

The background of the cover is a blue-tinted, microscopic image of several virus particles, likely coronaviruses, showing their characteristic spherical shape and surface spikes. 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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## PREFACE

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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.<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>1</sup> 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](https://stopcov.ge/Content/files/COVID_RESPONSE_REPORT_ENG.pdf).

<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> 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.

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

<sup>4</sup> 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.

<sup>5</sup> 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.

## CONCLUSIONS AND RECOMMENDATIONS

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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:

### 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.**

## **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.**

## **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.

#### **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.**

## 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 Government 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.**

## 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.

## 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 recommended 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.**

## **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. UI-

timately, 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.**

## 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.

## 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.

## 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.**

## 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.**

### **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 education 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 (1<sup>st</sup>-6<sup>th</sup> years, and 7<sup>th</sup>-12<sup>th</sup> 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.**

#### 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. 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.**

## **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.**

## **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.**

## **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.**

## **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.**

