication/CN/2001/CN.94.2001-Eng.pdf
(Dated 20 February 2001)
Notification to the effect that the derogation from article 9 (3) of the Covenant is terminated with effect from Mony [sic], 26 February 2001.
The notification further states that the termination of the derogation only applies to the United Kingdom of Great Britain and Northern Ireland and that it is not yet possible to terminate the derogation in respect of the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man.

18 December 2001 [DEROGATION]
https://treaties.un.org/doc/Publication/CN/2001/CN.1464.2001-Eng.pdf
“Notification of the United Kingdom’s derogation from article 9 of the International Covenant on Civil and Political Rights: [..The Government of the United Kingdom conveys] the following information in order to ensure compliance with the obligations of Her Majesty’s Government in the United Kingdom under Article 4 (3) of the International Covenant on Civil and Political Rights adopted by the General Assembly on 16 December 1966.

Public emergency in the United Kingdom
The terrorist attacks in New York, Washington, D.C. and Pennsylvania on 11th September 2001 resulted in several thousand deaths, including many British victims and others from 70 different countries. In its resolutions 1368 (2001) and 1373 (2001), the United Nations Security Council recognised the attacks as a threat to international peace and security.

The threat from international terrorism is a continuing one. In its resolution 1373 (2001), the Security Council, acting under Chapter VII of the United Nations Charter, required all States to take measures to prevent the commission of terrorist attacks, including by denying safe haven to those who finance, plan, support or commit terrorist attacks.

There exists a terrorist threat to the United Kingdom from persons suspected of involvement in international terrorism. In particular, there are foreign nationals present in the United Kingdom who are suspected of being concerned in the commission, preparation or instigation of acts of international terrorism, of being members of organisations or groups which are so concerned or of having links with members of such organisations orand [sic] who are a threat to the national security of the United Kingdom.

As a result, a public emergency, within the meaning of Article 4(1) of the Covenant, exists in the United Kingdom.

The Anti-terrorism, Crime and Security Act 2001

As a result of the public emergency, provision is made in the Anti-terrorism, Crime and Security Act 2001, inter alia, for an extended power to arrest and detain a foreign national which will apply where it is intended to remove or deport the person from the United Kingdom but where removal or deportation is not for the time being possible, with the consequence that the detention would be unlawful under existing domestic law powers. The extended power to arrest and detain will apply where the Secretary of State issues a certificate indicating his belief that the person's presence in the United Kingdom is a risk to national security and that he suspects the person of being an international terrorist. That certificate will be subject to an appeal to the Special Immigration Appeals Commission ('SIA'), established under the Special Immigration Appeals Commission Act 1997, which will have power to cancel it if it considers that the certificate should not have been issued. There will be an appeal on a point of law from a ruling by SIAC. In addition, the certificate will be reviewed by SIAC at regular intervals. SIAC will also be able to grant bail, where appropriate, subject to conditions. It will be open to a detainee to end his detention at any time by agreeing to leave the United Kingdom.

The extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001 is a measure which is strictly required by the exigencies of the situation. It is a temporary provision which comes into force for an initial period of 15 months and then expires unless renewed by Parliament. Thereafter, it is subject to annual renewal by Parliament. If, at any time, in the Government's assessment, the public emergencyer [sic] exists or the extended power is no longer strictly required by the exigencies of the situation, then the Secretary of State will, by Order, repeal the provision.

Domestic law powers of detention (other than under the Anti-terrorism, Crime and Security Act 2001)

The Government has powers under the Immigration Act 1971 ('the 1971 Act') to remove or deport persons on the ground that their presence in the United Kingdom is not conducive to the public good on national security grounds. Persons can also be arrested and detained under Schedules 2 and 3 to the 1971 Act pending their removal or deportation. The courts in the United Kingdom have ruled that this power of detention can only be exercised during the period necessary, in all the circumstances of the particular case, to effect removal and that, if it becomes clear that removal is not going to be possible within a reasonable time, detention will be unlawful (R v Governor of Durham Prison, ex parte Singh[1984] All ER 983).

Article 9 of the Covenant

In some cases, where the intention remains to remove or deport a person on national security grounds, continued detention may not be consistent with Article 9 of the Covenant. This may be the case, for example, if the person has established that removal to their own country might result in treatment contrary to Article 7 of the Covenant. In such circumstances, irrespective of the gravity of the threat to national security posed by the person concerned, it is well established that the international obligations of the United Kingdom prevent removal or deportation to a place where there is a real risk that the person will suffer treatment contrary to that article. If no alternative destination is immediately available then removal or deportation may not, for the time being, be possible even though the ultimate intention remains to remove or deport the person once satisfactory arrangements can be made. In addition, it may not be possto [sic] prosecute the person for a criminal offence given the strict rules on the admissibility

of evidence in the criminal justice system of the United Kingdom and the high standard of proof required.

Derogation under Article 4 of the Covenant

The Government has considered whether the exercise of the extended power to detain contained in the Anti-terrorism, Crime and Security Act 2001 may be inconsistent with the obligations under Article 9 of the Covenant. To the extent that the exercise of the extended power may be inconsistent with the United Kingdom's obligations under Article 9, the Government has decided to avail itself of the right of derogation conferred by Article 4(1) of the Covenant and will continue to do so until further notice.]

15 March 2005 [WITHDRAWAL OF DEROGATION…but effective date of withdrawal is day before and recorded as 14/03/2005 on Database]
https://treaties.un.org/doc/Publication/CN/2005/CN.200.2005-Eng.pdf

(Dated 15 March 2005)

"The provisions referred to in the 18 December 2001 notification, namely the extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001, ceased to operate on 14 March 2005. Accordingly, the notification is withdrawn as from that date, and the Government of the United Kingdom confirm that the relevant provisions of the Covenant will again be executed as from then."