

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

State Rights and Human Rights in State of Emergency

ALI KHALEL JASSIM ALKUBAISY¹

ABSTRACT

It is an undeniable fact of life that many states will at some stage be confronted with emergencies, serious crisis situations, such as pandemic or other kinds of serious societal upheavals, and that in such situations they may consider it necessary, in order to protect the community, to limit the enjoyment of individual rights and freedoms and possibly even to suspend their enjoyment altogether. The result may be disastrous not only on the human rights for the persons affected by the restrictions but also on the community in general. Human Rights such as freedom of movement, mobility rights, or the right to travel is a human rights concept encompassing the right of individuals to travel from place to place within the territory of a country, such a right is provided in the constitutions of numerous states, and in documents reflecting norms of international law.

Keywords: Declaration, Derogate, Freedom, Suspend, State of emergency.

I. INTRODUCTION

When a government declares a state of emergency or does not make such a declaration, this decision determines the legal and operational resources available to respond to an emergency and has implications for governments, the private sector, and the public. The declaration will then trigger issues concerning the main legal principles in international human rights law that govern the rights of state to take measures derogating from their legal obligations in emergency situations, and therefore serious questions will raise such as; what is, or should be, the purpose of the declaration of a state of emergency and the derogation from human rights obligations? In what circumstances can this be done? which body decides? Which rights can be affected by a decision to derogate from, or suspend, the full enjoyment thereof? Is it possible in the legal system within the state derogate from, or suspend, the full enjoyment of human rights and fundamental freedoms? could it be necessary to suspend the full enjoyment of human rights and fundamental freedoms in order to deal with a severe crisis situation? Is it possible in the legal system within the state to derogate from, or suspend, the full enjoyment of human rights and fundamental freedoms?

¹ Author is an Assistance Professor at Lusail University, Qatar.

The following will determine whether it is possible in the legal system within the State to derogate from, or suspend, the full enjoyment of human rights and fundamental freedoms. 'The State' that will be considered for the purposes of this essay will be the United Kingdom. In order to determine whether it is possible to derogate or suspend the full enjoyment of human rights and fundamental freedoms, this essay will be split into two sections. The first section will outline the remits of derogations in non-states of emergency to establish the leeway already provided to the UK in relation to human rights. Meanwhile, the second section will consider the extent to which states of emergency can result in the UK being able to derogate from human rights and fundamental freedoms. This section will consider the derogations available under UK domestic law.

(A) Methodology

The research methodology adopted in this paper seeks to answer the issue related to state rights verses human rights in states of emergency like "Pandemic". Qualitative research methods are designed in a manner that help reveal the behaviour and perception of a target audience with reference to a particular topic. There are different types of qualitative research methods like an in-depth interview, focus groups, ethnographic research, content analysis, case study research that are usually used. The results of qualitative methods are more descriptive, and the inferences can be drawn quite easily from the data that is obtained. Qualitative research methods originated in the social and behavioural sciences. Today our world is more complicated, and it is difficult to understand what people think and perceive. Online qualitative research methods make it easier to understand that as it is more communicative and descriptive.

II. HUMAN RIGHTS IN PANDEMIC

In the case of crises or pandemic there are different humans suffered in this critical situation and during this whole situation there are different numbers of important rights which are being involve and play role in this whole case. This situation is aggravated by isolation, such as the quarantine introduced during the pandemic. All states must make significant efforts and measures to address the threat of pandemic, these measures could affect the applications and practice of human rights. Various specialists announced that the pandemic is a circumstance when various issues are being experienced intersectional, and consequently, are not, at this point an issue of just a single classification. Human rights laws ensure that everyone has the highest security, and the government is committed to finding solutions to eliminate food hazards. it causes nerves and helps those in need of medical care. The public also recognizes that some rights can be discussed in connection with good health care and open access to community life.

If properly supported, they lead to most of the evidence and not to a wrong decision in the application, as opposed to protecting one's interests, as long as the assessment is made in the process of achieving the objective.

Article 4(1) of the International Covenant on Civil and Political Rights 1976 states that:

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”²

Article 27(1) of the American Convention on Human Rights 1978 states that:

“In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.”³

and article 15(1) of the European Convention on Human Rights 1953 states that:

“In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”⁴

This article lay down the condition that derogatory measures must not be “inconsistent with” a State party’s “other obligations under international law”. The same condition is laid down in article 30(1) of the European Social Charter 1961 which states that:

“In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent

² International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force 23 March 1976) UNTS 2200A (ICCPR)

³ The American Convention on Human Rights (adopted on 22 November 1969, entered into force 18 July 1978) 27 (ACHR) Pact of San José

⁴ The European Convention on Human Rights (adopted on 4 November 1950, entered into force on 3 September 1953) 15 (ECHR)

with its other obligations under international law.”⁵

and in article F (1) of the Charter as revised. The term “other obligations under international law” is broad and can in theory be interpreted to comprise any legal obligation derived from an international treaty or customary law, or even general principles of law, that is relevant to the enjoyment of the human rights and fundamental freedoms affected by a derogation. In General Comment No. 29, the Human Rights Committee states in this regard that:

“no measure derogating from the provisions of the Covenant may be inconsistent with the State party’s other obligations under international law, particularly the rules of international humanitarian law. Article 4 of the Covenant cannot be read as a justification for derogation from the Covenant if such derogation would entail a breach of the State’s other obligations, whether based on treaty or general international law. This is reflected also in article 5, paragraph 2, of the Covenant according to which there shall be no restriction upon or derogation from any fundamental rights recognized in other instruments on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.”⁶

International human rights law provides for restrictions on the rights and freedoms granted to serious threats to health and violence that threaten human lives. Hit nationally and exploited legal restrictions, their rigorous and new research bases. Pandemic will cause critical social and financial disturbance. Lawful systems can assume a significant job in explaining the rights and obligations of people, networks, and governments for times of emergency. In tending to legitimate systems, there is a requirement for jurisdictional clearness between various degrees of government in reacting to general wellbeing crises. General wellbeing laws are likewise educated by our understandings of rights and obligations regarding people and networks, and the adjusting of general wellbeing and open opportunities.⁷

Thought of these issues is a basic piece of deciding arrangements for pandemic. Our capacity to react to the social and financial interruption that might be brought about by an episode of a genuine irresistible infection might be tried should the world experience another pandemic. General wellbeing law is a dissimilar assortment of laws and government reactions, with its regular component an attention on the populace as opposed to the individual'. While law has a significant impact in forming the job of state activity and mediation in the strength of people and networks, the extent of these state powers is moulded by a scope of elements including: the

⁵ The European Social Charter (adopted on 18 October 1961, entered into force on 26 February 1965) 30 (ESC)

⁶ Ibid

⁷ John Watkins, J. (2020) ‘Preventing a covid-19 pandemic’, (*The BMJ*, February 2020), <<https://www.bmj.com/content/368/bmj.m810>> accessed July 2021

nature and customs of the legitimate framework in the nation being referred to; social understandings of the individual, the network and the state and of the connections among them.⁸

Extraordinary powers should be used legally, in the interest of public health. Restrictive measures, such as social distance and self-isolation, should take into account the needs of people who rely on other people's support. Many people, including people with disabilities, rely on family and social services in these aspects.⁹ The degree of pandemic has reached the level of threats to public health that may restrict certain rights and freedoms, as opposed to freedom of movement due to exclusion or exclusion. At the same time, careful attention to such rights as the right not to be discriminated against, and principles such as transparency and respect for human dignity, can ensure an effective response to the conditions of disorganization and violation of the usual way of life that are inevitable in a crisis situation and stop the negative consequences associated with the introduction of excessively broad restrictions that do not meet the above criteria.¹⁰

Based on already existing examples of government responses, this material provides an overview of the human rights issues that arise in connection with the corona virus epidemic and provides recommendations to governments and other responsible people on how to ensure respect for rights and freedoms in a crisis situation.¹¹ The state is obliged to provide the information necessary to promote and protect human rights, including the right to health. The Committee on Economic, Social and Cultural Rights classifies as “priority commitments” “ensuring access to information related to major medical problems in the community, including information on how to prevent and combat such problems”. Taking human rights into account when responding to COVID-19 implies providing the entire population with reliable and up-to-date information about the virus itself, about access to services, about the termination of services and about other aspects of the authorities' response to the pandemic (Nicola *et al.*, 2020).¹²

In international human rights norms, freedom of movement, as a general rule, guarantees everyone the right to leave any country and enter a country of nationality, as well as the right

⁸ Juliet Bedford, ‘COVID-19: towards controlling of a pandemic’ [2020] Volume 395, Issue 10229, <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30673-5/fulltext#%20](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30673-5/fulltext#%20)> accessed July 2021

⁹ Haleem, A., Javaid, M. and Vaishya, R. (2020) ‘Effects of COVID-19 pandemic in daily life’, *Current Medicine Research and Practice*, <<https://pubmed.ncbi.nlm.nih.gov/32292804/>> accessed June 2021

¹⁰ Mesa Vieira and others, ‘COVID-19: The forgotten priorities of the pandemic’ (Science Direct, 4 April 2020), <<https://www.sciencedirect.com/science/article/pii/S0378512220302346>> accessed July 2021

¹¹ Simon Wren-Lewis, ‘The economic effects of a pandemic’ (Social Europe 10 March 2020) <<https://www.socialeurope.eu/the-economic-effects-of-a-pandemic>> accessed July 2021

¹² Nicola, M. *et al.* (2020) ‘The Socio-Economic Implications of the Coronavirus and COVID-19 Pandemic: A Review’, (International Journal June 2020) <<https://www.ncbi.nlm.nih.gov/32305533/>> accessed July 2021

of every person legally located in the territory of a state to freely move throughout its territory. Restrictions on freedom of movement are permissible only if they are prescribed by law,

pursue a legitimate goal and are proportionate to its achievement, including in terms of the consequences of their introduction. (Richardson *et al.*, 2016). International law recognizes the state's broad powers to close borders for individuals and migrants. However, national and international travel bans have historically shown limited effectiveness in controlling the spread of infections and in reality can even contribute to their spread when people try to get out of the quarantine zone before it is introduced. COVID-19, like other infectious diseases, is an increased danger for people who are in constant close contact with each other. Asylum seekers, refugees living in camps, and people with no fixed abode, In nursing homes and other institutions with a large number of elderly people, the policy of admission of visitors should be based on a balance of interests of protecting the at-risk contingent with their needs in communicating with family and human contacts (Hurley, 2020).

Measurements and weight of pandemic include a number of environmental features that can block specific requirements, such as those that are difficult to distinguish allow or limit the time for development. At the same time, close scrutiny of human rights, such as non-discrimination, and the rights of people, such as the direct and dignified human condition, can cause disputes when dealing with disputes and confusion. Damage due to the complexity of quantitative actions precludes such actions. Rights and duties are multi-layered. They emerge at nearby, national and worldwide levels and at the crossing points between these levels. What is clear is that general wellbeing rights and duties regarding irresistible sickness are worldwide just as national. On the off chance that we are to survey the amplexness of our legitimate systems for pandemic readiness, we additionally need to evaluate the sufficiency of our laws as far as their appropriateness for meeting our global commitments. While created nations of the world as of now have modern general wellbeing frameworks, the ability to meet their commitments under the IHR (2005), and the monetary assets to create national immunization stores, the creating nations of the world face a totally different viewpoint.

III. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE UK IN NON-STATES OF EMERGENCY

Human Rights are enshrined in the UK under the Human Rights Act (HRA) 1998,¹³ which

¹³ Human Rights Act 1998

codifies the European Convention on Human Rights (ECHR)¹⁴ into the law of the United Kingdom. This is still applicable even though the United Kingdom has chosen to leave the European Union. This is demonstrated under the EU-UK Trade AND Cooperation Agreement 2021, which states that ‘the Parties shall continue to uphold the shared values and principles of democracy, the rule of law, and respect for human rights which underpin their domestic and international policies.’¹⁵ Edwards notes that while this Agreement specifically refers to international treaties, the ECHR is not explicitly mentioned. However, he proposes that this qualifies as one of the international treaties that they are parties to, even if they have the potential to limit its application in the future.¹⁶

Under the area of human rights law, there are several types of rights which can be conveyed. These rights can be categorised as limited rights, qualified rights, and absolute rights. Limited rights can be restricted under the specific situations which are outlined under statute. One example of this is the right to liberty and security, which can only be deprived in scenarios such as ‘for the prevention of the spreading of infectious diseases’, the ‘lawful detention of a person after conviction’, and ‘the detention of a minor...[for] educational supervision’.¹⁷ This shows that under normal circumstances, these rights can be restrained providing that the required criteria are met.

Qualified rights can be limited If they interfere with the interests of the wider community or if they infringe on the rights of others.¹⁸ Qualified rights include the right to freedom of assembly,¹⁹ the right to private and family life,²⁰ and the right to freedom of expression.²¹ However, these rights can also only be interfered with by a public authority if it is lawful and if there is a legitimate aim such as public safety, national security, the prevention of a crime, the

¹⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR)

¹⁵ Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (2021) 149 OJL 10 (The EU-UK Trade and Cooperation Agreement)

¹⁶ Reiss Edwards, ‘European Convention on Human Rights (ECHR) Does it Still Apply After Brexit?’ (April 12 2021) Available at <https://www.lexology.com/library/detail.aspx?g=7e0577d5-e617-471a-8e00-5c964741965c> (accessed 23.10.21)

¹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 5(1)

¹⁸ Citizens Advice, ‘when can a public authority interfere with your human rights’ <https://www.citizensadvice.org.uk/law-and-courts/civil-rights/human-rights/when-can-a-public-authority-interfere-with-your-human-rights/> (accessed 23.10.21)

¹⁹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 11

²⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 8

²¹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 10

protection of health, or the protection of other people's rights.²² In addition, the interference with a qualified right must be 'necessary in a democratic society', and the interference must be no more than what is deemed to be absolutely necessary in order to achieve the legitimate aim that the State is claiming is applicable.²³ This shows that it is relatively easy for the UK to restrict this type of right in normal circumstances providing that they are able to justify the infringement on the right that they are attempting to restrict.

As for absolute rights, these cannot be restricted. Absolute rights include the right to not be enslaved,²⁴ the right to life,²⁵ and the right not to be subjected to torture or to inhuman or degrading treatment or punishment.²⁶ Unlike qualified and limited rights, absolute rights do not allow the State leeway in regard to their implementation. Thus, under normal circumstances, the UK cannot limit absolute rights, which means that it is unable to fully derogate from, or suspend, human rights and fundamental freedoms under normal circumstances. However, this situation may change when the UK is in a state of emergency as the State is granted more leeway to address the crisis at hand. Thus, this area needs to be discussed in order to determine whether the UK has the ability to restrict human rights and fundamental freedoms as a result of this leeway.

IV. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE UK IN STATES OF EMERGENCY

As the impact of the ECHR has not yet been limited as a result of the UK's decision to leave the European Union, it is reasonable to consider the HRA 1998 within the context that would have been applicable prior to Brexit in order to establish whether states of emergency would allow the UK to fully negate human rights and fundamental freedoms.²⁷

Section 14 of the HRA 1998 allows the Secretary of State to 'designate' derogations from the ECHR when they have been or are anticipated to become a matter of international law. This would allow the removal of the 'Convention rights' to occur.²⁸ However, it is also worth noting

²³ Audrey Lebet, 'COVID-19 Pandemic and Derogation to Human Rights' (2020) 7 JL & Biosciences 2

²⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 4

²⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 2

²⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 4

²⁷ Human Rights Act 1998; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR)

²⁸ Human Rights Act 1998 S1 and S14

that only one derogation has ever been made under Section 14 and this was made in relation to the right to liberty and security under Article 5(1) of the ECHR. However, this was subsequently withdrawn.²⁹ *A v Secretary of State for the Home Department* (2004) established that the designation of a derogation in domestic law by the Secretary of State is only valid and can only take effect if the international legal conditions precedent under Article 15 of the ECHR have been met.³⁰ Thus, Article 15 needs to be considered in further detail to determine whether human rights can be fully derogated.³¹

Article 15 states that in any ‘public emergency threatening the life of the nation’, a State is able to derogate ‘from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.’³² Article 15 establishes that the only circumstances in which human rights can be derogated is in public emergencies, which limits the scenarios where human rights can be limited. Likewise, there is the requirement for the derogation to be proportional, according to the situation, which begs the question as to whether there is truly any scenario which would legitimise the restriction of all fundamental rights and freedoms. However, the measures must also be consistent with the obligations that the State has under international law.

The United Kingdom is a party to a variety of human rights treaties which confer obligations upon it. For the purposes of this essay, the International Covenant on Civil and Political Rights (ICCPR) will be used in order to determine whether this would impose a limitation on the UK’s ability to restrict human rights and fundamental freedoms.³³ Article 4 of the ICCPR echoes Article 15 of the ECHR in regard to the need of a ‘public emergency which threatens the life of the nation’ and the ability for the States who are parties to the treaty being able to derogate from their obligations, to the extent that it is proportionate and does not interfere with their other international obligations.³⁴ However, Article 4 also establishes that there is still a prohibition on discrimination.³⁵ This is a protected right under Article 14 of the ECHR and is and is

²⁹ *A v Secretary of State for the Home Department* [2004] UKHL 56

³⁰ *A v Secretary of State for the Home Department* [2004] UKHL 56 §42; §106; §152; §164; §225

³¹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 15

³² Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 15

³³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

³⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 4(1)

³⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 4(1)

enshrined under the HRA 1998.³⁶ This therefore suggests that this human right cannot be fully derogated. In addition, Article 4 prohibits the derogation of Article 6, Article 7, paragraphs 1 and 2 of Article 8, Article 11, Article 15, Article 16, and Article 18.³⁷ This includes the right to life;³⁸ the right to be recognised as a person before the law;³⁹ and the right to freedom of thought, conscience, and religion.⁴⁰ Thus, the UK is unable to derogate on the basis of multiple rights as they are protected under the State's human rights obligations in international law. Likewise, some of these rights such as Article 6 and Article 7 are also recognised as absolute rights under UK domestic law.⁴¹ This further solidifies that the UK is unable to derogate from some human rights and fundamental freedoms.

V. CONCLUSION

States should refrain from total and excessively broad restrictions on freedom of movement and personal freedom and resort to generally binding restrictions only when it is justified and necessary from a scientific point of view, and when support mechanisms for the affected population can be ensured. Any measures taken must be foreseen by law and fall within the relevant constitutional or statutory regime, whether emerging from the legal text or the jurisprudence of constitutional courts. A common feature in many legal systems is the constitutional requirement for human rights derogations to be enshrined in a law approved by parliament or in an extraordinary decree issued by the government that is later subject to parliamentary confirmation.

International human rights law provides a multitude of legal prescriptions for managing emergency situations that are so severe that they constitute a threat to the life of the nation or to the independence or security of the State. In such situations, the bedrock of human rights principles must remain in force, and it is the responsibility of the legal professions to help ensure

³⁶ Human Rights Act 1998;

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 14

³⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 4(2)

³⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 6

³⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 16

⁴⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 18

⁴¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 6 and 7;

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 2 and 4

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 15

that this is in fact the case.

Crisis may call for strong measures in response to a severe crisis such as pandemic, and Governments may face these Crisis by resorting to drastic and far-reaching security measures. However, In times of crisis, a concerted effort by all actors in society, including judges, prosecutors and lawyers, to maintain the highest possible standards of human rights protection is not only more difficult but also more necessary than ever to contribute to the restoration of a constitutional order in which human rights and fundamental freedoms can again be fully enjoyed by all.

In conclusion, there are a variety of scenarios where the UK is able to restrict human rights. However, under ordinary circumstances this does not extend to being able to restrict human rights and fundamental freedoms entirely. This is because there are requirements to be met before rights can be limited, and some rights are absolute and so cannot be limited at all.

As for whether this differs if the State is in a state of emergency, UK domestic law does allow derogations providing that they satisfy Article 15 of the ECHR.⁴² However, this requires a proportionality element to the restriction of human rights, and it could be argued that there is no scenario which would require the restriction of all human rights and fundamental freedoms. Likewise, the UK's obligations under international law must still be upheld. This means that the non-derogable rights and freedoms under Article 4 of the ICCPR are still applicable as the UK is a party to that treaty.⁴³ Thus, the UK is not able to derogate from, or suspend, the full enjoyment of human rights and fundamental freedoms.

⁴² Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR) Art 15

⁴³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Art 4

VI. References

- Bedford, J. *et al.* (2020) 'COVID-19: towards controlling of a pandemic', *The Lancet*. doi: 10.1016/S0140-6736(20)30673-5.
- Citizens Advice, 'when can a public authority interfere with your human rights' <https://www.citizensadvice.org.uk/law-and-courts/civil-rights/human-rights/when-can-a-public-authority-interfere-with-your-human-rights/> (accessed 23.10.21)
- Haleem, A., Javaid, M. and Vaishya, R. (2020) 'Effects of COVID-19 pandemic in daily life', *Current Medicine Research and Practice*. doi: 10.1016/j.cmrp.2020.03.011.
- Lebret A, 'COVID-19 Pandemic and Derogation to Human Rights' (2020) 7 JL & Biosciences 2
- Hurley, R. (2020) 'Prepare for a pandemic', *The BMJ*. doi: 10.1136/bmj.m864.
- Mesa Vieira, C. *et al.* (2020) 'COVID-19: The forgotten priorities of the pandemic', *Maturitas*. doi: 10.1016/j.maturitas.2020.04.004.
- Nicola, M. *et al.* (2020) 'The Socio-Economic Implications of the Coronavirus and COVID-19 Pandemic: A Review', *International Journal of Surgery*. doi: 10.1016/j.ijssu.2020.04.018.
- Pfefferbaum, B. and North, C. S. (2020) 'Mental Health and the Covid-19 Pandemic', *New England Journal of Medicine*. doi: 10.1056/nejmp2008017.
- Richardson, E. T. *et al.* (2016) 'Biosocial approaches to the 2013-2016 ebola pandemic', *Health and Human Rights*.
- Reiss Edwards, 'European Convention on Human Rights (ECHR) Does it Still Apply After Brexit?' (April 12 2021) Available at <https://www.lexology.com/library/detail.aspx?g=7e0577d5-e617-471a-8e00-5c964741965c> (accessed 23.10.21)
- The Lancet Infectious Diseases (2020) 'COVID-19, a pandemic or not?', *The Lancet Infectious Diseases*. doi: 10.1016/S1473-3099(20)30180-8.
- Thompson, R. (2020) 'Pandemic potential of 2019-nCoV', *The Lancet Infectious Diseases*. doi: 10.1016/S1473-3099(20)30068-2.
- Watkins, J. (2020) 'Preventing a covid-19 pandemic', *The BMJ*. doi: 10.1136/bmj.m810.

- Simon Wren-Lewis, The economic effects of a pandemic, (social Europe 10-03-2020)
<https://socialeurope.eu/the-economic-effects-of-a-pandemic>
- International Covenant on Civil and Political Rights (Adopted on 16 December 1966, entered into force 23 March 1976) UNTS 2200A (ICCPR)

International Treaties:

- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

Regional Treaties:

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) 1950 (ECHR)
- Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (2021) 149 OJL 10 (The EU-UK Trade and Cooperation Agreement)

Statutes:

- Human Rights Act 1998

Cases:

- *A v Secretary of State for the Home Department* [2004] UKHL 56
