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State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights

Motion for a resolution

tabled by Ms Anne BRASSEUR and other members of the Assembly

This motion has not been discussed in the Assembly and commits only those who have signed it

Article 15 of the European Convention on Human Rights enables a State party to unilaterally derogate – in a temporary, limited and supervised manner – from some of its obligations under the Convention in certain exceptional circumstances.

However, some rights, such as the right to life, prohibition of torture and forced labour cannot be subject to derogations. The latter shall be used “to the extent strictly required by the exigencies of the situation”.

A few member States have already used derogations and the European Court of Human Rights has assessed the necessity and proportionality of some of them. Recently, new derogations were notified by Ukraine, France and Turkey.

According to the Venice Commission “State Practice shows that the gravest violations of human rights tend to occur in the context of states of emergency and that States may be inclined, under the pretext of a state of emergency, to use their power of derogation for other purposes or to a larger extent than is justified by the exigency of the situation.” The Parliamentary Assembly also noted in its [Resolution 1659 \(2009\)](#) that “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 expression”.

Thus, the Assembly should study proportionality issues regarding derogations under Article 15 of the Convention.

Signed (see overleaf)



Signed¹:

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