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THE ARCHITECTURE OF LIMITATION: DOGMATIC AND COMPARATIVE ANALYSIS OF HUMAN RIGHTS RESTRICTIONS UNDER THE PUBLIC HEALTH IMPERATIVE

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Abstract. *The conflict between emergency public health measures and fundamental human rights poses a critical challenge to legal dogmatics and constitutional governance. Dynamic public health crises frequently trigger far-reaching state restrictions—such as restrictions on movement, compulsory medical measures, and digital surveillance—that risk transforming temporary emergency measures into permanent governance structures. This paper addresses the problematic blurring of formal derogations and ordinary limitation clauses, which may undermine rule-of-law standards and effective judicial oversight. Combining legal dogmatics with comparative analysis of international and regional human rights frameworks (ICCPR, ECHR, and ACHR) and relevant judicial practice, the study systematically examines the multi-tiered architecture governing limitations on human rights. Theoretically, it develops a refined normative model for assessing the principles of proportionality and necessity, with particular reference to the Siracusa Principles in the context of public health emergencies. The analysis identifies a pattern of initial judicial deference to executive authorities that may weaken ordinary constitutional safeguards. The principal outcome of the study is a standardised evidentiary framework designed to ensure strict temporal limits, continuous judicial review, and proportionality testing of legal measures adopted during public health emergencies. These findings may assist constitutional courts, international adjudicative bodies, and legislative drafters in aligning public health measures with binding human rights obligations while preserving democratic legitimacy.*

Keywords: *international public law, European Union (EU) law, human rights, public health, judicial scrutiny, principles of proportionality and necessity*

Introduction

The structural tension between the regulatory powers of a sovereign state government, specifically its positive obligation to protect the right to life and health of its population, and the preservation of fundamental freedoms constitutes one of the most enduring paradoxes in constitutionalism and international jurisprudence (Shah et al., 2025; Barber, 2018). At the core of this tension lies a critical juridical problem: the agility of emergency or exceptional public health restrictions and their systemic tendency to erode established rule-of-law mechanisms (Grogan, 2022; King, 2026). While human rights instruments are designed with built-in limitation clauses to absorb societal shocks, modern public health crises have revealed an alarming vulnerability (Boin et al., 2021; Harris, 2020; Mukherjee, 2021). Based on these academic insights, *the core research problem* in this study is focused on the transformation of “*temporary exceptions*” into normalized legislative tools, the risk of executive overreach under the guise of scientific infallibility, and the severe strain placed on traditional judicial review mechanisms when evaluating fluid, technically complex, and fast-moving biological threats.

The significance of this problematic question within contemporary legislation cannot be overstated. Following the global legislative responses to the COVID-19 pandemic and subsequent localized epidemiological outbreaks, states have increasingly integrated emergency-style public health frameworks into their ordinary statutory laws (Evans, 2022). Converting temporary emergency rules into permanent law risks permanently shifting power from individual liberties toward state control. In modern administrative and statutory regimes, vague public health clauses are frequently invoked to bypass parliamentary oversight, insulate executive decrees from swift judicial annulment, and justify unprecedented interferences with violations of data privacy, freedom of movement, and economic liberties (Grogan & Beqiraj, 2022; Hussain, 2025). As a result, examining the strict limits of international human rights clauses is no longer a purely theoretical exercise in crisis response; it has become a necessary safeguard for preserving democratic governance through ongoing global risks (Ahmad, 2025).

In this study, legal issues from the perspective of international law are systematically analysed in three analytical research areas. First, it deconstructs the normative text of international human rights instruments (specifically, the Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights (ECHR), signed on November 4, 1950, and entered into force on September 3, 1953) and the International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations General Assembly on December 16, 1966, and entered into force on 23 March 1976. It examines the legal framework defining ‘public health’ as an independent basis for rights restrictions, and assesses how standard tests of legality, necessity, and proportionality in the strict sense adapt when applied to evolving scientific data. Second, it reviews the evolving case law of international and regional courts, isolating the exact judicial friction points where courts have struggled to balance state deference (via the margin of appreciation) against the risk of arbitrary deprivation of rights. Finally, it examines the unique, dual-layered framework of European Union law, detailing how primary and secondary European Union instruments seek to harmonize state health measures with the inviolable “*essence*” of fundamental human rights and the preservation of human freedoms.

Methods

This study applies a *doctrinal legal research methodology*, supplemented by *analytical legal analysis* and *systematic legal interpretation* methods. The research examines international human rights instruments, European legal frameworks, and the European Union legal acts governing the restriction of human rights and fundamental freedoms for public health protection purposes. The methodological objective of the research is to assess the coherence, scope of application, and normative limits of public health exceptions within international human rights law, to evaluate the judicial application of proportionality and necessity principles across different legal systems, and to identify existing vulnerabilities of legal norms within the international and regional legal frameworks that create conditions for the legitimization of state emergency powers in accordance with rule of law standards.

The research combines three complementary analytical tools: *comparative legal analysis*, focusing on systematic interpretation of international conventions, their limitation clauses, derogation provisions, and interpretive guidelines; *textual and teleological interpretation of legal sources*, examining international legal documents, European Union legislation, soft-law instruments, court decisions, and academic scholarship. The selected sources were analysed in the context of the relation between the European integrated proportionality and necessity model and the United States categorical control mechanism, with particular attention to how each legal system assesses public health measures that restrict fundamental human rights; and *normative assessment*, evaluating the adequacy of existing legal safeguards, particularly the principles of necessity, proportionality and non-discrimination, considering the systemic risk of transforming temporary emergency powers of public authorities into permanent powers under the rule of law.

Results

1. Harmonization of international legal provisions concerning restrictions on human rights

Under international human rights law, human rights are rarely absolute (Nowak, 2003; Badar, 2003); rather, they exist within a structured system of permissible limitations designed to safeguard collective societal interests (Mégret, 2010; Donnelly & Edquist-Whelan, 2026). The normative architecture allowing states to restrict human rights to mitigate public health crises is explicitly codified across major global and regional instruments. At the global level, the International Covenant on Civil and Political Rights (ICCPR), adopted on December 16, 1966, and officially entered into force on March 23, 1976, incorporates explicit public health limitation clauses within its substantive provisions, notably covering freedom of movement (Article 12(3)), freedom to manifest religion or beliefs (Article 18(3)), freedom of expression (Article 19(3)(b)), the right of peaceful assembly (Article 21), and freedom of association (Article 22(2)).

Similarly, at the European level, the European Convention on Human Rights (ECHR, 1950) uses a comparable legal framework. The limitation clauses in Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience, and religion), 10 (freedom of expression), and 11 (freedom of assembly and association) expressly enumerate “the protection of health” as a legitimate aim capable of justifying state interference. Furthermore, Article 5(1)(e) of the European Convention on Human Rights (ECHR, 1950) contains a specific provision allowing for the lawful detention of “persons for the prevention of the spreading of infectious diseases,” creating a distinct textual link between public health enforcement and the deprivation of liberty (Greene, 2020; Perlin, 2011; Sim et al., 2011).

To prevent these clauses from becoming legal instruments of authoritarian overreach, international bodies have developed strict interpretive criteria. The Siracusa Principles

on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, adopted in 1984, establish that public health limitations must be directed toward a serious threat to the health of the population or individual members of society and must be specifically intended to prevent disease or injury or provide care for the sick. Importantly, legal theory distinguishes between routine restrictions on human rights, which operate within the ordinary framework of human rights treaties, and extraordinary derogations under Article 4 of the International Covenant on Civil and Political Rights (1966) and Article 15 of the European Convention on Human Rights (1950), which require a public emergency threatening the life of the nation. In either scenario, “public health” cannot be invoked as a blank check; restrictions must comply with the applicable requirements of international human rights law and the rule of law.

The global framework: textual codification in the International Covenant on Civil and Political Rights (1966)

At the global level, the International Covenant on Civil and Political Rights (1966) incorporates explicit public health limitation clauses directly within the text of its substantive provisions. This structural design is evident in:

- *Freedom of Movement* (Article 12(3)): permits restrictions necessary to protect public health, forming the legal basis for domestic quarantines and travel restrictions.

- *Freedom to Manifest Religion or Beliefs* (Article 18(3)): allows limitations on public manifestations of faith, which frequently arise during epidemics in connection with the closure of places of worship.

- *Freedom of Expression* (Article 19(3)(b)): authorizes restrictions to protect public health, providing a potentially relevant basis for states addressing medical disinformation.

- *The Right of Peaceful Assembly* (Article 21) and *Freedom of Association* (Article 22(2)): allow restrictions for the protection of public health, providing a legal basis for restrictions on mass gatherings and public assemblies.

By placing these public health limitations directly within the relevant articles, the drafters of the International Covenant on Civil and Political Rights (1966) recognized that the enjoyment of individual liberties may need to be balanced against legitimate public health interests.

The regional framework: the European Convention on Human Rights (1950) governing deprivations of liberty during public health emergencies

Correspondingly, in the European regional context, the European Convention on Human Rights (1950) utilises a parallel structural design but applies a more specific textual formula (Violini & Baraggia, 2018; Morano-Foadi & Andreadakis, 2020). The limitation clauses in Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience, and religion), 10 (freedom of expression), and 11 (freedom of assembly and association) expressly enumerate “the protection of health” as a legitimate aim capable of justifying state interference.

Most importantly, the European Convention on Human Rights (1950) explicitly links public health considerations to the deprivation of physical liberty in specified circumstances (Heri, 2021). Article 5(1)(e) of the European Convention on Human Rights (1950) contains a specific provision allowing for the lawful detention of “persons for the prevention of the spreading of infectious diseases.” This creates a direct textual link between public health powers and the confinement of individuals considered capable of transmitting an infectious disease.

Within the European legal framework, Article 5(1)(e) operates as an exception to the general protection against arbitrary detention, meaning that it must be interpreted narrowly (Langford & Bryan, 2011). The Court has consistently emphasised that detention under

this provision must remain closely connected to the legitimate public health purpose pursued, ensuring that isolation remains an epidemiological measure rather than an instrument of arbitrary confinement.

Establishing interpretative safeguards based on the Siracusa Principles (1984) and empirical health data to ensure emergency measures remain legally bounded

To prevent these limitation clauses from becoming instruments of authoritarian overreach, international bodies have developed strict interpretive criteria to constrain executive discretion (Ingber, 2016). The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights establish that public health limitations must be directed toward a serious threat to the health of the population or individual members of society (United Nations Commission on Human Rights, 1984). Furthermore, they must be specifically intended to prevent disease or injury or to provide care for the sick.

The Siracusa Principles emphasise that limitations on human rights must satisfy applicable standards of legality, necessity, and proportionality (Sun, 2020; Shodunke, 2024). In the public health context, restrictions should therefore be supported by an adequate factual and scientific basis and should not rest solely on abstract fears or political considerations. This introduces an important requirement of rational justification into the legal analysis, requiring states to demonstrate a reasonable connection between restrictions and identifiable public health risks.

In legal theory, courts must clearly distinguish routine restrictions on human rights from formal state-of-emergency derogations. Routine limitations operate within the ordinary framework of human rights treaties (Durieux & McAdam, 2004). They recognise that certain rights may need to be balanced against legitimate public health interests, even in times of peace. These limitations do not suspend the right; rather, they define its permissible boundaries in accordance with the applicable limitation clauses.

In contrast, derogations under Article 4 of the International Covenant on Civil and Political Rights (1966) or Article 15 of the European Convention on Human Rights (1950) constitute an exceptional legal regime. Derogations are permissible only in a public emergency that “threatens the life of the nation.” When a public health crisis reaches this threshold, a state may temporarily derogate from certain treaty obligations, subject to the conditions prescribed by the relevant treaty.

However, even under a valid derogation, “public health” cannot be invoked as a blank check. The state remains bound by international law to ensure that its measures are strictly required by the exigencies of the situation, respect applicable non-derogable rights, and comply with the overarching principles of the rule of law.

2. The value of applying the principles of proportionality and necessity

The invocation of a legitimate aim, such as controlling a pandemic, is merely the threshold inquiry. The core of judicial review of human rights restrictions lies in the application of the principles of necessity and proportionality.

Under the jurisprudence of international and regional human rights bodies, restrictions on human rights must satisfy the applicable requirements of necessity and proportionality. This requires a multi-tiered legal evaluation:

- *Under the suitability test*, rights restrictions should have a rational and evidence-based connection to the public health objective pursued (Gullett, 2017).

- *Under the necessity test* (least restrictive means), restrictions are justified only where less intrusive measures would not provide an adequate level of public health protection (Spadaro, 2020). If a targeted quarantine or expanded testing regime is sufficient, for example, a blanket, non-selective curfew may constitute a disproportionate restriction.

- *Proportionality stricto sensu* serves as the final balancing test, requiring the severity of the interference with individual liberty to be weighed against the public benefit pursued by the restriction.

Furthermore, the principle of non-discrimination remains a fundamental constraint on the exercise of emergency powers. Public health restrictions that impose differential burdens based on prohibited grounds such as race, colour, sex, language, religion, or social origin require particularly careful legal scrutiny. Under the United States model, courts apply different standards of judicial scrutiny depending on the nature of the right or classification affected. Unlike the European proportionality framework, United States constitutional law may apply different levels of scrutiny under, among other provisions, the Due Process and Equal Protection Clauses of the Fourteenth Amendment (U.S. Constitution, amend. XIV, § 1), as developed in the jurisprudence of the U.S. Supreme Court.

Table 1

Framework of Constitutional Scrutiny in Health Emergency Litigation

Tier of Scrutiny	Triggering Criteria	Judicial Burden on the State	Primary Public Health Focus
Strict Scrutiny	Fundamental Rights (e.g., Religion, Speech) or Suspect Classifications (Race).	Must use the least restrictive means to achieve a compelling government interest.	Religious assemblies vs. commercial lockdowns.
Rational Basis Review	General Liberty Interests (e.g., Freedom of movement, economic regulations).	The measure must be rationally related to a legitimate government interest.	Quarantines, general stay-at-home orders, mask mandates.

For over a century, the foundational precedent in United States public health law was *Jacobson v. Massachusetts* (197 U.S. 11, 1905), in which the U.S. Supreme Court upheld a mandatory vaccination law, establishing that the protection of public health may justify restrictions on individual liberty during a health crisis under a highly deferential standard. However, modern constitutional challenges have prompted a reassessment of this deference when public health orders interfere with fundamental constitutional rights.

The Shift: Roman Catholic Diocese of Brooklyn v. Cuomo

In the landmark United States case *Roman Catholic Diocese of Brooklyn v. Cuomo* (592 U.S. 14, 2020), the U.S. Supreme Court applied strict scrutiny to pandemic-era executive restrictions affecting religious worship. The Governor of New York had imposed strict attendance caps on houses of worship in certain high-transmission zones. First, in its strict scrutiny analysis, the Court considered that the executive order imposed more severe restrictions on religious institutions than on certain secular businesses, including liquor stores and laundromats. Second, in assessing necessity, the Court concluded that, although controlling the spread of COVID-19 constituted a compelling governmental interest, the attendance caps were not sufficiently narrowly tailored. The Court observed that less restrictive measures could have been employed, including attendance limits based on the size and capacity of the places of worship. Accordingly, the restrictions at issue were unlikely to satisfy the requirements of strict scrutiny.

Table 2

Transatlantic Comparison of Legal Frameworks for Public Health Restrictions

Comparative Nexus	European Union (CJEU / ECtHR)	United States (Constitutional Framework)
Analytical Structure	Integrated Proportionality: Every restriction undergoes the same three-part sequence (Suitability -> Necessity -> Balancing).	Categorical Scrutiny: The level of judicial rigor depends entirely on the type of right or class targeted.
Deference to Science	Broad margin of appreciation granted to states facing fluid scientific data, provided it is non-discriminatory.	High deference under Jacobson for general liberties, but zero deference if a fundamental right is impacted.

Both systems converge on the principle that public health cannot be used to justify discriminatory burdens. Under Article 14 of the European Convention on Human Rights (1950) and the Equal Protection Clause of the U.S. Fourteenth Amendment (U.S. Constitution, amend. XIV, § 1, 1868), health restrictions that apply different standards based on protected characteristics such as race, religion, sex, or national origin are subject to heightened legal scrutiny. If a state imposes a quarantine on a specific neighbourhood populated primarily by a racial minority while leaving an adjacent, similarly affected neighbourhood unrestricted, such differential treatment would require particularly strong justification under both European and U.S. constitutional standards (Gussen, 2021). In both legal traditions, discriminatory public health measures may therefore be found incompatible with applicable human rights and constitutional guarantees.

The findings indicate that the analysis of international human rights law reveals that global and regional treaties expressly permit public health limitations on certain fundamental rights (Mann et al., 2017). While global treaties such as the International Covenant on Civil and Political Rights (1966) allow health-based restrictions on movement, expression, and assembly, the European Convention on Human Rights (1950) also permits, under specified conditions, the detention of individuals to prevent the spread of infectious diseases. To prevent arbitrary or disproportionate restrictions, international legal standards such as the Siracusa Principles (1984) require public health limitations to satisfy applicable standards of legality, necessity, and proportionality. Furthermore, legal theory distinguishes between routine limitations on rights and extraordinary state-of-emergency derogations, which apply only when an emergency reaches the threshold prescribed by the relevant treaty.

The research results show that judicial review of public health measures requires careful legal balancing rather than unchecked executive discretion. Under European and international human rights frameworks, restrictions are generally assessed in terms of their suitability, necessity, and proportionality in relation to the legitimate aim pursued. In contrast to the European proportionality framework, the United States applies different levels of judicial scrutiny depending on the nature of the right or classification affected. Ultimately, the research demonstrates that non-discrimination remains a fundamental constraint on the exercise of public health powers and that restrictions imposing unjustified differential burdens on protected groups may violate applicable human rights or constitutional guarantees.

Discussion*Legal precedents and case law: judicial scrutiny of health emergencies*

The conceptual parameters of public health exceptions have been profoundly shaped by regional and international courts navigating major crises. The European Court of

Human Rights, in particular, has developed a substantial body of jurisprudence balancing state discretion with the protection of individual rights (Kleinlein, 2019).

Historically, the landmark case of *Enhorn v. Sweden* (European Court of Human Rights, 2005) established an important test for public health detention under Article 5(1)(e) of the ECHR (Martin, 2006). The case involved the compulsory isolation of an HIV-positive individual. The Court held that the detention of a person to prevent the spread of an infectious disease may be justified only if, first, the spread of the disease poses a danger to public health or safety and, second, the detention of the infected person is a measure of last resort, after less severe measures have been considered and found insufficient to safeguard the public interest.

The onset of global health emergencies, such as the COVID-19 pandemic, subjected these principles to unprecedented challenges. In *Le Mailloux v. France* (2020), the European Court of Human Rights considered an application concerning the adequacy of measures adopted by France in response to the COVID-19 pandemic. Although the application was declared inadmissible because the applicant had failed to demonstrate that he was personally and directly affected by the alleged violations, the case illustrates the procedural limitations involved in bringing broad challenges to state public health measures before the Court. It also demonstrates the difficulties faced by applicants seeking judicial scrutiny of general public health policies during an evolving health emergency.

In *Terheş v. Romania* (2021), the European Court of Human Rights examined a nationwide lockdown in the context of Article 5 (right to liberty) of the European Convention on Human Rights (1950). The Court distinguished between restrictions on freedom of movement and an actual deprivation of liberty, finding that the general stay-at-home measure at issue did not amount to detention under Article 5 (Nikitina, 2023). Conversely, the Inter-American human rights system has emphasised that emergency measures must remain consistent with the rule of law and applicable human rights safeguards. Emergency powers should therefore remain time-bound, subject to effective oversight, and implemented without unlawful discrimination.

Provisions of European Union law on the restriction of human rights and freedoms

The European Union operates a distinct, dual-layered framework for human rights protection, consisting of the Charter of Fundamental Rights of the European Union (2012) and the fundamental freedoms protected under the Treaty on the Functioning of the European Union (2016).

First, Article 52(1) of the Charter of Fundamental Rights of the European Union (2012) establishes a horizontal framework governing limitations on Charter rights. When European Union Member States implement EU law or otherwise act within its scope, limitations on fundamental rights must comply with the requirements set out in Article 52(1). Any limitation must be provided for by law, respect the essence of the rights and freedoms concerned, and, subject to the principle of proportionality, be necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (Lenaerts, 2012; Klatt & Meister, 2012; Poscher, 2021). The requirement to respect the “essence” of a right establishes an important substantive limit on permissible restrictions. Where a measure undermines the essence of a Charter right, it cannot be justified solely by reference to proportionality.

Second, public health may justify certain restrictions on fundamental freedoms. Within the internal market, the right of EU citizens to move and reside freely is protected under Article 21 of the Treaty on the Functioning of the European Union (2016) and further regulated by Directive 2004/38/EC of the European Parliament and of the Council (2004).

Article 27 of Directive 2004/38/EC permits Member States to restrict freedom of movement and residence on grounds of public policy, public security, or public health.

The public health exception is further specified by Article 29 of Directive 2004/38/EC. Under this provision, diseases with epidemic potential as defined by the relevant instruments of the World Health Organization, as well as certain other infectious or contagious diseases subject to protective provisions applying to nationals of the host Member State, may justify measures restricting freedom of movement.

The broader jurisprudence of the Court of Justice of the European Union also provides relevant guidance on the protection of fundamental rights when Member States act within the scope of EU law. Although **Case C-176/12, Association de Médiation Sociale v. Union Locale des Syndicats CGT and Others** (Court of Justice of the European Union, 2014) did not concern a public health emergency, it is relevant to the broader question of the scope and application of rights guaranteed by the Charter and their relationship with EU secondary legislation. The judgment illustrates the importance of identifying the precise legal basis and scope of a Charter right before relying on it in disputes involving national measures.

Similarly, *Case C-311/18, Data Protection Commissioner v. Facebook Ireland Limited and Maximilian Schrems* (Court of Justice of the European Union, 2020), commonly referred to as *Schrems II*, did not arise from a public health emergency. Nevertheless, it is relevant to the present analysis insofar as it demonstrates the importance attached by EU law to effective protection of fundamental rights, particularly privacy and personal data protection, when public authorities interfere with protected interests. These principles are potentially relevant to digital public health measures, such as contact-tracing systems, health-data processing, and digital health certification, where public health objectives must be reconciled with the requirements of EU data protection and fundamental rights law.

Taken together, these cases should not be understood as direct precedents governing public health restrictions. Rather, they form part of the broader EU fundamental rights jurisprudence within which emergency public health measures must operate. Public health measures affecting free movement, privacy, or other protected interests must have an adequate legal basis and comply with applicable principles of EU law, including proportionality, non-discrimination, legal certainty, and effective protection of fundamental rights (Scissa & Gatta, 2024; Štrbac & Milosavljević, 2021). Border restrictions, health certification requirements, and other emergency measures must therefore be based on objective criteria and applied consistently with the relevant safeguards of EU law. Member States may not rely on public health considerations to justify arbitrary discrimination or disguised restrictions on free movement (Eylemer & Özsoy, 2021).

In summary, regional and international legal precedents demonstrate that judicial scrutiny during health emergencies requires a balance between state discretion and fundamental rights safeguards (Cafaggi & Iamiceli, 2021). *Enhorn v. Sweden* (2005) demonstrates that detention for the prevention of the spread of infectious disease must satisfy strict requirements and operate as a measure of last resort, while *Terheş v. Romania* (2021) illustrates the distinction between restrictions on freedom of movement and deprivation of liberty under Article 5 of the ECHR. *Le Mailloux v. France* (2020), although declared inadmissible, illustrates the procedural difficulties associated with broad challenges to state public health policies. Within the European Union, Article 52(1) of the Charter of Fundamental Rights establishes that limitations on Charter rights must be provided for by law, respect the essence of those rights, and comply with the principle of proportionality (Trstenjak, 2024). In this broader context, *Association de Médiation Sociale* and *Schrems II* provide additional guidance on the scope, application, and effective protection of Charter

rights, although neither case constitutes a direct public health precedent. Directive 2004/38/EC further provides a specific legal framework for restrictions on free movement on public health grounds, subject to the safeguards established by EU law.

Overall, the European Union legal framework provides mechanisms for balancing public health objectives with the protection of fundamental rights and freedoms. However, the lawfulness of restrictive measures adopted by European Union Member States ultimately depends on their continued compliance with applicable principles, including proportionality, legal certainty, necessity, and non-discrimination, particularly during prolonged public health emergencies.

Conclusion

1. The danger of turning temporary emergency powers into permanent practice and undermining the rule of law. The primary systemic threat identified by this analysis is the conceptual slippage between temporary emergency derogations and routine statutory limitations. The integration of crisis-style public health exceptions into ordinary domestic legislation has led to a progressive “normalization of the exceptional”. When vague public health parameters are codified as permanent fixtures of administrative law, the executive branch gains a structural incentive to bypass ordinary parliamentary and constitutional standard-setting. The resulting “preventative state” permanently recalibrates the relationship between individual liberty and state coercion, transforming fundamental rights from absolute shields into negotiable privileges contingent upon epidemiological status.

2. The essential need for evidence-based proportionality and scientific standards in decision-making. The judicial application of the principles of necessity and proportionality has exposed a dangerous systemic reliance on executive deference under the guise of medical expertise. To prevent the “margin of appreciation” from degenerating into a zone of absolute impunity, courts must enforce a rigorous, multi-tiered test of empirical proportionality. A public health restriction cannot achieve legality merely through a show of good faith or political consensus. Instead, it demands scientific due process: the state must bear the continuous burden of proving, through real-time and publicly accessible data, that a specific measure is the least restrictive means available. If the empirical link between the restriction and disease mitigation dissolves, the measure loses its normative validity and must be considered unconstitutional.

3. The principle that the core of fundamental human rights can never be violated. As anchored in Article 52(1) of the Charter of Fundamental Rights of the European Union (2012), the concept of the “essence” of a human right operates as an absolute dogmatic limit against state overreach. The balancing exercises typical of proportionality tests are secondary to this threshold constraint. When a public health measure—such as an automated contact-tracing regime or a blanket, indefinite lockdown—completely hollows out the functional core of a right (e.g., data privacy or freedom of association), the measure constitutes a subversion of the human rights paradigm. The regional legal orders of the ECHR and the European Union must continue to enforce this absolute baseline, ensuring that internal market efficiency or collective biosecurity imperatives never override the non-derogable, dignity-based nucleus of human rights.

4. Practical guidelines for designing future legal frameworks. To resolve the legal paradox identified in this study, future legislative frameworks must transition away from open-ended executive decrees and toward pre-legislated, rule-of-law emergency protocols. This research proposes two essential institutional solutions: first, establishing mandatory judicial oversight mechanisms with strict statutory deadlines during public health emergencies; and second, codifying clear evidentiary standards that governments must satisfy before restricting fundamental rights.

First, automatic expiration dates for emergency laws. All public health laws restricting fundamental freedoms must feature mandatory, non-extendable sunset provisions. Renewal must require a fresh, independent legislative assessment rather than administrative inertia.

Second, fast-track court review mechanisms to ensure continuous oversight. Jurisdictional frameworks must establish specialized judicial procedures that allow citizens to challenge the scientific and legal merits of emergency measures within days, not years. This preserves the ultimate authority of the judiciary and ensures that the executive's reliance on emergency expertise never displaces the rule of law.

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