

International Supervising Bodies: An Overview

Prepared by L. Kather / State: 8 April 2014

1. The African Charter (AC)

The African Charter on Human and Peoples Rights **does not regulate states of emergency, nor does it contain derogation provision.** The Charter envisages provisions, which permit the limitation of almost all the rights under certain conditions:

“ The African Charter does not contain a derogation clause. Therefore the limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies and special circumstances. The only legitimate reasons for limitations to the right and freedoms of the Charter are found in Article 27 (2). ”¹

2. The Association of Southeast Asian Nations (ASEAN)

The Association of Southeast Asian Nations **does allow derogations.** For example, wide discretionary powers or reservations under the concern for national security are given to the ASEAN countries by their own laws.²

3. The European Convention on Human Rights (ECHR)

The ECHR does allow derogations under Article 15.

Paragraph (3) of the same Article provides for the **Secretary General** to be informed of the beginning and end of state of emergency measures taken and reasons thereof.³

The European Court of Human Rights (ECtHR) has assumed its authority to review questions of emergency in individual and inter-State application with the first Cyprus case (Greece v. United Kingdom), Lawless v. Ireland and reaffirmed in Brannigan and McBride v. UK and Sakik et al. v. Turkey.

The European Court of Human Rights (ECtHR) in Lawless v. Ireland, qualified the time of public emergency as *‘an exceptional situation of crisis or emergency which afflicts the whole population and constitutes a threat to the organised life of the*

¹ Media Rights Agenda and Others v. Nigeria, African Commission on Human and Peoples' Rights, Comm. Nos. 105/93, 128/94, 130/94 and 152/96 (1998), para. 68-69.

² Report from Nanyang Technological University, The ASEAN Human Rights Declarations: Establishing a common framework, 3 July 2012, available at: <http://reliefweb.int/report/world/asean-human-rights-declaration-establishing-common-framework>

³ European Convention on Human Rights, Article 15 (3), available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf

community of which the community is composed'.⁴ This definition was further developed in the Greek case, in which the European Commission on Human Rights pronounced that 'public emergency' 1) must be actual or imminent, 2) the effects of emergency must involve the whole nation, 3) the continuance of the organised life of the community must be threatened and 4) the crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by Convention for the maintenance of public safety, health and order, are plainly inadequate.⁵ The recent judgement on *A and others v. UK* by the ECHR has further defined the criteria set by its previous pronouncements. First, the European Court of Human Rights agreed that the 9/11 attacks and the threat of international terrorism were an emergency threatening the life of the nation within the meaning of Article 15 of the ECHR.⁶

4. The American Convention on Human Rights (ACHR)

The ACHR does allow derogations under Article 27.

Paragraph (3) provides for the obligation to report any derogation on the ground of state of emergency to the **Secretary General of the Organization of American States** "of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension."⁷

5. Organization for Security and Co-operation in Europe (OSCE)

OSCE participating States have committed themselves to informing the **OSCE Secretariat** of any decision to declare or lift a state of emergency.⁸

With respect to this, the 1992 Concluding Document of Helsinki tasks the OSCE Office for Democratic Institutions and Human Rights (ODIHR) with acting as a "clearing house" for information regarding states of emergency.⁹

Thomas.Rymer@odhr.pl

⁴ ECtHR, *Lawless v Ireland* (No 3) (1961) 1 EHRR 15, para. 31

⁵ These criteria are recognized as general legal standards by the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1985) 7(1) Human Rights Quarterly 3 and the Paris Minimum Standards of Human Rights Norms in a State of (1985) 79 AJIL 1072.

⁶ See also Derogation from human rights treaties in situations of emergency, Geneva Academy of international humanitarian law and human rights, available at: http://www.geneva-academy.ch/RULAC/derogation_from_human_rights_treaties_in_situations_of_emergency.php

⁷ American Convention on Human Rights, Article 27 (2), available at:

http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm

⁸ 1991 Moscow Meeting of the Conference on the Human Dimension, para. 28.10, see

<http://www.osce.org/odihr/43668>

⁹ 1992 Helsinki Document, para. 5 (b)

6. Arab League (AL)

The Arab Charter on Human Rights of 23 May 2004 does provide for a derogation clause in Article 4. According to paragraph (c) of the same Article, the Secretary General must be informed of the beginning and end of the state of emergency.

“(c) Any State party to the present Charter availing itself of the right of derogation shall immediately inform the other States parties, through the intermediary of the **Secretary-General of the League of Arab States**, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”¹⁰

7. International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights of 23 March 1976 does provide for a derogation clause in Article 4. According to paragraph (3) of the same Article, the Secretary General of the United Nations must be informed of the provision it has been derogated from, the reason for derogation as well as the termination of the derogation.¹¹

“(3) Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the **Secretary-General of the United Nations**, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”¹²

¹⁰ Council of the League of Arab States, Arab Charter on Human Rights, May 23, 2004, available at: <https://www1.umn.edu/humanrts/instree/arabcharter2.html>

¹¹ Besides treaty law, guidelines on the legitimacy of derogations can be found in UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, available at: <http://www.refworld.org/docid/453883fd1f.html> or UN, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985), available at: http://www.defendinternational.com/index.php?option=com_content&task=view&id=30&Itemid=127

¹² United Nations General Assembly, International Covenant on Civil and Political Rights, 23 March 1976, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>