



Research Article

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Limitation or Derogation? The Dilemma of the States in Response to Human Rights Threat during the COVID-19 Crisis

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Abstract

In addressing human rights concerns during COVID-19 crisis, this article starts by explaining the inalienable, invisible, interrelated and interdependent nature of human rights in relation to the fact that a specific right may be closely related to and dependent upon the realization of other human rights and that it is insufficient to respect some human rights and not others. With regard to human rights restrictions, this article then analyzes the two approaches followed by different states as a response to COVID-19: the approach of limitation of the human rights and the derogation from international human rights treaties and it highlights some concerns in the application and implementation of each of them. It concludes that while Governments have a certain degree of discretion in choosing the most appropriate measures to combat COVID-19 pandemic and secure the human rights, such margin of appreciation should not be unlimited. Otherwise, it should be subject to continuous monitoring in order to avoid abuse of human rights.

Keywords: Human Rights, COVID-19, Limitations, Derogations, ECHR

1. Introduction

Since 30 January 2020, the World Health Organization (2020) has declared the novel coronavirus outbreak as a public Health Emergency of International concern. In one month period, considering the alarming level of spread and severe, WHO (2020) declared the outbreak of a global pandemic. Simultaneously with WHO statements, many political leaders across the world have considered COVID 19 outbreak as a “war against the invisible enemy” (Whitehouse, 2020), “the greatest challenge since Second World War” (DW News, 2020) or “the darkest hours of a state” (BBC News, 2020). Using “war” as a metaphor, they have announced a series of severe measures in order to attack it. According to Spadaro (2020), the war-like responses to the pandemic have been characterized by the severe measures taken with the result of limiting the enjoyment of personal freedoms, which is like unprecedented in democratic countries in such peaceful times. (p.1) Running alongside, Lutz and Crawford (2020) highlight that “equating a “determined, coordinated national response” with war mobilization, rather than with community care, is precisely the problem”. One of the most common measures taken by almost all the states affected by COVID-19 relates to the restriction of the freedom of the movement of people (WHO, 2020). As a consequence, in almost four months from the new

coronavirus outbreak in Wuhan (China), a third of the global population (almost 3 billion of people) have been put under some kind of coronavirus lockdown (Pleasant, 2020). Other measures have imposed limits on public life to contain the pandemic, restricting non-essential activities such as social gatherings and closing schools, offices, universities and recreational spaces (Transparency International, 2020) and in some few cases restrictions on freedom of expression and extraction of military troops have been observed (Newburger, 2020; Top Channel, 2020). Concerns about the impact of such measures on human rights have been raised by various experts around the world (Spadaro, 2020). According to UN Commissioner for Human Rights, COVID-19 pandemic “poses a far – reaching threat to human rights” (Bachelet, 2020). While accepting the difficulties of many Governments in identifying ways to address COVID-19, Bachelet (2020) brings to their attention that “an emergency situation is not a blank check to disregard human rights obligations”.

In addressing human rights concerns during COVID-19 crisis, this article starts by explaining the inalienable, the invisible, interrelated and interdependent nature of human rights in relation to the fact that a specific right may be closely related to and dependent upon the realization of other human rights (Office of the High Commissioner for Human Rights [OHCHR], 2000) and that it is insufficient to respect some human rights and not others (OHCHR, n.d). With regard to human rights restrictions, the article then proceeds to analyze two approaches followed by different states as a response to COVID-19: the approach of limitations of the human rights and the derogations from international human rights treaties and it highlights some concerns in the application and implementation of each of them. It concludes that while Governments have a certain degree of discretion in deciding the most appropriate measures to fight COVID-19 pandemic and ensure the human rights, such margin of appreciation should not be unlimited. On the other side, it should be subject to continual surveillance in order to avoid abuse of human rights.

2. The Interrelated Nature of Human Rights and COVID-19 Implications

The COVID-19 pandemic, once again recalled in the attention of all political leaders, the interconnected and inseparable nature of human rights. These characteristics of human rights have been recognized even in the Universal Declaration of Human Rights. As the United Nations High Commissioner for Human Rights, Pillay (2008) has highlighted “... the Universal Declaration of Human Rights framers wisely chose not to rank rights. On the contrary, they recognized the equal status of political and civil rights with economic, social and cultural rights. They did so because all rights are inextricably linked...”

The right to life and the right of health are being the two most threatened rights during the COVID-19 crisis. However, none of them can be understood and enjoyed independently and be unrelated not only to each other, but even with the other fundamental rights. On the path of choosing the right measures in order to address the consequences of COVID-19 in the field of human rights, the European Union’s Special Representative for Human Rights, while emphasizing the importance of the right to life, reminds to governments, international bodies, to the community and to individuals around the world that the protection of the right to life must first be seen very closely linked to the right of health. According to Gilmore (2020) “**Without the right to life, it is impossible to exercise other rights. To protect life, we must vindicate the right to health**”. According to international Covenants, States have the duty to protect the right to life and to take appropriate measures to address the general conditions in society (such as COVID-19) that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity (Human Rights Committee [HRC], 2019, para 26). There are exactly these measures that the state can take, in cases when life can be threatened by life threatening diseases, which may affect the enjoyment of other human rights (as below, the right of movement, freedom of association, etc.). In the same time, **the right to health** is dependent on, and contributes to, the realization of many other human rights. These include the right to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, the right to privacy, access to information and the freedom

of association, assembly and movement (OHCHR, 2000, para 3).

What to emphasize in the case of COVID-19 pandemic is the fact that while the "invisible enemy" is now threatening the right to life and health of millions of people worldwide, public authorities, through their measures to fight the "invisible enemy" may jeopardize the peaceful enjoyment of many other rights of individuals. In this regard, it is true that, while it may seem relatively obvious that the widespread and far-reaching restrictive measures could have an immediate impact on the enjoyment of human rights, government action or inaction in response to health crisis can also reveal other negative human rights effects (Inter-Parliamentary Union, 2020). In this context, for example, the measures taken by states' governments in order to restrict and / or prohibit air, land or sea traffic, as well as the measures of mandatory quarantine, may impact individuals' freedom of movement and thus, depending on how they are implemented, can also amount to arbitrary deprivation of liberty (Amnesty International, 2020). The closure of schools and the cancellation of all education processes can affect the right to education (UNESCO, 2020). The establishment of self-isolation procedures and the enforcement of surveillance procedures to track the cases with COVID-19 through telephones or intelligent applications may lead to restriction of the right of privacy and family life (International Commission of Jurists, 2020). Prohibition of public events, conferences, cultural or scientific activities affect the freedom of association and organization. Freedom of religion may be affected by the closure of religious cults and the imposed measures for the closure of almost all economic activities lead to consequences for the right of labor, the right of economic freedom, the right of social security and social protection (Gueterres, 2020). While in other countries (e.g. China, Bolivia, Turkey, Egypt), the measures taken during COVID-19 pandemic have extended their effect in regard to the restriction of freedom of expression or the right of information (Human Rights Watch, 2020).

The abovementioned situations point out that the measures taken by the states in response to COVID-19 have confronted each other and have increased the tension between the right to life and the public health in one hand, and they have also confronted other rights as provided in the national constitutional documents and international instruments.

3. Human Rights Limitation Approaches during COVID-19 and the International Standards

3.1 *The application of limitation and derogation approach by the states during COVID-19 and their dilemma*

All human rights' experts in the level of the United Nations or the Council of Europe emphasized the importance of applying a human rights based approach in response to the emergency situation caused by COVID-19. However, none of them exactly predicts what measures the states must take. The reasons are different: not all countries have the same effects of COVID-19; not all states have the same economic potential, and not all states might have gone through such a similar experience before. However, despite the changes, all countries around the world have considered COVID-19 as a "public emergency", thus imposing restrictive measures to protect the life of the nation. The reaction of states for the selection of the most appropriate measures within their jurisdiction was initially accepted by the ECtHR in the case of *Ireland Vs United Kingdom*. According to ECtHR "it falls to each Contracting State, with its responsibility for "the life of [its] nation", to determine whether that life is threatened by a "public emergency" and, if so, how far it is necessary to go in attempting to overcome the emergency" (Ireland Vs United Kingdom, 1978, para 207)"

International instruments classify human rights in two main groups: absolute rights (e.g. the right to life, the prohibition of torture etc) and the rights which may be restricted in normal or in emergent situations. In the latter case, in certain situations (read below) states may choose to apply the instrument of **the limitation of rights or derogation**. Both approaches are recognized by the main instruments of the human rights protection at a universal or regional level (International Civil Political Pact Rights [ICCPR], Article 4; European Convention of Human Rights [ECHR], Article 15;

American Convention of the Human Rights, Article 27). Meanwhile, unlike the above conventions, the African Charter of Human's and Peoples Rights does not contain the derogation clause.

At the European level, from 47 member states of the Council of Europe, only 10 of them have used the derogation instrument in accordance with Article 15 of the ECHR (Council of Europe, 2020). Meanwhile, at the United Nations level, only 15 out of the 173 member states of ICCPR have notified the United Nations Committee in regard to the derogation from this Convention (UN Treaty Collection, 2020).

While the instrument of limitation of human rights can be used by the states in specific cases and for legitimate reasons both in normal and emergency situations or in public emergencies, the use of the instrument of derogation in relation to human rights is limited only "in time of war or other public emergency threatening the life of the nation" (ECHR, Article 15/1). Given the fact that states have considered COVID-19 pandemic as an emergency situation that threatens the life of the nation, they have chosen as a response either to impose restrictions on human rights to protect health and public safety or to notify the Secretary-General of the Council of Europe or the UN Committee on the enforcement of the derogation instrument in regard to certain Rights.

Although the use of the derogation instrument is totally legal and accepted by international instruments, what really stands out is the fact that even in the second case, the states have notified the derogation in relation to the same rights, which on the basis of the ECHR, or ICCPR, consider "the protection of health and public safety" as a legitimate reason to justify the states' intervention (see e.g ECHR, Article 8/2; ECHR, Art 9 /2; ECHR Protocol 4, Article 2/3). Such choice can raise various hypotheses in terms of the use of the derogation instrument as well as questioning its value. Thus, it can be thought that one of the reasons which may have led the states to such solution may be related to the fact that by officially notifying the international mechanisms for the use of the derogation instrument, they may feel "more protected" in case of any claim for the human rights violation by different individuals before the ECtHR. Continuing the same approach, that of the "justification / protection approach", they can continue using the derogation instrument in order to take measures that could lead to restrictions of the rights beyond being reasonable, necessary, dictated by high public risk or even legal.

In the worse case, the derogation can be used not to protect the rights, but to absolutely avoid the obligations of states to guarantee other fundamental rights. In other cases, states without defining the range of rights that may be subject to derogation may consider themselves in the meaning of Schmitt (2010) as the "Sovereign who decides on the exception" thus, allowing themselves the power to intervene even beyond the constitutional or international provisions. (Green, 2020)

However, regardless of such hypotheses, we must understand that in no case the states can use the instrument of the rights' derogation as a synonym for "renunciation" or "complete avoidance" from the obligation of guaranteeing the rights. Also it should not be used as a basis to target particular groups, minorities, or individuals and should not function as a cover for repressive action under the guise of protecting health (OHCHR, 2020, March 16). According to ECtHR " even in a state of emergency, the Contracting States must bear in mind that any taken measures should seek protecting the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society (Mehmet Hasan Altan vs Turkey, 2018, para 210)". The measures taken by states can only limit some of the rights for the protection of some other rights that are currently considered as more priority. If the states do not officially declare the state of emergency and do not report the enactment of the derogation instrument, then this may jeopardize the *risks normalizing exceptional powers and permanently recalibrating human rights protections downwards* and it may sound doubtful (Green, 2020).

3.2 The Limitation Approach and international restrictions

The choice of approach of the "limitation of rights" versus "derogation" does not mean that states do not have requirements. In the context of human rights law, dictated by the high need of health

protection and public safety, in order to be coherent with international standards, the limitations must meet the requirements of legality, necessity and proportionality, and be non-discriminatory.

The Siracusa Principles, adopted by the UN Economic and Social Council in 1984, provide authoritative guidance on government responses which restrict human rights for the aim of public health or safety (HRW, 2020). According to these principles, restrictions that a state can impose for preventing disease or injury or even providing care for the sick and injured or for protection against danger and safety of persons, to their life or physical integrity, should, at a minimum be:

- a) provided for and carried out in accordance with the law;
- b) directed toward a legitimate objective of general interest (public health);
- c) strictly necessary in a democratic society to achieve the objective;
- d) the least intrusive and restrictive available to reach the objective
- e) based on scientific evidence and neither arbitrary nor discriminatory in application; and
- f) of limited duration, respectful of human dignity, and subject to review (HRW,2020)

Also, in order to prohibit the misuse of power of states, Art 18 of ECHR states that “the restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed”. This means that the states must ensure that the measures taken during the COVID-19 pandemic, such as restriction of freedom of movement, of privacy or family life, or restriction of freedom of organization, have come as a direct response to the explicitly stated objectives of the ECHR, only in context of health protection or public safety. Furthermore, in the case of continuance of limited measures (as in the case of COVID-19), the ECtHR states that where the restriction of a Convention right amounts to a continuing situation, the Court will assess what purpose(s) it pursued throughout the whole period of its duration. In particular, it will ascertain whether, at a given moment during the course of the application of the impugned restriction, an ulterior purpose has supplanted the prescribed one or become predominant (ECtHR,2018,p.9).

Article 18 of the ECHR is also applied in cases when the rights’ restriction has happened for some reasons, one of which is clearly provided in the convention and in cases when the states may use legitimate reasons provided in the convention (read: health protection, public safety) with the single aim to hide their intentions in regard to the extension of restrictive measures. In the first case, the ECtHR states that if it is established that a restriction also pursued an ulterior purpose, there will only be a breach of Article 18 if the ulterior purpose is predominant (ECtHR, 2018,p 13). Meanwhile, in the second case, the ECtHR, while emphasizing that any public policy or individual measure may have a “hidden agenda”, argues that “a restriction can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because the prescribed purpose, while present, was in reality simply a cover enabling the authorities to attain an extraneous purpose, which was the overriding focus of their efforts (ECtHR, 2018, p.13). As above, it is worth mentioning that if states, in imposing measures in response to COVID-19 choose to use the instrument of “**limitations of rights**” both ICCPR and ECHR provide requirements in order not to allow the misuse of this instrument from the States’ side, as well as not allowing to be taken excessive measures or not in accordance with the legitimate aims as provided in each of the Conventions.

3.3 *The Derogation Approach and International Restrictions*

Meanwhile, unlike the “limitation approach”, the use of the derogation instrument requires to strictly follow some specific conditions provided in Article 4 of ICCPR and Article 15 of ECHR. Thus, according to Article 15 of ECHR in order for the derogation to be valid, there must be some required conditions:

- a) it must be in time of war or other public emergency threatening the life of the nation;
- b) the measures taken in response to that war or public emergency must not go beyond the extent strictly required by the exigencies of the situation; and

- c) the measures must not be inconsistent with the State's other obligations under international law. (ECtHR, 2019, p.6)
- d) the taken measures do not include derogations on the right to life, the prohibition of torture, the prohibition of slavery and servitude and the legality of punishment (no punishment without law)

Due to the abstract nature of the ECHR, the scope of each of the above conditions in regard to the measures that states must have taken under the conditions of COVID-19 pandemic would be subject to the interpretation of the ECtHR, in case there will be individual and / or states' claims regarding the violation of human rights according to Article 15.

First, the ECtHR must interpret whether the situation created by COVID-19 can be considered as a "public emergency threatening the life of the nation" which justifies the emergency situation declared by the states that have announced the derogation. At *Lawless v. Ireland* (1961), ECHR refers to "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed". Moreover, the emergency should be actual or imminent and the crisis or danger should be exceptional in that the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health and order are plainly inadequate (ECtHR, 2019, p.6).

Secondly, the ECtHR will assess whether or not the measures taken by the state in response to COVID-19 have gone beyond the "extent strictly required by the exigencies" of the crisis. In exercising its supervision over the states the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation." (Brannigan and McBride v. the United Kingdom, 1993, para 43)

Thirdly, despite the fact that the state may have decided to derogate from ECHR, the measures it has taken in response to COVID-19 must not be in conflict with other international obligations that the state has undertaken. Such a case, would be when the states taken measures' in the conditions of derogation from the ECHR, are in contrast with the ICCPR's provisions. This is because the states who have used the ECHR derogation instrument are at the same time the ICCPR parties. Under these conditions, when the state notifies the derogation from ECHR, but it has not officially notified the Human Rights Committee in regard to that ICCPR's derogation, then the measures it may take may raise the claim of non-compliance with other international obligations of the state. (e.g Albanian case).

Fourthly, the ECtHR will assess whether the cases provided before and the 'taken measures' under the terms of COVID-19 can raise claims for the loss of life of the persons affected by COVID-19, their inhumane treatment, degrading or humiliating treatment in conditions of non-providing proper medical treatment or guarantee the conditions for access to health care, in cases of punishment of persons without law (e.g. cases of civil and / or criminal sanctions taken under conditions of emergency situation by imposing fines and / or unlawful criminal punishment of the persons who violated quarantine) or in cases of forced labor in the conditions of COVID-19.

Finally, for a derogation to be considered valid in accordance with the Article 15/3 of the ECHR, the state must fully inform the Secretary General of the Council of Europe for the derogation measures and reasons for taking them. Also, it is the responsibility of the State to inform the Secretary General when the state of emergency has terminated in order for the provisions of the Convention to be again fully enforceable. Article 15/3 is a little vague and abstract of nature. It does not contain any provisions for the time within which the notification must be made or as to the extent of the information to be furnished to the Secretary General (ECtHR, 2019, p 11). Although, as in other cases, it remains in the Court Supervision to assess if the notification made by States in time of emergency may or not be considered within the reasonable time and if it contains sufficient information about the measures of derogation.

3.4 Judicial supervision in relation to COVID-19 measures

From the abovementioned analysis, it is understood that despite the discretion that states might have

when imposing such measures, they are obliged to justify and legitimize the taken measures in accordance to all the conditions as provided in the Convention. The only problem in such case is the fact that the observing mechanism of ECtHR cannot be put in action if individuals, organizations or states do not bring a claim before it. Until now, there have not yet been any claims filed in Strasbourg. However, the national case law of the countries affected by COVID-19 has shown that the national observing mechanisms may play the same observing role as the ECtHR.

The duration of the measures during Covid-19 and the importance of continuous control of such measures by the states' side has been assessed by the Saarland Constitutional Court on its decision held on 28 April 2020. According to the Court "Interventions in the fundamental right of freedom of the person - such as exit restrictions - require an accompanying justification check. The longer the duration, the higher the requirements for their justification and for their coherence with other rules... The exercise of a fundamental right does not need to be justified. Rather, its limitation requires justification, which must be weighed up in a comprehensible manner between the level of the intervention on the one hand and the extent and probability of the impending danger, the restriction of which is averted. (BESCHLUS SIM NAMEN DES VOLKES In dem Verfassungsbeschwerdeverfahren , 2020)" In this case, the Court decides that the movement restrictions in the state must be relaxed with immediate effect, as there were "currently no longer any solid reasons for the unrestricted continuation of the strict Saarland regulation banning people from leaving their homes" (Altherr,2020).

The **proportionality** and balance of the measures taken by the government during Covid-19 such as restricting the movement of persons under the age of 18 and over 65 years old due to COVID-19 pandemic and the enjoyment of such freedom was also considered not in accordance with ECHR from Bosnia's Constitutional Court. In its decision dated on 24.04.2020, the Court has decided that "impugned measures do not fulfil the requirement of "proportionality" under Article 2 of Protocol No. 4 to the European Convention, because they do not indicate the basis for the assessment of the Federal Civil Protection Headquarters that the groups concerned have a higher risk of contracting or transmitting COVID-19 infection, and no consideration was given to the introduction of milder measures if such risk was justifiably present, and the measures are not strictly limited in time, nor is there an obligation to review them regularly to ensure that they last only as long as 'necessary' within the meaning of Article 2 of Protocol No. 4 to the European Convention, is that they should be alleviated or abolished as soon as the situation permits (Ms. Lejla Dragnić and A.B vs the Order of the Headquarters of the Federal Department of Civil Protection in case no. AP 1217/20, para 63)"

In other cases, national courts have ruled on the restriction of the measures taken during this period in relation to **the principle of legality**. According to the Constitutional Court of Kosovo, the government's decision to restrict movement of people to contain the spread of coronavirus cannot be considered to having been made by law of the Assembly, nor in accordance with law, or in its implementation. (Constitutional court of the Republic of Kosovo judgment in Case No. KO54/20, para 315). In the interpretation of this Court, the Government and, consequently, no other state public authority, can ever go beyond the limitations and regulations provided by a law of the Assembly which limits the guaranteed freedom of movement and association and the right to privacy under the aforementioned articles. - much less to make a limitation on its own without having any legal authorization given through a law of the Assembly. (Constitutional Court of the Republic of Kosovo judgment in Case No. KO54/20, para 292)

3.5 *The doctrinal debate for the selected approaches by the states in response to Covid-19*

While the instrument of restriction of human rights for the protection of public health and other human rights has gained bigger support by the states, the derogation from international instruments has been subject of criticism and concern at an international level. Some members of the European Parliament have considered it as an inappropriate instrument for the protection of human rights. So, according to Strugariu "It is a very dangerous precedent and at the same time a very weak political

signal to first think of a situation where you intend to derogate from the ECHR” (Makszimov, 2020). In the same line, Loiseau has highlighted that she cannot understand the reasons behind any suspension of the implementation of the ECHR during the challenging times the world is living (Makszimov, 2020). Also, according to Human Rights Committee (2001) *the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (art. 12) or freedom of assembly (art. 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation*”(UN, CCPR, 2001).

The main concern in regard to the derogation instrument is related to the fact that state practices have shown that the hardest violations of human rights tend to occur in the context of states of emergency and that States may be inclined, under the pretext of a state of emergency, to use their power of derogation for other purposes or to a larger extent than is justified by the exigency of the situation (Venice Commission, 2006).

However, there are also some authors who are pro of using the derogation instrument in terms of the state emergency. According to Green (2020) *“derogation constitutes a different regime of legality, rather than a zone of lawlessness. This different regime can be used to quarantine exceptional powers to exceptional situations, preventing a recalibration of ordinary legal norms that would be required to accommodate powers that would have been considered impossible prior to the crisis”*.

In our viewpoint, what should unite normal and emergency situations is the rule of legality and the rule of law. The restriction of the "sovereign" to justify the "draconian measures" in terms of legality, legitimacy and proportionality does not exist only in cases when a state declares a "de jure" state of emergency. Moreover, in such cases when a state declares the state of emergency or is in the condition of a public emergency, the fundamental rights can be protected by using those measures which may bring fewer consequences in terms of guaranteeing the human rights and that should impair "as little as possible" the right or freedom subject to limitation. As Henkin (1990) wrote in "The Age of Rights" *“Government may not do some things, and must do others, even though the authorities are persuaded that it is in the society's interest (and perhaps even in the individual's own interest) to do otherwise; individual human rights cannot be sacrificed even for the good of the greater number, even for the general good of all. But if human rights do not bow lightly to public concerns, they may be sacrificed if countervailing societal interests are important enough, in particular circumstances, for limited times and purposes, to the extent strictly necessary.”*

In such circumstances, "derogation" may be the last instrument that states can put in use, only in cases when the protection to life and health of individuals in emergency situations cannot be achieved in either way through restrictive measures covered by the ECHR and other international instruments.

All things considered, we agree with Scheinin (2020), a former UN Special Rapporteur on Human Rights and Counter-terrorism, whose opinion is that *“What can be done under the framework of permissible restrictions, should be preferred. If those available options prove insufficient during COVID-19, then it is better to derogate than not to derogate.”*

4. Conclusions

This article emphasizes the fact that in terms of public emergencies such as COVID-19 pandemic, states have the duty and the obligation to act as soon as possible and with the most appropriate measures in order to protect the life and health of the people. However, based on the interconnected and interdependent nature of human rights, the choices made by the states and the taken measures, may affect some certain rights and freedoms such as; the freedom of movement, the right to privacy, freedom of association etc. International human rights instruments simultaneously regulate both the instrument of restriction of rights and that of the derogation. The choice of the most appropriate instrument remains at the state's discretion. Meanwhile, the justification for such choice will be in the judicial surveillance of the ECtHR and other international mechanisms. While "the limitation" may be the most popular instrument, the derogation of rights may be justified in cases when the

protection of life and health of the individuals in emergency situations cannot be achieved in any way through restrictive measures covered by the ECHR and other international instruments. However, despite various topics explained by authors in regard to each instrument, it is very important to emphasize that the states' chosen approach in any case will have to be guided by the protection of human rights and will have to be limited to what is strictly necessary in order to manage the COVID-19 pandemic. Failing to choose the approach based on human rights can bring more consequences in the end of the emergency situation than the pandemic itself.

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