



INTERNATIONAL WEBINARS AND LIVE EVENTS

Human Rights in the Time of Coronavirus: Does England's Lockdown Violate Human Rights Law? *

7 April 2020, by Strasbourg Observers

* Chaired by **Dr Stuart Wallace** (University of Leeds)

*Main focus: necessity and/or desirability of **derogation under Article 15¹** in the context of the Covid-19 crisis². The panellists discussed whether England's recent Health Protection laws are consistent with the **European Convention on Human Rights (ECHR)**, in the context of the wider discussion on the human rights dimensions of measures taken within the Council of Europe. A key question was whether the member states need to derogate from the Convention to implement these emergency measures. To date, 9 Council's member states have derogated, and 38 have not. It was concluded that derogations should be neither encouraged nor discouraged. A derogation demands a system of accountability that is made to be functional, but the decision to derogate (or not) is up to states.*

Panellists:

Dr Ed Bates (University of Leicester): There is a glaring deficiency in the UK human rights law. The discrepancy between derogations and measures worldwide can be explained by the fact that States are waiting to see what the unfolding picture is, there is a lot of unknown regarding the powers they may need to resort to. Discrimination is always at the heart of all those emergencies. From Northern Ireland to France, it has always shown exactly who was going to be targeted as the threat to the nation.

Dr Natasa Mavronicola (University of Birmingham) Speaking on: Positive obligations in Crisis³, the legality of limitation. We are part of this vigilance on human rights protections, of this assessment of necessity and proportionality, we are part of the response. This pandemic has highlighted extreme inequalities within states and we must remain vigilant as to how those coercive measures will affect those that are already vulnerable. It is a time to think creatively, and to argue as strongly as possible for the protection of human rights at a time when the pandemic forces obligations of protection.

Prof Başak Çalı (Hertie School) There exists no unified framework as for from which treaty you can derogate: some have "derogation regimes", others not. The distinction of proportionality and necessity is important – the ECHR has not made enough of a significant case for a test for both – and that could explain the discrepancy between treaty bodies: their limits are not all the same. Not all derogations are positive and imply that states are taking their obligations seriously.

Prof Kanstantsin Dzehtsiarou (University of Liverpool): Declaring the State of Emergency under Article 15 of ECHR is not necessary. Art 15 is not limited in time. Its real live effects will be limited, but ideological consequences might be considerable. The proportionality analysis is already taking into account what Art 15 provides for, it is not necessary to trigger an Art 15 if there is a human rights concern for de jure emergency. There can be supervision without an Art 15 derogation. Derogation won't protect from a violation, but Art 15 would have more ammunition to limit Art 5.

Dr Alan Greene (University of Birmingham): A state of emergency has a shielding effect. Deference happens with or without an Art 15, and with Art 15 we have jurisprudence. The emergency powers that will be enacted, will far exceed the period of necessity caused by the pandemic: the issue is to identify the end of an emergency. It is a hazard to human rights not to declare a state of emergency, because we normalise what we have to do during exceptional circumstances. Sceptical of the role of the ECHR to stand up to states when it comes to their states of emergency and the powers that they have enacted during Art 15 derogation.

¹ European Convention on Human Rights: https://www.echr.coe.int/Documents/Convention_ENG.pdf

² See on this topic: [COVID-19 Symposium: To Derogate or Not to Derogate?](#) of 6 April 2020

³ More on that: [Positive Obligations in Crisis](#) by Dr Natasa Mavronicola, of 7 April 2020