



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

**Council of Europe Institutions - Organisation-Wide
Videoconference on Lessons Learned
Wednesday 3 June 2020**

**“Protection of human life and public health in the context of a pandemic –
Effectively responding to a sanitary crisis in full respect for human rights and
the principles of democracy and the rule of law”**

A dialogue and process leading up to the Ministerial Session,
Athens 4 November 2020

Speech by Robert Spano

Minister Varvitsiotis, Madame Secretary General Buric, dear ambassadors, dear colleagues.

It is a great pleasure for me to be here today to take part in this discussion along with my predecessor, former President Sicilianos and the Court’s Registrar, Roderick Liddell.

1. Allow me first make a general point about the nature and scope of the pandemic and its consequences for the Council of Europe. I will then elaborate briefly on the way in which the pandemic may potentially impact the Convention system and how these challenges might be viewed within the context of certain principles that might be of use in preparing the upcoming Ministerial Session in Athens in November.

A. General Point

2. First, my general point, which is this: The pandemic is not only a crisis in the sanitary sense. It is a crisis for the further development of European democracy, the rule of law and for the protection of human rights. It has brought our peoples back to first principles, to appreciating the need for solidarity in our communities, to the importance of social safety nets, in particular for our younger generation, a stable and secure employment and to the realisation of the importance of family life.

3. The Council of Europe, the Convention system and the European Court of Human Rights may not be on the frontline in the sanitary sense, but we are certainly on the frontline in safeguarding and promoting the rights and values embedded within the Council of Europe structure and the European Convention on Human Rights. I would argue dear colleagues that never before has the Council of

Europe and what this organisation of forty-seven member States stands for been as important as now and in the months and years to come.

4. What does this require at the general level of policy and law? It requires that the external messages of the Council of Europe, its standard-setting work and the work of the European Court of Human Rights, incentivises and triggers the unity of purpose of all of its member States. The pandemic certainly puts pressure on member States to fulfil their positive obligations to protect life and health. But, the organisation must make sure that our collective voices are heard so as to galvanise and counter the risks of the pandemic being utilised as a pretext for abusing public power, imposing measures on the populace which, although intuitively persuasive in the face of an unprecedented threat to human life and well-being, is upon a closer look a manifestly disproportionate overreach which threatens the fundamentals of democratic life, societies governed by the rule of law and the protection of human rights. Balance is key, balance is essential.

B. Principles To Guide Us Moving Forward

5. Ladies and gentlemen, I have already made clear in my recent public statements that the pandemic will certainly have an impact on the Convention system and the work of the Court. Convention issues will inevitably arise, in particular in relation to the right to life, the right to private and family life, the freedom of assembly and the freedom of movement. It is crucial that national authorities, especially national courts, take existing Convention principles into account when examining challenges to national measures. However, it will ultimately be for the Court to examine such issues when applications are brought before it.

6. On this basis, allow me finally to distill four general and fundamental principles that will manifest themselves in Convention-based challenges in the era of the pandemic and which might perhaps be kept in mind in the upcoming work of the Greek Presidency:

First - The public interest, whilst undoubtedly important, cannot be an absolute trump card for national authorities in the fight against the pandemic. The Convention requires proportionality, a balance to be struck between the public interest and the autonomy of the person. The responsibility for striking that balance is at the outset for the national authorities. In short, the Convention requires all national authorities, the legislative, executive and judicial branches, to engage with the principle of proportionality in good faith.

Second - The principle of legality, based on the primordial principle of the rule of law that permeates the Convention, will become ever more salient when lockdowns, restrictions on freedom of movement and other such measures are imposed. The principle of legality requires that measures taken at national level are accessible and foreseeable. This precludes vague and overbroad rules that run the risk of unpredictability and arbitrariness in their enforcement.

Third - Similarly, rules adopted at national level as a basis for pandemic-related measures restricting individual rights must not afford excessive discretion to the executive. In a true democracy, the executive must not be the sole arbiter of what rules are applicable. The democratically-elected legislator must be reactive and up to the task of engaging with the difficult balancing of interests required in this field.

Fourth - The adoption of emergency laws or declarations deviating in general from Convention guarantees must be strictly tailored to meet the exigencies of the situation. As I speak, ten Member States have derogated from the Convention under Article 15 of the Convention. So, let me be clear: Emergency laws must not become the new norm. The pandemic may well alter our way of life, but the Council of Europe should be at the forefront in making clear that it must not eradicate the system of fundamental values which forms the cornerstone of the Council of Europe and the European Convention on Human Rights.

Thank you very much.