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Europäisches Rechtsinstitut

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ELI Principles for the COVID-19 Crisis

Principle 3 DEMOCRACY

- (1) The unprecedented situation due to the COVID-19 outbreak should, in no case and for no reason, legitimise measures that, irrespective of their intention, might result in a repressive or authoritarian course of action, undermine democratic public institutions and/or impede the citizens' entitlement to democratic government, either permanently or temporarily.
- (2) Parliaments must not be deprived of their powers by the state of emergency, and should, wherever possible, take the most important decisions themselves (through the use of technology, where desirable), which will then be further implemented by governments. Parliaments must in any case be provided with the opportunity to decide when the state of emergency has come to an end, and to review and undo steps taken by the government during the state of emergency.
- (3) During the COVID-19 crisis, elections should be organised only if there is a guarantee that all requirements for free, equal and democratic election procedures can be observed. If the requirements are not met, then every effort should be made to put them in place, but in the meantime elections should be postponed.

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Principle 4 LAWMAKING

- (1) Governments must not abuse the crisis by utilising the curtailment of regular Parliamentary debate and processes to promote measures and policies unrelated to the COVID-19 crisis. Ordinary Parliamentary processes and legislation must be used for such measures. The crisis must not be used to adopt emergency laws that may secure privileges for governments in enhancing their powers during the COVID-19 crisis or thereafter in cases unrelated to the COVID-19 crisis.
- (2) If possible, legislation responding to the COVID-19 crisis that was passed under accelerated or curtailed procedures should be enacted separately and should automatically cease to remain in force at a date when the COVID-19 crisis is over. Where such legislation seems to be useful in the longer term it should be revisited and approved through ordinary procedures.
- (3) Even in a state of emergency and under accelerated or curtailed procedures, all due efforts must be made to make sure legislation is in conformity with the constitution, EU law and any other law higher in rank, in particular as far as fundamental rights are concerned. Reasonable efforts must be made to correct deficiencies even during the COVID-19 crisis, duly taking into account the need for stability.

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Principle 5 JUSTICE SYSTEM

- (1) The judiciary should do all that is reasonably practicable to continue to conduct proceedings and trials, particularly though the use of secure video and other remote links where available to the courts. In any case, the judicial system should maintain a minimum level of operations to deal with urgent matters, safeguard the rule of law and provide proper remedies to litigants, provided that the right to a fair trial, including the right to defence, is not infringed. The restrictions on the operation of the judiciary must be immediately removed when the COVID-19 emergency permits.
- (2) States should take appropriate measures to suspend or extend, where necessary, deadlines or time periods (whether fixed by statute or by courts) so that the rights of parties are not prejudiced by the emergency.
- (3) Measures must be taken to provide appropriate protection for those held in prisons. Where this is not possible, consideration should be given by the appropriate authority to granting temporary release to prisoners who are not considered to be a danger to society and particularly to the elderly and those with serious underlying health conditions.
- (4) Administrative sanctions and fines imposed on citizens for the violation of COVID-19 emergency legislation must have sufficient foundation in the law and they must be subjected to effective judicial review.

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Principle 15 RETURN TO NORMALITY

- (1) National governments should publish as soon as is practicable plans for an exit from the emergency and, in accordance with the rule of law, a return to normality and the ending of the emergency measures imposed for the crisis.
- (2) The ending of emergency measures and a return to normality should be monitored by EU institutions.