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Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis

A toolkit for member states

Introduction

The purpose of this paper is to provide governments with a toolkit for dealing with the present unprecedented and massive scale sanitary crisis in a way that respects the fundamental values of democracy, rule of law and human rights.

It is recognised at the outset that governments are facing formidable challenges in seeking to protect their populations from the threat of COVID-19. It is also understood that the regular functioning of society cannot be maintained, particularly in the light of the main protective measure required to combat the virus, namely confinement. It is moreover accepted that the measures undertaken will inevitably encroach on rights and freedoms which are an integral and necessary part of a democratic society governed by the rule of law.

The major social, political and legal challenge facing our member states will be their ability to respond to this crisis effectively, whilst ensuring that the measures they take do not undermine our genuine long-term interest in safeguarding Europe's founding values of democracy, rule of law and human rights. It is precisely here that the Council of Europe must carry out its core mandate by providing, through its statutory organs and all its competent bodies and mechanisms, the forum for collectively ensuring that these measures remain proportional to the threat posed by the spread of the virus and be limited in time. The virus is destroying many lives and much else of what is very dear to us. We should not let it destroy our core values and free societies.

1. Derogation in time of emergency (Article 15 European Convention on Human Rights)

The extent of measures taken in response to the current COVID-19 threat and the way they are applied considerably vary from one state to another in different points of time. While some restrictive measures adopted by member states may be justified on the ground of the usual provisions of the European Convention on Human Rights (Convention) relating to the protection of health (see Article 5 paragraph 1e, paragraph 2 of Articles 8 to 11 of the Convention and Article 2 paragraph 3 of Protocol No 4 to the Convention), measures of exceptional nature may require derogations from the states' obligations under the Convention. It is for each state to assess whether the measures it adopts warrant such a derogation, depending on the nature and extent of restrictions applied to the rights and freedoms protected by the Convention. The possibility for states to do so is an important feature of the system, permitting the continued application of the Convention and its supervisory machinery even in the most critical times.[1]

Any derogation will be assessed by the European Court of Human Rights (Court) in cases that will be brought before it[2]. The Court has granted states a large margin of appreciation in this field: "*It falls in the first place to each Contracting State, with its responsibility for 'the life of [its] nation', to determine whether that life is threatened by a 'public emergency' and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. In this matter Article 15 § 1 (...) leaves those authorities a wide margin of appreciation.*"[3]

A derogation is also subject to formal requirements: the Secretary General of the Council of Europe, being the depository of the Convention, must be fully informed of the measures taken, of the reasons therefore, and of the moment these measures have ceased to operate (https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354).

Certain convention rights do not allow for any derogation: the right to life, except in the context of lawful acts of war (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3), the prohibition of slavery and servitude (Article 4§1) and the rule of "no punishment without law" (Article 7). There can be no derogation from abolishment of death penalty

[1] CM Reply to PACE recommendation 2125 (2018).
[2] See the Guide on Article 15 of the Convention (31 December 2019) published by the Court's Registry.
[3] *Ireland v.UK* Judgment of 18.01.1978, Series A No 25, para 207.

or the right not to be tried or punished twice (Protocols Nos 6 and 13 as well as Article 4 of Protocol No 7).

A derogation under Article 15 is not contingent on the formal adoption of the state of emergency or any similar regime at the national level. At the same time, any derogation must have a clear basis in domestic law in order to protect against arbitrariness and must be strictly necessary to fighting against the public emergency. States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort should be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness[4]. While derogations have been accepted by the Court to justify some exceptions to the Convention standards, they can never justify any action that goes against the paramount Convention requirements of lawfulness and proportionality.

2. Respect for the rule of law and democratic principles in times of emergency

2.1. The principle of legality

Even in an emergency situation the rule of law must prevail.[5] It is a fundamental principle of the rule of law that state action must be in accordance with the law.[6] The "law" in this context includes not only acts of Parliament but also, for example, emergency decrees of the executive, provided that they have a constitutional basis. Many constitutions provide for a special legal regime (or regimes) increasing the powers of the executive authorities in the case of a war or a major natural disaster or another calamity[7]. It is also possible for the legislature to adopt emergency laws specifically crafted for dealing with the current crisis, which go beyond the already existing legal rules. Any new legislation of that sort should comply with the constitution and international standards and, where applicable, be subjected to review by the Constitutional Court. If parliament wants to authorise the government to deviate from special majority legislation (or the legislation adopted following another special procedure), this must be done by the majority required for the adoption of the legislation, or following the same special procedure.

2.2. Limited duration of the regime of the state of emergency and of the emergency measures

During the state of emergency, governments may receive a general power to issue decrees having the force of the law. This is acceptable, provided that those general powers are of a limited duration. The main purpose of the state of emergency regime (or alike) is to contain the development of the crisis and return, as quickly as possible, to the normality.[8] Prolongation of the state of emergency regime should be subject to the control of its necessity by parliament. An indefinite perpetuation of the general exceptional powers of the executive is impermissible[9].

During the state of emergency, not only should the power of the government to legislate be limited by the duration of the state of emergency, but any legislation enacted during the state of emergency should also include clear time limits on the duration of these exceptional measures (like a "sunset clause"). Indeed, after the end of the emergency situation it may be justified to continue to apply certain specific, targeted measures, but such extension would fall within the competence of parliament through the ordinary procedures.[10]

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[4] *Mehmet Hasan Altan v. Turkey*, §§ 94 and 210; and *Şahin Alpay v. Turkey*, §§ 78 and 180.
[5] See the Venice Commission, Opinion on the protection of human rights in emergency situation, CDL-AD(2006)015), para. 13.
[6] See the Venice Commission Rule of Law Checklist (CDL-AD(2016)007), paras. 44 and 45.
[7] By 29 March 2020, 22 of our member states have declared state of emergencies.
[8] Experience shows that "*the longer the emergency regime lasts, the further the state is likely to move away from the objective criteria that may have validated the use of emergency powers in the first place. The longer the situation persists, the lesser justification there is for treating a situation as exceptional in nature with the consequence that it cannot be addressed by application of normal legal tools*." - The Venice Commission, Turkey - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016, CDL-AD(2016)037, para. 41
[9] CommDH(2002)7, Opinion 1/2002 on certain aspects of the United Kingdom derogation from Article 5 par. 1 of the European Convention on Human Rights, p. 25; see also the Venice Commission, Parameters On The Relationship Between The Parliamentary Majority And The Opposition In A Democracy: A Checklist (CDL-AD(2019)019), para. 119).
[10] See PACE Resolution 1659 (2009), Protection of human rights in emergency situations, p. 12; See also the Rule of Law Checklist, cited above, and Article 15 of the Convention ("Derogation in time of emergency"); Article 4 of the ICCPR; Article 27 of the ACHR. On emergency

2.3. Limited scope of the emergency legislation; the principle of necessity

The principle of necessity requires that emergency measures must be capable of achieving their purpose with minimal alteration of normal rules and procedures of democratic decision-making[11]. Therefore, the power of the government to issue emergency decrees should not result in a *carte blanche* given by the legislator to the executive. Given the rapid and unpredictable development of the crisis, relatively broad legislative delegations may be needed, but should be formulated as narrowly as possible in the circumstances, in order to reduce any potential for abuse[12]. As a general rule, fundamental legal reforms should be put on hold during the state of emergency[13].

2.4. Distribution of powers and checks on the executive action during the state of emergency regime

The executive authorities should be able to act quickly and efficiently. That may call for adoption of simpler decision-making procedures and easing of some checks and balances. This may also involve, to the extent permitted by the constitution, bypassing the standard division of competences between local, regional and central authorities with reference to certain specific, limited fields, to ensure a more co-ordinated response to the crisis and on the understanding that full rights of local and regional authorities shall be re-established as soon as the situation allows it.

Parliaments, however, must keep the power to control executive action[14] in particular by verifying, at reasonable intervals, whether the emergency powers of the executive are still justified, or by intervening on an *ad hoc* basis to modify or annul the decisions of the executive.[15] Dissolution of parliaments during the states of emergency should not be possible, and indeed under many constitutions the parliament's mandate is prolonged until the end of the state of emergency.

The core function of the judiciary – in particular the constitutional courts, where they exist – should be maintained. It is important that judges may examine the most serious limitations of human rights introduced by the emergency legislation. Adjournments, "fast-tracking" or group treatment of certain categories of cases may be permitted, and preliminary judicial authorisation in some instances may be replaced with *ex post* judicial review (see also below, chapter 3.2).

During the state of emergency, holding elections and referendums may be problematic, since the possibility of campaigning is extremely limited in times of crisis.

3. Relevant human rights standards

3.1. Right to life (Article 2 Convention) and Prohibition of torture and inhuman or degrading treatment or punishment (Article 3 Convention); right of access to health care (Article 11 of the revised European Social Charter)

The right to life and the prohibition of torture and inhuman or degrading treatment or punishment belong to the core rights under the Convention as they cannot be subject to any derogation, even in

powers see also the reports by the Venice Commission on the Emergency Powers (CDL-STD(1995)012) and on the Protection of Human Rights in Emergency Situations (CDL-AD(2006)015).

[11] The principle of necessity is not referred directly in the context of the institutional emergency measures, but may be derived from the requirement of proportionality and necessity of the emergency measures in the field of human rights – see the Venice Commission, Opinion on the Draft Constitutional Law on "Protection of the Nation" of France, CDL-AD(2016)006, para. 71

[12] CM(2008)170, Committee of Ministers document on the Council of Europe and the Rule of Law, p. 46; see also Venice Commission, Parameters On The Relationship Between The Parliamentary Majority And The Opposition In A Democracy: A Checklist (CDL-AD(2019)019), paras. 119 – 121, and Turkey - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016 (CDL-AD(2016)037), para 98.

[13] A substantial number of European constitutions have provisions prohibiting constitutional amendments in times of war, emergency or similar situations. See also Venice Commission, Turkey - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016 (CDL-AD(2016)037), para. 80 and 90).

[14] See PACE Recommendation 1713 (2005), Democratic oversight of the security sector in member states, p. 38.

[15] The Venice Commission, Rule of Law Checklist (CDL-AD(2016)007), para. 51.

time of public emergency such as COVID-19. They have consistently been held to require positive obligations to protect people in state care against deadly diseases and the ensuing suffering[16].

The Convention continuously requires any member state to ensure an adequate level of medical care for people deprived of their liberty[17]. The European Committee for the Prevention of Torture (CPT) issued a Statement of principles relating to the treatment of persons deprived of their liberty in the context of the COVID-19 pandemic .They apply to various places, including police detention facilities, penitentiary institutions, immigration detention centres, psychiatric hospitals and social care homes, as well as in various newly-established facilities or zones where persons are placed in quarantine in the context of the COVID-19 pandemic. The CPT principles also refer to the need to protect staff working in these institutions and to ensuring continuous access by national independent monitoring bodies to detention facilities. The Commisioner for Human Rights also published a Statement: COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe.

Beyond people in the states' care, responsibility under Articles 2 and 3 of the Convention may be invoked in respect of severely ill patients, people with disabilities or elderly persons (see Recommendation CM/Rec(2014)2 on the promotion of human rights of older persons and the Statements by the Commissioner for Human Rights on persons with disabilities and older persons during the COVID-19 pandemic[18]). Their exposure to the disease and the extreme level of suffering may be found incompatible with the state's positive obligations to protect life and prevent ill-treatment. This positive obligation is further confirmed by Article 11 of the European Social Charter (revised) according to which states parties must demonstrate their ability to cope with infectious diseases, by means of arrangements for reporting and notifying diseases and by taking all the necessary emergency measures in case of epidemics.[19] States' increased attention to vulnerable groups would be consistent with the peoples' right to equitable access to health care (Article 3 of the Convention on Human Rights and Biomedicine, "the Oviedo Convention").

It is recalled in this respect that the availability of and access for patients to quality medicines is more important than ever in the context of the current COVID-19 pandemic. The Council of Europe Convention on the Elaboration of a European Pharmacopoeia[20] aims to provide a legal and scientific basis to ensure the quality of medicines and their components in the form of a single reference work, the European Pharmacopoeia. Under the auspices of the European Pharmacopoeia Commission, 39 member states and the European Union, together with experts from 29 observers, including the World Health Organization, join forces and workshare to establish quality standards, which are applicable in all signatory states and applied in more than 120 countries worldwide.

Finally, under both the Convention and the European Social Charter, states have a duty to inform the population about the known risks related to the pandemic and about behaviours or measures to avoid spreading the disease[21].

3.2. Right to liberty and security (Article 5) and Right to a fair trial (Article 6)

The unprecedented measures taken in response to COVID-19 may affect the state's capacity to guarantee the right to liberty and security and alter the regular functioning of the judicial system.

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[16] See the factsheet "Prisoners' health-related rights" published by the Court's Registry.
[17] See *Khudobin v. Russia*, no. 59896/00, 26 October 2006 ; As the CPT detailed in its Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, "an inadequate level of health care can lead rapidly to situations falling within the scope of the term "inhuman and degrading treatment".
[18] The Commissioner for Human Rights, who in her work frequently stresses that large residential settings where persons are deprived of their liberty are inappropriate for persons with disabilities and older persons, called on member states facing the pandemic to stop new admissions into such institutions, move people with disabilities out of them as much as possible, and take all necessary measures to protect remaining residents; Statements by the Commissioner: Older persons need more support than ever in the age of the COVID-19 pandemic, 20 March 2020, and Persons with disabilities must not be left behind in the response to the COVID-19 pandemic, 2 April 2020.
[19] ECSR, Conclusions XVII-2 (2005), Latvia.
[20] Council of Europe Convention on the Elaboration of a European Pharmacopoeia, ETS No. 050, Strasbourg, 22 July 1964, and Protocol to the Convention on the Elaboration of a European Pharmacopoeia, ETS No. 134, Strasbourg, 1 November 1989
[21] See European Court of Human Rights, *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 227, § 58 ; *Öneryildiz v. Turkey* [GC], no. 48939/99, 30 November 2004.

Article 5.1(e) specifies that the prevention of the spreading of infectious diseases is one of the grounds for which a person may be deprived of his or her liberty. Before resorting to such measures states are expected to control the existence of a relevant legal basis and consider whether measures amounting to deprivation of liberty are strictly necessary against any less stringent alternatives. The length of compulsory confinement and the way it is enforced in practice are relevant in this context.

Measures which aim at adapting modalities of access to courts should be designed in a way that is compatible with Article 6, not least in cases where special procedural diligence is required (vulnerable litigants, family and labour litigations, etc). Prolonged police custody or delayed judicial review of deprivation of liberty may lead to violations of Article 5 of the Convention.

Admittedly, derogations under Article 15 may enlarge the range of permissible measures under Articles 5 and 6 of the Convention and broaden the state authorities' margin of manoeuvre in complying with certain timelimits and other ordinary procedural requirements. However, the fundamental prohibition of detention without legal basis or timely judicial review, and the need to provide detainees with essential procedural safeguards, such as access to a doctor, a lawyer or next-of-kin, should in principle be observed in the present circumstances. States also remain under a general obligation to ensure that trials meet the fundamental requirement of fairness (such as equality of arms) and respect the presumption of innocence, and ensure that no steps are taken which would amount to an interference with the independence of judges or of courts.

3.3. Right to private life, freedom of conscience, freedom of expression, freedom of association

Effective enjoyment of all these rights and freedoms guaranteed by Articles 8, 9, 10 and 11 of the Convention is a benchmark of modern democratic societies. Restrictions on them are only permissible if they are established by law and proportionate to the legitimate aim pursued, including the protection of health. The significant restrictions to usual social activities, including access to public places of worship, public gatherings and wedding and funeral ceremonies, may inevitably lead to arguable complaints under the above provisions. It is for the authorities to ensure that any such restriction, whether or not it is based on a derogation, is clearly established by law, in compliance with relevant constitutional guarantees and proportionate to the aim it pursues[22].

While heightened restrictions to the above-mentioned rights may be fully justified in time of crisis, harsh criminal sanctions give rise to concern and must be subject to a strict scrutiny. Exceptional situations should not lead to overstatement of criminal means. A fair balance between the compulsion and prevention is the most appropriate, if not the only way, to comply with the Convention proportionality requirement.

Freedom of expression and information, media freedom, access to official information

The freedom of expression, including free and timely flow of information, is a critical factor for the ability of the media to report on issues related to the pandemic. Media and professional journalists, in particular public broadcasters, have a key role and special responsibility for providing timely, accurate and reliable information to the public, but also for preventing panic and fostering people's co-operation. They should adhere to the highest professional and ethical standards of responsible journalism, and thus convey authoritative messages regarding the crisis and refrain from publishing or amplifying unverified stories, let alone implausible or sensationalist materials. The exceptional circumstances may compel responsible journalists to refrain from disclosing government-held information intended for restricted use – such as, for example, information on future measures to implement a stricter isolation policy[23].

[22] See *Mehmet Hasan Altan v. Turkey*, 13237/17, 20 March 2018 ; as regards freedom of assembly, see *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, at para. 434; in this case the Court ruled that a general interdiction on demonstration is acceptable if there is a real danger of these resulting in disorder which cannot be prevented by other, less stringent measures and if the disadvantage of the ban's impact on demonstrations is clearly outweighed by the security considerations invoked to justify it.

[23] See the Council of Europe Guidelines on protecting freedom of expression and information in times of crisis.

The public's access to official information must be managed on the basis of the existing principles set down in the Court's caselaw.[24] Any restriction on access to official information must be exceptional and proportionate to the aim of protecting public health. The Convention on Access to Official Documents ("the Tromsø Convention") underlines the need for transparency and provides that, at its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents to encourage informed participation by the public in matters of general interest.

At the same time, official communications cannot be the only information channel about the pandemic. This would lead to censorship and suppression of legitimate concerns. Journalists, media, medical professionals, civil society activists and public at large must be able to criticise the authorities and scrutinise their response to the crisis. Any prior restrictions on certain topics, closure of media outlets or outright blocking of access to on-line communication platforms call for the most careful scrutiny and are justified only in the most exceptional circumstances[25]. The pandemic should not be used to silence whistle-blowers (see Recommendation CM/Rec(2014)7 on the protection of whistle-blowers),[26] or political opponents.[27] Malicious spreading of disinformation may be tackled with *ex post* sanctions, and with governmental information campaigns. States should work together with online platforms and the media to prevent the manipulation of public opinion, as well as to give greater prominence to generally trusted sources of news and information, notably those communicated by public health authorities.

Privacy and data protection

The new technologies of access to – and the processing of – personal data have the potential to contain and remedy the pandemic. Monitoring, tracking and anticipating are crucial steps of an epidemic surveillance. With the multiplication and over-abundance of available sophisticated digital technologies and tools (geolocation data, artificial intelligence, facial recognition, social media applications) such pandemic surveillance could be facilitated.

At the same time, the intrusive potential of modern technologies must not be left unchecked and unbalanced against the need for respect for private life. Data protection principles and the Council of Europe Convention 108 (and its modernised version, referred to as "Convention 108+"[28]) have always allowed a balancing of high protective standards and public interests, including public health. The Convention allows for exceptions to ordinary data-protection rules, for a limited period of time and with appropriate safeguards (eg anonymisation) and an effective oversight framework to make sure that these data are collected, analysed, stored and shared in legitimate and responsible ways. Large-scale processing of personal data by means of artificial intelligence should only be performed when the scientific evidence convincingly shows that the potential public health benefits override the benefits of alternative, less intrusive solutions. The Council of Europe expert network on artificial intelligence[29] and its partners can facilitate knowledge sharing in this respect.

3.4. Prohibition of discrimination (Article 14 Convention and Article 1, Protocol No. 12, Article E of the European Social Charter) and standards relating to diversity and inclusion

The principle of non-discrimination is highly relevant in the current context. When assessing whether derogating measures were "strictly required" under Article 15 of the Convention, the Court examines whether the measures discriminate unjustifiably between different categories of persons.[30] Also, certain forms of discrimination can amount to degrading treatment proscribed by Article 3, a non-derogable provision.[31] Moreover, the fact of not taking into account the specific needs of persons

[24] See, for example, *Magyar Helsinki* [GC], paras. 156-170).
[25] *Cumpana Mazare* [GC], para. 118.
[26] https://www.bbc.com/news/world-asia-china-51403795
[27] See the Council of Europe Guidelines on protecting freedom of expression and information in times of crisis.
[28] Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data (CETS 223): https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807c65bf
[29] The ad hoc Committee on Artificial Intelligence, CAHAI
[30] ECtHR, *A. and Others v. the United Kingdom* (GC), 3455/05, 19 February 2009, §§ 182-190.
[31] ECtHR, *Cyprus v. Turkey* (GC), 25781/94, 10 May 2001, §§ 312-315.

belonging to a disadvantaged group may result in discrimination.[32] The prohibition of discrimination may thus entail obligations to take positive measures to achieve substantive equality.[33] A similar approach is followed under the European Social Charter (Article E).[34] In this sense, many of the provisions of the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages, but also the General Policy Recommendations of ECRI should be seen as expressions of the principles of equality and non-discrimination.

The exceptional measures taken today in the framework of the fight against the spread of the virus are likely to raise questions as to their potential discriminatory consequences. For example, the right to education as enshrined in the Convention (Article 2 of Protocol No1) and the European Social Charter (Article 17) should in principle be secured, even though the ways in which it is ensured require adaptation. Particular attention must be paid however to make sure that members of vulnerable groups continue to benefit from the right to education and have equal access to education means and materials in times of confinement. A detailed study of difficulties and risks faced by Roma, migrants, persons belonging to national minorities and LGBTI persons, but also of the excellent specific inclusion practices that have already been adopted during this crisis in some member states, is under preparation[35].

4. Protection from crime; protection of victims of crime

Incidents and evidence are increasingly reported showing that the policy of isolation and confinement leads to increased levels of domestic, sexual and gender-based violence – and therefore to a heightened need of protection against this. The approach of those member states which, in line with the spirit of the Istanbul Convention[36], are looking for ways to continue providing services offering support and protection to the victims of such violence, adapted to the isolation regime, can only be welcomed. The Council of Europe can disseminate information about practices put in place in its member states, such as for instance allowing victims alternative ways of reporting incidents of violence [37]. It is also important to consider innovative means so that children have access to helplines and hotlines in light of the provisions of the Council of Europe Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in order to report violence, maltreatment and sexual abuse during this pandemic.[38]

Victims of human trafficking can find themselves in an even more vulnerable position, as a result of limited capacities of law enforcement and services supporting them, such as shelters.[39]

As modern societies rely more than ever on computer systems, in times of crisis malicious actors may even more so exploit this reliance to their advantage (fraud schemes, phishing campaigns and malware distribution through seemingly genuine websites of information or advice on COVID-19 are used to infect computers, extract user credentials or fraudulent payments). Children are no exception to risks in cyberspace and with the closure of schools, their increased use of the internet and social media affects their security. Furthermore, the coronavirus outbreak has regrettably offered new opportunities for criminals to take advantage of the increased demand for medical, personal protection and hygiene products. These include fake medicines or fake medical devices, such as COVID-19 testing kits, which are being made available both online and offline. The manufacture and

[32] See, e.g., ECtHR, *Horvath and Kiss v. Hungary*, 11146/11, 29 January 2013,.
[33] ECtHR, *Horvath and Kiss v. Hungary*, 11146/11, 29 January 2013, § 116; ECtHR, Çam v. Turkey, 51500/08, 23 February 2016. See also the Explanatory Report of Protocol No. 12 of the Convention.
[34] For the European Committee on Social Rights (ECSR), discrimination may result from failing to take due and positive account of all relevant differences between persons in a comparable situation, or failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all. See, e.g., ECSR, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 91/2013, 12 October 2015, § 237; ECSR, *Confédération française démocratique du travail (CFDT) v. France*, Complaint No. 50/2008, decision on the merits of 9 September 2009, §§ 39 and 41.
[35] The study is being prepared by the Secretariat of the new Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), for examination at the first meeting of the CDADI. An introductory note will soon be published on its website.
[36] Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No. 2010, Istanbul, 11 May 2011: https://www.coe.int/conventions/treaty/210
[37] See the statement by the Secretary General of the Council of Europe of 30 March 2020 (https://www.coe.int/en/web/portal/-/covid-19-crisis-secretary-general-concerned-about-increased-risk-of-domestic-violence) and the statement by the president of GREVIO of 24 March 2020: https://rm.coe.int/grevio-statement-covid-24-march-2020/pdfa/16809cf55e
[38] Lanzarote Committee Chair and Vice-Chairperson's statement: https://rm.coe.int/covid-19-lc-statement-en-final/16809e17ae
[39] See the statement by the GRETA of 3 April 2020

distribution of falsified medical products pose a significant risk to public health and endanger the right to life and the right to health. Criminal justice authorities need to engage in full co-operation to detect, investigate, attribute and prosecute the above offences. Within the framework of the Council of Europe Conventions (Cybercrime (Budapest) Convention, MEDICRIME Convention[40], Lanzarote Convention for the protection of children against sexual exploitation and abuse) states parties co-operate closely to improve their criminal law provisions, the procedural powers, and the international co-operation needed to counter these threats.

5. Next steps: the Council of Europe more relevant than ever

The Council of Europe was established to rebuild lasting peace in Europe after the most disastrous war it had ever known. It has largely succeeded by becoming, throughout its 70 year history, a pan-European organisation with unique institutions that set a world leading example. The challenge our societies face today is unprecedented. Even after the acute phase of the crisis, our societies will have to find the means to repair the social and economic damage and further enhance trust in our democratic institutions. Among other things, a broad reflection will need to be initiated on the protection of the most vulnerable individuals and groups in our societies and about the means to safeguard their rights in a more sustainable and solidary governance model.

The Council of Europe will continue to make every effort to assist its member states during the current crisis and its aftermath. Its wide array of effective legal instruments, technical expertise and extensive networks of national experts offer valuable tools for governments and citizens to find the best and most sustainable responses to protect public health, maintain the democratic fabric of our societies and mitigate the social consequences of the crisis.

The statutory bodies, all institutions of the Council of Europe and the Secretariat are mobilised and will spare no effort to use the tools and resources of the Organisation to share information, good practices and lessons learnt among all stakeholders, including authorities, civil society and citizens, in order to find common responses to the challenges we face. All programmes and activities of the Organisation (including – upon request – co-operation programmes with member states and non-member states) will be refocused to include components that will make the Organisation's contribution as relevant, timely and concrete as possible.

[40] The Committee of the Parties of the MEDICRIME Convention will issue advice on the application of the Convention in the context of COVID-19 (https://www.coe.int/en/web/medicrime/home)