

Quarterly Update:

Covid-19 & civic freedoms in Georgia

Emergency measures (December 2020 - February 2021)

The report reviews the developments in relation to the Covid-19 pandemic in Georgia, the adopted emergency measures and restrictions and their impact on civic freedoms during the period December 2020 – February 2021.

Emergency Measures against Covid-19 and Their Impact on Civic Freedoms

The measures adopted by the Government to fight coronavirus which led to restrictions of human rights which remained in force. Some of those restrictions are:

- Restriction of movement of pedestrians and transportation between 21:00 and 05:00 a.m.;
- Ban on municipal transport in big cities and regular intercity transport;
- Restriction of the work of cafes and restaurants (they could no longer host guests in closed or open space. The only allowed services were take-away, delivery and drive services);
- Ban on conferences, trainings, cultural and entertaining events, sports, arts and cultural activities (except for online format).

These restrictions were introduced in Georgia at the end of November 2020.

Some of these restrictions against Covid-19 were eased, in relation to the Christmas holidays (in the period December 24-January 2). During this period, municipal and intercity transport was allowed. Also, the trade centers in big cities were given right to operate under certain conditions. Movement of pedestrians and transportation was allowed on the eve of New Year and the Orthodox Christmas (January 7).

Restriction Of Freedom Of Movement And Its Impact On Freedom Of Religion

One of the significant challenges during this period was the discriminatory approach that the government applied against the religious minorities when it comes to free movement during their religious holidays. Specifically, on January 6, 2021, on the eve of Orthodox Christmas, the government lifted the curfew, in order to allow the Orthodox worshippers to freely move for the celebration of Orthodox Christmas. However, similar measures were not taken for the religious minorities, for instance, Protestant and Catholic religious minorities, in order to celebrate Christmas on December 25, 2020. In

justification of the new measure, the Vice Prime Minister of Georgia stated that majority of the society is Orthodox. This argument cannot justify the unequal treatment of different religious groups. This is permissible only when it is necessary and proportionate measure for achieving a legitimate aim. In this case, there was no relevant justification presented by the authorities that would explain that it was necessary and proportionate to restrict movement of Catholic and Protestant worshippers on their respective holidays for the prevention of the spread of the coronavirus, while allowing Orthodox worshippers to freely move on their respective holiday.

Restriction Of Freedom Of Movement And Its Impact On The Right To Assembly And Manifestation

On February 8, the ban on municipal transport in big cities was lifted. On February 25, the intercity transport was allowed. Despite easing other measures and improvement of the Covid-19 situation, the curfew and restriction of freedom of movement between 21:00 and 5:00 a.m. still remain in the whole country and fails to meet the necessity and proportionality test. The prolongation of the curfew and restriction of freedom of movement, without adequate explanation and any plan of when/under what circumstances they may be lifted, raise legitimate concerns that the real reason of their continuation is to counter the increased protest movement currently ongoing in Georgia.

The so-called curfew and the restriction of freedom of movement create obstacles for the full realization of the right to peaceful assembly and manifestation. During the reporting period, the protest movement increased in Georgia as the political crisis continued to escalate. The opposition political parties and activists were protesting regarding various issues and requested release of political prisoners, new elections, and demanded the resolution of other acute social issues. The law enforcement authorities fined the protestors (including activists) for violating the curfew as the protest actions continued during the hours when the movement was banned (between 21:00 pm and 05:00 am).

Sanctioning protesters for violating the rules of curfew must be assessed as unlawful interference into the right to peaceful assembly and manifestation, considering that the Law on Public Health of Georgia which authorizes government to enact measures for fighting coronavirus, does not allow restriction of freedom of peaceful assembly. It grants government the right to restrict freedom of movement and gatherings of individuals for conducting social events, but does not refer to assemblies and manifestations. Therefore, the movement of the participants of the protest actions should have been protected under the right to assembly and manifestation. This line of reasoning was, unfortunately, not supported by the February decision of the Constitutional Court of Georgia (see below).

It should be noted that the Public Defender of Georgia has underlined that the Law on Public Health of Georgia creates possibility of restriction of freedom of movement, but not of assembly and manifestation. In November 2020, the

Public Defender of Georgia has called on the authorities not to sanction the participants of the protest actions for violating the regulations related to movement¹.

Constitutional Court Decision

On February 11, 2021, the Constitutional Court of Georgia delivered a decision in relation to the amendments to the Law on Public Health which authorized the government to restrict freedom of movement, right to property and gatherings for social purposes under quarantine measures. The Constitutional Court partially satisfied the constitutional complaints against the new provisions (adopted in May 2020). Specifically, it found that delegating authority to the government of Georgia to restrict labor rights was unconstitutional, as this matter should have been decided by the Organic Law of Georgia and not by the ordinary law – Law on Public Health. As for other rights, the Constitutional Court did not find that the new provisions contradict the Constitution. It should be noted that the reasoning of the Court in this regard is vague. For example, the Court assessed the issue whether or not the impugned norms delegated authority of the Parliament to the government to regulate the matters of fundamental significance. The Court concluded that the authority delegated to the government of Georgia **to restrict freedom of movement, right to property and gatherings for conducting social events** according to the impugned norms did not concern the issues of fundamental principles for social, economic, legal and political development of the country and hence the Constitutional Court stated that these measures would not impact the long-term perspectives of social, economic, cultural, legal or political development of the country.

This reasoning is questionable considering that the new restrictions had big impact on economic activities of many citizens and the economic development of the whole country, as well as social and legal impact, considering that numerous citizens were found to have committed administrative offences and were fined for violating the new rules, such as curfew and other rules in relation to the prevention of Covid-19. Also, under these provisions, the government set curfew in the whole country and restricted movement of individuals in public space that hindered the comprehensive organization and holding of protest actions. Thus, the possibilities of civil protest and expression of discontent regarding acute social issues were restricted. Therefore, the reasoning of the Constitutional Court of Georgia that the measures enacted under the new provisions of Law on Public Health would not have affected long-term perspectives of social, economic, cultural, legal and political development of the country is unclear.

Other Developments and Their Impact Over Civic Freedoms

During the reporting period, the state of civic freedoms significantly deteriorated in Georgia. Particularly worrisome was the initiative of the ruling

¹ Public Defender's Special Statement on Freedom of Expression and Quarantine Measures:

<https://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtswelis-spetsialuri-gantskhadeba-gamokhatvis-tavisuflebis-a-sakarantine-ghonisdziebis-mokmedebis-taobaze>

party to stop the state financing for the political parties who refused to enter the Parliament in the form of boycott. This poses threats to freedom of expression and freedom of work of political parties.

In December 2020, the amendments were passed at first hearing to the Organic Law on Political Parties, according to which, the parties who reject their parliamentary mandates, will not receive state financing. Previously, the state financing of political parties was not dependent on taking up parliamentary mandates, but on the passing of electoral threshold. The amendments were initiated by the ruling party, Georgian Dream, in relation to the refusal of the opposition political parties to enter Parliament and take up the mandates granted as a result of October 31, 2020 Parliamentary Elections, as a form of boycott over the electoral violations. This is clearly demonstrated by the statements of the representatives of the ruling party at the first hearing of the draft amendments. “When the Parliament is under sabotage, no alternative responses can be made” – the leader of Parliamentary Majority, Irakli Kobakhidze stated at the first hearing².

The right to boycott belongs to the right of freedom of expression and freedom of work of political parties, guaranteed by the Constitution of Georgia. These freedoms imply that the political parties must be free to decide how to participate in the political life and express their discontent and concern regarding acute public issues in the form of peaceful protest they choose. It means that they are free to choose the form of work that they think will best advance the issues pertaining to their interest, including boycott or other form of peaceful protest³. The work of political parties does not mean only parliamentary work⁴. Cutting state financing for the political parties if they refuse to enter the Parliament and make use of their mandates is a form of punishment of political parties for the peaceful boycott. Therefore, new draft amendments constitute clear intrusion in the freedom of work of political parties and freedom of expression.

Another worrisome issue during the reporting period, posing threat to civic freedoms was that the police restricted the activists and protest participants right to set up tents in the area of the protest actions in several cases. Tents can be important instrument for the protestors to facilitate the process of their peaceful protest. When the temporary constructions, such as tents, do not block the transport movement and the entrance of the buildings where they are set up or constitute the form of certain illegal activity, the law enforcement authorities have no right to prohibit the protesters right to use the tents as part of their peaceful protest. During the reporting period, there were instances when the law enforcement authorities in Georgia violated this principle⁵.

2 http://www.parliament.ge/en/saparlamento-saqmianoba/plenaruli-sxdomebi/plenaruli-sxdomebi_news/parlamentma-moqalaqeta-politikuri-gaertianebebis-shesaxeb-saqartvelos-organul-kanonshi-cvilebas-pirveli-mosmenit-mxari-dauchira.page

3 Page 62, Report of Public Defender of Georgia, 2008: <https://ombudsman.ge/res/docs/2019040411373642069.pdf>

4 Statement of Republican Party of Georgia: <https://netgazeti.ge/news/506885/> (available only in Georgian)

5 On February 19, 2021, the police officers did not allow the protesters to set up tents in front of the Parliament building, although the tents posed no threat to the transport movement, nor they blocked the entrance of the Parliament building: <https://www.myvideo.ge/tv/mtavari/2021-02-19/21:06:06>