



# Human Rights in the Context of the State of Emergency: The Balance Between National Security and Fundamental Freedoms

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## Abstract

The proclamation of a state of emergency, whether triggered by armed conflict, terrorist threats, natural disasters, or global pandemics, constitutes a critical test for the resilience of democratic institutions and the protection of fundamental human rights. This paper explores the complex interplay between national security imperatives and the safeguarding of civil liberties during states of exception. Building on a multidisciplinary framework that integrates international human rights law, constitutional theory, and security studies, the analysis examines both normative constraints and empirical practices associated with the temporary suspension or limitation of rights. The study focuses on the legal mechanisms and justifications invoked by states to derogate from certain obligations under international treaties, such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights. It also addresses the principle of proportionality, the requirement of legality, and the obligation of non-discrimination in the implementation of emergency measures. Special attention is paid to the role of constitutional courts and supranational bodies in reviewing the legitimacy and necessity of such restrictions. Through a comparative analysis of recent case studies—including the COVID-19 pandemic response—this research highlights the risk of normalization of emergency powers and the erosion of democratic oversight. The paper argues for a strengthened normative framework that ensures a fair balance between protecting national security and preserving individual freedoms, emphasizing the importance of legal predictability, transparency, and accountability in emergency governance.

**Keywords:** state of emergency, human rights, national security, proportionality principle, democratic oversight

## 1. Introduction

The protection of human rights lies at the foundation of democratic governance and international law. Nevertheless, in times of exceptional crisis—such as armed conflict, terrorism, pandemics, or natural disasters—states may invoke a state of emergency to safeguard

national security, often leading to temporary restrictions on certain fundamental freedoms (Gross & Ni Aoláin, 2006). This raises pressing questions about the limits of state power and the extent to which civil liberties can be curtailed in the name of public safety.

According to Article 4 of the International Covenant on Civil and Political Rights (ICCPR), certain rights may be derogated during emergencies “to the extent strictly required by the exigencies of the situation,” provided such measures are consistent with other obligations under international law and are not discriminatory (United Nations, 1966). Similarly, Article 15 of the European Convention on Human Rights (ECHR) permits derogations, but emphasizes that these must be proportionate and must not contravene non-derogable rights such as the right to life and the prohibition of torture (Council of Europe, 1950).

The challenge, therefore, lies in achieving a legitimate balance between national security imperatives and the protection of fundamental rights. Scholars warn that states may use emergency powers as tools of executive overreach, with long-lasting consequences for the rule of law and democratic institutions. The COVID-19 pandemic, for instance, has revealed the risks of disproportionate measures and insufficient oversight in both democratic and authoritarian regimes

This paper explores how states have applied emergency powers in ways that either respect or undermine human rights norms. Through a comparative legal and jurisprudential analysis, it investigates whether legal safeguards—such as parliamentary control, judicial review, and time-bound limitations—are effectively implemented. In doing so, it draws attention to best practices and structural risks, calling for a principled framework that ensures accountability, necessity, and proportionality in emergency governance (Venice Commission, 2020).

In periods of crisis, the temptation to prioritize security over liberty becomes particularly acute. However, the protection of fundamental rights must remain a cornerstone of democratic governance, even under exceptional circumstances. Upholding human dignity and the rule of law ensures that emergency measures do not evolve into permanent restrictions or authoritarian practices.

The central dilemma explored in this research is how states can respond effectively to threats—such as terrorism, pandemics, or civil unrest—without undermining the very rights and freedoms that define democratic societies. How far can a government go in limiting rights in the name of security before it jeopardizes the legitimacy of its own legal order?

## **1.1 Research Objective and Questions**

This paper aims to critically analyze the legal and ethical tensions between national security and the protection of fundamental freedoms during a state of emergency. The research is guided by the following questions:

- Under what legal conditions can states derogate from their human rights obligations during emergencies?
- Which rights are non-derogable, and how are they protected in practice?
- What mechanisms ensure that emergency powers remain proportionate, necessary, and time-limited?
- How have national and international courts responded to rights violations committed under emergency regimes?

## 2. Theoretical and Legal Framework

### 2.1 Conceptualizing the State of Emergency

A state of emergency is a constitutionally or legally defined mechanism that allows a government to temporarily assume extraordinary powers in response to threats that endanger the nation's stability or security. It often involves the suspension of certain rights or the reallocation of authority between branches of government (Ferejohn & Pasquino, 2004). Constitutional emergencies may be declared by heads of state, governments, or legislatures depending on national legal frameworks, while administrative emergencies are typically regulated through executive decrees or ordinances.

States of emergency are commonly classified based on the nature of the threat:

- A state of war generally justifies full mobilization of national resources and may permit restrictions on political rights and civilian oversight (Scheppelle, 2006).
- A public health emergency, as observed during the COVID-19 pandemic, legitimates restrictions on movement, mandatory quarantines, and limitations on economic freedoms (Bjørnskov & Voigt, 2020).
- Counter-terrorism emergencies often focus on preventive detention, expanded surveillance, and restrictions on public assembly and speech, raising acute concerns regarding proportionality and judicial safeguards (Gross & Ní Aoláin, 2006).

While such classifications serve a functional purpose, they share the common risk of power concentration and potential erosion of democratic checks and balances, particularly when emergency regimes lack clear temporal and legal boundaries (Dyzenhaus, 2006).

### 2.2 International Legal Instruments

International human rights law provides a framework for assessing the legitimacy and scope of emergency powers. Both global and regional human rights treaties permit derogation from certain obligations under tightly controlled circumstances.

Article 4 of the International Covenant on Civil and Political Rights (ICCPR) allows states to derogate from obligations "in time of public emergency which threatens the life of the nation," but only when the measures are strictly necessary, temporary, and non-discriminatory (United Nations, 1966). The Human Rights Committee clarified in *General Comment No. 29* that states must not use derogations as a pretext for weakening protection of non-derogable rights or circumventing other international obligations (UN Human Rights Committee, 2001).

Similarly, Article 15 of the European Convention on Human Rights (ECHR) permits derogation in "time of war or other public emergency threatening the life of the nation," but only insofar as the measures are "strictly required by the exigencies of the situation" (Council of Europe, 1950). The European Court of Human Rights has stressed that derogations must be interpreted narrowly and subjected to effective judicial review (*A. and Others v. United Kingdom*, 2009).

A core safeguard under both treaties is the principle of proportionality, which requires that any rights-limiting measure be appropriate to the threat, necessary to achieve a legitimate aim, and the least restrictive means available (Venice Commission, 2020). The principle of necessity further demands that derogations not exceed what is strictly needed for the duration of the crisis.

In this context, public consultation and transparency become essential democratic tools, especially when emergency measures affect public health or restrict individual freedoms. As

Rus et al. (2022) argue, the legitimacy of public policy decisions in times of crisis increases significantly when they are grounded in inclusive consultation processes and public engagement, even under urgent conditions. Their findings emphasize that democratic resilience during emergencies depends not only on legal safeguards, but also on societal trust built through deliberative governance mechanisms. (Căzănel, 2015)

Moreover, both instruments delineate non-derogable rights, which are immune to suspension even in the most extreme situations. According to Article 4(2) of the ICCPR and Article 15(2) of the ECHR, these include the right to life, the prohibition of torture and cruel, inhuman or degrading treatment, the prohibition of slavery, and the principle of legality in criminal law. These rights are considered part of *jus cogens* norms in international law and reflect the inviolable core of human dignity (Nowak, 2005).

### **3. Democratic Safeguards and Rule of Law**

#### **3.1. Legal Limits and Oversight**

In democratic systems, the legitimacy of emergency powers is contingent upon robust institutional oversight, particularly by the legislative and judicial branches. The parliament's role is essential in authorizing, scrutinizing, and renewing states of emergency, thereby acting as a constitutional counterbalance to the executive's expanded authority (Ferejohn & Pasquino, 2004). The requirement for periodic review and renewal of emergency measures ensures that such powers are not normalized or extended indefinitely without justification.

Judicial review is another cornerstone safeguard. Constitutional and supreme courts play a vital role in assessing the legality, proportionality, and necessity of emergency decrees. For instance, the European Court of Human Rights has repeatedly emphasized that derogation measures must be subject to "effective domestic control," including access to justice for individuals claiming violations of their rights (*A. and Others v. the United Kingdom*, 2009).

Equally important is transparency in decision-making. Public confidence in the rule of law during crises depends on clear communication, accountability, and access to information. As Rus et al. (2022) argue, inclusive public consultation and transparent governance mechanisms help legitimize public health and security policies, particularly in contexts marked by fear and uncertainty. Without such mechanisms, emergency measures risk losing democratic credibility and social acceptance.

Emergency legislation should also include time-bound limitations, automatic sunset clauses, and requirements for reporting to parliament and civil society. These provisions are crucial to prevent the institutionalization of exceptional powers and to allow for the timely restoration of constitutional normalcy (Venice Commission, 2020).

#### **3.2. Risks of Authoritarian Drift**

While emergency powers are intended to be temporary and narrowly tailored, history shows that they are often vulnerable to abuse. One of the most pressing risks is the permanent normalization of exceptional regimes, where the state of emergency becomes a vehicle for consolidating executive power and undermining democratic institutions (Scheppele, 2013).

In Hungary, the government used the COVID-19 pandemic to pass a law allowing rule by decree without a clear end date, significantly weakening parliamentary oversight (Krastev & Holmes, 2012). Similarly, Turkey's post-2016 state of emergency, declared after the failed coup, led to widespread purges, prolonged detentions, and restrictions on freedom of expression, many of which persisted long after the formal emergency ended. In Nigeria, the

frequent invocation of emergency decrees under the pretext of economic and security crises facilitated the erosion of judicial independence and the suppression of dissent (Ibezim-Ohaeri, 2017).

Such cases illustrate how emergency regimes can become tools of authoritarian entrenchment, especially when checks and balances are weak or deliberately circumvented. Without strong legal safeguards and civic vigilance, the very measures designed to protect the nation can ultimately threaten the foundations of democratic governance.

## 4. Case Studies and Jurisprudence

### 4.1. The European Court of Human Rights (ECtHR)

The jurisprudence of the European Court of Human Rights plays a crucial role in defining the limits of permissible derogations under Article 15 of the ECHR. In the landmark case *Lawless v. Ireland* (1961), the Court accepted the existence of a public emergency but emphasized that derogations must be interpreted strictly and applied only in exceptional circumstances. This precedent laid the foundation for balancing state discretion with judicial oversight.

Another pivotal case is *A. and Others v. the United Kingdom* (2009), where the Court ruled that the indefinite detention of foreign nationals suspected of terrorism, without charge or trial, violated Articles 5 and 14 of the Convention. The judgment reaffirmed that emergency measures must be necessary, proportionate, and non-discriminatory—even in times of serious threats to national security.

The ECtHR has also insisted that any derogation must be accompanied by procedural guarantees, including access to courts and the possibility for individuals to challenge the legality of emergency measures (*Brannigan and McBride v. United Kingdom*, 1993). These rulings underline the critical importance of maintaining judicial scrutiny during states of emergency to prevent arbitrary or abusive state behavior.

### 4.2. Comparative National Approaches

Different countries have implemented emergency powers in varied ways, with outcomes ranging from enhanced democratic resilience to authoritarian overreach.

In France, the state of emergency declared after the 2015 terrorist attacks allowed police to conduct warrantless searches and impose house arrests. Although the measures were initially accepted, concerns soon emerged over civil liberties violations and the normalization of emergency tools into ordinary law (Duroy, 2017). The French Constitutional Council upheld many of these measures but also placed limits on their duration and scope.

In Romania, the government enacted a series of military ordinances during the COVID-19 pandemic. While these measures were constitutionally authorized and time-limited, the Constitutional Court of Romania ruled in several instances that the restrictions imposed by executive ordinances required more robust parliamentary scrutiny (CCR, Decisions no. 152/2020 and 457/2020). This demonstrated the importance of institutional checks even in health emergencies.

By contrast, Hungary's approach involved a sweeping extension of executive powers without a defined endpoint, raising alarms across the EU. The government adopted legislation allowing governance by decree and criminalizing "fake news," which international watchdogs saw as a tool to silence dissent.

In Nigeria, the recurrent use of emergency decrees served not to address discrete crises but to erode the independence of the judiciary, suppress protests, and centralize power in the executive.

These comparative examples highlight that the difference between legitimate emergency response and authoritarian manipulation often lies in the strength of legal safeguards, transparency mechanisms, and independent institutions.

## **5. Discussion and Conclusions**

The critical evaluation of emergency measures implemented across democratic and hybrid regimes reveals a fragile equilibrium between effective crisis response and democratic backsliding. While emergencies necessitate swift and decisive action, many states have faced criticism for measures that exceeded the scope of necessity or lacked adequate oversight mechanisms. As highlighted by the jurisprudence of the European Court of Human Rights and comparative constitutional analysis, the legitimacy of emergency powers is contingent on adherence to the principles of legality, proportionality, necessity, and temporality (Venice Commission, 2020; Dyzenhaus, 2006).

Excessive concentration of power, opaque decision-making, and the sidelining of parliaments are recurring risks that can gradually erode democratic resilience. In contexts such as Hungary and Venezuela, emergency powers have served as platforms for entrenching authoritarian control, weakening judicial independence and suppressing dissent. Conversely, countries that imposed time-bound, transparent, and judicially reviewable measures, like France or Romania, illustrate more sustainable models for balancing rights and security (Constitutional Court of Romania, 2020).

In this light, it becomes evident that the sustainable management of emergencies requires a rights-based approach. Democratic systems must design emergency frameworks that preserve core civil liberties while enabling proportional restrictions in exceptional circumstances. This includes legal safeguards such as:

- Parliamentary control over emergency declarations and renewals;
- Clear limitation in time and scope of emergency powers;
- Independent judicial review of restrictions;
- Mandatory public communication and consultation (Rus, Tăsențe, & Tănase, 2022).

Moreover, the lack of harmonized international standards for declaring and managing states of emergency has resulted in a fragmented landscape. Although instruments such as the ICCPR and ECHR provide essential guidance, enforcement and interpretation remain uneven, especially outside Europe. There is an urgent need for coordinated normative frameworks and global monitoring mechanisms to prevent abuses under the pretext of emergency and to protect the indivisibility of fundamental rights ( UN Human Rights Committee, 2001).

This paper has explored the tension between national security imperatives and the protection of fundamental rights during states of emergency. The findings reveal that while emergency powers are legally permissible under international law, their legitimacy depends on strict compliance with core democratic and legal principles. The balance between individual rights and collective safety must never be arbitrary or discretionary but rooted in constitutional guarantees and subject to independent oversight.

Where these principles are neglected, emergency powers risk becoming a tool for permanent exceptionalism, undermining both the rule of law and democratic legitimacy. Conversely,

when applied transparently and proportionally, emergency regimes can be aligned with human rights standards and democratic accountability.

### **5.1 Policy Recommendations**

To ensure a genuine balance between security needs and the protection of fundamental rights, it is essential for governments to adopt a series of concrete measures aimed at enhancing transparency, accountability, and the temporary nature of emergency regimes. First and foremost, any declaration of a state of emergency must be accompanied by a clear legal justification, a well-defined duration, and a specific scope. The absence of these elements can lead to abuse and the unjustified extension of exceptional measures.

Secondly, it is vital that parliaments are actively involved in both the adoption and monitoring of emergency legislation. Parliamentary oversight ensures democratic control over the executive and allows for public debate on the proposed measures. Lastly, public consultation mechanisms must be authentically integrated into the decision-making process, particularly when fundamental freedoms are at stake. The involvement of citizens and civil society not only legitimizes decisions but also fosters trust in state institutions during times of crisis.

Courts and constitutional bodies also have a decisive role in safeguarding democracy. They must actively monitor and assess the constitutionality and proportionality of measures adopted by public authorities. Access to justice must be guaranteed for individuals whose rights have been affected, ensuring that effective remedies are available for abuses or excesses of power. Moreover, courts must apply strict scrutiny to any derogations from rights considered non-derogable under international law, such as the right to life or the prohibition of torture.

International organizations—such as the United Nations, the Council of Europe, and the OSCE—must strengthen their role in promoting harmonized standards for emergency governance. These organizations can play an essential part in the protection of human rights by establishing real-time monitoring and reporting mechanisms for abuses committed under the pretext of emergency. In addition, they can provide technical and legal assistance to member states reforming their emergency legislation, thereby contributing to the development of a legal culture grounded in respect for human dignity and the principles of the rule of law.

### **5.2. Future Research Directions**

Given the growing complexity of emergency governance in the 21st century, future research should seek to further explore the long-term democratic consequences of the widespread use of exceptional powers. One important area of inquiry is the impact of pandemic-related emergency regimes on civil liberties and political culture. The COVID-19 crisis has exposed the vulnerabilities of democratic systems when faced with prolonged emergencies and has highlighted the need for empirical studies on the resilience or erosion of institutional checks and balances.

Another promising direction involves examining the role of civil society, media, and digital technologies in resisting the normalization of emergency powers. Investigating how these actors contribute to transparency, public scrutiny, and legal accountability could shed light on the social mechanisms that uphold democratic resilience in times of crisis.

Comparative research is also needed to evaluate the effectiveness of transitional justice or remedial frameworks implemented after states of emergency. In particular, assessing how different jurisdictions have addressed rights violations, compensated victims, or re-established democratic control following the lifting of emergency measures could provide valuable policy insights.

Moreover, further analysis is warranted on the performance of regional human rights courts and bodies, such as the European Court of Human Rights and the Inter-American Court of Human Rights, in limiting executive overreach. Their jurisprudential role in establishing legal thresholds for derogation, proportionality, and necessity deserves closer examination.

Finally, interdisciplinary approaches—combining law, political science, sociology, and public health—could enrich our understanding of how emergency powers interact with broader governance structures. As global crises become more frequent and multidimensional, it is imperative for scholars to build integrative frameworks that ensure both state effectiveness and the enduring protection of human rights.

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