



**TRANSPARENCY
INTERNATIONAL**
GEORGIA

Managing the Challenges of COVID-19
Government Actions Evaluation Report

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Managing the Challenges of COVID-19 Government Actions Evaluation Report

Main Findings

The government actions prevented a large-scale spread of the novel coronavirus in the country. It would not be justified to say that the government managed to achieve these results at the expense of massive violations of human rights, however, the process was marred by certain shortcomings.

In the process of combating the pandemic, the role of the legislative body was considerably limited while the powers of the government were increased. With the powers vested in the government:

- The rules of isolation and quarantine were established;
- The scope of powers of the Internal Affairs Ministry was increased as a result of introduced restrictions;
- The time limits for releasing public information were suspended;
- The rules of using public services were altered;
- The education and work process became remote;
- For a certain period of time, the movement of vehicles was restricted;
- The use of cars by more than three persons was banned as well as riding in the front passenger seat next to driver;
- A curfew was introduced between 21.00 and 06.00 hours;
- Persons aged 70 years and older were prohibited from leaving their homes;
- An obligation to wear face masks in closed spaces was introduced;
- Assembly of initially more than 10 and then more than three persons in public spaces was banned;
- For a certain period of time, all economic activity was suspended with some exceptions.

The following merits positive assessment:

- The government carried out measures against the novel coronavirus in a timely manner, gradually tightening the restrictions. The restrictions were gradually lifted in accordance with the existing situation;
- The decisions concerning the imposition of particularly strict measures were made based on the consideration of epidemiological situation on specific territories;
- The information about the epidemiological situation and tightening or loosening the restrictions was constantly provided to journalists and the public;
- The government was actively holding consultations with corresponding professionals;
- Internal transmission in the country never became large-scale.

The following merits negative assessment:

- During the state of emergency, parliamentary oversight of the executive government was only formal;
- Risks of abuse of power increased as a result of granting the executive government broad discretion with regard to restrictions on human rights and freedoms;
- Some of the government actions were of selective nature while some restrictions were unsubstantiated and disproportionate;
- Strictly determined amounts of fines for the violation of the state of emergency rules did not allow to assess individual circumstances and rendered impossible the imposition of corresponding sanctions;
- There were no effective mechanisms of appealing against placing a person in quarantine;
- At the initial stage of the virus spreading, serious problems were recorded in terms of communication with ethnic minorities and foreigners living in Georgia;
- The amendments made to the Law on Public Health towards the end of the state of emergency contradict the principles of the Constitution.

This report evaluates concrete decisions made by the government to manage the first stage of the pandemic. It also reviews the legislative framework and international standards which governed or were supposed to govern the actions of all three branches of government.

Introduction

Georgia as well as many other countries of the world has been trying to tackle the pandemic caused by the novel coronavirus disease (Covid-19). On 11 March 2020, because of this infectious disease, the World Health Organisation declared a pandemic.¹ As we know, the first case of the novel coronavirus in Georgia was recorded on 26 February 2020.² This was mainly the point when the government started introducing certain restrictions to fight the pandemic. Initially, most of the restrictions were recommendations. They became obligatory only after the state of emergency was declared on 21 March. Specific restrictions were introduced gradually.³ Some of them were temporary and effective. However, in the process of managing the state of emergency, there were also instances of selective approach.

The recent period has demonstrated that making decisions concerning the novel coronavirus was placed in the domain of the executive branch. The government implemented many radical measures with the aim of curbing the spread of the disease.

The protection of life, health and ensuring safety of the population is an important public interest which, under the state of emergency, can warrant restriction or suspension of some of the rights and freedoms and changes in the distribution of roles among various branches of government at the expense of increasing the powers of the executive branch.⁴ However, it needs to be considered that the concentration of powers in the hands of the executive may increase the risks of arbitrariness and ungrounded restriction of human rights. It is unacceptable to justify arbitrary infringement on the rule of law and democratic institutions using the fight against the pandemic as a reason. The crisis caused by the pandemic poses threat not only to the life and health of the population but also to other benefits and values that are necessary for the existence of a democratic society. Correspondingly, strict adherence to both the local legislation as well as international standards is important when the declaration of the state of emergency, its duration and limits are at issue.

¹ WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020, <https://bit.ly/2TOJlCs> [accessed on 15.06.2020]

² ეკატერინე ტიკარაძის თქმით, საქართველოში დაფიქსირდა კორონა ვირუსის პირველი შემთხვევა (Ekaterine Tikaradze says the first case of coronavirus was recorded in Georgia), <https://bit.ly/3caxwwA> [accessed on 15.06.2020]

³ See Annex 1 for precise chronological list of restrictions.

⁴The European Commission for Democracy through Law (Venice Commission), Emergency Powers, 1995, CDL-STD(1995)012.

Grounds and Rules for Declaring a State of Emergency

The Constitution of Georgia allows for the possibility of declaring a state of emergency. According to the Constitution, a state of emergency can be declared “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.”⁵

A state of emergency is declared jointly by the prime minister, the president and the Parliament. The procedure is as follows: the president, by the prime minister’s nomination, declares a state of emergency which needs to be approved by the Parliament. The state of emergency enters into force as soon as it is declared although, if the Parliament refuses to approve it during the vote, it loses its force upon voting. A state of emergency can be declared on the whole territory of the country as well as on its part. After a state of emergency is declared, the president has the power, upon the nomination by the prime minister, to issue edicts which have the power of organic laws, based on which specific constitutional rights can be restricted or suspended. The Constitution contains a list of specific rights which can be suspended or restricted.⁶

The rules and conditions for the declaration of a state of emergency are also determined by the Law on the State of Emergency. The declaration of a state of emergency can serve to ensure the safety of the Georgian citizens, and its goal must be to normalise the situation as quickly as possible. The same law establishes⁷ specific measures which the government can implement based on need and considering the principle of proportionality.

⁵ Constitution of Georgia, Article 71, Paragraph 2 [translation from: <https://matsne.gov.ge/en/document/view/30346?publication=35>, accessed on 07.07.2020]

⁶ Constitution of Georgia, Article 71, Paragraph 4 [translation from: <https://matsne.gov.ge/en/document/view/30346?publication=35>, accessed on 07.07.2020]

⁷ Law of Georgia on State of Emergency, Article 4.

International Standards

Similar to the Constitution of Georgia, the International Covenant on Civil and Political Rights (the Covenant) and the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) provide for a mechanism of derogating from the obligations under the Covenant and the Convention during a state of emergency.⁸

We should note that not all kinds of extreme situations are equated with a state of emergency. The latter is a combination of circumstances in which extraordinary interference is required to deal with a situation that threatens the existence of the nation.⁹

According to the case-law of the European Court of Human Rights (ECHR), a *situation threatening the life of the nation* refers to “an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community”.¹⁰ Such emergency can be a natural disaster, civil unrest, epidemic or an exceptional economic crisis.¹¹

ECHR clarifies that the Contracting States have a wide margin of appreciation to determine what circumstances pose a threat to the life of the nation and what measures should be implemented in order to eliminate it.¹² Their powers, however, are not unlimited. The discretion of the Contracting States is subject to the oversight by ECHR if a specific complaint is lodged; in this case, the Court examines whether a State had “gone beyond the ‘extent strictly required by the exigencies’ of the crisis”.¹³ When evaluating this issue, the Court considers the essence of the rights which were restricted by derogation, the conditions and duration of the state of emergency.¹⁴ ECHR also assesses whether the ordinary laws would have been sufficient to address the existing challenges, whether the declaration of the state of emergency and introduced restrictions were lawful and a proportionate means of achieving a legitimate goal, whether the possibility of reviewing a state of emergency and judicial control were provided for.¹⁵

The Office of the UN High Commissioner for Human Rights (OHCHR), the European Commission for Democracy through Law (the Venice Commission) and various international legal instruments determine the fundamental principles which must be adhered to when a state of emergency is declared and while it remains in force. It is important to mention the following principles: limited duration, declaration and communication, proportionality, legality and non-derogation of absolute rights.¹⁶ It is important that the

⁸ International Covenant on Civil and Political Rights, Article 4; Convention for the Protection of Human Rights and Fundamental Freedoms, Article 15.

⁹ UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, paras. 2-3.

¹⁰ *Lawless v. Ireland* (no. 3) [ECHR] 1 July 1961, Series A no. 3, p. 28.

¹¹ The European Commission for Democracy through Law (Venice Commission), Report on the Democratic Control of the Armed Forces, 23 April 2008, CDL-AD(2008)004, para. 244.

¹² *Ireland v. The United Kingdom* [ECHR] 18 January 1978, Series A no. 25, paras. 205-207.

¹³ *Ibid.*

¹⁴ *Brannigan and McBride v. The United Kingdom* [ECHR] 26 May 1993, Series A no. 258-B, para. 43.

¹⁵ Council of Europe/European Court of Human Rights, Guide on Article 15 of the European Convention on Human Rights, Updated on 31 December 2019, para. 21.

¹⁶ The European Commission for Democracy through Law (Venice Commission), Opinion on the Draft Constitutional Law on "the Protection of the Nation" of France, 14 March 2016, CDL-AD(2016)006, para. 28.

processes unfold against the background of the parliamentary oversight while the judiciary should be able to assess the legality and expedience of derogation.

The Principle of Legality

A *de facto* state of emergency must be avoided – it must be declared officially.¹⁷ Any action implemented by the government must be in line with the national legislation and the requirements established by the instruments of international law.¹⁸ An act imposing restriction on the rights must serve the attainment of a legitimate goal and must not be arbitrary and unsubstantiated as this would cause unjustified restrictions of human rights.¹⁹ It must meet the criteria of predictability, specificity and accessibility.

Furthermore, the declaration of a state of emergency must not imply a suspension of the rule of law. The government can potentially abuse the state of emergency by silencing the opposition and through unjustified derogation of human rights in order to stay in power.²⁰ The state and public security can be effectively protected only in the conditions of democracy. Correspondingly, strict adherence to the elements of the rule of law is of utmost importance.²¹

The rule of law principle implies legal security for humans, when the population must be protected from the arbitrary and disproportionate restrictions imposed by the state. The principle of legality, democratic participation in the decision-making process, transparency of the government, respect for personal life, non-discrimination and respect for other human rights and freedoms are important elements of the rule of law.²² In addition, high degree of the government transparency and media freedom must be ensured so that exercising the freedom of expression and freedom of dissemination of information are not threatened under the state of emergency.²³

Office of the United Nations High Commissioner for Human Rights, Emergency Measures and Covid-19: Guidance, 27 April 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed on 15.06.2020]

Human Rights and COVID-19: A guidance note for parliaments <https://www.ipu.org/human-rights-and-covid-19-guidance-note-parliaments> [accessed on 15.06.2020]

Council of Europe, Parliamentary Assembly, Resolution 2209 (2018), State of Emergency: Proportionality Issues Concerning Derogations under Article 15 of the European Convention on Human Rights, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24680&lang=en> [accessed on 15.06.2020]

¹⁷ UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 2.

Council of Europe/European Court of Human Rights, Guide on Article 15 of the European Convention on Human Rights, Updated on 31 December 2019, para. 24.

The European Commission for Democracy through Law (Venice Commission), Emergency Powers, 1995, CDL-STD(1995)012, recommendations.

¹⁸ Office of the United Nations High Commissioner for Human Rights, Emergency Measures and Covid-19: Guidance, 27 April 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed on 15.06.2020]

¹⁹ Council of Europe, Parliamentary Assembly, Resolution 1659 (2009), Protection of Human Rights in Emergency Situations, para. 6. <https://bit.ly/2XPULlc> [accessed on 15.06.2020]

²⁰ The European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, 18 March 2016, CDL-AD(2016)007, para. 51.

²¹ Council of Europe/European Court of Human Rights, Guide on Article 15 of the European Convention on Human Rights, Updated on 31 December 2019, paras. 19-20.

²² The European Commission for Democracy through Law (Venice Commission), Opinion on the Protection of Human Rights in Emergency Situations, 4 April 2006, CDL-AD(2006)015, para. 34.

²³ Office of the United Nations High Commissioner for Human Rights, Emergency Measures and Covid-19: Guidance, 27 April 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed on 15.06.2020]

On 21 March 2020, the presidential [edict](#) imposed restrictions on the freedom of movement, the right to liberty, respect for private and family life, due process, access to public information, property, freedom of assembly and freedom of labour. On the basis of the powers delegated by the edict, the government [decree](#) No 181 approved the measures to be implemented with the goal of preventing the spread of the novel coronavirus with quite a broad spectrum of restrictions on the constitutional rights.

The constitutional principles of democracy, the rule-of-law state and division of powers set strict legal and constitutional boundaries for the government.²⁴ It is important that any normative act is compliant with the requirements of the constitution from both formal and material viewpoint.²⁵ Correspondingly, the failure to meet formal requirements causes the main restrictive norm to be deemed unconstitutional.

Based on the presidential edict, the government was granted broad powers enabling it to restrict fundamental human rights and freedoms. Granting the executive branch unlimited freedom of action brought into question the effectiveness of checks and balances.

According to the explanation offered by the Constitutional Court, the delegation of an issue which is subject to legal regulation can often be warranted by practical needs, however, it should concern the procedural/technical issues of regulating the rights.²⁶ The legislature may decide on a principled political or legal issue and delegate to other state agencies the regulation of the details required for its implementation.²⁷

Contrary to this, **the presidential edict failed to provide for clear determination of the scope of the norms restricting human rights and freedoms, trusting the government to decide on the essential issues in this regard. In addition to the disregard for the criteria of specificity and predictability, this resulted in the rights-restricting regulations being left effectively outside the scope of the parliamentary oversight.**

At the same time, as a result of the amendments made to the Law of Georgia on Public Health²⁸, it has become possible to restrict some of the fundamental human rights without declaring a state of emergency. As a result of the delegation of the power to determine the rules and the scope of restrictions to serve as quarantine measures to the government, the constitutional requirement to ensure that the rights are restricted on the basis of the law and that the criteria of specificity and predictability are met was disregarded. Regulating the issue in such a manner could result in declaring a *de facto* state of emergency bypassing the parliamentary oversight and

²⁴ Constitutional Court of Georgia Decision №2/2-389 of 26 October 2007, *Citizen of Georgia Maia Natadze and others v. Parliament of Georgia and the President of Georgia*, II-18.

²⁵ Constitutional Court of Georgia Decision №3/1/659 of 15 February 2017, *Citizen of Georgia Omar Jorbenadze v. Parliament of Georgia*, II-27.

²⁶ Constitutional Court of Georgia Decision №1/7/1275 of 2 August 2019, *Aleksandre Mdzinarashvili v. Georgian National Communications Commission*, II-30.

²⁷ Ibid.

²⁸ See <https://info.parliament.ge/#law-drafting/20381> [accessed on 15.06.2020]

creating a risk of the state imposing arbitrary and disproportionate restrictions. Correspondingly, disregard for these requirements may become a basis for deeming a norm unconstitutional.

The Principle of Declaration and Communication

The [information about the] decision concerning the declaration of the state of emergency and the measures to be implemented must be public and accessible. If possible, this information should be delivered to the population not only in the state language but also in the languages that are widely used on the territory of the country.²⁹ The state must proactively ensure the availability of the information about the state of emergency so that the population is able to familiarise itself with it and act according to the rules.³⁰

In addition, the state has an obligation to inform other member-states of the Covenant (via the Secretary-General of the United Nations) and the Secretary General of the Council of Europe about its decision concerning derogation, implemented measures and reasons for them in a timely manner.³¹ It should be noted that such notices are mostly formal and their contents are not considered **legally binding**.³²

The principle of declaration and communication was partially observed. The state efficiently ensured public access to information in the Georgian language. The government actively provided the media with [the information about] the recommendations and mandatory rules which were to be followed in the fight against the novel coronavirus. A special website, stopcov.ge, was created where relevant information about the state of affairs concerning Covid-19 was constantly posted and updated.

There were shortcomings in the state policy concerning ethnic minorities since there was no active awareness campaign in the languages they understand.³³ Ultimately, as a result of this shortcoming, the government encountered problems addressing issues related to Covid-19 in some of the administrative entities populated by ethnic minorities. Ethnic groups living in Georgia

²⁹ Office of the United Nations High Commissioner for Human Rights, Emergency Measures and Covid-19: Guidance, 27 April 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed on 15.06.2020]

³⁰ Human Rights Watch, COVID-19: A Human Rights Checklist <https://www.hrw.org/news/2020/04/14/covid-19-human-rights-checklist> [accessed on 15.06.2020]

³¹ International Covenant on Civil and Political Rights, Article 4, Paragraph 1. Also, Convention for the Protection of Human Rights and Fundamental Freedoms, Article 15, Paragraph 1.

UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 17.

Georgia fulfilled this obligation within reasonable time limits. See details: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=oC00wpDO

<https://treaties.un.org/doc/Publication/CN/2020/CN.125.2020-Eng.pdf> [accessed on 15.06.2020]

³² Respecting Democracy, Rule of Law and Human Rights in the Framework of the COVID-19 Sanitary Crisis. A Toolkit for Member States, 7 April 2020, SG/Inf(2020)11 <https://bit.ly/3hedPb6> [accessed on 15.06.2020]

Strengthening the Supervision of ECHR Derogation Regimes. A Non-judicial Avenue

<https://strasbourgobservers.com/2020/04/17/strengthening-the-supervision-of-echr-derogation-regimes-a-non-judicial-avenue/> [accessed on 15.06.2020]

³³ “We call on the state and media outlets to include the languages of ethnic minorities in their information policy” („მოვუწოდებთ სახელმწიფოსა და მედიებს, საინფორმაციო პოლიტიკაში უმცირესობების ენები გაითვალისწინონ”); <https://bit.ly/3726uGB> [accessed on 15.06.2020]

were not provided with information about the epidemiological situation in the country and ways of addressing this situation in corresponding languages, especially at the beginning. As a result, the population in such regions did not have a possibility to acquire the knowledge and to implement the recommendations and rules issued by the state. This might be one of the reasons why particularly strict measures at the initial stage became [necessary](#) precisely in the region populated by ethnic minorities.

At a later stage, the government stepped up the awareness campaign in this direction. This included the translation of the special website stopcov.ge into several languages.

The Principle of Limited Duration

A state of emergency is a measure of exceptional nature. It should be declared only in special situations, for the duration of the period when the threat is actual and imminent.³⁴ The state of emergency is a temporary crisis situation which must not become permanent. Its prolongation must take place in the conditions of effective parliamentary oversight while the government must start preparing for its termination and determining subsequent actions while the state of emergency is still in force.

The state of emergency must be limited in time and space since its protraction may cause it to lose its legitimacy. In the opinion of the Venice Commission, the prolongation of a state of emergency is not always the best option as it increases the probability that the state will deviate from the objective criteria which served as the basis for declaring the state of emergency.³⁵

It is also important that the special rules which are enforced during the state emergency are no longer valid once the state of emergency is over³⁶ and the post-crisis challenges are addressed under the regular legislation.³⁷

This principle was mostly observed by the government. Initially, the state of emergency was declared for the duration of one month, then prolonged for the same period of time. On 22 May, the state of emergency was officially lifted. However, we cannot say that the process was fully compliant with the principle of limited duration.

³⁴ UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 2. The European Commission for Democracy through Law (Venice Commission), Emergency Powers, 1995, CDL-STD(1995)012, recommendations.

³⁵ The European Commission for Democracy through Law (Venice Commission), Opinion on emergency decree laws nos 667-676 adopted following the failed coup of 15 July 2016, 12 December 2016, CDL-AD(2016)037, para. 41.

³⁶ Office of the United Nations High Commissioner for Human Rights, Emergency Measures and Covid-19: Guidance, 27 April 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed on 15.06.2020]

Council of Europe, Parliamentary Assembly, Resolution 1659 (2009), Protection of Human Rights in Emergency Situations, para. 12. <https://bit.ly/2XPULLc> [accessed on 15.06.2020]

³⁷ The European Commission for Democracy through Law (Venice Commission), Opinion on emergency decree laws nos 667-676 adopted following the failed coup of 15 July 2016, 12 December 2016, CDL-AD(2016)037, para. 80.

The observation of the processes has shown that the prolongation of the state of emergency did not take place in the conditions of effective parliamentary control. Decisions were made without any discussion in the Parliament, effectively disregarding the role of the Parliament. Precisely because the need to prolong the state of emergency and retain the restrictions was not properly substantiated, the opposition [did not support](#) the initiative.

The observation of the processes has generated a perception that the role of the Parliament was used as a formal instrument to obtain approval. The need for the prolongation of the state of emergency and the use of restrictive measures required better substantiation and more discussions concerning their expediency and necessity.

The Principle of Proportionality

The extraordinary measures implemented by the state and deviation from fundamental rights and freedoms must be proportionate to the existing threat.³⁸ The measures under the state of emergency “may only have a scope that is ‘strictly required by the exigencies of the situation’”.³⁹ Also, the measures must not contradict other obligations undertaken by the state under the international law.⁴⁰

According to case-law, the national government bodies should have broad freedom of action since, in their assessment of emergency needs, compared to international courts, governments, due to their direct and immediate contact with the threat, are better placed to assess the seriousness of the situation, the fact of existence of a state of emergency, the type and scope of measures to be implemented.⁴¹ However, when declaring the state of emergency, the government should not enjoy unlimited discretion and must act solely within the limits of strict requirements and exigencies of the situation.⁴²

In the assessment of proportionality, the intensity, duration and geography of implemented measures are of utmost importance.⁴³ The state of emergency must be of limited duration and only be enforced on the territory where it is necessary.⁴⁴ According to the Venice Commission:

³⁸ UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 4.

The European Commission for Democracy through Law (Venice Commission), Emergency Powers, 1995, CDL-STD(1995)012, recommendations.

³⁹ The European Commission for Democracy through Law (Venice Commission), Opinion on the Protection of Human Rights in Emergency Situations, 4 April 2006, CDL-AD(2006)015, para. 12.

⁴⁰ International Covenant on Civil and Political Rights, Article 4, Paragraph 1; Convention for the Protection of Human Rights and Fundamental Freedoms, Article 15, Paragraph 1.

⁴¹ *Ireland v. The United Kingdom* [ECHR] 18 January 1978, Series A no. 25, para. 207.

⁴² The European Commission for Democracy through Law (Venice Commission), Compilation of Venice Commission Opinions and Reports on States of Emergency, 16 April 2020, CDL-PI(2020)003, p. 6.

⁴³ Council of Europe, Parliamentary Assembly, Resolution 2209 (2018), State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights, para. 4. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24680&lang=en> [accessed on 15.06.2020]

⁴⁴ UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 4.

Office of the United Nations High Commissioner for Human Rights, Emergency Measures and Covid-19: Guidance, 27 April 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed on 15.06.2020]

“...all of these measures must be proportionate to the threat and its immediacy, must not last any longer than the threat itself and must only apply to the regions affected by it.”⁴⁵

It is important that the measures used during the state of emergency are regularly revised and the need for their imposition is analysed.⁴⁶ As a result of the assessment, it may be established that the implementation of the measures which were necessary at the initial stage of the crisis is unjustified after passage of time and changes in the circumstances.

A balance should be found between protecting life and health and ensuring the security of the population and protecting human rights and freedoms.⁴⁷ When public and private interests clash and when deciding on the issue of proportionality, the specific situation and circumstance need to be considered. Priority should be given to the measures which would allow achieving the set goals with minimal derogation of rights.⁴⁸

The measures and specific restrictions used by the government were in most part proportionate and effective, however, there were some instances of selective approach and unreasonable derogation of human rights and freedoms.

It should be assessed positively that the government, rather than introducing tight restrictions at once and on the entire territory of Georgia, tightened them in specific regions depending on the epidemiological situation. We can cite the examples of Marneuli, Bolnisi, Tetrtskaro and other municipalities which were declared quarantine zones due to serious epidemiological situation that unfolded there.

It should also be noted that there was no large-scale spread of the novel coronavirus in the country. Between 26 February and 1 July, 931 people were infected in Georgia, 794 of them recovered and 15 are deceased.⁴⁹

What warrants a negative assessment is the establishment by the presidential edict of the size of fines for violating the rules of the state of emergency, setting their amounts at GEL 3,000 for physical persons and GEL 15,000 for legal persons. The strictly defined sanctions make it impossible to assess individual circumstances and impose appropriate sanction.

According to international standards, the state has to determine a humane kind and size of

⁴⁵ The European Commission for Democracy through Law (Venice Commission), Opinion on the Legal Framework Governing Curfews, 13 June 2016, CDL-AD(2016)010, para. 87.

⁴⁶ The European Commission for Democracy through Law (Venice Commission), Opinion on emergency decree laws nos 667-676 adopted following the failed coup of 15 July 2016, 12 December 2016, CDL-AD(2016)037, para. 62.

⁴⁷ COVID-19: A Human Rights Checklist, <https://reliefweb.int/report/world/covid-19-human-rights-checklist> [accessed on 15.06.2020]

⁴⁸ On sledgehammers and nutcrackers: recent developments in the Court's less restrictive means doctrine <https://strasbourgobservers.com/2018/06/20/on-sledgehammers-and-nutcrackers-recent-developments-in-the-courts-less-restrictive-means-doctrine/> [accessed on 15.06.2020]

⁴⁹ stopcov.ge; <https://stopcov.ge/> [accessed on 01.07.2020]

sanctions so that it is not used in a disproportionate, arbitrary and discriminatory manner.⁵⁰ A fine must be proportionate to an offence. When imposing a fine, individual circumstances need to be considered.⁵¹ Detention should be used in extreme cases, when using it is reasonable, necessary and proportionate. Administrative or court measures should be aimed at mitigating negative effects as much as possible or rectifying them.⁵²

It was an unjustified measure to fine persons for expressing protest which did not unequivocally violate the rules of distancing and assembly. For example, Teimuraz Pataridze was [fined](#) only because he was staging an individual protest outside the Chancellery building.⁵³

In a similar way, the people who attended a meeting organised by the Girchi political party on the territory of the Hippodrome and who observed the mandatory 2-m distance were [fined](#) nevertheless.

At the same time, the state allowed the Orthodox Church [conduct](#) its liturgies business as usual.

The Principle of Non-Derogation of Absolute Rights

Derogation of absolute rights under the state of emergency is inadmissible (*inter alia*, ban on torture, ban on retroactive legislation, ban on double jeopardy).⁵⁴

No instances of interference in the spheres protected by absolute rights have been recorded in the process of fighting the novel coronavirus.

Parliamentary Oversight

The conditions for declaring a state of emergency are clearly defined by the Constitution. There is an established mechanism of parliamentary monitoring with regard to its declaration and prolongation.

⁵⁰ Office of the United Nations High Commissioner for Human Rights, Emergency Measures and Covid-19: Guidance, 27 April 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed on 15.06.2020]

⁵¹ Office of the United Nations High Commissioner for Human Rights, Emergency Measures and Covid-19: Guidance, 27 April 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed on 15.06.2020]

⁵² The European Commission for Democracy through Law (Venice Commission), Compilation of Venice Commission Opinions and Reports on States of Emergency, 16 April 2020, CDL-PI(2020)003, p. 26.

⁵³ Also, in Kutaisi, Gogi Tsulaia was detained because he was holding a banner and expressed critical views <https://www.tabula.ge/ge/story/168273-gdi-xelisuflebam-sagangebo-mdgomareoba-kritikuli-azris-tsinaaghmddeg-ar-unda-gamoikenos> [accessed on 15.06.2020]

⁵⁴ See International Covenant on Civil and Political Rights, Article 4, Paragraph 2. Also, Convention for the Protection of Human Rights and Fundamental Freedoms, Article 15, Paragraph 2.

UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 7.

It is especially noteworthy that ignoring the role of the Parliament in a parliamentary republic and in the situation that is critical for the country threatens the country's democratic, stable development compliant with the constitutional order. In any critical situation, including during a pandemic and a state of emergency, there is an equal need to take immediate actions and to control these processes. This is necessary due to the disproportionately heightened risks of restricting human rights in the conditions of a state of emergency.

It is important for the Parliament to work continuously during a state of emergency so that the oversight over the work of the executive branch and exercising constitutional powers related to the state of emergency are not hampered.⁵⁵ The first step of the parliamentary control is the discussion by the Parliament of the approval of the decision to declare the state of emergency.

It is important to ensure transparency of the process and also to properly substantiate the decision concerning the declaration of the state of emergency as well as the necessity of the planned measures.⁵⁶ The government is under the obligation to prove that derogation of rights is necessary and proportionate.⁵⁷ Taking into consideration the seriousness of the situation and all relevant factors, the government is under the obligation to assess if there is an extreme situation which poses threat to the life of the nation and whether the declaration of a state of emergency is necessary to address it.⁵⁸

Adherence to this requirement is an important guarantor of maintaining the rule of law and democratic values.

The executive branch should not be given complete freedom of action, the so-called *carte blanche* which involves increased risks of arbitrariness and of abuse of power.

A case in which the scope of the government's powers and its mandate were not defined when the state of emergency was declared was negatively assessed by the Venice Commission.⁵⁹ The effectiveness of the Parliament's role as a controlling body is lost when unlimited powers are granted. The actions of the executive branch left without checks and balances are dangerous for a country's democratic order.

Along with its legislative activities, the Parliament has an extremely important role of exercising oversight of the executive branch. In the conditions of a pandemic, controlling the activities of the government becomes particularly important. It merits a negative assessment that, after the Parliament approved the presidential edict, the process of the management of the state of emergency fell entirely into the hands of the government and ***the parliamentary oversight of the executive branch was just a formality.***

⁵⁵ The European Commission for Democracy through Law (Venice Commission), Emergency Powers, 1995, CDL-STD(1995)012.

⁵⁶ Ibid.

⁵⁷ Office of the United Nations High Commissioner for Human Rights, Emergency Measures and Covid-19: Guidance, 27 April 2020, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed on 15.06.2020]

⁵⁸ The European Commission for Democracy through Law (Venice Commission), Opinion on the Legal Framework Governing Curfews, 13 June 2016, CDL-AD(2016)010, para. 67.

⁵⁹ The European Commission for Democracy through Law (Venice Commission), Opinion on emergency decree laws nos 667-676 adopted following the failed coup of 15 July 2016, 12 December 2016, CDL-AD(2016)037, para. 191.

The president's Edict No 1 dated 21 March established grounds for blanket derogation of rights while the powers of determining the nature and scope of specific restrictions was delegated to the government. Moreover, regulation of certain issues fell within the competence of the ministries. ***As a result, the government was granted a broad discretion in terms of derogation of rights.***

Effective parliamentary oversight would be ensured only if the presidential edict clearly determined a specific scope of the derogation of rights, within which the government would be able to act. Contrary to this, **the presidential edict did not clearly define the scope for derogation of constitutional rights, correspondingly, making decisions, essential and on merit, concerning interference with the rights fell completely within the competence of the government. As a result, the assessment of the necessity and proportionality of specific restrictive measures implemented by the government was left beyond the parliamentary control.**

It should also be noted that initially the state of emergency was declared for the period until 21 April but was later prolonged until 22 May. The Parliament made the decision on the declaration of the state of emergency unanimously but the issue of its prolongation caused a heated discussion amongst MPs. The opposition parties [demanded](#) that, before making this decision, the government present an anti-crisis plan and an activity report about the actions implemented until that moment. Eventually, this decision was approved by the parliamentary majority with 97 votes against 10.

During the state of emergency, the Parliament did not use the mechanisms of parliamentary oversight neither at the level of committees and factions nor at the level of individual MPs. Including the following:

In the process of exercising the oversight role, the Parliament did not use its powers under Article 39 of the Parliamentary Rules of Procedure. Specifically, a committee, based on the area of its work, can check the compliance of the normative acts issued during the state of emergency with the Georgian legislation and the state of affairs with regard to their enforcement. Such mechanism allows identifying shortcomings and developing relevant recommendations. In the conditions when the government was granted an effectively full discretion to manage the state of emergency, the use of this mechanism would have been important in the process of exercising the role of the parliamentary oversight.

In addition, the Parliament did not use the mechanism of the so-called Ministerial Hour while the state of emergency was in force. Despite the fact that the ***Ministerial Hour*** [schedule](#) for 2020 already existed before the state of emergency was declared, ministers did not report to the Parliament. This mechanism would have allowed the Parliament to hear the reports on specific important issues during the pandemic directly from the ministers. Especially given that the presidential edict gave precisely the ministries the powers to address certain issues.

It is noteworthy that, on 21 May, Prime Minister Giorgi Gakharia [addressed](#) the Parliament **on his own initiative** in order to present to it the activity report. On 27 May, the prime minister [presented](#) to the Parliament the report on fighting the coronavirus.

Also, during the state of emergency, the National Movement faction [summoned](#) Prime Minister Giorgi Gakharia to the plenary session through the mechanism of **interpellation** on the last Friday of May.⁶⁰ Furthermore, on 8 May, European Georgia used interpellation to [pose questions](#) to the prime minister concerning the government's anti-crisis plan and measures carried out by the government during the pandemic. It merits a positive assessment that the prime minister appeared in the Parliament to answer these questions on 29 May.⁶¹

Judicial Review

The national judiciary should be able to review the legality and expediency of measures used as a result of restrictions and derogation of rights, including by means of establishing their compliance with the provisions of the European Convention on Human Rights.⁶² The role of the Constitutional Court must also be preserved.⁶³ The importance of the judicial review increases in a parliamentary republic where the executive and legislative branches often represent the same political force.

Judicial review becomes particularly important when freedoms are restricted during the state of emergency. It is crucial that persons whose freedom is restricted are able to appeal to court through the writ of *habeas corpus* without any obstruction.⁶⁴

Habeas corpus means that any person whose freedom was restricted has a right to appeal to court in order to check the lawfulness of his or her detention and expect a prompt hearing of this issue and to be released immediately in the event the detention is ruled unlawful.⁶⁵ *Habeas corpus* is a procedural guarantee against unlawful detention. Thus, judicial control during the state of emergency is a means of putting a stop to unjustified restrictions of human rights and of restoring the rights that were violated.

⁶⁰ See the National Movement faction's 5 May letter #3983/3-24/20 to Prime Minister Giorgi Gakharia, <https://bit.ly/3dcPbVL> [accessed on 15.06.2020]

⁶¹ "The answers of the Prime Minister to the Parliament within the Interpellation", 9 May 2020, <https://bit.ly/2TSLIEB>; see also the Prime Minister's written responses to the questions asked within the interpellation, <https://bit.ly/2TR2Yd5>; <https://bit.ly/3dj32tA> [accessed on 15.06.2020]

⁶² The European Commission for Democracy through Law (Venice Commission), Opinion on the Protection of Human Rights in Emergency Situations, 4 April 2006, CDL-AD(2006)015, para. 12.

⁶³ Respecting Democracy, Rule of Law and Human Rights in the Framework of the COVID-19 Sanitary Crisis. A Toolkit for Member States, 7 April 2020, SG/Inf(2020)11 <https://bit.ly/3hedPb6> [accessed on 15.06.2020]

See Annex 2 for information about the complaints lodged with the Constitutional Court of Georgia.

⁶⁴ The European Commission for Democracy through Law (Venice Commission), Compilation of Venice Commission Opinions and Reports on States of Emergency, 16 April 2020, CDL-PI(2020)003, p. 19.

UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 16.

⁶⁵ International Covenant on Civil and Political Rights, Article 9, Paragraph 4; Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5, Paragraph 4.

Furthermore, it is especially important that the judicial review is effective and feasible.⁶⁶

All physical persons who came from abroad and/or were in contact with the coronavirus cases with the exceptions determined by a government decree will be subject to mandatory 14-day isolation (quarantine or self-isolation).⁶⁷ A violation of this rule will result in sanctions envisaged by the Georgian legislation. Additionally, an authorised representative of the Ministry of Internal Affairs of Georgia may transfer a physical person who committed a violation to a corresponding facility within reasonable time.⁶⁸ The legislation clarifies that such a measure is of preventive nature and is not an administrative detention.

The legislation does not envisage judicial control over decisions concerning transfer to isolation in advance (*ex ante*) and afterwards (*ex post*) which, in the opinion of some of the lawyers, is an unconstitutional arrangement and must be made subject of the review by the Constitutional Court. It should also be noted, however, that not all kinds of deprivation of liberty require a court order. Placing in isolation can be considered to be the case outside of the mandatory judicial control. According to the European Convention, restriction of a person's liberty is allowed to prevent the spread of infectious diseases.⁶⁹

In parallel, a person placed in isolation is authorised to use the writ of *habeas corpus*. Correspondingly, given the goals and preventive nature of placing a person in isolation, it can be said that *habeas corpus* is the minimal guarantee provided for in the Constitution of Georgia and international instruments based on which a person has the right to appeal to court and have it check the lawfulness of the decision made in their case.

The Law of Georgia on Public Health stipulates the right of a person to appeal against the decision made in his or her case.⁷⁰ However, the law contains only a general reference to the possibility of appeal in accordance with the procedure established by the Georgian legislation.

It is not clear to the persons wishing to appeal the decisions which procedures should be applied to examine the issue of lawfulness. Correspondingly, in the conditions when the clearly defined rules of procedure are absent, it is difficult to claim that this norm provides for effective guarantees of protection of the rights.

⁶⁶ Council of Europe/European Court of Human Rights, Guide on Article 15 of the European Convention on Human Rights, Updated on 31 December 2019, para. 21.

⁶⁷ See Order №01-31/n of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, dated 25 March 2020, <https://matsne.gov.ge/ka/document/view/4833995?publication=0> [accessed on 15.06.2020]

⁶⁸ Law of Georgia on Public Health, Article 11, Paragraph 1¹.

⁶⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5, Paragraph 1, Sub-paragraph "e".

COVID-19 and the European Convention on Human Rights <https://strasbourgobservers.com/2020/03/27/covid-19-and-the-european-convention-on-human-rights/> [accessed on 15.06.2020]

⁷⁰ Law of Georgia on Public Health, Article 11, Paragraph 2.

Under the international instruments, the court decides on the lawfulness of the deprivation of liberty as soon as a complaint is lodged.⁷¹ Based on the publicly available information, we can say that no one has exercised the right of *habeas corpus* with regard to being placed in isolation. The lack of information could be identified as one of the reasons causing this. On the one hand, the government is not trying to proactively inform the public about the essence of this right, while on the other, when the persons who are subject to isolation are informed about their rights and duties and when they are given a written explanation concerning this information, they are given virtually no information about this right.⁷²

Activities of the Interagency Coordination Council

According to the prime minister, the Interagency Coordination Council was [formed](#) on 28 January 2020. During this period, the Council was making decisions concerning combating the pandemic. Representatives of the executive branch as well as the chairperson of the Parliament participated in the Council sessions. It is important that the government issued a [decree](#) concerning the creation of this Council on 30 March, correspondingly, the Council had not been officially formed prior to this date and the public was not aware of its composition or decision-making procedures.

The chairperson of the Interagency Coordination Council formed with the aim to prevent the spread of the novel coronavirus is the prime minister; representatives of ministries and medical institutions are its members. In addition, one representative of the Presidential Administration and one representative of the Parliament are allowed to participate in the Council sessions.⁷³

Decisions made during the period of restrictions imposed due to the coronavirus

Legislative activities of the Parliament during the state of emergency

The Parliament's legislative activities during the state of emergency were not intensive either. It is noteworthy that the declaration of the state of emergency does not deprive MPs of the possibility to fulfil their role. The emergency mode of the Parliament's work during the state of emergency does not imply weakening of the Parliament's functions and role.

⁷¹ International Covenant on Civil and Political Rights, Article 9, Paragraph 4; Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5, Paragraph 4.

Khlaifia and Others v. Italy [ECHR] no. 16483/12, 1 September 2015, para. 131.

UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para. 16.

⁷² See Order №01-31/n of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, dated 25 March 2020, <https://matsne.gov.ge/ka/document/view/4833995?publication=0> [accessed on 15.06.2020]

⁷³ See Annex 1 for detailed information about the decisions made by the Council.

The legislative process during the state of emergency was limited to passing several laws which were mainly initiated in the context of fighting against the pandemic or entailed deference of the enactment of some laws for this reason.⁷⁴ At the same time, there were several instances when the laws which caused protest in part of the public were passed. Turning amendments into laws during this period raised more questions given the fact that attending parliamentary sessions and, correspondingly, public participation in the process of discussion was limited due to the pandemic.

Before the state of emergency was declared, the [parliamentary] majority members developed [draft](#) amendments to the Rules of Procedure which envisaged a possibility of the Parliament working remotely. The first hearing of the draft law was held at the plenary session; however, questions arose with regard to compliance with the Constitution since the Constitution does not make a provision for a remote assembly of the Parliament during a state of emergency. No vote was held on the draft law and its consideration was suspended.

On 21 March, the Parliamentary Bureau [approved](#) the Workplan for the Extraordinary Session of the Parliament, according to which plenary sessions would be held during the state of emergency “if needed”, based on the decision by the chairperson of the Parliament.⁷⁵

During the period between the declaration of the state of emergency and its end, the Parliament gathered for a plenary session five times. The committee sessions were in most cases dedicated to the discussion of draft laws that were going to be passed at plenary sessions using an expedited procedure. The parliamentary opposition declared a boycott six times and did not attend plenary sessions citing political views.

- Initiative on transferring land to the Patriarchy (amendment to the Forest Code)

The amendments to the Forest Code and accompanying laws [established](#) that forest areas adjacent to the Orthodox Christian churches and monasteries that existed before the law came into force will be transferred into the ownership of the Apostolic Autocephalous Orthodox Church of Georgia upon the latter’s request; the area in each case shall not exceed 20 hectares.⁷⁶

This initiative was criticised by part of the public; non-governmental organisations deemed this amendment unconstitutional.⁷⁷

- Amendments to the Local Self-Government Code concerning the establishment of LEPLs

⁷⁴ See, for example, draft amendments to the Code on the Rights of the Child and accompanying laws, <https://bit.ly/3ciGI26> [accessed on 15.06.2020]

⁷⁵ See Parliamentary Bureau Decision #341/1, dated 21 March 2020, On the Workplan of the Parliament of Georgia during the Extraordinary Session of the Parliament of Georgia, <https://bit.ly/3dhjjPQ>.

⁷⁶ As well as the [attributed](#) territories defined by the Forest Code of Georgia. See details: <https://bit.ly/2TScnRq> [accessed on 15.06.2020]

⁷⁷ “EMC: According to the Forest Code, it will be unconstitutional to transfer forest resources to the church only”, 21 May 2020, <https://bit.ly/3evPRWv>; “TDI calls on the Parliament to refrain from supporting the law on transferring forest to the Patriarchy”, 21 May 2020, <https://bit.ly/2AjtLHY>; “Petition against transferring forest to the Patriarchy disseminated”, Radio Liberty, 21 May 2020, <https://bit.ly/3ccbbP7> [accessed on 15.06.2020]

The Parliament passed [amendments](#)⁷⁸ to the Local Self-Government Code according to which the municipalities will have the right to establish Legal Entities of Public Law (LEPLs). These LEPLs will exercise the following powers: collection of taxes, provision of public amenities and development of the corresponding engineering infrastructure, cleaning streets, parks, city gardens and other public spaces, municipal waste management, management of local roads and other.

According to the assessment by Transparency International Georgia, the law that was passed had not been substantiated.⁷⁹

➤ Establishing administrative and criminal responsibility

Members of the parliamentary majority presented to the Parliament an [initiative](#) on amendments to the **Code of Administrative Offences of Georgia**. An expedited procedure was used to hear the draft law. According to the new amendments, fines were established for violation of isolation and/or quarantine rules⁸⁰ and the rules of the state of emergency.⁸¹ According to the law that was passed, violation of the rules of isolation and/or quarantine once the state of emergency is lifted will result in the fines amounting to GEL 2,000 for a physical person and GEL 10,000 for a legal person.⁸²

According to the amendments to the **Criminal Code**, a responsibility was established for repeat violation of the rules of isolation and/or quarantine (if these rules are not part of the state of emergency or the state of war).⁸³ House arrest for the length of time between six months and two years or imprisonment for up to three years were established as sanctions. The sanctions for the same actions committed by legal persons include a fine, termination of licence or dissolution and fine.

According to the same law, repeat violation of the rules of the state of emergency or the state of war established by a presidential edict and/or other normative act is punishable with imprisonment for up to six years unless otherwise prescribed by the presidential edict.⁸⁴ The sanctions for the same actions committed by legal persons include a fine, termination of licence or dissolution and fine unless otherwise prescribed by the edict of the Georgian president.

It should be noted that the president's Edict No1 envisaged criminal responsibility punishable by up to three years' imprisonment for the violation of the rules of the state of emergency.⁸⁵

⁷⁸ The legislative initiative was presented to the Parliament on 10 January 2020, its hearing by the plenary session began in April; see details: <https://bit.ly/2ZP4TT1> [accessed on 15.06.2020]

⁷⁹ For details, see "Municipalities Should Not Be Authorized To Create LEPLs Without A Legal Reform", Transparency International Georgia, 28 April 2020, <https://bit.ly/2ZNqBHb> [accessed on 15.06.2020]

⁸⁰ Unless this is part of the state of emergency or the state of war. See Code of Administrative Offences of Georgia, Article 42¹⁰

⁸¹ Code of Administrative Offences of Georgia, Article 177¹⁵

⁸² Prior to the adoption of these amendments, a rule established by the presidential edict was in force, according to which violation of the state of emergency rules envisaged fining a physical person in the amount of GEL 3,000 and a legal person in the amount of GEL 15,000.

⁸³ Criminal Code of Georgia, Article 248¹

⁸⁴ Criminal Code of Georgia, Article 359¹

⁸⁵ Edict No 1 of the President of Georgia, dated 21 March 2020, <http://www.parliament.ge/ge/ajax/downloadFile/135879/sruli> [accessed on 15.06.2020]

- Initiative on restrictive measures without the declaration of the state of emergency (amendments to the Law on Public Health)

After the state of emergency was lifted, members of the parliamentary majority initiated [amendments](#) to the Law on Public Health which envisage the use of restrictive measures without declaring the state of emergency, while the rules and the scope of such restrictions shall be defined by the government. The hearing of this initiative was held using an expedited procedure and it was approved.

[Transparency International Georgia](#) and [other non-governmental organisations](#) deemed the draft law unconstitutional.⁸⁶

The Parliament made changes to the draft law in the [second](#)⁸⁷ and the [third](#)⁸⁸ hearing thus partially addressing some of the problems but, according to our assessment, the issue of its unconstitutional nature remained a problem.

Concessions introduced by the Parliament due to the coronavirus

During the state of emergency, the Parliament also passed legislative amendments which envisage introducing certain concessions due to the coronavirus:

- Initiative on the establishment of tax concessions due to Covid-19

On 4 May, the government presented to the Parliament amendments to the Tax Code according to which:

- Starting on 1 May 2020 and for the duration of six months, employers are authorised to reduce (not transfer to the budget) the income tax withheld from GEL 750 of a salary paid to an employee if this employee's salary does not exceed GEL 1,500.⁸⁹
- Starting from 1 March and for the duration of six months, the service of property renting/leasing will be subject to VAT during the period when the amount/part of the amount is actually paid in compensation for this service.

- Concessions on privatised property due to the state of emergency (amendments to the Local Self-Government Code)

During the state of emergency, the Parliament adopted majority MP Koba Lursmanashvili's [initiative](#) according to which the government, during or after the state of emergency, is authorised to address Tbilisi City Council with the request to change or annul the investment conditions for a buyer of property privatised by means of an auction. The reason provided for the development of the initiative was the introduction of certain concessions for businesses in the conditions of Covid-19. However, the text of the law is not clear on

⁸⁶ "It is unconstitutional to impose restrictions without a state of emergency", Transparency International Georgia, 19 May 2020, <https://bit.ly/2Ba9rZT> [accessed on 15.06.2020]

⁸⁷ See the amended version of the draft law discussed during the second hearing at the plenary session here: <https://bit.ly/3digZle> [accessed on 15.06.2020]

⁸⁸ See final edited version of the draft law: <https://bit.ly/36Hlj1j> [accessed on 15.06.2020]

⁸⁹ The concessions will not apply to budget-funded agencies, the National Bank, the national regulatory bodies, enterprises partially owned by the state.

whether the changed conditions only imply the introduction of concessions. The opposition members and independent MPs have commented on this issue but the initiator did not consider their comments.

Judiciary

On 3 April, during the state of emergency, the Plenum of the Supreme Court appointed Khvicha Kikilashvili a judge of the Constitutional Court; the appointment procedure was speeded up and no public discussion took place.⁹⁰ Despite the fact that the vacancy existed since 5 December 2019, the Plenum effectively took advantage of the state of emergency and filled the vacancy when public attention was diverted due to the situation that prevailed in the country. This step taken by the Plenum of the Supreme Court has further strengthened the distrust towards the judiciary. Ultimately, this action should be assessed as strengthening the influence of the clan and the government in the Constitutional Court.

Conclusion

The situation that has taken shape in the country due to the spread of the novel coronavirus shows that the government's actions in its fight with the virus were timely and effective from the start. It is important that the government implemented timely measures against the virus and that the decisions to use especially strict measures were made based on specific territories and considering epidemiological situation. However, initially, the government failed to properly inform the ethnic minorities living in Georgia about the existing situation and recommendations, which created a challenging situation with regard to the spread of the virus in such regions.

Despite the fact that the measures and specific restrictions implemented by the government were mostly effective, there were instances of disproportionate, unsubstantiated and/or selective approach. For example, ignoring the imposed restrictions and issued recommendations, the Orthodox Church continued its liturgies business as usual, which prompted no effective response on the part of the government. Contrary to this, imposing restrictions on the protest expressed by persons who did not unequivocally violate the rules of distancing and assembly, was unjustified.

In addition, the public had questions concerning the expediency of some of the restrictions. For example, the restriction on members of the same family sharing a car caused discontent. However, the government never explained the need for this restriction.

During the state of emergency, the role of the Parliament as a body exercising oversight of the executive branch was especially problematic. The assessment of the necessity and proportionality of the restrictive measures imposed by the government were left outside the scope of the parliamentary control. The amendments to the Law on Public Health also merit a negative assessment as they provide the executive

⁹⁰ Khvicha Kikilashvili received a judicial appointment to the Constitutional Court on 3 April 2020, <http://www.supremecourt.ge/news/id/2062> [accessed on 15.06.2020]

government with broad-ranging powers and freedom of action to restrict constitutional rights without the declaration of the state of emergency.

Additionally, based on the publicly available information, we can say that the right to appeal to court with regard to being placed in isolation (*habeas corpus*) was never used. The reason for this could be the lack of information and the absence of an effective mechanism of appeal.

In conclusion, it can be said that, as a result of the measures carried out by the government, the large-scale spread of the novel coronavirus in the country was averted. However, achieving a goal is not acceptable at the expense of unsubstantiated restriction of the rule of law and human rights. Correspondingly, the effectiveness of the fight against the pandemic must be assessed keeping in mind both circumstances. It would be unjustified to say that the government achieved these results at the expense of massive human rights violations, however, the problems that were recorded during this process must become a subject of discussion.

Appendix #1: Imposed Restrictions

*The restrictions imposed by the government before the state of emergency was declared:*⁹¹

From 2 March, educational activities were temporarily suspended in schools and kindergartens. All educational institutions subsequently switched to remote teaching mode.

From 6 March, direct flights to/from Italy were temporarily suspended. The flights to/from China and Iran were suspended too. At the same time, the recommendations of quarantine and self-isolation were issued for the citizens returning from high-risk countries (China, Italy, South Korea, Iran, France, Germany, Austria, Spain, Switzerland, Norway, Denmark).

On 12 March, recommendation was issued for public institutions to switch to remote work mode. The government also issued this recommendation for the private sector.

From 13 March, the movement of citizens between Georgia, Armenia and Azerbaijan was restricted.

From 15 March, the movement of citizens through the Sarpi border crossing point was restricted.

From 16 March, Georgia's mountain ski resorts were closed. The government also urged citizens aged 70 and older to remain in self-isolation. Cafes, bars and restaurants were also given the recommendation to limit service and to offer customers delivery services.

On the same day, the movement of citizens between Georgia and Russia was temporarily suspended.

On 18 March, the Georgian Government banned foreign citizens from entering the country for a period of two weeks. The movement of fixed-route taxis was also banned. The operation of gyms and spas was suspended. The theory and practice examinations for the acquisition of driver's licenses were suspended.⁹²

On 19 March, following a meeting of the National Security Council, the operation of all retail entities across Georgia was suspended, except for food stores, pharmacies, banking and postal networks, and gas stations. The prime minister also said at a briefing that there was no need for a state of emergency in Georgia based on the situation on 19 March.

On 21 March, air travel was suspended completely. Only the flights carried out by Georgian Airways and authorized by the Georgian government were performed. Also, the government decided that all citizens entering Georgia were to be placed in quarantine regardless of where they came from.

On the same day, the Georgian Defence Forces were confined to barracks. During this state, the soldiers are prohibited from leaving the military bases.

⁹¹ According to the government, these restrictions were recommendations, although most of the recommendations were complied with before the state of emergency was declared.

⁹² <https://sa.gov.ge/news/details?id=297> [last accessed on 15.06.2020]

Declaration of state of emergency

On 21 March, the state of emergency was declared. During a briefing following a meeting of the Interagency Coordination Council, Prime Minister Giorgi Gakharia explained the decision by saying that the country had moved to the stage where the virus was spreading internally, which required additional measures. It should be noted that, following the 20 March meeting of the Synod, the Georgian Orthodox Church refused to change the rules of communion. A sense emerged in the public that this was the reason why it became necessary to declare the state of emergency from 22 March, as the rituals in churches were taking place in the usual manner despite the recommendations that had been issued.

On 21 March, the Prime Minister sent the co-signed proposal to the President, while the President issued Edict #1 declaring the state of emergency on the entire territory of Georgia on the same day. She also issued a decree on the same day, which contained a list of specific rights that were to be limited. The decree also established sanctions for the violation of the state of emergency rules: GEL 3,000 for physical persons and GEL 15,000 for legal persons. The Parliament [approved](#) both the [decree](#)⁹³ and the edict⁹⁴ by 115 votes on the same day.⁹⁵

The edict declared the state of emergency for a period of one month. However, it was subsequently extended for another month through the same procedure. Part of the opposition did not support the decision but the state of emergency was ultimately extended until 22 May by 97 votes against 10.⁹⁶ The state of emergency ended once this period expired.

Restrictions introduced by decree:

The state of emergency was declared on the entire territory of Georgia from 22 March. The declaration of the state of emergency limited specific human rights and freedoms established by the Georgian Constitution and the government acquired the following powers:

- *Article 13, human freedom:*

The relevant bodies defined by Georgian legislation acquired the power to coercively move a person violating the rules of quarantine or isolation established by the Georgian Government to a special institution in a location designated by the government.

- *Article 14, freedom of movement:*

⁹³ The Georgian Parliament's resolution "On Approving Georgian President's 21 March 2020 Decree #1 On Measures To Be Implemented Due to Declaration of State of Emergency on Entire Territory of Georgia", <https://bit.ly/3cm16QQ> [last accessed on 15.06.2020]

⁹⁴ The Georgian President's 21 March 2020 Edict #1 "On Declaration of State of Emergency on Entire Territory of Georgia," <https://bit.ly/2XOeDKW>

⁹⁵ See voting record, "On Approving Georgian President's 21 March 2020 Decree #1 On Measures To Be Implemented Due to Declaration of State of Emergency on Entire Territory of Georgia", <https://bit.ly/2TRpTVy> [last accessed on 15.06.2020]

⁹⁶ The Georgian Parliament resolution "On Approving Georgian President's 21 April 2020 Edict #2 On Declaration of State of Emergency on Entire Territory of Georgia," <https://bit.ly/2BggmAX> [last accessed 15.06.2020]

- a) The Georgian Government acquired the power to establish the isolation and quarantine rules;
- b) International air, ground and maritime passenger travel was suspended, except for the special cases identified through the Georgian Government's decree;
- c) The Georgian Government acquired the power to regulate the transportation of passengers and cargo on Georgian territory with rules other than those established by the law.

➤ *Article 15, the rights concerning inviolability of personal and family life, personal space and communication:*

The right of conjugal visit in penitentiary institutions established by the Imprisonment Code was suspended.

➤ *Article 18, the rights concerning administrative due process, access to public information, informational self-determination, and remedy for damage inflicted by public authorities:*

The Georgian Government acquired the power to establish rules for the provision of public services and the conduct of administrative paperwork different from those established by the law.

➤ *Article 19, the right to property:*

The Georgian Government acquired the right to limit, if needed, the right to property for quarantine, isolation and medical purposes according to the rules it has established, as well as to use the property and the material means of physical and legal persons.

➤ *Article 21, the freedom of assembly:*

All types of assemblies, manifestations and popular gatherings were banned, except for the special cases established through a government decree.

➤ *Article 26, the freedom of labour, the freedom of professional unions, the right of strike and the freedom of entrepreneurship:*

a) The private law entities identified through the government decree were prohibited from conducting specific activities, had their right to conduct such activities limited, or were required to conduct specific activities according to the rules established by the government decree;

b) The Georgian Government's decree established special rules for the compliance of physical and legal persons and public institutions with sanitation and hygiene requirements.

c) The Georgian Government acquired the right to regulate, if needed, the prices of medication important for human life and health, medical preparations, services and basic goods;

d) The Georgian Government acquired the power to establish rules and terms different from those established by the Georgian laws On Early and Pre-School Upbringing and Education, On General Education, On Professional Education, On Specific Professional Education, and On Higher Education.

e) The Georgian Government acquired the power to mobilize the individuals with relevant medical training and authorization according to the rules established through a government decree.

Specific restrictions established through the government decree and their enforcement

On 23 March, based on a government decree, strict quarantine zones were established in the Marneuli and Bolnisi municipalities. According to the same decision, the relevant healthcare authorities began testing local residents in order to identify possible infection cases.

On 26 March, the Internal Affairs Ministry imposed a fine of GEL 15,000 on the New Leaders' Initiative organization for the violation of the state of emergency rules.

According to the Internal Affairs Ministry, the agency imposed the GEL-15,000 fine on the New Leaders' Initiative organization for the violation of the state of emergency rules after the handing out of face masks by the organisation's members in downtown Zugdidi resulted in a popular gathering. This was a violation of the Georgian Government decree which prohibited the gathering of more than 10 people.

On 30 March, Prime Minister Giorgi Gakharia effectively declared "total quarantine" in the country as he banned travel in any type of public transport (including metro) both within cities and municipalities as well as between them.

- Only travel in personal vehicles (including taxis) was allowed, so long as the Healthcare Ministry's recommendations were followed and the cars contained no more than three people, two of whom had to sit in the back.
- Passenger travel was only allowed for the purpose of organized and safe transportation of the employees of strategically important entities.
- Gatherings of more than three people were banned, except for in food stores and pharmacies where two-meter social distancing was mandatory.
- Citizens aged 70 and above were prohibited from leaving their homes, except for the cases where they went to the nearest food stores, pharmacies or medical institutions.
- Travel between 21:00 and 06:00 hours, both on foot and in vehicles, was banned within cities and across the country.
- Checkpoints were established at the entrances to the following cities: Tbilisi, Batumi, Kutaisi, Rustavi, Poti, Zugdidi and Gori.
- Any citizen moving in a city at any time was required to have an identity document.

These restrictions came into force at 08:00 hours on 31 March.

On 2 April, the list of economic activities permitted despite the restrictions imposed during the state of emergency was expanded. Extraction of oil and gas was added to the list of permitted activities along with all types of economic activities performed remotely -- without leaving a home. At the same time, based on the government's decision, food products and medical/pharmaceutical goods could be delivered via home delivery services along with meals.

The restriction of home delivery services prompted discontent among the public and some businesses.

On 4 April, six agricultural markets were closed in Shida Kartli. On the same day, all existing agricultural markets were closed in Imereti. Agricultural markets were later closed in the Kakheti region too.

From 7 April, the agricultural markets were also closed in the capital.

From 10 April, complete quarantine similar to those in Marneuli and Bolnisi was established in the Lentekhi Municipality.

From 12 April, the Kobuleti Municipality was declared a strict quarantine zone. Testing and thermal screening of local residents began. On the same day, despite the restrictions, large crowds gathered in Orthodox churches to mark the Palm Sunday. The law enforcement agencies did not react to this development.

On 13 April, a strict quarantine regime was introduced in the village of Khidiskuri in the Khashuri Municipality.

On the same day, Georgian Prime Minister Giorgi Gakharia, Healthcare Minister Ekaterine Tikaradze and Amiran Gamkrelidze, head of the National Centre for Diseases Control, visited Georgian Orthodox Church Patriarch Ilia II.

The nearly two-hour meeting at the Patriarchate took place five days before the Easter. Despite the state of emergency and the curfew, the Orthodox Church was still planning to hold the Easter service.

On 14 April, based on a government decision, four major cities -- Tbilisi, Kutaisi, Batumi and Rustavi -- were closed for a period of 10 days starting 15 April. Entering or leaving the cities was prohibited.

On 15 April, a strict quarantine regime was established in the village of Savaneti in the Bolnisi Municipality. On the same day, the Patriarchate informed the public that the Easter service would still take place in churches.

On 16 April, based on the government's decision, travel in personal vehicles was banned from 12:00 hours on 17 April and through 21 April. There was a perception among the public that the prohibition was linked to the Patriarchate's decision on 15 April.

On 17 April, cemeteries were closed all over the country. The prohibition only allowed for exemptions in cases where people had to enter the cemeteries and move within their territory in order to carry out the activities necessary for the burial of the deceased.

On the same day, the city of Bolnisi and the village of Rachisubani were closed. The town of Kazreti and the village of Balichebi were declared quarantine zones.

Against the background of these developments, the Georgian President addressed the population on the same day and urged the people to stay home and follow the recommendations.

On the same day, the Patriarchate announced that the prohibition of travel in personal vehicles would not apply to clerics, choristers and sextons. The Patriarchate also declared that "this prohibition was not coordinated with the Georgian Patriarchate."

On 21 April, the Georgian Government requested extension of the state of emergency until 22 May and the Government Administration sent the corresponding request to the President.

On 22 April, by a vote of 97 against 10, the Georgian Parliament approved the extension of the state of emergency in the country through 22 May.

On the same day, residents of the village of Shulaveri in the Marneuli Municipality took to the streets and held a protest, thereby violating the restrictions on public gatherings imposed as part of the state of emergency. Hundreds of locals, mostly ethnic Azerbaijanis, protested against the strict quarantine regime which had been in place since 23 March and the problems they were facing in selling their agricultural produce.

On 23 April, following the confirmation of 10 cases of Covid-19 in the village of Ghvankiti in the Terjola Municipality, a complete lockdown was imposed in the village starting at 06:00 based on the government's decision.

On 25 April, three villages of the Bolnisi Municipality -- Khatisopeli, Vanati and Mushevani -- were locked down and declared strict quarantine zones.

On 26 April, the city of Tetrtskaro was closed.

On 27 April, gradual easing of the restriction imposed during the state of emergency began. The ban on personal vehicles and taxis was lifted; all types of online shopping were allowed (both wholesale and retail), along with home deliveries of all products and operation of outdoor agricultural markets. The Marneuli agricultural market was among those to open.

From 5 May, construction and repair work was allowed along with the production of construction materials and the activities concerning construction oversight, operation of car services and car washes. All restrictions on automobile use in Kutaisi and Batumi were lifted.

From 11 May, all types of restrictions on travel were lifted in Tbilisi and operation of transport in the city was restored fully.

From 14 May, Rustavi and Gardabani reopened and travel was restored fully.

On 15 May, a strict quarantine regime was imposed in the village of Geta in the Bolnisi Municipality.

From 18 May, the restriction of gatherings of more than three people was lifted, although this did not apply to car travel. According to Gakharia, doctors had explained that the restriction was "very significant in epidemiological terms." The restriction of gatherings of more than 10 people remained in place. Beauty parlours and aesthetics centres reopened.

On 23 May, the state of emergency and curfew were lifted throughout the country, although a number of restrictions remained in place until 15 July based on the legislative amendments adopted by the Parliament.

As of 23 May, only the villages of Mushevani and Geta remained quarantined zones along with the city of Tetrtskaro.

The ban on assemblies and manifestations allowed under the law On Assemblies and Manifestations was lifted along with the state of emergency. Yet, the restriction on assemblies of more than 10 persons remained in place.

The ban on the travel of more than three people in a single car only remained in place for taxis. At the same time, restrictions were maintained on the movement of public transport, sporting and cultural events, and border control.

Restrictions remaining in place after state of emergency ended:

Following the end of the state of emergency, the government issued a new decree which in force until 15 July. According to the [decree](#):

- International passenger air, ground and maritime travel is restricted;
- Passenger travel via public transport, as well as within and between cities and municipalities, is prohibited;
- It is prohibited for more than three persons to travel in a single taxi. Also, the driver must wear a face mask, while the passengers must sit behind the driver and follow the relevant recommendations;
- General and higher education institutions must use remote teaching mode;
- The recommendations to hold all sporting, cultural and entertainment events, as well as all trainings, conferences and workshops remotely remains in place;

- Gatherings of more than 10 people linked to socially established events (e.g. weddings, all types of anniversaries, wakes, and so on) are prohibited;
- Restaurants, bars, cafes and all types of cafeterias are prohibited to serve customers locally;
- The operation of shopping malls and markets is not allowed;
- All types of economic activities must be conducted with the relevant entity's specific characteristics in mind. The social distance of at least two meters must be observed and masks must be worn;
- Hotels and similar accommodation facilities can only operate for the purpose of establishing quarantine areas.

Appendix #2: Appeals Filed with the Constitutional Court

During the state of emergency, appeals were filed with the Constitutional Court, challenging the decisions to limit the rights guaranteed by the Constitution and to delegate powers to the government.

- [Paata Diasamidze vs. Georgian Parliament and Georgian Government](#)⁹⁷

The appeal disputes⁹⁸ the provisions of the law On Public Health Care which grant, without a state of emergency, the government or other executive branch institutions the power to restrict the freedom of movement and labour through a by-law. The government can restrict the freedom of labour and movement in a manner which is not established by the law or contradicts the rule established by the law.

The applicant has indicated that the Parliament had no authority to entrust the government with the restriction of these constitutional rights.

- [Tornike Artkmeladze vs. Georgian President, Georgian Parliament and Georgian Government](#)

The constitutional appeal⁹⁹ disputes¹⁰⁰ the constitutionality of the restrictions of human rights and fundamental freedoms that were introduced through a government decree during the state of emergency. The government decree was issued based on the President's decree.

According to the applicant, granting the government (or delegating to it) the power to prohibit entrepreneurial activities is problematic because entrepreneurial activities (which represent a constitutional right) can only be limited during a state of emergency through a presidential decree.

- [Giorgi Chitidze vs. Georgian President, Georgian Prime Minister, Georgian Parliament, Georgian Government, and Georgian Minister of Persons Displaced From Occupied Territories, Labour, Health and Social Protection](#)

The applicant disputes the restrictions introduced through the presidential decree, the law On Public Health Care and the government's decrees and the Parliament's resolutions. The disputed restrictions include the placement of individuals in isolation (quarantine or self-isolation) for a period of 14 days, restriction of the right to drive vehicles, imposition of curfew, suspension of the deadlines for the provision of public information.

⁹⁷ Constitutional appeal #1505, "Paata Diasamidze vs. Georgian Parliament and Georgian Government," 25 May 2020, <https://bit.ly/2ZVDbEj> [last accessed on 15.06.2020]

⁹⁸ The disputed normative acts: The Georgian Law On Public Health Care, the Georgian Government's 23 May 2020 Decree #322 "On Approval of Isolation and Quarantine Rules."

⁹⁹ Constitutional Appeal #1503, "Tornike Artkmeladze vs. Georgian President, Georgian Parliament and Georgian Government," 19 May 2020, <https://bit.ly/2ZX9p1S> [last accessed on 15.06.2020]

¹⁰⁰ The disputed normative acts: The Georgian President's 21 March 2020 Decree #1 On Measures To Be Implemented Due to Declaration of State of Emergency on Entire Territory of Georgia; the Georgian Government's 23 March 2020 Decree #181 "On Approval of Measures To Be Implemented for Prevention of Spread of New Coronavirus in Georgia" (attached "Measures To Be Implemented for Prevention of Spread of New Coronavirus (COVID-19) in Georgia").

According to the applicant, the Georgian Constitution requires that the freedom of movement, the freedom of assembly and manifestation, the right of access to public information and the right to property be limited through a law only. The applicant pointed out that the Georgian Parliament is required to delegate the power of regulating the subject in such a manner so as to remain the decision-maker on all fundamental issues. Moreover, the applicant emphasized, the material requirements concerning the constitutionality of the acts which limit the basic rights remain unchanged during the state of emergency. Specifically, a basic right should still only be limited in a way which complies fully with the principles of the Constitution (the principle of proportionality, the principle of legal security, the principle of equality and so on).

➤ [Teka Davituliani vs. Georgian Parliament](#)

The appeal challenges the Georgian Government's decree on the measures to be implemented for the prevention of the spread of the New Coronavirus (Covid-19) in Georgia. The applicant pointed out that the Patrol Police officers had given her a GEL-3,000 fine on 4 April 2020 because she had gathered with three friends in a street. The fine was based on the government decree prohibiting the gathering of more than three persons in public places. According to the applicant, this violated a right guaranteed by the Constitution -- the right to free development -- and the principle of proportionality. The applicant considers baseless the government's assertion that gathering in a public place represents greater danger than living under the same roof with one's family.

➤ [Paata Zangurashvili vs. Georgian Government](#)

The appeal challenges the Georgian Government's decree on the measures to be implemented for the prevention of the spread of the New Coronavirus (Covid-19) in Georgia. On 2 April 2020, the applicant was travelling in a car in the refugee settlement in Tserovani together with a family member -- his son -- who sat next to the driver. Because of this, the police gave him a fine of GEL 3,000 based on the decree. According to the applicant, this violated a right guaranteed by the Constitution -- the right to free movement. In his view, the legitimate goal can be achieved through easier measures and without complete restriction of the exercise of the right protected by the Constitution. The party also indicated in the constitutional appeal that it has not been proven how sitting next to the driver creates danger as opposed to sitting in the back where two people are allowed to sit next to each other.

➤ [Giorgi Chauchidze vs. Georgian Government](#)

The applicant disputes the President's delegating powers to the government through a decree and the government's decree On Quarantine Measures To Be Implemented in Marneuli and Bolnisi Municipalities for Prevention of Spread of New Coronavirus which is based on that decree. The decree established a different legal order in the Marneuli and Bolnisi Municipalities for the duration of the state of emergency and prohibited people from leaving the municipality.

The applicant believes that, for the purposes of this dispute, the Georgian Parliament refused to exercise its constitutional power as it approved the Presidential decree and edict on the state of emergency in this

form. Specifically, the legal acts which it approved transferred the power of limiting the rights guaranteed by the Constitution entirely to the government, the executive branch. Currently, the government can decide on the extent to which the rights will be limited, which contradicts the requirements of the Georgian Constitution and the Constitutional Court's practice.

➤ [Mikheil Samnidze vs. Georgian Government](#)

The application challenges the imposition of the curfew through the government's decree. On 3 April 2020, the applicant was travelling in a cargo vehicle, a so-called trailer, which he used to transport goods on Georgian territory. After 21:00 hours, Patrol Police officers stopped him on a highway and gave him a fine of GEL 3,000 for the violation of the curfew.

In the applicant's view, the decree's provisions banning movement of individuals either on foot or in vehicles between 21:00 and 06:00 hours are unconstitutional and contradict the right to free movement. According to the application, the delegation of the power was also a problematic issue.

➤ [Georgian Young Lawyers Association and Sulkhan Saladze vs. Georgian Government](#)

The applicant disputes the government decree which contains a provision limiting the public's participation in the adoption of the decisions concerning environmental protection. In the applicant's view, the government had no right to use the President's decree on the declaration of the state of emergency to limit a right guaranteed by the Constitution. Specifically, the Constitution establishes that the public's right to participate in the adoption of decisions on environmental protection issues must be ensured by law. The disputed provision prohibits individuals and civil groups from expressing their views on issues of environmental protection at a public meeting. The applicant believes that such restriction is unconstitutional.