**Fact-sheet #1 - International human rights regime in exceptional timeS**

1. Lawful ordinary restrictions

Many restrictive measures adopted by states during the COVID-19 crisis may be justified on the ground of the usual provisions of international human rights law relating to the protection of health.

It can be a **well-defined limitation**, as for instance in ECHR Article 5 (1) e:

*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.*

Or more **general restrictions** as in many articles of UN and regional human rights treaties, as for instance

* ICCPR Article 18 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
* Freedom of expression, assembly and association (in all HR treaties)
* Right to privacy and right to respect for family life (in all HR treaties)

The following requirements must be met:

1. There must be a **legal basis** for the infringement, and the regulations must be predictable and precise such that it is easy for citizens to understand and comply with them.
2. The infringement must aim at **protecting the interests of society**, for example, the protection of public order and national security, the protection of public health and morals, the rights and freedoms of others, the economic well-being of the country or the prevention of criminal offenses.
3. **The infringement is proportional** to the protection of the interest concerned and a less intrusive measure would not achieve the same effect.

2. Derogation in time of emergency

**ICCPR Article 4**

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

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

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

**Article 15 European Convention on Human Right:**

***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 [right to life], except in respect of deaths resulting from lawful acts of war, or from Articles 3 [prohibition of torture and inhuman or degrading treatment or punishment], 4 (paragraph 1) [prohibition of slavery and servitude] and 7 [no punishment without law] shall be made under this provision.*

***3.*** *Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”*

* This article has been invoked by many European states at different points in time: Turkey, Cyprus, south-East Turkey, Ireland, UK, France (2015-2017), UK etc.)
* During the COVID19 crisis 10 member states of the CoE have make a declaration of derogation under article 15: Albania, Armenia, Estonia, Georgia, Latvia, FYROM, Moldova, Rumania, San-Marino and Serbia

Main points re. derogations:

* Derogation can be assessed by supervisory mechanism (HRC, ECtHR)
* A derogation is also subject to formal requirements
* Certain human rights do not allow for any derogation
* An international derogation is not contingent on the formal adoption of the state of emergency or any similar regime at the national level
* Derogations can never justify any action that goes against the paramount IHRL requirements of lawfulness and proportionality