Brannigan and McBride v. U.K.
A New Direction on Article 15 Derogations under the European Convention on Human Rights?

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Introduction

The 1993 case of Brannigan and McBride v. U.K.1 was a key case heard by the European Court of Human Rights (the Court). The Court had to wrestle with the problem of the United Kingdom’s derogation under article 15 of the European Convention on Human Rights (the Convention), and the amount of leeway, or margin of appreciation, which should be given to states to decide on measures to be taken during a public emergency. This was not the first time the Court has faced this problem, but it came at a crucial point in the development of the Council of Europe’s institutions.

Article 15 states the following:

1. 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.2

* This article was first published in the Revue belge de Droit international 1994/2 at pages 603–631. It is reprinted with their kind permission. The research for this article was done during an internship at the European Court of Human Rights which was made possible through the generous support of the International Human Rights Internship Programme at the University of Toronto Faculty of Law. I would like to thank Judge Ronald St. John Macdonald for his patient guidance and the staff of the Court for their helpfulness. Thanks also to Professor Rebecca Cook and Heather Gamester for their continuing support.


2 The definition of exceptional circumstances in article 15 includes war, natural catastrophes, such as earthquakes, floods, epidemics and economic crises, and anything that puts the security
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 15 has only been examined in a few cases of the European Commission of Human Rights (the Commission) and the European Court of Human Rights. However, these cases are extremely important.

From the point of view of human rights those occasions have been ones of critical and often dramatic importance; just as the power of arbitrary imprisonment is the cornerstone of tyranny, so the limitations on this power form a large part of the foundations of democracy. If the mechanism of the Convention is to operate effectively in this crucial area, the concepts which are adapted must be the subject of continuing analysis.  

It is vitally important that the concept of margin of appreciation in the context of an emergency be reviewed continually, in order to ensure the protection of basic rights.

Terrorism "constitutes a threat to the very existence of democracy; the States must have at their disposal adequate weapons to counter organised

of the state in peril. See Joao de Deus Pinheiro Farinha, "L'article 15 de la Convention" at 521 in Franz Matscher and Herbert Petzold (eds.), Protecting Human Rights: The European Dimension (Köln: Carl Heymanns Verlag KG, 1988) at 524–525. In his thesis on article 15, Rusen Ergec states that an emergency must affect the whole state, not just one province or region. Thus, an emergency in one area would not qualify as a public emergency unless the rest of the state was affected as well. It is possible that a government could argue that any unrest or catastrophe which affects one region has had an impact on the rest of the state. For example, most of the violence caused by the IRA was confined to Northern Ireland until recent times, but the U.K. has been able to apply emergency measures in Great Britain as well, on the basis that the entire country has been affected and not just one region. The Court has accepted this argument. See Rusen Ergec, Les droits de l'homme à l'épreuve des circonstances exceptionelles (Bruxelles: Editions Bruyant, 1987) at 170.