



Democracy and Human Rights During the Pandemic and the State of Emergency

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Content

Introduction.....	5
Part I - Analysis of the legal basis and the recommendations.....	5
Introduction and the research methodology.	5
1. Main shortcomings.....	6
1.1. Main shortcomings of the constitutional regulation of a state of emergency. ..	6
1.2. Main shortcomings of the Law of Georgia “on State of Emergency”	9
1.3. Main shortcomings of the Law “on Public Safety”.	16
1.4. Main shortcomings of the Georgian Law “on Public Health”.	17
3. Main recommendations.....	20
3.1. Measures restricting fundamental rights during epidemic.....	20
3.2. Restricting measures to be implemented during the ordinary situation	22
3.3. Restricting measures to be implemented during an emergency situation.....	26
3.4. Restrictive measures to be implemented during the state of emergency.....	30
3.5. Declaration and cancellation of an emergency situation in case of epidemic.....	34
3.6. Declaration and cancellation of a state of emergency during an epidemic	35
3.7. Issuance and repeal of a Decree of the President during the epidemic.	37
3.8. Parliamentary control during the epidemic	38
3.9. Judicial review during the epidemic.	39
Part II – Constitutionality of restrictions imposed by the Government of Georgia in fight against pandemic before, during and after the state of emergency.....	40
Introduction and research methodology	40
1. Assessment of the restrictions imposed prior to the declaration of a state of emergency.....	41
2. Assessment of the declaration of a state of emergency.....	43
2.1. Preconditions for declaration of a state of emergency.	43
2.2. Procedures for declaration of a state of emergency	44
3. Assessment of the restrictions in force during the state of emergency.....	46
3.1. Right to liberty.....	46
3.2. Freedom of movement.....	48
3.3. Right to personal and family life	52
3.4. Access to public and personal information kept by the public agencies.....	53
3.5. Right to a fair hearing of his/her case by an administrative body within a reasonable time.....	54
3.6. Freedom of assembly.....	56

3.7. Freedom of enterprise.....	58
3.8. Right to property.....	59
3.9. Right to education.....	60
3.10. The right to a fair trial.....	62
3.11. Liability	62
3.12. Freedom of religion and belief.....	64
4. Assessment of the restrictions maintained/imposed after the termination of the state of emergency	65
4.1. Right to liberty.....	66
4.2. Freedom of movement.....	69
4.3. Freedom of assembly.....	71
4.4. Right to fair trial	72
4.5. Freedom of enterprise.....	72
4.6. Right to education.....	74
4.7. Right to a fair hearing of one's case by an administrative body within a reasonable time.....	76

Introduction

Hereby, we would like to present the study on “Democracy and Human Rights during the Pandemic and the State of Emergency” prepared within the framework of joint project of the International Society for Fair Elections and Democracy (ISFED), the Georgian Democracy Initiative (GDI) and the Human Rights Center (HRC) and with the financial support of the Open Society Georgia Foundation.

For the last four months, a group of researchers invited by GDI and ISFED has been studying legal basis and international standards as well as measures that had been undertaken by the Government of Georgia in response to the spread of the novel coronavirus (COVID-19). HRC has been providing legal aid to persons affected by measures undertaken by the Government of Georgia. In addition, GDI has drafted four constitutional complaints against restricting measures imposed by the Government of Georgia.

On the one hand, the aim of the research was the critical analysis of the legislative basis and provision of relevant recommendations in terms of the existing deficiencies and, on the other hand, assessment of the constitutionality of the regulations imposed by the Government of Georgia during 2020. In lieu of the above, the study consists of two main parts:

Part I presents existing deficiencies in the Georgian legislation in terms of the fight against pandemic and the declaration of the state of emergency. Following legislative acts have been studied: Constitution of Georgia, laws of Georgia “on the State of Emergency”, “on Public Safety” and “on Public Health”. Due to the revealed deficiencies, number of recommendations aiming to achieve efficiency in the fight against pandemic, as well as to avoid threats to the democratic processes and imposition of arbitrary limitations on the implementation of human rights, have been drafted.

Part II analyses constitutionality of the declaration of the state of emergency and other measures undertaken by the Government of Georgia. In this regard, Part II presents the analysis of the influence of restrictive measures imposed by the Georgian Government before, during and after the declaration of the state of emergency on human rights and constitutionality of these measures. Within the framework of the present study, different constitutional models of declaration and management of state of emergency, their impact on human rights as well as legal acts of several countries on the issues of the prevention of the infectious diseases have been studied.

The present document is a short review of the findings in each parts of the study and is a summary of a large-scale document.

We hope that the Government of Georgia will take into consideration the findings and recommendations presented in this study, bring the Georgian legislation and the relevant practice in conformity with the Georgian Constitution and also consider the best examples of international practice.

Part I - Analysis of the legal basis and the recommendations.

Introduction and the research methodology.

Prevention and management of epidemic and eradication of its results are mainly regulated by several legislative acts. Their use depends on the nature of an epidemic, its scale and the level of danger. These legal acts were subject of review in this study. In the first place, constitutional norms regulating declaration of a state of emergency during an epidemic, powers of state

institutions, restrictions on fundamental rights and other important issues have been analyzed. Apart from the Constitution, the Laws of Georgia “on State of Emergency”, “on Public Safety” and “on Public Health” have been reviewed. With regards to the legal regulation, the research has revealed substantial shortcomings in the Constitution of Georgia as well as in a number of legislative acts, which, on the one hand, do not provide an effective mechanism in fight against a pandemic and, on the other hand, allowed imposition of disproportionate restrictions on human rights. Thus, our recommendation is to thoroughly revise the legislation currently in force and to take into consideration the best international practices, which are in line with the Constitution of Georgia. The legislation should consider a gradation of the measures to be adopted for three different situations: ordinary situation, emergency situation and the state of emergency. Preconditions for each of the situations must be proved to exist in each case and the corresponding procedures should be prescribed by law. We also consider it to be extremely important that in each situation, the scope and the scale of the restrictions of human rights are to be defined by legislative acts and that executive authorities should only be authorized to make decisions on technical/administrative issues. Parliamentary control and judicial review shall also be strengthened as well.

1. Main shortcomings.

1.1. Main shortcomings of the constitutional regulation of a state of emergency.

1. Flaws of general preconditions for the introduction of a state of emergency.

The Constitution of Georgia does not clearly stipulate that the state of emergency may be declared only when there is a substantial and inevitable threat to the statehood and/or the constitutional order. This does not comply with requirements of the international law and the best practices of the democratic countries and creates a risk of arbitrary and a panic-driven introduction of a state of emergency.

2. An impossibility to partially accept the recommendation of the Prime Minister concerning the declaration of a state of emergency/the President’s decree.

The President is authorized to accept or reject the recommendation of the Prime Minister on declaration of the state of emergency. He/she does not have the legal power¹ to partially accept the recommendation that would in turn create an additional obstacle to an arbitrary use of the state of emergency. Moreover, this lack of possibility of partial acceptance might impede the process of declaring the state of emergency even when the declaration is necessary.

The President is also authorized to accept or reject the Prime Minister’s recommendation on the issuance of a decree. He/she does not have the legal power to accept the recommendation partially. In light of the fact that that a decree might allow restrictions on the fundamental rights or a suspension of certain norms of the Constitution, the possibility of partial acceptance could in turn reduce the risk of arbitrary and disproportionate interference in constitutional rights.

2. Countersignature of a Prime Minister on the decision/decreed of the President on the declaration of the state of emergency.

The decision to declare a state of emergency is made and the President’s decree is issued upon the recommendation of the Prime Minister. This renders countersignature meaningless. Such an additional formality might have an impeding and damaging effect on the immediate and efficient management of the situation. The countersignature will be justified if the President is granted the power to partially accept the recommendation of the Prime Minister.

¹ For example, when a President believes that there are grounds for the declaration of the state of emergency, although, not on the whole territory of the country but in certain parts thereof.

4. Formal character of the Parliament's approval of the declaration of the state of emergency/presidential decree.

The approval of the decision of the President/Presidential decree on the declaration of the state of emergency by the Parliament of Georgia is a mere formality as subject based discussions surrounding the issue do not take place in the Parliament and participation of the President and the Prime Minister in the relevant procedure is not obligatory.

5. Entry into force of the decision on declaration of the State of Emergency from the moment of its declaration and entry into force of the presidential decree upon its publication.

The Parliament approves the decision on declaration of a state of emergency that has already entered into force. The period in-between the declaration of the state of emergency and its approval by the Parliament allows important issues normally subject to the parliamentary control, such as the restrictions of fundamental rights, to be regulated without the participation of the Parliament. The declaration of the state of emergency shall enter into force from the moment of its declaration only in case if the Parliament fails to convene.

The decree restricting fundamental rights enters into force as soon as it is issued. The existence of a period prior to the parliamentary approval violates the constitutional standard for restricting fundamental rights and general constitutional standards, as the restriction takes place without the participation of the legislative body.

6. Impossibility of the partial parliamentary acceptance of the declaration of a state of emergency/the presidential decree.

The Parliament has two options: 1) to fully accept decision on the declaration of the state of emergency or 2) to fully decline it. The legislative body does not have the power of partial acceptance of the decision when it does not fully agree with it.² Such a regulation cannot be justified in terms of reasonableness and expediency because if the Parliament does not accept the decision when it does not fully agree with it, then the procedure shall start all over again and thus take much more time.

In case of the Presidential decree, the Parliament has the same two options – it can either accept it or reject it. The legislative body does not have the power to partially approve the decree when it does not fully agree with its content.

7. Validity period of the state of emergency/presidential decree and its revocation.

The Constitution does not define the maximum period of validity of the state of emergency. A decision on the revocation of the state of emergency is made in accordance with procedures established for its declaration and approval. The parliament does not have the power to revoke the state of emergency based on its own or on the President's initiative. Thus, the term of validity and its revocation, in fact, completely depends on the decision of the Prime Minister. This, in turn, creates a risk of unreasonable extension of the state of emergency and violates the balance between the governmental branches. Additionally, Constitution does not precisely define the preconditions for the revocation of the state of emergency which would simplify the decision-making process and would reduce the risk of its unnecessary extension.

The decree of the President is valid until the revocation of the state of emergency. In its turn, the initiation of the revocation of the state of emergency depends on the Prime Minister. The Parliament does not have the power to revoke a decree based on its own or on the President's initiative even if it considers that temporary regulations are no longer necessary. It is the executive and not the legislative authority that plays a decisive role in defining the term of validity of

² For example, when the Parliament agrees with the decision but argues that it should be declared for a shorter period.

restrictions on fundamental rights or of the suspension of the constitutional norms. The Parliament is in fact devoid of the legislative power and this contradicts the principles of democracy and separation of powers.

8. Amending the President's decree.

There might be a situation in which the President or the Parliament deem it necessary to extend a state of emergency but consider it important to change the content of the President's decree³. In such case, the initiation of a procedure depends on the will of the Prime Minister. The legislative body and the Head of State are devoid of the power to initiate the amendment procedure.

9. Delegation of legislative powers to the executive authority.

The Constitution does not provide for a specific norm on the cases, scopes and rules of delegating law-making powers by the legislative authority to the executive authority, which in practice allows dubious decisions in terms of constitutionality. This problem became obvious by the delegation of power to restrict fundamental rights during the state of emergency, when the Parliament largely conceded the authority to regulate fundamental issues and legislative powers to the executive bodies in a blanket and vague manner, thereby contradicting requirements of democracy and the state under the rule of law (Rechtsstaat).

10. Suspension of Constitutional norms.

Suspension of Constitutional norms by the Presidential decree is a much more intensive interference in human rights than limiting them by the decree. Nevertheless, the Constitution does not provide a more complicated suspension procedure with a special focus on the approval by the Parliament. The Constitution does not define the criteria for suspending constitutional norms, the basic principles for selecting the norms to be suspended and the difference between suspending and restricting fundamental rights. The Constitution does not stipulate whether and to what extent it is possible to combine the suspension and restriction. During an epidemic, which essentially differs from other preconditions for the declaration of state of emergency such as massive public disorder, encroachment on the territorial integrity of the country, military coups, armed insurrection and terrorist acts, a situation requiring suspension of constitutional norms should be practically excluded.

11. Elections and referendum during a state of emergency.

If a state of emergency is declared on the whole territory of the country, then it is impossible to hold general elections. When the state of emergency is declared in any part of the country, decision to hold elections in the rest of the territory is made by the Parliament. The Constitution does not provide the objective criteria for making such a decision. In fact, the legislative body is granted absolute freedom to indirectly extend its term, which in turn does not comply with the principles of democracy. The sole justification for not holding elections in the rest of the territory could be existence of an objective condition during which the choice not to hold elections on the territory under the state of emergency will have a substantive and decisive effect on election results. The president is elected not directly by people but by the Electoral College. If it is objectively possible to assemble the College and if its members have a possibility to freely express their will, then it is unclear why elections of the Head of the State should be delayed. It should be noted that the issue of holding the local self-government elections or referendum is not regulated by the Constitution when it should be, as a constitutional regulation is necessary for prevention of unreasonable legislative restrictions in this field.

12. Revision of the Constitution during the state of emergency.

³ For example, the majority of the Members of the Parliament considers that it is expedient to revoke or simplify some of restrictions provided by a decree.

In case of the declaration of a state of emergency, discussions around the draft Constitutional law is suspended until the revocation thereof. The state of emergency does not always give rise to a situation when the revision of the Constitution should be suspended. For example, there were no circumstances essentially impeding the revision process of the Constitution during the state of emergency caused by the epidemic. The organization of wide public discussions were possible by technical means and the Parliament did not have any obstacles to convene. Presumably, substantial impediments will not appear even when the state of emergency is declared in one part of the country. If epidemic-related state of emergency is declared in the territory of any of the municipalities, suspension of the revision process of the Constitution is unreasonable. The revision process of the Constitution should not be suspended if there is no urgent necessity for suspension. Otherwise, as the experience shows, there might be a risk of impeding changes that are vitally important for political stability and democratic development of the country.

13. Use of defense forces during a state of emergency.

Preconditions, aims and scope of the use of defense forces are not clearly stipulated by the Constitution. Fight against epidemic is not the direct constitutional task of defense forces. Thus, their use should only be allowed on an exceptional basis, as *ultima ratio*, when relevant structures lack capacity and are unable fulfill their obligations or face substantial problems in this regard. The proper understanding of the term “use” is also important in the context of epidemic. Due to the specific character of the situation, the use of defense forces to conduct military operations should be excluded. During epidemic, it might become necessary to use the defense forces as a supporting force to ensure public security and order and to implement the rescue and biological safety measures.

14. Parliamentary control during a state of emergency.

At a glance, there is a variety of means for exercising parliamentary control. However, in practice, the legislative body was in fact excluded from participating in state governance during the state of emergency. The Constitution does not contain special regulations which would enable the parliament to receive information about the existing situation and adopted measures from the executive authorities timely and systematically.

1.2. Main shortcomings of the Law of Georgia “on State of Emergency”⁴

1. The definition of state of emergency.⁵

According to the Law, a state of emergency shall be declared “in the interests of ensuring the security of the citizens of Georgia”. Although, the range of interests to be protected by the mechanism of state emergency is much wider – state sovereignty, territorial integrity, democratic constitutional order, etc. However, these are not included in the law.

2. Aim of declaration of a state of emergency.⁶

According to the Law, “The purpose of declaration of a state of emergency is the normalization of the situation as quickly as possible, and the restoration of law and order.” This aim cannot always serve as the justification for the declaration of a state of emergency. The aim of the declaration of a state of emergency should be a complete or a substantial overcoming of the threats that endanger the existence of a state and/or constitutional order.

⁴ The law “on State of Emergency” reiterates regulations enshrined in the Constitution with regards to the state of emergency. Thus, remarks on the flaws of the constitutional regulation of a state of emergency apply to this law as well. Only those shortcomings have been mentioned, the improvement of which is possible by making changes to the Law “on State of Emergency.”

⁵ Paragraph 1, Article 1 of the Law “On State of Emergency.”

⁶ Paragraph 2, Article 1 of the Law “On State of Emergency.”

3. Recommendation of the Prime Minister on declaration of a state of emergency.⁷

The law does not specify the general constitutional provision concerning the recommendation of the Prime Minister. It does not define standards of justification of the declaration of a state of emergency which should be met by the recommendation.

4. Declaration of a state of emergency by the edict of the President⁸

The President issues an edict as the Supreme Commander-in Chief of the Defense Forces. However, when declaring the state of emergency during an epidemic, the President does not act as the Supreme Commander-in Chief of the Defense Forces. A state of emergency due to epidemic does not belong to the defense field of a state in terms of its content. Moreover, it is the Prime Minister who possesses the authority to use defense forces during epidemic and not the President.

5. Justification of a decision of the President on the declaration of a state of emergency.⁹

The decision of the President contains references to the motives and territorial boundaries for the declaration of a state of emergency. It does not meet high standards of justification for such an important decision. The Law does not require the President to specify the term of validity of the state of emergency in his/her decision, thereby creating risks for its inexpedient extension.

6. Approval of the declaration of a state of emergency by the Parliament.¹⁰

This part of the Law is limited to a mere repetition of the text of the Constitution. The role of the Parliament is rather formal. It cannot discuss the issue in substance (even in an expedited manner), assess the need for the declaration of a state of emergency and take a deliberate, well thought decision. Direct involvement of the President and the Prime Minister in the decision-making procedure has not been provided for.

7. The use of defense forces.¹¹

The Law does not specify the constitutional norms concerning the use of defense forces. If the relevant recommendations do not appear in the text of the Constitution, then the law might stipulate that the use of defense forces during epidemic and natural or man-made disasters shall bear supportive character in terms of providing public security and order as well as implementation of the rescue and biological safety measures.

8. Recommendation of the Prime Minister on the issuance of the Decree.¹²

The recommendation and especially its part concerning restrictions of fundamental rights or suspension of the constitutional norms should be justified. Clear argumentation regarding the legitimate aim, effectiveness, necessity and proportionality is necessary.

9. Justification of the Decree of the President.¹³

The Law should define standards of justification of the Presidential Decree. The Decree should meet requirements of the principles of proportionality and certainty.

10. Delegating legislative powers to the executive authority by the Decree of the President.

⁷ Paragraph 1, Article 2 of the Law "On State of Emergency."

⁸ Paragraph 1, Article 2 and Paragraph 1 of Article 3 of the Law "on State of Emergency."

⁹ Paragraph 1, Article 3 of the Law "On State of Emergency."

¹⁰ Paragraph 1, Article 2 of the Law "On State of Emergency."

¹¹ Paragraph 2, Article 2 of the Law "On State of Emergency."

¹² Paragraph 3, Article 2 of the Law "On State of Emergency."

¹³ Paragraph 3, Article 2 of the Law "On State of Emergency."

The Law should fill in the legal loophole caused by the absence of a special constitutional norm about delegation. It should only be allowed to delegate the powers to normatively regulate concrete issues related to the implementation of the Decree. The Decree should define the aim, content and scope of delegated powers. Sub-delegation may be allowed if it is directly stipulated by the Decree.

11. Approval of the Decree of the President by the Parliament¹⁴

The Law has the capacity of strengthening the role of the Parliament if the Constitution is not amended. The Parliament could review the Decree in an expedited manner before its approval and examine necessity of its issuance as well as the proportionality of certain measures and restrictions.

12. General provision granting executive authority the powers for the implementation of emergency measures.¹⁵

Article 4 of the Law “on State of Emergency” is problematic in several different ways. Executive bodies might perceive the fact of the state of emergency as a self-sufficient ground for limiting fundamental rights. This would in turn increase the risk of arbitrariness. The officials granted with the special emergency powers and their concrete competences is unclear. The extent and aim of the powers to enact normative regulations granted to the executive authority is also vague. The regulation of all key issues of restricting the fundamental rights (aim of restrictions, preconditions, scopes, etc.) is in fact delegated to the executive authority. Substantial part of the legislative power is ceded by the Parliament to the executive government. Thus, Article 4 of the Law “on State of Emergency” does not comply with the formal and material requirements of the Constitution.

13. Restriction of freedom of movement.

1) Temporary resettlement of citizens from districts that are dangerous to live in.¹⁶

Resettlement implies massive increase in mobility of persons. This measure will not only be a futile measure to protect life and health but will also increase the risk of the spread of epidemic among the resettled persons and local inhabitants of the resettlement territories.

2) Introducing a special regime of an entry into and an exit of citizens from the areas, which are under the state of emergency.¹⁷

The Law ignores the possibility of achieving legitimate aims by less restrictive measures.¹⁸ Executive authority has the power to impose disproportionate restrictions on freedom of movement. The norm lacks certainty because the content and the scope of restrictions is not clearly defined.

3) Restriction on freedom of movement, prohibition of leaving places of residence or other places of accommodation, expulsion of those who violate public order.¹⁹

Expulsion is not a suitable mean during an epidemic. It could worsen the epidemiological situation in the places where individuals are expelled to as the expulsion could cause the transfer of potentially infected/high risk persons beyond the boundaries of the epidemic hotspot.

¹⁴ Paragraphs 3 and 4, Article 2 of the Law “On State of Emergency.”

¹⁵ “During a state of emergency, the supreme bodies of the executive authority of Georgia, depending on specific circumstances, within the scope of their authority, and in accordance with the requirements of legislation, may carry out the following measures:”, article 4 of the Law “on State of Emergency.”

¹⁶ Subparagraph (b), Article 4 of the Law “On State of Emergency.”

¹⁷ Subparagraph (c), Article 4 of the Law “On State of Emergency.”

¹⁸ For example, by means of testing citizens who enter the country instead of sending them to quarantine.

¹⁹ Subparagraph (d), Article 4 of the Law “On State of Emergency.”

Subparagraph (d), Article 4 of the Law “On State of Emergency” does not adequately define prerequisites and the scope for implementing relevant measures.

4) Restriction of movement of vehicles²⁰

Executive authority independently decides on when to introduce restrictions and on the degree of their intensity. Fortunately, the Law provides a clear regulation in terms of content and the scope of restriction of movement of vehicles.

5) Curfew.²¹

The power to decide on the necessity of such a heavy restriction is fully granted to the executive authority. Prerequisites and the scope of imposing a curfew are not sufficiently defined.

14. Restrictions on gatherings protected under the freedom of assembly and other fundamental rights.

Prohibition of the arrangement of gatherings, meetings, street processions and demonstrations, as well as entertainment, sports and other mass actions within the territory under the state of emergency.²²

The law allows imposition of restrictions even in cases when they are not necessary and the prevention of spread of epidemic is possible by other less restrictive measures.²³ Besides, there is an uncertainty in terms of prerequisites and duration of validity of restrictions.

15. Restrictions on the right to property.

1) Temporary seizure of firearms and cold weapons, ammunition, military training equipment, explosives, radioactive substances and materials, and strong chemical and poisonous substances.²⁴

None of the above-mentioned poses a threat of spreading an epidemic. These measures are not related to the legitimate aim and are not necessary for its achievement.

2) Use of the property and material resources of natural and legal persons for the prevention and elimination of the consequences of the state of emergency.²⁵

Subparagraph (i), Article 4 of the Law “On State of emergency provides for the adequate compensation for the use of these resources only after the end of the state of emergency. It could be of vital importance for the owner of these resources to receive income/make a living during the state of emergency. The law allows implementation of these measures/use of property even in cases, when there is no necessity and the aim can be attained by lighter means.²⁶

3) Restrictions on movement of vehicles.²⁷

Imposing restrictions on movement of vehicles constitutes interference with the right to property when it is related to privately owned vehicles. It has also been noted above in terms of freedom of movement that this measure does not comply with the principles of proportionality and certainty.

16. Restrictions on freedom of enterprise.

²⁰ Subparagraph (p), Article 4 of the Law “On State of Emergency.”

²¹ Subparagraph (q), Article 4 and Paragraph 1, Article 7 of the Law “On State of Emergency.”

²² Subparagraph (f), Article 4 of the Law “On State of Emergency.”

²³ For instance, determining the certain epidemiological safety requirements for holding assemblies.

²⁴ Subparagraph (e), Article 4 of the Law “On State of Emergency.”

²⁵ Subparagraph (i), Article 4 of the Law “On State of emergency.”

²⁶ For instance, in case of use of a hotel as a quarantine area, ensuring the reimbursement before the revocation of a state of emergency.

²⁷ Subparagraph (p), Article 4 of the Law “On State of Emergency.”

1) *Establishing special regime of operations for private enterprises.*²⁸

Executive authorities have the opportunity to arbitrarily impose a special regime. There is a high risk of government interfering in the freedom of enterprise even when alternatives are available.²⁹ An interference of any type and of any gravity into entrepreneurial activity might fall within the “special regime of operations.” The Law does not stipulate a clear scope for the implementation of these restrictions.

2) *Prohibition or restriction of trading in arms, strong chemical and poisonous substances, and alcoholic beverages and alcohol-containing substances, and prohibition of wearing military uniforms and outfits without permission.*³⁰

None of the above mentioned objects fall within the category that poses a threat of spreading an epidemic. Prohibition of wearing or selling them is not connected with the legitimate aim of health protection. Prohibition to trade in substances containing alcohol might even hinder achievement of this legitimate aim disinfectants might fall into the category of alcohol containing substances. This restriction is not a suitable mean for achieving the legitimate aim during an epidemic.

3) *Restrictions on movement of vehicles.*³¹

As transport might be used for entrepreneurial activities, restrictions on movement of vehicles might result in the interference in the freedom of enterprise. Due to incompatibility with the principles of proportionality and certainty, Subparagraph (p), Article 4 of the Law “On State of Emergency” violates freedom of movement and right to property as well as a freedom of enterprise.

17. Restrictions on freedom of labor and right to strike.

1) *Temporary dismissal of the heads of state enterprises, institutions and organizations of strategic and vital public importance; Temporary prohibition of the dismissal of workers and employees from such enterprises, institutions and organizations.*³²

Restrictions on freedom of labor must be stipulated by the Organic Law or the Decree of the President, which has the force of the organic law. The Law “on State of Emergency” is not an organic law. Thus, subparagraph (h), Article 4 of the Law “On State of Emergency” does not comply with the formal requirements of the Constitution.

2) *Engaging citizens capable of working in the operations of enterprise, institutions and organizations and in the elimination of the consequences of the state of emergency*³³

The formal requirement of the Constitution has not been adhered to as this restriction is not prescribed either by the Organic Law or by the presidential Decree. The law should not allow the implementation of these restrictive measures when they are not necessary and when the work force is sufficient. In this regard, the subparagraph (k), Article 4 of the Law “On State of Emergency” does not define the scope of powers of the executive authority. Persons falling under the scope of restrictions encompasses all citizens capable of working, thus giving the executive authority an unlimited scope for action. It might even be counter-productive to use persons without the adequate skills. Restrictions are not sufficiently defined either in terms of their temporal and territorial scope.

²⁸ Subparagraph (g), Article 4 of the Law “On State of Emergency.”

²⁹ For example, the deficit in masks could have been solved by changing the profile of state enterprise. However, the restrictions in question were still imposed on private enterprises.

³⁰ Subparagraph (l), Article 4 of the Law “On State of Emergency.”

³¹ Subparagraph (p), Article 4 of the Law “On State of Emergency.”

³² Subparagraph (h), Article 4 of the Law “On State of Emergency.”

³³ Subparagraph (k), Article 4 of the Law “On State of Emergency.”

3) *Prohibition of arranging a strike.*³⁴

Interference with the right to strike is subject to the Organic Law, thus, the subparagraph (j), Article 4 of the Law “On State of Emergency” does not comply with the formal requirements of the Constitution. The executive authorities have an opportunity to decide arbitrarily upon the necessity of prohibition of strikes. The law does not stipulate the standards of the scope of restrictions.

4) *Engagement of employees in tasks that are not envisaged under the employment contract*³⁵

The norm contradicts the Constitution formally as far as the restrictions are not prescribed by the Organic Law or by the Decree of the President. The law provides an opportunity to engage employees in tasks that are not envisaged under their contract arbitrarily, against their will. Such engagement should be performed “in case of necessity”, but determination of the existence of such necessity is completely up to the employer.

18. Limitations on the right to liberty.

1) *Introduction of quarantines and implementation of mandatory sanitary and anti-epidemic measures.*³⁶

The Law does not define cases and procedures of placing persons in quarantine/isolation. The wording of the law allows sufficient grounds to believe that these procedures should be carried out in cases and according to the rules prescribed by the Law of Georgia “on Public Health.” Thus, remarks on the relevant norms of the Law “on Public Health” will also apply to the provision in question.

2) *Detention of the persons violating the curfew prior to the end of the curfew, and detention of those who carry no documents until their identification is established, but no more than three days.*³⁷

Detention of a person is possible for any type of violation, even when legitimate aim can be achieved without detention.³⁸ In such cases detention takes the form of a punishment instead of a measure intended to ensure fulfillment of obligations prescribed by law. Detention of unidentified persons for more than 48 hours without bringing them before the court contradicts the Constitution. The possibility to appeal detention is not being provided.

19. Restrictions on freedom of mass media, information and the internet.

1) *Establishing control over the means of mass media.*³⁹

An opinion or information spread by means of mass media during epidemic does not pose threat to the virtues protected in the Constitution, human life and the right to health. Thus, imposing control upon them cannot serve to protect these interests, save for preventing the disclosure of confidential information. Even in such cases it is not necessary to control the means of mass media, because the information about the health of a person is already protected from disclosure by the legislation. As a result of the general and uncertain content of the norm, executive authority is, in fact, given the liberty to impose restrictions on freedom of communication despite it having an utmost importance for the functioning of the democratic society.

³⁴ Subparagraph (j), Article 4 of the Law “On State of Emergency.”

³⁵ Article 6 of the Law “On State of Emergency.”

³⁶ Subparagraph (m), Article 4 of the Law “On State of Emergency.”

³⁷ Paragraph 2, Article 7 of the Law “On State of Emergency.”

³⁸ For instance, if a person is near his/her place of residence, carries the identification document and it is possible to return him/her to the place of residence after drawing up the administrative offence protocol, the use detention will be an excessive measure.

³⁹ Subparagraph (n), Article 4 of the Law “On State of Emergency.”

2) *Introduction of special rules for using communication facilities.*⁴⁰

“Communication facilities” might include the means of communication that are used for expressing opinion publicly, spreading and receiving information. Restriction of the use of these facilities does not comply with the principles of proportionality and certainty due to the same reasons mentioned above concerning the imposition of control on the means of mass media.

20. Restrictions on right to personal life, personal space and privacy of communications.

1) *Introduction of special rules for using communications facilities.*⁴¹

It is impossible to find a logical explanation on how restricting and controlling privacy of communication protects the human life and health during an epidemic. Vagueness of this norm has already been mentioned in the context of restricting the freedom of expression. The issue of ignoring judicial control should be underlined as well because it is problematic in terms of its constitutionality.

2) *Searching*⁴²/*checking vehicles*⁴³

During the epidemic, the aim of checking or searching vehicles should be the protection of human life and health in circumstances when there is sufficient data about the presence of a person or a subject in the vehicle that poses a threat of spreading an extremely dangerous infection. Most probably, search of the vehicle will be of a spontaneous nature, which would in turn require existence of an urgent need. Requirement of demonstration of an urgent need has not been prescribed by the law. The judicial control has also been ignored. The law uses different terms, namely the content of “searching the vehicle” and the difference between this term and “checking vehicles” is not clear. Preconditions, procedures and the scope for the use of this restriction is uncertain.

3) *Personal searches.*⁴⁴

“Personal search” in a broad sense could be understood as a search that serves discovery of a hidden item. Within the context of epidemic, it might be an item causing the risk of an extremely dangerous infection. The law also allows individual searches of those violating curfew rules. Detaining a person is not a per se ground for personal search, especially when the person is identified. The general nature of the wording creates a risk of arbitrary acts and unnecessary searches by executive authorities. Determination of fundamental issues related to the meaning of personal search, conditions and scope for its use are completely ceded to the discretion of executive authorities.

4) *Inspection of personal items*⁴⁵/ *searches.*⁴⁶

The law allows executive authority to act arbitrarily and check/search for personal items when it is not necessary. It is not clear whether an inspection or search of personal items is limited to a superficial examination or has a more intensive character.

21. Territorial jurisdiction.⁴⁷

The law grants the Parliament the power to change the territorial jurisdiction for civil and criminal cases during the state of emergency. According to the Constitution, procedural legislation

⁴⁰ Subparagraph (o), Article 4 of the Law “On State of Emergency.”

⁴¹ Subparagraph (o), Article 4 of the Law “On State of Emergency.”

⁴² Subparagraph (p), Article 4 of the Law “On State of Emergency.”

⁴³ Subparagraph (s), Article 4 of the Law “On State of Emergency.”

⁴⁴ Subparagraph (s), Article 4 and Paragraph 2, Article 7 of the Law “On State of Emergency.”

⁴⁵ Subparagraph (s), Article 4 of the Law “On State of Emergency.”

⁴⁶ Paragraph 2, Article 7 of the Law “On State of Emergency.”

⁴⁷ Article 12 of the Law “On State of Emergency.”

including the regulation of territorial jurisdiction already falls within the special authority of the Parliament of Georgia. If the need for any changes emerges, amendments should be introduced into the relevant procedural codes. In light of the modern technology, the probability of such changes is very low.

22. Provisional government and temporary performance of the functions of municipality bodies.⁴⁸

The Law envisages the possibility of establishing a provisional government by the presidential decree in the territory under the state of emergency and performance of the functions of the municipality bodies by the provisional governmental bodies/officials. The Constitution does not grant this power to the President. The Provisional Government may be established when the state authorities fail to duly perform their functions. It is not clear which bodies are meant under the “state authorities” and the performance of which functions the law refers to. Suspension of the functioning of municipality bodies and their replacement with the provisional government because some unclear state body cannot adequately perform its duties lacks logic, violates constitutional guarantee of local self-governance, principles of democracy and concrete requirements of the Constitution for the suspension of the work of municipal assemblies.

23. Parliamentary and judicial control.

No attention is given to the question of parliamentary and judicial control. If the relevant changes are not made into the Constitution, it is alternatively possible to introduce regulations concerning governmental accountability into the Law. In addition, the Law should include norms related to the judicial control and legal protection. However, specific mechanisms should be generally reflected in the Organic Law “on Constitutional Court of Georgia” and the Administrative Procedures Code of Georgia.

1.3. Main shortcomings of the Law “on Public Safety”.

1. Management of emergency situation caused by epidemic.

Protection of human life and health from an epidemic is a part of public safety. Being particularly dangerous for public health, epidemic and pandemic are among the emergency situations, that should be managed in line with the law “on Public Safety”. Unfortunately, the Law does not provide special regulations that are necessary for efficient management of a pandemic-related emergency. This legislative gap needs to be filled in urgently. The declaration of a state of emergency, causing intensive restrictions of human rights and hindering the democratic processes, should be avoided when there are no preconditions for it and it is possible to fight epidemic under the regime of an emergency situation.

2. Restrictions of fundamental rights.

During the management of a particularly dangerous epidemic and a pandemic, it is sometimes necessary to interfere in fundamental rights while adhering to the requirements of the Constitution. The Law does not either the norms defining general standards for restricting fundamental rights, or the norms regulating measures restricting these rights during the emergency situation caused by an epidemic.

3. Restriction or prohibition of movement in the emergency zone.⁴⁹

⁴⁸ Article 14 of the Law “On State of Emergency.”

⁴⁹ Paragraph 11, Article 16 of the Law “On Public Safety.”

According to the law, while responding to an emergency situation, movement in the emergency zone may be restricted or prohibited by the decision of a body carrying out the emergency response management at the operational level in order to ensure the security of individuals. This formulation fails to guarantee that the application and the scope of restrictions will be necessary and proportional to achieving a legitimate objective. The Law creates the risk of using excessively restrictive measures. Conditions for the use of restrictions and prohibition are not differentiated. It is not clear whether the norm applies to only the movement of vehicles or other means of movement as well. The delegation of the authority to impose high intensity restrictions on freedom of movement, including the authority to determine normative regulation, to the Ministry and even more, to the provisional bodies, is not expedient and raises risk of arbitrariness.

4. Declaration of an emergency situation.

The declaration of an emergency situation should be well substantiated and justified. The Law does not define procedures for the declaration of an emergency situation. The Law merely stipulates that a decision to assign a category of national importance to an emergency situation is made by the Government of Georgia upon the recommendation of the Minister of Internal Affairs. An emergency situation is related to the obvious threat to such virtues as life, health, environment and property. On the one hand, it is important to manage emergency situations efficiently and, on the other hand, to ensure the protection of the fundamental rights. Both of these interest underline the importance of providing the information to the Parliament and of its involvement.

5. Parliamentary control during an emergency situation.

The Law leaves the issue of parliamentary control open. The parliament should have the ability to carry out an effective control of the efficiency, constitutionality and legality of the management of an emergency situation. This will be impossible if the accountability of the executive authority concerning the management of the state of emergency and the relevant implemented measures is not ensured on a regular basis.

6. Judicial review during an emergency situation.

Law does not stipulate norms governing the judicial review of the acts issued and measures implemented within the framework of an emergency situation. The Law does not define with sufficient clarity the question of awarding compensation for damages caused by the authorities. Like the state of emergency, specific measures of the judicial control and legal protection should be generally stipulated in the Organic Law “on Constitutional Court of Georgia” and the Administrative Procedures Code.

1.4. Main shortcomings of the Georgian Law “on Public Health”.

1. Isolation and quarantine.⁵⁰

1. Placing a person in isolation/quarantine against/without one’s will is related to restrictions to the right of liberty with the aim to prevent the spread of transmissible diseases. As for the placement of the person in quarantine, the Law lays down the contradictory conditions that may result in unnecessary placement of a person in quarantine. Law fails to set out the duration of quarantine, rules on informing a person about the grounds of his/her placement in isolation/quarantine and about his/her general rights such as a right to a lawyer and right to a compensation in case of an unlawful placement in isolation/quarantine. The Law does not adequately stipulate involvement of the court during involuntary placement in quarantine.

⁵⁰ Subparagraphs (k) and (l) of Article 3, Paragraphs 3,5 and 6 of Article 11, Subparagraphs (d), (k), and (l) of Article 12 of the Law “On Public Health.”

2. Against the background of above-mentioned shortcomings, authority to establish rules of isolation and/or quarantine is delegated to the executive government or the ministry as defined by the executive branch. Thus, it is at the government's discretion to regulate fundamental and substantive issues, which should have been regulated by the Parliament.

2. Temporary rule for isolation/quarantine⁵¹

1. The temporary rule envisages a possibility of imposing additional so called "quarantine measures", which could lead to the interference into the right to liberty, right to fair administrative proceedings and access to public information, freedom of movement, right to property, freedom of labor, freedom of enterprise, right to asylum and right to free personal development. Due to the general formulation of the Law, executive authorities might design "quarantine measures" in such a way that would enable them to restrict other rights as well.

2. The temporary rule does not define circumstances when a person may be placed in isolation and grants the authority to determine them to the executive government or the ministry defined by the executive government, thereby violating formal requirements of the Constitution. The same remark applies to ceding to the executive the competence to define those authorized to place individuals in isolation/quarantine. Placement of a person in quarantine relies upon a very low standard of assumption that depends on the personal evaluation of a person authorized to impose such a restriction. The Law ignores the issues of duration of isolation/quarantine term, court's involvement in involuntary placement, access to a lawyer and compensation for the illegal placement in isolation/quarantine.

3. Law contains the list of rights that are subject to limitations, although possible content, circumstances and the scope of application of these restrictions are not specified. Thus, the risk of arbitrary and excessive measures introduced by the executive authorities arises. The Law is uncertain to the extent that it does not allow to conduct a substantial constitutional assessment and the judicial review.

4. In this case, the delegation of powers to the executive authority violates constitutional standards. The delegation, its scale and scope are general and vague. The issues normally subject to a parliamentary decision and oversight are delegated to the executive authority. Executive authority is even given the possibility to adopt the regulations different from those stipulated by law.

3. Prohibition and termination of an activity.⁵²

The norms limiting freedom of labor should be defined by the Organic Law. The Law "on Public Health" is not an organic law. Thus, the formal requirement of the Constitution is violated. The Law creates a risk of using disproportionate restrictions and prohibitions even when a person is applying relevant preventive measures against the spread of the disease while performing his/her activities.

4. Obligation to undergo the medical examination.⁵³

1. Compulsory medical examination cannot be always justified in terms of constitutionality. When it comes to a particularly dangerous infection, even a substantive interference with the physical integrity is a proportional measure as the protection of persons from such diseases is of

⁵¹Article 45³ of the Law "On Public Health."

⁵² Subparagraph (a) and (c), paragraph 1 of Article 5 and subparagraph (c) of paragraph 4 of Article 7 of the Law "On Public Health."

⁵³ Subparagraph (b), paragraph 1 of Article 5; paragraph 1 and subparagraph (a), paragraph 3 of Article 10; Point (c), paragraph 3 of Article 12 and subparagraph (a), Paragraph 2 of Article 31 of the Law "On Public Health."

great significance. One could not say the same about other diseases. In the latter cases, the level of danger is not high enough to outweigh the right to physical integrity.

2. Compulsory medical examination of any person present in the epidemic hotspot is not always necessary. The fact of the presence in the epidemic hotspot, *per se*, does not provide a solid ground for assuming that a person is infected or has been exposed to an infected person during the period of transmissibility. Medical examination is a necessary measure in case of the existence of the mentioned preconditions and not in any given case.

5. Obligation to name persons that one has been in contact with.⁵⁴

Right to personal privacy is of great importance. Thus, naming those that one has been in contact with could be assessed as a proportional restriction only in cases of a particularly dangerous epidemic or pandemic. The aim of preventing the spread of other type of communicable diseases cannot outweigh the value of the right to personal privacy.

6. Restriction of movement.⁵⁵

“Ensuring control” over the movement of natural persons and vehicles is a broad and vague formulation allowing the executive authority to arbitrarily define the content, form and scope of restricting measures.

7. Inspection of baggage, goods and postal parcels of any type.⁵⁶

The norm does not stipulate preconditions for the inspection of goods. Declaration of a state of emergency cannot be the only ground for its implementation. The term “inspection” is not defined as well. It is up to the relevant bodies to interpret its content, time and target group. Thus, there is a high risk of applying this measure unnecessarily. If the inspection implies restrictions on the right to personal space and privacy of communication, judicial control required by the Constitution should be adhered to. The Law does not comply with this requirement.

8. Mobilization of material resources and vehicles⁵⁷

1. Restriction of the right to property might be deemed necessary in circumstances when the state’s resources are not adequate quantitatively and qualitatively. The Law does ignore these circumstances and creates the possibility of using excessive measures.

2. The Constitutional requirements should be met in case of expropriation of property. The norm does not comply with the standard of “a case directly provided by the law.” The Law lacks clarity and does not directly point to the expropriation of property and its conditions. Neither the court decision in case of expropriation nor the compensation issues are considered. Moreover, the expropriation is allowed in cases of pressing social need, but this should be stipulated by an organic law whereas the Law “on Public Health” is not an organic law.

9. Ensuring control on food production, supply and transportation⁵⁸

Existence of epidemic and pandemic, *per se*, does not necessarily require control on food production. No other preconditions are defined by law for the authorities performing control. Thus, there is a possibility of applying unnecessary measures. The term “control” has not been defined and interpreted. This allows executive authority to pass off as control any measure directly or indirectly connected with it. Control might include entering the territory of an enterprise against

⁵⁴ Subparagraph (b), Paragraph 3 of Article 10 of the Law “On Public Health.”

⁵⁵ Subparagraph (f) and (g), para. 3, article 12 of the Law “On Public Health.”

⁵⁶ Subparagraph (h), para. 3, article 12 of the Law “On Public Health.”

⁵⁷ Subparagraph (i), para. 3, article 12, of the Law “On Public Health.”

⁵⁸ Subparagraph (m), para. 3, article 12, of the Law “On Public Health.”

the will of the owner and even more intensive forms of interference. In such case, the Constitution requires judicial control. However, the Law does not meet this requirement.

10. Management of extremely dangerous epidemic and pandemic.⁵⁹

An extremely dangerous epidemic and pandemic fall within the category of an emergency situation. The Law “on Public Health” refers to the Law “on Public Safety” but it itself regulates the management of an emergency situation during an epidemic. Such regulation is far from being perfect in terms of compliance with the Constitution and human rights. After undergoing necessary changes and improvements, these norms should be transferred into the Law “on Public Safety.”

11. Compensation for damages in the field of public health.⁶⁰

The Law limits the compensation for damages to the cases of the development of post/side effects or complications from vaccination, conducted under the National Immunization Schedule and of becoming incapable to work. A damage could also be inflicted upon a person by other measures in the field of public health implemented in violation of law and the Constitution. Moreover, the damage might not be limited to the one inflicted on someone’s health, but it can appear in other forms that should be subject to compensation as well.

3. Main recommendations.

3.1. Measures restricting fundamental rights during epidemic.

1. General standards.

The act issued during an epidemic and the relevant implemented measures limiting fundamental rights, should meet the following basic constitutional standards:

- 1) Prescribed by *law* - restrictions are imposed by a legislative act or based on it;
- 2) Judicial control *and procedural guarantees* - imposition of certain restrictions is allowed only by a court decision. Moreover, while limiting a right, it is necessary to adhere to the procedural constitutional guarantees;
- 3) *Legitimate aim* - any restriction introduced during an epidemic should directly or indirectly serve the protection of human life and the right to health via preventing or eliminating consequences of the epidemic. When the Constitution provides for a precise list of legitimate aims, the law must stay within this list. In case of a delegation of powers, executive authority is bound by the legitimate aim defined by law;
- 4) *Usefulness* - Restriction should not be arbitrary and should be an effective measure for achieving an efficient protection of human life and health. The existence of a logical connection between the restriction and the aim is rather necessary. Restriction should not lead to a counter-effect, i.e. complication or exclusion of achieving the objective;
- 5) *Necessity* – The intensity of restrictions (gravity, scope *ratione personae*, *temporis* and *loci*) imposed during epidemic should not be higher than what is necessary for the protection of human life and health. There should be no other equally efficient and less intensive and less restrictive measure for achieving the aim.
- 6) *Proportionality* – a damage inflicted on a certain right by a restriction should not exceed the value of the interest the restriction intends to protect;

⁵⁹ Para. 1 of article 12, of the Law “On Public Health.”

⁶⁰ Article 42 of the Law “On Public Health.”

7) *Certainty* – The circumstances, rules, content and scope of the measures undertaken during an epidemic should be defined clearly, unambiguously and understandably. Addressees of the restrictions should be able to understand their essence and to conduct their actions accordingly. The content of restrictions should be clear and understandable also for those entrusted with their implementation. The executive authority should not be given the power to independently determine the scope of its activity. The content of the restricting norm should enable a sufficient level of judicial review over this norm and legal acts introduced on its basis.

8) *Non-discrimination* – any restrictions and exceptions from restrictions introduced during an epidemic should meet the requirements of the constitutional principle of equality. Essentially unequal treatment towards the equal and essentially equal treatment towards the unequal should be justified constitutionally and should not be discriminatory.

2. Delegation of restrictions of fundamental rights to the executive authority.

In certain circumstances implementation of measures restricting fundamental rights lies within the powers of the executive authority. Moreover, the parliament may delegate to the executive bodies the power to introduce normative regulations in order to prevent the spread of the pandemic. However, the delegation should meet the following requirements:

1) *Formal standards* – a subordinate act, regardless of its content, adopted (issued) based on delegation violating formal constitutional requirements is unconstitutional. Reference in the Constitution to prescribing a restriction by law or to defining by law those who are entitled to impose restrictions means that only the parliament has the legal powers to regulate these issues. Adoption (issuing) of the subordinate normative act on the basis of the delegation of authority is permissible in cases directly prescribed by law, for the implementation of the law and within the competences of the relevant bodies (officials).

2) *Impermissibility of delegation* – delegation is impermissible if it is directly prohibited by the Constitution or if it amounts to a refusal by the Parliament to perform its constitutional powers. This refusal is present if the Constitution contains specific references regarding the regulation of the issue or if the Parliament delegates a fundamental portion of its power. The legislator should not excessively delegate law-making powers and should itself regulate important, crucial and fundamental issues in order to inhibit the transfer of the decision-making regarding human rights limitations to the discretion of the executive authority. The Parliament must itself determine the subject, content, aim and scope of interference with the fundamental human rights. The executive authority may be granted the power to regulate formal relations needed for the implementation of the key decisions made by the Parliament.

3) *Certainty* – The general and blanket delegation of powers to restrict human rights is inadmissible. It should be precise and sufficiently defined. The law must clearly define the scope, aim and content of the delegation. Executive authorities should not be allowed to independently define the scope of their activities.

4) *Sub-delegation* – the possibility of further delegating already delegated matters to an executive body must be directly prescribed by law.

3. Specific activities restricting the fundamental rights.

Based on the legislation in force, it is possible to classify epidemic situations according to their severity and level of threat. This classification should become the basis for selecting the types and intensity of restrictions of constitutional rights. In any case, it is necessary to adhere to the general standards governing imposition of restrictions and delegation.

Epidemic situations can be divided into three categories:

1) Ordinary situation – an epidemic is not particularly dangerous. Its prevention/elimination of its consequences, as a rule, does not require special, complex, mass and high-intensity restrictive measures. In such circumstances activities should be undertaken mainly on the basis and within the framework of the Law “on Public Health.” It is also possible to regulate certain issues by other legislative acts if it is justified in terms of systemic approach;

2) Emergency situation – during an emergency situation, there exists a particularly dangerous epidemic and pandemic that poses or might pose an apparent threat to the human life and/or health. It is necessary to use mechanisms for the management of emergency situation and to undertake complex, coordinated and intense measures. The management of the emergency situation should be performed mainly in accordance with the Law “on Public Safety”. At the same time, it is possible to introduce special restrictive rules in other legislative acts. During the emergency situation, it is also possible to use the measures intended for an ordinary situation if different regulations for the implementation of the relevant measures during the emergency situation are not prescribed;

3) State of emergency – if a particularly dangerous epidemic or a pandemic reaches the point when it threatens the statehood and/or constitutional order and, at the same time, state authorities are devoid of capacity to adequately implement their constitutional powers, the grounds for declaration of a state of emergency exist. Prevention of the epidemic and elimination of its consequences are to be mainly regulated under the Law “on State of Emergency” and the Decree of the President. Specific restrictive norms may be prescribed in other relevant legislative acts. During the state of emergency, it should be possible to apply to the measures that are intended for the ordinary situations and emergency situations if different regulation for the implementation of the relevant measures during the state of emergency is not stipulated by law.

3.2. Restricting measures to be implemented during the ordinary situation

#	Name	Content and the minimum standards of application
1	Isolation	<p>Content:</p> <p>Keeping an ill or infected person separated from others for the period of transmission of the disease by placing him/her in such a place and/or in such conditions that would limit or prevent direct or indirect transmission of the disease from him/her to another person;</p> <p>Minimum standards (if the isolation is involuntary):</p> <ol style="list-style-type: none"> 1. Isolation is applied in case of a particularly dangerous infection, by the decision of the court, upon the recommendation of public health office; 2. Isolation of a person shall be implemented by the authorized person of the Ministry of the Internal Affairs upon the recommendation of public healthcare office; 3. A petition/motion regarding the placement of a person in isolation shall be submitted to the court within 48 hours of the deprivation of his/her liberty. If during the following 24 hours the court does not decide on the placement of a person in isolation, he/she shall be immediately released. 4. A person detained for the purpose of placing him/her in isolation shall be informed about his/her rights and the reasons for the isolation from the very outset of the deprivation of liberty.

		<p>5. A person detained for the purpose of placing him/her in isolation shall have the right to request a lawyer, which should be ensured/granted.</p> <p>6. The duration of the isolation shall not exceed the period of transmission of the disease. A person placed in isolation has a right to apply/refer to the court with the petition regarding the termination of his/her isolation.</p> <p>7. A person shall be ensured with living conditions in full respect of his/her dignity and medical service in isolation.</p> <p>8. Placement of a juvenile/a beneficiary of support in isolation shall be implemented in light of his/her best interests. The information about the placement in isolation shall be immediately notified to his/her parent/another legal representative or supporter. It is permissible to place a person voluntarily in isolation together with the juvenile/beneficiary of support in order to take care of the latter.</p> <p>9. In case of an illegal placement in isolation, a person has a right to compensation according to the rules defined by law.</p>
2	Quarantine measures	<p>Content:</p> <p>A set of measures applied to a person who is not ill but has been exposed to a case of a contagious disease during the period of its transmission.</p> <p>Minimum standards (if the quarantine measures imply involuntary placement of a person in quarantine):</p> <p>1. Placement of a person in quarantine is permissible only in case of a particularly dangerous infection, by the decision of the court, upon the recommendation/appeal of public health office;</p> <p>2. Placement a person in a quarantine shall be implemented by the authorized person of the Ministry of Internal Affairs upon the recommendation/appeal of public health office;</p> <p>3. A motion/petition regarding the placement of a person in quarantine shall be submitted to the court within 48 hours of the deprivation of his/her liberty. If during the following 24 hours the court does not decide on placement in quarantine, he/she shall be immediately released.</p> <p>4. A person detained for the purpose of placing him/her in quarantine shall be informed about his/her rights and the reasons for the placement in quarantine from the very outset of the deprivation of liberty.</p> <p>5. A person detained for the purpose of placing him/her in quarantine shall have the right to request a lawyer, which should be ensured/granted.</p> <p>6. The duration of the quarantine shall not exceed the period of detection of the disease. A person placed in quarantine has a right to appeal to the court with the petition on the termination of his/her quarantine period.</p> <p>7. A person placed in quarantine shall be ensured with living conditions in full respect of his/her dignity and medical service.</p> <p>8. Placement of juvenile/beneficiary of support in quarantine shall be implemented in light of his/her best interests. The information about the placement in quarantine shall be immediately notified to his/her parent/another legal representative or supporter. It is permissible to voluntarily place a person in quarantine together with the juvenile/beneficiary of support to take care of the latter.</p> <p>9. In case of an illegal placement in quarantine, a person has a right to compensation according to the rules defined by law.</p>

3	Restrictions on activities	A person who does not adopt relevant preventive measures is obliged to refrain from carrying out activities that pose a high risk of spreading transmissible and non-transmissible diseases and endanger public health. b
4	Restrictions on activities	A person is obliged to terminate an activity that poses high risk of spreading transmissible and non-transmissible diseases and endangers public health if the relevant preventive measures are not undertaken.
5	Restrictions on activities in the aesthetic and cosmetic field	1. A person, whose activity is connected to carrying out aesthetic and cosmetic procedures in institutions of public importance, is obliged to follow technical regulations – Sanitary Norms on Prevention and Control of Infections, while performing aesthetic and cosmetic procedures in public institutions. 2. A person, whose activity is associated with carrying out aesthetic and cosmetic procedures in public institutions, shall register the relevant activity in the registry of economic activities in accordance with the procedures provided by the legislation. In case of commencement and termination of the economic activity and in case of beginning or termination of the activity or of any changes in the registered data, in order to make changes in the registry of economic activities, he/she shall apply to the National Agency of Public Registry, a legal entity under public law, in accordance with the procedures provided by the legislation.
6	Restrictions related to the safety of production	1. Goods and products produced and/or imported in(to) the territory of Georgia shall comply with normative regulations of safety in order to ensure safety for human health. 2. If sanitary norms are violated, a person shall be obliged to suspend production, import, export, supply, transportation, sale and products until the violation is eliminated.
7	Vaccination for performing one's activities	A person shall undergo prophylactic vaccination if his/her occupation is related to a high risk of spread of contagious diseases.
8	Preventive obligatory medical procedures	A person shall be obliged to undergo all medical procedures, as required by appropriate authorities, necessary to prevent health risks for other persons, in case of a danger of emergence and spread of contagious diseases. Medical procedure related to the substantive interference with the physical integrity of a person should be obligatory in case of a particularly dangerous infection.
9	Mandatory medical examination	The public health office is authorized to require a person to undergo medical examination if there is a reasonable doubt that he/she is a carrier of a contagious disease and poses a risk to public health. The examination shall be carried out with full respect for human rights and fundamental freedoms. If the examination is related to a substantive interference into the physical integrity of a person, it should be mandatory in case of a particularly dangerous infection.
10	Mandatory medical procedures for carriers of a disease	If a person is confirmed to be a carrier of a contagious disease, a public healthcare office and a healthcare provider are authorized to request that he/she undergoes an appropriate medical examination and/or relevant medical treatment and/or relevant consultation. If the mentioned procedures require a substantial interference with physical integrity of a person, they shall be mandatory in case of particularly dangerous infection.

11	Provision of information by a disease carrier	If a person is confirmed to be a carrier of a contagious disease, a public health office and a healthcare provider are authorized to request that he/she indicates the persons with whom he/she has been and/or is in close contact during the transmissibility period of the disease. Provision of the given information is mandatory if a person is confirmed to be a carrier of a particularly dangerous infection.
12	Mandatory vaccination	A person shall be obliged to undergo vaccination, in the absence of medical side-effects, if there is a risk of an outbreak or beginning of an epidemic.
13	Preventive vaccination according to the National Vaccination Schedule	<p>A person shall be obliged to observe the National Prophylactic Vaccination Schedule in accordance with the procedures and the framework established by the legislation of Georgia.</p> <p>Comment:</p> <p>1. The National Prophylactic Vaccination Schedule – a list of infectious diseases for which preventive vaccination is mandatory and age criteria, time-frames and procedures of prophylactic vaccination;</p> <p>2. A person shall have a right to refuse to undergo prophylactic procedures, if there is no risk of an epidemic or pandemic; a person, whose occupation is related to a high risk of spread of contagious diseases shall not have the right of refusal.</p>
14	Obligation of an enterprise to observe existing legislation in the field of public health	An enterprise shall be obliged to observe legislation in force in public health.
15	Provision of information by an enterprise	An enterprise shall be obliged to notify a public health office of all emergency situations caused by violating sanitary norms in production and technological processes.
16	Ban on possession of the pathogenic biological agents	Possession of the types of pathogenic biological agents and possession thereof in amounts that cannot be justified by their use for diagnostic, research or other peaceful purposes shall be prohibited.
17	Restrictions and bans related to extremely dangerous pathogens	<p>1. Upon the recommendation of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, the Government of Georgia shall approve rules and norms for the possession, use, transfer, transportation and destruction of the EDPs, and the investigation and monitoring methods thereof.</p> <p>2. The Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs shall develop sanitary and hygiene rules and standards for laboratories working with extremely dangerous pathogenic biological agents, the qualification requirements for personnel and principles for the health supervision of the personnel thereof, and shall submit them to the Government of Georgia for approval.</p> <p>3. Only the legal entities holding a license for working with extremely dangerous pathogens in accordance with the Law of Georgia “on Licenses and Permits” shall have the right to work with extremely dangerous pathogens.</p> <p>4. The Government of Georgia shall determine the list of natural persons who are prohibited from possessing, using, transferring, transporting and destroying extremely dangerous pathogens, due to their criminal records or having been accused of terrorism.</p> <p>5. Upon recommendation of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, the Government of</p>

	<p>Georgia shall determine additional technical and safety requirements that will constitute additional conditions for issuance of a license to conduct activities involving extremely dangerous pathogens.</p> <p>6. Upon the recommendation of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, the Government of Georgia shall approve the rules for transfer and transportation of extremely dangerous pathogens. The rules shall be binding for any person involved in the transfer and/or transportation of extremely dangerous pathogens.</p> <p>7. Extremely dangerous pathogens may be transferred only to relevant authorized facility. The appropriate authorized facility shall be notified of every expected transportation of extremely dangerous pathogens in advance. The extremely dangerous pathogens shall be transported according to the established rules.</p> <p>8. In case of identifying extremely dangerous pathogens, the relevant laboratory shall immediately notify the legal entity, where the national repository of extremely dangerous pathogens is located, and shall transport these pathogens to the national repository, or destroy them according to the statutory procedure.</p> <p>9. The Government of Georgia shall adopt the regulations for import and export of extremely dangerous pathogens. These regulations shall ensure the use of extremely dangerous pathogens only for peaceful purposes. Extremely dangerous pathogens shall only be imported and exported by appropriate authorized persons according to the statutory procedure.</p>
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3.3. Restricting measures to be implemented during an emergency situation.

#	Name	Content and minimum standards of application
1	Quarantine measures in the epidemic hotspot	<p>1. Quarantine measures shall be applied, by the relevant authorities, to those persons present in an epidemic hotspot who have been exposed to a contagious disease during the period of its transmissibility.</p> <p>2. If quarantine measures imply involuntary placement in quarantine, it shall be implemented in line with the Law "on Public Health" and the requirements defined by the legislation.</p>
2	Mandatory medical examination in the epidemic hotspot	A person present in the epidemic hotspot is obliged, upon the request by a public health office, to undergo the relevant medical examination. If the examination implies substantive interference with the physical integrity of a person, it may be performed if based on symptoms there is a reasonable ground to believe that a person is a carrier of a particularly dangerous infection or there are enough data showing that he/she has been exposed to a contagious disease during the period of transmissibility.
3	Medical examination during the entry into or an exit from the epidemic hotspot	A person, while entering or exiting the epidemic hotspot, may be subject to temperature screening and/or other external medical examination with the aim of revealing the symptoms of a particularly dangerous infection.
4	Restriction on movement of natural persons in the	<p>1. In case of a heightened risk of spread of a particularly dangerous epidemic or pandemic, it is permitted to impose restrictions or a ban on the entry into and exit from the epidemic hotspot.</p> <p>2. Restrictions shall not be applied on the following types of movement with the aim of:</p>

	epidemic hotspot	<p>a) protecting the human health and/or life;</p> <p>b) protecting the state and public security;</p> <p>c) preventing/eliminating consequences of a particularly dangerous epidemic or pandemic;</p> <p>d) ensuring the provision of goods/services necessary for living for the persons living in the territory of epidemic hotspot;</p> <p>e) returning persons to the place of their permanent residence within the territory of epidemic hotspot.</p> <p>f) performing journalistic activities by the accredited representatives of mass media.</p>
5	Restriction on movement of vehicles in the epidemic hotspot	<p>1. In case of a heightened risk of spread of a particularly dangerous epidemic or pandemic, it is permitted to impose restrictions or a ban for the vehicles on the entry into and exit from the epidemic hotspot.</p> <p>2. Restrictions shall not be applied on the movement in the following cases:</p> <p>a) In order to protect the human health and/or life;</p> <p>b) In order to protect the state and public security;</p> <p>c) In order to prevent/eliminate the consequences of particularly dangerous disease;</p> <p>d) In order to ensure the provision of goods/services for the persons living in the territory of epidemic hotspot;</p> <p>e) In order to return to the place of permanent residence within the territory of epidemic hotspot.</p> <p>f) In order to perform one's duties by the accredited representatives of mass media.</p>
6	Restriction on public transport	<p>1. In case of a particularly dangerous epidemic and pandemic, it is possible to impose additional requirements for the transportation of passengers by public transport or by individual means of public transport in order to prevent the spread of a particularly dangerous epidemic/pandemic.</p> <p>2. Within the territory of an epidemic hotspot, it is possible to impose full or partial ban on transportation of passengers by public transport if transportation poses a high risk of spread of particularly dangerous infection.</p>
7	Ban on entry to Georgia	<p>In case of an emergency situation of national importance, in order to prevent the spread of a particularly dangerous epidemic/pandemic, the following measures may be applied:</p> <p>1. A person entering the territory of Georgia may undergo temperature screening and /or other external (general) medical examination for detection of symptoms of a particularly dangerous infection.</p> <p>2. A foreigner may be requested to provide a document confirming the taking of a test for detecting an especially dangerous infection or confirming the undergoing a preventive vaccination as a precondition for entering the territory of Georgia, if the foreigner, during the outbreak of an especially dangerous infection, was present in or is entering from the country where an especially dangerous epidemic or pandemic is widespread.</p> <p>3. A person shall undergo mandatory testing on an especially dangerous disease upon crossing the border of the country if the person does not possess the document confirming already undertaken test results. Testing of Georgian citizens shall take place with state financial support.</p>

		4. Full or partial ban on transportation from the country where an especially dangerous infection is widespread.
8	Use of material resources and transport	<p>Content:</p> <p>For the prevention/elimination of consequences of an especially dangerous epidemic/pandemic, it shall be permissible to use privately-owned vehicles and other material resources.</p> <p>Conditions:</p> <ol style="list-style-type: none"> 1. The use shall be permissible if state owned transport and material resources are not sufficient qualitatively and/or quantitatively; 2. The owner of the object shall be informed about the use in advance; 3. The use shall be permissible only in exchange for relevant compensation; 4. The use shall be terminated from the moment when the state acquires the capacity to prevent/eliminate consequences of an extremely dangerous epidemic/pandemic by using the vehicles and other material resources at the state's disposal. In any case, the duration of utilization shall not exceed the validity term of the emergency situation.
9	Seizure of items posing threat	<ol style="list-style-type: none"> 1. In order to implement anti-epidemic measures, the owner of a property might be temporarily deprived of his items/objects if the latter poses a real danger of spread of an extremely dangerous infection. The item/object shall be returned to the owner after the elimination of danger. 2. If it is impossible to eliminate a danger of spread of an extremely dangerous infection coming from an item/object without destroying it, an item/object is subject to expropriation. The expropriation shall be performed upon the decision of the court, based on the motion of public health office and the advance, full and fair compensation shall be ensured. The compensation shall be free from any type of fees and taxes. The owner shall be prohibited from using the item/object prior to finalization of expropriation procedures.
10	Food control	Production, delivery and transportation of food shall be subject to control if the latter serves provision for persons present in epidemic hotspot with food and/or prevention of an extremely dangerous epidemic and pandemic.
11	Restriction on provision of public services	It shall be permissible to impose restrictions on certain forms of provision of public services if provision poses a real risk of spread of an extremely dangerous epidemic and pandemic and provision is impossible by electronic or by other less dangerous means.
12	Mandatory co-engagement in work	<p>Content:</p> <p>A person might be obliged to be engaged in work of prevention of an extremely dangerous epidemic and pandemic or elimination of its consequences.</p> <p>Conditions:</p> <ol style="list-style-type: none"> 1. A qualitative and/or quantitative shortage of human resources at the state's disposal; 2. A person shall be of the minimum age of 18; 3. A person has a relevant professional qualification; 4. A person retains a job he/she had before mandatory employment and it shall not be permissible to dismiss him/her during the mandatory employment. 5. A person shall receive remuneration for being engaged in a mandatory work activity, which shall not be less than the average remuneration for the similar work in the country. If

		<p>a person was employed before his/her engagement in a mandatory work activity, his/her remuneration shall not be less than that which he had during his employment before his/her engagement in a mandatory work activity.</p> <p>6. Mandatory engagement in work shall be terminated from the moment when a state becomes capable to perform the prevention/elimination of consequences of an extremely dangerous epidemic and pandemic by using human resources at state's disposal. In any case, the duration of mandatory work activity shall not exceed the term of validity of emergency situation.</p>
13	The mobilization of resources	<p>In case of need, when there is a shortage of human resources, with the aim to respond to the emergency situation, the emergency management service is authorized to mobilize veterans registered in advance in its database and having relevant skills to involve them in response measures to the emergency situation.</p>
14	Restrictions related to professional and economic activities in service providing field	<p>With the aim of prevention/elimination of consequences of an extremely dangerous epidemic and pandemic, following restrictions may be imposed on persons performing professional and economic activities in service providing field:</p> <ol style="list-style-type: none"> 1. Observing additional requirements of epidemic safety - maximum number of persons allowed to gather in vehicles and spaces, restriction/ban on provision of services in certain areas, mandatory use of means of epidemic safety etc. 2. Prohibition on provision of certain services if they pose a heightened risk of spread of an extremely dangerous infection until the elimination of the relevant threat. 3. Imposing an obligation to provide certain services in exchange for appropriate remuneration if it is necessary for prevention/elimination of consequences of an extremely dangerous epidemic and pandemic and for responding to the primary needs of the population and if the state lacks the adequate resources for achieving these aims.
15	Restrictions related to professional and economic activities in the production field	<p>With the aim of prevention/elimination of consequences of an extremely dangerous epidemic and pandemic, following restrictions may be imposed on persons performing professional and economic activities in production field:</p> <ol style="list-style-type: none"> 1. Observing additional requirements of epidemic safety - maximum number of persons allowed to gather in spaces, mandatory use of means of epidemic safety, etc.; 2. Launch of and/or increase in production of certain goods if is necessary for the prevention/elimination of consequences of an extremely dangerous epidemic and pandemic, also for responding to the primary needs of the population when the state lacks adequate resources for achieving these aims. When the launching or/and the increasing production of goods is related to additional expenses, they shall be reimbursed by the state.
16	Restrictions of social activities	<ol style="list-style-type: none"> 1. It shall be possible to impose restrictions on cultural, sports, entertainment, festive, ritual, religious and other types of social activities which are not related to the realization of the freedom of assembly guaranteed by the Constitution, in terms of defining mandatory requirements on the place of activities, number of participants and epidemic safety if these activities create a real risk of spread of an especially dangerous infection. 2. It shall be possible to prohibit cultural, sport, entertainment, festive, ritual, religious and other activities, which are not related to realization of freedom of assembly if these activities pose a realistic heightened risk of spread of an especially dangerous infection.
17	Notification about the	<p>During an emergency situation, when human life or/and health is/might be at risk, electronic communications company, which provides mobile communication networks and means</p>

	emergency situation and provision of other information	or/and services and the public broadcaster shall ensure the notification of persons within the territory of Georgia about the emergency situation and provision of other information upon the request of emergency management service.
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3.4. Restrictive measures to be implemented during the state of emergency.

#	Name	Content and minimum standards of application
1	Restriction on movement within the territory of state of emergency	<p>1. Within the territory under the state of emergency or in part thereof, it shall be possible to introduce a special regime of entry and exit, which implies a ban on entry into and exit from the relevant territory for natural persons.</p> <p>2. Restrictions shall not be applied to the persons performing the following activities within the relevant territory:</p> <ul style="list-style-type: none"> a) Ensuring state and public security; b) Prevention/elimination of the consequences of a particularly dangerous epidemic or pandemic; c) Performing journalistic duties by accredited representatives of mass media; <p>3. In case of a ban, a state shall be obliged to:</p> <ul style="list-style-type: none"> a) Provide the persons living in the relevant territory with goods/services of primary need; b) Provide the persons, who cannot return to the place of permanent residence, with temporary accommodation.
2	Restriction on leaving the place of residence or other location	<p>1. In case of a heightened risk of spread of an extremely dangerous infection, within the territory under the state of emergency or in a part of the territory thereof, it shall be possible to prohibit movement and presence of persons beyond certain distance from their place of residence or other location. The distance shall be defined in a way to ensure access to goods/services of primary need.</p> <p>2. The prohibition shall not be applied in the following cases:</p> <ul style="list-style-type: none"> a) When movement of a person serves the protection of human life or/and health; b) When movement of a person is aimed at receiving goods/services necessary for living, provision of which is impossible within the restricted perimeter; c) Movement of those persons who participate in prevention/elimination of consequences of an extremely dangerous epidemic and pandemic; d) Movement of those persons who ensure provision of population with essential goods/services; i) Movement of those persons who ensure the protection of state and public safety; f) Movement of representatives of mass media who have the relevant accreditation.
3	Ban on leaving the place of residence or other location (curfew)	<p>Content:</p> <p>In certain hours during a day and a night, the persons shall be banned from leaving their place of residence or other location.</p>

		<p>Conditions:</p> <ol style="list-style-type: none"> 1. The prohibition may be applied to the period during day and night, when the highest risk of spread of extremely dangerous infection exists; 2. The prohibition shall not be applied to the following persons: <ol style="list-style-type: none"> a) those who participate in prevention/elimination of consequences of an extremely dangerous epidemic/pandemic; b) who ensure the provision of population with emergency medical service; c) who perform the protection of state and public safety; d) the accredited representatives of mass media.
4	Restriction of movement of vehicles	<p>The following restrictions may be imposed on the movement of privately-owned vehicles within the territory under the state of emergency and in part thereof, if the movement poses an increased risk of spread of an extremely dangerous infection:</p> <ol style="list-style-type: none"> 1. Ban on movement not complying with anti-epidemic requirements; 2. Ban on movement except in cases where the movement aims to: <ol style="list-style-type: none"> a) Protect human life and health; b) Provide population with essential goods and services; c) Access and receive essential goods/services if due to the person's medical condition, it is impossible for him/her to walk or the distance exceeds 1 km and there is no possibility of delivering relevant goods/services to the place of residence; d) Perform journalistic activities based on the relevant accreditation.
5	Restriction/prohibition of assembly	<ol style="list-style-type: none"> 1. Within the territory under the state of emergency or in part thereof, it shall be possible to place conditions on gatherings organized within the framework of the constitutional right of freedom of assembly in terms of place of assembly, mandatory distance between the participants and other anti-epidemic considerations if the holding such assembly is related to a real risk of spread of an extremely dangerous epidemic and pandemic. 2. It shall be permissible to prohibit holding assemblies within the framework of exercising the constitutional right of freedom of assembly in the territory under the state of emergency or in part thereof, if holding such assembly is related to a realistic increased risk of spread of an extremely dangerous epidemic and pandemic.
6	Termination of employment	<p>Content:</p> <p>During the period of a state of emergency, it shall be permissible to temporarily terminate the employment of the heads of enterprises, institutions and organizations of strategic and vital importance for the population and to appoint their replacements.</p> <p>Conditions:</p> <ol style="list-style-type: none"> 1. It shall be permissible to terminate the employment of a person, who does not have enough professional qualifications for prevention/elimination of consequences of an extremely dangerous epidemic and pandemic or/and for ensuring the provision of population with essential goods/services.

		<p>2. A person whose employment has been terminated shall retain his/her remuneration.</p> <p>3. A person whose employment has been terminated shall be returned to his/her position upon lifting the state of emergency if there are no legal grounds for the dismissal.</p>
7	Termination of employment at the employee's initiative	<p>Content:</p> <p>During the period of a state of emergency, it shall be permissible to temporarily ban the termination of the employment of persons employed in enterprises, institutions and organizations of strategic and vital importance for the population unless a reasonable ground of termination is present.</p> <p>Conditions:</p> <p>A ban shall be applied to the employees participating in :</p> <ul style="list-style-type: none"> a) prevention/elimination of consequences of an extremely dangerous epidemic and pandemic; b) Providing population with essential goods/services; c) Ensuring state and public safety.
8	Prohibition of a strike	<p>During a state of emergency, it shall be permissible to prohibit a strike by those persons, who:</p> <ul style="list-style-type: none"> a) Participate in prevention/elimination of consequences of an extremely dangerous epidemic and pandemic; b) Ensure the provision of population with essential goods/services.
9	Transfer to another job	<p>Content:</p> <p>During a state of emergency, an employer shall be permitted to transfer an employee to another job, which is not envisaged in the employment contract.</p> <p>Conditions:</p> <ul style="list-style-type: none"> 1. Transfer to another job might be applied to a person, who, due to the specific character of the job to be performed, are under the real risk of being exposed to an extremely dangerous infection and do not have enough qualifications to prevent an exposure. 2. Transfer to another job might be applied to persons if the work not envisaged under his/her employment contract is related to: <ul style="list-style-type: none"> a) Prevention/elimination of consequences of an extremely dangerous epidemic and pandemic; b) Ensuring provision of population with goods/services essential for living; 3. A person transferred to another job shall have the relevant professional qualifications for performing it. 4. A person transferred to another job shall be given a decent remuneration, which should not be less than the one she was receiving prior to the transfer.
10	Administrative detention	<ul style="list-style-type: none"> 1. An administrative detention might be applied to a person who violates a ban on leaving the place of residence or other location (curfew) and shall be performed by an authorized person of the Ministry of Internal Affairs.

		<p>2. Detention may last until the end of a ban on leaving the place of residence or other location (curfew). It is not permissible to detain an identified person if it is possible to transfer him/her to his/her place of residence or other location of living.</p> <p>3. It is permissible to detain an unidentified person with the aim of his/her identification and imposition of liability. The identification of a person shall immediately be performed by police. The detention of a person may last until his/her identification but for no more than 48 hours.</p> <p>4. In case of administrative detention, a person shall be informed about his/her rights and the detention grounds.</p> <p>5. A person shall have the right to lawyer from beginning of detention, which shall be ensured/granted.</p> <p>6. Legality of detention may be appealed in the court. A person detained illegally shall have a right to compensation.</p>
11	Search of vehicles	<p>Content:</p> <p>Visual search or/and search by technical means of vehicles moving within the territory under the state of emergency or in the part thereof, or of the vehicles entering and leaving this territory.</p> <p>Conditions:</p> <p>1. Search shall be performed by an authorized person of the Ministry of Internal Affairs.</p> <p>2. Search may be performed in case of an urgent need when there are sufficient grounds of presence in the vehicle of a person or an item posing a real risk of spread of an extremely dangerous infection.</p> <p>3. If the owner of a car does not consent to the search of the vehicle, the request for search shall be submitted to the court within 24 hours, which on its part shall approve the legality of search within 24 hours after receiving the request.</p>
12	Personal search	<p>Content:</p> <p>Visual search or/and search by technical means of a person present within the territory under the state of emergency or in the part thereof, or of a person entering and leaving this territory.</p> <p>Conditions:</p> <p>1. Search shall be performed by the authorized officials of the Ministry of Internal Affairs.</p> <p>2. A search may be performed:</p> <p>a) In order to find an identity document of the detainee;</p> <p>b) In case of an urgent need, if there are sufficient grounds to believe that a person has an item posing risk of spread of an extremely dangerous infection.</p> <p>3. A person shall have a right to appeal to the court.</p>
13	Search of personal items	<p>Content:</p> <p>Visual search or/and search by technical means of an item of a person present within the territory under the state of emergency or in the part thereof, or of an item of a person entering and leaving this territory.</p>

		<p>Conditions:</p> <ol style="list-style-type: none"> 1. Search shall be performed by an authorized person of the Ministry of Internal Affairs. 2. Search may be performed in case of an urgent need, if there are enough grounds to believe that an item poses a real risk of spread of an extremely dangerous infection. 3. The owner of an item shall have a right to appeal to the court.
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3.5. Declaration and cancellation of an emergency situation in case of epidemic.

1. Preconditions for declaration.

- 1) Expectation / emergence or/and outbreak of an extremely dangerous epidemic and pandemic.
- 2) Extremely dangerous epidemic – significant increase in cases of an extremely dangerous infection (disease caused by highly pathogenic biological agents that poses a particular risk to human and/or animal health), compared to the expected (background) rate on a specific territory or in a specific population group;
- 3) Pandemic – an unusually wide spread of a contagious disease (throughout several countries, continents, or worldwide), affecting a significant part of the population.

2. Recommendation on declaration of an emergency situation.

- 1) The Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia and the Ministry of Internal Affairs of Georgia shall apply to the Government of Georgia with joint recommendation on declaration of an emergency situation of national importance.
- 2) The recommendation shall include following:
 - a) Situation related to an extremely dangerous epidemic and pandemic and a prognosis of its development;
 - b) Justification of the necessity of declaration of an emergency situation;
 - c) The territorial boundaries of an emergency situation;
 - d) Validity term of an emergency situation;
 - e) Necessary measure for management of an emergency situation;
 - f) Restrictions of fundamental rights, their content, form and scope, necessary for the management of an emergency situation;
 - g) Authorized and accountable persons, who shall be responsible for implementation of relevant measures and restrictions during an emergency situation.

3. An Ordinance on declaration of an emergency situation.

- 1) If the Government agrees with the recommendation submitted by the ministers, it shall adopt an Ordinance on declaration of an emergency situation of national importance throughout the whole territory of the country or in a part thereof.
- 2) An Ordinance shall include the following:
 - a) Justification of declaration of an emergency situation;
 - b) The territorial boundaries of an emergency situation;

- c) Validity term of an emergency situation;
 - d) Necessary measure for management of an emergency situation;
 - e) Restrictions of fundamental rights, their content, form and scope, necessary for the management of an emergency situation;
 - f) Authorized and accountable subjects, who shall be responsible for implementation of relevant measures and restrictions during an emergency situation
- 3) An Ordinance shall be immediately sent to the Parliament.

4. Amendments into the Ordinance on declaration of an emergency situation

Amendments into the Ordinance on declaration of an emergency situation may be made according to the procedures established for the declaration of an emergency situation.

5. Cancellation of an Ordinance declaring an emergency situation

- 1) The Ordinance shall be cancelled upon the end of the validity term of an emergency situation.
- 2) Full or partial cancellation of the Ordinance before the end of validity term of an emergency situation shall be possible:
 - a) By the Government;
 - b) By the Parliament.
- 3) The Parliament shall be immediately informed about the cancellation of an Ordinance.
- 4) A full or partial cancellation of an Ordinance takes place by the Decree of the Parliament after consultations with the Prime Minister.

3.6. Declaration and cancellation of a state of emergency during an epidemic

1. Preconditions for declaration

- 1) General precondition:
 - a) There is a substantial and inevitable threat to the existence of the state or/and to the constitutional order;
 - b) The state authorities lack the capacity to adequately perform their constitutional powers.
- 2) Specific precondition:

An outbreak of an extremely dangerous epidemic and pandemic is expected/present and/or in progress

2. Recommendation of the Prime-Minister on declaration of a state of emergency.

- 1) The Prime Minister submits a recommendation on declaration of a state of emergency to the President.
- 2) A recommendation shall include the following:
 - a) The situation related to an extremely dangerous epidemic and pandemic and a prognosis of its development;
 - b) A description of a substantial and an inevitable threat to the existence of the state or/and the constitutional order;
 - c) The state authorities that lack the capacity to adequately perform their constitutional powers, specific powers that are impossible to perform and scope of the obstacle to their performance;

- d) Territorial boundaries of a state of emergency;
- e) Validity term of a state of emergency.

3. Declaration of a state of emergency by the President

- 1) The President, based on a full or partial acceptance of the recommendation of the Prime Minister, shall declare a state of emergency on the whole territory of the country or in any part thereof and shall immediately submit the decision to declare a state of emergency to the Parliament for the approval.
- 2) The decision of the President shall include the following:
 - a) Grounds and justification of a declaration of a state of emergency;
 - b) Territorial boundaries of a state of emergency;
 - c) Validity term of a state of emergency.
- 3) The decision of the President shall not need countersignature if he/she fully agrees with the recommendation of the Prime Minister on declaration of a state of emergency;
- 4) The decision of the President shall enter into force upon the approval by the Parliament.

4. The approval of the decision of the President on declaration of a state of emergency by the Parliament

- 1) The Parliament shall approve the decision of the President on declaration of a state of emergency as soon as it assembles.
- 2) The President and the Prime Minister shall attend discussions on the issue of approval. If their attendance is impossible, the discussion shall be attended by persons authorized by them.
- 3) The Parliament shall examine the necessity of declaration of a state of emergency and the proportionality of the measures envisaged in decision.
- 4) The Parliament shall be authorized to partially approve the decision on declaration of a state of emergency.
- 5) Decision on the partial approval shall be preceded by consultations with the President and the Prime Minister.

5. Validity period of a state of emergency

- 1) Validity period of a state of emergency shall not exceed one month.
- 2) Decision on extension of the validity period of a state of emergency, but for no more than a month in each case of extension, shall be decided in accordance with the procedures established for the declaration and approval of a state of emergency.

6. Cancellation of a state of emergency

- 1) A state of emergency shall be cancelled as soon as its validity period ends.
- 2) A state of emergency shall be cancelled before the end of its validity period if the threat to the existence of the state or/and to constitutional order no longer exists or has substantially decreased.
- 3) The Parliament is authorized to cancel a state of emergency before the end of its validity period based on its own or on the President's initiative, after consulting the President and the Prime Minister.

3.7. Issuance and repeal of a Decree of the President during the epidemic.

1. Scope of regulation by a Decree and its legal force.

- 1) A Decree shall be issued during a state of emergency.
- 2) During the state of emergency declared in case of an epidemic, a Decree may:
 - a) impose a regulation of powers of state bodies and state officials that is different from regulation established by the legislative and subordinate acts;
 - b) restrict fundamental rights enshrined in Articles 13, 14, 15, 17, 18, 19, 21 and 26 of the Constitution.
- 3) Decree shall have the legal force of an Organic Law.

2. Recommendation of the Prime Minister on issuance of a Decree

1. A recommendation of the Prime Minister on issuance of a Decree shall include the following:
 - a) Situation related to an extremely dangerous epidemic and pandemic, which necessitates the issuance of the Decree;
 - b) List of fundamental rights which shall be subject to restriction;
 - c) Justification concerning legitimate aim, efficiency, necessity and proportionality of every restrictions of the fundamental rights;
 - d) Justification of non-discriminatory nature of restriction of fundamental rights, if the restriction envisages exceptions in terms of aggravation or mitigation of the legal situation;
 - e) Bodies/officials authorized to enforce and responsible for implementing restrictions.
2. If the recommendation contains a request to delegate power to normatively regulate restrictions of fundamental rights, it shall include the following:
 - a) Indication of bodies/officials shall be granted with the delegated powers;
 - b) Aim, content and scope of the delegation;
 - c) Reasoning on constitutionality, legality and expediency of the delegation;
 - d) Reasoning on possibility to further transfer (sub-delegate) power to introduce normative regulations, its constitutionality, legality and expediency.
3. If the recommendation contains a request to regulate powers of state bodies and officials differently from those regulations already established by legislation, it shall include justification of constitutionality, legality and expediency of the request.

3. Issuance of a Decree by the President

- 1) If the President fully or partially agrees with the recommendation of the Prime Minister, he/she shall issue a Decree.
- 2) A Decree shall not require a countersignature by the Prime Minister if the President fully agrees with the recommendation of the Prime Minister.
- 3) The President shall immediately submit a Decree to the Parliament for approval.
- 4) A Decree or a part thereof, which refers to regulation of powers of state bodies and officials that is different from regulation already established by the legislation, shall enter into force upon the moment of its issuance.
- 5) A Decree or a part thereof, which refers to the restriction of fundamental rights, shall enter into force upon the approval by the Parliament.

4. Approval of a Decree by the Parliament.

- 1) The Parliament shall approve the Decree as soon as it assembles.
- 2) Discussions on the issue of approval shall be attended by the President and the Prime Minister and, in case their attendance is not possible – by their authorized representatives.
- 3) The Parliament shall examine the necessity of issuance of the Decree and proportionality of the measures envisaged in the Decree.
- 4) The Parliament shall be authorized to partially approve the Decree after the consultations with the President or the Prime Minister.
- 5) If the Parliament does not approve the Decree or a part thereof referring to the regulation of powers of state bodies and officials that is different from the regulation envisaged under legislative and subordinate legislative acts, it shall lose its legal force immediately after the voting.

5. Making changes in the Decree

- 1) Prior to the cancellation of a state of emergency Parliament shall be authorized to amend the Decree:
 - a) upon its own initiative;
 - b) upon the initiative of the President;
 - c) upon the initiative of the Prime Minister.
- 2) Amendments to the Decree shall be made after consultations with the President and the Prime Minister.

6. Repeal of the Decree

- 1) Cancellation of a state of emergency shall lead to the loss of the legal force of the Decree.
- 2) Parliament shall be authorized to repeal the Decree before the cancellation of a state of emergency:
 - a) Upon its own initiative;
 - b) Upon the initiative of the President;
 - c) Upon the initiative of the Prime Minister.
- 2) Repealing Decree before the cancelation of state of emergency shall be possible after consultations with the President and the Prime Minister.

3.8. Parliamentary control during the epidemic

1. Ordinary situation

In the ordinary situation, parliament exercises control over activities of the state bodies and officials responsible for public healthcare by already established mechanisms, namely: control by committees, Temporary Investigative Commission and other temporary commissions, questioning by parliament members, Interpellation, submission of the report to the Parliament, etc.

2. Emergency situation.

1. During an emergency situation, the Parliament shall be authorized to use all the mechanisms of control, which function during an ordinary situation.
2. During an emergency situation, the following shall be immediately sent to the Parliament:
 - a) An Ordinance of the Government on declaration of an emergency situation;

- b) Changes to the Ordinance of the Government on declaration of an emergency situation;
- c) Information on repeal of the Ordinance of the Government on declaration of emergency situations.

3. The Parliament, after consultations with the Prime Minister, shall be authorized to fully or partially repeal the Ordinance of the Government on declaration of an emergency situation.

4. During the period of emergency situation, the Prime Minister shall submit to the Parliament a report on the measures undertaken for managing the emergency situation twice a week.

3. State of emergency

1. During a state of emergency, the Parliament shall be authorized to use all the mechanisms of control that are applicable during an ordinary situation.

2. During a state of emergency, the Parliament:

- a) Fully or partially approves the decision of the President on declaration of a state of emergency;
- b) Approves the decision on extension of validity period of the state of emergency;
- c) Is authorized to revoke a state of emergency prior to end of its validity period;
- d) Is authorized to terminate the use of defense forces.

3. During the state of emergency, the Prime Minister shall submit to the Parliament a weekly report on the measures undertaken within the framework of the state of emergency.

3.9. Judicial review during the epidemic.

1. Ordinary situation

1. Constitutional Court shall exercise constitutional review over the constitutionality of normative acts enacted in public healthcare field within the scope and according to the standards established by the Constitution and the Organic Law “on Constitutional Court of Georgia.”

2. Common Courts shall exercise judicial review over the administrative-legal acts and actions of state bodies and officials in the public healthcare field in accordance with the Administrative Procedure Code and relevant legislation.

2. Emergency situation.

1. Legal acts issued and actions undertaken within the framework of the emergency situation are subject to the mechanisms of judicial review applicable during an ordinary situation.

2. The time limit for considering and deciding a constitutional claim regarding constitutionality of normative acts issued within the framework of the emergency situation shall not exceed 2 months from the moment of submission of the claim to the Constitutional Court.

3. The time limit for reviewing and deciding disputes related to administrative legal acts issued and actions undertaken within the framework of the emergency situation shall not exceed:

- a) In Court of First Instance – 1 month;
- b) In Appellate Court – 1 month;
- c) In the Court of Cassation – 2 months;

4. In case of a real risk of spread of an extremely dangerous epidemic and pandemic and if adjournment of the hearing is not possible, court hearings may be conducted via means of internet communication. Parties shall be given due opportunity to present their evidence and positions

and to defend themselves. Publicity of a court hearing shall not be restricted unless there is a legislative basis for it.

3. State of emergency.

1. Legal acts issued and actions undertaken within the framework of the state of emergency are subject to the mechanisms of judicial review applicable during an ordinary situation.

2. Time limit for considering and deciding a constitutional claim on constitutionality of normative acts issued within the framework of the state of emergency shall not exceed 2 months from the moment of submitting the claim to the Constitutional Court.

3. The time limit for reviewing and deciding disputes related to administrative legal acts issued and actions undertaken within the framework of the state of emergency shall not exceed:

a) In Court of First Instance – 15 days;

b) In Appellate Courts – 15 days;

c) In the Court of Cassation – 1 month.

4. In case of a real risk of spread of an extremely dangerous epidemic and pandemic and if adjournment of the court hearing is not possible, court hearings may be conducted via means of internet communication. Parties shall be given due opportunity to present their evidence and positions and to defend themselves. Publicity of a court hearing shall not be restricted unless there is a legislative basis for it.

Part II – Constitutionality of restrictions imposed by the Government of Georgia in fight against pandemic before, during and after the state of emergency.

Introduction and research methodology

This part of the study analyses constitutionality of restrictive measures adopted/maintained by the Government of Georgia before, during and after the declaration of state of emergency. It also examines constitutionality of declaring the state of emergency. Thus, the findings are classified according to four main periods/issues: 1) Assessment of regulations adopted prior to the declaration of the state of emergency; 2) assessment of the declaration of the state of emergency; 3) assessment of restrictions imposed during the state of emergency; 4) assessment of restrictions imposed/maintained after lifting the state of emergency.

The study briefly describes the content of those main regulations and normative acts, based on which the Government restricted constitutional rights. The description is followed by a legal assessment.

The aim of the study was to assess constitutionality of restrictions imposed on each of those rights, which were directly or indirectly affected by the adopted regulations. The assessment is based on the Georgian Constitution, the case-law of the Constitutional Court of Georgia and the relevant international experience. Constitutionality of the adopted legal acts has been analyzed in terms of formal (the existence of a legal basis for their adoption, authority to delegate, etc.) and material (to what extent imposed restrictions complied with the principle of proportionality i.e. whether the undertaken measures were suitable, necessary and proportional to the legitimate aim (protection of public health) pursued) constitutional requirements. Moreover, they were examined in terms of compliance with the constitutional principles (principles of legal certainty, separation of powers, legal security, etc.). It should also be noted that the objective of the research was not

to evaluate the effect of the measures imposed during the pandemic/state of emergency on the individual target (vulnerable) groups and to study the enjoyment of their constitutional rights.

The following normative acts were examined: Decree of the President of Georgia issued on March 21, 2020; Decree #164 of the Government of Georgia issued on January 28, 2020; Ordinance #181 issued on March 23, 2020 and Ordinance #322 issued on May 23, 2020 and other subordinate acts adopted on their basis or in parallel to them. In addition, public information was requested from various public institutions within the framework of the study. Unfortunately, despite expiration of the time-limit defined by law, we have received replies to only some of our request. The study analyses restricting measures enacted between January 28, 2020 and September 30, 2020 and does not cover following period.

1. Assessment of the restrictions imposed prior to the declaration of a state of emergency.

Description.

- According to the information provided by the Administration of the Government of Georgia, most of the restrictions imposed prior to the declaration of state of emergency were recommendations and the mechanism of their enforcement did not exist. These measures included restriction on functioning of gyms/fitness clubs and wellness centers, cancellation of crowded events, closing of all retail trading facilities except food facilities having take-away service, open agricultural markets, pharmacies, petrol stations and banking service providers, etc.
- Placements in quarantine and isolation took place in accordance with the Law of Georgia “on Public Health”. This constituted an interference with the right to liberty as guaranteed by Article 13 of the Constitution of Georgia;
- Georgian Law “on Public Health” and Decree #164 of the Government of Georgia issued on January 28, 2020 were among the main legal acts applied during this period;
- Regulations established by Decree #164 mostly concerned the suspension of flights with several countries, temperature screenings of travelers and drivers of cargo vehicles at the border and their transfer to isolation/quarantine in case of need. These rules limited the freedom of movement guaranteed by Article 14 of the Constitution of Georgia and in case of involuntary transfer to quarantine - also the right to liberty enshrined in Article 13 of the Constitution.
- The Government issued a separate decree on suspension of services at the educational institutions and daycare centers until April 1, thereby restricting the right to education;
- By the Decree of 12 March, the Government introduced special measures for work at public institutions, whereas the order of Minister of Internal Affairs established rules for provision of public services and administrative proceedings that were different from those envisaged under the legislation already in force;
- Regulations concerning the court hearings and the right to movement within the territory of a court were also adopted. According to the legal act adopted by the High Council of Justice, common courts were ordered to postpone hearings of pending cases (except those to be heard within time-limits), to conduct proceedings without oral hearing in cases defined by law, to ensure distance participation of parties in the court proceedings, etc. All of this constituted an interference with the right to fair trial.

- Individual measures have been undertaken by self-governing units, which restricted reception of citizens on site, switched to remote working regime, limited business trips, arrangement of different meetings, holding of oral hearings of administrative complaints and organization of other public events as well as transportation of passengers by mini-buses.

Assessment

- The main problem of the issued legal acts lies in their illegality and violation of formal constitutional requirements.
 - The Government of Georgia issued an act with a normative content as an individual legal act (i.e. Decree #164), thereby contradicting the rule stipulated by Article 2 of the Law of Georgia “on Normative Acts” according to which “a legal act with normative content shall not be adopted (issued) in the form of an individual legal act and a legal act with individual content shall not adopted (issued) in the form of a normative act.” It should be noted that a normative act is a rule of general conduct applied repeatedly, whereas an individual legal act is used only once and is issued based on a normative act. Decree #164 contained general rules of conduct, which were to be applied repeatedly and obligatory to observe and.
 - The legal ground for the adoption of Decree #164/its formal constitutionality is also arguable. This act not only defines authority of state bodies, but also restricts several human rights. (e.g. the right to freedom of movement was restricted by suspension of flights). Therefore, clear grounds for delegating authority to impose such restrictions to the Government must be prescribed by a legislative act. Decree #164 only refers to the Law of Georgia “on Public Health” (fully) and Article 6 (stipulating general powers of the Government to issue ordinances and decrees) of Law of Georgia “on the Structure, Authority and Rules of Operation of the Government of Georgia” as its legal basis. Although the Law of Georgia “on Public Health” defines those issues falling under the authority of the Government of Georgia, this authority does not encompass powers to restrict constitutional rights such as freedom and inviolability, freedom of movement, right to property and freedom of enterprise. For instance, Para. 6 of Article 11 of the said Law stipulates that the Government establishes rules of isolation or/and quarantine (the Law also determines the meaning of isolation and quarantine). The power to regulate specific issues is stipulated by Articles 16, 17, 19, 21 and 32. However, each of these provisions concern narrow topics such as possession/use of extremely dangerous pathogens, approval of a technological scheme for sanitary and quarantine control at the state border, etc. One cannot infer from these specific measures the authority of the Government to suspend flights or, for instance, to impose restrictions on economic activities.
 - The case adopted to educational process suffers from the same problem. This act was issued by the Government of Georgia as a Decree (in spite of its normative content). Its grounds of its issuance were norms defining general competences of the Government of Georgia, according to which, the Government is authorized to adopt measures in order to ensure the state defense and public safety and to exercise other powers granted to the

Government by legislation.⁶¹ These provisions cannot be considered as a sufficient justification of delegation of powers to restrict constitutional rights.

- Adapting court hearings to remote working regime, per se, has not violated the right to a fair trial. Although, this measure restricted publicity of court hearings and created threat to the right to fair trial. Moreover, the lack of possibility for the court monitors and the third persons to attend the hearings restricted the principle of publicity, which has not been justified and is unconstitutional. This is even more alarming in light of the existing public distrust towards the judicial system.
- It should be noted that remote legal proceedings have created several problems, which were examined by the non-governmental organization “Rights Georgia” in its report.⁶² In particular, one of the main issues was the lack of adequate knowledge of information technologies in major part of the population (especially in regions), which has further complicated their involvement in online court hearings. According to the report, remote court proceedings were accompanied by technical problems, such as, low quality of audio and video, lack of relevant technology from the side of the parties to the proceedings or low internet speed. Moreover, halls in courts and detention facilities were underequipped with necessary technology. Ensuring confidential communication between the lawyer and defendant was also complicated. The organization points out the risks of presence of unauthorized persons at the closed court hearing as well as risk of disclosure of video and audio records of closed court hearings. The report also points to the complications in identification of witnesses and their proper questioning and to the risk of witnesses being dictated, etc. The report also refers to restrictions imposed on attendance by those monitoring court proceedings. Other problems included difficulties in ensuring order, examination of written and material evidences, verification of the facts of alleged ill-treatment of a detained person, etc.

2. Assessment of the declaration of a state of emergency.

2.1. Preconditions for declaration of a state of emergency.

- As stipulated in para. 2 Article 71 of the Constitution of Georgia, declaration of a state of emergency is linked to the existence of general and specific preconditions. According to the general precondition, the state bodies should lack the capacity to fulfil their constitutional duties normally. This lack must be of such a nature as to cause a real danger of disruption or damage to statehood and constitutional order. This precondition is satisfied if the population faces such a real danger. Moreover, a state of emergency must be a necessary measure without any alternatives.
 - The Government of Georgia fails to justify why the declaration of a state of emergency was the one and the only solution. Reasons for the introduction of a state of emergency indicated by the Government in its report⁶³ (transmissibility degree of the virus and readiness of healthcare system, socio-cultural peculiarities of the society, the degree of acceptance of recommendations in a society) merely indicate the need of tightening

⁶¹ Subparagraphs (z) and (33³) of Article 5 of Law of Georgia “On Government Structure, Powers and Order of Activity of Government of Georgia.”

⁶² “Assessment of efficiency of electronic justice system during pandemic” by “Rights Georgia,” Tbilisi, 2020.

⁶³ Report of the Government of Georgia on the measures undertaken in fight against Covid-19, please view http://gov.ge/files/76338_76338_444796_COVID-19angarishi...pdf [last viewed on 07.10.2020].

restrictions and do not point to the necessity of introduction of a state of emergency. Although the specific precondition for a declaration of a state of emergency was satisfied (existence of pandemic), the above-mentioned circumstances still cannot prove the existence of a threat of disrupting statehood and constitutional order (the general precondition).

- Moreover, the Government has not justified the argument that powers and restrictive measures established by the Law of Georgia “on Public Health” and other legal acts were not enough to neutralize the threat posed by the virus; One should also take into consideration that many countries managed to effectively cope with the epidemic by introducing regime of emergency situation (e.g. Estonia) or by using anti-epidemic legislation (e.g. Germany).
- As for the specific precondition for declaration of a state of emergency, in this case it means the existence of an epidemic. This precondition is satisfied taking into consideration that the World Health Organization declared the coronavirus as pandemic on March 11, 2020. Moreover, the country was facing an extremely dangerous and largely unknown infection characterized by an extremely quick spread.
- General and specific preconditions should be satisfied for extension of the state of emergency as well. Compared to March 22, 2020, the epidemic situation had improved and become much more manageable by 21 April. Even the Government itself points out in its report that from 20 to 26 April the epidemic situation became controllable and the number of cases was reducing daily and lifting of restrictions started from April 27. Therefore, on April 21, 2020, the state authorities did not lack the capacity to fulfill the constitutional powers normally and, thus, the precondition for extending the state of emergency was not met.

2.2. Procedures for declaration of a state of emergency

Consultations of the Prime Minister with the relevant bodies and specialists on the necessity of introduction of the state of emergency was an important precondition for its introduction. After deciding to declare the state of emergency, it was necessary to adhere to the procedures stipulated by the Constitution, such as addressing a motivated recommendation to the President, declaration of the state of emergency by the President and approval of his/her decision by the Parliament. Therefore, compliance with the Constitution and the relevant legislation needs to be assessed.

a) Introduction of a state of emergency on March 21, 2020

- Setting up of the Inter-Agency Coordinating Council - the main advisory body - at an early stage of the fight against pandemic, deserves a positive assessment. One should also welcome holding of pandemic related meetings by the National Security Council in March 2020, and inviting the President and the Chairman of the Parliament to attend them; The expediency of declaration of a state of emergency along with the other issues was discussed within this framework.
- The recommendation prepared by the Prime Minister on March 21, 2020 and sent to the President lacked justification. The recommendation should have contained clear and detailed references to those factual circumstances that directly indicated the lack of capacity of state authorities to fulfill their constitutional duties normally and the existence of a real and large-

scale threat faced by the statehood and constitutional order of the country. Moreover, the Prime Minister should have explained why it was impossible to avoid the above-mentioned threat (if we assume that such a threat existed) by applying other means. The recommendation did not contain the justification for necessity of each restriction imposed on the human rights either, which were mentioned in the draft Decree attached to the recommendation.

- The President issued an order and the relevant Decree on the very day of submission of recommendation by the Prime Minister. It's worth mentioning that the draft documents of the order on declaration of the state of emergency and the draft Decree were submitted to President Salome Zurbishvili by the Prime Minister and the role of the President was limited to signing it.
- The emergency plenary session of the Parliament of Georgia was held on the same day, March 21. The declaration of a state of emergency was not widely discussed in the Parliament either by the ruling party or by the representatives of the opposition. In light of the importance of the issue, the lack of discussion should be assessed negatively. Also, it would have been better if the Rules of Procedure of the Parliament of Georgia envisaged more opportunity for such discussions and limited the involvement of the President, members of the Parliament and the Government in wider and thematic discussions to a lesser degree.

b) Extension of the state of emergency

- The Prime Minister addressed the President of Georgia with the request to extend the state of emergency on April 21, 2020. Compared to the recommendation of March 21, this time the justification by the Prime Minister on the necessity of extending the state of emergency was even less convincing;
- The Plenary session in the Parliament was accompanied with more active discussions than those at the time of declaration of the state of emergency. Representatives of the Government provided much more arguments on the necessity of the declaration of the state of emergency at this session than when the issue of approval of declaration of the state of emergency was discussed for the first time. However, arguments still lacked tangible evidence. In light of the improved epidemic situation, it was necessary to present more clear and specific reasons for extension than those that were needed for the declaration of the state of emergency.
- The absence of the Prime Minister at the plenary sessions during the discussions of the declaration of the state of emergency as well as of the extension of its validity deserves criticism. Even though the Rules and Procedures of the Parliament of Georgia allows the representative of the Government to replace the Prime Minister at the Parliamentary session, the presence of the Prime Minister was necessary due to the high importance of the issue and direct political accountability. Moreover, no reason was stated as to why it was impossible for the Prime Minister to appear in the Parliament.

c) Territorial boundaries of the state of emergency

- The state of emergency was declared on the whole territory of Georgia. In order to ensure proportionality of restrictions imposed within the state of emergency, all the preconditions necessary for the declaration of a state of emergency should be present on the whole territory

of the country. In the given case, declaration of a state of emergency on the whole territory was not justified. The Government should have explained why it was impossible to declare a state of emergency only in separate parts of the country, taking into consideration that in March the novel coronavirus was spread mainly in Tbilisi, followed by some of the regions with low spread of the virus whereas no cases of the virus were found in some regions.⁶⁴

3. Assessment of the restrictions in force during the state of emergency

3.1. Right to liberty

Description

- The Decree of the President granted the bodies defined by the Georgian legislation authority to forcibly transfer a person to the relevant institution if he/she violated the isolation and quarantine rules adopted by the Government of Georgia. The Government sub-delegated the power to define the rules of isolation and quarantine to the Ministry of Health, which in its turn, issued the relevant Order.
- The abovementioned Order defined categories of persons subject to isolation, procedures of transfer of a person to isolation and powers of separate bodies. In addition, the list of rights and duties of persons in isolation was prescribed. It should also be noted that sanctions for the breach of the isolation and quarantine rules, identical to those defined by the Decree, were also indicated in the Order of the Minister of Health.
- The Minister of Economy and Sustainable Development, Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, Minister of Finance, and Minister of Regional Development and Infrastructure issued a joint Order determining, inter alia, rules on transfer of cargo vehicle drivers having Georgian nationality and involved international freight transportation to self isolation, areas arranged for isolation (TIR-Parks and appropriate hotels) and other quarantine areas during the period of state of emergency.

Assessment

- The ground for (physical) restriction of liberty during the state of emergency was para.1, Article 1 of the Decree of the President authorizing the state bodies to forcibly transfer a person to an appropriate institution, in a place designated by the Government of Georgia, if he/she violated the isolation and quarantine rules issued by the Government. By this legal norm, the Decree authorized state bodies to forcibly transfer persons to quarantine even before the isolation and quarantine rules were defined. Thus, prior to defining the rules on isolation and quarantine, one could not have foreseen the rules violation of which would have made him/her subject to involuntary quarantine. This contradicts the principle of legal certainty, according to which a legal rule should be clear enough for a person to properly understand the law and foresee the relevant legal consequences.

⁶⁴ "COVID-19 in Georgia" by National Center for Disease Control and Public Health, p.32, <https://www.ncdc.gov/Handlers/GetFile.ashx?ID=d729d5fa-4800-48a3-9749-7379c8226809>

- The Decree of the President granted the Government of Georgia an authority to define the rules of isolation and quarantine (however it wrongly considered these rules to be connected to Article 14 rather than Article 13 of Constitution and thereby misinterpreted the guarantees enshrined in article 13). Thus, it has accordingly delegated the said authority to the executive government. This Delegation contradicts constitutional standards,⁶⁵ as the Government was granted the general power to establish the isolation and quarantine rules, i.e., to regulate the principal as well as secondary aspects of quarantine and isolation rules. Moreover, such a blanket delegation granted the Government an absolute discretion to determine isolation and quarantine rules. Thus the Government was free to formulate this rules with any content.
- Since the Decree-based delegation of powers to the Government is unconstitutional, the sub-delegation of delegated powers by the Government to the relevant ministries for the purpose of adopting isolation and quarantine rules should be automatically considered unconstitutional. Moreover, sub-delegation was also of a blanket nature and failed to comply with the principle of legal certainty.
- Article 13 of the Constitution of Georgia guarantees the right to liberty and subjects its restriction to a judicial review. Based on the case-law of the Constitutional Court of Georgia, isolation and quarantine, considering their coercive nature and duration, constitutes a restriction of the right liberty. Thus, the condition of its constitutionality is a judicial review – either preliminary or subsequent. This condition is not met in the given case, as the regulation in force prior and during the state of emergency did not envisage either preliminary or subsequent judicial review of placement a person to isolation. Although the Law of Georgia “on Public Health” grants a person subject to isolation/quarantine the right to appeal the placement in isolation/quarantine, the appeal is still not enough because the judicial review envisaged by the Constitution implies the mandatory examination of the legality of restriction of liberty by the court, independently from the right to appeal.
- If we consider involuntary placement in isolation/quarantine to be detention in terms of Para. 3 of Article 13 of the Constitution, then it will fail to comply with Paragraphs 3 and 4 of Article 13 of the Constitution because, contrary to these provisions, persons subject to transfer to isolation were not informed about detention grounds and their rights prior to the changes made to the Administrative Procedures Code of Georgia on April 23, 2020. Even after these changes, it was still not mandatory to inform persons about their right to have a lawyer. At the same time, judicial review was not envisaged, thereby contradicting the requirements of paragraph 3, Article 13 of the Constitution.
- We would also like to pay attention to the report of the Public Defender of Georgia, which revealed practical problems⁶⁶ with regards to the placement of persons in quarantine areas. The report also confirms violations of procedural-legal guarantees of persons subject to quarantine measures. According to the document, the persons placed in quarantine lacked the information – they often did not have information on their rights, including information

⁶⁵ PIs. see constitutional requirements related to the delegation of powers on page 22.

⁶⁶ “Monitoring of Places of Restriction of Freedom Relating to Quarantine Measures Against Novel Coronavirus (COVID – 19)”, report of the Public Defender of Georgia, 2020, <http://www.ombudsman.ge/eng/spetsialuri-angarishebi/akhali-koronavirusis-covid-19-tsinaagmddeg-mimartuli-sakarantine-ghonisdziebebit-gamotsveuli-tavisuflebis-shezhudvis-adgilebis-monitoringi> [last viewed 07.10.2020].

about the right to appeal against the placement in quarantine and about appeal procedures. Besides, the appeal mechanism itself was ineffective as the appeal procedures could have potentially lasted for months. According to the report, self-isolation, as a less restrictive measure, should have been discussed prior to placement of a person in quarantine and applied if certain criteria were met. However, persons were frequently uninformed about the option of self-isolation or were refused this option without any justification. Moreover, one of the main procedural violations was ignoring the provision of information about the right to have a lawyer. The right to request independent medical consultations as a guarantee against the ill-treatment, has not been taken into consideration as well. The report also describes living conditions in quarantine areas. Medical check ups were not mainly carried out during placement in quarantine and people placed there usually did not have information about the available medical services. Mostly, there were almost no recreational activities and the lack thereof had a negative effect on mental health of persons placed in quarantine. The approach towards child's rights was especially alarming. Neither a special diet nor psychological needs of children were taken into consideration in the quarantine areas and this resulted in a negative effect on children's mental health on two separate occasions.

- Lastly, we would like to underline the vagueness of the terminology used in the Order issued by the Minister of Health. According to the Law "on Public Health," isolation applies to ill or infected persons. Contrary to this stipulation, the Order of the Minister of Health on Determining Isolation and Quarantine Rules issued on March 25 states that "for the purposes of these rules, isolation shall be applied to persons suspected of being infected with coronavirus or those at a high risk of infection in order to prevent further spread of the virus." Such broadening of a term "isolation" created problems in terms of legal certainty. In this regard, it is worth mentioning that proper interpretation of the norms enforced during the state of emergency, including ones imposing liability, depends on the accurate definitions of terms – "isolation", "self-isolation" and "quarantine".

3.2. Freedom of movement

Description

- At the initial stage of the state of emergency, international air, land and maritime travel, direct scheduled international flights and scheduled air traffic for transportation of passengers within the country (apart from certain exceptions) were suspended. Restrictions were also imposed on transportation of passengers by bus, minibus and taxi.
- From March 31, public transport was suspended. From the same period, the transportation of more than three persons (including a driver) by vehicles became prohibited. Rules governing the placement of passengers in cars were introduced.
- The same day, the so called "curfew" was introduced for the duration of the state of emergency and the movement of persons became prohibited from 21:00 to 06:00 by foot as well as by transport, whereas everyone became obliged to carry identification documents with them. A restriction was imposed on movement of persons aged 70 or over.
- From 17 to 27 April, the movement of all types of vehicles (apart from motorcycles and certain exceptions) was prohibited on the whole territory of Georgia. From April 17, during the period of state of emergency, entering a cemetery was prohibited apart from certain exceptions.

- Relatively stricter restrictions of freedom of movement were introduced within the territories of several municipalities. Extensive regulations governing the movement of cargo vehicles were introduced as well.

Assessment

a) Curfew

- Ordinance #181 of the Government of Georgia imposing the curfew does not contain a reference to the Law “on State of Emergency”, as one of the grounds of the Ordinance, whereas it is this very law that grants the Government the authority to introduce a curfew and not the Decree of the President as of March 21, 2020. Having no legislative basis, the imposition of curfew does not comply with the formal requirements of adopting a subordinate normative act.
- Introduction of curfew on the whole territory of Georgia does not comply with the principle of proportionality.
 - First, it is unclear how the introduction of a curfew from 21:00 to 06:00 could have ensured prevention of the spread of coronavirus in the circumstances when the intensity of the movement of persons (for example, to purchase food products or to receive certain services, etc.) and therefore, contact with others were highest during those hours when the curfew was not in effect. Therefore, such regulation was increasing the risk of the spread of the virus rather than decreasing it.
 - According to the Government's report, introduction of a curfew decreased the number of social gatherings usually taking place in the evening ⁶⁷. Despite this decrease, people could have gathered before the beginning of the curfew hours and returned home after 6 am. This possibility to gather despite the curfew raises considerable doubts on the usefulness of this restriction. Moreover, this possibility could have lead to a natural increase in the intensity and duration of gatherings.
 - Curfew, as it was introduced by the Government of Georgia, was a blanket restriction, which limited the freedom of movement more than it was necessary in order to achieve the legitimate objective. Particularly, the risk of spread of novel coronavirus is particularly high in cases of social contact in closed spaces. Therefore, the spread of the virus is less likely when a person, for instance, is present and is moving in an open space by himself/herself or with his/her family members, with whom he/she has daily contact. However, even such type of movement was prohibited by the Government.
 - Besides, restrictions on the number of persons allowed in vehicles and on gatherings were already in force at the same time as the curfew. Therefore, if the introduction of a curfew was aimed to enforce these regulations more efficiently, for instance, to facilitate prevention of gatherings by police, it could have been possible to restrict movement specifically for this aim. That would be a less restrictive measure.

⁶⁷ Report of the Government of Georgia on the measures undertaken against COVID-19, p.27, http://gov.ge/files/76338_76338_444796_COVID-19angarishi...pdf [last viewed 07.10.2020].

- As a result, introduction of a curfew unreasonably restricted the freedom of movement guaranteed by Article 14 of the Constitution of Georgia.
- There were cases of abuse of powers, mala fide interpretations of the rules governing curfew and arbitrary enforcement of rules regulating it. The non-governmental organization “Human Rights Center” has been working on such cases and has been providing legal aid to persons affected by the measures undertaken by the Government in fight against pandemic,
 - b) Restriction of movement due to the age group*
- This restriction imposed by the Government was discriminatory by its nature, as the persons aged 70 and over (except for some cases) were fully deprived of the right to leave their places of residence, while this restriction was not imposed on other age groups. This measure was motivated by the fact that elderly persons belong to the high-risk category in terms of contracting the virus. However, this fact alone is not enough to justify different treatment based on age. Restriction of constitutional right on the ground of age should have been strictly necessary and the last resort for achieving the legitimate aim. It is also problematic that the state substantially interferes with the freedom and autonomy of individuals and makes decisions instead of them by adopting blanket rules restricting their constitutional right in order to protect their health. The Constitutional Court of Georgia has repeatedly stated in several decisions that punishment of individuals due to self-harming and their own health was a display of paternalism by the state and incompatible with the notion of free society⁶⁸. Contrary to the Court’s statement, the elderly persons aged 70 and over were subject to liability for violation of the rules restricting movement.
- While the restriction on leaving a place of residence was aimed to protect life and health of citizens aged 70 and over, one should not overlook the physical and mental problems that could have been caused by the restriction to the detriment of the elderly, for example, when they, due to their physical condition, needed to go out for a walk to exercise.
- In conclusion, the above mentioned restriction adopted by the Government of Georgia should be negatively assessed.

c) Obligation to carry the identification document

- The sanction applicable to persons not carrying an identification document was the same as, for instance, in case of violation of self-isolation rules, rules for gathering, curfew, etc. More specifically, in such cases a person was fined by 3000 GEL and in case of a repeated violation he/she was subject to criminal liability. Whereas the actions mentioned above were directly related to the increased risk of spread of the virus and, thus to the threat to the human life and health and severity of the sanctions established by the Decree could have been justified by the

⁶⁸ Judgment of the Constitutional Court of November 30, 2017 on the case #1/13/732, “Georgian citizen Givi Shanidze v. the Parliament of Georgia”, II-50.

seriousness of this threat, such a threat did exist when one did not carry an identification document. Thus, the sanction imposed on him/her was disproportionate to the offence. Moreover, in our opinion, if a person does not commit any offence, the mere fact of not carrying an identity document does not annu pose a threat public and thus should not be considered an offence.

d) Prohibition of movement of vehicles (except motorcycles)

- Prohibition of movement of vehicles (except motorcycles) was a disproportionate measure in ligh of the fact that the Government had alrady imposed a prohibition on entering the territory of cemeteries (which in our opinion was a proportional measure), banned entering and exiting municipalities and limited gatherings and the number of people permitted to travel by transport. Despite a number of exceptions from the prohibition in question, it was impossible to consider all of the needs related to transportation by vehicles. For example, the Government failed to consider the possibility that the prohibition could have caused huge problems to the detriment of the population in mountaneous regions who might have found it harder to purchase products as they usually live far away from shops.
- According to several media sources, the permissions to drive cars as an exception from the above mentioned prohibition were issued in a discriminatory manner and the police stoped and fined persons without such permissions in a random and arbitrary manner. For instance, a video was published, showing the former General Prosecutor, Otar Partskhaladze, driving his car⁶⁹. Furhtermore, the Patriarchate of Georgia stated that the prohibition was not applicable to priests and other church servants⁷⁰.

e) Prohibition of movement of more than three persons by vehicles

- Although the Government linked the restriction in question to the freedom of movement, the Constitutional Court has clarified that this restriction did not result in an interference with the freedom of movement⁷¹.
- The restriction is problematic in terms of formal constitutionality and legality as the presidential Decree of March 21 did not contain a direct, clear and certain provision grantinf the Government an authority to restrict the number of persons permitted in vehicles and to determine rules governing the placement of passengers therein. This authority cannot be inferred from legislation that had alrady been in force, including the Law of Georgia “on State of Emergency.”
- The restriction in question is also problematic in terms of material constitutionality. It should be noted at the outset that this restriction limited not the freedom of movement, but right to property, which, according to the case-law of the Constitutional Court, includes the use of one’s property according to one’s will⁷². Due to the restriction, one could not have used his/hr vehicle to transport more than 2 passengers and could not have placed them therein based on his/her own preferences. As one was unable to use his/her property based on his/her will,

⁶⁹ Please view: <https://bit.ly/36z3pzG> [last viewed 07.10.2020]

⁷⁰ Please view: <https://netgazeti.ge/news/444475/> [last viewed 07.10.2020]

⁷¹ Judgment №1/18/1497 of the Constitutional Court of Georgia of April 30, 2020, on case “Paata Zangurashvili v. the Government of Georgia.” II-12.

⁷² Judgment №2/3/680 of the Constitutional Court of Georgia of July 21, 2017, on case “LTD UCG Green Power v. the Parliament of Georgia.” II-12.

one's right to property was limited. This restriction does not comply with the principle of proportionality. For instance, it is unclear how the transportation by a single vehicle of more than three members of a family, who live together, increases the risk of spread of the virus. Moreover, the prohibition on sitting next to the driver is also meaningless as there is no difference in terms of the spread of the virus whether a person sits next to or behind the driver. Although the same threat of the spread of the virus exists when two persons are sitting next to each other on the back seat of a vehicle, sitting on the back seat was not prohibited. This indicates the arbitrary nature of the restriction.

f) Suspension of international air, land and maritime movement and of direct scheduled international flights; also, restrictions on transportation of passengers by public transport, minibuses and buses.

- Problems regarding constitutionality of the restrictions in question have not been found. More specifically, the restrictions were not problematic in terms of formal constitutionality or legal certainty and were proportional for the achievement of the legitimate aim.

3.3. Right to personal and family life

Description

- Based on the Decree of the President, exercise of the right to visit persons placed in penitentiary institutions stipulated in the Imprisonment Code was suspended.
- According to the case-law of the Constitutional Court of Georgia, the restriction of the right to visit is an interference with the right to personal and family life guaranteed under Article 15 of the Constitution of Georgia.

Assessment

- The restriction in question was not problematic in terms of being prescribed by law and formal constitutional requirements, as the Constitution of Georgia allows to restrict the right to personal and family life by the Decree of the President. However, the Imprisonment Code divides the right to visit into categories and allows the right to a video visit. The Decree should have indicated whether the right to video visits were suspended or not and should not have given the Government the possibility to impose a disproportionate restriction on the right.
- Penitentiary institutions are closed, isolated institutions where the risk of a quick and irreversible spread of the virus is high. Moreover, implementation of anti-virus measures (for example, transfer of prisoners to another place) is much complicated in these institutions due to specific characteristics thereof. In light of this, we believe that the prohibition of visits, which implied direct contact of the visitor with the prisoner, was a proportional measure and the fact that the restriction was not applied to video visits should be positively assessed.
- Despite the fact that, restrictions were not imposed on video visits (video communication), one of the reports of the Public Defender of Georgia states that due to the restrictions of movement and the closure of Probation Bureaus, implementation of the right to video visits became

complicated, as video visits required going to the Probation Bureau⁷³. Therefore, we share the position of the Public Defender on the need to adjust the rules and procedures for the arrangement of video visits to the current situation⁷⁴.

- In light of restriction on the right to visit, it is important to balance this restriction by telephone or other electronic communication. This is one of the recommendations of Subcommittee on the Prevention of Torture and other Cruel, Degrading Treatment or Punishment, which emphasized the importance to provide alternative methods of communication, in order to ensure that detainees would maintain contact with the outside world⁷⁵. The above-mentioned report of the National Preventive Mechanism of the Public Defender of Georgia pointed out that free minutes were added to the time limits of telephone conversations of the prisoners, which in turn is a positive initiative. However, the same report mentions the problems the prisoners have faced in terms of international phone calls⁷⁶.

3.4. Access to public and personal information kept by the public agencies

Description

- The Decree granted the Government an authority to issue an Ordinance to deretmine rules for providing public services and for administrative proceedings, other than those provided for by the legislation of Georgia already in force.
- Based on the Decree, the Ordinance #181 suspended the time limits stipulated by law for issuing public and personal information.

Assessment

- By suspending the time limits for issuing public and personal information, public agencies were temporarily freed from their statutory obligation to issue information within maximum period of 10 days. Therefore, during the state of emergency, one could no longer request to receive information within the time limits prescribed by legislation. Thus the right to access information kept in public institutions (including personal information), guaranteed by para.2, Article 18 of the Constitution of Georgia, was restricted.
- In terms of formal constitutionality, Paragraph 2, Article 18 of the Constitution of Georgia guarantees the right to access information existing in public agencies in accordance with procedures established by legislative acts. Therefore, access to information should be regulated by legislative acts. According to the case-law of the Constitutional Court, this means that the regulation must be directly prescribed by a legislative act or that the power to regulate

⁷³ Report of the National Preventive Mechanism of the Public Defender of Georgia on adhoc visit to penitentiary establishment #17 (April30, May 1, May 7, 2010), 2020, <http://www.ombudsman.ge/eng/spetsialuri-angarishebi/sakhalkho-damtsvelis-angarishi-n17-datsesebulebashi-gankhortsielebuli-sagangebo-monitoringis-taobaze> [last viewed 07.10.2020]

⁷⁴ Ibid.

⁷⁵ Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic, 3. <https://undocs.org/CAT/OP/10> [last viewed 07.10.2020].

⁷⁶ Report of the National Preventive Mechanism of the Public Defender of Georgia on adhoc visit to penitentiary establishment #17 (April30, May 1, May 7, 2010), 2020, <http://www.ombudsman.ge/eng/spetsialuri-angarishebi/sakhalkho-damtsvelis-angarishi-n17-datsesebulebashi-gankhortsielebuli-sagangebo-monitoringis-taobaze> [last viewed 07.10.2020].

must be delegated by a legislative act. The Government introduced the restriction on the right to receive public and personal information by the Ordinance #181, which was issued based on the authority delegated by the Decree. Contrary to the constitutional standard, the Government was granted this authority without defining its scope, thereby enabling the Government to impose any type of restriction on the right to access to information. Such a blanket delegation of powers contradicts the constitutional principles of legal certainty and legal state (i.e the rule of law/Rechtstaat). Thus, the delegation of powers and the restriction that was based on it were unconstitutional.

- At the same time, it was not necessary to fully restrict the right to access public and personal information. It would have been a less restrictive measure to disapply suspension of the time limits for issuing public information to such information which could have been requested and issued remotely by electronic means or by post, without contact between the person requesting the information and an employee of the public agency.
- Moreover, necessity of restriction is questionable in light of the fact that some of the public services were provided within the premises of public agencies if one remotely booked a visit in advance. Against this background, the right to access public and personal information would have been less restricted if one were allowed to book a visit in advance and to receive the requested information in the buildings of public institutions in a similar way while observing recommendations of the Ministry of Health. Therefore, the restriction imposed by the Government was not necessary and violated Paragraph 2, Article 18 of the Constitution of Georgia.
- It is also worth mentioning that freedom of access to information is especially important during the state of emergency when the Government's powers are increased and the parliamentary control has weakened. During this period, receiving certain information could have been critically important for the assessment of governmental measures.

3.5. Right to a fair hearing of his/her case by an administrative body within a reasonable time.

Description

- The Decree granted the Government an authority to issue an Ordinance to determine rules for providing public services and for administrative proceedings, other than those provided for by the legislation of Georgia already in force.
- Based on the Decree, the Ordinance #181 regulated certain issues concerning administrative proceedings. In particular, Ordinance #181 suspended the time limits for submission and review of administrative complaints and the time limits applicable to some offences.
- By Ordinance #181, the Government ordered certain Ministries to regulate certain issues concerning administrative proceedings and provision of public services, i.e. sub-delegated the authority to determine rules for providing public services and for administrative proceedings, other than those provided by the legislation. Different Ministries issued several orders based on this authority. For instance, the Minister of Justice issued special orders on rules and procedures for enforcement proceedings and activities performed by the National

Archive, Public Service Development Agency, National Agency of Public Registry and the Notary Chamber of Georgia. These orders have mainly introduced a temporary suspension of provision of certain public services and certain administrative proceedings or defined rules for the provision of some of the public services and for the conduct of certain administrative proceedings by electronic means. The Minister of Internal Affairs also issued the order mainly suspending some of the services provided by the Ministry or defining rules for the remote provision of certain services.

- In total, the regulations adopted by the Government during the state of emergency were mainly characterized by switching to remote provision of certain public services and remote conduct of administrative proceedings as well as suspension of certain services and of (time limits of) conducting and deciding administrative disputes.

Assessment

- The above-mentioned measures restricted the right to a timely and fair hearing of one's case by an administrative body, as it suspended the time limits for administrative proceedings and, thus, delayed them, thereby impeding the timely conduct of decision making process.
- The above mentioned grant of powers violated the constitutional principles of legal state and of legal certainty, as the Decree did not determine the scope of the delegation. Thus, the delegation as well as restrictions based on it were unconstitutional.
- Apart from delegation, the sub-delegation was also problematic. As mentioned, the Government, by its Ordinance #181, delegated to several ministries the authority to determine rules for administrative proceedings, different from those already provided by the legislation. The sub-delegation, as a part of delegated powers, must be directly envisaged and clearly defined in a legislative act prescribing delegation. The presidential Decree (as a replacement of a legislative act) directly envisaged the delegation of powers only to the Government. It did not prescribe the sub-delegation of powers by the Government to the ministries. Therefore, the sub-delegation and the restriction of the right guaranteed by Para. 1, Article 18 of the Constitution of Georgia by subordinated acts based on the sub-delegation were unconstitutional.
- The right guaranteed by Para.2, Article 18 of the Constitution is instrumental, i.e. ensures efficient protection of other protected rights and interests. Thus, as a result of the restriction of the right to have a fair and timely hearing of one's case by administrative bodies, an individual might be unable to enjoy the right protected by the instrumental guarantee of Para 2, article 18 of the Constitution. This factor was overlooked by the Government which adopted regulations different from the ones already provided by law in a way that excessively and unnecessarily restricted legal interests and rights.
- The regulation of notary services introduced by the Order of the Minister of Justice⁷⁷ was among unnecessary and excessive restrictions. According to the Order, remote provision of notarial services was not permitted (a notary was only permitted to provide legal

⁷⁷ Order #511 of the Minister of Justice "On Determination of Procedures and Conditions for the activities of LEPL the Notary Chamber of Georgia and of those of Notarial Services for the Purpose of Facilitating the Prevention of the Spread of Novel Coronavirus (COVID-19)," March 31, 2020.

consultation remotely). As for the provision of services in person, only several temporary bureaus were available throughout the country (and at the initial stage - only in Tbilisi).

- A special attention should be paid to the rule stipulating that during the validity period of the Minister's Order certification of an agreement on extracorporeal fertilization by public or private notarial deed was prohibited if one of the parents were a foreign citizen. Thus, the prohibition on provision of this service (including a remote provision) applied only to parents of foreign citizenship.
- It is unclear how the provision of extracorporeal fertilization service to foreign nationals was connected to the fight against the coronavirus and which epidemiological dangers it created. If such dangers indeed existed, then it is questionable why only foreign national and not Georgian citizens posed these dangers.
- We believe that the mentioned rule was discriminatory and arbitrary as it had no link to the protection of public health and was a clear example of abuse of the broad discretion granted to the executive authorities during the state of emergency.

3.6. Freedom of assembly

Description

- The Ordinance #181 of the Government of Georgia prohibited assemblies or/and demonstrations under the Georgian Law "on Assemblies and Demonstrations" for the duration of the state of emergency.
- The Government also prohibited the gathering of more than 10 natural persons in public spaces (apart from some derogations), social activities/events (such as funeral repasts, wedding parties, etc.) and established restrictions on gatherings in private institutions. Later, maximum permissible number of natural persons went down from 10 to 3 and then went back to 10 again.
- According to the Ordinance of the Government, from March 23, all types of cultural activities in both closed and open spaces, as well as all types of mass sports activities were prohibited.

Assessment

a) Assembly and demonstrations

- It could be seen from wording of the Decree of the President that the full restriction of assemblies and demonstrations had not been envisaged and the Government should have defined exceptions from the restriction instead. Contrary to this, the Government introduced a complete prohibition of assemblies and demonstrations during the state of emergency and did not allow any exceptions, thereby derogating from the Decree of the President. The wording of the Decree was problematic as well. The Decree itself should have determined the criteria, which would have guided the Government in regulating assemblies and demonstrations. Moreover, it would have been more correct if the the Decree determined what kind of assemblies were permissible or prohibited.
- When an assembly/demonstration is organized in an open space, the risk of spread of the virus is much less than in a closed space. Moreover, if the persons participating in the assembly/demonstration are wearing face masks and are keeping distance, the threat of a

spread of a virus decreases significantly. After lifting the restriction in question, the protest of June 20 was not followed by an increase in new cases of COVID-19 in Georgia. This was a clear example showing that, despite the spread of the coronavirus, organization of assemblies/demonstrations in compliance the relevant (medical) rules and without posing a threat to public health was possible.

- During the state of emergency, when the risk of unlawful governmental restrictions on human rights increases, protection of the right to assembly becomes even more important, as it might turn out to be the most effective protective measure against the government. Thus, justification of such a blanket restriction on the freedom of assembly requires much more solid arguments than those the Government used as a basis for its decision.
- The police has violated the legal scope of the state of emergency in several cases, when it considered a protest by one person to be an assembly/demonstration under the Law of Georgia “on Assemblies and Demonstrations” and fined him 3000 GEL⁷⁸.

b) Gathering of natural persons

- The Decree of the President established a restriction on gathering of natural persons and placed this restriction within the context of Article 21 of the Constitution of Georgia (freedom of assembly). According to the case-law of the Constitutional Court of Georgia, “the gathering (a march) of persons, which lacks an underlying idea, does not serve the purpose of sharing or spreading views, information, has nothing in common with the right to assembly guaranteed by the Constitution of Georgia.”⁷⁹ Therefore, the above mentioned restriction did not interfere with the right to assembly as far as gatherings subject to the restriction were not intended to share or spread opinions/information. Participation in such or similar gatherings is protected by the right to free personal development or/and by the freedom of belief, religion and conscience (religious gatherings) and the Constitution does not allow placing restriction on these rights by the Decree during a state of emergency. Thus, adoption of the restriction in question based on the Decree of the President contradicts the Constitution.
- The delegation of the powers to prohibit gathering of natural persons cannot be literally inferred from the Law “on the State of Emergency” and is subject of interpretation. However, considering that Article 4(f) of the said law allows the Government to prohibit all types of assemblies and gatherings, it seems more logical to assume that the legislator intended to grant the Government this authority.
- As gatherings, like assembly/demonstrations, were prohibited in closed as well as in open spaces, the prohibition had a blanket nature. The government should have justified that the gathering of, for example, 10 persons in an open space, with all of them wearing face masks and keeping sufficient distance posed such a threat that it became necessary to prohibit such gatherings and to fine violations with a sanction as strict as the one imposed for throwing wedding parties and having funeral repasts. The restriction of gathering of more than 3

⁷⁸ Please view: <https://gdi.ge/ge/news/ganacxadeba-21-04-2020.page> [last viewed 07.10.2020].

⁷⁹ Judgment №2/482, 483, 487, 502 of the Constitutional Court of Georgia of April 18, 2011, on case “Political Union of Citizens “Movement for Unified Georgia”, Political Union of Citizens “Conservative Party of Georgia”, Citizens of Georgia – Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens – Dachi Tsaguria, Jaba Jishkariani, the Public Defender of Georgia v. Parliament of Georgia”, II-3.

persons created even more problems, as more than 3 persons may gather in an open space naturally and unintentionally.

c) Cultural and sport activities

- The prohibition of cultural and sport activities based on the Decree contradicts the Constitution of Georgia for the same reasons as those analysed above concerning gatherings of natural persons. However, the legal basis for the imposition of the said prohibition, in contrast to the restriction on gatherings of natural persons, was the Law of Georgia "on State of Emergency".
- The prohibition in question was of a blanket nature as well because it applied to, *inter alia*, small-scale cultural activities in an open space, which could have been organized in compliance with the requirement of wearing face masks and keeping the distance, thereby substantially reducing the risk of spreading the virus.

3.7. Freedom of enterprise

Description

- Based on the Decree, the Government of Georgia, by its Ordinance #181, prohibited and restricted certain activities of business entities as well as ordered them to carry out particular activities. Ordinance #181 temporarily suspended economic activities apart from those listed in the Ordinance. Special ordinance of the Government applied similar regulations to business entities located in certain territorial areas (Bolnisi, Marneuli, Tetritskaro, etc.). Later, by the changes made to Ordinance #181, the Government was granted the authority to determine an additional list of economic activities/business entities which were not subject to restrictions and functioning of which was particularly important during the state of emergency. Therefore, the annexes, indicating permitted activities, were added to Ordinance #181. The list of permitted economic activities was constantly updated and each of them should have been performed in compliance with the recommendations of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs.
- According to the publicly available information, business entities not included in the list of permissible economic activities in Ordinance #181 had to fill in the registration form published by the relevant Ministry and to submit it to the Ministry. Each of the ministries used different procedures for registration, examination of business entities and for granting the permission to carry on functioning.
- The Decree authorized the Government to establish by ordinance special procedures for observing sanitary and hygiene rules by natural and legal persons and public institutions. These rules and procedures were determined in detail by the Order of the Minister of Health issued on April 4, 2020, prescribing general recommendations for all the economic sectors as well as the specific recommendations for the certain economic sectors.

Assessment

- The freedom of enterprise was restricted by the temporary suspension of economic activities as general prohibition was imposed on all economic activities, apart from some exceptions.

- The above mentioned restriction did not comply with constitutional principles of legal security and legal certainty because governmental measure underwent constant changes, in particular:
 - The problem of unforeseeability was caused by vagueness of the criteria based on which the Government selected permissible economic activities or/and business entities performing them. If, in selection of the permissible economic activities, the Government was guided by their importance, as indicated in the Government's report, then it is unclear and questionable why the Lottery company "LTD GNL" fell within the selected activities.
 - The government made a list of permissible activities as an exception from the general prohibition. Due to the constant changes of the list, it was possible to prohibit a permitted economic activity in a very short period of time and vice versa.
 - A business entity could not have reasonably foreseen measures and restrictions which it could have been subjected to. Thereby, they were impeded in planning their activities.
- Restriction of freedom of enterprise also violated the principle of proportionality. In particular, restriction was neither necessary, nor was it the least restrictive as a general prohibition of economic activities with several exceptions was a heavier burden on the freedom of enterprise than an opposite regulation i.e. generally permitting economic activities and imposing certain prohibitions on those business entities, whose activities posed a risk of spreading an extremely dangerous infection.
- The freedom of enterprise was also limited by introduction of sanitary-hygienic rules for business entities. However, they were not problematic in terms of constitutionality.
- The freedom of enterprise was also restricted by the authority granted by the Decree to the Government, to regulate, in case of necessity, prices on medicines of vital importance for human life and health, medical preparations, services and primary commodities. On March 23, 2020, the Government of Georgia adopted Ordinance #185, establishing a program of payment of subsidy for the changes in foreseen/actual expenses incurred in foreign currency which were caused by the exchange rate. According to the Ordinance, participation in the program was not mandatory and an importer was free to choose to take part. Thus, the Government did not use any compulsory measures that would lead to an unjustified interference with the freedom of enterprise.

3.8. Right to property

Description

- The Decree granted the Government of Georgia the authority, to restrict, in case of necessity, the right to property of private persons and to use their property/material resources for quarantine, isolation and medical purposes in accordance with the rules defined by the Government.
- By Ordinance #181, the Government obliged airlines to provide special charter flights. Companies were also required to ensure quarantine spaces in hotels, to transport people for the purpose of placing them in quarantine and to transport cargo;

- In case of necessity, special ordinances allowed the Government to restrict the right to private property and to use property and material resources of natural and legal persons in the territories subject to these ordinances (Marneuli, Bolnisi, Kobuleti etc.).

Assessment:

- Regulations adopted in fight against the coronavirus temporarily suspended certain economic activities. These regulations were also applied to entities carrying out activities with strictly defined/specific functions and using their property for specific purposes, for instance, theatres, gyms, night clubs, etc. Besides the freedom of enterprise, the right to property of these entities was also restricted as they were unable to use their property for specific business-related purposes. This restriction was disproportionate, as according to the case-law of the Constitutional Court of Georgia, prohibition of activity of business entity having a strictly defined purpose and a specific function, is an unproportional restriction of the right to property.⁸⁰
- The decree has delegated to the Government an authority to regulate not only secondary aspects of restriction of the right property, but also principal and key issues as the Paragraph 5 of the Article 1 of the Decree states, without specifying any details, that the Government shall be authorized to restrict the right to property according to the rules defined by the Government. Thus, the Decree has granted the Government fundamental authority to decide substantial legal issues. Delegation of such powers violates constitutional standards. The delegation also fails to comply with the principle of legal certainty, as it grants the Government the authority to restrict the right to property without defining clear and accurate criteria for using the delegated powers. The restriction of right to property established by the ordinance applicable to specific territories and based on the delegation of powers is also vague as it merely reiterates the wording of the Decree expressing the delegation of powers. With respect to these ordinances, it would have been logical to specify types and nature of restrictive measures by such special act instead of repeating the general wording used in the Decree.
- As mentioned, the Decree granted the Government the authority to use the property and material resources of natural and legal persons. This authority was specified by Article 8 of Ordinance #181, determining obligations imposed on certain private property owners, including hotels. According to media and the report of the Government of Georgia, the use of hotels for quarantine purposes was based on the agreements signed with legal persons. In light of the freedom of contract, one cannot speak of interference with the right of property of hotel owners and of unconstitutionality of interference.

3.9. Right to education

Description

- The Decree authorized the Government of Georgia to establish rules other than those provided by the Law of Georgia “on Early and Preschool Education”, the Law of Georgia “on

⁸⁰ Judgment №1/2/411 of the Constitutional Court of Georgia of December 19, 2008, on case “LTD “Russergoservice”, LTD “Patara Kakhi”, JSC “Gorgota”, Givi Abalaki’s Individual Company “Farmer” and LTD “Energia” v. Parliament of Georgia and the Ministry of Energy of Georgia”.

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”.

- According to Ordinance #181, the educational process was initially suspended in educational institutions until April 21, 2020, but then, it was suspended for the duration of the state of emergency. Institutions of general and high education were obliged to conduct the educational process by forms of remote learning/communication. Also, administrations of educational and academic and research institutions were required to switch to a remote working regime (except in cases of critical necessity). All trainings, conferences and seminars were prohibited except those conducted remotely.
- The Ordinance #205 “on Conduct of Educational Process in Educational Institutions during the State of Emergency” prescribed the conduct of educational process by general educational institutions by means of “TV-school”, remote/electronic means or by other means of communication. Remote learning regime also applied to educational processes conducted in penitentiary institutions and for asylum seekers⁸¹. General educational institutions were obliged to switch to remote working regime (except in cases of necessity). Higher educational institutions were also obliged to switch to the remote working regime, as well as to ensure conduct of educational processes remotely, by electronic means or by other means of communication and to select and use applications/platforms of electronic learning.

Assessment

- By suspending the educational process and switching to the remote learning regime, the above-mentioned regulations restricted the right to education because, as a result, certain part of the population, was unfortunately left without access to education. This problem especially concerns people living in the regions as they have often have no or limited access to internet and technology (computers, mobile phones, TV-sets).
- The restriction of the right to education was based on the Ordinances #181 and #2015 of the Government of Georgia, which in turn were based on the Decree of the President. However, neither the Decree, nor the Ordinances #181 and #205 may serve as a legal ground for restricting the right to education because Para.4, Article 71 of the Constitution of Georgia does not permit to restrict the right to education by the Decree of the President during the state of emergency. Thus, during the state of emergency, there was no legal ground for the restriction of right to education by suspending the educational process in the educational institutions and switching to distance learning regime.
- The Decree authorized the Government to establish rules in the educational field, other than those already provided by legislation. This authority was delegated to the Government without defining its scope, criteria for its application or guiding principles. The Decree allowed the Government to adopt any rules with any content, including restrictive ones. This contradicts the principles of legal certainty and legal state. This blanket delegation also violated the principles of rule of law and separation of powers. The delegation was of absolute nature, i.e.

⁸¹ Paras.9 and 10, Article 1, Ordinance #205 “on Provision of Educational Process in General Educational Institutions during the State of Emergency.”

it allowed the Government to replace the legislative body, to exercise all of its powers and to adoption, inter alia, regulations contradicting the law.

3.10. The right to a fair trial

Description

- In contrast to other constitutional rights, the Decree imposed no separate restriction on the right to a fair trial. However, article 7 of the Decree stipulated that court hearings provided for by the Criminal Procedure Code of Georgia could have been conducted remotely, by means of electronic communication.

Assessment

- Before the declaration of as well as during the state of emergency, remote conduct of court hearings substantially limited their publicity, thereby posing a threat to the right of the parties to a fair trial. At the same time, the violation of principle of publicity was disproportionate as it had no logical link with the legitimate aim of protection of public health. The state was obliged to ensure the remote participation of any interested persons in the court hearings. However, even the court monitors were unable to attend the hearings.
- The Constitution of Georgia does not provide for the restriction of the right to a fair trial by the Decree of the President during the state of emergency. Therefore, it is formally unjustifiable to impose above-mentioned measures by Decree, which affected the format and publicity of the court hearings.

3.11. Liability

Description

- The liability for the violation of the state of emergency was imposed by the Decree of the President, according to which, in case of a violation of the state of emergency, a natural person would be fined by 3 000 GEL and the legal person – by 15 000 GEL. If a person already subject to administrative liability committed the violation again, then he would be subject to criminal liability, in particular - imprisonment for a term of up to 3 years for natural persons and a fine and a deprivation of the right to carry out activities, or liquidation and a fine in case of legal persons.
- The decree allowed the Government to determine persons authorized to impose liability on natural/legal persons. Later, these persons were specified by the ordinance of the Government of Georgia, which also stipulated that the authorized persons could perform the review of administrative offence and impose liability on offenders on-site, in accordance with the rules defined by law.
- In order to prevent the spread of the novel coronavirus (COVID-19), isolation and quarantine rules shall be defined by a normative act of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia. Violation of rules shall entail liability pursuant to the Decree of the President of Georgia.
- Ordinance #181 authorized the Ministry of Health to define the isolation and quarantine rules and established that the violation of these rules would entail liability pursuant to the Decree of the President.

- The Government of Georgia authorized the Labor Conditions Inspecting Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia or/and the Technical and Constructions Supervision Agency of the Ministry of Economy and Sustainable Development of Georgia to monitor the observance of recommendations of the Ministry of Health during performance of economic activities at work places.
- Conduct of monitoring observance of recommendations at work places were regulated in detail.
- On May 2, important changes were made to the Administrative Procedure Code and Criminal Procedure Code establishing liability for the first and repeated violation of isolation and quarantine rules and the regime of State of emergency or martial law/state of war.

Assessment

- Paragraph 4, Article 71 of the Constitution of Georgia authorizes the President of Georgia to issue a decree restricting several human rights⁸² across the entire territory of Georgia during the state of emergency or martial law. However, the Constitution does not authorize the President of Georgia to determine legal liability for the violation of state of emergency/martial law.
- According to the Constitution of Georgia and case-law of the Constitutional Court of Georgia, the regulation of the criminal and administrative legislation (and generally, of imposition of liability) lies within the special competences of the Parliament of Georgia. It is important to subject norms imposing legal liability to substantial democratic review, which cannot take place if such norm are prescribed by a Decree. Therefore, introduction of norms imposing liability by the Decree was unconstitutional.
- For the same reasons, it is unconstitutional to grant the Government the power to determine rules for the enforcement of imposition of liability and to determine persons responsible for the enforcement and to regulate these matters by a legal act of the Government. For instance, there were neither constitutional, nor legal grounds for delegating by the Ordinance of the Government the authority to monitor observance of the recommendations of the Ministry of Health and imposition of the liability to LEPL Technical and Constructions Supervision Agency and to Labor Conditions Inspecting Department.
- While changes made to the Administrative Procedure Code and Criminal Procedure Code on May 2 solved the problem of prescription of the norms on liability by the Decree of the President, the rules added by these changes were still vague, disproportionate and blanket.
- The legal norms in question (those provided by the Decree as well as by the amendments to the Criminal and Administrative Procedure Codes) are disproportionat and blanket. In particular, application of the same sanction to offences of different gravity is impermissible and does not comply with requirements of the Constitution. However, the Decree as well as the legislative amendments established a unified rule for imposing liability, which overlooked the gradation between sanctions according to the gravity of offences.

⁸² Para.4, Article 71 of the Constitution of Georgia.

- The situation is further aggravated by the lack of procedural guarantees in the Administrative Procedure Code of Georgia adopted in 1984. The Code prescribes heavy fines and does not provide for the mechanisms for the protection of individuals against unfair/unlawful sanctions. Further problems include absence of the presumption of innocence, of the standard ‘of beyond a reasonable doubt’ and of several procedural rights while imposing administrative liability (despite the gravity of the offense/sanction).

3.12. Freedom of religion and belief

Description

- Although the Government tightened restrictions on movement and gatherings before Easter, it did not prohibit gatherings at religious institutions and participation in religious rituals, thereby leaving such gatherings without a state response. Although the Government of Georgia did not restrict the freedom of religion and belief during the state of emergency, due to the importance of the issue, we still considered it important to discuss and analyze it.

Assessment

- In spite of the fact that the mass gathering of persons in churches and participation in religious rituals during Easter holidays substantially increased the risk of the spread of the virus, The Government of Georgia did not express its political will to prohibit these gatherings and participation in rituals and to prevent the increase in risk to human life and health. Thus, the Government did not fulfil the positive obligation of protecting humans from transmissible disease, imposed by the right to life, in circumstances when even gatherings of more than 3 persons was banned.
- As gatherings in churches and participation in religious rituals are protected under the freedom of belief and religion⁸³, the restriction thereof by the Decree of the President is impermissible, as the Constitution of Georgia does not provide for the restriction of freedom of belief, religion and conscience by the Decree of the President.
- Gatherings in church and participation in religious rituals are protected by the so-called *Forum Externum* of the freedom of religion and belief. Para.2, Article 16 of the Constitution of Georgia allows its restriction, *inter alia*, for the protection of health. Therefore, even though prohibition of gatherings in churches and participation in religious rituals by the Decree of the President is impermissible, such a prohibition may still be introduced by ordinary procedure, on the basis of the national legislation.
- The prohibition of gatherings in churches and participation in religious rituals was possible on the basis of the Law of Georgia “on Public Health”. The Parliament also had the capacity to amend legislation (at least by using the expedited procedure).
- An analysis of the measures undertaken by the European Countries, including Great Britain and Germany, in terms of this issue, demonstrates that several western countries applied

⁸³ Para.1, Article 16 of the Constitution of Georgia guarantees the right of persons to gather in churches and to participate in religious rituals. This right is also protected under international agreements ratified by Georgia such as Convention for the Protection of Human Rights and Fundamental Freedoms and International Covenant on Civil and Political Rights.

very strict measures, inter alia, measures regarding religious rituals in order to prevent a wider spread of the novel coronavirus.

4. Assessment of the restrictions maintained/imposed after the termination of the state of emergency

Description

- In order to have a legal ground for maintaining/imposing restrictions on the human rights after the end of the state of emergency, the Parliament of Georgia made changes to the Law of Georgia “on Public Health” on May 22 in an expedient manner. Initially, the temporary rule was intended to be in force up to July 15, but then it was prolonged until January 1, 2021. The content of the changes was described in the part of the study dedicated to the review of legislative shortcomings (Part I).
- Based on the mentioned changes, after the termination of the state of emergency, on May 23, 2020, the Government of Georgia issued Ordinance #322, establishing most of the measures related to the fight against the novel coronavirus and restricting human rights. In some cases, old restrictions established by Ordinance #181 and other legal acts were copied into Ordinance #322 without any changes, but in some cases, the content and the scope of restrictions changed (mainly mitigated). It is worth mentioning that validity term of the Decree #164 of the Government was extended. Moreover, Ordinance #322 stipulated that regulations envisaged under the Decree #164 were part of it, unless they contradicted the Ordinance. Initially, Ordinance #322 was valid until July 15, 2020, but later its validity was extended.
- Beginning from September 10, 2020, measures prescribed by Ordinance #322 were not applicable to the pre-election campaign (agitation).

Assessment

- Prior to amendments to the Law of Georgia “on Public Health”, on May 20, several non-governmental organizations, including Georgian Democracy Initiative, published a statement and called upon the Parliament not to approve the draft-law/draft-amendment, which contradicted the Constitution of Georgia⁸⁴. Remarks were made by the Public Defender of Georgia as well⁸⁵. Despite its shortcomings, the amendment was adopted. Moreover, the Parliament has not resolved the shortcomings even after July 15, when it re-adopted the rules introduced by the amendment. The flaws of the law are described in detail in the part of the study dedicated to the analysis of the legislation (Part I). As the norm introduced by the amendment does not comply with the requirements of the Constitution, subsequent legislative acts issued on its ground are automatically unconstitutional.
- By May 23, more than enough time had passed for the state to mobilize all the resources necessary to fight against the coronavirus, also, more information was available on the

⁸⁴ Please view: <https://gdi.ge/ge/news/statement-20-05-20.page> [last viewed 12.10.2020].

⁸⁵ Please view: <https://ombudsman.ge/eng/tsinadadebebi/sakhalkho-damtsvelis-mosazrebebi-sazogadoebrivi-janmrtelobis-shesakheb-kanonproektan-dakavshirebit> [last viewed 12.10.2020].

characteristics of the virus. At the same time, the experience of various countries could have been considered as well (including those countries, which applied lighter measures and managed to cope with the virus and those, who applied much stricter measures, but still could not manage to prevent the spread of the virus). Gradually, it became apparent, that total containment of the virus would not be possible and it would be necessary to learn to coexist with it. Apart from the fact that most of the imposed restrictions were disproportionate, vital economic interests were on the other side of the scale, these interests being a condition for well-being and protection of health and life in the long term. One should also take into consideration other interests, especially the protection of human dignity as citizens, due to various disproportionate and unreasonable restrictions, faced problems related to minimum living conditions. Therefore, we welcome the lifting/mitigation of several restrictions from May 23, although, we believe that this process should have started earlier.

- We welcome the fact that measures envisaged under Ordinance #322 were not applied to the pre-election campaign. This is an important precondition for the conduct of fair and democratic elections.
- The provision of Ordinance #322 stating that regulations envisaged under Decree #164 (those which did not contradict the rules defined by Ordinance #322) were part of the Ordinance #322, additionally confirms that by adopting Decree #164, the Government issued a normative act as an individual act, thereby violating the law.

4.1. Right to liberty

Description

- Order of the Health Minister issued on March 25, defining the quarantine and isolation measures, rights and duties of persons in isolation, lost legal force and was copied to the Ordinance #322 with only minor changes. The only difference lies in the fact that Order #322 does not impose liability for the violation of its provisions. This difference could be explained by the changes made to the Criminal and Administrative Procedure Code of Georgia.
- The amendments introduced on June 1 provided the list of cases when it was possible to place persons in self-isolation⁸⁶. The same amendments prescribed that persons arriving from the occupied territories were also subject to 14-days quarantine.
- Pursuant to changes made to Ordinance #322 at different times, certain groups of persons were granted privileges in terms of involuntary placement in quarantine. Particularly, in contrast to all other persons, the following were not subject to the unconditional isolation/quarantine: members of delegations of foreign countries and international organizations travelling to Georgia for official visits; members of the governmental and presidential delegations returning from official visits; foreign visitors entering the territory of Georgia for business trips or various labor activities⁸⁷; foreign military personnel participating in international military trainings. The changes made to Decree #164 of the Government of Georgia on July 8 established that citizens/permanent residents of Germany, France, Latvia,

⁸⁶ Taking into consideration a person's health condition; in case of request by the representatives of accredited diplomatic missions and their family members; in case of existence of other special circumstances (for instance, person with disability, juvenile, etc.).

⁸⁷ Excluding those foreign visitors, that carry out business activities in foreign countries, remotely from Georgia.

Lithuania and Estonia were not subject to quarantine/isolation upon entering the territory of Georgia, apart from those cases when they had visited any other countries within 14 days before the arrival (they had to indicate those visits in a form) or when they were COVID-19-positive based on a PCR test.

- Changes made on July 8 determined the list of countries⁸⁸, citizens/permanent residents of which were permitted to enter the territory of Georgia starting from July 10, provided that they were travelling from the listed countries.
- On September 9, the procedures for foreign students entering the territory of Georgia were determined in Ordinance #322⁸⁹.
- Starting from August 12, the duration of the quarantine/isolation was reduced to 12 days instead of 14.
- Important changes were made to Ordinance #322 on September 15. According to the new regulations, those who had been in contact with coronavirus-infected persons and persons who arrived from the occupied territories of Georgia became subject to 12-days quarantine. It was established that people arriving from foreign countries would be placed in isolation for 8 days and would leave the isolation area on the 8th day in case of negative PCR test results; After leaving the isolation they were obliged to undergo repeated PCR test on the 12th day. It was established that authorized persons of public healthcare services would define duration of isolation of those in contact with a coronavirus-infected person.

Assessment

- Whereas foreign visitors entering the territory of Georgia to conduct business/labor activities were not subject to unconditional isolation/quarantine, the Georgian citizens entering Georgia for similar purposes were subject to it.
 - This differential approach cannot be justified by the argument about “driving” an economic growth because Georgian citizens entering Georgia to carry out business/labor activities can contribute to the economic growth to the same extent as foreign citizens arriving with the same aim. Therefore, promotion of economic growth is not logically connected to the restriction in question.
 - If the government’s decision was based on the argument about intensity of physical contacts, then it should have at least presented a study/research confirming a substantial difference between the number of contacts of foreign citizens entering the territory of Georgia to carry out the business/labor activities and the number of contacts of Georgian citizens entering Georgia with the same purpose. Moreover, one should not overlook other restrictions that were already in force, including those on social gatherings.
- Disapplying unconditional/mandatory quarantine/isolation to citizens/permanent residents of Germany, France, Latvia, Lithuania and Estonia while entering the territory of Georgia was

⁸⁸ These are the following countries: Federal Republic of Germany, The Republic of France, the Republic of Latvia, the Republic of Lithuania, the Republic of Estonia, Kingdom of Spain, Grand Duchy of Luxemburg, Kingdom of the Netherlands, Republic of Poland, Republic of Portugal, Romania, Republic of Greece, Kingdom of Sweden, Republic of Croatia, Republic of Italy, Republic of Cyprus, Republic of Slovenia, Republic of Iceland.

⁸⁹ They were obliged to register in the relevant e-program, to receive consent from the Ministry of Education; In case of consent they were obliged to undergo quarantine at their own expenses and to take the PCR test, etc.

discriminatory and applying it to Georgian citizens and citizens of other countries arriving in Georgia from the above-mentioned states constituted a discriminatory regulation.

- The argument that the differentiated approach could be justified by the fact that Georgian citizens have more contacts after arrival in Georgia is unacceptable in this case as well, because citizens of foreign countries were not subject to mandatory isolation/quarantine even if they arrived as tourists. Mobility of tourists in the country could be even more intensive than the mobility of a Georgian citizen returning to his/her family.
- At the same time, one should note that even permanent residents (Georgian citizens) of the countries listed above or persons of dual citizenship could also have a historic link and, thus, many contacts in Georgia. Therefore, it is not clear how the state would neutralize the risk (in case of its existence) posed by them as according to the rules they were not subject to quarantine.
- Such a blanket approach fails to justify the differential approach. Therefore, the regulation in question is discriminatory and puts Georgian citizens in an unfavorable position.
- Besides, it is not clear why citizens of other countries (except those 5 listed above) could not enjoy the privileged approach. In particular, if a person arriving from the listed countries was free from quarantine (as those countries were labelled as “safe”), it is not understandable why citizens of other states who had continuously spent the last period in those so called “safe countries” carried an increased risk. Therefore, it is also unclear why this privilege applied only if a person was a permanent resident in the above-listed countries. Thus, there is no link between justification provided by the Government and the imposed restriction.
- Decision to decrease the number of quarantine days initially to 12 and then to 8 with regards to persons entering the territory of Georgia should be welcomed. According to public statements made by the authorities, this decision aimed to reduce the discomfort related to quarantine⁹⁰, although, this answer fails to explain why it was impossible to use the same time limits and rules of quarantine (which were a less restrictive measure) before. Moreover, this is even more unclear in light of the fact that the current epidemiological situation in the country is much worse than it was during previous periods. It is also unclear, why the mentioned decision as a less restrictive measure could not be applied to students arriving from foreign countries.
- As previously mentioned, Order of the Minister of Health issued on March 25 on Determining Isolation and Quarantine Rules was almost fully incorporated into Ordinance #322. However, Ordinance #322 contained an important update. Namely, it introduced preconditions for placing persons in self-isolation which included an existence of specific circumstances/social factors (persons with disabilities, juveniles, etc.) justifying appropriateness of placement in self-isolation. We welcome the addition of these preconditions for self-isolation as their absence during the state of emergency created considerable problems including the inconsistency of quarantine areas with child’s best interests. One of the high-profile cases was a dispute won by a parent who was a human rights defender. The parent requested a

⁹⁰ Please view: https://mtavari.tv/news/15128-karantinis-vada-8-dghemde-shemtsirda?fbclid=IwAR2CulfxNBq4FGsa-52qQGlvCNsC6FUt8xiu_v7Yv4pX96LaY905f1uv9os [last viewed 12.10.2020].

transfer from quarantine to self-isolation. She had filled in the request form for the self-isolation in advance, but received an unjustified refusal. It is important to note the absence of an adequate space and of an appropriate diet menu for her child in the quarantine, which directly violated the child's rights⁹¹. Unfortunately, according to the information provided by non-governmental organization "Partnership for Human Rights", there were other cases of inconsistency of the quarantine spaces with child's interests, such as neglect of mental health of juveniles. Thus, despite the self-isolation conditions in Ordinance #322, their enforcement remained problematic.

- Conditions in quarantine areas were sometimes inconsistent even with the needs of adults and remained unimproved after the state of emergency. This issue was underlined in the Report of the Public Defender of Georgia⁹², describing problematic living conditions in quarantine areas, such as provision of inadequate food (outdated, insufficient meal) and the absence of physical (recreational) activities.
- Defining the terms "isolation" and "quarantine" differently from the statutory definition remained a problem, which caused legal uncertainty.

4.2. Freedom of movement

Description

- The restriction on movement of more than 3 persons by vehicles was lifted from May 23 and continued to apply only to taxis. Moreover, a taxi driver was obliged to wear a face mask and passengers had to take the back seats.
- The so-called curfew was lifted as well as the obligation to carry an identification document while outside.
- The prohibitions on entering the territory of a cemetery was lifted and on leaving the place of residence for the elderly persons aged 70 and above were lifted as well.
- Starting from May 29, transportation of passengers by busses and mini-busses within municipal administrative boundaries, as well as public transport were resumed and drivers and passengers became obliged to wear face masks. The railway and transportation of passengers by busses and mini-busses between cities/towns became permissible from June 8 and 15 respectively.
- Restrictions on movement in certain territories were incorporated into Ordinance #322 instead of being separately regulated by different ordinances. Starting from June 4, the strict quarantine regime was lifted in Tetrtskaro municipality, from 15 - in the village Geta of Bolnisi municipality and from July 1 – in the village Mushevani of Bolnisi municipality. A special quarantine regime was imposed on July 24 in village Karadjala of Gardabani municipality and was lifted on

⁹¹ Please view: <https://bit.ly/2leDLpO> <https://www.radiotavisupleba.ge/a/30709953.html> [last viewed 12.10.2020].

⁹² Monitoring of Places of Restriction of Freedom Relating to Quarantine Measures Against Novel Coronavirus (COVID-19), Report of the Public Defender of Georgia, 2020, <https://www.ombudsman.ge/eng/spetsialuri-angarishebi/akhali-koronavirusis-covid-19-tsinaagmddeg-mimartuli-sakarantine-ghonisdziebebit-gamotsveuli-tavisuflebis-shezhudvis-adgilebis-monitoring/> [last viewed 12.10.2020]; Also, the case of a citizens placed in quarantine deserves a special attention. The NGO "Partnership for Human Rights" was working on the case. According to the information and photos provided by the citizen to the NGO, the food delivered to persons in quarantine was inedible and sanitary-hygienic rules were not observed in some cases.

August 10. The same day the special quarantine regime was imposed in Mestia municipality. From August 21, the special quarantine entered into force only in towns Mestia and Lendjeri of Mestia municipality and was valid until September 2.

- On July 13, the restriction on direct scheduled flights between Tbilisi and Munich, Paris and Riga airports was lifted. On July 15, the scheduled air-traffic for transportation of passengers within the country was resumed. On September 17, a decision was made to lift the restriction on direct scheduled flights between Kutaisi and Riga airports from October 1.
- Decree #164 of Government of Georgia issued on August 3 determined rules on leaving the territory of Georgia and entering the territory of Turkey for purposes of carrying out labor activities by persons who had the relevant invitation. Before the introduction of these rules, Georgian citizens organized several demonstrations requesting an opening of the border with Turkey as they were left in a difficult financial situation⁹³. A part of the population expressed concerns regarding the mentioned rules and stated that their problems had not been resolved⁹⁴. It should be noted that Turkey opened international air, maritime and land border with all the countries, except Iran, in June. However, movement of Georgian citizens to Turkey remained restricted due to restrictions in force in the Georgian territory⁹⁵.
- Changes made to Ordinance #322 on September 24 tightened restrictions in the Autonomous Republic of Adjara. Transportation of passengers by busses and mini-busses as well as by cable car became suspended.

Assessment

- Lifting/mitigation of several restrictions on freedom of movement starting from May 23 should be positively assessed. However, we do not welcome the repeated postponement of resuming international scheduled flights whereas these flights are extremely important for the tourism sector. Besides, repeated announcements of renewal of international scheduled flights and their subsequent postponements have put people in an uncertain situation, which is problematic in terms of legal security. It is worth mentioning that several countries have gradually lifted restrictions on international flights including those with Georgia and have made it possible to travel again. Moreover, it was the EU who initiated renewal of flights with Georgia as the EU included it in the list of “safe” countries and issued recommendation for its members states to open their borders with Georgia⁹⁶. Despite this, Georgia maintained strict restrictions on international scheduled flights.
- In our opinion, the Government was unjustified in restricting land movement with neighboring countries whereas Turkey had already opened land borders.
 - The Constitution of Georgia guarantees the right to freely leave the territory of Georgia and an interference with this right requires an appropriate justification. If the above mentioned restriction aimed to protect health of Georgian citizens leaving the country (and thus presumably putting their health at a risk), it could not be justified based on this

⁹³ Please view: <https://ajaratv.ge/article/61225>; <https://ajaratv.ge/article/61528> [last viewed 12.10.2020].

⁹⁴ Please view: <https://bit.ly/36TFoU5>; <https://www.radiotavisupleba.ge/a/30750916.html> [last viewed 12.10.2020].

⁹⁵ Please view: <https://batumelebi.netgazeti.ge/news/282800/> [last viewed 12.10.2020].

⁹⁶ Please view: <https://data.consilium.europa.eu/doc/document/ST-9208-2020-INIT/en/pdf>, <https://data.consilium.europa.eu/doc/document/ST-10095-2020-INIT/en/pdf> [last viewed 12.10.2020].

objective, as such a justification would be an excessive interference with the freedom and autonomy of individuals and an expression of paternalism by the state.

- In light of the exhaustible financial resources, the aim of the Government could have been the prevention of increase in expenses incurred on quarantine measures intended for Georgian citizens returning to Georgia. In this case, however, the interest of protection of the freedom of movement outweighs the interest of state budget. Both the Constitutional Court of Georgia and the European Court of Human Rights have critically assessed⁹⁷ the use of exhaustibility of budgetary funds as justification of human rights restrictions.
- The governmental approach in question has caused many persons, especially those living in Adjara, serious financial problems.

4.3. Freedom of assembly

Description

- Restrictions on the assembly or/and demonstrations envisaged under the Law of Georgia “on Assembly and Demonstrations” were lifted. However, the prohibition on gathering of more than 10 persons at social events (for instance weddings, funeral repasts, anniversaries, etc.) remained in force. From July 20, holding such events in an open space in compliance with recommendations became permissible. The prohibition of gathering of more than 10 persons in open spaces was lifted on May 23. However, the obligation to wear face masks in closed public spaces remained in force. From September 10, restrictions were again imposed on gathering of more than 10 persons at social events in open spaces.
- After the state of emergency, restrictions on holding cultural events remained unchanged – they had to be held remotely. Some additional exceptions from the restriction of mass sports activities were introduced. Starting from June 20 it became permitted to physically hold museum activities/events in case of compliance with the relevant rules. The prohibition on recreational activities in open spaces was lifted on July 1, on organization of cultural activities in open spaces – on July 15 and on the same day organization of rehearsals in closed spaces became permissible.
- On July 22, the prohibition on organization of mass sports activities in open spaces was lifted.
- On September 10, attendance by no more than 200 persons of cultural and sports activities in open areas became permissible in line with the Order of the Minister of Health

Assessment

The tendency of reducing restrictions on freedom of assembly after the state of emergency should be welcomed. With regards to restrictions enforced after the state of emergency, the study has not identified any problems of unconstitutionality.

⁹⁷ Judgment №1/11/629,652 of the Constitutional Court of Georgia of October 25, 2017, on case “Georgian citizens Roin Gavashelishvili and Valeriane Migineishvili v. Government of Georgia.”

4.4. Right to fair trial

Description

- The Criminal Procedure Code of Georgia was amended on May 22, 2020. The amendment introduced a temporary rule stipulating that court hearings could be conducted remotely, by means of electronic communication in case of existence of a risk of a pandemic or/and epidemic extremely dangerous for public health and if statutory conditions were met.
- The High Council of Justice once again adopted recommendations for common courts again. Particularly after the state of emergency. According to recommendations approved on June 5, 2020, priority was to be given to conduct of court proceedings without oral hearings in cases stipulated by law and in case of need – to remote participation of parties in court hearings by using electronic means. On September 15, the Council once again approved recommendations reiterating previous rules, but with slightly changed provisions concerning hearing of cases. Particularly, the Council recommended the common courts to ensure (instead of prioritizing) conduct of court proceedings without oral hearings and to ensure remote participation of parties in court hearings.

Assessment

- Due to the regulations described above, the principle of publicity of court hearings remained substantially restricted and procedural rights continued to be violated even after the state of emergency. This was also indicated in the report of the Public Defender of Georgia⁹⁸. According to the report, remote court hearings caused several shortcomings to the detriment to the rights of parties to proceedings, proper functioning of the court and achievement of public aims. These shortcomings included postponement of hearings or hindering of the normal conduct of hearings due to substantial technical (audio and video) problems, impossibility of confidential communication between lawyers and most of the defendants, difficulties in seeing and hearing witnesses caused by technical deficiencies, cases of impossibility to verify the credibility of witnesses by the judges. Furthermore, the remote regime restricted the publicity of court hearings. For example, some judges refused to allow representatives of the Public Defender to attend remote court hearings without justifying refusals. Restriction of the principle of publicity is also demonstrated by the fact that out of 279 hearings, monitored by the representatives of the Public Defender, only 12 were attended by monitors from non-governmental or other organizations.

4.5. Freedom of enterprise

Description

- According to the initial edition of Ordinance #322, all economic activities were permitted except for those listed in the Ordinance. Apart from vitally important exceptions, permitted economic activities, with due regard to their specific characteristics, should have been performed remotely. This requirement was not applicable to exceptional activities/objects listed in Ordinance #322. Moreover, provision of gambling services and prize-winning games

⁹⁸ Monitoring Report on Remote Hearings of Criminal Cases, Report of the Public Defender of Georgia, 2020, please view: <https://www.ombudsman.ge/en/spetsialuri-angarishebi/sakhalkho-damtsveli-distantiuri-tseseit-chatarebuli-siskhlis-samartlis-skhdomebis-monitoringis-angarishs-akveqnebs> [last viewed 12.10.2020].

was permissible only by electronic means and functioning of hotels and similar accommodation facilities were only allowed for the purpose of arranging quarantine areas.

- Later, amendments to Ordinance #322 mitigated restrictions. In particular, the restriction requiring remote performance of economic activities was lifted. The list of prohibited activities was shortened. For instance, functioning of hotels (in case of a positive assessment with regard to compliance with the recommendations of the Ministry of Health based on an inspection by authorized persons), museums, amusement/theme parks/amusement ride and cultural and sport activities in open spaces became permitted.
- The Restriction on provision of gambling services and prize-winning games was remained (they were only allowed in electronic forms). Organization/arrangement of cultural and sports activities was still prohibited if they were not included in the above-mentioned list of permitted activities; The night clubs were also prohibited.
- All of the permitted economic activities were to be carried out by taking into account their specific circumstances, in compliance with the 2 metre social distancing rule and in line with the recommendations elaborated by the Ministry of Health.
- By Ordinance #322, Labor Conditions Inspection Department of the Ministry of Health was authorized to suspend an economic activity in case of detecting a coronavirus case or in case of critical inconsistencies with Order (recommendations) of the Minister of Health. After solving the causes of suspension, activity could be renewed based upon submission of a request⁹⁹.
- Ordinance #322 also regulated performance of economic activities within certain territories. Particularly, provision/selling of any goods/products was suspended in certain epidemic hotspots, apart from those determined by the Ordinance. The suspension was lifted later. Finally, economic activities were restricted in Adjara. Particularly, restaurants, cafes and bars could work only from 07:00 am to 22:00 pm.

Assessment:

- As previously mentioned, the approach imposing a general prohibition on economic activities and allowing certain exceptions was not the least restrictive and necessary measure limiting the freedom of enterprise because the opposite would have been less burdensome. After the the state of emergency, the Government changed its approach – generally allowed economic activities while prohibiting only specific ones. Moreover, the Government gradually lifted certain restrictions. This new approach should be welcomed as it restricts the freedom of enterprise to a lesser degree than the old one.
- Despite the above-mentioned tendency of mitigating restrictions, the Government maintained prohibition on some economic activities. Reasons for the maintenance of the prohibition are vague and need explanation. One may use the restriction on provision of gambling services and prize-winning games as an example. It is not clear why this restriction was maintained when, in contrast, the Government permitted to carry out certain economic activities in closed spaces, provided that they complied with recommendations issued by the Ministry of Health. Thus, the freedom of enterprise would be less restricted for the providers of gambling and

⁹⁹ In line with the procedures prescribed by Order #01-56/n of the Minister of Health as of June 6, 2020.

prize-winning games if they, like other business entities, had a possibility to carry out these activities in compliance with the recommendations.

- As mentioned, Ordinance #322 authorized Labor Conditions Inspection Department of the Ministry of Health to suspend an economic activity in case of detecting a Covid-19 case or in case of critical inconsistencies with Order (recommendations) of the Minister of Health. According to the statement of the Minister of Health, this decision to authorize was triggered by numerous repeated cases of violation of recommendations. In particular, as the Minister explained, the economic activity would be suspended if it failed to comply with the relevant requirements after having been fined and after a repeated inspection¹⁰⁰. Despite this statement, Ordinance #322 names the critical inconsistency with the Order of the Health Minister and not a repeated violation thereof as the ground for suspension of economic activities. This formulation is rather vague, as there is no explanation of what critical inconsistencies mean, whereas the Ordinance could have directly referred to a repeated violation. As a result, it is only up to the Labor Conditions Inspection Department to decide what may be considered as a critical inconsistency, i.e., this body is granted excessively broad discretion to restrict the freedom of enterprise, which contradicts the principles of legal state and legal certainty.

4.6. Right to education

Description

- According to the initial edition of Ordinance #322, general and high educational institutions were to perform the educational process using various forms of distance teaching/communication (if available). A distance learning mode was to be applied to all types of trainings, conferences and seminars as well and higher educational institutions were authorized to conduct practical activities/laboratory work and examinations non-remotely (physically), in accordance with the Order of the Minister of Health¹⁰¹.
- Amendments to Ordinance #322 mitigated certain restrictions, particularly:
 - Activities of the vocational education institutions as well as special vocational educational institutions became permissible;
 - Restrictions on organization of conferences, trainings and seminars were eventually lifted.
 - Providers of services of early education and upbringing or/and preschool education and upbringing or/and legal persons providing school readiness program and educational institutions were to perform the educational process in accordance with the recommendations of the Minister of Health;
 - In order to function remotely, educational institutions were granted an authority to remotely conduct activities of their collegial bodies provided that they observed rules governing administrative proceedings. They were also authorized to transfer their employees to the remote work regime in case of necessity and work on site was permissible depending on

¹⁰⁰ Please view: <https://netgazeti.ge/news/476299/> <https://www.kutaisipost.ge/ka/akhali-ambebi/article/18259-business-romelic-jandacvis-rekomendaciebs-ar-daicavs-saqmianoba-sheucherdebath> [last viewed 12.10.2020].

¹⁰¹ Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia on the Approval of Recommendations for the Prevention of the Spread of Novel Coronavirus (COVID-19) at Workplaces.

the specific circumstance of the work and in accordance with the recommendations of the Minister of Health.

- Ordinance #322 determined that a person registered for Unified National Examination/the Master's Graduate Entry Examinations/Student's Grant Competition/Subject Tests and Tests defining Subject/Field and Professional Competencies was undergo PCR Testing before the admission to the examination/competition/tests and 72 hours thereafter if the person was in quarantine or were to be placed in quarantine after arrival in the country according to rules determined by Ordinance #322. Moreover, he/she had to return to quarantine between examinations.
- The Ministry of Health also prescribed special rules for examinations organized by the National Assessment and Examinations Center. Particularly, the Ministry of Health issued recommendations concerning arrangement of examinations desks in examination sectors, requirements applicable to air conditioning and ventilation systems, cleaning of examination centers, thermal screening, criteria for eligibility for the examination and other conditions for organization of the examination.

Assessment

- As already mentioned, introduction of distance learning (due to its unavailability/lack of access to it) and certain rules restricted the right to education. Article 45³ of the Law "on Public Health", discussed above, served as a ground for this restrictions after the state of emergency. According to Paragraph 2 of this article, the quarantine measure could imply regulations different from those established by other normative acts, including temporary imposition of restrictions on certain rights indicated in the same paragraph. However, this paragraph does not directly mention the right to education. Therefore, it is not clear whether the right to education is implied in this norm and, whether subordinate legal acts restricting the right to education have a legislative basis. Thus, the restriction on the right to education contradicts the principle of legal certainty, delegation standards and formal constitutional requirements.
- One of the cases related to process of Unified National Examination¹⁰² deserves special attention. According to various sources, on July 7, one of the entrants tested positive for the coronavirus after taking the exam in Georgian language and literature. Various sources initially reported that she would not be admitted to the remaining exam, but later the Ministry of Education in co-ordination with the relevant bodies allowed her to take the exam in a medical facility. This decision itself should be welcomed. However, the initial misunderstanding around the issue of allowing the infected entrant to take the remaining exam indicates that the authorities did not have a precise plan for such situations.

¹⁰² Please view: <http://mes.gov.ge/content.php?id=10660&lang=eng>; <https://edu.aris.ge/news/abiturienti-romelsac-koronavirusi-daudasturda-7-ivlisis-gamocdazea-gasuli-amiran-gamyrelidze.html> [last viewed 12.10.2020].

4.7. Right to a fair hearing of one's case by an administrative body within a reasonable time

Description

- Ordinance #322 determined temporary rules for activities and administration of public institutions and for the provision of public services, mostly reiterating regulations established by Ordinance #181. In particular, by Ordinance #322 authorized the Minister of Justice to determine rules and conditions, other than those established by law, for administering the provision of services by certain public institutions; and, the Minister of Internal Affairs was authorized to introduce regulations, other than one established by law, governing the field of combatting illegal migration and provision of certain services at the Ministry of Internal Affairs.
- Based on the authority granted by Ordinance #322, the Minister of Justice as well as the Minister of Internal Affairs issued relevant orders, mostly reiterating the content of those orders which were in force during the state of emergency.

Assessment

- One should welcome that Ordinance #322, unlike Ordinance #181, did not suspend the time limits for submission and review of administrative complaints and, also, time limits for issuing public and personal information. Thus, paragraphs 1 and 2 of Article 18 of the Constitution of Georgia were not restricted. However, Ordinance #322, like Ordinance #181, granted the Minister of Justice and the Minister of Internal Affairs the authority to determine regulations for provision of public service and administration of public institutions, other than those regulations one established by law, without defining the scope for using this authority. Such a general and broad delegation of powers creates a considerable risk of unconstitutional restrictions on the rights guaranteed by Paras. 1 and 2, Article 18 of the Constitution in violation of principles of legal state and legal certainty.
- We welcome the fact that, in accordance with the Order of the Minister of Justice on regulation of notary services, notary bureaus were opened in more places throughout the country after the state of emergency and, thus, notary services became more available/accessible. In particular, amendments to the Order allowed to open notary bureaus in Tbilisi and in other municipalities if conditions stipulated in the Order were met. It also became permissible to open notary bureaus in exceptional cases and in light of the degree of accessibility of notary services in a municipality or in a part thereof even if the conditions were not met.
- Despite positive changes mentioned above, the Order maintained the prohibition on certification of the agreement on extracorporeal fertilization by public or private notarial deed if one of the parents were a citizen of a foreign country. The restriction imposed on a foreign parent is discriminatory and arbitrary. Moreover, it is a clear example of those risks that emerge by granting the Government a broad discretion