



Quarterly Update:

Covid-19 & civic freedoms in Georgia

Emergency measures

The developments in relation to Covid-19 emergency measures in Georgia can be summarized and analysed in several phases:

Phase 1: The declaration of state of emergency in the whole territory of Georgia and accompanying restrictions of various fundamental human rights and freedoms. (The period from March 21 till May 22, 2020).

Phase 2: The passing from the safe “green zone” to the so-called “yellow”, riskier zone on September 7, assessed according to the incidence rate of new cases of infection with coronavirus per 100 000 persons in the country, by the classification of the European Center for the Disease Control.¹ (The period between September 7 until October 23). On October 23, Georgia became “red zone” considering the higher incidence rate of infection with coronavirus. On October 31, the Parliamentary Elections took place in Georgia, followed by subsequent political crisis – large scale protest actions throughout the whole country in demand of new elections and refusal of the opposition political parties to enter the Parliament. On November 28, the restrictions similar to those which operate during the time of state of emergency were introduced by the government. This happened on the basis of the amendments made to the Law on Public Health of Georgia in May 2020 which is envisaged to operate until July 1, 2021 as of now.

Phase 1

Presidential Decree and Delegating Broad Authority to Restrict Human Rights to the Government of Georgia

The Constitution of Georgia allows the President of Georgia, by the proposal of the Prime Minister, to declare the state of emergency in the whole territory of Georgia in times of epidemic and restrict number of fundamental human rights by Presidential Decree. This decision is later adopted by the Parliament that ensures necessary parliamentary control over the restriction of fundamental human rights.

According to the Constitution, on March 21, by the proposal of the Prime Minister, the President issued Order N1 regarding the declaration of the state of emergency in the whole territory of Georgia². On the same day, the President issued Decree N1

¹ Internet Publication *Netgazeti.ge*:
<https://netgazeti.ge/news/481007/> (available only in Georgian)

² The online portal of legislative acts of Georgia:
<https://matsne.gov.ge/ka/document/view/4830390?publication=0> (link available only in Georgian)



regarding the measures to be taken in relation of declaration of the state of emergency in the whole territory of Georgia and restricted number of fundamental human rights³. Both the Order N1 and Decree N1 issued by the President of Georgia were co-signed by the Prime Minister and they were adopted by the Parliament of Georgia on March 21⁴.

According to the Decree N1, the President of Georgia restricted following human rights enshrined in the Constitution of Georgia: Article 13 (Right to Liberty), Article 14 (Freedom of Movement), Article 15 (Inviolability of Private and Family Life, Personal Space and Communication), Article 18 (Rights to fair administrative proceedings, access to public information, informational self-determination, and compensation for damage inflicted by public authority), Article 19 (Right to Property), Article 21 (Freedom of Assembly) and Article 26 (Freedom of labor, freedom of trade unions, right to strike and freedom of enterprise). The Presidential Decree N1 specifies the content of the restrictions in its respective provisions.

The President made concrete restrictions in relation to certain human rights as according to the Decree, such as, inviolability of private and family life and right to liberty⁵. However, in certain cases, such as, freedom of movement and right to property, the President delegated authority to restrict human right to the government of Georgia, without setting necessary boundaries and defining the scope for the restriction⁶. This created risks of disproportionate and undue interference into concrete human rights by the government of Georgia.

Regarding the freedom of assembly, the Presidential Decree N1 stipulated that any assembly, manifestation and gathering of individuals shall be restricted, besides the exceptions envisaged by the resolution of the government of Georgia. The President did not provide any conditions as to what could be the exceptions under which the right to assemblies and manifestations could be realized. The government did not make any exceptions for the realization of right to assemblies and manifestations. It prohibited any assemblies, manifestations and public gatherings - initially, gathering of more than 10 people and later, gathering of more than 3 people. In this case as well, too broad authority was delegated to the government to intervene into the human right, without setting necessary guidance for the intervention.

³ The online portal of legislative acts of Georgia:

<https://matsne.gov.ge/ka/document/view/4830372?publication=0> (link available only in Georgian)

⁴http://www.parliament.ge/en/saparlamento-saqmianoba/plenaruli-sxdomebi/plenaruli-sxdomebi_news/parlamentma-sagangebo-mdgomareobis-gamocxadebis-sheaxebs-saqartvelos-prezidentis-brdzaneba-daamtkica.page

⁵ In relation to the right of inviolability of private and family life, the Presidential Decree stipulates that the conjugal meetings are suspended in the penitentiary establishments. When it comes to right to liberty, the Presidential Decree stipulates that the government bodies can detain the persons who violate the rules of quarantine or isolation

⁶ In relation to right to property, the Presidential Decree stipulates that the government can restrict right to property by its own rule for the quarantine, isolation and medical purposes in case it is essential and use the property and material means of physical and legal entities. When it comes to the transfer of passengers in the territory of Georgia, the Presidential Decree stipulates that the government of Georgia can regulate the transfer of the passengers in a way which is contrary to the existing legislation of Georgia

Execution of the Presidential Decree by the Government of Georgia

For the execution of the Presidential Decree N1, on March 23, 2020, the Georgian Government issued Resolution N181, regarding the measures to be taken in order to prevent the spread of new coronavirus in Georgia. According to the Resolution N181, for the duration of the state of emergency, any assembly and manifestation, defined so by the Georgian legislation, was prohibited. The Resolution N181 further prohibited gathering of more than 10 individuals in public spaces⁷. International air, land and marine travel was suspended. Educational processes were stopped. Cultural and sporting events were prohibited. Various economic activities were restricted, such as work of restaurants, cafes, clubs, sport and recreational centers, movie theaters⁸.

On March 30, 2020, the government of Georgia issued Resolution N204 regarding making amendments to the Resolution N181 concerning the measures to be taken in order to prevent the spread of new coronavirus in Georgia. According to the amendments, gathering of more than 3 individuals in public space was prohibited⁹. The requirement of keeping physical distance of 2 meters applied to every kind of gathering. Public transport and intercity transport were prohibited. The movement of people – on foot or by transportation¹⁰ – was prohibited between 21:00 pm and 06.00 am. Transfer of more than 3 people in the automobiles was prohibited, with the requirement that no passenger should sit next to the driver¹¹.

Disproportionately high fines

The violation of the above-mentioned rules constituted administrative offense and envisaged various penalties, as according to the Presidential Decree. The penalty for the physical persons was the fine of 3000 GEL (approximately 917 dollars) and for legal entities – 15 000 GEL (approximately 4573 dollars). These fines were

⁷ Public space was defined as any place both inside, as well as outside of any building, except for the places with housing purposes for private individuals. The social events related to the gathering of more than 10 individuals were also prohibited (for instance, funeral reception, wedding and other similar events). The prohibition of gathering of more than 10 individuals did not apply to gathering of individuals in the medical facilities, public bodies, defense forces, special penitentiary facilities and law enforcement bodies, for the purposes of fulfilling their official functions. The restrictions also did not apply to public transports, except for when the requirement of suspension of work during the state of emergency covered their work. The restrictions also did not apply to construction and infrastructural works. The gathering of more than 10 persons in private facilities could be allowed considering the specifics of the work of the facility.

⁸ Government Resolution N181:

<https://matsne.gov.ge/ka/document/view/4830610?publication=0> (link available only in Georgian)

⁹ The public space was defined similarly as in Resolution N181 – “any place both inside, as well as outside of any building, except for the places with housing purposes for private individuals”. The social events related to the gathering of more than 3 persons (such as funeral receptions, wedding and similar events) were also prohibited. The prohibition of gathering of more than 3 individuals did not apply to gathering of individuals in the medical facilities, public bodies, defense forces, special penitentiary facilities and law enforcement bodies, for the purposes of fulfilling their official functions. The restrictions did not apply to the construction-infrastructural work agreed with the Operative Headquarters for the Management of State of Emergency existing under the Interagency Council of Government. The gathering of more than 3 individuals was allowed for implementing economic activities, including, selling of food and medical/pharmaceutical goods/products, considering the specific nature of the facility, complying with social distance of not less than 2 meters.

¹⁰ With certain exceptions, such as international cargo shipping, as well as the individuals and auto transportation means of public bodies and the subjects implementing economic activities which are agreed with the Operative Headquarters and the movement of which are critically essential for fulfilling their official functions.

¹¹ Government Resolution N204:

<https://matsne.gov.ge/ka/document/view/4840082?publication=0> (link available only in Georgian)

disproportionately high, considering severe socio-economic situation in Georgia that especially worsened during the pandemic. As of 2019, the average monthly income per 1 person in Georgia is 336 GEL (approximately 102 dollars), according to the National Statistics Office of Georgia¹². As of December 2020, every 7th person in Georgia is below poverty line and receives social allowance from the state¹³.

From March 27 till April 10, the fines amounting to more than 9 million GEL in total were issued for violating the rules of the state of emergency¹⁴. Among others, these cases included fining people for gathering in small groups in parks and near their houses, for not keeping physical distance in small gatherings, for riding in the car while sitting next to the driver, etc. During the state of emergency, there was no constitutional complaint filed against the existing restrictions. The existing restrictions were neither disputed on international level. Therefore, in cases where the regulations were indeed violated, the avenues for seeking redress for the fined individuals were largely closed. However, there were cases when the individuals were fined unlawfully – the regulation was not violated in fact, but the police insubstantially considered that it was violated and unlawfully fined the individual. In some of these cases, it was possible to achieve the annulment of the fines after appealing it to the domestic Court. For instance, in July 2020, Human Rights Center appealed the imposition of fines on 7 persons to Gori District Court in city of Gori in Georgia. The Court satisfied the complaint of Human Rights Center and considered that the fines were imposed unlawfully, and the regulation referred as being violated by the police officers was in fact not violated¹⁵.

Phase 2

Amendments to the Law on Public Health of Georgia

In May 2020, the amendments were made to the Law on Public Health of Georgia which authorized the government to set massive restrictions on human rights and freedoms during the time of pandemic or epidemic due to the reason of protection of the health of the population. The government was authorized to regulate the work of the public bodies, movement of individuals, professional and economic work, illegal migration/international protection, gatherings of individuals for conducting social events, “differently from other normative acts of Georgia, including setting relevant temporary restrictions”. As of now, these provisions shall operate until January 1, 2021. However, Georgian government recently enacted restrictions based on these provisions. The restrictions may extend beyond January 1 as announced. It remains to be what legal changes will be made in case of prolongation of current restrictions.

¹² National Statistics Office of Georgia:

<https://bit.ly/3pkQyrh>

¹³ Internet publication *Tabula*:

<https://www.tabula.ge/ge/story/183773-koveli-meshvide-saarsebo-shemtseobis-imedad-ra-mdgomareobashia-qveknis-ekonomika>

¹⁴ Radio Liberty: <https://bit.ly/2Wvf7p2> (link available only in Georgian)

¹⁵ Human Rights Center:

<http://humanrights.ge/index.php?a=main&pid=20188&lang=eng>

The new amendments afford the government right to introduce restrictions similar to those of state of emergency – restriction of freedom of movement, setting curfew, banning public transportation and economic activities, etc. During the state of emergency, according to the Constitution of Georgia, such massive restrictions go through the parliamentary oversight which has final say whether the restrictions get adopted. This ensures necessary parliamentary control against the risks of abuse of power by the executive branch of government. The new provisions in the Law on Public Health of Georgia authorizes the government to introduce massive restrictions on fundamental human rights without going through the parliamentary supervision. This creates high risks of abuse of power by the government.

The NGO Georgian Young Lawyers Association filed constitutional complaints to the Constitutional Court of Georgia, disputing the constitutionality of new provisions in the Law on Public Health of Georgia¹⁶. The NGO Georgian Democratic Initiative also filed constitutional complaint against specific new provision in the Law on Public Health of Georgia¹⁷. Human Rights Center, Transparency International, Georgian Democratic Initiative and International Society for Fair Elections and Democracy (ISFED) issued joint statement criticizing the new changes made to the Law on Public Health of Georgia¹⁸.

It should be noted that the initial version of the draft amendments introduced by the government did not provide which requirements must be complied with when restricting the human rights under quarantine measures. However, later, after the Ombudsman of Georgia made relevant recommendations, specific criteria for the interference into the human rights was defined in the law after the first parliamentary hearing, according to which, the restriction of human rights under this provision must be: a) made for the protection of the values envisaged by the Constitution of Georgia b) envisaged by the law or normative act c) necessary for the democratic society d) non-discriminatory e) proportionate and f) the value protected by the restriction must exceed the damage done by it.

The violation of regulations enacted in accordance to the above mentioned new provisions is considered an administrative offense and fines are imposed against the offenders - 2000 GEL in case of physical persons and 10 000 GEL – in case of legal entities. The decision regarding the imposition of fines are made by the administrative organs of Ministry of Internal Affairs and Ministry of Finances. The repeated violation of the restrictions leads to the criminal liability.

These fines are disproportionately high. They do not take into account the severe socio-economic reality and the poverty that people are experiencing in Georgia,

¹⁶ Georgian Young Lawyers Association:

<https://gyla.ge/ge/post/saia-sazogadoebrivi-janmrtelobis-shesakheb-kanonshi-shetani-cvllilebebs-sakonstitucio-sasamartloshikidev-ertkhel-asachivrebs#sthash.JQzvk7DB.dpbs> (link available only in Georgian)

¹⁷ The database of Constitutional Court of Georgia: <https://www.constcourt.ge/ka/judicial-acts?legal=9814> (link available only in Georgian)

¹⁸ Joint Statement of NGOs:

http://humanrights.ge/index.php?a=main&pid=20273&lang=eng&fbclid=IwAR0vy_61A8HGyfxB4fQ903n98W0rmuyJgD_cVD709j_dMfDtzSG0uuVghKEo

especially in the light of the pandemic, loss of jobs and ongoing economic crisis. Imposing criminal liability for the repeated violation of these regulations is overly strict and inadequate sanction.

In September 2020, after the cases of new coronavirus drastically increased in Georgia and it passed to the so-called “yellow zone” from “green zone”, restrictions on certain social events were introduced again. The restrictions were enacted based on the above-mentioned new clauses introduced in the Law on Public Health of Georgia.

On September 9, social gatherings, specifically, “gatherings of more than 10 individuals related to social events, such as, weddings, birthday celebrations, funeral receptions and etc.” were prohibited, by the Resolution N566 of the government¹⁹. Such social events were banned both in public as well as in private places. The cultural and sport events with the participation of more than 200 individuals were also prohibited. The list of prohibited gatherings did not include assemblies and manifestations. The list of prohibited gatherings also did not include the pre-election campaign gatherings.

As the cases of coronavirus continued to rise even higher – about 2000 cases daily – Georgia moved to the so-called “red zone” on October 23²⁰ – the highest risk zone in terms of spread of the coronavirus according to the common approach criteria of the European Center for Disease Control and Prevention²¹.

Despite alarming rise of cases of coronavirus, on October 31, the Parliamentary Elections took place in Georgia. The polling stations in many regions of Georgia lacked necessary infrastructure to prevent the spread of coronavirus. In many areas, the polling stations were too small, and it was not possible to keep recommended physical distance among the people present at the polling stations²².

On the second day of the Elections, spontaneous protest actions were held throughout whole country regarding the violations observed at the Elections. Large scale peaceful protest action with the participation of tens of thousands of people was held in front of the Parliament of Georgia on November 8. The protestors later moved to the building of Central Election Commission where they were dispersed by the government by water cannons and “pepper spray”²³.

On November 9, the government introduced new restrictions according to which the movement of people, either by car or on foot, as well as being in the public space was prohibited during 10 pm – 5 am. The official reason for introducing new restrictions as announced by the government was fighting the spread of the coronavirus.

¹⁹ The online portal of legislative acts of Georgia:

<https://www.matsne.gov.ge/ka/document/view/4990670?publication=0> (available only in Georgian)

²⁰ Public Broadcaster:

<https://www.youtube.com/watch?v=Tytuz7cUq4> (available only in Georgian)

²¹ <https://www.ecdc.europa.eu/en/covid-19/situation-updates/weekly-maps-coordinated-restriction-free-movement>

²² Report of Human Rights Center:

<http://hridc.org/admin/editor/uploads/files/pdf/report2020/MONITORING%202020%20PARL.%20ELECTIONS-eng.pdf>

²³ Statement of Human Rights Center:

<http://humanrights.ge/index.php?a=main&pid=20285&lang=eng>

As the drastic increase of cases of new coronavirus continued to rise in Georgia and reached about 3800 people daily, Georgian government introduced further restrictions on November 28²⁴, based on new amendments to Law on Public Health of Georgia, including, prohibition of movement and “being in public space” between the hours of 21:00 pm and 05:00 am in the whole country, banning regular intercity transport (railways, buses, minibuses), banning municipal transport in big cities, closure of restaurants and other food facilities, banning conferences, trainings, cultural and entertaining events, Sports, arts and cultural activities, fitness clubs and swimming pools²⁵. The assemblies and manifestations are not formally restricted by new regulations. However, banning public transportation and movement during evening hours hinders to practically realize the right to peaceful assembly and manifestations.

As of December 20, 2020, according to the information disseminated by the Ministry of Internal Affairs of Georgia, during the last 24 hours, 849 facts of breaching new regulations have been revealed across the country. Police fined 104 physical persons among who were the citizens who moved during the prohibited hours²⁶.

The existing situation is similar to the state of emergency with massive restrictions on multiple fundamental freedoms. As of now, these restrictions shall operate till December 31, 2020 according to the government resolution. However, they may be extended, as announced by the government.

Measures and their effect over civil society

The restrictive measures and prohibitions on freedom of movement negatively affects the work of the civil society organizations, especially the human rights organizations. The government provides no realistic possibility for the human rights defenders to receive the permits enabling them to move outside during the evening hours. Human Rights Center has been in intensive communication with the government bodies regarding the possible issuance of permits in order to enable the human rights defenders to move outside during the prohibited hours and observe various events relevant in terms of fulfilling their work, such as monitoring the protest actions. According to the existing regulations, the permits are given to the representatives of certain government bodies, certain economic activities, journalists and lawyers who hold the order regarding the implementation of concrete procedural activity. The permits can also be given for “extraordinary circumstance” or for the “circumstance not envisaged preliminarily”. The Human Rights Center has been in communication with the government whether the human rights work and monitoring of the protest actions could be considered such ground, giving rise to the issuance of permits. However, there has not been any positive response from the government. Existing situation negatively affects the work of human rights organizations and human rights

²⁴ The Resolution regarding the restrictions was enacted on November 26. The restrictions took force since November 28: <https://matsne.gov.ge/ka/document/view/5039493?publication=0>

²⁵ <https://agenda.ge/en/news/2020/3722>

²⁶ <https://police.ge/en/shinagan-saqmeta-saministrom-kovid-19-is-tsinaaqhmdeg-brdzolis-miznit-moqmedi-regulatsiebis-darghvevis-849-faqti-gamoavlina/14217>

defenders as they are not able to move outside during the night hours and observe possible violations taking place outside.

The existing restrictions undermine freedom of expression as well. The freedom of expression encompasses right to receive information. According to existing regulations in Georgia, the representatives of the media outlets are entitled to be given permits enabling them to move outside during the night hours in order to fulfil their work. This work includes receiving and disseminating information to the public. The government body responsible for the issuance of the permits for the journalists is the Press Service of the Government of Georgia. The Press Service issued the permits for the representatives of the media outlets during concrete period of time in November. Although the ban on the movement is continuing and the representatives of the media outlets are entitled to receive permits as according to the existing regulations, in practice currently there is no procedure in place for doing so. This situation undermines the work of the media outlets and realization of freedom of expression. Human Rights Center continues advocacy in order to eradicate this problem.

Derogations from human rights treaty obligations

The Permanent Representation of Georgia to the Council of Europe, notified the Secretary General of the Council of Europe, pursuant to Article 15 of the European Convention on Human Rights and derogated from the Articles 5 (Liberty and Security), 6 (Right to a Fair Trial), 8 (Right to Respect for Private and Family Life), 11 of the Convention (Freedom of Assembly and Association), Articles 1 and 2 of Protocol 1 to the Convention (Protection of Property), Article 2 of Protocol 4 to the Convention (Freedom of Movement). The notifications regarding the derogations and prolongation of derogations were made on March 21, April 22 and May 25²⁷.

On 14 July 2020 the Parliament of Georgia extended the application of the emergency legislation until 1 January 2021²⁸.

²⁷ Council of Europe: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=oC00wpDO

²⁸ *ibid*