

# Upholding human rights in Europe during the pandemic

## SUMMARY

The severe coronavirus outbreak has forced governments across the world to resort to drastic measures in order to slow down the spread of the virus and prevent a public health crisis. As elsewhere, these emergency measures taken in Europe have affected all aspects of societal life and profoundly impacted people's personal freedoms and individual rights, as enshrined in the European Convention on Human Rights (ECHR).

Although certain human rights can be suspended in situations of emergency, human rights conventions, such as the ECHR, continue to apply even then. In fact, many human rights instruments provide for such situations and contain dedicated 'emergency clauses' that give governments additional flexibility to address crises. Indeed, within the ECHR framework, Article 15 is one such clause that allows Council of Europe (CoE) member states to temporarily diverge from their ordinary convention obligations to resolve an emergency, provided certain conditions are met.

During the coronavirus pandemic, derogation clauses such as Article 15 of the ECHR, have gained particular importance, as so far 10 CoE member states have notified their intention to derogate from certain ECHR provisions in order to tackle the outbreak.

This briefing explains the functioning of Article of the 15 ECHR and its application to the current health emergency. Furthermore, it lists some fundamental rights and freedoms that have been affected by the coronavirus emergency measures, while also showcasing how Member States have sought to reconcile measures to protect public health with the fundamental rights principles enshrined in the ordinary framework of the ECHR. The briefing also stresses that it is key to protect the human rights of vulnerable persons, including during the implementation of recovery strategies.



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## Derogations under the European Convention of Human Rights in times of emergency

In response to the coronavirus pandemic, 10 Council of Europe (CoE) member states, including a few EU Member States, have derogated from certain human rights protected under the European Convention on Human Rights (ECHR).

The particular role of Article 15 of the ECHR

The [ECHR](#) constitutes one of the key instruments to safeguard fundamental rights across Europe. Within this framework, **Article 15 of the ECHR** deals with human rights protection during emergency situations and forms an important cornerstone of the Treaty. At core a classic [derogation clause](#), Article 15 of the ECHR allows CoE member states to [temporarily deviate](#) from certain convention rules in order to address 'war or other public emergency'. Provided a series of strictly defined conditions are met, member states may lawfully adopt measures that under normal circumstances may have amounted to a breach of the ECHR.

Article 15 of the ECHR thus [widens the margin of action](#) for governments in situations of distress and allows for an effective resolution of the crisis at hand. On the other hand, Article 15 imposes [clear boundaries](#) on governmental action (i.e. by stipulating a list of non-derogable rights) and thus guarantees respect for the fundamental rights and values under the ECHR, especially in times of severe crisis. In this way, Article 15 plays a crucial role in upholding human rights during an emergency and facilitates the delicate balancing act between the need for urgent action and the protection of core rights throughout periods of emergency.

### The European Convention of Human Rights (ECHR)

The ECHR is an international treaty drafted in [1950](#) within the framework of the **Council of Europe (CoE)**. So far, all [47 CoE member states](#) have ratified the ECHR. EU Member States are all CoE members and parties to the ECHR, and the EU is also set to accede to it, but the accession has proven more legally complex than initially thought.

The ECHR established the [European Court of Human Rights](#) (ECtHR) as the adjudicatory body overseeing member states' compliance with the convention. A peculiarity of the ECtHR body is that individuals may bring complaints against any one of the CoE member states before it for violations of their rights enshrined in the ECHR.

### Article 15 ECHR (Derogation in times of emergency)

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.

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.

### Conditions that need to be present for activation of Article 15 ECHR

The activation of Article 15 is subject to a strict set of conditions designed to prevent abuse and thus unlawful restrictions of human rights in times of distress.

Firstly, Article 15(1) stipulates that member states may only resort to derogations when faced with particularly serious emergencies, notably in times of war or other public emergency apt to threaten the life of a nation. The latter requirement sets a high threshold and, according to the [ECtHR Guide on Article 15](#), 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' ([Lawless v. Ireland](#)).

Secondly, the ECtHR has ruled that Article 15 implies that the situation of emergency must be [actual or imminent](#) and that the crisis or danger should reveal a degree of 'exceptionality' rendering measures normally permissible inadequate to restore public order, health and safety ([the 'Greek case'](#)). If these requirements are satisfied, derogations are permissible in principle.

However, Article 15 does not grant unlimited powers to states with regard to their emergency responses. On the contrary, it imposes [boundaries](#) on the nature and the scope of the envisaged derogation. In this regard, Article 15(1) stipulates that states may only take derogating measures to the 'extent strictly required by the exigencies of the situation'. Whether a state measure has exceeded these requirements and thus amounts to an unlawful derogation may be challenged before the ECtHR. The ECtHR then considers [various factors](#), such as the nature and the importance of the rights affected by the derogation ([Brannigan and McBride v. the United Kingdom](#)), the duration of the measure, whether the need for derogation is kept under regular review ([Brannigan and McBride v. the United Kingdom](#)), whether the measures are subject to safeguards ([Ireland v. the United Kingdom](#)) and whether the measures are a genuine response to the respective emergency ([Alparslan Altan v. Turkey](#)).

On multiple occasions in the past, the ECtHR has stressed that 'the existence of a public emergency must not serve as a pretext for limiting freedom of political debate' and that even in a state of emergency member states 'must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness' ([Mehmet Hasan Altan v. Turkey](#); [Şahin Alpay v. Turkey](#)). These elements will be assessed in consideration of the 'conditions and circumstances reigning when [the measures] were originally taken and subsequently applied', as clarified in the case law ([Ireland v. the United Kingdom](#)).

Additionally, a country's emergency measures, although deviating from ECHR standards, must not be in violation of other international laws and treaties. Derogations from human rights standards under the ECHR should not serve as a way to circumvent other international norms; hence why Article 15(1) states that national emergency measures [must not reveal any inconsistencies](#) with a country's 'other obligations under international law'.

Finally, Article 15(2) defines a list of absolute rights that may [never be subject to any derogation \(non-derogable rights\)](#). As such, Article 2 (right to life), Article 3 (prohibition of torture and other forms of ill-treatment), Article 4(1) (prohibition of slavery or servitude) and Article 7 (no punishment without law), which enshrines essential elements of the rule of law principle, are protected from derogations and must be observed by states at all times.

#### Formal requirements for the activation of Article 15 of the ECHR

A derogation under Article 15 of the ECHR requires prior [notification](#). As set out in Article 15(3), state authorities must notify their intention to derogate to the CoE Secretary General and provide detailed information about the [specific measures that will be taken as well as their purpose](#). In absence of any notification, Article 15 does not apply to the adopted measures and a member state may not rely on the derogation clause, as clarified by the Court ([Cyprus v. Turkey](#)). The rationale behind the notification system is to increase [transparency and accountability](#). Any derogation will become public and other member states will learn about the derogation, which plays a crucial role within the CoE system of collective enforcement. Equally, member states are required to notify the cessation of the derogation.

Whether a member state deems the activation of Article 15 necessary in a given situation is the [exclusive discretion](#) of the respective national authorities. Evidently, it is deemed that making an effective and lawful recourse to Article 15 satisfies all its conditions; however, such a recourse does not trigger Article 15 'automatically'. The application of Article 15 is only the result of an official

decision (and notification) of member states' authorities after a careful assessment of the situation that a derogation is the only way to effectively tackle the crisis.

Previously, Article 15 has mainly been applied in the context of terrorism or political violence (e.g. terrorism in Northern Ireland). However, the coronavirus outbreak seems to equally [satisfy the conditions under Article 15](#). The pandemic has posed an imminent threat to entire states, so it may well amount to a situation of '[public emergency](#)'. By mid-August 2020, [Albania, Armenia, Estonia, Georgia, Latvia, North Macedonia, Moldova, Romania, San Marino and Serbia](#) had notified the CoE Secretary General of their intention to derogate from the ECHR in order to curb the spread of the outbreak. So far, [Albania, Estonia, Latvia, North Macedonia, Moldova, Romania and San Marino](#) have withdrawn the derogation decision, as the pace of the outbreak has slowed down.

Other member states have chosen a different path and have not activated Article 15. Consequently, their coronavirus counter-measures have had to adhere to the standard ECHR provisions. The section below lists the rights and freedoms that have been affected the most and showcases how governments have sought to reconcile their adopted measures with their (ordinary) human rights obligations under the ECHR.

## Impact of the anti-coronavirus measures on individual rights and freedoms under the ECHR

Most rights and freedoms enshrined in the ECHR are of a relative character, meaning that restrictions are permissible within narrowly defined areas. Many ECHR provisions mention the protection of public health as one of the lawful grounds for imposing restrictions. Thus, emergency measures entailing restrictions imposed on these 'relative' rights are already [covered](#) by the ordinary ECHR provisions and may generally be considered lawful, if proportionate and necessary.

### Freedom of movement and right to liberty and security (Articles 2 and 5)

At the peak of the coronavirus outbreak witnessed thus far, several European governments imposed [movement bans](#) in order to contain its regional spread. These bans differed in scope and intensity, ranging from restricting movement within the borders of a state to prohibiting people from exiting the state. Examples of intra-state restrictions of movement are the intercity travel ban imposed in [Bulgaria](#) and [Cyprus](#), the prohibition to travel between the mainland and certain islands imposed in [Estonia](#), or the geographical restriction imposed on movement in [Ireland](#) (maximum travel distance of 5 km). Undoubtedly, these measures have [interfered](#) with people's freedom of movement as enshrined in [Article 2 of Protocol No 4 to the ECHR](#), and have had a substantial impact on societies and individuals.

#### Article 2, Protocol 4 of the ECHR (Freedom of movement)

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 2(1) grants everyone who is lawfully present within the territory of a state the right to freely move therein as well as the right to choose their place of residence. According to Article 2(3), this freedom may be subject to lawful restrictions, though only in narrowly defined instances. Lawful grounds include the maintenance of public order, the prevention of crime, national security interests (public safety), the protection of health and morals as well as the rights and freedoms of others. In the context of the coronavirus outbreak, member states' authorities largely evoked the protection of public health as grounds for adopting measures restricting people's freedom of movement and travel. As stated in Article 2(3), such restrictions must be imposed 'in accordance with the law' and may only be adopted if they are 'necessary in a democratic society' and are [proportionate to the legitimate aim pursued](#).

Whether a measure has exceeded the standard of proportionality is assessed by the ECtHR, which considers [various factors](#) such as the duration of the measure, the existence of a sunset clause and the admissibility of exceptions (hardship clauses). In past cases, the ECtHR has stressed that restrictions of liberty and freedom of movement, such as quarantine orders, should remain 'a temporary measure, to be discontinued as soon as circumstances permit' and that applications thereof over a 'long duration are particularly likely to be disproportionate' (*Kuimov v. Russia*). In Europe, the large majority of measures taken in relation to the pandemic have been limited in time or subject to automatic sunset clauses (e.g. Ireland). Further, many measures have included hardship clauses and thus are [likely](#) to satisfy the standard of proportionality.

Similarly, several countries imposed exit bans preventing their citizens and residents from leaving their territory in order to contain the epidemic ([Belgium](#), [Czechia](#), [Lithuania](#) and [Malta](#)). This measure equally curtails people's freedom of movement, more specifically the right to leave any country (including one's own), as provided by Article 2(2). Such interferences may be lawful, provided the state imposing it complies with the requirements set out in Article 2(3) and respects the principle of proportionality.

More severe measures, such as confinement to one's home or compulsory detention for quarantine purposes, [may even amount to a deprivation of liberty](#), as enshrined in Article 5 of the ECHR. Article 5 grants everyone the right to liberty and security and [protects individuals from arbitrary detention and arrest](#).

#### Article 5 of the ECHR (Right to liberty and security (excerpt))

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

[...]

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

[...]

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

Confinement to one's home (except for shopping for essential items) certainly entails a severe *restriction* of one's liberty, but is not yet a *deprivation* of liberty in the sense of Article 5. For it to be pronounced as such by the ECtHR will depend [on several factors](#) (surveillance by authorities, possibility to exercise outdoors, etc.). In contrast, compulsory detention for quarantine purposes has been considered a deprivation of liberty in the sense of Article 5 in the past (*Kuimov v. Russia*). Such a measure may be justified and thus lawful if applied in order to halt the spread of infectious diseases, as stipulated in Article 5(1)(e). However, as [emphasised](#) by the ECtHR on multiple occasions, the detention of an infected person may only be used as a 'last resort in order to prevent the spreading of the disease' and only 'because less severe measures have been considered and

found to be insufficient' to safeguard public health (*Enhorn v. Sweden*). In the absence of strict necessity and proportionality, the detention of an infected person ceases to be lawful and may thus amount to a violation of Article 5. In relation to the coronavirus outbreak, mandatory detention for quarantine purposes is, for instance, foreseen in [Ireland's legislative response](#) to the health crisis.

## Freedom of assembly and association (Article 11)

Many states have either [formally restricted](#) the right of peaceful assembly and association under international law or have [derogated](#) from it, by introducing a ban on public and private gatherings to limit contact among people and thus prevent the rapid spread of the coronavirus. Those measures have included not only a prohibition of religious masses, political rallies, concerts, sports events and other meetings including large number of people but also, for example, the requirement that in public places, a person may only be accompanied by certain family members and persons belonging to the same household or by one other person, and that they need to maintain a distance of 1.5 m from all other people. Belgium ([13 March](#)), Estonia ([13 March](#)), Italy ([9 March](#)), Luxembourg ([16 March](#)) to name just a few, introduced a full ban on social gatherings. Some countries, such as Slovenia, for example, amended their full ban on gatherings on [15 May](#), to allow gatherings of up to 50 persons to take place. Again, some countries, such as Lithuania ([17 June](#)), for example, distinguished between indoor and outdoor gatherings and limited indoor ones to 150 persons and outdoor ones to 700 persons.

### Article 11 of the ECHR (Freedom of assembly and association)

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

The above restrictions could be interpreted as interfering with the effective enjoyment of rights and freedoms under Article 11 ECHR, which guarantees freedom of peaceful assembly and freedom of association. According to the ECtHR [Guide](#) on Article 11, interference with the right to freedom of peaceful assembly constitutes a breach of Article 11 unless it is 'prescribed by law', pursues one or more legitimate aims under paragraph 2 (national security or public safety, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others), or is 'necessary in a democratic society' for the achievement of the aim or aims in question (*Vyerentsov v. Ukraine*). The CoE Venice Commission specified additional situations in which restrictions on Article 11 ECHR as a [qualified right](#) could be created and enforced. In its 2004 [Opinion](#) on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, the Venice Commission stipulated, among others, that:

- the right of assembly should not be interpreted restrictively;
- freedom of assembly refers to 'peaceful' gatherings;
- restrictions may be allowed for the regulation of public order as a legitimate aim, and the state is given a wide margin of appreciation in order to deal with disorder or crime or to protect the rights and freedoms of others;
- the state needs to find a fair balance between the interests of those seeking to exercise the right of assembly and the general interests of the rest of the community, i.e. by applying the principle of proportionality.

The ECtHR and its (now obsolete) [European Commission on Human Rights](#) have delivered several [judgements](#) following significant restrictions on public gatherings in terms of the number of people participating or the places in which those gatherings occurred. In the case [Chappell v. United Kingdom](#), which concerned a prevention of a Druidic religious ceremony at Stonehenge, the Commission found that interference was prescribed by law and necessary in a democratic society for the prevention of disorder or crime, or the protection of the rights and freedoms of others, within the meaning of Article 11(2) of the ECHR.

In the case [Cisse v. France](#), which concerned occupation of St Bernard's Church in Paris by a group of some 200 illegal immigrants, the ECtHR did not find the dispersal of a gathering to be in interference with the right to freedom of assembly where this was to protect the health and safety of those participating in it, who were at risk because of the living conditions and in some cases because they were on a hunger strike.

The case [Lashmankin and others v. Russia](#) concerned 15 separate applications from different parts of Russia, describing how the applicants had faced bureaucratic obstacles when they tried to organise peaceful assemblies. The ECtHR found that a general ban on demonstrations can only be justified if there is a real danger of these resulting in disorder that cannot be prevented by other less stringent measures and if the disadvantage resulting from the ban of such demonstrations is clearly outweighed by the security considerations justifying the issue of the ban.

In the context of the coronavirus outbreak, Member States' authorities have largely relied on the need to protect public health as grounds for taking measures banning or restricting social gatherings. Those measures have been seen as prescribed by law and necessary in a democratic society.

## Right to education (Article 2 of Protocol No 1)

As a result of the pandemic and the need to practice 'social distancing', all Member States gradually [closed](#) education facilities to limit the spread of the coronavirus. In May and June, a number of Member States allowed schools to reopen partially or fully, although under certain conditions linked to hygiene and physical distancing (e.g. split groups, reduced capacity and activities). Higher education institutions and schools have been striving to ensure the continuity of the education process, as classes and assessments were temporarily moved to online platforms, with varying success. Special arrangements have had to be put in place with regard to class promotions and final examinations. By mid-June, a number of Member States, such as [Belgium](#), [Estonia](#), [Luxembourg](#) and the [Netherlands](#), restarted contact-based educational activities for all students (under certain conditions). Other Member States – such as Bulgaria, Ireland, Italy, Latvia, Malta and Romania – decided to suspend all such activities for the entire school year.

As stated by [experts](#), those measure have unprecedented effects on pupils and students, particularly those preparing for examinations or pursuing academic studies.

### Article 2 of Protocol No 1 to the ECHR (Right to education)

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Those measures could also have significant consequences for the right to education under Article 2 of Protocol No 1 to the ECHR as a fundamental right. According to the ECtHR [Guide](#) on Article 2 of Protocol No 1, the right to education is not absolute, as it may give rise to implicitly accepted limitations and the Contracting States enjoy a certain margin of appreciation in this sphere. However, unlike the position with respect to Articles 8 to 11 of the ECHR, the permitted restrictions are not bound by an exhaustive list of 'legitimate aims' (such as national security, public safety, protection of the rights and freedoms of others, etc.). They must, however, be foreseeable for those

concerned and pursue a legitimate aim ([Leyla Şahin v. Turkey](#)). The CoE Committee of Ministers [recommendation](#) of 12 December 2012 further states that, while access to education is in itself important, the true value of this right can only be realised if education is of adequate quality and if learning opportunities and arrangements enable pupils and students to complete their education in reasonable time and under conditions conducive to quality education.

The ECtHR has delivered several [judgments](#) regarding the violation of the right to education. In the case [Leyla Şahin v. Turkey](#), the ECtHR found that any restrictions that are imposed must curtail the right to such an extent as to impair its very essence and deprive it of its effectiveness in order to be considered violations. It further stated that a limitation will only be compatible with Article 2 of Protocol No 1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. The case [Mürsel Eren v. Turkey](#) could be relevant in case of absence of any form of overall assessment of performance at the end of a course or year of study. The ECtHR found a violation of Article 2 of Protocol No 1 where the applicant's exam results had been annulled and this lacked a legal and rational basis, resulting in arbitrariness.

In the context of the coronavirus outbreak, all Member States have to a certain extent limited the right to education, but have tried, through alternative means, to ensure continuity of educational programmes and final examinations. It remains to be seen if the imposed restrictions have influenced the very essence, effectiveness and quality of education to the extent that this might violate the right to education.

## Freedom of thought, conscience and religion (Article 9)

As Member States imposed bans on social gatherings in public and private places, most also suspended [religious ceremonies](#) or (partially) closed places of worship to stop the coronavirus spreading. A number of Member States suspended particular ceremonies, such as weddings, or limited the number of attendees, for example, at funerals. Some Member States, such as Germany, introduced very high levels of restrictions, effectively curtailing private prayers in public places as well as public religious celebrations. Others, such as Italy and Finland, suspended public celebrations but allowed accommodating private prayer in places of worship. Again others, such as Sweden and the Netherlands, allowed public celebrations to take place so long as they do not exceed a maximum number of participants.

### Article 9 of the ECHR (Freedom of thought, conscience and religion)

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

These measures could significantly interfere with the right to freedom of thought, conscience and religion under Article 9 of the ECHR as a fundamental right. Whether an interference is justified is assessed by reference to [three tests](#): whether the interference pursues a legitimate aim, whether it is 'prescribed by law', and whether it is 'necessary in a democratic society'. According to the ECtHR [Guide](#) on Article 9, a state can interfere in the exercise of the right when it pursues one or more legitimate aims of: public safety; the protection of public order, health and morals; or the protection of the rights and freedoms of others. In order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned. The burden is on the authorities to show that no such measures were available ([Biblical Centre of the Chuvash Republic](#)



[v. Russia](#)). The limitations set out in Article 9(2) only relate to the freedom to *manifest* one's religion or belief and not to the right to *have* a religion or belief.

In the case [Chappell v. United Kingdom](#), the [European Commission on Human Rights](#) found that the decision to prevent the ceremony was a necessary public safety measure, and that any implied interference with the applicants' rights under Article 9(1) was in accordance with the law and necessary in a democratic society in the interests of public safety, for the protection of public order or for the protection of the rights and freedoms of others. In the case [Svyato-Mykhaylivska Parafiya v. Ukraine](#), which concerned a religious association, the Svyato-Mykhaylivska Parafiya, and failings in Ukrainian legislation and administrative practice, the ECtHR reiterated that the list of exceptions to freedom of religion in Article 9 is exhaustive, that 'only convincing and compelling reasons can justify restrictions', that the interference must be 'necessary in a democratic society' and that any interference must correspond to a 'pressing social need'.

In the context of the coronavirus outbreak, Member State authorities have largely pursued the legitimate aim of health protection when taking measures limiting the freedom of religion. Those measures were seen as necessary in a democratic society in the interest of public health.

## Safeguarding the human rights of vulnerable groups

Evidently, states have specific human rights obligations towards everybody in their territory; however, different social groups are affected differently during a public emergency such as a health pandemic. States thus have a specific duty of upholding the human rights of the most vulnerable groups in their societies.

The European Court of Human Rights attaches legal significance to a [special category of vulnerability](#) either through the notion of [positive obligation](#) under the ECHR or by reversing the burden of proof and imposing it on the government. There is no definition specifying what constitutes a vulnerable group or under what circumstances does such a group exist. There has rather been a development of case law covering different settings in which vulnerability can occur, including for people such as prisoners, children, the disabled and the mentally ill, victims of domestic violence, the Roma, to name just a few. This gives the ECtHR the broadest freedom to identify other groups and categories that merit special attention in future cases.

Vulnerable social groups are affected differently by the coronavirus crisis, very often disproportionately compared to other groups. During the pandemic, states must assess and address situations of individuals and groups that are particularly vulnerable and are at increased risk of infection because of their poor overall health, limited access to information on protection measures, substandard housing conditions and socio-economic disadvantages. States must protect the lives and health of such people, and in general make sure they can enjoy their rights.

A Fundamental Rights Agency [report](#) shows that Member States have adopted special measures to prevent the spread of the coronavirus in places such as prisons, residential care facilities and refugee camps/reception facilities and shelters, where people are more at risk of infection due to the difficulty of applying physical distancing measures, especially in often overcrowded premises. Some Member States have tried to provide solutions that address the particular needs of certain social groups, such as persons with disabilities, older people, Roma and Travelers, and women and children at risk of domestic violence.

The European Parliament, in its [resolution](#) of 17 April 2020 on EU coordinated action to combat the Covid-19 pandemic and its consequences, expressed its concern regarding the potential impacts of the pandemic, including confinement, on the well-being of people, notably the most vulnerable groups and people in vulnerable situations, including elderly people, people who are already suffering from poor health, migrants, and those exposed to domestic violence, especially women and children. It called on the Commission and the Member States to prioritise aid and crisis-mitigation measures for the most vulnerable citizens, for women and children exposed to domestic

violence, for the elderly, for people with disabilities and for ethnic minorities, among others. Furthermore, the [Parliament Kohl building](#) in Brussels has been used as a temporary residence for women in a difficult situation in the context of the pandemic.

Experts have published [guidance](#) on populations at disproportionate risk in public health emergencies (this risk being due to a lack of access to effective surveillance, early-warning systems and healthcare), describing the ways to engage with them when communicating about risks and deciding about appropriate response, recovery, preparedness, and risk reduction.

The [European Public Health Alliance](#), together with a number of European and national organisations and individuals, has issued recommendations for the EU institutions and national governments on how to protect vulnerable groups during the coronavirus pandemic. Policy-makers should develop a human rights-centred and gender-sensitive approach involving representatives of disadvantaged communities, civil society organisations and other players in key policy areas such as health, housing, education, employment and anti-discrimination.

Policy-makers should, however, also ensure that the human rights of all members of society are not only protected during the response to the coronavirus pandemic but equally so during the implementation of recovery strategies aimed at addressing the impact of the pandemic.

## Putting human rights at the centre of the recovery strategies

The public health crisis caused by the coronavirus outbreak has evolved into an economic and social crisis that has highlighted the existing glaring economic and social inequalities and the shortfalls of the health and social protection systems in place. Member States' recovery strategies and future efforts need to address all these issues, including the discrimination that has made some people more vulnerable to the disease and to the economic and social impact of the response to stop the spread of the virus.

The [United Nations](#) has developed several recommendations for this purpose, specifying that:

- stimulus packages and other responses to mitigate the economic impacts of the pandemic should be people-centred and should adequately support groups most affected by the loss of their livelihoods;
- there is a need for ensuring income security and targeted social assistance for the most marginalised or vulnerable;
- national and local response and recovery plans should identify and put in place targeted measures to address the disproportionate impact of the virus on vulnerable groups and individuals.

According to the [Treaty on European Union](#) (TEU), fundamental rights, as guaranteed by the ECHR, constitute general principles of EU law. Furthermore, with the Treaty of Lisbon, the EU's accession to the ECHR became a legal obligation under Article 6(2) TEU aimed at achieving a coherent framework of human rights protection throughout Europe. Although the accession process has advanced, it has not yet been finalised.

The EU and its Member States are also bound by the [Charter of Fundamental Rights of the European Union](#), which enshrines the fundamental rights of citizens and all individuals under the Member States' jurisdiction in EU law. The Fundamental Rights Agency has published a [report](#) outlining the measures Member States have put in place to protect public health during the coronavirus pandemic and how those measures may affect fundamental rights.

### European Social Charter

The [European Social Charter](#) is a Council of Europe treaty that guarantees fundamental social and economic rights as a complement to the ECHR, which refers to civil and political rights. Some of the rights protected by the Charter have been severely [affected](#) during the coronavirus pandemic.

## EU recovery strategy as a response to the pandemic

The European Commission has proposed a [recovery plan for Europe](#) to ensure an effective EU response to the coronavirus crisis. The plan aspires to help repair the economic and social damage inflicted by the crisis, to stimulate EU economies' recovery, and to protect and create jobs. Following the constraining effect that Member States' emergency measures have had on some fundamental freedoms, the Commission has [committed](#) to a recovery based on full respect of fundamental principles and human rights, including measures of immediate assistance to the marginalised groups affected by the crisis.

This is in line with the Council [presidency trio programme](#) (been put together by Germany, Portugal and Slovenia, the Member States assuming the presidency for the next three six-month periods from July 2020), which confirms that the recovery plan must be based on solidarity and be inclusive and co-owned by all involved, while fully respecting EU citizens' values, rights, and the rule of law. The three Member States have also committed to promoting better protection of the rights of older people and other vulnerable adults as a way to prevent an increase in inequalities and discrimination of any kind due to the pandemic.

The European Parliament, in its [resolution](#) of 15 May 2020 on the new multiannual financial framework, own resources and the recovery plan, considers it crucial that the recovery address social and economic inequalities and the needs of those hit hardest by the crisis, such as women, minorities and those on or below the poverty line. The Parliament also 'calls on the Commission and the Member States to lead recovery and transformation efforts resulting from the pandemic at international level while upholding our values of solidarity, the protection of human rights, democratic principles, the rule of law and multilateralism'.

The [European Network of National Human Rights Institutions](#) welcomes the EU strategy to stimulate the economy and support livelihoods, while stressing that all human rights, including economic and social rights, should guide the implementation of such measures. The network lists several points that the EU and Member States should take into account when devising a recovery plan for a socially-cohesive and sustainable society. For example, the EU recovery fund should provide grants to Member States in need so that people across the EU can enjoy a minimum essential level of socio-economic rights, including the rights to housing, health, food, water, sanitation, education, social security and work. Furthermore, a thorough human rights impact assessment of recovery measures can help to protect people against discrimination and prevent a widening of existing inequalities.

Human rights continue to apply even when a state declares a state of emergency or a derogation from its human rights obligations. However, it is equally important that once the crisis is over, recovery is guided by those rights.

## MAIN REFERENCES

ECtHR

[Guide on Article 5 of the European Convention on Human Rights](#), April 2020.

[Guide on Article 11 of the European Convention on Human Rights](#), May 2020.

[Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights](#), April 2020.

[Guide on Article 9 of the European Convention on Human Rights](#), April 2020.

European Union Agency for Fundamental Rights, [Coronavirus pandemic in the EU – fundamental rights implications](#), April 2020.

Jeremy McBride, [An Analysis of Covid-19 Responses and ECHR Requirements](#), March 2020.

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