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THE MARGIN OF APPRECIATION AND COVID-19: HUMAN RIGHTS RESTRICTIONS IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS[1]

The outbreak of COVID-19 initiated a widespread tendency among states to implement broader restrictions on human rights and to transfer more powers to the national level. During this crisis, various fundamental rights were restricted, including the freedom of movement, the right to liberty and security, the right to a fair trial, the right to respect for private and family life, and the freedom of assembly and association. Economic, social, and cultural rights, though not directly guaranteed by the European Convention on Human Rights (ECHR), also entailed positive state obligations to safeguard vulnerable groups during the pandemic [1, p. 9; 2].

In evaluating these restrictions, the European Court of Human Rights (ECtHR) largely determined that measures limiting human rights were justified to protect "public health" [3, p. 2]. As most rights and freedoms enshrined in the ECHR are relative in nature, emergency measures that entail restrictions on these rights are generally deemed lawful under ordinary ECHR provisions, provided they are proportionate and strictly necessary [4, p. 14]. Consequently, in emergency situations like the COVID-19 pandemic, states enjoy a wide margin of appreciation [5, p. 550].

Despite the general expansion of the margin of appreciation during the pandemic, the ECtHR's jurisprudence reveals a nuanced approach. The Court maintained strict review over certain procedural and absolute rights while deferring to state healthcare policies in other areas. In several cases, the ECtHR highlighted significant problems regarding the effective provision of human rights, demonstrating that the pandemic could not serve as a blanket justification for all state actions. In these instances, the ECtHR applied a narrow margin of appreciation. In particular, in relation to Article 3 ECHR (Prohibition of inhuman or degrading treatment) in the case of *Feilazoo v. Malta* (2021), the applicant, a Nigerian national, complained about the conditions of his immigration detention, which included *de facto* isolation followed by placement in a COVID-19 quarantine with new arrivals. The Court found a violation of Article 3, pointing out that there was no indication the applicant actually needed quarantine after a seven-week isolation period. Therefore, placing him with new arrivals who could pose a health risk failed to comply with basic sanitary requirements [6].

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In the context of Article 5 (Right to liberty and security), the case of *Khokhlov v. Cyprus* (2023) concerned an individual detained pending extradition to Russia. The extradition was delayed partly due to the COVID-19 pandemic, resulting in over two years of detention. Consequently, the ECtHR found violations of Article 5(1) and (4) of the ECHR, ruling that the applicant's detention was unreasonably long and that the appeal proceedings regarding the lawfulness of his detention had not been conducted 'speedily' [7].

In *Q and R v. Slovenia* (2022), a grandmother sought foster care for her grandchildren after the murder of their mother. The proceedings spanned on for almost six years. Notably, the ECtHR acknowledged that COVID-19 restrictions could understandably delay case processing; however, this did not absolve the state of its responsibility for lengthy proceedings. Because the applicant's profound personal stakes required special diligence, and the case could have been processed during the pandemic had it been classified as urgent, the ECtHR found a violation of Article 6(1) of the ECHR (Right to a fair trial), applying a narrow margin of appreciation [8].

Conversely, where state measures strictly pertained to public health administration and epidemiological containment, the ECtHR afforded domestic authorities a wide margin of appreciation.

For instance, *Pasquinelli and Others v. San Marino* (2024) involved healthcare workers who refused mandatory COVID-19 vaccination and consequently faced suspension without pay or relocation. The ECtHR found no violation of Article 8 (Right to respect for private and family life), ruling that the vaccination requirements pursued the legitimate aim of protecting public health and were proportionate. The measures did not exceed the state's wide margin of appreciation in healthcare policy. Notably, the Court observed that vaccination was not 'forcible,' as no fines were imposed and no disciplinary sanctions were taken for refusal. Instead, the following alternative measures were applied to employees who declined vaccination: transfer to other public sector positions or services where contact with patients was minimal; community service (participation in socially significant activities with an allowance of up to €600 per month); and temporary suspension, used as a last resort if other options were unavailable or rejected by the employee. In some cases, suspension was accompanied by an allowance conditional upon the performance of social work. Furthermore, the ECtHR emphasised that the financial losses suffered by the applicants were deemed an unavoidable consequence of the 'exceptional and unforeseeable' context of the global pandemic [9].

Regarding Article 9 (Freedom of thought, conscience and religion), in the *Constantin-Lucian Spînu v. Romania* judgement (2022), a prisoner belonging to the Seventh-day Adventist Church was denied leave to attend religious services outside the prison due to COVID-19 measures. In this case, the ECtHR concluded there was no violation of Article 9. Given the specific and novel circumstances of the health crisis, the national authorities were afforded a wide margin of appreciation. The Court observed that the prison authorities had carefully balanced the applicant's individual situation against the evolving public health crisis when making their decision [10].

The influx of pandemic-related litigation also featured substantial procedural hurdles. Between March 2020 and December 2023, the ECtHR processed nearly 400 interim measures requests related to the COVID-19 health crisis. These

requests were predominantly brought by vulnerable groups, such as prisoners and individuals held in reception or detention centers for asylum seekers and migrants. Many cases were declared inadmissible due to procedural failures, including the non-recognition of *actio popularis* by the Court, the failure of applicants to demonstrate a victim status (individualised impact), the non-exhaustion of domestic remedies, failure to comply with filing deadlines, and the manifest ill-foundedness of the applications [11, pp. 18 – 19].

Therefore, the jurisprudence of the ECtHR during the COVID-19 pandemic underscores the dynamic nature of the margin of appreciation doctrine. While the crisis undeniably shifted the balance toward state sovereignty – granting domestic authorities wide discretion to implement unprecedented health and safety regulations – this deference was not unlimited. The Court maintained a narrow margin of appreciation when assessing the rights of vulnerable individuals, specifically regarding conditions of detention, absolute rights (notably the prohibition of inhuman or degrading treatment), the right to liberty, and the right to a trial within a reasonable time. Ultimately, the pandemic reaffirmed the doctrine's core function: ensuring a balanced distribution of powers between the supranational and national levels while effectively safeguarding fundamental human rights standards.

LITERATURE:

1. Radjenovic A. Upholding human rights in Europe during the pandemic : briefing. Brussels : European Parliamentary Research Service, 2020. URL: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652085/EPRS_BRI(2020)652085_EN.pdf (дата звернення: 17.04.2026).
2. Leijten I. *The ECHR and Socio-Economic Rights Protection*. Core Socio-Economic Rights and the European Court of Human Rights. Cambridge : Cambridge University Press, 2018. P. 25–58. (Cambridge Studies in European Law and Policy).
3. Vinceti S. R. COVID-19 Compulsory Vaccination and the European Court of Human Rights. *Acta Biomedica Atenei Parmensis*. 2021. Vol. 92, No. S6. e2021472. DOI: https://doi.org/10.23750/abm.v92iS6.12333.
4. Valutytė R., Jočienė D., Ažubalytė R. Legality of Human Rights Restrictions During the COVID-19 Pandemic Under the European Convention on Human Rights. *Tilburg Law Review*. 2021. Vol. 26, No. 1. P. 1–15. DOI: https://doi.org/10.5334/tilr.245.
5. Jovičić S. COVID-19 restrictions on human rights in the light of the case-law of the European Court of Human Rights. *ERA Forum*. 2021. Vol. 21. P. 545–560. DOI: https://doi.org/10.1007/s12027-020-00630-w.
6. *Feilazoo v. Malta* (no. 6865/19) : Judgment / European Court of Human Rights. 2021. 11 March. URL: https://hudoc.echr.coe.int/fre?i=001-208447 (дата звернення: 17.04.2026).
7. *Khokhlov v. Cyprus* (no. 53114/20) : Judgment / European Court of Human Rights. 2023. 13 June. URL: https://hudoc.echr.coe.int/fre?i=001-225223 (дата звернення: 17.04.2026).
8. *Q and R v. Slovenia* (no. 19938/20) : Judgment / European Court of Human Rights. 2022. 8 February. URL: https://hudoc.echr.coe.int/eng?i=001-215476 (дата звернення: 17.04.2026).

9. *Pasquinelli and Others v. San Marino* (no. 24622/22) : Judgment / European Court of Human Rights. 2024. 29 August. URL: https://hudoc.echr.coe.int/fre?i=001-235475 (дата звернення: 17.04.2026).
10. *Constantin-Lucian Spînu v. Romania* (no. 29443/20) : Judgment / European Court of Human Rights. 2022. 11 October. URL: https://hudoc.echr.coe.int/eng?i=001-219646 (дата звернення: 17.04.2026).
11. Factsheet – COVID-19 health crisis / *European Court of Human Rights*. 2024. October. URL: https://www.echr.coe.int/documents/d/echr/fs_covid_eng (дата звернення: 17.04.2026).

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МІЖНАРОДНО-ПРАВОВІ АСПЕКТИ НАДЗВИЧАЙНОГО ЗАКОНОДАВСТВА

Понад три десятиліття тому Френсіс Фукуяма у праці *«Кінець історії та остання людина»* висловив доволі оптимістичне припущення про остаточну перемогу ліберальної демократії та поступове зникнення масштабних ідеологічних конфліктів. Проте сучасні події демонструють, що історія виявилася значно складнішою та конфліктнішою. Повномасштабна війна в центрі Європи, пандемія COVID-19, терористичні атаки, міграційні кризи та інші глобальні загрози свідчать про те, що сучасні держави дедалі частіше функціонують не в умовах стабільної «нормальності», а в умовах постійних криз і викликів. За таких обставин особливого значення набуває правовий режим надзвичайного стану. Його природа є певною мірою парадоксальною: з одного боку, надзвичайний стан означає відступ від звичайного конституційного порядку та допускає тимчасове обмеження прав людини і концентрацію владних повноважень, а з іншого — саме він покликаний забезпечити збереження держави, конституційного ладу та демократичних інституцій.

Право держави на існування традиційно розглядається міжнародним правом як одне з фундаментальних прав держави. У міжнародно-правовій доктрині воно визнається основою для реалізації інших прав та обов'язків держави. Саме із права на самозбереження випливає можливість держави вживати виняткових заходів для захисту конституційного ладу, територіальної цілісності та безпеки населення. У Консультативному висновку щодо законності погрози або застосування ядерної зброї Міжнародний Суд ООН фактично підтвердив існування такого права, наголосивши на фундаментальному значенні права держави на виживання [1]. У цьому контексті конституційний надзвичайний стан можна порівняти з інститутом необхідної оборони у кримінальному праві. Якщо особа має право захищати