

The background of the cover is a blue-tinted microscopic image showing several spherical virus particles with a textured surface, likely representing the COVID-19 virus. The particles are scattered across the frame, with some appearing more prominent than others. The overall tone is clinical and scientific.

HUMAN RIGHTS RESTRICTIONS IN GEORGIA
DURING THE COVID-19 PANDEMIC:
LESSONS LEARNED AND RECOMMENDATIONS

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HUMAN RIGHTS RESTRICTIONS IN GEORGIA DURING THE COVID-19 PANDEMIC: LESSONS LEARNED AND RECOMMENDATIONS



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TABLE OF CONTENTS

TABLE OF CONTENTS	4
SUMMARY OF RECOMMENDATIONS	6
1. PREFACE	8
2. INTRODUCTION	11
3. DEROGATIONS FROM HUMAN RIGHTS OBLIGATIONS DURING A STATE OF EMERGENCY: INTERNATIONAL STANDARDS.....	13
3.1. <i>An Emergency Threatening the Life of the Nation</i>	14
3.2. <i>A State’s Right to Take Measures Only to the Extent Strictly Required by the Exigencies of the Situation</i>	16
3.3. <i>“Provided that such measures are not inconsistent with the party’s other obligations under international law”</i>	20
3.4. <i>Non-derogable Rights under the ICCPR and the ECHR</i>	21
3.5. <i>Procedural Requirements for Derogations from Human Rights and Freedoms</i>	22
4. RESPONSE OF INTERNATIONAL AND REGIONAL INSTITUTIONS TO THE COVID-19 PANDEMIC.....	24
4.1. <i>United Nations</i>	25
4.2. <i>Council of Europe</i>	30
5. DEROGATIONS FROM HUMAN RIGHTS OBLIGATIONS DURING A STATE OF EMERGENCY: STATE PRACTICE.....	35
6. THE LEGISLATION OF GEORGIA GOVERNING RESTRICTIONS/SUSPENSION OF HUMAN RIGHTS IN STATE OF EMERGENCY SITUATION.....	42
6.1. <i>General Overview</i>	42
6.2. <i>The Rights that may be Restricted or Suspended During a State of Emergency under the Legislation of Georgia</i>	44
6.3. <i>Compliance of the Legislation of Georgia with ICCPR and ECHR Standards During a State of Emergency</i>	49
7. THE LEGISLATION OF GEORGIA GOVERNING RESTRICTIONS OF HUMAN RIGHTS IN AN ORDINARY (NON-STATE OF EMERGENCY) SITUATION ...	52
8. HUMAN RIGHTS RESTRICTIONS IN GEORGIA DURING THE COVID-19 PANDEMIC...55	
8.1. <i>Human Rights Restrictions before the State of Emergency (30 January - 21 March 2020)</i>	56
8.2. <i>Human Rights Restrictions During the State of Emergency (21 March - 22 May 2020)</i>	61
8.3. <i>Human Rights Restrictions after the State of Emergency (from 23 May 2020)</i>	80
9. THE COMPLIANCE OF HUMAN RIGHTS RESTRICTIONS DURING THE PANDEMIC IN GEORGIA WITH INTERNATIONAL AND EUROPEAN HUMAN RIGHTS STANDARDS ...	89
9.1. <i>The Right to Liberty and Security</i>	92
9.2. <i>The Freedom of Movement</i>	102
9.2.1. <i>The Equal Treatment of Foreigners and Citizens of Georgia</i>	109

9.3. <i>The Right to Private and Family Life</i>	111
9.4. <i>The Rights to Fair Administrative Proceedings, Access to Public Information, and Informational Self-determination</i>	115
9.5. <i>The Right to Property</i>	121
9.6. <i>The Freedom of Assembly</i>	122
9.6.1. <i>The Freedom of Religion</i>	128
9.7. <i>The Freedom of Labor, the Freedom of Trade Unions, the Right to Strike, and the Freedom of Enterprise</i>	131
9.7.1. <i>Special Procedures for Following Sanitary and Hygiene Rules</i>	131
9.7.2. <i>The Right to Education</i>	134
9.7.3. <i>Performance of Forced or Compulsory Labor</i>	140
9.8. <i>The Right to a Fair Trial</i>	140
10. WAS IT NECESSARY TO DECLARE A STATE OF EMERGENCY IN GEORGIA?	146
11. OBLIGATION OF A STATE TO PROVIDE THE GENERAL PUBLIC WITH INFORMATION ABOUT THE RISKS POSED BY COVID-19 AND JUSTIFICATIONS FOR HUMAN RIGHTS RESTRICTIONS	152
12. PROCEDURAL REQUIREMENTS FOR DEROGATIONS FROM HUMAN RIGHTS TREATIES: THE GEORGIAN EXPERIENCE IN THE CONTEXT OF THE COVID-19 PANDEMIC	157
13. SANCTIONS FOR VIOLATIONS OF HUMAN RIGHTS RESTRICTIONS.....	162
14. JUDICIAL CONTROL OVER DECISIONS OF THE GOVERNMENT	165
15. CONCLUSIONS AND RECOMMENDATIONS	168

SUMMARY OF RECOMMENDATIONS

The fight against the COVID-19 pandemic is an unprecedented challenge for the entire world, including Georgia. The latter's recent experience in combating the pandemic has exposed that its legislation governing such situations is not ready to respond adequately to the challenges caused by the pandemic. Although it was difficult to foresee that the COVID-19 pandemic would lead to such extensive restrictive measures being taken by the Government of Georgia, had a well-developed legislative framework been in place beforehand, it would have helped to avoid some of the problems to have arisen related to legality, lawfulness, and proportionality in practice.

In such an extraordinary situation, the Government of Georgia has quickly formed a corresponding legal basis in a short period of time, but has also taken practical steps in order to fight the COVID-19 pandemic effectively. At the same time, this research has revealed the necessity of taking a number of measures to effectively fight the pandemic in the future.

On the basis of this research, the following recommendations are issued:

- a) to develop an appropriate legal framework for the imposition of human rights restrictions not only in ordinary situations, but also in extraordinary situations such as a state of emergency in order to fight epidemic/pandemic threats adequately without excessively impinging on human rights and freedoms;
- b) to reflect in the Law on Civil Safety, the Law on Public Health and other relevant laws the situation regarding epidemics and pandemics, specifically laying down the object, content, and limits of restrictions on human rights (among others, the freedom of movement, the right to property, the freedom of assembly, and the right to education) that may be imposed during epidemics and pandemics, and defining the powers and the limits of the relevant authorities in restricting human rights in ordinary situations as well;
- c) to reflect in the Law on State of Emergency the situation with respect to epidemics and pandemics, specifically laying down the object, content, and limits of restrictions on human rights (among others, the freedom of movement, the right to property, the freedom of assembly, and the right to education) that may be imposed during epidemics and pandemics, and

defining the powers and the limits of the relevant authorities in restricting human rights during a state of emergency;

- d) to strictly adhere to the constitutional framework when restricting human rights within a state of emergency, namely with regard to the right to education (Article 27 of the Constitution) and procedural rights (Article 31 of the Constitution) that may not be restricted during a state of emergency;
- e) to establish efficient judicial and administrative mechanisms for appeal by which the lawfulness of placing a person in isolation is decided as soon as possible (preferably within 48 or 72 hours), but definitely before the period of isolation expires;
- f) to provide persons placed in isolation with relevant information on appealing against the decision taken against them;
- g) to lay down a longer, albeit not exhaustive, list of categories of persons who may be put in self-isolation instead of quarantine such as pregnant women and women who are breastfeeding, persons with underlying health conditions, and persons older than 60 years of age in the Law on Public Health;
- h) to improve further the practice of providing the public with relevant explanations and justifications for human rights restrictions imposed, including on the proportionality of the relevant measures taken;
- i) to withdraw the derogations made under Article 4 of the ICCPR and Article 15 of the ECHR;
- j) to establish sanctions for violations of the state of emergency regime under the administrative and criminal legislation of Georgia only;
- k) to bear in mind individual circumstances, seriousness of offences, and the damage caused while establishing sanctions under national law for the violation of state of emergency legislation and ordinary legislation; and
- l) to establish relevant guarantees for effective judicial control over interferences in human rights by the Government and to lay down shorter terms for the examination of appeals on the lawfulness and proportionality of the decisions of the Government.

1. PREFACE

The world is still confronting a pandemic and crisis of an unprecedented scale. After the first cases of the novel coronavirus (COVID-19) emerged in the Chinese city of Wuhan, COVID-19 to spread rapidly across the world. On 30 January 2020, the WHO declared an international public health emergency, while on 11 March 2020 the same organization declared a pandemic. Already by early March 2020 the COVID-19 pandemic had affected over 190 countries worldwide.¹ By the end of October 2020, there had been about 45 million confirmed cases of infection and almost 1.2 million deaths, with a rising trajectory at the time as well.² This devastating crisis has had a negative impact on public health systems, economies, and labor markets. Looking further ahead, the long-term impact of the pandemic is unpredictable.

In order to fight the pandemic, all countries have taken their own measures. Some countries have even declared a state of emergency. Some such measures entailed derogations from human rights obligations while others prescribed restrictions on human rights. The more drastic measures taken by some countries to combat the spread of the virus impinged on a number of human rights and freedoms. Indeed, some of these rights and freedoms have been put under serious threat.

Bearing in mind the pandemic's associated risks, Georgia, like many other countries, has imposed restrictions on human rights on the grounds that doing so enables it to fight more effectively against the COVID-19 pandemic.

The main purposes of this research are to assess the compliance of human rights restrictions imposed by the Government of Georgia in the course of fighting the pandemic with international and European human rights standards, including with respect to proportionality, and then to develop corresponding recommendations and potential restrictions in order to balance the meeting of emergency needs and the effective protection of human rights.

¹ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 5, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

² See the data of the WHO: <https://bit.ly/3jQFgYy> [visited: 12.10.20].

Although the main purpose of the research was to assess the human rights restrictions imposed during the pandemic by the Government of Georgia and to measure these against international and European human rights standards, it also covers to some extent the problems directly related to the protection of human rights, in particular the constitutionality of the restrictions and the legal obstacles hindering the efficient protection of human rights during the pandemic.

Although human rights restrictions are governed by several international and regional human rights treaties, this research focuses only on two treaties relevant to Georgia: the International Covenant on Civil and Political Rights (hereinafter, the ICCPR) adopted in the framework of the United Nations; and the European Convention on Human Rights (hereinafter, the European Convention or the ECHR) adopted in the framework of the Council of Europe.³

It is beyond the scope of this research to offer a detailed study of all restrictions imposed by the Government of Georgia during the COVID-19 pandemic. There have been a number of restrictions imposed during the pandemic, some of which have had a greater effect on rights and freedoms, such as the right to liberty and security, the freedom of movement, the freedom of assembly, and the right to education. Therefore, the focus has been placed only on those human rights to have been affected most significantly.⁴

In order to provide a comprehensive analysis of the measures taken by the Government of Georgia during the COVID-19 pandemic, the research encompasses the period from January 2020 (when the Government of Georgia took its first measures with respect to COVID-19) and mid-October 2020.⁵ The research analyzes not only the measures taken by the Government of Georgia during the state of emergency, but also the measures imposed in other periods of the pandemic. Thus, the research covers the human rights restrictions imposed in Georgia before, during, and after the state of emergency.

³ Although the focus of the research will be on the ICCPR and the ECHR, exceptionally, other human rights documents will be discussed too.

⁴ Although the restrictions on economic activities were also imposed during the pandemic in Georgia, it is beyond this research as it focuses on the rights and freedoms laid down in the ICCPR and the ECHR.

⁵ Only minor amendments were made in the research after the middle of October 2020.

Although the research focuses primarily on human rights restrictions imposed during the pandemic, its conclusions and recommendations may be of relevance, *mutatis mutandis*, to other extraordinary or state of emergency situations.

The methodology of the research includes: desk reviews and research; interviews with state actors and external observers; media monitoring; and comparative analysis of international and European human rights standards and state practice.

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2. INTRODUCTION

Before analyzing human rights restrictions under the ICCPR and the ECHR, it is important to distinguish between, on the one hand, *limitations (restrictions)* of human rights and *derogations* from human rights, on the other.⁶

The ICCPR and the ECHR provide for both limitations (restrictions) of human rights and derogations from human rights. While human rights limitations (restrictions) are usually imposed in ordinary situations, derogations from human rights are allowed in extraordinary situations of public emergency or war. The Human Rights Committee has pointed out: “[d]erogation from some Covenant obligations in emergency situations is clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant.”⁷

As far as limitations (restrictions) of human rights are concerned, as noted above, both human rights instruments provide for the conditions under which limitations of certain human rights can be permitted. Limitations of these rights may be justified by legitimate aims defined in an exhaustive manner in the relevant articles of these two human rights instruments. For example, the second paragraphs of a number of articles of the ECHR refer to legitimate aims which may justify restrictions of these rights (Article 8 - right to private and family life (e.g. protection of national security, public safety, health, and rights and freedoms of others), Article 9 – freedom of thought, conscience, and religion (e.g. protection of public safety, health, and rights and freedoms of others), Article 10 – freedom of expression (e.g. protection of national security, public safety, and health) and Article 11 – freedom of assembly and association (e.g. protection of national security or public safety, health, and rights and freedoms of others). Apart from this, limitations of human rights have to be “prescribed by law” and must be “necessary in a dem-

⁶ European Commission for Democracy Through Law, Rule of Law Checklist, Study No. 711/2013, CDL-AD(2016)00, 18 March 2016, p. 13-14. See: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e).

⁷ General Comment No.29, State of Emergency (Article 4), International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.11, 31 August, 2001, para. 4, <https://www.refworld.org/docid/453883fd1f.html>.

ocratic society.” If a right enshrined in the relevant instruments is formulated as an absolute one (for example, the prohibition of torture), then limitation (restriction) may not be applied.⁸

Along with limitations (restrictions) of human rights under specific articles, the ICCPR and the ECHR provide for derogations from human rights obligations under Article 4 of the ICCPR and Article 15 of the ECHR. These instruments stipulate the possibility of derogation only in exceptional circumstances such as public emergency or war. By derogation, states parties to the ICCPR and the ECHR are allowed to temporarily reduce the scope of their human rights obligations.⁹ No derogation is possible from absolute rights (as it is the case with the prohibition of limitation of absolute rights).

If in the past, Article 4 of the ICCPR and Article 15 of the ECHR were invoked by states parties to these instruments to derogate from human rights obligations in situations of, *inter alia*, civil disturbances, wars, and fighting against terrorism, the COVID-19 pandemic has posed new challenges in the form of striking a fair balance between effectively fighting against the pandemic to protect the health and lives of the population, and at the same time protecting human rights and freedoms.

⁸ Opinion on the Protection of Human Rights in Emergency Situations, adopted by the Venice Commission at its 66th Plenary Session (17-18 March, 2006), Opinion no. 359/2005, CDL-AD(2006)015, 4 April, 2006, paras. 2-3, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)015](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)015).

⁹ Turkey - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016, 12 December 2016 Opinion No. 865/2016 CDL-AD(2016)037, para. 33, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037).

3. DEROGATIONS FROM HUMAN RIGHTS OBLIGATIONS DURING A STATE OF EMERGENCY: INTERNATIONAL STANDARDS

Along with national legislation, the protection of human rights and freedoms during a state of emergency is governed by human rights treaties adopted at universal and regional levels. These treaties stipulate that in extraordinary situations of a state of emergency, states may derogate from their human rights obligations.

The starting point for the analysis of the right of states to derogate from their human rights obligations during a state of emergency is Article 4 of the ICCPR and Article 15 of the ECHR, which are expressed in similar terms.¹⁰

Article 4 of the ICCPR states the following:

- “1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further com-

¹⁰ The text of Article 15 of the ECHR is based on the draft article that later became Article 4 ICCPR. Guide on Article 15 of the European Convention on Human Rights: Derogation in Time of Emergency, 31 December 2019, European Court of Human Rights, p. 5. See: https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf.

munication shall be made, through the same intermediary, on the date on which it terminates such derogation.”

Under Article 15 of the European Convention:

- “1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures, which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”

In order to legitimately derogate from human rights obligations as enshrined in Article 4 of the ICCPR and Article 15 of the ECHR, the states have to satisfy three important requirements, namely:

- a) There must be an emergency that threatens the life of the nation;
- b) A state may take measures derogating from obligations to the extent strictly required by the exigencies of the situation; and
- c) Measures taken by a state must not be inconsistent with their other obligations under international law.¹¹

Each of these requirements is discussed below.

3.1. AN EMERGENCY THREATENING THE LIFE OF THE NATION

Both the ICCPR and the ECHR allow states parties to derogate from their human rights obligations in exceptional situations (*“in time of war or other pub-*

¹¹ In addition, according to article 4(1) of the ICCPR, one of the conditions for the justifiability of any derogation from the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

lic emergency threatening the life of the nation” - ICCPR; “war or other public emergency threatening the life of the nation” - ECHR). These exceptional circumstances are defined as situations of war or other public emergencies threatening the life of the nation.¹²

Therefore, only an exceptional situation (as distinguished from an ordinary situation) may justify a declaration of state of emergency and derogation from human rights obligations. The main effect of a declaration of a state of emergency is that the relevant state authorities may take certain measures, including derogation from their human rights obligations, which would not be acceptable under ordinary circumstances.¹³

As the Human Rights Committee in its General Comment on State of Emergency pointed out “[m]easures derogating from the provisions of the Covenant must be of an exceptional ... nature.” It further noted that “the situation must amount to a public emergency which threatens the life of the nation...”¹⁴

The European Court of Human Rights (ECtHR) in the case of *Lawless v. Ireland* gave the following definition of a public emergency threatening the life of the nation: “an exceptional situation or crisis of emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed.”¹⁵

In the case of *Denmark, Norway, Sweden and the Netherlands v. Greece* (the “Greek case”), the European Commission of Human Rights pointed out that in order to consider an exceptional situation as a “state of public emergency” in the sense of Article 15 of the European Convention, it should have the following characteristics: 1) it must be actual or imminent; 2) its effect must involve the whole nation; 3) the continuance of the organized life of the community must be threatened; 4) the crisis or danger must be exceptional,

¹² Turkey - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016, 12 December 2016 Opinion No. 865 / 2016 CDL-AD(2016)037, para. 36, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037).

¹³ *Ibid*, para. 59.

¹⁴ General Comment No.29, State of Emergency (Article 4), International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.11, 31 August, 2001, para. 2.

¹⁵ *Lawless v. Ireland* (no. 3), 1 July 1961, § 28, Series A no. 3.

in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate.¹⁶

Even though neither the ICCPR nor the ECHR make reference to whether an epidemic/pandemic can be considered as a type of public emergency, any extraordinary situation meeting the above threshold would be categorized as a public emergency.¹⁷

3.2. A STATE'S RIGHT TO TAKE MEASURES ONLY TO THE EXTENT STRICTLY REQUIRED BY THE EXIGENCIES OF THE SITUATION

Under Article 4 of the ICCPR and Article 15 of the ECHR, states parties may take measures derogating from their human rights obligations “only to the extent strictly required by the exigencies of the situation.”¹⁸ Measures taken by states derogating from their human rights obligations should bear in mind their predominant objective of the restoration of a state of normalcy where full respect for human rights can again be secured.¹⁹

The requirement that states may derogate from human rights obligations shall be made “only to the extent strictly required by the exigencies of the situation” is particularly important with regard to the proportionality and duration of measures taken.

The Human Rights Committee has underscored that “the obligation to limit any derogations to those strictly required by the exigencies of the situ-

¹⁶ Report of the Commission of 5 November 1969, Yearbook XII, 1969, para. 153, see: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-167795%22%7D>]. Opinion on the Protection of Human Rights in Emergency Situations, adopted by the Venice Commission at its 66th Plenary Session (17-18 March, 2006), Opinion no. 359/2005, CDL-AD(2006)015, 4 April, 2006, para. 4, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037).

¹⁷ Supra note 5, p. 493; J. Kosala, Rules on Emergency Powers in International Human Rights Treaties, in: Human Rights and the Functioning of the Democratic Institutions in Emergency Situations: Proceedings of the UniDem Seminar, 1997, p. 114.

¹⁸ General Comment No.29, State of Emergency (Article 4), International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.11, 31 August, 2001, para. 4, <https://www.refworld.org/docid/453883fd1f.html>.

¹⁹ Turkey - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016, 12 December 2016 Opinion No. 865 / 2016 CDL-AD(2016)037, para. 36, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037).

ation reflects the principle of proportionality...²⁰ Under this principle, measures taken by a state must be proportionate to the existing situation.²¹ The state may derogate solely from the rights that cannot be properly protected due to the existing situation. A state is prohibited from derogating from rights to an extent greater than is strictly required by the exigencies of the situation. If the situation does not require derogation from certain rights, but the state has still derogated from them, this measure will be considered disproportionate and, therefore, in violation of the relevant human rights obligations.

With regard to the principle of proportionality, the European Commission of Human Rights in the case *Ireland v. United Kingdom* declared that a state cannot invoke the existence of an emergency situation to justify the taking of any measures. The Commission pointed out that a state must specifically make a connection between the measure to be taken and the given situation.²²

The principle of proportionality requires that states parties “provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation.”²³ As the Human Rights Committee has pointed out: “[i]f States purport to invoke the right to derogate from the Covenant ... they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation.”²⁴

For example, if a state derogates from the freedom of movement, this measure should be justified by the risk of spreading coronavirus. There should be a direct link between the risk (spread of coronavirus) which the state tries to prevent and the measure taken (prohibition of the freedom of movement).

²⁰ General Comment No.29, State of Emergency (Article 4), International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.11, 31 August, 2001, para. 4, <https://www.refworld.org/docid/453883fd1f.html>.

²¹ F. Jacobs, R. White, *The European Convention on Human Rights*, 1996, p. 320.

²² Commission Report, 25 January 1976, Yearbook 19, p. 588.

²³ General Comment No.29, State of Emergency (Article 4), International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.11, 31 August, 2001, para. 5, <https://www.refworld.org/docid/453883fd1f.html>.

²⁴ *Ibid.*

Pertinently, without taking such a measure, there may increase the risk of spreading coronavirus with damaging consequences.

Even during a state of emergency, the severity of the situation may change to some extent. The principle of proportionality is thus equally applicable to these changing circumstances. The measures taken by a state that were “strictly required” at the beginning of a state of emergency situation, may turn out to be inadequate (too strict or too weak) if the situation changes.²⁵ Therefore, on the basis of the principle of proportionality, the given state should adapt its measures to the situation at the relevant time.

Another important requirement that states parties should meet relates to the duration of a public emergency and of the derogation. A public emergency is an exceptional situation, and is also temporary. Thus, when the situation eases and no longer constitutes a threat to the life of the nation, the derogations from human rights obligations must be terminated. As it has been noted above: “the most important characteristic of any emergency regime is its temporary character.”²⁶ Derogation may last for as long as it is “strictly required by the exigencies of the situation.”²⁷ Moreover, derogation from human rights obligations may not last longer than the state of emergency itself.²⁸

States parties to human rights treaties have a margin of discretion (appreciation) to assess whether a public emergency exists and derogations from hu-

²⁵ P. van Dijk, G. J. H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 1998, p. 737; F. Jacobs, *Emergency Situations: The Practice of the Organs of the European Convention on Human Rights*, in : *Human Rights and the Functioning of the Democratic Institutions in Emergency Situations: Proceedings of the Unidem Seminar*, 1997, p. 135.

²⁶ Turkey - Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy, adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017), CDL-AD(2017)021, Opinion No. 865/2016, 12 December, 2016, para. 78, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e).

²⁷ Opinion on the Protection of Human Rights in Emergency Situations, adopted by the Venice Commission at its 66th Plenary Session (17-18 March, 2006), Opinion no. 359/2005, CDL-AD(2006)015, 4 April, 2006, para. 5, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037).

²⁸ Opinion on the Draft Constitutional Law on “Protection of the Nation” of France adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), CDL-AD(2016)006, Opinion No. 838/2016, 14 March, 2016, para. 65, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)006-e).

man rights obligations are needed. The European Court in the case of *Ireland v. the United Kingdom* pointed out that “[i]t falls in the first place to each Contracting State, with its responsibility for “the life of [its] nation” to determine whether that life is threatened by a “public emergency” and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. In this matter Article 15 para. 1 (art. 15-1) leaves those authorities a wide margin of appreciation.”²⁹

In the same vein, the Venice Commission held: “It is for the national authorities to assess, in view of the seriousness of the situation and taking account of all the relevant factors, if and when there is a public emergency threatening the existence of the nation and if a state of emergency needs to be declared to combat it. Likewise, it is for the state authorities to decide on the nature and extent of the derogations needed to overcome the emergency.”³⁰

However, although states have a margin of discretion in this area, their powers are not unlimited and the ECtHR and the Human Rights Committee (HRC) exercise some supervision over them.³¹ As the ECtHR noted in the case of *Ireland v. the United Kingdom* it “is empowered to rule on whether the States have gone beyond the “extent strictly required by the exigencies” of the crisis.”³²

The case-law of the ECtHR illustrates that there are different factors it takes into consideration in determining whether a state has gone beyond what is strictly required by the exigencies of the situation,³³ including:

²⁹ Para. 207, 18 January 1978. See also *Brannigan and McBride v. United Kingdom*, Series A no. 258-B, 26 May, 1993, para. 43. See also recent case *Alparslan Altan v. Turkey*, 16 April 2019, para. 116.

³⁰ Turkey - Opinion on the Legal Framework governing Curfews, adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016), Opinion No. 842/2016, CDL-AD(2016)010, 13 June 2016, para. 67. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=C-DL-AD\(2016\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=C-DL-AD(2016)010-e).

³¹ *Ibid.*, *Brannigan and McBride v. United Kingdom*, Series A no. 258-B, 26 May, 1993, para. 43.

³² Para. 207, 18 January 1978.

³³ Paras. 20-21, Guide on Article 15 of the European Convention on Human Rights: Derogation in Time of Emergency, 31 December 2019, European Court of Human Rights. See: https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf.

a) whether ordinary laws would have been sufficient to meet the danger caused by the public emergency;³⁴ b) whether the measures are a genuine response to an emergency situation;³⁵ c) any attenuation in the measures imposed;³⁶ d) whether the measures were subject to safeguards;³⁷ e) the importance of the right at stake, and the broader purpose of judicial control over interferences with that right;³⁸ f) whether judicial control of the measures was practicable;³⁹ g) the proportionality of the measures and whether they involved any unjustifiable discrimination;⁴⁰ and h) whether the measure was “lawful” and had been effected “in accordance with a procedure prescribed by law.”⁴¹

3.3. “PROVIDED THAT SUCH MEASURES ARE NOT INCONSISTENT WITH THE PARTY’S OTHER OBLIGATIONS UNDER INTERNATIONAL LAW”

A third element provided for both in the ICCPR and the ECHR is that the measures taken by a state shall not be inconsistent with its other obligations under international law.

Of particular interest here is Article 4 of the ICCPR, which prohibits, in times of emergency, derogation from more rights than the European Convention. Specifically, besides the rights from which derogation is prohibited under both international treaties, the ICCPR also prohibits derogation from rights and freedoms such as: the freedom from imprisonment on the grounds of inability to fulfil a contractual obligation (Article 11); the recognition as a person before the law (Article 16); and the freedom of thought, conscience, and religion (Article 18).

³⁴ *Lawless v. Ireland* (no. 3), 1 July 1961, para. 36.

³⁵ *Alparslan Altan v. Turkey*, 16 April 2019, para. 118.

³⁶ *Ireland v. the United Kingdom*, 18 January 1978, para. 220.

³⁷ *Aksoy v. Turkey*, 18 December 1996, paras. 79-84.

³⁸ *Ibid.*, para. 76.

³⁹ *Ibid.*, para. 78.

⁴⁰ *A. and Others v. the United Kingdom*, Grand Chamber, 19 February, 2009, para. 190.

⁴¹ *Alparslan Altan v. Turkey*, 16 April 2019, para. 116.

Thus, the state parties to the ECHR that are at the same time parties to the ICCPR are not entitled to derogate from obligations under the above-mentioned three articles.⁴²

3.4. NON-DEROGABLE RIGHTS UNDER THE ICCPR AND THE ECHR

Although the ICCPR and the ECHR enshrine that in a time of public emergency a state party may take measures derogating from its human rights obligations, this right of a state is not absolute. Both instruments however stipulate that certain rights and freedoms shall not be derogated.

Namely, the ICCPR stipulates that despite the exigencies of the situation, the given state is prohibited from derogating from certain rights and freedoms. Under the ICCPR, the rights and freedoms that shall not be derogated from, even in a time of public emergency, are as follows:

- *Article 6* (right to life);
- *Article 7* (prohibition of torture);
- *Article 8, paragraphs 1 and 2* (prohibition of slavery and servitude);
- *Article 11* (prohibition of imprisonment on the grounds of inability to fulfill a contractual obligation);
- *Article 15* (prohibition of holding someone guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence);
- *Article 16* (recognition as a person before the law); and
- *Article 18* (freedom of thought, conscience, and religion).

Similar provisions are stipulated in the ECHR, prohibiting derogation from certain rights and freedoms in a time of public emergency. In particular, under the European Convention, rights and freedoms that shall not be derogated from even in a time of public emergency are as follows:

- *Article 2* (right to life), except with respect to deaths resulting from lawful acts of war;

⁴² Paras. 23-25, Guide on Article 15 of the European Convention on Human Rights: Derogation in Time of Emergency, 31 December 2019, European Court of Human Rights. See: https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf.

- *Article 3* (prohibition of torture or inhuman or degrading treatment or punishment);
- *Article 4, paragraph 1* (prohibition of slavery and servitude); and
- *Article 7* (prohibition of punishment without law).⁴³

As noted above, it is clear that the ICCPR prohibits derogation from more rights and freedoms than the ECHR.

The fact that these instruments stipulate that certain rights and freedoms may not be derogated from in a time of public emergency, means that they are so fundamental (for example, prohibition of torture) that the states are not free to derogate from them even when the situation is extremely difficult.

3.5. PROCEDURAL REQUIREMENTS FOR DEROGATIONS FROM HUMAN RIGHTS AND FREEDOMS

Both the ICCPR and the ECHR provide for the procedural requirements for derogations from relevant rights and freedoms.⁴⁴ States availing themselves of this right of derogation have to comply with the procedural conditions foreseen under Article 4(3) of the ICCPR and Article 15(3) of the ECHR.

Article 4(3) of the ICCPR requires that the relevant state shall “immediately” inform the UN Secretary General of the provisions from which it has derogated and of its reasons for doing so. Under the ICCPR, the state party also has an obligation to notify the UN Secretary General on the date on which the given state has terminated such derogation.

The ECHR imposes upon states a similar obligation, when a state avails itself of the right of derogation, to keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe

⁴³ Additional protocols to the ECHR also contain clauses prohibiting derogation from certain rights contained in them, namely, Protocol No. 6 (the abolition of the death penalty in time of peace and limiting the death penalty in time of war), Protocol No. 7 (ne bis in idem principle, as contained in Article 4 of that protocol) and Protocol No. 13 (the complete abolition of the death penalty). Para. 28, Guide on Article 15 of the European Convention on Human Rights: Derogation in Time of Emergency, 31 December 2019, European Court of Human Rights. See: https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf.

⁴⁴ General Comment No.29, State of Emergency (Article 4), International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.11, 31 August, 2001, para. 17.

once such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Neither the ICCPR nor the ECHR set a specific time-frame within which the Secretary General of the United Nations and the Secretary General of the Council of Europe have to be informed about the existence of a public emergency.

However, practice has clarified the time-frame for providing information about such a situation. In the *Lawless* case, the ECtHR has stated that the information on measures taken by a state shall be notified “without delay” to the Secretary General of the Council of Europe. Nevertheless, notification sent 12 days after the commencement of such measures was considered by the Court as consistent with the requirements of the Convention.⁴⁵ In the Greek case, a notification sent to the Secretary General of the Council of Europe four months after the commencement of measures was considered by the European Commission to be a failure to meet the time-frame requirement of the Convention.⁴⁶

⁴⁵ Judgement of 1 July 1961, A. 3, p. 62.

⁴⁶ Report of 5 December 1969, Yearbook XII, 1969, 43. see also *supra* note 1, p. 371.

4. RESPONSE OF INTERNATIONAL AND REGIONAL INSTITUTIONS TO THE COVID-19 PANDEMIC

With states confronting a pandemic and crisis of an unprecedented scale, international and regional institutions have been prompted to provide assistance to states in responding to the existing challenges with due consideration given to human rights.

This research will thus focus on the response of the United Nations and the Council of Europe to the pandemic.⁴⁷ Although this research limits itself only to these particular institutions, bearing in mind the enormous work carried out during the past few months within these institutions (leaving aside the work of other intergovernmental and non-governmental organizations), even the measures taken within these institutions may not be considered exhaustively.⁴⁸ The research will thus deal only with the most important steps taken by these institutions.⁴⁹

⁴⁷ Useful research was prepared by the OSCE on the COVID-19 pandemic. See: OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, 2020, https://www.osce.org/files/f/documents/e/c/457567_0.pdf.

⁴⁸ As International Justice Resource Center has pointed out “[t]he 56 United Nations special procedures, 10 U.N. human rights treaty bodies, three principal regional human rights systems (each with various components), and their respective “parent” intergovernmental organizations have collectively put out more than 150 statements on respecting human rights during the pandemic since late February.” See: [https://www.justsecurity.org/70170/mapping-the-proliferation-of-human-rights-bodies-guidance-on-covid-19-mitigation/.](https://www.justsecurity.org/70170/mapping-the-proliferation-of-human-rights-bodies-guidance-on-covid-19-mitigation/)

⁴⁹ Among other bodies and agencies within the United Nations, only the UN human rights treaty bodies adopted a number of guidance notes, advice documents, statements and press releases. See, Compilation of statements by human rights treaty bodies in the context of COVID-19, OHCHR, 27 July, 2020. https://www.ohchr.org/Documents/HRBodies/TB/COVID19/External_TB_statements_COVID19.pdf; UN Special Procedures mandate holders carried out an impressive work and formulated advice in connection with the emergency. As of 7 August 2020, they issued 92 press releases, 12 guidance and other tools and 17 reports to HRC/GA are planned or presented. See: <https://www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx>

4.1. UNITED NATIONS

The HRC⁵⁰ and the UN Office of the High Commissioner for Human Rights (OHCHR)⁵¹ have adopted important documents on derogations from the ICCPR aimed at clarifying the human rights obligations of states when responding to the COVID-19 crisis.⁵²

The need to clarify the obligations of states parties has been underscored in the statement of the HRC pointing out that while some states have notified the Secretary General of the United Nations of their intent to derogate from their human rights obligations, as required by Article 4 of the ICCPR, many states parties to the ICCPR have “resorted to emergency measures...without formally submitting a notification of derogation.”⁵³

The HRC has noted that in the face of the COVID-19 pandemic, states parties must take effective measures to protect the right to life and health of all individuals and recognized that such measures may, in certain circumstances, result in limitations (restrictions) in the enjoyment of individual rights guaranteed by the Covenant. However, the HRC reiterated that the states parties confronting the threat of widespread contagion may, on a temporary basis, resort to exceptional emergency powers and invoke their right of derogation from the Covenant under Article 4 provided that it is required to protect the life of the nation.

The OHCHR has noted that even if a state declares a public emergency, permitting it to derogate from certain rights, such derogation should be avoided when the situation can be adequately dealt with by establishing proportionate restrictions or limitations on these rights.⁵⁴

⁵⁰ The treaty body responsible for monitoring the implementation of the ICCPR.

⁵¹ The leading UN entity responsible for promoting and protecting human rights in all UN Member States.

⁵² <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf> Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*; UN Doc. CCPR/C/128/2, 30 April 2020, para. 1; *Emergency Measures and COVID-19: Guidance*, 27 April, 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

⁵³ <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf> Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*; UN Doc. CCPR/C/128/2, 30 April 2020, para. 1.

⁵⁴ *Emergency Measures and COVID-19: Guidance*, 27 April, 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

In line with what the HRC has noted, the OHCHR has underscored that “[e]ven without formally declaring states of emergency, States can adopt exceptional measures to protect public health that may restrict certain human rights. These restrictions must meet the requirements of legality, necessity and proportionality, and be non-discriminatory.”⁵⁵

The HRC in its guidance reminded the states of the requirements under Article 4 of the ICCPR when states decide to derogate from their obligations in a situation of emergency threatening the life of the nation based on Article 4 of the Covenant. On the basis of Article 4 of the ICCPR, the HRC reiterates six specific requirements that states must comply with if they want to derogate from their human rights obligations. Specifically, states must: 1) proclaim a state of emergency; 2) formally notify the UN Secretary General of their intent to derogate; 3) ensure that derogation measures meet strict tests of necessity and proportionality; 4) ensure that derogation measures do not interfere with other international human rights obligations; 5) guarantee that derogation measures are applied in a manner that is not discriminatory; and 6) uphold non-derogable rights.⁵⁶

The HRC further underscores that states have an obligation under Article 4 of the ICCPR to notify the UN Secretary General of “provisions derogated from and the reasons for the derogation,” including the text of the legislation adopted, and must again notify the UN Secretary General when the derogation period ends.⁵⁷ The obligation to notify the UN Secretary General is equally applicable when a state extends the derogation or terminates the derogation.⁵⁸

Along with providing the UN Secretary General with the relevant information about emergency measures taken, the OHCHR focuses on the need

⁵⁵ UN Doc. CCPR/C/128/2, 30 April 2020, para. 1; Emergency Measures and COVID-19: Guidance, 27 April, 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

⁵⁶ <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>, Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*; UN Doc. CCPR/C/128/2, 30 April 2020, para. 1. <https://ijrcenter.org/2020/04/29/ohchr-human-rights-committee-address-derogations-during-covid-19/>

⁵⁷ <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>, Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*; UN Doc. CCPR/C/128/2, 30 April 2020, para. 2(a).

⁵⁸ *Ibid.*

to “inform the affected population of the exact substantive, territorial and temporal scope of the application of the state of emergency and its related measures. Sufficient information about emergency legislation and measures should be communicated swiftly and in all official languages of the State, as well as in as many other languages widely spoken in the country as possible, and in an accessible manner so the public at large is aware of the new legal rules and can conduct themselves accordingly.”⁵⁹

The OHCHR’s guidance draws special attention to providing the population with relevant information. It notes that “[r]elevant information on the COVID-19 pandemic and response should reach all people, without exception. This requires making information available in readily understandable formats and languages, including indigenous languages and those of national, ethnic and religious minorities, and adapting information for people with specific needs, including the visually- and hearing-impaired, and reaching those with limited or no ability to read or with no internet access.”⁶⁰

In the context of COVID-19, the HRC pointed out that “[d]erogating measures may deviate from the obligations set out by the Covenant only to the extent strictly required by the exigencies of the public health situation. Their predominant objective must be the restoration of a state of normalcy, where full respect for the Covenant can again be secured.” The Committee also noted that “[d]erogations must, as far as possible, be limited in duration, geographical coverage and material scope, and any measures taken, including sanctions imposed in connection with them, must be proportional in nature.”⁶¹

The HRC has further noted that “[w]here possible, and in view of the need to protect the life and health of others, States parties should replace COVID-19-related measures that prohibit activities relevant to the enjoyment of rights under the Covenant with less restrictive measures that allow such activities to be conducted, while subjecting them as necessary to public health

⁵⁹ Emergency Measures and COVID-19: Guidance, 27 April, 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

⁶⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>.

⁶¹ <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf> Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*; UN Doc. CCPR/C/128/2, 30 April 2020, para. 2(b).

requirements, such as physical distancing.” A similar approach has been taken by the OHCHR that has pointed out that a state’s derogation legislation and measures must be the “least intrusive to achieve the stated public health goals” and provide safeguards that guarantee the return to normal laws when the given emergency situation is over.⁶²

The HRC has made an important statement about when states should not derogate from the Covenant’s obligations. Namely, the Committee noted that “States parties should not derogate from Covenant rights ... when they are able to attain their public health or other public policy objectives by invoking the possibility to restrict certain rights.”⁶³ For example, restrictions on the rights to freedom of movement (Article 12), freedom of expression (Article 19), and peaceful assembly (Article 21) should comply with the limitation clauses set out in those ICCPR articles, without relying on a derogation from those articles.⁶⁴

A similar view has been expressed by the OHCHR in its document. Namely, it pointed out that “[s]ome rights, such as freedom of movement, freedom of expression or freedom of peaceful assembly may be subject to restrictions for public health reasons, even in the absence of a state of emergency.”⁶⁵

In the same context, the UN Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression has reiterated this view, stating that “Article 19(3) already provides sufficient grounds for necessary and proportionate restrictions of article 19(2) rights, to protect public health.”⁶⁶ The Special Rapporteur further explained that “even in the context of a declared public emergency which threatens the life of

⁶² Emergency Measures and COVID-19: Guidance, 27 April, 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

⁶³ <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>, Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*; UN Doc. CCPR/C/128/2, 30 April 2020, para. 2(c).

⁶⁴ <https://ijrcenter.org/2020/04/29/ohchr-human-rights-committee-address-derogations-during-covid-19/>

⁶⁵ Emergency Measures and COVID-19: Guidance, 27 April, 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

⁶⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Disease pandemics and the freedom of opinion and expression, UN Doc. A/HRC/44/49, 23 April 2020, para. 17. <https://undocs.org/A/HRC/44/49>

the nation, measures derogating from a State party's obligations under the Covenant must be limited to the extent strictly required by the exigencies of the situation."⁶⁷

Both the UN Special Rapporteur and the HRC have noted that the right to freedom of expression is an important safeguard "for ensuring that States parties resorting to emergency powers in connection with the COVID-19 pandemic comply with their obligations under the Covenant."⁶⁸

As stated in Article 4 of the ICCPR, the HRC reiterated that derogation measures must not discriminate on any grounds or violate other state obligations under international law.⁶⁹

The HRC also stated that there are certain ICCPR provisions that states can never derogate from. These are: the right to life (Article 6); the prohibition of torture or cruel, inhuman, or degrading treatment (Article 7); the prohibition of slavery, slave trade, and servitude (Article 8); the right to not be imprisoned merely on the grounds of inability to fulfil a contractual obligation (Article 11); the right to not be found guilty of a criminal offence that did not constitute a criminal offence when it was committed (Article 15); the right to recognition as a person before the law (Article 16); and, the right to freedom of thought, conscience, and religion (Article 18).⁷⁰

The OHCHR reminded states that the enforcement of exceptional measures must also comply with the principle of proportionality and must not be "imposed in an arbitrary or discriminatory way."⁷¹ The OHCHR further noted that measures taken against the COVID-19 outbreak must not involve discrimination on any grounds.⁷²

⁶⁷ *Ibid.*

⁶⁸ See Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*, 24 April 2020, para. 2(f).

⁶⁹ <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>, Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*; UN Doc. CCPR/C/128/2, 30 April 2020, para. 2(d).

⁷⁰ <https://ijrcenter.org/2020/04/29/ohchr-human-rights-committee-address-derogations-during-covid-19/>

⁷¹ Emergency Measures and COVID-19: Guidance, 27 April, 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

⁷² *Ibid.*

Among other issues raised by the OHCHR in its guiding document, it focused on penalties for violations of extraordinary measures. The OHCHR noted that “[s]tates must enforce any exceptional measures humanely, respecting the principle of proportionality when imposing penalties for violations and ensure that penalties are not imposed in an arbitrary or discriminatory way. For example, persons with disabilities or victims of domestic violence, should not be subjected to penalties should they violate COVID-19 emergency measures to protect themselves.”⁷³ It also noted that “[f]ines should be commensurate to the seriousness of the offence committed. In assessing the appropriate sum of a fine, consideration should be given to the individual circumstances, including gender-specific impacts. This is particularly relevant for jobless people or those not generating income because of the emergency measures.”⁷⁴

4.2. COUNCIL OF EUROPE

A number of activities are carried out within the Council of Europe to help states in fighting the COVID-19 pandemic and to guide them to ensure full respect of relevant human rights standards.⁷⁵ This research aims to focus on only some of the activities conducted within the organization rather than making a full review of these activities.

On 7 April 2020, the Secretary General of the Council of Europe published an information document entitled “Respecting Democracy, Rule of Law and Human Rights in the Framework of the COVID-19 Sanitary Crisis: A Toolkit for Member States.”⁷⁶ The purpose of this document is “to provide governments with a toolkit for dealing with the present unprecedented and massive scale sanitary crisis in a way that respects the fundamental values of democracy, rule of law and human rights.”⁷⁷

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ See the section on the Council of Europe: <https://bit.ly/322J5na> [visited: 24.07.20].

⁷⁶ SG/Inf(2020)11. <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

⁷⁷ Secretary General of Council of Europe, Respecting Democracy, Rule of Law and Human Rights in the Framework of the COVID-19 Sanitary Crisis: A Toolkit for Member States, Information Document, SG/Inf(2020)11, 7 April, 2020, <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

As the ECHR provides a basis for derogations from human rights obligations and restrictions of human rights, the Secretary General of the Council of Europe reminds states of their obligations under the ECHR. The document points out that different measures may be taken in response to the COVID-19 threat, namely, “[w]hile some restrictive measures adopted by member states may be justified on the ground of the usual provisions of the European Convention on Human Rights (Convention) relating to the protection of health (see Article 5 paragraph 1e, paragraph 2 of Articles 8 to 11 of the Convention and Article 2 paragraph 3 of Protocol No. 4 to the Convention), measures of exceptional nature may require derogations from the states’ obligations under the Convention.”⁷⁸ Therefore, “[i]t is for each state to assess whether the measures it adopts warrant such a derogation, depending on the nature and extent of restrictions applied to the rights and freedoms protected by the Convention.”⁷⁹

The states parties to the ECHR should meet the formal requirements under Article 15, para. 3 of the Convention, namely the Secretary General of the Council of Europe must be fully informed of the measures taken, of the reasons therefor, and of the moment at which these measures cease to operate.⁸⁰

The document reiterates the peremptory rules under which “certain convention rights do not allow for any derogation: the right to life, except in the context of lawful acts of war (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3), the prohibition of slavery and servitude (Article 4§1) and the rule of “no punishment without law” (Article 7). There can be no derogation from abolishment of death pen-

⁷⁸ *Ibid*, p.2.

⁷⁹ *Ibid*, p.2. The European Court of Human Rights (ECtHR) has granted states a wide margin of appreciation in this field: “It falls in the first place to each Contracting State, with its responsibility for ‘the life of [its] nation’, to determine whether that life is threatened by a ‘public emergency’ and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. In this matter Article 15 § 1 (...) leaves those authorities a wide margin of appreciation.” (*Ireland v. the United Kingdom*, Judgment of 18.01.1978, Series A No 25, para. 207.)

⁸⁰ *Ibid*.

alty or the right not to be tried or punished twice (Protocols No. 6 and 13 as well as Article 4 of Protocol No. 7).⁸¹

The document also gives guidance to states on the substantive human rights standards. Although it is clear that the right to life and the prohibition of torture and inhuman or degrading treatment or punishment may not be derogated from in a time of public emergency, “[t]hey have consistently been held to require positive obligations to protect people in state care against deadly diseases and the ensuing suffering.”⁸² The positive obligation under the ECHR requires that states parties to ensure an adequate level of medical care for people deprived of their liberty.⁸³

In line with the ECtHR’s approach, the European Committee for the Prevention of Torture (CPT) issued a statement of principles relating to the treatment of persons deprived of their liberty in the context of the COVID-19 pandemic, noting that the need for an adequate level of medical care is applicable to various places, including police detention facilities, penitentiary institutions, immigration detention centres, psychiatric hospitals, and social care homes, as well as in various newly-established facilities or zones where persons are placed in quarantine in the context of the COVID-19 pandemic.

The Convention also imposes a duty on states to inform the population about the known risks which may endanger life and health, and about behaviors or measures to avoid them.⁸⁴

The document also covers the right to liberty and security (Article 5) and the right to a fair trial (Article 6) which may be affected during the COVID-19 pandemic.

Although Article 5.1(e) of the ECHR specifies that the prevention of the spreading of infectious diseases is one of the grounds on which a person may be deprived of his or her liberty, before resorting to such measures states are expected to have in place the relevant legal basis and consider whether mea-

⁸¹ *Ibid.*

⁸² *Ibid.*, p. 4.

⁸³ *Ibid.* See also *Khudobin v. Russia*, 26 October 2006.

⁸⁴ European Court of Human Rights, *Guerra and Others v. Italy*, judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 227, para. 58 ; *Öneryıldız v. Turkey [GC]*, no. 48939/99, 30 November 2004.

asures amounting to deprivation of liberty are strictly necessary compared to less stringent alternatives.⁸⁵

Although derogations under Article 15 of the ECHR may broaden the range of permissible measures under Articles 5 and 6 of the Convention and expand state authorities' margin of manoeuvre in complying with certain time limits and other ordinary procedural requirements, the fundamental prohibition of detention without legal basis or timely judicial review, and the need to provide detainees with essential procedural safeguards (such as access to a doctor, a lawyer, or next-of-kin) should in principle be observed in the present circumstances. States also remain under a general obligation to ensure that trials meet the fundamental requirement of fairness (such as equality of arms) and respect the presumption of innocence, and ensure that no steps are taken which would amount to an interference with the independence of judges or of courts.⁸⁶

The document also deals with the rights and freedoms guaranteed by Articles 8, 9, 10, and 11 of the Convention. The restrictions of these rights and freedoms may be applied in accordance with the second paragraphs of the relevant articles. Various types of restrictions may be put in place by states in the context of these rights, including the restriction of access to public places of worship, public gatherings, and wedding and funeral ceremonies.⁸⁷

The document points out that “[i]t is for the authorities to ensure that any such restriction, whether or not it is based on a derogation, is clearly established by law, in compliance with relevant constitutional guarantees and proportionate to the aim it pursues.”⁸⁸

In the context of privacy and data protection, the document focuses on the usefulness of applying new technologies to monitor and track pandemics and epidemics. However, this should be counter-balanced against the need to

⁸⁵ Secretary General of Council of Europe, *Respecting Democracy, Rule of Law and Human Rights in the Framework of the COVID-19 Sanitary Crisis: A Toolkit for Member States*, Information Document, SG/Inf(2020)11, 7 April, 2020, p. 6, <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Mehmet Hasan Altan v. Turkey*, 20 March 2018; *Lashmankin and Others v. Russia*, 7 February 2017, para. 434.

have respect for private life. In order to strike a balance between data protection standards and the public interest, including public health, the Data Protection Convention (Convention 108+)⁸⁹ allows for exceptions to ordinary data protection rules for a limited period of time and with appropriate safeguards (e.g. anonymization).⁹⁰

The document also covers the prohibition of discrimination, which is relevant in the context of the fight against the COVID-19 pandemic. As the document states: “[w]hen assessing whether derogating measures were “strictly required” under Article 15 of the Convention, the Court examines whether the measures discriminate unjustifiably between different categories of persons.”⁹¹

⁸⁹ Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data (CETS 223).

⁹⁰ Secretary General of Council of Europe, Respecting Democracy, Rule of Law and Human Rights in the Framework of the COVID-19 Sanitary Crisis: A Toolkit for Member States, Information Document, SG/Inf(2020)11, 7 April, 2020, p. 7, <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>. See also <https://rm.coe.int/covid19-joint-statement-28-april/16809e3fd7>.

⁹¹ *A. and Others v. the United Kingdom*, Grand Chamber, 19 February 2009, paras. 182-190.

5. DEROGATIONS FROM HUMAN RIGHTS OBLIGATIONS DURING A STATE OF EMERGENCY: STATE PRACTICE

Since the outbreak of the COVID-19 pandemic, a number of states parties to the ICCPR and the ECHR have declared a state of emergency and derogated from their human rights obligations. In accordance with Article 4(3) of the ICCPR and Article 15(3) of the ECHR, they have notified the Secretary General of the United Nations and the Secretary General of the Council of Europe, respectively, about their derogations from certain human rights obligations.

Ten out of 47 states parties to the ECHR, namely Albania, Armenia, Estonia, Georgia, Latvia, North Macedonia, Moldova, Romania, San Marino, and Serbia derogated from their obligations under the ECHR and its protocols.⁹²

a) Albania

The Government of Albania declared a state of natural disaster and notified the Secretary General of the Council of Europe on 31 March 2020 that it derogated from Articles 8 and 11 of the Convention, as well as Articles 1 and 2 of Protocol No. 1 to the ECHR and Article 2 of Protocol No. 4 to the ECHR. The measures adopted by the Government of Albania, among others, have included the gradual restriction of air, land, and sea traffic, the suspension of the education process, the establishment of quarantine procedures and self-isolation, the restriction of assembly, manifestation, and gathering, the restriction on the right of property, and a special regulation on public service delivery and administrative proceedings.⁹³

On 25 June 2020, the Government of Albania withdrew its derogations and notified the Secretary General of the Council of Europe accordingly.⁹⁴

⁹² Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic, status as of 13 October 2020. See: <https://bit.ly/36bZ5o7> [visited: 14.10.20].

⁹³ Note Verbale of the Permanent Representation of the Republic of Albania to the Council of Europe, 31 March 2020. See: <https://rm.coe.int/16809e0fe5> [visited: 12.09.20]. Later, Albania has extended its derogations till 23 June 2020. See: <https://rm.coe.int/16809e544b> [visited: 12.09.20].

⁹⁴ <https://rm.coe.int/16809ed2cc> [visited: 12.09.20].

b) Armenia

The Government of Armenia declared a state of emergency and notified the Secretary General of the Council of Europe on 19 March 2020 that the restrictions/prohibitions imposed, among others, were on the freedom of movement, the right to property, the right to assembly, and the freedom of expression.⁹⁵

On 16 September 2020, the Government of Armenia notified the Secretary General of the Council of Europe⁹⁶ that it had withdrawn its derogations.⁹⁶

c) Estonia

The Government of Estonia declared an emergency situation and notified the Secretary General of the Council of Europe on 20 March 2020 that it had derogated from Articles 5, 6, 8, and 11 of the ECHR, Articles 1 and 2 of Protocol No. 1 to the ECHR, and Article 2 of Protocol No. 4 to the ECHR.⁹⁷ The restrictions adopted by the Government of Estonia, among others, included switching to a remote form of studying at primary, basic, secondary, and vocational schools as well as higher education establishments and universities, the prohibition of gatherings, and restrictions on freedom of movement within the country and international travel. A two-week quarantine for everyone entering the country has also been imposed.

On 16 May 2020, the Government of Estonia notified the Secretary General of the Council of Europe that it had withdrawn its derogations.⁹⁸

d) Georgia

The Government of Georgia declared a state of emergency and notified the Secretary General of the Council of Europe on 21 March 2020 that it derogates from Articles 5, 8, and 11 of the ECHR, Articles 1 and 2 of Protocol No. 1 to the ECHR, and Article 2 of Protocol No. 4 to the ECHR.⁹⁹ The measures

⁹⁵ Note Verbale of the Permanent Representation of the Republic of Armenia to the Council of Europe, 19 March 2020. See: <https://rm.coe.int/16809cf885> [visited: 12.09.20]. The Government of Armenia extended the state of emergency five times (each time for a month).

⁹⁶ <https://rm.coe.int/16809f97a6> [visited: 12.09.20].

⁹⁷ Note Verbale of the Permanent Representation of Estonia to the Council of Europe, 20 March 2020. See: <https://rm.coe.int/16809cfa87> [visited: 12.09.20].

⁹⁸ Valid from 18 May 2020. See: <https://rm.coe.int/16809e6409> [visited: 12.09.20].

⁹⁹ Note Verbale of the Permanent Representation of Georgia to the Council of Europe, 21 March 2020. See: <https://rm.coe.int/16809cff20> [visited: 12.09.20]. The derogation of Georgia was later extend-

adopted by the Government of Georgia, among others, included establishing special rules of isolation and quarantine, the suspension of international passenger air, land, and sea traffic, special regulations on passenger transportation inside Georgia, the suspension of visits to penitentiary institutions, special regulations on public service delivery and administrative proceedings, the restriction of assembly, manifestation, and gathering, the establishment of rules and conditions for education other than those established by the relevant laws of Georgia, and restrictions on the right to property.

On 25 May 2020, the Government of Georgia notified the Secretary General of the Council of Europe that the state of emergency had expired, but the Parliament adopted “special emergency legislation.”¹⁰⁰ In the same notification, the Government of Georgia submitted that “Georgia extends the derogations from certain obligations under Articles 5, 6, 8, 11 of the Convention, Articles 1 and 2 of Protocol No. 1 to the Convention, Article 2 of Protocol No. 4 to the Convention until 15 July 2020.”

It is notable that although Georgia notified the Secretary General of the Council of Europe that the state of emergency had expired, the notification also outlined extensions of the derogations under the ECHR by adding Article 6 of the ECHR to the original list of articles from which Georgia had made derogations.

On 15 July 2020, the Government of Georgia issued another notification extending the derogations previously made until 1 January 2021.¹⁰¹

e) Latvia

The Government of Latvia declared an emergency situation and notified the Secretary General of the Council of Europe on 15 March 2020 that it derogates from Articles 8 and 11 of the ECHR, Article 2 of Protocol No. 1 to the ECHR, and Article 2 of Protocol No. 4 to the ECHR.¹⁰² Among the measures adopted by the Government of Latvia, in-class learning at schools was

ed for a month, till 22 May 2020.

¹⁰⁰ <https://rm.coe.int/16809e757c> [visited: 12.09.20].

¹⁰¹ <https://rm.coe.int/16809efedd> [visited: 12.09.20].

¹⁰² Note Verbale of the Permanent Representation of the Republic of Latvia to the Council of Europe, 15 March 2020. See: <https://rm.coe.int/16809ce9f2> [visited: 12.09.20].

suspended, access of third persons to hospitals, social care institutions, and places of detention was restricted, all public events, meetings, and gatherings were cancelled and prohibited, and movement of persons was restricted.

On 14 May 2020, the Government of Latvia informed the Secretary General of the Council of Europe that it had withdrawn its derogation from Article 11 of the ECHR, but the rest of its derogations remained in place.¹⁰³ Furthermore, on 2 June 2020, the Government of Latvia withdrew its derogation from Article 2 of Protocol No. 1 to the ECHR on the right to education, namely with regard to the necessity to continue the remote education process.¹⁰⁴

On 9 June 2020, the Government of Latvia withdrew its remaining derogations and notified the Secretary General of the Council of Europe accordingly.¹⁰⁵

f) North Macedonia

The Government of North Macedonia declared a state of emergency and notified the Secretary General of the Council of Europe on 1 April 2020 that it had derogated from Articles 8 and 11 of the ECHR, Article 2 of the Protocol No. 1 to the ECHR, and Article 2 of Protocol No. 4 to the ECHR.¹⁰⁶ The restrictions imposed by the Government of North Macedonia included, among others, the suspension of regular classroom instruction in primary, secondary, and vocational schools and universities (replaced by distance/home learning), the restriction of public assemblies, the cancellation of all public events, meetings, and gatherings, closing museums, theatres, and cinemas, the cancellation of performances and conferences, the suspension of international passenger air traffic, the establishment of special rules on isolation and state-organized quarantine for citizens entering the country's territory, a ban on (and special regime for) movement on the territory of the country, as well as additional movement restrictions.¹⁰⁷

¹⁰³ <https://rm.coe.int/16809e5d16> [visited: 12.09.20].

¹⁰⁴ <https://rm.coe.int/16809e9273> [visited: 12.09.20].

¹⁰⁵ <https://rm.coe.int/16809ea746> [visited: 12.09.20].

¹⁰⁶ Note Verbale of the Permanent Representation of the Republic of North Macedonia to the Council of Europe, 1 April 2020. See: <https://rm.coe.int/16809e1288> [visited: 12.09.20].

¹⁰⁷ *Ibid.*

After a few extensions of the state of emergency and derogations from certain articles of the ECHR, on 29 June 2020, the Government of North Macedonia issued a notification that it had withdrawn its derogations.¹⁰⁸

g) Moldova

The Government of Moldova declared a state of emergency and notified the Secretary General of the Council of Europe on 18 March 2020 that it had derogated from Article 11 of the Convention, Article 2 of the Protocol No. 1 to the ECHR, and Article 2 of Protocol No. 4 to the ECHR.¹⁰⁹ The notification stated that “the measures already in force or envisaged to be gradually implemented entail or may entail restrictions to fundamental rights and liberties, *inter alia*, by way of establishing a special regime of entry and exit from the country, a special regime of movement on the territory of the Republic of Moldova, suspending the activity of educational establishments, introducing the quarantine regime, prohibiting meetings, public demonstrations and other mass gatherings.”¹¹⁰

On 19 May 2020, the Government of Moldova issued a notification that it had withdrawn its derogations.¹¹¹

h) Romania

The Government of Romania declared a state of emergency and conveyed its notification to the Secretary General of the Council of Europe on 18 March 2020 that it had derogated from its obligations under the ECHR.¹¹² The measures adopted by the Government of Romania, among others, included restrictions on the freedom of movement, the right to private and family life, the right to education, freedom of assembly, and the right to property.¹¹³

After a number of notifications on the introduction of new restrictions during the state of emergency, on 15 May 2020, the Government of Romania

¹⁰⁸ <https://rm.coe.int/16809ee0a1> [visited: 12.09.20].

¹⁰⁹ Note Verbale of the Permanent Representation of the Republic of North Macedonia to the Council of Europe, 1 April 2020. See: <https://rm.coe.int/16809cf9a2> [visited: 12.09.20].

¹¹⁰ *Ibid.*

¹¹¹ <https://rm.coe.int/16809e6a12> [visited: 12.09.20].

¹¹² Note Verbale of the Permanent Representation of Romania to the Council of Europe, 1 April 2020. See: <https://rm.coe.int/16809cee30> [visited: 12.09.20].

¹¹³ The Decree of the President of Romania on the establishment of the state of emergency in the territory of Romania, annexed to the Note Verbale of the Permanent Representation of Romania to the Council of Europe. *Ibid.*

informed the Secretary General of the Council of Europe that the state of emergency had ceased to be in force and that its derogations from the obligations under the ECHR had been withdrawn.¹¹⁴

i) San Marino

The Government of San Marino declared a state of emergency and notified the Secretary General of the Council of Europe on 10 April 2020 that it had derogated from its obligations under the ECHR.¹¹⁵

On 1 July 2020, the Government of San Marino notified the Council of Europe Secretary General on the termination of the emergency and withdrew the derogation from its obligations under the ECHR.¹¹⁶

j) Serbia

The Government of Serbia declared a state of emergency and provided the relevant notification to the Secretary General of the Council of Europe on 6 April 2020 that it had derogated “from certain obligations provided for in the European Convention on Human Rights.”¹¹⁷

On 9 October 2020, the Government of Serbia notified the Secretary General of the Council of Europe that the state of emergency had been revoked.¹¹⁸

Regarding the derogations made by states parties to the ICCPR, at least 20 states (Argentina, Armenia, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Georgia, Guatemala, Kyrgyzstan, Latvia, Namibia, Palestine, Paraguay, Peru, Romania, Senegal, and Thailand) out of 173 states parties to the ICCPR notified the Secretary General of the United Na-

¹¹⁴ <https://rm.coe.int/16809e5ea6> [visited: 12.09.20].

¹¹⁵ Note Verbale of the Permanent Representation of San Marino to the Council of Europe, 10 April 2020. See: <https://rm.coe.int/16809e2770> [visited: 12.09.20]. The Government of San Marino neither specified the measures which it took, nor the rights and freedoms from which it derogated. However, in its further notification the Government of San Marino mentioned that it partially reduced the restrictive measures with regard to freedom of movement, assembly and association and allows, where possible, the holding of remote meetings and the possibility to conduct religious and funeral ceremonies. See the Note Verbale of 8 May 2020. See <https://rm.coe.int/16809e520a> [visited: 12.09.20].

¹¹⁶ <https://rm.coe.int/16809ef4e5> [visited: 12.09.20].

¹¹⁷ Note Verbale of the Ministry of Foreign Affairs of the Republic of Serbia, 6 April 2020. See: <https://rm.coe.int/16809e1d98> [visited: 12.09.20].

¹¹⁸ See <https://rm.coe.int/16809fee1a> [visited: 14.10.20].

tions that they had derogated from certain provisions of the ICCPR.¹¹⁹ According to these notifications, most states parties declared a state of emergency, while some states declared an emergency situation or a health emergency.

On the basis of a short overview of the derogations made by states parties to the ECHR and the ICCPR, at least two conclusions may be drawn. Notably, only a small proportion of states parties to the ECHR and the ICCPR have made derogations. Looking at the states parties to the ECHR, only 10 out of 47 states conveyed their notifications to the relevant international organizations about the derogations from their human rights obligations, while for states parties to the ICCPR this figure amounted to 20 out of 173 states.

Although the situation with the COVID-19 pandemic in many countries worldwide has been difficult, some have not declared a state of emergency in the sense of Article 4 of the ICCPR and Article 15 of the ECHR, but have instead dealt with the pandemic under ordinary legislation (and not state of emergency legislation), without the need to derogate from their international/European human rights obligations.

As far as the states parties to the ECHR are concerned, almost all states have lifted their state of emergency and withdrawn their derogations from their obligations under the ECHR. However, there is an exception here: despite the fact that the state of emergency had long expired in Georgia, the Government maintained (and even widened the scope of) derogations until 1 January 2021 (for details, see Chapter 12).

¹¹⁹ Depository Notifications by the Secretary General of the United Nations. See: <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=en> [visited: 21.10.20]. Also: <https://bit.ly/322xiFK> [visited: 21.10.20].

6. THE LEGISLATION OF GEORGIA GOVERNING RESTRICTIONS/SUSPENSION OF HUMAN RIGHTS IN STATE OF EMERGENCY SITUATION

6.1. GENERAL OVERVIEW

Like the national laws of other countries, the legislation of Georgia stipulates rules for declaring a state of emergency and taking extraordinary measures during a state of emergency, including restrictions on human rights. The Constitution of Georgia is particularly important in this regard as it not only defines the circumstances in which the State may declare a state of emergency, but it also determines the human rights and freedoms that may be restricted during a state of emergency.

In particular, para. 2 of Article 71 of the Constitution of Georgia, which lays down the circumstances and the procedures for declaring a state of emergency, provides for the following:

“In cases of mass unrest, the violation of the country’s territorial integrity, a military coup d’état, armed insurrection, a terrorist act, natural or technogenic disasters or epidemics, or any other situation in which state bodies lack the capacity to fulfil their constitutional duties normally, the President of Georgia shall, upon recommendation by the Prime Minister, declare a state of emergency across the entire territory of the country or in any part of it, and shall immediately present this decision to Parliament for approval. The decision shall enter into force upon the announcement of the state of emergency. Parliament approves the decision upon its assembly. If Parliament does not approve the decision following a vote, it shall become null and void. Emergency powers shall only apply to the territory for which the state of emergency is declared.”

Para. 4 of Article 71 of the Constitution of Georgia defines the following rights and freedoms that may be restricted or suspended during a state of emergency:

“During a state of emergency or martial law, the President of Georgia shall have the right to restrict by decree the rights listed in Ar-

Articles 13, 14, 15, 17, 18, 19, 21 and 26 of the Constitution across the entire territory of Georgia or in any part of it. During a state of emergency or martial law, the President of Georgia shall have the right to suspend by decree Articles 13(2)-(6), 14(2), 15(2), 17(3), (5) and (6), 18(2), 19(3) of the Constitution across the entire territory of Georgia or in any part of it. The President of Georgia shall immediately submit the decree provided for by this paragraph to Parliament for approval. A decree on the restriction of a right shall enter into force upon its issuance, whereas a decree on the suspension of a norm shall enter into force upon approval by Parliament...”

The President of Georgia has the right to *restrict* or *suspend* certain rights and freedoms. Yet, the Constitution does not cover preconditions for restricting or suspending certain rights and freedoms. Articles 13, 14, 15, 17, 18, 19, 21, and 26 of the Constitution may be restricted, while Articles 13(2)-(6), 14(2), 15(2), 17(3), (5) and (6), 18(2), 19(3) of the Constitution may be suspended. Although the rights and freedoms that may be restricted or suspended partly coincide, the suspension of the rights and freedoms may be imposed on only a limited number of human rights provisions. Pertinently, the rules on entry into force of the restriction and suspension of human rights differ. While the presidential decree prescribing restrictions enters into force upon its issuance, the decree on suspension of human rights and freedoms enters into force upon approval by the Parliament.

Article 71 of the Constitution of Georgia sets out several conditions for declaring a state of emergency when the State may restrict or suspend certain rights and freedoms. Under paragraph 2 of Article 71 of the Constitution, a public emergency shall be declared in Georgia in cases of mass unrest, the violation of the country’s territorial integrity, a military coup d’état, armed insurrection, a terrorist act, natural or technogenic disasters or epidemics, or any other situation in which state bodies lack the capacity to fulfil their constitutional duties as normal. The Constitution directly refers to epidemics as a basis for declaring a public emergency which leaves no doubt that epidemics or pandemics, like COVID-19, may be sufficient grounds on which to declare a state of emergency.

The basis for declaring a state of emergency is not exhaustive in the Constitution as it generally indicates “other cases when the state authorities are deprived of the opportunity of implementing their constitutional powers normally.”

The Constitution requires that the situation in which the State may declare a state of emergency should be extraordinary. In other words, the situation, epidemiological or otherwise, should be challenging to such an extent that the state authorities are unable to carry out their constitutional duties as normal and, therefore, the State needs to take extraordinary measures which necessitate the restriction/suspension of certain rights and freedoms.

Although the Constitution of Georgia defines a general framework for declaring a state of emergency and corresponding measures, including human rights restrictions, that may be imposed, the specific regulations are stipulated in the Law of Georgia on the State of Emergency.¹²⁰ This Law provides a more precise definition of a state of emergency mentioned in the Constitution. Specifically, Article 1(1) of the Law points out that a state of emergency is a “temporary measure” declared for the purpose of securing the safety of the citizens of Georgia during, *inter alia*, “outbreaks of epidemic or, in other cases when the state authorities are unable to exercise their constitutional powers in normal manner.”¹²¹ In addition, the Law defines that “the purpose of the declaration of a state of emergency is the normalization of the situation as soon as possible, and the restoration of law and order.”¹²²

6.2. THE RIGHTS THAT MAY BE RESTRICTED OR SUSPENDED DURING A STATE OF EMERGENCY UNDER THE LEGISLATION OF GEORGIA

Article 71(4) of the Constitution of Georgia defines the rights and freedoms that may be restricted or suspended during a state of emergency. Under this provision: “[d]uring a state of emergency, the President of Georgia shall have the right to restrict by decree the rights listed in Articles 13, 14, 15, 17, 18, 19,

¹²⁰ 17 October 1997. See: [<https://matsne.gov.ge/ka/document/view/33472?publication=7>].

¹²¹ *Ibid.*

¹²² *Ibid.*, Article 1(2).

21 and 26 of the Constitution across the entire territory of Georgia or in any part of it.”

The rights and freedoms which may be restricted during a state of emergency are as follows:

- Human liberty (Article 13);
- Freedom of movement (Article 14);
- Rights to personal and family privacy, personal space, and privacy of communication (Article 15);
- Rights to freedom of opinion, information, mass media, and the internet (Article 17);
- Rights to fair administrative proceedings, access to public information, informational self-determination, and compensation for damage inflicted by a public authority (Article 18);
- Right to property (Article 19);
- Freedom of assembly (Article 21); and
- Freedom of labor, freedom of trade unions, right to strike, and freedom of enterprise (Article 26).

The Law of Georgia on the State of Emergency enshrines the specific measures to carry out during the state of emergency. These measures include both practical actions that are not directly related to the restrictions on human rights (e.g. intensified guarding of important facilities) and actions that are aimed at restricting human rights. Under Article 4 of the Law, during a state of emergency, the State has the right to take the following measures to restrict human rights:

- temporarily resettle citizens from districts that are dangerous to live in, and at the same time provide them with necessary stationary or other temporary dwellings (paragraph “b”);
- introduce a special regime for the entrance or exit of citizens from the areas which are under a state of emergency (paragraph “c”);
- if necessary, restrict the right to free movement of citizens and stateless persons and prohibit them from leaving their places of residence or other places of accommodation without an appropriate permit, remove those who violate public order, or relocate those who are not inhabitants of a given place to their permanent

places of residence or outside the area under a state of emergency and at their own expense (paragraph “d”);

- temporarily seize firearms and ammunitions from citizens (paragraph “e”);
- prohibit the arrangement of gatherings, meetings, street processions, and demonstrations as well as entertainment, sport, and other mass actions in the areas under a state of emergency (paragraph “f”);
- use property and material means of natural and legal persons only in exchange for relevant compensation that shall be issued after the end of the state of emergency (paragraph “l”);
- prohibit the arrangement of strikes (paragraph “j”);
- engage citizens who are capable of work in the operation of enterprises, institutions or organizations in exchange for an average wage, and engage them in the elimination of the consequences of the state of emergency (paragraph “k”);
- introduce quarantines and carry out other mandatory sanitary and anti-epidemic measures (paragraph “m”);
- impose control over the media as provided for by legislation (paragraph “n”);
- introduce special rules for using communication facilities (paragraph “o”);
- restrict the movement of vehicles and search them (paragraph “p”);
- impose a curfew (paragraph “q”);
- prevent the establishment and activities of armed formations of citizens not stipulated by Georgian legislation (paragraph “r”); and
- check documents in places of mass public gatherings and, where there are relevant grounds, arrange personal searches of citizens, and search their personal property and vehicles (paragraph “s”).

In addition, Article 7 of the Law on the State of Emergency stipulates the possibility of the arrest of a person only during a time of curfew or when it is prohibited to be in the place of a mass gathering without an officially issued pass and their identity documents. Under the Law, for a violation of this rule, a person can be arrested and held until identified but for no longer than three days.

A number of conclusions may be drawn regarding the Law of Georgia on the State of Emergency:

- a) The declaration of a state of emergency gives rise to a number of complex legal, human rights, and management issues, and requires their detailed regulation. However, the Law of Georgia on the State of Emergency does not cover many of the details that may arise in such situations. It consists of only 16 Articles, of which one (Article 2) repeats the constitutional provisions and two are of a technical nature (Articles 15 and 16).

The Law does not address various types of state of emergency situations and fails to address the measures to be taken and the procedures to be followed by the Government in cases of a state of emergency caused by an epidemic/pandemic.

- b) The Law grants the supreme bodies of the executive authority of Georgia the power to impose restrictions on the freedom of movement, the freedom of assembly, and the right to strike or impose a curfew.¹²³ The power granted to the executive authorities conflicts with the constitutional provisions stating that only the President of Georgia may impose human rights restrictions in accordance with the established procedures.¹²⁴
- c) The purpose of the Law in question is not only to reflect the constitutional provisions, but also to provide for specific measures to be taken during a state of emergency and the mechanisms of their implementation.

The list of the measures defined in Article 4 of the Law is not open-ended as it does not refer to other measures that may be taken during a state of emergency. Therefore, it may be concluded that the Law on the State of Emergency defines the specific measures that stem from the constitutional provisions (Article 71(4)) restricting human rights during a state of emergency.¹²⁵ As the spe-

¹²³ *Ibid.*, Article 4.

¹²⁴ Legal and Political Content of State of Emergency – Analysis of the Existing Experience, Human Rights Education and Monitoring Center, 2020, 9. See: <https://bit.ly/2HToxq8> [visited: 28.09.20].

¹²⁵ As well as in the Law “On Martial Law” adopted on 31 October 1997.

cific measures provided in Article 4 of the Law are exhaustive, it is reasonable to believe that the Government of Georgia may not legitimately take measures to restrict human rights during a state of emergency, other than those directly referred to in Article 4 of the Law.

- d) The scope of the restrictions of certain rights is unclear. In particular, Article 4 of the Law provides for the introduction of special rules for using communication facilities (subparagraph “o”). It is not clear whether this measure includes interference in the private communication of persons or whether it has no direct effect on individuals’ private lives. There is thus a need to clarify the content of this provision of the Law.

The same is true with regard to the rights to fair administrative proceedings, access to public information, informational self-determination, and compensation for damage inflicted by a public authority (Article 18). As far as the restrictions of these rights are concerned, the Law on the State of Emergency only provides for the use of property and material means of natural and legal persons only in exchange for relevant compensation that shall be issued after the end of the state of emergency (subparagraph “l”). Since the Law refers exclusively to one element of the constitutional right (compensation for damage inflicted by a public authority), the only conclusion to be drawn here is that no restriction may be made to the rights to fair administrative proceedings, access to public information, and informational self-determination during a state of emergency. However, the recent experience of Georgia’s declaring of a state of emergency makes it clear that the position taken in the Law was not shared in practice as the restriction on Article 18 of the Constitution was imposed in a wider context than is provided for in the Law on the State of Emergency (see Chapter 9.4.).

- e) Some of the measures provided for in the Law are very limited in nature.¹²⁶ Importantly, the Law should lay down measures that give

¹²⁶ For example, as far as the restriction of the rights to freedom of opinion, information, mass media

the Government an opportunity to cope with different types of state of emergency, including pandemics. Outlining that the State should strike a balance between the need to effectively fight pandemics and the protection of public health, the Government should develop legislation allowing efficient measures to be taken to fight against the risks posed by a state of emergency.

As the Law of Georgia on the State of Emergency is plagued by a number of problems and lacks detailed regulations for state of emergency situations, it is recommended to develop legislation that will address in detail state of emergency situations, including a state of emergency caused by an epidemic/pandemic.

6.3. COMPLIANCE OF THE LEGISLATION OF GEORGIA WITH ICCPR AND ECHR STANDARDS DURING A STATE OF EMERGENCY

The rules established by the legislation of Georgia with regard to the declaration of a state of emergency mainly meet the requirements of the ICCPR and the ECHR. Specifically, both the legislation of Georgia and the ICCPR/ECHR consider a state of emergency to be an extraordinary situation that gives the right to a state to restrict human rights and freedoms.

However, unlike the ICCPR and the ECHR, which stipulate the rights from which derogation is prohibited, the legislation of Georgia provides for the rights which may be restricted or suspended during a state of emergency.

On the one hand, while the ICCPR and the ECHR enshrine that certain rights may not be derogated from even during a state of emergency (for example, prohibition of torture), all other rights may be derogated from. On the other hand, the Constitution of Georgia stipulates that, except certain rights (those protected under Articles 13, 14, 15, 17, 18, 19, 21, and 26), all the rights given in the Constitution may be restricted during a state of emergency

and the internet is concerned (Article 17 of the Constitution), the Law only provides for imposition of control over the media (paragraph “n”). This means that the State in time of state of emergency may only restrict a part of this right concerning mass media and therefore, no restriction may be made with regard to the other parts of this right - the freedom of opinion, freedom of information and freedom of the internet.

(those listed under Articles 9, 10, 11, 12, 16, 20, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, and 33). Despite the differences in methodological approach between the above-stated human rights treaties and the legislation of Georgia, they both stipulate that during a state of emergency the restrictions of most rights are permitted, but certain rights may not be restricted.

The comparative analysis between the legislation of Georgia and the human rights treaties undertaken above makes it clear that the legislation of Georgia does not permit restrictions of those rights which are prohibited under the two highlighted human rights treaties. In this regard, the legislation of Georgia meets the human rights standards set by the ICCPR and the ECHR.

The analysis also shows that the legislation of Georgia, in particular the Constitution, sets higher standards on human rights than these human rights treaties (the ICCPR and the ECHR). While these treaties permit derogation from certain human rights, the Constitution of Georgia prohibits the restriction of the majority of rights. For example, while both the ICCPR and the ECHR permit derogation from the freedom of association during a public emergency, the Constitution excludes freedom of association (Article 22) from the rights which may be restricted during a public emergency. Another example here relates to the right to education under the Protocol No. 1 to the ECHR. While this Protocol permits derogation from the right to education during a public emergency, under the Constitution of Georgia no restriction of the right to education (Article 27) may be imposed. The same is true with regard to the other rights established by the human rights treaties examined above and the Constitution of Georgia, namely the right to vote (Article 24) and procedural rights (Article 31).¹²⁷

As already pointed out, the principle of proportionality is essential when assessing whether measures taken by a state are strictly required by the exigencies of the situation. The State should not derogate from the rights unless necessitated by the exigencies of the situation. Apart from the practice of the Constitutional Court of Georgia, the necessity to comply with this principle may be inferred from Article 4 of the Law of Georgia on the State of Emergency that points out that the measures aiming at derogating from rights during

¹²⁷ Except its para. 9.

a state of emergency shall be taken in accordance with “specific circumstances.” The aim of referring to “specific circumstances” here is to limit measures to be taken by a state only to those that are necessary for the exigencies of the situation.

It may be argued that another reflection of the principle of proportionality is the control mechanism over declaring a state of emergency. In particular, a decree issued by the President of Georgia during a state of emergency restricting human rights shall be approved by the Parliament of Georgia, in accordance with Article 71(2) of the Constitution. The Parliament should have the right not only to approve a proposal submitted by the President on the restriction of any of the rights under the Constitution, but also to determine the proportionality of restriction of certain rights given the exigencies of the existing situation. If the Parliament considers that the restrictive measures proposed are not strictly required by the exigencies of the situation, it should have the right to only give approval for the restriction of those rights that it considers proportionate.

Nevertheless, it is recommended to include a clear reference to the principle of proportionality in the Law on the State of Emergency.

With respect to the procedural requirement of notifying the Secretaries General of the UN and the Council of Europe, the legislation of Georgia, namely the Law on the State of Emergency (Article 15) which requires that the Secretary General of the United Nations is “immediately” notified about the declaration and termination of a state of public emergency. The necessity to notify the Secretary General of the United Nations on the declaration of a state of war or emergency in Georgia derives from Article 4(3) of the ICCPR.

However, the Law does not expressly mention the need to notify the Secretary General of the Council of Europe about a declaration of a public emergency or the termination thereof. Therefore, it is recommended to amend the Law on the State of Emergency to include the obligation to notify the Secretary General of the Council of Europe about the declaration and termination of a state of emergency.

7. THE LEGISLATION OF GEORGIA GOVERNING RESTRICTIONS OF HUMAN RIGHTS IN AN ORDINARY (NON-STATE OF EMERGENCY) SITUATION

Like international and European treaties on human rights such as the ICCPR and the ECHR, the legislation of Georgia provides for the restriction of human rights both in a state of emergency situation and an ordinary (non-state of emergency) situation. Apart from human rights restrictions imposed under Article 71 of the Constitution of Georgia (i.e. in a state of emergency situation), the Constitution provides for human rights restrictions in an ordinary situation. For example, Article 14(2) of the Constitution (freedom of movement) states that “these rights may only be restricted in accordance with law, for ensuring national security or public safety, protecting health or administering justice, insofar as is necessary in a democratic society.”

Another pertinent example is the freedom of belief, religion, and conscience. Article 16(2) of the Constitution defines that “these rights may be restricted only in accordance with law for ensuring public safety, or for protecting health or the rights of others, insofar as is necessary in a democratic society.” Similarly, Article 15(1) of the Constitution (the right to private and family life) may be restricted “in accordance with the law for ensuring national security or public safety, or for protecting the rights of others, insofar as is necessary in a democratic society.” Article 17(5) of the Constitution (freedom of opinion) lays down the following: “the restriction of these rights may be allowed only in accordance with the law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others.”

The examples here refer to the legitimate aims that the relevant restrictions pursue such as protecting health, ensuring public safety, or protecting the rights of others. Therefore, the epidemic situation that threatens public health, public safety, or the rights of others may represent a basis for the restriction of constitutional rights. According to the Constitution of Georgia, the restrictions of human rights and freedoms imposed for the purpose of

protecting health, ensuring public safety, or protecting the rights of others should be specified in the legislation.

The specific legislation of Georgia governing public-health-related matters is the Law of Georgia on Public Health.¹²⁸ Article 12(1) of the Law states that “an epidemic and pandemic extremely dangerous for public health shall fall into the category of emergency situations, and shall be managed in accordance with the Law of Georgia on Civil Safety.” Therefore, the Law on Public Health, which covers a wide range of public-health-related questions, defines that an epidemic and pandemic which is extremely dangerous for public health shall be governed by the more specific Law on Public Safety.¹²⁹ In light of this provision, it is difficult to explain why the Government of Georgia based its initial series of measures against COVID-19 on the Law of Georgia on Public Health and not on the Law on Civil Safety.¹³⁰

Article 1(1) of the Law of Georgia on Civil Safety lays down that “this Law defines the organization of the National Civil Safety System in Georgia, the measures of public safety, the powers of executive authorities, bodies of the Autonomous Republics and municipalities of Georgia, and the state representative, the rights and duties of legal entities under public law and legal entities under private law in the field of public safety, as well as citizens of Georgia and other persons staying in the territory of Georgia.”

Based on the Law on Public Health, which directly refers to the Law on Civil Safety as a law governing the questions relating to an epidemic or pandemic which is extremely dangerous for public health, the latter neither deals in general with the situation of an epidemic or pandemic, nor does it provide for measures restricting human rights that the Georgian authorities may impose in the event of an epidemic or pandemic.¹³¹ Therefore, without specific

¹²⁸ 27 June 2007. See: <https://matsne.gov.ge/en/document/view/21784?publication=31>.

¹²⁹ 27 June 2018. See: <https://matsne.gov.ge/ka/document/view/4243170?publication=3>.

¹³⁰ Preamble of the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4821121?publication=0>. Legal and Political Content of State of Emergency – Analysis of the Existing Experience, Human Rights Education and Monitoring Center, 2020, 13. See: <https://bit.ly/2HToxq8> [visited: 28.09.20].

¹³¹ Legal and Political Content of State of Emergency – Analysis of the Existing Experience, Human Rights Education and Monitoring Center, 2020, 13, see: <https://bit.ly/2HToxq8> [visited: 28.09.20].

provisions on the human rights restrictions to be imposed in the event of an epidemic or pandemic which is extremely dangerous for public health, the Law on Civil Safety may not be considered as the legislation to which the specific articles of the Constitution of Georgia refer to.

Although under the Law on Public Health, the measures relating to an epidemic or a pandemic should be governed by the Law on Civil Safety, even if the Law on Public Health is to regulate questions relating to epidemics and pandemics, it should define with sufficient precision the relevant restrictive measures that may be imposed during an epidemic and/or pandemic and the powers of the relevant authorities, and covers a number of measures which were actually taken following the outbreak of the COVID-19 pandemic.

Although the Government of Georgia has done its utmost to create an appropriate legal framework within a short period of time by adopting relevant regulations, these restrictive measures imposed by the Government have to be provided for in the relevant laws (such as the Law of Georgia on Civil Safety) to meet the constitutional requirements under which these restrictions could be imposed in ordinary situations.

Therefore, it is recommended that the legislation of Georgia, and specifically the Law on Civil Safety, governs the emergency situation of epidemics and pandemics which are extremely dangerous for public health, lays down the object, content, and limits of the restriction of human rights that may be imposed during an emergency situation of an epidemic and/or a pandemic, and defines the powers and the limits of the relevant authorities in restricting human rights.

8. HUMAN RIGHTS RESTRICTIONS IN GEORGIA DURING THE COVID-19 PANDEMIC

It was clear from its outset that COVID-19 would be a threat to life and health all over the world, including Georgia. In Georgia, from 30 January 2020 to 30 October 2020, about 40,000 confirmed cases of COVID-19 infection were reported.¹³²

Prior to this, realizing the scale of the looming threat to the population, already on 28 January 2020 the Government of Georgia has set up the Inter-agency Coordination Council in order to ensure an effective and coordinated fight against COVID-19.¹³³ The Council was founded as the main decision-making platform on issues pertaining to the coronavirus. It consists of members of the Government, members of the Parliament, the Administration of the President of Georgia, and medical professionals.¹³⁴

A number of measures, including those affecting human rights, have been taken by Georgia during the pandemic. These measures may be divided into three time periods: a) the measures taken *before* the declaration of a state of emergency (30 January - 21 March 2020); b) the measures taken *during* the state of emergency (21 March - 22 May 2020); and c) the measures taken *after* the termination of the state of emergency (from 23 May 2020).

¹³² For an updated data, see: www.stopcov.ge [visited: 30.10.20].

¹³³ Even before, on 24 January 2020 the General Director of the National Center for Disease Control and Public Health adopted Order (N06-9/o) on the Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus.

¹³⁴ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 6, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

8.1. HUMAN RIGHTS RESTRICTIONS BEFORE THE STATE OF EMERGENCY (30 JANUARY - 21 MARCH 2020)

About a month before the first case of COVID-19 infection was reported in Georgia (26 February 2020), a series of measures were taken by the Government to prevent the coronavirus from being brought in from other countries and being spread within the country.¹³⁵ In particular, on 28 January 2020, the Government of Georgia adopted the Decree “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease.”¹³⁶ As stated in the Emergency Response Plan, its purpose was and still is to ensure that the State is prepared to respond to the coronavirus in terms of both preventive measures and necessary measures to respond to the virus where it is detected.¹³⁷

Although a number of measures, including crisis management ones, were taken by the Government of Georgia on the basis of the Emergency Response Plan,¹³⁸ the measures affecting human rights have been mainly as follows:

1. The compulsory isolation of persons returning from high-risk countries (28 January 2020)¹³⁹ which was later applicable to all persons from all other countries (18 March 2020);¹⁴⁰

¹³⁵ *Ibid.*

¹³⁶ See: <https://matsne.gov.ge/ka/document/view/4821121?publication=45>. The Decree was followed by a number of amendments.

¹³⁷ *Ibid.*, Article 2(1) of the Plan.

¹³⁸ Video recording of the Georgian Prime-Minister’s press-conference of 21 March 2020 about the need to declare state of emergency. The Prime Minister underscores a series of measures aimed at fighting COVID-19. See: http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75723 [visited: 03.09.20].

¹³⁹ Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4821121?publication=0>. Unlike the original Decree that is general on isolation, the amendment to the Decree adopted on 12 March 2020 is more specific in defining the rules applicable to compulsory 14-day (now 12) isolation. Decree N514 of 12 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4821519?publication=0>.

¹⁴⁰ Decree N540 of 16 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Pos-

2. The suspension of direct international flights to China (28 January 2020),¹⁴¹ Iran (23 February 2020),¹⁴² Italy (6 March),¹⁴³ France (19 March 2020);¹⁴⁴
3. The suspension of teaching in educational institutions (4 March 2020);¹⁴⁵
4. The introduction of special conditions in penitentiary institutions (5 March 2020);¹⁴⁶
5. The suspension of air and road traffic with neighboring countries (14 March 2020);¹⁴⁷

sible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4824306?publication=0>.

¹⁴¹ Para. 7 of the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/en/document/view/4821121?publication=34>.

¹⁴² Para. 7 of the Decree N377 of 26 February 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4821168?publication=0>.

¹⁴³ Decree N492 of 9 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4821212?publication=0>.

¹⁴⁴ Decree N576 of 20 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4830234?publication=0>.

¹⁴⁵ Decree No. 434 of 2 March 2020 of the Government of Georgia “On Measures to Prevent the Spread of the Novel Coronavirus in the Country”. Under the Decree the education process was suspended from 4 March to 16 March 2020. See: http://gov.ge/files/545_75412_143943_434.pdf. Amendment to the Decree No. 434 prolonged suspension of the education process till 1 April 2020. See the Decree on Amendment No.501 of 11 March 2020 to the Decree No. 434 of 2 March 2020 of the Government of Georgia “On Measures to Prevent the Spread of the Novel Coronavirus in the Country”. See: http://gov.ge/files/545_75507_389527_501.pdf.

¹⁴⁶ See Order No.4109 of the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia, 5 March 2020.

¹⁴⁷ Namely, with Armenia, Azerbaijan and Russia. Decree N540 of 16 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4824306?publication=0>. A number of crisis-management measures are taken by Georgia before declaring the state of emergency, including approval of an Emergency Re-

6. The suspension of transportation of passengers by M2 category buses (fixed route taxis) within the territories of municipalities (18 March 2020);¹⁴⁸ and

7. The suspension of all direct international flights (21 March 2020).¹⁴⁹

Under the report of the Government of Georgia on the steps taken against COVID-19, the measures carried out in this period (i.e. before the declaring of a state of emergency): “the government was mainly limited to recommendatory measures. Information campaigns that aimed to provide the population with information on the threats pertaining to the virus, the implementation of preventive measures, and the importance of following recommendations were actively utilized during this period.”¹⁵⁰ Among other examples of recommendations issued by the Interagency Coordination Council was the cancellation of activities associated with populous gatherings, to abstain from travelling to high-risk countries as defined by the WHO,¹⁵¹ to postpone

sponse Plan concerning the measures aimed at preventing the possible spread of the novel coronavirus and ensuring a prompt response to cases of infection (28 January, 2020), see <https://matsne.gov.ge/document/view/4821121?publication=31>. Other measures taken by the Government are creation of a special information website (www.StopCov.ge) where all available information relating to the coronavirus is accessible and the preparation of quarantine zones for the placement of persons suspected of being infected, or carrying a high risk of infection with the coronavirus. See the Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 8, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

¹⁴⁸ Decree No.546 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease, 17 March 2020. See: <https://matsne.gov.ge/ka/document/view/4825724?publication=0>. See also video recording of the Georgian Prime-Minister’s press-conference of 17 March 2020. See http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75614 [visited: 03.09.20].

¹⁴⁹ It is notable that the decision to suspend all international flights was adopted by the Government on Georgia on 20 March 2020 i.e., before the state of emergency was declared on 21 March 2020. See the Decree N577 of 20 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4830251?publication=0>.

¹⁵⁰ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 8-9, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

¹⁵¹ Video recording of the meeting of 1 March 2020 of the Interagency Coordination Council. See: http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75370 [visited: 03.09.20]. See also the page of the Government of Georgia: <https://www.facebook.com/watch/?v=1343913005806775> [visited: 03.09.20].

cultural and sports events in enclosed areas,¹⁵² to abstain from working and study visits abroad¹⁵³, and to stay in self-isolation (for persons aged 70 and over).¹⁵⁴

Although the difference between recommended and compulsory measures is obvious, in practice the status of “recommendations” issued by the Government was not always clear.¹⁵⁵ Although the report of the Government pointed out that a number of recommendations were made to prevent the spread of the coronavirus, the Prime Minister of Georgia at a press conference underscored that the recommendations were actually compulsory. In particular, the Prime Minister pointed out the following: “what matters the most ... it is critically important that everyone, the citizens and companies, as well as legal persons, without an exception, realize that the recommendations issued by the Government are compulsory for implementation.”¹⁵⁶

However, at the press conference at which the state of emergency was initiated, the Prime Minister of Georgia, when talking about the list of proposed measures to be taken by the President of Georgia during the state of emergency, stated that: “this is a list that we convey to the President of Georgia. As you are aware and it is clear that some of the actions are already introduced, but it has to be taken into consideration that these actions and these requirements on the part of the Government had only a recommendatory

¹⁵² Video recording of the meeting of 2 March 2020 of the Interagency Coordination Council. See: http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75383 [visited: 03.09.20]. See also the page of the Government of Georgia: <https://www.facebook.com/watch/?v=2513179485599277> [visited: 03.09.20].

¹⁵³ Video recording of the meeting of 9 March 2020 of the Interagency Coordination Council. http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75468 [visited: 03.09.20].

¹⁵⁴ Video recording of the Georgian Prime-Minister’s press-conference of 17 March 2020. See http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75614 [visited: 03.09.20].

¹⁵⁵ Legal and Political Content of State of Emergency – Analysis of the Existing Experience, Human Rights Education and Monitoring Center, 2020, 12. See: <https://bit.ly/2HToxq8> [visited: 28.09.20].

¹⁵⁶ Video recording of the Georgian Prime-Minister’s press-conference of 17 March 2020, from 6:06 minute. See http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75614 [visited: 03.09.20]. See the part of the statement of the Prime Minister in the Georgian language: „და რაც მთავარია ... კრიტიკულად მნიშვნელოვანია, უკლებლივ ყველას გვესმოდეს, როგორც მოქალაქეებს, ასევე კომპანიებს, ასევე ყველა იურიდიულ პირს, რომ რეკომენდაციები, რომელიც გაიცემა მთავრობის მიერ, არის სავალდებულო შესასრულებლად.“

character. ... After the President agrees to our decision and it is approved by the Parliament, all these actions will be of compulsory character.”¹⁵⁷

On the basis of the analysis of the measures taken by the Government of Georgia before the declaration of a state of emergency, the following conclusions may be made: although it is true that some of the measures taken by the Government such as those calling upon certain action to be taken (cancelling activities associated with populous gatherings, as well as postponing cultural and sports events in enclosed areas) or abstaining from taking certain action (i.e. to abstain from travelling to high-risk countries as defined by the WHO, to stay in self-isolation for persons aged 70 and over) were recommendations, not all the measures affecting human rights were of this nature. Specifically, some of the measures carried out in this period (for example the isolation of persons returning from other countries, the suspension of education process, the suspension of international flights or road transportation, and the introduction of special conditions in penitentiary institutions) were of a compulsory nature.

Regarding the legal basis for imposing human rights restrictions in ordinary situations, which was the case in Georgia before declaring a state of emergency (i.e., before 21 March 2020),¹⁵⁸ such restrictions on human rights were provided for by the Constitution either expressly or impliedly. Certain articles of the Constitution of Georgia stipulate that restrictions of human rights may be imposed under certain conditions, among others “in accordance with law.” Therefore, the legislation should set forth the conditions under which these restrictions could be imposed. The articles of the Constitution on the freedom of movement and the right to private and family life may serve as

¹⁵⁷ Video recording of the Georgian Prime-Minister’s press-conference of 21 March 2020 about the need to declared state of emergency. The Prime Minister underscores a series of measures aimed at fighting COVID-19, from 5:15 minute. See: http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75723 [visited: 03.09.20]. See the part of the statement of the Prime Minister in the Georgian language: „ეს გახლავთ ის ჩამონათვალი, რომლითაც ჩვენ მივმართავთ საქართველოს პრეზიდენტს. მოგესვენებათ და ამკარად ჩანს, რომ ზოგიერთი ეს ქმედება უკვე შემოდებულია, მაგრამ გასათვალისწინებელია, რომ ამ ქმედებებს და ამ მოთხოვნებს მთავრობის მხრიდან ჰქონდა მხოლოდ სარეკომენდაციო ხასიათი. ... მას შემდგომ, რაც პრეზიდენტი დაეთანხმება ჩვენ გადაწყვეტილებას და ის იქნება დამტკიცებული პარლამენტში, ყველა ამ ქმედებას მიეცემა სავალდებულო ხასიათი.“

¹⁵⁸ As well as after the state of emergency is expired in Georgia.

pertinent examples here.¹⁵⁹ Under Article 14(2) of the Constitution of Georgia, the freedom of movement “may only be restricted in accordance with law, for ensuring national security or public safety, protecting health or administering justice, insofar as is necessary in a democratic society.” Similarly, under Article 15(1), in reference to the right to private and family life, it states “this right may be restricted only in accordance with law for ensuring national security or public safety, or for protecting the rights of others, insofar as is necessary in a democratic society.”

Other articles of the Constitution of Georgia do not directly state that restrictions should be in accordance with law, but they may be imposed on the basis of relevant law. The restrictions on human rights imposed on the basis of law should serve a legitimate aim and they should be proportionate to the aim pursued.

Since the restrictions on human rights should be imposed by law, they may not be imposed on the basis of the regulations adopted by the Government of Georgia unless they stem directly from the law concerned. Whether these requirements were satisfied in Georgia during the pandemic will be discussed in Chapter 9.

8.2. HUMAN RIGHTS RESTRICTIONS DURING THE STATE OF EMERGENCY (21 MARCH - 22 MAY 2020)

In responding to the question of a journalist as to the reasons for not declaring a state of emergency in Georgia, the Prime Minister of Georgia at a press conference on 17 March 2020 stated that at this stage there was no need to declare a state of emergency.¹⁶⁰ Specifically, the Prime Minister noted the following:

“State of emergency shall not grant the Government such instruments which we do not possess. Therefore, we say that at this stage we have all the instruments necessary in order to respond to this challenge step-by-step, gradually and we will continue. At certain moment declaration of public emergency may become necessary. We will take even this de-

¹⁵⁹ See <https://matsne.gov.ge/ka/document/view/30346?publication=36>.

¹⁶⁰ The statement of the Prime-Minister of Georgia. See: <https://www.radiotavisupleba.ge/a/30487865.html> [visited: 09.09.20].

cision. We say one thing, clearly, that according to today's data, based on the objective reality and the assessments we have, today there is no need to declare a state of emergency. If there is such a necessity tomorrow, we will take this decision. This is a process. This is a management. This is a process of management how to fight the virus. Is not it?! Therefore, we say that all the instruments which we need for effective fighting, are in our possession. When these instruments are exhausted and are necessary to declare public emergency, we will take this step too.”¹⁶¹

However, the position of the Government of Georgia soon changed. It took a view that the recommendatory measures carried out to fight the spread of the coronavirus and the high risk of the uncontrolled internal transmission of the coronavirus made it clear that the situation could no longer be managed by applying instruments designed for an ordinary situation. This was underscored in a report published by the Government:

“The Government of Georgia initially chose the path of mainly issuing recommendations and conducting information campaigns. The imposition of strict mandatory restrictions was avoided as much as possible. ... Accordingly, during almost one month after the first reported case of the novel coronavirus (26 February to 21 March), the government conducted active information campaigns and issued recommendations, which included the “stay at home” universal recommendation policy and social distancing; the observance of personal and public sanitary-hygienic norms; the transitioning of the employees of public and private institu-

¹⁶¹ Video recording of the Georgian Prime-Minister's press-conference of 17 March 2020, from 7:35 minute. See http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75614 [visited: 03.09.20]. The part of the statement of the Prime Minister in the Georgian language: „საგანგებო მდგომარეობა არ შესძენს მთავრობას რაღაც ისეთ ინსტრუმენტებს, რომელიც დღეს არ გავაჩნია. შესაბამისად, ჩვენ ვამბობთ, რომ ამ ეტაპზე, ჩვენ გვაქვს ყველა ინსტრუმენტი იმისთვის საჭირო, რომ ნაბიჯ-ნაბიჯ, ეტაპობრივად, ამ გამოწვევას ვუპასუხოთ და ასე გავაგრძელებთ. რაღაც მომენტში შეიძლება დადგეს საგანგებო მდგომარეობის გამოცხადების აუცილებლობაც. ამ გადაწყვეტილებასაც მივიღებთ. ჩვენ ვამბობთ ერთ რამეს, მკაფიოდ, დღეს, დღევანდელი მონაცემებით, იმ ობიექტური რეალობით და იმ შეფასებებით, რომელიც ჩვენ გვაქვს, საგანგებო მდგომარეობის გამოცხადების აუცილებლობა დღეს არ არის. სხვალთუ ასეთი აუცილებლობა დადგება, ჩვენ ამ გადაწყვეტილებას მივიღებთ. ეს არის პროცესი. ეს არის მართვა. ეს არის მართვის პროცესი როგორ ვებრძოლოთ ვირუსს. ხომ?! შესაბამისად, ჩვენ ვამბობთ, რომ ყველა ის ინსტრუმენტი, რომელიც ჩვენ გვჭირდება ეფექტური ბრძოლისთვის, გავაჩნია. როდესაც ეს ინსტრუმენტები დაგვიმთავრდება და აუცილებელია იქნება საგანგებო მდგომარეობა, ამ ნაბიჯსაც გადავდგამთ.“

tions to remote work; refraining from going to public places, cafes and restaurants, entertainment venues, gyms, swimming pools, casinos, and slot clubs, and subsequently calling for the closure of cafes and restaurants, entertainment venues, gyms, swimming pools, casinos, and slot clubs.

However, the detailed observation of the implementation of these recommendations and the resulting epidemiological situation revealed that the recommendations were not sufficient, as a large part of the public, for the most part, continued to live their lives without making any changes ..., which increased the risks of virus transmission, the infection of the majority of citizens, and the collapse of the country's healthcare system. Consequently, in the 2nd half of March 2020, when the country entered a more active phase of the spread of the virus and faced a high risk of the uncontrolled internal transmission of the virus, while the bodies of state were deprived of the ability to exercise their authority properly, it became necessary to implement stricter/mandatory measures and to declare a state of emergency.”¹⁶²

The seriousness of the risks was emphasized as follows in an epidemiologist's forecast: “in the event of the severe scenario unfolding, the country was facing the risk of thousands of persons becoming infected and the healthcare system collapsing.”¹⁶³

For the above reasons, the Government of Georgia deemed it necessary to introduce legally binding restrictions justified by three main factors:

1. **The degree of the transmissibility of the virus and the preparedness of the healthcare system** – Given the high degree of the transmissibility and the rapid spread of the virus, the objective was not to allow the mass infection of persons, which would have caused the healthcare system to be overwhelmed, subsequently leading to its collapse.
2. **The sociocultural peculiarities of the social environment** – Considering the specifics of the social environment in the country (which

¹⁶² Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 17, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf

¹⁶³ *Ibid.*, 9.

is based on the tradition of the cohabitation of persons belonging to several generations), the separation and isolation of risk groups (the elderly, as well as people with chronic diseases) was practically unthinkable.

3. **The degree of acceptance of recommendations by the social environment** – The analysis of the implementation of the recommendations issued at the initial stage of the fight against the pandemic revealed the actual weakness of this method. Therefore, in order to achieve the desired results, it became necessary to impose mandatory restrictions.”¹⁶⁴

Therefore, having faced the threat of the uncontrolled internal spread of the virus and thus making it impossible to trace the source of infection and, correspondingly, to take the necessary preventive measures (i.e., isolating persons), coupled with a low degree of compliance with the recommendations, the Government considered that there was now a high risk of the coronavirus spreading countrywide and on 21 March 2020 appealed to the President of Georgia to declare a state of emergency.¹⁶⁵

Based on the factors the Government referred to above in justifying the need to introduce a state of emergency, on 21 March 2020 the President of Georgia declared a state of emergency.¹⁶⁶ On the same day, the President of Georgia issued a decree laying down the restrictions of certain rights and free-

¹⁶⁴ *Ibid.*, 17.

¹⁶⁵ See the address of the Prime Minister of Georgia to the President of Georgia of 21 March 2020. See: <http://www.parliament.ge/ge/ajax/downloadFile/135879/sruli> [visited: 30.08.20]. See also Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 9, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf

¹⁶⁶ The Edict of the President of Georgia No.1, of 21 March 2020 on the Declaration of the State of Emergency Throughout the Whole Territory of Georgia. See: <https://matsne.gov.ge/en/document/view/4830390?publication=0>. The Edict of the President of Georgia was approved in the same day by the Parliament of Georgia. See the Resolution of the Parliament of Georgia on Approval of Edict No.1 of 21 March 2020 of the President of Georgia on the Declaration of the State of Emergency Throughout the Whole Territory of Georgia, 21 March 2020, No. 5864-SS. See: <https://matsne.gov.ge/en/document/view/4830327?publication=0>. Following the declaration of the state of emergency, an Operational Headquarter on the Management of the State of Emergency was created with the participation of the representatives of all relevant agencies in order to ensure the effective coordination of the enforcement of the measures envisaged by the state of emergency.

doms enshrined in Chapter 2 of the Constitution.¹⁶⁷ On 21 March 2020, the Parliament of Georgia approved the Edict of the President of Georgia on the Declaration of the State of Emergency and the Decree on restriction of right and freedoms.¹⁶⁸ Although, initially, the state of emergency was declared for a period of one month, and it was subsequently extended until 22 May 2020.¹⁶⁹

Outlining the basis for restricting constitutional rights and freedoms, the President of Georgia in her Decree of 21 March 2020 cited the following reasons:

“taking into account the mass spread of the novel coronavirus (COVID-19) and the increasing challenge facing the country, for the purposes of an appropriate response to the pandemic announced by the World Health Organisation and in order for the State to fulfill its constitutional obligations to ensure necessary public security in a democratic society, to reduce any possible threat to the life and health of the country’s population, and to control the situation...”¹⁷⁰

On the basis of Article 71(3) and (4) of the Constitution of Georgia and Article 2(3) and (4) of the Law of Georgia on the State of Emergency, the rights referred to in Articles 13, 14, 15, 18, 19, 21, and 26 of the Constitu-

¹⁶⁷ Along with the Edict by which the President of Georgia declared the state of emergency, the same day the President adopted Decree No.1 on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia. See: <https://matsne.gov.ge/en/document/view/4830372?publication=0>.

¹⁶⁸ The Resolution of the Parliament of Georgia on Approval of Decree No.1 of 21 March 2020 of the President of Georgia on Measures to be Implemented in Connection with the Declaration of a State of Emergency throughout the Whole Territory of Georgia, 21 March, 2020, N5865-SS. See: <https://matsne.gov.ge/en/document/view/4830333?publication=0>. Under the Constitution of Georgia, the Prime-Minister of Georgia initiates the declaration of state of emergency followed by the actual declaration by the President of Georgia (countersigned by the Prime-Minister) and approved by the Parliament of Georgia. See Article 71(2) of the Constitution of Georgia. See: <https://matsne.gov.ge/en/document/view/30346?publication=36>.

¹⁶⁹ The Edict of the President of Georgia No.2, 21 April, 2020 on the Declaration of the State of Emergency Throughout the Whole Territory of Georgia. See: <https://matsne.gov.ge/en/document/view/4853172?publication=0>. The Edict of the President of Georgia was approved the next day by the Parliament of Georgia. See the Resolution of the Parliament of Georgia on Approval of Edict No.2 of 22 April 2020 of the President of Georgia on the Declaration of the State of Emergency Throughout the Whole Territory of Georgia, 22 April 2020, No. 5866-SS. See: <https://matsne.gov.ge/en/document/view/4853217?publication=0>.

¹⁷⁰ Article 1 of the Decree No.1 of the President of Georgia on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia, 21 March 2020, See: <https://matsne.gov.ge/en/document/view/4830372?publication=0>.

tion of Georgia were restricted for the duration of the state of emergency throughout the whole territory of Georgia. In particular, the following rights and freedoms were restricted during the state of emergency declared by the President of Georgia:

1. Under Article 13 of the Constitution (human liberty): “the relevant authorities defined by the legislation of Georgia shall be authorized to transfer a person by force to an appropriate institution, in a place designated by the Government of Georgia, for the violation of isolation or quarantine rule established by the Government of Georgia.”¹⁷¹
2. Under Article 14 of the Constitution (freedom of movement):
 - a) the Government of Georgia shall be authorized to establish isolation and quarantine rule;
 - b) international travel by air, land and sea shall be suspended, except in exceptional cases provided for by an ordinance of the Government of Georgia;
 - c) the Government of Georgia shall be authorized to regulate the carriage of passengers and the transportation of cargo in the territory of Georgia by a procedure other than that provided for by the legislation of Georgia currently in force.”¹⁷²
3. Under Article 15 of the Constitution (rights to personal and family privacy, personal space, and privacy of communication): “in penitentiary institutions, the right to a visit provided for by the Imprisonment Code shall be suspended.”¹⁷³
4. Under Article 18 of the Constitution (rights to fair administrative proceedings, access to public information, informational self-determination, and compensation for damage inflicted by a public authority): “the Government of Georgia shall be authorized to determine, by an ordinance, procedures for providing public services and for administrative proceedings, other than those provided for by the legislation of Georgia currently in force.”¹⁷⁴

¹⁷¹ *Ibid*, para. 1, Article 1.

¹⁷² *Ibid*, para. 2, Article 1.

¹⁷³ *Ibid*, para. 3, Article 1.

¹⁷⁴ *Ibid*, para. 4, Article 1.

5. Under Article 19 of the Constitution (right to property): “the Government of Georgia shall be authorized to restrict right to property, if necessary, and to use the property and material resources of natural and legal persons for quarantine, isolation and medical purposes.”¹⁷⁵
6. Under Article 21 of the Constitution (freedom of assembly): “any kind of assemblies, demonstrations or gatherings of people, except in exceptional cases determined by an ordinance of the Government of Georgia shall be restricted.”¹⁷⁶
7. Under Article 26 of the Constitution (freedom of labor, freedom of trade unions, right to strike, and freedom of enterprise):
 - a) private-law entities provided for by an ordinance of the Government of Georgia shall be prevented from or limited to carrying out particular activities, or shall be obligated to carry out such activities, in accordance with the procedure provided for by the said ordinance;
 - b) special procedures for following sanitary and hygiene rules by natural and legal persons and public institutions shall be determined by an ordinance of the Government of Georgia;
 - c) Government of Georgia shall, if necessary, regulate prices for essential medicines, medical preparations, services and primary commodities;
 - d) the Government of Georgia shall be authorized to establish procedures and conditions other than those provided for by the Law of Georgia on Early and Preschool Education, the Law of Georgia on 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;
 - e) the Government of Georgia shall be authorized to mobilize persons with appropriate medical qualifications and competence, in accordance with the procedure determined by an ordinance of the Government of Georgia.”¹⁷⁷

¹⁷⁵ *Ibid*, para. 5, Article 1.

¹⁷⁶ *Ibid*, para. 6, Article 1.

¹⁷⁷ *Ibid*, para. 7, Article 1.

Apart from it, the Presidential Decree stipulates that “the Minister of Justice of Georgia shall be authorized to regulate, by a procedure other than that provided for by the legislation of Georgia currently in force, an obligation of probationers and persons released on parole to adhere to the regime established by law, as well as to appear at a time and place specified by a probation officer.”¹⁷⁸

The Decree also stipulated that: “Court hearings provided for by the criminal procedure legislation of Georgia may be conducted remotely, by means of electronic communication. If a court hearing is conducted in the said manner, no person participating in a court hearing shall have the right to refuse the conduct of the court hearing remotely on grounds of being willing to physically attend.”¹⁷⁹

In her address to the public on 21 March 2020, the President of Georgia underscored the importance of fighting COVID-19 by taking relevant measures and pointed out that: “the measures provided for in the Decree include neither complete quarantine, nor declaring curfew.”¹⁸⁰

In order to implement the Decree of the President of Georgia of 21 March 2020 to restrict certain rights and freedoms provided for in the Constitution of Georgia,¹⁸¹ on 23 March 2020 the Government of Georgia adopted Ordinance No.181 “on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia”¹⁸² followed by numerous amendments.¹⁸³

It is important to note that under Ordinance No.181, Governmental Decree No.164 of 28 January 2020 “On the Approval of Measures to Prevent

¹⁷⁸ *Ibid*, Article 6.

¹⁷⁹ *Ibid*, Article 7.

¹⁸⁰ Video recording of the President of Georgia’s address to the Public of 21 March 2020, from 03:36 minute. See: <https://ajaratv.ge/article/56955>; [visited: 07.09.20]. See the part of the address of the President in the Georgian language: „დეკრეტით გათვალისწინებულ ზომებში არ შედის არც სრული კარანტინი, არც კომუნდანტის საათის გამოცხადება.“

¹⁸¹ Decree No.1 on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia. See: <https://matsne.gov.ge/en/document/view/4830372?publication=0>.

¹⁸² See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

¹⁸³ Adoption of more than 40 amendments to the Ordinance within a relatively short time period may be explained by the challenges created by the epidemiological situation that changed on a daily basis.

the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease” adopted before declaring a state of emergency and provided for restrictions of certain rights, remained in force, unless it contradicted with Ordinance No.181.¹⁸⁴

A number of measures restricting human rights were imposed during the state of emergency:

1. The suspension of international air, land, and sea transport services for transportation of passengers during the state of emergency (23 March 2020);¹⁸⁵
2. The introduction of quarantine in Marneuli and Bolnisi municipalities (23 March 2020);¹⁸⁶
3. The suspension of intercity passenger traffic (buses and fixed route taxis), railway, and air transport (23 March 2020);¹⁸⁷
4. The suspension of the transportation of passengers by M2 category buses (fixed route taxis) within the territories of self-governing cities and municipal administrative centers (23 March 2020);¹⁸⁸
5. The suspension of teaching in educational institutions and the restriction whereby this could be carried out only remotely (23 March 2020);¹⁸⁹

¹⁸⁴ The Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

¹⁸⁵ *Ibid*, Article 2.

¹⁸⁶ *Ibid*. Under the Ordinance of the Government, from 18 May 2020 the Government maintained quarantine only in Bolnisi. See: Ordinance No. 304 on Amendment to the Ordinance No.180 of the Government of Georgia on Quarantine Measures to be Implemented in Order to prevent the Spread of the Novel Coronavirus in the Municipalities of Marneuli and Bolnisi, 14 May 2020. See: <https://matsne.gov.ge/ka/document/view/4870732?publication=0>. See also the Ordinance No. 313 on Amendment to the Ordinance No.180 of the Government of Georgia on Quarantine Measures to be Implemented in Order to prevent the Spread of the Novel Coronavirus in the Municipalities of Marneuli and Bolnisi, 19 May 2020. See: <https://matsne.gov.ge/ka/document/view/4874174?publication=0>.

¹⁸⁷ Article 1, the Ordinance No.186 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/ka/document/view/4832959?publication=0>.

¹⁸⁸ Article 2(5), Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

¹⁸⁹ *Ibid*, Article 3(1). Initially, under the Ordinance No. 181, education process was suspended until

6. The restriction whereby all kinds of trainings, conferences, and seminars are to be conducted only remotely (23 March 2020);¹⁹⁰
7. The restriction of activities related to culture and sports (23 March 2020);¹⁹¹
8. The prohibition of assemblies and/or manifestations under the Law of Georgia on Assemblies and Manifestations (23 March 2020);¹⁹²
9. The limitation of the number of people (10) allowed to gather in public spaces (23 March 2020);¹⁹³
10. The restriction to maintain two-meter social distancing (bearing in mind the specificity of the venue) for gatherings of no more than 10 people in private institutions to which the requirement to suspend activities is not applied (23 March 2020);¹⁹⁴
11. The restriction on the number of people (10) who may be involved in social activities (such as funerals, wedding parties, and similar activities) (23 March 2020);¹⁹⁵

21 April 2020, but the Amendment to the Ordinance prolonged the suspension for the period of state of emergency. See Ordinance No. 257 on Amendment to the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 22 April 2020. See: <https://matsne.gov.ge/ka/document/view/4853868?publication=0>.

¹⁹⁰ Article 3(2), Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

¹⁹¹ *Ibid*, Article 4.

¹⁹² Article 5(1), the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

¹⁹³ *Ibid*, Article 5. Although initially the limitation of the number of persons allowed to gather was 10, from 31 March it was reduced to 3 persons. The Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

¹⁹⁴ Article 5(5), the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>. The number of people was reduced to 3 and it was specified that the rule is applicable to carrying out economic activities. See Article 1, the Ordinance No. 252 on Amendment to the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 16 April 2020. See: <https://matsne.gov.ge/ka/document/view/4852403?publication=0>.

¹⁹⁵ Article 5, the Ordinance No.181 on the Approval of Measures to be Implemented in Connection

12. The use of private property of legal and natural persons who own and/or are able to provide hotel and similar accommodation services or who are able to provide carriage and transportation by air and/or road (23 March 2020);¹⁹⁶
13. The authorization to determine different procedures governing the activities of the Penitentiary Service, the Notary Chamber, the National Archives, the State Service Development Agency, the National Agency of Public Registry, the House of Justice to be defined by the Minister of Justice for the duration of the state of emergency (23 March 2020);¹⁹⁷
14. The authorization to determine different procedures for electronic case management and the suspension of administrative proceedings and of the release of public and personal information (23 March 2020);¹⁹⁸
15. Isolation of persons (quarantine or self-isolation) suspected of being infected with the coronavirus or being at high risk of coronavirus infection (25 March 2020);¹⁹⁹

with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>. As mentioned, although initially the limitation of the number of persons allowed to gather was 10, from 31 March it was reduced to 3 persons. However, from 18 May 2020, the limitation of 3 persons was reverted to 10 again. See, the Ordinance No.305 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 14 May, 2020. See: <https://matsne.gov.ge/ka/document/view/4870954?publication=0>.

¹⁹⁶ Article 8, the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

¹⁹⁷ *Ibid.* See also Article 11, the Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

¹⁹⁸ Article 13, the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

¹⁹⁹ Order No.01-31/N of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia on Defining Isolation and Quarantine Rules, 25 March 2020. See: <https://matsne.gov.ge/ka/document/view/4833995?publication=0>.

16. The imposition of a curfew and the prohibition of travel on foot and by vehicle from 21:00 to 06:00 (31 March 2020);²⁰⁰
17. The prohibition on leaving places of residence for persons aged 70 and over (exceptions applied) (31 March 2020);²⁰¹
18. The suspension of the transportation of passengers by M3 category vehicles and public transport (including metro) within the administrative boundaries of municipalities (31 March 2020);²⁰²
19. The prohibition of the transportation of more than three persons (including the driver) by vehicles and the restriction whereby passengers could only use the vehicle's rear seats (31 March 2020);²⁰³
20. The introduction of a quarantine regime in Lentekhi Municipality (10 April 2020),²⁰⁴ certain administrative units of Kobuleti Municipality (Gvara, Mukhaestate, Leghva, and Tskavroka) (12 April 2020)²⁰⁵, the village of Khidiskhuri in Khashuri Municipality (13 April 2020),²⁰⁶ the

²⁰⁰ Article 1, the Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

²⁰¹ *Ibid*, para. 3 (Amending Article 5-1 of the Ordinance).

²⁰² Article 1, the Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>; Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 9, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

²⁰³ Article 1, the Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

²⁰⁴ The Ordinance No.234 of the Government of Georgia on Quarantine Measures to be Implemented in Order to prevent the Spread of the Novel Coronavirus in the Municipality of Lentekhi, 10 April 2020. See: <https://matsne.gov.ge/ka/document/view/4849367?publication=0>.

²⁰⁵ The Ordinance No.239 of the Government of Georgia on Quarantine Measures to be Implemented in Order to prevent the Spread of the Novel Coronavirus in the Administrative Units of Kobuleti Municipality (Gvara, Mukhaestate, Leghva and Tskavroka), 12 April 2020. See: <https://matsne.gov.ge/ka/document/view/4849683?publication=0>.

²⁰⁶ The Ordinance No.240 of the Government of Georgia on Quarantine Measures to be Implemented in Order to prevent the Spread of the Novel Coronavirus in the village of Khidiskhuri of Khashuri Municipality, 10 April 2020. See: <https://matsne.gov.ge/ka/document/view/4850257?publication=0>.

- village of Ghvankiti in Terjola Municipality (23 April 2020)²⁰⁷, and Tetrtskaro Municipality (26 April 2020);²⁰⁸
21. The prohibition on entering or leaving the municipalities of the cities of Tbilisi, Rustavi, Kutaisi, and Batumi (exceptions applied) (15 April 2020);²⁰⁹
 22. The suspension of travel by mechanical means of transportation (other than motorcycles) (17 April 2020);²¹⁰
 23. The prohibition on entering cemeteries (17 April 2020);²¹¹
 24. The obligation to wear face masks in enclosed public spaces (17 April 2020);²¹²
 25. The mobilization of persons with appropriate medical qualifications and competence (17 April 2020);²¹³
 26. The restriction whereby court hearings could only be held remotely;²¹⁴ and
 27. The placement of a physical person in an appropriate space in the

²⁰⁷ The Ordinance No.259 of the Government of Georgia on Quarantine Measures to be Implemented in Order to prevent the Spread of the Novel Coronavirus in the village of Ghvankiti of Terjola Municipality, 23 April 2020. See: <https://matsne.gov.ge/ka/document/view/4854983?publication=0>.

²⁰⁸ The Ordinance No.267 of the Government of Georgia on Quarantine Measures to be Implemented in Order to prevent the Spread of the Novel Coronavirus in Tetrtskaro Municipality, 26 April 2020. See: <https://matsne.gov.ge/document/view/4856705?publication=0>.

²⁰⁹ The Ordinance No. 242 on Amendment to the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 14 April 2020. See: <https://matsne.gov.ge/ka/document/view/4850634?publication=0>.

²¹⁰ Article 1, the Ordinance No. 252 on Amendment to the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 16 April 2020. See: <https://matsne.gov.ge/ka/document/view/4852403?publication=0>.

²¹¹ *Ibid.*

²¹² *Ibid.* See also Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 10, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

²¹³ Article 1 (amending Article 2(6) of the Ordinance No.184), the Ordinance No.253 on the Amendment to the Ordinance No. 184 of 23 March 2020 of the Government of Georgia on the Establishment of Different Rules relating to Public Services and Administrative Proceedings within the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, 17 April 2020. See: <https://matsne.gov.ge/ka/document/view/4852610?publication=0>.

²¹⁴ Video recording of the Georgian Prime-Minister's press-conference of 21 March 2020 about the need to declare state of emergency. The Prime Minister underscores a series of measures aimed at fighting COVID-19. See: http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75723 [visited: 03.09.20].

event of a violation of isolation and/or quarantine rules (2 May 2020).²¹⁵

In the opinion of the Government, over time the epidemiological situation gradually came under control and the number of daily cases of new infections began to decrease. Accordingly, the Government started to lift its human rights restrictions.²¹⁶ The following measures affecting human rights were taken to gradually lift the restrictions previously imposed within the state of emergency:

1. The permission to travel by mechanical modes of transportation (27 April 2020);²¹⁷
2. The lifting of the quarantine regime in the Lentekhi Municipality and the village of Khidiskuri in Khashuri Municipality (28 April 2020);²¹⁸
3. The opening of the municipalities of Batumi and Kutaisi (5 May 2020);²¹⁹
4. The lifting of quarantine regimes in certain administrative units of Kobuleti Municipality (Gvara, Leghva, Mukhaestate, and Tskavroka) (8 May 2020)²²⁰ and the village of Ghvankiti in Terjola Municipality (23 April 2020);²²¹

²¹⁵ See Amendment to Article 111, Amendment to the Law of Georgia on Public Health, 23 April 2020, No.5890-SS, <https://matsne.gov.ge/ka/document/view/4854050?publication=0>.

²¹⁶ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 11-14, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

²¹⁷ Ordinance No.264 on the Amendment to the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 24 April 2020.

²¹⁸ The Ordinance No. 269 of the Government of Georgia on Declaring Certain Ordinances of the Government of Georgia Invalid, 28 April 2020. See: <https://matsne.gov.ge/ka/document/view/4858807?publication=0>.

²¹⁹ Ordinance No.287 on the Amendment to the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 4 May 2020. See: <https://matsne.gov.ge/ka/document/view/4864476?publication=0>. See also: <https://bit.ly/3miGUNv> [visited: 24.09.20].

²²⁰ The Ordinance No. 296 of the Government of Georgia on Declaring the Ordinance No.239 of 12 April 2020 on Quarantine Measures to be Implemented in Order to prevent the Spread of the Novel Coronavirus in the Administrative Units of Kobuleti Municipality (Gvara, Mukhaestate, Leghva and Tskavroka) Invalid, 8 May 2020. See: <https://matsne.gov.ge/ka/document/view/4868362?publication=0>.

²²¹ The Ordinance No.300 on Amendment of the Government of Georgia on Declaring Invalid the Quarantine Measures to prevent the Spread of the Novel Coronavirus in the village of Ghvankiti of Terjola Municipality, 12 May 2020. See: <https://matsne.gov.ge/ka/document/view/4869464?publication=0>.

5. The opening of Tbilisi Municipality (11 May 2020);²²²
6. The opening of Rustavi Municipality (14 May 2020);²²³
7. Increasing the number of people allowed to gather in public spaces from three to 10 (18 May 2020);²²⁴ and
8. Increasing the number of persons who may be involved in social activities (such as funerals, wedding parties, and similar activities) from three to 10 (18 May 2020).²²⁵

As the epidemiological situation appeared under control, the Government of Georgia took the view that there was no need to extend the state of emergency any longer. Therefore, the state of emergency expired on 22 May 2020.²²⁶ As a result of the expiration of the state of emergency, the following human rights restrictions laid down in Ordinance No.181²²⁷ (23 March 2020) of the Government to implement the Presidential Decree No.1 (21 March 2020) were automatically lifted:

1. The restrictions on the transportation of more than three persons by car;
2. The imposition of a curfew;

²²² Ordinance No.297 on the Amendment to the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 8 May 2020. See: <https://matsne.gov.ge/ka/document/view/486845?publication=0>.

²²³ The Ordinance No.298 on the Amendment to the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 11 May 2020. See: <https://matsne.gov.ge/ka/document/view/4869042?publication=0>.

²²⁴ See, the Ordinance No.305 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 14 May, 2020. See: <https://matsne.gov.ge/ka/document/view/4870954?publication=0>.

²²⁵ *Ibid.*

²²⁶ The Edict of the President of Georgia No.1, 21 March, 2020 on the Declaration of the State of Emergency Throughout the Whole Territory of Georgia. See: <https://matsne.gov.ge/en/document/view/4830390?publication=0>. Later, The President of Georgia adopted the Edict that postponed the state of emergency for one month. The Edict of the President of Georgia No.2, 21 April, 2020 on the Declaration of the State of Emergency Throughout the Whole Territory of Georgia. See: <https://matsne.gov.ge/en/document/view/4853172?publication=0>.

²²⁷ The Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>. As noted before, this ordinance has been later amended on numerous occasions.

3. The restriction on assemblies and manifestations provided for by the Law of Georgia on Assemblies and Manifestations;
4. The restriction on the movement of persons aged 70 and over;²²⁸ and
5. The prohibition on entering cemeteries.²²⁹

On the basis of an overview of the restrictions imposed in Georgia during the state of emergency, the following issues merit particular attention.

- a) The Government of Georgia invoked two main arguments in support of the state of emergency: the threat of the uncontrolled internal spread of the coronavirus; and the low degree of compliance among the population with the Government's recommendations. The first argument may be questionable in terms of the existence of immediate risks posed by COVID-19 at the given time, the second argument was not convincing either. The declaration of a state of emergency and imposing human rights restrictions therein were not the only means available to increase the degree of compliance among the population with recommended measures. The restrictions on human rights could have been imposed on the basis of relevant laws that are legally binding. For example, if there was no compliance or a low degree of compliance among the population with the recommendation of the Government to cancel activities associated with populous gatherings or for persons aged 70 and over to stay in self-isolation, the Parliament of Georgia could have amended the relevant law, without declaring a state of emergency and imposing the corresponding human rights restrictions.
- b) In restricting human rights during the state of emergency, the President of Georgia acted in compliance with international and European human rights treaties. In particular, none of the absolute rights provided for in the ICCPR and the ECHR were restricted by the President of Georgia.

²²⁸ However, the Government has issued a recommendation to restrict the movement of persons aged 70 and over. See: <https://bit.ly/3efZlGy> [visited: 24.09.20].

²²⁹ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 14-15, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

Meanwhile, the President of Georgia acted mainly in compliance with the constitutional provisions in restricting human rights. The Presidential Decree restricted mostly those rights that are expressly permitted under Article 71(3) of the Constitution. However, the Decree still raised at least two legal problems.

Firstly, during the state of emergency the right to education was restricted in Georgia (teaching had to be conducted remotely) on the basis of Article 26 of the Constitution that governs the freedom of labor, freedom of trade unions, right to strike, and freedom of enterprise. Restricting the right to education on the basis of a constitutional provision that has nothing to do with this right, and not instead doing so on the basis of Article 27 of the Constitution which directly deals with the right to education, was somewhat unusual. However, this approach may be explained by the fact that under Article 71(3) of the Constitution of Georgia, the right to education may not be restricted under the Constitution during a state of emergency. Secondly, of the human rights that were restricted during the state of emergency listed in Article 1 of the Presidential Decree, the reasons for restricting the right to a fair trial (i.e. having to conduct court hearings on criminal cases remotely) under Article 7 of the Decree are questionable. Placing the provision on the restriction to the right to a fair trial in a different part of the Presidential Decree that did not deal with the restrictions of human rights may be explained by the fact that Article 31 (procedural rights) of the Constitution that covers the right to a fair trial may not be restricted during a state of emergency.

- c) Under the Decree of the President of Georgia of 21 March 2020, all the rights and freedoms that could be lawfully restricted under Article 71(4) of the Constitution of Georgia were restricted, with the exception of Article 17 of the Constitution that covers the rights to freedom of opinion, information, mass media, and the internet.
- d) Implementing measures provided for in the regulations of the Government mainly stemmed from the restrictions laid down in the Presidential Decree. However, at least one problem on declaring a

quarantine and curfew arose. Specifically, on the basis of the restriction of Article 14 of the Constitution (freedom of movement), the Government of Georgia introduced a quarantine and curfew. Quarantine regimes were introduced in various municipalities such as Marneuli and Bolnisi (23 March 2020), Lentekhi (10 April 2020), certain administrative units of Kobuleti Municipality (Gvara, Mukhaestate, Leghva, and Tskavroka) (12 April 2020), and the village of Khidiskhuri in Khashuri Municipality (13 April 2020). The Government also imposed curfew, prohibiting travel on foot and by vehicle from 21:00 to 06:00 (31 March 2020).

The statement of the Prime Minister at a press conference on 30 March 2020 pointed out the following: “we took a decision, within the state of emergency, on further tightening the measures and we declare factually, factually I underline, universal quarantine that will start tomorrow from 8 o’clock in the morning.”²³⁰ At the same press conference, the Prime Minister underscored that “for the period of the state of emergency, complete quarantine is factually announced. From 21:00 to 06:00 movement on foot and by transport within cities and in the country is prohibited. ... Factually, it means that within the country from 21:00 to 06:00 so called curfew is declared.”²³¹

The Prime Minister gave a further explanation by pointing out that: “complete quarantine, so called, so called curfew means that

²³⁰ See the part of the statement of the Prime Minister in the Georgian language: „ჩვენ მივიღეთ გადაწყვეტილება, საგანგებო მდგომარეობის ფარგლებში, ზომების მნიშვნელოვანი გამკაცრების შესახებ და ჩვენ ვაცხადებთ ფაქტობრივად, ფაქტობრივად ხაზგასმით აღვნიშნავ, საყოველთაო კარანტინს, რომელიც ხვალ დილის 8 საათიდან დაიწყება.“ From 4:32 minute. Video recording of the Statement of the Prime Minister of Georgia followed by Q&A session of 30 March 2020. See: http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75773. [visited: 07.09.20].

²³¹ See the part of the statement of the Prime Minister in the Georgian language: საგანგებო მდგომარეობის ვადით ცხადდება, ფაქტობრივად, სრული კარანტინი. 21 საათიდან იკრძალება როგორც ქვეითად, ისე ტრანსპორტით ქალაქებში და ქვეყნის მასშტაბით გადაადგილება დილის 6 საათამდე. ... ფაქტობრივად ეს ნიშნავს, რომ ქვეყნის მასშტაბით 21 საათიდან დილის 6 საათამდე ცხადდება ეგრედ წოდებულ საკომენდანტო საათი. From 6:57 minute. *Ibid.*

from 21:00 to 06:00 in the morning only pharmacies may function. Nothing else. This is critically important. And everyone should understand that this is a minimum ... we could do and make concession today in order not to declare universal quarantine.”²³²

This leaves no doubt that that the Government of Georgia announced a complete quarantine in several municipalities of Georgia, and a curfew for the whole country.

However, the measures mentioned above are difficult to reconcile with the statement of the President of Georgia in her television address to the nation on declaring the state of emergency on 21 March 2020. In her address, the President of Georgia clearly pointed out that “the measures provided for in the Decree include neither complete quarantine, nor declaring curfew.”²³³ There is no doubt that the declaration of a state of emergency, that may include both quarantine and curfew, is within the competence of the President of Georgia, as defined in Article 71 of the Constitution of Georgia. By stating that neither complete quarantine nor curfew had been declared in Georgia, the President did not apply this power, at least when declaring the state of emergency on 21 March 2020. The President of Georgia could have done so at any time later, depending on the epidemiological situation. However, no further amendment to the Presidential Decree was made declaring a complete quarantine and/or curfew.

Therefore, the measures taken by the Government of Georgia, namely declaring a complete quarantine and curfew, were

²³² See the part of the statement of the Prime Minister in the Georgian language: „სრული კარანტინი, ეგრედ წოდებული, ეგრედ წოდებული საკომენდანტო საათი ნიშნავს, რომ 21 საათიდან დილის 6 საათამდე ფუნქციონირება შეეძლება მხოლოდ და მხოლოდ აფთიაქებს. სხვას არაფერს. ეს არის კრიტიკულად მნიშვნელოვანი. და ყველას უნდა გვესმოდეს, რომ ეს არის ის მინიმუმი ..., რისი გაკეთებაც და დათმობაც ჩვენ დღეს შეგვეძლო იმისათვის, რომ არ გამოგვეცხადებინა საყოველთაო კარანტინი.“ From 16:40 minute.

²³³ Video recording of the President of Georgia’s address to the Public of 21 March 2020, from 03:36 minute. See: <https://ajaratv.ge/article/56955>; [visited: 07.09.20]. See the part of the address of the President in the Georgian language: „დეკრეტით გათვალისწინებული ზომებში არ შედის არც სრული კარანტინი, არც კომენდანტის საათის გამოცხადება.“

questionable as these measures were not consistent with the statement of the President of Georgia of 21 March 2020.

- e) An analysis of the developments following the declaration of the state of emergency to its expiration makes it clear that the Law of Georgia on the State of Emergency was of no or little use in practice. In the preamble of the Decree of 21 March 2020, the President of Georgia referred to Article 2, paras. 3 and 4 of the Law that reflect Article 71 of the Constitution. No substantive reference to the Law of Georgia on the State of Emergency was made in other legal acts, including the regulations adopted by the Government of Georgia. This may be explained by the limited nature of the measures laid down in the Law and the irrelevance of these measures in the context of this epidemiological situation. Bearing in mind the fact that the Parliament adopted a special law governing the state of emergency, it is important to adapt the Law on the State of Emergency to accommodate challenges presented by an epidemiological crisis.

Therefore, it is recommended:

- a) to strictly adhere to the constitutional framework when restricting human rights within the state of emergency, namely with regard to the right to education (Article 27 of the Constitution) and procedural rights (Article 31 of the Constitution) that may not be restricted during a state of emergency; and
- b) to reflect in the Law on the State of Emergency the context of epidemics and pandemics, to lay down specific restrictive measures applicable to an epidemic and/or pandemic, and to define the power and the limits of the relevant authorities in restricting human rights.

8.3. HUMAN RIGHTS RESTRICTIONS AFTER THE STATE OF EMERGENCY (FROM 23 MAY 2020)

Although the state of emergency expired in Georgia on 22 May 2020, the COVID-19 pandemic persisted. In order to keep the situation under control, the Government of Georgia decided to continue imposing some human rights restrictions without maintaining the state of emergency.

In order to impose human rights restrictions without declaring or maintaining a state of emergency, the Government of Georgia applied to the Parliament to amend the Law of Georgia on Public Health.²³⁴ The proposed amendment to the Law on Public Health envisaged measures restricting human rights without declaring a state of emergency and laid down that the scope of such restrictions would have to be defined by the Government.²³⁵ The initial amendments to the Law on Public Health²³⁶ have been improved to some extent and were finally adopted by the Parliament on 22 May 2020.²³⁷

An important element of the amendments to the Law related to the new definition of quarantine measures. The new definition of quarantine measures introduced in the Law widened its scope to cover not only measures applied to a specific person (that were already laid down in the Law), but also a set of measures imposing restrictions of certain human rights on the basis of the Law on Public Health or normative acts adopted/issued in accordance with this Law. Namely, the amendments to the Law specified the following:

“the quarantine measures shall be:

- a) a set of measures applied to a person who is not ill but has had or may have had contact with the case of contagious disease during the period of transmission;
- b) measures defined by this Law and/or the normative act adopted/issued in accordance with this Law, which are temporarily used for the protection of the health of the population during a pandemic and/or epidemic especially dangerous for the public health and which may imply a different regulation than those established by other normative acts of Georgia, including the temporary imposition of appropriate restrictions in connection with the activities/administration of public institutions, other institutions under the

²³⁴ <https://bit.ly/2T1bWsu> [visited: 09.09.20].

²³⁵ In accordance with the explanatory note of the amendments to the Law of Georgia of Public Health, the initiative to adopt amendments to the Law was conditioned by the need to enable the Government of Georgia to take the relevant measures after the termination of the state of emergency in order to fight pandemic and epidemic particularly dangerous for public health. <https://info.parliament.ge/file/1/BillReviewContent/248129>. Also <https://bit.ly/35Y3Ame> [visited: 09.09.20].

²³⁶ For initiated draft amendments to the Law see: <https://info.parliament.ge/file/1/BillReviewContent/248127?>

²³⁷ See <https://info.parliament.ge/file/1/BillReviewContent/249312?>

executive government, legal entities under public law, other legal entities, the provision of public services, the movement of persons, property, labour, professional or economic activities, and illegal migration/international protection, and/or in connection with the gathering of persons for the purpose of holding social events.”²³⁸

The post-state of emergency restrictions of human rights were mainly governed by Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules adopted on 23 May 2020, the day after the state of emergency expired.²³⁹

Under Article 3 of the Ordinance: “regulations provided for by Decree No.164 of 28 January 2020 of the Government of Georgia on the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and an Emergency Response Plan for the Cases of Novel Coronavirus Diseases, which do not contravene rules approved by this Ordinance, shall constitute an integral part of this Ordinance.”²⁴⁰ The reference to the pre-state of emergency legal document makes it clear that it was still valid (unless it contradicted Ordinance No.322). The same is true with regard to the validity of the regulations provided for by Decree No.164 during the state of emergency.²⁴¹

The purpose of the Ordinance is to determine isolation and quarantine rules provided for by the Law of Georgia on Public Health to prevent the mass spread of the novel coronavirus (COVID-19) and to determine appropriate measures to minimize the possible threat to life and health and to manage the epidemiological crisis.²⁴²

After the expiration of the state of emergency, the following restrictions affecting human rights were applied:

²³⁸ See Article 453(2). This amendment is valid until 1 January 2021. <https://matsne.gov.ge/en/document/view/21784?publication=31>. See also the explanatory report to the amendment: <https://info.parliament.ge/file/1/BillReviewContent/248129>.

²³⁹ Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

²⁴⁰ *Ibid.*

²⁴¹ The Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

²⁴² Article 1 of the Rules, Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

1. The suspension of international air, land, and sea transport services for the transportation of passengers (23 May 2020);²⁴³
2. The suspension of transportation of passengers by railway within the country (23 May 2020);²⁴⁴
3. The suspension of intercity passenger transportation and/or transportation within municipal administrative territories (buses and fixed route taxis) (23 May 2020);²⁴⁵
4. The suspension of transportation of passengers by public transport, including metro and cable transport (23 May 2020);²⁴⁶
5. The suspension of transportation of passengers by air within the country (23 May 2020);²⁴⁷

²⁴³ *Ibid.* From 13 July 2020 the exceptions are made with regard to direct international flights carried out between Tbilisi International Airport and the following airports: Munich; Paris; Riga. The Ordinance No.433 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 10 July 2020. See: <https://matsne.gov.ge/ka/document/view/4922274?publication=0>. From 1 October 2020 the exception is also made with regard to direct international flights between Kutaisi and Riga. The Ordinance No.585 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 17 September 2020. See: <https://matsne.gov.ge/ka/document/view/4990670?publication=0>.

²⁴⁴ Article 2(5)(a), Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>. From 15 June 2020 the transportation of passengers by railway within the country was allowed. Ordinance No. 355 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 8 June 2020. See: <https://matsne.gov.ge/ka/document/view/4891162?publication=0>.

²⁴⁵ Article 2(5)(b), Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>. From 8 June 2020 intercity passenger transportation and/or transportation within the municipal administrative territories were allowed. Ordinance No. 345 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 2 June 2020. See: <https://matsne.gov.ge/ka/document/view/4886920?publication=0>.

²⁴⁶ Article 2(5)(c), Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>. From 29 May 2020 the transportation of passengers by public transport, including metro and cable transport was allowed. Ordinance No. 337 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 28 May 2020. See: <https://matsne.gov.ge/ka/document/view/4883020?publication=0>.

²⁴⁷ Article 2(5)(d), Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>. From 15 July 2020 transportation of passengers by air within the

6. The prohibition on the transportation of more than three persons (including the driver) by taxi (M1 category). In addition, the driver had to be equipped with a face mask and passengers could only use rear seats (23 May 2020);²⁴⁸
7. The restriction whereby passengers and drivers had to wear face masks while using public transport, including metro and cable transport (28 May 2020);²⁴⁹
8. The restriction whereby cultural and sports events could be carried out only remotely (23 May 2020);²⁵⁰

country was allowed. Ordinance No. 440 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 15 July 2020. See: <https://matsne.gov.ge/ka/document/view/4927101?publication=0>.

²⁴⁸ Article 2(7), Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

²⁴⁹ The Ordinance No. 337 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 28 May 2020. See: <https://matsne.gov.ge/ka/document/view/4883020?publication=0>.

²⁵⁰ Article 4(1), Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>. From 20 June 2020 an exception was made for cultural events related to museum activities. The Ordinance No.374 on Amendment to the Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 18 June 2020. See: <https://matsne.gov.ge/ka/document/view/4898915?publication=0>. From 1 July 2020 restriction is declared inapplicable to entertaining activities carried out in an open space. The Ordinance No.377 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 22 June 2020. See: <https://matsne.gov.ge/ka/document/view/4901211?publication=0>. From 10 July 2020 the restriction to carry out sports events remotely was cancelled. The Ordinance No.433 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 10 July 2020. See: <https://matsne.gov.ge/ka/document/view/4922274?publication=0>. From 13 July 2020 cultural events are permitted in open spaces. The Ordinance No.437 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 10 July 2020. See: <https://matsne.gov.ge/ka/document/view/4923308?publication=0>. From 10 September 2020 the restriction to carry out cultural and sports events in open space with no more than 200 persons was introduced. The Ordinance No.566 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 9 September 2020. See: <https://matsne.gov.ge/ka/document/view/4990670?publication=0>. Under the amendment of 16 September 2020, the restriction of cultural events relating to theatres and movie theatres will be lifted on 1 November 2020. The Ordinance No.579 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 16 September 2020. See: <https://matsne.gov.ge/ka/document/view/4990670?publication=0>.

9. The suspension of in-person teaching in educational institutions and the restriction whereby this could be carried out only remotely (22 May 2020);²⁵¹
10. The restriction on teaching remotely was also governed under another Ordinance of the Government (23 May 2020);²⁵²
11. The restriction whereby all kinds of trainings, conferences, and seminars had to be conducted only remotely (23 May 2020);²⁵³
12. The restriction on the assembly of more than 10 natural persons where such an assembly is related to social events (e.g. wedding parties.) (23 May 2020).²⁵⁴

²⁵¹ Ordinance No.321 of the Government of Georgia on Carrying Out Education Process in Education Institutions, 22 May 2020. See <https://matsne.gov.ge/ka/document/view/4876977?publication=0>. Under the Order of the Minister for Education, Science, Culture and Sport dated 11 September 2020, the establishments of general education carrying out activities in the cities of Tbilisi, Kutaisi, Rustavi, Gori, Zugdidi, Poti, Kobuleti and Batumi will conduct an education process till 1 October 2020 remotely and from 1 October 2020 continue the process in non-remote form. However, under the amendment dated 30 September 2020 to the Order of 11 September 2020 the establishments of general education carrying out activities in the cities of Tbilisi, Kutaisi, Rustavi, Zugdidi will conduct an education process from 1 October to 29 December 2020 in accordance with hybrid model of remote study for I-VI classes in the intramural form and for VII-XII classes in the remote form (exceptions apply). As regards the cities of Gori and Poti, under the Order dated 30 September 2020 education process till 1 October 2020 will be conducted remotely and from 1 October 2020 it will be continued in non-remote form.

²⁵² Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

²⁵³ Article 3(2), Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>. Later the prohibition was applied only to events organised in enclosed spaces (1 July 2020). From 6 July 2020 prohibition about all kinds of trainings, conferences and seminars was completely cancelled. Ordinance No.410 on the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 3 July 2020. See: <https://matsne.gov.ge/ka/document/view/4915862?publication=0>.

²⁵⁴ On 20 July 2020 an amendment was made to this provision by which the limitation applies only to enclosed spaces. The Ordinance No.450 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4931389?publication=0>. Later, an assembly in open spaces of more than 10 natural persons where such assembly is related to social events (e.g. wedding parties, any kind of anniversaries, funeral repasts, etc.) was allowed only in compliance with the recommendations of the Ministry of Health (20 July). The Ordinance No.450 to the Amendment to the Ordinance

13. The restriction whereby face masks had to be worn in enclosed public spaces (23 May 2020);²⁵⁵
14. The same restriction (face masks in enclosed public spaces) was also imposed under another Ordinance of the Government (15 June 2020);²⁵⁶
15. Isolation of persons (quarantine or self-isolation) suspected of being infected with coronavirus or being at high risk of coronavirus infection (23 May 2020);²⁵⁷
16. Quarantine restrictions imposed in the villages of Mushevani and Geta of Bolnisi Municipality (23 May 2020),²⁵⁸ Tetritskaro Municipality (23 May 2020),²⁵⁹ the village Karajalari in Gardabani Municipality

No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4931389?publication=0>. From 10 September 2020 the regulation is reverted to the original version i.e. the restriction of an assembly of more than 10 natural persons where such assembly is related to social events (e.g. wedding parties, any kind of anniversaries, funeral repasts, etc.) is applied to both open and enclosed spaces. The Ordinance No.566 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 9 September 2020. See: <https://matsne.gov.ge/ka/document/view/4990670?publication=0>.

- ²⁵⁵ Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>. For the purposes of the Ordinance, a public space shall be any indoor or outdoor area, unless it is a space used by individuals for residential purposes. Article 5(2), *Ibid*.
- ²⁵⁶ Ordinance No.368 on the Approval of the Rules for Wearing Face Masks, 15 June 2020. See: <https://matsne.gov.ge/en/document/view/4896616?publication=0>.
- ²⁵⁷ Chapter II, Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.
- ²⁵⁸ Article 15, the Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>. From 15 June 2020 quarantine was limited only to the village of Mushevani. See: Amendment No.369 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 15 June 2020. See: <https://matsne.gov.ge/ka/document/view/4896865?publication=0>. From 1 July 2020 quarantine was completely lifted in the remaining village of Geta of Bolnisi Municipality. Amendment No.395 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 1 July 2020. See: <https://matsne.gov.ge/ka/document/view/4912789?publication=0>.
- ²⁵⁹ Article 16, the Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>. From 4 June 2020 quarantine was lifted in Tetritskaro Municipality. Amendment No.351 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 4 June 2020. See: <https://matsne.gov.ge/ka/document/view/4889053?publication=0>.

- (24 July 2020),²⁶⁰ and Mestia Municipality (10 August 2020);²⁶¹
17. The restriction whereby court hearings could be conducted only remotely (23 May 2020);²⁶² and
 18. The suspension of transportation of passengers within the municipal administrative territories of Adjara Autonomous Republic, as well as within the administrative borders of Adjara Autonomous Republic and intercity passenger transportation to Adjara Autonomous Republic and back by M2 and M3 categories of vehicles (fixed route taxis and buses) (25-26 September 2020).²⁶³

The legal basis for imposing human rights restrictions after the state of emergency in Georgia merits particular attention here. This legal basis, namely the Law on Public Health, has been criticized by civil society representatives, the Public Defender (Ombudsman), individual members of the Parliament, and experts alike.²⁶⁴

²⁶⁰ Amendment No.468 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 24 July 2020. See: <https://matsne.gov.ge/ka/document/view/4939485?publication=0>. From 10 August 2020 quarantine was lifted in the village Karajalari of Gardabani Municipality. Amendment No.493 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 10 August 2020. See: <https://matsne.gov.ge/ka/document/view/4960956?publication=0>.

²⁶¹ Amendment No.493 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 10 August 2020. See: <https://matsne.gov.ge/ka/document/view/4960956?publication=0>. From 21 August 2020 quarantine was limited only to the administrative units of Lower Mestia and of Mestia Municipality. Amendment No.526 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 21 August 2020. See: <https://matsne.gov.ge/ka/document/view/4970710?publication=0>. From 2 September 2020 Quarantine is lifted in Mestia Municipality. The Ordinance No.547 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 31 August 2020. See: <https://matsne.gov.ge/ka/document/view/4980382?publication=0>.

²⁶² Article 1 (amending Article 3325 of the Code), the Law on the Amendment of the Code of Criminal Procedure of Georgia, No. 5973, 22 May, 2020; See: <https://matsne.gov.ge/ka/document/view/4876514?publication=0#DOCUMENT:1>; See also the Law on the Amendment of the Code of Criminal Procedure of Georgia, No. 6779, 14 July 2020. See: <https://matsne.gov.ge/ka/document/view/4924554?publication=0#DOCUMENT:1>.

²⁶³ Ordinance No.601 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 24 September 2020. See: <https://matsne.gov.ge/ka/document/view/5001492?publication=0>.

²⁶⁴ See: the statement of the GYLA, 19 May 2020, see <https://bit.ly/35Y3lCe> [visited: 10.09.20]; the statement of the Georgian Democratic Initiative, 20 May 2020, see <https://gdi.ge/news/state-ment-20-05-20.page> [visited: 11.09.20]; also <https://www.apsnv.ge/analytics/1592073018.php> [vis-

- a) One of the reasons for such criticism is that the amendments to the Law on Public Health did not specifically define the object, content, and limits of the restriction of the constitutional rights and fully grant the executive authorities the discretion to restrict human rights.²⁶⁵ The reference in the Law on Public Health that certain rights may be restricted is not sufficient. It is necessary that the Law specifically defines the object, content, and limits for the restriction of the rights concerned. While the Law should lay down the object, content, and limits of restrictions of the rights concerned, the Government may be authorized to define the ways and means of restricting the relevant rights.²⁶⁶
- b) Another problem with the Law of Georgia on Public Health relates to the fact that the Government of Georgia was granted the right to define rules different from the regulations set by the Parliament of Georgia.²⁶⁷ Therefore, the Law empowers the Government to impose restrictive rules which differ/contradict the will of the legislator and the norms stipulated by law.²⁶⁸

Therefore, it is recommended that:

- a) the Law on Public Health specifically defines the object, content, and limits for restrictions of the rights concerned; and
- b) the provision of the Law on Public Health that grants to the executive authorities the right to define the rules different from the regulations set by the Parliament of Georgia is abolished.

ited: 15.09.20]; the Statement of Transparency International Georgia, 19 May 2020, see: <https://bit.ly/3mI69Qb> [visited: 15.09.20]. See also <https://bit.ly/2GjCHQU> [visited: 15.09.20]; <https://bit.ly/321mUn> [visited: 16.09.20].

²⁶⁵ <https://bit.ly/3kRpqhs> [visited: 12.09.20]; See also <https://gdi.ge/ge/news/statement-02-07-2020.page> [visited: 12.09.20].

²⁶⁶ The Statement of Georgian Democratic Initiative, 20 May 2020, see: <https://gdi.ge/ge/news/statement-20-05-20.page> [visited: 12.09.20].

²⁶⁷ L. Jibladze, Covid-19 Pandemic and Human Rights, Human Rights Center, 2020, 6. See: <https://bit.ly/3kRcKHA> [visited: 12.09.20].

²⁶⁸ <https://bit.ly/2HW8LuN> [visited: 12.09.20]. See also <https://gdi.ge/ge/news/statement-02-07-2020.page> [visited: 12.09.20].

9. THE COMPLIANCE OF HUMAN RIGHTS RESTRICTIONS DURING THE PANDEMIC IN GEORGIA WITH INTERNATIONAL AND EUROPEAN HUMAN RIGHTS STANDARDS

As noted above, human rights restrictions were imposed in Georgia not only during the state of emergency (21 March - 22 May 2020), but also before and after it. Therefore, it would be wrong to focus solely on the compliance of human rights restrictions imposed during the state of emergency. Accordingly, it is equally important to assess the legitimacy and proportionality of human rights restrictions imposed before 21 March 2020 and after 22 May 2020.

The analysis of the steps taken by Georgia in fighting the COVID-19 pandemic demonstrates that the President of Georgia was authorized under the Constitution to declare the state of emergency and that the human rights restrictions imposed met with the international and European standards in the sense that the President of Georgia had not derogated from the absolute human rights.

When describing the character of the human rights restrictions, the Government of Georgia has underscored that “every imposed restriction aimed to restrict the mobility of citizens and to ensure adherence to sanitary-hygienic norms and social distancing rules...”²⁶⁹ Therefore, all the measures taken by the Government were supposed to serve the above purposes.

If the legitimate aim of the Government of Georgia to restrict human rights and freedoms was the protection of public health, the specific restrictions imposed should serve the aim of preventing the spread of COVID-19. At the same time, if the specific restrictions of human rights imposed did not serve the aim of preventing the spread of COVID-19, then the restriction of human rights would not be legitimate. Therefore, the question to answer with regard to the legitimate aim here is whether or not the specific restrictions aimed at preventing the spread of the coronavirus.

²⁶⁹ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 17. See: https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

If it is established that the specific restrictions imposed by the Government were aimed at preventing the spread of coronavirus, then it should be assessed whether the restrictions were proportionate to the aim pursued.

In assessing whether the requirements of the relevant international and European instruments in restricting human rights have been met, a particular focus will be placed on compliance with the principle of proportionality.

As the research is aimed at finding out the relevance of the human rights restrictions at all three stages (i.e. before, during, and after the state of emergency) it is important to note that the principle of proportionality should have been applied in all of them. The Secretary General of the Council of Europe in her information document pointed out that “[i]t is for the authorities to ensure that any such restriction, whether or not it is based on a derogation, is clearly established by law, in compliance with relevant constitutional guarantees and proportionate to the aim it pursues.”²⁷⁰ Therefore, the measure restricting human rights must be proportionate to the aim it pursues.

As already noted, the principle of proportionality is fundamental in assessing whether measures taken by a state are strictly required by the given situation. This principle requires that a state must justify the relevance of the measures taken. For example, if a state takes a measure aimed at restricting the freedom of movement, this measure will be justified only if there is a high risk of spreading the virus that poses a threat to the health of the population.

One of the elements of the principle of proportionality is that the state should consider less restrictive measures from among the various measures available. As the European Court has noted “when assessing the “lawfulness” of the detention of a person “for the prevention of the spreading of infectious diseases” are whether the spreading of the infectious disease is dangerous to public health or safety, and whether detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest.”²⁷¹

²⁷⁰ Secretary General of Council of Europe, Respecting Democracy, Rule of Law and Human Rights in the Framework of the COVID-19 Sanitary Crisis: A Toolkit for Member States, Information Document, SG/Inf(2020)11, 7 April, 2020, p.6, <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

²⁷¹ *Enhorn v. Sweden*, 25 January 2005, para. 44.

An important requirement of the principle of proportionality is the temporary character of the restriction imposed. The restriction of human rights may not last longer than the situation justifying such a measure.

Apart from the practice of the Constitutional Court of Georgia, the necessity to comply with the principle of proportionality may be inferred from Article 4 of the Law on the State of Emergency that points out that the measures aimed at derogating from the rights during a state of emergency shall be taken in accordance with “specific circumstances.” However, the amendment to the Law of Georgia on Public Health lays down the principle of proportionality in express terms. Specifically, para. 3 of Article 45³ prescribes that “restriction of the right shall be:

- a) directed towards the achievement of the benefits guaranteed by the relevant article of the Constitution of Georgia;
- b) provided for by law and/or other normative act;
- c) necessary for the democratic society;
- d) non-discriminatory;
- e) proportionally restricting;
- f) such that the benefit protected by restriction exceeds the damage incurred as a result of the restriction.”

In general, it is argued that while imposing the human rights restrictions, the Government of Georgia was guided by the principle of proportionality. This is confirmed by the report of the Government of Georgia characterizing the measures restricting human rights provided for in the Presidential Decree (21 March 2020), which stated: “the decree included only those rights and freedoms, the restriction of which was critical to the management of the epidemiological situation.”²⁷² The fact that the principle of proportionality was taken into account when imposing the relevant human rights restrictions was demonstrated in the same report as follows: “[i]t should be stressed that on the one hand, the legitimate objective given the epidemiological situation, and on the other hand, the proportionality between the legitimate objective

²⁷² Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 17, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

and the means used to achieve it was taken into consideration during the imposition of specific restrictions.”²⁷³

The application of the principle of proportionality in restricting human rights was also referred to in the statements of the Prime Minister of Georgia²⁷⁴ and other state officials.²⁷⁵

As noted above, an important requirement of the principle of proportionality concerns the duration of the measures taken: the human rights restriction should not last longer than the state of emergency itself.²⁷⁶ The temporary character of the measures imposed was demonstrated by the fact that after the state of emergency was initially introduced on 21 March 2020 for one month, the Government of Georgia considered prolonging it until 10 May 2020.²⁷⁷ However, due to the epidemiological situation, it was finally decided to request that the President of Georgia prolong the state of emergency for another month.²⁷⁸

9.1. THE RIGHT TO LIBERTY AND SECURITY

The right to liberty and security aims to protect a person from having his/her freedom arbitrarily taken away. The isolation (quarantine or self-isolation) of a person putting him/her under the effective control of the state affects his/her right to liberty and security. If the person concerned is not at liberty to

²⁷³ *Ibid.*, 18.

²⁷⁴ Video recording of the statement of the Prime Minister of Georgia at the press conference on 19 March 2020. See: http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75722. In his interview the Prime Minister of Georgia noted that “საგანგებო მდგომარეობას, რომელიც ქვეყანაში გამოცხადდა, ყველა იმ აუცილებელ ღონისძიებას, რომელიც ჩვენ გავატარეთ, ჰქონდა თავისი მიზნუბ-მდეგობრივი ახსნა და პირდაპირ იყო მიმართული ეპიდემიის გავრცელების გეოგრაფიისა და სისწრაფის შემცირებისაკენ. ხელისუფლება კანონით მინიჭებული უფლებამოსილებას იყენებდა მხოლოდ ეპიდსაჭიროებიდან გამომდინარე.” იხ. „ვაქციით კრიზისი შესაძლებლობად“, ინტერვიუ საქართველოს პრემიერ მინისტრ, გიორგი გახარია-სთან, გაზეთი „ქართული ოცნება“, N1/2020, გვ. 3.

²⁷⁵ <https://bit.ly/3efiV5K> [visited: 25.09.20].

²⁷⁶ Opinion on the Draft Constitutional Law on “Protection of the Nation” of France adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), CDL-AD(2016)006, Opinion No. 838/2016, 14 March, 2016, para. 65, [https://www.venice.co.eint/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)006-e](https://www.venice.co.eint/webforms/documents/default.aspx?pdffile=CDL-AD(2016)006-e).

²⁷⁷ See: <https://bit.ly/2TKUJyB> [visited: 25.09.20].

²⁷⁸ See: <https://bit.ly/3mKSsQo> [visited: 25.09.20].

leave a premises (even if this premises is his/her residence), that person has to be regarded as being deprived of his/her liberty.²⁷⁹

The right to liberty and security is protected, *inter alia*, under Article 9 of the ICCPR and Article 5 of the ECHR. The ECtHR has pointed out that Article 5 of the Convention that deals with a person's physical liberty, aims "to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. In order to determine whether someone has been "deprived of his liberty" ... the starting-point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question."²⁸⁰

The rules on isolation that covers both quarantine and self-isolation established in Georgia in connection with the pandemic were applicable *before*, *during*, and *after* the state of emergency. Before declaring the state of emergency, the Government of Georgia introduced a rule on the compulsory isolation of persons returning from high-risk countries (28 January 2020) that was later applied to all persons from all other countries (18 March 2020). Under this regulation, persons entering Georgia were to present a PCR test result issued by the relevant laboratory within the last three days. In case persons entering Georgia were unable to present the PCR test result, they were subject to an epidemiological test and compulsory 14-day isolation.²⁸¹

The Decree of the President of Georgia of 21 March 2020 provided for the restriction of Article 13 of the Constitution (human liberty) as follows "the relevant authorities defined by the legislation of Georgia shall be authorized to transfer a person by force to an appropriate institution, in a place designated by the Government of Georgia, for the violation of isolation or quarantine rule established by the Government of Georgia."

²⁷⁹ Para. 8, Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, UN Working Group on Arbitrary Detention, 8 May 2020. See: <https://www.ohchr.org/Documents/Issues/Detention/DeliberationNo11.pdf>.

²⁸⁰ *Medvedyev and Others v. France*, Grande Chamber, 29 March 2010; *Guzzardi v. Italy*, 6 November 1980, para. 92; *Amuur v. France*, 25 June 1996, para. 42.

²⁸¹ Amendment to Article 4, para. 4, subparas. b.d-b.d.b., the Decree No.514 of the Government of Georgia on the Amendment to the Decree of the Government of Georgia No.164 of 28 January 2020 "On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease", 12 March 2020. See: <https://matsne.gov.ge/ka/document/view/4821519?publication=0>.

Although not immediately, but rather on 23 April 2020, the Law of Georgia on Public Health was amended, laying down that in order to protect life and/or health of others, as a preventive measure, a physical person could be placed in an appropriate space, in the event of a violation of isolation and/or quarantine rules (entered into force on 2 May 2020).²⁸²

As far as the rules on isolation adopted after the state of emergency are concerned, apart from the rule on the isolation of a person upon entry into the country and the rule on the isolation of a person in the event of a violation of isolation and/or quarantine rules which remained in force after the state of emergency, the Government, as a result of the internal spread of coronavirus in the country, also laid down a rule on the isolation of persons (quarantine or self-isolation)²⁸³ suspected of being infected with coronavirus or being at high risk of coronavirus infection (23 May 2020).²⁸⁴

It is also important to assess the relevant regulations relating to the right to liberty and security adopted by the Government of Georgia in light of international and European human rights standards. A person deprived of his/her liberty should be provided with all the human rights guarantees; in particular, he/she should be informed promptly, in a language which he/she understands of the reasons for his/her detention and he/she should have access to legal assistance.²⁸⁵

Under comment No.2 of Article 42¹⁰ of the Administrative Offences Code of Georgia, in the implementation of a preventive measure (i.e. placement of

²⁸² See Amendment to Article 111, Amendment to the Law of Georgia on Public Health, 23 April 2020, No.5890-SS, <https://matsne.gov.ge/ka/document/view/4854050?publication=0>.

²⁸³ The Law of Georgia on Public Health in Article 1(k and l) defined isolation and quarantine measures: a) "isolation – keeping a diseased or an infected person separately from others for the period of communicability of these disease by placing him/her in such a place and/or in such conditions that would restrict or prevent direct or indirect transmission of the disease from his/her to another person"; b) "quarantine measures – a set of measures applied to a person who is not diseased but has been exposed to a communicable disease case during the period of communicability". See: <https://matsne.gov.ge/ka/document/view/21784?publication=31>.

²⁸⁴ Chapter II, Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

²⁸⁵ Para. 19, Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, UN Working Group on Arbitrary Detention, 8 May 2020. See: <https://www.ohchr.org/Documents/Issues/Detention/DeliberationNo11.pdf>.

a physical person in an appropriate space), subparagraphs a) and c) of part 1 and part 2 of Article 245 of the Code are applied.²⁸⁶ While it is important that Article 245(1) of the Administrative Offences Code of Georgia lays down that during an administrative detention, a relevant official is obliged to explain to the detainee in a form he/she understands of the administrative offence he/she has committed and the corresponding basis for detention (subparagraph a), and that he/she has a right to notify the person he/she names and the administration of his/her work/educational institution (subparagraph c), the Code fails to guarantee that the person concerned has a right to a lawyer.

The fact that a person whose liberty is deprived does not have a right to legal assistance posed a human rights problem.²⁸⁷ However, the amendment to the Law of Georgia on Public Health rectified this legal drawback by providing that a person placed in isolation, in addition to the rights mentioned in the Administrative Offences Code, also has a right to a lawyer.²⁸⁸

Regarding the right of a person deprived of their liberty to have relevant information relating to his/her detention, the Public Defender (Ombudsman) of Georgia raised a concern.²⁸⁹ In particular, although the Order of 25 March 2020 of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia on Defining Isolation and Quarantine Rules²⁹⁰ that was valid during the state of emergency and Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules²⁹¹ currently in force, lay down that the person concerned shall be provided with an explanation/appropriate information about his/her

²⁸⁶ Article 4210 (introduced by amendment of 23 April 2020 and entered into force on 2 May 2020), the Administrative Offences Code of Georgia. See: <https://matsne.gov.ge/ka/document/view/28216?-publication=465>.

²⁸⁷ GYLA's Assessment on the Legislative Amendments Adopted in Connection with the State of Emergency, 24 April 2020, see: <https://bit.ly/381Cl7s> [visited: 21.09.20].

²⁸⁸ Amendment to the Law of Georgia on Public Health, No.5972, 22 May 2020. See: <https://matsne.gov.ge/ka/document/view/4876537?publication=0>.

²⁸⁹ Para. 4, Letter of the Public Defender (Ombudsman) of Georgia addressed to the Chairman of the Parliament of Georgia, N 02-1/5118, 20 May 2020. See: <http://ombudsman.ge/res/docs/2020052113561253581.pdf> [visited: 13.09.20].

²⁹⁰ Order No.01-31/N, 25 March 2020. See: <https://matsne.gov.ge/ka/document/view/4833995?publication=0>.

²⁹¹ 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

rights and duties that he/she is to comply with while in isolation and/or quarantine, in the view of the Public Defender (Ombudsman) of Georgia the established form is not an appropriate means for providing a person to be placed in quarantine with the relevant information. Specifically, in the opinion of the Public Defender (Ombudsman), the document did not contain information about fundamental guarantees and the basis for deprivation of liberty was not explained properly.²⁹²

One question which may be raised with respect to the Georgian experience, is the interpretation of the right to liberty and security. The international and European human rights treaties clearly distinguish between, on the one hand, the right to liberty and security, and the freedom of movement on the other. In this regard, the ECtHR pointed out in its case-law that Article 5(1) of the Convention “is not concerned with mere restrictions on liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4.” However, it seems that the approach of the President of Georgia has differed from that provided for in the international and European human rights treaties. The President of Georgia within the state of emergency authorized the Government to establish isolation and quarantine rules under Article 14 of the Constitution (freedom of movement) instead of imposing the relevant restriction under Article 13 of the Constitution (human liberty).²⁹³ Under the international and European human rights treaties, the relevant standards on the protection of the right to liberty and security should be applicable to persons in isolation. An interpretation similar to international and European human rights treaties was made by the Constitutional Court of Georgia.²⁹⁴

The right to take proceedings by which the lawfulness of his/her detention is decided is an important aspect of the protection of the right to liberty and security. This right has been well-established at international and Euro-

²⁹² Monitoring of Places of Restriction of Freedom relating to Quarantine Measures against Novel Coronavirus (COVID-19), Public Defender (Ombudsman) of Georgia, 2020, 6. See: <http://ombudsman.ge/res/docs/2020071010392251855.pdf> [visited: 28.09.20].

²⁹³ *Ibid.*

²⁹⁴ The Citizens of Georgia – Levan Izoria and Davit-Mikheil Shubladze against the Parliament of Georgia, decision of 11 April 2013, N1/2/503,513. See: <https://matsne.gov.ge/ka/document/view/1901078?publication=0>.

pean levels. Under Article 9(4) of the ICCPR: “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” A similar provision is laid down in Article 5(4) of the ECHR, stating “[e]veryone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

The Law of Georgia on Public Health provides for the right of a person to take proceedings by which the lawfulness of his/her detention is decided. In particular, Article 11(2) of the Law lays down that “a natural person shall have the right to appeal the decision made concerning him/her, as provided by the legislation of Georgia.” Although the right to appeal against the decision on isolation is important in itself, an effective mechanism to protect the right to liberty and security in the context of isolation (quarantine and self-isolation) seems to have been overlooked in Georgia.²⁹⁵

As rightly pointed out by the Public Defender (Ombudsman) of Georgia, under the current legislation, the lawfulness of isolation is decided on the basis of the rule of administrative appeal²⁹⁶ and, later, by applying to the relevant court.²⁹⁷ Based on the above regulations, appeals about the lawfulness of isolation would last longer than the isolation itself. Under Article 183(1) of the General Administrative Code of Georgia, the administrative body has one month to decide on the administrative appeal. As for the appeal before the court, the Civil Procedure Code of Georgia lays down that a judge shall be obliged to deliver a judgement on admitting the claim within five days²⁹⁸ and the Court has to decide the case within two months.²⁹⁹

²⁹⁵ Managing the Challenges of COVID-19: Government Actions Evaluation Report, Transparency International Georgia, 2020, 23. See: <https://bit.ly/38auZUQ> [visited: 30.09.20].

²⁹⁶ Article 178(1) of the General Administrative Code of Georgia. See: <https://matsne.gov.ge/ka/document/view/16270?publication=36>.

²⁹⁷ Monitoring of Places of Restriction of Freedom relating to Quarantine Measures against Novel Coronavirus (COVID-19), Public Defender (Ombudsman) of Georgia, 2020, 10. See: <http://ombudsman.ge/res/docs/2020071010392251855.pdf> [visited: 28.09.20].

²⁹⁸ Article 445(3) of the Civil Procedure Code of Georgia.

²⁹⁹ Article 59(1)) of the Civil Procedure Code of Georgia.

It is clear that in order to ensure that persons in isolation have an effective remedy, it is important that the lawfulness of his/her placement in isolation is decided as soon as possible, and definitely earlier than the period of isolation expires.³⁰⁰ This approach has been supported in the case-law of the ECtHR.³⁰¹ Therefore, there is a need to establish accelerated procedures under the Law of Georgia on Public Health by which the lawfulness of the placement of a person in isolation (quarantine or self-isolation) is decided. Making decisions on the lawfulness of an isolation by a court within 48 or 72 hours would be a proportionate time period.

The same is true with regard to appeals to a higher administrative body, as laid down under the legislation of Georgia. There should also be an efficient mechanism for appeals to a higher administrative body. A person in isolation should be able to decide whether to appeal on the lawfulness of placement in isolation to the higher administrative body or the court. As was the case regarding the determination of the reasonable time period within which the court should decide on the lawfulness of the isolation, a similar approach should be taken to appeal to a higher administrative body.³⁰² Having an effective right to remedy in the situation described above requires that the national law bears in mind that a person is placed in isolation and he/she has access to the higher administrative body and/or court only remotely.³⁰³ Information available regarding the difficulties to access to remedy for those who are placed in quarantine has outlined that the current mechanism for appeals is not efficient.³⁰⁴

Apart from laying down a provision in the Law of Georgia on Public Health on the right to appeal, it is vital that persons placed in isolation are provided the relevant information on appeal against the decision taken.³⁰⁵

³⁰⁰ Monitoring of Places of Restriction of Freedom relating to Quarantine Measures against Novel Coronavirus (COVID-19), Public Defender (Ombudsman) of Georgia, 2020, 10. See: <http://ombudsman.ge/res/docs/2020071010392251855.pdf> [visited: 28.09.20].

³⁰¹ *Shvydka v. Ukraine*, 30 October 2014.

³⁰² Monitoring of Places of Restriction of Freedom relating to Quarantine Measures against Novel Coronavirus (COVID-19), Public Defender (Ombudsman) of Georgia, 2020, 11. See: <http://ombudsman.ge/res/docs/2020071010392251855.pdf> [visited: 28.09.20].

³⁰³ *Ibid.*

³⁰⁴ The statement of the Georgian Young Lawyers' Association on two persons placed in quarantine. See: <https://bit.ly/34M8Qdp> [visited: 10.10.20].

³⁰⁵ Monitoring of Places of Restriction of Freedom relating to Quarantine Measures against Novel Coro-

Therefore, it is important not only to lay down the right to appeal on the lawfulness of isolation, but also to make the mechanism and procedure both fast and efficient.³⁰⁶ The Government is expected to guarantee that the right that is not theoretical, but is actually practical and effective.³⁰⁷

The lawful deprivation of liberty may be arbitrary if such detention is not strictly necessary or a proportionate measure in pursuance of a legitimate aim.³⁰⁸ International and European human rights standards are helpful here when identifying the relevant criteria. The ECtHR on the a relating to the detention of a person spreading an infectious disease pointed out the following: “the essential criteria when assessing the “lawfulness” of the detention of a person “for the prevention of the spreading of infectious diseases” are whether the spreading of the infectious disease is dangerous to public health or safety, and whether detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest. When these criteria are no longer fulfilled, the basis for the deprivation of liberty ceases to exist.”³⁰⁹

It is clear from the above judgement of the ECtHR that detention of the person infected should be the last resort in order to prevent the spread of disease if less severe measures have been considered and found to be sufficient to safeguard the public interest. Thus, under the ECHR, if less strict measures allow for the same result to be achieved, then resorting to stricter measures would not be regarded as proportionate.

navirus (COVID-19), Public Defender (Ombudsman) of Georgia, 2020, 11. See: <http://ombudsman.ge/res/docs/2020071010392251855.pdf> [visited: 28.09.20].

³⁰⁶ Managing the Challenges of COVID-19: Government Actions Evaluation Report, Transparency International Georgia, 2020, 17. See: <https://bit.ly/38au2UQ> [visited: 30.09.20]. Legal and Political Content of State of Emergency – Analysis of the Existing Experience, Human Rights Education and Monitoring Center, 2020, 12. See: <https://bit.ly/2HToxq8> [visited: 28.09.20].

³⁰⁷ *Airey v. Ireland*, 9 October 1979, para. 24; *García Manibardo v. Spain*, 15 February 2000, para. 43; *Aksoy v. Turkey*, 18 December 1996, para. 78.

³⁰⁸ Para. 3, Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, UN Working Group on Arbitrary Detention, 8 May 2020. See: <https://www.ohchr.org/Documents/Issues/Detention/DeliberationNo11.pdf>.

³⁰⁹ *Enhorn v. Sweden*, 25 January 2005, para. 44.

The Georgian legislation provides for two forms of isolation: quarantine and self-isolation. The latter is less strict as the person concerned may spend this period of time at his/her own residence.³¹⁰ Under the relevant regulation, the placement of a person in self-isolation is implemented if the relevant conditions for self-isolation are met.

Although under the international and European human rights standards, priority should be given to self-isolation over quarantine as it is a less strict measure, a study carried out by the Public Defender (Ombudsman) of Georgia showed that this has not always been the case in Georgia. On the basis of a study by the Public Defender of Georgia, during the month of March 2020, requests for self-isolation were always satisfied in due time, and from April 2020 the majority of requests were rejected.³¹¹

More recently, the Government of Georgia adopted a decision to give priority to the application of self-isolation over quarantine.³¹² In particular, from 21 October 2020, citizens of Georgia with a negative PCR test result would be subject to self-isolation instead of quarantine after arriving in Georgia.³¹³

The amendment to the Government's regulation on isolation was welcomed by the Public Defender (Ombudsman) of Georgia as it specified the list of persons who may be put in self-isolation.³¹⁴ Under para. 7¹ of the Amendment to the Government Ordinance:

“A person may be placed in/transferred to self-isolation:

³¹⁰ Order No.01-31/N of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia on Defining Isolation and Quarantine Rules, 25 March 2020. See: <https://matsne.gov.ge/ka/document/view/4833995?publication=0>. See, Order No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

³¹¹ Monitoring of Places of Restriction of Freedom relating to Quarantine Measures against Novel Coronavirus (COVID-19), Public Defender (Ombudsman) of Georgia, 2020, 13. See: <http://ombudsman.ge/res/docs/2020071010392251855.pdf> [visited: 28.09.20].

³¹² Ordinance No. 637 on Amendment to the Ordinance No.322 of the Government of Georgia of 23 May 2020 on the Approval of Isolation and Quarantine Rules, 21 October 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

³¹³ See: <https://bit.ly/3eksVuE> [visited: 21.10.20]; <https://bit.ly/2HRekdQ> [visited: 21.10.20].

³¹⁴ Monitoring of Places of Restriction of Freedom relating to Quarantine Measures against Novel Coronavirus (COVID-19), Public Defender (Ombudsman) of Georgia, 2020, 13. See: <http://ombudsman.ge/res/docs/2020071010392251855.pdf> [visited: 28.09.20].

- a) taking into account the state of health of a person (e.g. after surgery, chemotherapy, the need for dialysis session, etc.) where relevant medical documentation is submitted;
- b) at the request of representatives of international missions, accredited diplomatic missions in Georgia and their family members, taking into account the request of the relevant state agencies;
- c) in the presence of other special circumstances/social factors (persons with disabilities, minors, etc.) that justify the privilege of a person's presence in self-isolation.”³¹⁵

In general, this amendment should be assessed positively, particularly the open-ended para. 7¹(c). However, in order to avoid an excessively narrow interpretation of the special circumstances/social factors in practice justifying why a person has been obliged to self-isolate, it is recommended to prescribe a longer, albeit not exhaustive, list of special circumstances/social factors. The list may also include, for example, pregnant women and women who are breastfeeding, persons with underlying health conditions, and persons older than 60 years of age.

On the basis of an analysis of the right to liberty and security in the context of the measures taken by Georgia, it is recommended:

- a) to establish an efficient judicial and administrative mechanism for appeals according to which the lawfulness of placing a person in isolation is decided as soon as possible (preferably within 48 or 72 hours), but definitely before the period of isolation expires. It is recommended that the mechanism bears in mind that a person is placed in isolation should have access to a higher administrative body and/or court remotely;³¹⁶
- b) to provide persons placed in isolation with the relevant information on appeal against the decision taken; and

³¹⁵ Amendment N344 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 1 June 2020. See: <https://matsne.gov.ge/ka/document/view/4886309?publication=0>.

³¹⁶ Monitoring of Places of Restriction of Freedom relating to Quarantine Measures against Novel Coronavirus (COVID-19), Public Defender (Ombudsman) of Georgia, 2020, 11. See: <http://ombudsman.ge/res/docs/2020071010392251855.pdf> [visited: 28.09.20].

- c) to lay down a longer, albeit not exhaustive, list of categories of persons who may be put in self-isolation instead of quarantine such as pregnant women and women who are breastfeeding, persons with underlying health conditions, persons older than 60 years of age in the Law of Georgia on Public Health.

9.2. THE FREEDOM OF MOVEMENT

The freedom of movement was restricted in Georgia before, during and after the state of emergency. Before declaring a state of emergency, the Government of Georgia took a number of measures restricting the freedom of movement such as the suspension of international air and road transportation,³¹⁷ the suspension of transportation of passengers by M2 category buses (fixed route taxis) within the territories of municipalities, and the compulsory isolation of persons returning from high-risk countries (later applied to all persons from all other countries).

Various measures were taken during the state of emergency. The Decree of the President of Georgia of 21 March 2020 provided for the restriction of Article 14 of the Constitution (freedom of movement). Namely, the Decree laid down restrictive measures such as imposing isolation and quarantine rules, suspending international travel by air, land, and sea (exceptions applied), and authorizing the Government to regulate the carriage of passengers and the transportation of cargo in the territory of Georgia by a procedure other than that provided for by the legislation of Georgia.

In order to implement the Decree of the President of Georgia, the Government took a number of steps such as the suspension of international air, land, and sea transport services for transportation of passengers, intercity passenger traffic (buses and fixed route taxis), transportation of passengers by railway and air transport, the transportation of passengers by M2 category buses (fixed route taxis) within the territories of self-governing cities and municipal administrative centers, the transportation of passengers by M3 category vehicles and public transport (including metro) within the administrative

³¹⁷ Initially, the suspension of international flights was imposed with high risk countries such as China, Iran, Italy and France and later with all the other countries.

boundaries of municipalities, travel by mechanical means of transportation (other than motorcycles), and transportation of more than three persons (including the driver) by vehicles (along with the restriction whereby passengers could only use the vehicle's rear seats).

For the duration of the state of emergency, the Government of Georgia also prohibited persons aged 70 and over from leaving their places of residence (exceptions applied), entering or leaving the municipalities of the cities of Tbilisi, Rustavi, Kutaisi, and Batumi (exceptions applied), and entering cemeteries.

In addition, the Government of Georgia introduced quarantine regimes in the municipalities of Marneuli, Bolnisi, Lentekhi, Khashuri (village of Khidiskhuri), and Kobuleti (administrative units of Gvara, Mukhaestate, Leghva, and Tskavroka), imposed a curfew and prohibited travel on foot and by vehicle from 21:00 to 06:00.

Regarding the restrictions applicable after the state of emergency, the following restrictions were imposed under the relevant regulation of the Government: the suspension of international air, land, and sea transport services for the transportation of passengers; the transportation of passengers by railway and by air within the country; intercity passenger transportation and/or transportation within the municipal administrative territories (buses and fixed route taxis); transportation of passengers by public transport (including metro and cable transport), and transportation of more than three persons (including the driver) by taxi (M1 category).

The Government of Georgia also took measures to isolate persons (quarantine or self-isolation) suspected of being infected with coronavirus or being at high risk of coronavirus infection and to apply the quarantine restriction in the municipalities of Bolnisi (villages of Mushevani and Geta), Tetrtskaro, Gardabani (village of Karajalari), and Mestia.

An important criterion for assessing whether the Government met the requirements set out in the ICCPR (Article 4) and the ECHR (Article 15) is whether the restrictions imposed were “only to the extent strictly required by the exigencies of the situation”. The obligation to take measures only to the extent strictly required by the exigencies of the situation reflects the principle of proportionality that requires that the measures taken by a state must be pro-

portionate to the aim pursued. This requirement is applicable to restrictions imposed in ordinary situations (i.e., non-state of emergency situations) as well.

In imposing restrictions on the freedom of movement, the Government of Georgia outlined a number of ways in which it had ensured the proportionality of the measures taken. Regarding the suspension of air and land traffic, the Government pointed out that doing so had allowed it “to reduce the risk of the virus entering the country on the one hand, while allowing...to take some time to adequately prepare the healthcare system and to carry out the controlled management of the epidemic on the other.”³¹⁸ The Government further argued that the decision to close air and land borders was made on the basis of recommendations issued by epidemiologists and healthcare experts related to the rapid spread of the pandemic and the potential increase in the number of cases of internal transmission in other countries.³¹⁹

As far as the suspension of public transport is concerned, the Government argued that, bearing in mind that public transport is a source of rapid mass transmission of the virus, tracking the source of such infections posed significant difficulties. Therefore, in the view of the Government, the restriction of operation of (intercity and municipal) public transport would reduce the mobility of the population and thus slow down and reduce the spread of the virus.³²⁰

Concerning the suspension of travel by car, the Government noted that the period of this particular suspension (17-27 April 2020) coincided with the Easter holidays which are “accompanied by a high degree of mobility of the population, as well as the tradition of a high degree of social interaction. The Government explained the imposition of travel by car in order to maximize the observance of the rules of social distancing and to reduce the risk of spreading the virus.”³²¹ The same explanation was given about the prohibition of entering cemeteries, given the tradition of visiting cemeteries during the Easter holidays.³²²

³¹⁸ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 20, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

³¹⁹ *Ibid*, 21.

³²⁰ *Ibid*, 24.

³²¹ *Ibid*, 22.

³²² *Ibid*.

With respect to the restriction on entering or leaving several cities in which 43.5% of the population of Georgia live, the Government noted that “maintaining the rate of population movement from urban to rural areas and vice versa increased the risk of spreading the virus and made it difficult to determine the contacts of infected persons.”³²³ In addition, in the Government’s view: “the intensity of movement increased the risk of the geographic spread of the virus over a brief period of time.” Apart from it, in the opinion of the Government, “it was important to significantly decrease the mobility of the population during the Easter week, when, traditionally, people move en masse from cities to villages and back.”³²⁴

Regarding the introduction of the curfew (i.e. the restriction of the mobility and prolonged social interaction of the population, the Government of Georgia justified its introduction by the time of the beginning of the internal transmission of the coronavirus in the country that could become uncontrolled and the risk of the epidemic becoming large-scale, leading to the disruption and collapse of the healthcare system. In the opinion of the Government, the imposition of the curfew could reduce the population’s mobility and the number of gatherings for social purposes, which usually take place in the evening.³²⁵

In the same spirit, imposing quarantine regimes in individual municipalities was justified by the Government of Georgia on the basis of risk assessment and of the specific situation on the ground. In terms of the introduction of a curfew in Marneuli and Bolnisi municipalities, this was justified on grounds of the high level of internal transmission of the novel coronavirus in Marneuli which occurred during a ritual event that was attended by several dozen people (including residents of Bolnisi). Correspondingly, epidemiologists identified up to 90 direct contacts in this chain. Bearing in mind that a significant part of their population of these municipalities migrates daily to Tbilisi, as well as other cities, in the opinion of the Government, there was a high risk of the virus spreading rapidly in and beyond the Marneuli and Bolnisi clusters.³²⁶

³²³ *Ibid.*, 27.

³²⁴ *Ibid.*

³²⁵ *Ibid.*, 25. See also: <https://bit.ly/325aWDz> [visited: 16.08.20].

³²⁶ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 23, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf

The Government faced a similar situation in Lentekhi Municipality, when an infected person who had arrived there from Tbilisi had had contact with a large number of people (approximately 50 persons). The situation was assessed as critical due to the large number of direct contacts. Therefore, the aforementioned municipality was put on lockdown to avoid the mass spread of the virus.³²⁷

Strict measures of quarantine were imposed on the basis of the consideration of the epidemiological situation on specific territories rather than the whole country. This reflects the principle of proportionality and should thus be assessed positively.

As noted above, the Government of Georgia prohibited persons aged 70 and over from leaving their places of residence. This prohibition was imposed not on 23 March 2020, when the Government adopted the Ordinance implementing the Decree of the President of Georgia, but later, on 30 March 2020.³²⁸ In particular, under the Ordinance of the Government, the Ministry of Economy and Sustainable Development and the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia are commissioned, if necessary, to ensure meeting the needs of persons aged 70 and over.³²⁹ The Ordinance enshrined that the prohibition would not be applicable to leaving places of residence to receive medical care that could not be received in their place of residence, as well as leaving their place of residence in order to purchase food and medical/pharmaceutical products.³³⁰

In terms of proportionality, the restriction on persons aged 70 and over leaving their places of residence was clearly an interference with their right to the freedom of movement.³³¹ Thus, the Government struck a balance between the interests of persons aged 70 and over being able to enjoy freedom

³²⁷ *Ibid.*

³²⁸ Valid from 31 March 2020. Para. 3 (Amending Article 5-1 of the Ordinance) the Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

³²⁹ *Ibid.*

³³⁰ *Ibid.*

³³¹ L. Jibladze, Covid-19 Pandemic and Human Rights, Human Rights Center, 2020, 7. See: <https://bit.ly/3kRcKHA> [visited: 12.09.20].

of movement while also protecting their health. The prohibition on leaving places of residence was therefore not absolute. In addition, the prohibition was not applicable for receiving medical care that could not be received at their place of residence, as well as for leaving a place of residence in order to purchase food and medical/pharmaceutical products. Therefore, it may be concluded that the prohibition on persons aged 70 and over leaving their place of residence was proportional.

As noted above, the freedom of movement was restricted in Georgia not only during the state of emergency, but also before and after it. Pertinently, the restriction of the freedom of movement before and after the state of emergency should be assessed on the basis of the relevant articles of the ICCPR and the ECHR.

Namely, under Article 12 of the ICCPR:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”

Under Article 2, Protocol No. 4 to the ECHR:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

These two provisions of the ICCPR and the ECHR are similar. Both the IC-CPR and the ECHR recognized that the right to freedom of movement may be restricted by a state provided that it meets certain requirements, namely that the restriction is in conformity with the law, the restriction serves a legitimate aim (such as the protection of health or the protection of the rights and freedoms of others), and that the restriction is necessary in a democratic society.

In terms of whether the restrictions on the freedom of movement are in accordance with the law, the relevant restrictions are provided in the relevant regulations of the Government.³³² However, bearing in mind that the Constitution of Georgia expressly refers to “law” in Article 14 of the Constitution (the freedom of movement),³³³ the restriction should be laid down in law,

³³² Para. 7 of the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/en/document/view/4821121?publication=34>. Para. 7, Decree N377 of 26 February 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4821168?publication=0>. Decree N492 of 9 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4821212?publication=0>. Decree N576 of 20 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4830234?publication=0>. Decree N540 of 16 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4824306?publication=0>. Decree No.546 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease, 17 March 2020. See: <https://matsne.gov.ge/ka/document/view/4825724?publication=0>. Decree N577 of 20 March 2020 of the Government of Georgia on Amendment to the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/ka/document/view/4830251?publication=0>.

³³³ Para. 2 of Article 14 (freedom of movement) of the Constitution of Georgia states the following: “[t]hese rights may only be restricted in accordance with law, for ensuring national security or public safety, protecting health or administering justice, insofar as is necessary in a democratic society.”

rather than in the regulations adopted by the Government. Therefore, it is important that the relevant laws, the Law on Civil Safety (as the law governing epidemics and pandemics which are extremely dangerous for public health) or the Law on Public Health, specifically define the object, content, and limits with respect to the restriction of the freedom of movement. Although the amendment to the Law on Public Health was made on 22 May 2020 stating that, *inter alia*, the restriction of movement of persons may be imposed, it did not meet the relevant requirements of clarity and foreseeability.

As for the legitimate aim behind the restriction of the freedom of movement, the analysis shows that the restrictions were imposed for the purpose of the protection of public health and/or for the protection of the rights and freedoms of others. In terms of whether the restriction on the freedom of movement was proportionate to the aim pursued, the measures taken by the authorities should in general be regarded as proportionate to the aim pursued.

Therefore, it is recommended that the relevant laws of Georgia specifically define the object, content, and limits with regard to the restriction of the freedom of movement.

9.2.1. THE EQUAL TREATMENT OF FOREIGNERS AND CITIZENS OF GEORGIA

When it comes to entering Georgia, there may have been some discrimination in the treatment of citizens/permanent residents of foreign countries on the one hand, and the citizens of Georgia on the other hand.

Under Article 11(4) of the Ordinance of the Government of Georgia on the Approval of Isolation and Quarantine Rules, everyone (including citizens of Georgia) when entering the country was subject to quarantine for eight days.³³⁴

³³⁴ Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>. Although from 15 September 2020 the period of quarantine is set to 8 days, at the outset 14 days of quarantine was established (23 May 2020) that was later reduced to 12 days (12 August 2020). See: the Ordinance No.577 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 14 September 2020. See: <https://matsne.gov.ge/ka/document/view/4990670?publication=0>. For the reasons to reduce the period to quarantine, see: <https://bit.ly/2GkGy05> [visited: 25.09.20]. Notably, 8 days of quarantine is not applicable to persons who were in contact with infected persons (i.e. 12 days of quarantine rule remains valid to them). The Ordinance No.577 to the Amendment to the Ordinance No.322 of 23

Despite the requirement that everyone entering Georgia was subject to quarantine, Decree No. 164 of the Government lays down that the citizens/permanent residents of five countries (Germany, France, Latvia, Lithuania, and Estonia) would not be subjected to quarantine.³³⁵

The different treatment of citizens/permanent residents of foreign countries by the Government may have been reasonably justified as some countries are safer than others in terms of their epidemiological situation. Based on the epidemiological situation, the Government has the discretion to treat citizens/permanent residents of foreign countries differently. Therefore, the differing treatment of citizens and permanent residents of the five countries mentioned above and those of other foreign countries did not contravene the principle of non-discrimination.

However, the problem of discriminatory treatment may have arisen with regard to the differing treatment between the citizens of Georgia and the citizens/permanent resident of the above-listed five countries. As mentioned above, the citizens of Georgia were subject to quarantine when entering the country, while citizens/permanent residents of the five countries mentioned above were not.³³⁶

The explanation given by a Georgian government representative on the reasons for exempting citizens/permanent residents of those five countries not subject to quarantine asserted that the above EU countries opened their borders to the citizens of Georgia and, therefore, the Government of Georgia reciprocated the gesture.³³⁷ Another explanation provided by the General Di-

May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 14 September 2020. See: <https://matsne.gov.ge/ka/document/view/4990670?publication=0>.

³³⁵ The Decree No.1158 on Amendment to the Decree of the Government of Georgia No.164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease, 8 July 2020. See: <https://matsne.gov.ge/ka/document/view/4920321?publication=0>. The citizens of Georgia who have permanent residence or dual citizenship of one of these five countries are not subject to quarantine. See: <https://bit.ly/3mKUUGA> [visited: 24.09.20].

³³⁶ From 15 September 2020 citizens/permanent residents of the five countries before entering Georgia are obliged to present a PCR test result taken in the last 72 hours or take PCR test at their own expenses. The Decree No.1176 on Amendment to the Decree of the Government of Georgia No.164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease, 14 September 2020. See: <https://matsne.gov.ge/ka/document/view/4993225?publication=0>.

³³⁷ Video recording of the press statement of Irakli Chikovani on behalf of the Interagency Coordination

rector of the National Center for Disease Control and Public Health was taking “the deterrence position.”³³⁸ According to him, citizens/permanent residents of foreign countries had limited mobility in the country and their travel itineraries were known, while citizens of Georgia entering the country would have much more contact with the local population.³³⁹ The same explanation was given by the Press-Speaker of the Prime Minister of Georgia who stated that foreigners had much less contact with other people in the country while citizens of Georgia would have a much more extensive circle of contacts.³⁴⁰

Bearing in mind the fact that at the time this restriction was introduced, Georgia was regarded a safe country, it is difficult to explain why the citizens of Georgia who travelled to those five countries and returned to Georgia were subjected to quarantine, unlike the citizens/permanent residents of those countries.³⁴¹ Therefore, a problem with regard to the equal treatment of foreigners and citizens of Georgia is acknowledged here.

9.3. THE RIGHT TO PRIVATE AND FAMILY LIFE

The right to private and family life was restricted in Georgia only in the context of penitentiary institutions. Indeed, the restriction of this right was applied before, during, and after the state of emergency.

Even before the state of emergency, on 5 March 2020, the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia introduced extraordinary measures in the penitentiary institutions of Georgia in order to prevent the spread of COVID-19.³⁴² In response to the extraor-

Council, 8 July 2020. See: http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=76699 [visited: 15.09.20].

³³⁸ <https://bit.ly/2TRUnpP> [visited: 15.09.20].

³³⁹ *Ibid.*

³⁴⁰ See: <https://bit.ly/3mKUUGA> [visited: 25.09.20].

³⁴¹ See: <https://metronome.ge/story/282550> [visited: 15.09.20]. By the time of writing this paper there are at least two pending cases before Tbilisi City Court on discrimination. See: <https://bit.ly/324GrNU> [visited: 15.09.20]. See also “the Deputy of “[the Georgian] Dream” Criticises the Government: Restrictions Should be Applicable to Everyone”, Review of the Georgian Press (in Georgian), 14 August 2020. See: <https://bit.ly/38nEfoR> [visited: 16.09.20].

See also A. and Others v. the United Kingdom, Grand Chamber, 19 February, 2009.

³⁴² Para. 1, see the Order No.4109 of the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia, 5 March 2020.

dinary situation caused by the COVID-19 pandemic, in accordance with the Imprisonment Code of Georgia, family, long-term and short-term visitation rights of charged and convicted persons, the right to short-term leave from a penitentiary institution, as well as the right to temporarily leave a penitentiary institution in special circumstances were all suspended.³⁴³

Along with the declaration of the state of emergency, the President of Georgia on 21 March 2020 adopted a decree restricting, *inter alia*, Article 15 of the Constitution (rights to personal and family privacy, personal space, and privacy of communication). This restrictions covered not only private and family life issues, but also the right of visitation to penitentiary institutions. In particular, the Decree stated that “in penitentiary institutions, the right to a visit provided for by the Imprisonment Code shall be suspended.”

However, despite the relevant regulations adopted by the Government to implement various restrictions imposed by the Decree of the President of 21 March 2020, no such regulations were adopted to implement the restriction on the right to visitation to penitentiary institutions imposed by the Decree.³⁴⁴ The reason for not adopting relevant regulations may be the fact that even before the declaration of the state of emergency, on 5 March 2020, the Special Penitentiary Service of the Ministry of Justice adopted a regulation that was applicable not only before and during the state of emergency, but would also remain applicable after the state of emergency.³⁴⁵ The competence of the Special Penitentiary Service of the Ministry of Justice to adopt the regulation was based on Article 35(4) of the Law of Georgia on Public Health stating, *inter alia*, that the Penitentiary Service shall have the following authority over penitentiary institutions: “... b) undertaking preventive health measures at penitentiary institutions”.³⁴⁶

³⁴³ *Ibid.*, Para. 2 of the Order. See also paras. 3 and 4 of the Order.

³⁴⁴ Neither the Ordinance No. 181 of the Government that aims at implementing the restrictions provided for in the Decree of the President of Georgia, nor other legal act addressed this issue after declaration of the state of emergency (21 March 2020). The Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

³⁴⁵ See Order No.4109 of the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia, 5 March 2020.

³⁴⁶ 26 July 2007. See: <https://matsne.gov.ge/document/view/21784?publication=31>.

If the restriction of the right to private and family life imposed by the Order of the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia is compared with the restriction provided for in the Decree of the President of Georgia, it may be concluded that the former was wider in substance than the restriction imposed under the Decree of the President of Georgia, as the Order restricted not only visitation rights of charged and convicted persons, but also the right to short-term leave from a penitentiary institution as well as the right to temporarily leave a penitentiary institution for a special and private situation.

As the right to private and family life was restricted in the context of penitentiary institutions in Georgia, it is important to analyze this restriction in light of the relevant articles of the ICCPR and the ECHR. In particular, under Article 17 of the ICCPR:

- “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.”

Under Article 8 of the ECHR:

- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Although both articles recognize the right to private and family life, the text of the ECHR is more specific in identifying the conditions under which the right to private and family life may be restricted. It states that the restriction should be provided for in the law, have a legitimate aim, and be necessary in a democratic society.

In terms of whether the restriction of the right to private and family life in the context of penitentiary institutions was in accordance with the law, this

restriction was imposed on the basis of the relevant provisions of the Law on Public Health and the Order of the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia.³⁴⁷ Therefore, the lawfulness of the restriction imposed is not in doubt.

As for whether the restriction imposed by the Government of Georgia with regard to the right to private and family life pursued a legitimate aim, the restriction was imposed for the purpose of protecting public health and/or protecting the rights and freedoms of others.

With respect to whether the restriction imposed was proportionate to the aim pursued, the Government of Georgia struck a fair balance between the relevant interests. Although visitation rights were restricted to protect the health of inmates, convicted persons maintained the right to have video communication with family members. To compensate for the restriction imposed, prisoners were allocated 15 minutes of telephone conversation free of charge. On 22 April 2020, the time limit for telephone conversations was increased to 35 minutes. Thus, these measures that were aimed at counterbalancing the restriction imposed on prisoners for public health reasons were in adherence with the principle of proportionality.³⁴⁸

Therefore, bearing in mind the special risks connected with the spread of coronavirus in penitentiary institutions, the restriction imposed by the Georgian authorities to restrict the right to private and family life in the context of the right to visitation was in line with relevant international and European human rights standards.

Although, in general, the discretion of the State to impose relevant restrictions to prevent the spread of COVID-19 in penitentiary institutions is not doubted, there was no rationale for adopting the provision of the Decree of the President of Georgia of 21 March 2020 stating that “in penitentiary institutions, the right to a visit provided for by the Imprisonment Code shall be suspended.” The practical irrelevance of this provision of the Decree was

³⁴⁷ See Order No.4109 of the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia, 5 March 2020.

³⁴⁸ Follow-up Statement of CPT Regarding the Situation of Persons Deprived of their Liberty in the Context of the Ongoing COVID-19 Pandemic, CPT/Inf (2020) 21, 9 July 2020. See: <https://rm.coe.int/16809ef566> [visited: 25.09.20].

confirmed by the fact that no action was taken by the Government to adopt a regulation in relation to this part of the Decree. Even without this part of the Decree of the President, the Order of the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia that was based on the relevant provisions of the Law on Public Health was valid and sufficient to impose the relevant restriction. The restriction on the right to visitation imposed on the basis of the Law on Public Health and the Order of the General Director of the Special Penitentiary Service proves that ordinary legislation was able to adequately cope with the situation without declaring a state of emergency and imposing corresponding restrictions.

9.4. THE RIGHTS TO FAIR ADMINISTRATIVE PROCEEDINGS, ACCESS TO PUBLIC INFORMATION, AND INFORMATIONAL SELF-DETERMINATION

The rights laid down in Article 18 of the Constitution of Georgia were restricted during the state of emergency and partly after it as well.

Regarding the period of the state of emergency, the Decree of the President of Georgia of 21 March 2020 provided for the restriction of, *inter alia*, Article 18 of the Constitution (rights to fair administrative proceedings, access to public information, informational self-determination, and compensation for damage inflicted by a public authority) as follows: “the Government of Georgia shall be authorized to determine, by an ordinance, procedures for providing public services and for administrative proceedings, other than those provided for by the legislation of Georgia currently in force.”³⁴⁹

In order to implement the restriction of Article 18 of the Constitution, the Government of Georgia adopted regulations focusing on the following two aspects of constitutional rights: a) the procedures for providing public services; and b) the procedures for administrative proceedings.³⁵⁰

³⁴⁹ Decree No.1 of the President of Georgia on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia, 21 March 2020, See: <https://matsne.gov.ge/en/document/view/4830372?publication=0>.

³⁵⁰ The Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

In terms of the procedures for providing public services, the implementing regulations of the Government further authorized the Ministry of Justice for the duration of the state of emergency to determine different procedures governing the activities of the National Bureau of Enforcement, the Penitentiary Service, the Notary Chamber, the National Archives, the State Service Development Agency, the National Agency of Public Registry, and the House of Justice.³⁵¹

The Ministry of Justice as a competent institution in the relevant spheres adopted regulations governing the activities of the following institutions during the state of emergency:

a) The National Bureau of Enforcement

The regulations suspended the proceedings of eviction from property (Article 10) and of the seizure of movable property located in a living space (Article 7).³⁵²

b) The Penitentiary Service

The regulations suspended the obligation of probationers and parolees to appear before a probation officer as laid down by the Law of Georgia on the Procedure for Enforcing Non-custodial Sentences and Probation.³⁵³

c) The Notary Chamber

The regulations governed the activities of notaries and restricted certain services provided by notaries.³⁵⁴

³⁵¹ *Ibid.* See also Article 11, the Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

³⁵² Order No.515 of the Minister of Justice of Georgia on the Determination of Certain Questions Other than those Provided for by Law of Georgia on Enforcement Proceedings in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19), 6 April 2020. See: <https://matsne.gov.ge/ka/document/view/4846300?publication=0>.

³⁵³ Order No.522 of the Minister of Justice of Georgia on the Determination of Certain Questions Other than those Provided for the Legislation of Georgia with regard to probationers and Parolees in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19), 16 April 2020. See: <https://matsne.gov.ge/ka/document/view/4851140?publication=0>.

³⁵⁴ Order No.511 of the Minister of Justice of Georgia on Activities of the Legal Person of Public Law – the Chamber of Notaries of Georgia and the determination of the Service Rules and Conditions by the Notaries in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19), 31 March 2020. See: <https://matsne.gov.ge/ka/document/view/4841539?publication=0>.

d) The National Archives

The regulations governed the activities of the National Archives, the rules relating to remote communication with interested persons, and restricted certain services provided.³⁵⁵

e) The State Service Development Agency

The regulations governed the activities of the State Service Development Agency, the rules relating to remote communication with interested persons, home services (for example, for persons aged 70 and over³⁵⁶), and restricted certain services provided.³⁵⁷

f) The National Agency of Public Registry

The regulations governed the activities of the National Agency of Public Registry, the rules relating to remote communication with interested persons (my.gov.ge), home services (for example, for persons aged 70 and over³⁵⁸) and restricted certain services provided.³⁵⁹

With regard to the procedures for administrative proceedings during the state of emergency, the Government adopted regulations under which the timeframes established by the legislation for the submission and consideration of administrative complaints and for releasing public information and personal information were suspended.³⁶⁰ In particular, timeframes of one month estab-

³⁵⁵ Order No.516 of the Minister of Justice of Georgia on Approval of Administrating Rules of the Activities of the National Archives of Georgia in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19), 6 April 2020. See: <https://matsne.gov.ge/ka/document/view/4846252?publication=0>. The Order No.516 was cancelled by the Order No.534 on 13 May 2020 i.e., during the state of emergency and new Order determining questions other than those provided for in the legislation was not adopted. See: <https://matsne.gov.ge/ka/document/view/4868844?publication=0>.

³⁵⁶ These persons were not allowed to leave their places of residence during the state of emergency.

³⁵⁷ Order No.518 of the Minister of Justice of Georgia on Approval of Administrating Rules of the Activities of the State Service Development Agency in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19), 9 April 2020. See: <https://matsne.gov.ge/ka/document/view/4848390?publication=0>. See also the Amendment to the Order No.518. *Ibid.*

³⁵⁸ These persons were not allowed to leave their places of residence during the state of emergency.

³⁵⁹ Order No.521 of the Minister of Justice of Georgia on Approval of Administrating Rules of the Activities of the National Agency of Public Registry in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19), 15 April 2020. See: <https://matsne.gov.ge/ka/document/view/4848390?publication=0>.

³⁶⁰ The Order No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

lished by the General Administrative Code of Georgia for filing an administrative complaint against an administrative act³⁶¹ and for appeal against an action by an administrative body³⁶² were suspended during the state of emergency. Similarly, the timeframes established by the legislation of Georgia for issuing public³⁶³ and personal³⁶⁴ information were immediately (or within no more than 10 days if such information required retrieving and processing) suspended during the state of emergency. Therefore, these timeframes only restarted from the moment of expiration of the state of emergency.

Access to public and personal information pertains to two fundamental human rights. Although the Constitution of Georgia states that access to public information is a separate right (Article 18 of the Constitution) from the freedom of expression (Article 17 of the Constitution), under international human rights treaties, access to public information constitutes a part of the freedom of expression, while access to personal information is part of the right to private life. Regarding the freedom of expression, as has been noted, it is the only right under the Constitution that was not restricted during the state of emergency in Georgia, even though the Constitution lawfully permits the restriction of this right. The freedom of expression covers the right to hold, to receive, and to impart information and ideas. Imposing a restriction on access to public information however puts into question the protection of the freedom of expression. It is clear that putting obstacles in the way of accessing public information or even the suspension of the timeframe for releasing public information may have interfered with the freedom of expression.

Although the Prime Minister of Georgia in a press conference on 21 March 2020 declared that the restrictions were not applicable to the media,³⁶⁵ it is clear that one of the functions of the media is to receive information.

³⁶¹ Article 180 of the General Administrative Code of Georgia. See: <https://matsne.gov.ge/en/document/view/16270?publication=33>.

³⁶² *Ibid.*

³⁶³ *Ibid.*, Article 40.

³⁶⁴ Article 21(3), 28 December 2011. See: <https://matsne.gov.ge/en/document/view/1561437?publication=9>.

³⁶⁵ Video recording of the Georgian Prime-Minister's press-conference of 21 March 2020, from 10:11 minute. http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75723 [visited: 19.10.20].

Therefore, the suspension of the timeframe for releasing public information definitely had an impact on access to public information. This decision of the Government of Georgia could thus have had a negative impact on the work of the media when it came to receiving and imparting information. The Government did not provide any justification for the need to restrict the release of public information.

The suspension of access to public information during the state of emergency was assessed negatively by civil society.³⁶⁶ In the opinion of the Institute for Development of Freedom of Information (IDFI), the suspension of the timeframe for releasing public information was “problematic due to the blanket character of the restriction. It is important that disclosure of public information is restricted not in full, but only to the extent that is critical in a state of emergency.”³⁶⁷

The same is true with regard to personal information. Prevention of access to personal information or suspension of the timeframe for releasing personal information may interfere with the right to private life. No restriction on the right to private life was imposed under the Decree of the President other than in the context of the right of visitation to penitentiary institutions. The Government has not given any justification as to its reason(s) for restricting access to personal information. Indeed, it is not clear why the suspension of the timeframe to access personal information was considered a measure strictly called for by the exigencies of the situation. Bearing in mind the fact that during the state of emergency neither the Decree of the President, nor the regulations of the Government prescribed that the work of state institutions was suspended, the blanket restriction on access to public and personal information may not be regarded as proportionate to the legitimate aim of protecting public health.

As for the period after the state of emergency, the procedures for providing public services falling within the competence of the Ministry of Justice were determined by new regulations since the Decree of the President de-

³⁶⁶ Report on Rule of Law and Human Rights During the COVID-19 Crisis, Institute for Development of Freedom of Information, May 2020, 10. See: https://idfi.ge/public/upload/Covid/rule_of_law_and_human_rights_during_covid_19.pdf [visited: 12.10.20].

³⁶⁷ *Ibid.*

clarifying the state of emergency had expired and, therefore, it could no longer serve as a legal basis for relevant restrictions. New regulations of the Ministry of Justice were subsequently based on the Law of Georgia on Public Health (Article 45³)³⁶⁸ and the Ordinance on Approval of Isolation and Quarantine Rules (Article 7(1)).³⁶⁹

In substance, the regulations governing the activities of various institutions of the Ministry of Justice of Georgia are similar to those applicable during the state of emergency (the National Bureau of Enforcement,³⁷⁰ the Penitentiary Service,³⁷¹ the Notary Chamber,³⁷² the State Service Development Agency³⁷³ and the National Agency of Public Registry).³⁷⁴

The only institution whose services were restricted only during the state of emergency was the National Archives. It was restricted from 6 April to 13 May 2020.³⁷⁵ It is not clear why this restriction was imposed on 6 April 2020 rather than immediately after the adoption of the declaration of the state of emergency and the Government Ordinance No.181.³⁷⁶ It is also not clear why the restriction was cancelled on 13 May 2020 when the state of emergency

³⁶⁸ See: <https://matsne.gov.ge/document/view/21784?publication=31>.

³⁶⁹ Order No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

³⁷⁰ Order No.546 of 25 May 2020 (<https://matsne.gov.ge/ka/document/view/4877192?publication=0>) substituted by Order 582 of 15 July 2020 (<https://matsne.gov.ge/ka/document/view/4926185?publication=0>).

³⁷¹ Order No.545 of 25 May 2020 (<https://matsne.gov.ge/ka/document/view/4877231?publication=0>).

³⁷² Order No.548 of 25 May 2020 (<https://matsne.gov.ge/ka/document/view/4877214?publication=3>) substituted by Order no. 581 of 15 July 2020 (<https://matsne.gov.ge/ka/document/view/4926199?publication=4>).

³⁷³ Order No.543 of 25 May 2020 (<https://matsne.gov.ge/ka/document/view/4877263?publication=0>) substituted by Order No.579 of 15 July 2020 (<https://matsne.gov.ge/ka/document/view/4926250?publication=0>).

³⁷⁴ Order No.544 of 25 May 2020 (<https://matsne.gov.ge/ka/document/view/4877247?publication=0>) substituted by Order 580 of 15 July 2020 (<https://matsne.gov.ge/ka/document/view/4926233?publication=0>).

³⁷⁵ Order No.516 of the Minister of Justice of Georgia on Approval of Administrating Rules of the Activities of the National Archives of Georgia in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19), 6 April 2020. See: <https://matsne.gov.ge/ka/document/view/4846252?publication=0>.

³⁷⁶ The Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

was still legally valid. Ultimately, it remains ambiguous as to what, by 6 April 2020, necessitated the restriction on the work of the National Archives which apparently vanished by 13 May 2020. Without justification being given for the proportionality of the measure taken by the Government, the restriction on access to information contained in the National Archives remains questionable.

9.5. THE RIGHT TO PROPERTY

The restriction of the right to property was imposed not only during the state of emergency, but also after it. As far as the restriction of this right during the state of emergency is concerned, the Decree of the President of Georgia of 21 March laid down the following restriction of Article 19 of the Constitution (right to property): “the Government of Georgia shall be authorized to restrict right to property, if necessary, and to use the property and material resources of natural and legal persons for quarantine, isolation and medical purposes.”³⁷⁷

On the basis of the restriction of the right to property imposed by the President, the Government enacted a regulation under which the private property of legal and natural persons who own and/or are able to provide hotel and similar accommodation services, or who are able to provide carriage and transportation by air and/or road, may be used for state purposes (23 March 2020).³⁷⁸

However, in practice, the restriction of the right to property did not become necessary during the state of emergency.

Regarding the restriction of the right to property after the state of emergency, the amendment to the Law of Georgia on Public Health adopted on 22 May 2020 stated that the quarantine measures shall be “measures defined by this Law and/or the normative act adopted/issued in accordance with this

³⁷⁷ Para. 5, Article 1 of the Decree No.1 of the President of Georgia on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia, 21 March 2020. See: <https://matsne.gov.ge/en/document/view/4830372?publication=0>. Notably, under Article 4(i) of the Law of Georgia on State of Emergency, the State has an obligation to issue compensation after the termination of the state of emergency.

³⁷⁸ Article 8, the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

Law, which are temporarily used for the protection of the health of the population during a pandemic and/or epidemic especially dangerous for the public health and which may imply a different regulation than those established by other normative acts of Georgia, including the temporary imposition of appropriate restrictions in connection with, *inter alia*, property.”³⁷⁹

As already discussed in Chapter 8.3 of this research, the Law on Public Health should not only lay down that the right to property may be restricted, but it should also define object, content, and limits of the restriction of the constitutional right to property.

At the time that this research was being finalized, the restriction to the right to property had not been imposed in practice on the basis of the Law of Georgia on Public Health.

Therefore, it is recommended that the Law on Public Health specifically defines the object, content, and limits with respect to the restriction of the right to property.

9.6. THE FREEDOM OF ASSEMBLY

The freedom of assembly was restricted in Georgia during and after the state of emergency. Before the state of emergency, the freedom of assembly was not legally restricted, but the Government recommended cancelling activities normally associated with people’s gatherings.³⁸⁰

As far as the period of the state of emergency is concerned, the Decree of the President of Georgia of 21 March 2020 provided for the restriction of, *inter alia*, Article 21 of the Constitution (freedom of assembly) as follows: “any kind of assemblies, demonstrations or gatherings of people, except in exceptional cases determined by an ordinance of the Government of Georgia shall be restricted.” In order to implement the Decree of the President, on 23 March 2020 the Government of Georgia adopted an ordinance that imposed restrictions, *inter alia*, on the freedom of assembly.³⁸¹

³⁷⁹ Amendment to the Law of Georgia on Public Health, No.5972, 22 May 2020. See: <https://matsne.gov.ge/ka/document/view/4876537?publication=0>.

³⁸⁰ Video recording of the meeting of 1 March 2020 of the Interagency Coordination Council. See: http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75370 [visited: 03.09.20].

³⁸¹ The Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

The measures taken by the Government of Georgia aimed at restricting the freedom of assembly were as follows: the prohibition of assemblies and/or manifestations under the Law of Georgia on Assemblies and Manifestations (23 March 2020)³⁸²; imposing a limit on the number of people (10) allowed to gather in public spaces (initially (23 March 2020) the limitation of the number of people allowed to gather was 10,³⁸³ but on the basis of the worsening epidemiological situation, it was reduced to three people from 31 March 2020)³⁸⁴; imposing a restriction whereby two-meter social distancing was to be observed (depending on the specifics of the venue/location) for gatherings of no more than 10 (later reduced to three)³⁸⁵ people in private institutions to which the requirement to suspend activities did not apply (23 March 2020)³⁸⁶; imposing a restriction on the number of people (10) who may be involved in social activities (such as funerals, wedding parties, and similar activities) (23 March 2020)³⁸⁷ (the number was reduced to three people on 31 March,³⁸⁸ but reverted to 10 on 18 May 2020)³⁸⁹; and the restriction whereby passengers could only use the rear seats of a vehicle (31 March 2020).³⁹⁰

³⁸² Article 5(1), the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

³⁸³ *Ibid.*, Article 5.

³⁸⁴ The Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

³⁸⁵ Article 1, the Ordinance No. 252 on Amendment to the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 16 April 2020. See: <https://matsne.gov.ge/ka/document/view/4852403?publication=0>.

³⁸⁶ Article 5(5), the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

³⁸⁷ *Ibid.*, Article 5.

³⁸⁸ The Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

³⁸⁹ See, the Ordinance No.305 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 14 May, 2020. See: <https://matsne.gov.ge/ka/document/view/4870954?publication=0>.

³⁹⁰ Article 1, the Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on

In terms of the restrictions to the freedom of assembly imposed after the state of emergency, the Government restricted assemblies of more than 10 natural persons where such an assembly is related to social events (e.g., wedding parties.) (23 May 2020).³⁹¹ On 20 July 2020, an amendment was made to the Ordinance of the Government by which the limitation applied only to enclosed spaces.³⁹² Later, an assembly in open spaces of more than 10 natural persons where such an assembly is related to social events (e.g. wedding parties) was allowed only in compliance with the recommendations of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia (20 July 2020).³⁹³ In addition, the Government restricted transportation of more than three persons (including a driver) by taxi (M1 category).³⁹⁴

On 9 September 2020, the Government of Georgia introduced an amendment to the relevant regulation that excluded the application of the restriction on gatherings relating to pre-election campaigning.³⁹⁵ This exception was made in anticipation of forthcoming elections.³⁹⁶

the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

³⁹¹ On 20 July 2020 an amendment was made to this provision by which the limitation applies only to enclosed spaces. The Ordinance No.450 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4931389?publication=0>. Later, an assembly in open spaces of more than 10 natural persons where such assembly is related to social events (e.g. wedding parties, any kind of anniversaries, funeral repasts, etc.) was allowed only in compliance with the recommendations of the Ministry of Health (20 July 2020). The Ordinance No.450 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4931389?publication=0>.

³⁹² The Ordinance No.450 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4931389?publication=0>.

³⁹³ *Ibid.*

³⁹⁴ Article 2(7), Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

³⁹⁵ The Ordinance No.566 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 9 September 2020. See: <https://matsne.gov.ge/ka/document/view/4990670?publication=0>.

³⁹⁶ See: <https://bit.ly/368UROM> [visited: 26.09.20].

As noted above, the main criterion for assessing whether the Government had met the requirements set out in the ICCPR (Article 4) and the ECHR (Article 15) is whether the restrictions imposed were “only to the extent strictly required by the exigencies of the situation.” This principle of proportionality applies not only to the state of emergency, but also to restrictions imposed in ordinary situations (i.e., non-state of emergency situations) as well.

The justification provided by the Government for taking relevant measures will be of help here in assessing the proportionality of the restrictions imposed. The Government of Georgia, in justifying its restriction on the gathering of more than 10 people (reduced to three), argued that “[s]ocial distancing remains the only effective way to prevent the spread of the infection.”³⁹⁷ Therefore, according to the view of the Government, this restriction was necessary to limit public gatherings as much as possible. The restriction was adjusted according to the fluctuating situation. During the first stage, gatherings of 10 people were permitted. Subsequently, as the epidemiological situation worsened (the internal transmission of the virus began in the country in late March 2020), the restriction was tightened and gatherings of more than three people were prohibited.

With regard to the redistribution of passengers in transport vehicles (i.e. the prohibition of passengers using a vehicle’s front seat next to the driver), the Government followed international recommendations and state practice (e.g., the WHO, the US, and the UK) aimed at reducing the risk of spreading the virus in enclosed spaces.³⁹⁸ The imposition of this restriction in Georgia was primarily aimed at reducing mobility, with the restriction becoming a kind of deterrent that discouraged families from using transport for non-essential travel. At the same time, the aim of the restriction was to ensure the maintaining of distance between members of different families/households, especially in enclosed spaces. According to a comment of the Head of the Department of the National Center for Disease Control and Public Health, the

³⁹⁷ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 26, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

³⁹⁸ Footnote 17, at p. 26, Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 26, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

restriction of transportation of more than three persons in a vehicle ensured the limitation of movement.³⁹⁹

The analysis shows that the principle of proportionality was applied in assessing the severity of measures in the context of the freedom of assembly. For example, the fact that the Government reduced the limit of persons from 10 to three and then reverted back to 10 clearly shows that the Government was guided by the principle of proportionality when applying relevant measures. Although the principle of proportionality in the context of gatherings of more than 10 people (reduced to three) is not doubted, the prohibition on using the front seat of a vehicle (next to the driver) for members of the same family/household may not be justified.

As noted above, the freedom of assembly was restricted not only during the state of emergency, but also after it. Pertinently, the restriction of the freedom of assembly after the state of emergency should be assessed on the basis of the relevant articles of the ICCPR and the ECHR.

Namely, under Article 21 of the ICCPR, it states:

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

Under Article 11 of the ECHR, it states:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful re-

³⁹⁹ See: <https://bit.ly/2TKRO9d> [visited: 13.10.20].

strictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

The two provisions above are similar in substance. Both the ICCPR and the ECHR recognize that the right to freedom of assembly may be restricted by a state provided that it meets certain requirements, namely that the restriction is in accordance with the law, the restriction serves a legitimate aim (such as the protection of health or the protection of the rights and freedoms of others) and that the restriction is necessary in a democratic society.

In terms of whether the restrictions on the freedom of assembly were in accordance with the law, the relevant restrictions are provided for in the regulations of the Government.⁴⁰⁰ However, bearing in mind that the Constitution of Georgia expressly refers to “law” in Article 21 (the freedom of assembly), the restriction should have been laid down in law, rather than in the regulations adopted by the Government. Therefore, it is important that the relevant law, for example the Law on Civil Safety (as the law governing epidemics and pandemics which are especially dangerous to public health), the Law on Public Health, or the Law on Assemblies and Manifestations specifically define the object, content, and limits regarding the restriction of the freedom of movement. Although the amendment to the Law on Public Health was made on 22 May 2020 stating that, *inter alia*, the restriction may be imposed “in connection with the gathering of persons for the purpose of holding social events,” it did not meet the relevant requirements of clarity and foreseeability (see Chapter 8.3).

Regarding the legitimate aim of the restriction of the freedom of assembly, the analysis has shown that the restrictions were imposed for the purpose of protecting public health and/or protecting the rights and freedoms of others. With respect to whether the restriction on the freedom of assembly was proportionate to the aim pursued, the measures taken by the authorities were aimed at striking a balance between various interests and they acted according to the changing situation. The restriction of assemblies of more

⁴⁰⁰ The Ordinance No.450 to the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4931389?publication=0>. See also Article 2(7), Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

than 10 persons at social events introduced on 23 May 2020 is a good example here. Although initially the Government set the limit at 10 people (both in open and enclosed spaces) (23 May 2020), later the restriction was changed to only apply to assemblies in enclosed space (20 July 2020). However, as a result of the deterioration of the epidemiological situation, the restriction reverted to covering both open and enclosed spaces (10 September 2020).

Thus, the measures taken by the authorities with regard to the freedom of assembly after the state of emergency should in general be regarded as proportionate to the aim pursued.

As for the legal basis for the restriction of the freedom of assembly, it is recommended that the relevant law of Georgia specifically defines the object, content, and limits with respect to the restriction of the freedom of assembly.

9.6.1. THE FREEDOM OF RELIGION

One of the topics most widely discussed in Georgia during the state of emergency was the effect of the restriction of the freedom of assembly on the freedom of religion.⁴⁰¹

It should be pointed out from the outset that the Constitution of Georgia does not allow for a restriction of the freedom of religion during a state of emergency. Therefore, unlike the ECHR, which does permit the restriction of this freedom during a state of emergency, the Constitution of Georgia stipulates higher human rights standards by prohibiting the restriction of this right during a state of emergency.⁴⁰²

However, despite the fact that no restriction of the freedom of religion is permitted during a state of emergency under the Constitution of Georgia, the restriction of the freedom of assembly had an effect on the freedom of religion as the Government introduced a limitation on gatherings of more than three people.⁴⁰³ As a consequence, religious gatherings and religious services

⁴⁰¹ See: <https://bit.ly/35TUA1z> [visited: 19.09.20]; <https://bit.ly/325bQzY> [visited: 09.10.20];

⁴⁰² ICCPR prohibits derogation from Article 18 (freedom of thought, conscience and religion) in time of emergency (Article 4(2)).

⁴⁰³ The Ordinance No.204 on Amendment to the Ordinance No.181 of 23 March 2020 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 30 March 2020. See: <https://matsne.gov.ge/ka/document/view/4840082?publication=0>.

carried out in a community setting with others could only take place provided that they met these requirements.⁴⁰⁴

The position of the Government was that during religious holidays the risk of violations of the social distancing rule was particularly high and that gatherings could result in spreading the coronavirus, and should therefore be avoided. However, the position of the Orthodox Church was that religious liturgies should take place as practiced previously.⁴⁰⁵ Therefore, the limitation for gatherings introduced by the Government dissatisfied the Orthodox Church, in particularly for Annunciation, Palm Sunday, and Easter.⁴⁰⁶ Eventually, negotiations took place between representatives of the Orthodox Church and the Government.

As a result of the negotiations, parishioners of the Georgian Orthodox Church were allowed to attend the Easter Vigil held on Easter Eve on 18 April 2020 on the basis of the following conditions: in big churches, two-meter social distancing has to be maintained while in smaller churches parishioners would have to remain in churchyards provided that they observe the social distancing rule.⁴⁰⁷ This agreement reached between the Government and the Orthodox Church departed from the rule established by the Government that no more than three people may gather in one place.

Although the freedom of religion may not be restricted under the Constitution of Georgia during a state of emergency, this freedom, namely its external dimension (*forum externum*), may be restricted in ordinary situations (as distinguished from the situation of a state of emergency).

Under Article 16 of the Constitution of Georgia (freedom of belief, religion, and conscience):

- “1. Everyone has freedom of belief, religious and conscience;
2. These rights may be restricted only in accordance with the law

⁴⁰⁴ Video recording of the Georgian Prime-Minister’s press-conference of 21 March 2020, from 8:57 minute. http://gov.ge/index.php?lang_id=GEO&sec_id=200&info_id=75723 [visited: 19.09.20].

⁴⁰⁵ The position of the Orthodox Church was criticized by the civil society representatives of Georgia. The address of more than 10 human rights NGOs to the Government of Georgia and religious unions. See: <https://bit.ly/325bQzY> [visited: 19.09.20].

⁴⁰⁶ Other religious groups existing in Georgia have limited or suspended collective religious services..

⁴⁰⁷ See: <https://civil.ge/archives/347100> [visited: 18.09.20]; <https://bit.ly/3jOGTpu> [visited: 19.09.20].

for ensuring public safety, or for protecting health or the rights of others, insofar as is necessary in a democratic society. ...”

With respect to international and European human rights treaties, the IC-CPR and the ECHR are the two most relevant treaties. Under Article 18 of the ICCPR:

- “1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. ...
2. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. ...”

Under Article 9 of the ECHR:

- “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

The analysis of the Constitution of Georgia and human rights treaties to which Georgia is a party (ICCPR and ECHR) revealed some similarities not only in substance, but also in wording. Thus, under these instruments, Georgia has a right to lawfully restrict the freedom of religion, including the carrying out of religious services if there is a risk of spreading the virus, provided that it meets the relevant requirements, namely that the restriction is in accordance with law, has a legitimate aim (public safety or the protection of health or the

rights of others) and is necessary in a democratic society. The same is true with regard to using a shared communion spoon.⁴⁰⁸

The legislation of Georgia, namely the Law of Georgia on Public Health, lays down the relevant legal basis for imposing restrictions in response to the epidemiological situation. Namely, Article 5(1) (rights and obligations of the population and legal persons in the field of public health) imposes an obligation on every person to “restrain from carrying out activities posing the risk of spreading communicable or noncommunicable diseases, and other risks related to public health” and “observe sanitary and epidemiological norms.”⁴⁰⁹ These provisions may serve as a basis for the legitimate restriction of the freedom of religion provided that all the other conditions laid down in Georgian legislation and the international and European human rights treaties are met.

Therefore, if there is a risk of spreading the virus in the context of religious gatherings, it would be to take adequate measures to prohibit such gatherings.

It is obvious that if the Government imposes restrictions on the freedom of religion on grounds that the enjoyment of this freedom may entail gatherings of believers and thus multiply the risk of spreading the virus, such a restriction should be applied to all religious denominations without discrimination.⁴¹⁰

9.7. THE FREEDOM OF LABOR, THE FREEDOM OF TRADE UNIONS, THE RIGHT TO STRIKE, AND THE FREEDOM OF ENTERPRISE

9.7.1. SPECIAL PROCEDURES FOR FOLLOWING SANITARY AND HYGIENE RULES

The obligation to wear a face mask was imposed not only during the state of emergency, but also after it. Since wearing a face mask is considered one of the best means of protecting oneself from COVID-19 and given that it is critical to the management of the epidemiological situation, the President of

⁴⁰⁸ See: <https://bit.ly/36btfZ1> [visited: 19.09.20]. Also: <https://bit.ly/34OfgZk> [visited: 23.09.20].

⁴⁰⁹ <https://gdi.ge/ge/news/religiis-tavisuflebis-farglebi-pandemiis-dros.page> [visited: 23.09.20].

⁴¹⁰ L. Jibladze, Covid-19 Pandemic and Human Rights, Human Rights Center, 2020, 7. See: <https://bit.ly/3kRcKHA> [visited: 17.09.20].

Georgia imposed a restriction to wear face masks on the basis of Article 26 of the Constitution of Georgia (the freedom of labor, freedom of trade unions, right to strike, and freedom of enterprise). In particular, the Decree of the President of Georgia of 21 March 2020 stated that the special rules for following sanitary and hygiene rules by natural and legal persons and public institutions should be determined by an ordinance of the Government of Georgia.⁴¹¹

During the state of emergency, the obligation to wear face masks in enclosed public spaces was introduced on 17 April 2020. After the expiration of the state of emergency, a number of restrictions were introduced to oblige the wearing of face masks by taxi drivers while transporting passengers (23 May 2020),⁴¹² by passengers and drivers while using public transport (including metro and cable transport) (28 May 2020),⁴¹³ and by every person in enclosed public spaces (23 May 2020).⁴¹⁴

Although opinions may vary as to which particular right is interfered in by obliging persons to wear a face mask (e.g., the right to health, the right to private life, the freedom of expression, the right to personal development, the freedom of movement,⁴¹⁵ and/or other rights/freedoms), neither the President of Georgia in her Decree adopted on 21 March 2020 nor the Government in its ordinances made it clear which human right was affected in this context. However, bearing in mind that the Decree of the President authoriz-

⁴¹¹ The Decree No.1 of the President of Georgia on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia: <https://matsne.gov.ge/en/document/view/4830372?publication=0>.

⁴¹² Article 2(7), Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

⁴¹³ The Ordinance No. 337 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 28 May 2020. See: <https://matsne.gov.ge/ka/document/view/4883020?publication=0>.

⁴¹⁴ Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

⁴¹⁵ Along with the right to private life and the right to health, the applicants before the Administrative Tribunal of the city of Strasbourg (France) claimed a violation of the freedom of movement due to their obligation to wear face masks from 10 a.m. to 8 p.m. The Administrative Tribunal decided in favour of the applicants stating that the exigency of the situation in the city of Strasbourg did not justify the obligation to wear face masks. See the Decision N°2003058 of 25 May 2020: <https://bit.ly/3oQlxMk>.

ing the Government to define special procedures for following sanitary and hygiene rules referred to Article 26 of the Constitution of Georgia (freedom of labor, freedom of trade unions, right to strike, and freedom of enterprise), it may be assumed that, in the opinion of the Government and the President, that this indeed falls under Article 26 of the Constitution. When it comes to obliging the wearing of face masks by taxi drivers while transporting passengers or by drivers of public transport, it may be argued that this would indeed be a restriction of Article 26 of the Constitution in the context of the freedom of labor. However, imposing an obligation on passengers to wear face masks using public transport⁴¹⁶ or imposing an obligation on persons to wear face masks in enclosed public spaces⁴¹⁷ is difficult to explain on the basis of Article 26 of the Constitution.

With regard to whether the restriction to wear a face mask is in accordance with law, it may be stated that although the Law of Georgia on Public Health contains a legal basis (albeit vague) for the obligation to wear a face mask, this provision has never been invoked in the context of imposing an obligation to wear a face mask.⁴¹⁸ The Decree of the President authorized the Government to determine special procedures for following sanitary and hygiene rules. As for the legitimate aim of imposing this restriction, the protection of public health and the protection of rights of others were the legitimate aims pursued.

With regard to whether the obligation to wear face masks was proportionate to the aim pursued, the Government of Georgia struck a fair balance between the relevant interests. In particular, it did not impose a blanket restriction, but had identified the risk of spreading the virus and imposed the restriction in places where there is a high risk of infection such as, for exam-

⁴¹⁶ The Ordinance No. 337 on Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 28 May 2020. See: <https://matsne.gov.ge/ka/document/view/4883020?publication=0>.

⁴¹⁷ Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 20 July 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

⁴¹⁸ Under Article 5(1) of the Law on Public Health, every person shall be obliged to “restrain from carrying out activities posing the risk of spreading communicable or noncommunicable diseases, and other risks related to public health.” The Law of Georgia on Public Health. See: <https://matsne.gov.ge/ka/document/view/21784?publication=31>.

ple, enclosed public spaces or public transport. The fact that the Government was guided by the principle of proportionality is also proved by the rule that some categories of people were exempt from the obligation to wear a face mask (for example, persons when carrying out professional activities where it would be impossible to wear a face mask (including speech therapists, sign language translators, children under six years of age, persons who cannot wear face masks because of a health condition confirmed by a medical doctor, persons in an enclosed public space if it is impossible to wear a face mask when receiving services, and drivers or metro/overground trains).⁴¹⁹ Therefore, the obligation imposed to wear a face mask by drivers providing transportation, passengers using public transport, and persons in enclosed public spaces was proportionate to the legitimate aim pursued.

9.7.2. THE RIGHT TO EDUCATION

The COVID-19 pandemic has affected the right to education across the world. Indeed, Georgia was among the countries to suspend teaching in educational institutions due to the coronavirus. The right to education was restricted in Georgia not only during the state of emergency, but also before and after it.

For the first time, teaching was suspended in the educational institutions of Georgia on 4 March 2020. Later, as a result of declaring the state of emergency on 21 March 2020, the President of Georgia adopted a Decree that provided for the restriction of the right to education under Article 26 of the Constitution (freedom of labor, freedom of trade unions, right to strike, and freedom of enterprise). Paragraph “d” of Article 26 of the Constitution states that “the Government of Georgia shall be authorized to establish procedures and conditions other than those provided for by the Law of Georgia on Early and Preschool Education, the Law of Georgia on 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.”

Following the Decree of the President, the Government’s Ordinance suspended teaching in educational institutions, which was to be carried out

⁴¹⁹ See Article 4 of the Ordinance No.368 of the Government of Georgia on the Approval of the Rule for Wearing Face Masks, 15 June 2020. See: <https://matsne.gov.ge/en/document/view/4896616?publication=0>.

remotely instead.⁴²⁰ The Ordinance also imposed a restriction on all kinds of trainings, conferences, and seminars which now had to be conducted remotely instead.⁴²¹

On the same day that the state of emergency expired in Georgia, the Government adopted the Ordinance under teaching in educational institutions was to be continued remotely.⁴²² The restriction was also imposed on all kinds of trainings, conferences, and seminars.⁴²³

With the academic year of 2020-2021 approaching, on 11 September 2020, the Government declared that education establishments would resume teaching on 1 October 2020 remotely, and that from 1 October 2020 teaching would resume at classrooms. However, later, due to the deterioration of the epidemiological situation, the Government declared that in bigger cities such as Tbilisi, Kutaisi, Rustavi, and Zugdidi, from 1 October 2020 teaching would be conducted through a hybrid model of remote study for pupils of 1st-6th years at school, and for pupils in the 7th-12th years classes would be conducted entirely remotely (exceptions apply).⁴²⁴

The suspension of teaching on the basis of Article 26 (freedom of labor, freedom of trade unions, right to strike, and freedom of enterprise) of the Constitution instead of doing it under Article 27 (the right to education and academic freedom) raises questions. It is argued that the reason for the re-

⁴²⁰ Article 3(1), Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

⁴²¹ *Ibid.*, Article 3(3).

⁴²² Ordinance No.321 of the Government of Georgia on Carrying Out Education Process in Education Institutions, 22 May 2020. See <https://matsne.gov.ge/ka/document/view/4876977?publication=0>; See also the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

⁴²³ On 6 July 2020 the restriction to conduct all kinds of trainings, conferences, seminars was cancelled. The Ordinance No.410 on the Amendment to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 3 July 2020. See: <https://matsne.gov.ge/ka/document/view/4915862?publication=0>.

⁴²⁴ As regards the cities of Gori and Poti, education process till 1 October 2020 will be conducted remotely and from 1 October 2020 it will be continued in non-remote form. See: <https://bit.ly/2HSSN18> [visited: 11.10.20]. According to the Minister of Education, Science, Culture and Sport of Georgia on the education process in high education institutions will be resumed on 19 October 2020. See: <https://bit.ly/3mNAhK7> [visited: 12.10.20].

striction of the right to education on the basis of Article 26 of the Constitution instead of doing so under Article 27 of the Constitution (the right to education) is the fact that the Constitution of Georgia does not allow for a restriction of Article 27 of the Constitution during a state of emergency. This leads us to conclude that the restriction of the right to education under the Decree of the President of Georgia was unlawful.

The argument that by switching to remote education, the right of education was not restricted as only the form (and not the substance) was changed (from a regular class to an online class), is not convincing since the President herself in the Decree of 21 March 2020 restricted it under Article 26 of the Constitution. In addition, the notification of the Government of Georgia to the Secretary General of the Council of Europe under Article 15 of the ECHR that aims to derogate from Article 2 of Protocol No.1 to the ECHR (the right to education), leaves no doubt that Georgia restricted the right to education.⁴²⁵

As noted above, the right to education was also restricted before and after the state of emergency. Although no restriction of the right to education is permitted under the Constitution of Georgia during a state of emergency, the right to education may be restricted in ordinary situations provided that this restriction is in accordance with the law, has a legitimate aim and is proportionate to the aim pursued. The restriction of the right to education before and after the state of emergency should be assessed on the basis of the relevant articles of international and European human rights treaties.

Regarding the relevant instrument governing the right to education within the United Nations, this right is governed by the International Covenant on Economic, Social and Cultural Rights (ICESCR). Namely, under Article 13 of the ICESCR:

- “1. The States Parties to the present Covenant recognize the right of everyone to education. ...
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;

⁴²⁵ <https://bit.ly/36bZ5o7> [visited: 10.10.20].

- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education ...”

Pursuant to the limitations clause of Article 4 of the ICESCR: “the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” Apart from the requirement that the limitation of the right to education should be determined by law, the State had an obligation to justify such a measure on legitimate grounds (for example, protection of health or the protection of others).⁴²⁶ Therefore, the limitation of the right to education should be proportionate to the aim pursued.

Under Article 2 of Protocol No. 1 to the ECHR:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

The right to education provided for in Article 2 of Protocol No. 1 to the ECHR is not absolute, as it may permit implicit restrictions.⁴²⁷ Unlike the restrictions provided for in Articles 8 to 11 of the Convention, the permitted restrictions are not bound by an exhaustive list of “legitimate aims” under Article 2 of Protocol No. 1.⁴²⁸ As the ECtHR pointed out in the case of *Leyla Sahin*

⁴²⁶ Implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/1999/10, 8 December 1999, para. 42.

⁴²⁷ Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, updated 30 April 2020, para. 5. See: https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf [visited: 21.09.20].

⁴²⁸ *Ibid.*, para. 6.

v. Turkey (GC): “a limitation of the right to education will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.”⁴²⁹

The restriction of the right to education both before and after the state of emergency was imposed by the Government of Georgia under its regulations.⁴³⁰ Bearing in mind that the Constitution of Georgia expressly refers to “law” in Article 27 of the Constitution (the right to education), it is argued that the restriction should have been laid down in law, rather than in the regulations adopted by the Government. Therefore, it is important that the relevant law, for example, the Law on Civil Safety (being the law which governs epidemics and pandemics especially dangerous to public health), the Law on Public Health, or the laws governing education⁴³¹) specifically define the object, content, and limits for restriction of the right to education.

As for the legitimate aim of imposing a restriction on the right of education, the protection of public health and the protection of others were the legitimate aims of the restrictions concerned. In terms of whether the restriction to the right of education was proportionate to the aim pursued, the imposition of this restriction was justified by the Government on the basis of the following reasons: “Preschool, general, vocational, and higher educational institutions are characterized by a high degree of social interaction and, in general, they lead to a significant increase in the mobility of the population, which contributes to the rapid spread of the virus.”⁴³² In addition, the Government pointed out the following argument justifying its suspension of teaching in educational institutions: “[t]he temporary suspension of the educational

⁴²⁹ Grand Chamber, 10 November 2005, para. 154

⁴³⁰ Before the state of emergency, the restriction was imposed under the Decree No. 434 of 2 March 2020 of the Government of Georgia “On Measures to Prevent the Spread of the Novel Coronavirus in the Country”. Under the Decree the education process was suspended from 4 March to 16 March 2020. See: http://gov.ge/files/545_75412_143943_434.pdf. As regards the situation after the state of emergency, the restriction was imposed by the Ordinance No.321 of the Government of Georgia on Carrying Out Education Process in Education Institutions, 22 May 2020. See <https://matsne.gov.ge/ka/document/view/4876977?publication=0>. See also the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

⁴³¹ For example, the Law of Georgia on General Education, the Law of Georgia on Higher Education, etc.

⁴³² Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 21, https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

process and the transition to a remote model of education is one of the most proven preventive methods in the world in the context of the spread of the novel coronavirus. In the case of Georgia, the specifics of the social environment had to be taken into consideration. This refers to the tradition of the cohabitation of persons belonging to different generations in families, which, given the specific characteristics of this particular disease, would have put the health and lives of the elderly at risk.⁴³³ The justification invoked by the Government to restrict the right to education during the state of emergency (including the high degree of social interaction at educational institutions, the fact that such institutions may lead to a significant increase in the mobility of the population that contributes to the rapid spread of the virus, and the specifics of the social environment (i.e. the cohabitation of persons belonging to different generations in households, putting the health and lives of the elderly at risk) may be equally relevant when assessing the proportionality of the restrictions imposed before and after the state of emergency.

Although, in general, the justification provided by the Government about the restriction of the right to education seems proportionate, there was no justification for treating two groups of pupils (1st-6th years, and 7th-12th years) differently. It may be assumed that the different treatment of pupils may be justified by the fact that pupils in the 1st-6th years may have more difficulty with remote learning, given the need to concentrate on a screen for long periods. However, in light of the deteriorating epidemiological situation in Georgia in September-October 2020, it is difficult to explain the statement of the Deputy Minister of Education of 16 October 2020, which stated that “they work actively so that pupils of VII-XII classes return to the classrooms.”⁴³⁴

In a practical sense, switching to remote education created problems relating to access to education for a certain number of pupils and students in Georgia who lack relevant technical means or access to the internet.

Therefore, it is recommended that the relevant law of Georgia specifically defines the object, content, and limits regarding the restriction of the right to education.

⁴³³ *Ibid.*

⁴³⁴ See: <https://bit.ly/3602arD> [visited: 16.10.20].

9.7.3. PERFORMANCE OF FORCED OR COMPULSORY LABOR

The performance of forced or compulsory labor was permitted in Georgia both during the state of emergency and after it. Under Article 7(e) of the Decree of the President of Georgia of 21 March 2020: “the Government of Georgia shall be authorized to mobilize persons with appropriate medical qualifications and competence.”⁴³⁵ On the basis of this Decree, the Government of Georgia in its regulation provided for the mobilization of persons with appropriate medical qualifications and competence (17 April 2020).⁴³⁶

Looking at the situation after the state of emergency, the Ordinance of the Government adopted on 23 May 2020 (i.e. after the state of emergency) provides for the mobilization of persons with appropriate medical qualification and competence in the context of quarantine declared in various parts of Georgia (23 May, 24 July, and 10 August 2020).⁴³⁷

According to the information that is publicly available, the mobilization of persons with appropriate medical qualification had not yet become necessary in Georgia in response to the COVID-19 pandemic.⁴³⁸

9.8. THE RIGHT TO A FAIR TRIAL

The right to a fair trial was restricted in Georgia before, during, and after the state of emergency. Regarding the period of the state of emergency, the

⁴³⁵ Para. 7, Article 1 of the Decree No.1 of the President of Georgia on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia, 21 March 2020, See: <https://matsne.gov.ge/en/document/view/4830372?publication=0>.

⁴³⁶ Article 1 (amending Article 2(6) of the Ordinance No.184), the Ordinance No.253 on the Amendment to the Ordinance No. 184 of 23 March 2020 of the Government of Georgia on the Establishment of Different Rules relating to Public Services and Administrative Proceedings within the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, 17 April 2020. See: <https://matsne.gov.ge/ka/document/view/4852610?publication=0>.

⁴³⁷ Article 15(4). The Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=0>; See also the amendment No.369 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 15 June 2020. See: <https://matsne.gov.ge/ka/document/view/4896865?publication=0>; Amendment No.468 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 24 July 2020. See: <https://matsne.gov.ge/ka/document/view/4939485?publication=0>; Amendment No.493 to the Ordinance No.322 of 23 May 2020 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 10 August 2020. See: <https://matsne.gov.ge/ka/document/view/4960956?publication=0>.

⁴³⁸ See the statement of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, <https://bit.ly/323V7Nj> [visited: 25.09.20].

Decree of the President of Georgia of 21 March 2020 prescribed that “court hearings provided for by the criminal procedure legislation of Georgia may be conducted remotely, by means of electronic communication. If a court hearing is conducted in the said manner, no person participating in a court hearing shall have the right to refuse the conduct of the court hearing remotely on grounds of being willing to physically attend.”⁴³⁹

The above provision on conducting court hearings on criminal cases remotely was not laid down in paragraphs 1 to 7 of Article 1 of the Decree of the President that prescribes the restrictions of the relevant human rights under the Constitution. A probable reason for not covering this under Article 1 of the Decree dealing with the restriction of human rights may be that the Government believed that conducting court hearings remotely would not restrict the right to a fair trial since all rights would still be afforded to the defense in the same way as if the court hearings were being conducted in a courtroom. This interpretation is in line with the case-law of the ECtHR. In particular, the European Court in the case *Marcello Viola v. Italy* pointed out that a remote hearing does not violate the right to a fair trial if the exercise of the right of defense is fully realized.⁴⁴⁰ The same position was expressed in the case of *Sakhnovskiy v. Russia* where the European Court stated that participation in proceedings by video link “is not, as such, incompatible with the notion of a fair and public hearing, but must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediment, and that effective and confidential communication with a lawyer is provided for.”⁴⁴¹

However, the interpretation that the Government believed that the conducting of court hearings remotely did not restrict the right to a fair trial is brought into question by the fact that the Government had notified the Secretary General of the United Nations and the Secretary General of the Council of Europe under Article 4 of the ICCPR and Article 15 of the ECHR, respectively,

⁴³⁹ Article 7 of the Decree No.1 of the President of Georgia on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia, 21 March 2020, See: <https://matsne.gov.ge/en/document/view/4830372?publication=0>.

⁴⁴⁰ *Marcello Viola v. Italy*, 5 October 2006, para. 67.

⁴⁴¹ *Sakhnovskiy v. Russia*, Grand Chamber, 2 November 2010, para. 98.

that Georgia had derogated from Article 14 of the ICCPR and Article 6 of the ECHR (the right to a fair trial).⁴⁴²

Given the fact that the Government has not imposed any other restriction on Article 14 of the ICCPR and Article 6 of the ECHR (the right to a fair trial), the only reasonable interpretation of the derogation undertaken by Georgia is that the Government considered that laying down a rule for remote court hearings on criminal cases would restrict the right to a fair trial. Otherwise, there would have been no need to convey its notification to the UN and the Council of Europe under Article 4 of the ICCPR and Article 15 of the ECHR (see details on notification under Chapter 12 of this research).

Therefore, this notification leaves no doubt that by prescribing to conduct court hearings remotely, Georgia restricted the right to a fair trial and in order to derogate from this right, the relevant notifications to the United Nations and the Council of Europe were necessary.

Another, more realistic reason for not covering the conducting of remote court hearings under Article 1 of the Presidential Decree dealing with the restriction of human rights is that the Constitution does not permit restriction of Article 31 of the Constitution of Georgia (procedural rights).

On the basis of the Presidential Decree of 21 March 2020, no legal regulation was adopted to oblige that court hearings are conducted remotely. This may be explained by the fact that even before the state of emergency, namely on 13 March 2020, the High Council of Justice of Georgia adopted the Recommendation on the Measures to Prevent the Possible Spread of Coronavirus in the Judicial System.⁴⁴³ Under the Recommendation, the courts of general jurisdiction had to ensure the following: the postponement of the examination of pending cases (except those cases to be heard in shortened deadlines); the examination of cases without an oral hearing in cases provided for by the procedural legislation; the participation of the parties in the judicial examination remotely as laid down by the procedural legislation; and the limitation of the number of attendees of the court hearings, including mass-media repre-

⁴⁴² See: <https://treaties.un.org/doc/Publication/CN/2020/CN.183.2020-Eng.pdf> and <https://bit.ly/36b-Z5o7> [visited: 11.10.20].

⁴⁴³ No.1. See: <http://hcoj.gov.ge/ge/tsardgineba-2020> [visited: 23.09.20].

sentatives.⁴⁴⁴ In addition, the Recommendation addressed the presidents of the courts to issue the relevant orders on COVID-19 related situation.⁴⁴⁵ This Recommendation was followed by the Order of the relevant courts of Georgia. For example, the President of the Tbilisi City Court issued an order on 16 March 2020 on the establishment of a restriction for the prevention of the spread of the coronavirus. Under the order, civil, administrative, and criminal law panels of the Tbilisi City Court were to postpone the scheduled hearings of cases under the terms established by the procedural code, except cases which need to be examined in a limited timeframe.⁴⁴⁶

The Recommendation also addressed citizens, who were requested to abstain from attending court hearings, unless necessary.⁴⁴⁷

Later, on 5 June 2020, the High Council of Justice of Georgia adopted a new Recommendation on the Measures to Prevent the Possible Spread of New Coronavirus (COVID-19) in the Judicial System that abolished the previous Recommendation of 13 March 2020.⁴⁴⁸ Under this Recommendation, in cases provided for by the procedural legislation, it was recommended to give priority to the examination of cases without court hearings and the participation of parties in judicial examination remotely using technical means. This Recommendation also deals with a limitation on the number of attendees of a court hearing, including mass-media representatives and maintaining two-meter distancing.

On 15 September 2020, the High Council of Justice of Georgia adopted another (the third of its kind) Recommendation on the Measures to Prevent the Possible Spread of New Coronavirus (COVID-19) in the Judicial System that abolished the Recommendation of 5 June 2020.⁴⁴⁹ This Recommendation laid down that the courts of general jurisdiction should ensure that cases are

⁴⁴⁴ Para. 1 of the Recommendation on the Measures to Prevent the Possible Spread of Coronavirus in the Judicial System, No.1, 13 March 2020. See: <http://hcoj.gov.ge/ge/tsardgineba-2020> [visited: 23.09.20].

⁴⁴⁵ *Ibid.*, para. 14.

⁴⁴⁶ <https://bit.ly/2HVAa08>.

⁴⁴⁷ *Ibid.*, para. 2.

⁴⁴⁸ See: <http://hcoj.gov.ge/ge/tsardgineba-2020> [visited: 23.09.20].

⁴⁴⁹ *Ibid.*

examined without court hearings and that parties still participated in judicial examinations remotely.⁴⁵⁰

One of the problems raised by civil society in general and the Public Defender (Ombudsman) of Georgia in particular with regard to the right to a fair trial marked a restriction on public hearings in practice as the Recommendations provided for the limitation of the number of attendees of court hearings, including mass-media representatives.⁴⁵¹ Neither the Decree of the President of Georgia adopted during the state of emergency, nor the Recommendations of the High Council of Justice aimed at restricting the right to a fair trial and, therefore, public hearings, even if they were conducted remotely, should be held. Bearing in mind that the purpose of conducting court hearings remotely (instead of in the courtroom) was to prevent the spread of coronavirus, the restriction of public hearings would not be a proportionate measure in line with the aim of the protection of public health.

After the expiration of the state of emergency in Georgia, the restriction to conduct court hearings only remotely was laid down by an amendment to the Criminal Procedure Code (23 May 2020).⁴⁵²

The following conclusions may be drawn from the overview of the measures aimed at restricting the right to fair a trial before, during, and after the state of emergency.

- a) As underscored in chapter 8.2. of this research, the President of Georgia could not legally restrict Article 31 of the Constitution (pro-

⁴⁵⁰ Special Report of the Public Defender of Georgia on Remote Hearings of Criminal Cases refers to “the need of focusing on the categorization of criminal cases and the risk of irreparable harm”, 2020, p. 3. <http://ombudsman.ge/res/docs/2020071917595833001.pdf>.

⁴⁵¹ Statement of Coalition for an Independent and Transparent Judiciary, 13 April 2020. See: http://www.coalition.ge/index.php?article_id=243&clang=1; Also GYLA Presented the Results of the Special Court Monitoring Report “The Court During the Pandemic”, 10 July 2020, <https://gyla.ge/en/post/saia-m-sasamartlo-pandemiis-dros-specialuri-angarishi-moamzada#sthash.iw778Of.qN9sdAEK.dpbs>; Statement of Georgian Democratic Initiative of 13 April 2020. See: <https://bit.ly/35Uz6BD> [visited: 18.09.20]. See also the position of the Public Defender (Ombudsman) of Georgia: <http://ombudsman.ge/res/docs/2020052113561253581.pdf> [visited: 23.09.20].

⁴⁵² Article 1 (amending Article 3325 of the Code), the Law on the Amendment of the Code of Criminal Procedure of Georgia, No. 5973, 22 May, 2020; See: <https://matsne.gov.ge/ka/document/view/4876514?publication=0#DOCUMENT:1>. See also the Law on the Amendment of the Code of Criminal Procedure of Georgia, No. 6779, 14 July, 2020. See: <https://matsne.gov.ge/ka/document/view/4924554?publication=0#DOCUMENT:1>.

- cedural rights) that covers the right to a fair trial during the state of emergency. Therefore, the restriction of the right to a fair trial during the state of emergency by the President of Georgia should be considered unlawful.
- b) The legislation of Georgia, namely the Law of Georgia on Public Health, lays down the relevant legal basis for imposing restrictions caused by the epidemiological situation. In particular, Article 5(1) (rights and obligations of the population and legal persons in the field of public health) obliges every person to “restrain from carrying out activities posing the risk of spreading communicable or noncommunicable diseases, and other risks related to public health” and “observe sanitary and epidemiological norms.”⁴⁵³ Although the Recommendations of the High Council of Justice did not refer to the above article of the Law on Public Health, it could have been used as a basis for the legitimate restriction of the right to a fair trial provided that all of the other conditions laid down in the Georgian legislation and the international and European human rights treaties were met.
- c) Since the purpose of conducting court hearings remotely (instead of in the courtroom) was to prevent the spread of coronavirus, the restriction of public hearings of courts was not a proportionate measure to serve the legitimate aim of the protection of public health.

⁴⁵³ See: <https://gdi.ge/ge/news/religiis-tavisuflebis-farglebi-pandemiis-dros.page> [visited: 23.09.20].

10. WAS IT NECESSARY TO DECLARE A STATE OF EMERGENCY IN GEORGIA?

One of the fundamental questions to answer in this research is whether it was necessary to declare a state of emergency in Georgia and to impose human rights restrictions therein, or whether human rights restrictions could have been imposed on the basis of the ordinary legislation (rather than the state of emergency legislation).

The starting point for an analysis of whether it was necessary to declare a state of emergency and restrict human rights therein is Article 71(2) of the Constitution of Georgia, which prescribes that a state of emergency may be declared in a situation in which “state bodies lack the capacity to fulfil their constitutional duties normally.” In line with this constitutional provision, the President of Georgia in the Edict referred to the following reasons for declaring the state of emergency: “to normalize the situation, and to enable the State to fulfil its constitutional obligations to ensure necessary public safety in a democratic society and to reduce any expected threat to the life and health of the population of the country.”⁴⁵⁴ Similar reasons were defined in the Decree of the President on restricting human rights during the state of emergency.⁴⁵⁵

What stems from the above provisions is that without declaring a state of emergency and restricting certain human rights, Georgia would not have been able “to fulfil its constitutional obligations to ensure necessary public safety in a democratic society and to reduce any expected threat to the life and health of the population of the country.”

In order to answer whether the situation in Georgia was really exceptional in the sense that only by declaring a state of emergency and restricting human rights therein could the Government have responded to the ongoing challenge,

⁴⁵⁴ The Edict of the President of Georgia No.1 on the Declaration of the State of Emergency Throughout the Whole Territory of Georgia, 21 March 2020. See: <https://matsne.gov.ge/en/document/view/4830390?publication=0>.

⁴⁵⁵ Decree No.1 on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia. See: <https://matsne.gov.ge/en/document/view/4830372?publication=0>.

it is important to analyze international practice. A useful reference point in this regard is the practice of the European Commission of Human Rights in the case *Denmark, Norway, Sweden and the Netherlands v. Greece* (the “Greek case”). In this case, the Commission pointed out that the given crisis or danger must be exceptional, to the point that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, were plainly inadequate.⁴⁵⁶ Therefore, the point made in the Greek case is that in order to consider an exceptional situation to be a state of emergency, the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health and order would have to be plainly inadequate.

The practice of declaring a state of emergency and derogating from the obligations under the ECHR makes it clear that although in many parts of Europe the COVID-19 situation has been difficult, only a minority of states (10 out of 47 states) derogated from their human rights obligations.⁴⁵⁷ For the majority of states parties to the ECHR there was no need to derogate from the obligations laid down in the ECHR, although the epidemiological situation in those countries was worse than in Georgia at the time concerned (March-May 2020). Although the epidemiological situation in many of these states was extraordinary and worse than in Georgia, they still considered the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health, and order to be adequate. If these states had considered that the normal measures or restrictions were inadequate for the maintenance of public safety, health, and order, then nothing would have prevented them from declaring their own states of emergency and derogating from the obligations under the ECHR.

Thus, for the majority of states parties to the ECHR, normal measures or restrictions permitted under the Convention for the maintenance of pub-

⁴⁵⁶ Report of the Commission of 5 November 1969, Yearbook XII, 1969, para. 153, see: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-167795%22%5D>. Opinion on the Protection of Human Rights in Emergency Situations, adopted by the Venice Commission at its 66th Plenary Session (17-18 March, 2006), Opinion no. 359/2005, CDL-AD(2006)015, 4 April, 2006, para. 4, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037).

⁴⁵⁷ Albania, Armenia, Estonia, Georgia, Latvia, North Macedonia, Moldova, Romania, San Marino, Serbia have derogated from the ECHR during the COVID-19 pandemic. <https://bit.ly/36b25o7> [visited: 14.09.20].

lic safety, health and, order were adequate, while only a minority of states considered that the normal measures or restrictions were inadequate and, therefore, took extraordinary measures by declaring a state of emergency and derogating from the ECHR under Article 15 of the Convention.

As far as the normal measures or restrictions are concerned, a number of provisions of the ICCPR and of the ECHR lay down the relevant restrictions that may be imposed by a state in ordinary situations (as distinguished from derogations prescribed in Article 4 of the ICCPR and Article 15 of the ECHR and applied in the situation of a state of emergency).

It is important to consider whether the Government of Georgia while confronting the challenges relating to the COVID-19 pandemic could have imposed similar restrictions on the basis of the ordinary legislation as those imposed through declaring a state of emergency and restricting rights and freedoms under Article 4 of the ICCPR and Article 15 of the ECHR.

The ICCPR and the ECHR each define the conditions under which rights and freedoms may be restricted in ordinary situations. In particular, they state that such restrictions should be in accordance with the law, serve a legitimate aim, and be necessary in a democratic society. For example, Article 11(2) of the ECHR that deals with the freedom of assembly defines that restrictions of the freedom of assembly should be prescribed by law, serve a legitimate aim (including the protection of health and the protection of the rights and freedoms of others), and be proportionate to the aim pursued. Another pertinent example here is the freedom of movement. Under Article 12 of the ICCPR and Article 2(3) of Protocol No. 4 of the ECHR, a restriction of the freedom of movement should be in accordance with the law, serve a legitimate aim (including the protection of health and the protection of the rights and freedoms of others), and be proportionate to the aim pursued.

On the basis of the ICCPR and the ECHR, it may be concluded that a state is free to restrict certain rights and freedoms without resorting to a state of emergency. It is at the discretion of a state to restrict human rights on the basis of ordinary or emergency legislation depending on the exigencies of the given situation. Therefore, the answer to the question of whether Georgia could have imposed human rights restrictions under its ordinary legislation should be answered in the affirmative.

If the ICCPR and the ECHR permit the restriction of rights under ordinary legislation, why did the Government of Georgia opt to declare a state of emergency and restrict human rights on the basis of Article 71 of the Constitution of Georgia?

Although the Government of Georgia was permitted under the ICCPR and the ECHR to impose restrictions to protect public health and rights of others under ordinary legislation, it has been argued that when the Government confronted the threat of the uncontrolled internal spread of the coronavirus and faced a low degree of compliance with the Government's recommendations and thus considered it necessary to adopt extended restrictions of human rights to cope with these challenges (March 2020). Pertinently, the legislation of Georgia did not lay down an appropriate legal framework for imposing such restrictions of human rights in the context of the epidemiological situation. Neither the Law on Public Health, nor the Law on Civil Safety or other relevant legislation laid down restrictions of specific human rights that could be imposed in the event of a deteriorated epidemiological situation. The existence of relevant legislation serving as a legal basis for imposing necessary restrictions would have avoided the declaration of a state of emergency and the imposition of human rights restrictions within the state of emergency.

Therefore, the lack of an appropriate legal framework that would have allowed for the restriction of the relevant rights and freedoms under the ordinary legislation, triggered the constitutional mechanism of restriction of human rights during a state of emergency. Having the relevant legislation in place before declaring the state of emergency, the President of Georgia would not have declared the state of emergency and imposed human rights restrictions under Article 71 of the Constitution.

This argument is backed up by the fact that after the expiration of the state of emergency (22 May 2020), the Government applied almost the same restrictions that were imposed during the state of emergency. The difference between the restrictions applied during the state of emergency and after it was the legal basis for these restrictions. While during the state of emergency the legal basis for restricting human rights was Article 71 of the Constitution and the Edict and Decree of the President of Georgia of 21 March 2020, the restrictions after the state of emergency were legally based on the ordinary

legislation, namely the amendments to the Law on Public Health and the relevant codes and regulations of the Government. Imposing human rights restrictions after the state of emergency on the basis of ordinary legislation makes it clear that it would have been possible to govern the situation of the epidemic on the basis of ordinary legislation without applying legislation governing the state of emergency. Moreover, the COVID-19-related situation in Georgia at the time of the declaration of the state of emergency was much better than it later became in September-October 2020. While the situation was much worse in September-October 2020, the Government did not declare a state of emergency as it already had the relevant legislation in place. This may explain the position of a government representative who expressed the view in September 2020 that another state of emergency would not be declared in Georgia.⁴⁵⁸

The declaration of a state of emergency and the restriction on human rights within a state of emergency should be resorted only if measures and restrictions provided for in the ordinary legislation are unable to adequately fight a pandemic or similar threats.⁴⁵⁹ Depending on the exigencies of the situation, if it is found that the ordinary legislation is not adequate, a state may resort to extraordinary measures and impose a state of emergency.

The analysis makes it clear that it is important to develop an appropriate legal framework in Georgia for imposing human rights restrictions not only in ordinary situations, but also in extraordinary situations such as a state of emergency in order to fight epidemiological threats adequately. The measures to be applied in ordinary and extraordinary situations should be clearly defined. On the one hand, the legislation should be developed to lay down measures and restrictions that may be imposed in ordinary situations when epidemiological threats emerge. The Law on Civil Safety should be further developed to reflect the relevant challenges.⁴⁶⁰ On the other hand, the legal

⁴⁵⁸ See the statement made at the Press-Conference by Natia Mezvrishvili, the Head of the Administration of the Government of Georgia on 22 September 2020. <https://bit.ly/3ehF1EF> [visited: 24.09.20].

⁴⁵⁹ <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf> Human Rights Committee, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*; UN Doc. CCPR/C/128/2, 30 April 2020, para. 2(c).

⁴⁶⁰ 27 June 2018. See: <https://matsne.gov.ge/en/document/view/4243170?publication=2>. Notably, Ar-

framework applicable during the state of emergency should also be developed. This need was made clear by the deficiencies of the Law on the State of Emergency which was barely applied during the state of emergency declared in Georgia.

Therefore, it is recommended to develop an appropriate legal framework for imposing human rights restrictions, not only in ordinary situations but also in extraordinary situations (such as a state of emergency) in order to fight epidemic/pandemic threats adequately with human rights and freedoms given due consideration.

Article 12(1) of the Law of Georgia on Public Health expressly points out that “an epidemic and pandemic extremely dangerous for public health shall fall into the category of emergency situations, and shall be managed in accordance with the Law of Georgia on Public Safety”. See: <https://matsne.gov.ge/ka/document/view/21784?publication=31>.

11. OBLIGATION OF A STATE TO PROVIDE THE GENERAL PUBLIC WITH INFORMATION ABOUT THE RISKS POSED BY COVID-19 AND JUSTIFICATIONS FOR HUMAN RIGHTS RESTRICTIONS

A state has an obligation to provide the general public with objective information about the threats posed to the health and lives of the population. This obligation has been established in the case-law of the ECtHR. One of the most important cases relating to the public's right to information is the case of *Oneryildiz v. Turkey* where the applicants claimed that the Turkish authorities were responsible for the death of their close relatives and for the destruction of their property as a result of a methane explosion at a municipal rubbish tip in Istanbul.⁴⁶¹ The European Court pointed out that the authorities have an obligation to secure the public's right to information about potential risks to their health/lives. The Court established that the respondent Government had "not shown that any measures were taken in the instant case to provide the inhabitants ... with information enabling them to assess the risks they might run."⁴⁶²

Another important case relating to the public's right to information is the case of *Budayeva and Others v. Russia* in which the applicants alleged that the national authorities were responsible for the death of their relative, for putting their lives at risk, and for the destruction of their property as a result of a failure to mitigate the consequences of a mudslide.⁴⁶³ The European Court here underscored the obligation of the state to inform the public about such risks and pointed out that "the authorities could reasonably be expected to acknowledge the increased risk of accidents in the event of a mudslide that year and to show all possible diligence in informing the civilians and making advance arrangements for the emergency evacuation. In any event, informing

⁴⁶¹ 30 November 2004, Grand Chamber.

⁴⁶² *Ibid.*, para. 108.

⁴⁶³ 20 March 2008.

the public about inherent risks was one of the essential practical measures needed to ensure effective protection of the citizens concerned.”⁴⁶⁴

Therefore, the obligation of the state with respect to informing the public about potential risks to their lives and health is an established standard under the ECHR.

There have been a number of measures taken by the Government of Georgia to provide the public with information about threats relating to COVID-19, both at the regulatory and practical levels. Regarding the regulatory framework, it has been duly established by the Government of Georgia, which laid down that the Georgian Public Broadcaster had “to provide the general public with accurate and necessary information on the outbreak of coronavirus, and the measures aimed at reducing the risk of exposure to the virus.”⁴⁶⁵ In addition, a regulation of the Government imposed an obligation on the relevant state institution - the Office of the State Minister of Georgia for Reconciliation and Civic Equality – to “provide information on the carrying out of emergency measures for preventing the possible spread of the novel coronavirus (COVID-19) to the population living in the occupied territories of Georgia and to ethnic minority groups compactly settled in the territory controlled by Georgia, in an understandable language and through available means of communication.”⁴⁶⁶ A similar regulation was laid down in the Ordinance of the Government adopted after the expiration of the state of emergency.⁴⁶⁷

At the practical level, the Government has been proactive in providing the media and the public with relevant information about the risks caused by COVID-19 to the health and lives of the population. On a daily basis and often even a few times a day, government officials and epidemiologists have con-

⁴⁶⁴ *Ibid.*, para. 52.

⁴⁶⁵ Article 4(6) of the Decree of the Government of Georgia N164 of 28 January 2020 “On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for the Cases of Novel Coronavirus Disease. See: <https://matsne.gov.ge/en/document/view/4821121?publication=34>.

⁴⁶⁶ Article 15, the Ordinance No.181 on the Approval of Measures to be Implemented in Connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, 23 March 2020. See: <https://matsne.gov.ge/en/document/view/4830610?publication=0>.

⁴⁶⁷ Article 9(6), Ordinance No.322 of the Government of Georgia on the Approval of Isolation and Quarantine Rules, 23 May 2020. See: <https://matsne.gov.ge/ka/document/view/4877009?publication=38>.

veyed to the public relevant information not only about the threats caused by the coronavirus and how to prevent infection, but also giving updates on the situation. Specifically, information about preventive measures such as wearing face masks or maintaining social distancing has been clearly conveyed to the public.

It is important that information about the threats posed by COVID-19 and the restrictions imposed are delivered to the population not only in the state language, but also in other languages widely spoken in the country to make sure that the relevant information reaches as many residents as possible.⁴⁶⁸ At the outset, certain shortcomings were identified regarding the provision of ethnic minorities with relevant information as there was no active awareness-raising campaign in any of the main ethnic minority languages.⁴⁶⁹ Therefore, the populations of the relevant regions lacked knowledge of the situation and did not implement relevant regulations. This may explain the spread of the virus and the need to impose particularly strict measures in the regions populated by ethnic minorities.⁴⁷⁰ Later, an active awareness-raising campaign was launched in these regions to provide ethnic minorities with relevant information in languages they understand.

In order to provide the public, including ethnic minorities, with relevant information, *inter alia*, on the restrictions imposed during the pandemic, the measures carried out, as well as available services, the Government of Georgia created an informative and regularly-updated web-page (www.stopcov.ge) in six languages (Georgian, Abkhazian, Armenian, Azeri, Ossetian, and English).

Bearing in mind that regulatory and practical measures were taken by the Government of Georgia to provide the public with relevant information about the threats posed by the pandemic and about the measures being carried out, aside from its initial failure to convey relevant information to ethnic minorities, the general conclusion that may be drawn is that the public in

⁴⁶⁸ Managing the Challenges of COVID-19: Government Actions Evaluation Report, Transparency International Georgia, 2020, 9. See: <https://bit.ly/38auZUQ> [visited: 30.09.20].

⁴⁶⁹ L. Jibladze, Covid-19 Pandemic and Human Rights, Human Rights Center, 2020, 7. See: <https://bit.ly/3kRcKHA> [visited: 12.09.20]. Also the statement of the Georgian Democratic Initiative on the need to launch awareness raising campaign among ethnic minorities, 23 March 2020. See: <https://gdi.ge/ge/news/gdi-gancxadeba.page>.

⁴⁷⁰ *Ibid.*, 9-10.

Georgia has been kept well-informed about the situation relating to COVID-19 and the threats posed by the spread of the virus.

Along with information about the threats posed by COVID-19, it is important to note that the Government has provided the public with relevant explanations and justifications for human rights restrictions imposed. The public should be made aware of the specific reasons behind introducing relevant restrictions. Without information about reasons for introducing relevant measures, the proportionality of the restrictions imposed may still be brought into question and this may have adversely impacted on the population's compliance with the restrictions.

Although the Government has done a lot to convey to the public relevant information about the restrictions imposed (including on the freedom of movement, freedom of assembly, freedom of education, right to liberty and security), the reasons for introducing certain restrictions have not always been provided.

The reasoning offered by the Government, namely about the need to restrict the mobility of the population and to ensure social distancing, was too general a justification for imposing various restrictions of human rights.⁴⁷¹ The Government is expected to provide specific justifications for restrictions of human rights imposed. This includes information about the proportionality of the measures taken, including information that the given restriction imposed is a last resort in order to prevent the spread of the virus, because less severe measures were considered but found to be insufficient to safeguard the health and lives of the population.

A number of pertinent examples may be referred to in this regard. For example, there was no explanation given for the different treatment of pupils, with those in 7th-12th years supposed to continue their education remotely and those in 1st-6th years supposed to do so at school (i.e. in person).⁴⁷² Moreover, no justification was given for imposing a restriction on the release of public and personal information.

⁴⁷¹ Report on the Measures Implemented by the Government of Georgia Against COVID-19, 2020, 17. See: https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf.

⁴⁷² The rule was applicable from 1 October 2020.

Although human rights restrictions imposed by the Government may be proportionate to the aims pursued, the lack of information given about the reasons for imposing restrictions may have caused discontent in society, stirred doubts about the proportionality of measures taken, and fueled public mistrust of the Government.⁴⁷³

The analysis of the situation in Georgia has shown that the public has been provided with relevant and up-to-date information about the situation relating to COVID-19 and the threats posed by the spread of the virus. The work of the Government in this regard should in general be assessed positively. As regards the provision of the public with relevant explanations and justifications for the human rights restrictions imposed, this could have been handled better.

Therefore, it is recommended that the Government improves the practice of providing the public with relevant explanations and justifications for human rights restrictions imposed, including on the proportionality of the relevant measures taken.

⁴⁷³ Managing the Challenges of COVID-19: Government Actions Evaluation Report, Transparency International Georgia, 2020, 22. See: <https://bit.ly/38auZUQ> [visited: 30.09.20].

12. PROCEDURAL REQUIREMENTS FOR DEROGATIONS FROM HUMAN RIGHTS TREATIES: THE GEORGIAN EXPERIENCE IN THE CONTEXT OF THE COVID-19 PANDEMIC

As already noted, both the ICCPR and the ECHR lay down the procedural requirements for derogations from human rights obligations during a state of emergency.⁴⁷⁴ Under Article 4(3) of the ICCPR, a state shall immediately inform the Secretary General of the United Nations of the provisions from which it has derogated and of its reasons for doing so, as well as of the date on which the state terminates such derogations. A similar provision is prescribed in Article 15(3) of the ECHR which pertains to informing the Secretary General of the Council of Europe of the measures taken and its reasons for doing so, as well as when such measures cease to operate.

In accordance with Article 4(3) of the ICCPR and Article 15(3) of the ECHR, on 21 March 2020, the Government of Georgia, through its permanent missions to the United Nations and the Council of Europe, conveyed similar notifications to the Secretary General of the United Nations and the Secretary General of the Council of Europe.⁴⁷⁵ Namely, both notifications pointed out that “Georgia exercises the right to derogation from its obligations” under the ICCPR and the ECHR. Both notifications underscored that “the increase in number of infected persons necessitated adoption of additional measures.”⁴⁷⁶ Only the notification conveyed to the Secretary General of the Council of Europe noted that “the current epidemic situation in the State, has reached the point of *public emergency threatening the life of the nation* under Article 15(1) of the Convention necessitating further and now exceptional measures to ensure safety and protection of public health.”⁴⁷⁷

⁴⁷⁴ General Comment No.29, State of Emergency (Article 4), International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.11, 31 August, 2001, para. 17.

⁴⁷⁵ See: <https://treaties.un.org/doc/Publication/CN/2020/CN.125.2020-Eng.pdf> [visited: 10.10.20]; <https://bit.ly/36bZ5o7> [visited: 10.10.20].

⁴⁷⁶ *Ibid.*

⁴⁷⁷ <https://bit.ly/36bZ5o7> [visited: 10.10.20].

The notification sent to the United Nations pointed out that “the application of these measures gives reasons for the necessity to derogate from certain obligations of Georgia under Articles 9, 12, 17, and 21 of the International Covenant on Civil and Political Rights.”⁴⁷⁸ The notification conveyed to the Council of Europe pointed out that the “application of these measures gives reasons for the necessity to derogate from certain obligations of Georgia under Article 5, 8 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 and 2 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms.”

After the initial notifications were conveyed to the United Nations and the Council of Europe respectively on 21 March 2020, the Government of Georgia submitted further notifications on its extension of the state of emergency for another month until 22 May 2020, justifying it by stating that “the country has entered the level of massive internal transmission.”⁴⁷⁹ The human rights obligations derogated from at the time the state of emergency was first declared remained the same.

The state of emergency expired in Georgia on 22 May 2020. This means that the restrictions of human rights imposed during the state of emergency were no longer valid. However, on 23 May and 25 May 2020 (i.e. after the state of emergency has expired in Georgia), the Government of Georgia notified the Secretary General of the United Nations and the Secretary General of the Council of Europe, under Article 4 of the ICCPR and Article 15 of the ECHR, respectively, that Georgia extended its derogations from its obligations under the ICCPR and the ECHR on the basis of “special emergency legislation, namely: 1) amendments to the Law on Public Health and 2) amendments to the Criminal Procedure Code of Georgia.” Specifically, on 23 May 2020, the Government of Georgia notified the Secretary General of the United Nations that “Georgia extends the derogations from certain obligations under Article 9, 12,

⁴⁷⁸ The reason for not derogating from the right to property and the right to education under ICCPR is that the Covenant does not cover these rights, unlike the ECHR and its protocols.

⁴⁷⁹ See: <https://treaties.un.org/doc/Publication/CN/2020/CN.142.2020-Eng.pdf> [visited: 10.10.20]; <https://bit.ly/36bZ5o7> [visited: 10.10.20].

14, 17 and 21 of the International Covenant on Civil and [P]olitical Rights until 15 July 2020.”⁴⁸⁰ On 25 May 2020, the Government of Georgia also conveyed a similar notification to the Secretary General of the Council of Europe that “Georgia extends the derogations from certain obligations under Articles 5, 6, 8, 11 of the Convention, Articles 1 and 2 of Protocol No. 1 to the Convention, Article 2 of Protocol No. 4 to the Convention until 15 July 2020.”⁴⁸¹

On 15 July 2020, the Government of Georgia further notified the Secretary General of the United Nations that “the Parliament of Georgia extended the application of “the emergency legislation” until 1 January 2021” and “Georgia retains the already notified derogations from certain obligations under Article 9, 12, 14, 17 and 21 of the International Covenant on Civil and [P]olitical rights until 1 January 2021.”⁴⁸² On the same day, the Government of Georgia conveyed a similar notification to the Secretary General of the Council of Europe, invoking “special emergency legislation” and pointing out that “Georgia retains the already notified derogations from certain obligations under Articles 5, 6, 8, 11 of the Convention, Articles 1 and 2 of Protocol No. 1 to the Convention, Article 2 of Protocol No. 4 to the Convention until 1 January 2021.”⁴⁸³

At least two conclusions may be drawn from the notifications sent to the United Nations and the Council of Europe under the ICCPR and the ECHR.

Firstly, as the existence of a state of emergency is a fundamental precondition for a derogation from human rights obligations under the ICCPR and the ECHR, a state may not extend derogations without such a state of emergency being in place. As the Human Rights Committee pointed out: “before a State moves to invoke article 4, two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency. The latter requirement is essential for the maintenance of the principles of legality and rule of law at times when they are most needed.”⁴⁸⁴

⁴⁸⁰ See: <https://treaties.un.org/doc/Publication/CN/2020/CN.183.2020-Eng.pdf> [visited: 11.10.20].

⁴⁸¹ See: <https://bit.ly/36bZ5o7> [visited: 11.10.20].

⁴⁸² See: <https://treaties.un.org/doc/Publication/CN/2020/CN.314.2020-Eng.pdf> [visited: 11.10.20].

⁴⁸³ See: <https://bit.ly/36bZ5o7> [visited: 11.10.20].

⁴⁸⁴ General Comment No.29, State of Emergency (Article 4), International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.11, 31 August, 2001, para. 2.

Therefore, derogations from human rights obligations under the ICCPR and the ECHR are permitted only if a state of emergency is in force. Since the state of emergency expired in Georgia on 22 May 2020, the Government of Georgia could not legally renew the derogations it had made during the state of emergency.

Beyond the state of emergency, the Government of Georgia could restrict certain rights and freedoms under the ICCPR and the ECHR only on the basis of relevant articles of international human rights treaties providing for such restrictions (for example, the freedom of movement (para. 3 of Article 12 of the ICCPR or para. 3 of Article 2, Protocol No. 4 to the ECHR; the freedom of assembly (Article 21 of the ICCPR or para. 2 of Article 11 of the ECHR)), but not on the basis of Article 4 of the ICCPR and Article 15 of the ECHR, which govern derogations during a state of emergency. It is clear that there was no need to notify the United Nations and the Council of Europe about restrictions of certain human rights and freedoms imposed in ordinary situations (as distinguished from state of emergency situations).

As the state of emergency had expired, the Government could not have maintained derogations under Article 4 of the ICCPR and Article 15 of the ECHR even on the basis of “special emergency legislation.” Whatever the meaning of “special emergency legislation” under the legislation of Georgia, it falls short of a state of emergency as required under Article 4 of the ICCPR and Article 15 of the ECHR. Therefore, after the expiration of the state of emergency in Georgia (22 May 2020), the Government of Georgia was not legally allowed to extend the derogations under Article 4 of the ICCPR and Article 15 of the ECHR.

Secondly, during the state of emergency, the Government of Georgia notified the Secretary General of the United Nations that it had derogated from Article 9 (the right to liberty and security), Article 12 (the freedom of movement), Article 17 (the right to private and family life), and Article 21 (the freedom of assembly). Meanwhile, the notification conveyed to the Secretary General of the Council of Europe during the state of emergency related to derogations from the following articles of the ECHR and its protocols: Article 5 (the right to liberty and security); Article 8 (the right to private and family life); Article 11 (the freedom of assembly); Article 1 of Protocol No. 1 (the right to

property); Article 2 of Protocol No. 1 (the right to education); and Article 2 of Protocol No. 4 (the freedom of movement).

However, in the notification dated 23 May 2020 conveyed to the Secretary General of the United Nations after the expiration of the state of emergency, the Government of Georgia widened the scope of derogations, adding to it Article 14 of the ICCPR (the right to a fair trial).⁴⁸⁵ A similar notification was sent to the Secretary General of the Council of Europe, stating that Article 6 of the ECHR (the right to a fair trial) would be among those obligations from which Georgia would derogate.⁴⁸⁶ Since no other restriction was imposed by the Government in the context of the right to a fair trial, it may be assumed that this restriction related to remote courts hearings under criminal procedure legislation.

Bearing in mind the restriction whereby court hearings on criminal cases were to be conducted remotely was laid down under the Decree of the President of Georgia on 21 March 2020, it remains unclear why the Government of Georgia did not derogate from the right to a fair trial under Article 14 of the ICCPR and Article 6 of the ECHR when it initially notified the United Nations and the Council of Europe (21 March 2020) about its declaration of a state of emergency and its derogation from certain rights and freedoms. Once the state of emergency expired in Georgia, the Government did not have the right to broaden the scope of its derogations.

Therefore, it is recommended that the Government of Georgia withdraws the derogations made under Article 4 of the ICCPR and Article 15 of the ECHR.

⁴⁸⁵ See: <https://treaties.un.org/doc/Publication/CN/2020/CN.183.2020-Eng.pdf> [visited: 11.10.20].

⁴⁸⁶ See: <https://bit.ly/36bZ5o7> [visited: 11.10.20].

13. SANCTIONS FOR VIOLATIONS OF HUMAN RIGHTS RESTRICTIONS

Sanctions for violations of human rights restrictions imposed during the pandemic should be proportionate to the seriousness of the act committed.

The Decree of the President of Georgia of 21 March 2020 defined sanctions for violations of the state of emergency. In particular, Article 8 of the Decree laid down that a violation of the state of emergency would induce an administrative penalty – a fine of 3000 GEL for natural persons, and 15000 GEL for legal persons. Under the Decree, if the same act is committed repeatedly by a natural person already subject to an administrative penalty, the person would face imprisonment for a term of up to three years, and where the same act is committed repeatedly by a legal person, they may be deprived of the right to carry out activities, or could face liquidation and a fine.⁴⁸⁷

Although, initially, sanctions for violations of the state of emergency were established by the Decree of the President of Georgia of 21 March 2020, the Parliament of Georgia amended the Code of Administrative Offences of Georgia and the Criminal Code of Georgia on 23 April 2020.⁴⁸⁸ The Code of Administrative Offences thus fully reflected the Decree of the President of Georgia of 21 March 2020 in the context of administrative sanctions. Meanwhile, the amendment to the Criminal Code established sanctions for violations of the state of emergency in the form of imprisonment for up to six years, unless otherwise provided for by the presidential decree (as noted above, the latter established a penalty of imprisonment for a term of up to three years). It has been argued that sanctions introduced by the amendment to the Criminal Code of Georgia were disproportionate in cases where the violation did not cause significant damage.⁴⁸⁹

⁴⁸⁷ Decree No.1 of the President of Georgia on Measures to be Implemented in Connection with the Declaration of a State of Emergency Throughout the Whole Territory of Georgia, 21 March 2020, See: <https://matsne.gov.ge/en/document/view/4830372?publication=0>.

⁴⁸⁸ Article 4210 (introduced by amendment of 23 April 2020 and entered into force on 2 May 2020), the Administrative Offences Code of Georgia. See: <https://matsne.gov.ge/ka/document/view/28216?publication=465>; Law of Georgia on Amendment to the Criminal Code of Georgia, 23 April 2020. See: <https://matsne.gov.ge/ka/document/view/4854133?publication=0>.

⁴⁸⁹ GYLA's Assessment on the Legislative Amendments Adopted in Connection with the State of Emer-

At least two problems have been identified in the context of sanctions. Firstly, the Decree of the President of Georgia of 21 March 2020 has been criticized by civil society and experts who have pointed out that the President has the power to restrict or suspend certain human rights during a state of emergency, but no power to establish sanctions for violations of the state of emergency.⁴⁹⁰ The lawfulness of the sanctions as established by the Decree of the President of Georgia has been questioned given the fact that the Parliament of Georgia during the state of emergency has adopted amendments to the Code of Administrative Offences⁴⁹¹ and the Criminal Code of Georgia.⁴⁹² It is obvious that if the Decree of the President of Georgia had not been regarded as legally problematic, the Parliament would not have amended the relevant Codes.⁴⁹³

Secondly, the proportionality of sanctions may also pose a legal problem. The United Nations has pointed out that in the context of COVID-19 “fines should be commensurate to the seriousness of the offence committed. In assessing the appropriate sum of a fine, consideration should be given to the individual circumstances.”⁴⁹⁴

Although it is clear there should be some sort of grading of administrative or criminal offences which the national court should apply, bearing in mind the individual circumstances as well as the seriousness of the given offence and the damage caused, no such gradation exists in Georgia.⁴⁹⁵

Therefore, it is recommended that:

- a) sanctions for violations of the state of emergency are established by the administrative and criminal legislation of Georgia only, and not by decrees of the President of Georgia; and

gency, 24 April 2020. See: <https://bit.ly/381C17s> [visited: 21.09.20].

⁴⁹⁰ See: <https://www.apsny.ge/analytics/1592073018.php> [visited: 15.09.20].

⁴⁹¹ Article 4210 (introduced by amendment of 23 April 2020 and entered into force on 2 May 2020), the Code of Georgia on Administrative Offences. See: <https://matsne.gov.ge/ka/document/view/28216?publication=465>.

⁴⁹² Law of Georgia on Amendment to the Criminal Code of Georgia, 23 April 2020. See: <https://matsne.gov.ge/ka/document/view/4854133?publication=0>.

⁴⁹³ <https://netgazeti.ge/news/450680/> [visited: 09.09.20].

⁴⁹⁴ Emergency Measures and COVID-19: Guidance, 27 April, 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf.

⁴⁹⁵ Legal and Political Content of State of Emergency – Analysis of the Existing Experience, Human Rights Education and Monitoring Center, 2020, 24. See: <https://bit.ly/2HToxg8> [visited: 28.09.20].

- b) sanctions established under national law for violations of the state of emergency legislation and ordinary legislation should bear in mind the individual circumstances, the seriousness of the given offence, and the damage caused.

14. JUDICIAL CONTROL OVER DECISIONS OF THE GOVERNMENT

Judicial control over government decisions is particularly important during a crisis such as the COVID-19 pandemic as the risks of imposing unlawful or disproportionate restrictions of human rights may be particularly high. An efficient judicial mechanism for preventing unlawful or disproportionate normative and/or administrative acts should be provided to counterbalance such government decisions.

Both the normative and administrative acts of the Government of Georgia may be appealed before courts of general jurisdiction and the Constitutional Court of Georgia. However, the legislation of Georgia lays down a timeframe for examining such appeals that may not allow for timely judicial control to be exercised during the pandemic.

The need to ensure efficient judicial control over the decisions of the Government was raised by the Public Defender (Ombudsman) of Georgia and civil society representatives.⁴⁹⁶ The Public Defender (Ombudsman) of Georgia underscored the need to establish relevant guarantees for effective judicial control over interference in human rights by the Government. In the view of the Public Defender (Ombudsman), it is necessary to establish shorter timeframes for examining appeals against the decisions of the Government. To demonstrate that accelerated procedures for examining appeals to a court are enshrined in the legislation of Georgia, the Public Defender (Ombudsman) invokes Article 13(7) of the Law of Georgia on Assemblies and Manifestations, stating that a decision about the termination of an assembly or a manifestation may be appealed to a court of general jurisdiction of Georgia that has to decide on the lawfulness of the decision concerned within three working days in each of the judicial instances. The Public Defender (Ombudsman) also invokes Article 22(2) of the Law on the Constitutional Court of Georgia on the

⁴⁹⁶ Para. 5, Letter of the Public Defender (Ombudsman) of Georgia addressed to the Chairman of the Parliament of Georgia, N 02-1/5118, 20 May 2020. See: <http://ombudsman.ge/res/docs/2020052113561253581.pdf> [visited: 13.09.20]; Legal and Political Content of State of Emergency – Analysis of the Existing Experience, Human Rights Education and Monitoring Center, 2020, 8-9. See: <https://bit.ly/2HToxq8> [visited: 28.09.20].

constitutionality of elections or a referendum that has to be examined within 30 days from the moment of appealing to the Constitutional Court.⁴⁹⁷

The need to examine the lawfulness of the decisions of the Government within a short time is particularly important since the restrictions imposed may only be applicable for a limited time. Examining the appeals against allegedly unlawful or disproportionate restrictions of human rights imposed during the pandemic within the standard period of time may make judicial control over the decisions of the Government futile, leaving the protection of human rights neither practical nor effective.

The role of the Constitutional Court of Georgia is particularly important in this regard. From the moment of the outbreak of the COVID-19 pandemic to finalizing this research, there were 15 applications filed to the Constitutional Court of Georgia that related to the lawfulness and proportionality of human rights restrictions imposed during the pandemic.⁴⁹⁸ The applicants (natural

⁴⁹⁷ Letter of the Public Defender (Ombudsman) of Georgia, *Ibid*.

⁴⁹⁸ *Georgian Young Lawyers Association and Sul Khan Saladze v. the Government of Georgia*, constitutional appeal, 16 April 2020, <https://constcourt.ge/ka/judicial-acts?legal=9029>; inadmissibility decision, 30 April 2020, <https://constcourt.ge/ka/judicial-acts?legal=9139>; *Tekla Davituliiani v. the Parliament of Georgia, constitutional appeal*, 23 April 2020, <https://constcourt.ge/ka/judicial-acts?legal=9031>; *Paata Zangurashvili v. the Government of Georgia*, constitutional appeal, 23 April 2020, <https://constcourt.ge/ka/judicial-acts?legal=9033>; inadmissibility decision, 30 April 2020, <https://constcourt.ge/ka/judicial-acts?legal=9153>; *Giorgi Chauchidze v. the Government of Georgia*, constitutional appeal, 23 April 2020, <https://constcourt.ge/ka/judicial-acts?legal=9036>; *Mikheil Samnidge v. the Government of Georgia*, constitutional appeal, 23 April 2020, <https://constcourt.ge/ka/judicial-acts?legal=9038>; admissibility decision, 30 April 2020; <https://constcourt.ge/ka/judicial-acts?legal=9154>; *Zaur Shermazanashvili v. the President of Georgia and the Government of Georgia*, constitutional appeal, 11 May 2020, <https://constcourt.ge/ka/judicial-acts?legal=9169>; admissibility decision, 20 May 2020, <https://constcourt.ge/ka/judicial-acts?legal=9189>; *Tornike Artkmeladze v. the President of Georgia, the Parliament of Georgia and the Government of Georgia*, constitutional appeal, 19 May 2020, <https://constcourt.ge/ka/judicial-acts?legal=9191>; admissibility decision, 20 May 2020, <https://constcourt.ge/ka/judicial-acts?legal=9190>; *Giorgi Chitidze v. the Parliament of Georgia, the President of Georgia, the Government of Georgia, Prime Minister of Georgia and Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia*, constitutional appeal, 19 May 2020, <https://constcourt.ge/ka/judicial-acts?legal=9192>; *Paata Diasamidze v. the Parliament of Georgia and the Government of Georgia*, constitutional appeal, 25 May 2020, <https://constcourt.ge/ka/judicial-acts?legal=9220>; admissibility decision, 5 June 2020, <https://constcourt.ge/ka/judicial-acts?legal=9519>; *LEPL "The Highest Administration of all Muslims in Georgia" and Elsevar Agaevi v. the President of Georgia*, constitutional appeal, 2 June 2020, <https://constcourt.ge/ka/judicial-acts?legal=9490>; *Giorgi Chitidze and Eduard Marikashvili v. the Parliament and the Government of Georgia*, constitutional appeal, 22 June 2020, <https://constcourt.ge/ka/judicial-acts?legal=9814>; *Lika Sajaia and Eduard Marikashvili v. the Parliament*

and legal persons) mainly challenged the restrictions of the rights and freedoms laid down by the Constitution and the delegation of these restrictions to the Government. Out of 15 constitutional appeals, none were decided on the merits of the given appeal. Four appeals were declared admissible by the Constitutional Court of Georgia and two appeals were declared inadmissible.

Therefore, it is recommended to establish relevant guarantees to ensure effective judicial control over interferences in human rights by the Government, and the national law of Georgia should lay down shorter terms for the examination of appeals on the lawfulness and proportionality of the decisions of the Government.

and the Government of Georgia, constitutional appeal, 22 June 2020, <https://constcourt.ge/ka/judicial-acts?legal=9815>; *Joni Pirtskhelava v. the Parliament of Georgia, the President of Georgia, the Government of Georgia and Samegrelo-Zemo Svaneti Police Department of the the Ministry of Internal Affairs*, constitutional appeal, 6 July 2020, <https://constcourt.ge/en/judicial-acts?legal=9852>; *Tornike Kublashvili v. the Government of Georgia*, constitutional appeal, 1 September 2020, <https://constcourt.ge/ka/judicial-acts?legal=10064>; *Alika Kuprava and Tengiz Tevzadze v. the Central Election Commission of Georgia*, constitutional appeal 26 October, 2020, <https://constcourt.ge/ka/judicial-acts?legal=10189>.

15. CONCLUSIONS AND RECOMMENDATIONS

The fight against the COVID-19 pandemic represents an unprecedented challenge for the entire world, including Georgia. The recent experience of Georgia in fighting the pandemic has revealed that its legislation governing epidemic/pandemic situations was not ready to respond adequately to the challenges presented by the COVID-19 pandemic. Although it was of course difficult to foresee that the COVID-19 pandemic could have given rise to the extensive restrictive measures taken by the Government of Georgia, the prior existence of a well-developed legislative framework would have helped to avoid some of the problems related to legality, lawfulness, and proportionality in practice.

In such an extraordinary situation, the Government of Georgia has done a lot not only in terms of creating a legal basis in a short period of time, but also in taking practical steps to fight the COVID-19 pandemic effectively. The steps taken by the Government of Georgia to fight against COVID-19 have been efficient, particularly at the initial stage of the pandemic.

Specific conclusions and recommendations are provided below:

15.1. THE LEGISLATION OF GEORGIA GOVERNING RESTRICTIONS OF HUMAN RIGHTS IN A STATE OF EMERGENCY SITUATION

- a) The declaration of a state of emergency gives rise to a number of complex legal, human rights, and management issues and thus requires their detailed regulation. However, the Law of Georgia on the State of Emergency does not govern many of the issues that may arise in a state of emergency situation. The Law does not cover the various types of state of emergency situations and fails to address the measures to be taken and the procedures to be followed by the Government in the event of a state of emergency caused by an epidemic/pandemic.
- b) The Law grants the executive authorities of Georgia the power to impose human rights restrictions on the freedom of movement, the freedom of assembly, the right to strike, or the right to declare a curfew. The power granted to the executive authorities is in conflict

- with the constitutional provisions which state that only the President of Georgia may impose human rights restrictions in accordance with the established procedures.
- c) The scope of the restrictions of certain rights laid down in the Law of Georgia on the State of Emergency is unclear.
 - d) Some of the measures provided for in the Law are very limited. The Law should lay down measures that give the Government an opportunity to efficiently cope with different types of state of emergency situations, including pandemics. Providing that the State strikes a balance between the need to fight pandemics and the protection of public health, the Government should develop legislation allowing it to take efficient measures to fight against the risks posed by a state of emergency, such as during the COVID-19 pandemic.
 - e) The comparative analysis between the legislation of Georgia (the Constitution of Georgia and the Law of Georgia on the State of Emergency) and the human rights treaties such as the ICCPR and the ECHR makes it clear that the legislation of Georgia does not permit restrictions of those rights which are prohibited under the international human rights treaties. In this regard, the legislation of Georgia meets human rights standards set by the ICCPR and the ECHR.
 - f) Although Article 71 of the Constitution of Georgia does not expressly refer to the principle of proportionality, which is essential in assessing whether restrictions imposed are strictly required by the exigencies of the situation, this principle may be inferred from Article 4 of the Law on the State of Emergency. However, looking ahead, it is important that the Law on the State of Emergency actually does lay down this principle expressly.
 - g) Along with the Law on the State of Emergency requiring that the Secretary General of the United Nations is notified about declarations and terminations of a state of emergency under Article 4(3) of the ICCPR, a similar requirement should be laid down with regard to notifying the Secretary General of the Council of Europe about declarations and terminations of a state of emergency.

It is recommended:

- a) to develop legislation that will address in detail the various types of state of emergency situation, including a state of emergency caused by an epidemic/pandemic;**
- b) to provide a clear reference to the principle of proportionality in the Law on the State of Emergency; and**
- c) to amend the Law on the State of Emergency to include an obligation to notify the Secretary General of the Council of Europe about declarations and terminations of a state of emergency.**

15.2. THE LEGISLATION OF GEORGIA GOVERNING RESTRICTIONS OF HUMAN RIGHTS IN ORDINARY (NON-STATE OF EMERGENCY) SITUATIONS

- a) The relevant laws of Georgia, whether it be the Law on Civil Safety, the Law on Public Health, or other laws governing restrictions of human rights in ordinary situations (i.e., non-state of emergency situations) should define with sufficient precision the restrictive measures that may be imposed during an epidemic and/or pandemic and the power of the authorities concerned.
- b) Although the Government of Georgia has done its utmost to create a relevant legal framework within a short period of time since the outbreak of the COVID-19 pandemic by adopting governmental regulations, the restrictions it has imposed should have been provided for in the relevant laws (such as the Law of Georgia on Civil Safety) to meet constitutional requirements.

It is recommended that the legislation of Georgia, namely the Law on Civil Safety (which specifically governs state of emergency situations caused by an epidemic and/or pandemic which is especially dangerous to public health), the Law on Public Health, or other relevant laws lay down the object, content, and limits of the restrictions of human rights that may be imposed during an epidemic and/or pandemic, and define the power and the limits of the relevant authorities in restricting human rights in ordinary situations.

15.3. HUMAN RIGHTS RESTRICTIONS BEFORE THE STATE OF EMERGENCY (30 JANUARY - 21 MARCH 2020)

- a) Although it is true that some of the measures taken by the Government before the state of emergency was declared, such as those calling upon certain action (such as cancelling activities associated with populous gatherings, and postponing cultural and sports events in enclosed areas) to be taken or those calling for abstinence from taking certain action (such as to abstain from travelling to high-risk countries, and for persons aged 70 and over to stay in self-isolation) were recommendations, not all the measures taken affecting human rights were of this nature. Specifically, some of the measures carried out in this period, for example the isolation of persons returning from other countries, the suspension of the education process, the suspension of international flights or road transportation, and the introduction of special conditions in penitentiary institutions, were of a compulsory nature.
- b) Restrictions of human rights in ordinary situations may be provided for in the Constitution either expressly or impliedly. In particular, certain articles of the Constitution of Georgia lay down that restrictions of human rights may be imposed under certain conditions, among others being “in accordance with law.” Therefore, the law should set forth the conditions under which these restrictions can be imposed. The articles of the Constitution on the freedom of movement and the right to private and family life may serve as pertinent examples here. Other articles of the Constitution of Georgia may not directly state that restrictions should be in accordance with law, but rather that they may be imposed on the basis of relevant law. The restrictions of human rights imposed on the basis of law should serve a legitimate aim and should be proportionate to the aim pursued. Since the restrictions of human rights should be imposed by law, they may not be carried out on the basis of regulations adopted by the Government of Georgia, unless they stem directly from existing legislation.

15.4. HUMAN RIGHTS RESTRICTIONS DURING THE STATE OF EMERGENCY (21 MARCH - 22 MAY 2020)

- a) The Government of Georgia invoked two main arguments for initiating the declaration of a state of emergency: the threat of the uncontrolled internal spread of the coronavirus; and the low degree of compliance among the population with governmental recommendations. The first argument regarding the threat of the uncontrolled internal spread of the virus may have been questionable in terms of the existence of immediate risks posed by COVID-19 at that particular time, and the second argument that there was a low degree of compliance among the population with recommendations (instead of compulsory rules) is not convincing. The declaration of the state of emergency and the imposing of human rights restrictions therein is not the only means of increasing compliance with measures of a recommendatory character. The restrictions of human rights should instead have been imposed on the basis of relevant laws that are legally binding.
- b) In restricting human rights during the state of emergency, the President of Georgia acted in compliance with the international and European human rights treaties. In particular, none of the absolute rights provided for in the ICCPR and the ECHR were restricted by the President of Georgia. Therefore, the restriction of these rights does not pose any problem with respect to compliance with international and European human rights treaties.
- c) The President of Georgia acted mainly in compliance with the constitutional provisions in restricting human rights. The Presidential Decree restricted mostly those rights that are expressly permitted under Article 71(3) of the Constitution. However, the Decree still raised at least two legal problems.
Firstly, during the state of emergency, the right to education was restricted on the basis of Article 26 of the Constitution, which governs the freedom of labor, the freedom of trade unions, the right to

strike, and the freedom of enterprise. Restricting the right to education on the basis of constitutional provisions which have nothing to do with this right, while not doing so on the basis of Article 27 of the Constitution, which directly deals with the right to education, may seem unusual. However, this approach may be explained by the fact that under Article 71(3) of the Constitution of Georgia, the right to education may not be restricted under the Constitution during a state of emergency.

Secondly, although the human rights that were restricted during the state of emergency were listed in Article 1 of the Presidential Decree, the reasons for restricting the right to a fair trial (with court hearings on criminal cases to be carried out remotely only) under Article 7 of the Decree are questionable. Placing the provision on the restriction of the right to a fair trial in a different part of the Presidential Decree that does not deal with the restrictions of human rights may be explained by the fact that Article 31 of the Constitution (procedural rights) that covers the rights to a fair trial may not be restricted during the state of emergency.

- d) The implementing measures provided for in the regulations of the Government mainly stem from the restrictions laid down in the Decree of the President. However, at least one problem relating to the regulations of the Government on declaring quarantine and curfew has been identified. Specifically, in her television address to the nation to declare the state of emergency on 21 March 2020, the President of Georgia clearly pointed out that “the measures provided for in the Decree include neither complete quarantine, nor declaring curfew.” Despite this, in order to implement the Presidential Decree in the context of the freedom of movement, the Government of Georgia declared both a quarantine regime and a curfew. Therefore, the measures taken by the Government of Georgia, such as declaring a quarantine and curfew, were questionable as these measures and the statement of the President of Georgia of 21 March 2020 were not consistent.

- e) Analysis of the developments from the moment of the declaration of the state of emergency until its expiration makes it clear that the Law of Georgia on the State of Emergency was of no or little use in practice. This may be explained by the limited measures laid down in the Law and the irrelevance of these measures in the context of an actual epidemiological situation. Bearing in mind the fact that the Parliament adopted a special law governing the state of emergency, it is important to adapt the Law on the State of Emergency to the relevant challenges, including epidemiological situations.

It is recommended:

- a) **to strictly adhere to the constitutional framework when restricting human rights within a state of emergency, namely with regard to the right to education (Article 27 of the Constitution) and procedural rights (Article 31 of the Constitution) that may not be restricted during a state of emergency; and**
- b) **to reflect in the Law on the State of Emergency epidemic and pandemic situations, to lay down specific restrictive measures applicable to epidemics and/or pandemics, and to define the powers and the limits of the relevant authorities in restricting human rights.**

15.5. HUMAN RIGHTS RESTRICTIONS AFTER THE STATE OF EMERGENCY (FROM 23 MAY 2020)

The amendments to the Law on Public Health adopted on 22 May 2020 raised at least two legal problems. Firstly, the Law does not specifically define the object, content, and limits of the restriction of the constitutional rights and fully grants to the executive authorities the discretion to restrict human rights. The reference in the Law on Public Health that certain rights may be restricted is not sufficient as it fails to meet the requirements of clarity and foreseeability. It is necessary that the Law specifically defines the object, content, and limits for the restriction of the rights concerned. While the Law should lay down the object, content, and limits of restrictions of the rights concerned, the Gov-

ernment may be authorized to define the ways and means of restricting the relevant right. Secondly, the Law on Public Health grants the Government of Georgia the right to define rules different from the regulations set by the Parliament of Georgia. Therefore, the Law empowers the Government to impose restrictive rules which differ from/contradict the will of the legislator and the norms stipulated by law.

It is recommended that:

- a) the Law on Public Health specifically defines the object, content, and limits regarding the restriction of the rights concerned; and**
- b) the part of the Law on Public Health that grants to the executive authorities the right to define rules different from the regulations set by the Parliament of Georgia is abolished.**

15.6. THE COMPLIANCE OF HUMAN RIGHTS RESTRICTIONS DURING THE PANDEMIC IN GEORGIA WITH INTERNATIONAL AND EUROPEAN HUMAN RIGHTS STANDARDS

During the pandemic, the Government of Georgia, in general, has imposed restrictions proportionate to the legitimate aims of the protection of public health and the rights of others. However, some specific problems have been identified.

15.7. THE RIGHT TO LIBERTY AND SECURITY

The isolation (quarantine or self-isolation) of a person, putting him/her under the effective control of the State, affects their right to liberty and security.

- a) The right to initiate proceedings through which the lawfulness of his/her detention is decided is an important mechanism for the protection of the right to liberty and security. However, an effective mechanism to protect the right to liberty and security in the context of isolation (quarantine and self-isolation) seems to be missing in the Georgian legislation. It is important that the lawfulness of a person's placement in isolation be decided as soon as possible, and should definitely be done before the period of isolation expires.

Therefore, there is a need to establish an accelerated procedure under the Law of Georgia on Public Health according to which the lawfulness of the placement of a person in isolation (quarantine or self-isolation) is decided. To clarify, deciding on the lawfulness of isolation within 48 or 72 hours would be a proportionate time.

- b) Apart from laying down a provision in the Law of Georgia on Public Health on the right to appeal, it is important that persons placed in isolation be provided with relevant information about appealing against the decision taken against them. Therefore, it is important to not only lay down the right to appeal the lawfulness of isolation, but also to put in place a corresponding mechanism and an efficient procedure. The Government is thus expected to guarantee that this right is not merely theoretical, and that it is practical and effective.
- c) The decision of the Government to give priority to the application of self-isolation over quarantine was a welcoming development. To clarify, from 21 October 2020, citizens of Georgia with a positive PCR test result were subject to self-isolation instead of quarantine after arriving in Georgia.
- d) The amendment of the government regulation specifying the list of persons who may be put in self-isolation was welcomed. However, in order to avoid an overly narrow interpretation of the special circumstances/social factors in practice justifying that a person is assigned to quarantine, it is recommended to prescribe a longer, albeit not exhaustive, list of special circumstances/social factors. The list may also include, for example, pregnant women and women who are breastfeeding, persons with underlying health conditions, and persons older than 60 years of age.

It is recommended:

- a) **to establish an efficient judicial and administrative mechanism for appealing the lawfulness of placing a person in isolation, which is decided as soon as possible (preferably within 48 to 72 hours), but definitely earlier than the period of isolation expires. It is also rec-**

ommended that the mechanism is constructed with the notion in mind that a person placed in isolation should have access to the relevant administrative body and/or court remotely;

- b) to provide persons placed in isolation with the relevant information about appeals against the decision taken; and
- c) to lay down a longer, albeit not exhaustive, list of categories of persons who may be put into self-isolation instead of quarantine such as pregnant women and women who are breastfeeding, persons with underlying health conditions, and persons older than 60 years of age in the Law of Georgia on Public Health.

15.8. THE FREEDOM OF MOVEMENT

- a) The restrictions imposed by the Government of Georgia during the state of emergency were mostly proportionate to the exigencies of the situation.
- b) The restrictions on the freedom of movement before and after the state of emergency are provided for in the relevant regulations of the Government. However, bearing in mind that the Constitution of Georgia expressly refers to “law” in Article 14 of the Constitution (the freedom of movement), the restriction should thus be laid down in law, rather than in the regulations adopted by the Government. Therefore, it is important that the relevant laws, for example the Law on Civil Safety or the Law on Public Health, specifically define the object, content, and limits for restriction of the freedom of movement. Although an amendment to the Law on Public Health was made on 22 May 2020 stating that, *inter alia*, a restriction on the movement of persons may be imposed, it does not meet the relevant requirements of clarity and foreseeability. The restriction of the freedom of movement pursued the legitimate aim of the protection of public health and/or the rights and freedoms of others. Ultimately, the restrictions imposed by the Government should, in general, be regarded as proportionate to the aim pursued.

- c) In terms of the equal treatment of foreigners and citizens of Georgia in the context of the freedom of movement, it is difficult to explain why the citizens of Georgia who travelled to five specific countries classified as ‘safe’ and returned back to Georgia were still subject to quarantine, unlike the citizens/permanent residents of those countries who entered Georgia. Therefore, a problem regarding the equal treatment of foreigners and citizens of Georgia was identified.

It is recommended that the relevant laws of Georgia specifically define the object, content, and limits regarding restrictions of the freedom of movement.

15.9. THE RIGHT TO PRIVATE AND FAMILY LIFE

- a) The restriction of the right to private and family life in the context of penitentiary institutions (the restriction of the right to visitation) was imposed in Georgia on the basis of the relevant provisions of the Law on Public Health and the Order of the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia. Therefore, the lawfulness of the restriction imposed is not doubted. The restriction imposed pursued the legitimate aim of the protection of public health and/or the protection of the rights and freedoms of others. The Government of Georgia struck a fair balance between the relevant interests and, thus, the restriction was proportionate to the legitimate aim. Therefore, the restriction imposed by the Georgian authorities in the context of the restriction of the right to visitation complied with the relevant international and European human rights standards.
- b) Although the discretion of the State to impose relevant restrictions to prevent the spread of COVID-19 is not doubted, there was no rationale behind the adoption of the Decree of the President of Georgia of 21 March 2020 in the context of penitentiary institutions. Even without this part of the Decree of the President, the Order of

the General Director of the Special Penitentiary Service of the Ministry of Justice of Georgia that was based on the relevant provisions of the Law on Public Health would have been valid and sufficient to impose the relevant restriction. The restriction on the right to visitation imposed on the basis of the Law on Public Health and the Order of the General Director of the Special Penitentiary Service proves that ordinary legislation may have adequately addressed the situation without declaring a state of emergency and imposing restrictions therein.

15.10. THE RIGHT TO ACCESS TO PUBLIC AND PERSONAL INFORMATION

The limitation of the right to access public and personal information at a time when no restriction was imposed on the freedom of expression and the right to private life (the right to private and family life was only restricted in the context of penitentiary institutions) was questionable. The Government did not provide any justification about the necessity for the restriction of access to public and personal information. Bearing in mind the fact that during the state of emergency neither the Decree of the President nor the regulations of the Government prescribed that the work of state institutions was suspended, the blanket restriction on access to public and personal information may not be regarded as proportionate to the legitimate aim of protection of the health of the population. Therefore, the limitation of the right to access to public and personal information during the state of emergency is assessed negatively.

15.11. THE RIGHT TO PROPERTY

- a) The amendment to the Law of Georgia on Public Health adopted on 22 May 2020 stated that the quarantine measures shall be “measures defined by this Law and/or the normative act adopted/issued in accordance with this Law, which are temporarily used for the protection of the health of the population during a pandemic and/or epidemic especially dangerous for the public health and which may

imply a different regulation than those established by other normative acts of Georgia, including the temporary imposition of appropriate restrictions in connection with, *inter alia*, property.” The Law on Public Health should not only define that the right to property may be restricted, but it should also define the object, content and limits of the restriction of the constitutional right to property.

- b) At the time that this research was being finalized, the restriction on the right to property has not been imposed in practice on the basis of the Law on Public Health.

It is recommended that the Law on Public Health specifically defines the object, content, and limits regarding restrictions of the right to property.

15.12. THE FREEDOM OF ASSEMBLY

- a) The principle of proportionality was, in general, respected, upon an assessment of the severity of measures taken in the context of the freedom of assembly during the state of emergency. However, the prohibition on passengers using the front seat of the vehicle for members of the same household may not have been justified.
- b) Regarding the periods before and after the state of emergency, the restrictions on the freedom of assembly were provided for in the relevant regulations of the Government. However, bearing in mind that the Constitution of Georgia expressly refers to “law” in Article 21 of the Constitution (the freedom of assembly), the restriction should be laid down in law, rather than in regulations adopted by the Government. Therefore, it is important that the relevant laws, for example the Law on Civil Safety, the Law on Public Health, or the Law on Assemblies and Manifestations specifically define the object, content, and limits regarding restrictions of the freedom of movement. Although an amendment to the Law on Public Health was made on 22 May 2020 stating that, *inter alia*, the restriction may be imposed “in connection with the gathering of persons for

the purpose of holding social events,” this does not meet the relevant requirements of clarity and foreseeability. The restrictions of the freedom of assembly served the legitimate aims of the protection of public health and/or the rights and freedoms of others. Moreover, the restrictions struck a balance between the relevant interests and were proportionate to the legitimate aim.

- c) The restriction of the freedom of assembly had an impact on the freedom of religion. Although the Constitution of Georgia does not allow for restrictions of the freedom of religion during a state of emergency, this freedom, specifically its external dimension (*forum externum*), may be restricted in ordinary situations. If there is a risk of a virus spreading in the context of a religious gathering, then it is important to take adequate measures to prohibit such gatherings.
- d) If a restriction of the freedom of religion is imposed to prevent the risk of spreading the virus, such a restriction should be applied to all religious denominations without discrimination.

It is recommended that the relevant laws of Georgia specifically define the object, content, and limits regarding the restriction of the freedom of assembly.

15.13. THE FREEDOM OF LABOR, THE FREEDOM OF TRADE UNIONS, THE RIGHT TO STRIKE, AND THE FREEDOM OF ENTERPRISE

- a) The restriction imposed whereby the wearing of face masks became mandatory for public transport drivers, passengers using public transport, and persons in enclosed public spaces was proportionate to the legitimate aim pursued.
- b) The suspension of teaching on the basis of Article 26 (freedom of labor, freedom of trade unions, right to strike, and freedom of enterprise) of the Constitution instead of doing so under Article 27 (the right to education and academic freedom) raises some questions. It has been argued that the reason for restricting the right to educa-

tion on the basis of Article 26 of the Constitution instead of doing so under Article 27 of the Constitution (the right to education) was that the Constitution of Georgia does not allow for the restriction of Article 27 of the Constitution during a state of emergency. This leads to a conclusion that the restriction of the right to education under the Decree of the President of Georgia was unlawful.

- c) Although no restriction of the right to education is permitted under the Constitution of Georgia during a state of emergency, the right to education may be restricted in ordinary situations. The right to education was restricted both before and after the state of emergency was imposed by the Government of Georgia under its regulations. Bearing in mind that the Constitution of Georgia expressly refers to “law” in Article 27 of the Constitution (the right to education), it is argued that the restriction should be laid down in law, rather than in the regulations adopted by the Government. Therefore, it is important that the relevant laws, for example the Law on Civil Safety, the Law on Public Health, or the laws governing education specifically define the object, content, and limits regarding restrictions of the right to education. However, the Government may be authorized to define the ways and means of restricting the right to education. As for the legitimate aim of imposing a restriction on the right to education, the protection of public health and the rights and freedoms of others were the legitimate aims pursued. The restriction of the right to education before and after the state of emergency was, in general, proportionate to the aim of protecting the health and the rights of others. However, the proportionality of the restriction treating two groups of pupils (1st-6th years, and 7th-12th years) differently was questionable.

It is recommended that the relevant laws of Georgia specifically define the object, content, and limits regarding restrictions of the right to education.

15.14. THE RIGHT TO A FAIR TRIAL

- a) The President of Georgia could not legally restrict Article 31 (procedural rights) of the Constitution that covers the right to a fair trial during a state of emergency. Therefore, the restriction of the right to a fair trial during the state of emergency by the President of Georgia should be considered unlawful.
- b) The legislation of Georgia, namely the Law of Georgia on Public Health, lays down the relevant legal basis for imposing restrictions in response to the epidemiological situation. Although the Recommendation of the High Council of Justice did not refer to the above article of the Law on Public Health, it could have been used as a basis for the legitimate restriction of the right to a fair trial provided that all the other conditions laid down in Georgian legislation and the international and European human rights treaties were met.
- c) Since the purpose of conducting court hearings remotely (instead of in the courtroom) was to prevent the spread of the coronavirus, the restriction of public hearings of courts would not be a measure proportionate to the legitimate aim of the protection of public health.

15.15. WAS IT NECESSARY TO DECLARE A STATE OF EMERGENCY IN GEORGIA?

One of the fundamental questions to answer in this research is whether it was necessary to declare a state of emergency in Georgia and to impose human rights restrictions therein, or whether human rights restrictions could have been imposed on the basis of ordinary legislation (as distinguished from state of emergency legislation).

Although the Government of Georgia was permitted under the ICCPR and the ECHR to impose restrictions to protect public health and the rights of others under ordinary legislation, it has been argued that when the Government confronted the threat of the uncontrolled internal spread of the coronavirus and was faced with a low degree of compliance among the population with the governmental recommendations and thus considered it

necessary to adopt extensive restrictions of human rights to counter these challenges (March 2020), the legislation of Georgia did not lay down an appropriate legal framework for the imposition of such restrictions of human rights in the context of an epidemiological crisis. Neither the Law on Public Health nor the Law on Civil Safety or any other relevant legislation laid down restrictions of human rights that could be imposed in the event that the epidemiological situation deteriorated. The existence of the relevant legislation serving as a legal basis for imposing the necessary restrictions would have avoided the need to declare a state of emergency and impose human rights restrictions therein.

Therefore, the lack of an appropriate legal framework that would have allowed for the restriction of the relevant rights and freedoms under the ordinary legislation triggered the application of the constitutional mechanism of restricting human rights during state of emergency. Had the relevant legislation been in place, the President of Georgia would not have declared the state of emergency and imposed human rights restrictions under Article 71 of the Constitution.

The analysis makes it clear that it is important that an appropriate legal framework be developed in Georgia for the imposing of human rights restrictions not only in ordinary situations, but also in extraordinary situations, such as a state of emergency, in order to fight epidemiological threats adequately. The corresponding measures to be applied in ordinary and extraordinary situations (i.e., a state of emergency) should be clearly defined. On the one hand, the legislation should lay down measures and restrictions that may be imposed in ordinary situations when there exist epidemiological threats. Among others, the Law on Civil Safety, which is supposed to be applicable in ordinary situations where there exists an epidemiological threat, should be further developed to reflect the relevant challenges. On the other hand, the legal framework applicable during a state of emergency should also be developed. This need was made clear by the deficiencies exposed in the Law on the State of Emergency, which was hardly applied during the state of emergency due to its inadequate nature, particularly with regard to epidemiological threats.

It is recommended to develop an appropriate legal framework for the imposing of human rights restrictions not only in ordinary situations, but also in extraordinary situations (such as a state of emergency) in order to fight epidemic/pandemic threats adequately, with human rights and freedoms given full consideration.

15.16. OBLIGATION OF A STATE TO PROVIDE THE GENERAL PUBLIC WITH INFORMATION ABOUT THE RISKS POSED BY COVID-19 AND JUSTIFICATIONS FOR HUMAN RIGHTS RESTRICTIONS

A state has an obligation to provide the general public with objective information about any threats posed to the health and lives of the population as well as justifications for human rights restrictions. The general conclusion here is that the public in Georgia have been well informed about both the situation relating to COVID-19 and the threats posed by the spread of the virus. The work of the Government in this regard should, in general, be assessed positively. However, when it comes to the obligation of the Government to provide the public with relevant explanations and justifications for human rights restrictions imposed, there is still room for further improvement.

It is recommended that the Government improves its practice of providing the public with relevant explanations and justifications for human rights restrictions imposed, including on the proportionality of relevant measures.

15.17. THE PROCEDURAL REQUIREMENTS FOR DEROGATIONS FROM HUMAN RIGHTS TREATIES: THE GEORGIAN EXPERIENCE IN THE CONTEXT OF THE COVID-19 PANDEMIC

Since the existence of a state of emergency is a fundamental precondition for a derogation from human rights obligations under the ICCPR and the ECHR, after the expiration of the state of emergency in Georgia on 22 May 2020, the

Government of Georgia was not legally empowered to maintain the derogations it had made during the state of emergency and, moreover, could not extend the derogations under Article 4 of the ICCPR and Article 15 of the ECHR on the right to a fair trial.

It is recommended that the Government of Georgia withdraws the derogations made under Article 4 of the ICCPR and Article 15 of the ECHR.

15.18. SANCTIONS FOR VIOLATIONS OF HUMAN RIGHTS RESTRICTIONS

Sanctions for the violation of human rights restrictions imposed during the pandemic should be proportionate to the seriousness of the act committed. Pertinently, at least two problems have been identified in the context of sanctions. Firstly, the President of Georgia has the power to restrict certain human rights during a state of emergency, but has no power to establish sanctions for violations of the state of emergency. Secondly, some questioned the proportionality of the sanctions. It is clear that there should have been some gradation of administrative or criminal offences for the national court to apply bearing in mind the individual circumstances of the given case, the seriousness of the offence, and the damage caused, but no such gradation exists in Georgia.

It is recommended that:

- a) sanctions for violations of a state of emergency be established by the administrative and criminal legislation of Georgia only and not by decrees of the President of Georgia; and**
- b) sanctions established under national law for violations of the state of emergency legislation and ordinary legislation should bear in mind the individual circumstances of the case, the seriousness of the offence, and the damage caused.**

15.19. JUDICIAL CONTROL OVER DECISIONS OF THE GOVERNMENT

- a) Both the normative and administrative acts of the Government of Georgia may be appealed before courts of general jurisdiction and the Constitutional Court of Georgia. However, examining such appeals on the basis of the standard timeframe during the state of emergency may have made judicial control impractical and thus rendering futile both the prevention of unlawful or disproportionate normative and administrative acts of the Government and the protection of human rights.
- b) The role of the Constitutional Court of Georgia is particularly important in this regard. Since the moment of the outbreak of the COVID-19 pandemic, there have been 15 applications filed with the Constitutional Court of Georgia relating to the lawfulness and proportionality of human rights restrictions imposed during the pandemic, none of which have been decided on the merits.

It is recommended to establish relevant guarantees for effective judicial control over interferences in human rights by the Government and the national law of Georgia should lay down shorter terms for examining appeals regarding the lawfulness and proportionality of the decisions of the Government.

