

HANDOUT

Case Study : COVID-19 Crisis in Greece: Emergency Measures and Judicial Review

1: Introduction

The outbreak of COVID-19 in Greece led the government to adopt, during the whole period of the ensued health crisis, multiple emergency measures aimed at limiting the spread of the virus. Such measures included the compulsory vaccination of people over the age of 60 and of people working at health facilities, restrictions on the movement of the whole population, a night-time curfew, the suspension of religious services in places of worship, the suspension of public gatherings of more than 3 people, the suspension of the operation of educational institutions, courts and nearly all commercial shops except food markets etc. Many of the above measures were challenged before the Greek courts as unconstitutional.

2. The procedure for adopting many of the emergency measures

Many of the above emergency measures were issued according to the procedure provided in Article 44 par. 1 of the Greek Constitution, namely by “acts of legislative content”.

Article 44 par. 1 of the Greek Constitution: *“Under extraordinary circumstances of an urgent and unforeseeable need, the President of the Republic may, upon the proposal of the Cabinet, issue acts of legislative content. Such acts shall be submitted to Parliament for ratification [...] within forty days of their issuance or within forty days from the convocation of a parliamentary session. Should such acts not be submitted to Parliament within the above time-limits or if they should not be ratified by Parliament within three months of their submission, they will henceforth cease to be in force”.*

- Should courts called to review “acts of legislative content” examine whether the required “extraordinary circumstances” were indeed existent at the time of the issuance of these acts?

3: The impact of the emergency measures on fundamental rights

The emergency measures aimed at limiting the spread of the virus and, therefore, at ensuring the right to the protection of health.

Article 5 of the Greek Constitution: *“All persons have the right to the protection of their health and of their genetic identity [...]”.*

Article 21 par. 3 of the Greek Constitution: *“The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy.”*

- Do you think that the aforementioned emergency measures impinged on other fundamental rights?
- Which ones do you think that those rights were in each case?

If you wish to locate those rights by looking at relevant legal texts, you may access: a) the Greek Constitution (see especially Articles 4 to 25): <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

, and b) the European Convention on Human Rights (see especially Articles 1 to 14 and also the attached Protocol): https://www.echr.coe.int/documents/d/echr/convention_ENG

4. In need for scientific data justifying the emergency measures?

The spread of COVID-19 not only caused a large number of deaths across Greece, but also a massive influx of patients in the hospitals.

- Do the above constitute a situation of emergency?
- If yes, is this situation in itself sufficient to justify the adoption of emergency measures or should more specific and comprehensive scientific data be invoked by the government?
- Do scientific data need to be regularly updated?

5. Judicial review: How far should the courts go?

The review of emergency measures in times of crisis pose a major challenge for courts. On the one hand they must safeguard fundamental rights, but on the other hand they must not substitute the opinion of the democratically legitimate institutions in matters of policy.

- Which “tools” can the courts use as regards their judicial review so that they can achieve the above objective?

Case study : Using the procedure prescribed in Article 44 par. 1 of the Greek Constitution, the Greek government adopted on the 14th of November 2020 the following emergency measures:

1) All religious services in places of worship are suspended, 2) Public gatherings of more than 3 people are prohibited, 3) Food stores, car and bicycle repair shops remain open without restrictions.

The government invoked the following data to justify the adoption of the above measures: “Daily reports of epidemiological surveillance of infection by the novel coronavirus (COVID-19) show that there had been a marked deterioration with a large increase in average daily cases and deaths, as well as the number of intubated patients, with the consequence of the intensity of pressure from the National of the Health System took place from 4.11.2020 and until the 14th of November 2020. At 5 November saw a new historical high with 2,917 cases and on November 11 the second one was recorded highest daily rate with 2,752 cases, of which 28.2% concern Thessaloniki, 23.1% Athens and the rest are scattered throughout the territory. ... the average daily number of deaths more than tripled to 33.7 (from 10 in the previous report) and the number of intubated patients in ICUs increased significantly to 297 (from 179), which is the new highest value since the beginning of the crisis”.

We are in mid-July 2021 and the aforementioned measures are still in force. They are yet to be re-evaluated. In light of all these, affected citizens contest the measures as unconstitutional at the competent Greek court.

- Summarise and present the arguments for and against the constitutionality of those measures.
- How will the competent court proceed in reviewing the measures and which factors will it take into account?
- Will it uphold or annul the measures?