

IN OUR WORLD



COUNCIL OF EUROPE BALANCES FREEDOM AND CONFINEMENT AS COVID-19 PANDEMIC RAGES

By Helen Gavaghan

Many freedoms now being curbed by European nations are protected by the European Convention on Human Right (ECHR). Derogation from some aspects of the ECHR are allowed in public emergencies, if the action is proportionate to the threat. The test is whether the European Court of Human Right, part of the Council of Europe, would uphold an action, given the known threat.

Seeing its 47 Member States thus caught between a rock and a hard place the Council of Europe earlier this week published guidance entitled, "Respecting democracy, rule of law and human rights in the framework of the covid-19 sanitary crisis". The document is blunt. It admits the virus is destroying lives and much of what is dear to people.

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April 9 is the correct date. Inexplicably for a short time the date above was incorrect.

Measures taken by Member States which contravene any part of the ECHR must be notified to the secretary general of the Council of Europe and have basis in national law, such as the UK's Coronavirus Act. See:

<http://www.legislation.gov.uk/ukgpa/2020/7/contents/emacted>*

There is no requirement to declare a state of emergency, but members of the Council of Europe must tell the secretary general why they are acting as they are.

Certain elements of the ECHR cannot be ignored by members, even in a public emergency. For example, there can be no derogation from abolition of the death penalty, nor from the right not to be tried or punished twice. Prohibition of torture, inhuman and degrading behaviour, slavery, servitude and punishment without law cannot be contravened. The right to life must be maintained.

During a crisis, such as the Covid-19 pandemic now gripping nations, the ECHR binds its member states to the rule of law. Admitting that governments may take emergency powers, the Council of Europe's newly released guidance says those powers must be for a limited time and that Parliament must be responsible for prolongation of emergency measures.

Equally important is that the scope of powers adopted by the executive is as limited as possible in the circumstances, and that they are curtailed by parliament as soon as possible. Fundamental legal reforms should be put on hold and any power transferred to the executive from regional or local government should be restored as soon as possible. Throughout the crisis member states have an obligation, says the guidance document, to ensure adequate medical care to people deprived of freedom, and an obligation to protect people in State care from deadly diseases.

*Unless [legislation.gov.uk](http://www.legislation.gov.uk) has had chance to make a correction the url in the text is correct, and the final word is emacted rather than enacted, which would have been the intended word.

The Council of Europe is separate from the European Union. One of the Council's institutional bodies is the European Court of Human Rights, which hears cases in relationship to the European Convention on Human Rights. The ECHR is a separate document from the more recent Charter of Fundamental Rights adopted by the European Union.

The CoE guidance document published on Tuesday this week has the reference designation of SG/Inf (2020) 11. It can be found at the following URL.

<https://zm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>

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