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This Factsheet does not bind the Court and is not exhaustive

## Derogation in time of emergency

**Article 15 (derogation in time of emergency) of the [European Convention on Human Rights](#)**<sup>1</sup> affords to the governments of the States parties, in exceptional circumstances, the possibility of derogating, in a temporary, limited and supervised manner, from their obligation to secure certain rights and freedoms under the Convention. The use of that provision is governed by the following procedural and substantive conditions<sup>2</sup>:

⇒ the right to derogate can be invoked *only in time of war or other public emergency threatening the life of the nation*;

⇒ a State may take measures derogating from its obligations under the Convention *only to the extent strictly required by the exigencies of the situation*;

⇒ any derogations *may not be inconsistent with the State's other obligations under international law*;

⇒ *certain Convention rights do not allow of any derogation*: Article 15 § 2 thus prohibits any derogation in respect of the right to life, except in the context of lawful acts of war, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, and the rule of "no punishment without law"; similarly, there can be no derogation from Article 1 of Protocol No. 6 (abolishing the death penalty in peacetime) to the Convention, Article 1 of Protocol No. 13 (abolishing the death penalty in all circumstances) to the Convention and Article 4 (the right not to be tried or punished twice) of Protocol No. 7 to the Convention;

⇒ lastly, on a procedural level, the State availing itself of this right of derogation must *keep the Secretary General of the Council of Europe fully informed*.

<sup>1</sup>. Article 15 (derogation in time of emergency) of the [European Convention on Human Rights](#) provides that:

"1. 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 this 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.

2. No derogation from Article 2 [right to life], except in respect of deaths resulting from lawful acts of war, or from Articles 3 [prohibition of torture and inhuman or degrading treatment or punishment], 4 (paragraph 1) [prohibition of slavery and servitude] and 7 [no punishment without law] shall be made under this provision.

3. 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."

<sup>2</sup>. See, in particular, [Lawless v. Ireland \(no. 3\)](#), judgment of 1 July 1961, [law part] § 22: "... [T]he Government of any High Contracting Party has the right, in case of war or public emergency threatening the life of the nation, to take measures derogating from its obligations under the Convention other than those named in Article 15, paragraph 2, provided that such measures are strictly limited to what is required by the exigencies of the situation and also that they do not conflict with other obligations under international law ...".

## Facts and figures

On 5 June 2015 Ukraine notified the Secretary General of the Council of Europe that given the emergency situation in the country, the authorities of Ukraine had decided to use Article 15 of the European Convention on Human Rights to derogate from certain rights enshrined in the Convention<sup>3</sup>.

In March and April 2020, in the context of the COVID-19 health crisis, Latvia<sup>4</sup>, Romania<sup>5</sup>, Armenia<sup>6</sup>, the Republic of Moldova<sup>7</sup>, Estonia<sup>8</sup>, Georgia<sup>9</sup>, Albania<sup>10</sup>, North Macedonia<sup>11</sup>, Serbia<sup>12</sup> and San Marino<sup>13</sup> notified the Secretary General of the Council of Europe of their decision to use Article 15 of the Convention.

To date, eight other States parties to the European Convention on Human Rights – Albania, Armenia, France, Georgia, Greece, Ireland, Turkey and the United Kingdom – have relied on their right of derogation<sup>14</sup>. Four of those States have had to justify the measures taken, in the light of Convention requirements, namely Greece, Ireland, the United Kingdom and Turkey (see below).

<sup>3</sup>. See the [news release](#) published on the Secretary General’s website on 10 June 2015. See also the Ukrainian Government’s [declarations](#) related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General.

<sup>4</sup>. See the Latvian Government’s [declaration](#) related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 16 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 10 June 2020 (see the [notification](#) of the same day). See also the [declaration](#) of 30 December 2020 ([withdrawal](#) of derogation registered on 6 April 2021) and the [declaration](#) of 21 October 2021 ([withdrawal](#) of derogation registered on 18 November 2021).

<sup>5</sup>. See the Romanian Government’s [declaration](#) related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 17 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 15 May 2020 (see the [notification](#) of the same day).

<sup>6</sup>. See the Armenian Government’s [declaration](#) related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 19 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 16 September 2020 (see the [notification](#) of the same day).

<sup>7</sup>. See the [declaration](#) of the Government of the Republic of Moldova related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 19 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 20 May 2020 (see the [notification](#) of the same day). See also the [declaration](#) of 31 March 2021 ([withdrawal](#) of derogation registered on 30 April 2021).

<sup>8</sup>. See the [declaration](#) of the Estonian Government related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 20 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 18 May 2020 (see the [notification](#) of the same day).

<sup>9</sup>. See the [declaration](#) of the Georgian Government related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 23 March 2020. See also, more recently, the [notification](#) of 3 January 2022.

<sup>10</sup>. See the [declaration](#) of the Albanian Government related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 31 March 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 25 June 2020 (see the [notification](#) of the same day).

<sup>11</sup>. See the [declaration](#) of the Government of North Macedonia related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 1 April 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 30 June 2020 (see the [notification](#) of the same day).

<sup>12</sup>. See the [declaration](#) of the Serbian Government related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 6 April 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 13 October 2020 (see the [notification](#) of the same day).

<sup>13</sup>. See the [declaration](#) of the Government of San Marino related to the Convention on the Protection of Human Rights and Fundamental Freedoms registered by the Secretariat General on 10 April 2020. Withdrawal of Derogation registered at the Council of Europe Secretariat General on 8 July 2020 (see the [notification](#) of the same day).

<sup>14</sup>. See, for detailed information on the context of those derogations, the [website](#) of the Council of Europe Treaty Office.

## Substantive requirements

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(1) The right of derogation can be invoked only in time of war or other public emergency threatening the life of the nation

***Measures of derogation taken by Ireland in 1957 to deal with activities of the IRA (Irish Republican Army) and its dissident groups***

**Lawless v. Ireland (no. 3)** (see also below, pp. 6 and 12)

1 July 1961 (judgment)

Suspected of being a member of the IRA (Irish Republican Army), the applicant alleged in particular that he had been held from July to December 1957 in a military detention camp in Ireland without being brought before a judge in the relevant period.

The European Court of Human Rights observed that, in the general context of Article 15 of the Convention, the natural and customary meaning of the words "other public emergency threatening the life of the nation" was sufficiently clear: **"an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed"** (paragraph 28 (law part) of the judgment). Going on to examine whether the facts and circumstances which had led the Irish Government to make their Proclamation of 5th July 1957 implementing special detention powers came within this conception, the Court found this to be the case. The existence at the time of a "public emergency threatening the life of the nation", had been reasonably deduced by the Irish Government from a combination of factors, namely: the existence in the territory of the Republic of Ireland of a secret army engaged in unconstitutional activities and using violence to attain its purposes; the fact that this army was also operating outside the territory of the State, thus seriously jeopardising the relations of the Republic of Ireland with its neighbour; the steady and alarming increase in terrorist activities from the autumn of 1956 and throughout the first half of 1957. In the circumstances of the case, the Court found that **the Irish Government were justified in declaring that there was a public emergency threatening the life of the nation** in Ireland and were thus entitled, applying the provisions of Article 15 § 1 of the Convention for the purposes for which those provisions were made, to take measures derogating from their obligations under the Convention.

***Derogation by the Greek Government at the time of the "colonels' dictatorship" in 1967***

**Denmark, Norway, Sweden and the Netherlands v. Greece ("The Greek Case")**

5 November 1969 (report of the European Commission of Human Rights<sup>15</sup>)

On 21 April 1967 a revolutionary (military) government overthrew the regime in Greece. The following month the new government informed the Council of Europe's Secretary General, under Article 15 of the European Convention on Human Rights, that they had suspended certain rights under the Greek Constitution. In their application, the Danish, Norwegian, Swedish and Dutch Governments alleged that the Greek government had violated a number of Convention provisions and that it had not been shown that the conditions laid down in Article 15 for derogation measures had been fulfilled. Greece argued that the European Commission of Human Rights was not competent to examine the situation under Article 15 on the ground that it could not control the actions by which a revolutionary government maintained itself in power.

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<sup>15</sup>. Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States' compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1 November 1998.

The European Commission of Human Rights found that it had jurisdiction and that, in the circumstances, **the conditions for the application of Article 15** of the Convention **were not met**. It observed in particular that the public emergency threatening the life of the nation invoked by Greece (the military junta having taken power) did not exist in reality. It found that the legislative measures and administrative practices of the Greek government had breached a number of Convention provisions and that those measures and practices had not been justified on the basis of Article 15 of the Convention.

***Derogations by the United Kingdom in the early 1970s following terrorist acts related to the situation in Northern Ireland***

**Ireland v. the United Kingdom** (see also below, p. 7)

18 January 1978 (judgment)

In order to combat what the respondent Government described as "the longest and most violent terrorist campaign witnessed in either part of the island of Ireland", the authorities in Northern Ireland had exercised from August 1971 until December 1975 a series of extrajudicial powers of arrest, detention and internment. The United Kingdom Government had sent the Council of Europe's Secretary General six derogation notices concerning those powers during that period. The Irish Government argued in particular that the extrajudicial measures of deprivation of liberty were not fully compatible with Article 15 and breached Article 5 (right to liberty and security) of the Convention.

Reiterating that Article 15 of the Convention was applicable only "in time of war" or "other public emergency threatening the life of the nation", the Court observed that the **existence of such an emergency was clear from the facts of the case.**

**Brannigan and McBride v. the United Kingdom** (see also below, pp. 7 and 11)

26 May 1993 (judgment)

This case concerned a fresh derogation made by the United Kingdom in respect of Northern Ireland. The two applicants, suspected members of the IRA, had been arrested by the police in Northern Ireland and held in police custody: one for six days and fourteen and a half hours, the other for four days, six hours and twenty-five minutes. They both complained about not having been brought promptly before a judge. The British Government asked the Court to rule that the United Kingdom had not breached Article 5 (right to liberty and security) of the Convention, having availed itself on 23 December 1988 of its right of derogation under Article 15 of the Convention.

Referring to its judgments in *Lawless (no. 3) v. Ireland* and *Ireland v. the United Kingdom* (see above), and making its own assessment in the light of the evidence at its disposal as to the extent and effects of the terrorist violence in Northern Ireland and elsewhere in the United Kingdom, the Court found it not to be in doubt that **there genuinely was a public emergency threatening the life of the nation in the circumstances.**

***Derogation in 1990 by the Turkish Government in respect of South-East Turkey following clashes between the security forces and members of the illegal organisation PKK (Kurdistan Workers' Party)***

**Aksoy v. Turkey** (see also below, pp. 8, 13 and 15)

18 December 1996 (judgment)

Since 1985 serious disturbances had raged in south-eastern Turkey between the security forces and members of the PKK. At the time when the Court examined the case, ten out of the eleven provinces of that part of Turkey had, since 1987, been subjected to emergency rule. The applicant alleged in particular that his detention in 1992, on suspicion of aiding and abetting PKK terrorists, had been illegal. The Turkish Government stated that there had been no violation of Article 5 (right to liberty and security) of the Convention, having regard to the derogation notified by Turkey in 1990 in accordance with Article 15 of the Convention. They argued in particular that there had been, in south-eastern Turkey, a public emergency threatening the life of the nation, which was

not disputed by the applicant, although he asserted that, in the main, it was a question for the Convention organs to address.

The Court found, in the light of all the evidence at his disposal, that **the extent and particular effects of the PKK terrorist activity** in south-eastern Turkey **had undoubtedly created, in the region concerned, a public emergency threatening the life of the nation**. It reiterated, among other things, that it fell to each Contracting State, with its responsibility for "the life of [its] nation", to determine whether that life was threatened by a "public emergency" and, if so, how far it was necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities were in principle better placed than the international judge to decide both on the presence of such an emergency and on the nature and scope of the derogations necessary to avert it. Accordingly, in this matter a wide margin of appreciation had to be left to the national authorities. Nonetheless, States did not enjoy an unlimited discretion. It was for the Court to rule whether, *inter alia*, the States had gone beyond the "extent strictly required by the exigencies" of the crisis. In exercising this European supervision, the Court had to give appropriate weight to such relevant factors as the nature of the rights affected by the derogation and the circumstances leading to, and the duration of, the emergency situation.

### ***Derogation by the United Kingdom in 2001 after "9/11" terrorist attacks in USA***

#### **A. and Others v. the United Kingdom (no. 3455/05)** (see also below, p. 9)

19 February 2009 (judgment – Grand Chamber)

Following the terrorist attacks of 11 September 2001 against the United States of America, the British government believed that certain foreign nationals present in the United Kingdom were providing a support network for Islamist terrorist operations linked to al-Qaeda and that they thus represented a threat to the United Kingdom. As a number of these foreign nationals could not be deported because of the risk that they would suffer ill-treatment in their countries of origin, the government had found it necessary to create an extended power permitting the detention of foreign nationals, where the Secretary of State reasonably believed that the person's presence in the United Kingdom was a risk to national security and reasonably suspected that the person was an "international terrorist". Since the Government considered that this detention scheme might not be consistent with Article 5 § 1 (right to liberty and security), they issued a notice of derogation under Article 15 of the Convention setting out the provisions of Part 4 of the Anti-Terrorism, Crime and Security Act 2001, including the power to detain foreign nationals certified as "suspected international terrorists" who could not "for the time being" be removed from the United Kingdom. The 11 applicants, who complained about having been held in a high-security regime under that statutory mechanism, argued that there had been no public emergency threatening the life of the nation at the relevant time. They put forward three main arguments in support of that position: first, the emergency was neither actual (*sic*) nor imminent; secondly, it was not of a temporary nature; and, thirdly, the practice of other States, none of which had derogated from the Convention, together with the informed views of other national and international bodies, suggested that the existence of a public emergency had not been established.

The Court accepted that there had been a public emergency threatening the life of the nation. Before the domestic courts, the Secretary of State had provided evidence to show the existence of a threat of serious terrorist attacks planned against the United Kingdom. Additional closed evidence had been provided before SIAC. All the national judges except one had accepted that danger to have been credible. Although no al-Qaeda attack had taken place in the United Kingdom at the time when the derogation had been made, the Court did not consider that the national authorities could be criticised for having feared such an attack to be imminent. A State could not be expected to wait for disaster to strike before taking measures to deal with it. The national authorities enjoyed a wide margin of appreciation in assessing the threat, according to

the information at their disposal. Weight had to be attached to the judgment of the executive and Parliament on this question. Significant attention also had to be paid to the views of the national courts, which were better placed to assess the evidence relating to the existence of an emergency.

***Derogation by the Turkish Government following the attempted coup of 15 July 2016***

**Sahin Alpaya v. Turkey and Mehmet Hasan Altan v. Turkey** (see also below, p. 9)

20 March 2018 (Chamber judgments)

These cases concerned complaints by two journalists who had been arrested and detained following the attempted military coup of 15 July 2016. The Turkish Government emphasised in particular that all of the applicant's complaints should be examined with due regard to the derogation of which the Secretary General of the Council of Europe had been notified on 21 July 2016 under Article 15 of the Convention.

In both cases the Court observed that the Constitutional Court of Turkey, having examined from a constitutional perspective the facts leading to the declaration of a state of emergency, had concluded that the attempted military coup had posed a severe threat to the life and existence of the nation. In the light of the Constitutional Court's findings and all the other material available to it, the Court likewise considered that the attempted military coup had disclosed the existence of a "public emergency threatening the life of the nation" within the meaning of the Convention.

***Declaration of national emergency in the context of 2008 massive post-election protests***

**Dareskizb Ltd v. Armenia**

21 September 2021 (Chamber judgment)

In March 2008, and during massive protests that followed the announcement of the preliminary results of the presidential election, the incumbent President of Armenia adopted a decree declaring a state of emergency in Yerevan and imposing, inter alia, restrictions on the mass media. In addition, the authorities gave notice of a derogation from a number of Convention rights. The applicant company, which published a daily opposition newspaper, was prevented from publishing it, with national security officers prohibiting the printing of the newspaper's edition on two occasions. The applicant unsuccessfully challenged the measure before the domestic courts.

The Court considered that the derogation had failed to satisfy the requirements of Article 15 and it went on to find a breach of Article 10 (freedom of expression) of the Convention. It found, in particular, that there was insufficient evidence to conclude that the opposition protests could be characterised as a public emergency "threatening the life of the nation" within the meaning of Article 15 of the Convention or therefore as a situation justifying a derogation.

**(2) A State may take measures derogating from its Convention obligations only to the extent strictly required by the situation**

**Lawless v. Ireland (no. 3)** (see also above, p. 3, and below, p. 12)

1 July 1961 (judgment)

The applicant had argued, among other things, that even if the situation in Northern Ireland in 1957 had been such as to justify derogation from obligations under the Convention, the bringing into operation and the enforcement of Part II of the Offences against the State (Amendment) Act 1940 were disproportionate to the strict requirements of the situation. The Irish Government had argued that the measures taken under Part II of the 1940 Act were, in the circumstances, strictly required by the exigencies of the situation in accordance with Article 15 § 1 of the Convention.

The Court observed that neither of the means available to the Irish Government to deal with the activities of the IRA and its splinter groups – namely, the application of the

ordinary law or even the institution of special criminal courts – would have made it possible to deal with the situation existing in Ireland in 1957 and to restore peace and order. In those circumstances it took the view that detention without bringing terrorist suspects before a judge, as provided for by the 1940 Act, subject to **a number of safeguards designed to prevent abuses** in the operation of this system of administrative detention (e.g. constant supervision by Parliament, a "Detention Commission" and a promise to release any person detained who gave an undertaking not to engage in any illegal activity), could be regarded as a measure strictly confined to the exigencies of the situation within the meaning of Article 15 of the Convention; in other words a measure required by the circumstances.

As to the applicant's particular case, **there was nothing to show that the powers of detention conferred upon the Irish Government** by the 1940 Act **had been employed** against him, either, within the meaning of Article 18 of the Convention, for **a purpose other than that for which they were granted**, or, within the meaning of Article 15, by virtue of a measure going beyond what was strictly required by the situation at that time. In addition, the Irish Government had informed the applicant that he would be released if he gave a written undertaking "to respect the Constitution of Ireland and the Laws" and not to be a member of or assist any organisation that was declared unlawful. He had accepted that offer and on giving that undertaking was immediately released.

**Ireland v. the United Kingdom** (see also above, p. 4)

18 January 1978 (judgment)

In the view of the Irish Government, the powers applied in Northern Ireland, from 9 August 1971 to March 1975, allowing extrajudicial deprivation of liberty, had exceeded the "extent strictly required" by the exigencies of the situation, whereas the British Government asserted the contrary.

The Court noted that in this matter Article 15 of the Convention left a wide margin of appreciation to States. It fell in the first place to each State, with its responsibility for "the life of [its] nation", to determine whether that life was threatened by a "public emergency" and, if so, how far it was necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities were in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. Nevertheless, the States did not enjoy an unlimited power in this respect and the Court thus had to ascertain whether they had gone beyond the "extent strictly required by the exigencies" of the crisis. In this case the Court did not find it established, having regard to the margin of appreciation afforded to Contracting States, that the United Kingdom had exceeded the "extent strictly required" by the exigencies of the situation, within the meaning of Article 15 § 1 de la Convention.

**Brannigan and McBride v. the United Kingdom** (see also above, p. 4, and below, p. 11)

26 May 1993 (judgment)

The derogation notice invoked in this case had closely followed the *Brogan and Others v. the United Kingdom* judgment of 29 November 1988 (see below, p. 11), where the British Government had been found to have breached Article 5 § 3 (right to liberty and security / right to be tried within a reasonable time or released during the proceedings) of the Convention, as the applicants had not been brought promptly before a judge. The Court had to examine the derogation on the basis of that fact, in particular, without forgetting that the power of arrest and detention in question had already been in force since 1974.

The Court noted that that the central issue in the present case was not the existence of the power to detain suspected terrorists for up to seven days but rather the exercise of this power without judicial intervention.

As to whether, firstly, the derogation was a genuine response to an emergency situation, since the power of extended detention without such judicial control and the derogation of

23 December 1988 were clearly linked to the persistence of the emergency situation, there was no indication that the derogation was other than a genuine response.

As to whether the derogation was premature, the validity of the derogation could not be called into question for the sole reason that the Government had decided to examine whether in the future a way could be found of ensuring greater conformity with Convention obligations. Indeed, such a process of continued reflection was not only in keeping with Article 15 § 3, which required permanent review of the need for emergency measures, but was also implicit in the very notion of proportionality.

As to whether the absence of judicial control of extended detention was justified, the Court restated among other things that it was not the Court's role to substitute its view as to what measures were most appropriate or expedient at the relevant time in dealing with an emergency situation for that of the Government, which had direct responsibility for establishing the balance between the taking of effective measures to combat terrorism on the one hand, and respecting individual rights on the other. In the context of Northern Ireland, where the judiciary was small and vulnerable to terrorist attacks, public confidence in the independence of the judiciary was understandably a matter to which the Government attached great importance. In the light of these considerations it could not be said that the Government had exceeded their margin of appreciation in deciding, in the prevailing circumstances, against judicial control.

Lastly, as regards safeguards against abuse, the Court was satisfied that such safeguards did in fact exist and provided an important measure of protection against arbitrary behaviour and incommunicado detention. In addition to the basic safeguards, the operation of the legislation in question had been kept under regular independent review and, until 1989, was subject to regular renewal.

In the present case, **having regard to the nature of the terrorist threat** in Northern Ireland, **the limited scope of the derogation and the reasons advanced in support of it**, as well as **the existence of basic safeguards against abuse**, the Court took the view that the British Government **had not exceeded their margin of appreciation in considering that the derogation was strictly required by the exigencies of the situation**.

**Aksoy v. Turkey** (see also above, p. 4, and below, pp. 13 and 15)

18 December 1996 (judgment)

In the present case the applicant had been held for at least fourteen days without being brought before a judge or other judicial officer. The Turkish Government sought to justify this measure by the particular demands of police investigations in a vast region in the grips of a terrorist organisation receiving outside support. While not presenting any detailed arguments against the validity of the Turkish derogation as a whole, the applicant, for his part, cast doubt on the need, in south-eastern Turkey, to hold suspects in custody for fourteen days or more without any judicial supervision. In his view, the judges in that part of Turkey would not run any risk if they were able and obliged to review the lawfulness of detention at more frequent intervals.

As regards the duration of detention without supervision, the Court observed that **the Turkish Government had not adduced any detailed reasons before the Court as to why the fight against terrorism** in South-East Turkey **rendered judicial intervention impracticable**. While the Court took the view that the investigation of terrorist offences undoubtedly presented the authorities with special problems, it could not accept that it was necessary to hold a suspect for fourteen days without judicial intervention. This period was exceptionally long, and left the applicant vulnerable not only to arbitrary interference with his right to liberty but also to torture. As to the safeguards afforded by the Turkish legal system, **the Court took account of the unquestionably serious problem of terrorism** in South-East Turkey and the difficulties faced by the State in taking effective measures against it. **However, it was not persuaded that the exigencies of the situation necessitated the holding of the applicant** on suspicion of involvement in terrorist offences for fourteen days or

more **in incommunicado detention without access to a judge or other judicial officer.**

See *also*, among other authorities: [Demir and Others v. Turkey](#), judgment of 23 September 1998; [Nuray Sen v. Turkey](#), judgment of 17 June 2003; [Bilen v. Turkey](#), judgment of 21 February 2006.

**[A. and Others v. the United Kingdom \(no. 3455/05\)](#)** (see also above, p. 5)

19 February 2009 (judgment – Grand Chamber)

The House of Lords had ruled, at last instance, in a judgment of 16 December 2004, on the applicants' action in the domestic courts challenging the fundamental legality of the derogation notified in November 2001 under Article 15 of the Convention. It held that there was an emergency threatening the life of the nation but that the detention scheme did not rationally address the threat to security and was therefore disproportionate. It found, in particular, that there was evidence that United Kingdom nationals were also involved in terrorist networks linked to al-Qaeda and that the detention scheme in question discriminated unjustifiably against foreign nationals. It therefore made a declaration of incompatibility under the Human Rights Act and quashed the derogation order. Part 4 of the impugned Anti-Terrorism, Crime and Security Act 2001 remained in force, however, until it was repealed by Parliament in March 2005. As soon as the applicants still in detention were released, they were made subject to control orders under the Prevention of Terrorism Act 2005.

The Court found in particular that the choice by the Government and Parliament of an immigration measure to address what had essentially been a security issue (a genuine and imminent threat of a terrorist attack following 11 September 2001) had resulted in a failure adequately to address the problem, while imposing a disproportionate and discriminatory burden of indefinite detention on one group of suspected terrorists. The threat came from both British nationals and foreign nationals and there was no significant difference in the potential adverse impact of detention without charge on a national or on a non-national. The Court thus found that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention because the derogating measures had been disproportionate in that they had discriminated unjustifiably between nationals and non-nationals.

**[Sahin Alpay v. Turkey and Mehmet Hasan Altan v. Turkey](#)** (see also above, p. 6)

20 March 2018 (Chamber judgments)

These cases concerned complaints by two journalists who had been arrested and detained following the attempted military coup of 15 July 2016. The Turkish Government submitted that in availing itself of its right to make a derogation from the Convention, Turkey had not breached the provisions of the Convention. In that context, they noted that there had been a public emergency threatening the life of the nation on account of the risks caused by the attempted military coup and that the measures taken by the national authorities in response to the emergency had been strictly required by the exigencies of the situation.

The Court observed in particular that the Turkish Constitutional Court had expressed its position on the applicability of Article 15 of the Turkish Constitution, holding that the guarantees of the right to liberty and security would be meaningless if it were accepted that people could be placed in pre-trial detention without any strong evidence that they had committed an offence. Accordingly, it found that the applicant's deprivation of liberty had been disproportionate to the strict exigencies of the situation. This conclusion was also valid for the Court's examination. Having regard to Article 15 of the Convention and the derogation by Turkey, the Court considered, as the Constitutional Court had done in its judgment, that a measure of pre-trial detention that was not "lawful" and had not been effected "in accordance with a procedure prescribed by law" on account of the lack of reasonable suspicion could not be said to have been strictly required by the exigencies of the situation. In that context, the Court noted in addition that the Turkish Government had not provided it with any evidence that could persuade it to depart from the

conclusion reached by the Constitutional Court. In both case, the Court therefore found that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention.

See also, among others: [Alparslan Altan v. Turkey](#), judgment (Chamber) of 16 April 2019; [Kavala v. Turkey](#), judgment (Chamber) of 10 December 2019<sup>16</sup>; [Baş v. Turkey](#), judgment (Chamber) of 3 March 2020; [Sabuncu and Others v. Turkey](#), judgment (Chamber) of 10 November 2020; [Şık v. Turkey \(no. 2\)](#), judgment (Chamber) of 24 November 2020; [Atilla Taş v. Turkey](#), judgment (Chamber) of 19 January 2021; [Ahmet Hüsrev Altan v. Turkey](#), judgment (Chamber) of 13 April 2021; [Murat Aksoy v. Turkey](#), judgment (Chamber) of 13 April 2021; [Öğreten and Kanaat v. Turkey](#), judgment (Chamber) of 18 May 2021; [Akçün v. Turkey](#), judgment (Chamber) of 20 July 2021; [Tuncer Bakırhan v. Turkey](#), judgment of 14 September 2021; [Vedat Şorli v. Turkey](#), judgment (Chamber) of 19 October 2021<sup>17</sup>; [Turan and Others v. Turkey](#), judgment (Chamber) of 23 November 2021<sup>18</sup>; [Yasin Özdemir v. Turkey](#), judgment (Chamber) of 7 December 2021<sup>19</sup>; [İlıcak v. Turkey \(no. 2\)](#), judgment (Chamber) of 14 December 2021<sup>20</sup>; [İlker Deniz Yücel v. Turkey](#), judgment (Chamber) of 25 January 2022<sup>21</sup>.

### [Pişkin v. Turkey](#)

15 December 2020 (arrêt de chambre)

This case concerned the dismissal of the applicant, who was working as an expert at the Ankara Development Agency, on the grounds that he had links with a terrorist organisation, in the wake of the declaration of a state of emergency in Turkey following the failed military coup of 15 July 2016, as well as the subsequent judicial review of that measure. The applicant complained that neither the procedure leading to his dismissal nor the subsequent judicial proceedings had complied with the guarantees of a fair trial. He also complained that he had been branded a “terrorist” and “traitor”.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) and a **violation of Article 8** (right to respect for private and family life) of the Convention in the applicant’s case. As regards, in particular, the derogation provided for in Article 15 of the Convention, the Court noted that the impugned Emergency Legislative Decree had placed no restrictions on the judicial review to be exercised by the domestic courts following the termination of the employment contracts of those concerned, such as the applicant in the instant case. The Court also pointed out that even in the framework of a state of emergency, the fundamental principle of the rule of law had to prevail. It would not be consistent with the rule of law in a democratic society or with the basic principle underlying Article 6 § 1 – namely that civil claims should be capable of being submitted to a judge for an effective judicial review – if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons. Accordingly, in view of the seriousness of the consequences for the Convention rights of those persons, where an emergency legislative decree such as the one at issue in the present case did not contain any clear or explicit wording excluding the possibility of judicial supervision of the measures taken for its implementation, it had always to be understood as authorising the courts of the

<sup>16</sup> On 2 February 2022 the Council of Europe Committee of Ministers, which has the responsibility under the Convention for supervising the execution of the Court’s judgments, considered that “by not having ensured the applicant’s immediate release, Turkey refuse[d] to abide by the final judgment of the Court” of 10 December 2019. It thus decided to refer to the Court “the question whether Turkey has failed to fulfil its obligation under Article 46 § 1 (binding force and execution of judgments) of the Convention”. The Court received the formal request from the Committee of Ministers on 21 February 2022 ([link](#) to press release).

<sup>17</sup> This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

<sup>18</sup> This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

<sup>19</sup> This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

<sup>20</sup> This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

<sup>21</sup> This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

respondent State to exercise sufficient scrutiny so that any arbitrariness could be avoided. In those circumstances, the failure to observe the requirements of a fair trial could not be justified by the Turkish derogation.

### (3) Derogations cannot be incompatible with other obligations in international law

**Brannigan and McBride v. the United Kingdom** (see also above, pp. 4 and 7)

26 May 1993 (judgment)

The applicants contended for the first time before the Court that it was an essential requirement for a valid derogation under Article 4 of the 1966 United Nations International Covenant on Civil and Political Rights, to which the United Kingdom was a Party, that a public emergency must have been “officially proclaimed”. Since such proclamation had never taken place the derogation was inconsistent with the United Kingdom’s other obligations under international law. In their view this requirement involved a formal proclamation and not a mere statement in Parliament.

The Court observed that the Home Secretary’s statement of 22 December 1988 to the House of Commons, which was formal in character and made public the Government’s intentions as regards derogation, was well in keeping with the notion of an official proclamation. In that statement the Secretary of State had explained in detail the reasons underlying the Government’s decision to derogate and announced that steps were being taken to give notice of derogation under both Article 15 of the European Convention and Article 4 of the International Covenant on Civil and Political Rights. The Court thus found the applicants’ view ill-founded on this point and that there had been **no violation of Article 5 § 3** (right to liberty and security) of the Convention.

### Procedural requirements

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On a procedural level, in the context of Article 15 § 3 of the European Convention on Human Rights, a State exercising a right of derogation is bound by a duty to notify the Secretary General of the Council of Europe. Such notice must refer to the measures taken, the reasons justifying them and the date on which they cease to apply.

### Non-applicability of Article 15 of the Convention in the absence of a formal and public notice of derogation

**Cyprus v. Turkey**

4 October 1983 (report of the European Commission on Human Rights<sup>22</sup>)

This case concerned the situation existing in Northern Cyprus since the conducting of military operations in this region by Turkey in July and August 1974. The Cypriot Government had argued that Turkey continued to occupy 40% of the territory of the Republic of Cyprus and alleged violations by Turkey of certain Convention provisions.

The Commission confirmed the findings it had made in the previous case of *Cyprus v. Turkey*, namely that, **in the absence of an official and public notice of derogation** from Turkey it **could not apply Article 15** of the Convention **to the measures taken by Turkey** in respect of persons or property in northern Cyprus. Having objected that **Article 15** was **not applicable** here, it gave the opinion that Turkey had breached Article 5 (right to liberty and security) and Article 8 (right to respect for private and family life) of the Convention together with Article 1 (protection of property) of Protocol No. 1 to the Convention.

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<sup>22</sup>. See footnote 15 above.

## Information on the measures taken and reasons given

### Greece v. the United Kingdom

26 September 1958 (report of the European Commission on Human Rights<sup>23</sup>)

Between 1955 and 1957 the Island of Cyprus, which at the time was a British colony, underwent a period of tension, in particular with protests demanding independence and a deterioration in the relations between the Greek community and the Turkish minority. In that context the British Government had, in 1955, adopted measures by way of derogation under Article 15 of the Convention. They had notified the Secretary General of the Council of Europe in October 1955 but without any information on the measures or the reasons for taking them. The Greek Government, which had then complained about violations of the Convention by the British Government and the Cypriot administrative authorities, holding the former responsible for the latter's actions, claimed in particular that the derogation measures in question did not meet the procedural requirements of Article 15 § 3 of the Convention.

The Commission noted that it was for the States to notify the measures in question without any unavoidable delay with sufficient information concerning them to enable the other High Contracting Parties to appreciate the nature and extent of the derogation which the measures involved. In the present case, the three-month period between taking of the derogating measure and its notification had been too long and could not be justified by administrative delays resulting from the alleged emergency. In addition, the British Government's Note Verbale had not been accompanied by the text of the measures adopted in derogation of the Convention. However, while recognising that paragraph 3 of Article 15 of the Convention did not afford clear guidance as to the information required in a notification and as the notification in question was the first to be made under that provision, the Commission found that it was not called upon to say that in the present case there had not been sufficient compliance with Article 15 § 3. The Commission nevertheless added that it was **really essential** for the satisfactory working of the Convention **that the text of measures taken under Article 15 should form part of the information provided by the High Contracting Party concerned.**

### Lawless v. Ireland (no. 3) (see also above, pp. 3 and 6)

1 July 1961 (judgment)

On 20 July 1957 the Irish Government had sent a letter to the Secretary General of the Council of Europe informing him of the entry into force on 8 July 1957 of Part II of the Offences against the State (Amendment) Act, 1940, and stating that "... the bringing into operation of [the statute], which confers special powers of arrest and detention, [might] involve any derogation from the obligations imposed by the Convention ..." The applicant disputed the Irish Government's right to rely on the letter of 20 July as a valid notice of derogation, asserting in particular that it did not comply with the strict requirements of Article 15 § 3 of the Convention.

The Court found that the Irish **Government had fulfilled their obligations under Article 15 § 3** of the Convention. It observed that copies of Part II of the 1940 Act and of the Proclamation of 5 July (published 8 July) bringing it into force had been attached to the letter of 20 July 1957. It had also been explained in that letter that the relevant measures had been taken in order "to prevent the commission of offences against public peace and order and to prevent the maintaining of military or armed forces other than those authorised by the Constitution". Thus the Irish Government had provided the Secretary General with sufficient information about the measures taken and the reasons for them. Furthermore, the Irish Government had brought this information to the Secretary-General's attention only twelve days after the entry into force of the measures derogating from their obligations under the Convention and the notification had therefore been made without delay. In conclusion, the Convention did not contain any special provision to the effect that the Contracting State concerned had to promulgate in its

<sup>23</sup>. See footnote 15 above.

territory the notice of derogation addressed to the Secretary-General of the Council of Europe.

**Aksoy v. Turkey** (see also above, pp. 4 and 8, and below, p. 15)

18 December 1996 (judgment)

On 6 August 1990 the Turkish Government had sent a letter to the Secretary General of the Council of Europe informing him among other things that Turkey was exposed to threats to its national security in South-East Anatolia and that it had enacted, on 10 May 1990, two decrees with force of law (nos. 424 and 425) applying to the region subjected to a state of emergency and which might result in derogating from the obligations enshrined in the certain provisions of the Convention. In a second letter of 3 January 1991 the Turkish Government informed the Secretary General of the enactment of Decree no. 430, limiting the powers previously afforded to the Governor of the state of emergency region under Decrees nos. 424 and 425.

None of those appearing before the Court had contested that the Turkish Republic's notice of derogation complied with the formal requirements of Article 15 § 3, namely to keep the Secretary General of the Council of Europe fully informed of the measures which were taken in derogation from the Convention and the reasons therefor. **The Court reiterated that it was competent to examine this issue of its own motion** and in particular **whether the Turkish notice of derogation contained sufficient information about the measure in question**, which allowed the applicant to be detained for at least fourteen days without judicial supervision, to satisfy the requirements of Article 15 § 3. However, in view of its finding that the impugned measure was not strictly required by the exigencies of the situation (see above), the Court found it unnecessary to rule on this matter.

**Sakık and Others v. Turkey**

26 November 1997 (judgment)

This case concerned the arrest and police custody of six members of the Turkish National Assembly who had been brought before a national security court. The Turkish Government argued that, having availed itself of its right of derogation under Article 15 of the Convention, Turkey had not in the present case breached Article 5 (right to liberty and security) of the Convention. The applicants took the view, for their part, that the derogation in question did not apply to the measures imposed on them.

The Court noted that Legislative Decrees nos. 424, 425 and 430, referred to in the derogation of 6 August 1990 and the letter of 3 January 1991, applied, according to the descriptive summary of their content, only to the region where a state of emergency had been proclaimed, which, according to the derogation, did not include the city of Ankara. However, the applicants' arrest and detention had taken place in Ankara on the orders first of the public prosecutor attached to the Ankara National Security Court and later of the judges of that court. In the Turkish Government's view, this was no bar to the derogation's applicability and the facts of the case constituted only the prolongation of a terrorist campaign being conducted from inside the area where the state of emergency had been proclaimed, in south-eastern Turkey. **The Court found that in this case it would run counter to the object and purpose of Article 15 of the Convention if, when assessing the territorial scope of the derogation concerned, it were to extend its effects to territory not explicitly named in the notice of derogation.** The derogation in question was thus inapplicable *ratione loci* to the facts of the case and it was not necessary to determine whether it satisfied the requirements of Article 15.

See *also*, among others: **Abdülşamet Yaman v. Turkey**, judgment of 2 November 2004; **Yurttaş v. Turkey**, judgment of 27 May 2004.

## Information about the date on which the measures ceased to apply

### **Brogan and Others v. the United Kingdom**

29 November 1988 (judgment)

The four applicants, suspected of terrorist acts, were arrested by the police in Northern Ireland in September and October 1984 and, after being questioned for periods ranging from four days and six hours to six days and sixteen and a half hours, were released without having been charged or brought before a judge. The United Kingdom Government referred extensively to the existence of particularly difficult circumstances in Northern Ireland, notably the threat posed by organised terrorism.

The Court observed, among other things, that on 22 August 1984, **the British Government had informed the Secretary General of the Council of Europe that they were withdrawing a notice of derogation** issued under Article 15 of the Convention relying on the emergency situation in Northern Ireland. Consequently, there was no call in the present proceedings to consider whether any derogation from the United Kingdom's obligations under the Convention might be permissible under Article 15 by reason of a terrorist campaign in Northern Ireland. Examination of the case had to proceed on the basis that **the Articles of the Convention in respect of which complaints had been made remained fully applicable. This did not, however, preclude proper account being taken of the background circumstances of the case.** In the context of Article 5 it was for the Court to determine the significance to be attached to those circumstances and to ascertain whether, in the instant case, the balance struck complied with the applicable provisions of that Article in the light of their particular wording and its overall object and purpose. The Court found that there had been a **violation of Article 5 § 3** of the Convention, taking the view that it could not be considered that a period of four days and six hours, or even more, met the requirement of promptness.

## Non-derogable or intangible rights

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### Article 2 (right to life) of the Convention

#### **Mc Cann and Others v. the United Kingdom**

27 September 1995 (judgment)

Three members of the Provisional IRA, suspected of having a remote-control device to detonate a bomb, were shot dead in a street in Gibraltar by SAS (Special Air Service) soldiers. The applicants, heirs of the deceased, argued that the use of lethal force by the security services constituted a violation of Article 2 of the Convention.

The Court found a violation of Article 2 on account of the fact that the operation could have been controlled and organised without it being necessary to kill the suspects. It pointed out in particular that **Article 2** "... not only safeguard[ed] the right to life but [also] [set] out the circumstances when the deprivation of life [might] be justified" and that it thus **"rank[ed] as one of the most fundamental provisions** in the Convention ... **one which, in peacetime, admit[ted] of no derogation under Article 15"** (see paragraph 147 of the judgment).

See *also*, among other authorities: **Makaratzis v. Greece**, judgment (Grand Chamber) of 20 December 2004, § 56; **Isayeva v. Russia** and **Isayeva and Others v. Russia**, judgments of 24 February 2005; **Giuliani and Gaggio v. Italy**, judgment (Grand Chamber) of 24 March 2011, § 174.

## Article 3 (prohibition of torture and inhuman or degrading punishment or treatment) of the Convention

**Aksoy v. Turkey** (see also above, pp. 4, 8 and 13)

18 December 1996 (judgment)

In November 1992 the applicant was arrested and taken into police custody on suspicion of aiding and abetting the PKK. He complained of various forms of ill-treatment: of having been kept blindfolded during interrogation; of having been suspended from his arms, which were tied together behind his back ("Palestinian hanging"); of having been given electric shocks, exacerbated by having water thrown over him; and lastly of having been subjected to beatings, slapping and verbal abuse.

The Court found that there had been a violation of Article 3 of the Convention; the treatment was of such a serious and cruel nature that it could only be described as torture. It observed in particular as follows: "Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against organised terrorism and crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention ...

**Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation ..."** (paragraph 62 of the judgment).

See *also*, among other authorities: **Ireland v. the United Kingdom**, judgment of 18 January 1978, § 163; **Soering v. the United Kingdom**, judgment of 7 July 1989, § 88; **Chahal v. the United Kingdom**, judgment of 15 November 1996, § 79; **Saadi v. Italy**, judgment (Grand Chamber) of 28 February 2008, § 127; **El-Masri v. "The former Yugoslav Republic of Macedonia"**, judgment (Grand Chamber) of 13 December 2012, § 195; **Al Nashiri v. Poland**, judgment of 24 July 2014, § 507.

**Öcalan v. Turkey (no. 2)**

18 March 2014 (judgment)

The applicant, founder of the illegal organisation PKK complained in particular about the irreducible nature of his sentence to life imprisonment, and about the conditions of his detention (in particular his social isolation and the restrictions on his communication with members of his family and his lawyers, whether by telephone or through visits) in the prison on the island of İmralı.

The Court found that there had been a violation of Article 3 of the Convention, as the conditions of detention imposed on the applicant up to 17 November 2009 constituted inhuman treatment, but no violation of Article 3 as regards the subsequent period. It observed in particular as follows: "Article 3 of the Convention enshrines one of the fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned ... In the modern world, States face very real difficulties in protecting their populations from terrorist violence. However, unlike most of the substantive clauses of the Convention ..., Article 3 makes no provision for exceptions and **no derogation from it is permissible** under Article 15 § 2 even in the event of a public emergency threatening the life of the nation" (see paragraphs 97-98 of the judgment).

## Article 4 § 1 (prohibition of slavery and servitude) of the Convention

**Rantsev v. Cyprus and Russia**

7 January 2010 (judgment)

The applicant was the father of a young woman who died in Cyprus, where she had gone

to work in March 2001. He argued that the Cypriot police had not done everything possible to protect his daughter from human trafficking while she was still alive or to punish those responsible after her death. He further complained that the Russian authorities had failed to investigate his daughter's alleged trafficking and subsequent death or to take steps to protect her from the risk of trafficking.

The Court found that Cyprus had not fulfilled its positive obligations under Article 4 of the Convention and that there had also been a violation of this Article by Russia on account of its failure to investigate how and where the applicant's daughter had been recruited and, in particular, to take steps to identify those involved in her recruitment or the methods of recruitment used. The Court reiterated in particular as follows: "... together with Articles 2 and 3, **Article 4** enshrines one of the basic values of the democratic societies making up the Council of Europe ... Unlike most of the substantive clauses of the Convention, Article 4 makes no provision for exceptions and **no derogation from it is permissible** under Article 15 § 2 even in the event of a public emergency threatening the life of the nation" (paragraph 283 of the judgment).

See *also*, among other authorities: [Siliadin v. France](#), judgment of 26 July 2005, § 112; [C.N. v. the United Kingdom \(no. 4239/08\)](#), judgment of 13 November 2012, § 65; [Stummer v. Austria](#), judgment (Grand Chamber) of 7 July 2011, § 116.

## Article 7 (no punishment without law) of the Convention

### [Del Río Prada v. Spain](#)

21 October 2013 (judgment – Grand Chamber)

The case concerned the postponement of the final release of a person convicted of terrorist offences, on the basis of a new approach – based on jurisprudence known as the "Parot doctrine" – adopted by the Supreme Court after she had been sentenced. The applicant complained in particular that the Supreme Court's departure from the case-law concerning remissions of sentence had been retroactively applied to her after she had been sentenced, thus extending her detention by almost nine years.

The Court found that there had been a violation of Article 7 of the Convention, as the applicant had served a prison sentence of a term that was longer than that which had been applicable in Spanish law at the time of her conviction. It observed in particular as follows: "**The guarantee enshrined in Article 7**, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 even in time of war or other public emergency threatening the life of the nation" (paragraph 77 of the judgment).

See *also*, among other authorities: [Ecer and Zeyrek v. Turkey](#), judgment of 27 February 2001, § 29; [Kafkaris v. Cyprus](#), judgment (Grand Chamber) of 12 February 2008, § 137; [M. v. Germany \(no. 19359/04\)](#), judgment of 17 December 2009, § 117.

## Article 4 (right not be tried or punished twice) of Protocol No. 7 to the Convention

Article 4 § 3 of Protocol No. 7 states: "**No derogation from this Article shall be made under Article 15 of the Convention.**"

Protocol No. 6 to the Convention on the abolition of the death penalty and Protocol No. 13 on the abolition of the death penalty in all circumstances

### [Al-Saadoon and Mufdhi v. the United Kingdom](#)

2 March 2010 (judgment)

The applicants, two Iraqi nationals who were Sunni Muslims, were accused of involvement in the murder of two British soldiers shortly after the invasion of Iraq in 2003. They complained that their transfer by the British authorities into Iraqi custody put them at real risk of execution by hanging.

The Court found that there had been a violation of Article 3 of the Convention and that it was not necessary to decide whether there had been violations of Article 2 of the Convention or Article 1 of Protocol No. 13. As regards the latter it took the view that: “in respect of those States which [were] bound by it, the right under Article 1 of Protocol No. 13 **not to be subjected to the death penalty, which admit[ted] of no derogation** and applie[d] in all circumstances, rank[ed] along with the rights in Articles 2 and 3 as a fundamental right, enshrining one of the basic values of the democratic societies making up the Council of Europe” (paragraph 118 of the judgment).

## International armed conflicts and lack of a formal derogation under Article 15 of the Convention

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### Hassan v. the United Kingdom

16 September 2014 (Grand Chamber)

This case concerned the capture of an Iraqi national – the applicant’s brother – by the British armed forces and his detention at Camp Bucca in southeastern Iraq during the hostilities in 2003. The applicant submitted in particular that his brother’s arrest and detention had been arbitrary and unlawful and lacking in procedural safeguards. The United Kingdom had not lodged any formal request under Article 15 of the Convention allowing it to derogate from its obligations under Article 5 (right to liberty and security) of the Convention in respect of its operations in Iraq. Instead, the Government had in their submissions requested the Court to disapply United Kingdom’s obligations under Article 5 or in some other way interpret them in the light of the powers of detention available to it under international humanitarian law.

The Court noted in particular that it was not the practice of the Contracting States to derogate from their obligations under Article 5 (right to liberty and security) of the European Convention on Human Rights in order to detain persons on the basis of the Third and Fourth Geneva Conventions<sup>24</sup> during international armed conflicts. That practice was mirrored by State practice in relation to the International Covenant for the Protection of Civil and Political Rights. In the light, in particular, of these considerations, the Court accepted the United Kingdom Government’s argument that the lack of a formal derogation under Article 15 did not prevent the Court from taking account of the context and the provisions of international humanitarian law when interpreting and applying Article 5 in this case. Nonetheless, and consistently with the case-law of the International Court of Justice, the European Court considered that, even in situations of international armed conflict, the safeguards under the European Convention on Human Rights continued to apply, albeit interpreted against the background of the provisions of international humanitarian law. By reason of the co-existence of the safeguards provided by international humanitarian law and by the European Convention in time of armed conflict, the grounds of permitted deprivation of liberty set out under Article 5 should be accommodated, as far as possible, with the taking of prisoners of war and the detention of civilians who pose a risk to security under the Third and Fourth Geneva Conventions. The Court was mindful of the fact that internment in peacetime did not fall within the scheme of deprivation of liberty governed by Article 5 of the Convention without the exercise of the power of derogation under Article 15. It could only be in cases of international armed conflict, where the taking of prisoners of war and the detention of civilians who pose a threat to security were accepted features of international

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<sup>24</sup>. There are four [Geneva Conventions of 12 August 1949](#): the third is the Geneva Convention relative to the Treatment of Prisoners of War, and the fourth the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

humanitarian law, that Article 5 could be interpreted as permitting the exercise of such broad powers.

In the circumstances of the case, the Court found that the applicant's brother's capture and detention had been consistent with the powers available to the United Kingdom under the Third and Fourth Geneva Conventions, and had not been arbitrary. It therefore held that there had been **no violation of Article 5 §§ 1, 2, 3 or 4** of the European Convention on Human Rights.

## Texts and documents

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See in particular:

- [Guide on Article 15 of the European Convention on Human Rights – Derogation in time of emergency](#), report prepared by the Directorate of the Jurisconsult
  - [National security and European case-law](#), report prepared by the Research Division of the Court
  - [Terrorism and the European Convention on Human Rights](#), factsheet prepared by the Court's Press Unit
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