

Derogations by States Parties from Article 21 ICCPR and Article 11 ECHR on the Basis of the COVID-19 Pandemic

(Information believed correct as of 23 March 2020)

On 9 March 2020, Guatemala became the first state to seek formally to derogate from Article 21 ICCPR (as well as Article 12 on freedom of movement) on the basis of the COVID-19 pandemic. Guatemala's derogation lasts for 30 days. A week later, on 16 March 2020, Latvia formally derogated from Article 21 ICCPR (as well as Article 12 on freedom of movement and Article 17 on freedom from interference in privacy and family life) on the basis of the COVID-19 pandemic. In its notification, Latvia stated that the emergency situation began on 13 March 2020, and will remain in force until 14 April 2020. Among the measures adopted by the Government of Latvia, all public events, meetings and gatherings have been cancelled and prohibited. (Latvia has made a similar declaration of derogation with respect to the 1950 European Convention on Human Rights.)

The Human Rights Committee has previously stated in its General Comment 29 on Article 4 that states of emergency must be limited to the extent strictly required by the exigencies of the situation, "relating to the duration, geographical coverage and material scope, and any measures of derogation resorted to because of the emergency".¹ But given the extent of prohibitions on assemblies, some of which are nationwide, the possibility of imposing restrictions on the right to freedom of assembly does not appear sufficient given the extent of the global public health crisis.

On 17 March 2020, Romania also derogated under the 1950 European Convention on Human Rights. It declared a national 30-day state of emergency as a result of COVID-19. The decree determined that the exercise of the right to freedom of assembly (and other derogable rights) is restricted, "proportionally" with the degree of spread of the virus. Romania has not, as of yet, derogated from its obligations under the ICCPR.

On 19 March 2020, Armenia informed the Council of Europe that it had declared a state of emergency across the country's whole territory from 16 March 2020, 18:30, to 14 April 2020, 17:00. The state of emergency included restrictions and prohibitions on assemblies and public events, which in fact comprised a prohibition on organising and holding assemblies and strikes as well as participating therein.

Also on 19 March 2020, the Council of Europe received a note verbale from Moldova, dated the previous day, by which it informed the Council about the decision of the Parliament of the Republic of Moldova to declare a state of emergency on 17 March 2020 as a critical measure to stop the spread of COVID-19. The state of emergency has been instituted for a period of 60 days, from 17 March to 15 May 2020 throughout the territory of Moldova. The state of emergency included a prohibition on public meetings and gatherings and other mass events.

On 20 March 2020, Estonia informed the Council of Europe that it had decreed a national state of emergency until 1 May 2020. Under subsection 32 (1) of the Emergency Act, from 13 March to 1 May 2020 all public gatherings are prohibited. On 21 March 2020, the President of Georgia declared

¹ Human Rights Committee, "General Comment No. 29: States of Emergency (Article 4)", UN doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 4.

a state of emergency throughout Georgia, a decision that was approved by the Georgian Parliament the same day. The current epidemic situation in Georgia, the authorities informed the Council of Europe, “has reached the point of public emergency threatening the life of the nation under Article 15(1) of the Convention necessitating further and now exceptional measures to ensure safety and protection of public health”. Presidential Decree N1 of 21 March 2020 restricted certain fundamental human rights and freedoms enshrined in the Constitution of Georgia leading to, among others, “restrictions of assembly, manifestation and gathering”. Accordingly, Georgia derogated from the rights of liberty and security, to family life, and the right of peaceful assembly under the ECHR.

Other states have taken similar measures but have not sought to derogate from the right of peaceful assembly. In early January 2020, China notified the World Health Organization about the outbreak of COVID-19 and by the end of the month China was taking exceptional measures to contain the spread of the virus, which included the sealing off of entire cities and prohibitions on going outdoors. Italy, which has now seen a higher number of deaths from COVID-19 than China, prohibited by law all gatherings of people from 11 March 2020 across the entire country. Violations of the law are a criminal offence. Similar provisions are in place in France, which has ordered people to stay at home unless they have one of a limited series of grounds to be outside. On 14 March 2020, Spain also declared a state of emergency, imposing strict limitations on movement with exceptions for primary needs or professional requirements.