Preface

Derogations from the European Convention on Human Rights

In 2016, the Council of Europe registered a record number of derogations from the European Convention on Human Rights (ECHR). France, Ukraine and Turkey introduced derogations in response to terrorism, armed conflict and a failed *coup d'état*, respectively. In addition, the UK government adopted a proposal to derogate extraterritorially from the ECHR in future military operations.

These cases raise concerns about the aptness and potential misuse of the derogation provision enshrined in Article 15 of the ECHR. France, for instance, noted that the ‘terrorist threat in France is of lasting nature’,¹ suggesting that emergency measures may have no endpoint. Ukraine derogated from the ECHR in relation to the Donbas region only and not Crimea. Turkey, on grounds of terrorism, arrested an international judge serving in a war crimes tribunal,² a director of Amnesty International and thousands of citizens, including teachers, public officials and journalists.³ The UK, displeased with earlier human rights complaints in relation to its involvement in, among others, Iraq and Afghanistan argued that a blank derogation as regards future military operations will ‘put an end to the industry of vexatious claims that has pursued those who served in previous conflicts’.⁴

Against this background, we hosted the conference *Derogation from the European Convention on Human Rights under Contemporary Situations of Emergency*, which took place on 4 May 2017 at the University of Graz. The conference had a twofold purpose. First, to explore, at a national level, similarities between the aforementioned four cases of recent derogations, and the trajectories and context that shaped the framing, duration and possible

¹ Declaration contained in a letter from the Permanent Representative of France to the Council of Europe, dated 24 November 2015, registered at the Secretariat General on 24 November 2015.

² <<https://www.bbc.com/news/world-europe-40285658>> (17 July 2019).

³ <<https://www.dw.com/en/turkish-court-rules-to-keep-amnesty-official-in-jail-on-terrorism-charges/a-44341440>> (17 July 2019).

⁴ ‘May pledges to end “industry of vexatious claims” against forces’ (*The Law Society Gazette*, 5 October 2016) <<https://www.lawgazette.co.uk/law/may-pledges-to-end-industry-of-vexatious-claims-against-forces/5058070.article>> (17 July 2019).

abuse of Article 15 of the ECHR. The second aim of the conference was to critically examine the supervisory role of the European Court of Human Rights in derogation cases, in particular, the way in which the Court assesses the exigencies of the situation and the discretion of States to determine a threat to the nation.

The contributions included in this volume were developed on the basis of four papers presented at the conference. However, as questions on effective supervision and long duration of derogations continuously emerged during the conference, we decided to tackle these issues in an additional contribution.

Thus, in the first contribution, we analyze legal and theoretical controversies about the conundrum of temporariness in derogation regimes and explore a new emerging layer of European non-judicial supervision of derogations.

In the second contribution, Benedikt Harzl and Oleksii Plotnikov analyze the Ukrainian derogation from the ECHR and discern some unique features of this derogation. These features include the facts that the justification provided by the Ukrainian government on derogating from the ECHR referred to terrorism – and not war or armed conflict – and that it derogated one year after the armed conflict had commenced in Ukraine. Harzl and Plotnikov examine, among others, the relationship between the ECHR and international humanitarian law in the wake of the Russian aggression and the dual responsibility of Ukraine and Russia to secure the Convention rights in conflict areas.

In the third contribution, Luca Pasquet examines the legal and theoretical issues arising from the derogation from the ECHR by France. Pasquet analyzes the use and misuse of the derogation regime, the duration of derogation and the effects of derogatory measures on religious and other minority groups. Although the emergency measures were terminated in November 2017, Pasquet critically questions whether France has transposed the emergency measures into its ordinary legislation and in that manner has constructed a *de facto* state of emergency.

In the fourth contribution, Kerem Altıparmak and Senem Gürol address the legal and political controversies surrounding Turkey's derogation from the ECHR and its enduring detrimental effects on democracy and the rule of law in Turkey. They look at the operation of courts and other institutions during derogation and the scale of the population affected by specific derogation measures, such as mass purges and the closure of private institutions. Altıparmak and Gürol suggest how the Strasbourg Court should respond to complaints concerning Turkish derogation measures.

In the last contribution, Vassilis Tzevelekos analyzes the UK government's proposal to derogate from the ECHR in future military operations. Tzevelekos

looks at the political and legal arguments employed by the UK government to justify the proposal and assess whether such derogations by the UK could amount to an abuse of a right.

More often than not conference proceedings profit from invaluable comments, pointed critique and suggestions. In this regard, we would like to thank in particular the discussants on the panels, Stephan Hinghofer-Szalkay, Ieva Miļūna, Gerd Oberleitner and Kerem Öktem, for their excellent discussions of the individual papers, and Marko Milanović and Raphaël Comte, Rapporteur of the Council of Europe on derogations, for their stimulating keynote lectures. Moreover, we would like to thank the Austrian Federal Ministry for Europe, Integration and Foreign Affairs, the Dean's office at the law faculty of the University of Graz and Rectorate of the University of Graz for their generous financial support that enabled the realisation of the conference.

Kushtrim Istrefi & Stefan Salomon