

COVID-19 PANDEMIC AND HUMAN RIGHTS



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HUMAN RIGHTS CENTER

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Mass spread of the Novel Coronavirus (COVID-19) created unprecedented crisis in the world. Social distancing and isolation became the major instrument to prevent the spread of the infection and virus. Isolation or other restrictions established during the state of emergency restricted freedom of movement that proportionally affects the restriction of other human rights and freedoms. Similar restrictions, in almost all countries across the world, once again demonstrated how important is the full respect of human rights including civic, political, economic or social rights.

During the state of emergency, it is particularly alarming that governments try to take an advantage of the situation for the sake of their narrow political interests, or to reinforce their control on the citizens in their or other countries via modern technologies that was used by various states or big companies short time before the pandemic¹. Similar activities harm the standards of human rights in concrete states and undermine the functioning of democratic institutions and respect of democratic values. However, evidently, it is not the only problem, which were disclosed by the crisis.

Adoption of the emergency measures and compulsory isolation of citizens once again demonstrated the importance and need to support social, economic and cultural rights² like we do it with regard to the civil and political rights. The UN member states declared it in June 1993 during the World Conference on Human Rights in Vienna, where they unanimously adopted the “Vienna Declaration³”, which stated that “all human rights are universal, indivisible and interdependent and interrelated,” that enabled all rights to be respected equally and declared absence of hierarchy among human rights. The COVID-19 related crisis once again demonstrated the rightness of this approach.

The social distancing and other restrictions established by the authorities aimed to protect lives and health of individuals and it justified the legitimacy of those measures. In this regard, human life is the central aspect of civic values. The pandemic clearly showed that protection of the individuals from the virus, who do not have access to clean water, will be impossible without guarantying these rights. Also, it is impossible to effectively protect homeless and hungry people from the virus, unless their right to housing and right to have access to food is realized. Experience of the fight against virus revealed that sustainability of the country and effective fight against the crisis can be achieved only by the steady respect of human rights. Without full respect of the social and economic rights and enhanced support to vulnerable groups it will be impossible to achieve the objectives.

¹ See Echelon scandal

<https://www.eui.eu/Documents/Research/HistoricalArchivesofEU/FriendsOfArchives/FriendsHAEUConfMonbelli.pdf>

² Right to health, education and right to work, right to safe place of residence, and more

³ See more at <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

It also enables us to critically assess not only the need of the steps taken by the authority but their relevance and proportionality. Isolation, establishment of state of emergency and their implementation with repressive measures, is more or less easy for all states but without the respect of social, cultural and economic rights, the taken measures will neither enable the authorities to achieve the goals of special measures nor effectively defend human rights.

For any objective, let it be public healthcare or safety, quarantining the people or establishment special measures against them, who are doomed to starvation without respective support, will not be able to get adequate medical service, food, and housing, cannot be considered to be effective way to achieve the goals. Public healthcare, with its context, ensures collective defense of the people, through the protection of the health, life and safety of each individual. Neglecting these obligations for economic or other reasons, cannot meet the requirements of the values of liberal-democratic society and the standards of human rights.

1. RESTRICTED RIGHTS BASED ON THE STATE OF EMERGENCY

During the two-month state of emergency in Georgia, the authority, regardless the fragment attempts (to provide the elderly people with food and medicines in their home by local municipalities and volunteers, distribution of food among the beneficiaries of kindergartens, postponed financial obligations in commercial banks, etc.) failed to adequately and effectively respond to the needs of particularly vulnerable groups. During the crisis, when employers sent their employees to unpaid vocations or dismissed them based on unlawful practice, when transport movement was banned and citizens of Georgia reduced financial transfers from abroad, various groups of the society could not get adequate social support from the state to overcome the crisis.

With the March 21, 2020 Decree # 1 of the President of Georgia, the right to freedom, right to movement, right to personal and family life, right to fair administrative proceedings, right of property, right to assembly and labor were restricted; the list included all rights, which may be restricted in accordance with the Constitution of Georgia during the state of emergency except the right to freedom of expression guaranteed under the Article 17 of the Constitution. At the same time, the President's Decree did not use the mechanism to suspend the right.

The legitimacy of the abovementioned measures was not questioned in Georgia. However, the risks of the human rights violation during the state of emergency place the states in front of particular challenges.

The need of emergency measures does not free the State from responsibilities, just the opposite, imposes additional responsibilities on it in order to verify the substantiality of each restriction. At the same time, considering the existing situation, the obligation to take care of the suffered people and particularly high social responsibility are imposed over the state.

2. AMENDMENTS IN THE LAW OF GEORGIA ON PUBLIC HEALTH

On May 22, 2010 the Parliament of Georgia supported the bill on the amendments⁴ to the Law of Georgia on Public Healthcare⁵. According to the clarification letter of the bill⁶, the proposed amendments aimed to enable the Government of Georgia to apply special measures for the fight against the pandemic and particularly dangerous epidemics after the state of emergency is lifted. In accordance with the proposed amendments, clarifications of the “*isolation*” and “*quarantine measures*”⁷ were amended and besides the measures to be taken in relation with concrete individuals, it became possible to differently arrange the activities of public agencies, transportation of individuals, labor, professional or economic activities, illegal migration/international protection, social events of the individuals and among them, it became possible to establish restrictions which are necessary to protect the public health. In accordance with the Article 11 paragraph 3 of the law, a Public Health Office shall make a decision to isolate and/or quarantine a person, in compliance with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms⁸.

Although the proposed amendments aimed to effectively protect the public health during the pandemic, to rapidly respond to it in case of necessity, some amendments introduced into the law are problematic. Namely, in accordance with the Article 11 Paragraph 6, the rules of isolation and / or quarantine shall be established by the Government of Georgia or the Ministry determined by the Government of Georgia.⁹. Therefore, in accordance with the rules determined by the GoG or the Ministry may cause disproportionate infringement of human rights.

Delegation of the abovementioned authorities to the GoG contradicts the Constitution of Georgia and the standards established by the European Convention on Human Rights and Basic Freedoms, which state that the abovementioned restrictions may be applied only in accordance with the high legitimacy law that is not by law – for example, the Law of Georgia on Public Health.

The proposed amendments, authorizes respective bodies of the executive government, without the supervision and control of the Parliament of Georgia, to take the same measures in ordinary situation, which can be applied only during the state of emergency and checked by the Parliament of Georgia. Also, in accordance with the introduced amendments, the abovementioned law creates high risks of selfishness from the GoG. It allows disproportionate restriction of human

⁴ See the draft amendments to the Law of Georgia on Public Health <https://bit.ly/2YmqfG8>.

⁵ See the Law of Georgia on Public Health <https://bit.ly/2Brf3j5>

⁶ See the clarification letter about the draft amendments to the Law on Public Health <https://bit.ly/2YVRiY3>.

⁷ See the Article 3 paragraph “l” and “m” of the Law on Public Health <https://bit.ly/2Brf3j5>

⁸ See the Article 11 paragraph 3 of the Law on Public Health

⁹ See the Article 11 Paragraph 6 of the Law on Public Health

rights and is not oriented on the necessity of concrete cases that is obligatory pre-condition for the restriction of basic human rights and freedoms.

Based on the amendments to the law, the law determined unrestricted nature of the government's authorities. In ordinary situation, with lower legitimacy and high standard of substantiation, the Parliament of Georgia is not authorized to supervise and control the GoG when it uses quarantine measures. Consequently, the Parliament will not have authority to examine legitimacy of the applied measures, their proportionality and necessity for the democratic society that increases the possibility of negative impact of the applied measures on human rights.

3. FREEDOM OF EXPRESSION

We positively evaluate that the state did not interfere in the freedom of expression though the Constitution of Georgia allows similar restriction in the state of emergency. As a result, during the crisis, media did not suspend its activities, freedom of media and awareness raising of the society about the virus-related issues significantly promoted the effectiveness of the implemented measures.

Regardless that, in the first stage of the spread of the COVID-19, the communication of the central authority in the regions of ethnic minorities was particularly problematic due to language barrier. It significantly complicated the fight against the virus in Marneuli and Bolnisi municipalities, where majority of the local population are Azerbaijani and Armenian citizens.

During the fight against the crisis, the GoG had nonhomogeneous approach towards religious organizations. While it did not hinder the Georgian Orthodox Church to conduct religious services and gather parish, other religious organizations were deprived of the possibility to enjoy the same right. Although the Constitution of Georgia prohibits to restrict the freedom of religion during the state of emergency, the state is authorized to restrict the freedom of religion (forum externum) though the government of Georgia applied this right only with regard to the Orthodox Church consider its particular influence over the population of Georgia.

4. ECONOMICS

Considering the economic conditions of Georgia, everybody expected grave social impact of the state of emergency on it. The crisis once again demonstrated the acute problems in the labor legislation, which enabled the employers to dismiss the employees easily or send them to compulsory vacations. During two months the Government did not take actual steps to assist the people, who lost jobs. It led many people to extreme poverty. The social aid programs in the frame of the anti-crisis plan, under which the allowances are not paid yet, cannot adequately respond to the real needs of the people left without jobs during pandemic.

5. HEALTHCARE SYSTEM

It must be noted that, the timely steps taken for the fight against the crisis, the State managed to avoid medical crisis and considering the number of infected people, the health of people was not under particular risk. However, the problems which were particularly acute in the Georgian healthcare system before the crisis, are not responded yet that is another barrier to overcome the crisis.

Regardless the important and positive reforms in the healthcare system in the past decade, which is related with the establishment of the universal health insurance system, there are many challenges in the system, which negatively affects the health rights of the citizens of Georgia.

One of the criteria to assess how the right to health is ensured in the country, is to have sufficient public healthcare and medical institutions, and services in the country. It was impossible to fight against the COVID-19 related pandemic not only in poor and developing countries, but also in developed and strong countries. With the active work of epidemiologists and timely preventive measures taken by the Government of Georgia, it was possible to avoid wider spread of the virus in the country and medical system remained capable to assist all infected patients. Nevertheless, the crisis showed that the healthcare system of Georgia needs empowerment in order to cope with similar crisis easier. Therefore, significant component of the anti-crisis plan - to empower the public healthcare system - shall be implemented transparently and shall respond to the current challenges in the field.

As for the access to medical institutions, medical goods and service, it must be evaluated as non-discriminative in terms of physical, economic and information availability.

Naturally, the state covered all COVID-19 related expenses of the patients and no facts of discrimination were identified. Both physical and economic availability was ensured for all patients, who needed medical assistance. It is also important to note that during the state of emergency and in the post-crisis period, people had access to the information about the areas where the infection was spread, about the number of infected patients, the epidemic state and other significant issues.

In general, regardless the implemented reforms in the healthcare system and increased access to it, there are still some barriers which hinders full realization of the right to health.

There is no political will to develop primary health system and major accent is on hospital sector which is completely privatized and profit-oriented. Due to the commercialization of the healthcare system, access to public health services is undermined. It is necessary to clearly define the public healthcare services – the list of doctor-specialists who provide primary medical service (family doctor, pediatrician, therapist or narrow specialist), their competences and forms of services; consequently, the package of the PHSs shall be defined that can be achieved only in case of long-term action plan with respective qualitative and financial indicators.

It is necessary to mobilize necessary human resources in the healthcare department and to ensure their qualitative and quantitate rise. It is necessary to establish system of non-stop compulsory

professional education to build capacity of the PHS personnel¹⁰. It is necessary to increase engagement of the municipal and regional public healthcare services, to empower their role in the solution of the problems pending in front of the primary healthcare.

6. VULNERABLE GROUPS

Particular attention shall be paid to the unprotected groups, who become even more vulnerable during similar crisis and neither Georgian case was an exception.

The crisis created particular social-economic problems for the people with low income. The regulations during the state of emergency and curfew significantly restricted economic activities that left thousands people without salaries and jobs.

Weak legislative framework and guarantees for labor rights enabled the employers to send employees to vacations or dismiss at all.

As it was already mentioned above, during two months, while the state of emergency was in force in the entire territory of Georgia, the Government of Georgia did not take effective measures to assist unemployed people or the people left without income. Later, they envisaged the financial support for these people in the anti-crisis plan. By the end of the state of emergency, the State was unable to identify all individuals who faced financial problems during the crisis. It was particularly problematic for the informally employed and self-employed people, who could not provide respective documents to get the compensation from the state.

Because of the pandemic, the places for free food were closed in the municipalities and it significantly affected the conditions of the impoverished people, who were beneficiaries of this service. Although this service was modified in accordance with the state of emergency and the beneficiaries could take food home, the coverage area of the service was limited during the state of emergency and differed across the municipalities.

In the course of the state of emergency, elderly people were restricted to leave homes and it significantly restricted their rights. During the quarantine, the State took responsibility to supply them with food and medicines, and it was successfully implemented. At the same time, restricted transport movement had negative impact on the residents of villages, who could not reach shops and pharmacies which are mostly located several kilometers away from the villages. It created particular problems for the old people.

¹⁰ See the final report of the Open Society Georgia Foundation “Weak Primary Healthcare” <https://osgf.ge/wp-content/uploads/2019/12/Primary-health-report-printed-version.pdf>

7. SEXUAL MINORITIES

The crisis once again revealed grave human rights situation of LGBTQI+ community in the Georgian society. Regardless the anti-discrimination law, the community is still one of the most vulnerable groups in Georgia. The anti-crisis plan, which envisages social allowances and assistance for various vulnerable groups, ignored the needs of the LGBTQI+ community.

LGBTQI+ community members permanently become subjects of discrimination and stigma when they apply for healthcare or other services that may have fatal results during the pandemic. As a result of social distancing and quarantine, the risk of domestic violence against the community members increased. As all economic activities were suspended during the state of emergency, many people, particularly those working in informal companies, lost income.

The crisis particularly affected the transgender women, who are left without attention. The gravity of their situation was proved by the incident, when young transgender woman tried to burn herself down in front of the Tbilisi City Hall in protest. The status of gender, high level of homophobia and transphobia and other related problems are still a serious challenge in the country that finally leaves these people beyond the economic activities and social programs.

8. RIGHTS OF THE PRISONERS

With the new regulations established for the fight against the crisis, for the purpose of healthcare, the rights of prisoners were also significantly restricted (conjugal meetings were prohibited). Although these restrictions are not questioned, additional restriction of the prisoners shall impact the length of their imprisonment term. Unfortunately, regardless many respective recommendations, the GoG did not take similar measures.

9. ELECTIONS

The spread of the COVID-19 created new challenges for the major form of the public legitimacy in the democratic society – elections in many countries across the world. To follow the restrictions on social distancing, and to protect people's lives and health, many states (including Western countries) postponed elections. Since the end of February 2020, over 50 states across the world changed the dates of the nationwide, regional or local elections. Among them was Iran, where the second round of the parliamentary elections was postponed. The Northern Macedonia postponed the parliamentary elections; Serbia also postponed universal elections. Poland and the Great Britain are also on the list with postponed elections. However, it is not full list of the states. On the other side, there are some countries, which held the scheduled elections despite pandemic (France, South Korea).

After the June 20-21, 2019 events, as a result of long-term negotiations between the government and opposition parties, which was facilitated by the international partners, it was decided to hold the next Parliamentary Elections with the system of 120/30, first time in the history of Georgia, where 120 mandates will be obtained through the proportional elections and 30 mandates through the majoritarian elections.

In accordance with the Constitution of Georgia, next parliamentary election is scheduled in October 2020. Considering the current situation, unless we walk into the second spike of the infection, the elections may be formally held in October.

It is significant that on June 21 and on June 23 the parliament passed the constitutional amendments in the first and second readings, and finally, on June 29, at the plenary session, the Parliament of Georgia passed the draft constitutional amendments with 117 votes in the third and final reading.

The introduced amendments shall be positively assessed, however it is necessary to continue working on the improvement of the election law and its harmonization with the international standards.

Above that, considering the risks of the second spike of the virus, it is essential that the GoG started working on the adaptation of all possible scenario of the election process in order not to create any threats for the elections. Together with the special security measures in the polling stations, the respective government bodies shall ensure adequate environment for the pre-election campaigning and in case of necessity to offer alternative methods to the election subjects.

10. OCCUPIED TERRITORIES

The spread of COVID-19 increased the number of cases of human rights violations of the citizens living in the Russia occupied Abkhazia and Tskhinvali region; the situation once again demonstrated grave impact of the occupation on the lives of local population.

The Government of Georgia cannot exercise its jurisdiction over the occupied territories. Therefore, the positive tendency in the fight against the virus in the rest territory of Georgia, does not affect the people living in the occupied territories.

The military forces of Russia and separatist Tskhinvali still continue illegal borderization during the crisis; the right to movement, right of trading, right to get medical assistance, right to education and other rights are still restricted, which permanently increases the risks of humanitarian crisis. The de-facto government of Tskhinvali prohibited movement from and to the Georgia-controlled territory in February 2020 for the prevention of the spread of virus. However, Akhagori district was already locked since September 4, 2019. The movement is

restricted towards occupied Abkhazia too but Abkhazia turned up more open to cooperate with the international organizations during the crisis.

On May 7, 2020, the International Crisis Group published the report about the challenges and COVID-19 related pandemic situation in the occupied territories of the post-soviet countries¹¹, which also describes the situation in the occupied Abkhazia and Tskhinvali region.

In accordance with the report, Tskhinvali region arguably is at greatest risk. a significant part of the population (17 per cent) is elderly. Hospitals are severely underequipped. One of the few doctors in the region refused to work due to lack of basic protective gear at the hospital. Russia, which provides a majority of the region's needs, stopped most exports of medical supplies in early March. Moreover, many of the region's medical professionals have had no training for years, lacking even the know-how to operate 26 ventilators delivered from Russia. The report also mentions low trust of the local population towards the medical personnel in the occupied Tskhinvali.

Unfortunately, de-facto authority of Tskhinvali region has been reluctant to work with the WHO and other international organizations. The International Committee of Red Cross (ICRC) is the only international organization operating in Tskhinvali Region. The Report of the International Crisis Group states that given the scope of the crisis, the de facto authorities are taking a serious risk by issuing political demands and impeding active cooperation with the WHO and other UN agencies.

With regard to Abkhazia, the report of the International Crisis Group states that the situation in Abkhazia is better, although it still presents vulnerabilities. Like South Ossetia, Abkhazia suffers from weak infrastructure, lacks medical professionals and has an ageing population, with nearly 20 per cent of residents over 60 years of age. Indeed, nearly 80 per cent of medical personnel are themselves at high risk, in their sixties or older.

The report states that de-facto government of Abkhazia was slow to impose social distancing and despite the crisis they held so-called presidential elections and the population did not follow recommendations.

Unlike Tskhinvali, de-facto authority of Abkhazia demonstrated more willingness to cooperate with the international organizations and Abkhazia's de facto authorities reached out for outside help in early March. In response, the UN Development Programmed (UNDP) delivered over 12,000 packages of basic medical supplies and sanitizers purchased with U.S. and EU financial support; Russia supplied some 500 COVID-19 test kits and sent soldiers to support disinfection of public places; and international NGOs with local offices in Abkhazia offered vehicles for emergency care and pulverizes to disinfect public transport. Facilitated by the UNDP, WHO specialists carried out a needs assessment in Sukhumi.

¹¹ See <https://www.crisisgroup.org/europe-central-asia/b89-covid-19-challenge-post-soviet-breakaway-statelets>

having the abovementioned situation, it is important that the Government of Georgia, with the engagement of the international actors, intensified its support to protect the lives and health of the people living in the occupied territories and promote creation of new spaces for cooperation.

11. CONCLUSION

Although the virus does not discriminate individuals, the existing social structure does it. The world has already agreed that there is no alternative and we should study to live together with the virus. Consequently, to overcome the crisis, it is necessary to upgrade the standard of the defense of human rights and to establish public control on it. Besides creating new challenges, the COVID-19 made many problems more evident, which were familiar for our society before. Existing social injustice particularly increases vulnerability of the country in terms of grave impact of the virus, which may be resolved only by defending the social justice and human rights.