

# Problems of ensuring IHRL in the context of the introduction of a state of emergency

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## Մարդու իրավունքների միջազգային իրավունքի պաշտպանության խնդիրները արտակարգ դրության պայմաններում

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**Անփոփագիր.** Սույն գիտական հոդվածը նվիրված է ժամանակակից աշխարհում տիրող արտակարգ դրությանը և Մարդու իրավունքների միջազգային իրավունքի պաշտպանությանը տիրող իրավիճակում; Կովիդ-19 համաճարակը գլխիվայր փոխեց բնականոն կյանքը, մարդիկ սկսեցին ապրել մի շարք սահմանափակումների պայմաններում, ինչի հետևանքով աշխարհը կանգնեց նոր իրավանդությունների ստեղծման խնդրի առջև, որոնցով որ կարելի կլիներ կարգավորվել ստեղծված դրությունը: Սույն թեմայի շրջանակներում ուսումնասիրվում է թե ինչ նոր խնդիրներ իր հետ բերեց համաճարակը, ինչ օրենսդրական բացեր ունեին պետությունները արտակարգ դրության պայմաններում մարդու իրավունքների և ազատությունների պաշտպանության հարցում: Սույն թեմայի ընտրության կարևորությունը նշանակությունը պայմանավորված է ներկայացնելու, որ իրավունքը զարգացող օրգանիզմ է, և ժամանակի ընթացքում փոփոխվող աշխարհը թելադրում է նոր իրավահամակարգերի ստեղծում:

**Հիմնաբառեր՝** Մարդու իրավունքների միջազգային իրավունք, Կովիդ-19 համաճարակ, վերարտադրողական իրավունք, հիմնարար ազատություններ

## Проблемы обеспечения МППЧ в условиях введения чрезвычайного положения

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**Аннотация.** Данная научная статья посвящена чрезвычайному положению в современном мире защите международного права прав человека в сложившейся ситуации. Эпидемия Covid-19 перевернула нормальную жизнь с ног на голову, люди стали жить в условиях ряда ограничений, в результате чего мир столкнулся с проблемой создания новых законов, которые могли бы регулировать сложившуюся ситуацию. В данной теме исследуется, какие новые проблемы принесла эпидемия, какие законодательные пробелы имели государства в защите прав и свобод человека во время чрезвычайного положения. Важность выбора этой темы обусловлена тем, что право – это развивающийся организм, с течением времени меняющийся мир, диктует создание новых правовых систем.

**Ключевые слова:** международное право прав человека, эпидемия Covid-19, репродуктивное право, основные свободы.

In many European countries, in other parts of the world, the development of the rule of law was declining even before the coronavirus epidemic. Human rights and their importance are openly challenged, and the principle of the rule of law is interpreted with an emphasis on national characteristics. A number of European countries have weakened the basic structures and legislation of the rule of law.

The independence of the courts has been weakened, and the conditions of human rights organizations and civil society have been reduced or their activities have been completely prevented.

Deliberately misleading information spreads faster and easier than ever before, especially on social media. They also share misleading information about the coronavirus epidemic, which aims to undermine the trust of the authorities and political actors.

This leads to inconsistencies in national strategies. Italy or France have imposed strict sanctions to limit the spread of the virus. Denmark, with its smaller population and lower incidence rates, was able to adopt a milder version of social detention after premature closure of its borders. None of these countries currently conducts mass

testing as in Germany, but the mortality rate is lower than in other European countries.

The prevailing period of emergency in the world also calls into question the protection of fundamental rights and the protection of human rights and freedoms in the current state of emergency becomes a priority.

According to the ECHR, deviation from fundamental human rights is allowed *"in conditions of war or other state of emergency, when there is a threat to the life of the nation"*. Earlier legal documents did not usually refer to "war" but contained a similar reference to public emergencies [1].

The 27 EU member states, along with 20 other European countries, are members of the Council of Europe based on the European Convention on Human Rights (ECHR) [2]. The European Court of Human Rights has described this founding text as an "instrument of European public order". The Convention contains a list of rights, most of which may be restricted for valid purposes, including public health. Provided they are "necessary in a democratic society", these restrictions are acceptable in normal times [3]. In those particular circumstances, the Convention has a special provision which allows for the unilateral derogation of contractual rights. Article 15 allows States to "take measures in the event of war or other public emergencies which threaten the life of the nation [...] which deviate from its obligations". Article 4 (1) of the International Covenant on Civil and Political Rights (ICCPR), Article 27 (1) of the American Convention on Human Rights (ACHR) or Article 4 of the Arab Charter of Human Rights. It is noteworthy that the African Charter does not contain any provision on deviations; the African Commission has concluded that no deviation is possible. Pursuant to Article 15 3 3 of the ECHR, Latvia, Romania, Armenia, Estonia, Moldova, Georgia, Albania, Northern Macedonia, Serbia and San Marino have notified the Secretary General of the Council: that they were referring to this provision to counter the ongoing epidemics. Pursuant to Article 27 A 3 of the ACHR, Guatemala, Peru, Ecuador, Colombia, Bolivia, Panama, Chile, Honduras, Argentina, and El Salvador have notified the Dominican Republic to the Secretary-General of the Organization of American States (OAS). on a state of emergency by notifying other States of the special regulations they have adopted [4]. Several countries have updated their notifications to the Council of Europe OAS.

State obligations under international human rights law are mainly divided into obligations to respect, protect and "implement" human rights. This

classification is still compatible with the difference between positive liabilities and negative liabilities for all rights. According to the European Court of Human Rights, the Convention *"is intended to guarantee practical - effective rights, not theoretical or illusory ones"*.

In a public health emergency, as usual, human rights protection may require special measures that make the basic rights of vulnerable people as effective as the rest of the population. Ignoring these special needs in the context of Article 15 may raise questions of proportionality [5, at 93]. In its decision of 10 April 2020, the Inter-American Commission on Human Rights called on States to take into account *"special effects their limitations or suspensions"*. may affect the most vulnerable groups to ensure that the impact is not disproportionate and take any action that may be necessary.

An example of a special restriction is the restriction on women's reproductive rights. Women have access to contraceptives, as well as legal abortions. As the crisis calls for the reorganization of hospitals to fight the epidemic, it is necessary to postpone the term of abortion. Poland, for example, uses the blockade to discuss abortion in case of fetal abnormalities.

If health protection falls within the notion of "privacy" (Article 8), the European Court of Human Rights is usually reluctant to interfere in the management of scarce health resources by states. For example, in the case of *Pentyakovka Others v. Moldova*, where patients complained about the lack of free access to dialysis, the Court noted that *"the applicants' claim is equivalent to the state funding requirement, which, given its limited resources, should not be diverted to other tax-financed funds"*. *"While it is obviously desirable for everyone to have access to the full range of medical treatment, including life-saving medical procedures, medicines, the lack of resources means that, unfortunately, there are many people in the Contracting States who will not be able to use it, especially in permanent and expensive treatment"* [6]. This pragmatic approach will certainly apply to the use of women's reproductive services in emergencies, with some justifications. However, the public health crisis cannot be used as a pretext to legitimize unnecessary violations of women's rights.

The human rights courts will certainly be overburdened with applications following the COVID-19 crisis. If states have some discretion in deciding a state of emergency, the international human rights courts will consider the need for measures to address it, using the principle of proportionality. States should pay special attention to vulnerable groups of the population. In their

study, international courts will rely on different indicators to determine whether they could have achieved the same results through more lenient measures at the time of their adoption. The duration of those events will be considered. In some cases, applicants may allege a violation of the prohibition on torture, inhuman or degrading treatment or punishment, especially in the context of detention. In addition to this global emergency management, this prevailing crisis underscores the fragility of the healthcare sector, prompting governments to reconsider their investment plans in the healthcare sector.

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