

Emergency measures and civic freedoms in Georgia

March -December 2020

The outbreak of the global pandemic Covid-19 demonstrated that the legal framework of many states was not sufficiently refined to respond to the challenges posed by the pandemic with minimum harm on individual human rights and civic freedoms. Georgia was no exception in this regard. The legal process, which regulates the emergency measures addressing the critical nationwide situations, like pandemic or epidemic, lacked sufficient guarantees against disproportionate human rights restrictions. Like in many other states, the state of emergency was declared in Georgia as a response to the pandemic and extensive human rights restrictions were introduced subsequently. These restrictions had impact over civil society work, particularly those organizations that promote and safeguard human rights.

During the first wave of the pandemic, the President of Georgia declared state of emergency in the whole country and restricted a number of fundamental rights and freedoms. The respective Order and Decree issued by the President of Georgia were co-signed by the Prime Minister and they were adopted by the Parliament of Georgia by majority of votes on March 21, 2020. Initially the state of emergency operated until April 22. On April 22, the state of emergency was extended until May 22 by the Parliament. While the Presidential Decree determined concrete restrictions in certain cases, in relation to various human rights, it also delegated authority to restrict human rights to the government of Georgia, without providing the necessary scope under which the rights could be restricted. This created risks of disproportionate and undue interference into concrete human rights by the government.

In May 2020, the Parliament of Georgia amended the Law on Public Health of Georgia to authorize the government to set restrictions on human rights and civic freedoms during the time of pandemic or epidemic on the grounds to protect the health of the population. The new amendments create high risks of abuse of authority by the executive branch of government and disproportionate human rights restrictions as they do not envisage checks and balances between various branches of government such as necessary parliamentary oversight over this process.

Declaring state of emergency and first wave of restrictions over civic freedoms

The President set restrictions on the following human rights and civic freedoms according to the Presidential Decree:

Freedom of Movement: suspended international air, land and maritime travel with certain exemptions. The government is given the right to establish the rules of quarantine and isolation and regulate the transfer of passengers and cargo differently from the existing legislation;

Right to Private Life: suspended right to conjugal meetings of prisoners in the penitentiary establishments;

Right to Assemblies and Manifestations: suspended any assemblies and manifestations and public gatherings and gave right to the government to make exceptions;

Right to Liberty: the government is given the right to coercively transfer individuals to relevant facilities because of violation of rules of quarantine and isolation;

Right to Fair Administrative Proceedings, Access to Public Information and Informational Self-determination: the government is given the right to regulate the work of public services and administrative proceedings differently from the existing legislation;

Right to Property: the government is given the right to restrict this right for the quarantine, isolation and medical purposes in case it was essential and use the property and material means of physical and legal entities;

Freedom of Labor: the government is given the right to restrict the work of the subjects of the private law, as well as to determine the prices on medicaments and medical services in case it was essential and regulate the rules related to the education differently from the existing legislation.

Disproportionate and unnecessary list of offenses and fines for violating rules during the state of emergency

According to the Presidential Decree, the violation of rules of state of emergency would result in administrative offense – fining of physical persons by approximately 750 EUR (3.000 GEL) and fining of legal entities by approximately 3.750 EUR (15.000 GEL). The repeated violation would result in criminal responsibility for the physical persons – deprivation of liberty up to 3 years, as for legal entities – fine, prohibition of right to work or liquidation.

The fines imposed against the individuals for violating the rules of the state of emergency were disproportionately high (the fine for a single violation was approximately nine times higher than monthly average income of one person in Georgia). Setting such high fines did not take into account the severe socio-economic problems that people face in Georgia that particularly worsened in the light of the pandemic.

Second wave of restrictions and amendments to the Law on Public Health to give more power to the Government without oversight

The amendments to the Law on Public Health of Georgia, which authorized the government to regulate the work of the public bodies, movement of individuals, professional and economic work, illegal migration/international protection, gatherings of individuals for conducting social events, “*differently from other normative acts of Georgia, including setting relevant temporary restrictions*”. As of now, these provisions shall operate until July 1, 2021.

The new amendments allow the government to introduce restrictions similar to those of state of emergency – restriction of freedom of movement in the whole country, set up curfew, ban public transportation and economic activities, etc. According to the Constitution of Georgia, during the state of emergency, such restrictions go through the parliamentary review that ensures necessary parliamentary oversight against the risks of abuse of power by the executive branch of government. The new provisions in the Law on Public Health of Georgia authorize the government to introduce restrictions on fundamental human rights without any parliamentary supervision which increases the risks of abuse of power by the government.

As the drastic increase of cases of new coronavirus continued to rise in Georgia and reached about 3800 people daily, the Georgian government introduced extensive restrictions on November 28¹, based on the new amendments to the Law on Public Health of Georgia, including, prohibition of movement and “*being in public space*” between the hours of 21:00 pm and 05:00 am in the whole country, banning regular intercity transport (railway, buses, minibuses), banning municipal transport in big cities, closure of restaurants and other food facilities, banning conferences, trainings, cultural and entertaining events, sports, arts and cultural activities, etc. **The assemblies and manifestations were not formally restricted by the new regulations.** However, banning public transportation and movement during evening hours hinders the possibility of people to practice their right to peaceful assembly and manifestations.

Offences and fines during the second wave of restrictions

The violation of regulations enacted in accordance to the above-mentioned new provisions is considered an administrative offense and fines are imposed against the offenders – approximately 500 EUR (2.000 GEL) in case of physical persons and approximately 2.500 EUR (10.000 GEL) – in case of legal entities. Although the amount of fines are decreased compared to the first wave of pandemic, yet they are still disproportionately high and they do not take into account the severe socio-economic reality that people are experiencing in Georgia. The same aim of protection of public health and promotion of adherence to the new regulations could have been achieved with lower fines.

¹ The Resolution regarding the restrictions was enacted on November 26. The restrictions took force since November 28. Online portal of legislative acts of Georgia: <https://matsne.gov.ge/ka/document/view/5039493?publication=0>