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CARISMAND
Culture And RISk management in Man-made And Natural Disasters

WP6 “Citizens rights”
Lead Partner – P6 – LUH

D6.2 “Report on Fundamental Rights in Disaster Situations in Selected National Legislations”

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List of partner contributors to the survey:

- Comune di Firenze and ITTIG-CNR, Italy
- Law and Internet Foundation, Bulgaria
- Ministry of Justice and the Special Telecommunications Service, Romania
- Portugal Criminal Police, Portugal
- The University of Groningen, the Netherlands
- University of Malta, Malta
- Valencia City Council-Local Police, Spain
- University of Novi Sad, Serbia
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Abbreviations

AOB        Austrian Ombudsman Office
BBK        Bundesamt für Bevölkerungsschutz und Katastrophenhilfe
CFREU      Charter of Fundamental Right of the European Union
CCS        Civil Contingencies Secretariat
CCA        Civil Contingencies Act
CPM        Civil Protection Mechanism
COS        Operational Commander Relief (Portugal)
CNPD       National Commission for the Protection of Data
CHR        Commissioner for Human Rights
CARISMAND  Culture And RISk management in Man-made And Natural Disasters
CNCD       National Council for Combating Discrimination (Romania)
CNSSSU     National Committee for Special Emergencies
CNMSO      National Centre for Monitoring the Operative Status (Romania)
COCG       Operational Command Centre of the Government (Romania)
CNCl       National Centre of Integrated Leadership (Romania)
CNCCI      National Centre for Response Coordination and Leadership (Romania)
COZ        Civil Security Operational Coordination Centre (France)
CNIL       Commission nationale de l'informatique et des libertés
CRR        Caisse Centrale de Reassurance
CCS        Consorcio de Compensación de Seguros
DPA        Disaster Protection Act
EU         European Union
ECTHR      European Court of Human Right
ESC        European Social Charter
ECHHR      European Convention of Human Right
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<td>EKC</td>
<td>Einsatz- und Koordinationscenter</td>
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<tr>
<td>GG</td>
<td>Grundgesetz</td>
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<td>GFCC</td>
<td>German Federal Constitutional Court</td>
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<td>GFAC</td>
<td>German Federal Court of Administrative Law</td>
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<td>HRA</td>
<td>Human Rights Act</td>
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<td>IFRC</td>
<td>International Federation of the Red Cross and Red Crescent Societies</td>
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<td>Inter-Agency Standing Committee</td>
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<td>NGO</td>
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<td>NRCP</td>
<td>National Resilience Capability Programme</td>
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<td>OGH</td>
<td>Oberster Gerichtshof</td>
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<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<td>Policy of insurance Against natural Disasters (Romania)</td>
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<td>National System for the Management of Emergencies (Romania)</td>
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<td>Government’s General Secretariat (Romania)</td>
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<td>Treaty on the European Union</td>
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<td>TFEU</td>
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<td>Universal Declaration of Human Rights</td>
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1. Executive Summary

This deliverable supplements Deliverable D6.1 and provides country profiles of thirteen European states – Austria, Bulgaria, France, Germany, Italy, Malta, the Netherlands, Portugal, Romania, Serbia, Spain, the United Kingdom and Ukraine with respect to the interplay between fundamental rights protection and disasters. Apart from Austria and Ukraine, all other countries represent countries in the CARISMAND Consortium. The analysis in this report is undertaken from four broad areas, namely looking at: national fundamental rights framework and disasters, civil protection mechanisms and fundamental rights protection, the reflection of data protection and cultural aspects in disaster management and compensation schemes for disaster damage.

National fundamental rights framework is deeply rooted in the constitutional framework of these states. The UK does not operate a single written Constitution but relies on some sources such as legislation, cases law, and international law for fundamental rights protection of which the Human Rights Act 1998 (HRA) is the main legislation. Apart from this unique nature of the UK’s legal system, a lot of similarities exist in the states mentioned above regarding their fundamental rights frameworks. They all mirror the European Regional fundamental right system as found in sources such as the European Convention on Human Rights, the Charter of Fundamental Rights of the EU (Ukraine and Serbia do not belong to the EU, and the Charter is not applicable to them), and the European Social Charter. But, none of these Constitutions, including the UK HRA, contain specific rights for disaster situations. The Ukrainian Constitution, however, recognizes the Chernobyl disaster as a catastrophe of global scale, and imposes a duty on the state to ensure environmental safety, among others, while the Bulgarian, French and Spanish Constitutions put certain duties for the citizens in cases of disaster.

The fact that no special rights were guaranteed for disaster situations could be explained by the notion that fundamental rights are meant to apply in all situations – peace time and crises times. Thus, the general fundamental rights provisions are applicable in disaster situations in all the states reviewed, including certain rights that have been adjudged as important for disaster situations. These rights could be mapped against the grouping in the guidelines by the Inter-Agency Standing Committee (IASC) on human rights and natural disasters.¹ They include the right

¹ The Inter-Agency Standing Committee (IASC) has identified certain human rights which are relevant in disaster scenarios and grouped them into four, namely: (A) rights related to physical security and integrity (e.g. protection of the right to life and the right to be free of assault, rape, arbitrary detention, kidnapping, and threats to these rights); (B) rights related to basic necessities of life (e.g. the rights to food, drinking water, shelter, adequate clothing, adequate health services, and sanitation); (C) rights related to other economic, social and cultural protection needs (e.g. the rights to be provided with or have access to education, to receive restitution or compensation for lost property, and to work); and (D) rights related to other civil and political protection needs (e.g. the rights to religious freedom and freedom of speech, personal documentation, political participation, access to courts, and freedom from discrimination). See: Inter-Agency Standing Committee, Protecting Persons Affected
to life; the rights to health; the right to education; the rights to religious freedom and freedom of speech, freedom from discrimination, etc.

Another common thread that runs through all these Constitutions is that they contain some references to disaster (explicitly or impliedly) in the area of derogation or limitation of rights. As such, the occurrence of a disaster could serve as a legal basis for declaring a state of emergency which permits the limitation of certain fundamental rights.

In addition to the constitutional guarantees, international law also forms a source of fundamental rights in all these states, and they are parties to core international human rights treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Social and Economic Rights, etc. The relationship between the national framework and these international human rights laws - customary international law, multilateral and bilateral treaties - is also found in these legal systems.

Regarding civil protection, each of the states has its structure and mechanisms for dealing with disasters, which include municipal, provincial, regional and central platforms for coordination of operations. Apart from the laws establishing the civil protection framework, there are also guidelines and instructions on how the operation is to be carried out. While these laws and guidelines do not focus on implementing fundamental rights in disasters per se, there are elements in them that foster respect and protection for certain rights. For instance, the core objective of all civil protection is to protect lives as far as possible, which reflects the promotion of the right to life. Elements of non-discrimination, data protection could also be seen in these guidelines. However, there seems to be scant attention on how to implement cultural rights in disaster situations. No consistent approach is maintained in these frameworks. Only a few states expressly mentioned cultural rights in their disaster management, in all others, protection of such right could only be implied.

On insurance and compensation schemes for disasters, there is no uniform framework in the states investigated. While a voluntary insurance scheme for natural disaster and some forms of man-made disaster such as terrorism exists in all the countries, Romania, Spain and France have a form of compulsory insurance policy for certain disasters. Respondents indicate that these voluntary schemes are used by a minority of the population. However, a framework for government assistance or compensation regarding recovery assistance exists in all the investigated states.

In conclusion, the following summarises the findings of this report:

- Fundamental rights protection is entrenched in the national framework of the European States reviewed in this report. Although no special rights were granted for disaster

situations, the relevant provisions in the general fundamental rights guaranteed are applicable in such situations.

- Disasters could trigger a state of emergency in all the states and could serve as a legal basis for limiting or derogating from fundamental rights obligations.

- While the civil protection mechanisms in all the states do not focus on the implementation of fundamental rights in disasters per se, they contain elements that promote, respect and protect certain rights in some cases. Instances that promote the right to life, non-discrimination, data protection, etc., could be found in the core civil protection guidelines and instructions. However, no consistent approach is seen regarding cultural rights.

- Insurance and compensation schemes for disasters in these States are not uniform. All the states operate a voluntary policy of insurance against disasters which is not popular in most of the states. Romania, Spain and France have a form of compulsory insurance policy. A framework for compensation regarding recovery assistance exists in all the states.

1.1. Methodology

To gather relevant information concerning different national legal frameworks on fundamental rights implementation in disaster situations, this report used a combination of quantitative and comparative research methods. Work package 6 conducted a survey through the use of a questionnaire that covers four areas: how national fundamental rights framework interact with disasters, how civil protection mechanisms reflect fundamental rights protection in disaster management, how data protection and cultural aspects are observed in disaster management, and how compensation schemes for disaster damage are implemented. Desk research was also utilized in this report as a supplement to the answers given in the questionnaire, and a comparative analysis of the legal systems investigated in this report was also made.

The questionnaire was distributed to the project consortium, and the selection of the countries was based on countries that are represented in the CARISMAND Consortium as analysed in D2.3: Bulgaria, France, Germany, Italy, Malta, the Netherlands, Portugal, Romania, Serbia, Spain, and the United Kingdom. Two additional states that were not mentioned in Deliverable D2.3 – Austria and Ukraine were however included in this report based first, on the availability of resources in completing the survey. Austria further represents an alpine, highly developed country that is frequently affected by avalanches and floods of possibly catastrophic nature that might become

2 A sample of the questionnaire is annexed to this deliverable.
worse in the next years due to climate change. And evidence from D6.1 suggests that Austria had a unique reform of its data protection law following the 2005 Tsunami that contains an elaborate provision on the protection of personal data during disaster management. This prompted our desire to investigate it further in this deliverable. In the case of Ukraine, the Chernobyl disaster offered an opportunity to investigate how a state responds to a major disaster in the Constitution regarding addressing relevant fundamental rights and compensation of victims.

However, it is noteworthy that the intention of the survey in WP 6 is to specifically focus on how fundamental rights have been reflected in the disaster management framework of the selected states, and as such has a different focus from D2.3 which involved the identification of the various national and regional policies in the selected states that relate to different types of disasters in three disaster phases.

The following partners completed the survey:

- Leibniz Universität Hannover for Austria, Germany, France, partly the UK, Ukraine
- Law and Internet Foundation for Bulgaria
- Comune di Firenze and ITTIG-CNR for Italy
- University of Malta for Malta
- The University of Groningen for the Netherlands and the UK
- Portugal Criminal Police for Portugal
- Ministry of Justice and the Special Telecommunications Service for Romania
- University of Novi Sad for Serbia
- Valencia City Council-Local Police for Spain

Chapter three of this report reflects a compilation of the responses to the questionnaire received from the above partners, who used legal experts from their institutions to complete the survey. Where the project partners lacked legal experts, they sought assistance from external sources such as experts from the ministry of justice in the case of Romanian partner. The anonymity of these respondents will be maintained as this was a condition to give them freedom to answer the questions. The questions were open-ended but formulated in a way that national specificities can be incorporated into the answers.
2. Introduction

2.1. Implementing Fundamental Rights in Disasters Situation in European States

A good number of European States have witnessed a natural or man-made disaster in one form or another \(^3\) and have instituted civil protection mechanisms to cater for such situations.\(^4\) The impact of disasters on fundamental rights and freedoms have been seen in some ways,\(^5\) and the need to respect, promote and protect the rights of disaster victims and their community means that a human rights-based approach is necessary for all the phases of disaster management. Though human rights instruments do not explicitly contain special rights for disaster victims, international, regional and national human rights instruments have provisions that are particularly relevant in a disaster situation. This interplay between human rights and disasters from an international and European regional perspective was discussed in Deliverable D6.1. This report takes a closer look at this interaction from a national level in selected European states: Austria, Bulgaria, France, Germany, Italy, Malta, the Netherlands, Portugal, Romania, Serbia, Spain, the UK, and Ukraine.

Except for the UK that does not operate under a single written constitution, all the above-mentioned states have constitutional provisions that guarantee fundamental rights and freedoms. The UK for its part, relies on the HRA, which incorporates into the UK’s domestic law the European Convention on Human Rights (ECHR) as the most important source of fundamental rights in the country. No specific rights were considered for disasters cases under the HRA.

International human rights law also forms a source of fundamental rights in these states. All the states are parties to core international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICSECR), etc., and have constitutional provisions for implementing such treaties.

While no special rights were provided for disaster situations in the Constitutions of these states, it is important to note that explicit or implicit references to disasters could be found in them. For


\(^4\) All the countries reviewed here have a civil protection mechanism (CPM), which according to EU law is first and foremost the responsibility of the State. However, in accordance with the subsidiarity principle, the European Union also has taken some initiatives in this field.

\(^5\) CARISMAND D6.1, Report on European Fundamental Rights in Disaster Situations.
instance, the Bulgarian Constitution explicitly prescribes that “Citizens shall assist the state and the society in case of natural or other disaster, on conditions and a manner established by the law.”\(^6\) A similar provision could be seen in France and Spain. The Ukrainian Constitution also referred to the Chernobyl disaster as a catastrophe of global scale and tasks the state with a duty of ensuring environmental safety, among others.\(^7\) In all other cases, at least an implied reference to disaster is seen in the aspect of limitation of rights. In these instances, a disaster could be a ground for declaring a state of emergency which on the grounds of public interest, permits a limitation of rights.\(^8\)

The legal instruments that create civil protection mechanisms (CPM) and which regulate the operational aspects of emergencies, including disaster cases, do not per se focus on implementing fundamental rights, but to restore public order and security. In most operational guidelines and instructions, disaster managers are expected to respect the rights of victims. For the two rights investigated deeply in this report – data protection and cultural rights, each country has a distinct approach to their civil protection laws and guidelines regarding these rights. While elements that promote data protection and privacy could be seen in all the civil protection frameworks,\(^9\) such is not usually the case with cultural rights. At best, only implied references to cultural and related activities could be found. For instance, the UK Civil Contingencies Act 2004 stresses the need for authorities that have been allocated responsibility as ‘responders’ (requiring them to prepare a contingency plan to execute in case of a disaster), to have regard - when formulating their plan - to the needs of all members of the population they serve, including members of vulnerable and minority groups. Authorities should carry out a ‘community’ or ‘equality’ impact assessment to meet this obligation. One government guidance on evacuation and shelter, for example, requires emergency planners to consider individuals or groups who may have special requirements.\(^10\) These could be for instance dietary (halal food), cultural (unisex facilities) or religious (need for prayer facilities).

One other aspect in this interplay between disasters and fundamental rights is how victims of disasters recover from the damage to their property and financial losses they encountered as a

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\(^6\) Art. 61 of the Bulgarian Constitution.
\(^7\) See Art. 16 of the Ukrainian Constitution.
\(^8\) There have been instances of the declaration of emergency because of diverse situations including terrorism, natural disaster, industrial accident, etc., in some of the countries. See http://ec.europa.eu/echo/files/civil_protection/vademecum/index.html, accessed 27 July 2016. However, only the UK among the States under review has relied on Art. 15 of the ECHR on its derogation of rights. See Council of Europe, Factsheet – Derogation in times of Emergency (July 2016), http://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf, accessed 22 July 2016.
\(^9\) All the countries investigated have a specific data protection law, and CPM guidelines reflect the need to process personal data during emergencies and certain safeguards are put in place in such cases such as erasure when data is not needed anymore (as seen in Germany for instance).
consequence of the disaster.\footnote{This report does not focus on compensation to personal injury caused by a disaster where liability is attributable to another entity.} This aspect is important for the protection of economic and social rights of disaster victims such as their rights to property, social security, etc. There is no EU-wide harmonisation of laws on insurance and compensation schemes for disasters. Member States have opted for different policy approaches to their financial management of disaster risks. In the countries reviewed in this report, voluntary insurance policy exists for natural disaster risks. However, Romania, Spain and France have a form of mandatory schemes for disaster risks. Romania has a compulsory insurance policy against earthquakes, floods, and landslides for all dwellings, and a recent amendment to the Romanian law on compulsory insurance makes it a prerequisite to obtaining a compulsory insurance before taking out a voluntary one.\footnote{Law no. 260/2008 on Compulsory Home Insurance against Earthquakes, Landslides and Floods.} Spain and France have a unique system which mandates insurance companies not to exclude certain natural disaster risks. However, it should be noted that there is a framework of compensation regarding recovery assistance for disasters in all these states which ranges from structural arrangements (such as compensation funds) to ad hoc disbursement of public funds in the aftermath of a disaster. The impact of these policies on disaster risk management is still subject to debate in all the countries, and it seems there is no one solution that fits all in strategizing to reduce the damaging effects of disasters.

In the end, this report hopes to open further discussions on how to better implement relevant fundamental rights, especially, data protection and cultural rights, in disaster management and field operations. Moreover, in conjunction with Deliverable D6.1 and the subsequent deliverables that will follow this report, policy recommendations will be made to relevant stakeholders on how to integrate and/or improve the human rights-based approach to disaster management in Europe.
3. National Protection Mechanisms for Fundamental Rights in Disaster Situations in Selected Member States

3.1. Austria

3.1.1. National Fundamental Rights Framework and Disasters

Austria’s system of fundamental right protection goes back to the 19th Century. In particular, the Fundamental Law (Staatsgrundgesetz) on general rights of ‘Citizens from 1867 is still in force and regarded as the major source for national protection of human rights. The law is part of Austrian’s Constitution in the sense that laws need to comply with it. It is, however, not part of the Constitution in the formal, narrow sense from 1920 (Bundes-Verfassungsgesetz) that does not have a catalog of fundamental rights.

Fundamental rights protection is also guaranteed by the (direct) applicability of the European Convention on Human Rights, which was formally incorporated by a constitutional law into Austria’s legal system. The Charter of Fundamental Rights was incorporated into Austria’s legal system as part of the ratification of the Lisbon Treaty. The Charter applies only to European issues (Article 51 CFREU). The Austrian Constitutional Court has however held that the Charter should also apply to national issues.

In addition, specific laws dealing with specific topics such as data protection contain rules on fundamental rights protection such as Article 1 of the Federal Law on Data Protection (DSG 2000).

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The protection of fundamental rights in Austria is therefore not collected in one single piece of law but distributed among different national and international sources.\textsuperscript{17}

There is no fundamental right to protection from disaster situations\textsuperscript{18} and no special rights to disaster victims but that the general framework applies in all cases.

Human rights are enforced mainly through the jurisdiction of national courts, in particular, the Constitutional Court that is competent to declare laws infringing fundamental rights to be void.\textsuperscript{19} There are some cases where the courts have ruled on issues relating to fundamental rights and disasters in Austria. In a decision from 2005, the OGH (Oberster Gerichtshof) rejected a claim for compensation against Austria from an individual who had argued that state authorities had not sufficiently protected her from a flood catastrophe.\textsuperscript{20} In several other decisions, the VwGH (Verwaltungsgerichtshof) has balanced administrative rules of environment protection in the light of disaster prevention,\textsuperscript{21} in particular, protection from avalanches.

As a party to the ECHR, citizens also have a right to institute proceedings before the ECtHR if at the national level, all legal remedies have been exhausted and the last national decision is not older than six month.

Apart from the court's system, there is also the Austrian Ombudsman Office (AOB), which represents primarily, a contact person for problems with the authorities. Since 2012, the AOB is also responsible for a “National Preventive Mechanism” for human rights and the protection and promotion of human rights in Austria.\textsuperscript{22}

\subsection*{3.1.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights}

Austria is a federal state with nine provinces. While the Federal Ministry for the Interior is the highest authority for disaster cases, the disaster management law is subject to the legislation of the nine regions (Bundesländer), including rules on competencies to declare a state of

\textsuperscript{17} Austria is a party to a number of international human rights treaties such as the ICCPR and the ICESCR.

\textsuperscript{18} http://diepresse.com/home/recht/rechtallgemein/389557/Grundrecht-auf-Katastrophenschutz, assessed 03 August 2016.

\textsuperscript{19} Art. 140, Art. 144 B-VG.


\textsuperscript{22} http://volksanwaltschaft.gv.at/en/about-us#anchor-index-1679, assessed 03 August 2016.
In addition to the civil protection laws, the authorities can draw on complementary laws such as the police and fire service laws or the laws on rescue services.

For the operational management of emergencies, the provinces and municipalities are responsible. To activate the Civil Protection, the government must declare the state of emergency. Depending on the size and the scale of the disaster, the mayor or the governor of the state (Landeshauptmann) is responsible for declaring the state of emergency and for the coordination of the civil protection units. But in the case of cross-border disasters, the head of operations can be the special department of the Austrian Ministry of the Interior (Department II/13) - the Operations- and Coordination Center (Einsatz- und Koordinationscenter (EKC)) including a National Crisis and Disaster Protection Management (Staatliches Krisen- und Katastrophenschutzmanagement (SKKM)). The SKKM is available for advisory in disasters of every size.

Civil protection is usually ensured by the firefighting and rescue services, which are provided by volunteers, with a few exceptions in the big cities. For disasters, they provide a service known as disaster relief services (Katastrophenhilfedienste). These units contain specially trained firefighters and offer various special services. In exceptional cases, the Austrian Armed Forces can be deployed for support.

Since the disaster relief is dependent on volunteers, the Austrian Red Cross, in cooperation with a national radio station, founded the so-called ‘Team Austria’. Through the campaign, almost 50,000 new volunteers were hired, who can be activated in the case of an emergency and taken to the disaster areas. Every Member of the Team Austria get a short training in disaster relief from the Red Cross and the special competences of every single volunteer will be documented in a list (e.g. foreign languages, specialized medical training, etc.).

23 See for example https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=LrW&Dokumentnummer=LWI40001638
26 By virtue of § 79 (2) B-VG in conjunction with § 2 para. 1 lit. C of the WG 2001, the armed forces can be consulted in certain disaster cases. See also the Vademecum of the European Union to Civil Protection Mechanisms in Europe; http://ec.europa.eu/echo/files/civil_protection/vademecum/at/2-at-1.html#over, accessed 03 August 2016.
3.1.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

The first article of the Austrian Data Protection Act guarantees citizens a fundamental right to privacy and data protection.\(^{28}\) The Act allows limitations to the fundamental right to data protection in disaster situations under specific conditions.\(^{29}\) Specifically, Section 48a was implemented into the Act after the Tsunami-catastrophe in 2005,\(^{30}\) and it provides an elaborate framework for data processing in a disaster situation, including how data may be shared with other organizations or be exchanged when necessary with other countries. It states:

(1) Controllers of the public sector shall be authorised to use data in case of a catastrophe to assist persons affected directly by the catastrophe, to locate and identify missing or deceased persons and to provide information to the relatives. Relief organisations (para. 6) shall be authorised to use data for this purpose in accordance with their duties and legitimate authority [...].

The Act equally provides some safeguards to personal data that are processed in such circumstance. Importantly, the data is to be deleted immediately it is no longer required for the fulfillment of the specific purpose, and all uses of data shall be logged.\(^{31}\) Section 48a (2) contains some other relevant safeguards which include that:

a) The data shall be committed or transmitted to recipients in third countries insofar as this is necessary to fulfil the purposes of disaster assistance.

b) A transfer of police records and sensitive data for the purpose of identification to a joint information system shall only take place if investigations have yielded tangible evidence that the missing person is presumably deceased.

c) Data that by itself would implicate the data subject in a crime shall not be transferred unless it is absolutely necessary for identification in a particular case.

d) The data of relatives shall only be transferred in pseudonymous form.

e) Data shall be transmitted or committed to states lacking an adequate general level of data protection only if the controller can assume, based on a written agreement with the recipient or if such cannot be obtained under the circumstances in due time, by specifying conditions for the recipient, that the interests in secrecy deserving protection

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\(^{29}\) Sections 7, 8(7) and 48a of the Austrian Data Protection Act.


\(^{31}\) See Sec. 48a (1) and (7) of the Austrian Data Protection Act.
of the data subjects of the intended transfer shall be sufficiently respected in the recipient country. A transmission or committing shall not take place if there is cause for concern that the recipient will not devote attention to the interests in preserving secrecy protection of the data subjects or that he will ignore data protection conditions imposed by the controller.

f) In addition, the Data Protection Authority shall be informed immediately about the data transfers performed and about the circumstances of the motivating incident. The Data Protection Authority is authorized to prohibit data transfers if the intervention into the civil right to data protection is not justified by special circumstances caused by the catastrophe.

Additionally, the Vienna Civil Protection Act authorizes the use of data to prevent and fight disasters.32

Data subjects have the right to get information about how their personal data is collected and could delete or rectify such data. They can also file a complaint with the Data Protection Authority or institute legal proceedings before a court for any violation of their right to data protection.33

In respect of cultural rights, the Austrian Basic Law on the General Rights of Nationals (StGG) contains provisions on knowledge and its teaching,34 as well as artistic creativity and dissemination,35 which shall all be free; freedom of conscience and creed;36 right of churches and other religious societies to their practice and independence;37 right of vocation;38 right of ethnic entities to preserve and foster their nationalities and language, as well as the right of each member of an ethnic entity have adequate opportunity to receive education in his/her own language.39 Furthermore, ethnic groups enjoy a special right under the Ethnics Groups Act of 1976. To give effect to this law, various cultures are to be promoted by the federal government. The law also regulates the establishment of advisory boards of the various ethnics groups and how they to advise the government on all aspects of the ethnic groups.40 Cultural rights in Austria

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33 See Sec. 26 to 34 of the Austrian Data Protection Act.
34 Art. 17 StGG.
35 Art 17(a) StGG.
36 Art. 14 StGG.
37 Art. 15 StGG.
38 Art. 18 StGG.
39 Art 19 StGG.
also include the right to equality and the right to work.\textsuperscript{41} It is noteworthy that Austria has ratified the ICESCR since 1978.\textsuperscript{42}

### 3.1.4. Compensation Mechanisms for Disaster Damage

A compulsory insurance against natural disasters does not exist in Austria.\textsuperscript{43} Losses from natural disasters are covered on the one hand by the private insurance market (which are not very popular) and, on the other hand, by the Austrian Catastrophes Fund.\textsuperscript{44} The catastrophes fund is financed through taxes, and further help to disaster victims may be provided by special laws enacted on an ad hoc basis. A large part of the money from the Fund is intended for the reconstruction of infrastructure. The extra available money may then be distributed to individual citizens. However, it should be noted that citizens do not have a legal entitlement to payments from the Fund.\textsuperscript{45} Additional help may come to disaster victims from charitable funds.

In respect of terrorism risk, the Österreichischer Versicherungspool zur Deckung von Terrorrisiken was set up in 2002 by the Austrian insurance association (Versicherungsverband Österreich) as a purely private co-reinsurance pool with no state guarantee.\textsuperscript{46}

### 3.2. Bulgaria

#### 3.2.1. National Fundamental Rights Framework and Disasters

The Bulgarian Constitution provides one of the sources of fundamental rights in Bulgaria and contains various civil and political rights, as well as economic and social rights that are relevant in


\textsuperscript{44} See Catastrophes Fund Law of 1996.


disaster situations. According to the Bulgarian expert respondent, the Constitution explicitly refers to disaster in only one provision, which prescribes that “Citizens shall assist the state and the society in case of natural or other disaster, on conditions and a manner established by the law.” There are no specific rights granted by the Constitution for disaster cases.

Bulgaria is a state party to most of the core human rights treaties adopted under the UN framework, which also forms a source of fundamental rights. The UN Universal Declaration of Human Rights (UDHR) is binding as far as its provisions contain norms of customary character since the document is adopted as a General Assembly resolution under Chapter IV of the UN Charter. Bulgaria has never employed the persistent objector rule regarding any of the rights established by the declaration.

Bulgaria is also a state party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and has ratified additional protocols 1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 14 and 15 to the Convention. After the Lisbon Treaty had entered into force, the Charter of Fundamental Rights of the European Union (CFREU) became part of the EU legislation, and hence binding on the Bulgaria as a Member State.

The relation between the Bulgarian legal system and the treaties it is a state party to is regulated by the provision of Article 5 (4) of the Bulgarian Constitution. According to the provision, those international treaties that are ratified according to the procedure prescribed in the Constitution, promulgated and entered into force, become part of the Bulgarian legislation and they shall have primacy over conflicting provisions of the domestic legislation. Bulgaria is also party to the Vienna Convention on the Law of Treaties and its Article 27 clearly, prescribe that provisions from the internal law cannot be relied upon as justification for the failure of performance of obligations under international treaty. In addition to this principle, as far as the European legislation is concerned, the European Court of Justice has an established case law on the direct effect and supremacy of the EU law, both primary and secondary legislation. The compliance of the

48 Art. 61 of the Bulgarian Constitution.
49 The list of the core human rights treaties to which Bulgaria is a state party include: the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its two Optional Protocols, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Rights of the Child and its first two Optional Protocols, the Convention on the Rights of Persons with Disabilities and its Optional Protocol which is yet to be ratified, and International Convention for the Protection of All Persons from Enforced Disappearance which is also not ratified at the moment.
50 See Art. 6 of the Treaty of the European Union.
51 See: Costa v ENEL, Case 6/64; Italian Minister of Finance v Simmenthal, Case 106/77; Grad v Finanzamt Traunstein, Case 9/70; Defrenne v Sabena, Case 43/75; Marshall v South West Area Health Authority (No.I), Case 152/84.
Bulgarian legislation with the norms of the applicable international instruments is guaranteed by the provision of Article 149(1)(4) of the Constitution which grants competence to the Constitutional Court to rule on such matter.

Although disasters are not covered in general by Bulgarian constitutional provisions, the Bulgarian respondent indicated that there could be implicit or explicit limitations of human rights depending on the assessment made by the legislative body.52 Thus limitations of fundamental rights with respect to disasters are possible by legal acts which regulate public relations that could be affected by those disasters. Such acts include the Disaster Protection Act, the Ministry of Inferior Act, the Water Act, the State Administrative Division Act, the Labour Code, the Environment Protection Act, etc., as well as the acts adopted by the executive authorities for application of the enlisted legislative acts.

In the case of explicit limitation, the Constitution explicitly stipulates the conditions. The limitation provided in a specific act that forms the basis for implicit limitation, despite the lack of explicit provision in the Constitution. Usually, the mechanism includes enlistment of certain conditions that shall exist before the said right is being limited. Often, the assessment is carried out by an administrative body which, as a rule, issues an individual administrative act under Article 21 of the Administrative Procedure Code or general administrative acts under Article 65 (which are subject to administrative and judicial control under Chapter VI or Chapter IX of the same Code).

Article 52 of the Disaster Protection Act, for instance, clearly indicates a number of rights that could be limited in the case of a disaster. These include: sanctity of the person or of the home in cases of temporary evacuation from places, where the life or health of individuals would be under direct threat; the rights of use of property due to the need to protect life, health or property of individuals or the environment; the freedom to move or stay in certain sections of the territory threatened or stricken by disaster; the right to engage in activity, which could prevent or impede performance of rescue works. The list is not exclusive. Other legal acts may further restrict other rights in disaster situation which were not enlisted in Article 52 of the Disaster Protection Act.

There are a number of avenues through which fundamental rights could be enforced in Bulgaria. One possibility of seeking redress for violation of a fundamental right is to address the question to the Ombudsman who can approach the Constitutional Court regarding laws that are deemed unconstitutional in relation to human rights and fundamental freedoms.53 Another possibility is by addressing the question to one of the bodies who have the immanent right to address the Constitutional Court via the mechanism of proposals and signals regulated in Chapter VIII of the Administrative Procedure Code. A third option is by referring such question, when it appears during a court procedure, to the Supreme Administrative Court or the Court of Cassation which

52 Whether in implicit or explicit cases, limitation of fundamental rights should have its base in a legal act.
53 Art. 150 (3) of the Bulgarian Constitution.
shall suspend the procedure and refer the question to the Constitutional Court. In addition to these procedures, individuals who suffered damage from acts and/or omissions committed by the state or municipal bodies have their rights protected by the Act on the Liability for Damage Incurred by the state and the Municipalities. The claims under this act proceed in the civil courts under Article 7 of the aforementioned act. It is important to note that individuals who feel that a legislative act violates their constitutional rights cannot directly file a complaint to the Bulgarian Constitution Court, as the Constitution does not allow such persons to address the Constitutional Court. According to Article 150, the subjects who are entitled to address questions to the Constitutional Court are one-fifth of all Members of the National Assembly, the President, and the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Chief Prosecutor. In some cases, the Ombudsman and the Municipal Councils also have such powers.

If all the domestic remedies have been exhausted, individuals can enforce their rights through the European Court of Human Rights (ECtHR) subject to the admissibility criteria enlisted in Article 35 of the Convention. On the other hand, Bulgarian legislation strengthens the protection of the individual rights by creating a mechanism for cancellation of judicial acts which have already entered into force on the basis of a decision adopted by the ECtHR that contradict the domestic act. This mechanism provides an additional layer of protection for individuals whose rights have been violated.

The Bulgarian respondent pointed out that Bulgarian courts lack practice on violation of human rights in the context of disasters. The decisions related to the corresponding legal acts such as the Disaster Protection Act are mainly on rejections by state authorities to provide financial aid to individuals, often under Article 33 (1)(4) or 55(3) of the Disaster Protection Act or liability of employers in situation of disasters under the Labour Code. Those are cases heard by administrative courts and the decisions do not contain any legally relevant findings or interpretations. There are a few decisions such as Decision 495 from 31 May 2016 of the Court of Cassation according to which Mayors have the authority to oblige companies to perform certain actions in the context of disasters under Article 62 (2)(5) such as cleaning snow and ice from the sidewalks in front of the company premises.

54 In order to use this mechanism, a case must already exist before the respective court. The most common case is a violation of individual rights through the act of a state organ. The lawfulness of such act can be challenged via the procedure regulated in Chapters IX to XIII of the Administrative Procedure Code before special administrative courts.


56 Decision 1840 from 19 February 2015 of the Supreme Administrative Court; Decision 4016 from 24 March 2014 of the Supreme Administrative Court.

57 Decision 3231 from 1 October 2012 of the Court of Cassation.
3.2.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

The main legislative act that deals with disaster management in Bulgaria on a national level is the Disaster Protection Act adopted in 2006. Apart from it, the Ministry of Interior Act, the Water Act, the State Administrative Division Act, the Waste Management Act, the Environment Protection Act, the Safe Exploitation of Nuclear Energy Act, the Administration Act, the National Urgent Calls System Act also contain provisions related to disaster risk reduction.

The bodies responsible for disaster management are all the ministries and associated agencies, which have the competence to conduct one or more of the preventive activities enlisted in Article 6 of the Disaster Protection Act (DPA).\(^{58}\) Those bodies operate at the central state level, as well as the municipal level.\(^{59}\) On a state level, there is a national platform, the Consultative Council with the Council of Ministers competent in supporting the Council of Ministers in adopting the state policy in the area of disaster protection. Those consultations led to the adoption of the Reduction of Disasters-related Risks Strategy 2014-2020, which among others, aims to achieve the goals set in the Hyogo Framework for Action 2005-2015 and Sendai Framework for Disaster Risk Reduction 2015-2030.

On the basis of the Strategy referred to above, the Council of Ministers adopted National Disaster Protection Program for the period 2014-2018. The Program contains aims and directions for development of protection programs regarding different disasters such as earthquakes, floods, etc., that is, differentiation of the methods used for protection of the population depending on the nature of the disaster. It also defines the operative measures to be taken. This Program is implemented by regional and municipal bodies which adopt separate regional and municipal programs.

An important element of the Bulgarian civil protection mechanism is the integrated rescue system (IRS). It encompasses 15 activities for protection of the population in the event of a threat or occurrence of disasters. Those activities include warning, rescue operations, providing medical assistance in emergency situations, temporary evacuation, the performance of emergency repair and recovery works, etc.\(^{60}\) The actions included in the IRS are concluded mainly by the Fire Safety and Protection of the Population Directorate General of the Ministry of Interior, the Ministry of Interior Regional Departments, the Bulgarian Red Cross, and the emergency medical centres.

Another important element is the participation of individuals, legal persons, sole proprietors, and voluntary formations in the activities related to disaster protection. The related obligations in

\(^{58}\) Such activities are research, analysis, evaluation and forecasting of disaster risks, implementation of preventive measures for the exclusion or mitigation of disaster consequences, planning of disaster protection, etc.

\(^{59}\) Art. 6a DPA.

\(^{60}\) The full list is included in Art. 19 of the DPA which also stresses on the applicability of this system only in peaceful times due to Bulgaria’s observance of its obligations under the Geneva Conventions, 1949.
situations which require the participation of individuals are enlisted in Article 34 of the DPA, the corresponding obligations regarding legal persons and sole proprietors are stipulated in Articles 35 – 38 of the DPA.

The Reduction of Disasters-related Risks Strategy 2014—2020 indicates as key values in disaster management: the right of people to be informed, the principle of equality and indiscrimination, as well as the right of education of the population concerning disasters, their prevention, and best practices. Those values mean that the government will concentrate its efforts, both legislative and executive, on those aspects of human rights protection required in the context of disasters. The National Disaster Protection Program contains some guidelines regarding the right to education and its goals, as well as basic skills that need to be developed.

Each state, regional or municipal body that participates in disaster management has a plan and guidelines adopted for a certain period which indicates the most common risks and the preventive and operative measures which include realization/protection of some fundamental rights. For example, the Guidelines of Triaditza Municipality specifically stressed the duty of the municipal organs to inform the population fully and objectively, to take the necessary measures to safeguard the right to health, to deliver the essentials such as food and water which is a realization of the right to life and health.

There is also secondary legislation which regulates activities of bodies such as the Ministry of Interior and the Chief Directorate Fire Safety and Civil Protection related to specific disastrous situations such as fires. In this regulation, the population’s right to information is emphasized, as well as the right to education as a preventive measure.

Other specific rights are protected by normative acts such as the Labour Code. Article 157(1)(7) of the Code safeguards the right of the employee to participate in the volunteer groups operating during disaster situations by allowing the employee to be absent from work. Furthermore, Article 218 stipulates that a worker is entitled to compensation if they are not able to attend work because of disaster. This compensation is 50% of their remuneration, but it could not be less than 75% of the minimal wage.

### 3.2.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

The rights to privacy and data protection are contained in the Bulgarian Constitution. They have also been implemented in other legislation such as the Data Protection Act and the Electronic

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61 Triaditza is a part of the special territorial entity of Sofia which includes several municipalities, [http://www.triaditza.org/docs/Osnoven_plan.pdf](http://www.triaditza.org/docs/Osnoven_plan.pdf) (in Bulgarian), accessed 25 July 2016.

62 Regulation 8121z-758 from 22 October 2014.

63 See Art. 32 of the Bulgarian Constitution.
Communications Act. The Constitution equally contain limitation of such rights. For instance, Article 32 of the Constitution states that no one shall be followed, photographed, filmed, recorded or subjected to any other similar activity without his/her knowledge or despite his/her expressed disapproval, except when such actions are permitted by law. The right to privacy includes the inviolability of one’s home, which is covered by Article 33 of the Constitution that provides that no one shall enter or stay inside a home without its occupant’s consent, except in the cases expressly stipulated by law, such as the case of Article 52 Disaster Protection Act discussed below. Article 34 of the Constitution regulates the privacy and confidentiality of one’s correspondence.

The respondent from Bulgaria indicates that as a rule, exceptions to the principle of inviolability shall be allowed only with the permission of the judicial authorities for the purpose of discovering or preventing a grave crime. This could be relevant to cases of man-made disasters when the act is also considered a crime under Bulgarian criminal law. Article 52 of Disaster Protection Act stipulates that in the case of disaster the right to enjoy one’s home and one’s personal integrity and freedom, as well as one's right to engage in certain activities if they could prevent or impede the performance of rescue works, could be restricted for a limited time.64

The Bulgarian Data Protection Act does not specifically refer to disasters. Nevertheless, it states in Article 1(5) that the law is applicable for data processing for the objectives of public security and crime prevention. This provision could be relevant in the case of disasters caused intentionally such as terrorist attacks. On the other hand, the Electronic Communications Act has devoted an entire chapter on electronic communication services during disasters, the state of martial law, the state of war or state of emergency. Article 301 of the Electronic Communications Act prescribes that the undertakings providing public electronic communications networks and/or services shall ensure possibilities for the provision of electronic communications services during disasters in the sense of the Disaster Protection Act.

Violation of the right to privacy in the sense of infringing the inviolability of one’s home or vehicle, correspondence or illegally gather, store or transmit personal data are criminal offences under the Bulgarian Criminal Code.66 Article 13 of the Criminal Code includes a provision that is relevant to committing the aforementioned offences in the context of a disaster. The provision stipulates that an act shall not be considered dangerous to society, hence punished under the provisions of the Criminal Code, where committed by a person in situation of emergency - in order to save the state or public interests, as well as personal or property rights belonging to him or to others, from immediate danger which the acting person could not possibly avert in another way, provided the damage caused by the act is less significant than those averted.

64 See paragraph 1, subparagraphs 1 and 4.
65 Chapter XVIII.
66 Art. 170, 171 and 171a.
Apart from the criminal liability, other safeguards to personal data are provided for by Article 33(1)(5) of the DPA. According to this provision, a person shall be entitled to compensation for damages suffered in the course of or in connection with the legally prescribed actions for disaster protection. The Council of Ministers created a body called Interbody Commission for Reparation and Support. Its Constituent Act contains a specific procedure for compensation on the ground of such violations. A rejection of a claim is subject to control by the administrative courts, as well as every act that violates those rules and is adopted by administrative bodies. If the result is not satisfying, a person whose rights have been violated is entitled to file a claim before the European Court of Human Rights for violation of Article 8.

Regarding cultural rights, Bulgarian legislation refers to cultural rights in the context of disasters in Article 52 (2)(6) of the Disaster Protection Act, which indicates as a possible measure taken in the context of a disaster, the movement of objects with cultural value in order to protect them from damage. It clearly restricts the rights of the individuals to enjoy the use of those objects. Furthermore, Article 5 of the Cultural Heritage Act states that the state has an obligation to protect the cultural heritage in the case of natural disaster and armed conflicts.

Furthermore, Article 16 of the Disaster Protection Act establishes the obligation of the state to include and introduce disaster protection modules in the education plans in the state school system. It relates to the right of education as a cultural right. However, it is noteworthy that Article 22 of the Higher Education Act proclaims that the autonomy of the universities could be overruled in cases of disasters.

### 3.2.4. Compensation Mechanisms for Disaster Damage

There is no mandatory disaster insurance policy in Bulgaria. Chapter VI of the Disaster Protection Act (DPA), entitled Relief and Recovery, regulates activities such as the rendering of emergency and rehabilitation assistance to victims, and conduct of recovery works after disasters. The emergency assistance is to be organized by municipality mayors and shall include providing food and temporary shelter to victims of disaster, domestic animals and livestock, distribution of clothing and household belongings to victims of disaster and undertaking of other necessary measures.

Recovery assistance, on the other hand, is provided to victims of disaster and is regulated by the terms, procedures and amounts determined by the Rules under Article 54(6). This article forms the legal ground for the establishment of the Commission for Reparation and Support. Its Statute contains the procedures that need to be followed by the individuals who apply either for recovery

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67 Part 6 of the Commission’s Constituent Act.
68 Art. 6 of the Cultural Heritage Act defines the term as including ground, underground and underwater archaeological sites and reserves, historical sites and complexes, architecture sites and complexes, ethnographic sites and complexes, models of park art and landscape architecture, natural valuables, etc.
assistance or compensations for damage caused in the course of or in connection with the legally prescribed actions for disaster protection. The Recovery assistance may include financial aid for recovery of damage caused by the disaster to private homes if the owner meets the criteria established in Article 26 of the Statute of the Commission. The criteria are mainly of a financial character, and their goal is to ensure the financial aid reaches only people who need it and cannot afford to repair their homes. Financial aid of this type is also available for demolition of buildings which have been determined to be unsafe due to unrepairable damage suffered as a consequence of a disaster.  

Article 55(6) of the DPA establishes an additional mechanism which could be seen as an emergency assistance with a longer scope of application. It regulates the possibility for individuals to be sheltered in a property owned by the state. This is a temporary measure which shall not exceed six months.

All the options listed above are without prejudice to private insurance schemes which are not very popular in Bulgaria as far as private homes are concerned.

3.3. France

3.3.1. National Fundamental Rights Frameworks and Disasters

Protection of human rights are among the founding values of the French Republic and today is still rooted in the French Constitution. The current French Constitution of 1958 reaffirms the common ideals of liberty, equality and fraternity in the preamble and goes further to refer to three important fundamental rights texts, namely: the Human Rights Declaration of 1789 (Déclaration des droits de l’homme et du citoyen), the preamble to the Constitution of 1946 and the Charter of Environment of 2004 (Charte de l’environnement). A Decision of the Constitutional Council in 1971 holds that the preamble and the texts it indicates are part of the positive law (droit positif – as valid written law) and do have a constitutional value. Although the 1958 Constitution does not mention individual rights explicitly, the documents mentioned above contain several fundamental rights that are relevant in disaster situations. Even though no special rights were carved out for disaster cases, the Preamble to the 1946 Constitution (quoted in the

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69 Art. 27 of the Statute of the Commission in relation to Art. 55(4)(2) of DPA.
Preamble to the 1958 Constitution) states that the: “The Nation proclaims the solidarity and equality of all French people in bearing the burden resulting from national calamities.”

Peace treaties and certain others are subject to ratification by an Act of Parliament. Such treaties take direct effect after ratification and rank above the national law. France has concluded several human rights treaties including the ECHR and the CFREU. Furthermore, the rules of public international law shall be respected as acknowledged in the Preamble to the 1946 French Constitution.

While disaster is not explicitly mentioned in the 1958 Constitution, it does in Art. 16 grants extraordinary powers to the President to take necessary measures when the institutions of government, the independence or territorial integrity of France are threatened, and the functioning of the public authorities is interrupted so that the public authorities could carry out their obligations. Although no specific mention is made of derogation of rights, Article 4 of the 1789 Declaration of Rights states that limits on the exercise of rights that are permissible are those determined by law and necessary to prevent infringement upon rights of others. Thus, the President in the Council of Ministers can declare a state of siege, and fundamental liberties may be restricted. It is notable that the Conseil Constitutionnel has required that police powers may infringe upon right only pursuant to a prior law that defines the power with sufficient specificity.

Under the French legal system, individuals have not been granted the right to directly put the Constitutional Council into motion for violation of fundamental rights. The jurisdiction and competences of the Constitutional Council were mainly focused on the a priori control of laws by virtue of the 1958 Constitution. As ruled in 1975 by the Cour de Cassation, the formal courts can check whether a law is constitutional and decide to apply it. However, significant reforms have occurred with respect to the competence of the Constitutional Council. Since 2010 for instance, a constitutional reform recognized the right to have the constitutional review

72 See Articles 52 to 55 of the French Constitution.
73 Art. 55 of the French Constitution (under condition of reciprocity).
77 That is, to rule whether proposed statutes conform with the Constitution, after they have been voted by Parliament and before they are signed into law by the President of the Republic.
78 See http://www.hrcr.org/chart/limitations+duties/limits_general.html
("question prioritaire de constitutionnalité") of already adopted laws – in an incidental way – which have been claimed to infringe the individuals’ fundamental rights and freedoms.\textsuperscript{80}

The constitutional amendment of 2008 introduced the position of an ombudsperson, Defender of Right (Défenseur des droits)\textsuperscript{81} under Article 71-1 of the French Constitution, who is empowered to observe the rights and freedoms. A separate law defines the tasks and powers of the ombudsman more precisely.\textsuperscript{82} Overall, this ombudsman is to monitor the State authorities in carrying out their tasks, and citizens may refer a case of violation of their rights to this body.\textsuperscript{83} There is also the National Consultative Commission on Human Rights which is the French National Human Rights Institution.\textsuperscript{84} Its mission includes ensuring that France fulfills its institutional and international commitments in the area of human rights and to advise the government and Parliament on bills and proposals as they relate to human rights. As such, it can intervene on any human rights issue. The Consultative Commission is an independent body with a plurality of membership including representatives of civil society organizations.

### 3.3.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

The civil protection in France is separated into different levels. The highest authority is at the Ministry of Interior - the Department of Civil Defense and Emergency Preparedness. Preparing rescue measures and coordinating the civil protection resources between the different levels of civil protection is the main responsibility of this department. The Ministry of Defense is obliged to assist in cases of emergency.

The interregional Civil Security Operational Coordination Centre (COZ) operates at the district level, with the “zone prefect” as the responsible body. This centre coordinates the necessary measures between the differently affected municipalities. At the municipalities are different units responsible for civil protection. The fire and emergency services fall under these units, and they

\textsuperscript{80} Article 61/1 of the French Constitution emphasizes that: “If during proceedings [...] before a court of law, it is claimed that a legislative provision infringed the rights and freedoms guaranteed by the Constitution, the matter may be referred by the Conseil d’Etat or by the Cour de Cassation to the Constitutional Council, which shall rule within a determined period [...]”. See also Xhezair Zaganjori, \url{http://www.umk.ro/images/documente/publicatii/Buletin19/2_the_constit.pdf}; \url{http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-question-prioritaire-de-constitutionnalite/decouvrir-la-qpc/decouvrir-la-question-prioritaire-de-constitutionnalite-qpc.47106.html} accessed 20 February 2017.


\textsuperscript{82} See \url{https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167}, accessed 17\textsuperscript{th} February 2017.

\textsuperscript{83} See \url{http://www.defenseurdessdroits.fr/en}, accessed 17\textsuperscript{th} February 2017.

will be assisted by different private organizations such as the Red Cross and other NGOs. The fire and emergency services are operated by professional and voluntary actors. The French civil protection is carried out by around two hundred and fifty thousand people.

The legal basis for civil protection is at the national legislation. Regulations for civil defense and civil security elaborate the responsibilities and necessary measures in case of an emergency. The competence for public safety is shared between municipalities and the district on the one hand, and the state on the other hand. While the prevention of disasters is a task of the municipality and district level, the national authorities are responsible for declaring the state of emergency.85

The state of emergency in France is framed by the Law n°55-385 of 3 April 1955 which regulates that the state of emergency (L'état d'urgence) can be decreed by the president in the Council of Ministers.86 The decision to proclaim the state of emergency can only last for 12 days. To extend the state of emergency for a longer time necessitates a law regularly passed by the Parliament. Proclaiming the state of emergency gives exceptional powers to the Minister of the Interior and Prefects. The Minister and the Prefects could for instance, order places of gathering to be closed in the territory concerned by the state of emergency or decide administrative searches and seizures, day and night, without judiciary oversight, etc.

It is notable that this 1955 Law was modeled after the society of the time, to deal with a specific crisis, and its objective was to prevent a civil war or very severe unrest emanating from a part of the population. Some parts have since become obsolete and reformed. For instance, administrative search and seizures must now be submitted to judicial oversight. Further, various terrorism laws have strengthened the criminal procedure and the powers available to the police and judges when investigating terrorism acts are beyond those described in the 1955 law.

### 3.3.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

France is one of the first countries to draft a Data Protection Act as far back as in 1978 (loi n° 78-17, (DPA) which is meant to ensure that any use of information technology does not violate “human identity, human rights, privacy, or individual or public liberties.” 87 Nevertheless, it was only in 2004 that the 1978 law was amended to transpose the European Data Protection Directive

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of 1995 into French law.\textsuperscript{88} The French Data Protection Act is complemented by the Postal and Electronic Communications Code, especially by Article L34.\textsuperscript{89} The DPA applies to both the public and private sectors, and the “Commission nationale de l'informatique et des libertés” (CNIL) is the French data protection authority.\textsuperscript{90}

Apart from the Data Protection Act, both the civil and the criminal codes also protect privacy. Article 9 of the Civil Code provides that “Everyone has the right to respect for his private life.” The Criminal Code also provides sanctions for offences against privacy such as any wilful violation of a person's private life.\textsuperscript{91}

The Data Protection Act does not expressly mention disaster, however, the right to data protection could be limited if an emergency is declared as pointed out about. It should be noted though that the Civil Code provides that court may by interim order prescribe any appropriate measures to prevent or put an end to an invasion of personal privacy.\textsuperscript{92}

Anyone who alleges that his or her privacy and data protection rights have been violated can file a claim in court. Privacy violations committed by individual and legal persons can be civil or criminal offences, and reparations can, therefore, be claimed before civil or criminal courts.\textsuperscript{93} Furthermore, individuals can contact the CNIL when they are experiencing difficulties in exercising their data protection rights.\textsuperscript{94}

The cultural rights are protected by Article 103 de la loi NOTRe (nouvelle organisation territoriale de la République).\textsuperscript{95} The Act elaborates that responsibility concerning culture is performed collectively by the state and the local authorities with respect to the cultural rights announced by the convention of UNESCO of 20th October 2005. These include culture, sport, tourism, promotion of local languages and education.\textsuperscript{96} The ICESCR is applicable in France as well.


\textsuperscript{90} See https://www.cnil.fr/en/home, accessed 17\textsuperscript{th} February 2017.

\textsuperscript{91} Art. 226-1, Criminal Code.

\textsuperscript{92} Art. 9 of the French Civil Code.

\textsuperscript{93} http://uk.practicallaw.com/7-573-6346 accessed 17\textsuperscript{th} February 2017.

\textsuperscript{94} https://www.cnil.fr/en/cnils-missions, accessed 17\textsuperscript{th} February 2017.

\textsuperscript{95} See https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030985460&categorieLien=id, accessed 17\textsuperscript{th} February 2017.

\textsuperscript{96} Article 104 of the loi NOTRe.
3.3.4. Compensation Mechanisms for Disaster Damage

In France, the market for first party policies is generally voluntary, but due to a series of legislation, it is mandatory for first party insurance by private insurance companies not to exclude coverage for losses arising out of: natural catastrophes, technological disasters, or terrorism.\(^97\) Thus, there is a compulsory extension of disaster risks on all property damage policies purchased on the voluntary market. Pursuant to Article L125-1 of the French Insurance Code, insurance contracts, issued to any natural or legal persons other than the State in order to insure against damage caused by fire or any other damage to property located in France as well as damage to hulls of motor vehicles, must also cover the effects of natural disasters and subsidence of land due to underground cavities or due to Marl-pits on property covered by the insurance contracts.\(^98\) Also, when the insured is covered for business interruption, the cover must be extended to the effects of natural disasters in accordance with the terms of the corresponding contract.

It is important to note that some categories of damages are excluded from this mandatory extension of coverage such as damage caused to non-harvested crops, cultivation, soil and livestock outside premises, etc.\(^99\) The regime does not also apply to damages caused to real property built and to activities carried out in breach of administrative regulations in force intended to prevent the damage caused by a natural disaster. Furthermore, in the case of natural catastrophes, the insured may not be compensated in all cases unless the event is declared a “natural catastrophe” by government decision.\(^100\) This obligation applies only to the insurer, not to the citizen.\(^101\)

Insurances are provided by private insurers, which have the option of a government-guaranteed reinsurace offered by the Caisse Centrale de Reassurance (CRR). The CRR is founded on the common ideal of national solidarity and fraternity by the French government. Therefore, the CRR offers this reinsurace with a uniform price policy. Insurers transfer 50% of their natural peril risks to CCR and pay that entity 50% of their natural disaster premiums in a quota-share-like arrangement.\(^102\) In the end, the CRR has no reserves and is financed by the tax. The claims

\(^97\) See Law No. 82-600 of 13 July 1982 relating to the compensation of victims of natural catastrophes, presently Code des assurances, Article L 125-1 to L 125-6. See also OECD, Policy Issues in Insurance Financial Management of Large-Scale Catastrophes, (No. 12, 2008) 60.


\(^100\) Ibid.


\(^102\) See \(\text{http://www.nft.nu/sites/default/files/2001403.pdf}\)
regulation is handled by the private insurers. Insurers kept 24% of premium income to cover their expenses, but to get the reimbursement of the CRR, the state of emergency must be declared or at least the disaster must be named as a natural disaster by officials.

3.4. Germany

3.4.1. National Fundamental Rights Frameworks and Disasters

Fundamental rights in Germany have a high priority, and that is deeply rooted in the country’s history. These rights are written in the Basic Law (Grundgesetz (GG)),\textsuperscript{103} and in the Constitutions of the Federal States. The Basic Law comprehensively laid down these fundamental rights in Articles 1 to 19. Almost all fundamental rights are formally laid down explicitly (some of them jointly in one article or even within one paragraph, others by distinct articles), with the exception of two rights (the right to informational self-determination and the right to the guarantee of the confidentiality and integrity of information technology systems), which were deduced from human dignity and personal freedom through decisions of the German Federal Constitutional Court (GFCC).\textsuperscript{104}

General international law forms part of the German legal system as it becomes directly part of the federal law,\textsuperscript{105} and as such, is a source of fundamental rights in Germany. “General” here refers to the universally applicable international law as opposed to bilateral or multilateral treaties.\textsuperscript{106} International treaties only become national law through ratification by the German Parliament (Bundestag).\textsuperscript{107} Such ratified treaties become federal law, and generally do not rank higher than regular federal law.\textsuperscript{108} However, it is recognized that international treaties and laws


\textsuperscript{105}Art. 25 Grundgesetz provides: “The general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.”


\textsuperscript{107}It should be noted that the UN Universal Declaration of Human Rights (UDHR) does not as a general rule fall within the meaning of Article 25 GG. It is only seen as a Programmatic Resolution (a general statement and have no binding status as an international treaty). However, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have been ratified as international treaties (See Bundesgesetzblatt (Federal Law Gazette) BGBl. 1973 II, 1553 and BGBI 1976 II, 428) and thus applicable in Germany. See von Heintschel von Heinneg in Epping/Hillgruber “Beck-OK Grundgesetz”(Beck Online Commentary to the Basic Law) Art. 25 Fn 12; Pieroth/Schlink in “Staatsrecht II” Sec. 3 Fn 56, 57.

\textsuperscript{108}See Art. 59 (2) Grundgesetz.
on human rights take precedence over the federal law in the sense that their provisions are strictly interpreted under German law.\textsuperscript{109} Hence, all laws (including the fundamental rights laid down in the Constitution) must be measured against the rules on fundamental human rights stemming from international law.\textsuperscript{110} Nevertheless, there are human rights (such as the prohibition of torture), which are not explicitly mentioned in the German Constitution, but are derived from the inviolability of Human Dignity (Article 1 GG), and therefore can be backed up by international treaties.

The ECHR as an international treaty has been ratified by the German Parliament and is applicable as federal law, but ranks higher than other federal laws.\textsuperscript{111} The CFREU is directly applicable as a result of Articles. 23, 24 and Article 59 (2) GG, which permit the application of the whole EU-Law in Germany.

On disasters, the German Constitution contains only a few references such as when granting specific rights of the Federal Republic with regard to control over police forces and to the deployment of German Armed Forces (\textit{Bundeswehr}) and the Federal Police (\textit{Bundesgrenzschutz})\textsuperscript{112} in the Federal States in disaster situations.\textsuperscript{113} The Federal Republic is granted some particular rights about financial administration in disaster situations.\textsuperscript{114} However, there are no specific rights for disaster situations. Rather, there is a possibility of limiting fundamental rights in such cases as explicitly mentioned in Article 11 (2) GG\textsuperscript{115} (for all types of disasters), and in Article 13 (7) GG\textsuperscript{116} concerning epidemic diseases and “general dangers.”\textsuperscript{117} In general, limitation of fundamental rights in disaster situations follows the general constitutional principles, which means that first, any action taken by the state needs to be based upon parliamentary law.\textsuperscript{118} Second, any such action as well as the law that permits such action is


\textsuperscript{112} Today referred to as “Bundespolizei”, a change in denomination that has not been reflected within the wording of the respective articles of the constitution.

\textsuperscript{113} See Art. 35 (3) Grundgesetz for the right to request one federal state to send forces to another state for support.

\textsuperscript{114} Art. 104b, 109, 115 GG.

\textsuperscript{115} Art. 11 Grundgesetz regulates the Freedom of Movement.

\textsuperscript{116} Art. 13 Grundgesetz regulates the Inviolability of the Home.

\textsuperscript{117} A general danger is any danger that concerns an uncertain number of individuals (in terms of a general public); typical examples are danger of fire, danger of flooding, avalanche danger, danger of collapse (of a building), danger of epidemic diseases. See Papier, in Maunz/Dürig, Grundgesetz-Kommentar, Art. 13, Paras119.

\textsuperscript{118} Art. 20 (3) Grundgesetz.
required to be proportionate, while fulfilling the following conditions: a) aim at a legitimate purpose; b) suitable; c) necessary to achieve the envisaged aim; d) be adequate in the sense that the resulting impact on fundamental rights shall not be essentially imbalanced towards the aims being pursued.

As a rule, possible limitations to a fundamental right in Germany depend on the right itself (as elaborated in decisions of the German Federal Constitutional Court (BVerfG)). In disaster situations, for instance, the fundamental rights of freedom of movement and inviolability of home can be restricted according to explicit limitations in Arts. 11 (2) and 13 (7) GG which provide for those rights respectively. For example, if there is a disaster situation that is posing a danger to the public, or the life of an individual, and rescue forces access the disaster site through private grounds, they will be permitted to interfere with the right to inviolability of the home of the residents of these private grounds on the basis of the explicit limitations implemented in Article 13 (7) GG, regulated by a law.

A restriction on one fundamental right can be proportionate, in particular, if it is necessary and adequate to protect other fundamental rights (of both the impacted individuals and of third-parties). Hence in the example mentioned above, the access to a disaster site through private grounds might also create an impact on the fundamental right to property of the owner, which however will be justified for the protection of life and health of disaster victims. Third, the essential guarantees of each fundamental right must not be impacted at all. Any law that is limiting fundamental rights based upon the explicit exemption is required to explicitly state that the respective fundamental rights are being (purposefully) limited (for example the mentioned exceptions in Article 11 (2) GG and Article 13 (7) GG).

There are various mechanisms to enforce fundamental rights in Germany. Importantly, all actors acting on behalf of the state are bound directly to respect fundamental rights. Any executive act violating fundamental rights can be challenged through an administrative procedure and if unsuccessful, in the court. In urgent cases, (preliminary) summary proceedings can be requested. Where the administrative act cannot be undone (for factual reasons, e.g. because a

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120 See Art. 11 Grundgesetz.
121 See Art. 13 Grundgesetz.
122 For example, section 8 of the Civil Protection Act of Berlin.
123 Art. 14 Grundgesetz.
124 But this needs to be based upon law (e.g. police and regulatory law, since no specific provision exists in the civil protection act applicable in this case E.g. The Civil Protection Act of Lower Saxony, see http://www.nds-voris.de/jportal/?quelle=jlink&query=KatSchG+ND&psml=bsvorisprod.psmI&max, accessed 27 July 2016.
125 See Art. 19 (1) Grundgesetz.
126 Widerspruchsverfahren, Sec. 68 ff. VwGO.
127 Einstweiliger Rechtsschutz, Sec. 80, 80a and 123 VwGO.
violation of a fundamental right has already happened), judicial observation of the illegitimacy of
the act, and hence the violation of fundamental rights, can be requested to prevent future
violations. Unsuccessful proceedings in the administrative courts can be further brought to the
Constitutional Court as a constitutional complaint.\textsuperscript{128}

Furthermore, claims can arise from public liability/administrative liability\textsuperscript{129} as a result of the
violation of fundamental rights by the state. In this case, compensation for damage can be
demanded. Another possibility for German citizens is to further apply to the ECtHR, “after all
domestic remedies have been exhausted.”\textsuperscript{130}

A national ombudsman for human rights does not exist in Germany. There are only the courts
responsible for the protection of individual human rights. A constitutional complaint is legally
permissible only if the complainant is personal, presently and directly (concretely) affected by a
violation of a fundamental right. This rules out complaints by citizens against a law as such,
though there are several exceptional cases.\textsuperscript{131} Only judges or constitutional bodies can challenge
laws before the Constitutional Court.\textsuperscript{132} In addition to that, a complaint against a law is only
possible after the commencement of the law. Only against international treaties could a
preventive action be possible.\textsuperscript{133}

There have some judicial pronouncements on disasters and fundamental rights. The German
Federal Court of Administrative Law (GFAC) (\textit{Bundesverwaltungsgericht}) has ruled that the
abstract danger of a nuclear disaster (in the wake of the Chernobyl Disaster) does not render
complaints against permissions to operate a nuclear power plant admissible, unless it could be
reasoned that operating that particular facility would fail to guarantee a reasonable level of
protection and that additionally, an adequate level of protection could not be achieved in that
facility at all.\textsuperscript{134} This case involves the unusual constellation that the fundamental rights of a
private entity (operating a nuclear power plant) had to be balanced against the threats to
fundamental rights of the general public as a result of the risk involved in operating such a facility
(and thereby the risk of a man-made disaster).

There have also been judgments with concrete reference to the civil protection mechanisms and
fundamental rights. The most important decisions of the Constitutional Court and the German

\textsuperscript{128} Verfassungsbeschwerde, Art. 93 I Nr. 4a GG, Sec. 90 f. BVerfGG.
\textsuperscript{129} Art. 34 Grundgesetz.
\textsuperscript{130} See Art. 35 (1) of the European Convention on the Protection of Human Rights.
\textsuperscript{131} For example, if the complainant would be required to make dispositions to comply with the law, in which the
Constitutional Court has ruled admissible complaints filed by private entities and/or citizens against specific
provisions of a law. See GFCC, Order of 14. 1. 1998 - 1 BvR 1995–94 = NJW 1998, 1385; including references to
several other decisions.
\textsuperscript{132} Art. 93, 100 Grundgesetz.
\textsuperscript{133} Pieroth in Jarass/Pieroth commenting on “Grundgesetz für die Bundesrepublik Deutschland” Art. 93 Fn 21.
\textsuperscript{134} BVerwG, Beschluss vom 05.04.1989 - 7 B 47/89 (Münster).
Federal Administrative Court refer to the following fundamental rights: the right to life and physical integrity (Art. 2 II 1 GG); the right to property (Art. 14 I 1 GG); and the freedom to choose an occupation (Art. 12 I GG). Concerning the right to life and physical integrity, the German Constitutional Court ruled in 2006 that it would not be lawful to shoot down an aircraft being used as a weapon for terrorist purposes if passengers were aboard who were not participants in the crime. Such action would be incompatible with human dignity and the right to life according to the court. On the right to property, the GFAC ruled in 2006 that it was lawful to restrict the fundamental right to property in the sense of channeling water in a flooding disaster across private property. This action is considered to be a lawful measure to ensure safety and security needs. In another case, the German Constitutional Court decided that the prohibition on building on dike properties can be legitimate and even that an expropriation for flood protection is constitutional. In addition, the Constitutional Court has ruled that operators of a radio antenna could be obliged to install an antenna for the radio of emergency services. However, this must be compensated financially by the state. Concerning the freedom to choose an occupation, the German Constitutional Court ruled in 2010 that it is possible to mandatorily include private emergency services in publicly administered emergency services to allow a better response to disasters.

In another case, the Higher Administrative Court of North Rhine-Westphalia (Oberverwaltungsgericht Nordrhein-Westfalen) decided that it is legitimate to suspend an order of returning an asylum seeker whose application for asylum has not been granted if in the home country of the applicant there has been a (natural) disaster. Furthermore, the GFAC has ruled twice on the possibility to engage in disaster protection as an alternative to military service.

135 GFCC, Judgment of 15 February 2006 - 1 BvR 357/05; [http://www.bverfg.de/e/rs20060215_1bvr035705en.html](http://www.bverfg.de/e/rs20060215_1bvr035705en.html).
136 Note however that a subsequent judgment approved the armed operations by the German forces in Germany under certain circumstances. See GFCC, Judgment of 03 July 2012 - 2 PbVU 1/11, [http://www.bverfg.de/e/up20120703_2pbvu000111.html](http://www.bverfg.de/e/up20120703_2pbvu000111.html), accessed 20 July 2016.
141 GFCC, Judgement of 08. June 2010 - 1 BvR 2011/07, 124; [http://www.bverfg.de/e/rs20100608_1bvr201107.html](http://www.bverfg.de/e/rs20100608_1bvr201107.html) accessed 20 June 2016 (German version).
143 BVerwG, Urteil vom 24. 4. 1969 - VIII C 98/68 (VG Aachen); BVerwG, Urteil vom 25.10.1989 - 6 C 6/88 (VG Karlsruhe). Note that Art. 12 (2) GG lays down the fundamental right to not being forced to work, with the
3.4.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

In Germany, civil protection in peacetime is subject to State legislation (as opposed to Federal legislation which takes care of war times). Therefore, there are 16 different Civil Protection Acts.\(^1\) In addition to the regular Civil Protection Acts, most of the states have specific laws for Fire and Emergency Services, which support civil protection. Furthermore, the Police and Public Order Law is applicable as danger prevention law when it comes to measures that are not covered by the more specific civil protection laws.

The direct responsibility of organising civil protection is assigned to the local governments and communities.\(^2\) However, local governments can delegate public tasks – such as providing ambulance services – to private companies (e.g. aid organisations such as the German Red Cross) by contract. Moreover, public authorities might also oblige private entities to take precautions in certain circumstances. For instance, the organiser of a festival can be obliged to provide an ambulance service at the festival ground. In this case, aid organisations would be contracted by the organiser, meaning that they would act as private organisations.\(^3\)

The federal government is responsible only for civil defence matters, i.e. in *Verteidigungsfall* (Article 155a ff. GG, “state of defence”) or *Spannungsfall* (Art. 80a GG, “state of tension”), the latter referring to a situation in which the transition into state of defence is imminent and an armed attack is highly probable.\(^4\) Therefore, there is a Federal Civil Protection and Disaster Assistance Act.\(^5\) For this purpose, various federal agencies have been established (such as Bundesamt für Bevölkerungsschutz und Katastrophenhilfe (BBK), Federal Office of Civil Protection and Disaster Assistance, Technisches Hilfswerk (THW), German Federal Agency for Technical Relief). In the case of a crisis, the federal government also has access to the regular civil protection units of the States. Correspondingly, the Federal States may request police forces of another

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\(^2\) See Sec. 2 Nds. KatSG; 2 BayKatSG, 3 Berl. KatSG, 4 KatSG BW.

\(^3\) The idea of proper precautions can be found in a broad variety of legal provisions, such as fire prevention laws or German laws concerning the freedom of assembly (both being part of the state legislation).

\(^4\) Jarass in Jarass/Pieroth commenting on “Grundgesetz der Bundesrepublik Deutschland” Art. 80a Fn 1.

\(^5\) Federal Civil Protection and Disaster Assistance Act (Zivilschutz- und Katastrophenhilfegesetz); [http://fis.bbk.bund.de/aDISWeb/app;jsessionid=36093044263D6C59394148D380A7B773](http://fis.bbk.bund.de/aDISWeb/app;jsessionid=36093044263D6C59394148D380A7B773).
State, the Federal Police, Federal Civil Protection Units and the Federal Armed Forces in a disaster situation.\textsuperscript{149}

In the case of a formally declared disaster (\textit{Katastrophenfall}), the local Disaster Management Authority is responsible for coordinating all actions. In that case, fire-fighting, ambulance, and police units will jointly and with specific responsibilities, take care of the disaster situation. Additional support to the local disaster management units can be requested from the German armed forces, the THW and NGOs. In the case of a disaster with cross-border impact (i.e., the borders of the Federal States within Germany), activities will be coordinated by the district or by the Ministry of Interior of the State.

In practice, there could be situations in which a local government would not formally declare a disaster, but such a situation would be considered a disaster situation. As stipulated in the federal emergency service laws, the local emergency call centre can activate emergency plans for mass casualties ("Massenanfall von Verletzten") when facing a high number of victims in order to mobilize more ambulance forces. In those cases, declaring a disaster situation (which would result in shifting responsibilities to the disaster management authority) might not be required.

With respect to incorporation of fundamental rights protection in civil protection and disaster management guidelines, the position in Germany could be summarized as follows: Civil protection guidelines exist at various levels of civil protection and disaster management. There are also official instructions (\textit{Dienstvorschriften})\textsuperscript{150} that are used in all similar departments and organisations throughout the country to ensure consistency. For instance, DV-400 provides instructions on the organisation of medical platoons and the usage of their equipment.\textsuperscript{151} However, it should be noted that those instructions do not aim explicitly at the protection of fundamental rights, but they provide a consistent quality of civil protection services. While the instructions are in line with German law, they do not constitute a (legal) framework offering protection of fundamental rights.

There is also the twelve Basic Rules of Humanitarian Aid which are observed in Germany.\textsuperscript{152} These Rules are relevant to all civil protection units. Also, there are different guidelines from NGOs, and guidelines for medical care in disaster situations.\textsuperscript{153} All these guidelines give priority to giving aid

\textsuperscript{149} Art. 35 (2) Grundgesetz.

\textsuperscript{150} Basically, every organization/authority can enact their own instructions. However, most of those instructions are based on the older "Kats-DV" which were in force until the civil protection reform package in 1997: http://www.bbk.bund.de/DE/Service/Fachinformationsstelle/RechtundVorschriften/VorschriftenundRichtlinien/VolltextKatS-Dv/volltextkats-dv_node.html.

\textsuperscript{151} This instruction can also be used both by paramedics of fire departments as well as of aid organisations.


and forbid using political or religious beliefs to control the work of the civil protection units and aid organizations. Furthermore, the needs and culture of those people affected should be respected.\textsuperscript{154}

3.4.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

In Germany, data protection is regulated by several laws. The Federal Data Protection Act (\textit{Bundesdatenschutzgesetz}), is applicable in all cases that fall within the legislative competence of the Federal Republic unless one of the specific data protection laws applies (such as the Code on Telemedia (\textit{Telemediengesetz})).\textsuperscript{155} The same systematic approach exists on the level of the Federal States: each State has its general data protection code and additional specific laws which derogate the general code.

However, in most Civil Protection Acts of the Federal States, provisions for collecting and processing data in disaster situations exist, which allows the processing of data for response to messages and requests (in particular, for the documentation of whereabouts, where the name, location, and injuries may be documented).\textsuperscript{156} Likewise, the Police Codes (which are the laws of public security and public order) of the Federal States contain provisions on the collection and processing of personal data. Such data include video recordings (also from aboard UAV\textsuperscript{157}) of the disaster site and locating individuals by tracking their mobile phones.\textsuperscript{158} The extent to which these specific laws do not cover data collection and processing, the General Data Protection Codes of the Federal States apply.

Additionally, the Geo Data Access Law\textsuperscript{159} contains relevant provisions on making available geo data such as satellite imagery, for the purpose of fulfilling public tasks if there are no conflicting rights. Based upon this law, a centre for Satellite Based Crisis Information\textsuperscript{160} was established by


\textsuperscript{155} For example, websites.

\textsuperscript{156} Civil protection in peace times and (more generally) maintaining public security and order fall within the competence of the Federal States (with a few exceptions such as counter-terrorism where there is a parallel competence of Federal Criminal Police Agency (Bundeskriminalamt). Bundeskriminalamt has the particular competence to access mobile phones, computer systems, and other devices including using specific hidden software for the purpose of preventing terrorism (a form of man-made disaster scenario).

\textsuperscript{157} Unmanned Air Vehicles.

\textsuperscript{158} See Sec. 32, 33b of the Police Act of Lower Saxony (Nds. SOG); 21, 23a Police Act of Baden-Württemberg; 24, 25a Police Act of Berlin.

\textsuperscript{159} Geo Data Access Law (Geodatenzugangsgesetz); \texttt{http://www.gesetze-im-internet.de/geozg/} (German version).

\textsuperscript{160} See \texttt{https://www.zki.dlr.de/}.
the Federal Interior Ministry in cooperation with the German Centre for Aerospace. In the event of a disaster, the Centre could provide data necessary for disaster management.

The following safeguards exist in Germany regarding the data processing during emergencies: foremost, both the communication and the data are protected by Article 10 GG; and Article 2 (1) 1 (1) GG respectively. Again, if the collection and processing of data are permitted by civil protection laws, such laws generally provide an erasure procedure. Section 18 of the Hamburg Civil Protection Act, for example, provides that collected data of the victims must be deleted when it is no longer needed. A similar provision can be found in the implementation rule for people-information-desk of Berlin for Disaster Protection Act, in No. IV. In general, citizens have a right of access to their stored data and the right to have these deleted if the legal conditions for processing (in particular: storage) no longer exist.

With respect to cultural rights, these rights are protected primarily by the Basic Law and are carried out or specified by federal law or regulations. Furthermore, in Germany, international treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) are applicable. Protected cultural rights in German include:

- the right to education,
- freedom of religion,
- the right to social security.

### 3.4.4. Compensation Mechanisms for Disaster Damage

Germany does not have a compulsory insurance policy against disasters. A voluntary insurance scheme that is expensive exists which is not commonly used against disaster risks. Instead, disaster damage in Germany is compensated by the state and through donations. So, foundations can be established by the state which carries out compensation payments to the affected citizens. For example, a foundation for the injured children of the thalidomide scandal was established by

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161 Implementation rule on the collection and other processing personal data in case of disasters by the Berlin people information desk of the police (AVBEPAS), 22 July 2010; [https://www.berlin.de/sen/inneres/service/verwaltungsvorschriften/personenbezogene_daten_im_katastrophenfall.pdf](https://www.berlin.de/sen/inneres/service/verwaltungsvorschriften/personenbezogene_daten_im_katastrophenfall.pdf) (German version).

162 See Sec. 6 (1); 20; 35 Federal Data Protection Act.


the German government that financed single payments and an ongoing pension for the victims. The fund comes from the state and a certain amount from the originating company.\textsuperscript{165}

This system has been criticized for putting the financial risk of disasters on the state. It provides too little incentive to citizens to voluntarily insure themselves and carry out preventive measures against possible disasters.\textsuperscript{166}

3.5. Italy

3.5.1. National Fundamental Rights Frameworks and Disasters

Fundamental rights in Italy are rooted in the Constitution\textsuperscript{167}, and almost all fundamental rights are explicitly provided for therein.\textsuperscript{168} Article 2 of the Italian Constitution is particularly important because it made the inclusion of the so-called “New Fundamental Rights” possible. According to the Italian expert respondent, the “New Fundamental Rights” such as the environmental protection, the right to housing, the recognition of the life of the unborn and, in recent times, the need of procreation were not foreseen in the Constitution but were identified by the society's cultural evolution. Therefore, Article 2 of the Constitution acts as an "open clause," and also relates to the transformations of the rights expressly recognized in the Constitution (i.e. the right to health, personal freedom, protection of landscape, etc.).

The Italian legal system conforms to the “generally” recognised principles of international law. Therefore international law also provides a source of fundamental rights in Italy.\textsuperscript{169} The expression “general” in Article 10 of the Italian Constitution refers to the universally applicable international law as opposed to bilateral or multilateral treaties, and provides a mechanism of automatic standing for incorporation of general international law into domestic law in a permanent way.\textsuperscript{170} There is no need for “ad hoc” implementing legislation, and a constant


\textsuperscript{166} See Press Article of the DIW Berlin: Compulsory insurance against natural disasters creates twofold greater safety: by encouraging more damage prevention and better claims management \url{http://www.diw.de/documents/dokumentenarchiv/17/diw_01.c.422774.de/pressegespr%C3%A4ch_versicherungs_pflicht-gegen-naturkatastrophen_dossier-20130614.pdf} accessed 01 June 2016.


\textsuperscript{168} See Arts. 1, 3-11, 12-54 of the Italian Constitution.

\textsuperscript{169} See Art. 10 of the Italian Constitution.

\textsuperscript{170} i.e. Customary International Law, a kind of international common law based on widespread state practice and on "the general principles of law recognized by civilized nations". It binds all nations and non-state actors.
adjustment of international and national law is recognized based on Article 10 of the Italian Constitution. Furthermore, customary international law provisions have the same ranking as constitutional provisions based on Article 10.

Concerning bilateral or multilateral treaties (i.e. Conventional International Law), the Italian Constitution provides a mechanism of automatic “ad hoc” incorporation into domestic law.\(^{171}\) Under this mechanism, international rules become applicable to the Italian legal system only if and when the relevant parliamentary authority passes specific implementing legislation (the so-called “legge di ratifica”).\(^{172}\)

Furthermore, Italy is a Member of the EU and the Council of Europe. Therefore fundamental rights sources include the CFREU, and the ECHR (which as an international multilateral treaty has been ratified by the Italian Parliament,\(^{173}\) and it is applicable as an “intermediary norm” - halfway between constitutional and ordinary norms). In other words, the ECHR provisions have been raised to an intermediate level between ordinary legislations and constitutional provisions.\(^{174}\) Consequently, the ECHR is used by the Constitutional Court in judicial review of legislation as a sort of parameter/criterion (so-called “parametro interposto”).\(^{175}\)

The CFREU is directly applicable as a result of Article 117 Italian Constitution. EU law derogates Italian national law, including the Italian Constitution, but only to the extent of which fundamental rights guaranteed on EU level are comparable to the Italian national fundamental rights, and only as long as EU law does not conflict with Italian fundamental rights.

With respect to disasters and emergency situations, the Italian Constitution contains only a few and marginal references to such situations. In particular, Article 78 of the Italian Constitution concerns the powers of the Government in the case of a state of war. Article 77 concerns the power of the Government, in the case of necessity and urgency, to adopt under its responsibility, a temporary measure that will have to be introduced to the Parliament for transposition into law. Article 120 concerns the procedures to be adopted in the case of grave danger for public safety and security; while Article 126 concerns the procedures to be adopted to dissolve the Regional

\(^{171}\) See Art. 117 – 1 comma of the Italian Constitution.

\(^{172}\) “ordine di esecuzione” is an implementing order to give the international treaty the full force within the Italian legal system, once ratified. Examples of ratified treaties include: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by the Italian Parliament (law 25 october1977, n. 881) and are applicable as domestic law in Italy. Differently, the Universal Declaration of Human Rights is not implemented as a domestic law, it is not independently legally binding within the Italian legal system, nevertheless, it is part of the basis of the Italian Constitution as a programmatic document. See also Giovanni Bognetti, “The Role of Italian Parliament in the Treaty-Making Process – Europe”, 67 Chi.-Kent. L. Rev. 391 (1991).

\(^{173}\) See Law 4 August 1955, n. 848.


\(^{175}\) The Italian system describes a mechanism in which constitutional rules have to be interpreted according to the European Convention whenever the Convention provides a higher standard of protection for human rights than the system of constitutional rights protection.
Council in the case of danger to national security. However, no natural disaster references are pointed out in the Italian Constitution, and no specific rights were granted for disaster situations.

The Italian Constitution also establishes possible limitations of fundamental rights which depend on the right itself. For example, the right of freedom of movement\(^\text{176}\) can be restricted for reasons of health or security, the right to health can be restricted in respect for the human person, etc.

If the limitation is necessary, the safeguards of the fundamental rights have to be taken into consideration following the principle of the so-called “doppia riserva” (double provision). To limit fundamental rights (such as personal freedom, inviolability of the home, telecommunication privacy, etc.), there is the necessity of the so-called “riserva di giurisdizione” (that is, only a judge may restrict a fundamental right, with a motivated measure) and of “riserva di legge” (that is, only the law issued by the Italian Parliament can determine when and how a fundamental right may be sacrificed). In the case of urgency or necessity, Article 77 of the Italian Constitution gives power to the Government to adopt under its responsibility a temporary measure (that will have to be introduced to the Parliament for transposition into law).

Although the state of emergency is not mentioned in the Constitution, the Law n. 225/1992 mentions it, where it is defined thus: “the state of emergency can be declared by the Council of ministers, at the instance of the President of the Council of Ministers, under the circumstances of natural calamity, catastrophes or other events that, for their intensity and extent, must be faced with extraordinary means and powers”.\(^\text{177}\) Under the state of emergency, the President of the Council of Ministers can issue ordinances which can repeal in part, and provisionally, any law in force. There is only one limit: those ordinances shall respect the general principles of the State order (i.e. the fundamental rights).

Any implementing/executive act infringing fundamental rights can be challenged according to Article 113 of the Constitution by bringing an action before a competent court. In the case of urgency, executive acts may be preliminarily suspended by the following procedures:

- Ordinary Court: Article 700 Procedural Civil Code;
- Administrative Court: the suspension request is presented to the Administrative Judge who decides with urgency in the Council Chamber (a fast procedure behind closed doors, with only the judge and the lawyers representing the respective parties being present).

If the result of the above procedures favours the suspension, the executive act loses its validity. Where the administrative court does not respect fundamental rights, the case may be brought before the Constitutional Court (Corte Costituzionale).\(^\text{178}\) The Constitutional Court as the highest court in Italy has made some decisions on civil protection and the “state of emergency” (especially

\(^\text{176}\) Art. 16 of the Italian Constitution.
\(^\text{177}\) Law N. 225/1992, Art. 5.
\(^\text{178}\) See Art. 134 of the Italian Constitution.
on the allocation of competence between the State and the Regions). For example in the Decision n. 127/1995 (state of emergency for a cholera epidemic); Decision n. 284/1986 (state of emergency for environment emergency).

3.5.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

Civil Protection activities are in Italy regulated by Law no. 225 of 24.02.1992. Civil protection is not a task assigned to a sole administration but is a function that belongs to an integrated system: the National Service of Civil Protection. Established by Law no. 225 of 1992, the National Service of Civil Protection has as its components in the central government of the State, the Regions and Autonomous Provinces, Provinces, municipalities and mountain communities. The National Fire Department, the Armed Forces, the Police, the National Forestry Corps, the scientific community, the Italian Red Cross, the structures of the National Health Service, voluntary organizations, the National Mountain and Alpine Rescue Corps form the operating structures.

The Italian civil protection system is activated from bottom-up (from Municipality upwards to State), and the direct responsibility of the civil protection is at different levels according to the general principle of subsidiarity. At the institutional level, the responsibilities are shared between the National, the Regional, the Provincial, and the Local authorities. Public authorities can take advantage of private entities for certain public service management - such as the ambulance services provision – through agreements.

Apart from the laws regulating civil protections, additional application measures are issued by the Civil Protection Department of the Ministers Council Presidency. It is noteworthy that while these legal frameworks do not aim specifically to protect fundamental rights, their implementation invariably affects human rights. For instance, Law 100/2012 contains a provision on risk prediction and prevention. Prevention activities include early warning, emergency planning, training, dissemination of knowledge of civil protection, information for the public,

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179 See for example, Decision n. 127/1995 (state of emergency for a cholera epidemic); Decision n. 284/1986 (state of emergency for environment emergency). See also decision n. 17/2015 and decision n. 100/2014. See, also, decision n. 15/1982.

180 See also decision n. 17/2015 and decision n. 100/2014. See, also, decision n. 15/1982.


182 Law 225/1992 has been amended by Law 100/2012 and Law 119/2013.


184 The various subjects represent the national civil protection operational structures (those indicated in Art. 11 of Law no. 225 of 24.02.1992).

185 See Art. 118 of the Italian Constitution.

enforcement and technical exercises.\textsuperscript{187} During the rescue operation as well, every rule which governs constitutional principles must be respected (e.g. the right to human dignity, to freedom of thought, conscience, and religion, freedom of the press, etc.).

\textbf{3.5.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms}

In Italy, data protection is regulated by Legislative Decree 196/2003, and it also covers the activities of civil protection, although it does not contain any specific reference to data protection in disaster situation or emergency. However, one marginal reference in Article 82 relates to “Emergency and Protection of Health and Bodily Integrity” and contains rules on information and consent requirements in medical emergencies.

The data protection authority (\textit{Autorità Garante della Privacy}) has made specific reference to civil protection, stating that the information and data necessary for municipal planning security can be processed by the municipalities since they are necessary for the performance of its institutional duties.\textsuperscript{188} Moreover, regarding the question of inclusion of personal data (names, address, telephone numbers and also sensitive data) in the municipal plans of civil defense, the Authority specifies that public entities do not have to acquire either consent or authorization of the Autorità Garante della Privacy.\textsuperscript{189}

The Legislative Decree 196/2003 (Italian Personal Data Protection Code) makes provision for remedies and sanctions against infringements of personal data. Section 141 of the Code provides:

1. Data subjects may apply to the Garante
   a) to lodge a circumstantial claim pursuant to Section 142, in order to point out an infringement of the relevant provisions on the processing of personal data,
   b) to lodge a report if no circumstantial claim as per letter a) may be lodged, in order to call upon the Garante to check up on the aforementioned provisions,
   c) to lodge a complaint with a view to establishing the specific rights referred to in Section 7 in accordance with the arrangements and for the purposes laid down in Part III of this Chapter.

With respect to cultural rights, the Italian Constitution makes a specific reference to Culture in Article 9, which establishes that “the Republic promotes the development of culture and of scientific and technical research. It safeguards natural landscape and the historical and artistic

\textsuperscript{188} \url{http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/47139} accessed 25 July 2016.
\textsuperscript{189} Ibid. See also Art. 135 Legislative Decree 196/2003.
heritage of the Nation.” As already mentioned, Italy has ratified the ICESCR which therefore applies as domestic law, and grants cultural rights in Article 15. The UN UDHR which is part of the basis of the Italian Constitution as a programmatic document also contains some cultural rights.\textsuperscript{190}

Moreover, the Legislative Decree no. 42 of 22 January 2004 “Code of the Cultural and Landscape Heritage” specifically establishes that “In the implementation of Article 9 of the Constitution, the Republic shall protect and enhance the cultural heritage in accordance with the powers set out in Article 117 of the Constitution and according to the provisions of this Code. The protection and enhancement of the cultural heritage shall concur to preserve the memory of the national community and its territory and to promote the development of culture.” In particular, Article 6 of the Code establishes that the “enhancement of Cultural Heritage consists in the exercise of the functions and in the regulation of the activities aimed at promoting knowledge of the cultural heritage and at ensuring the best conditions for the utilization and public enjoyment of the same heritage. Enhancement also includes the promotion and the support of conservation work on the cultural heritage.” Finally, Article 9 of the Code protects cultural property of religious interest.

\subsection*{3.5.4. Compensation Mechanisms for Disaster Damage}
Insurance against natural disaster is not compulsory in Italy. Voluntary and often expensive insurance exists which is not popular as many people are not used to insuring against disasters. However, an ad hoc ex-post compensation is regularly granted in the aftermath of each disaster by the State.\textsuperscript{191} Italian citizens usually expect the State to intervene and assist disaster victims based on the traditional idea of the functions of the state.\textsuperscript{192} There is a fund established by Article 5 of Law no. 225 of 24.02.1992. The process that regulates the collection of assets from this Fund and how to distribute the contributions are established from time to time by the Head of the Civil Protection Department in consultation with the Minister of Economy and Finance.\textsuperscript{193} It should be noted that reforming the disaster insurance scheme has generated series of debates in Italy, especially in view of the financial burden on the government.

\section*{3.6. Malta}

\textsuperscript{190} See Arts. 22 and 27 UDHR.
\textsuperscript{192} Ibid.
\textsuperscript{193} Art. 5 quinquies of Law no. 225 of 24.02.1992.
3.6.1. National Fundamental Rights Frameworks and Disasters

The fundamental human rights and freedoms are entrenched in the Maltese Constitution under Chapter IV – “Fundamental Rights and Freedoms of the Individual”, which includes Articles 32 to 47 and contains both civil, political social and economic rights that are important for disaster situations.\(^\text{194}\)

The Maltese expert respondent indicates further that the ECHR is by virtue of the European Convention Act\(^\text{195}\) incorporated as part of the Laws of Malta and forms a source of fundamental rights. As a result, persons will have a right to invoke the protection of the fundamental human rights and freedoms against the State – the rights are not intended to provide protection for infringement by private parties. The provisions of the CFREU are not referred to in the Maltese Constitution and therefore are not directly applicable. Consequently, the applicability of the provisions of the Charter remains “addressed [...] to the Member States only when they are implementing Union law’.\(^\text{196}\)

International human rights law stemming from the treaties which have been ratified by Malta also form a source of fundamental rights in Malta. Examples include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights which have been ratified by Malta and are therefore enforceable.\(^\text{197}\)

The limitations to the fundamental human rights contained in Chapter IV of the Maltese Constitution are explicitly stated in the Constitution and operates during the period of public emergency. Article 47 of the Constitution defines “period of public emergency” as:

any period during which -

(a) Malta is engaged in any war; or

(b) there is in force a proclamation by the President declaring that a state of public emergency exists; or

(c) there is in force a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the Members of the House declaring that democratic institutions of Malta are threatened by subversion.


\(^{195}\) Cap. 319 of the Laws of Malta.

\(^{196}\) See also Art. 51 CFREU.

\(^{197}\) The Universal Declaration on Human Rights, 1948, is not referred to in the Maltese Constitution and as such not enforceable as law in Malta.
Such a situation has the effect that specific rights such as protection from arbitrary arrest and detention\textsuperscript{198} or protection from forced labour\textsuperscript{199} or protection from discrimination\textsuperscript{200} could be derogated from during a period of public emergency.

The Maltese legal system provides platforms for any individual to seek redress when they allege that any of the provisions of fundamental human rights in the Constitution has been, is being or is likely to be contravened in relation to him, or such other person as the civil court may determine. Article 46 of the Maltese Constitution provides that breaches of the fundamental human rights may be referred to the First Hall, Civil Court in the first instance and the Constitutional Court for an appeal from a decision of the First Hall, Civil Court.

3.6.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

Article 4 of the Emergency Powers Act\textsuperscript{201} makes provision for the President of Malta, acting on advice of the Prime Minister, to make such regulations “necessary or expedient for securing the public safety, the defence of Malta, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.”\textsuperscript{202}

The Civil Protection Act of Malta\textsuperscript{203} establishes a Civil Protection Department (CPD). In general, civil protection in Malta is coordinated by the central government and the local councils. At central government level, civil protection is the responsibility of the minister of interior and the Director of the CPD, while at the community level, the Mayor and the Executive Secretary are responsible.

One of the main objectives of the Civil Protection Department (CPD) is to organise civil defence services by coordinating the capabilities and resources available to other ministries and departments such as the police, the armed forces and the health authorities, and to organise the existing intervention units for disaster situations. It is also responsible for the training of the teams such as fire-fighting, basic rescue and first aid.\textsuperscript{204} The CPD offers a Council of Experts for

\textsuperscript{198} Art. 34 of the Maltese Constitution.
\textsuperscript{199} Art. 35 of the Maltese Constitution.
\textsuperscript{200} Art. 45 of the Maltese Constitution.
\textsuperscript{201} Cap. 178 of the Laws of Malta.
\textsuperscript{202} E.g. Art. 4 para. 2 (h) provide for maintaining such supplies and services as are, in the opinion of the President of Malta acting as aforesaid, essential to the life of the community.
\textsuperscript{203} Cap. 411 of the Laws of Malta.
\textsuperscript{204} http://ec.europa.eu/echo/files/civil_protection/vademecum/mt/2-mt-1.html, accessed 15 February 2017
the different areas of disaster and provides an expert as an incident commander who takes the leading role in disaster response during such incidents.

The immediate combat of a disaster is coordinated by the local authorities and is supported by the CPD and the neighbouring communities. Civil protection in Malta is carried out by various organizations, including police, fire and emergency services, the military as well as voluntary organizations such as the St. John Ambulance or the Red Cross Malta.

3.6.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

Apart from the right to private and family life in the Maltese Constitution, Malta has a Data Protection Act, which regulates personal data processing activities and also lists the circumstances in which the provisions of the Act are not applicable. Art. 5(b) of the Data Protection Act provides that it shall not apply “to processing operations concerning public security, defence, state security (including the economic well-being of the State when the processing operation relates to security matters) and activities of the State in areas of criminal law.” Disaster situation could be located in such public security cases.

The Maltese respondent also indicates that the Act provides that the Minister, responsible for data protection, may make provision, by regulation, extending the application of the Act. The Minister may therefore also add or derogate from the provision of Art. 5(b) to enforce the provisions of any international obligation, convention or treaty relating to the protection of personal data to which Malta is a party to or may become a party to. The Minister may exercise such power only after consultation with the Data Protection Commissioner and with the concurrence of the Minister responsible for the Police.

Subsidiary legislation 440.05 of the Laws of Malta — The Data Protection (Processing of Personal Data in the Police Sector) Regulations — regulates the processing operations undertaken by the police. The Regulations place emphasis on how the data protection principles apply within the context of the police sector which has implications for disaster operations.

On cultural rights, the following are protected in Chapters II (Declaration of Principles) and IV (Fundamental Rights and Freedoms of the Individual) of the Maltese Constitution:

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206 Ibid.

1) Promotion of culture,\textsuperscript{208}

2) Safeguarding of landscape and historical and artistic patrimony,\textsuperscript{209}

3) Protection of Artisan Trades,\textsuperscript{210}

4) Protection of freedom of conscience and worship.\textsuperscript{211}

Note however that the first three above are “Declarations of Principles,” and therefore not enforceable rights. The State sets moral, not statutory obligations to safeguard such principles.

3.6.4. Compensation Mechanisms for Disaster Damage

Insurance against disasters is not mandatory in Malta. The Civil Protection Act contains provision for the Minister responsible for Civil Protection to make regulations “for determining, with the concurrence of the Minister responsible for Finance, the method and payment of compensation levels for material losses incurred by persons during an emergency in terms of the Emergency Powers Act and during a disaster as defined in that Act.”\textsuperscript{212} Article 7(2) also provides that “payment of any compensation under the provision of such regulations shall be a charge upon the Consolidated Fund.” The Consolidated Fund is established by Article 105 of the Maltese Constitution.

3.7. The Netherlands

3.7.1. National Fundamental Rights Frameworks and Disasters

Fundamental rights in the Netherlands are extensively laid down in the Dutch Constitution (Articles 1 – 23), referred to as “Grondwet” (Gw).\textsuperscript{213} Almost all fundamental rights are formally laid down in the Constitution explicitly (some of them jointly in one article or even within one paragraph, some others separately).\textsuperscript{214} The Statute of the Kingdom of the Netherlands also has constitutional characteristics.

\textsuperscript{208} Art. 8 of the Maltese Constitution.
\textsuperscript{209} Art. 9 of the Maltese Constitution.
\textsuperscript{210} Art. 19 of the Maltese Constitution.
\textsuperscript{211} Art. 40 of the Maltese Constitution.
\textsuperscript{212} Art. 7(1)(e) of the Civil Protection Act (Cap. 411 of the Laws of Malta).
\textsuperscript{214} For example Art. 7 (freedom of speech) http://www.dutchcivillaw.com/legislation/constitution011.htm#007, accessed 04 August 2016.
International law can be made applicable to the Dutch legal system in various ways.\textsuperscript{215} Article 90 of the Dutch Constitution states that it is the duty of government to promote the international rule of law. The Doctrine holds that this article also attributes the general right to conclude treaties. Article 91 states that the Netherlands shall not be bound by treaty without prior approval of the States General (Dutch Parliament), except for those cases where law determines no such approval is necessary.\textsuperscript{216} Despite this, if no reservation of approval is made upon conclusion of the treaty, or if the treaty contains a ratification clause, treaties are according to international law binding upon conclusion.

Sub-article 3 determines that if a treaty conflicts with the Constitution, it must be approved by a two-thirds majority of both Houses, and whether such conflict exists is decided by the Dutch Parliament. Article 6 of the lower \textit{Rijkswet goedkeuring en bekendmaking verdragen} determines that this decision has again to be made by special formal law.\textsuperscript{217} A special implementation law of the 1992 Treaty of Maastricht determines that certain European Community decisions having the force of treaty must be approved by Parliament prior to even the conclusion itself. By treaty, legislative, administrative and judicial powers may be conferred on organizations established under international law.\textsuperscript{218}

According to the doctrine of "treaty monism," treaties are in the Dutch legal system, in principle, self-executing; no special transformation is needed by implementing a special law. That means that it is recognized that the international treaties and laws on human rights take precedence over the federal law when the treaty is published.\textsuperscript{219} Article 94 determines that legal prescripts are inapplicable if they conflict with treaties of a generally binding nature. This means that laws can be tested against treaty norms and obligations. Dutch courts have however been very reluctant to do so, limiting this to cases where the government has been left no freedom of policy at all by the treaty, or to severe formal and procedural defects.\textsuperscript{220}

Most fundamental rights laid down in the Dutch constitution are being considered to exceed the minimum requirements of the various human rights treaties, as a result of which clashes which would require an in-depth analysis of the precise relation of International Human Rights and Dutch Fundamental Human Rights appear not to have occurred. Nevertheless, there are Human rights (such as the prohibition of torture), which are not explicitly mentioned in the Dutch


\textsuperscript{216} Such approval may be tacit. See Sub-Art. 2.

\textsuperscript{217} Art. 6 \textit{Rijkswet goedkeuring en bekendmaking verdragen} (Statute Law approval and publication treaties) \url{http://wetten.overheid.nl/BWBR0006799/2010-10-10#Artikel6}, accessed 04 August 2016.

\textsuperscript{218} Art. 92 of the Dutch Constitution. This has been done on many occasions, e.g. on the Benelux, the European Community, the United Nations, the Council of Europe and NATO.

\textsuperscript{219} Art. 93 of the Dutch Constitution.

\textsuperscript{220} The case law is very complex and contradictory, complicated by the fact that the phrase "generally binding nature" is assumed to have exactly the same meaning in both articles.
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constitution, but are derived from the inviolability of Human Dignity (Article 1 Gw), and therefore can be backed up by the regulations in the international treaties.

The Netherlands is a state party to a number of international human rights treaties.221 The ECHR as an international treaty was ratified by the Dutch Parliament and is applicable as general federal law, but higher ranking than other federal law.222 The CFREU is directly applicable as a result of Articles 93 and 94 of the Dutch Constitution.

The Dutch Constitution contains only a few references to disaster, and there are no specific rights granted for disaster situations. However, the possibility of limiting fundamental rights in disaster situations is implied in Article 103 of the Constitution, which provides:

1. The cases in which a state of emergency, as defined by Act of Parliament, may be declared by Royal Decree in order to maintain internal or external security shall be specified by Act of Parliament. The consequences of such a declaration shall be governed by Act of Parliament.

2. Such a declaration may depart from the provisions of the Constitution relating to the powers of the executive bodies of the provinces, municipalities and water boards (waterschappen), the basic rights laid down in Article 6, insofar as the exercise of the right contained in this Article other than in buildings and enclosed places is concerned, Articles 7, 8, 9 and 12 paragraphs 2 and 3, Article 13 and Article 113 paragraphs 1 and 3.223

In general, limitations of fundamental rights must have a basis in the Constitution. Derogation from constitutional rights is only justified when they are allowed by the constitutional legislator, i.e.: the formulation of a fundamental right must be able to ascertain to what extent and under what conditions the fundamental right may be restricted by law. More specifically, in disaster situations, the fundamental rights mentioned in Article 103 can be limited. For instance, if in a disaster situation posing a danger to the public or to the life of an individual, and rescue forces use private grounds to access the disaster site, they will be permitted to interfere with the right to inviolability of the home of the resident of these private grounds (Article 12 of the Dutch Constitution) on the basis of the explicit limitations implemented in Article 103 of the Constitution.

221 Examples include: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, etc.


223 These basic rights refer to rights of freedom of religion or believe (Art. 6), freedom of speech (Art. 6), freedom of association (Art. 8), Freedom of assembly and freedom of demonstration (Art. 9), inviolability of home (Art. 12(2) and (3)), Secrecy of communication (privacy of correspondence) (Art. 13), Trial of offences, disciplinary proceedings and martial law (Art. 113 (1) and (3)).
There are various mechanisms to enforce fundamental rights. Any executive act violating (fundamental) rights can be challenged by administrative procedures (Article 6:4 algemene wet bestuursrecht, Awb (General Administrative Law Act)), and if unsuccessful, in front of the court (Article 112 Gw). In urgent cases, (preliminary) summary proceedings (Article 8:81 Awb) can be requested.\textsuperscript{224} Normally, only ‘interested parties’ can apply and a case is legally permissible only if the complaint is personal, presently and directly (concretely) affected by a violation of a fundamental right. However, in crisis, the ‘interested party’ concept as in Article 1:3 Awb is interpreted more extensively by the Court.\textsuperscript{225}

If the administrative act cannot be undone (for factual reasons, e.g. because a violation of a fundamental right has already happened), a complaint can be filed, first with the violating government (local, national, etc.), and second with the ‘national ombudsman’ (Articles 9:1, 9:17 Awb). The National Ombudsman deals with citizens' complaints about any improper conduct by the government, including violation of fundamental human rights.

Furthermore, claims can arise from public liability/administrative liability (Articles 8:89 Awb and 6:162 Burgerlijk wetboek) as a result of the violation of fundamental rights by the state. In this case, damages can be demanded.\textsuperscript{226}

There is also a special Act for crisis — the Crisis and Recovery Act, which has an impact on the right to appeal to the court in various ways.

\textbf{3.7.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights}

The Netherlands is divided into 12 provinces and subdivided into 25 security regions. The security regions oversee the police, the fire brigade and the public health institutions within their territory.\textsuperscript{227} The Security Regions Act regulates the administrative framework and the organisation of the emergency services. It provides for powers in disaster and crises situations, including when such crisis affect more than one community at a time or more than the interest of one municipality.

The Dutch system of crisis management is structured into three levels – national, regional and local levels. At the national level, the overall responsibility rests with the Directorate General for Public Order and Safety within the Ministry of the Interior. The Ministry of the Interior

\textsuperscript{224} Art. 8:81 Awb \url{http://wetten.overheid.nl/BWBR0005537/2016-07-01#Hoofdstuk8}, accessed 04 August 2016.


\textsuperscript{226} In the case of a compensation claim of more than 25.000 euro or if the claim consists a complaint about factually actions from the government, the person brings the case to civil court instead of administrative court.

coordinates crisis management preparedness and is responsible for public order and safety. This task includes among other things, the responsibility for fire brigades, disaster management and the organisation of medical assistance in the event of a disaster. Each ministry is responsible for crises and disasters within its policy area. The National Crisis Centre (NCC) operates as national coordination unit when crisis from disasters affect several policy areas. The national civil protection authorities cooperate with operational agencies via the security regions.

At the regional level, the 25 security regions of the country oversee civil protection issues in municipalities which belong to their territory. Several organisations with crisis-related tasks, such as the fire brigades and the public health institutions are organised within the security regions.

At the local level, each municipality has a division which is in charge of civil protection issues, and the responsibility for disaster relief and safety, in general, rests with the municipalities. In the event of a disaster, the municipalities will cooperate regionally, and if regional assets are not sufficient, assistance can be requested at the national level. The Minister of the Interior is responsible for this coordination.

During or after a disaster, the Crisis and Recovery Act accelerates the execution of infrastructure, construction, sustainability, energy and innovation projects to alleviate the economic crisis and to promote the recovery of the economic structure of the Netherlands. To this end, Chapter 1 of the Crisis and Recovery Act contains provisions intended to accelerate decision-making and legal protection procedures relating to these projects. The law can bypass certain rules and procedures in a crisis.

The Netherlands respondent indicates that a number of guidelines exist at various levels, but they are not focused on implementation or protection of fundamental rights per se.

### 3.7.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

The Constitution of the Netherlands contains a provision on the protection of privacy of personal data. In addition, the Dutch Personal Data Protection Act (wet bescherming persoonsgegevens) broadly governs the protection of personal data, as well as other laws such as Telecommunications Act (Telecommunicatiewet) which apply in specific environment. While privacy and data protection in disaster situations are not specifically mentioned in the Data

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229 Ibid.


231 Art. 10 of the Dutch Constitution.

232 Wet bescherming persoonsgegevens (July 6, 2000), OVERHEID.NL.) as amended.

233 Telecommunicatiewet - Juni 2012.
Protection Act, general principles that processing of personal data is permissible only under certain conditions, including importantly, the data subject’s unambiguous consent are present. Processing for disaster situations could find legal basis where the data processing is necessary for compliance with a legal obligation to which the controller is subject;\textsuperscript{234} or is necessary for the proper performance of a public law task by the relevant administrative body or the administrative body to which the data are disclosed;\textsuperscript{235} for protection of a vital interest of the data subject.\textsuperscript{236}

The Data Protection Act contains familiar rights of data subjects\textsuperscript{237} and creates the office of the Dutch Data Protection Authority (DPA) (College Bescherming Persoonsgegevens) to administer personal data protection-related matters in the Netherlands.\textsuperscript{238} Aggrieved data subjects could petition the DPA, as well as the court for redress.

Regarding cultural rights, the Dutch Constitution (Grondwet) contains provision guaranteeing such rights. International treaties such as the ICESCR to which the Netherlands is a signatory also provide for cultural rights. However, these provisions are not mentioned specifically with focus on disaster situations.

### 3.7.4. Compensation for Disaster Damage

There is no mandatory insurance for the risk of natural catastrophes in the Netherlands. Private insurance do exist for natural disasters, but it should equally be noted that some forms of mandatory insurance such as insurance for nuclear catastrophes (verzekering voor nucleaire ongevallen)\textsuperscript{239} and insurance for oil spills (verzekering voor olietankschepen),\textsuperscript{240} must be undertaken by entities that engage in those activities as there is potential risk of man-made disaster from such activities.\textsuperscript{241}

It is also noteworthy that at various occasions, the government has provided ad hoc compensation to the disaster victims with public fund. There is a compensation scheme under the Calamities Compensation Act (WTS) 1998 (Wet tegemoetkoming schade bij rampen)\textsuperscript{242} which provides a more structured response to the compensation of victims of disasters in cases of

\textsuperscript{234} Sec. 8 (c ) of the Data Protection Act.
\textsuperscript{235} Sec. 8 (e ) of the Data Protection Act.
\textsuperscript{236} Sec. 8 (d) of Data Protection Act.
\textsuperscript{237} See Part 6 of the Act.
\textsuperscript{238} See Part 9 of the Act.
\textsuperscript{239} Wet aansprakelijkheid kernongevallen (Wako) (Liability for Nuclear Incidents Act).
\textsuperscript{240} Wet aansprakelijkheid olietankschepen (Oil Tanker Liability Act).
\textsuperscript{242} See the Calamities Compensation Act (WTS) 1998.
floods, earthquakes and other major disasters and accidents. Based on this Act, the damage is set by an expert and determined in an administrative decision.

The general administrative law further introduces a new statutory basis for the payment of compensation to private citizens and businesses that suffer damage from governmental activities, whether lawful or unlawful. Injured parties can go to the administrative court to seek for damages caused by, for example, (non) appealable decisions, factual actions, and policies of the government. Based on the principle of proportionality, damage caused by lawful government action are reimbursed. There are, however, limits to the right to compensation for the loss.²⁴³

### 3.8. Portugal

#### 3.8.1. National Fundamental Rights Frameworks and Disasters

The Constitution of the Portuguese Republic (Constituição da República Portuguesa)²⁴⁴ provides for fundamental rights and freedoms of citizens, and contains some rights that are relevant in disaster situations, even though no special rights were carved out for disaster situations. These fundamental rights include among others, the right to dignity, the right to life, the right to health, the right to private and family life, the right to social security, the right to data protection, the right to property, etc. The Portuguese expert respondent states that the fundamental rights enshrined in the Constitution shall not exclude any others set out in applicable international laws and legal rules.²⁴⁵ Thus, international human rights law forms also a source of fundamental rights in Portugal, and constitutional precepts concerning fundamental rights must be interpreted and completed in harmony with the Universal Declaration of Human Rights.²⁴⁶ Portugal has ratified a number of international human rights treaties such as the International Covenant on Civil and Political Rights; International Covenant on Economic, Social, and Cultural Rights, etc.

In addition, the European Convention on Human Rights, the Charter of the Fundamental Right of the EU and the European Social Charter are also applicable in Portugal.

On disasters, the Constitution of Portuguese Republic provides that the occurrence of a public calamity or disaster could be a ground for suspending fundamental rights.²⁴⁷ By the general


²⁴⁵ Art 16 (1) of the Portuguese Constitution.

²⁴⁶ Art 16 (2) of the Portuguese Constitution.

²⁴⁷ Art 19 (2) of the Portuguese Constitution.
principles of law, fundamental rights in Portugal are not absolute — they can be limited internally and externally, to ensure the same rights to all human beings and to ensure that other rights and interests are legally protected for all. Article 19(2) of the Constitution provides:

A state of siege or a state of emergency may only be declared in part or all of Portuguese territory in cases of actual or imminent aggression by foreign forces, a serious threat to or disturbance of democratic constitutional order, or public disaster.

In the Portuguese legal system, the restriction of rights, freedoms, and guarantees falls within the competence of the Assembly of the Republic reservation.\(^{248}\) Such restrictions must be limited to those needed to safeguard other constitutionally protected rights and interests. In order to verify the suspension of fundamental rights in the cases foreseen in the Constitution, it is necessary that the following assumptions are met:

i. Expressly referred (principle of express constitutional authorization),

ii. They have to be limited to what is necessary (principle of proportionality),

iii. The protection of other rights or constitutionally protected interests,

iv. The character should be general and abstract,

v. Prohibition of retroactivity and restriction of the essential content of the precepts.

Portuguese citizens may use the courts to ensure legally protected rights and interests, against other citizens (individuals or legal persons) or against the State itself, although they do not have direct access to the Constitutional Court. They also enjoy in addition to recourse to the Court of Justice of the European Union, the diplomatic and consular protection. Portuguese citizens could also petition to the European Ombudsman, as well as expect response to their communications with the various European institutions in any of the official languages under certain conditions. Citizens can also petition to the European Commission of Human Rights. This petition, in turn, could lead (at the initiative of the Commission or other States) to proceedings before the European Court of Human Rights against the State.

3.8.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

The response from Portugal indicates that the responsibility to ensure, plan and coordinate national civil protection needs in the emergency area in Portugal lies with the National Civil Protection Authority, and the civil protection structure is organised at the municipal, regional and national levels.

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\(^{248}\) See Art. 165 (1)(b) of the Portuguese Constitution.
Under the direct administration of the State - Minister of Home Affairs - is a central service, with administrative and financial autonomy and its assets. Its mission is to plan, coordinate and implement civil protection policy, particularly in prevention and response to major accidents and disasters, protection and rescue of populations and oversight of the activity of fire services. As well, it ensures the planning and coordination of national needs in emergency civil planning area (to address situations of crisis or war).

The National Plan Civil Protection Emergency (PNEPC) supports the civil protection operations in case of imminence or occurrence of a major accident or disaster to enable the direction of unity of actions, to develop the technical and operational coordination of the means to engage, and the adequacy of exceptional measures to adopt. The existence of PNEPC is justified by the history of Portugal, which is associated with many serious accidents and disasters of severe consequences. The PNEPC was prepared in accordance with the directives issued by the National Civil Protection Commission. The PNEPC is activated by the decision of the National Civil Protection Commission, under point a) of paragraph 3 of Article 36 of the Basic Law of Civil Protection, or the statement issued sequence by the Government of the calamity situation under paragraph b) of paragraph 2 of Article 22 of the same Law.

According to the general principles of law, the guidelines for civil protection are made to provide help to those who need it. Whenever a relief force is driven to join the ongoing response effort, the head of the first team to reach the site takes the immediate Operational Commander Relief (COS) function, thus beginning the minimum organization of a theater of operations, helping to maintain an evolving system of command and control of the operation. The assumption of the COS function must take into account the skills, legal powers and technical capacity of the entity represented, with a view to resolving the situation. At the same time, the various entities involved in this plan (agencies and supporting organizations) play missions intervention, reinforcement, support, and assistance, both during the Emergency Phase or during Rehabilitation Phase. The structures of the intervention of these entities are provided for in the respective laws organic or statutes, subject to the necessary operational links with the National Coordinator of the Plan.

249 Among the many serious accident records and disasters, stand, the symbolic weight them is associated with the famous earthquake of 1755 (internationally regarded as the first catastrophe of the modern era), the 1967 floods and, in a more recent range, fires in rural areas / forestry, 2003 and 2005.


251 See the National Plan Civil Protection Emergency – Public components.

252 Ibid.
3.8.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

The Portuguese Data Protection Act\(^{253}\) transposed Directive 95/46/EC into the Portuguese legal system and created the National Commission for the Protection of Data (CNPD) to monitor its enforcement. Moreover, the Constitution of the Portuguese Republic recognises data protection as a *sui generis* right as contained in Art. 35 which specifically highlights the constitutional importance of data protection in Portugal. Accordingly, data protection has a constitutional setting within Portugal that is similar to Art. 8 of the CFREU. There are other relevant laws regarding personal data protection such as Law 41/2004 of 18 August on the protection and processing of personal data in e-communications (amended by Law 46/2012 of 29 August).

The Data Protection Act does contain an express provision on data processing in disaster situations, but the legal basis for data processing during such periods could be found in the law.\(^{254}\) The Act provides certain rights that individuals have in relation to the processing of their personal data. They could seek redress for violation of their rights.

With respect to cultural rights, the Constitution of Portuguese Republic enshrines the general principle of pluralism inherent in the democratic rule of law.\(^{255}\) The Constitution forbids to plan education and culture according to any philosophical, aesthetic, political, ideological or religious. It guarantees the freedom of conscience, religion, and worship as an inviolable right.\(^{256}\)

3.8.4. Compensation Mechanisms for Disaster Damage

Portugal equally does not have a mandatory insurance against natural disasters, it is voluntary. However, it is noteworthy that several banks require insurance coverage for seismic risk (together with mandatory coverage for fire risk) as a condition for financing the purchase of a house.\(^{257}\) Recently, both insurers and reinsurers have been discussing the impact of climate risks and growing threat of increased damage to property, which has worsened in recent years as a result of these changes (e.g., gas emissions, with serious damage to the environment and human health). These risks could potentially bring about changes in the insurance business in Portugal.

Nevertheless, a few years ago, the Integrated System protection against the Random Climate Events (SIPAC) was created, which might be considered an attempt to mitigate the gaps in this

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\(^{253}\) Law nº 67/98 of 26 October, Act on the Protection of Personal Data Transposing into the Portuguese legal system the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

\(^{254}\) See Arts 6 (b-d), 7(3)(a) of the Data Protection Act.

\(^{255}\) Art. 43 (2) of the Portuguese Constitution.

\(^{256}\) Art. 41 of the Portuguese Constitution.

field. The Integrated System is an agricultural policy instrument and covers three components: Crop insurance; Background fund for calamities and Compensation mechanism. While the crop insurance is voluntary, the fund for calamities is exclusively for compensating the farmers’ non-insurable risks when there is an official declaration of calamity.

3.9. Romania

3.9.1. National Fundamental Rights Frameworks and Disasters

Fundamental rights in Romania are provided for in Title II (Articles 15 to 60) of the Constitution of Romania. The Constitution contains general rights that are important for disaster situations such as human dignity, the right to life, right to social security, right to health, right to property, freedom of movement, prohibition of slavery and forced labour, prohibition against torture and inhuman or degrading treatment or punishment, right to private and family life, etc.

Furthermore, the CFREU is applicable in Romania due to its membership of the European Union. Moreover, many other international and regional treaties such as Convention on the rights of the Child, the European Convention on Human Rights (ECHR), and European Social Charter (ESC) are also applicable in Romania.

The Romanian Constitution equally outlines the relationship between international treaties and domestic law. “Treaties ratified by the Parliament, according to the law, are part of national law.” Moreover, constitutional provisions on rights and liberties shall be interpreted and applied in accordance with the UN UDHR, covenants, and other treaties to which Romania is a

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258 See Decree-Law No. 20/96 creating the Protection System Fund to combat Climatic Changes (SIPAC) as amended by Order No. 318/2011 approving the Fund to combat Climatic Changes (SIPAC), Order No. 61/2012 amending the Regulation of the Fund to combat Climatic Changes (SIPAC) and Order No. 45/2013 establishing the Second Amendments of the Regulation Fund to combat Climatic Changes (SIPAC).
261 LAW No. 18 of September 27, 1990 (republished) for the ratification of the Convention on the Rights of the Child.
262 See LAW No. 30 of May 18, 1994 regarding the ratification of the Convention for the protection of human rights and of fundamental liberties and of the additional protocols to this convention.
263 Art. 11 (2) of the Romanian Constitution makes ratified international treaties part of the national law.
264 Ibid.
265 Romania signed the Universal Declaration of Human Rights on 14th December 1955.
party to. Where any inconsistencies exist between the covenants and treaties on fundamental human rights to which Romania is a party to and internal laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.

On disasters, no specific rights were provided for disaster situations in the Constitution, but there is the possibility of restricting certain rights and freedoms for preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe.

Article 53 of the Romanian Constitution states:

(1) The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defence of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe.

(2) Such restriction shall only be ordered if necessary in a democratic society. The measure shall be proportional to the situation having caused it, applied without discrimination, and without infringing on the existence of such right or freedom.

Judicial and administrative remedies are available to individuals and organizations for violations of human rights by government agencies. In this regard, the Romanian Constitution provides for the right to free access to justice to everyone for the enforcement of their rights. Civil courts are independent, and function in every jurisdiction. Plaintiffs may resort to the ECtHR after exhausting the avenues of appeal in the domestic courts over adverse judgments involving alleged violations of human rights by the state.

It is important to note that the ECtHR has issued some judgments against Romania for violating certain rights under the European Convention on Human Rights with respect to disasters. In Tatar v Romania, the ECtHR found that the disaster caused by cyanide contamination of some farmlands and rivers due to the activities of a state licensed gold mining company and the inability of the state to protect those at risk from such mining activities was a violation of the right to private and family life of the victims under Article 8 ECHR. The ECtHR also found that the state infringed the right to respect private and family life and, in the cases of Bacila v Romania and Brândușe v Romania.

266 See Art. 20 of the Romanian Constitution.
267 Ibid.
268 Art. 53 of the Romanian Constitution.
269 Art. 21 of the Romanian Constitution.
270 App. No. 67021/01 (ECtHR, 5 July 2007).
271 App. No 19234/04 (ECtHR, 30 March 2010).
272 App. No 6586/03 (ECtHR, 7 April 2009).
Apart from the judiciary, there are also some government human rights bodies such as the Office of the Ombudsman where individuals could lay a complaint of violation of their fundamental rights. Each chamber of parliament also has a human rights committee tasked with drafting reports on bills that pertain to human rights. There is further, the National Council for Combating Discrimination (CNCD) which is an independent governmental agency under parliamentary control.

### 3.9.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

Civil protection in Romania is a component of the national security system and constitutes an integrated set of activities - organizational, technical, operative tasks of humanitarian and public information character, which are planned, organized and performed in accordance with the Law no. 481/2004 regarding civil protection. This law is meant to prevent and reduce the risks related to disaster occurrence, protection of population, goods and the environment against the adverse effects of emergencies, armed conflicts, and to operatively mitigate their consequences by ensuring the necessary conditions exist for the distressed persons.

Crisis management in the field of emergencies is coordinated at four levels, namely the national level, the county level/ the Bucharest Municipality level, the local level and the location

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274 The following laws are relevant for Civil Protection in Romania: LAW no. 481 of November 8, 2004 regarding civil protection, republished, with the subsequent amendments and supplementations; DECISION no. 547 of June 9, 2005 for the approval of the National Strategy for Civil Protection; DECISION no. 642 of June 29, 2005 for the approval of the Classification criteria of the administrative-territorial units, public institutions and economic agents in terms of civil protection, depending on particular types of risks; LAW no. 59 of April 11, 2016 regarding the control of major accident risks in which dangerous substances are involved; DECISION no. 2.288 of December 9, 2004 for the approval of the assignment of the main support functions provided by the ministries, other central bodies and the non-governmental organizations regarding the prevention and management of emergencies; DECISION no. 846 of August 11, 2010 for the approval of the National Strategy for Floods Risk Management on medium and long term; DECISION no. 1.854 of December 22, 2005 for the approval of the National Strategy for Floods Risk Management, ORDER no. 1.184 of February 6, 2006 Regarding the approval of the Rules for organizing and ensuring the evacuation activity during emergencies, ORDINANCE no. 88 of 30 August, 2001 on the establishment, organization and functioning of public services for emergency situations, LAW no. 575 of October 22, 2001 on the approval of the National Landscaping Plan - Section V of Natural risk areas Cross-border cooperation in disasters.

of the emergency level. At the National Level, the following agencies exist for crisis management emergencies:

I. The National Committee for Special Emergencies (“CNSSU“) within the National System for the Management of Emergencies (“SNMSU“).\(^{276}\)

II. The Operational Command Centre of the Government (“COCG“)/Government’s General Secretariat (SGG) which operationally subordinates all the central and local operatives and operational centres and the Operational Coordination Platform for supporting the decision-making process of the CNSSU.\(^{277}\)

III. The National Centre of Integrated Leadership (“CNCI“)/Ministry of Internal Affairs, as a decision-making support tool for the integrated coordination of the actions taken by the components of the ministry and for inter-institutional cooperation coordinating the following two centers:\(^{278}\)

- The National Centre for Response Coordination and Leadership (“CNCCI“).\(^{279}\)
- The National Centre for Monitoring the Operative Status (“CNMSO“)/Ministry of Internal Affairs for supporting the CNCI in managing the emergencies.\(^{280}\)

At the County level/the Bucharest Municipality level, there is the County Committee/Committee of the Bucharest Municipality for Emergencies which is supported in the decision-making process by the County Centre/Centre of the Bucharest Municipality for Response Coordination and Leadership.

At the Local level, there is the Local Committee for Emergencies, while at the Location of Emergencies level exists the Commander of the action/response, and the Advanced Operative Point.

It is also noteworthy that protecting life and physical integrity of persons affected in disaster situations is ensured by the Romanian Criminal Code. Art. 203 of the Criminal Code makes it an offence for anyone to fail to assist a person that needed help or to report to the authorities in circumstances where the person’s life, physical integrity or health is in danger and is not possible to save himself. In addition, Art. 204 of the Code provides that: “Preventing intervention of aid

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\(^{276}\) See the Government’s Decision no. 94/2014 regarding the organization, functioning and composition of the National Committee for Special Emergencies.

\(^{277}\) See the Government’s Decision no. 117/2014 regarding the organization and functioning of the Operational Command Centre of the Government.

\(^{278}\) See Decision no. 1/2015 of the CNSSU/Government of Romania regarding the adoption of the Single Response Concept in Special Situations given by the components of the Integrated Action System in Special Situations.

\(^{279}\) See Art. 1 of the Government’s Emergency Ordinance no. 1/2014 regarding certain measures in the field of emergencies management, as well as for the amendment and supplementation of the Government’s Emergency Ordinance no. 21/2004 regarding the National System for the Management of Emergencies.

\(^{280}\) See Decision no. 1/2015 of the CNSSU/Government of Romania regarding the adoption of the Single Response Concept in Special Situations given by the components of the Integrated Action System in Special Situations.
for rescuing a person from an imminent and serious danger to life, physical integrity or health, is punished with imprisonment from one to three years or a fine.”

Art. 20 of the Civil Protection Act no. 481/2004 contains extensive obligations for citizens which among other things obliged them to respect and apply the civil protection rules and regulations established by the central and local government authorities and the leaders of public institutions, economic agents or non-governmental organizations, as appropriate.\(^{281}\)

### 3.9.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

Articles 26-28 of the Romanian Constitution provide for the right of privacy. There is also LAW no. 677 of November 21, 2001, on the Protection of Individuals with regard to the Processing of Personal Data and the Free Movement of Such Data which implements the Data Protection Directive. Although no special provision is made in the data protection law for disasters, the right to data protection could be restricted as specified by law.\(^{282}\)

Art. 18 of the LAW no. 677 of November 21, 2001, makes provision for redress against violation of the right to data protection. It states:

(1) Without prejudice to the possibility of addressing the supervisory authority, the data subject has the right to refer to a court of law in defense of any rights, guaranteed by the present law, that have been infringed.

(2) Any person that has suffered prejudice as a consequence of unlawful processing of personal data may address a competent court of law in order to obtain compensation for the prejudice suffered.

Regarding cultural rights, Article 33 of the Constitution grants a right to access to culture. It provides that a person's freedom to develop his or her spirituality and to get access to the values of national and universal culture shall not be limited, and the state must preserve and protect cultural legacy among others. Law 489/2006 on the Freedom of Religion and the General Status of Denominations also provides that “Freedom of religion includes the right of every individual to have or embrace a religion, to manifest it individually or collectively, in public or in private, through practices and rituals specific to that denomination, including through religious education, as well as the freedom to preserve or change one’s religion.”\(^{283}\)

\(^{281}\) See Art. 20 of the Civil Protection Act no. 481/2004 for details of citizens’ obligations in civil protection.

\(^{282}\) See Art. 1(2) LAW no. 677 of November 21, 2001.

Also, the law on civil protection provides that the duties of civil protection include protection of the population, material goods, cultural values and archive, and the environment against the effects of disasters and armed conflicts.284

3.9.4. Compensation Mechanisms for Disaster Damage

Romania has a compulsory disaster insurance scheme, which does not foreclose other voluntary insurance. Under Law no. 260/2008,285 all individuals and legal entities are obliged to insure their dwellings against earthquakes, floods, and landslides, irrespective of whether those dwellings are located in urban or rural areas. The law was recently amended and supplemented Law no. 191/2015 which introduced some changes such that individuals and legal entities may take out voluntary insurance against natural disasters only after having obtained mandatory dwelling insurance.286 Goods placed inside the dwellings are excluded from mandatory coverage.

The Insurance Pool against Natural Disasters (PAID)287 is the insurance-reinsurance undertaking established in 2009, with private capital, formed by the association of 12 insurance companies for the conclusion of compulsory home insurance in accordance with the provisions of Law no. 260/2008. Policy Against Natural Disasters (PAD) will only cover damage resulting from the natural disasters up to either EUR 20,000 or EUR 10,000, depending on the type of property.288 The PAD insurance policy is compulsory and where natural or legal persons do not insure their owned dwellings, they shall not benefit, in the event of one of the natural disasters defined per Law 260/2008, of any indemnity from the state or local budget for damage to dwellings. Furthermore, failure by natural or legal persons to observe the obligation to insure the dwelling is an offence and is punishable with a fine from 100 to 500 lei.289 However, there seems to be a low patronage of this policy as a report indicates that only 17.25% of dwellings are insured as at the end of May 2015.290

The Civil Protection Act contains a minimum general framework for disaster damage compensation. Art. 18 of the Civil Protection Act provides:

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284 Art. 3 (1)(f) of Law 481/2004 on Civil Protection.
288 See Art. 5 Law no. 260/2008 on compulsory home insurance against earthquakes, landslides and floods.
(1) Citizens who have suffered damage due to the effects of a disaster or armed conflicts or following the execution of the intervention by the emergency services are entitled to emergency aid and compensation as appropriate.

(2) Compensation shall be granted upon written request of the damaged party, addressed to the mayor on the basis of the findings issued by the competent authorities and the ruling of the local council, the funds provided by local budgets for this purpose or those approved by Government decision.

Art. 19 further provides that voluntary emergency services personnel and citizens who participate in preventive and intervention actions to limit, recover and rehabilitate during emergencies shall receive monetary compensation, social rights and other facilities set out in the Volunteer staff regulations.

3.10. Serbia

3.10.1. National Fundamental Rights Frameworks and Disasters

Fundamental rights in Serbia are laid down in the Serbian Constitution from 2006. Precisely, Part II of the Constitution contains human and minority rights as follows:

1) Basic principles (Articles 18 – 22),
2) Human rights and Freedoms (Articles 23-74),
3) Minority rights (Articles 75-81).

The Constitution takes precedence over other legal acts and ratified international treaties and generally accepted rules of international law forms an integral part of the Serbian legal order.

Human and minority rights guaranteed by generally accepted rules of international law and ratified international treaties are directly applicable in Serbia.

In this respect, Serbia has ratified a number of UN documents on human rights such as the ICCPR and the ICESCR; UN Convention on the Rights of the Child, etc.

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292 Art 194 the Serbian Constitution.
293 Ratification of international treaties in Serbia falls within the competence of the National Assembly as stipulated in Art. 99 (4) the Serbian Constitution.
294 See Official Gazette SFRJ, No. 7/71.
Given that Serbia is a contracting party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (since 26th December 2003), its stipulations are directly applicable before Serbian authorities. Moreover, Serbia enforces decisions of the ECtHR and adjusts its legislation to the ECtHR jurisprudence. Serbia has not yet become a member of the EU. Therefore, the EU Charter on Fundamental Rights is not applicable in Serbia.

The Serbian Constitution does not expressly mention disaster, but referred to a state of emergency which could exist when the survival of the state or its citizens is threatened by a public danger (of which a disaster could be envisaged). Such state of emergency could lead to derogation from human and minority rights guaranteed by the Constitution. Emergency situations are governed by the special Law on Emergency Situations. Article 8 (1) of this Law includes disaster as one of the extraordinary situations that could lead to a state of emergency. The Law provides for a number of measures that could be taken during an emergency such as the citizens taking part in the rescuing operations as well as fulfilling their financial duties required for civil protection and other civil tasks. All capable citizens (men from 16 to 60 years old, and women from 16 to 55 years old) shall take part in performing protective and rescuing measures unless some health problems prevent them. Further, during extraordinary situations, citizens could be obliged to deliver immovable property, vehicles, machines, water, foods, medical equipment, medicines, clothes, etc. when rescuing needs require so. The government shall adopt regulations governing the citizen’s duty to hand over specific things and the remuneration which ought to be paid in return subject to the market prices.

Article 20 of the Constitution contains a general provision on the limitation of human and minority rights. In some specific articles, also, the Constitution envisages a possibility of limitation of rights. For instance, freedom of assembly may be restricted by the law only if necessary to protect public health, morals, and rights of others or the security of the Republic of Serbia. As well, the right of property may be revoked or restricted only in public interest established by the law and with compensation which cannot be less than market value. When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, the pertinence of restriction, nature and extent of restriction, the relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means.

296 Art. 200 of the Serbian Constitution.
299 See Art. 22. Pregnant women, mothers and single fathers with children under 15 are freed from the civil duties (Art 23).
300 Art. 24 Law on Emergency Situations.
301 Art. 54 of the Serbian Constitution.
302 Art. 58 of the Serbian Constitution.
The Constitution also provides a right to judicial protection when any of the human or minority rights are violated or denied. The citizens also have the right to address international institutions in order to protect their constitutional freedoms and rights. The Constitution further makes provision for a right to compensation for material or non-material damage inflicted by the unlawful or irregular act the state or entities exercising public powers. Everyone shall also enjoy a right to equal protection and legal remedy before courts and other state bodies, including the right to a (constitutional) appeal against any decision on his/her rights, obligations or lawful interests.

The media closely follows and regularly reports on the extraordinary situations. Within the Ministry of interiors there is a special department which is competent for extraordinary situations. Due to many extraordinary situations in recent years, the government has appointed a minister without portfolio in charge of emergency situations.

### 3.10.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

As mentioned earlier, Serbia adopted a special Law on Emergency Situations which relies on a set of principles for protection and rescue in emergency situations. These include: the principle of the right to protection; the principle of solidarity, the principle of transparency, the principle of prevention, principle of accountability, principle of incremental use of powers and means. These set of principles reflect conscious efforts at protecting certain fundamental rights which are important in disaster situations. For example, the right to protection principle provides: “Everyone has a right to be protected from catastrophes caused by natural and other disasters. Protection and rescue of human lives shall have priority over all other protection and rescue activities.”

The Principles of Transparence and Prevention Protection are equally notable in this regard.

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303 Art. 22 of the Serbian Constitution.
304 Art 35 of the Serbian Constitution.
305 See Arts 21, 170 of the Serbian Constitution.
306 There have been instances of declaration of emergency due to disasters. In May 2014, heavy floods led to such a declaration by government on the entire territory. A few municipalities on the South of Serbia recently declared emergency due to the heavy snow and extremely low temperatures.
307 Art. 5 of the Law on Emergency Situations.
308 Ibid.
309 Art 5(a) of the Law on Emergency Situations.
The Principles of Transparence: Data on dangers and activities of state agencies, agencies of autonomous provinces, local governments and other participants in protection and rescue activities shall be public.

State administration, agencies of autonomous provinces and local governments shall ensure for the population in the areas potentially affected by natural or other disasters, to be informed about the threat thereof.310

The Principles of Prevention and Protection: In ensuring protection from natural and other disasters, the state administration agencies, agencies of autonomous provinces, and local governments and other legal persons shall conduct preventive measures of protection as a matter of priority, in accordance with their respective mandates.311

Furthermore, it is foreseen that National Assembly will adopt a National Protection and Rescue Strategy,312 and there should be a Vulnerability Assessment for the Territory of the Republic of Serbia and the Plan for Protection and Rescue in Emergency Situations.313 There is a National Disaster Risk Management Program launched in March 2015.314

The Serbian civil protection framework is officially based on two main structures: the Civil Protection Sector of the Ministry of Defence and the Protection and Rescue Sector of the Ministry of Interior.315 The Protection and Rescue Sector include a Section for International Cooperation and Public Relations; a Training Centre; an Operational Centre 112; and three departments: Prevention, Firefighting and Rescue Units, and Emergency Situations. The Civil Protection operational forces are the firefighters, the Red Cross and the police, at Level 2 and Level 3, and the Army, in the case of severe emergencies at Level 1. The presidents of municipalities are the commanders of the local crisis committees, which have the authority to form ad hoc teams composed of personnel and means of the State Police, Fire Brigade, local institutions and local military structures.316

Serbia recently joined the EU Civil Protection Mechanism which offers a wide range of cooperation opportunities to Serbia such as European monitoring tools and early warning systems, joint trainings and exercises, exchange of experts, disaster prevention and preparedness projects, direct communication among the civil protection authorities of the members during

310 Art 5 (c) of the Law on Emergency Situations.
311 Art 5 (d) of the Law on Emergency Situations.
312 Art. 9 of the Law on Emergency Situations. There is a Strategy for emergency Management and civil protection for the period 2011 – 2016.
313 Art. 128 of the Law on Emergency Situations.
316 Ibid.
emergency response, information exchange and best practices, coordinated EU relief operations and transport co-funding.317

The Ministry of Interiors — Department for Emergency Situations in cooperation with OEBS has also published a 40-page manual Family Guideline on How to Behave During Emergency Situations.318 It is a very useful booklet, depicted with many photos and useful advice. Nevertheless, the Guideline rather provides advice on how to react in emergency situations and not how to protect human rights per se.

3.10.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

The Serbian Constitution guarantees the right protection to the protection of personal data and prohibits the use of personal data other than the purpose for which it is collected unless it is necessary for criminal proceedings or for protecting public safety in a manner stipulated by the law.319 Data Protection is also regulated by the Law on the Protection of Personal Data.320 Although this Law does not explicitly make provision for data protection during emergency situations, it nevertheless provides a limited number of exceptions to the general rule for obtaining consent for the processing of personal data, including for the realisation or protection of vital interests of the subject or third party, such as life, health and physical integrity, as well as for the purpose of execution of obligations prescribed by a statute, among others.321 Furthermore, government organs could process personal data without consent if it is necessary to realise their legal tasks for national or public security, protection of health and moral, etc.322 Processing data in disaster situations could have a basis from these provisions.

The Law also provides various rights to the data subjects323 and gave several enforcement powers to the Serbian Commissioner for Information of Public Importance and Personal Data Protection.324 Among others, data subjects have a right to lodge complaints to the DPA for any

319 Art. 42 of the Serbian Constitution.
320 Official Gazette of the RS", br. 97/2008, 104/2009, 68/2012. Note that the government has passed a Strategy on Personal Data Protection (adopted 16 August 2010) which creates assumptions for compliance with the country’s international commitments regarding legislative harmonization with acquis communitairew and performance of obligations arising from the Council of Europe membership.
321 Art. 12 of the Law on the Protection of Personal Data.
322 Art. 13 of the Law on the Protection of Personal Data.
323 Arts. 19-26 of the Law on the Protection of Personal Data.
violation of their rights and the Commission shall rule on such complaints. The DPA can also initiate misdemeanour proceedings against a data controller who carries out any of the 17 prohibited acts or omissions explicitly listed in Article 57 of the Law.

Regarding cultural rights and disasters, the Serbian Constitution contains several provisions that relate to the manifestation of cultural rights including among others: freedom of thought, conscience and religion,\textsuperscript{325} promotion of respect for diversity,\textsuperscript{326} prohibition of inciting racial, ethnic and religious hatred.\textsuperscript{327} Similarly, the Law on Emergency Situations made several references to the safeguarding of cultural goods. Article 92 of the Law, for example, provides among others, the need for special protection of cultural property and property of a historical importance. Article 103 stipulates that during the assessment and early warning phase of the emergency situation, all the threats to the cultural property need to be reported.

There are also other laws in the field of cultural property such as the Law on Cultural Property,\textsuperscript{328} the Law on Culture,\textsuperscript{329} the Law on the restoration of cultural-historical heritage, and the boosting of the development of Sremski Karlovci.\textsuperscript{330} Serbia has also ratified several international instrument that relate to culture including the UNESCO Convention for the protection of cultural property in the event of armed conflict (1954), among others.\textsuperscript{331}

\textbf{3.10.4. Compensation Mechanisms for Disaster Damage}

Insurance schemes for natural disaster risks are available in Serbia but not mandatory to take up a property catastrophe risk insurance. It is only on a voluntary initiative that such schemes are undertaken by both citizens and government institutions.\textsuperscript{332} Disaster insurance is not widespread in Serbia. Rather, disaster risk financing is largely a government effort which are structured both ex ante and ex post disaster. For example, the government has a contingency budget reserve emergency situations, as well as a reserve budget for compensation for damage caused by natural disasters which various governmental institutions could have.\textsuperscript{333} Ex post instruments for disaster financing include budget reallocation, donations, and debt financing. In 2014, following a

\textsuperscript{325} Art. 43 of the Serbian Constitution.
\textsuperscript{326} Art. 48 of the Serbian Constitution.
\textsuperscript{327} Art. 49 of the Serbian Constitution.
\textsuperscript{328} Official Gazette No. 71/94, 52/201199/2011.
\textsuperscript{329} Official Gazette No 71/09.
\textsuperscript{330} Official Gazette No 37/91, 53/93, 67/93 and 48/94.
\textsuperscript{332} Global Facility for Disaster Reduction and Recovery (GFDRR) Disaster Risk Finance Country Note: Serbia (April 2016), p 15-23.
\textsuperscript{333} Ibid.
devastating flood, the EU and other international donors, for instance, contributed to the Serbian Reconstruction and Flood Relief Scheme.\textsuperscript{334}

### 3.11. Spain

#### 3.11.1. National Fundamental Rights Frameworks and Disasters

The Spanish Constitution contains provision on fundamental rights.\textsuperscript{335} These rights are essentially ensured through the insertion a catalogue of rights and freedoms in the Constitution\textsuperscript{336} and through the establishment and provision of mechanisms to guarantee them by the Ordinary Jurisdiction and Constitutional Jurisdiction of the courts. The Spanish Constitution equally provides that “Provisions relating to the fundamental rights and liberties recognised by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.”\textsuperscript{337}

Although no special rights for disaster situation are included in the Spanish Constitution, it nevertheless contains a provision that “The duties of citizens in the event of serious risk, catastrophe or public calamity may be regulated by law.”\textsuperscript{338} The Constitution does not contain a precept in which it explicitly covers the limits of fundamental rights in a strict sense. However, it is necessary to note that on certain occasions the constitutional precepts themselves establish limits to rights, either in the same precept as the law, or elsewhere in the Constitution. The Constitutional Court has decided in different decisions (SSTC 11/81, 2/82, 110/84 or 120/90, among others), that “all rights have their limits, and in relation to fundamental rights, the limits are established within the Constitution...” In any case, it should be noted that the Constitution in Section 55 contains a provision for the suspension of rights during a state of emergency.

Citizens have the right to bring an action for the enforcement of their fundamental rights in Spain. The right to effective judicial protection includes the possibility of obtaining from the courts the guardianship of legitimate rights and interests. The aim is to offer every citizen the possibility of reacting to violations of their rights. When the right violated is a recognised right (see Section 1


\textsuperscript{336} See Part I of the Spanish Constitution.

\textsuperscript{337} Art. 10(2) of the Spanish Constitution.

\textsuperscript{338} Art. 30 (4) of the Spanish Constitution.
of Chapter II, in the Articles 14 and 30.2), the Constitution provides for an extraordinary system of protection based on preference and summary, called a “unconstitutionality issue” and “appeal of unconstitutionality”, by means of which a rule can be declared unconstitutional if it violates the rights recognized in the Constitution. It also creates the figure of the Ombudsman who has as its specific mission the protection and defense of human rights. There is also a subsidiary and last means of guarantee, the “appeal of amparo” in the Constitutional Court.

Further, different non-governmental organizations (NGOs) and international institutions are responsible for observing respect for human rights in the Spanish State. Such organizations include the Organization for Security and Cooperation in Europe (OSCE), UN control bodies, International Amnesty, Oxfam Intermon and a long list of NGOs that monitor and report on what they consider to be violations of human rights.

3.11.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

Civil Protection in Spain is regulated by several legal instruments.\(^ {339}\) Firstly, the Spanish Constitution adopts a diversified or plural model for declaring emergency rule into three specific situations: “state of alarm,” “state of emergency,” and “state of siege” (or martial law). However, the Constitution does not define the causes for which emergency rule may be declared, leaving this tasks to organic legislation.\(^ {340}\)

Importantly, Act 2/1985 on Civil Protection regulates the measures that can be taken by public authorities in emergencies. The law defines civil protection broadly.\(^ {341}\) It is mainly a peacetime activity conducted by civil authorities and institutionally placed under the Ministry of the Interior of which the Directorate-General for Civil Protection and Emergency exercises the powers of the Ministry in civil protection matters. It also establishes a general duty of cooperation of citizens that may involve an obligation to perform personal services upon request by the competent authority.

There is also the Royal Decree 407/1992 on Civil Protection Basic Rule which specifies responsibilities of and cooperation among all administrative levels involved in civil protection. It

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\(^ {339}\) See for instance: Law 2/1985 on Civil Protection; Royal Decree 1378/1985, on provisional measures for action in emergency situations in cases of serious risk, catastrophe or public calamity; Royal Decree 407/1992 approving the Basic Rule of Civil Protection; Self-protection Basic Rule of the centres, institutions and agencies devoted to activities that may give rise to emergency situations (BOE 24th of March of 2007), modified by Royal Decree 1468/2008, of 5th of September; Royal Decree 307/2005, of 18th of March, regulating the grants to disaster situations and the procedure for granting.

\(^ {340}\) The Organic Law 4/ 1981 defines these emergency situations.

contains the essential guidelines for civil protection plans (territorial and special). In addition, Law 17 / 2015, of 9 July, on the System of National Civil Protection provides for the operative intervention of the State during emergencies and focuses mainly on cases of emergency of national interest as defined by the Law.\textsuperscript{342} It imposes on the State the obligation to provide the human and material resources for civil protection to the Autonomous Communities and Local Authorities. Significantly, further to this criterion of reciprocity, the State is obligated not leave unattended any risky situation which can affect a part of the population, even if other Administrations are competent to deal with it.

The organizational structure of the Spanish civil protection system reflects the three basic levels of the Public Administrations: State level; Autonomous Communities level and Local level, and each of these levels of intervention has its civil protection structure within its jurisdiction.\textsuperscript{343} At the State level is the National Civil Protection System which is made up of the Minister of Interior (the Director General of Civil Protection and Emergencies), Delegations and Sub-delegations of the government, and Civil Protection Units. For the coordinated adoption of specific policies in this area, there is the National Civil Protection Commission. At the Autonomous Communities level, there is the Proficient Council in Civil Protection, Proficient General Direction, and the Territorial institutions (if they exist). There is also an Autonomous Commission of Civil Protection. At the Local level, there is the Civil Protection Town Councilor and the Civil Protection Municipal Services.

Regarding the fundamental rights element of civil protection in Spain, it is important to note that the Civil Protection System is conceived as an instrument of public security and it is integrated into the National Security Policy. This could find legal basis within the Constitution (Art. 15) which obligates public powers to guarantee the right to life and physical integrity as the first and the most important fundamental right.\textsuperscript{344} It should also be noted that the permanent action of the public authorities in the area of civil protection is oriented towards the study and prevention of situations of grave risk, catastrophe or public calamity, and the protection and relief of persons and properties in situations where the safety and life of people could be endangered.

3.11.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

The Spanish Constitution guarantees the protection of personal and family privacy in Art 18 (4) which provides that "The law will limit the use of information technology to guarantee the honor
and personal and family privacy of citizens and the full exercise of their rights." Furthermore, the Organic Law 15/1999, of December 13, on Protection of Personal Data,\(^{345}\) has developed this right as well as implements the Directive 95/46 EC. Royal Decree 1720/2007\(^{346}\) is ancillary to Organic Law 15/1999 and sets out security measures for personal data and further regulation. There is also the Organic Law 1/1982, on 5th May, regarding the civil protection of the right to honor, to personal and familiar intimacy and to the own image which implements Article 18(1) of the Constitution.\(^{347}\) Furthermore, Title X of the Criminal Code is important in relation to privacy rights.\(^{348}\)

There is no specific provision on disaster in the data protection laws, but the Royal Decree provides that “The exercise of the rights of access, rectification, erasure and objection may be modulated for reasons of public safety in the cases and within the scope provided by law.”\(^{349}\) And the general limitation of such rights is provided for in the Constitution.\(^{350}\)

The Organic Law 15/1999 establishes the Spanish Data Protection Authority (DPA), which is in-charge of supervising the application of the regulations on data protection. There are also regional data protection authorities with competencies limited to the processing of personal data by the regional public sector.\(^{351}\) Privacy infringements are claimed before the (civil or criminal) courts.

Regarding cultural rights, the Spanish Constitution contains numerous references to culture. For example, in the Preamble to the Constitution, it is stated that the Spanish Nation proclaims its will to “Protect all Spaniards and peoples of Spain in the exercise of human rights, of their culture and traditions, languages and institutions. Promote the progress of culture and the economy to ensure a dignified quality of life for all.” Various articles in the substantive part of the Constitution also refer to culture. Art. 9.2 provides that “It is incumbent upon the public authorities to promote conditions which ensure that the freedom and equality of individuals and of the groups to which they belong may be real and effective, to remove the obstacles which prevent or hinder their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.” Another nucleus of the concept of culture in the Constitution is in Article 20 (1)(b) about the artistic, literary, scientific and technical areas, which are manifestations of culture. Article 44 also creates obligations for public authorities to promote and protect access to culture.

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\(^{348}\) Ibid. See Arts. 197 to 204 of Criminal code.

\(^{349}\) Art. 25 (7) Royal Decree 1720/2007.

\(^{350}\) Art. 53(1) of the Spanish Constitution.

and promote science and research. This provision is more than recognition of the principle of cultural freedom since it entails public activity to promote cultural and scientific development.

Under Article 46, “The public authorities shall guarantee the preservation and promote the enrichment of the historical, cultural and artistic heritage of the peoples of Spain and of the property of which it consists […] Offences committed against this heritage shall be punished under criminal law.” The public authorities shall also promote conditions directed towards cultural development\textsuperscript{352} as well as promote the welfare of old people through a system of social services that addresses their cultural needs among others.\textsuperscript{353}

In general, the Spanish Constitution has a triple legal treatment of culture: (i) freedom (creation, teaching, manifestation of the different ways in which cultural phenomena appear), (ii) diversity (recognition and coexistence of Different cultures) and (iii) promotional activity (aimed at facilitating access and enjoyment of what is a right).

It is noteworthy that the guarantees of the right to culture in accordance with Article 53(3) are based on: (i) the principle of finalist linkage of the activity of the public powers and (ii) the impossibility of immediate demand of the same before judges and courts. That entails that while substantive legislation, judicial practices and actions of the public authorities shall recognise, respect and protect the principles recognized in Chapter Three of the Constitution (including aspects of cultural rights), they may only be invoked in the ordinary courts in the context of the legal provisions by which they are developed.

Furthermore, by virtue of Article 10(2) of the Constitution, the interpretation of fundamental rights shall be in conformity with the Universal Declaration of Human Rights and the international treaties and agreements which Spain has ratified. In the context of cultural rights, these include Article 27 of the International Covenant on Civil and Political Rights (which recognizes the right of minorities to have their own cultural life) and Article 15(a) of the International Covenant on Economic, Social and Cultural Rights (which recognizes the right of everyone to participate in cultural life). There are also specific Spanish laws, which regulates cultural events, scientific and research activities such as National Spanish Law 14/2011, of June 1st, on Science, Technology, and Innovation.

### 3.11.4. Compensation Mechanisms for Disaster Damage

Although the purchase of insurance is optional in Spain, “extraordinary risks” cover is a compulsory component of all insurance policies in certain lines:

\textsuperscript{352} Art 48 of the Spanish Constitution.

\textsuperscript{353} Art. 50 of the Spanish Constitution.
• In insurance against damages: fires and natural events, land vehicles (damages to the vehicle in any case, and from July, 2016, also the insurance policies that cover only legal liability), railway vehicles, other damages to the goods (theft, breakage of windows, damages to machinery, electronic equipment and computers), sundry financial losses and combined modalities of the above.

• In personal insurance: life and accidents, although these covers are contracted in a complementary way to another type of insurance or within the framework of a pension plan.354

Thus, all the policies issued by private companies in the above-mentioned lines must compensate for extraordinary events which include: natural catastrophes (currently: earthquake and sease, volcanic eruption, flood, windstorm, falling of meteorites) and socio-political risks (terrorism, riots, civil commotion, rebellion, actions by army and security forces in peacetime).355

The Consorcio de Compensación de Seguros (CCS)356 is responsible for coverage of extraordinary risks. Founded in 1941, following the Spanish Civil War, its main role is to indemnify Spanish insurance companies against claims arising from unpredictable events including natural disasters. It became a permanent state-run, private-public partnership in 1954 providing nationwide, state-guaranteed cover for extraordinary risks.357 Since the approval of its Charter in 1990, CCS lost its legal monopoly for covering extraordinary risks and it is no longer a self-running body of the Ministry of Economy and Finance, but a state-owned company - currently a public business entity governed by a board of directors with members from government and the private insurance market.358

All extraordinary risks can legally be covered by private insurance companies. Otherwise, the CCS will automatically take charge of the guarantee. In practice, the private market does not directly cover those risks. Thus, CCS is the direct insurer. CCS also acts as a guarantee fund when a private insurer, having assumed the coverage of an extraordinary risk can no longer fulfil its obligations, such as following bankruptcy.359

To finance the “extraordinary risk” coverage, a compulsory surcharge is applied on the amount insured of every policy in the aforementioned lines of insurance. This surcharge, which tariff only varies depending on the type of exposure (dwellings, offices, shops, factories, docks, cars, etc., as

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357 OECD, Financial Management in Large-scale Catastrophes, 92.
358 Ibid.
well as persons), is collected by the companies together with their premiums and then reimbursed to the CCS in monthly bases.\textsuperscript{360} CCS is supported by an unlimited State guarantee if the losses are above its ability of payments, but it has never been used so far, and its resources to meet its duties are independent of the State budget.

A number of laws regulate the granting of aids or compensations to citizens affected by different catastrophic situations in Spain.\textsuperscript{361} By virtue of the Royal Decree 307/2005, the beneficiaries of disaster aids can be: the families or economic cohabitation units suffering personal or material damages; the local corporations that have a shortage of resources to face the expenses derived from actions in situations of serious risk or catastrophic nature; the natural or legal persons who, required by the competent authority, have carried out a personal or property allowance because of an emergency situation, among others.\textsuperscript{362} Law 17/2015 about Civil Protection also includes certain criteria for disaster compensation.\textsuperscript{363}

### 3.12. The United Kingdom

#### 3.12.1. National Fundamental Rights Frameworks and Disasters

The UK does not operate under a single written constitution; rather, its constitution is found in a number of sources such as case law, statute, and practice. The UK expert respondent indicates that since the enactment of the HRA, the most important source of fundamental rights in the UK is the European Convention on Human Rights (ECHR), which the HRA incorporates into UK domestic law. Notably, Section 3 of the Act requires that the interpretation of primary and subordinate legislation be compatible with and give effect to the ECHR. UK public bodies, when carrying out their functions, are required to act in compliance with Convention rights.\textsuperscript{364} The Act does not grant any specific rights in disaster or emergency situations.

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\textsuperscript{360} Ibid.

\textsuperscript{361} See Law 38/2003, of November 17, General of Subsidies (BOE No. 276, of November 18); Law 48/2015, of October 29, of the State General Budgets for 2016 (additional provision eighty-fourth), on determination of the public multi-effect income indicator (IPREM) for 2016 (BOE No. 260, of 30 Of October); Order INT/277/2008, of 31 January, implementing Royal Decree 307/2005, of 18 March, regulating subsidies in response to certain needs arising from emergency situations or nature catastrophic and establishes the procedure for its concession (BOE No. 37, of February 12); Royal Decree 307/2005, of 18 March, regulating aids in order to response to certain needs arising from emergency or catastrophic situations, and establishing the procedure for granting them (BOE No. 67 of 19 of March).

\textsuperscript{362} See Art. 5, Royal Decree 307/2005.

\textsuperscript{363} See Art. 24 Law 17/2015 about Civil Protection.

\textsuperscript{364} See Sec. 6 of the Human Rights Act.
Another important human rights statute in the UK’s human rights framework is the Equality Act 2010.\textsuperscript{365} The purpose of the Act is to require public bodies:

To have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics; to enable certain employers to be required to publish information about the differences in pay between male and female employees; to prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct; to enable duties to be imposed in relation to the exercise of public procurement functions; to increase equality of opportunity; to amend the law relating to rights and responsibilities in family relationships; and for connected purposes.\textsuperscript{366}

The Equality and Human Rights Commission (EHRC), receiving its mandate from the Equality Act to ensure that government policies and actors are mindful of the duty of non-discrimination, has identified two sets of non-discrimination duties during emergency situations: the first relates to the duty of providers of services such as health and housing.\textsuperscript{367} Under those duties, service providers must be mindful of the right to non-discrimination with regard to the availability of the service, its quality, and the conditions under which it is provided.\textsuperscript{368} The second set of duties relates to the public sector bodies in general which also need to give due regard to the principle of non-discrimination when carrying out their duties.\textsuperscript{369}

Since 2009 the Charter of Fundamental Rights of the EU has also been a source of fundamental rights in the UK.\textsuperscript{370} EU fundamental rights are incorporated into domestic law in the UK via the

\textsuperscript{365} Available at: \url{http://www.legislation.gov.uk/ukpga/2010/15/contents} accessed 24 July 2016.

\textsuperscript{366} Equality Act 2010, Preamble.

\textsuperscript{367} Institute of International and Comparative Law, \textit{Analysis of Law in the United Kingdom pertaining to Cross-Border Disaster Relief} (30 June 2010), p. 73, \url{http://www.ifrc.org/PageFiles/93649/idrl-uk-cross-border-analysis-0810.pdf} accessed 24 July 2016.

\textsuperscript{368} Ibid.

\textsuperscript{369} Ibid.

\textsuperscript{370} It is worth noting that the applicability of the Charter of Fundamental Rights of the EU in the UK has been a controversial issue, because of the Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom (Protocol (No 30) \url{http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0156:0157:EN:PDF}, which gives an impression that the UK has opted out from the application of the Charter. However, the House of Commons European Scrutiny Committee has confirmed the limited application of the Charter in the UK in the following paragraphs of its report “The application of the EU Charter of Fundamental Rights in the UK: a state of confusion”: Some misunderstanding about the Charter is inevitable — it operates in a complex way, and Protocol 30 is deceptive in looking to a non-lawyer as if it provides an opt-out, when it does not [...]. With a legal status equal to the EU Treaties, the Charter is directly effective in the UK by virtue of Section 2(1) of the European Communities Act 1972. The rights it contains have supremacy over inconsistent national law or decisions of public authorities, by virtue of sections 2(4) and 3(1) of the same Act.
European Communities Act 1972, which requires UK courts to give effect to EU law. However, as a result of the recent ‘Brexit’ decision, this source is likely to cease to apply after the UK leaves the EU.

UK is also party to a number of international human rights declarations and treaties such the UN UDHR; ICCPR; ICESCR; etc.\(^{371}\) UK’s approach to the relationship between the national law and international law, such as international human rights law, is characterized as dualist.\(^{372}\) That is, international law does not have a direct effect before the UK courts until it is transformed into national law by means of national legislation. As a result, individuals will eventually base their claims before the UK courts on national law rather than international law.\(^{373}\)

In the UK, derogation from the human rights obligations during emergency situations is possible by virtue of section 14 of the HRA. Also, placing a reservation on individuals’ human rights and freedoms provisions under the ECHR is possible by virtue of section 15 of the HRA. Thus, any of the human rights and freedoms articulated in the HRA can be subject to a designated derogation or reservation.\(^{374}\) It is worth noting that the power to derogate from human rights or to place reservations on them during an emergency is consistent with the ECHR. Article 15 of the ECHR authorizes member states to derogate from their obligations toward the rights and freedoms in the Convention, in “time of war or other public emergency threatening the life of the nation [...]

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371 It is a party to other UN core international human rights instruments such as the Convention Against Torture (UNCAT), the Convention on the Elimination of all forms of Racial Discrimination (CERD), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (UNCRC), the Convention on the Rights of Persons with Disabilities (UNCRPD).

372 The other approach to the relationship between national and international law is the monist approach. For further discussion of those approaches see generally J.G. Starke, “Monism and Dualism in the Theory of International Law” (1936) 17 Brit. Y.B. Int'l L. 66.


to the extent strictly required by the exigencies of the situation [...], except the rights protected under articles 2, 3, 4, and 7, or subject such rights and freedoms to reservations.

Under the Civil Contingencies Act 2004, the powers to limit human rights and freedoms during a state of emergency are broad. Section 22(1) provides: “[e]mergency regulations may make any provision which the person making the regulations is satisfied is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made.” However, such emergency regulations need to be compatible with ECHR rights, as incorporated by the HRA.

Enforcement of human rights during emergency situations can take place through two main paths: via the mechanisms of the HRA or that of the Equality Act depending on what is at stake. Under section 7 of the HAR, any person with standing (defined by reference to Article 34 ECHR) may bring an action in the ordinary domestic courts against a public authority which has acted or proposes to act in such a Convention-contravening manner. Where the court finds that the authority has breached the individual’s ECHR rights, section 8 provides that it may "grant such relief or remedy, or make such order, within its powers as it considers just and appropriate." In doing so, it is expressly required to take account of the principles applied by the European Court of Human Rights when awarding damages under Article 41 ECHR.375

More generally, section 3(1) HRA requires the UK courts themselves to interpret legislation (including that on which the public authority may purport to rely) so far as possible in a manner compatible with ECHR rights. In (the relatively rare) cases where this is not possible, the court may issue a "declaration of incompatibility." The effect of this is not to invalidate the legislation (which would contradict the UK constitutional principle of ‘the sovereignty of Parliament’), but it will open the way to the amendment of the legislation by a special fast-track procedure under section 10 HRA.

Under the Equality Act 2010, the Equality and Human Rights Commission (EHRC) has investigative powers with regard to discrimination claims, can seek judicial orders to stop discriminatory actions, and can initiate judicial review proceedings.376

An example of a judicial decision on nuclear radiation from the UK is the case of L.C.B. v. The United Kingdom.377 The applicant was born to a father who had been exposed to dangerous nuclear radiation, during nuclear tests, while serving in the Royal Air Force at Christmas Island in the Pacific Ocean in the 1950s. She was diagnosed with leukaemia in 1970 and, thus, complained that the failure of the authorities to warn her parents about the possible impact on her health of nuclear radiation was in breach of their ECHR rights.

375 Sec. 8(4) HRA 1998.
the exposure of her father to the nuclear radiation amounted to a violation of her right to life protected by Art. 2 of the ECHR. The European Court of Human Rights held that there was no violation of Art. 2, stating:

In conclusion, the Court does not find it established that, given the information available to the State at the relevant time [...] concerning the likelihood of the applicant’s father having been exposed to dangerous levels of radiation and of this having created a risk to her health, it could have been expected to act on its own motion to notify her parents of these matters or to take any other special action in relation to her.378

3.12.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

As stated earlier, the UK’s legislative framework for the civil protection and combating disasters is contained in the Civil Contingencies Act (CCA) 2004 and its implementing regulations and guidance. The CCA governs local arrangements for the civil protection and emergency powers. It requires the responsible authorities to take the necessary measures to respond to emergencies, to collaborate with each other in carrying out their duties under the Act, and to fulfill those duties during emergencies. In addition, the Civil Contingencies Act 2004 enables the government to expedite legislation when this is necessary during emergencies.

The level of emergency - based on their severity, nature, and location, dictates which entity is to respond to it. The Civil Contingencies Secretariat (CCS) within the Cabinet Office plays a significant role in the coordination of disaster response among responsible government departments. In the event of a catastrophic or serious emergency, the Prime Minister, Home Secretary or other senior Ministers will direct the central government response from the Cabinet Office Briefing Room. All serious emergencies will be handled by one lead government department or devolved administration taking overall responsibility. Most response coordination is managed at the local level by local and regional resilience forums and local authorities. There is also the potential involvement of the military, the National Red Cross Society and other voluntary organisations and the private sector.

The Civil Contingencies Act 2004 guarantees to the public a set of rights, such as the right to receive a warning, advice, and assistance. For example, section 2 requires local authorities and emergency and health services to: regularly assess the likelihood of an emergency occurring;379 have plans on how to prevent an emergency or reduce, mitigate or control its effect;380 take measures to warn the public about an emergency and provide them with information and advice.

378 Ibid.
379 Sec. 2(1)(a) of the Civil Contingencies Act 2004.
380 Sec. 2(1)(d) of the Civil Contingencies Act 2004.
when an emergency may occur or has already occurred. Furthermore, section 4(1) requires county councils to “provide advice and assistance to the public in connection with the making of arrangements for the continuance of commercial activities by the public, or the continuance of the activities of bodies other than public or local authorities whose activities are not carried on for profit, in the event of an emergency.”


Relevant emergency response and recovery guidelines include “Emergency Response and Recovery: Non-statutory guidance accompanying the Civil Contingencies Act 2004.” According to this document, the main objectives for the UK government response in emergency situations are to: “protect human life and, as far as possible, property, and alleviate suffering; support the continuity of everyday activity and the restoration of disrupted services at the earliest opportunity; and uphold the rule of law and the democratic process.”

3.12.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

During an emergency, responders may need to collect and share information of a personal nature. The UK framework for the protection of personal data in processing during such situation mainly consists of the Data Protection Act 1998, the Civil Contingencies Act 2004 and the HRA. While this legislative framework does not provide specific exemptions for information sharing in an emergency, the current guidance indicates that the legislation has sufficient flexibility to enable the exchange of information as may be required. It is important to note that since the Data Protection Act does not include an exemption relating to cases of disasters and emergencies,

381 Sec. 2(1)(g) of the Civil Contingencies Act 2004.
384 Ibid, p. 188.
processing personal data in emergency situations must comply with the eight principles of data protection.\textsuperscript{385}

It is also worth noting that Section 1 of the HRA incorporates by reference Article 8 of the ECHR relating to the “right to respect for private and family life.” Of course, legitimate interference with this right is possible when the conditions provided in Article 8(2) are met, specifically, when the interference is “in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Finally, the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 include provisions relating to information sharing.\textsuperscript{386} Under those provisions receiving responders have a duty to share information (including personal data) with requesting responders unless they are satisfied that sharing the information would likely adversely affect the confidentiality of the data.\textsuperscript{387} It is worth emphasizing that the receiving responders remain required to abide by the data protection principles.\textsuperscript{388}

The UK’s legal system also includes some safeguards with respect to disasters. For instance, the Department for Business, Innovation and Skills (BIS) is responsible for coordinating the telecommunications and postal services to ensure that proper plans are in place to respond to emergency situations.\textsuperscript{389} Further, the National Resilience Capability Programme (NRCP) is in charge of maintaining and developing the UK’s capability in maintaining resilient telecommunications.\textsuperscript{390} Moreover, the Civil Contingencies Act (2004) includes as a second responder, within the meaning of the Act, “[a] person who provides a public electronic communications network which makes telephone services available (whether for spoken communication or the transmission of data).”\textsuperscript{391} Therefore, as a second responder, telecommunication organizations are subject to the same data protection principles that are applicable to the other responders.

\textsuperscript{385} See generally British Institute of International and Comparative Law, Analysis of Law in the United Kingdom pertaining to Cross-Border Disaster Relief (30 June 2010) http://www.ifrc.org/PageFiles/93649/idrl-uk-cross-border-analysis-0810.pdf, p. 44.


\textsuperscript{387} Sec. 49 of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (No. 2042).

\textsuperscript{388} British Institute of International and Comparative Law, Op cit.


\textsuperscript{390} Ibid, 48.

\textsuperscript{391} Civil Contingencies Act 2004, Schedule 1, Part 3.
Similarly, important, Section 132 of the Communication Act 2003 authorizes the Secretary of State to order the suspension or restriction of electronic communications for the purpose of public safety or national security.\textsuperscript{392}

With respect to cultural rights, under the UK’s human rights framework, there is no specific treatment for the protection of cultural rights during disasters. In fact, according to the response from the UK, the treatment of economic, social, and cultural rights (ESCR) in general in the UK has not been very favourable, because the UK views this set of human rights as mere “objectives” and “principles” rather than justiciable rights. The Committee on Economic, Social and Cultural Rights (the UN body supervising the implementation of the ICESCR) criticized this approach as follows:

The Committee deeply regrets that, although the State party has adopted a certain number of laws in the area of economic, social and cultural rights, the Covenant has still not been incorporated in the domestic legal order and that there is no intention by the State party to do so in the near future. The Committee reiterates its concern about the State party’s position that the provisions of the Covenant, with minor exceptions, constitute principles and programmatic objectives rather than legal obligations that are justiciable, and that consequently they cannot be given direct legislative effect (see paragraph 10 of the Committee’s concluding observations of December 1997 (E/C.12/1/Add.19)).\textsuperscript{393}

The above remark is not to say that the UK provides no protection to ESCR at all. In fact, the HRA protects the human rights to property and the human right to education, which in fact both have strong civil and political rights facets. Otherwise, the legislative and policy approach of the UK toward the protection and promotion of ESCR does not pursue incorporation but is programmatic.\textsuperscript{394}

For instance, the Civil Contingencies Act 2004 stresses the need for authorities that have been allocated responsibility as ‘responders’ (requiring them to prepare a contingency plan to execute in case of a disaster), to have regard - when formulating their plan - to the needs of all members of the population they serve, including members of vulnerable and minority groups. To meet this obligation, authorities should carry out a ‘community’ or ‘equality’ impact assessment. For example, government guidance on evacuation and shelter requires emergency planners to

\textsuperscript{392} See generally British Institute of International and Comparative Law, op cit, p. 58.
consider individuals or groups who may have special requirements. These could be e.g. dietary (halal food) cultural (unisex facilities) or religious (need for prayer facilities).  

3.12.4. Compensation Mechanisms for Disaster Damage

There is no mandatory insurance policy against disasters in the UK. The general trend has been for individualized solutions, and “there is a strong tradition of the state distancing itself from compensation payments.” However, an injured party during an emergency can seek compensation from any government department when this has grounds in a breach of contract or a breach of a duty of care under the common law. The Crown Proceedings Act 1947 establishes that the Crown can incur contractual or tortious liability.

3.13. Ukraine

3.13.1. National Fundamental Rights Frameworks and Disasters

Ukraine has a constitutional framework for the protection of fundamental rights and freedoms. Importantly, the expert respondent for Ukraine pointed out that Constitution provides that human and citizens’ rights and freedoms affirmed by the Constitution are not exhaustive, and the content and scope of the existing rights and freedoms shall not be diminished by an adoption of new laws or by introducing amendments to the effective laws.

The Constitution of Ukraine provides for both civil and political rights as well as economic and social rights such as the right to life, the right to health, the right to human dignity, the right to social security, and other rights that are important in disaster situations. With respect to disasters,

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396 See, Michael Huber and Tola Amodu, “UNITED KINGDOM”, in Michael Faure and Ton Hartlief (eds.), Financial Compensation for Victims of Catastrophes. A Comparative Legal Approach, (Wien: Springer-Verlag, 2006) 261. The authors however cited some examples of publicly financed compensation funds such as in the context of IRA-terrorism and the minor economic support for communities (not individuals) after catastrophes that has been established in the Bellwin scheme. See page 262.


Article 16 of the Constitution recognises the Chernobyl disaster as a catastrophe of global scale and provides that ensuring environmental safety, maintaining ecological balance in the territory of Ukraine, overcoming the aftermath of the Chernobyl catastrophe and preserving the gene pool of the Ukrainian people shall be a duty of the State.

Also, international human rights treaties that have been ratified by the Parliament of Ukraine become part of the national law and are binding on the territory of Ukraine by virtue of Article 9 of the Constitution. As a member of the United Nations and the Council of Europe, Ukraine is signatory to a number of human rights declarations and treaties such as the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention on Human Rights and the European Social Charter.

As regards the interaction and possible contradictions between the international treaties and the Ukrainian Constitution, Article 9 (2) of the Constitution provides that conclusion of international treaties, which contradict the Constitution of Ukraine, shall be possible only after introducing relevant changes into the Constitution of Ukraine. However, Ukraine recognises the priority of international agreements over national laws. This principle is established by Article 19 (2) Law “On the International Agreements of Ukraine. It provides that if an international agreement, ratified by Ukraine, provides for rules that are different from those which are foreseen by the national law, the rules of the international agreement shall apply.

There are several cases where the Ukrainian Constitution permits limitations of the fundamental rights. However, such limitations must be justified by the goal of public welfare pursued by the State, which prevails over the individual interests, and must be legitimised by the law or by the court. Such limitations are foreseen for public security, public order, healthcare, ecology, etc.

 Explicit limitation of fundamental rights due to a state of emergency is provided for in the Constitution for the right to property. Hence, enforced recovery of private property may be applied only in exceptional cases for public necessity, on the ground and in order, provided by the law and on condition of compensating the value.

Whereas the Constitution guarantees the right to labour and prohibits forced labour, the labour which a person performs in circumstances and according to the law enacting the military state or the state of emergency is not considered to be forced labour. Similarly, freedom of expression and free access to information may be limited by the law in the interests of national security, territorial integrity and public order with the purpose of prevention of riots or crimes, for the

400 Art. 41 of the Ukrainian Constitution.
401 Art. 43(3) of the Ukrainian Constitution.
protection of healthcare and other goals pursued by the state.\textsuperscript{402} Also, freedom of movement and the right to leave the territory of Ukraine may be subject to limitations in cases, established by the law. For instance, the Law “On legal regime of emergency,” in Article 22, regulates the legal status and limitations of the rights and freedoms of citizens in circumstances of the emergency.

It is noteworthy that the rights and freedoms stipulated in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and 63 of the Constitution shall not be restricted even in a state of emergency.\textsuperscript{403}

The general rule applicable to enforcement of fundamental rights is also applicable to enforcement of rights of victims of disasters. In this respect, the Article 55 (1) of the Constitution provides that fundamental rights are protected by the court. Every person has a guaranteed right to challenge decisions, actions and omissions to act by the state and municipal organs, as well as state officers in the court. As interpreted by the Constitutional Court of Ukraine,\textsuperscript{404} this is a general clause, which provides for the right of everyone to apply to the court if his rights or freedoms are violated, or there are obstacles that prevent their realization. This clause obliges the courts to accept complaints even in the absence of special clause on judicial protection in the law. Rejections of complaints, which comply with the legal requirements, constitutes a violation of the right to the court protection, which according to Article 64 of the Constitution may not be limited.\textsuperscript{405} For the purposes of safeguarding the claims, an individual may apply for interim remedies if without the application of such remedies the enforcement of the judicial decision would be complicated or impossible should such remedies be not applied.\textsuperscript{406}

Among other legal remedies for the enforcement of fundamental rights, each person has a right to apply for protection of the human rights to the Ukrainian Parliament Commissioner for Human Rights.\textsuperscript{407} After exhausting national legal remedies, individuals have a right to apply for protection of fundamental rights to international judicial organs or international organizations to which Ukraine is a party to, including the European Court of Human Rights.\textsuperscript{408}

In April 1986, the explosion of the reactor at the Chernobyl Nuclear Power Plant took place which has been recognised as a catastrophe of global scale. Since then, there have been a number of court decisions related to violations of the rights of the citizens affected by the consequences of

\textsuperscript{402}By virtue of Art. 34(3) of the Ukrainian Constitution.

\textsuperscript{403}Ibid.


\textsuperscript{405}Ibid, Paragraph 2.


\textsuperscript{408}Art. 55(4) of the Ukrainian Constitution.
Chernobyl Disaster. On 28 April 1991, the Parliament of Ukraine adopted the Law “On the status and social protection of citizens, who suffered in the result of Chernobyl disaster.”409 This law established some benefits, compensations, and other state social guarantees to the affected people, including invalids, liquidators, people evacuated from the radioactive zone, and others. A number of legal acts, determining the amounts of social compensations and payments were adopted throughout 1996-2007. It is important to note that Article 64 of the Ukrainian Constitution provides citizens with the right to social protection, which includes the right to support in the case of full, partial or temporary loss of labour ability, and other cases foreseen by the law. Furthermore, the Supreme Administrative Court of Ukraine issued a Summary of the court practice of the administrative courts related to the social payments to the individuals affected by the Chernobyl disaster.410

3.13.2. The Civil Protection Mechanisms, Disaster Management, and Fundamental Rights

The main source of disaster management law of Ukraine is the Law “On the legal regime of emergency,”411 which determines the meaning of legal regime of emergency, the procedure of its enactment and termination, as well as governs the activities of the state and municipal organs, enterprises and organizations in the state of emergency. It also provides for the observance of the rights and freedoms of individuals and citizens, rights and legitimate interests of legal entities and foresees responsibility for violating the requirements and non-fulfillment of the measures of the legal regime of emergency.

Another special law related to the social protection of the population affected by the consequences of Chernobyl disaster is the Law “On the status and social protection of citizens, who suffered in the result of Chernobyl disaster.”412 This Law lays down the main provisions for


412 Law “On the status and social protection of citizens, who suffered in the result of Chernobyl disaster” of 28.02.1991 № 796-XII/Про статус і соціальний захист громадян, які постраждали внаслідок Чорнобильської
the realization of the constitutional right for the protection of life and health to the citizens who suffered as a result of the Chernobyl disaster; establishes the single procedure of determining the zones of contaminated territories; defines the living and labor conditions of the affected area and provides for the social protection of affected population.

The civil protection guidelines have been enacted at different levels. The Code of Civil Protection of Ukraine⁴¹³ regulates the protection of population, territories, environment and property in emergency situations. The Code establishes the uniform system of civil protection and defines the powers of the state and municipal organs, citizens, enterprises, institutions, and organizations.⁴¹⁴ Inter alia, the Code provides for the medical, biological, psychological protection of population in cases of emergency; foresees educational and training actions for the population in case of emergency such as first aid; regulates the activity of economic entities in the area covered by civil protection (e.g., compliance with safety measures, spread of information on actions in case of emergency, etc.); taking safeguards for industrial and fire safety, etc.

There is special guidance on reacting to emergency situations and conduct of search and rescue as well as other immediate actions at the state level.⁴¹⁵ The plans of measures of civil protection are issued on early basis.⁴¹⁶ Apart from the regular tasks of the state organs, the Plan for 2016 provides for the conduct of the day of civil protection; inclusion of extra-curriculum subjects relating to healthcare and safety; protection of children in schools and higher educational institutions; dissemination of knowledge on prevention of emergency situations among the population; organisation of events devoted to civil protection for the youth, etc. The subjects on health and safety are frequently included into the curriculum at schools and institutions of higher education. Enterprises, institutions, and organizations are obliged to comply with the standards of safety, enact instructions of actions shall be taken in the state of emergency and shall make the new employees aware of the said instructions upon acceptance to work. Compliance with this guidance is under the state control.


3.13.3. Reflection of Data Protection and Cultural Aspects in Civil Protection Mechanisms

Only recently, in 2010, in course of adaptation of the national laws to the laws of EU, Ukraine passed the Law “On data protection”. The law governs the procession of personal data and provides for protection of individuals from intrusion into their private life. This law does not contain explicit provisions relating to the processing of personal data in the state of emergency just as the Law “On the legal regime of emergency” does not address the privacy issues expressly.

With regard to the processing of personal data in the sector of electronic communications, Article 9 of the Law “On telecommunications” provides for the protection of privacy of phone conversations, telegraph, and other correspondence, security of telecommunications and prohibits certain actions with respect to the withdrawal of information from telecommunications unless authorized by law.

Also, limitations of fundamental rights due to disaster situations may relate to the right to privacy, which generally may not be infringed, unless in cases provided by the Constitution. As interpreted by the Constitutional Court of Ukraine, collection, storage, use and dissemination of confidential information about the person without consent by the state, municipal organs, legal and natural persons constitute an infringement of their private and family life. Such infringement may be admissible only in cases defined by the law and only for the interests of national security, economic welfare, and human rights.

Some additional measures are imposed by Ukrainian law on the operators and providers of telecommunications in case of emergency. In the state of emergency, the administration of telecommunication networks of general use passes to the National Commission for Regulation of Communication and Information. Also, the providers and operators of telecommunications shall continue to provide high-quality communication during such situations and shall adopt technical and organizational measures for protecting the telecommunication networks, means of communication, information transferred via telecommunications.

As regards the protection of cultural rights, Article 24 of the Law “On the legal regime of emergency”, provides that enactment of the state of emergency may not serve as a cause for the limitation of the right to the freedom of thought, conscience, religion in the understanding of

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417 The Law “On protection of personal data” of 01.06.2010.
419 Art. 32 (1) of the Ukrainian Constitution.
these rights and freedoms under the International Covenant on Civil and Political Rights and the laws of Ukraine.

### 3.13.4. Compensation Mechanisms for Disaster Damage

Ukraine does not operate a compulsory insurance policy against disasters. A voluntary scheme exists, but only a small percentage of homeowners take out such insurance.

A relevant legal act, which foresees compensation for disaster damage is the Law of Ukraine № 796-XII “On the status and social protection of citizens, affected in the result of Chernobyl disaster.” This law provides for social protection of affected citizens classified into categories I, II, III, and IV by Section IV of the law. The protection of children is regulated in Section V, the provision of displaced persons with accommodation is foreseen by Section VI, the payment of pensions and other compensations to affected citizens is regulated in Section VII.

For instance, citizens classified into the first category have the following rights: payment of social assistance for temporal loss of working capacity in the amount of 100 % of average salary; free receipt of medicinal products; free dental prosthetics; 50% discount for the use of communal services; privatization of flats (houses) of state and civil housing funds; free use of public means of transportation, etc. Furthermore, the law foresees that citizens who have been evacuated or displaced shall be provided with accommodation in settlements, houses and flats specially constructed for this purpose. The accommodation is transferred into their private ownership. Citizens who left the contaminated territories voluntarily are included into the lists with priority supply of accommodation. Such individuals also have the right to build a house and have the right to priority receipt of land plots.

Regarding the pensions and compensations payable to the affected citizens, the Law № 796-XII foresees following payments: one-time compensation payable to the individuals who participated in the liquidation of the Chernobyl disaster; yearly compensation for health recovery payable to the persons who took part in liquidating the consequences of the Chernobyl disaster; pensions to the persons attributed into the categories I, II, III and IV. Pensions payable to the persons attributed into categories I, II, III and IV cover both state pensions and additional pensions for the damage to health. A monthly compensation is payable to families for the loss of a provider as a result of Chernobyl disaster. Additionally, there are certain privileges as to the calculation of the employment period. The Law № 796-XII also establishes pensions to the military officers who participated in the liquidation, as well as pensions to the affected citizens who moved abroad.

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422 Art. 32, Law “On status and social protection of citizens, affected in the result of Chernobyl disaster”. 
The amounts and procedure of claiming the compensations are usually regulated by the sub-normative acts of the Cabinet of Ministers of Ukraine and other executive organs. It should be noted that the above listed pensions and compensations are not exhaustive.
4. Findings and Conclusion

4.1. Comparative Analysis

A comparative analysis of the responses from the survey indicates that there are some similarities and differences in the approaches adopted by the European states investigated in this report when implementing fundamental rights in the context of disaster management.

First, it is common that fundamental rights are guaranteed by the Constitutions of these states (or in specific legislation as seen in the case of the UK), which reflects the case on a regional scale. These national frameworks are also supplemented by international human rights law as applicable in their local jurisdictions. All the states have a constitutional mechanism for incorporating international law (customary international law or treaties) into their domestic legal system, and as such, their citizens and residents can, therefore, draw on a comprehensive catalog of fundamental rights. They could as well approach international courts such as the ECtHR after exhausting all local remedies, for redress of their fundamental rights violation.

The guarantee of rights has also been promoted through the incorporation of new processes of European regional integration which has led to three different catalogs of fundamental rights with their corresponding guarantee system: the content of the respective National Constitution, the content of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the content of the Charter of Fundamental Rights of the European Union which now has the same legal value as the European Treaties and applicable to states that are members of the European Union.

Although none of the countries under review has special fundamental rights provisions for a disaster situation, the guaranteed rights are well applicable in such situation. There is an assumption of common applicability of fundamental rights at all times, of which judicial cases have shown the willingness of the courts to intervene in appropriate circumstances where the consequences of a disaster have resulted in a violation of a fundamental justiciable right. Good examples include decisions from Austria, Bulgaria, Germany, Italy, Romania, the UK, Ukraine as well as the ECtHR which have ruled over a lot of cases stemming from a disaster situation.423 As such it is arguable that there is little or no appetite for constitutional amendments to incorporate special rights for disaster situations even when some Constitutions (Bulgaria, France, Spain, Ukraine) explicitly considered disaster situations.

423 See Deliverable D6.1 for analysis of some of the ECtHR cases.
Another common thread that present in all the states is that disasters are regarded as situations that could lead to emergency and thus, explicitly or implicitly, create a possibility of restricting fundamental rights. Evidence of declaration of emergency due to natural or man-made disasters has been seen in these states. Similarly, all the states grant unrestricted access to the ordinary courts for the enforcement of the fundamental rights.

In the area of civil protection, each of the states has its mechanism. This mechanism appears similar regarding structure – organized at the levels of administration: municipal, provincial, regional and central platforms. The upper levels of government are responsible for the coordination, while the lower levels take mainly the direct on-site coordination. The civil protection units consist of specially trained teams – ranging from fire and rescue services to non-governmental organizations and volunteers.

There are however some differences in disaster management rules and guidelines that regulate the field operations. These vary in individual States and between organizations. It is not in all the countries that a focused structure for the promotion of human rights in disaster cases could be seen. Bulgaria, for example, appears to have a more coordinated strategy for fundamental rights promotion in their Disaster Protection Act and other regulations. Germany also has a complex system with visible elements of fundamental rights promotion. Serbia includes on a set of principles for protection and rescue in emergency situations – the principle of the right to protection; principle of solidarity, the principle of transparency, the principle of prevention, and the principle of accountability – which reflect efforts at promoting human rights in such situations. While this is not totally lacking in the other states, it seems not be the emphasis as indicated in the responses. The respondent from Malta, for instance, could not identify any existing CPM guidelines that point to human rights in the operation of disaster management.

In terms of reflection of data protection, privacy, and cultural rights in the civil protection and disaster management framework, the following observations were made. First, elements relating to data protection and privacy are more visible than those of cultural rights. With respect to the former, all the states have enacted laws implementing the right to data protection, and these laws contain rules permitting the limitation of data protection and privacy rights to facilitate the processing of personal data in emergency cases, even though the boundaries of this limitation are not always clear. It is assumed that the regular data protection laws (even when disaster may not be expressly referred to) should take care of disaster situations. The most comprehensive framework for data protection in a disaster situation is found in the Austrian Data Protection Act which was amended to include a section on the use of data in case of a catastrophe in 2005.

Apart from the primary data protection legislation, there are other laws which could regulate how personal data is processed in such situations. The Maltese respondent pointed out a Data Protection (Processing of Personal Data in the Police Sector) Regulations which places emphasis...
on how the data protection principles apply within the context of the police sector which is an important institution in disaster management. The German respondent also indicated that some regulations provide for the erasure of data that is no longer necessary for disaster management.

It is not in all states that the Data Protection Authority has issued a clear statement concerning the application of data protection principles in emergency or disaster cases. Two of the respondents showed evidence of such statements from the Italian DPA and the UK's Information Commission.

Regarding cultural rights, although all the states appear to have general provisions relating to cultural rights such as the right to freedom of thoughts, conscience, and religion, etc., there seems to be no concrete implementation mechanism for cultural rights in disaster situations. The Bulgarian, Romanian, and Serbian respondents, however, showed reference to cultural rights in the disaster and civil protection laws. The Bulgarian framework indicates measure such as the movement of objects with cultural value in order to protect them from disaster damage, as well as the introduction of disaster protection modules in the school system in the CPM. Romania provides as part of the duties of civil protection, the protection of cultural values and archive. The Serbian Law on Emergency Situations made several references to the safeguarding of cultural goods and property of a historic importance including evacuating them during disaster operations. In other states, general references to cultural rights and related activities in disaster management are often implied but seem blurred in practical terms.

On compensation for disaster damage, there is also fragmentation on how the individual state approaches disaster risk finance, compensation and insurance policy. There is evidence of contingency measures by way of funds for prevention of disaster. However, most often, they deal with the issue of emergency assistance and compensation for disaster losses on a purely ex-post, ad hoc basis. In this regard, there exist compensation schemes as a recovery assistance measure in all the reviewed States which are organized differently in each state. The UK is unique in this area as there is a strong tradition of the state distancing itself from compensation payments, and in the case of natural hazards, tend not to compensate for insurable risks. The individualised solution is rather the norm in the UK. By contrast, an extensive post-disaster compensation framework exists in Ukraine due to the Chernobyl disaster. This includes a range of social protection and benefits to the affected citizens according to the framework’s categorisation of victims.

In terms of disaster risk transfer through insurance, the common approach is a voluntary insurance policy where property owners are free to take-up such insurance coverage. Such voluntary schemes enjoy low patronage in the majority of the states as indicated by the

respondents. However, the positions in France, Spain and Romania are different. These States operate a form of mandatory scheme with respect to disasters risk coverage.\textsuperscript{427} In France, while the market for first party policies (such as fire policies) is voluntary, it is mandatory for first party insurance by private insurance companies not to exclude coverage of losses arising out of natural catastrophes, technological disasters, or terrorism. Insurances are provided by private insurers, which have the option of a government-guaranteed reinsurance offered by the Caisse Centrale de Reassurance (CRR).

In Spain, while it is generally by choice to take up insurance, there is a mandatory provision that certain lines of insurance such as life and accident, fires and natural events, land vehicles etc.,\textsuperscript{428} must cover “extraordinary risks” which includes disaster (mostly natural disaster but has recently included terrorism). To implement this scheme, a state-owned company (now a public business entity governed) - Consorcio de Compensación de Seguros (CCS) is responsible for claims arising from unpredictable events disasters including as a reinsurance institution to other insurance companies.

In Romania, the policy of insurance against natural disasters (PAD) is a compulsory insurance policy which covers damage from floods, earthquakes or landslides on dwellings, and must be obtained by all natural and legal persons. The policy is also implemented through the establishment of PAID, an insurance-reinsurance undertaking with private capital formed by the association of 12 insurance companies. Failure to obtain such policy attract a sanction, but recent statistics indicate a low uptake of about 19.01 per cent of such policy in Romania as at the end of February 2017.\textsuperscript{429}

\textsuperscript{427} It is noteworthy that some other European States which were not reviewed also have some evidence of compulsory disaster insurance such as Norway, Belgium, Iceland and Switzerland. See OECD, \textit{Policy Issues in Insurance Financial Management of Large-Scale Catastrophes}, (No. 12, 2008).

\textsuperscript{428} See Section 3.10.4 of this report.

<table>
<thead>
<tr>
<th>Focus of survey</th>
<th>Common Areas</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 National F/R mechanisms and how they relate to disasters</td>
<td>Constituional provisions; Special regulation; Int’l law</td>
<td>All states (UK has special regulations (HRA, EA))</td>
</tr>
<tr>
<td></td>
<td>Explicit mention of disaster</td>
<td>Bulgaria, France, Spain Ukraine</td>
</tr>
<tr>
<td></td>
<td>Implicit reference to disasters for FR limitation</td>
<td>All states</td>
</tr>
<tr>
<td></td>
<td>Special rights for disaster situations</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Applicability of general rights in disaster cases</td>
<td>All states</td>
</tr>
<tr>
<td></td>
<td>Access to court for rights enforcement</td>
<td>All states</td>
</tr>
<tr>
<td>2 Civil protection mechanisms and FR protection</td>
<td>States with own CPM and structure</td>
<td>All states</td>
</tr>
<tr>
<td></td>
<td>Explicit focus on fundamental rights</td>
<td>Blurred in all states (Bulgaria, Serbia, Germany more coordinated)</td>
</tr>
<tr>
<td>3 Privacy and data protection implementation in disaster cases</td>
<td>Existing national data protection law</td>
<td>All states</td>
</tr>
<tr>
<td></td>
<td>Implicit reference to disasters for privacy limitation</td>
<td>All states</td>
</tr>
<tr>
<td></td>
<td>Explicit consideration of disaster in data protection law</td>
<td>Austria</td>
</tr>
<tr>
<td></td>
<td>DPA statement on privacy and disasters</td>
<td>Italy, UK</td>
</tr>
<tr>
<td>4 Cultural rights implementation in disaster cases</td>
<td>Existence of general provisions on cultural rights</td>
<td>All states</td>
</tr>
<tr>
<td></td>
<td>Evidence of implementation in disaster management</td>
<td>Bulgaria; Romania; Serbia</td>
</tr>
<tr>
<td>5 Insurance and compensation</td>
<td>Evidence of contingency measures (special funds or ex-post ad hoc basis for disaster relief)</td>
<td>Fragmented in the states. Ukraine however, has an extensive post-disaster</td>
</tr>
</tbody>
</table>
Table 1: Summary Comparison of Fundamental Rights and Disaster Management in the Selected States

<table>
<thead>
<tr>
<th>Focus of survey</th>
<th>Common Areas</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>compensation scheme following the Chernobyl disaster.</td>
<td></td>
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<tr>
<td></td>
<td>Existence of voluntary disaster insurance</td>
<td>All states</td>
</tr>
<tr>
<td></td>
<td>Existence of compulsory disaster insurance</td>
<td>Romania, France, Spain</td>
</tr>
</tbody>
</table>

**4.2. Conclusion**

This deliverable has shown how fundamental rights and disasters interact at the national level using a sample of thirteen European States, which gives an insight into the larger European region. Europe is known for having a strong regional fundamental rights framework, and this indeed is reflected in all the states reviewed. Although no special rights were made for disaster situations, the general fundamental rights are nevertheless applicable in such cases. Therefore, there seems to be no need at the moment for amending the constitutional framework of each state to include special rights for disaster situations. This conclusion could be further supported by the fact that courts have interpreted and applied existing fundamental rights in appropriate disaster cases.

However, there are areas that need improvement regarding a focused reflection of certain rights in the civil protection and disaster management mechanisms. Promoting a rights-based approach in clear guidelines with a specific focus on certain rights such as cultural rights, and data protection as reviewed in this report is important. Such guidelines will be relevant in directing disaster managers in their field operations at all disaster phases. As there is no implementing EU-wide regulation in the area of cultural rights similar to the Data Protection Directive (now the General Data Protection Regulation), such guidelines will further draw attention to the values and importance of culture in disaster risk management. Similarly, such guidelines will clearly indicate the boundaries of limitation of data protection principles in disaster cases as seen, for example, in Section 48a of the Austrian Data Protection Act.

Finally, disaster risk management that incorporates insurance schemes has been in existence for a long time. However, evidence shows that voluntary insurance for disaster risks is not popular in Europe, even in states where disaster risks are high. Citizen education is highly required to disseminate the values and importance of risk management through insurance schemes as well as tackle the low coverage in most states. Strong awareness campaign will be needed to refocus the belief in an ex-post government compensation of losses, which is unsustainable in certain
instances. Potentially the burden on the state in such situations will reduce if citizens take up insurance policies.
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Annex 1 – Sample of Questionnaire

H2020-DRS-21-2014

HORIZON 2020 PROGRAMME

Secure societies – Protecting freedom and security of Europe and its citizens

Collaborative and Support Action

Grant Agreement Number 653748

CARISMAND

Culture And RISk management in Man-made And Natural Disasters

WP6 “Citizens rights”

Lead Partner – P6 – LUH

A SURVEY FOR A

REPORT ON FUNDAMENTAL RIGHTS IN DISASTER SITUATIONS IN SELECTED NATIONAL LEGISLATIONS
QUESTIONNAIRE

Background

The CARISMAND project aims i.a. at identifying cultural factors influencing citizens’ risk perceptions and behaviour in disaster situations. A key factor is exploring gaps and opportunities in existing disaster management policies/procedures to suggest improvements by developing a comprehensive toolkit. This will support professionals and voluntary disaster managers in adopting culturally-aware policies and procedures.

Work Package 6 citizens’ rights will contribute to this goal by providing a detailed analysis of existing national protection mechanisms for fundamental rights, especially, privacy rights, and any form of cultural rights, their limitations and interdependencies in disaster situations within the EU. This questionnaire is designed to explore national legal frameworks and their respective mechanisms.

For the purposes of this survey, a disaster is defined “any situation which has or may have a severe impact on people, the environment, or property, including cultural heritage.”

Please provide, where applicable, a legal reference(s) supporting your answer: an article of a law, a provision of a regulatory act, or a court case citation, as well as any additional details.

Please kindly provide your answers in Annex A.

Completed questionnaires should be returned by email to: wendt@iri.uni-hannover.de, and knoke@iri.uni-hannover.de, and please cc: nwankwo@iri.uni-hannover.de, hawellek@iri.uni-hannover.de.

Please note that during the publication of the results of this questionnaire no personal data of the respondent will be revealed.

Information about the respondent

<table>
<thead>
<tr>
<th>Institution and country</th>
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<th>Contact person</th>
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A. National Fundamental Rights Framework and Disasters

I. Which of the international human rights treaties\(^\text{431}\) are applicable in your legal system? How do they interact with your constitution/legal system?

II. Please indicate your jurisdiction’s guaranteed FHR\(^\text{432}\) by using the sheet in Annex B.

III. Does your constitution/FHR system explicitly refer to disasters? Kindly elaborate on respective regulations\(^\text{433}\).

IV. Does your constitution/FHR system allow for explicit or implicit limitation\(^\text{434}\) of FHR in disaster situations? Kindly elaborate on the general mechanisms in both cases (if applicable).

V. By which mechanisms can victims of disasters enforce their FHR?

VI. Are there any court decisions observing violation of FHR in disaster situations? Please kindly list as many as reasonable and provide us with brief summaries of both the case and the ruling.

VII. Have there been any non-judicial observations\(^\text{435}\) of FHR violations in disaster situations?

B. Civil Protection Mechanisms and Fundamental Rights

I. Which are the national, regional or municipal disaster management laws\(^\text{436}\)? How does the civil protection mechanism work?

II. Have there been instances of a declared state of emergency during a disaster? Which FHR were limited?

III. Are there any guidelines on civil protection activities in reference to FHR protection? What do they suggest?

C. Data Protection and Cultural Aspects

I. Please list and summarize\(^\text{437}\) provisions in your data protection law/disaster management law guidelines/civil protection mechanism (laws) which specifically address

a. privacy and data protection in disaster situations?

---

\(^{431}\) Such as UN Universal declaration of Human Rights or the European Convention of Human Rights.

\(^{432}\) Fundamental Human Rights.

\(^{433}\) E.g. provisions declaring specific rights in disaster situations, limiting the application or encouraging the observance of FHR in disaster situations.

\(^{434}\) Such as in order to maintain public security, public order, averting dangers etc.

\(^{435}\) E.g. by parliamentary committees, NGOs, the Media, etc.

\(^{436}\) Kindly list the most relevant laws/provisions applicable and explain the general mechanism and actors involved.

\(^{437}\) Should there by very many, kindly prioritize the most relevant and provide us with an exemplary overview of the scheme as such.
b. protection of cultural rights in disaster situations?

II. Which safeguards for telecommunications secrecy/data protection (each) in disaster situations are provided by your jurisdiction? In absence of disaster-specific rules briefly outline the general mechanism.

D. Compensation for Disaster Damage

I. Does your legal system (national, regional or municipal level) provide for compensation of disaster victims such as public or private insurance schemes or state aid? How do they operate?
ANNEX A

Answer Sheet to the Questionnaire

A. National Fundamental Rights Framework and Disasters

<table>
<thead>
<tr>
<th>I. International Human Rights Treaties</th>
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<tr>
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<tr>
<td>II. Fundamental Human Rights (kindly use Annex B)</td>
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<tr>
<td>III. Constitution/FHR referring to disasters</td>
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<tr>
<td>IV. Explicit or implicit limitation of FHR</td>
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<tr>
<td>V. FHR enforcement mechanisms</td>
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<tr>
<td>VI. Court decisions</td>
</tr>
<tr>
<td>VII. Non-judicial observations of FHR violations</td>
</tr>
</tbody>
</table>
### B. Civil Protection Mechanisms and Fundamental Rights

<table>
<thead>
<tr>
<th>I. Disaster Management Law &amp; Civil Protection Mechanism</th>
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<tr>
<th>II. Instances of a declared state of Emergency</th>
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<tr>
<th>III. Civil Protection Guidelines for FHR</th>
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</table>

### C. Data Protection and Cultural Aspects

<table>
<thead>
<tr>
<th>I. List and summarize provisions</th>
</tr>
</thead>
</table>

1. Privacy and data protection

2. Protection of cultural rights

<table>
<thead>
<tr>
<th>II. Safeguards</th>
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</table>
D. Compensation for Disaster Damage

I. Provision for disaster damage compensation
Annex B

Table of Fundamental Rights (Question 1): Kindly select the Fundamental Rights granted by the legal system of your country and reference the legal basis (if applicable).

Example:

| Right to Property Ref.: Art. 14 Grundgesetz |

| Human Dignity Ref.: ________ |
| Right to Life Ref.: ________ |
| Right to Health Ref.: ________ |
| Right to the integrity of a person Ref.: ________ |
| Right to Non-Discrimination Ref.: ________ |
| Freedom of Thought, Conscience and Religion Ref.: ________ |
| Right to Liberty and Freedom Ref.: ________ |
| specific national rights Ref.: ________ |
| Right to Education Ref.: ________ |
| Right for Private and Family Life Ref.: ________ |
| Right to Social Security Ref.: ________ |
| Right to Data Protection Ref.: ________ |
| Freedom of Expression and Information Ref.: ________ |
| Freedom of Movement Ref.: ________ |
| Right to Property Ref.: ________ |
| specific national rights Ref.: ________ |
| Freedom of Press Ref.: ________ |
| Freedom of Art and Science Ref.: ________ |
| Freedom of Assembly Ref.: ________ |
| Privacy of telecommunications, posts & correspondence Ref.: ________ |
| Prohibition of torture and inhuman or degrading treatment or punishment Ref.: ________ |
| Prohibition of slavery and forced labour Ref.: ________ |
| specific national rights Ref.: ________ |
| specific national rights Ref.: ________ |

438 In some countries some Fundamental Human Rights are not based upon legislative acts, but e.g. deduced from more general Fundamental Human Rights in (Constitutional) Court Decisions. In this (and similar) case(s), kindly fill in “unwritten” and add a reference to the origin of that particular Fundamental Right (e.g. a reference to a Court Decision).