

# Quarterly Update

## Covid-19, emergency measures and civic freedoms in Georgia March-May 2021

### Introduction

In the following report, Human Rights Center (HRC) reviews the developments in relation to the Covid-19 pandemic in Georgia, the measures operating for fighting pandemic and their impact on civic freedoms during the period of March – May 2021.

We also look at the situation of the civic freedoms, not particularly related to the pandemic, including freedom of speech and expression, right to information and right to peaceful assembly and manifestation and examine concrete instances when these rights were unduly restricted.

### Covid-19 and Civic Freedoms

During the reporting period, most of the restrictions operating in relation to Covid-19 pandemic have been lifted. The municipal transport and regular intercity transport are now fully operating in the whole country, the private and public schools, higher education and professional institutions are back to normal, the cafes and restaurants are working both indoors and outdoors (except for the weekend), the conferences, trainings and sport events no longer have any restrictions. The restrictions are still operating in relation to social events, such as weddings, funeral receptions and birthday celebrations. The curfew hours have been reduced from 21:00 – 05:00 to 23:00 – 04:00. This change was made on May 17, 2021.

During May 4-12, the public holiday was announced due to the worsened epidemiological situation. Interagency Coordination Council recommended the employers to switch to online work. The coordination council called on the citizens to correctly use the masks, keep physical distance and avoid large gatherings and organization of social events, prohibited by the government decree<sup>1</sup>.

During the night of the Easter, the curfew hours were reduced from 21:00 – 05:00 to 23:00 – 04:00, in order to facilitate movement of Orthodox worshippers for the Easter liturgy. However, similar measures were not taken towards the religious minorities, for instance,

<sup>1</sup> Article "4-11 May Announced a Public Holiday in Georgia":

<https://www.radiotavisupleba.ge/a/31195683.html>

Catholic worshippers for Catholic Easter on April 4. This continues the tendency of discriminative state policy towards the religious minorities – the restrictions are eased only in relation to the Orthodox holidays, but not that of religious minorities, as reported in the previous updates<sup>2</sup>. Similar tendency was observed in relation to the Christmas holiday. 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<sup>3</sup>.

During the reporting period, freedom of movement continued to be impeded from Abkhazia and South Ossetia, breakaway regions of Georgia occupied by the Russian Federation. For years, the Russian Federation carries out deliberate policies in Gali District in occupied region of Abkhazia and Akhagori District in the occupied region of South Ossetia, as a result of which both Districts inhabited by the Ethnic Georgians are losing connection to the territory controlled by the central government of Georgia. This process includes the illegal borderization of the Georgian territories, erection of barbed wires and other artificial barriers along the dividing lines of Abkhazia and South Ossetia and rest of Georgia and closing the checkpoints connecting the regions to the rest of Georgia.

Possibilities of passing from the occupied territories to the territory controlled by the central government of Georgia are extensively restricted by the occupying forces during the pandemic, violating the freedom of movement and causing fatal consequences. Four Gali residents tragically died in April 2021 when trying to cross from Gali to the territory controlled by Georgia through Enguri river<sup>4</sup>. During the pandemic, only limited group of people are allowed to cross from Gali District to the Georgian central government territory and only through one passage – Enguri Bridge. All other crossing points connecting the Gali District to the rest of Georgia are closed. Further, when passing through this way, Gali residents are subjected to document control by the de facto forces. Obtaining necessary documents from the de facto authorities in order to cross to the territory controlled by the central government of Georgia involves significant difficulties for Gali residents.

Instead of easing the severe consequences of the policies carried out by the Russian Federation in Gali District, the Georgian government imposed further obstacles for them to pass to the rest of Georgia. After overcoming the above described difficulties, created by the occupying forces, the Gali residents who managed to cross to the Georgian central government controlled territory had to spend several days in quarantine. The residents of the Gali District usually cross to the territory controlled by the central government of Georgia for the issues that need prompt care – receiving medical assistance, purchasing products and medicines, receiving pensions, using social services, etc. The application of quarantine made it useless to cross to the Georgian central government controlled territory for these purposes. The local residents from Gali resorted to the secret ways of crossing for this reason as well. The Georgian government revoked the regime of quarantine for the passers from Gali only after the Enguri tragedy.

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<sup>2</sup> Quarterly Update “Covid-19, Emergency Measures and Civic Freedoms in Georgia:

[https://ecnl.org/sites/default/files/2021-03/Formatted%20%20quarterly%20%20COVID%20March%2015%20%281%29\\_0.pdf](https://ecnl.org/sites/default/files/2021-03/Formatted%20%20quarterly%20%20COVID%20March%2015%20%281%29_0.pdf)

<sup>3</sup> Quarterly Update “Covid-19, Emergency Measures and Civic Freedoms in Georgia:

[https://ecnl.org/sites/default/files/2021-03/Formatted%20%20quarterly%20%20COVID%20March%2015%20%281%29\\_0.pdf](https://ecnl.org/sites/default/files/2021-03/Formatted%20%20quarterly%20%20COVID%20March%2015%20%281%29_0.pdf)

<sup>4</sup> Statement by HRC on the Tragic Death of Gali Residents on Enguri River:

<http://www.hrc.ge/168/eng/>

The possibilities of passing from Akhlagori District of South Ossetia inhabited by the Ethnic Georgians to the rest of Georgia are even more restricted. For a long time, the de facto authorities imposed general ban on the passing to the Georgian central government controlled territory, referring to the building of new police post by the Georgian authorities near the occupied territory in another area of South Ossetia as a basis for it. The de facto forces announced that the crossing points would be closed until the Georgian authorities dismantled the new police post erected in Chorchana. Crossing from Akhlagori was prohibited for everyone, even for gravely ill patients. According to the information of official bodies of Georgia, as a result of closing crossing points, 13 people died in Akhlagori since September 4, 2019 till April 15, 2020<sup>5</sup> as they could not get adequate medical help inside Akhlagori and passing to the Georgian central government territory to receive medical assistance was prohibited for them. Since January 2020, the occupying and de facto forces eased the restrictions and allowed passing in exceptional circumstances. However, since the outbreak of the coronavirus, the strict ban on freedom of movement was reintroduced again. As of now, only gravely ill patients are allowed to pass from Akhlagori, in case they receive approval from the local hospital. As a result of this situation, reportedly, ethnic Georgians are leaving the Akhlagori District,<sup>6</sup> as they are cut the main way for receiving adequate medical care and using social services – that of connecting to the rest of Georgia. The ongoing human rights violations in Akhlagori District bear the signs of the crimes against humanity, specifically, forcible transfer of the civilian population.

## Other Violations of Civic Freedoms

Except for looking into the effect of the pandemic on civic freedoms in Georgia, in the report we analyse other cases of violation of civic freedoms, which are not related to the pandemic. Two major cases were observed during the reporting period which reveal the lack of understanding of the essence of the freedom of expression and right to peaceful assembly and manifestation by the state authorities. These cases are analysed below.

## Protests in relation to Namakhvani Hydroelectric Power Plant

It has been almost half a year of ongoing protests in various parts of the country against the construction of the Namakhvani hydroelectric power plant in Western Georgia, the largest energy project in Georgia<sup>7</sup>. In April 2021, after 169 days of peaceful protests in tents in the village Namakhvani where the construction works are ongoing, the police removed the tents of the protesters under unsubstantiated grounds and prohibited them to protest anywhere else in the village. Afterwards, the police erected metal constructions/barriers at the entrance of the village and prohibited the protesters to enter the village. The state authorities provide no official explanation as to the reasons of the total closure of the village

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<sup>5</sup> Report by Human Rights Center "Human Rights Situation in Occupied regions of Georgia – Abkhazia and South Ossetia/Tskhinvali Region and Dividing Lines":

<http://hrdc.org/admin/editor/uploads/files/pdf/report2020/gavkofi%20xazi%20eng.pdf>

<sup>6</sup> Democracy Research Institute, Statement "Creeping Ethnic Cleansing of Akhlagori Continues":

<http://www.democracyresearch.org/eng/505>

<sup>7</sup> Statement by Human Rights Center on Disproportionate Dispersal of Peaceful Protest in Zhoneti:

<http://humanrights.ge/index.php?a=main&pid=20278&lang=eng>

for the protesters. The state actions gravely violate fundamental civil rights, such as freedom of expression, right to assembly and manifestation and freedom of movement.

On April 11, 2021, the police dismantled the tents of the protesters in the village Namakhvani. The dismantling of the tents followed the police activities in relation to the search of the person who disappeared in the village territory. In the beginning, the police told the protesters that the tents were hindering the search activities and therefore they had to be removed<sup>8</sup>. Later, the Ministry of Internal Affairs (MIA) disseminated official statement, according to which the water level of the Rioni River was above the signal level and given the current weather forecast, a significant increase in the water level and potential flooding of the river was expected<sup>9</sup>. As MIA stated, they decided to remove the tents from the danger zone “in order to avoid danger and protect the protesters' life and health”. This explanation raises serious questions regarding its credibility, considering that there was no evacuation announced for the local population living in those areas. If the likelihood of the river Rioni to flood was so high that the protesters' tents had to be removed from the surrounding areas, in order to protect their life and health, the state also had to protect the life and health of the local population living there and **should have warned and called on them to leave**. This never happened. The state intruded into the right of peaceful assembly and manifestation and dismantled the tents of protesters under ungrounded reasons.

The situation was further aggravated as the protesters were not given right to put up tents in any alternative place in the village Namakhvani and were prohibited to enter the village at all and hold protests there. The state actions violate international human rights principles in relation to freedom of assembly and manifestation. According to the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and Council of Europe's Venice Commission Guidelines on Freedom of Peaceful Assembly, “*people have the right in principle to choose the location or route of an assembly in publicly accessible places*”<sup>10</sup>. **Publicly accessible places mean places which are generally accessible to everyone, independently of possible private ownership**<sup>11</sup>. Although certain land in Namakhvani village may be under the ownership of the private company Enka which is implementing Namakhvani project, there are indeed certain places inside the village which are generally accessible to everyone. Therefore, closing the whole village for the protest has no legitimate grounds and contradicts the above described international human rights standards.

This is not an isolated case of violation of right to peaceful assembly and manifestation in relation to Namakhvani protests. In November 2020, police employed disproportionate force in order to disperse the peaceful protesters from the Village Zhoneti who blocked the road for few hours. The police physically pushed the protesters who were chained to one another off the road, causing their injuries. No prior warning was given and no attempt of negotiation was made. The government dismantled a peaceful protest, referring to the

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<sup>8</sup> Article “The Police Is Dismantling Tents of Participants of Protest Action in Namakhvani”:

<https://www.radiotavisupleba.ge/a/31198049.html>

<sup>9</sup> “Statement of Ministry of Internal Affairs”:

<https://police.ge/en/shinagan-saqmeta-saministros-gantskhadeba/14531>

<sup>10</sup> Paragraph 61, Guidelines on Freedom of Assembly - European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

<sup>11</sup> Paragraph 12, Guidelines on Freedom of Assembly - European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

general prohibition of blockage of the road, without looking into the individual circumstances of the case and weighing up the opposing public and private interests at stake. This is a classic example of blanket prohibition – when a general rule is routinely used, without consideration of specific circumstances of the individual case<sup>12</sup>.

## Protests in relation to Manganese Extracting Works in Chiatura Municipality

Local residents living in the village Shukruti in Chiatura resorted to extreme form of protest in May 2021. They sewed their lips and went on hunger strike, requesting adequate reaction from the state authorities regarding the damages made by the mining works of the LLC Georgian Manganese in the village. The protestors speak about serious damage inflicted by the mining works on their houses and land, such as major cracks in the walls of their houses and large holes in the land<sup>13</sup>. The mining works have also damaged the local infrastructure, such as roads and ecological environment, such as polluting water<sup>14</sup>. The local population held active protests in relation to this situation in the past as well, including the blocking of the entrances to the mines operating in the village and halting the mining works in September 2019. The company has expressed openness to assess the damage inflicted on the local population and consider possible subsequent compensation. However, the state has not yet responded to this situation. One of the main requests of the protesters is that the state must get involved as a guarantor that the obligations undertaken by the company will be met<sup>15</sup>. The protesters request that their damage be assessed by the National Bureau of Forensic Expertise and not by the company, which is implementing the construction works.

## Freedom of Expression and Right to Information under Threat

In March 2021, the nationwide TV Channel *TV Pirveli* aired audio recordings, which included the conversation between the acting Prime Minister, Irakli Gharibashvili, son of the founder of the ruling Party and former Prime Minister, Bera Ivanishvili and acting head of the state security service, Anzor Chubinidze. The participants of the conversation are discussing the fact of threatening of the high school student due to the unpleasant comments for Bera Ivanishvili. The conversation included signs of a criminal offense. As the journalist indicated in the reportage, the audio recordings were provided by a confidential source. The Office of Prosecutor of Georgia started investigation into the offense of unauthorized recording or wiretapping of private conversation, as well as its illegal usage or dissemination, envisaged by the Criminal Code of Georgia<sup>16</sup>. As for the investigation in

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<sup>12</sup> Statement by Human Rights Center on Disproportionate Dispersal of Peaceful Protest in Zhoneti:

<http://humanrights.ge/index.php?a=main&pid=20278&lang=eng>

<sup>13</sup> Article "Three Persons Sewed Their Lips in Chiatura – Protest against Georgian Manganese":

<https://netgazeti.ge/news/541172/>

<sup>14</sup> Statement by Social Justice Center (former EMC):

<https://socialjustice.org.ge/ka/products/emc-chiaturis-munitsipalitets-sofel-shukrutis-mosakhleobis-mier-gamartul-aktsias-ekhmianeba> (statement available only in Georgian)

<sup>15</sup> Article "Two People On Hunger Strike Needed Medical Assistance in Shukruti":

<https://www.radiotavisupleba.ge/a/31277155.html>

<sup>16</sup> Statement of Office of Prosecutor of Georgia:

<https://pog.gov.ge/en/news/si-1>



regards with the content of the conversation and alleged criminal offense displayed in it, it has not been opened as of now.

In March 2021, the Tbilisi City Court granted the prosecutor's request for the seizure of the materials related to the above described secret audio recordings from *TV Pirveli*, including the device containing the electronic information which carried the recordings of the private conversation aired in the reportage, as well as an envelope in which the device was placed. The order of the court underlined that in case of the resistance in terms of providing the information, "the proportionate measure of force" could be used. Thus, the order allowed investigative authorities to take information regarding the confidential source from the TV Company by force, in case of resistance.

The above described order contradicts the Georgian legislation, as well as international human rights principles in regards with the protection of the journalistic sources. According to the Criminal Procedural Code of Georgia, the journalist is not obliged to pass the document, item or any other object received in relation to his/her professional activity to the investigative authorities. The search and/or seizure in the mass media outlets is allowed only when there is a clear and convincing substantiation that this investigative activity will not violate the freedom of speech and expression.

According to the case-law of the European Court of Human Rights, "*the right of journalists not to disclose their sources is not a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but is part and parcel of the right to information, to be treated with the utmost caution. Without an effective protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital "public watchdog" role of the press may be undermined*"<sup>17</sup>.

According to the case law of ECtHR, any interference with the right to protection of journalistic sources (searches at journalists' workplace or home, seizure of journalistic material, disclosure orders etc.) must be backed up by effective legal procedural safeguards, such as a "review by an independent and impartial body to prevent unnecessary access to information capable of disclosing the sources' identity. Such a review is preventive in nature. *The review body has to be in a position to weigh up the potential risks and respective interests prior to any disclosure. Its decision should be governed by clear criteria, including as to whether less intrusive measures would suffice*"<sup>18</sup>.

In case of *Sanoma Uitgevers B.V. v. the Netherlands*, the Court underlines the necessity of adequate legal safeguards to enable an independent assessment as to whether the interest of the criminal investigation overrides the public interest in the protection of journalistic sources<sup>19</sup>.

In the given case, Tbilisi City Court provided no assessment as to the risks and dangers that the seizure of the case materials from *TV Pirveli* would have entailed for freedom of expression and right to information. No weighing up was provided as to the opposing

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<sup>17</sup> Council of Europe, Thematic Factsheet, June 2018, "The Protection of Journalistic Sources, A Cornerstone of the Freedom of the Press:

<https://rm.coe.int/factsheet-on-protection-of-sources-june2018-docx/16808b3dd9#:~:text=According%20to%20the%20case%2Dlaw.be%20treated%20with%20the%20utmost>

<sup>18</sup> *ibid*

<sup>19</sup> Paragraph 100, *Sanoma Uitgevers B.V. v. the Netherlands*:

<https://hudoc.echr.coe.int/eng#{f%22fulltext%22:%22Sanoma%20Uitgevers%20B.V.%20v.%20the%20Netherlands%22}%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22}%22itemid%22:%22001-100448%22}>

interests at stake – interest of criminal investigation on the one hand and public interest of protection of journalistic sources on the other hand. The Court gave preference to the interest of investigation as it granted the request of the seizure, however, it provided no substantiation as to why this interest overrode the opposing interest at stake. Such orders fall short of standards envisaged by the European Court of Human Rights, as described above. Therefore, this order must be assessed as posing threats to freedom of expression and right to information, fundamental civil liberties enshrined in the European Convention on Human Rights.

It should be noted that after passing the above described order, Tbilisi City Court disseminated statement in which it explained the reference to the use of “proportionate measure of force” in relation to the seizure of the material from *TV Pirveli* as a “standard form of seizure of the case materials”. The Court underlined that in other orders as well, passed in relation to the carrying out of the investigation activities, the Court is guided by the same provision of the Criminal Procedural Code, allowing the use of “proportionate measure of force” in case of resistance. The Court notes at the end of the statement that *“this proposition is a standard form which in numerous other similar instances is indicated in the analogous orders and there was no different rule used in this case”*<sup>20</sup>. The fact that the Court applied a standard measure when intervening in the freedom of speech and did not assess the individual circumstances of the case is exactly the problem. The Court had to look into and examine the specific features of this case and the stakes it raised for the vital public interests, such as freedom of speech and expression. Applying “standard forms” when these interests are endangered goes against the international human rights principles described above.

The Office of Prosecutor of Georgia also made another clarification and stated that according to the procedural law, the *TV Company Pirveli* and its journalists had right not to pass the item, document or any other object received in relation to his/her professional activity to the investigative authorities. However, the Office of Prosecutor retained hope that the *TV Company Pirveli* would cooperate with the investigative authorities and pass the secret audio recordings aired by it, in order to enable timely commissioning of the relevant expert examinations and carrying out all necessary investigative and procedural activities<sup>21</sup>.

## Amendments to the Code of Administrative Offences

On April 29, the Parliament adopted amendments to the Code of administrative offences, increasing sanctions for the offenses of the petty hooliganism and police disobedience, and prolonging terms of administrative detention – charges most frequently used against participants of assemblies and manifestations in Georgia<sup>22</sup>.

The Code of Administrative Offences of Georgia was adopted in 1984, during the Soviet period and has never gone through a comprehensive reform. The Code includes substantive flaws, such as lack of due process and fair trial guarantees and standard of proof required

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<sup>20</sup> The Statement of Tbilisi City Court:

<https://tcc.court.ge/ka/News/Tbilisis-saqalago-sasamarTlos-gancxadeba-1-2-3-4-5-6-7>

<sup>21</sup> The Statement of Office of Prosecutor of Georgia:

<https://pog.gov.ge/en/news/si-1>

<sup>22</sup> <https://csometer.info/updates/georgia-amendments-have-intimidating-impact-freedom-expression-and-protest-movements>

for holding the person responsible. This is especially problematic in relation to the above underlined offenses of petty hooliganism and police disobedience, considering that the protestors are arrested under these charges, while having no guarantees of fair trial and right to reasoned decision. Instead of developing these guarantees that would have prevented unsubstantiated arrests of the protestors, the state increased the sanctions. The amendments therefore are endangering the freedom of expression and right to peaceful assembly and manifestation.