

Written evidence from Boriss Cilevičs, Chairperson, Committee on Legal Affairs and Human Rights, Parliamentary Assembly of the Council of Europe (COV0005)

The present submission is intended to respond in particular to the first question asked in the call for evidence: “What steps need to be taken in order to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?”

Europe as a whole, including the United Kingdom (UK), is currently confronted by a global public health emergency that is unprecedented in living memory. This emergency is of such scope and gravity that it will require exceptional measures in response, affecting many areas of public and private life. As a member State of the Council of Europe and party to the European Convention on Human Rights (ECHR), the UK government should ensure that all measures taken are consistent with the country’s obligations under international human rights law.

As the Parliamentary Assembly of the Council of Europe recalled in its Resolution 2209 (2018), “The Convention is adaptable to any and all circumstances, continuing to regulate the State’s actions even in the event of a national crisis... In no circumstances, however, does it allow national authorities to act without constraint... Fundamental safeguards of the rule of law, in particular legality, effective parliamentary oversight, independent judicial control and effective domestic remedies, must be maintained even during a state of emergency. Due democratic process, including separation of powers, as well as political pluralism and the independence of civil society and the media must also continue to be respected and protected.”

On this basis, the Assembly recommended that all States parties to the ECHR, “should a state of emergency be declared, constantly review the necessity of maintaining it and any measures taken under it, with, at the expiration of every period, a presumption against extending the state of emergency or, if it is extended, in favour of repealing it or, if not repealed, further limiting the scope of measures taken under it”. It also called on them to “ensure that the normal checks and balances of a pluralistic democracy governed by the rule of law continue to operate to the maximum extent possible, respecting democratic process and the authority of parliament and local authorities, the independence of the judiciary and national human rights structures, and the freedoms of association and expression, especially of civil society and the media.”

As regards the extent to which normal human rights protection may be adapted in response to an emergency situation, “the overarching principle of proportionality limits the action that may be taken, via the stringent test of what is ‘strictly required by the exigencies of the situation’... Emergency powers may be exercised only for the purposes for which they were granted. The duration of emergency measures and their effects may not exceed that of the state of emergency.”

A copy of the full text of Resolution 2209 can be found here:
<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24680&lang=en>

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