

SECURITY *VERSUS* FREEDOM:
DEROGATION FROM HUMAN RIGHTS IN TIME OF TERRORISM

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Outline

- I. Introduction
- II. International rules on derogation from human rights
- III. Legal regime of Article 15 of the ECHR
 - 1. Precondition: state of public emergency
 - 1.1. Definition of the concept of public emergency
 - 1.2. Derogation practices by European States
 - 1.3. The temporal scope of the emergency: existing, imminent, or only threatened danger?
 - 1.4. The territorial scope of the emergency: extraterritorial effects of Article 15?
 - 2. Limits to the emergency measures
 - 2.1. Measures “strictly required by the exigencies of the situation”
 - 2.1.1. Necessity
 - 2.1.2. Proportionality
 - 2.1.3. Domestic legal guarantees against abuses
 - 2.1.4. Only temporary measures?
 - 2.2. Respect for non-derogable human rights
 - 2.3. Respect for other obligations deriving from international law
 - 3. Who decides on the existence of an emergency situation and on the compliance with the limits? What is the margin of appreciation of the State?
 - 3.1. The theory of the margin of appreciation applied to Article 15
 - 3.2. The practice of the Strasbourg supervisory bodies
 - 3.3. My opinion
 - 4. The procedural rules
 - 4.1. Obligations to inform the CoE
 - 4.2. International control by the Strasbourg Court
- IV. Conclusions