

## CONCLUDING OBSERVATIONS AND ODIHR'S OFFER OF ASSISTANCE

At the time of writing, the Covid-19 pandemic may have receded in a number of participating States, allowing some to relax stringent emergency measures, but with others still struggling to contain the spread of infection. Most are only beginning to come to terms with the socio-economic consequences of the disruption and this unprecedented challenges will remain for years to come. At the same time, the UN is warning that the pandemic may only be in the early phases in many countries around the globe, and in an interconnected world, we know that while the coronavirus persists, it may affect the security and safety of societies everywhere.

Covid-19 has been a test to our democracies. Nationally, health systems and social services, local governments and security agencies have been stretched, some to their limits. Many have innovated and often improvised to protect their societies. The infringements on fundamental rights and freedoms have been unprecedented both in extent and scale. In some states, governments met this challenge well, while others used the pandemic and ensuing states of emergency, unjustifiably, as a pretext to roll back democratic standards, erode fundamental freedoms and curtail the rule of law. Internationally, the pandemic has shown the fragility of organizations and multilateral co-operation in times of crisis, demonstrating that no country can face this challenge alone, and that only by living up to commitments on joint responsibility and collective security will this global enemy be defeated. The crisis has also reconfirmed the centrality of responsible and engaged citizenship and empowered communities to cope with such an enormous destabilizer, and it has made us realize how important trust and communication are for effective governance and crisis management.

In the OSCE context, participating States have agreed on the centrality of the human dimension for co-operative security and the lasting stability of our societies. The respect for human rights and fundamental freedoms, democracy and the rule of law remain at the core of the OSCE's comprehensive concept of security,

especially in times of crisis. States are accountable to their citizens and responsible to each other for their implementation of the OSCE commitments.<sup>816</sup> States have also agreed that all OSCE commitments, without exception, apply equally to each participating State, and that they cannot use emergencies to dismantle them. Their implementation, in good faith, is essential for relations between states, between governments and their citizens, as well as for the continued effectiveness of the organizations of which they are members.<sup>817</sup>

When the coronavirus first spread in the OSCE region, many states were caught off guard and societies were unprepared. Now, many lessons have been learned, about how to contain the spread of the disease effectively – essentially by testing, identifying, tracing, and isolating infected individuals, and maintaining a high degree of hygienic discipline. But equally important is the lesson only to use lockdowns and other more drastic measures only when the necessity arises, not infringing upon the basic norms and principles democratic societies are built upon – democratic accountability, the rule of law and access to justice for all and the full enjoyment of universal human rights. This report contains many such lessons and offers good practice in the hope that states will be inspired and learn from each other.

Among the major lessons from the Covid-19 pandemic, so far, are the reinforced need for international collaboration and collective responses to a collective health and human security crisis. It has underscored the need for a transparent and informed partnership between responsible citizens and accountable state institutions and political leaders. Likewise, it has highlighted the importance of social justice and inclusion as cornerstones of the human dimension – to ensure that no one is left behind. Inclusion and equality are not only basic values emanating from the ideas of fundamental and

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<sup>816</sup> Istanbul, 1999

<sup>817</sup> *Ibid.*

universal human rights, they are also essential for the social cohesion of our societies. This report has provided details about how various groups and segments of society have fared differently during the pandemic, and the unjust accumulation of negative consequences faced by some. Discrimination has exacerbated the impacts of both the virus and the adverse implications of emergency measures.

States could have foreseen that vulnerable groups and communities would suffer multi-layered consequences. Many human rights groups and international organizations warned of such adverse effects. A number of states have avoided some of these consequences and offered targeted help promptly. Others struggled or failed to do so, which further worsened the situation of certain communities, some even suffering scapegoating and stigmatization.

These important lessons must be studied implemented and built upon. Measures should be put in place to ensure that states are prepared to adequately handle future crises, while respecting human rights and making sure that the principle of 'leaving no one behind' is reality. Unfortunately, all predictions are that similar crises, including pandemics and the increasing threat of the consequences of climate change, will put our established institutions, structures and systems to the test.

The principle of 'do no harm' must be at the forefront when ordering emergency measures. Authorities can learn lessons from short-sighted, drastic emergency lockdowns, especially those that isolated entire communities without support, including access to means for basic hygiene or subsistence. At the same time, lessons must be learned from public health measures that inadequately reflected the equal value of human life and the inviolability of the dignity of every human.

ODIHR has made every effort to serve participating States from the beginning of the pandemic by offering advice and recommendations on integrating human rights into their public health and emergency responses. The Office has worked in the rapidly changing environment to document and collect information to be able to provide concrete support to states. Operating under unprecedented restrictions and reduced mobility of its own staff, ODIHR has exercised its mandate to

collect and share information on states of emergencies and related derogations limiting human rights, and has maintained close contact with all those who can provide information on how human dimension commitments are implemented in practice and how vulnerable people have been affected. Due to travel restrictions, ODIHR was forced to postpone a number of training events and monitoring activities, but in many cases innovative solutions have been found, albeit without fully substituting the ability be present in person. In the coming months, together with other OSCE structures and institutions, ODIHR stands ready to help to collect more lessons learned; to assist states in the restoration and protection of all fundamental rights and freedoms as soon as the situation allows; to provide assistance to those who have been hit the hardest; to design and implement recovery measures in an inclusive manner; and to prepare for future emergencies. ODIHR's experts look forward to further discussions and exchanges with participating States in this regard.

ODIHR therefore invites participating States to make use of its numerous applicable tools and resources. ODIHR will work with states to help parliaments and judicial institutions to begin fully functioning again and, as states consider the legislative changes needed to be better prepared for future emergency situations, ODIHR offers its **legislative assistance** in reviewing draft or existing legislation and advising on the development of legislation impacting the state's human dimension commitments. ODIHR looks forward to co-operating with states to protect human rights defenders, based on the **Guidelines on the Protection of Human Rights Defenders**. The Office is prepared to offer capacity building training to state actors and NHRIs, as well as legislative support or other types of expert advice. States should consider inviting ODIHR to monitor assemblies once health concerns subside and they can be held, and draw on the work of the Office in the area of the freedom of peaceful assembly.<sup>818</sup> ODIHR also wishes to refer to all other available tools and past recommendations, such as the recent **ODIHR Guidance: Monitoring Places of Detention through the COVID-19 Pandemic**.

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818 Including ODIHR **Guidelines on Freedom of Peaceful Assembly**, and ODIHR **Human Rights Handbook on Policing Assemblies**

ODIHR has been working for many years to address discrimination and hate crime to build more tolerant societies and remains at the disposal of participating States to support them in implementing their commitments in the area of tolerance and non-discrimination, including building related capacity of law enforcement.<sup>819</sup> ODIHR's work collecting data to address hate crime, as well as intolerance and discrimination in general, has been slowed by the Covid-19 pandemic, but remains a core priority of the Office.<sup>820</sup>

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819 See, the **resources and tools on tolerance and non-discrimination**.

820 For instance, ODIHR's annual 2019 Hate Crime Reporting process, which coincided with lockdowns across the OSCE region in early 2020, has been affected, as civil society organizations faced an unexpected change and were forced by circumstance to modify their priorities.

Finally, it is expected that all participating States will fully account for how they have responded to the Covid-19 crisis while living up to their human dimension commitments in the course of the regular human dimension mechanisms designed for mutual accountability within the OSCE. It is also anticipated that they will duly report on how human rights and fundamental freedoms were upheld in the various treaty-based frameworks and mechanisms, such as within the Council of Europe and the United Nations. For instance, states should include an analysis of the impact of pandemic response into state reports to ICCPR, IESCR, CEDAW, the CRC and others of which participating States may be signatories, and they should consult with relevant civil society and affected groups and communities in preparation of these reports. ODIHR remains at the disposal of participating States to assist them in this endeavour.

# ANNEXES

## 1. ADDITIONAL INFORMATION ON STATES OF EMERGENCY OR EQUIVALENT STATUS, WITHOUT SEEKING DEROGATIONS\*

PARTICIPATING STATE	DESCRIPTION	DURATION
<b>Bulgaria</b>	State of Emergency declared by the National Assembly as per Art. 84(12) of the Constitution on 13 March until 13 May, and a one-month “nationwide epidemic situation” started on 14 May, which was extended.	2 months
<b>Czech Republic</b>	State of Emergency declared by resolution of the Czech Government, based on Art. 5 of the Constitution and the Crisis Act No. 240/2000 Coll. and Constitutional Act No. 110/1998 Coll. on the Security of Czech Republic, starting on 13 March for an initial period of 30 days, and ended on 17 May.	Slightly more than 2 months
<b>Finland</b>	State of Emergency declared on 16 March by the government in co-operation with the President as per the Emergency Powers Act and in accordance with Section 23 of the Constitution, initially until 13 April, then extended until 13 May and was lifted on 16 June.	3 months
<b>Hungary</b>	“State of Danger” declared by decree on 11 March for 15 days, on the basis of Art. 53 of the Fundamental Law of Hungary, with extension possible only upon authorization by the Parliament, which was provided with the adoption of the Act on the Protection Against the Coronavirus on 30 March, for as long as the “state of danger” persists, which is to be determined by the government. A Bill to end the “state of danger” was adopted on 16 June, and the “state of danger” ended on 18 June, when Hungary transitioned to an open-ended state of <b>healthcare emergency</b> .	3 months and one week
<b>Italy</b>	State of Emergency declared by government on 31 January for a period of six months in accordance with Law 225 of 24 February 1992 on the Italian Civic Protection.	Planned 6 months
<b>Kazakhstan</b>	State of Emergency declared by presidential decree, based on Art. 44 (1) (16) of the Constitution, from 16 March to 15 April initially, and then extended twice until 11 May.	Nearly 2 months
<b>Luxembourg</b>	“State of Crisis” declared on 18 March by regulation of the Grand-Duc pursuant to Art. 32 (4) of the Constitution, for a duration of 3 months until 24 June, and confirmed unanimously by the Parliament.	3 months
<b>Portugal</b>	15-day State of Emergency declared on 18 March by Presidential Decree after mandatory consultation of the Council of State and government and the authorization of the Parliament, as per Art.s 134 and 138 of the Constitution, and renewed twice until 2 May after hearing the government and authorization of the Parliament, as per the Constitution. On 4 May, Portugal transitioned to a “state of calamity”.	1.5 months
<b>Slovakia</b>	“Emergency Situation” declared as of 16 March by the government, on the basis of Art. 5 of the Constitutional and Law No. 227/2002 on the State Security in Times of War and State of Emergency, which is distinct from a “state of emergency” provided in Art. 4 of the same Law, for a maximum of 90 days, and was lifted on 13 June.	90 days
<b>Spain</b>	15-day “State of Alarm” – lowest level of state of emergency – declared by governmental decree, from 14 March to 29 March, in accordance with Art. 116.2 of the Constitution, and extended six times following authorization by the Congress of Deputies, until 21 June when it ended.	90 days

\* This overview does not include the subnational level in federal states.

## 2. ADDITIONAL INFORMATION ON STATES OF EMERGENCY OR EQUIVALENT STATUS, WITH DEROGATIONS NOTIFIED TO THE UNITED NATIONS OR/AND THE COUNCIL OF EUROPE

PARTICIPATING STATE	DESCRIPTION	DURATION
<b>Albania</b>	State of Natural Disaster, different from a “state of emergency”, declared by the Council of Minister on 24 March, later extended upon the consent of the Assembly of the Republic of Albania, as per Art.s 170-175 of the Constitution, and ended on 23 June.	3 months
<b>Armenia</b>	30-day State of Emergency declared by decision of the government on 16 March, on the basis of Art. 120 of the Constitution, and extended three times by governmental decrees until 13 July, and expected to be further extended.	TBC
<b>Estonia</b>	“Emergency Situation” declared on 12 March, on the basis of Art. 87 of the Constitution and the 2017 Emergency Act, and terminated as of 18 May.	Slightly more than 2 months
<b>Georgia</b>	30-day State of Emergency declared by the President on 21 March, further approved by the Resolution N5864 of the Parliament of Georgia on the same day, in accordance with Art. 71 par 2 of the Constitution and Art. 2 par 1 of the Law of Georgia on State of Emergency, later extended twice and ended on 22 May. On 22 May, the Parliament of Georgia adopted and the President promulgated special emergency legislation amending the “Law on Public Health” and the Criminal Procedure Code of Georgia, which introduced special restrictive measures until 15 July, and Georgia notified the Council of Europe about the extension of derogations until that date.	2 months
<b>Kyrgyzstan</b>	“Emergency Situation” declared on 22 March on the whole territory, for one month, which has been renewed, while a State of Emergency was declared on 25 March, based on Art. 64 (9) (2) of the Constitution, in certain specific cities and districts, as approved by the Jogorku Kenesh, and later extended to 10 May for certain of these cities and districts, while a nationwide “emergency situation” remains).	1.5 months
<b>Latvia</b>	“Emergency Situation” declared by the government, as per Art. 10 of the Law on Emergency Situation and State of Exception, from 13 March, as approved by the Parliament on 13 March, initially until 14 April and extended twice until 9 June when it ended, with a partial lifting of derogations in the meantime.	Nearly 3 months
<b>Moldova</b>	State of Emergency declared by Parliament’s Decision no. 55 on 17 March for a period of 60 days, on the basis of Art. 66 sub-para. (m) of the Constitution of the Republic of Moldova, and terminated on 15 May.	60 days
<b>North Macedonia</b>	30-day State of Emergency established by President’s Decision on 18 March on the basis of Art.s 125-126 of the Constitution, further extended four times until 22 June, when it ended.	3 months
<b>Romania</b>	30-day State of Emergency decreed by the President on 16 March and endorsed by the Parliament of Romania, in accordance with Art. 93 of the Constitution, extended for 30 days according to the same procedure and ended on 14 May.	60 days
<b>San Marino</b>	Since the Constitution has no provisions on “state of emergency”, urgent measures were adopted by the government through a series of decree-laws i.e., regulatory instruments adopted in case of necessity and urgency by the government and which, within 3 months and under penalty of forfeiture, have to be submitted to the Parliament for ratification as per Art. 3 of the Law no. 59 of 8 July 1974 on Declaration of Citizens’ Rights and of the Fundamental Principles of the San Marinese Legal Order, initially extended until 31 May but new Decree Law no. 96 of 31 May provides restrictive measures that will last “until the end of the health emergency”.	Undetermined
<b>Serbia</b>	State of Emergency declared on 15 March by the President of the Republic together with the President of the National Assembly and the Prime Minister, pursuant to Art. 200 of the Constitution, and lifted on 6 May 2020 by the National Assembly.	7 weeks

### 3. STATES OF EMERGENCY AND OTHER EMERGENCY MEASURES IN FEDERAL STATES

PARTICIPATING STATE	DESCRIPTION
<b>Austria</b>	Several Federal Acts on Covid-19 were adopted, authorizing federal ministers to adopt regulations to deal with the pandemic, with most of the measures being based on the 1950 Federal Epidemics Act.
<b>Belgium</b>	A federal phase of crisis management was declared on 13 March by the Federal Minister of Interior, to allow for greater co-ordination between the federal state and federated entities. The legal basis for the special powers at the federal Level was promulgated by two laws that entered into force on 30 March, with a retroactive effect from 1 March, and conferred special powers on the King until 30 June. In parallel, several legislators from the Regions, Communities and Community Commissions also granted special powers to respond to the Covid-19 pandemic to the governments or colleges of the entities concerned.
<b>Bosnia and Herzegovina</b>	The Republika Srpska declared a state of emergency on the basis of Art. 70 of the Constitution as of 3 April, which ended on 21 May, while the Federation of Bosnia and Herzegovina declared a state of natural or other disaster on 17 March, on the basis of the <i>Framework Law on Protection and Rescue of People and Material Property from Natural and Other Disasters in BiH</i> , which ended on 31 May.
<b>Canada</b>	All Canada's provinces and territories have declared, in one form or another, states of emergency (eight) or other public health emergency status (five).
<b>Germany</b>	Several Laender declared a state of emergency, while the German Bundestag has determined "an epidemic situation of national importance" in the country in accordance with the 2001 Protection against Infectious Diseases Act, which was amended in March 2020 to confer additional competencies to the Federal Ministry of Health.
<b>Russian Federation</b>	Restrictive measures were imposed by regional and local decrees on high alert regimes based on the Federal Law No. 68-FZ "On Protection of the Population and Territories against Emergency Situations of Natural and Technogenic Nature"; by 19 March, all the federated entities had announced high alert regimes; the Federal law No. 98-FZ dated 1 April 2020 "On amendments to certain legislative acts of the Russian Federation for the prevention and elimination of emergency situations" introduced amendments to several federal laws to clarify the powers of the Regions when dealing with natural disasters, introduce tightened penalties for breaking quarantine or self-isolation requirements and toughened liability for spreading fake news about the Covid-19 outbreak.
<b>Switzerland</b>	In cases of "extraordinary situations" as per Art. 7 of the Law on Epidemics, the Cantons must abide by the Confederation's legal prescriptions, meaning that the Cantons' ability to act is limited to those areas falling within their jurisdiction and not covered by the Federal Order.
<b>United States of America</b>	A "National Emergency" was declared by the President on 13 March on the basis of the Constitution and national legislation of the United States of America, including the National Emergencies Act and the Social Security Act. In parallel, about two-thirds of the states declared a state of emergency, while less than a third declared a public health, disaster or other emergency status and only a few states adopted other restrictive measures without declaring such special legal regime.