



## Resolution 1659 (2009)<sup>1</sup>

# Protection of human rights in emergency situations

Parliamentary Assembly

1. The Parliamentary Assembly is concerned by recent recourse to declarations of a state of emergency in several member states, in particular Georgia and Armenia, involving serious human rights violations.
2. It is the state's responsibility to take preventive measures to protect the interests of society "in time of war or other public emergency threatening the life of the nation" (Article 15 of the European Convention on Human Rights (ETS No. 5), as interpreted by the European Court of Human Rights). Emergency measures must not exceed what is strictly required by the situation and cannot be inconsistent with the state's other obligations under international law.
3. In very specific circumstances linked specifically to Article 15 of the European Convention on Human Rights, the declaration of a state of emergency can be a legitimate legal method to respond quickly to such threats. However, as it entails restrictions on the rights and freedoms of individuals, it must be used with utmost care and as a means of last resort only. Declaring a state of emergency must not become a pretext to unduly restrict the exercise of fundamental human rights.
4. Allegations of abuse of such derogations must be effectively and thoroughly investigated, and the government must be fully accountable.
5. In order to enhance national oversight of the use of emergency legislation, the Assembly is convinced that the legislature should have effective control of this decision-making process.
6. The Assembly notes that an abusively declared or improperly conducted state of emergency often results in excessive use of force and, in particular, the stifling of the freedoms of assembly and of expression.
7. National authorities should ensure appropriate training for law-enforcement officials with respect to non-derogable rights, in particular the rights to life, freedom from torture and inhuman or degrading treatment and to the principle of "no punishment without law", as well as to the use of potentially lethal force only as a last resort when all other means fail. Security forces should have at their disposal the appropriate panoply of means of crowd control that are non-violent and less likely to be lethal and should remain subject to stringent administrative and judicial supervision (see, in this connection, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) and the Council of Europe's European Code of Police Ethics (2001)).
8. The Assembly is strongly of the opinion that the rules of engagement of the security forces in all Council of Europe member countries, and in particular in those countries which, like the Russian Federation, have inherited certain rules from the Soviet period or have recently adopted similar legislation or regulations, should be thoroughly reviewed and modernised in the light of the requirements of the European Convention on Human Rights and the case law of the European Court of Human Rights.

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1. *Assembly debate* on 27 April 2009 (11th Sitting) (see [Doc. 11858](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Haibach). *Text adopted by the Assembly* on 27 April 2009 (11th Sitting). See also [Recommendation 1865 \(2009\)](#).



9. Taking into account the Guidelines on Freedom of Peaceful Assembly (2007) of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), restrictions on the time, place or manner of assembly during an emergency are by far preferable to an outright ban.
10. As concerns freedom of expression, the Assembly recalls the Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis (2007) and stresses that reporting facts and expressing opinions as such should never be regarded as constituting a threat to national security, except in circumstances strictly defined by law; any restrictions must be shown to be necessary in a democratic society to protect a legitimate national security interest and respect the proportionality principle. Such restrictions should be as clear and as limited as possible. The public should have constant access to independent media.
11. The Assembly condemns any attempt to set up legislation concerning demonstrations which would inevitably lead to emergency-like situations by excessively limiting the rights of freedom of movement or expression and by setting up inappropriate impediments to receiving authorisation for such demonstrations to take place.
12. The Assembly considers that the following safeguards – in addition to those stated in Article 15 of the European Convention on Human Rights – should always be provided for in a state of emergency:
  - 12.1. clear time limits and effective legislative oversight of any state of emergency – for example through a “sunset clause” with the possibility of extension subject to new parliamentary approval – while ensuring that the opposition can play its role;
  - 12.2. judicial scrutiny of the validity of a state of emergency and its implementation.
13. The integrity of the judicial system – its competence, independence and impartiality – should be safeguarded, especially as concerns access to a court and to an effective remedy.
14. At the international level, the oversight of declared states of emergencies by the Council of Europe’s Secretary General and the Commissioner for Human Rights should be reinforced. Also, member states should consider adding more rights to the list of those that are currently non-derogable, as is the case in other international human rights mechanisms.