



**Institute for Development
of Freedom of Information**

Rule of Law and Human Rights During the COVID-19 Crisis

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Table of Contents

I. Introduction	3
II. Derogation from the European Convention on Human Rights in Time of Emergency	3
III. Derogation from the International Covenant on Civil and Political Rights.....	6
IV. Rule of Law and Democratic Principles in Time of Emergency	7
V. Human Rights Standards.....	9
VI. Conclusion	12



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I. Introduction

The crisis caused by the novel coronavirus (COVID-19) pandemic is a global challenge. During such a crisis the state has the power and is even obliged to take more restrictive measures than it would take in an ordinary situation. However, it is of paramount importance that the measures taken by the government to fight against the coronavirus do not restrict human rights disproportionately and do not pose a threat to fundamental values of democracy.

This document provides an overview of the international standards related to the rule of law and human rights protection in time of emergency as well as analyses key challenges regarding the following fundamental rights: the right to a fair trial, freedom of expression/access to information and the right to privacy.

II. Derogation from the European Convention on Human Rights in Time of Emergency

According to the international human rights standards, the government has the power to restrict certain rights by law in order to achieve relevant legitimate aims, which are often called “ordinary” limitations since they can be imposed permanently in normal times. For instance, European Convention on Human Rights permits to restrict certain rights during an ordinary time to protect one’s health, in particular: Right to Liberty can be restricted for the prevention of the spreading of infectious diseases;¹ Right to Privacy,² Freedom of Expression,³ Freedom of assembly,⁴ Freedom of Religion,⁵ Freedom of movement⁶ can be restricted for the protection of health. Derogation from the international instruments of human rights protection are permitted during particularly serious crises that require the introduction of extraordinary measures.⁷

According to the Article 15 of the European Convention on Human Rights, “in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”⁸

The primary purpose of informing the Secretary General is that the derogation becomes public, as it is through the Secretary General that the other Contracting States are informed of the derogation.⁹ In the absence of an official and public notice of derogation, Article 15 does not apply to the measures taken by

¹ European Convention on Human Rights, Article 5.

² Ibid, Article 8.

³ Ibid, Article 10.

⁴ Ibid, Article 11.

⁵ Ibid, Article 9.

⁶ Ibid, Protocol N4, Article 2.

⁷ The Administration of Justice During States of Emergency, available at: <https://bit.ly/2KuF2qH>, last visited on 24.04.2020.

⁸ European Convention on Human Rights, Article 15.

⁹ Guide on Article 15 of the European Convention on Human Rights, available at: <https://bit.ly/3aCPA1w>, last visited on: 24.04.2020.

the State and the Convention fully applies. At the same time, it should be noted that such notifications are formalities and they are not reviewed on merits, because legal assessment of emergency measures is possible only once an application concerning an alleged violation reaches the Court.¹⁰

The European Convention establishes the special regime of protection for certain fundamental rights and forbids their restriction in time of emergency.

Non-derogable rights under the European Convention

- Right to life (Article 2);
- Prohibition of torture (Article 3);
- Prohibition of slavery and servitude (Article 4(1));
- No punishment without law (Article 7);
- Prohibition of the death penalty (Protocols No. 6 and No. 13);
- Right not to be tried or punished twice (Article 4 of Protocol No. 7).

The European Convention on Human Rights does not constitute an obstacle for taking effective measures during the pandemic. However, the most important aspect is that Article 15 does not allow the Contracting Parties to interfere with any rights the way they wish during the emergency. These interferences should be clearly linked to the pandemic, limited in time and strictly necessary.¹¹

States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort should be made to safeguard the values of a democratic society.¹²

On March 23, 2020 Georgia submitted its derogations from the ECHR to the Secretary General of the Council of Europe pursuant to Article 15.¹³ The transmitted notification informs the Secretary General about the rights and fundamental freedoms that have been restricted by the Decree of the President of Georgia and derogations from certain obligations. Georgia noted that the epidemic situation in the State necessitated exceptional measures to ensure safety and protection of public health.

As of April 24, 2020 ten Countries have submitted their notifications about the derogation from the European Convention.¹⁴

¹⁰ Strengthening the supervision of ECHR derogation regimes. A non-judicial avenue, 2020, available at: <https://bit.ly/3cVwrd1>, last visited on: 24.04.2020.

¹¹ Covid-19 and the European Convention on Human Rights, 2020. available at: <https://bit.ly/2xYFFGe>, last visited on: 24.04.2020.

¹² Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020, available at: <https://bit.ly/3azucub>, last visited on: 24.04.2020.

¹³ Available at: <https://bit.ly/2Y1GJnx>, last visited on: 24.04.2020.

¹⁴ Available at: <https://bit.ly/3bMkVjC>, last visited on: 24.04.2020.

Countries that submitted their derogations from the European Convention as of April 24, 2020

1. Latvia - 16 March , 2020
2. Romania – 18 March, 3 and 15 April, 2020
3. Estonia – 20 March, 2020
4. Armenia - 20 March, 2020
5. Republic of Moldova - 20 March, 2020
6. Georgia - 23 March and 23 April, 2020
7. Albania – 1 April, 2020
8. North Macedonia - 2 April, 2020
9. Serbia - 7 April, 2020
10. San Marino - 14 April, 2020

In time of emergency, proper supervision of the derogation from the European Convention constitutes a challenge. Supervision of derogations by the court, including by the European Court of Human Rights, cannot be considered as an effective supervisory mechanism at least for these two reasons:¹⁵

- 1) The ECtHR cannot guarantee a timely review of derogation measures so as to provide an adequate response to derogation measures in place. The applications related to derogatory measures are not classified as ‘urgent cases’ and do not appear as a separate category that enjoys priority.¹⁶ Therefore, it may take years before the Court decides on such cases.¹⁷
- 2) On the other hand, the European Court of Human Rights focuses on the facts of an individual application, hence it cannot address the magnitude of human rights concerns related to derogation regimes. In this vein, the ECtHR alone is ill-equipped to address in a systemic manner the effects of emergency measures on human rights, the rule of law and democracy.¹⁸

Consequently, alternative supervisory mechanisms gain a special importance. In this respect, the role of the Secretary General of the Council of Europe needs to be mentioned. Under Article 52 of the European Convention, “on receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.” Parliamentary Assembly of the Council of Europe in its resolution N2209 recommends the Secretary General to open an inquiry under Article 52 of the Convention in relation to any State that derogates from the Convention and engage in

¹⁵ Supervision of derogations in the wake of COVID-19: a litmus test for the Secretary General of the Council of Europe, 2020, available at: <https://bit.ly/3cL1xny>, last visited on: 24.04.2020.

¹⁶ The court’s priority policy, available at: <https://bit.ly/3cJrUdh>, last visited on: 24.04.2020.

¹⁷ Supervision of derogations in the wake of COVID-19: a litmus test for the Secretary General of the Council of Europe, 2020, available at: <https://bit.ly/3cL1xny>, last visited on: 24.04.2020.

¹⁸ Supervision of derogations in the wake of COVID-19: a litmus test for the Secretary General of the Council of Europe, 2020, available at: <https://bit.ly/3cL1xny>, last visited on: 24.04.2020.

dialogue with the State concerned with a view to ensuring the compatibility of the state of emergency with Convention standards.¹⁹

The derogation envisaged by Article 15 of the European Convention is not a compulsory precondition to activate Article 52, the presence of political will and collaboration between the states and the Secretary General is essential in this regard. It's the first derogation from the European Convention on Human Rights after adopting the Resolution N2209 of the Parliament Assembly of the Council of Europe. It is a topic of common interest if the Secretary General will engage more actively and how it can perform the supervisory function regarding the derogation from the Convention in time of emergency.²⁰

III. Derogation from the International Covenant on Civil and Political Rights

According to the Article 4 (1) of the International Covenant on Civil and Political Rights, "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."²¹

Measures that necessitate the derogation from the Covenant must be exceptional and must have a temporary character. Before the states apply Article 4 of the Covenant, the presence of following fundamental preconditions is important: The situation must impose a threat to the life of the nation, and the state must have officially proclaimed a state of emergency. The latter requirement is essential to ensure the principles of legality and rule of law that need to be respected in time of emergency more than in ordinary times. Upon declaring the state of emergency, states must act within their constitutional and other provisions of law that govern such proclamations and the exercise of emergency.²² At the same time, this condition requires that states provide careful justification not only for their decision to proclaim a state of emergency, but also for any specific measures based on such a proclamation.²³

Similar to the European Convention of Human Rights, the International Covenant on Civil and Political Rights also envisages the obligation of submission of the corresponding notification. A State party availing itself of the right of derogation must immediately inform the other States parties, through the United Nations Secretary-General, of the provisions it has derogated from and of the reasons for such measures.²⁴

¹⁹ Parliamentary Assembly, Resolution 2209(2018), available at: <https://bit.ly/2yFsF8B>, last visited on: 26.04.2020.

²⁰ Strengthening the supervision of ECHR derogation regimes. A non-judicial avenue, 2020, available at: <https://bit.ly/3cVwrd1>, last visited on: 24.04.2020.

²¹ The International Covenant on Civil and Political Rights, Article 4(1).

²² UN, International covenant on civil and political rights, general comment no. 29, derogations during a state of emergency (Article 4), § 2, 31 August, 2001, available at: <https://bit.ly/2RYWaZV>, last visited on: 24.04.2020.

²³ UN, International covenant on civil and political rights, general comment no. 29, derogations during a state of emergency, (Article 4), § 5, 31 August, 2001.

²⁴ The International Covenant on Civil and Political Rights, Article 4(3).

Non-derogable rights under the International Covenant on Civil and Political Rights

- Right to life (Article 6);
- Prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 7);
- Prohibition of slavery and servitude (Article 8, paragraphs 1 and 2);
- Prohibition of imprisonment on the ground of inability to fulfil a contractual obligation (Article 11);
- Prohibition of punishment for the crime which did not constitute a criminal offence, under national or international law, at the time when it was committed (Article 15);
- Right to recognition as a person before the law (Article 16);
- Freedom of thought, conscience and religion (Article 18).

At the same time, it should be noted that the prohibition of the derogation does not mean that the right cannot be restricted. For instance, under Article 18(3) of the International Covenant on Civil and Political Rights freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

IV. Rule of Law and Democratic Principles in Time of Emergency²⁵

1) *The principle of Legality*

Even in emergency situations the rule of law must prevail.²⁶ A basic requirement of the Rule of Law is that the State action must be in accordance with and authorized by the law.²⁷ At this point, law covers not only laws adopted by the parliament, but also emergency acts issued by the executive branch relating to the state of emergency on the basis of the constitution. The legislative authority may adopt the emergency acts that focus on the current crisis and are beyond the scope of the existing rules. Any new legislation of that sort should comply with the constitution and international standards and, where applicable, be subjected to review by the Constitutional Court.²⁸

2) *Limited duration of the regime of the state of emergency and of the emergency measures*

During the state of emergency, governments may have a general power to issue decrees having the force of the law. This approach is acceptable provided that those general powers are of a limited duration. The main purpose of the state of emergency regime is to restrain the development of the crisis and return, as

²⁵ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020, available at: <https://bit.ly/3azucub>, last visited on: 24.04.2020.

²⁶ Venice Commission, Opinion on the protection of human rights in emergency situation, CDL-AD(2006)015), § 13.

²⁷ Venice Commission, Rule of Law Checklist (CDL-AD(2016)007), § 44; 45.

²⁸ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

quickly as possible, to normality. Prolongation of the state of emergency regime should be subject to the control of its necessity by parliament.²⁹

During the state of emergency, not only should the power of the government to legislate be limited by the duration of the state of emergency, but any legislation enacted during the state of emergency should also include clear time limits on the duration of these exceptional measures (like a “sunset clause”).³⁰ After the end of the emergency situation it may be justified to continue to apply certain specific, targeted measures, but such extension would fall within the competence of parliament through the ordinary procedures.³¹

3) The principle of proportionality

The principle of proportionality requires that the emergency measures should comply with its intended purposes with minimal alteration of normal rules and procedures of democratic decision-making.³² Given the rapid and unpredictable development of the crisis, relatively broad legislative delegations may be needed, but should be formulated as narrowly as possible in the circumstances, in order to reduce any potential for abuse.³³ **In General, fundamental legal reforms should be put on hold during the state of emergency.**³⁴

The emergency restrictions should only proceed to the extent stipulated by the exigency of the situation. The necessity and the proportionality of the noted restrictions should be the subject of the international and local supervision. It is of paramount importance to exercise control over the measures taken in time of emergency, **as practice shows, the most serious breaches of human rights take place in situations of proclaimed state of emergency and that States may be inclined to use their power of derogation for other purposes or to a larger extent than is justified by the exigency of the situation.**³⁵

4. Distribution of powers and checks on the executive action

The executive authorities should be able to act quickly and efficiently. That may call for adoption of simpler decision-making procedures and easing of some checks and balances.³⁶

However, the parliament should keep the power to control executive action by verifying at reasonable intervals, whether the emergency powers of the executive are still justified, or by intervening, in special cases, to modify or annul the decisions of the executive.³⁷

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ CM(2008)170, § 46, available at: <https://bit.ly/2VYWgC0>, last visited on: 24.04.2020.

Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

³⁴ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

³⁵ Venice Commission, CDL-AD(2006)015, § 12, available at: <https://bit.ly/3bBJoIs>, last visited on: 24.04.2020.

³⁶ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

³⁷ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

The core function of the judiciary – in particular the constitutional courts, should be maintained. It is important that judges may examine the most serious limitations of human rights introduced by the emergency legislation.³⁸

V. Human Rights Standards

1) *The right to a fair trial*

The judiciary is the branch of government that is responsible for safeguarding the rule of law in the country. The judiciary also examines the legality of actions taken by executive and legislative branches. The special powers are granted to the government in a state of emergency, which makes it particularly difficult for the judiciary to perform its controlling function. The judiciary must also assess whether conducts of government comply with human rights when imposing emergency measures.³⁹

Adopted measures for preventing the spread of the novel coronavirus may jeopardize one of the most important components of the right to a fair trial – the publicity of hearings. It is recognized by international standards that the public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny. At the same time, publicity is one of the means whereby public confidence in the courts can be maintained. Visible administration of justice serves to ensure a fair trial, which is one of the fundamental principles of any democratic society.⁴⁰ Thus, it is important to provide the publicity of proceedings while conducting remote hearings.

In this regard the absence of remote access to court proceedings for interested persons is the main challenge in Georgia, which threatens the right to a fair trial as well as the right to access to information.⁴¹ Taking into account the risks posed by the state of emergency, effective public control over the activities of the judiciary is of particular importance that is only possible through transparency of the judicial system.

The right to a trial within a reasonable time is also one of the components of a fair trial. It is often emphasized in legal literature that justice delayed is justice denied. However, in order to prevent the spread of the virus and protect public health, the courts in some countries have begun to postpone hearings and only urgent cases are to be heard in a timely manner.⁴² In order to avoid delays in the administration of justice in the given situation, it is essential to ensure that the hearings are held remotely.

According to international standards, the prohibition of detention without legal basis or timely judicial review, and the need to provide detainees with essential procedural safeguards must be ensured in the present circumstances.⁴³ States also remain under a general obligation to ensure that trials meet the fundamental requirement of fairness (such as equality of arms) and respect the presumption of

³⁸ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

³⁹ Legal Commentary to the ICJ Geneva Declaration, Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis, available at: <https://bit.ly/3cSpM2T>, accessed on: 24.04.2020.

⁴⁰ Guide on Article 6 of the European Convention on Human Rights, available at: <https://bit.ly/3bGCmT0>, accessed on: 24.04.2020.

⁴¹ Coalition for an Independent and Transparent Judiciary, “Statement on the Closure of Court Hearings in Common Courts of Georgia and other related Problems under a State of Emergency“, available at: <https://bit.ly/2WB4DVP>, accessed on: 24.04.2020.

⁴² Available at: <https://bit.ly/3bCBw9z>; <https://bit.ly/2VV3CGw>, accessed on: 24.04.2020.

⁴³ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

innocence. Moreover, no steps should be taken which would amount to an interference with the independence of judges or of courts.⁴⁴

2. Freedom of expression/Access to information

Freedom of expression has one of the most essential roles during a state of emergency, because of its particular importance for informing the public about current events in the present circumstances. Also, it is easy to interfere with freedom of expression without any legal basis, especially in countries that do not have long experience in the functioning of democratic institutions.

The freedom of information, including free and timely dissemination of information, is critical for the media to report on issues related to the pandemic. Media and journalists have a key role and responsibility for providing timely, precise and reliable information to the public. At the same time, they should adhere to high professional and ethical standards.⁴⁵

Journalists, media, medical professionals, civil society activists and the public at large must be able to criticize the authorities and scrutinize their response to the crisis.⁴⁶

Openness and transparency are essential for people to participate in measures designed to protect their own health, especially when trust in the authorities has been eroded. It is also important to counter false or misleading information.⁴⁷

Although those forms of freedom of expression that require public gatherings can be limited, the exercise of this right is essential in any crisis, since freedom of expression keeps governments accountable. Hence, although certain aspects of freedom of information may be restricted, the core of this right should stay intact and must be strictly protected.⁴⁸

Access to public information has a key role for effective realization of freedom of expression. In Georgia, the time frame for releasing public information is suspended during state of emergency,⁴⁹ which is problematic due to the blanket character of the restriction. It is crucial that disclosure of public information is restricted not in full, but only to the extent that is critical in a state of emergency.

Furthermore, the importance of proactive disclosure of public information is even more evident during the crisis. The more open and transparent the government is in terms of publishing information the more informed decisions will be made by citizens.⁵⁰

⁴⁴ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

⁴⁵ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

⁴⁶ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

⁴⁷ Coronavirus: Human rights need to be front and centre in response, available at: <https://bit.ly/2KAPzRm>, accessed on: 24.04.2020.

⁴⁸ Covid-19 and the European Convention on Human Rights, 2020, available at: <https://bit.ly/2xYFFGe>, accessed on: 24.04.2020.

⁴⁹ IDFI, "Special Rules for Electronic Case Management, Administrative Proceedings and the Issuance of Public Information will be applied during a State of Emergency in Georgia.", available at: <https://bit.ly/2Wxk11p>, accessed on: 24.04.2020.

⁵⁰ IDFI, List of Information to be Proactively Published by Public Entities during the Covid-19 Crisis, available at: <https://bit.ly/2ThBxc6>, accessed on 27.05.2020.

3. Right to privacy/Personal data protection

Using new technologies to access and process personal data is one way to deal with a pandemic. Existing digital technologies and tools (geolocation data, artificial intelligence, facial recognition, social media applications) can facilitate control over pandemic.⁵¹

However, the intrusive potential of modern technologies must not be left unchecked and unbalanced. Data protection principles and the Council of Europe Convention N108 allow for a balance between high standards of data protection and public interests, including public health. The Convention allows for exceptions for a limited period of time and with appropriate safeguards to make sure that these data are collected, analyzed, stored and shared in legitimate and responsible ways.⁵² Large-scale processing of personal data by means of artificial intelligence should only be performed when the adequate evidence shows that the potential public health benefits override the benefits of alternative, less intrusive solutions.⁵³

The coronavirus crisis is likely to pose a significant challenge to the right to privacy. In order to prevent spreading the pandemic the state needs to know whether people comply with the quarantine, it needs to have a major amount of medical data and to know who people infected were in contact with, etc., which constitutes personal information.⁵⁴ Article 8 of the ECHR allows legal interference, but the key challenge is their proportionality. Although, the emergency might be able to justify certain measures, it will not justify all restrictions. This crisis might lead to changes in interpretation of the Convention and some decrease of the level of protection, but only the ECtHR can rule on how this crisis will really impact the scope of Article 8 (right to privacy).⁵⁵

A notable example of the critical challenges to the right to privacy caused by the current pandemic is how several countries have actively started collecting different types of personal data to contain the spread of the virus.⁵⁶ China has deepened and extended the surveillance. South Korea has broadcast information about people's movements to anyone who might have had contact with them. In Israel, the government has authorized its internal security agency to use location-tracking data from the cellphones of Israeli citizens. In Moscow, Russia is installing surveillance cameras equipped with facial recognition technology. This creates danger that even after a crisis states will continue to collect and process this type of personal data.⁵⁷

Thus, it is also crucial to control government actions after the pandemic is contained. The government of Georgia has launched an application for the COVID-19 prevention as well, which has access to the geolocation data and is completely voluntary.⁵⁸ At this stage, the application does not raise any concerns

⁵¹ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

⁵² Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

⁵³ Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 2020.

⁵⁴ Covid-19 and the European Convention on Human Rights, 2020, available at: <https://bit.ly/2xYFFGe>, accessed on: 24.04.2020.

⁵⁵ Covid-19 and the European Convention on Human Rights, 2020, available at: <https://bit.ly/2xYFFGe>, accessed on: 24.04.2020.

⁵⁶ How authoritarians are exploiting the COVID-19 crisis to grab power, 2020, available at: <https://bit.ly/3cMkwxL>, accessed on 24.04.2020.

⁵⁷ How authoritarians are exploiting the COVID-19 crisis to grab power, 2020, available at: <https://bit.ly/3cMkwxL>, accessed on: 24.04.2020.

⁵⁸ Available at: <https://bit.ly/2W2VjyM>, accessed on: 24.04.2020.

over privacy issues. However, identifying a person based on location aggregated with other types of data may not be difficult.⁵⁹ So it is essential that the public is provided with sufficient information about the data processing in order to obtain informed consent from people regarding the accessibility of their personal data before downloading the application.

In order to ensure that the use of surveillance technologies by governments is in line with human rights, the international civil society has issued a joint statement establishing the conditions necessary for human rights protection while using surveillance technologies to contain Covid-19:⁶⁰

1. Surveillance measures must be lawful, necessary and proportionate and they must be justified by legitimate public health objectives. All measures taken by the government must be transparent.
2. Expanded monitoring and surveillance powers must be time-bound, and only continue for as long as necessary to address the current pandemic.
3. States must ensure that increased collection, retention, and aggregation of personal data is only used for the purposes of responding to the Covid-19 pandemic. Data must not be used for commercial purposes.
4. Governments must take every effort to protect people's data and ensure sufficient security of any personal data collected and of any devices involved in collection, transmission, processing and storage. Any claims that data is anonymous must be based on evidence and supported with sufficient information regarding how it has been anonymized.
5. Any use of digital surveillance technologies, including big data and artificial intelligence systems, must address the risk that these tools will facilitate discrimination and other rights abuses against racial minorities, people living in poverty, and other marginalized groups.
6. It is crucial that data sharing agreements with other public or private sector entities be based on law and be publicly available.
7. Every measure that the government takes must include accountability protections and safeguards against abuse. Increased surveillance efforts must be subject to effective oversight by appropriate independent bodies. Every individual must be given the opportunity to challenge any measures to collect, aggregate, retain, and use data.
8. Government measures adopted to collect data should include means for free, active, and meaningful participation of relevant stakeholders.⁶¹

VI. Conclusion

Novel coronavirus pandemic requires that the governments take large-scale and extraordinary measures. Responding to the Covid-19 challenge calls for appropriate and time-bound restrictions. At the same time, it is critically important to retain fundamental rights and to hold governments accountable during a state of emergency, as granting excessive powers to the executive branch during a crisis may have a long-term and disproportionate impact on people's rights and freedoms.⁶²

⁵⁹ Twelve million phones, one dataset, zero privacy, 2019, available at: <https://nyti.ms/3bQLFiY>, accessed on: 24.04.2020.

⁶⁰ Joint civil society statement: States use of digital surveillance technologies to fight pandemic must respect human rights, available at: <https://bit.ly/2Y2IINX>, accessed on: 24.04.2020.

⁶¹ Joint civil society statement: States use of digital surveillance technologies to fight pandemic must respect human rights, available at: <https://bit.ly/2Y2IINX>, accessed on: 24.04.2020.

⁶² Covid-19 and the European Convention on Human Rights, 2020, available at: <https://bit.ly/2xYFFGe>, accessed on: 24.04.2020.

According to international standards, restrictions must be limited in time and should be prolonged only to the extent that is required by the exigencies of the situation. The right to privacy is especially at risk as it is difficult to check whether increased surveillance measures have been lifted or whether the personal information used for containing covid-19 has been erased after the emergency.

Given the risks posed by the state of emergency, effective public control over the activities of the judiciary is of particular importance, and one of the means of ensuring such control is the transparency of the judiciary. In order to achieve this purpose, it is essential that the proceedings are public during remote court sessions.

Furthermore, it is crucially important that citizens have freedom to seek, receive and impart information related to the virus. In order to achieve this purpose, ensuring access to the internet is critical. Also, it is essential that the government addresses false information to avoid panic and disorder in society.⁶³

The importance of proactive publication of public information is even more evident in the light of the crisis. In addition, it is crucial that disclosure of public information is restricted not in a blanket manner, but only to the extent that is required by the exigencies of the situation.

Finally, in order to avoid a threat to the rule of law, it is essential that the government actions are directed towards lifting human rights restrictions as soon as possible.

⁶³ COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts, 2020, available at: <https://bit.ly/35jQiQx>, accessed on: 27.04.2020.