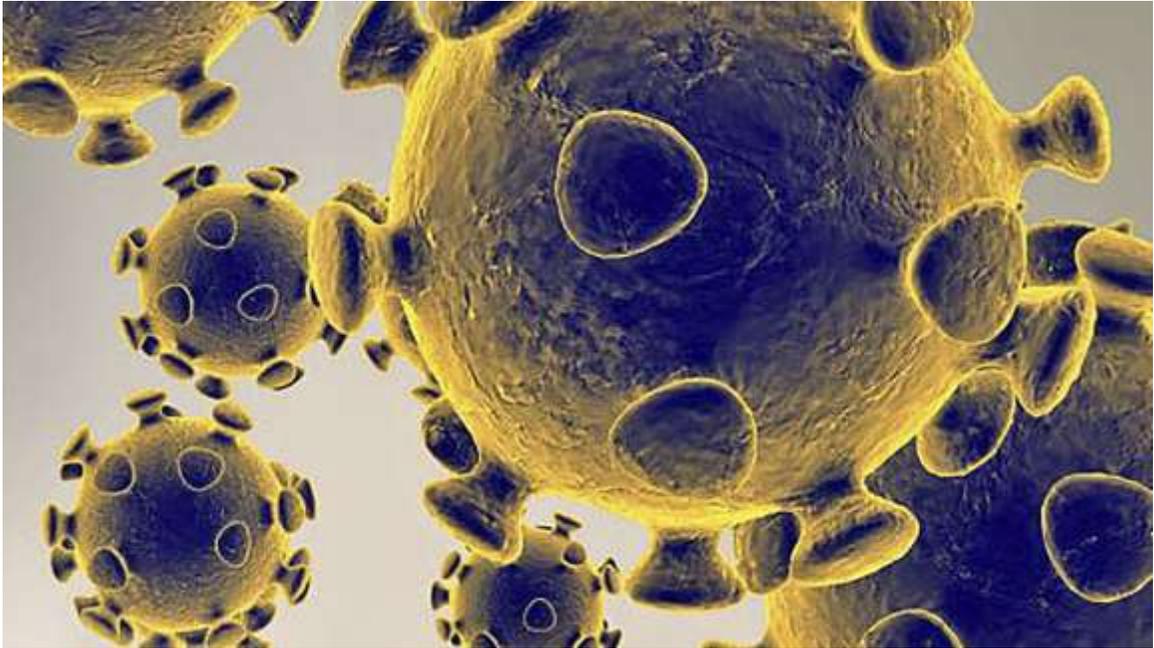


HUMAN RIGHTS IN THE STATE OF EMERGENCY



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INTRODUCTION

In Georgia, like in many countries across the world, the COVID-19 related epidemics has reached its peak. Economists, political scientists and philosophers already express their views about the post-pandemic life. There are many opinions about the future, some of them are optimistic and others - pessimistic. Anyhow, the global impact of the pandemic may be comprehensively analyzed only after the virus is completely defeated.

Physical distancing is the most welcomed and effective method to resist the spread of the COVID -19. People find it difficult to start life with different social rules and keep away from each other. The governments had to establish special regimes, introduce non-standard measures and carry out extraordinary activities to ensure so-called social distancing. This situation affects the lives of all citizens of any country and it means restriction of their basic rights, which the humanity gained through centuries-long struggle and which are now guaranteed under the constitutions and various international conventions.

The Novel Coronavirus, initially declared to be a global threat and then to be pandemic by the World Healthcare Organization [WHO], soon became the reason to announce the state of emergency in many countries across the world. Officially, Georgia joined the list of these states on March 21, 2020, when the President of Georgia, based on the preliminary petition of the Prime Minister, released the Decree N1 “On Measures to be implemented in connection with the Declaration of a State of Emergency throughout the whole territory of Georgia”, which was approved by the Parliament of Georgia on the same day. It is noteworthy that the decision was made based on the large public consensus. The parliamentary opposition also voted for the President’s decree. The opposition parties, which had boycotted the parliament sessions since last November, also participated in the ballot. On the same day, independently from the decree, the Parliament balloted on the “Law on Measures to be implemented during the Curfew,” which was also supported by the opposition parties and finally it was approved with 115 votes without any objections.

REASONABILITY OF THE STATE OF EMERGENCY, WHICH WAS ANNOUNCED ON MARCH 21

The first case of the COVID-19 infection was confirmed in Georgia on February 26, 2020¹. Citizen of Georgia infected with COVID-19 arrived in Georgia from Iran via Azerbaijan. Two days later, we had one more confirmed case,² on the third day the number of the infected people increased up to three³. In parallel to the increased number of confirmed cases, the Government of Georgia started to fight against the spread of the novel coronavirus and took special measures before the state of emergency. After the WHO announced that the COVID-19 was the worldwide pandemic⁴, the Government of Georgia (GoG) started rapid reactions in various directions. At that stage, based on the GoG decision, street markets, shopping and entertaining centers, theaters, cinemas and museums were closed; mass events were banned; public transportation movement was banned; quarantine was announced in schools and kindergartens; medical institutions moved to an emergency regime; entry from the countries, which were declared to be sources of infection, was banned. We may state that the GoG, without announcing the state of emergency, established many restrictions which were applied by many other countries in the frame of the state of emergency.

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Human Rights Center supported the decision of the GoG to fight against the crisis with less painful measures – to announce the state of emergency in the country only in extreme necessity, because of the increased risks of restriction and disproportionate inference in human rights⁵.

The state of emergency is the exceptionally critical situation in the country, where there is a threat to society or one part of it⁶. The state of emergency shall be real and immediate, it shall be able to negatively affect wider population, as for the crisis and threat shall be of particular nature which excludes provision of public safety and health without exceptional restrictions⁷.

Opposite to that, restriction of the rights does not mean a priori violation of the rights. The international human rights law allows to restrict the rights for the sake of public health or national emergency, but they should be lawful, necessary, and proportionate. They should be necessary to achieve a legitimate objective, evidence-

¹ See more <https://civil.ge/archives/340246>

² See more <https://civil.ge/archives/340372>

³ See more <https://civil.ge/archives/340500>

⁴ WHO announced the COVID-19 related pandemic on March 11, 2020

⁵ See the HRC statement 20.03.20 <http://humanrights.ge/index.php?a=main&pid=20097&lang=eng>

⁶ Guide on Article 15 of the European Convention on Human Rights, Derogation in time of emergency. 2019, p 16

⁷ B. Bokhashvili, Case Law of the ECtHR, p 361

based, proportionate to achieve that objective, neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, and subject to review⁸.

In this light, regardless the state of emergency and some restrictions in the state, the authority is not absolutely free in the execution of activities and the European Court of Human Rights may review how necessary the concrete restrictions were in response to the urgent situation. During the review, the ECtHR takes such factors into account, like the circumstances before the state of emergency and length of the state of emergency, legal nature of the restricted rights.

The Article 71 of the Constitution of Georgia clearly determines the formal basis to announce the state of emergency, according to which the emergency situation can be announced “In cases of mass unrest, the violation of the country’s territorial integrity, a military coup d’état, armed insurrection, a terrorist act, natural or technogenic disasters or epidemics, or any other situation in which state bodies lack the capacity to fulfil their constitutional duties normally.”⁹

The COVID-19 related pandemic was really a legal basis to announce the state of emergency in accordance with the abovementioned article in the entire territory of the country or in some parts of it. Even though, like the Case Law of the Strasbourg Court defines, the Constitution of Georgia does not consider only formal basis enough to announce the state of emergency and additionally underlines that it is important to substantiate the reasonability of the decision, which is connected with the extraordinary situation, when the authority “lacks the capacity to fulfil their constitutional duties normally.” It means cumulative co-existence of several factors, namely: the threat is real and evident, it shall affect big part of the population, the possibility to continue normal life shall be under the risk and it shall have an exceptional nature. In due respect to the obligation to substantiate the need of the state of emergency, the provision of the Law of Georgia on the State of Emergency acquires particular importance to introduce the special regime. According to the law, “the purpose of the declaration of a state of emergency is the normalization of the situation as quickly as possible, and the restoration of law and order.”¹⁰ Consequently, the Constitution of Georgia requires to meet all formal and contextual pre-conditions necessary to announce the state of emergency. Therefore, these requirements shall be substantiated when the President of Georgia issues a decree and the GoG enacts the resolutions, which authorize them to substantiate the basis of the restriction of human rights and basic freedoms.

⁸ Human Rights Watch, “Human Rights Dimensions of COVID-19 Response”, March 19, 2020, <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>.

⁹ See the Constitution of Georgia, Article 71(2)

¹⁰ See the Law of Georgia on the State of Emergency, Article 1 (2)

On March 21, 2020, the state of emergency was announced in response to the ongoing developments in the world and epidemic situation in the country. The decision was made based on large public consensus, which is confirmed with the support of various political parties and civil society. On that ground, HRC does not observe any irrelevance of the need and rationality to announce the state of emergency.

THE RESTRICTIONS UNDER THE STATE OF EMERGENCY

The state of emergency is a special situation, when the governments are equipped with the authority to carry out special measures, which they cannot apply in ordinary situations. The formal basis and rules to announce the state of emergency are regulated by the Constitution of Georgia¹¹. The state of emergency obliges every individual to change his/her conduct and normal lifestyle and obey the requirements of the special regime, which may restrict their constitutional rights and freedoms.

Despite that, the state of emergency does not mean usurpation of the authority by the government that is secured by the Constitution of Georgia and international conventions ratified by the State of Georgia. Even though, during the state of emergency, the constitutional institutions start working in an extraordinary regime (for example the executive authority issues the decree which has the power of the law), it is necessary to ensure coordination of all three branches of the authority and through parliamentary and judiciary control to minimize the risks of the exceed of power by the authority.

The Constitution of Georgia, like other international acts¹², explicitly lists those rights which may be restricted in the course of state of emergency. Freedom of religion is not on the list. Regardless that, the Constitution of Georgia, like international human rights acts, allows to restrict the freedom of religion, and it's one of the pre-conditions shall be protection of the health of citizens. At the same time, neither constitutional nor international standards allows similar restrictions during the state of emergency; moreover, because of the state of emergency, they find restriction of freedom of religion inadmissible. Consequently, it is evident that the President's Decree did not mention the Article 18 of the Constitution, which could somehow effect gathering of people in the churches or other places of worship during the epidemics. While the main purpose of the state of emergency was to prevent the spread of virus by keeping physical distancing in the population, it became impossible to achieve these goals without the proportional restriction of freedom of religion.

¹¹ See the Constitution of Georgia, Article 71

¹² UN International Covenant on Civil and Political Rights, Article 4, adopted in 1966.

THE NEED OF CURFEW

Refusal of the Orthodox Church to change the rule of Eucharist before the Christian holidays, rejection of recommendations and imposing all responsibilities on the parishioners¹³, particularly increased the need to tough the already introduced restrictions, which was responded by the Government of Georgia with particular loyalty towards the Orthodox Church of Georgia. The GoG, to avoid confrontation with the Church, due to the legitimate interference in the freedom of religion and the Article 18 of the Constitution, instead establishing proportionate restrictions, preferred to tough the restrictions for the believers throughout the country, mostly in two stages. With the approaching Christian holidays – Annunciation, Palm Sunday and Easter, when the risk of violation of physical distancing rule was particularly high, the GoG failed to temporarily restrict the freedom of religion (*external dimension*) to avoid the spread of the COVID-19. Instead, it became necessary to announce the curfew and ban transport movement to influence the decision of the churchgoers to join the religious services by restricting the right to movement and freedom of gathering instead directly interfere in the freedom of religion; the Orthodox Church of Georgia did not oppose the decision either.

In accordance with the government's decision, the restrictions were placed in two stages. On March 30, the Prime Minister once again spoke about the church and stated that they continue communication and try to find some compromise. This statement was followed by the March 31 decision of the GoG to announce the curfew in the entire territory of Georgia – from 9 pm until 6 am the movement of transport and people was banned with some exceptions. In accordance with the new regime, only cars, including taxis, were allowed to move based on the recommendations of the Healthcare Ministry. Also, institutions of strategic importance were allowed to provide their employees with organized and safe transportation. Gathering of more than 3 people was banned except groceries and pharmacies, where people had to observe 2-meter so-called social distancing.

Afterwards, on April 1, the Chatholocos-Patriarch of the Orthodox Church of Georgia published a letter¹⁴, where he stated that churches will not close. In his recommendatory letter, the Patriarch called on the clergies to observe the physical distancing and to conduct the liturgies in large and small churches with new rules. Nevertheless, gathering

¹³ See the statement of Bishop Jakub: "Parish who will come to the church, will take responsibility – I can be responsible only for myself." <https://www.interpressnews.ge/ka/article/595428-meupe-iakobi-mrevli-romelic-tazarshi-mova-tviton-aigeb-pasuxismgeblobas-meshemizlia-chems-tavze-viqo-pasuxismgebeli/>

¹⁴ See the address of the Patriarch of Georgia to parish (01.04.2020) <https://patriarchate.ge/news/2595>; <https://orthodoxtimes.com/patriarch-of-georgia-spiritual-nourishment-necessary-we-will-not-close-churches/>

of large number of people on April 7, Annunciation Day, and after one of the church servants was confirmed with COVID-19¹⁵ revealed how real the threat was. At the same time, media permanently reported that clergies and churchgoers did not follow the recommendations and did not observe social distancing in the churches. On April 12, on the Palm Sunday, high number of believers in the churches and many facts of unobserved physical distancing, resulted into criticism of the patriarchate¹⁶. On April 12, a security officer of the Patriarchate of Georgia was confirmed with COVID-19¹⁷, and on April 14 information was spread that a clergyman and his family members were confirmed with COVID-19 too¹⁸.

At that stage, it became evident that the existing regulations could not affect gatherings in the churches during rituals and it could not guarantee restriction of mass gathering of people on the Easter Holiday and relatively prevention of the spread of infection.

Therefore, at the second stage, the GoG had to restrict the emergency regime. On April 15, based on the GoG's decision, entry in big cities of Georgia – Tbilisi, Rustavi, Batumi and Kutaisi was banned for ten days¹⁹. On April 16, in the evening, after the number of the COVID-19 infected people increased with 140 within one week, the GoG decided to fully ban transport movement from 12 pm on April 17 until April 21. It is noteworthy that this year the Easter Holiday was on April 19, which was preceded by the Holy Week and then followed by the Bright Week. The next day – April 20 is traditionally known as the Day of the Deceased People and on that day people go to cemeteries. Consequently, the government's toughened regulations were directly connected with the Christian holidays and the position of the Patriarchate.

Regardless the particular role of the freedom of religion, its external dimension (forum externum) is not unbounded and the Constitution of Georgia and the international human rights law allows its restriction for the protection of public health. In Georgia, popularity of the Orthodox Church and its influence on the electorate permanently forces all governments to compromise. However, when the public health was questioned, the GoG was obliged to be courageous and even with non-popular decision to reduce the obvious risks threatening the public health.

Respectively, the tactics of the GoG can be criticized, based on which the state of emergency was unreasonably toughened while it was possible to achieve the same results

¹⁵ See more at <https://www.radiotavisupleba.ge/a/30538151.html>

¹⁶ See more <https://www.radiotavisupleba.ge/a/30551255.html>

¹⁷ <https://www.radiotavisupleba.ge/a/30552550.html>

¹⁸ <https://www.radiotavisupleba.ge/a/30552203.html>

¹⁹ <https://imedinews.ge/ge/covid19/136915/dges-2100-saatidan-tbilisi-rustavi-batumi-da-qutaisi-chaiketa>

by applying the measures in accordance with the Article 18 Part 3 of the Constitution of Georgia.

THE WORK OF THE PARLIAMENT OF GEORGIA DURING THE COVID-19-RELATED EPIDEMIC

In accordance with the Constitution of Georgia, the President of Georgia shall, upon recommendation by the Prime Minister, declare a state of emergency across the entire territory of the country and shall immediately present this decision to Parliament for approval²⁰. On its side, the Parliament of Georgia shall adopt it by a majority of the total number of its members²¹. If Parliament does not approve the decision following a vote, it shall become null and void²². Consequently, the Parliament formally restricts its own authority.

In such a situation, the authorities of the Parliament of Georgia are significantly restricted. Namely, during the state of emergency, the Parliament continues work in the special regime, which continues throughout the entire emergency situation. In the meantime, the Parliament immediately examines the issues of the emergency state or a martial law, to sign a truce, to approve the President's decree, to use defense forces or to allow the entry of the military forces of other state and they are put on motion without preliminary committee hearings and other respective procedures²³.

The Rules of Procedures of the Parliament of Georgia regulates the issues, which can be adopted by the Parliament in an ordinal manner. However, the list does not mention whether the Parliament is able to continue usual law-making or supervisory function in accordance with the Constitution of Georgia. Also, the Georgian legislation does not regulate the form of this activity of the Parliament. The most important is that it is not determined how the public control over the activities of the parliament and citizens' engagement is ensured, when it implements its important constitutional function of law-making and supervision. There is only inter-regulatory decision²⁴, which the Parliament of Georgia adopted in relation with the work of the parliament during the state of emergency, but neither this document determines the forms and rules how the parliament will implement law-making and supervision functions.

²⁰ See the Constitution of Georgia, Article 71 (2)

²¹ See the Constitution of Georgia, Article 71 (7)

²² See the Constitution of Georgia, Article 71 (3)

²³ See the Rules of Procedures of the Parliament of Georgia, Article 262

²⁴ See the Decision N341/1 of the Bureau of the Parliament of Georgia, March 21, 2020
<http://parliament.ge/ge/ajax/downloadFile/135880/341-1>

In the course of implementation of the law-making and supervision function, public engagement and participation are essential. Therefore, it is necessary to ensure their engagement in the process at least remotely.

The Parliament of Georgia shall demonstrate more institutional and public commitment and elaborate the rules and forms how this problem will be regulated. This obligation is already described in the rules of procedures of the Bureau of the Parliament of Georgia.

Besides the abovementioned problematic issue, the provision of the Constitution, which halts the process of the discussion of the constitutional law until the state of emergency is over in the country, acquires particular importance for the public and political stability. After months-long public protest, negotiations between opposition parties and government, with the effort of the international partners, the agreement was achieved to change the election system and it needs respective amendments in the Constitution. For that purpose, the package of the draft constitutional amendments was registered in the Parliament of Georgia²⁵. According to the bill, the 2020 Parliamentary Elections shall be held with proportional system that is the result of consensual decision of the political spectrum²⁶.

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The state of emergency does not allow the Parliament to examine the bill and if it prolongs, it will undermine the possibility to change the election system before the elections in the fall of 2020. **Respectively, it is necessary, to use the state of emergency only for the period of time and purpose it serves, and the GoG, the ruling party, shall not artificially hinder the process.**

HUMAN RIGHTS DURING THE COVID-19 RELATED ECONOMIC CRISIS

The scales of the spread of the novel coronavirus made it evident that the pandemic created global threats not only for the human health but it has also challenged the world economics. The world leaders, international media and experts already speak²⁷ about the large-scaled economic crisis – COVID-19 triggered “economic pandemic”, which may become an unprecedented in the history. It is contextually new crisis, which the earth has not undergone so far. The scientific society is using new terms reflecting the existing situation²⁸: “coronomics”, “corononomics.”

²⁵ See the bill <https://bit.ly/2v7UruH>

²⁶ <https://civil.ge/archives/341385>

²⁷ See more <https://cnn.it/2YzODx9>

²⁸ See more <https://bit.ly/3f8VkdE>

Generally, economic crisis negatively affects the human rights; the developments after the 1930s and 2007-2008 global financial crisis can easily prove that. Related mass rise in unemployment, cut off in state and international funding, impoverishment of the population, results into reinforced nationalism, racism and xenophobia²⁹ after similar crisis and make such groups of the society, like children, elderly people, and migrants, ethnic or other minorities particularly vulnerable.

Current crisis revealed particularly humiliated sectors of the economics. Among them are tourism and transport sector (particularly passenger flights). In the state of crisis, less money is transferred from abroad. The fall on stock markets directly affected the real sector of economics.

Naturally, in similar conditions, the state shall take measures to overcome the crisis with the implementation of anti-crisis activities and shall be ready for the post-crisis situation considering the new reality.

The world experience in the fight against the 2008-2009 economic crisis revealed that it will be important to establish tax suspensions, to reduce credit percent of central banks and to take measures to ensure liquidity, to empower the most impoverished population through social programs as well as other respective activities. Due to peculiarities of the current crisis, it is necessary that the state paid particular attention to the healthcare system and to protect citizens from hunger by implementing social programs.

The world experience in the fight against economic crisis already revealed that effectiveness of the steps taken by the state is directly connected with the inevitable defense of human rights. In the post-crisis period, direction of all “save economy” efforts towards the financial institutions, instead assisting individuals, further increased the inequality, made the rich even richer and the poor even poorer, the poor countries got more impoverished³⁰. Respectively, stimulation of economics is largely connected with the defense of all individuals’ rights from the side of the states. For example, Roosevelt’s policy of non-interference (*laissez faire*) – which was replaced by the so-called NEW DEAL, and it managed to lead the country out of the great depression by increasing the economic activities of minorities, by empowering the social policy and constructive interference of the state in the economics.

Diversification and inclusiveness of the post-crisis economics will be important to cope with such crisis. The social allowances shall be applied reasonably and

²⁹ In February 2009, UN High Commissionaire for Refugees Antonio Gutteres stated that “xenophobia becomes particularly indivisible trend throughout the world, when economics deteriorates.”

³⁰ See at https://www.ohchr.org/Documents/Issues/Development/IEDebt/20200414_IEDebt_urgent_appeal_COVID19_EN.pdf

adequately. The State shall take over the role of a mediator between the business and individuals. Eviction of people from their houses and leaving them in the street because of unpaid debts shall be suspended with respective regulations.

Unjustified weakness of the employers' rights in Georgia is critically acute even during the non-emergency period that makes a lot of employees particularly vulnerable during the crisis. It is necessary to finalize the commenced reform of the labor law in the country and to base the post-crisis economics on human rights.

CORRUPTION AND COVID-19

During the large-scaled crisis, unfortunately, corruption particularly flourishes. The practice³¹ shows that neither developed countries are protected from it, where the systems are functioning more-or-less correctly and states have strong anti-corruption policies. Even though, in terms of vulnerability, the risks are particularly high, where the institutions and *Checks and Balances* system are weak and the society has low trust to the authority.

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Although the crisis for the big part of the society is a cause for economic oppression, the world practice many times showed that for certain groups of people similar periods become a good time to easily and unlawfully misappropriate large amounts of money. The COVID-19 related situation has already become similar comfortable environment for similar manipulations in many countries of the world³².

March 23, 2020 resolution of the Government of Georgia resulted to suspend the obligation under the General Administrative Code to issue public information. Current situation unconditionally raises the number of state procurements without competitions, which without public control, results into corruptive deals and irrational budget expenditures.

Above that, the GoG, due to the COVID-19 related situation in the country, announced to mobilize 2 billion GEL in the state budget and allocated additional 351 million GEL on the healthcare sector to fight against the pandemic.

In accordance with the GoG resolution, on April 7 2020, for the prevention of the COVID-19, agricultural markets were closed temporarily that was particular burden for the village population. Their main source of income was realization of agricultural products.

³¹ S. Steingrüber, M. Kirya, D. Jackson and S. Mullard, U4 Guide - Corruption in the time of COVID-19: A double threat for low-income countries <https://www.u4.no/publications/corruption-in-the-time-of-covid-19-a-double-threat-for-low-income-countries.pdf>

³² Ibid

On April 22, population of Imiri, Kasumlo and Agmamedlo villages in Marneuli municipality held protest action; in parallel to that number of questions to the GoG increased. Online edition presa.ge³³ reported that the Government created a special platform for agricultural trading on the basis of the wholesale trading center Ltd Jibe. The author mentions alleged corruption scheme, which according to his allegation, tracks us to Bidzina Ivanishvili.

Ebola crisis also revealed the insufficiency of anti-crisis mechanisms in emergency situations. Respectively, it is necessary that the GoG paid particular attention to the anti-corruption system and not to refuse to apply additional mechanisms for that. Also, it is necessary that public agencies ensured rational and transparent expenditure of the funds they receive from the emergency budget.

IMPACT OF THE COVID-19 ON THE RIGHT TO EDUCATION

Throughout the world, as a result of COVID-19 related lockdown of schools, 87% of pupils, approximately over 1, 5 billion adolescents, were deprived of the possibility to participate in the schooling process after the schools were completely closed in 165 states across the world³⁴.

In this regard, neither Georgia was an exception. For the prevention of the spread of COVID-19, in accordance with the President's decree on the state of emergency, the GoG was allowed to apply different rules and conditions for the implementation of the duties under the Law of Georgia on Pre-School Education, the Law of Georgia on General Education, the Law of Georgia on Vocational Education, the Law of Georgia on Special Vocational Education and the Law of Georgia on Higher Education.

Several paragraphs refer to the fields of education, science, culture and sport in the Government's resolution on the Measures to Be Implemented for the Prevention of the Spread of the COVID-19, according to what the schooling process became remote and many restrictions were established in connection with the social distancing.

On March 17, Prime Minister Giorgi Gakharia in his address on TV³⁵ stated that the system was not ready to fully ensure the remote education. The Ministry of Education stated that unless the schooling process is restored by April 26, the entire educational process was questioned.

³³ See the article <https://presa.ge/?m=politics&AID=81787>

³⁴ <https://time.com/5810017/coronavirus-school-closings-education-unesco/>

³⁵ See more at <https://netgazeti.ge/news/434874/>

By April 24, after the anti-crisis plan was presented, the PM stated³⁶ that the schooling process will resume in schools on September 1, 2020 though the 2019-2020 education year will not be declared academic. He stated that the Ministry of Education effectively responded to the restrictions and introduced the method of remote education.

On April 6, the Organization for Economic Co-operation and Development – OECD published the report³⁷ how to overcome the COVID-19 related challenges in the field of education. The report reviewed the cases of 98 states and it positively evaluated the steps taken by the Government of Georgia to ensure non-stop educational process in the country.

Nevertheless, access to internet is still a challenge for many pupils and students in Georgia. It is particularly difficult for the people living in the villages and mountainous regions as well as for the adolescents from the families with low income. Consequently, it contributes to the increase of inequality in the population. Although educational program is transmitted for the school children on the Channel 2 of the Georgian Public Broadcasting, to make the remote education available for everybody, these measures cannot be considered enough considering the scope of the problem. The quality of the schooling process will be assessed in the end of the school year but it is evident that the quality will be lower than usual.

It is important that in coordination with the state authority, the universities should take the gaps in the remote educational process into account and assist the students who because of limited access to internet or for other technical problems, cannot take part in the remote education process.

It is noteworthy that some part of the tuition fee paid by the students is spent on the expenses related with maintenance of lecture-halls, on logistics, on the arrangement of conferences and trainings that is directly connected with the educational process and during the remote process, these facilities and tools are not used. So, the money paid by the students is saved. Therefore, the universities should either retribute the part of the unspent tuition fee to the students, or spend it on subsidizing the socially vulnerable students through transparent and fair mechanisms.

The COVID-19 may affect the Common National Entrance Examinations too. According to the National Assessment and Educations Center, it is early to speak about any

³⁶ See more at <https://droa.ge/?p=71378>

³⁷ See full report at https://gloaled.gse.harvard.edu/files/geii/files/framework_guide_v2.pdf

amendments in the dates or process of examinations³⁸. The Prime Minister of Georgia stated the same³⁹. The State institutions have not yet presented any concrete plans about the national exams. However, as it is difficult to predict how long the COVID-19 related situation will last, it is necessary that the State elaborated the possible plan of coordination.

PENITENTIARY ESTABLISHMENTS

Peculiarity of the situation during the coronavirus crisis make the prisoners particularly vulnerable. The spread of the virus is dangerous in isolated institutions, where it is almost impossible to keep physical distancing between inmates (shared cells, shared bathrooms, toilets, kitchen and other items). Relatively, being in similar institution, in fact, means that a person is under particular risk of being infected. The high number of inmates in the Georgian penitentiary establishments further increases this risk. In accordance with the CoE report, Georgia ranks the third place with the number of prisoners (per 100 000 inhabitants of the country).

Due to the particular threat coming from the virus, the UN called on the states, because of the novel coronavirus pandemic, to free the prisoners who belong to vulnerable groups. The UN Human Rights Commissionaire Michele Bachelet stated that the virus was confirmed in the penitentiary establishments, psychiatric clinics and asylums of elderly people in many countries. She added that the “governments shall consider the issue of early release of the prisoners who belong to vulnerable groups. It refers to older detainees and those who are sick, among them – as well as low-risk offenders.⁴⁰”

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The Council of Europe also released the appeal⁴¹, which suggested the member states to take immediate steps with regard to the high risk prisoners because preventive measures have particular importance in similar situation.

Because of pandemic, many countries across the world made decision to release part of prisoners. Not only western states were on the list (Germany, Italy, Poland, Great Britain, Canada and more) but also the states which are known with particularly strict penitentiary system like Iran, Turkey, Afghanistan and others⁴².

³⁸ See more at <https://bit.ly/2YnwWZ9>

³⁹ See more at <https://droa.ge/?p=71385>

⁴⁰ See more at <https://news.un.org/en/story/2020/03/1060252>

⁴¹ See more at <https://www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe>

⁴² See more at <https://theconversation.com/coronavirus-why-swathes-of-prisoners-are-being-released-in-the-worlds-most-punitive-states-136563>

Because of the threat coming from the spread of the virus, on March 12, the Director General of the Penitentiary Service announced the two-week special conditions⁴³. For the prevention of the spread of the COVID-19, the defendants/convicted people had their right to enjoy conjugal meetings suspended. From March 16, some preferences were established for phone calls⁴⁴. Respectively, each prisoner has right to make phone calls for additional 15 minutes for free that is a serious relief for them due to prohibited conjugal meetings. Phone call limits for the defendants/convicted people are established in coherence with the risk and type of penitentiary establishments. The inmates in semi-open penitentiary establishments can enjoy unlimited phone calls while the inmates of the particular regime facilities, considering the risk of threat, can make only 30 or 45 minute phone calls a month.

Extra phone-call time aimed to compensate the restrictions, which were established for the prisoners to prevent the spread of the pandemic. Nevertheless, these measures cannot be considered proportionate and sufficient respond to the restrictions. The so-called conjugal meetings are one of the key components for the prisoners to communicate the people outside the facility during imprisonment. It has particular importance for their re-socialization. Free phone calls cannot be an alternative of the face-to-face meetings and the State shall necessarily take adequate measures so that the restrictions influenced the mitigation of the punishment terms.

Also, on March 30, the employees of the penitentiary establishments moved to so-called emergency regime⁴⁵, that means they are isolated from the outside world. This situation cannot last forever, considering the fact that there is no vaccine and effective medical treatment method. Therefore, it is necessary that the GoG took measures in accordance with the UN and CoE recommendations and immediately release the high risk prisoners (elderlies, HIV infected people, those who have respiratory diseases and more), who were convicted for non-violent crimes.

During the state of emergency, the pardon mechanism, may also be applied effectively. The humanitarian goals of the pardon power, alongside other ones, are listed in the Constitution, which regulate it. The President is cable to play positive role in the defense of the prisoners' rights and avoid possible complications.

On April 7, on the day of Annunciation, the President of Georgia Salome Zurbashvili pardoned 9 convicted women. As reported by the President's administration, all of the

⁴³ See information at <https://imedineews.ge/ge/samartali/131213/tea-tsulukiani-vmushaobt-rom-paemnis-akrdzalvis-kompensireba-satelepono-shegavatebit-mokhdes>

⁴⁴ See information at <http://www.tabula.ge/ge/story/166957-penitenciuri-samsaxuri-patimrebs-fasian-droze-15-tsutiani-ufaso-sasaubro-dro-daematat>

⁴⁵ See more at https://imedineews.ge/ge/archive?fbclid=IwAR0Zt_p4PKSr2-FCA0ig7qQcaqBIFQ7l_N_4go0PAmox45o1x8aU0NoMlzw

pardoned convicts are mothers of at least one minor, and none of them have been convicted for violent crimes”⁴⁶. The President pardoned the prisoners on the religious holiday and it had no connection with the COVID-19 related crisis. The recent case of pardoning of prisoners caused discontent of the prisoners and controversy of opinions in the society. Human Rights Center many times called on⁴⁷ the President’s administration to act with more transparency and more accountability before the citizens of Georgia.

MEDIA DURING THE STATE OF EMERGENCY

Minimalized restrictions for the work of media during the state of emergency in Georgia shall be evaluated positively. Although in the state of emergency, in case of necessity, the Constitution of Georgia allows the authority to impose some restriction on the spread of information, in this particular case, the restrictions did not refer to media representatives. Neither additional bans under the curfew were applied against the journalists.

The issue of dissemination of accurate information and civil responsibility of journalists are the topics of another discussion. The statement of the WHO also stressed the importance of this issue⁴⁸, according to which, they are not just fighting the pandemic, but they are fighting an infodemic too. The disinformation also indicates at the pandemic threat, which may complicate the fight against the virus. In this regard, we should underline demonstration of high ethical standards of the Georgian media and big part of the journalists and their effort to report correct information.

We criticize continuation of the repressive policy of the head of the Adjara TV and Radio Public Broadcasting in the course of state of emergency and rude interference in the editorial independence from his side. On April 21, 2020, disciplinary proceedings started against Teona Turmanidze - anchor/reporter of the news room of the company, based on which she was deprived of the right to temporarily run the TV programs because of her April 14 post in the social network FACEBOOK. In the past three months, many similar incidents were observed in the TV Company; critical TV-program HashTag was closed. Local⁴⁹ (Media Institute, HRC, EMC...) and international organizations⁵⁰ (OSCE, CoE, and RWB) critically assessed these decisions. It is important to immediately combat malicious practice of the company management and to prevent them from taking advantage of the emergency situation in the country.

⁴⁶ See more at <https://netgazeti.ge/news/441247/>

⁴⁷ See the statement of HRC at <http://humanrights.ge/index.php?a=main&pid=20130&lang=eng>

⁴⁸ See more at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30461-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30461-X/fulltext)

⁴⁹ See the joint statement of HRC and Media Institute <https://bit.ly/3dyMoGg>

⁵⁰ See more at <https://agenda.ge/en/news/2020/730>

IMPACT OF THE COVID-19 ON THE WORK OF THE JUDICIARY SYSTEM

On March 13, 2020, prior to the declaration of the state of emergency, the High Council of Justice (HCoJ) adopted recommendations on the measures to be implemented in the common courts of Georgia for the prevention of the spread of the COVID-19⁵¹. The recommendations are related to the measures to be implemented in the court system to ensure a gradual transition of court proceedings to a remote regime.

On March 16, 2020, the chairman of the Tbilisi City Court issued an order on the establishment of restrictions for the prevention of the spread of the coronavirus. It reads that the Civil, Administrative and Criminal Law Panels of the Tbilisi City Court shall postpone the scheduled hearings of the cases pursuant to the terms established under the procedure code except those cases, which need to be examined in a limited timeframe⁵².

Later on, with the Decree N1 of March 21, 2020, the President of Georgia stated that in accordance with the criminal procedure code of Georgia the court hearings may be held remotely with the support of online communication resources.

17 Regardless the abovementioned regulations, majority of the judges in the Tbilisi City Court, fully restricted the access of the interested parties to the hearings, among them are the monitors. Also, the court exercised nonhomogeneous approach to the practice because some judges allowed the monitors of the monitoring organizations to attend the hearing while others misinterpreted the regulations and forbade them to observe the hearing that is evident negligence of the law and contributed to a faulty practice. HRC monitors were also restricted to attend the court proceedings, who observed the cases, where alleged political motives were identified.

On March 24, 2020, HRC disseminated a statement and called on the common courts to ensure transparency of all proceedings when holding the hearings remotely in accordance with the President's decree⁵³. On April 13, 2020, the Coalition for Independent and Transparent Judiciary also published the statement⁵⁴.

Naturally, the complexity of the current situation, including the challenges in front of the judiciary system, need to be taken into account, but the practice of full or partial closure of hearings, except for specific cases established in the legislation, contradicts the principles of the rule of law and undermines individuals' right to fair trial. At the same

⁵¹ See the order at <https://bit.ly/355pyTF>.

⁵² See the order at <https://bit.ly/35cggol>.

⁵³ See the HRC statement at <https://bit.ly/2WLGhYz>

⁵⁴ See the statement of the Coalition at <https://bit.ly/3fxiyDX>

time, the common courts shall ensure to conduct the hearings in full coherence with the Constitution of Georgia and the Criminal Procedure Code of Georgia.

On April 3, 2020, the Plenum of the Supreme Court of Georgia elected Khvicha Kikilashvili on the position of the judge in the Constitutional Court of Georgia⁵⁵. The candidate was presented to the Plenum in the course of state of emergency, when it was impossible to ensure control of the society and other interested parties over the process that was criticized by the civil society organizations⁵⁶.

EXTENSION OF THE STATE OF EMERGENCY

The Constitution of Georgia offers pre-conditions for the announcement of the state of emergency but does not mention how long it may last. It is evident because the state of emergency is announced in response to the existing crisis and it is impossible to foresee how long it may last. Therefore, the state of emergency shall be extended for the period of time, which is necessary to resolve the problem for what it was announced. The Constitution of Georgia does not change the standard of the substantiation in this regard either. The Constitution secures the risks of the usurpation of the power with various methods and demands cumulative coordination between the three institutes of the government to announce the state of emergency (government, president and the parliament). The Constitution does not restrict extension of the state of emergency either. The Government shall determine the reasonability of the extension of the quarantine in relevance to the causes of its initial announcement.

On March 21, for the fight against the COVID-19 pandemic, the state of emergency was announced in the entire territory of Georgia for one month. The curfew and strict quarantine regime was announced on March 31, 2020. Above that, four big cities Tbilisi, Kutaisi, Batumi and Rustavi were closed and transport movement was banned in the entire territory of the country. Alongside the identification of the infected people, particular quarantine measures were taken in various towns and villages of Georgia. Regardless the taken measures, number of the infected people increased. Therefore, based on the PM's decision, the state of emergency was extended until May 22,⁵⁷ that was initially supported by the President of Georgia and then, on April 22, 2020, by the Parliament of Georgia, with full majority, 97 votes against 10.

⁵⁵ See <http://www.supremecourt.ge/news/id/2062>

⁵⁶ See the address of the CSOs to the Plenum of the Supreme Court of Georgia <https://bit.ly/2WmdydM>

⁵⁷ See the resolution of the Parliament at <https://bit.ly/2SmjX68>

In this case, the members of the United National Movement and European Georgia's fractions were not among the supporters. They stated they would vote for the extension of the state of emergency if the GoG will present the announced anti-crisis plan, which was finally presented on April 27.

Advanced presentation of the anti-crisis plan by the Government of Georgia could have been important not only for the opposition political parties but also to gain full support of the society. Despite that, based on the same criteria, according to which the state of emergency was first announced on March 21, its extension was not legally problematic due to the scope of infection and real threats coming from the pandemic.

ANTI-CRISIS PLAN

In parallel to the COVID-19 related pandemic and painful measures taken against it in the country, which left thousands people without jobs and relatively without income, harmed the economics of the country, the anti-crisis plan presented by the GoG naturally is under particular public attention.

On April 24, the PM presented the economic plan how to cope with the crisis caused by the COVID-19. He said, the GoG will spend 3.5 billion GEL on the implementation of the plan, which includes both financial assistance to the people, who lost jobs because of the current situation, and empowerment of the business alongside the six-stage reopening plan.

According to the plan, the COVID-19 related budget will be spent on the three main directions:

1. *Care for the citizens and their social support (1, 35 billion GEL);*
2. *Care for the economics and support to entrepreneurship (2.11 billion GEL);*
3. *Reinforcement of the healthcare system and fight against pandemic (350 million GEL).*

At the first stage, the plan aims to financially support those activities, which the GoG has already commenced: subsidy of the taxes, support to the tourism sector, suspension of the bank loans and car taxation. On the second stage, people, who lost jobs, will receive social allowances, pensions; private and agriculture sectors will get assistance.

As for the reopening, the PM said at the briefing on April 25 that the reopening will be rolled out in six different phases and economics will be reopened eventually. He said, the

first stage will be rolled out on April 27 and each phase will take two weeks. At the same time, the epidemiologic situation will be important to consider.

We welcome that wider spectrum of the problems was reflected in the anti-crisis plan and that the state took social responsibility, which was largely supported by the purposeful assistance from foreign partners and donors.

It is important that the plan did not focus only on the employees working in formal sector. At the same time, the presented plan, through neglecting the principle of universality, means identification of target groups, which will complicate identification of the people working in informal sector or those who are self-employed. Naturally, in similar situation, it is difficult for these people to provide valid documents that they were really employed. The plan leaves these problems vague. On the other hand, identification of the problems in the social defense system, gives hope that the GoG will improve its faulty practice and will simplify identification of these groups or individuals.

In accordance with the plan, only those will get social benefits among the most vulnerable families, who have three and more underage children. This approach does not correspond the real challenge these families face.

Nonhomogeneous distribution of the monetary assistance in the social package of the plan between the employed and self-employed people is also problematic. According to the plan, self-employed people will get only single 300 GEL while those working officially, will get 1200 GEL within 6 months. We evaluate this approach as fair towards the self-employed people, who are under the high risk of losing the source of income.

The plan did not refer to many other vulnerable groups, who also need the support from the state. For example, people with disabilities, children, homeless people. Therefore, for the support and empowerment of all vulnerable groups, the benefits of the anti-crisis plan shall cover them too. Also, particular impact of the economic recession on the women and feminization⁵⁸ of the poverty is important to be taken into account, though it was left beyond the plan.

It is also important that the state included the support of those individuals and families, who lived on the money transfers from abroad and because of pandemic are now left without income.

⁵⁸ https://www.ohchr.org/Documents/Issues/Development/IEDebt/20200414_IEDebt_urgent_appeal_COVID19_EN.pdf

The country shall be ready to accept the migrants back, who were left unemployed because of the COVID-19 and their social guarantees must not be neglected. Even more, it is necessary to intensify the state support to encourage the citizens of Georgia to return to the homeland.

It is important that the state support to postpone and restructure the financial responsibilities of the citizens in the banks referred to the micro-financial organizations, Lombard or other financial institutions too. Moreover, the current credit policy and inactivity of the state make their beneficiaries further vulnerable.

It is important to eradicate the miscarriages in the plan, to simplify the administration process for the beneficiaries and to timely offer the benefits to them. Also, it is critically important to timely and comprehensively inform the society about the origin of the spent funds as well as their expenditure process.

CONCLUSION

Although the state of emergency was announced as a necessary and effective mechanism to mitigate the threats coming from the COVID-19 and its negative effects, the process was accompanied with risks and threats, which have already triggered some problems. The reality of these threats have already affected socio-economic conditions of thousands of people as well as the sectors of healthcare and economics, everyday life of people.

Polarized political spectrum, the pre-pandemic political crisis, upcoming elections and intended constitutional amendments, acute problems in the judiciary system, many cases of interference in the freedom of media, increased threats of corruption and other issues further aggravates the situation in the country, which were reviewed in the document above.

In this light, it is important to avoid taking advantage of the state of emergency for one's narrow political interests.

As the current developments in the country create basis for similar expectations, during the crisis, high activity of media and civil society plays important role.

It is essential that the state critically assessed fairness and systemic nature of the post-crisis plan and to plan it with maximum effectiveness. Considering the hard social and economic situation in Georgia before the crisis, it will have the decisive importance for the future of the country and its population.

Litmus for the assessment of the anti-crisis management will be not only defeating it but also inevitable defense of human rights in this process. Therefore, all steps or measures taken by the GoG in this process shall be done in due respect to the democratic values and principles and shall necessarily aim to defend political and social rights of each individual.

HRC will continue monitoring of the ongoing developments and will publish the final report after the state of emergency is over.