https://doi.org/10.22364/iscflul.8.2.26

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EUROPEAN COURT OF HUMAN RIGHTS AND COVID-19: WHAT ARE STANDARDS FOR HEALTH EMERGENCIES?

Keywords: European Court of Human Rights, COVID-19, emergency, proportionality

Summary

The European Court of Human Rights is currently facing a challenge in dealing with numerous applications linked to the COVID-19 pandemic and the related restrictions aiming to protect human life and health, which, at the same time, limit some of the most important human rights and fundamental freedoms. Legal scholars have voiced different views as to the complexity of this task, invoking the previous case law on infectious diseases and on military emergencies to infer standards that would be transferrable to COVID-19-related cases, or the margin of appreciation of domestic authorities pertaining to health care policy as the approaches ECtHR could take in this respect. The present paper argues that the ECtHR would be well advised to resort to a more systemic integrated approach, which implies the need to consider obligations emanating from other health-related international instruments in setting the standards against which it will assess the limitations of human rights during the COVID-19 outbreak. Hence, the authors reflect on the potential contribution of the integrated approach to the proper response of the ECtHR in times of the pandemic. The review shows that both the ECtHR's caselaw on the integrated approach, as well as its theoretical foundation leave enough room for a wide application by the ECtHR of the right to health, and likewise – soft law standards emanating from the various public health-related instruments, when adjudicating cases dealing with the alleged violations of human rights committed during the COVID-19 outbreak. Subsequently, the paper critically assesses to what extent the ECtHR has taken into account the right to health-related instruments in its previous case law on infectious diseases. This is followed by a review of the existing, albeit sparse, jurisprudence of the ECtHR in its ongoing litigations pertaining to restrictions provoked by COVID-19 pandemic, viewing them also in the context of the integrated approach. The analysis shows that ECtHR did not systemically utilize the integrated approach when addressing the right to health, even though it did seem to

acknowledge its potential. The authors then go on to scrutinize the relevant health emergency standards stemming from international documents and to offer them as a specific guidance to the ECtHR regarding the scope of the right to health which will help in framing the analysis and debate about how the right to health is guaranteed in the context of COVID-19. Consequently, building on the proposed integrity approach, examined theoretical approaches, and standards on the right to health acknowledged in relevant supranational and international instruments, the authors formulate guidance on the path to be taken by the ECtHR.

Introduction

The current COVID-19 pandemic has pushed a number of States Parties to the European Convention on Human Rights (ECHR) to limit some of the most important human rights and fundamental freedoms, which are protected by the ECHR by putting in place COVID-19 restrictions predominantly aimed to protect human life and health. Some of those emergency measures have been already challenged at national and supranational levels.

Since applicants can bring complaints before the European Court of Human Rights (ECtHR) only after exhausting internal remedies, most applications lodged in response to the national restrictions of human rights that were imposed due to the COVID-19 outbreak are still pending before national courts and are expected to reach the ECtHR in the near future. The ones that have reached the ECtHR and the ensuing ECtHR practice already show the diversity of rights and testify to the difficult task faced by the ECtHR.[1] These applications raise questions under a broad range of ECHR provisions, including, but not limited to those pertaining to the right to life, the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, the right to a fair trial, and the right to respect for private and family life. As of October 2021, there are over forty applications submitted to the ECtHR in relation to the COVID-19 health crisis. Most applications that have been brought before the ECtHR are yet to be judged. It is noteworthy that out of the cases in which a decision has been rendered, ECtHR found the violation of the ECHR rights only in one case, while all other applications were declared inadmissible.

There are differences in opinion regarding the extent of challenge the ECtHR is to face in response to COVID-19. Some authors argue that the ECtHR will not be faced with a difficult task, given that its case law on infectious diseases and public health issues is easily applicable to the current COVID-19 situation.[2] Others

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[1] Gambardella I. The COVID-19 pandemic and human rights: The European Court of Human Rights as the last resort for judicial oversight? 2021. Available: https://www.iee-ulb.eu/en/blog/articles/the-covid-19-pandemic-and-human-rights-the-european-court-of-human-rights-as-the-last-resort-for-judicial-oversight/ [viewed 19.10.2021.].

[2] See, for instance: Tsampi A. Public Health and the European Court of Human Rights: Using Strasbourg's Arsenal in the COVID-19 Era. 2020. Available: https://www.rug.nl/rechten/onderzoek/expertisecentra/ghlg/blog/public-health-and-the-european-court-of-human-rights-27-03-2020?lang=en [viewed 18.09.2021.].

claim that the COVID-19 is the first pandemic the ECtHR has had to grapple with, and that the previous case law on public health and infectious diseases is sparse and as such – of minimal help with regard to the reviewing the limitations of human rights provoked by the COVID-19 outbreak.[3] In that context, some legal scholars offer the case law on military emergencies to infer standards that would be transferrable to the health emergency[4] triggered by the COVID-19 pandemic.[5] This approach does not seem optimal, as it neglects and misunderstands the specifics of the current pandemic and the distinction between health and military emergencies. Other scholars invoke and try to apply to COVID-19 situations the ECtHR dictum in Shelley v the United Kingdom according to which "[m]atters of health care policy [...] are in principle within the margin of appreciation of the domestic authorities who are best placed to assess priorities, use of resources and social needs".[6] This approach also has some drawbacks, as it entails a danger of recognizing a broad margin of appreciation related to issues that are not only capable of having a profound adverse impact on human rights but are also inherently trans-national, given that the threat of COVID-19 is universal. Hence, the ECtHR's intervention in these cases is particularly necessary.

Taking as a starting point the literature dealing with the unprecedented situation encountered by the ECtHR in applying a proportionality test to accommodate emergency coronavirus measures, the authors of this paper will argue that the ECtHR would be well advised to resort to a more systemic integrated approach, which implies the need to consider obligations emanating from other human rights instruments in setting the standards against which it will assess the limitations of human rights during COVID-19 outbreak.[7] Firstly, the authors will reflect on the potential contribution of the integrated approach to the proper response of the ECtHR in times of the pandemic. Subsequently, the paper will critically assess to what extent, if any, the ECtHR has taken into account the provisions of the right to health-related instruments in its previous case law on infectious diseases, as well as whether it has gone into that direction in its ongoing

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[3] Greene A. States Should Declare a State of Emergency Using Article 15 ECHR to Confront the Coronavirus Pandemic. 2020. Available: https://strasbourgobservers.com/2020/04/01/states-should-declare-a-state-of-emergency-using-article-15-echr-to-confront-the-coronavirus-pandemic/ [viewed 16.10.2021.]; Tzevelekos V. P., Dzehtsiarou K. Editorial: Normal as Usual? Human Rights in Times of COVID-19, European Convention on Human Rights Law Review, 2020, Vol. 1, No. 2, pp. 141–149.

[4] In this paper, the terms "health emergency" and "public health emergency" will be used interchangeably.

[5] Tzevelekos V. P., Dzehtsiarou K. 2020, p. 145; Jovičić S. COVID-19 restrictions on human rights in the light of the case law of the European Court of Human Rights. ERA Forum 21, p. 559, 2021. https://doi.org/10.1007/s12027-020-00630-w. p. 559.

[6] See, for example, Dzehtsiarou K. Article 15 Derogations: Are They Really Necessary during the COVID-19 Pandemic? European Human Rights Law Review, 2020, No. 4. pp. 360, 361; Tsampi A. 2020.

[7] Gambardella I. 2021.

litigations pertaining to restrictions provoked by COVID-19 pandemic.[8] Finally, the authors scrutinize the relevant health emergency standards stemming from international documents. Building on the proposed integrity approach, guidance on the path to be taken by the ECtHR in the context of health emergencies will be offered, by relying upon theoretical approaches, and standards governing the right to health which are already acknowledged in relevant supranational and international instruments.

1. Scope of the integrated approach of the European Court of Human Rights

The assessment in the following paragraphs will be focused only on the extent to which the ECtHR can afford protection to the right to health in the context of health emergencies. It is widely known that, with the exception of the First Protocol that governs the right to property and the right to education, the ECHR focuses almost entirely on civil and political rights.[9] While the right to health as a fundamental economic and social right is not included in the scope of the ECHR, there is a broad spectrum of prescribed limitations of ECHR's rights and freedoms based on the ground of "the protection of health".[10]

The integrated approach is an interpretive technique adopted by the ECtHR, which takes note of social and labour rights in the interpretation of civil and political rights granting them certain protection.[11] A long time ago, the ECtHR in its judgment in Airey v Ireland laid the foundations for further development of the integrated approach, holding that "there is no water-tight division separating" socio-economic rights from civil and political rights.[12]

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[8] The analysis of the ECtHR current caselaw relies on the information provided in the ECtHR. ECHR, Press Unit, Factsheet, COVID-19 health crisis of October 2021.

[9] Palmer E. Protecting Socio-Economic Rights Through the European Convention on Human Rights: Trends and Developments in the European Court of Human Rights. Erasmus Law Review, 2009, Vol. 2, No. 4, p. 398.

[10] The "the protection of health" is expressly determined as a ground for the limitations of the exercise of the right to respect private and family life, freedom of thought, conscience and religion freedom of expression, freedom of assembly and association and freedom of movement. Moreover, Art. 5 guaranteeing the right to liberty and security of the ECHR also envisages restriction by stipulating that the "lawful detention of persons for the prevention of the spreading of infectious diseases" will not constitute the violation of the right to liberty and security.

[11] The given jurisprudential technique is not characteristic only of the ECtHR, but instead is also applied by other courts in order to protect social and labour rights at international, regional and domestic level. Mantouvalou V. Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation. Human Rights Law Review, 2013, Vol. 13. No. 3, p. 529.

[12] See the ECHR judgment of 9 October 1979 in Case Airey v. Ireland (application No. 6289/73, para. 26 as referred to in: Sychenko E. Enlarging the Scope of the European Convention on Human Rights: History Philosophical Roots and Practical Outcomes. Zbornik PFZ, 2015, Vol. 65, No. 2, p. 314; Palmer E. 2009, p. 398.

In order to understand the exact scope and nature of the ECtHR's integrated approach in the interpretation of the ECHR, it is important to consider the decision in the case Demir and Baykara v. Turkey,[13] which serves as an illustrative example of acknowledgement of the unhindered references to international law, as well as of a high level of the ECtHR's judicial activism in the area of social rights.[14] Taking the systematization offered by Forowicz as a point of departure, with regards to the extent of the reception of international law in the ECtHR, the case Demir and Baykara v Turkey can be considered as an application of "open paradigm", being sharply opposed to instances of the "closed paradigm" characterized by judicial restraint and comparatively sparse referencing to international law.[15] In the given case, the respondent State challenged the use of International Labour Organization (ILO) materials in the interpretation of Art. 11 of the ECHR since it had not signed up to them. However, the ECtHR firmly observed in this connection that in searching for common ground among the norms of international law, it has never distinguished between sources of law according to whether they have been signed or ratified by the respondent State.[16] This approach initially triggered a wave of criticism from both the judges of the ECtHR and scholars, but this backlash gradually dissipated.[17] The ECtHR in its subsequent case law continued to apply the "open paradigm" approach, thus broadening the scope of the ECHR through its interpretation in "harmony with other rules of international law of which it forms part".[18]

Although Mantouvalou argues that the integrated approach to ECHR interpretation still needs a firm theoretical grounding,[19] it seems that Sychenko rightly claims that Sen's theory of capabilities may serve as a solid justification of this method of interpretation.[20] According to the theory of capabilities, the framework of human rights was missing a notion of "basic capabilities", which is understood to imply the necessity of protection of all the rights that influence a person's functioning. Such a notion thus rejects the conceptual differences

[13] ECHR judgment of 12 November 2008 in Case Demir and Bayakara v. Turkey, Grand Chamber (application No. 34503/97).

[14] Sychenko E. 2015, p. 321.

[15] Forowicz M. The Reception of International Law in the European Court of Human Rights. New York: Oxford University Press, 2010, p. 4. as referred to in: Sychenko E. 2015, p. 321.

[16] See ECHR judgment of 12 November 2008 in Case Demir and Bayakara v. Turkey, Grand Chamber (application No. 34503/97), paras. 85 and 86 referred to as in: Sychenko E. 2015, pp. 321 and 322.

[17] See on criticism: Wildhaber L., Hjartarson A. and Donnelly S. No Consensus on Consensus? The Practice of the European Court of Human Rights, Human Rights Law Journal, Vol. 33, No. 7–12, 2013, p. 252. and Nordeide R. Demir & Baykara v. Turkey – European Court of Human Rights Judgement on Rights of Trade Union Formation and of Collective Bargaining, American Journal of International Law, 2009, Vol. 103, No. 3, p. 572.

[18] ECHR judgment of 7 January 2010 in Case Rantsev v. Cyprus and Russia (application No. 25965/04), para. 274.

[19] Mantouvalou V. Labour Law and Human Rights. 2016. Available: https://discovery.ucl.ac.uk/id/eprint/1526806/1/Mantouvalou_Labour%20Law%20and%20Human%20Rights.pdf [viewed 18.10.2021.].

[20] Sychenko E. 2015, pp. 315–316.

between the first and second generation of human rights.[21] Sen further posits that reliance on the "open public reasoning" is critical for the understanding and protection of human rights.[22] The integrated approach so far applied by the ECtHR goes hand in hand with this Sen's view, since the ECtHR in its caselaw considers the achieved compromise between the majority of European countries on a specific matter as a reliable sign for the integration of "new" rights into the ECHR.

Both the ECtHR's caselaw on the integrated approach and its theoretical foundation leave enough room for a wide application of the right to health, as well as of soft law standards emanating from the various public health related instruments by the ECtHR when adjudicating cases dealing with the alleged violations of human rights committed during the COVID-19 outbreak.

3. Integration of health emergency standards in the case law of the European Court of Human Rights pertaining to infectious diseases

The established ECtHR case law linked to infectious diseases is in fact rather sparse. In the past, the ECtHR dealt with cases concerning the prevention of the spreading of contagious diseases such as hepatitis, tuberculosis and HIV. After the examination of the previous case law on hepatitis, tuberculosis and HIV, the current jurisprudence on COVID-19 pandemic will be reviewed.

3.1. Established jurisprudence related to hepatitis, tuberculosis and HIV

The case law pertaining to HIV, as well as previous cases related to other infectious diseases, offer a useful glimpse of how the ECtHR has assessed communicable diseases in the past. At the same time, it shows the lack of full integration of the health emergency standards stemming from other international instruments.

With regard to judgments rendered in the context of the prevention of spreading tuberculosis and hepatitis in its case law addressing systemic problems of medical care in Georgian prisons during the 2000s, the ECtHR developed a relevant set of positive obligations needed to prevent the spread of tuberculosis and hepatitis.[23] However, those cases are not sufficiently applicable to COVID-19

[21] Sen A. Elements of a Theory of Human Rights. Philosophy & Public Affairs, 2004, Vol. 32, No. 4, pp. 345–348; Sen A. Equality of What? Tanner Lecture delivered at Stanford University. 1979. Available: https://tannerlectures.utah.edu/_documents/a-to-z/s/sen80.pdf [viewed 23.08.2021].

[22] Sen A. 2004, p. 322.

[23] ECHR judgement of 24 February 2009 in Case Poghosyan v Georgia (application No. 9870/07) para. 70 and ECHR judgement of 3 March 2009 in Case Ghavtadze v. Georgia (application No. 23204/07), para. 105.

scenarios and nationwide measures, due to the fact that they concern health care measures in the limited context of prisons.

Nonetheless, a closer look at two relevant judgments in this context is warranted, as it shows that in its assessment ECtHR did not give equal regard to health standards emanating from other international instruments. While the judgment in the case Poghossian v. Georgia fully failed to consider health-related standards emanating from such instruments, the same does not apply to the case Ghavtadze v. Georgia. In the latter case, the ECtHR did not limit its efforts on the screening of the European Committee for the Prevention of Torture (CPT) report calling upon the Georgian authorities to persevere in their efforts to combat tuberculosis in the prison system, but also referred to the Guidelines for the Control of Tuberculosis in Prisons, which were jointly developed by the World Health Organization (WHO) and International Committee of the Red Cross. Furthermore, when determining the alleged violation of Art. 3 of the ECHR, the ECtHR again invoked the CPT report and found that competent authorities did not fulfil their positive obligation to protect the applicant's health.[24]

As for the previous pandemic-related cases, which hence imply nationwide measures that have been brought to the ECtHR before the COVID-19, these are cases that relate to HIV. The most relevant HIV related cases can be classified into three groups. The first group consists of cases that predominantly pertain to the protection of the confidentiality of information about a person's HIV infection.[25] The second group relates to quarantine, isolation, complete lockdown and other measures restricting the liberty or freedom of movement.[26] Finally, the third group of cases pertains to travel restrictions and restrictions on residence rights as means for the protection of public health against HIV.[27]

Although the Joint United Nations Programme on HIV/AID (UNAIDS) suggested in its recent report that the lessons learnt from the HIV experience should not be neglected when assessing limitations to human rights in the COVID-19 era, it seems that the HIV connected case law will have only limited impact on cases in times of COVID-19 pandemic. This is perhaps most visible with regards to the third group of HIV cases, pertaining to restrictions to the right to liberty

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[24] ECHR judgement of 3 March 2009 in Case Ghavtadze v Georgia (application No. 23204/07), paras 56, 57, 93–95.

[25] ECHR judgement of 25 February 1997 in Case Z v. Finland (application No. 22009/93), para. 96; ECHR decision of 19 March 2015 in Case Y.Y. v. Turkey (application No. 14793/08), paras. 77–78; ECHR judgement of 25 November 2008 in Case Armonienė v. Lithuania (application No. 36919/02); ECHR judgement of 25 November 2008 in Case Biriuk v. Lithuania (application No. 23373/03); ECHR judgment of 3 October 2013 in Case I. B. v. Greece (application No. 552/10).

[26] ECHR judgment of 25 January 2005 in Case Enhorn v. Sweden(application No. 56529/00).

[27] ECHR, judgement of 10 March 2011 in Case Kiyutin v. Russia (application No. 2700/10) para. 68. That was the first time that the ECtHR ruled on the merits of a claim of discrimination on the ground of a person's HIV-positive status. Timmer A. Kiyutin v Russia: Landmark case concerning the human rights of people living with HIV, 2011. Available: https://strasbourgobservers.com/2011/03/21/kiyutin-v-russia-landmark-case-concerning-the-human-rights-of-people-living-with-hiv/ [viewed 11.09.2021.]; ECHR judgement of 15 March 2016 in Case Novruk and others v Russia (applications Nos. 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14).

and freedom of movement, where the difference from the COVID-19 situations is undisputable. Namely, while HIV connected cases such as Enhorn v Sweden pertain to the compulsory detention of infected persons, the present COVID-19 crisis implies detentions and lockdowns of massive character where the entire population is subject to quarantine regardless whether they are infected at the material time.[28]

The HIV connected case law of the ECtHR likewise does not offer a systematic integration of the health-related standards stemming from international documents. In certain cases, such as Z v. Finland, and Y.Y. v. Turkey, pertaining to the protection of the confidentiality of information about a person's HIV infection, the ECtHR failed to give any regard to the right to health and health standards emanating from other international documents. In other cases concerning the same legal matter, ECtHR took an opposite, but still not fully coherent approach. More concretely, in two cases against Lithuania, ECtHR pursued a consistent approach of making a reference only to one document of the Committee of Ministers of the Council of Europe (CoE) regulating the ethical issues of HIV infection in the health care and social settings.[29] However, what was lacking in these judgments was the further contextualization of the referenced document. On the other hand, in the case I.B. v. Greece, the ECtHR took a more detailed approach by initially making a reference to a wide range of relevant hard and soft law international instruments, including the International Covenant of the Economic, Social and Cultural Rights (ICESCR), related General Comment No. 20 on Non-Discrimination,[30] and documents of the ILO and Parliamentary Assembly of the CoE (PACE) pertaining to AIDS and human rights[31] and then went on to base its argumentation on the some of the aforementioned documents.[32]

Although the Enhorn v. Sweden presents a landmark judgment in the area of compulsory isolation, the ECtHR's approach in this case is not sufficiently advanced in terms of providing full integration of other international documents pertaining to the right to health. Namely, while in Enhorn v. Sweden the ECtHR proceeded with making a reference to relevant international instruments,[33] it failed to further elaborate on these documents in its assessment.

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[28] Tsampi A. 2020.

[29] Both refer to the Recommendation No. R (89) 14 on "The ethical issues of HIV infection in the health care and social settings", adopted by the Committee of Ministers of the CoE on 24 October 1989.

[30] General Comment No. 20: Non-Discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2009.

[31] These are, as follows: ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200); PACE Recommendation 1116 (1989) on AIDS and human rights; PACE Resolution 1536 (2007) on HIV/AIDS in Europe.

[32] See ECHR judgment of 3 October 2013 in Case I. B. v. Greece (application No. 552/10), para. 84.

[33] These are International Guidelines on HIV/AIDS and Human Rights jointly issued in 2006 by the Office of the High Commissioner for Human Rights and UNAIDS and Recommendation no. R (89) 14 on "The ethical issues of HIV infection in the health care and social settings", adopted by the Committee of Ministers of the CoE on 24 October 1989.

In its jurisprudence on the restriction of residence rights and travel restrictions, the ECtHR gave due regard to the international health standards. Such a more systematic approach may be explained by the fact that travel restrictions in times of pandemics are of crucial interest, while the ECtHR seemed to suggest an approach that diverged from the one formally recommended by the WHO.[34] Notably, in Kiyutin v. Russia case, concerning travel restrictions, the ECtHR referred to relevant international documents including those of the WHO, United Nations (UN) Commission on Human Rights, UNAIDS, IOM, and PACE[35] and even more importantly, relied on them in its balancing exercise. Finally, in Novruk and others v. Russia dealing with residence restrictions, the ECtHR attributed less weight to international instruments, but in its reliance on the arguments from Kiyutin v Russia, the ECtHR indirectly took into account relevant international documents and reports.[36]

The above discussion indicates that the ECtHR does not pay equal levels of attention to international health standards in its case law on infectious diseases. The reason behind its selective approach remains unclear, since it is not attributable to the chronological development of ECtHR doctrine nor to legal matters engaged.

3.2. Current jurisprudence related to COVID-19

Between March and April 2020, ten states have officially derogated from their obligations under the ECHR, invoking the public health emergency posed by the pandemic. In doing so, they applied Art. 15 of the ECHR related to the "derogation in time of emergency".[37] The ECtHR position with regards to cases against the said ten countries is particularly challenging in that respect since the COVID-19 pandemic is the first time in the history that the ECtHR will have to deal with cases against states where the official derogations are in place based on the proclaimed public health emergency under Art. 15 of the ECHR. The reasons are twofold.

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[34] Tsampi A. 2020.

[35] These are, among others: Declaration of Commitment on HIV/AIDS (Resolution S-26/2) of 27 June 2001 adopted by the UN General Assembly; UN Commission on Human Rights Resolution No. 1995/44 on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), adopted at its 53rd meeting on 3 March 1995; UN Commission on Human Rights Resolution No. 2005/84, adopted at its 61st meeting on 21 April 2005; ICESCR; PACE Recommendation 1116 (1989) on AIDS and human rights; PACE Resolution 1536 (2007) on HIV/AIDS in Europe; UN Commission on Human Rights Resolution No. 1995/44 on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) adopted at its 53rd meeting on 3 March 1995; International Guidelines on HIV/AIDS and Human Rights jointly issued in 2006 by the Office of the High Commissioner for Human Rights and the UNAIDS.

[36] ECHR judgement of 15 March 2016 in Case Novruk and others v. Russia (Applications Nos 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14), paras 81–130.

[37] Jovičić S. 2021, p. 547.

Firstly, neither the public health grounds, nor the notion of health emergencies are explicitly included in Art. 15 of the ECHR. Therefore, the ECtHR will have to rely on other international hard and soft law instruments when assessing the proportionality of the exercised derogations. Secondly, before the COVID-19 pandemic, the ECtHR has not dealt with the derogations under Art. 15 in the context of public health emergencies, but instead only in the context of armed conflicts and terrorism.[38]

Some applications submitted against states which derogated from the ECHR under Art. 15, based on the proclaimed public health emergency in the context of COVID-19 pandemic, were communicated to the respective national governments,[39] while the ECtHR has already declared inadmissible one application against Romania.[40] The said application relates to the period when the official Art. 15 derogation was in place in Romania. In the given case, the WHO, as a relevant international actor in the field of health emergencies, was referenced, although its actions did not by any means influence the ECtHR decision. Namely, the ECtHR declared the application inadmissible as it found it to be incompatible with the provisions of the ECHR.[41] Therefore, the ECtHR, for the time being, did not decide on the merits of any of the cases when it comes to the applications against the states which derogated from Article 15 in the context of COVID-19 pandemic. Hence, it remains yet to be seen how the ECtHR will address those unprecedented situations.

The tasks of the ECtHR seem equally demanding in cases when it deals with COVID-19-related applications lodged against countries in the absence of their official Article 15 derogations on public health grounds. Thus far, the ECtHR has found the violation of the ECHR's rights only in one case (Feilazoo v. Malta).[42] Nevertheless, it did so without making any reference to the right to health or to other health emergency related instruments. Other relevant ECtHR decisions in which it rejected applications as inadmissible likewise do not refer to the right to health, nor do they provide any sufficient insights into the respective international materials

[38] Jovičić S. 2021, p. 550.

[39] See, for instance: ECHR application in pending Case Spînu v. Romania communicated to the Romanian Government on 1 October 2020 (application No. 29443/20) and ECHR application in pending Case Rus v. Romania communicated to the Romanian Government on 11 June 2021 (application No. 2621/21).

[40] ECHR, decision on the admissibility of 20 May 2021 in Case Terheş v. Romania (application No. 49933/20).

[41] More specifically, the ECtHR found in the Case Terheş v. Romania that the lockdown ordered by the authorities to tackle the COVID-19 pandemic could not be equated with house arrest. Furthermore, the level of restrictions on the applicant's freedom of movement had not been such that the lockdown ordered by the national authorities could be deemed to constitute a deprivation of liberty. Therefore, in the ECtHR's view, the applicant could not be said to have been deprived of his liberty within the meaning of Art. 5 para. 1 of the ECHR. See: ECHR, Press Unit, Factsheet, COVID-19 health crisis of October 2021, p. 5.

[42] ECHR judgement of 11 March 2021 in Case Feilazoo v. Malta (application No. 6865/19) as referred to in: ECHR, Press Unit, Factsheet, COVID-19 health crisis of October 2021, pp. 2–3.

pertaining to the health emergencies and other health-related issues.[43] The only bright exceptions in that regard are the partial decision on admissibility in Fenech v. Malta and the decision on admissibility in Le Mailloux v. France.[44] In Fenech v. Malta, the ECtHR explicitly refers, within its overview of relevant international materials, to both the WHO and CoE documents. More precisely, it invokes the toolkits and statements of the CoE pertaining to COVID-19 sanitary crisis and WHO's interim guidance concerning prevention and control of COVID-19 pandemic in prisons and other places of detention.[45] The reference to the aforementioned documents can be considered as a significant development on the road to integrating COVID-19 specifics in the ECtHR approach to interpretation of the ECHR. However, such referral has only limited practical effects, since the ECtHR in its further assessment of the alleged breach of Art. 5 failed to turn back to those CoE and WHO documents, and to elaborate them by shedding more light on their relevance for the given case.[46] Conversely, in Le Mailloux v. France, the ECtHR did not specify any relevant international documents with regard to health emergencies. The case is nevertheless relevant in the context of the present discussion, since the ECtHR's identified a link between the right to health, on the one hand, through acknowledging that such a right is not guaranteed by the ECHR, and "a positive obligation to take the measures necessary to protect the lives of persons within their jurisdiction and to protect their physical integrity, including in the area of public health", on the other.[47] While the ECtHR did not have to decide whether the respondent state failed to fulfil these positive obligations, as it held the application is inadmissible since the applicant failed to demonstrate that he was "directly affected" by the contested measure,[48] the approach taken by the ECtHR in establishing the link between the right to health and the positive obligations of the state related to public health is commendable.

Despite these two examples, the systematic integration of the health emergency standards in the recent COVID-19 related case law of the ECtHR is lacking. This inadequacy may be explained by the fact that so far only a negligible number of cases have been decided on by the ECtHR, with most of the submitted applications yet to be adjudicated. Moreover, it makes sense that admissibility

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[43] See for instance, ECHR decision on the admissibility of 22 June 2021 in Case Bah v. the Netherlands (application No. 35751/20); ECHR decision of 15 October 2020 in Case D. C. v Italy (application No. 17289/20); ECHR decision on the admissibility of 7 October 2021 in Case Zambrano v. France (application No. 41994/21); ECHR decision on the admissibility of 8 June 2021 in Case Aytaç Ünsal and Ebru Timtik v. Turkey (application No. 36331/20).

[44] See: ECHR, partial decision on the admissibility of 23 March 2021 in Case Fenech v. Malta (application No. 19090/20) and ECHR, decision on the admissibility of 5 November 2020 in Case Le Mailloux v. France (application No. 18108/20).

[45] ECHR, partial decision on the admissibility of 23 March 2021 in Case Fenech v. Malta (application No. 19090/20), paras 60–65.

[46] ECHR, partial decision on the admissibility of 23 March 2021 in Case Fenech v. Malta (application No. 19090/20), para. 88.

[47] ECHR, decision on the admissibility of 5 November 2020 in Case Le Mailloux v. France (application No. 18108/20), para. 9.

[48] ECHR, decision on the admissibility of 5 November 2020 in Case Le Mailloux v. France, para. 10.

decisions do not require a profound argumentation of the ECtHR, as it would be the case with decisions on the merits.

Having this in mind, and in support of the previous discussion on the theoretical and potential practical implications of ECtHR pursuing a more focused integrated approach when deciding on the merits in COVID-related case, an overview of relevant standards emanating from supranational and international instruments that the ECtHR may rely on is provided in the following section.

4. Standards emanating from international public health-related documents

The obligation of the ECtHR to apply the provisions governing the right to the highest attainable standard of health, as determined by the ICESCR and provisions of the International Health Regulation (IHR) of the WHO is undisputable.[49] It is not only a natural consequence of the application of the integrated approach to the interpretation of the ECHR. It also derives from the explicit wording of Art. 15 of the ECHR which envisages as a separate requirement that, in time of public emergency, States Parties may derogate from their obligations under the ECHR, as long as such measures are not inconsistent with their other obligations under international law.

It is certain that both the ICESCR and IHR impose clear obligations on the ECHR states parties, since all of them also ratified the ICESCR, and are WHO member states, legally bound by the IHR. Therefore, the obligations contained in the ICESCR and IHR can be considered as "other obligations under international law" in the sense of Art. 15. The normative authority of the ICESCR and IHR is further reinforced by the provision of the Vienna Convention on the Law of Treaties of 1969, which provides that international standards "may be interpreted in the light of any relevant rules of international law applicable in the relations between the parties."[50]

When it comes to the ICESCR, its Art. 12 is of key importance, as it contains an unambiguous human rights obligation imposed on the states parties to take measures to combat epidemic diseases.[51] The General Comment No. 14 (GC 14),

[49] At the time of writing of this paper, the World Health Assembly is yet to hold a session on the development of a convention, agreement or other international instrument on pandemic preparedness and response (see: Decision WHA74(16) adopted by the Member States at the Seventy-fourth World Health Assembly). The potential contents of such an instrument and its ramifications on the IHR remain out of the scope of the paper.

[50] Vienna Convention on the Law of Treaties of 1969, done at Vienna on 23 May 1969. Entered into force on 27 January 1980. UN, Treaty Series, Vol. 1155, p. 331, Art. 31.

[51] More specifically, Art. 12 stipulates that states parties should take steps necessary for "the prevention, treatment and control of epidemic, endemic, occupational and other diseases." See International Covenant of the Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with Art. 27.

issued by the Committee on Economic, Social and Cultural Rights is also a relevant document in this context, given that it provides an explanation of the meaning and scope of the right to health. It is informative for infectious disease control and consequently in the context of COVID-19, as it pinpoints the weak spots in states' responses to this crisis in health decision-making, through offering an authoritative set of standards which should provide guidance to the actions by states. GC 14 identifies a set of core and comparable priority obligations, which are both particularly relevant to the COVID-19 crisis.[52] They include, *inter alia*, ensuring access to health facilities, goods, and services on a non-discriminatory basis; provision of essential drugs as defined by the WHO and immunization against major infectious diseases occurring in the community; as well as taking measures to prevent, treat, and control epidemic and endemic diseases. Furthermore, the GC 14 underscores that States have the "burden of justifying" control measures aimed at curbing the spread of infectious diseases in terms of their legality, proportionality, and necessity.[53]

In a similar vein, the International Covenant on Civil and Political Rights (ICCPR) envisages that measures restricting the guaranteed rights and freedoms may be justified on the basis of protecting the public's health during emergencies. Those limitations are further articulated in the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR (Siracusa Principles).[54] Although neither GC 14 nor Siracusa Principles explicitly refer to health emergencies, both are relevant and may serve as additional guidance to the ECtHR when deciding whether restrictive measure undertaken in the context of health emergencies were necessary and proportionate.

While both the GC 14 and the Siracusa Principles are soft law instruments, this does not preclude them from being taken into consideration by the ECtHR since the application of integrated approach is not limited only to the rights and obligations originating from ratified hard law instruments, but even the soft law instruments should be considered as long as they reflect "a common ground in modern societies". A common shared value of the GC 14 and Siracusa Principles is that they make a reference to the WHO. The latter document is even more clear in that regard as it explicitly stipulates that, in interpreting the notion of public health 'due regard shall be had to the international health regulations of the World Health Organization'.[55] Similarly, the IHR envisages that States should implement the IHR 'with full respect for the dignity, human rights and fundamental

[52] Toebes T. Forman L. and Bartolini G. Toward Human Rights-Consistent Responses to Health Emergencies: What Is the Overlap between Core Right to Health Obligations and Core International Health Regulation Capacities? Health and Human Rights Journal, 2020, Vol. 22, No. 2, p. 102.

[53] General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-Second Session of the Committee on Economic, Social and Cultural Rights (CESCR), on 11 August 2000 (Contained in Document E/C.12/2000/4), paras 28 and 29.

[54] Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR (Siracusa Principles), American Association for the International Commission of Jurists, 1985.

[55] Siracusa Principles 1985, para. 26.

freedoms of persons'.[56] This interrelated approach should be commended, as it enables systematic interpretation of two international covenants, ECHR and other relevant human rights instruments with the IHR. In that context, Toebes et al. rightly argues that such an interpretation would help resolve the problem of fragmentation of international law and will provide a more human rights-consistent implementation of the IHR.[57]

In this context, it should be recalled that the IHR is a hard law instrument, providing an overarching legal framework which specifies states' rights and obligations in handling public health events and emergencies that have the potential to cross borders.[58] The IHR contains duties which are functionally similar to the ICESCR's duty to prevent, treat, and control epidemic, endemic, and other diseases, while keeping a stronger universal focus as opposed to the mainly domestically oriented duties imposed by the ICESCR. Parallels and overlaps between the core right to health obligations under the ICESCR and the core capacities under the IHR are striking.[59] However, the IHR should be given special weight, given that it is indeed *lex specialis* in the area of infectious disease.[60] Unlike other aforementioned instruments, the IHR contains the notion of health emergencies of international concern and provides criteria which shall be considered in its determination. The IHR thus specifies the available scientific principles, evidence and other relevant information as well as results of the respective risk assessments as relevant criteria in this regard. In addition, the IHR underscores, that public health measures "shall not be more restrictive of international traffic and not more invasive or intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection". Therefore, in deciding whether to implement certain restrictions, states should again take into consideration the existing scientific principles and evidence, as well as the specific guidance or advice from the WHO.[61]

In light of the above discussion, and given the WHO specific expertise and authority, it seems that the legality, proportionality and necessity of human rights restrictions in health emergencies can be best assessed by the ECtHR based on

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[56] Revision of the International Health Regulations, WHA58.3, Fifty-Eight World Health Assembly 2006, Art. 3, paragraph 1.

[57] Toebes T. Forman L. and Bartolini G., 2020, p. 100. For the opposite view, see: Rachovitsa A. The Principle of Systemic Integration in Human Rights Law. International and Comparative Law Quarterly, 2017, Vol 66, pp. 557–588.

[58] World Health Organization. International Health Regulations. Available: https://www.who.int/health-topics/international-health-regulations#tab=tab_1[viewed 18.09.2021.]

[59] Toebes T. Forman L. and Bartolini G. 2020, p. 104.

[60] Ó Cathaoir K. Human Rights in Times of Pandemics Necessity and Proportionality. In: COVID-19 and Human Rights, Kjaerum M., Davis F. M. and Lyons A. (eds.). New York: Routledge Studies in Human Rights, 2021, p. 43.

[61] Revision of the International Health Regulations, WHA58.3, Fifty-Eight World Health Assembly 2006, Art. 12 and 43.

state's responsiveness in its dialogue with the WHO, its proactivity to collect and follow scientific evidence and its overall compliance with the IHR.[62]

The presented standards deriving from the hard and soft law instruments are not sufficiently precise nor articulated and consequently not properly tailored to be used as a single tool by the ECtHR in identifying and addressing concrete COVID-19 related human rights violations. Nevertheless, the identified standards may provide specific guidance to the ECtHR on the contours of the right to health and help in framing the analysis and debate about how the right to health is guaranteed in the context of COVID-19.

Conclusion

The current COVID-19 pandemic has pushed a number of States Parties to the ECHR to limit some of most important ECHR's human rights and fundamental freedoms by putting in place COVID-19 restrictions predominantly aimed to protect human life and health. Some of those emergency measures have been already challenged at national and supranational level. Most cases are still pending before national courts and are expected to reach the ECtHR in the near future. The ones that have reached the ECtHR already testify to the difficult task faced by the ECtHR for a number of reasons.

Firstly, the ECHR focuses almost entirely on civil and political rights. Secondly, the pandemic is the first time in history that the ECtHR will have to deal with cases against states where the official Art. 15 derogations are in place based on the proclaimed public health emergency. Finally, since neither the public health grounds, nor the notion of health emergencies are explicitly included in Art. 15 of the ECHR it seems evident that ECtHR will have to rely on other international hard and soft law instruments when assessing the proportionality of the exercised derogations.

The ECtHR would do so by resorting to the integrated approach, an interpretive technique which takes note of social and labour rights in the interpretation of civil and political rights. The obligation of the ECtHR to apply the provisions governing the right to the highest attainable standard of health, as determined by the ICESCR and provisions of the IHR seems indisputable. It is not only a natural consequence of the application of the integrated approach to the interpretation of the ECHR. It also derives from the explicit wording of Art. 15 of the ECHR, envisaging that in time of public emergency, States Parties may derogate from their obligations under the ECHR, as long as such measures are not inconsistent with their other obligations under international law. It is certain that both the ICESCR and IHR

[62] According to the IHR, states parties have a wide range of obligations, such as informing the WHO, within 48 hours, about the implementation of additional health measures and their health rationale. See: Art. 43, para. 5 of the Revision of the International Health Regulations, WHA58.3, Fifty-Eight World Health Assembly 2006.

impose clear obligations on states parties of the ECHR, since all of them ratified the ICESCR, and are also WHO member states, legally bound by the IHR. Thus, the obligations contained in the ICESCR and IHR can be considered as "other obligations under international law" in the sense of Art. 15.

However, in its jurisprudence pertaining to infectious diseases before the COVID-19 pandemic, the ECtHR was not coherent in utilizing the integrated approach. The reason for its selective approach is unclear, since it is not attributable to the chronological development of ECtHR doctrine nor to legal matters engaged. Even in cases where the ECtHR made full reference to the international instruments governing health emergency standards, such referrals often had limited practical effects, since their further contextualization was missing. The ECtHR's currently sparse jurisprudence with regard to COVID-19 cases is limited both in terms of its scope, and the depth of the analysis, given that the cases adjudicated so far have been in fact decisions on admissibility and not on merits with only one exception. This, however, provides a window of opportunity for the ECtHR to fully and systematically resort to authoritative standards contained in other relevant international hard law and soft law instruments. Furthermore, although the ECtHR refers to certain WHO documents, it is interesting that it so far has never made reference to the IHR nor to the right to health in the sense of the ICESCR and its respective GC 14.

Given the specific expertise and authority of the WHO, it seems that the legality, proportionality and necessity of human rights restrictions in health emergencies can be best assessed by the ECtHR based on state's responsiveness in its dialogue with the WHO, on its proactivity to collect and follow scientific evidence as well as on its overall compliance with all the provisions of the IHR. In that way, the ECtHR will push states to implement the IHR more consistently and by doing so help overcome the lack of enforceable sanctions, which constitutes one of the most important structural shortcomings of the IHR.

The standards deriving from the hard and soft law instruments are not precisely tailored to be used as a single tool by the ECtHR in addressing COVID-19 related human rights violations. Nevertheless, they may provide specific guidance to the ECtHR on the contours of the right to health and help in framing the debate about how this right is guaranteed in the COVID-19 context.

The proposed stronger emphasis of the ECtHR on the integrated approach would be consistent with its existing jurisprudence on both health-related issues and cases dealing with other rights guaranteed by the ECHR and would be considered as an application of "open paradigm" approach. Furthermore, it would contribute to reducing fragmentation in international law and provide more human rights-consistent implementation of the health emergency standards.

BIBLIOGRAPHY

Literature

1. Ó Cathaoir K. Human Rights in Times of Pandemics Necessity and Proportionality. In: COVID-19 and Human Rights, Kjaerum M., Davis F. M. and Lyons A. (eds.). New York: Routledge Studies in Human Rights, 2021.
2. Dzehtsiarou K. Article 15 Derogations: Are They Really Necessary during the COVID-19 Pandemic? European Human Rights Law Review, 2020, No. 4.
3. Jovičić S. COVID-19 restrictions on human rights in the light of the case-law of the European Court of Human Rights. ERA Forum 21, 2021, https://doi.org/10.1007/s12027-020-00630-w
4. Mantouvalou V. Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation, 2013, Human Rights Law Review, Vol.13, No. 3.
5. Nordeide R. Demir & Baykara v. Turkey – European Court of Human Rights Judgement on Rights of Trade Union Formation and of Collective Bargaining, American Journal of International Law, 2009, Vol. 103, No. 3.
6. Palmer E. Protecting Socio-Economic Rights Through the European Convention on Human Rights: Trends and Developments in the European Court of Human Rights. Erasmus Law Review, 2009, Vol. 2, No. 4.
7. Rachovitsa A. The Principle of Systemic Integration in Human Rights Law. International and Comparative Law Quarterly, 2017, Vol. 66.
8. Sen A. Elements of a Theory of Human Rights. Philosophy & Public Affairs, 2004, Vol. 32, No. 4.
9. Sychenko E. Enlarging the Scope of the European Convention on Human Rights: History, Philosophical Roots and Practical Outcomes. Zbornik PFZ, 2015, Vol. 65, No. 2.
10. Toebes T. Forman L. and Bartolini G. Toward Human Rights-Consistent Responses to Health Emergencies: What Is the Overlap between Core Right to Health Obligations and Core International Health Regulation Capacities? Health and Human Rights Journal, 2020, Vol. 22, No. 2.
11. Tzevelekos V. P., Dzehtsiarou K. Editorial: Normal as Usual? Human Rights in Times of COVID-19, European Convention on Human Rights Law Review, 2020, Vol. 1, No. 2.
12. Wildhaber L., Hjartarson A. and Donnelly S. No Consensus on Consensus? The Practice of the European Court of Human Rights, Human Rights Law Journal, Vol. 33, No. 7–12, 2013.

Legal acts

13. International Covenant of the Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with Article 27.
14. Vienna Convention on the Law of Treaties of 1969, done at Vienna on 23 May 1969. Entered into force on 27 January 1980. UN, Treaty Series, Vol. 1155.

Court practice

International courts

15. ECHR application in pending Case Rus v. Romania communicated to the Romanian Government on 11 June 2021 (application No. 2621/21).

16. ECHR application in pending Case Spînu v. Romania communicated to the Romanian Government on 1 October 2020 (application No. 29443/20).
17. ECHR decision on the admissibility of 8 June 2021 in Case Aytaç Ünsal and Ebru Timtik v. Turkey (application No. 36331/20).
18. ECHR decision on the admissibility of 22 June 2021 in Case Bah v. the Netherlands – (application No. 35751/20).
19. ECHR, decision on the admissibility of 20 May 2021 in Case Terheş v. Romania (application No. 49933/20).
20. ECHR, decision on the admissibility of 5 November 2020 in Case Le Mailloux v. France (application No. 18108/20).
21. ECHR decision on the admissibility of 7 October 2021 in Case Zambrano v. France (application No. 41994/21).
22. ECHR decision of 19 March 2015 in Case Y.Y. v. Turkey (application No. 14793/08).
23. ECHR decision of 15 October 2020 in Case D.C. v. Italy (application No. 17289/20).
24. ECHR judgement of 24 February 2009 in Case Poghosyan v. Georgia (application No. 9870/07).
25. ECHR judgment of 25 January 2005 in Case Enhorn v. Sweden (application No. 56529/00).
26. ECHR judgement of 11 March 2021 in Case Feilazoo v. Malta (application No. 6865/19).
27. ECHR judgement of 3 March 2009 in Case Ghavtadze v. Georgia (application No. 23204/07).
28. ECHR, judgement of 10 March 2011 in Case Kiyutin v. Russia (application No. 2700/10).
29. ECHR judgement of 15 March 2016 in Case Novruk and others v. Russia (applications Nos 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14).
30. ECHR judgment of 7 January 2010 in Case Rantsev v. Cyprus and Russia (application No. 25965/04).
31. ECHR judgement of 25 November 2008 in Case Armonienė v. Lithuania (application No. 36919/02).
32. ECHR judgement of 25 November 2008 in Case Biriuk v. Lithuania (application No. 23373/03).
33. ECHR judgment of 12 November 2008 in Case Demir and Bayakara v. Turkey, Grand Chamber (application No. 34503/97).
34. ECHR judgment of 9 October 1979 in Case Airey v. Ireland (application No. 6289/73).
35. ECHR judgment of 3 October 2013 in Case I.B. v. Greece (application No. 552/10).
36. ECHR judgement of 25 February 1997 in Case Z v. Finland (application No. 22009/93).
37. ECHR, partial decision on the admissibility of 23 March 2021 in Case Fenech v. Malta (application No. 19090/20).
38. ECHR, Press Unit, Factsheet, COVID-19 health crisis, October 2021.

Decisions of bodies

39. Decision WHA74(16) adopted by the Member States at the Seventy-fourth World Health Assembly.
40. Declaration of Commitment on HIV/AIDS (Resolution S-26/2) of 27 June 2001 adopted by the UN General Assembly.
41. General Comment No. 20: Non-Discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2009.

42. General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the 22nd Session of the Committee on Economic, Social and Cultural Rights (CESCR), on 11 August 2000 (Contained in Document E/C.12/2000/4) (GC 14).
43. ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200).
44. International Guidelines on HIV/AIDS and Human Rights jointly issued in 2006 by the Office of the High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS (UNAIDS).
45. PACE Recommendation 1116 (1989) on AIDS and human rights.
46. PACE Resolution 1536 (2007) on HIV/AIDS in Europe.
47. Recommendation No. R (89) 14 on "The ethical issues of HIV infection in the health care and social settings", adopted by the Committee of Ministers of the CoE on 24 October 1989.
48. Revision of the International Health Regulations, WHA58.3, Fifty-Eight World Health Assembly 2006.
49. Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR (Siracusa Principles), American Association for the International Commission of Jurists, 1985.
50. UN Commission on Human Rights Resolution No. 2005/84, adopted at its 61st meeting on 21 April 2005.
51. UN Commission on Human Rights Resolution No. 1995/44 on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) adopted at its 53rd meeting on 3 March 1995.

Other materials

52. Gambardella I. The COVID-19 pandemic and human rights: the European Court of Human Rights as the last resort for judicial oversight? 2021. Available: https://www.iee-ulb.eu/en/blog/articles/the-covid-19-pandemic-and-human-rights-the-european-court-of-human-rights-as-the-last-resort-for-judicial-oversight/[viewed 19.10.2021.].
53. Greene A. States Should Declare a State of Emergency Using Article 15 ECHR to Confront the Coronavirus Pandemic, April 2020 Available: https://strasbourgobservers.com/2020/04/01/states-should-declare-a-state-of-emergency-using-article-15-echr-to-confront-the-coronavirus-pandemic/[viewed 16.10.2021.].
54. Mantouvalou V. Labour Law and Human Rights. 2016. Available: https://discovery.ucl.ac.uk/id/eprint/1526806/1/Mantouvalou_Labour%20Law%20and%20Human%20Rights.pdf [viewed 18.10.2021.].
55. Sen A. Equality of What? Tanner Lecture delivered at Stanford University. 1979. Available: https://tannerlectures.utah.edu/_documents/a-to-z/s/sen80.pdf [viewed 23.08.2021.].
56. Timmer A. Kiyutin v. Russia: Landmark case concerning the human rights of people living with HIV, 2011. Available: https://strasbourgobservers.com/2011/03/21/kiyutin-v-russia-landmark-case-concerning-the-human-rights-of-people-living-with-hiv/ [viewed 11.09.2021.].
57. Tsampi A. Public Health and the European Court of Human Rights: Using Strasbourg's Arsenal in the COVID-19 Era. 2020. Available: https://www.rug.nl/rechten/onderzoek/expertisecentra/ghlg/blog/public-health-and-the-european-court-of-human-rights-27-03-2020?lang=en [viewed 18.09.2021.].
58. World Health Organization. International Health Regulations. Available: https://www.who.int/health-topics/international-health-regulations#tab=tab_1 [viewed 18.09.2021.].