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COVID-19 AND HUMAN RIGHTS LAW

Governments are always obligated to observe human rights. This is why it is important that legislators and authorities continue to protect the rights of citizens, even at a time when the world is facing a crisis situation due to the COVID-19 pandemic. The Danish Institute for Human Rights has listed the human rights particularly under pressure due to the pandemic.

NB: This brief is written in a Danish context. We refer to OHCHR's Covid-19 Guidance for a more global perspective.

From one day to the next, the COVID-19 pandemic has changed the lives of people all over the world; however, we must not forget that the public is still protected by the human rights to which states have committed themselves. Having said that, because a pandemic is such an extraordinary situation, governments can curtail the rights of their citizens to a higher degree than under normal conditions. In many countries, the way in which the authorities have dealt with the pandemic has led to far-reaching restrictions on the rights of citizens, and as a consequence, a number of human rights have been challenged during the COVID-19 pandemic.

THE RIGHT TO THE FREEDOM OF MOVEMENT

Several countries have introduced bans on gatherings of more than a certain number of people, and some countries have introduced a curfew. Such measures represent a serious infringement in the right to the freedom of movement that must be repealed as soon as the measures are no longer necessary.

THE RIGHT TO FAMILY LIFE

All people have a right to family life, but during the pandemic, family reunification cases are being postponed and inmates in prisons are not allowed visitors. Inmates should be given access to digital solutions that allow them to maintain contact with their family.

RIGHT TO PRIVACY AND DATA PRIVACY

Several countries have used data from telecom companies to identify coronavirus victims and to trace who they have been in contact with. This represents a serious infringement of the individual's right to privacy that would normally be unlawful. It is far less intrusive, and thus legal, for the authorities to use anonymous, aggregated information about the movement patterns of citizens.

INVIOABILITY OF THE HOME

The home is afforded special protection by both human rights law and the Danish constitution. Under normal conditions, a court of law must issue a court order before the

authorities are allowed to enter a private home. Compelling reasons are needed for this requirement to be disregarded. It is not sufficient to point to bureaucratic problems with regard to obtaining a court order as a reason for disregarding this right - not even during a pandemic.

PERSONAL LIBERTY

There is a risk that the sick in particular may be robbed of their personal liberty if they are forced into quarantine. If a very strict curfew is introduced, this can also be perceived as an infringement of the right to personal liberty affecting a large proportion of the population. The authorities must strive to ensure that individuals in pre-trial detention are not detained any longer due to the pandemic than they normally would have been.

PHYSICAL INTEGRITY

Forcibly vaccinating or admitting an individual to hospital is a serious infringement of the individual's physical integrity, and should only be initiated in cases where there are no alternatives to prevent other people from becoming sick.

THE RIGHT TO HEALTH AND LIFE

All individuals have a right to health and life. During the pandemic, this right has become especially relevant for the elderly and the sick who are at risk of becoming seriously ill or dying. This is why the authorities have a

LAWFUL INFRINGEMENTS

Governments may circumvent most human rights, provided they have solid reason to do so. However, the following requirements must be met:

1. There must be a legal basis for the infringement, and the regulations must be predictable and precise such that it is easy for citizens to understand and comply with them.
2. The infringement protects the interests of society, for example, protection of public health.
3. The infringement is proportional, and a less intrusive measure would not achieve the same effect.

responsibility to ensure that the healthcare system can cope with the situation during the pandemic, so that individuals who need treatment can get it.

RECOMMENDATIONS

On the background of the COVID-19 pandemic, the Danish Institute for Human Rights recommends that:

- Legislators and the authorities only introduce interventions that are absolutely necessary and directly

contribute to containing the spread of the disease.

- Legislators and authorities always choose the least invasive measure required to manage the pandemic.
- All laws and other regulations introduced as a consequence of the pandemic are automatically repealed as soon as they are no longer needed.
- Emergency legislation that is rushed through without consultation of relevant players and adequate debate in Parliament must be avoided and only used when absolutely necessary.
- Legislators must ensure a clear and rational legal basis within which the authorities can act.