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Human Rights and SARS-CoV-2 – some observations on a Public Emergency threatening the Life of the Nation

Prawa człowieka i SARS-CoV-2 – uwagi o „niebezpieczeństwie publicznym zagrażającym życiu narodu”

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Abstract

This paper tackles the issue of derogation of State’s international obligations in the field of human rights protection. Although derogation clauses are often included in human rights treaties, their application is regarded as an exception rather than a rule and undergo strict scrutiny as to their legality. It is universally acknowledged that such derogation is allowed in the most severe of circumstances, usually referred as “war or other public emergency threatening the life of the nation”. The Author therefore considers whether the global COVID-19 pandemic might be categorized as such and thereby justify the measures undertaken by States to stop the spread of the coronavirus.

Keywords: human rights, ECHR, public emergency, derogation of human rights, SARS-CoV-2, threat to the life of the nation

Streszczenie

Przedmiotem artykułu są zagadnienia związane z derogacją międzynarodowych zobowiązań państw płynących z międzynarodowej ochrony praw człowieka. Mimo iż klauzule derogacyjne znajdują się w treści wielu traktatów chroniących prawa człowieka, ich stosowanie jest postrzegane w kategoriach wyjątku, co pociąga za sobą rygorystyczną ocenę ich legalności. Powszechnie przyjmuje się, że derogacja zobowiązań prawnoczłowieczych jest dopuszczalna tylko w wyjątkowych sytuacjach, określanych zazwyczaj jako „wojna lub inne niebezpieczeństwo publiczne zagrażające życiu narodu”. Artykuł jest próbą odpowiedzi na pytanie, czy pandemia COVID-19 może być uznana za taką okoliczność, a co za tym idzie – czy może stanowić uzasadnienie dla środków podejmowanych przez państwa w celu zwalczania koronawirusa.

Słowa kluczowe: prawa człowieka, Europejska Konwencja Praw Człowieka, niebezpieczeństwo publiczne, derogacja praw człowieka, SARS-CoV-2, zagrożenie życia narodu

1. Introduction

On 17 March 2020 Latvia, as the first State-Party to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) informed the Secretary General of the Council of Europe of its intention to exercise its right under Article 15 of ECHR and to derogate from its obligations under the ECHR¹. Following the announcement of the World Health Organization on 11 March 2020 that COVID-19 was confirmed as a pandemic, and taking into account the significant danger the spread of COVID-19 posed to public health, on 12 March 2020, the Government of Latvia declared an emergency situation in the entire territory of the Republic. Hence Latvia intended to derogate from certain obligations under Articles 8 and 11 of the ECHR, Article 2 of Protocol No. 1 to the ECHR, and Article 2 of Protocol No. 4 to the ECHR.

¹ Note verbale Permanent Representation of the Republic of Latvia to the Council of Europe of 16 March 2020, available at: <https://rm.coe.int/09000016809ce9f2>.

In the following month, Romania², Armenia³, the Republic of Moldova⁴, Estonia⁵, Georgia⁶, Albania⁷, North Macedonia⁸, Serbia⁹ and San Marino¹⁰ notified the Secretary General of the Council of Europe of their decision to use Article 15 of the ECHR.

The aforementioned declarations of invoking Article 15 of the ECHR are neither the first nor the last cases of derogation by States of its international obligations. Solely under the ECHR that kind of declaration are made by State parties approximately every six months. Nevertheless, what distinguishes those declarations is the reason they were made in the first place, that is the outbreak of global pandemic of COVID-19. To this date, derogations of international obligations toward human rights were justified either by war, rebellion, public unrest or, most commonly, the terrorist threat. In the context of current situation the question arises, whether the global pandemic of SARS-CoV-2 may be determined under the ECHR¹¹ as a “public emergency threatening the life of the nation”?

² The Romanian Government’s declaration related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 17 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 15 May 2020. All declarations and withdrawals mentioned below are available at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=005&codeNature=0> (access: 14.11.2021).

³ The Armenian Government’s declaration related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 19 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 16 September 2020.

⁴ The declaration of the Government of the Republic of Moldova related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 19 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 20 May 2020.

⁵ The declaration of the Estonian Government related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 20 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 18 May 2020.

⁶ The declaration of the Georgian Government related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 23 March 2020.

⁷ The declaration of the Albanian Government related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 31 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 25 June 2020.

⁸ The declaration of the Government of North Macedonia related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 1 April 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 30 June 2020.

⁹ The declaration of the Serbian Government related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 6 April 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 13 October 2020.

¹⁰ The declaration of the Government of San Marino related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 10 April 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 8 July 2020.

¹¹ Of all the human rights protection regimes, the ECHR system is the most developed and therefore is commonly treated as the model prototype for human rights protection. Therefore, the present analysis of derogation practice is also based mainly on interpretation and judicial *acquis* of the European Court of Human Rights.

2. Derogation from international human rights obligations

As mentioned above, the right to derogate from obligations contained in the ECHR is included under Article 15¹². It provides that:

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 [the] 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 (§ 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 therefore. 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 executed¹³.

The text of Article 15 is based on the draft Article 4 of the United Nations draft Covenant on Human Rights, which later became Article 4 of the 1966 International Covenant on Civil and Political Rights (hereinafter: ICCPR)¹⁴, although the exact wording differs in two cases (discussed below). The general framework of Article 15 shows that it covers three main issues: paragraph 1 defines the circumstances in which Contracting Party can validly derogate from its obligations under the ECHR. Paragraph 2 excludes certain rights from any derogation and finally paragraph 3 of Article 15 outlines the procedure of derogation which must be followed in order to implement the derogation effectively. Each of these issues will be discussed in turn.

2.1. Causes for derogation

Article 15.1 sets out three conditions for a valid derogation of the ECHR obligations. Firstly, the derogation must be declared in time of war or other public emergency threatening the life of the nation. Secondly, 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 thirdly, the measures must not be inconsistent with the State's other obligations under international law.

The right of derogation can be invoked only in time of war or other public emergency threatening the life of the nation. The practice of States under Article 15 and jurisprudence of the European Court of Human Rights (hereinafter: the ECtHR) give some insight as

¹² Cf, for similar provisions, eg. Article 4(1) of the 1966 International Covenant on Civil and Political Rights; Article 27(1) of the 1969 American Convention on Human Rights; and Article 30 of the 1961 European Social Charter. Notably, there is no such clause in the African Charter on Human and Peoples' Rights.

¹³ Article 15 of the ECHR, ETS No. 005.

¹⁴ For fascinating history of drafting the derogation clause of Article 15 of the ECHR and Article 4 of ICCPR, see: p. 10 of the *Travaux préparatoires* on Article 15 and Appendix 1 thereto, (available at: [https://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-ART15-DH\(56\)4-EN1675477.pdf](https://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-ART15-DH(56)4-EN1675477.pdf) (access: 14.11.2021)).

to the meaning of this term. Although the Court has not been required to interpret the meaning of “war”, but nevertheless it might be assumed that this term shall be understood similarly as in international humanitarian law, i.e. all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them¹⁵. Any other case of violence or public unrest short of war is likely to fall within the scope of the second requirement of Article 15.1, namely a “public emergency threatening the life of the nation”.

While up to date only eight States-parties to the ECHR (Albania, Armenia, France, Georgia, Greece, Ireland, Turkey and the United Kingdom) have relied on their right of derogation of the ECHR obligations in the proceedings before the ECtHR, the circumstances of those cases shed some light on the notion of “public emergency threatening the life of the nation”. As the ECtHR stated in *Lawless v. Ireland*¹⁶, the customary meaning of this term is clear and 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”. The emergency should be real or imminent; a crisis which concerns only a particular region of the State can amount to a public emergency threatening “the life of the nation”¹⁷ and the crisis or danger should be exceptional in that sense, that “the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health and order are plainly inadequate”¹⁸.

However, neither the ECHR, nor the ECtHR’s jurisprudence indicate whether the emergency shall be temporary or of more permanent nature. Indeed, the ECtHR in its judgments demonstrated that it is possible for a “public emergency” within the meaning of Article 15 to continue for many years¹⁹.

What is of paramount importance, the ECtHR leaves to the national authorities of State-party the assessment as to whether such an exceptional situation of public emergency exists. The *rationale* is obvious – the State’s direct and constant awareness of the situation on its own territory makes it generally better placed than the international judge to decide both on the presence of such an emergency and on the nature and scope of the derogations necessary to avert it. As the Court stated in *Ireland v. the United Kingdom*: “it falls in the first place to each Contracting State, with its responsibility for ‘the life of [its] nation’, to determine whether that life is threatened by a ‘public emergency’”²⁰. Nevertheless, the ECtHR had emphasised on numerous occasions that States do not enjoy an unlimited discretion in this respect. The domestic margin of appreciation is – as in every

¹⁵ Common Article 2 to the Geneva Conventions of 1949, UNTS no. 973.

¹⁶ *Lawless v. Ireland (no.3)*, Application no. 332/57, Judgment of 1 July 1961, § 28.

¹⁷ Cf.: *Ireland v. the United Kingdom*, Application no. 5310/71, Judgment of 18 January 1978, § 205, *Aksoy v. Turkey*, Application no. 21987/93, Judgment of 18 December 1996, § 70.

¹⁸ *Denmark, Norway, Sweden and the Netherlands v. Greece (the “Greek case”)*, European Commission on Human Rights Report, 1969, § 153.

¹⁹ Cf.: *Ireland v. the United Kingdom*, Application no. 5310/71, Judgment of 18 January 1978, *Brannigan and McBride v. the United Kingdom*, Applications no. 14553/89 and 14554/89, Judgment of 26 May 1993, *Marshall v. the United Kingdom*, Application no. 41571/98, Decision of 10 July 2001.

²⁰ *Ireland v. the United Kingdom*, Application no. 5310/71, Judgment of 18 January 1978, § 207.

case of the application of the ECHR – of accompanied by international supervision²¹ But what differs the wording of Article 15 of the ECHR from Article 4 of the ICCPR, is that the ECHR does not require for the validity of the derogation that the existence of the war or other public emergency shall be officially proclaimed by the invoking State²².

The States' margin of appreciation in case of derogation their international obligations is also limited by the requirement that a State may take measures derogating from its obligations only to the extent strictly required by the situation. The ECtHR further explained that the existence of a "public emergency threatening the life of the nation" must not serve as a pretext for limiting freedom of political debate – "even in a state of emergency the States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort should be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness"²³.

To assess whether the measures taken were "strictly required by the exigencies of the situation and consistent with the other obligations under international law", the ECtHR examines the complaints on the merits. This requires for the ECtHR to consider whether ordinary laws would have been sufficient to meet the danger caused by the public emergency²⁴; whether the measures are a genuine response to an emergency situation²⁵; whether the measures were used for the purpose for which they were granted²⁶; whether the derogation is limited in scope and the reasons advanced in support of it²⁷; or whether the need for the derogation was kept under review²⁸. These factors shall be assessed on the basis of the "conditions and circumstances reigning when [the measures] were originally taken and subsequently applied"²⁹.

Finally, the last condition for the validity of derogation under Article 15 is that the undertaken measures shall not be inconsistent with the State's other obligations under international law. This requirement is interpreted by the ECtHR as the requirement of consistency between the ECHR and international humanitarian law³⁰.

²¹ *Brannigan and McBride v. the United Kingdom*, Applications no. 14553/89 and 14554/89, Judgment of 26 May 1993, § 43; *Mehmet Hasan Altan v. Turkey*, Application no. 13237/17, Judgment of 10 March 2018, § 91; *Şahin Alpay v. Turkey*, Application no. 16538/17, Judgment of 20 March 2018, § 75).

²² See Article 4 of the ICCPR, UNTS No. 14668.

²³ *Mehmet Hasan Altan v. Turkey*, Application no. 13237/17, Judgment of 10 March 2018, § 210; *Şahin Alpay v. Turkey*, Application no. 16538/17, Judgment of 20 March 2018, § 180.

²⁴ *Lawless v. Ireland (no.3)*, Application no. 332/57, Judgment of 1 July 1961, § 36; *Ireland v. the United Kingdom*, Application no. 5310/71, Judgment of 18 January 1978, § 212.

²⁵ *Brannigan and McBride v. the United Kingdom*, Applications no. 14553/89 and 14554/89, Judgment of 26 May 1993, § 51; *Alparslan Altan v. Turkey*, Application no. 12778/17, Judgment of 16 April 2019, § 118.

²⁶ *Lawless v. Ireland (no.3)*, Application no. 332/57, Judgment of 1 July 1961, § 38.

²⁷ *Brannigan and McBride v. the United Kingdom*, Applications no. 14553/89 and 14554/89, Judgment of 26 May 1993, § 66.

²⁸ *Brannigan and McBride v. the United Kingdom*, Applications no. 14553/89 and 14554/89, Judgment of 26 May 1993, § 54.

²⁹ *Ireland v. the United Kingdom*, Application no. 5310/71, Judgment of 18 January 1978, § 214.

³⁰ See: *Hassan v. the United Kingdom*, Application no. 29750/09, Grand Chamber Judgment of 16 September 2014, *Georgia v. Russia (II)*, Application no. 38263/08, Grand Chamber Judgment of 21 January 2021.

2.2. Prohibition of derogation

Article 15.2 enumerates a catalogue of fundamental human rights which cannot be subjected to derogation under Article 15.1. These are right to life (except in respect of deaths resulting from lawful acts of war), prohibition of torture and other inhuman or degrading treatment or punishment, prohibition of slavery or servitude and prohibition of punishment without law.

Moreover, three of the Additional Protocols to the Convention also contain clauses which prohibit derogation from certain of the rights protected. These are Protocol No. 6 (the abolition of the death penalty in time of peace and limiting the death penalty in time of war), Protocol No. 7 (the *ne bis in idem* principle) and Protocol No. 13 (the complete abolition of the death penalty).

2.3. Procedure of derogation

A State which seeks to derogate its obligations under the ECHR is obligated to notify the Secretary General of the Council of Europe of the measures undertaken, the reasons justifying them and the date on which they cease to apply. In the absence of an official and public notice of derogation, a State cannot apply Article 15 of the ECHR to the measures undertaken, even if the state of emergency objectively existed³¹. In *Greece v. United Kingdom*³², the European Commission on Human Rights stressed that “it was really essential for the satisfactory working of the Convention that the text of measures taken under Article 15 should form part of the information provided by the High Contracting Party concerned”.

The duty to notify of the derogation is crucial for the ECtHR to correctly assess the validity of derogation. The ECtHR reiterated in numerous judgments that it was competent to examine the validity of the derogation declaration of its own motion and especially whether the notice of derogation contained sufficient information about the measures undertaken by the State³³. Moreover, the ECtHR found in *Sakik and Others v. Turkey*³⁴ that it would run counter to the object and purpose of Article 15 of the ECHR if, when assessing the territorial scope of the derogation concerned, it were to extend its effects to territory not explicitly named in the notice of derogation³⁵.

Finally, in compliance with the last sentence of Article 15.3, when the derogation is withdrawn, in any case concerning measures taken after the withdrawal of the derogation,

³¹ Cf. *Cyprus v. Turkey*, Application no. 8007/77, European Commission on Human Rights Report, 1983.

³² *Greece v. United Kingdom*, Application no. 176/56, European Commission on Human Rights Report, 1958 § 81.

³³ *Aksoy v. Turkey*, Application no. 21987/93, Judgment of 18 December 1996, §§ 85–86.

³⁴ *Sakik and Others v. Turkey*, Applications no. 23878/94, 23879/94, 23880/94, 23881/94, 23882/94 and 23883/94 (joined), Judgment of 26 November 1997.

³⁵ See also: *Abdulsamet Yaman v. Turkey*, Application no. 32446/96, Judgment of 2 November 2004; *Yurttas v. Turkey*, Applications no. 25143/94, 27098/95, Judgment of 27 May 2004.

the ECtHR will examine the case on the basis that the relevant articles of the ECHR are fully applicable again³⁶.

3. Measures undertaken during pandemic

The abovementioned regime of derogation under Article 15 of the ECHR was clearly envisioned for situations that can be described as war, armed conflict, uprising, rebellion or any other form of public unrest where the use of force is inevitable. However it is not clear whether any other situation, i.e. non-threatening of the use of force, may be referred as “public emergency threatening the life of the nation” and in particular, whether the global pandemic is such a situation.

The COVID-19 pandemic is undoubtedly one of the deadliest in written history³⁷ and States are scrambling to contain the spread of the virus. Given the relatively unprecedented nature of COVID-19, sometimes conflicting medical evidence guiding government actions and different impacts and rates of infections across different countries, it is hard to blame States for adopting, at times, incoherent responses. Although every State has the sovereign right to regulate the situation on its own territory, the majority of States have decided to adopt similar measures, e.g. impose travel restrictions, borders screening, more or less stringent lockdowns, curfews, prohibition of public gatherings of any kind, cancelling public events, promoting social distance, and – most of all – universal application of sanitary measures (face masks and disinfectants)³⁸.

The aforementioned public health measures may – according to the popular belief – seem ineffective, tedious and burdensome, but – from the legal point of view – may also cause some doubts as to their consistency with human rights. Even a cursory analysis of the ECHR allow us to note that extended lockdowns and curfews may violate Article 5 of the ECHR and Article 2 of the Protocol no. 4; prohibition of assemblies and public gathering of all kinds may contravene stipulations of Article 11 of the ECHR in the first place, but also Article 9 when concerning religious events (e.g. masses or prayers of any religion) or Article 10 of the ECHR in cases, for example, public protests.

These observations might justify the eagerness of some State-parties to derogate from its obligations under the ECHR. However, this kind of action seems a little exaggerated. Article 5 of the ECHR allows for the lawful detention of persons for the prevention of the spreading of infectious diseases and Articles 8 to 11 allow limitations for protection of health and public order even without any emergency. Obviously, these limitations need to be legal, i.e. prescribed by law and necessary in democratic society, i.e. proportionate to the goal they are to achieve. It is universally accepted that, in times of emergency, States

³⁶ *Brogan and Others v. the United Kingdom*, Application no. 11209/84, 11234/84, 11266/84, 11386/85, Judgment of 29 November 1988, § 48.

³⁷ As of 17 November 2021, more than 260 million cases and 5.19 million deaths have been confirmed around the Globe. Data retrieved from WHO, <https://covid19.who.int/info/> (access: 17.11.2021).

³⁸ Apparently, despite of the whole century passing since the Spanish flu outbreak, the public health measures have not changed a lot. See for more: L. Spinney, *Pale rider: the Spanish flu of 1918 and how it changed the world*, London, Vintage, 2018, p. 152.

tend to give new extensive powers to the executive branch, including those of a primarily legislative nature. The implementation of limitations imposed in such a manner, i.e. by executive order instead of parliamentary bill, may rise some questions as to legality of those limitations and in this context declaration of derogation under Article 15 of the ECHR might help to overcome the legality requirement and perhaps loosen the scrutiny in necessity assessment but otherwise the practical impact of derogation might be very limited.

But the question still stands – is the global pandemic a “public emergency threatening the life of the nation”? As remarked above, this is the first time States invoked derogation of its international obligations due to global outbreak of highly contagious disease. It is also the first pandemic of this magnitude in today's, globalized world and the lack of established practice is clearly visible. Nevertheless, nothing in the wording of Article 15 of the ECHR and subsequent jurisprudence of the ECtHR prevents the State-parties to the ECHR from executing their right to derogation. The ECtHR stated on numerous occasions that it is the right of a State to determine whether life of its nation is threatened by a ‘public emergency’³⁹. *Prima facie*, the pandemic is far from being similar to war or other crisis where the use of force is entangled, yet the death toll of COVID-19, together with its economic and social costs seem an important argument for classifying pandemic as public emergency threatening the life of the nation within the meaning of Article 15 of the ECHR. And it is likely that in the near future the ECtHR will be called upon to rule on whether that was a case and whether particular measures and provisions adopted by States in response to COVID-19 were ‘strictly required by the exigencies of the situation’ as laid down under Article 15 of the ECHR⁴⁰.

4. Closing remarks

The extent of measures taken in response to the current COVID-19 threat and the way they are applied considerably vary from one State to another. While some restrictive measures adopted by States may be justified on the ground of the usual provisions of the ECHR relating to the protection of health⁴¹, measures of exceptional nature may require derogations from the States’ obligations under the Convention. It is for each state to assess whether the measures it adopts warrant such a derogation, depending on the nature and extent of restrictions applied to the rights and freedoms protected by the ECHR⁴².

Nevertheless, taking into considerations the permissible limitations under the ECHR, human rights and the ECHR in particular are not the obstacles to effective governmental

³⁹ Cf. *Ireland v. the United Kingdom*, Application no. 5310/71, Judgment of 18 January 1978, § 207.

⁴⁰ See more: S. Molloy, *Covid-19 and Derogations Before the European Court of Human Rights*, VerfBlog, 2020/4/10, <https://verfassungsblog.de/covid-19-and-derogations-before-the-european-court-of-human-rights/>, DOI: 10.17176/20200410-153051-0.

⁴¹ See Article 5 paragraph 1e, paragraph 2 of Articles 8 to 11 of the ECHR and Article 2 paragraph 3 of Protocol No 4 to the ECHR.

⁴² Committee of Ministers of Council of Europe Reply to the Parliamentary Assembly of Council of Europe Recommendation np. 2125 (2018), <https://pace.coe.int/en/files/24680> (access: 15.11.2021).

measures targeting the pandemic⁴³. It seems that the only real danger of addressing the COVID-19 pandemic in the “normal way”, i.e. by limitations prescribed by law, would be that emergency laws may stay with us much longer than the pandemic itself⁴⁴. However, as the case may be, then the ECtHR shall assess if such laws are necessary in democratic, corona-free society.

References

Abdülsamet Yaman v. Turkey, Application no. 32446/96, ECtHR Judgment of 2 November 2004.

Aksoy v. Turkey, Application no. 21987/93, ECtHR Judgment of 18 December 1996.

Alparslan Altan v. Turkey, Application no. 12778/17, ECtHR Judgment of 16 April 2019.

Brannigan and McBride v. the United Kingdom, Applications no. 14553/89 and 14554/89, ECtHR Judgment of 26 May 1993.

Brogan and Others v. the United Kingdom, Application no. 11209/84, 11234/84, 11266/84, 11386/85, ECtHR Judgment of 29 November 1988.

Committee of Ministers of Council of Europe Reply to the Parliamentary Assembly of Council of Europe Recommendation np. 2125 (2018).

Cyprus v. Turkey, Application no. 8007/77, European Commission on Human Rights Report, 1983.

Denmark, Norway, Sweden and the Netherlands v. Greece (the “Greek case”), European Commission on Human Rights Report, 1969.

Dzehtsiarou, K., *COVID-19 and the European Convention on Human Rights*, “The Strasbourg Observers”, 27 March 2020.

Georgia v. Russia (II), Application no. 38263/08, ECtHR Grand Chamber Judgment of 21 January 2021.

Greece v. United Kingdom, Application no. 176/56, “European Commission on Human Rights Report”, 1958 § 81.

Greene, A., *States Should Declare a State of Emergency Using Article 15 ECHR to Confront the Coronavirus Pandemic*, “The Strasbourg Observers”, 1 April 2020.

Hassan v. the United Kingdom, Application no. 29750/09, ECtHR Grand Chamber Judgment of 16 September 2014.

Ireland v. the United Kingdom, Application no. 5310/71, ECtHR Judgment of 18 January 1978.

Lawless v. Ireland (no.3), Application no. 332/57, ECtHR Judgment of 1 July 1961.

⁴³ Cf. K. Dzehtsiarou, *COVID-19 and the European Convention on Human Rights*, The Strasbourg Observers, 27 March 2020, <https://strasbourgobservers.com/2020/03/27/covid-19-and-the-european-convention-on-human-rights/> (access: 5.11.2021).

⁴⁴ See also: A. Greene, *States Should Declare a State of Emergency Using Article 15 ECHR to Confront the Coronavirus Pandemic*, The Strasbourg Observers, 1 April 2020, <https://strasbourgobservers.com/2020/04/01/states-should-declare-a-state-of-emergency-using-article-15-echr-to-confront-the-coronavirus-pandemic/> (access: 5.11.2021).

Marshall v. the United Kingdom, Application no. 41571/98, ECtHR Decision of 10 July 2001.

Mehmet Hasan Altan v. Turkey, Application no. 13237/17, ECtHR Judgment of 10 March 2018.

Molloy S., *Covid-19 and Derogations Before the European Court of Human Rights*, VerfBlog, 2020/4/10, <https://verfassungsblog.de/covid-19-and-derogations-before-the-european-court-of-human-rights/>, DOI: 10.17176/20200410-153051-0.

Şahin Alpay v. Turkey, Application no. 16538/17, ECtHR Judgment of 20 March 2018.

Sakık and Others v. Turkey, Applications no. 23878/94, 23879/94, 23880/94, 23881/94, 23882/94 and 23883/94 (joined), ECtHR Judgment of 26 November 1997.

Spinney, L., *Pale rider: the Spanish flu of 1918 and how it changed the world*, London, Vintage, 2018.

Yurttas v. Turkey, Applications no. 25143/94, 27098/95, ECtHR Judgment of 27 May 2004.