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## **A more comprehensive explanation of view on why states derogate from their human rights obligations in time of crisis**

Winter, Esmee de

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# **A more comprehensive explanation of view on why states derogate from their human rights obligations in time of crisis**

Esmee de Winter

1844407

MSc. Political Science, Leiden University

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Supervisor: Dr. Gjovalin Macaj

Second reader: Dr. Wouter Veenendaal



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## Abstract

The derogation clause of the European Convention on Human Rights (ECHR) allows states to limit the exercise of most human rights in time of war and public emergencies threatening the life of the nation. To fight off the exceptional circumstances brought by the COVID-19 global pandemic, governments are extensively restricting human rights. Almost all states have introduced emergency measures, however only ten Member States of the Council of Europe have formally derogated from the ECHR by notifying the Secretary General. This thesis will attempt to explain why some states derogate from their human rights obligations whilst others do not when they take emergency measures. The thesis will move beyond the already existing theory of which states derogate and why they do so by looking at the differences within regime type rather than only looking at regime type. By comparing two very similar countries, Latvia and Lithuania, which only differ on whether they have derogated or not, the dissimilar element that will be found is likely to be the explanatory variable on why some states derogate whilst others do not. The willingness of states to maintain parliamentary democracy in time of crisis, seems to be the explanatory variable for why some states derogate when taking emergency measures whilst others do not derogate when taking emergency measures. In the end, this thesis would like to generate a more thoroughgoing view on why states derogate in time of crisis.

## Introduction

COVID-19 forces governments to limit certain human rights to protect the population and to fight off the pandemic. Article 15 of the European Convention on Human Rights (ECHR) allows governments to derogate from their human rights obligations in time of war and public emergencies threatening the life of the nation. When states derogate from human rights treaties, they officially declare and notify states of emergency (Neumayer, 2012, p. 7). Until now, only ten Member States of the Council of Europe have formally derogated from their human rights obligations by notifying the Secretary General.<sup>1</sup> If states take emergency measures, they are not obligated to formally derogate by notifying the Secretary General because the ECHR allows derogation of some rights without triggering Article 15. Most measures taken to prevent the spread of COVID-19 are already covered by the ECHR, such as the freedom of assembly which provides exceptions to maintain public order and public health (Dzehtsiarou, 2020; Emmons, 2020; Stefanovska, 2020). Since only ten Member States of the Council of Europe formally have derogated from the ECHR, it can be argued that more states are introducing a de facto state of emergency than a de jure state of emergency. It is preferable for states to simply adopt measures that restrict human rights without formally calling it a state of emergency. A de facto state of emergency enables the same powers as a de jure state of emergency, however it lacks transparency, supervision, and additional oversight. The important question which arises is why some states derogate from their human rights obligations whilst others do not when they take emergency measures.

In this thesis, I will move beyond the theory of the already existing literature to explain why some states derogate whilst others do not. To explain the derogations from human rights treaties, scholars have argued that predominantly stable democracies derogate from their human rights obligations because they take their international treaty obligations more seriously than non-democracies (Hafner-Burton et al., 2011). However, this theory is not applicable to the current COVID-19 pandemic, since nine out of the ten states are not stable democracies but rather hybrid regimes or flawed democracies. Albania, Armenia, Estonia, Georgia, Latvia, North Macedonia, the Republic of Moldova, Romania, and Serbia are not classified as high performing democracies, but rather as mid-range performing

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<sup>1</sup> See Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic, for the texts of all derogation notices, <https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354>.

democracies.<sup>2</sup> Derogations during COVID-19 cannot be solely explained by a state's regime type. Therefore, I will move beyond this theory and study the differences within the regime type. With the method Most Similar Systems Design, two states are chosen which are very similar but differ on the dependent variable (derogation or no derogation). What makes the very similar states different, explains the difference of why one state derogated whilst the other did not when it took emergency measures. The current theory on why some states derogate whilst others do not is too broad. By moving beyond the regime type and by studying the differences within the regime type, more in-depth knowledge can be gathered on why some states derogate whilst others do not.

First, I will briefly discuss the derogation clause of the ECHR. In the same section, I will revisit and compare the already existing literature on states' derogations from human rights treaties. Secondly, I will develop theoretical expectations on why regime type determines derogation. However, since this theory is not applicable to the current COVID-19 pandemic, a new theory will be set up. The stringency of restrictive measures might be an explanatory variable for why some states derogate whilst others do not. Afterwards I will explain the case selection, method, and operationalization. In the thesis, a state that derogated during COVID-19 will be compared with a state that did not derogate during COVID-19. The thesis will conclude that not the level of stringency is an explanatory variable, but rather the willingness of states to maintain the parliamentary democracy in time of crisis is an explanatory variable to why some states derogate whilst others do not when taking emergency measures.

## Literature review

In exceptional circumstances, Article 15 ECHR affords to Member of States of the Council of Europe the possibility of derogating in a supervised, limited, and temporary manner from their human rights obligations under the Convention. However, the derogation clause does not allow governments to derogate from all their human rights obligations. Article 15 § 2 prohibits any derogation in respect of the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, and the rule of

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<sup>2</sup> See IDEA: Global Monitor of COVID-19's Impact on Democracy and Human Rights for database collecting pandemic-related restrictions of human rights, <https://www.idea.int/gsod-indices/#/indices/world-map?covid19=1>.

no punishment without law (European Court of Human Rights, 2020). In addition, derogations should be proportionate to the crisis; necessary to protect the nation and responding to the threat; not discriminate on the basis of colour, sex, race, religion, language, or social origin; not be inconsistent with the state's other obligations under international law; and last only as long as necessary (Emmons, 2020). Article 15 § 3 indicates on the procedural level. States that avail themselves of the right of derogation must keep the Secretary General of the Council of Europe fully informed. The derogation clause does not contain precise language on how soon the Secretary General needs to be informed after a state of emergency is declared. Therefore, during the COVID-19 pandemic, there are more de facto states of emergency than de jure states of emergency.

To my best knowledge, Hafner-Burton et al. (2011) provide the only existing theory and evidence for which states derogate from human rights treaties and why they do so. Most scholars' findings contributed only descriptively to the topic of derogation (Helfer, 2021; Le Bret, 2020; Macdonald, 1998; Mokhtar, 2007; Schreuer, 1982). Other literature contributed indirectly to this topic since it examined which regime type would adhere to the requirements of the ratified human rights treaties and if these human rights treaties appear to be effective in improving countries' human rights practices (Hathaway, 2002; Neumayer, 2005). Lastly, other scholars studied reservations from international human rights treaties rather than derogations (Neumayer, 2007). Therefore, Hafner-burton et al. (2011) will be discussed more extensively. The literature on ratification of human rights treaties will only be briefly discussed since their theory is not entirely applicable to this study.

Hafner-Burton et al. (2011) findings are consistent with the empirical evidence found by Hathaway (2002) and Neumayer (2005). Neumayer (2005) found empirical evidence that the more democratic a country is and the stronger a country's civil society is, the more beneficial human rights treaty ratification becomes. Ratification of human rights treaties can make things worse or makes no difference in pure autocracies and/or in the absence of civil society. His evidence supported the already existing empirical evidence conducted by Hathaway (2002). Hathaway found no evidence that ratification of international human rights treaties leads to better human rights performance. However, in some full democratic countries, human rights treaty ratification is associated with a better human rights record. These two findings suggest that international human rights treaties are more beneficial in democratic countries with a strong civil society. Not focused on derogations but rather on reservations, understanding, and declarations (RUDs), Neumayer (2007) studied the legitimacy and role of reservations to international human rights treaties. He concludes that

liberal democracies set up more RUDs than other countries do. RUDs are a legitimate means to account for diversity and are mainly used by countries that take human rights seriously.

The theory used by Hafner-Burton et al. (2011) is partly based on the empirical evidence found by Hathaway (2002) and Neumayer (2005). Their article contains three core findings. First, stable democracies and states where domestic courts can exercise strong oversight of the executive are more likely to derogate than other regimes. This core finding is consistent with the finding that democracies are more likely than other regimes to file reservations, a finding found by Neumayer (2005; 2007). Second, the logic of derogation does not apply to states where the judiciary is weak or where voters cannot easily remove leaders from office. Third, states that derogate once are far more likely to do so again (Hafner-Burton et al., 2011, p. 675). Derogations are a rational response to an uncertain domestic political environment. It enables governments to buy time and legal breathing space from voters, courts, and interest groups to combat crises by temporarily restricting civil and political liberties. Derogations send a credible signal to domestic actors that suspending rights is necessary, temporary, and lawful. Domestic actors are then more likely to refrain from challenging rights-restrictive policies than if the government had adopted those same policies without derogating (Hafner-Burton et al., 2011, p. 680).

The already existing literature thus suggests that democracies are more likely to adhere to international human rights treaties and take their treaty obligations more seriously than autocracies. Democracies invoke derogations because of their commitment to respect human rights seriously. Derogations buy time and legal breathing space to confront crises. At the same time, derogations give a signal that rights suspensions are temporary and lawful (Hafner-Burton et al., 2011, p. 675). When officially declaring and notifying states of emergency, the emergency measures that are taken by the government are open to public scrutiny by the international observers, the European Court of Human Rights or to other international communities. Non-democracies also join human rights treaties but routinely breach the human rights agreements (Hathaway, 2002; Simmons, 2009). Therefore, they feel little need to derogate, because they are unlikely to be held accountable for violating the human rights treaties (Hafner-Burton, 2011, p. 675). This theory will further be elaborated in the next section. However, as will be discussed in the next section, this theory is too broad to understand derogations during COVID-19. Not only regime type, but other factors as well might have an influence on why some states derogate whilst others do not. The stringency of restrictive measures against COVID-19 might explain the difference in derogation, as will be discussed in the following section.



## Theoretical expectations

When states respond to emergencies, power will be concentrated in the executive and individual liberties can be constricted. Restrictions of individual liberties are mainly accepted when there is an external threat or when emergency measures target foreigners or activities outside the state. However, emergency measures are not popular when they infringe the civil and political rights of citizens. If democratic leaders do not want to be removed from power, it is increasingly important to convince voters that restrictions of rights are necessary and temporary responses to emergencies. Governments must restrict civil and political liberties in a way that reduces the risk of censure from voters. Not only voters need to be convinced about the legality of the restriction of civil and political liberties, also domestic judges need to be convinced about the legality of government's responses. Domestic judges view restrictions of constitutional and human rights in normal times with scepticism. However, their attitudes change when governments declare a state of emergency. In contrast to ordinary times, judges are more deferential to the government and more willingly to maintain the restrictions of constitutional and human rights. When the crisis is prolonged, then governments are more likely to be held responsible for violating constitutional and human rights. Thus, when governments face a crisis, they must adopt emergency measures that restrict civil and political liberties to buy time and policy breathing space. They must adopt these emergency measures in a way that it reduces the risk of censure from voters, interest groups, and domestic judges (Hafner-Burton et al., 2011, p. 681). Both of these ends can be achieved by formally derogating from a state's human rights obligations.

When derogating from international human rights treaties, a state's claim will be bolstered that it faces a real crisis. This will increase the likelihood that judges, voters, and domestic interest groups will support the government's action in the short run, because it gives a credible signal that restrictions of civil and political liberties are temporary and necessary. When the crisis is over, the government will return to full compliance with its human rights obligations. However, it is important to take the accountability of the government to voters into account. Derogations are only appealing to governments that are accountable to voters, since they have to garner support from voters and domestic interest groups. In addition, derogations are only appealing to governments that seek to reduce censure of emergency measures and judicial oversight (Hafner-Burton, 2011, p. 682). Therefore, countries are more likely to derogate if they have a stable democracy and if courts can exercise strong oversight of the executives.

This logic of derogation does not apply to countries where courts are not able to exercise strong oversight of the executives and where voters cannot easily remove leaders from office. Countries that do not have a stable democracy and have weak judicial institutions, join human rights however routinely violate the treaty norms (Hathaway, 2002; Simmons, 2009). Instead of democracies, non-democracies do not invoke escape provisions because they do not take their international treaty obligations that seriously (Neumayer, 2012, p. 7). Their need to derogate from international human rights treaties is less because they are unlikely to be held accountable for violations with or without derogation (Hafner-Burton, 2011, p. 682). Derogation from international human rights treaties can even be more harmful for non-democracies, since it draws more attention to the repression that would otherwise remain hidden. According to this theory, regime type determines whether a country will derogate from its human rights obligations.

The expected relationship would thus be that regime type determines if a country derogates from its international human rights obligations. However, as already stated in the introduction, derogations during COVID-19 cannot be solely explained by a state's regime type. The already existing literature is too broad to understand which states derogate and why they do so during COVID-19. In application of Article 15 § 3 of the ECHR, Albania,<sup>3</sup> Armenia,<sup>4</sup> Estonia,<sup>5</sup> Georgia,<sup>6</sup> Latvia,<sup>7</sup> North Macedonia,<sup>8</sup> the Republic of Moldova,<sup>9</sup> Romania,<sup>10</sup> San Marino,<sup>11</sup> and Serbia<sup>12</sup> notified the Secretary General of the Council of Europe that they would invoke the derogation clause. According to the Democracy Index of The Economist Intelligence Unit (2020), nine out of the ten states are not full democracies but flawed democracies or hybrid regimes. Democracy classification of San Marino is missing, however the Freedom House (2020) classifies San Marino as free with a score of 95 points out of 100 points. Since regime type is not the only explanatory variable of which states derogate and why they do so, a more in-depth investigation has to be conducted to examine what other variables, next to regime type, explain which and why states derogate.

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<sup>3</sup> Notification of 31 March 2020, <https://rm.coe.int/16809e0fe5>.

<sup>4</sup> Notification of 19 March 2020, <https://rm.coe.int/16809cf885>.

<sup>5</sup> Notification of 20 March 2020, <https://rm.coe.int/16809cfa87>.

<sup>6</sup> Notification of 23 March 2020, <https://rm.coe.int/16809cff20>.

<sup>7</sup> Notification of 16 March 2020, <https://rm.coe.int/16809ce9f2>.

<sup>8</sup> Notification of 2 April 2020, <https://rm.coe.int/16809e1288>.

<sup>9</sup> Notification of 20 March 2020, <https://rm.coe.int/16809cf9a2>.

<sup>10</sup> Notification of 18 March 2020, <https://rm.coe.int/16809cee30>.

<sup>11</sup> Notification of 14 April 2020, <https://rm.coe.int/16809e2770>.

<sup>12</sup> Notification of 7 April 2020, <https://rm.coe.int/16809e1d98>.

An explanatory variable on why some states derogate and others do not, might be the stringency of restrictive measures against the virus. During COVID-19, countries adopted different emergency measures to combat the pandemic. For example, Sweden never introduced a strict lockdown. Instead, the authorities made recommendations, such as keeping distance, washing hands, working from home as much as possible and the authorities relied on the common sense of the Swedish citizens. However, most countries introduced a strict lockdown with emergency measures violating human rights, e.g. freedom of assembly, freedom of movement, right to education, and so on. The stringency of restrictive measures against COVID-19 can be combined with the theory of Hafner-Burton et al. (2011). When a country derogates from its international human rights obligations, it gives a signal that it faces a real crisis. Judges, voters, and domestic interest groups are then more likely to support the government's action in the short run, because the derogation gives a credible signal that the restrictions of civil and political liberties are temporary and necessary. When the crisis is over, the government will return to full compliance with its human rights obligations. If a country adopted strict restrictive measures which violate human rights to fight off COVID-19, then the country is more likely to derogate because it gives a signal to judges, voters, and domestic interest groups that the measures are necessary and temporary. The expected relationship should thus be stated as follows:

*H1: The stringency of restrictive measures against COVID-19 determines if a country derogates from its international human rights obligations.*

In the following section, it will be explained which methodology this thesis will engage with and what cases will be studied. It will be further explained how the hypotheses will be studied and what variables will be used to investigate what factors might have an influence on why some states derogate whilst others do not when adopting emergency measures.

## Methodology

This thesis will engage with Most Similar Systems Design (MSSD), in which objects of research systems are chosen based on their similarity. The cases should be as similar as possible, except with regard to the dependent variable, that is, the effect of which we are interested in assessing. The reason for choosing cases that are as similar as possible, is “the

ambition to keep constant as many extraneous variables as possible” (Anckar, 2007, p. 389). With this method, the relationship between variables that are similar to one another can be analysed. This comparative method is commonly used in two or more countries and evaluates a specific variable across these countries. Besides comparison across countries, comparative analysis can also be conducted within one country (Steinmetz, 2021, p. 174). By comparing similar countries that produce different outcomes, it will make it easier to control factors that are not the causal agent and therefore isolate the independent variable that explains the presence or absence of the dependent variable. The dissimilar element is thus likely the independent variable that explains the presence or absence in the dependent variable (Steinmetz, 2021, pp. 176-177). MSSD suffers from one serious practical shortcoming, namely the problem of ‘many variables, small number of cases’ (Lijphart, 1971, p. 685).

This thesis will focus on two countries which are very similar but produce different outcomes. The countries that will be studied are Latvia and Lithuania. Latvia and Lithuania are very similar countries, however Latvia formally derogated from the ECHR by notifying the Secretary General while Lithuania adopted emergency measures without formally derogating from the ECHR. The similarities between Latvia and Lithuania are far-reaching. Both countries are centred in East-Central Europe and were occupied until they declared independence from Russia and Germany in 1918. Lithuania restored independence from the occupation by the Soviet Union in 1990; Latvia followed one year later in 1991. They both joined the European Union on May 1<sup>st</sup> 2004. Nowadays, both Latvia and Lithuania are classified as flawed democracies. Latvia scores 7.24 points on the Democracy Index<sup>13</sup> and 89 out of 100 points according to the Freedom House.<sup>14</sup> Likewise, Lithuania scores 7.13<sup>15</sup> points on the Democracy Index and the Freedom House gives Lithuania 91 out of 100 points.<sup>16</sup> Moreover, the two countries are very similar in their population, area, religion, and GDP per capita.<sup>17</sup> In both countries, human rights are generally respected by the government. However, there are still some concerns. Up to the present day, the Istanbul Convention has not been ratified by both countries. In Latvia, women, homosexuals and ethnic minorities are still discriminated, non-citizens do not enjoy the same rights as citizens, there are problems with

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<sup>13</sup> See Democracy Index 2020 Latvia, [https://pages.eiu.com/rs/753-RIQ-438/images/democracy-index-2020.pdf?mkt\\_tok=NzUzLVJJUS00MzgAAAF77sAoUic6D-B757hKsoQ\\_N2x8RIYL4YSD0m-ktLS3OV-D93RsDxhGFRFJDMoJVu5bjgheqosdD4CgLNinXHUSFBRzmJhTB-vqld5LuMhY4EFdEw/](https://pages.eiu.com/rs/753-RIQ-438/images/democracy-index-2020.pdf?mkt_tok=NzUzLVJJUS00MzgAAAF77sAoUic6D-B757hKsoQ_N2x8RIYL4YSD0m-ktLS3OV-D93RsDxhGFRFJDMoJVu5bjgheqosdD4CgLNinXHUSFBRzmJhTB-vqld5LuMhY4EFdEw/) p. 9.

<sup>14</sup> See Freedom House 2020 Latvia, <https://freedomhouse.org/country/latvia/freedom-world/2020>.

<sup>15</sup> See Democracy Index 2020 Lithuania, [https://pages.eiu.com/rs/753-RIQ-438/images/democracy-index-2020.pdf?mkt\\_tok=NzUzLVJJUS00MzgAAAF77sAoUic6D-B757hKsoQ\\_N2x8RIYL4YSD0m-ktLS3OV-D93RsDxhGFRFJDMoJVu5bjgheqosdD4CgLNinXHUSFBRzmJhTB-vqld5LuMhY4EFdEw/](https://pages.eiu.com/rs/753-RIQ-438/images/democracy-index-2020.pdf?mkt_tok=NzUzLVJJUS00MzgAAAF77sAoUic6D-B757hKsoQ_N2x8RIYL4YSD0m-ktLS3OV-D93RsDxhGFRFJDMoJVu5bjgheqosdD4CgLNinXHUSFBRzmJhTB-vqld5LuMhY4EFdEw/) p. 9.

<sup>16</sup> See Freedom House 2020 Lithuania, <https://freedomhouse.org/country/lithuania/freedom-world/2021>.

<sup>17</sup> For detailed information, see The World Bank, <https://data.worldbank.org/region/european-union/>.

police abuses of detainees, and prisons suffer from poor conditions (Amnesty International, 2020a). In Lithuania, there are concerns regarding domestic violence, children's welfare, poor prison and detention centres, and minorities are still discriminated (United States Department of State, 2019b).

## Operationalization

In this study, derogation from the European Convention on Human Rights is the dependent variable. As independent variables, several categories have been set up with different variables. These variables have, both for Latvia and for Lithuania, been thoroughly studied.<sup>18</sup> The categories and variables are partly based on De Meur and Berg-Schlosser (1996) study. De Meur and Berg-Schlosser investigated the conditions of authoritarianism, fascism, and democracy in interwar Europe. As a research design, they used Most Different Systems – Same Outcome (MDSO) – and Most Similar Systems – Different Outcome (MSDO). Since this thesis focuses on two very similar systems which produced a different outcome, their variables are partly used to find an answer for the research question. However, some categories are expanded and others have been omitted since this thesis focuses on one factor as possible explanatory variables: stringency of emergency measures.

The first category that has been studied, is the general background of Latvia and Lithuania. The variables included in this category give a clearer image on the history of the countries and how the states were built. In addition, general characteristics of the countries were compared, e.g. area, religions, ethnic groups and population. As already mentioned, Latvia and Lithuania are very alike in their general background. However, with a more thoroughly investigation of the general background, characteristics may be found in which the countries differ and which may be an explanation for the difference in the dependent variable. Most variables are derived from De Meur and Berg-Schlosser (1996) variables. Some variables have been omitted and variables from other categories have been added.

The second category summarizes some democratic aspects of the two countries. First, the central political system of the two countries will be studied. The electoral system, stability of governments, and the Freedom House Index of Civil and Political Rights were examined so more in-depth knowledge can be gathered about how Latvia's and Lithuania's political system works. Second, the centrality of human rights of Latvia and Lithuania and how they

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<sup>18</sup> See Appendix for the categories and variables.

want to represent themselves internationally have been studied. Variables such as overall respect for human rights, overview by human rights organisations, party to human rights treaties, and foreign policy were included to study the centrality of human rights. Like the first category, some variables are derived from the study of De Meur and Berg-Schlösser, other variables have been omitted since they did not apply to this research, and some variables have been added.

The third category groups the emergency measures the countries have adopted and the stringency of these measures. This category does not derive from De Meur and Berg-Schlösser, but has been set up since it could be the explanatory variable for the dependent variable. The relationship that is described, is that if a country adopts very strict emergency measures to fight off COVID-19, then the country is more likely to derogate from its international human rights obligations. To examine if there is a significant relationship between the stringency of restrictive measures and derogation, several variables have been set up. First of all, the adoption of the emergency law of Latvia and Lithuania are compared. The emergency measures contained in the emergency law are studied. Questions have been asked to what extent Latvia and Lithuania adopted the same emergency measures and if there was a difference in the stringency of the restrictive measures. In addition, the articles Latvia has derogated from have been examined and compared to Lithuania's emergency measures. Did Lithuania restrict the same human rights articles as Latvia, only then without derogating from the articles? Thereafter, the state of emergency of Latvia and Lithuania were compared. Did Latvia's state of emergency differ from Lithuania's state of emergency since Latvia adopted a *de jure* and a *de facto* state of emergency? Lastly, when Latvia's and Lithuania's level of stringency is known, the thesis will delve more deeply into the discussion which led to these emergency measures and derogation and how the parliament and other constitutional bodies function during COVID-19. By thoroughly investigating how both countries have responded to the outbreak of the virus, attempts are being made to find a significant relationship between the stringency of the restrictive measures against COVID-19 and the decision to derogate from the ECHR.

## Empirical analysis

Each category and its findings will be discussed separately. However, the first two categories – general background and democratic aspects – will not be discussed as much in detail as the

last category. These ‘general’ categories were included in the analysis to mostly indicate that the two selected countries are very similar and therefore suitable for the chosen research design. In all likelihood, there will be no significant differences found which might be the explanatory variables to the dependent variable. The last category – stringency of emergency measures – will be discussed more in detail, since one of these variables might be the explanatory variable to the research question.

## General background

Latvia and Lithuania are both indicated as developed countries with a high-income advanced economy. Both perform favourably in terms of press freedom, internet freedom, and civil liberties. The population and area are almost the same, with Christianity as the main religion. The Latvian and Lithuanian language belongs to the Baltic branch of the Indo-European linguistic family. The ethnic majority of Latvia is Latvians and of Lithuania is Lithuanians, which means that in both countries the vast majority of ethnic Latvians and Lithuanians live within the borders of their states. The occupation of Latvia and Lithuania by the Soviet Union had a major impact on the national identity of both countries. On 18 November 1918, Latvia declared its independence from the Russian empire. However, in 1944, Latvia’s territory came once more under Soviet control and the Soviet system was reinstated. Lithuania gained independence from Germany on 16 February 1918 but on 3 August 1944, the Soviets established their control in Lithuania. After almost 50 years of Soviet occupation, Lithuania restored independence in 1990; Latvia followed one year later in 1991.

As said, Latvia’s and Lithuania’s national identity is greatly affected by the period of almost fifty years of Soviet occupation. After restoration of independence, Latvia only granted citizenship to persons who had been citizens of Latvia when it lost its independence in 1940. Consequently, many non-ethnic Latvians were denied citizenship, since they or their parents never had been citizens of Latvia. As a result, they became non-citizens. Citizenship in Latvia is thus the key dividing line between citizens, i.e. who are accepted into core membership of the society and are seen as permanent residents with lasting and legitimate ties to the state, and those whose links to the state are not entirely confirmed (Kehris, 2006). Unlike Latvia, Lithuania did not adopt strict standards for gaining the Lithuanian citizenship. However, due to the Soviet occupation and the long struggle for independence, the Lithuanian national identity is relatively strong. The two World Wars and the fifty years of occupation, made it extremely complicated to position the Lithuanian national identity. Therefore, culture

was seen as the only quiet haven, which could host the concepts of national identity (Rindzeviciute, 2003, p. 87).

The outcome of the variables shows that Latvia and Lithuania have a common general background. No significant relationship has thus been found between the general background of Latvia and Lithuania and why some states derogate whilst others do not when adopting emergency measures.

## Democratic aspects

According to the Satvermse (the Latvian Constitution), Latvia is a democratic parliamentary republic where the sovereign power belongs to the people. Every four year, the people elect by direct popular vote the unicameral parliament (Saeima), with 100 members. The Latvian Parliament represents the citizens, makes the law, elects in separate elections the president and appoints other major public officials, and ratifies international agreements. The president appoints the prime minister, and together with the cabinet, forms the executive power.<sup>19</sup> The electoral system of Latvia is proportional representation, with a 5 percent threshold for parties to enter the Latvian parliament. Its unique feature lies in the optional preference vote, which offers voters the chance to judge each candidate on the party list. Since the preference vote is optional, Latvian electoral system effectively works as an open-list system (Millard, 2011, p. 310). The Political Stability Index sets the average value for Latvia during the period 1996 to 2019 on 0.52 points on a scale of -2.5 (weak) to 2.5 (strong), which indicates that the stability of Latvia's governments is not particularly strong, but definitely not weak (The Global Economy, 2020a).

Lithuania is a democratic parliamentary republic in which the legislative authority resides in the unicameral parliament (Seimas). The Seimas is the most powerful institution and is elected under a mixed system: 70 seats elected by proportional representation and the remaining 71 seats are elected in separate constituencies, similarly to the British Parliament. The president is directly elected, and therefore Lithuania has elements of a semi-presidential republic. The Seimas makes the law, ratifies international treaties, confirms the prime minister and the government and oversees their activities. The executive authority resides in the Office of the President.<sup>20</sup> The Political Stability Index sets the average value for Latvia

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<sup>19</sup> For more information on Latvia's political system, see <https://www.latvia.eu/home/politics/>.

<sup>20</sup> For more information on Lithuania's political system, see <https://urm.lt/default/en/travel-and-residence/about-lithuania/government-politics/> and <https://www.lrt.lt/en/news-in-english/19/1242990/how-lithuania-s-mixed-election-system-works-explainer/>.



during the period 1996 to 2019 on 0.75 points on a scale of -2.5 to 2.5, which indicates that the stability of Lithuania's government is not particularly strong, but definitely not weak (The Global Economy, 2020b).

The Freedom House Index (2020) gives Latvia a score of 89 out of 100 points and Lithuania 91 out of 100 points. Both countries are referred to as democracies with free and fair elections and where political rights and civil liberties are generally respected. However, corruption remains in Latvia and Lithuania a major problem, affecting the politics and the judiciary. On Civil Rights, Latvia scores 52 out of 60 points and Lithuania 53 out of 60 points.<sup>21</sup> Latvia lacks two points on Freedom of Expression and Belief; four points on Rule of Law; and two points on Personal Autonomy and Individual Rights. Lithuania lacks one point on Associational and Organizational Rights, four points on Rule of Law; and two points on Personal Autonomy and Individual Rights. Lithuania thus mainly scores higher on Freedom of Expression and Belief. When it comes to Political Rights, Latvia scores 37 out of 40 points and Lithuania 38 out of 40 points.<sup>22</sup> Latvia lacks one point on Political Pluralism and Participation and two points on Functioning of Government. Lithuania lacks two points on Functioning of Government. The countries miss points on almost the same topics.

Human rights are generally respected in Latvia and Lithuania. In both constitutions, human rights are included and both constitutions allow restrictions of certain rights when it is necessary for the protection of the health and morals of the people. Latvia and Lithuania signed about the same number of international human rights treaties.<sup>23</sup> Worth mentioning is that Lithuania did not sign the International Covenant on Economic, Social, and Cultural Rights and it did not sign any Convention on slavery and slavery-like practices. Both countries did not sign the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention Against Discrimination in Education. However, overall there is not a significant difference in the number of treaties signed by Latvia and by Lithuania.

Amnesty International and the United States Department of State gave an overview of Latvia's and Lithuania's respect for human rights and where they still fall short. According to these human rights organisations, non-citizens and stateless persons still suffer from limited

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<sup>21</sup> Freedom House Index – Civil Rights for Latvia <https://freedomhouse.org/country/latvia/freedom-world/2020#CL/> and for Lithuania <https://freedomhouse.org/country/lithuania/freedom-world/2020/>.

<sup>22</sup> Freedom House Index (2020) – Political Rights for Latvia <https://freedomhouse.org/country/latvia/freedom-world/2020/> and for Lithuania <https://freedomhouse.org/country/lithuania/freedom-world/2020/>.

<sup>23</sup> For all treaties signed by Latvia, see <http://hrlibrary.umn.edu/research/ratification-latvia.html>; for all treaties signed by Lithuania, see <http://hrlibrary.umn.edu/research/ratification-lithuania.html>.

or no access to a broad range of rights, e.g. the right to employment in the civil service and private sector, the right to participation in political process, and restrictions on property ownership. The majority of the people who suffer from limited or no access to these rights, are born in Latvia or lived almost their entire lives in Latvia. In addition, Latvia does not have national legislation that deals with all forms of discrimination. LGBT+ people still face discrimination. Lastly, there are reports that claim that detainees suffer from physical ill-treatment by prison staff, poor prison conditions and overcrowding, judicial corruption, official pressure to limit freedom of speech, violence against women, and violence against ethnic minorities (Amnesty International, 2020a; United States Department of State, 2019a). Similarly, Lithuanian LGBT+ people also face discrimination on the grounds of sexual orientation and are denied in effective domestic remedy, prison and detention centre conditions remained poor, prisons were overcrowded, there are reports of excessive force exerted by prison staff, government officials engaged in corrupt practices without being sanctioned, there is violence against women, and discrimination against ethnic groups and persons with disabilities (Amnesty International, 2020b; United States Department of State 2019b). Latvia and Lithuania generally respect human rights, however both countries lack in respecting the same human rights.

Latvia's and Lithuania's foreign policy have been studied to examine how the countries want to present themselves internationally. Latvia and Lithuania are members of the United Nations, European Union, Council of Europe, NATO, OECD, WTO, OSCE, and the Council of the Baltic Sea States. Latvia has established diplomatic relations with 158 countries and Lithuania with 188 countries. Foreign relations of Latvia and Lithuania may be summed up in one sentence: To leave the East and to re(join) the West. Both are involved in developing active trilateral Baltic states co-operation with northern European countries, e.g. the Nordic-Baltic Eight (NB-8) and the Nordic-Baltic Six (NB-6).<sup>24</sup>

Latvia's priorities as regard to foreign policy include deepening cooperation with the European Union and NATO; contributions to European and transatlantic security and defence structures; participation in international civilian and military peacekeeping operations; strengthening of multilateralism, improving the effectiveness of international organisations; co-operation in the Baltic Sea region; enforcing democracy and stability in the European Union's Eastern Partnership countries; and, most importantly, ensuring the irreversibility of the country's sovereignty and independence while promoting the democratic values laid in the

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<sup>24</sup> See Co-operation of Baltic and Nordic States  
<https://web.archive.org/web/20120405175147/http://www.mfa.gov.lv/en/eu/BalticSeaRegion/NordicStates/>.

Satversme (the Constitution). To ensure sovereignty and independence, Latvia reiterates for several times the importance of NATO as a safeguard of security and stability and to strengthen the relationship with the European Union. Since the European Union places high emphasis on human rights, Latvia mentions this importance of protecting human rights several times. However, its foreign policy does not indicate that protecting human rights and being a guardian of human rights is its highest priority. Latvia is mainly focused on ensuring their sovereignty and independence.<sup>25</sup>

Similarly to Latvia, Lithuania's aim is to integrate with Western Europe into a tight European Union. NATO is seen as a strategic partner of the EU to ensure the Euro-Atlantic security and collective defence. It is important for Lithuania that the EU and NATO complement each other to attain a safer Europe. By placing high emphasis on the role of NATO and describing the US, NATO, and the EU as the pillars of Lithuania's security, it can be concluded that ensuring its independence and sovereignty is Lithuania's highest priority. Russia is put down as unfriendly and which repeatedly violates international law. Therefore, once again, emphasis is placed on the building of a strong EU with enforcing democracy and stability in the European Union's Eastern Partnership countries. Human rights are mentioned in the same way as Latvia did in its foreign policy. Since the EU stands for protecting human rights, Lithuania emphasizes that its aim is to prevent and address human rights violations. However, this is not Lithuania's highest priority when it comes to their foreign policy.<sup>26</sup>

Studying the central political system and the centrality of human rights of Latvia and Lithuania, both within the country and how they present themselves internationally, no significant differences can be found. Therefore, no significant relationship has been found between democratic aspects of Latvia and Lithuania and why some states derogate whilst others do not when adopting emergency measures.

### Stringency of emergency measures

Latvia's first notification of derogation of the ECHR was on 16 March 2020. In this declaration of derogation, the Republic of Latvia declared the emergency situation in the entire territory of the Republic as an aim to ensure epidemiological safety and to restrict the

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<sup>25</sup> For more information on Latvia's foreign policy, see [https://www.mfa.gov.lv/images/ministrija/Annual\\_Report\\_of\\_the\\_Minister\\_of\\_Foreign\\_Affairs-2020.pdf](https://www.mfa.gov.lv/images/ministrija/Annual_Report_of_the_Minister_of_Foreign_Affairs-2020.pdf).

<sup>26</sup> For more information on Lithuania's foreign policy, see [https://www.urm.lt/uploads/default/documents/2020-12-10%20-%20XIV-65\\_EN.pdf](https://www.urm.lt/uploads/default/documents/2020-12-10%20-%20XIV-65_EN.pdf) and <https://www.urm.lt/default/en/foreign-policy/lithuania-in-the-region-and-the-world/human-rights/fundamental-international-institutions>.

spread of the virus. This emergency situation was commenced on 13 March 2020 and would remain in force until 14 April 2020. The emergency measures adopted by Latvia included the suspension of in-class learning at schools, access of third persons to hospitals, all public events, the cancelling and prohibition of meetings and gatherings, as well as the restriction of movement of persons, and the restriction of social care institutions and places of detention. With this declaration, Latvia notified the Secretary General of the Council of Europe that it would derogate from certain obligations of Latvia under Article 8 (Right to Respect for Private and Family Life) and 11 (Freedom of Assembly and Association) of the ECHR, Article 2 of Protocol (Right to Education) to the ECHR, and Article 2 of Protocol No. 4 (Freedom of Movement) to the ECHR.

On 16 April 2020, Latvia notified the Secretary General of the Council of Europe that in light of the continuous threat of COVID-19 to public health, it would prolong the state of emergency in the entire territory of Latvia until 12 May 2020. The derogation to the ECHR would also remain in force. On 15 May 2020 Latvia notified the Secretary General that it had prolonged the emergency situation in the entire territory until 9 June 2020. However, it also notified that Latvia would withdraw its derogation from Article 11 ECHR. As from 12 May, up to 25 participants were allowed at gatherings and events if all participants could observe 2-meter distance and other obligations that have been set for epidemiological safety. On 3 June 2020, Latvia had decided to ease the necessary restrictions with respect to the right to education, and therefore declared a withdrawal of its derogation from Article 2 of Protocol ECHR. Students were from 1 June allowed to take in-class exams in order to complete their studies or apply for other further education.

On 10 June 2020, Latvia declared its withdrawal of the remaining derogations from Article 8 ECHR and Article 2 Protocol No. 4 ECHR. It did not take long before Latvia notified the Secretary General for a new declaration of derogation related to the ECHR. On 31 December 2020, Latvia informed that it would prohibit as of 30 December 2020 all public events and gatherings and therefore exercise its right of derogation from Article 11 ECHR. In addition, the emergency situation was extended from 6 November 2020 until 7 February 2021. On 9 February 2021, Latvia communicated that the emergency situation was prolonged until 6 April 2021 and the derogation under Article 11 ECHR would remain in place. On 6 April 2021, Latvia informed that it would withdraw its derogation from Article 11 ECHR and that the provisions of the Convention were again implemented in full.<sup>27</sup>

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<sup>27</sup> For Latvia's Notification related to the ECHR, see <https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354/>.

By declaring a state of emergency and notifying this declaration with derogations of the ECHR to the Secretary General of the Council of Europe, Latvia both proclaimed a de facto and a de jure state of emergency. The Saeima amended on 3 April 2020 Article 5 § 3 of the Law on the State of Emergency, which allowed an unlimited number of extensions of emergency situations by the government for up to three months. Previously, only one extension of the emergency situation was possible. The measures affecting the general population were social distancing, education, social services, work, and freedom of movement.<sup>28</sup> For a number of administrative offences, penalties have been significantly increased. With the Administrative Offences Code, amended by the government on 3 April 2020, fines for the violation of the epidemiological safety and for violating restrictions or prohibitions specified during the emergency situation, were increased (European Union Agency for Fundamental Rights, 2020a).<sup>29</sup>

Lithuania declared a state of extreme situation on 26 February 2020. Due to continuous threat caused by COVID-19, the Resolution ‘On Declaration of State Level Emergency’ was adopted by the Government of the Republic of Lithuania on 26 February 2020. On 14 March 2020, the Government adopted another Resolution ‘On Declaration of Quarantine in the Territory of the Republic of Lithuania’.<sup>30</sup> Quarantine in the entire territory of Lithuania had been set from 16 March 2020 until 30 March 2020. However, quarantine in Lithuania had expanded from 7 November 2020 until 31 May 2021. The measures affecting the general population were impact on free movement, impact on access to health services, impact on access to social services and education, and impact on privacy and spread of disinformation (European Union Agency for Fundamental Rights, 2020b).

Lithuania violates Article 2 of Protocol No. 4 ECHR with the emergency measure which has an impact on free movement. Unlike Latvia, Lithuania did not declare a derogation by notifying the Secretary General, even though the restrictive measures on freedom of movement were as strict as Latvia’s restrictive measures. Prohibitions were made for non-citizens who wanted to enter the country during the quarantine regime and for citizens of Lithuania who wanted to leave the country, with some exceptions. Lithuania did not only violate Article 2 of Protocol No. 4 ECHR, but Article 8 and 11 ECHR and Article 2 Protocol to the ECHR. All events and gatherings were prohibited; cafes, restaurants, nightclubs, and

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<sup>28</sup> Overview Latvia’s emergency measures, <https://covid19.gov.lv/en/support-society/how-behave-safely/covid-19-control-measures/>.

<sup>29</sup> See ‘On the Declaration of Emergency Situation’ for Latvia’s emergency law, <https://rm.coe.int/16809ce9f2/>.

<sup>30</sup> Declaring Quarantine on the Territory of the Republic of Lithuania, <https://ru.mfa.lt/ru/en/news/declaring-quarantine-on-the-territory-of-the-republic-of-lithuania-1>.

bars were closed; socially vulnerable groups have been put in institutional isolation; visiting prisoners and arrested was prohibited; all educational activities were suspended from 16 March 2020 until 30 March 2020; access of third persons to hospitals was restricted; medical diagnostic services, elective hospitalizations, and surgeries were postponed with some exceptions.<sup>31</sup> Lithuania's restrictive measures to fight off the pandemic were as strict as Latvia's restrictive measures, since Lithuania violated the same Articles of the ECHR as Latvia did. Therefore, no significant relationship is found between the stringency of restrictive measures against COVID-19 and why some states derogate when adopting emergency measures.

Not only the stringency of the restrictive measures should be considered, also the discussion which lead to these restrictive measures and derogation and how the parliament and other constitutional bodies function during COVID-19 should be considered. On 12 March 2020, Order No. 103 "On the Declaration of a State of Emergency" was approved by the Latvian Cabinet of Ministers.<sup>32</sup> As mentioned above, with this Order Latvia violated Article 8, Article 11, Article 2 of Protocol and Article 2 of Protocol No. 4 to the ECHR. Since these articles are not absolute and thus countries are entitled to restrict these articles of the ECHR, a submission of declaration of derogation is not necessary. The question that arose in Latvia was if the restrictions already permitted by the ECHR were sufficient for the extraordinary circumstances caused by COVID-19 or if a submission of a declaration of derogation was still necessary. Latvia thus had two options: to derogate from the ECHR or to explain how the chosen emergency measures fall within the limits which are already provided in the ECHR. Eventually, Latvia chose for the option to derogate from the ECHR. Latvia wished to be transparent about the restrictions imposed to protect public health. In addition, it was important for Latvia to interpret the restrictions allowed in the relevant articles of the ECHR narrowly. If Latvia would not derogate from the ECHR, it would consider that all emergency measures taken during COVID-19 fall within the limits already permitted by the ECHR. This would give a false impression of the permissible limits. With a derogation, more transparency can be reached and it would confirm the necessity of the restrictive measures due to the exceptional nature of the current situation (Līce & Vītola, 2020).

Latvia also found a solution for the continuity of the Latvian Parliament (Saeima) while it considered the epidemiological safety in its work. It was important for the country

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<sup>31</sup> Overview Lithuania's emergency measures, <https://koronastop.lrv.lt/en/covid-19-related-restrictions-1/>.

<sup>32</sup> Cabinet Order of 12 March 2020 No. 103 Regarding Declaration of the Emergency Situation, <https://likumi.lv/ta/en/en/id/313191>.

that even in emergency situations, persons' fundamental rights and the system of constitutional bodies should be equally effective and applicable as in normal situations. The Saeima should continue the legislative processes as effectively as possible since the functioning of the Saeima, as one of the constitutional bodies, is indispensable in all circumstances (Rodina & Lībina-Egnere, 2020, p. 5). The new digital platform, e-Saeima, allows plenary sittings to be held remotely, with the MPs participating from outside the parliament premises. The e-Saeima provides the possibility for MPs to debate and vote on items in the plenary agenda in real time and thus ensures the most important function of parliamentary sittings. The plenary sittings and the work of the Saeima is open to the public and can be followed live on the website of the Saeima and on their Facebook account.<sup>33</sup> With the e-Saeima, the Latvian parliament is one of the first that can work entirely remotely. Despite the extraordinary circumstances, Latvia ensured the continuity of the legislative function and the parliamentary supervision over the Cabinet's work.

Even though Lithuania's emergency measures are roughly as strict as Latvia's emergency measures, Lithuania falls short in maintaining parliamentary democracy during the pandemic. Several constitutional rights were restricted with the Resolution 'On Declaration of Quarantine in the Territory of the Republic of Lithuania'. In addition to the state of extreme situation, the Lithuanian law allows two other legal regimes which might be applied in emergency situations, namely state of emergency and quarantine. The Quarantine Resolution combined the state of extreme situation and quarantine, and therefore a mixed legal regime was introduced (Dagilytė et al., 2020). However, various legal experts discussed whether the chosen legal basis was the appropriate one for the COVID-19 circumstances (Dagilytė & Padsokimaitė, 2021; Nekrosius, 2020). A declaration of a state of emergency might have been a more appropriate response to the COVID-19 pandemic than the chosen legal basis of quarantine. The opposition leader, Gabriel Landsberg, also challenged the Department of Law to explain why the government approved the quarantine regime and if this regime did not restrict constitutional human rights and freedoms. In addition, the opposition leader questioned if the government did not exceed its powers and therefore was acting *ultra vires* (Jurcenkaitė, 2020). Andrius Kabisaitis, the Head of the Department, responded to the critique on the chosen legal basis that the quarantine regime was the appropriate one. According to

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<sup>33</sup> Baltic Sea Parliamentary Conference – Handling and Combating the COVID-19 Pandemic in the Baltic Sea Countries, [http://www.bspc.net/wp-content/uploads/2020/08/BSPC\\_Handling-and-Combating-the-COVID-19-Pandemic-in-the-Baltic-Sea-Countries.pdf](http://www.bspc.net/wp-content/uploads/2020/08/BSPC_Handling-and-Combating-the-COVID-19-Pandemic-in-the-Baltic-Sea-Countries.pdf) and Inter-Parliamentary Union - Country Compilation of Parliamentary Responses to the Pandemic, <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic#L>.

him, a state of emergency can only be imposed in the event of a threat to the constitutional order (Jakucionis, 2020).

The Lithuanian Government has thus been criticized for the chosen legal basis and even been accused of acting without legal authority. The Lithuanian Parliament, the Seimas, is also accused of behaving strangely (Musnickas, 2020). Only once a week, the Seimas holds ordinary sittings and urgent hearings so it can discuss the Government's draft legislation related to COVID-19. The limited activities of the Seimas is problematic, since meaningful parliamentary scrutiny is more difficult for the urgent law-making. This results in approval of almost all proposals submitted by the Government. Other parliamentary committees, such as the Human Rights Committee, the Committee on Legal Affairs, or the Committee on Health Matters, continue with their activities. However, it is still unsure if they focus on assessing the quarantine measures. It is therefore not certain whether there are currently checks-and-balances of the Chief Officer's decisions (Dagilytė et al., 2020).

Latvia is considered as exceedingly agile in developing solutions to cope with the COVID-19 pandemic, since the Saeima is one of the first parliaments that is able to continue its work completely remotely during the state of emergency. The Lithuanian Government, on the other hand, is criticised for acting *ultra vires* and the Seimas for not providing enough checks-and-balances for the decisions made by the government. A significant difference cannot be found between the stringency of restrictive measures against COVID-19 and why some states derogate when adopting emergency measures. However, an interesting difference can be found between derogation and the way countries respond to the COVID-19 pandemic and to what extent democratic values remain important in time of crisis. Even though Latvia had the option to not derogate from the ECHR, derogation was still crucial for Latvia in a way that it would give a sign of respect to the ECHR and the Council of Europe. Lithuania falls short in maintaining parliamentary democracy since there is a significant imbalance in the separation of powers which is required by the Constitution.

## Conclusion

The aim of this thesis was to investigate why some states derogate from their human rights obligations whilst others do not when they take emergency measures. Until now, almost all existing theories focused merely on the descriptively side of the derogation clause. To my best knowledge, only one research provided a theory for which states derogate and why they



do so (Hafner-Burton, et al., 2011). However, this theory is not applicable to the current COVID-19 pandemic. Therefore, this thesis moved beyond the already existing theory and studied the differences within the regime type to find an explanation for why states derogate whilst others do not when taking emergency measures. With the research design Most Similar System Design, Latvia and Lithuania were compared with one another. Three categories with variables had been set up. The first two categories – general background and democratic aspects – were set up not with the intention to find an explanatory variable but rather to demonstrate that Latvia and Lithuania are very similar cases. This thesis tried to find an explanatory variable to the dependent variable in the category ‘stringency of restrictive measures against COVID-19’. Within this category, not only the emergency measures were compared, but also the discussion that led to the emergency measures and the continuity of parliamentary democracy. Unfortunately, no significant relationship has been found between the stringency of restrictive measures against COVID-19 and derogation. However, an interesting difference was found while delving more deeply into the discussions leading to the emergency measures. It appears that Latvia is exceptionally agile when it comes to developing solutions for the extraordinary circumstances caused by COVID-19. In contrast to Latvia, Lithuania falls short when it comes to the continuity of parliamentary democracy in time of crisis. The differences between the two countries about their willingness to maintain their parliamentary democracy in time of crisis, seems to be the explanatory variable for why some states derogate when taking emergency measures whilst others do not.

An observer-expectancy effect is one of the shortcomings of this thesis. Many other variables might explain why Lithuania did not derogate from the ECHR, such as that Lithuania’s 1992 Constitution is drafted after the ECHR and that, under the constitutional law, health constitutes a legitimate aim for limiting rights for Lithuania since it is considered to be one of the most important values (Dagilytė et al., 2020). These factors might be explanatory variables, and therefore more research should be conducted to study these factors and find an answer to why some states derogate when taking emergency measures whilst others do not.

# Appendix

## Categories and variables

1. General background
  - Population
  - History
  - State-building
  - Ethnic groups
  - National identity
  - Area
  - Religion
2. Democratic aspects
  - Political system
  - Electoral system
  - Stability of governments
  - Freedom House Index: Key developments in 2019
  - Freedom House Index of Civil Rights
  - Freedom House Index of Political Rights
  - Overall respect for human rights
  - Overview by human rights organisations
  - Party to human rights treaties
  - Foreign policy
3. Stringency of emergency measures
  - Adoption of emergency law
  - Emergency measures
  - State of emergency
  - Derogation from ECHR
  - Discussion leading to measures
  - Effectiveness of constitutional bodies during COVID-19

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