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The impact of the Covid-19 pandemic on human rights and the rule of law

Reply to Recommendation[1]: Recommendation 2180 (2020)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2180 (2020) on "The impact of the Covid-19 pandemic on human rights and the rule of law" and communicated it to the Steering Committee for Human Rights (CDDH), the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), the Committee of Legal Advisers on Public International Law (CAHDI), and the European Committee of Social Rights (ECSR) for information and possible comments.

2. The Committee recognises that an unprecedented number of member States derogated from their obligations to secure certain rights and freedoms under the European Convention on Human Rights (ETS No. 5) in respect of measures taken in response to the Covid-19 pandemic. Nine of those States have since withdrawn their notifications, considering them no longer necessary. While acknowledging the concern of the Parliamentary Assembly that derogations may pose a risk to the maintenance of common human rights standards across Europe, the Committee of Ministers recalls that the right to derogate under Article 15 of the Convention is an important feature of the Convention system, permitting the continued application of the Convention and its supervisory machinery even in the most critical times. Decisions to derogate can be, and have been, challenged before national courts, and any derogation from the Convention is subject to formal requirements and to supervision by the European Court of Human Rights.

3. As concerns paragraphs 3 and 4 of the recommendation, the Committee of Ministers recalls that significant efforts have already been undertaken to provide guidance to member States, notably through the "Guide on Article 15 of the Convention – Derogation in time of emergency" of the European Court of Human Rights and its factsheet "Derogation in time of emergency", both of which also refer to the relevant case law of the Court. Guidance was also provided by the Secretary General in the early days of the crisis in her Information Document "Respecting democracy, rule of law and human rights in the framework of the Covid-19 sanitary crisis: A toolkit for member States", which began with a section on "Derogation in time of emergency (Article 15 European Convention on Human Rights)". The Venice Commission has also contributed to clarifying this issue through its Rule of Law Checklist, the compilation of its works on the state of emergency, the launching of its Observatory of the state of implementation of declarations of states of emergency and of emergency legislation in Venice Commission member States, and its publication "Respect for democracy, human rights and the rule of law during states of emergency – Reflections".

4. Regarding paragraph 5 of the recommendation, the Committee recalls that important work on reviewing national experience in responding to the pandemic and identifying good practice has been carried out by different sectors of the Organisation, as highlighted in the Secretary General's annual reports of 2020 and 2021. At the intergovernmental level, as a first step, exchanges of national experiences in responding to the Covid-19 pandemic have already been carried out. In particular, in the framework of the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), measures taken by member States to mitigate the impact of the pandemic on vulnerable groups have been compiled and resulted in a study on which the Guidelines of the Committee of Ministers on upholding equality and protecting against discrimination and hate

1. Adopted at the 1416th meeting of the Ministers' Deputies (3 November 2021).

during the Covid-19 pandemic and similar crises in the future, adopted on 5 May 2021, are based. The Committee also highlights the statements of the Committee on Bioethics (DH-BIO) on Covid-19 and vaccines: ensuring equitable access to vaccination during the current and future pandemics, published on 22 January 2021, and on human rights considerations relevant to "vaccine pass" and similar documents, published on 4 May 2021; the advice of the Committee of the Parties of the MEDICRIME Convention on the application of the MEDICRIME Convention in the context of Covid-19, published on 8 April 2020; and the statement of interpretation on the right to protection of health in times of pandemic, adopted by the ECSR on 21 April 2020, as well as the on-going work of the ECSR on guidance related to a wide range of social rights as they are being impacted by the pandemic. In the latter context, the Committee points out that no member State has availed itself of the possibility to derogate from its obligations under the European Social Charter, as provided for by Article F of the Revised Social Charter (Article 30 of the 1961 Social Charter). The Committee particularly underscores the need for fair and non-discriminatory access to vaccines, as well as for providing accurate and reliable information about available vaccines.

5. At the same time, the Committee of Ministers informs the Parliamentary Assembly that it will give due consideration to its recommendation to give terms of reference to the appropriate intergovernmental committee or committees to review national experience in responding to the Covid-19 pandemic, with a view to pooling knowledge and experience and identifying good practice on how to ensure an effective response to public health emergencies that respects human rights and the rule of law. Such pandemic-related work may be proposed in the context of the Programme and Budget 2022-2025, possibly including a report on member States' practice in relation to derogations from the Convention in case of major hazards and a toolkit for human rights impact assessment of measures taken by the State in such cases, and potentially leading to drafting a non-binding instrument to assist member States to fully respect human rights, democracy and the rule of law in case of major hazards like the present Covid-19 crisis. In this regard, the Committee recalls its reply, adopted on 17 February 2021, to the Assembly's Recommendation 2174 (2020) on "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic".