

18 MONTHS OF THE FIGHT AGAINST THE PANDEMIC: HUMAN RIGHTS MONITORING

FINAL REPORT



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KEY FINDINGS

A REGARDING THE PARLIAMENT OF GEORGIA

- 01 The Parliament of Georgia has fully delegated the authority to restrict basic human rights during the pandemic to the Executive branch. In a pandemic, the role of parliament in restricting basic human rights is effectively exhausted in simply delegating powers to the Executive.
- 02 Following the October 2020 parliamentary elections, the boycott of parliamentary activities by the opposition parties had a significant impact on the effectiveness of parliamentary control.

B REGARDING THE EXECUTIVE BRANCH

- 01 All major decisions on pandemic management issues in Georgia, including the restriction of basic human rights, are initiated by the Interagency Council, which is the deliberative body of the government. All members of the Government of Georgia are simultaneously members of the Council as well. The rules of the procedures of the Interagency Council are not published in the Legislative Herald of Georgia. It was revealed that no such rules exist at all. The government only determined the Council's composition.
- 02 The meetings of the Interagency Council are closed. Consequently, decisions to impose systemic restrictions on human rights are usually communicated to the public after their adoption.
- 03 Enforcement of Covid regulations raises many legal issues, posing risks of unequal treatment, circumvention of the formal order and, as a result, risks of violation of numerous fundamental rights.

C CURFEW

- 01 There is no scientific research publicly available that assesses the extent of the positive effects of the curfew and the degree of its effectiveness in terms of pandemic retention within Georgia [It is unknown whether such a document exists].

- 02 Curfew was used against the participants of the manifestations. Forms and methods used to execute the curfew created the risk of religious discrimination and other forms of inequality.
- 03 According to Google, during the curfew (until June 30, 2020), the population spent 9% less time staying at their places of residence compared to the pre-pandemic indicator in Georgia. The data indicate that the curfew only translates into effective results when it is used in conjunction with other restrictions.
- 04 The impression remains that the state did not use the curfew as an extremely necessary, narrowly tailored measure to the exigencies. The duration of the curfew called into question the proportionality of this instrument.

D JUDICIAL AND CIVIL OVERSIGHT

- 01 The proper exercise of civil oversight is substantially impeded by the restriction of access to information. Public institutions usually do not proactively publish many important pandemic-related data. During the state of emergency, the deadlines for issuing public information were blankly suspended.
- 02 The vast majority of responses to public information requests provided by public institutions were issued in violation of the deadlines provided by the law. Moreover, the data provided often proved to be incomplete.
- 03 Both the common courts and the constitutional court did not or could not respond promptly to the systemic legal problems related to the pandemic.

E REGARDING THE ENFORCEMENT OF COVID REGULATIONS

- 01 Signs of punitive and exemplary punishment or intimidation of persons exercising freedom of expression [manifestation/protest] were identified.
- 02 All fines issued for violating the rules of wearing a mask outdoors until February 18, 2021, are highly likely to be illegal. As of February 2021, 93642 fines have been issued for violating the rules of wearing the masks.
- 03 Tens of thousands of illegal fines have been issued by law enforcement agencies.
- 03 As of February 2021, the Ministry of Internal Affairs (hereinafter, MIA) has detected 8737 cases of violating the rules of the state of emergency, and 10431 cases of violation of the rules of isolation and quarantine. In addition, the Ministry of Internally Displaced

Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia (hereinafter, Ministry of Health) has detected 181 cases of violation of Covid regulations by economic entities (up to March 22, 2021).

- 05 Enforcement of regulations on economic entities was particularly weakened in August 2020. During this period, only 2 violations were detected throughout Georgia by the Ministry of Health. 90% of the violations revealed by the Ministry of Health fall into three main cities (Tbilisi, Batumi, Kutaisi).
- 06 38% of the violations of isolation and quarantine rules identified by the MIA are from Tbilisi. Adjara and Kvemo Kartli share second place with 11%, while Kakheti is in the third place with 9%.
- 07 According to the number of violations detected jointly by the MIA and the Ministry of Health, Tbilisi ranks first with 31% of violations, followed by Guria with 5%.
- 08 In total, the MIA and the Labour Conditions Inspection Department imposed fines amounting to more than 50,000,000 GEL during the pandemic.
- 09 Due to the lack of relevant data provided by public institutions, there are some unresolved questions regarding the process of detecting violations of Covid-19-related regulations, as well as the enforcement of detected violations.

F IN CONNECTION WITH THE AMNESTY ANNOUNCED FOR THE VIOLATION OF COVID REGULATIONS

- 01 On June 23, 2021, the Government of Georgia and on June 24, 2021, the faction (United National Movement - United Opposition - "Power is in Unity") registered two different initiatives in the Parliament of Georgia regarding amnesty for the administrative penalties for violating Covid regulations.
- 03 An initiative registered by the government exempts legal entities and individuals from unpaid administrative fines. It does not define the "amnesty period" of the bill at all. The government's initiative also provides for exemption from punishment for administrative offenses committed in the future (before the adoption of the draft law).
- 04 Contrary to the government's initiative, the initiative registered by the „United National Movement“ - United Opposition – „Power is in Unity“, exempts from the administrative penalty the persons who had the penalty imposed before July 1, 2021; in addition, it envisages that paid fines must be reimbursed.

INTRODUCTION

From the beginning of 2020, Georgia had made efforts to combat the pandemic caused by the spread of the novel coronavirus. The effects of this endeavor have left no domain of social relations untouched. The spread of the pandemic most severely affected basic human rights, as it was their restriction that became the main tool in the fight against the pandemic.

Constitutional democracy and the rule of law in Georgia face many challenges. Trust towards independent constitutional institutions and the judiciary is significantly low. An issue to be considered is the refusal of opposition parties to enter Parliament. Mentioned factors lead to the questioning of the existence of effective political or legal control over the extraordinarily increased powers of the executive.

Numerous constitutional rights were restricted in the name of pandemic management during this period. Many substantive and procedural problems were identified both in terms of setting restrictions and enforcing them. Every part of it has negatively affected the quality of human rights protection and the rule of law in Georgia.

The fight against the pandemic in Georgia can be divided into three stages. Before the emergency, during the emergency, and under *de facto* emergency. The present report presents the main problems identified in terms of basic human rights protection in each of the named periods.

SOURCES AND METHODOLOGY OF THE REPORT

Institute for Development of Freedom of Information (hereinafter, IDFI) prepared a number of analytical and policy documents concerning the situation about fundamental rights during the pandemics. The analytical documents prepared by us at different times are presented in this report in a systemic form. The final report is largely based on the Interim Report prepared by the IDFI- "One year of the *de facto* state of emergency in Georgia and human rights during a pandemic".

IDFI largely relied on the requested public information, as well as on documents proactively published by the public institutions, disseminated by the media and on other types of documents that are publicly available.

01

28/JANUARY/2020 - 20/MARCH/2020: BEFORE THE DECLARATION OF A STATE OF EMERGENCY

Dissemination of information about the novel coronavirus (Covid-19) in Georgia started in the second half of January 2020. The executive branch acted operatively. Although no cases of Covid-19 had been reported at that time, on January 28, 2020, the government issued Decree N164 "On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for Cases of Novel Coronavirus Disease". According to Article 1, the main purpose of the decree was to define "[...] nationwide response measures against the novel coronavirus (COVID-19) and the responsibilities and duties of relevant structures". It is noteworthy that the decree was not published in the Legislative Herald of Georgia until March 3, 2020, approximately 40 days after its adoption.¹

The Government has not issued this decree within the powers delegated to it by the Parliament specifically to regulate these issues. The executive branch has recognized the "Law of Georgia on Public Health" and "Law of Georgia on the Structure, Authority and Rules of Operation of the Government of Georgia" (Article 6) as the legal basis of authority to adopt this decree.

Article 6 of the "Law of Georgia on the Structure, Authority and Rules of Operation of the Government of Georgia" authorizes the Government to adopt legal acts. This norm does not regulate at all the cases when the executive is authorized to issue a normative act. These

¹ Information card published on the Legislative Herald of Georgia. See the [Link](#).

cases are defined by Article 12 of the "Law of Georgia on Normative Acts". According to Paragraph 1 of the mentioned article, "[a]n ordinance of the Government of Georgia shall be issued on the basis of, and for the fulfilment of, the Constitution and laws of Georgia. An ordinance of the Government of Georgia shall specify the normative act on the basis and for the fulfilment of which the ordinance was issued [...]".

Decree N164 "On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for Cases of Novel Coronavirus Disease" refers to the "Law of Georgia on Public Health" in general and not to any of its specific provisions.

At the time of the adoption of decree N164, Article 453 was not the part of "Law of Georgia on Public Health" yet, as it was added on May 22, 2020. Before that, the law gave the Georgian government the authority to adopt normative acts only on specific issues. In particular, Article 32 of this Law ("Competencies of the Government of Georgia in the field of public health") listed specific issues to be regulated by the government, with the imposition of legal restrictions not being part of that list.

Therefore, no restriction on fundamental human rights and freedoms imposed by decree N164 before the declaration of a state of emergency could meet the formal requirement of legality, if its legality were examined in relation to a normative act in which the executive had found its jurisdiction to impose this particular restriction. It should be noted that decree N164 for the most part did not impose restrictions on basic rights, although it obligated various bodies/individuals to take certain actions that had a direct impact on fundamental rights and freedoms. The suspension of air traffic can serve as an example for it.²

On February 26, 2020, the first case of a Covid-19 was reported in Georgia. From March 9 special entry conditions were activated for those "visiting and traveling to countries at high coronavirus epidemic risk reported by the World Health Organization (China, South Korea, Italy, Islamic Republic of Iran) or have transited through those countries during the last 14 days". A mandatory 14-day quarantine has been set for people who failed to present proof of a negative PCR test.

The main legal restrictions and/or effects of such restrictions based on the operational plan approved by decree N164 were related to the regulation of international traffic. Restrictive measures at the national level have not been applied, except for restrictions on the freedom from physical restraint/movement of infected persons and their contacts.

²Paragraph 7 of the Plan approved by the Decree N164 "On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for Cases of Novel Coronavirus Disease (version valid until February 2, 2020)

On March 11, 2020, the WHO declared a pandemic. At that time only a few cases of Covid-19 infections had been registered in Georgia. Nevertheless, the population exhibited signs of panic [self-medication, panic purchase of food or medical products, etc.] and a high level of disinformation.

It is important to note that before the declaration of the state of emergency, the executive branch acted independently. The Parliament of Georgia did not take part in this process at all.

Given the fact that even professionals had very little information about Covid-19, the steps taken by the executive during the pre-emergency period should be assessed positively. Deviations from the formal rules established by legislation were detected, though not in such concentration as to affect our overall assessment.

To prevent the spread of the novel coronavirus and to ensure the inviolability of the health of the population at large, on March 21, 2020, a state of emergency was declared throughout Georgia. The declaration of a state of emergency is authorized by Paragraph 2 of Article 72 of the Constitution. Accordingly, the Prime-Minister addressed the President to declare a state of emergency. The latter declared a state of emergency by Edict No 1 of 21 March 2020³, which was approved by the Georgian Parliament on the same day.⁴ Under paragraph 2 of the Edict, the period of validity of the state of emergency was set for April 21, 2020.

The period of the declared state of emergency was extended to and including 22 May 2020.⁵ It is noteworthy that after the last term, the Prime-Minister no longer addressed the President with a request to further extend the state of emergency. Accordingly, Georgia spent two months in the state of emergency declared in connection with the new coronavirus pandemic - from March 21 to May 22, 2020.

Declaring the state of emergency, which is a rather infrequently used institution, has naturally given rise to certain problems in terms of its legal order and its practical enforcement. Abuse of power by specific political actors was also an issue.

One of the most important legal acts to be analyzed is the Presidential Decree No 1 of 21 March 2020 "On Measures to be Implemented in connection with the Declaration of a State of Emergency throughout the Whole Territory of Georgia". According to Paragraph 3 of Article 71 of the Constitution, this Presidential decree has the force of organic law.

The decree restricted numerous rights guaranteed by the Constitution, precisely, Articles 13-15 ('Human Liberty'; 'Freedom of Movement'; and 'Rights to personal and family privacy, personal space and privacy of communication' respectively), Articles 18-19 ('Rights to fair administrative proceedings, access to public information, informational self-determination, and compensation for damage inflicted by public authority' and 'Right to property' respectively), Article 21 (Freedom of assembly) and Article 26 (Freedom of labour, freedom of trade unions, right to strike and freedom of enterprise).

³ See the [Link](#)

⁴ See the [Link](#)

⁵ See the [Link](#)

Article 1 of the decree directly determined the content and scope of the restrictions. President of Georgia delegated the authority to the executive branch to determine specific regulations, rules or procedures related to each restriction. The sole exception was the restriction of the right to private and family life in particular, it was the President herself who restricted and completely suspended visits to penitentiary institutions.

Article 7 of Decree N1 defined the rules for holding court hearings, in particular, the possibility of holding them remotely using electronic means of communication, and at the same time stipulated that if this opportunity was exercised, a person could not “[...] refuse the conduct of the court hearing remotely on the grounds of being willing to physically attend”.

One of the most important regulations and legal innovations of the Presidential decree in question is the issue of imposing liability on individuals and legal entities for violating the regime of the state of emergency. In particular, Article 8 of the decree established administrative liability- a fine of GEL 3 000 for natural persons, and GEL 15 000 for legal persons for violating the rules defined by both this decree and a governmental ordinance (regulations still unknown at the time of enactment of the N1 Decree). The decree stipulates criminal liability for repeated actions of an administratively convicted person - imprisonment for a natural person for up to 3 years, and a legal person - a fine, with deprivation of the right to carry out activities, or by liquidation and a fine.

The decree of the President, as approved by the Parliament, did not set any specific legal restrictions at all except in rare cases. Decree N1 gave the government the power to impose all legal restrictions. These legal restrictions were enforced by the Ordinance N181 “On the Approval of Measures to be Implemented in connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia”.

Such a solution is extremely problematic from the point of view of constitutional law. In particular, the power concentrated in the executive branch in a state of emergency is ought to be balanced by the Parliament’s control over the content of the ordinance. If the content of the ordinance is merely indicative, it means that the Parliament of Georgia is unable to further control the legitimacy of legal restrictions throughout the state of emergency.

The ordinance is extremely problematic in light of the fact that the Parliament cannot lift the state of emergency on its own initiative. In particular, according to Paragraph 6 of Article 71 of the Constitution, “[a] decision on revoking a state of emergency or martial law shall be adopted in accordance with the procedures established for declaring and approving a state of emergency or martial law”. According to the 2nd paragraph of the same article, the “[...] President of Georgia shall, upon recommendation by the Prime Minister, declare a state of emergency across the entire territory of the country or in any part of it, and shall immediately present this decision to Parliament for approval [...]”.

Parliament, by approving an ordinance that is mostly indicative, substantially curtailed its own powers to protect human rights during the state of emergency and refused to effectively exercise its oversight powers.

This was offset by the fact that a state of emergency was declared for a limited period and without extension automatically lost its force. Nevertheless, the establishment of such a model of governing the state during an emergency has set a dangerous precedent. It should be noted that the constitutional complaints regarding the constitutionality of the decree of the President, as well as the Ordinance N181 of the Government, have been submitted in the Constitutional Court of Georgia, although they are yet to be decided by the Constitutional Court.

The government panicked and imposed almost all types of restrictions by the Ordinance N181. For example, a curfew and distance learning were imposed throughout the state of emergency.

Another problematic issue related to the Presidential decree is the definition of public legal responsibility. As mentioned above, Article 8 of Decree N1 prescribed administrative and criminal liabilities, based on which individuals were liable for violating the rules outlined in governmental Ordinance N181.

Defining public legal responsibility by presidential decree was fundamentally wrong, for multiple reasons. The first is the issue of validity over time. In particular, the decree's 'lifespan' coincides with the duration of the state of emergency, and upon its completion, there is an inevitable obligation to apply the mitigating law retrospectively. Given that the state of emergency only lasted for 2 months, this raised many question marks. At the same time, in our opinion, the determination of criminal actions and responsibilities is within the exclusive competencies of the Parliament of Georgia.

In February-May 2020 (during 4 months) a total of 794 cases of Covid-19 infections were detected in Georgia.⁶ The figure is so insignificant that there is no other choice than to be skeptical about the necessity of declaring the state of emergency at that time. Beyond the large-scale restrictions on basic human rights, the executive made significant economic sacrifices in the second quarter of 2020. During this period, the Georgian economy shrank by 13.2%.⁷ Given the minimal level of spreading the infection, this decision may not even be fully justified. In fairness, however, it should be noted that the state's panicked actions or other calculations played an important role in preventing the first wave of the coronavirus.

⁶ Data from National Center for Disease Control & Public Health. See the [Link](#).

⁷ Data from the Ministry of Economy and Sustainable Development of Georgia. See the [link](#).

On May 23, 2020, the state of emergency caused by the pandemic has terminated. The end of the state of emergency, naturally, could not end the pandemic. Consequently, it was necessary to establish a legal framework for managing pandemics. To that end, Georgia has chosen to radically increase the regulatory powers of the executive branch. Namely, based on the nominal amendments to the Georgian legislation, the Parliament gave full authority to the executive to manage the pandemic, thus establishing a *de facto* state of emergency in the state⁸.

On May 22, 2020, Article 45³ was added to the "Law of Georgia on Public Health". Under the 1st paragraph of this article, "The rules of isolation and/or quarantine shall be established by the Government of Georgia or the Ministry designated by the Government of Georgia. The relevant quarantine measures, which in this case are part of the rules, may be determined in accordance with the rules. The bodies and officials executing the rules may be determined in accordance with the rules differently from those established by this Law." According to the cited norm, the Government of Georgia was allowed to determine the rules of isolation and/or quarantine, as well as quarantine measures under this rule. Paragraph 2 of the same article defined quarantine measures based on their purpose. In particular, according to Article 45³, paragraph 2, sub-paragraph "b", the quarantine measures are: "measures defined by this Law and/or the normative act adopted/issued in accordance with this Law, which are temporarily used for the protection of the health of the population during a pandemic and/or epidemic especially dangerous for the public health and which may imply a different regulation than those established by other normative acts of Georgia, including the temporary imposition of appropriate restrictions in connection with the activities/administration of public institutions, other institutions under the executive government, legal entities under public law, other legal entities, the provision of public services, the movement of persons, property, labour, professional or economic activities, and illegal migration/international protection, and/or in connection with the gathering of persons for the purpose of holding social events."

⁸ In our estimation, the "*de facto* state of emergency" best describes the legal model that operates in Georgia today. Though, "*de facto* state of emergency" is the legal regime recognized by the legislation of Georgia, the current regime drastically differs from the ordinary situation, is not familiar to legislation and does not have any legal definition.

Along with the amendments to the "Law of Georgia on Public Health", the Administrative Offences Code of Georgia (hereinafter, AOC) and the Criminal Code of Georgia (hereinafter, CC) have also been amended. In particular, the named normative acts established sanctions for violations of quarantine rules defined by the government.

All these legislative norms form the basic legal framework for pandemic management, by the following systemic features: a) nominal/symbolic participation of Parliament in the management process of the pandemics; and b) excessive regulatory powers given to the executive.

3.1. THE ROLE OF THE PARLIAMENT OF GEORGIA IN PANDEMIC MANAGEMENT

The threats caused by the novel coronavirus, in some cases, require an immediate response from the state. Traditional, ordinary legislative processes can significantly delay the decision-making process, making it difficult to manage the pandemic. This problem (difficulty of managing a pandemic) is not a Georgian phenomenon and the whole globe has faced the necessity of overcoming this challenge. Due to this reality, the powers of the executive have increased intensely worldwide. Although increased powers of the executive have become a universal feature of pandemic management, the response from states and the methods of pandemic management differ to a significant extent. The selected model must be compatible with the constitutional system established in the respective state.

After May 23, 2020, the Georgian Parliament's legislative endeavor in regards to protecting human rights during the pandemic, was exhausted through the following activities:

■ INITIAL TEMPORARY DELEGATION OF AUTHORITY

On May 22, 2020, the Parliament delegated the authority to the Executive to regulate public services related to the exercise of fundamental human rights.⁹ According to the delegated authority, a normative act adopted by the Executive may establish regulations that differ from legislative acts.¹⁰ The expiration date of the delegated authority was set for July 15, 2020 (less than 2 months);¹¹

⁹ Law of Georgia No 5972 of 22 May 2020

¹⁰ The Law of Georgia on Amendments to the Law of Georgia on Public Health, Article 1, accessible on link.

¹¹ Idem.

■ **AMENDMENTS TO THE LEGAL NORMS THAT ESTABLISH PUBLIC LEGAL RESPONSIBILITY**

On April 23¹² and June 12¹³, 2020, amendments were made to the AOC. Namely, Articles 42¹⁰ and 42¹¹ were added. These norms impose liability for violating the rules of isolation and quarantine, as well as the rule of wearing a face mask.

■ **EXTENSION OF THE TERM OF THE DELEGATED AUTHORITY**

On July 14, 2020, the Parliament extended the delegation of power.¹⁴ The deferred deadline was set for January 1, 2021 (approximately 5 months and 15 days).¹⁵

■ **REPEATED EXTENSION OF THE TERM OF THE DELEGATED AUTHORITY**

On December 29, 2020, the Parliament once again extended the term of the delegated authority.¹⁶ The expiration date of the delegated authority was set for July 1, 2021 (6 months).¹⁷

■ **ADDITIONAL EXTENSION OF THE TERM OF THE DELEGATED AUTHORITY**

On June 22, 2021, the Parliament once again extended the term of the delegated authority.¹⁸ The expiration date set is January 1, 2022 (duration 6 months).¹⁹

Additionally, beyond the mentioned amendments, the Parliament implemented several targeted legislative measures related to the pandemic, the delegation of which would have been inconceivable. For example, amendments to the Electoral Code regarding the powers of the Central Election Commission for the October 31, 2020, parliamentary elections.

The framework of pandemic management chosen by Georgia, the process of separation of powers between the legislature and the executive is based on the following principle (see Figure N1):

¹² Law of Georgia No 5887 of 23 April 2020

¹³ Law of Georgia No 6344 of 12 June 2020

¹⁴ The Law of Georgia on Amendments to the Law of Georgia on Public Health, Article 1, 14/07/2020 accessible on [link](#).

¹⁵ Idem.

¹⁶ The Law of Georgia on Amendments to the Law of Georgia on Public Health, Article 1, 29/12/2020, accessible on [link](#).

¹⁷ Idem.

¹⁸ The Law of Georgia on Amendments to the Law of Georgia on Public Health, Article 1, accessible on the [Link](#).

¹⁹ Idem.

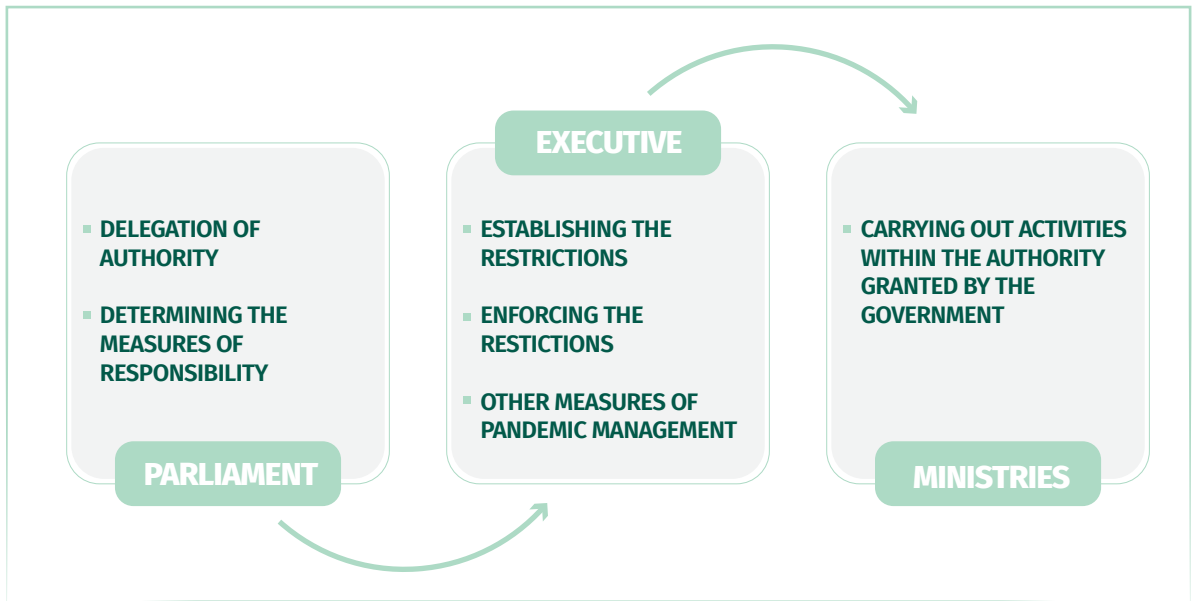


FIGURE 1

The amendments of 2009-2010 started the process of redefining Georgia as the Parliamentary Republic. The constitutional reform of 2018 concluded this process, and today, Georgia is the classic Parliamentary Republic. According to the 1st paragraph of Article 36 of the Constitution of Georgia, "The Parliament of Georgia is the supreme representative body of the country that exercises legislative power, defines the main directions of the country's domestic and foreign policies, controls the activities of the Government within the scope established by the Constitution, and exercises other powers".

Even though the Georgian model of constitutional democracy is based on the basic principles of a Parliamentary Republic, Georgia's supreme legislature has exhausted its participation in the management of the pandemic by fulfilling its explicit obligations under the constitution. In particular, the motivation of the highest legislative body of Georgia and the constitutional ambition did not go beyond fulfilling the direct requirements of the Constitution. There are many question marks about the latter as well.²⁰

²⁰ Civil society representatives have repeatedly expressed concern that the Georgian Parliament is failing to meet its constitutional obligations.

3.2. THE ROLE OF THE EXECUTIVE IN PANDEMIC MANAGEMENT

According to the framework established by the Parliament of Georgia, the Executive has borne the political, legal and professional burden of pandemic management. Namely, in terms of pandemic management, the Executive has become both legislator and law enforcer. Moreover, the Executive is empowered to establish regulations that differ from the law (maybe even illegal regulations).

AFTER MAY 22, 2020, THE EXECUTIVE IS AUTHORIZED TO REGULATE DIFFERENTLY FROM THE LAW :²¹

- A ACTIVITIES OF PUBLIC INSTITUTIONS AND PROVISION OF PUBLIC SERVICES;**
- B FREEDOM OF MOVEMENT;**
- C PROPERTY RIGHTS;**
- D FREEDOM OF LABOR ;²²**
- E PROFESSIONAL OR ECONOMIC ACTIVITIES;**
- F ILLEGAL MIGRATION AND INTERNATIONAL PROTECTION;**
- F GATHERING OF PERSONS FOR SOCIAL EVENTS.**

FIGURE 2

This power of the Executive, however, is not unlimited. Namely, the condition for the exercise/restriction of the powers delegated is the observance of the constitutional principle of proportionality and equality.²³

²¹ Article 45³ of the Law of Georgia "on Public Health", Paragraphs 1 and 2.

²² According to the decision of the Constitutional Court of Georgia 111/1 / 1505,1515,1516,1529 of February 11, 2021 (in the case "Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili and Lika Sajaia v. Parliament and Government of Georgia") The delegation of the Parliament of Georgia to the executive branch was declared unconstitutional in the part related to the delegation of the regulation of freedom of labor.

²³ Below we will discuss in detail the extent to which the Government of Georgia adheres to this scope of delegated powers.

Most of the legal restrictions and other temporary regulations that were in force during the pandemic are contained in the Ordinance N322 of the Government of Georgia of May 23, 2020, "On the Approval of Isolation and Quarantine Rules". Otherwise, the main restrictions related to the pandemic are formulated by a legal act of the government, although it is clear from public press conferences that the initiative for key substantive regulations in terms of pandemic management belongs to the Interagency Coordinating Council (hereinafter referred to as the "Council"). The Government has established the Council to prevent the spread of the novel coronavirus. It is important to note that the Council is not an instrument specifically designed to manage pandemics. There are several inter-agency councils in Georgia - it is, in essence, a deliberative body.

Article 29 of the Law of Georgia "On the Structure, Authority and Rules of Operation of the Government of Georgia" allows the Government, the Prime Minister, or a member of the Government to establish a deliberative body. The deliberative body is not a separate legal entity and it does not make legally binding decisions. According to paragraph 3 of the mentioned Article, the Council prepares conclusions and proposals, which are then submitted to the creator of this deliberative body.

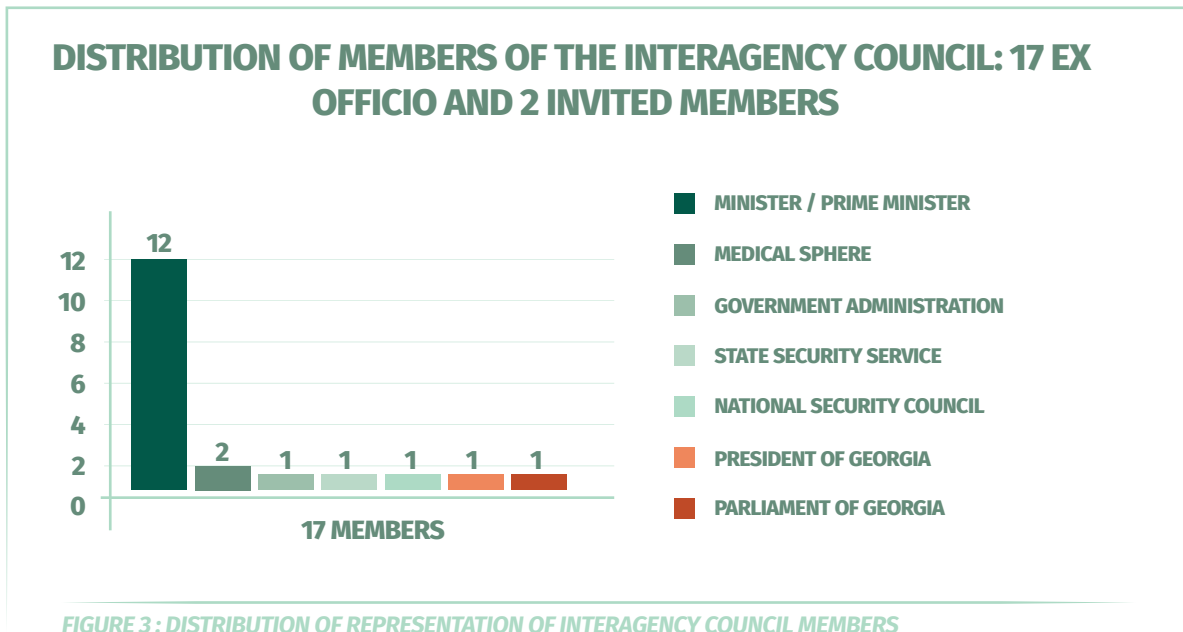
According to the 2nd sentence of Article 29 Paragraph 2, "[...] the tasks of the deliberative body, as well as the procedure for preparing its conclusions and proposals when establishing this body shall be determined by the Prime Minister, Government, and member of the Government." According to this norm, the Government should have defined the statute of the Council established to prevent the spread of the pandemic.

It should be noted that, unlike other inter-agency councils set up by the government, the rules and composition of the Council set up to prevent a pandemic has not been published in the Legislative Herald of Georgia²⁴ On October 26, 2020, IDFI addressed the Government and requested legal acts defining the composition and rules of operation of the Council. The government responded to our request in violation of the deadlines provided by the General Administrative Code of Georgia. After 45 days, the N618 decree of the Government of Georgia of March 30, 2020, on the "Establishment of an Interagency Council to Prevent the Spread of New Coronavirus in Georgia" was provided to us.²⁵

²⁴ The Legislative Herald of Georgia has published the legal acts of the Government of Georgia, on the basis of which a number of inter-agency councils have been established. It should be noted that among the published acts is the Decree of the Government of Georgia on the Establishment of the Interagency Coordination Commission for the Introduction of COVID-19 Vaccination in Georgia. The consistency between these government decisions is not perceptible.

²⁵ The main substantive aspects of this ordinance will be discussed in the next subsection.

Decree N618 indicates that the Council consists of 17 *ex-officio*²⁶ members (see Figure N3). Representatives of the Parliament and the President²⁷ were asked to participate in the activities of the Council, although we do not know to what extent the representatives of these bodies are involved in the activities of the Council.



Today, the public has the sense that it is the Council that administers the pandemic, including making decisions to restrict basic human rights formalized through legislative acts of the government. Representatives of the Executive constantly emphasize that the decision on any specific restriction or regulation was made by the Council.²⁸ The letter provided to us by the Government in response to a request for public information highlights this trend. IDFI requested copies of the conclusions and proposals adopted by the Council which was then submitted to the Government for approval per Article 29 Paragraph 4 of the Law on Georgia "on the Structure, Authority and Rules of Operation of the Government of Georgia". The Government informed us that the decisions and recommendations of the Council are reflected in the legal acts and referred us to the Legislative Herald of Georgia to seek them.²⁹

²⁶ The members of the Interagency Council are appointed *ex officio* and not individually.

²⁷ According to Article 29 of the Law of Georgia "on the Structure, Authority and Rules of Operation of the Government of Georgia", Persons who are not part of the executive power may not be required to be members of the deliberative body of the executive power.

²⁸ For an example, see the latest [information card](#) published on the Government of Georgia website: April 14.

²⁹ Letter of the Government of Georgia, December 9, 2020, letter GOV 6, 20 00054496.

The same follows from the analysis of the composition of the Council. The Government is fully represented in the Council, and its members are all the ministers of Georgia, including the Prime-Minister. Such a concentration of senior executive officials in itself indicates the importance of this body and the fact that the purpose of the Interagency Council goes beyond simply making informed decisions.

Circumstances related to the Council are made even more obscure by the Operational Headquarters established per Article 8 of Ordinance N322 [‘on the Approval of the Rules on Isolation and Quarantine Rules’]. The Operational Headquarters is located in the National Security Council and has 12 representative offices throughout Georgia. The rules of the operations of the Operational Headquarters state that it is accountable to the Council.

Otherwise, the presented data allow us to conclude that, at present, all major decisions on pandemic management issues in Georgia, including the restriction of basic human rights, are made by the deliberative body of the government, and responsibility for these decisions lies with the Executive.

It should be noted that IDFI obtained the Decree by requesting public information. It is not published on the website of the Legislative Herald of Georgia; therefore, it is not an easily accessible document. The request was formulated as follows:

Please provide us with the legal acts governing the establishment and operation of the Covid-19 Pandemic deliberation body - the Interagency Coordinating Council. Namely, a legal act or acts that:

- A** *Determines the composition of the Interagency Coordination Council;*
- B** *Defines the rules of operation of the Interagency Coordination Council (assembly procedure, conclusions, proposals or other decision-making procedure, quorum and other issues related to its activities);*

Clarification: If requested legal act (s) have been amended, please provide copies of both the original version of the relevant act and the act by which the amendment was made

FIGURE 4. CONTENT OF IDFI PUBLIC INFORMATION REQUEST

It was this request, that gave us access to the N618 decree of the Government of Georgia of March 30, 2020, on the “Establishment of an Interagency Council to Prevent the Spread of New Coronavirus in Georgia”. The provided Decree only determines the composition of the members of the board and establishes the possibility of involving other persons in the

activities of the board. The decree does not define at all the rules of operation of the Council. For comparison, the government has defined the rules of procedure of the Council on Covid-19 Vaccination - "Regulation".³⁰

Excluding comments made by members of the Council to the media, the transparency of the Council is close to zero. IDFI requested the conclusions and proposals adopted by the Council, but the request received no response.³¹ In addition, IDFI inquired about the possibility of a representative of the organization attending the meetings of the Council, although the administration of the executive branch has not yet responded.

As noted above, the Executive has been given powers to manage the pandemic that have a direct and/or indirect impact on the realization of fundamental human rights and freedoms. Each such decision is substantially influenced by the Council. Moreover, in our estimation, there is sufficient evidence to assert that the Council is not a standard deliberative body and that it is the de facto administrator of the powers conferred on the Executive to manage the pandemic. Therefore, given the amplified impact on basic human rights in this way, we consider it necessary to take additional measures to increase the involvement in the Council's activities and its transparency. These measures are necessary to maintain the accountability of the executive and to balance its increased powers. These measures are essential to maintain the accountability of the executive and to balance its increased powers.

³⁰ On the Establishment of the Interagency Coordination Commission for the Implementation of COVID-19 Vaccination in Georgia. Accessible at <https://matsne.gov.ge/ka/document/view/5052488?publication=1>

³¹ As mentioned above, the Government has referred us to the Legislative Herald and informed us that the decisions of the Interagency Council are reflected in the normative acts of the Government.

During the pandemic, many constitutional rights were restricted under Article 45³ of the "Law of Georgia on Public Health" and Ordinance "On the Approval of Isolation and Quarantine Rules".

It is important to clarify that, in general, in the Georgian legal system, from a constitutional legal point of view, the effects of the restriction of any right are not assessed separately. Namely, if the restriction of one right substantially affects the realization of another, it means that the only right that is restricted is the one at which the relevant norm and restriction were aimed. For example, the main purpose of the curfew is to reduce mobility in the state. Consequently, it restricts freedom of movement. However, the curfew has a significant impact on the realization of many other fundamental rights - the free development of the individual, freedom of expression and religion, property right, etc. Nevertheless, the constitutionality of the curfew is probably assessable with regard to the freedom of movement.³² Nevertheless, this approach does not mean that the negative effects of the constraint remain beyond assessment. It is simply that these effects must be taken into account when applying the principle of proportionality - mainly at the stage of narrow proportionality.

The analysis below will in some cases examine the effects of the restrictions separately. Otherwise, what should have been assessed at the narrow proportionality stage under ordinary conditions is separated according to the effects of the respective right.

³² Rarely, however, there may be such cases.

4.1. FREEDOM OF MOVEMENT – 8 MONTHS IN CURFEW

Ordinance N670 of the Government of Georgia of November 9, 2020, amended Ordinance N322 of the Government of Georgia "On the Approval of Isolation and Quarantine Rules" and imposed restrictions on freedom of movement in 7 major cities of Georgia (from 22:00 until 05:00). Per Ordinance N699 of the Government of Georgia of November 26, 2020, restriction on freedom of movement was intensified (from 21:00 to 05:00), and the area of operation was expanded to cover the entire territory of Georgia. The deadline for the curfew was set to be December 31, 2020. Ordinance of the Government of Georgia of December 29, 2020, reformulated paragraph 6¹ of Article 2 of Ordinance N322 of the Government of Georgia "On the Approval of Isolation and Quarantine Rules". According to this article, "for the population to remain at their places of residence, the movement of people on foot and by a vehicle, as well as their presence at public places, shall be prohibited throughout the entire territory of the country from 21:00 to 05:00." On 17 May 2021 the curfew was reduced by 2 hours, namely, it started at 23:00³³, and on the first of June it was reduced by another hour³⁴ and it lasted from 23:00 to 04:00. These norms did not specify the 'expiration date' of the curfew at all. The curfew was finally abolished on June 30, 2021.³⁵

About half a year into the imposition of the curfew, it was applied with the same severity, the rest of the period continued at a reduced intensity. In terms of the proportionality of the constraint, it is important to analyze this constraint in parallel with the epidemiological situation.³⁶ The information proactively published by the National Center for Disease Control does not allow us to generalize data according to territory, and the February-August 2020 data are only available in summary form. Data published after September 2020 helps us form important conclusions about the epidemiological situation.

³³ Ordinance N219 of the Government of Georgia of 17 May 2020 on the Amendment to the Ordinance N322 of the Government of Georgia "On the Approval of Isolation and Quarantine Rules"

³⁴ Ordinance N248 of the Government of Georgia of June 1, 2021 on the Amendment to the Ordinance N322 of the Government of Georgia "On the Approval of Isolation and Quarantine Rules"

³⁵ Ordinance of the Government of Georgia of 21 June, 2021 on the Amendment to the Ordinance N322 of the Government of Georgia "On the Approval of Isolation and Quarantine Rules"

³⁶ Epidemiological data are prepared based on static information published on the website of the National Center for Disease Control. See. Link. For data processing by IDFI, see. Appendix N1

YEAR	MONTH	WEEK	CASES PER WEEK	POSITIVE RESULT RATE
2020	9	36	174	0,45%
2020	9	37	708	1,11%
2020	9	38	1303	1,81%
2020	9	39	1857	3,37%
2020	9	40	1088	4,03%
2020	10	40	2056	7,45%
2020	10	41	3576	8,08%
2020	10	42	6391	11,22%
2020	10	43	11640	20,63%
2020	10	44	10424	17,76%
2020	11	44	1852	27,44%
2020	11	45	18101	26,33%
2020	11	46	22155	27,41%
2020	11	47	25855	29,55%
2020	11	48	26894	33,35%

FIGURE 5. EPIDEMIOLOGICAL SITUATION SEPTEMBER-NOVEMBER 2020

The data depicts that the infection rate has been steadily increasing since September, and the positive rate of testing for the novel coronavirus in September has risen to 4%. The epidemiological situation worsened in October. For comparison, the confirmed cases for novel coronavirus were about 35,000 in October, which is about 7 times more than in September. The rate was 13.4% for positive tests in October.

The curfew has been maintained in Georgia until June 30, 2021. Its high efficiency in terms of reducing human mobility being named a reason for its extension, yet the Executive did not activate the curfew in October despite the sharp worsening of the epidemiological situation. In November 2020, the epidemiological situation continued to worsen. A record number of novel coronavirus infections were reported in November.

On November 9, 2020, the curfew was announced in 7 major cities of Georgia, and on November 26, the curfew covered the whole territory of Georgia. At the time of the declaration of the curfew, there were approximately 4,500 new cases of coronavirus infection per day, and the coronavirus detection rate was about 30%. It should be noted that against this background, the need to declare a curfew has not been questioned by anyone.³⁷

From the second half of December 2020, the epidemiological situation began to improve and at the end of January 2021, compared to the moment of the announcement of the curfew, the situation was significantly better. In March, the positive rate of tests for the novel coronavirus dropped and was almost the same as it was in the summer of 2020.

YEAR	MONTH	CASES PER WEEK	POSITIVE RESULT RATE
2020	10	34087	13,41%
2020	11	98616	29,06%
2020	12	89067	19,49%
2021	1	29941	7,87%
2021	2	12567	2,57%
2021	3	11342	1,69%

FIGURE 6. KEY FIGURES FOR THE EPIDEMIOLOGICAL SITUATION OCTOBER / 2020-MARCH / 2021

Nevertheless, until June 17 the executive did not reduce its intensity and until June 30, 2021- did not revoke the curfew.

³⁷ Concerns have been expressed by civil society regarding the spread of the curfew during a demonstration to protest the October 31, 2020 parliamentary elections. It was also pointed out that the Georgian executive had no formal authority to declare a curfew.

During the same period, the Executive gradually began to lift restrictions. Starting with the opening of public transport and schools, ending with the right to attend indoor gyms, cinemas, and sports events. The maintenance of the curfew, in parallel with the drastic improvement in the epidemiological situation, has increased public protest and raised legitimate questions about the need for the prolonged curfew. These questions were systematically divided into two directions.

- I Is the Executive abusing its power to manage a pandemic, as a way to curb the ongoing public protests in the state? ³⁸
- II How proportionate was maintaining the curfew despite the sharp improvement in the epidemiological situation?

We have not found any evidence, information, and/or data that the Executive deliberately used the curfew against freedom of expression. There were instances where it was apparent that the curfew had been used against protesters³⁹, although none of the identified cases indicated that the primary purpose of maintaining the curfew in the state was to suppress freedom of expression.

In our estimation, the main problem with the curfew was its nonproportional application. Namely, the Executive did not use the curfew as a one-time measure employed only under extreme necessity.

4.1.1. PROPORTIONALITY OF THE CURFEW

To assess the proportionality of a curfew, it is important to analyze the severity of the measure and the means of fulfilling its legitimate purpose.

4.1.1.1. EFFECTS OF THE CURFEW

In general, the curfew is an instrument associated with authoritarian regimes. However, due to the immediate challenges posed by the pandemic, liberal democracies have had to use this tool. Thus, some courts have faced the need to assess the proportionality of restrictions on freedom of movement. There are no widely recognized standards set by international human

³⁸ In our estimation, the main problem with the curfew was its nonproportional application. Namely, the Executive did not use the curfew as a one-time measure employed only under extreme necessity.

³⁹ We will discuss these cases below in the section on freedom of expression

rights courts to verify the legitimacy of a curfew's use to manage a Covid-19 pandemic. At the same time, it is vital to be careful when using the standards established by other national courts, since far too many legal and social factors related to pandemic management must be taken into account. Nevertheless, general principles can be found in international documents regarding the curfew. One such document is the conclusion adopted by the Venice Commission in 2016 on the legislation regulating the curfew.⁴⁰

Due to the essence of the curfew, it primarily affects the right to free movement, although the effects of the curfew go far beyond the scope of freedom of movement, in the sense that it has an impact on other rights of the person. Depending on its duration and context, the curfew affects a person's physical freedom and security, the right to privacy, freedoms of association and assembly, freedoms of religion, information and dissemination, property, education, and dignity.⁴¹

"[...] its duration (a certain number of hours per day or, far more rarely, a permanent, round-the-clock curfew); whether it is for a specified or unspecified period; geographical coverage (village, urban district or wider geographical area/territorial unit); the substance of the associated restrictions, which may not necessarily be confined to a ban on going out. The impact that a curfew has on the social, economic, cultural, and political life of the community concerned and the exercise of fundamental rights will depend to a large extent on these factors."⁴² Since a restriction on a person's freedom of movement affects a wide range of rights, a balance must be struck between this particular measure and the protection of human rights and freedoms. The Venice Commission, therefore, pays particular attention to the need to adhere to the principle of proportionality and notes that the requirements of this principle must be strictly observed in both the decision on the curfew and its implementation:⁴³ Like the curfew, all other measures must be proportionate to the danger and its likelihood. In addition to the urgent need, the Venice Commission focuses on the effectiveness of judicial and parliamentary control over the executive.

⁴⁰ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW, opinion No. 842/2016, CDL-AD(2016)010 "Opinion on the Legal Framework governing Curfews" adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016).

⁴¹ Ibid, paragraphs 18-19

⁴² Ibid, P.20

⁴³ Ibid, p.87

4.1.1.2. GEORGIAN MODEL OF THE CURFEW

According to already repealed Paragraph 6¹ of Article 2 of Ordinance N322 of the Government of Georgia "On the Approval of Isolation and Quarantine Rules", for the population to remain at their places of residence, the movement of people on foot and by a vehicle, as well as in a public space, which is mainly outdoors, for example, a street, a park, etc., the probability of spreading the coronavirus is low compared to the closed environment, especially in the conditions when the legislation required the wearing of a mask in public spaces until June 24. Therefore, we can assume that the main purpose of establishing a curfew was not to prevent the movement/presence of persons in public spaces, but to prevent the gathering of persons in different spaces and to reduce general mobility.

Depending on the characteristics of social behaviors, a person may move for different purposes and their goal might be to attend different types of social events.

The curfew prohibited movement and presence in public spaces. It did not generally regulate or engage in social activities in private spaces (residential, restaurant, bar, club, gym, stadium, etc.) when it took place in privately owned/occupied spaces. These issues were regulated by other articles of the rules approved through Ordinance N322. For instance, Article 4 - restriction of cultural and sports events, Article 5 - regulation of gatherings, Article 6 - regulation of economic activities, etc.

To equate the lifting of the restriction on freedom of movement with the automatic admission of all the listed activities and considering these factors when calculating its effectiveness would have been fundamentally incorrect. For more clarity, restaurants, cafes, and bars in Tbilisi were restricted from functioning until 22:00 before the announcement of the curfew. Thus, despite being able to move around at specific times, people could not gather and spend time overnight in cafes, bars, or restaurants.⁴⁴ Otherwise, the state could reduce mobility at the expense of several other measures.

4.1.1.3. THE LEGITIMATE PURPOSE OF THE CURFEW

As mentioned above, the lifting of the curfew should not and cannot be equated with the complete lifting of restrictions. All aspects of social life that can be regulated and enforced separately by the Executive, should not be considered as part of the curfew. Against this background, only two possible purposes of the curfew remained: the first is to avoid meetings in private spaces where oversight is associated with difficulties - for example in homes. The second is to generally reduce mobility.

⁴⁴ Ordinance N659 of 3 November, 2020

4.1.1.4. THE CURFEW - SUITABILITY AND NECESSITY

The requirements of proportionality mean that the curfew must be the most suitable and least intrusive means of achieving the stated purpose.

It should be noted that the effectiveness of the curfew was debated fiercely by the public. Arguments used to support these views are often manipulative and/or taken out of context, although it is still possible to identify legitimate concerns. Namely, the curfew reduces mobility during night hours, but it increases its intensity. In particular, the curfew increases the concentration of mobility on public transport and in public places during the part of the day when movement is allowed. At the same time, the length of the curfew, which was almost half a year, in itself encouraged its violation.⁴⁵

It should be noted that IDFI is not aware of any scientific research conducted within Georgia that would assess the extent of the positive effects of the current curfew regime and the degree of its effectiveness in terms of pandemic retention. Nevertheless, we express confidence in the action of the state and do not doubt that the curfew is an effective means of achieving the goal.

At the same time, it is impossible to argue about less restrictive mechanisms, since, as already mentioned, in Georgia documentary data on the degree of effectiveness of the curfew and other restrictions is not publicly available and there is no indication that such data is processed at the national level.⁴⁶ However, Google Covid-19 Community Mobility Reports provides some interesting information about this data (see further subsection).

4.1.1.5. GOOGLE COVID-19 COMMUNITY MOBILITY REPORTS CHANGEABILITY OF MOBILITY IN PARALLEL WITH THE CURFEW.

Since 2020, Google has been making the GPS data collected worldwide through one of its most widely used apps, Google Maps, public.⁴⁷

⁴⁵ See. Part 4 of the report.

⁴⁶ The exception is the rule of wearing a mask. In Georgia, it is mandatory to wear a mask in the public space and the state calculates the percentage of fulfillment of this obligation, about which information is provided to the public through press conferences

⁴⁷ Google Covid-19 Community Mobility Reports. See the Link

The data from the period before the spread of the pandemic (from January 3, 2020, to February 6 of the same year) was analyzed by Google, and based on this data, the so-called Initial status – Baseline was calculated. The baseline of hours spent at the places of residence was calculated among them.⁴⁸ A temporal/time criterion is used to analyze the place of residence, while in all other cases it is quantitative.⁴⁹

Google publishes this data in both raw and processed forms. The data below replicates the information provided by Google in individual state accounts. In particular, the data below is based not on the results processed by IDFI, but on a percentage analysis conducted directly by Google.

⁴⁸ The instructions given are based on information provided by google about the data used by them- Section: Overview. See the Link

⁴⁹ *ibid.* Section: Understand the Data.

CHANGE IN THE LENGTH OF TIME SPENT BY THE POPULATION OF GEORGIA AT THE PLACE OF RESIDENCE ACCORDING TO DIFFERENT PERIODS COMPARED TO THE PRE-PANDEMIC PERIOD

N	INITIAL POINT	END POINT	% CHANGE	CURFEW STATUS
1	29.02.2020	11.04.2020	+16%	The curfew was valid for only 11 days (from March 30)
2	26.03.2020	07.05.2020	+20%	The curfew was in effect throughout the period
3	26.04.2020	07.06.2020	-2%	The curfew was valid for 26 days (until May 22).
4	29.05.2020	10.07.2020	+1%	The curfew was not in effect
5	26.06.2020	07.08.2020	-2%	The curfew was not in effect
6	28.07.2020	08.09.2020	-3%	The curfew was not in effect
7	28.08.2020	09.10.2020	+1%	The curfew was not in effect
8	27.09.2020	08.11.2020	+2%	The curfew was not in effect
9	26.10.2020	07.12.2020	+13%	The curfew was in effect. From November 9 in 7 major cities From November 28 throughout Georgia
10	27.11.2020	08.01.2021	+12%	The curfew was in effect throughout the period
11	29.12.2020	09.02.2021	+5%	The curfew was in effect throughout the period
12	26.01.2021	09.03.2021	+1%	The curfew was in effect throughout the period
13	26.02.2021	09.04.2021	+5%	The curfew was in effect throughout the period
14	27.03.2021	08.05.2021	-3%	The curfew was in effect throughout the period
15	16.05.2021	27.06.2021	-9%	The curfew was in effect throughout the period

FIGURE 7. CURFEW AND GOOGLE MOBILITY REPORT ON GEORGIA

The curfew was announced twice in Georgia. In the first phase, the curfew coincided with the state of emergency and lasted for almost the entire period from March 30, 2020 to May 22, 2020. The second phase of the curfew was announced on November 9, 2020, and continued to June 30, 2021.

Figure N7 indicates that at the initial stage, the time spent by the population at home during the duration of the curfew increased significantly by 20%, and upon its removal dropped drastically by 22% and descended to the pre-pandemic level. This, however, does not mean that the curfew is so effective in ensuring that residents stay at home. Some other factors need to be considered that have an impact on the 'homestay rate' - e.g. How well do public transport, educational institutions, social gathering places, etc., function? In Georgia, during the curfew, virtually all types of activities were prohibited or severely restricted, except for pharmacy and grocery stores and remote services.⁵⁰

This is evidenced by the second curfew announced in November (From November 9 in seven major cities of Georgia, and from November 28 the curfew was announced throughout Georgia). Initially, between November and December 2020, the 'homestay rate' increased by about 12-13%. There were many other restrictions through this period, in particular, the movement of public transport was prohibited, educational institutions operated remotely, and public places (cafes, bars, restaurants, cinemas) were closed.

On January 21, 2021, the state began lifting restrictions. The operation of educational institutions and public transport was gradually restored. In the following months, restaurants, cafes, and bars were added to this category, with almost all restrictions lifted or eased. The curfew continued to be in place until June 30, 2021.

Although the curfew regime has not changed, the number of people staying at home has decreased significantly. From March 27 to May 8, 2021, the number of hours spent by the population at home fell by 3% from the pre-pandemic rate. And after the curfew was set to start at 23:00, the time spent by the population at home was reduced so much that it reached the summer mark of 2020 when the curfew was not in effect at all.⁵¹

The curfew is stated by law to have the normative purpose of "ensuring that the population stays in the place of residence", but the data present raises a serious question that the curfew alone, if not used in conjunction with other restrictive measures, may not effectively achieve the stated goal. This assumption, however, naturally raises additional questions regarding the legitimacy of the restrictions on freedom of movement.

⁵⁰ See. Ordinance N181 of the Government of Georgia of March 23, 2020 "On the approval of measures to be taken to prevent the spread of the new coronavirus in Georgia." Valid until 22 May 2020.

⁵¹ A factor to consider is that this period coincided with the Easter holidays and the holidays announced by the government.

4.1.1.6. CURFEW - PROPORTIONALITY IN THE NARROW SENSE

Important considerations at the narrow proportionality stage are the intensity of the curfew and the questions that exist in connection with its immediate need.

The curfew was in force for almost 8 months. Within the last 6 months, the deadline for curfew was not set:⁵² At the same time, the epidemiological situation has changed in many ways during the duration of the curfew. It has improved radically from the early alarming figures, and the Executive has lifted or eased almost all restrictions except for the curfew. And the [incomplete] figure for April 2021 indicates that the epidemiological situation has started to worsen again.

YEAR	MONTH	CASES PER WEEK	POSITIVE RESULT RATE
2020	11	98616	29,06%
2020	12	89067	19,49%
2021	1	29941	7,87%
2021	2	12567	2,57%
2021	3	11342	1,69%
2021	4	29197	3,77%
2021	5	33739	4,48%
2021	6	21862	2,63%

FIGURE 8. THE CONTINUOUS REGIME OF THE CURFEW IN PARALLEL WITH THE EPIDEMIOLOGICAL SITUATION ⁵³

Such attitude of the executive towards the curfew indicated that it used this harsh measure not only as a temporary intervention (as an immediate and necessary measure) to balance the epidemiological situation, but also to maintain the epidemiological results achieved. Such a need, in theory, may exist in Georgia until the end of the pandemic, which, given the current rate of vaccination, may last for several years.

⁵² From a purely technical point of view, the curfew's, as well as any restrictions imposed by the executive, deadline is July 2021, as it is at this time that the Parliament of Georgia must extend the term of delegated powers. Nevertheless, previous experience indicates that the Parliament of Georgia extended the term of office of the delegated executive power by 6 months when the curfew was announced without a deadline.

⁵³ The curfew was announced in 7 major cities of Georgia on November 8, 2020, and on November 26 it was distributed throughout Georgia.

The curfew is the strictest form of interference with a person's freedom of movement, the effects of which substantially diminish and make it impossible to enjoy many other rights, including freedom of expression, unhindered professional and economic activities, free development, physical freedom, etc. The use of such a tool with such negative consequences on human rights, in our estimation, should be done only for urgent needs and immediate intervention. In our view, the curfew was carried out with excessive intensity, thus violating the principle of proportionality.

4.1.2. CURFEW: RISKS OF UNEQUAL TREATMENT DURING IMPLEMENTATION

Granting the exception to enjoy the freedom of movement during the curfew, is not the goodwill of the Executive, but a precondition for the proportional application of the curfew. Generally, the curfew conflicts with the ordinary lifestyle of the society, and persons have numerous reasons why they need to enjoy their freedom of movement at any time of the day: to provide public or private services, to receive medical care, to travel, to receive any services, and/or to participate in any official meeting or event that may take place during curfew.

The absolute ban of movement during the curfew would significantly affect many fundamental rights, and it would be unthinkable to consider it as a proportional measure. To balance these threats, the Executive had established exceptions, although several legal and practical problems emerged at the stage of enforcement of this mechanism.

Per Article 8 of Ordinance N322 ['on the Approval of the Rules on Isolation and Quarantine Rules'], Operational Headquarters were established. Ordinance N322 does not mention the purpose for creating the Headquarters, but as National Security Council indicates in the provided data, the main purpose of this body is to provide material and technical support to the Interagency Council and to carry out tasks dictated by the Council. The Operational Headquarters is set up on the base of the National Security Council. The Headquarters does not directly implement the restrictions that were envisioned to manage pandemics, but its powers have a significant impact on the exercise of rights restricted by the Government. Here, we can discuss one such power - the authority to issue the permit to freely move during the curfew.

As highlighted, Paragraph 6¹ of Article 2⁵⁴ of the Ordinance N322 "On the Approval of Isolation and Quarantine Rules" imposed the curfew, while Paragraph 6⁵⁵ of the same Article listed the exceptions and recognized the so-called one-time-pass and multi-pass system.

⁵⁴ formulation that was valid until 23:00 on June 30, 2021.

⁵⁵ formulation that was valid until 23:00 on June 30, 2021.

- The so-called Multi Passes⁵⁶ were issued to representatives of public institutions and entities carrying out permitted economic activities. Journalists, representatives of the press and mass media were entitled to use the same type of permit.
- The person could be granted a one-time-pass⁵⁷ due to special and/or unforeseen circumstances.

The list of the people/vehicles who were entitled to enjoy such passes must have been agreed upon with the Operational Headquarters. The substantive basis for being the objective for the exception was not sufficient reason to freely move while the curfew is in effect. This right must have been formally recognized by the Operational Headquarters. The agreement was made via phone call; in practice, the call was not the notice but to ask for permission. Thus, Operating Headquarters itself assessed whether there were material grounds to issue the pass. Several problems have been identified in terms of granting the permit.

THE SO-CALLED MULTI PASSES: NORMATIVE AND/OR PRACTICAL PROBLEMS OF UNEQUAL TREATMENT

Firstly, we would like to focus on the number of institutions that had the right to request multi passes and what constituted the material standard for granting this right.

As we have already mentioned, public institutions and persons carrying out permitted economic activities had the right to obtain a pass.

According to Article 3, Paragraph J of the Law of Georgia on Public Service, a public institution is "an institution established with funds from the State Budget, from the Republic Budget of the Autonomous Republic or the budget of a local self-government unit and funded from the relevant budget, also an organization accountable to/controlled by such institution, and any other legal entity under public law, provided that such legal entity is an organization that employs public servants and is authorized to spend allocations under the programmes /sub-programmes stipulated by the budgets of the relevant level". This definition covers virtually every central or local institution existing in various legal forms. At the same time, under Paragraph 1 of Article 2 of the Ordinance N322 "On the Approval of Isolation and Quarantine Rules", after the economic situation stabilizes, all types of economic activities will be allowed to carry on freely.

⁵⁶ By Multi Passes we mean the list of persons and vehicles that are agreed with the Operational Headquarters on the basis of Paragraph 62 .b. and 62 .c of Article 2 of the Ordinance N322 "On the Approval of Isolation and Quarantine Rules", to which the curfew does not apply.

⁵⁷ By One Time Passes we mean the list of persons and vehicles that are agreed with the Operational Headquarters on the basis of Paragraph 62 .d of Article 2 of the Ordinance N322 "On the Approval of Isolation and Quarantine Rules", to which the curfew does not apply.

As a result, almost all legal entities and state bodies in Georgia were entitled to claim the right to freely move while the curfew was in effect. All of these persons/bodies had the right to request/receive permits for their employees and vehicles, as long as the relocation of this employee was "critical to the performance of official duties".

The "critical need" standard is quite high, although there was no procedure to assess the need itself. It is unclear what criteria guided the Operating Headquarters or relevant institutions. Moreover, the role of the Operational Headquarters in this whole process is ambiguous to this day. Whether its function was only logistical or it also assessed whether the request met the "critical need standard", or, in general, to what extent was it able to assess what constituted a 'critical need', especially given the multitude of the institutions, is unclear.

Another legal problem is associated with these so-called Multi Passes. Specifically, Ordinance N322 "On the Approval of Isolation and Quarantine Rules" was based on the principle that persons who have obtained a multi-Pass permit were not subject to any restrictions on movement. Otherwise, the Ordinance allowed for interpretation in such a way as not to assess whether the recipient person used the pass for the very specific reason S/he was entitled to the multi-Pass. The preconditions for obtaining Multi Passes were verified, but it is unclear to what extent these Passes were used for the purposes they were distributed. Accordingly, it created a legal basis for a person to move with that pass at any time, even without the need for which he or she obtained the pass.

The information received by the IDFI within the framework of legal assistance verifies the mentioned problem.⁵⁸ In particular, the police did not inquire whether the person moved to fulfill the purpose for which s/he was given the pass. The police officers only verified whether the person had a multi-Pass. It is important to note that there have been repeated reports in the public that officials who have the right to move during curfew are likely to have exercised this right for non-official purposes. For instance, on April 24, 2021, Formula TV broadcasted that a religious service was held during the curfew that was also attended by the President of Georgia.⁵⁹ Earlier, it was reported that a birthday party was held during the curfew, which was attended by government officials.⁶⁰

It should be noted that IDFI requested data about the total number of persons that enjoyed the privileges of a multi-pass, as well as the number of these passes per institution. However,

⁵⁸ The Institute for the Development of Freedom of Information has provided some assistance to individuals who have been identified as offenders for being in and out of public space during curfew hours.

⁵⁹ Information and videos released by Formula TV on April 24. See the [Link](#)

⁶⁰ For an article prepared by Civil.ge based on media reports, See the [Link](#)

the National Security Council refused to provide this information. On June 25, 2021, the National Security Council upheld the administrative complaint of IDFI in the part that related to the total number of passes, however, we have not received this information so far.⁶¹

During the long period of continuous operation of the curfew, many shortcomings related to its regulation were revealed. In addition to the fact that there are significant questions regarding the proportionality of the curfew, there are weighty risks of unequal treatment and discrimination. The impression remained that the state could not comply with the requirements of the rule of law to cope with the organizational burden that needs to be maintained and enforced by the curfew in the state.

QUASI-NORMATIVE RULES: RULES DIFFERENT FROM CURFEW RELATED NORMS

Except for the so-called organizational burden, there have been some cases when the Operational Headquarters had set out the rules for free movement different/contrary to the rules of isolation and quarantine. An example of this is the free movement of lawyers. In particular, as mentioned above, the rules of isolation and quarantine entitled the freedom to move while quarantining to only those persons and vehicles that were agreed with the Operational Headquarters.⁶² Although there was no other rule for the free movement apart from the exceptions listed in Ordinance N322, on November 9, 2020 (after the curfew was enacted), the Georgian Bar Association released information stating that the curfew did not apply to lawyers who move while carrying out professional duties. In other words, a normative agreement different from the Ordinance N322 was reached between the Bar Association and the Operational Headquarters.⁶³

Naturally, it is of utmost importance that the lawyers have freedom of movement while the curfew is in effect. But the Executive bypasses the rule established by itself, granting the freedom of movement not by force of law, but on an agreement that differs from the law that governs the curfew. It is unknown to IDFI whether there were similar agreements between the Operations Headquarters and other entities.

Normative acts define only the material grounds for obtaining the right of movement. Procedural rules for obtaining the right of movement are not spelled out in the normative acts at all. According to our information, the Operations Headquarters issued instructions to its operators in a kind of standard operating procedures (SOP). We requested this information but were not provided with such data.

⁶¹ The public information request letter contained two requests. A) Total number of persons, b) Number of persons broken down according to different categories. The letter also clarified that if the information was not processed in a requested format, we would like to receive it anyway in any format they had it.

⁶² Exceptions are international and domestic freight shipments.

⁶³ Statement issued to the lawyers by the Georgian Bar Association. See the [Link](#)

4.2. DISCRIMINATION ON RELIGIOUS GROUNDS: CHRISTMAS EVE AND FOOTBALL MATCH

The Parliament of Georgia has not delegated the authority to restrict the freedom of religion to the Executive. In particular, while the government can significantly affect the freedom of religion, Article 45³ of the Law of Georgia "on Public Health" does not envision the Executive's discretion to restrict this freedom. One such restriction is the curfew.

As early as November 27, 2020, a representative of the Georgian government said that an exception would be made on the night of January 7 and the population would be allowed to celebrate Christmas Eve in churches. According to the government, the curfew would not be lifted on the night of December 25, when followers of other religious faiths celebrate the same holiday.⁶⁴ The Executive based its decision on quantitative reasoning, noting that the majority of Georgia's population is Orthodox Christian. The government also clarified that religious minorities would be allowed to celebrate Christmas in churches and monasteries in other ways. Namely, by granting the one-time passes by submitting the lists of persons of the respective religion (their data of a special category), which the denominations did not agree to.⁶⁵

At the time when the Georgian government granted the population the right to celebrate Christmas in churches, the strictest regime of restrictions was in place. The government made a political-legal decision and, despite the pandemic, allowed Christmas to be celebrated in religious institutions. Both the removal of the restrictions on January 7 and the exceptions offered on December 25 was not intended to establish a new general code of conduct. The purpose of the Government was to give individuals the opportunity to celebrate Christmas in the churches.

Any liberty restricted for a purpose carries risks of its misuse. Thus, the legitimate aim to control freedom of movement on Christmas night has emerged.

The decision of the state to lift the bans for only Orthodox Christians surely puts the representatives of other denominations who want to celebrate the same kind of religious holiday in respective religious institutions in an unequal position. However, an unequal situation does not always indicate discriminatory treatment. To make such a legal assessment, it is necessary to thoroughly understand the objectives, effects, and steps taken to eliminate inequality in the relevant decision-making process.

⁶⁴ Statement of the Vice Prime Minister of Georgia on November 17, 2020. See the [Link](#)

⁶⁵ Statement by the representative of the Georgian Catholic Church on December 24, 2020 on the principal and logistical difficulties of the government's proposal. See the [Link](#)

The state has limited resources for police control. Accordingly, the explanations of the government that the larger the number of parishioners, the more difficult it is to control the mobility on Christmas Eve, might be legitimate. According to the executive branch, the population that celebrates Christmas on December 25 is controllable, while those who celebrate the same holiday on January 7 reach a number whose effective mobility control is impossible.

It is known that different religious denominations celebrate Christmas on different dates. The use of different approaches to the exercise of religious freedom is especially a reason for caution. Deciding on religious issues based on neutral criteria does not always indicate its correctness. Moreover, neutral solutions are often the main cause of religious discrimination.⁶⁶

The decision that was allegedly based solely on mathematical, seemingly neutral, criteria, created a substantial difficulty for the minority religious denominations that celebrate Christmas on December 25, and they eventually refused to celebrate Christmas as a religious institution. By contrast, all the obstacles were lifted for the Orthodox Church and its parishioners, while the representatives of minority religious denominations were required to submit a comprehensive list of the parish.

In addition to the fact that the implementation of this requirement is associated with [many technical difficulties](#), it is also legally problematic. In particular, by law, information about religious beliefs is a special category of personal data,⁶⁷ the processing of which is subject to strict control. There was a high probability that if the members of religious denominations would submit their parish lists to the government, such a list in the government's possession would run counter to the requirements of the Law of Georgia on Personal Data Protection.

In any case, the decision based on the neutral /objective criterion put religious minorities in a substantially unequal position. Their followers, indirectly, faced the need to choose between protecting the right to privacy and freedom of religion. At the same time, the representatives of this confession were instructed to tackle a heavy organizational burden in a short period.

It is inconceivable that the government could not comprehend the severity of the organizational or legal problems that accompanied its solution. Offering an ineffective mechanism to eliminate religious inequality even creates a sense of discrimination by citizens on the grounds of religion.

⁶⁶ It is noteworthy that out of 3 judgements made by the Constitutional Court of Georgia on the substantive right to freedom of religion, 2 concerned the restriction/violation of the right arising from neutral regulation. See the [Judgements](#)

⁶⁷ Paragraph b of the Article 2 of the the Law of Georgia on Personal Data Protection enlists the religious beliefs as a special category of personal data.

The state is obliged to adhere to the principle of religious neutrality and to ensure equal opportunities for the exercise of the right to religion and belief. Mathematical logic can be found in the explanations made by the representatives of the Georgian government, although the guarantees of freedom of religion and equality cannot be measured by the number of parishioners.

By the decision of the Government on March 19, 2021, spectators were allowed to attend the football match between Georgia and Spain on March 28, 2021, which was to end in curfew hours.⁶⁸ Executive officials explained that persons who had a ticket to attend a football match would not be penalized for violating the curfew.⁶⁹ Naturally, attending football and celebrating Christmas are qualitatively different legal terms and their direct identification would not be correct, but the recognition of football tickets as a one-time pass indicates that the executive could have decided to take other measures instead of requesting specific lists of minority religious denominations.

The presented argument indicates that by easing the measures taken to fight the pandemic, the Georgian government has put people of different religions in a substantially unequal position. At the same time, it has not taken appropriate measures to eliminate this inequality, which in turn indicates discrimination on the grounds of religion. It is noteworthy that according to the government, on May 1, 2021, the Easter curfew will start late (instead of 21:00, it will start at 23:00), so that people can arrive at the churches and finish 1 hour earlier (instead of 05:00 hours, it will end at 04:00).⁷⁰

The main problem with pandemics in terms of religious equality is the granting of privileges to the Orthodox Church. Namely, the Executive does not use its powers to deliberately oppress religious minorities. However, there is an impression that the state cannot apply the relevant restrictions with the same severity to the Orthodox Church and, consequently, to its parishioners.

⁶⁸ According to the first article of the Resolution N119 of the Government of Georgia of March 19, 2021, the attendance of spectators was allowed to Judo Grand Slam Tournament to be held in Tbilisi and March 28, 2021, "During the qualifying match of the 2022 World Cup in Tbilisi (between the national teams of Georgia and Spain) and at the same time, 30% of the spectators will be admitted to the mentioned events, in compliance with the relevant epidemiological safety standards."

⁶⁹ See the statement of the Georgian Football Federation. [Link](#)

⁷⁰ Interagency Council Briefing. See the [Link](#). This decision of the government has not yet been reflected in the relevant legal act.

4.3. FREEDOM OF EXPRESSION: EXERCISING THE RIGHTS OF ASSEMBLY AND DEMONSTRATION

The Executive did not have the power to restrict freedoms of expression, assembly, and demonstrations either.⁷¹ According to Article 45³, Paragraph 2, Subparagraph B of the Law of Georgia on Public Health, the executive branch was empowered to impose restrictions only on the "gathering of persons to hold social events". Based on this norm, the gathering of more than 10 individuals related to social holidays (e.g., weddings, anniversaries, celebrations, etc.), including mass entertainment, is restricted. However, this restriction was not applied at any stage to the right of assembly and demonstration.

It should be noted that neither the Government nor the Parliament has taken normative measures at any stage in terms of substantive regulation of freedom of expression.

Nevertheless, the Curfew had a momentous effect on freedom of expression. Punishment of participants in demonstrations in violation of the curfew as an example had become a norm in Georgia.

4.3.1. CURFEW AND THE RIGHTS TO ASSEMBLY AND DEMONSTRATIONS

The clash of the freedom of demonstration and the curfew started at the very moment this restriction was announced. To clearly show the severity of this conflict, we must take into account the context of declaring the curfew in Georgia.

Parliamentary elections were held in Georgia on October 31, which was followed by mass protests and a boycott by the opposition parties, including one demonstration scheduled for November 9, 2020.

Amid a sharp worsening of the epidemiological situation, on November 6, 2020, the Prime Minister announced the expected restrictions, noting that these restrictions did not apply to freedom of expression,⁷² although on the very next day (November 7) the government announced a curfew in seven major cities.

With this decision of the government, indirectly, in advance, the rally planned by the opposition on November 9 was declared illegal. The legal way to implement this decision was

⁷¹ After concluding of the State of Emergency

⁷² See the Statement of the Prime Minister of Georgia on November 6, 2020. See the Link

significant. According to the Organic Law of Georgia on Normative Acts, for a normative act to acquire legally binding force, it must be published on the website of the Legislative Herald of Georgia. According to the same law, entry into force upon publication of a government decree is the fastest way to bind a legal act, and according to paragraph 2 of Article 22 of the same law, the normative act shall enter into force at 24:00 on the day of its promulgation.

The Government's decision on the restriction of freedom of movement was published on the afternoon of November 9 at the Legislative Herald of Georgia and, by the same resolution, the promulgation time of the curfew was set for November 9 at 22:00. The assumption that the Government may regulate the rules for the adoption and publication of a normative act significantly undermines the constitutional principle of legal certainty.

Despite the alarming epidemiological situation, this decision of the government was followed by sharply negative legal and political assessments. Nevertheless, the executive authorities started the implementation of the curfew from 22:00 on November 9, 2020, and fined persons who moved to participate in the demonstration.⁷³

The announcement of the curfew by the executive branch was carried out chaotically, with a high probability of bypassing the law. The implementation process also had significant shortcomings - for example, on the night of the announcement of the curfew, a homeless person was reportedly fined for being on the street.⁷⁴

In our estimation, such actions by the executive significantly hindered the recognition of the need for a curfew and meaningfully contributed to the diminution of the legitimacy of this restriction.

4.3.2. 2021 FEBRUARY 6, 2021: DEMONSTRATION AGAINST THE CURFEW

To fine the protesters for violating the Curfew is a proven practice in Georgia,⁷⁵ but the demonstration of February 6, 2021, must be highlighted. The demonstration was called the "March of Disobedience" and was held against the curfew, in violation of the requirements of the curfew. The demonstrations were held in Tbilisi and Batumi.

Protesters were fined again, albeit by unorthodox methods that are generally not used by the state. In particular, the Ministry of Internal Affairs of Georgia in Tbilisi identified the participants after the rally and imposed administrative responsibility for violating the curfew,

⁷³ See the [Link](#)

⁷⁴ See the [Link](#)

⁷⁵ According to IDFI, the only manifestation when individuals were not fined for holding a rally during curfew was the protest against the visit of Vladimir Posner. Vladimir Posner and his guests, marching in violation of the curfew to celebrate a birthday, gathered at a restaurant which further fueled the protest.

not on the night of the rally, but after it has ended. Similar practices of fining individuals for pandemic regulations have been observed several times, and, to our knowledge, such enforcement of the law has been applied in all cases to protesters.

To fine the demonstrators not on the spot but in the following days have a positive effect on the one hand, insofar as it helps to avoid confrontation between the police and the, thus holding a peaceful demonstration. However, the implementation of policing measures necessary to identify the protesters at the same time indicates that punishment is the direct aim of the state. In particular, the circumstance that the curfew applies to demonstrations is not due to the impossibility of enforcing the curfew in case of an exception. More specifically, in the present case, the State was aware that the fined persons were present at the rally and that they did not violate the curfew for attending a social event or for any other reason. Otherwise, such a practice of fining raises reasonable doubts that affecting freedom of expression by restricting freedom of movement is a direct aim of the state and not the effect of restricting freedom of movement. We do not necessarily assume that the primary purpose of the curfew is to violate freedom of expression. However, in our estimation, the state is actively using this tool against that right.

It is noteworthy that an investigation was launched against 19 people participating in this rally for committing a crime under Article 248¹ of the Criminal Code.⁷⁶ This article criminalizes repeated violations of isolation and quarantine rules (including curfew) within a year. It is noteworthy that according to the information provided by the Prosecutor's Office of Georgia, in the first quarter of 2021, a total of 51 investigations were launched under this article.

To draw clear conclusions about freedom of expression during a pandemic, it is important to analyze another manifestation. This case can be conditionally called "Vladimir Posner's dilemma".

Russian journalist Vladimir Posner visited Georgia on March 31, 2021, to celebrate his birthday with approximately 50 guests. That same night, he left the hotel with his guests and headed to the restaurant for dinner, where the birthday celebration continued in violation of the curfew. The events were followed by a fierce public outcry, and demonstrations took place both at the restaurant where Posner was celebrating his birthday and at the hotel where he was staying.⁷⁷ Unlike other cases of demonstrations in violation of the curfew, the MIA did not fine the protesters either on the night of the rally or afterward.⁷⁸

⁷⁶ See the link

⁷⁷ Material prepared by Civil.ge, see the Link

⁷⁸ We have taken all rational measures to obtain this information. We also contacted the organizer of the rally, who confirmed that the protesters had not been fined for violating the curfew.

Such an action by the MIA indicates that the state may not impose fines on individuals for violating the curfew when they participate in a demonstration. In any case, this is a clear example of selective and/or expedient enforcement of the curfew, which in turn carries the risks of selectively filtering the content of the curfew manifestations and selectively enforcing the restrictions.

4.3.3. RESTAURANTS PROTESTING, PRIME-MINISTER THREATENING

On January 30, 2021, 200 food outlets suspended their delivery service for a day as a means of protesting the restrictions imposed on them.⁷⁹ On February 2, the restaurant businesses announced that they would open arbitrarily from February 6.⁸⁰

On February 4, 2021, the statement of the Prime-Minister was published on the website of the Government. According to this release,⁸¹ "the head of government spoke at the meeting about the expected response in case of deliberate violation of restrictions by the organizations." According to the Prime Minister, a decision has been made that a deliberate violation of the rules imposed by the organizations will lead to a tougher response. **At the same time, such organizations will no longer receive state subsidies and will not be able to participate in state support activities in the future.**⁸²

According to the decision made by the head of government, one category of organizations (business entities) benefiting from subsidy programs was singled out, but it is unclear who was placed and/or who could be included in the list of entrepreneurial entities "who deliberately break the rules." This statement by the head of government coincided with the protest expressed by the restaurants at the time and the act of resistance against the regulations announced by them. We can assume that these individuals were the target audience for the Prime Minister's statement.

The Prime-Minister's announcement was problematic and vague in many ways. For example, two main legal acts invoke public liability in Georgia - the Criminal Code of Georgia and the Code of Administrative Offenses of Georgia. None of them contain a mention of the term "deliberate violation". Moreover, this term is never mentioned in publicly available documents on the Legislative Herald of Georgia.

On February 8, 2021, the Ordinance N51 of the Government of Georgia of February 4, 2021, was published in the Legislative Herald of Georgia. This normative act defines the category of entrepreneurial entities and the conditions that can benefit from the obligation of subsidy.

⁷⁹ See the Link

⁸⁰ See the Link

⁸¹ See the Link

⁸² See Video from 3:49 -<https://youtu.be/V-qOP2UOIFU?t=230>!

It was expected that the decision voiced by the Prime-Minister would be legally formulated in this very resolution and its content would be clarified. However, this normative act does not contain any provision that would dispel the ambiguity surrounding the decision announced by the head of government.

In addition to the ambiguity, there were signs of punitive use of economic subsidy mechanisms to suppress freedom of expression. In particular, according to the case-law of the Constitutional Court of Georgia,⁸³ the use of support programs as a punitive measure is directed at cases when the state deprives the possibility of equal access to state programs bases on a certain circle of persons violating the requirements of any other law.

It should be noted that the Constitutional Court has already declared one of the normative acts of the government unconstitutional due to the use of support programs as a punitive measure.⁸⁴ Namely, on May 11, 2018, the Constitutional Court found a violation of the right to equality and dignity and declared invalid part of the rule of forming a unified database of socially vulnerable families, which did not allow persons living illegally in state ownership to register in the database.⁸⁵

Violating the rules established are quite pricey for the organizations: the law prescribes a fine of GEL 10,000⁸⁶ and in case of repeating the same action, the legal entity can be punished with liquidation.⁸⁷ We do not question the authority of the State to impose a statutory and proportionate sanction in the event of a breach of mandatory regulations, although support programs have not been and probably will not be part of this package of sanctions.

Article 17 of the Constitution of Georgia establishes the constitutional guarantees for freedom of expression. In case of violation of the requirements of the law, while exercising the freedom of expression, the state may respond with the measures prescribed by law. However, as mentioned above, the use of state support programs was not and has not become part of this package of sanctions, and the decision announced by the Prime Minister was not reflected in the normative acts.

⁸³ Judgment of the Constitutional Court of Georgia №2 / 3/663 of May 11, 2018, "Citizen of Georgia Tamar Tandashvili v. Government of Georgia".

⁸⁴ *ibid.*

⁸⁵ According to the Constitutional Court, "the use of the state as a means of achieving the goal of human socio-economic hardship goes beyond the permissible impact of a coercive measure. Therefore, deprivation of the opportunity to receive social assistance in the form prescribed by the disputed norm, in its essence, is a measure that can not be used to protect state property, as a measure of coercion. The measure established by the disputed norm is focused only on achieving the set goal, and the difficult social situation of the people is used as a means to achieve the goal."

⁸⁶ Article 42¹⁰ of the Administrative Offences Code of Georgia

⁸⁷ Article 248¹ of the Criminal Code of Georgia

In our estimation, the decision announced by the Prime-Minister was in response to the protests announced by the threatening economic entities. Such action by the executive has significant potential to have a detrimental effect on freedom of expression and carries risks of instrumentalizing state subsidy mechanisms and using them for punitive purposes.

To sum up, during the pandemic, the Executive did not have the authority to restrict freedom of expression and/or assembly and demonstration. However, it actively used the curfew against demonstrations, during which signs of selective enforcement of restrictions were revealed. At the same time, the state made a special effort to punish the violation of the curfew during demonstrations, which in turn contained elements of punishment to set an example. In addition to the problems arising from the enforcement of the restriction on freedom of movement, there were also signs of a repressive threat to freedom of expression.

4.4. OBLIGATION TO USE A MASK OUTDOORS: A LARGE-SCALE PROBLEM OF LEGALITY.

As mentioned numerous times, the Executive has received extraordinarily great powers to manage the pandemic. The Parliament has limited itself to imposing sanctions. AOC established two administrative offenses (Article 42¹⁰ and Article 42¹¹). Article 42¹⁰ does not specify prohibited actions and it may include all restrictions imposed by the Georgian executive on the management of the pandemic. It differs from Article 42¹¹, which deals exclusively with the wearing of a mask. The need to regulate differently was driven by the need for different sanctions. For comparison, for violating the rules of isolation and quarantine (this offense includes all the restrictions that are envisioned to prevent the spread of the pandemic [except for the rule of wearing a mask]) the fine for an individual is 2000 GEL. Repeated violations are punishable under criminal law,⁸⁸ while a person is fined GEL 20 for violating the rule of wearing a mask, and repeated violation is punishable by GEL 40.

On June 12, 2020, Parliament imposed an obligation to wear a mask.⁸⁹ According to the primary version of Article 42¹¹ of the AOC, the Parliament made it mandatory to wear a mask in indoor spaces and on public transport. The Code did not provide for the obligation to wear a mask outdoors. Consequently, no sanction was imposed.

On June 15, 2020, the Government approved the rule of wearing a mask.⁹⁰ The government decree established various rules related to the wearing of the mask. For example, what will be considered as a mask and who will be released from the obligation to wear it.

⁸⁸ Article 42¹⁰ of the Administrative Offences Code of Georgia, Article 248¹ of the Criminal Code of Georgia

⁸⁹ Georgian law on "Amendments to the Administrative Code of Georgia" 12/06/2020.

⁹⁰ Decree of the Government of Georgia N368 on "Establishing the rules for wearing facemask". 15.06.2020.

On October 23, 2020, the Interagency Coordination Council issued a strict recommendation to use a mask in outdoor spaces in Kutaisi and Batumi. This recommendation was issued against the background of an alarming growth of the infection rate and confused society. Numerous questions were asked about the legal meaning of the term "strict recommendation". Georgian legislation does not recognize the similar or legally binding nature of any recommendation unless the content of the relevant recommendation is set out in any legal piece.

On November 3, 2020, the Government of Georgia adopted a by-law⁹¹ a resolution indirectly expanding the content of Article 42¹¹ of the AOC. In particular, the government introduced an obligation to wear a mask outdoors, and the responsibility for violating this rule was still vested in individuals under Article 42^{11,22}. The latter, as already mentioned, imposed a sanction only for violating the rule of wearing a mask indoors.

It should be noted that the Georgian government has made this change, not within the scope of its mandate to manage the pandemic but based on an ordinary norm that has been in force for about 7 years. More specifically, the Government referred to Paragraph 2 of Article 12 of the Organic Law of Georgia on Normative Acts as a basis for an obligation to wear a mask outdoors. According to this norm, "The Government of Georgia shall adopt an ordinance even if the issue in question is not regulated under a legislative act of Georgia (except if the issue falls within the authority of another body) and if the adoption of the ordinance is caused by an emergency". An IDFI investigation revealed that the executive had never before exercised its powers under this norm. Consequently, there was no established legal standard for the application of this norm, and the establishment of the standards started by this precedent.

Law of Georgia on Normative acts entitles the Government to issue by-laws. Article 12 of that law obliges the Government to specify the normative act on the basis and for the fulfillment of which the ordinance was issued. Paragraph 2 of the same article gives the government the exclusive power to regulate without a legal basis, provided that the following conditions are met:

- A** the issue in question is not regulated under a legislative act of Georgia;
- B** the issue does not fall within the authority of another body;
- C** the ordinance is caused by an emergency.

⁹¹ Decree of the Government of Georgia N660 on the "Amendments to the Decree of the Government of Georgia N368 on "Establishing the rules for wearing facemask", 3.11.2020.

⁹² article 5 of the Decree on "Establishing the rules for wearing facemask" indicated that for violation mentioned decree fine shall be imposed by the Administrative Code of Georgia.

These conditions must exist cumulatively. In particular, all of them must be satisfied so that the issuance of a normative act without a legal basis is not considered a violation.

As mentioned above, the Parliament already had enlisted the sanction for not wearing a mask only indoors. Otherwise, the legislature discussed the need for wearing masks separately and took into account the relevant sanction. Naturally, the Georgian parliament could have required the public to wear a mask outdoors too, but it precluded doing it. At the same time, it is the exclusive competence of the Parliament to envision public legal responsibility.⁹³ Acts adopted by the executive have, in some cases, played an important role in determining the content of actions recognized as punishable. In the present case, we consider that the decision of the executive branch to impose an obligation to wear a mask outdoors and envision a relevant penalty for violating this rule is contrary to law. In particular, with this regulation, the government has expanded the content of the relevant article of the Administrative Offences Code of Georgia. At the same time, it went beyond the authority of the Parliament of Georgia.

It should be noted that the Sachkhere District Court, by its decision N4/1-21 of March 10, 2021, abolished the fine for not wearing a mask outdoors.⁹⁴ The judge based the decision on the fact that Article 42¹¹ of the Administrative Offences Code of Georgia did not prescribe a sanction for the act. Otherwise, the judge considered that the Government's ruling, which required the use of a mask outdoors and indicated that a sanction under Article 42¹¹ should have been used for violating this rule, did not have a legal basis.

It is noteworthy that the legal problem of the decision regarding the rule of wearing a mask outdoors does not end only at the stage of its adoption. According to Article 12 of the Organic Law of Georgia on Normative Acts, if the government exercises the powers prescribed in paragraph 2 of this Article, the regulation adopted is temporary and for it to retain its legal force, the Parliament of Georgia must intervene per paragraph 3. According to Paragraph 3 of Article 12, "no later than one month after adopting a normative act under the second paragraph of this article, the Government of Georgia shall submit to the Parliament of Georgia a draft legislative act specifying the authority of the Government of Georgia or of another body/official with respect to adopting/issuing subordinate normative acts on relevant issues. If the Parliament of Georgia fails to adopt the relevant draft law within three months after the submission, the ordinance of the Government of Georgia shall be considered void. In this case the Government of Georgia may not issue another ordinance on the same issue."

⁹³ Administrative Offences Code 4210: the composition of which is automatically filled by the restrictions imposed by the executive in connection with the pandemic, we will review below.

⁹⁴ On May 14, 2021, it was reported that this decision had been upheld by the Court of Appeals. See the [Link](#)

The analysis of the norm shows that after using the powers given by the mentioned Article 12, Paragraph 2, the Government is obliged to submit the relevant draft law to the Parliament within one month, which must then be approved by the latter within 3 months.

The Executive has violated this obligation. The relevant draft law was not submitted to the Parliament. The amendment to the AOC was made on February 18, 2021, about 4 months after the adoption of the relevant government decree.⁹⁵ During this time, the Ministry of Internal Affairs of Georgia has not stopped fining citizens for violating the rules of wearing a mask outdoors.

It is a globally recognized fact that the use of masks is one of the most effective ways to prevent the spread of pandemics. The executive and legislative authorities of Georgia have not been able to regulate the relevant obligation to wear a mask in such a way that its compatibility with the law has not come under question. As of February 2021, approximately 93,500 fines had been imposed for violating the rules of wearing a mask. Information regarding how many of these fines are for violations that occurred outdoors is not available. However, we can assume that the vast majority of them are related to the latter category. It should be noted that the MP addressed a question to the MIA and requested this information. However, MIA has not responded to him so far. In our estimation, today in Georgia the legality of each fine imposed for violating the rules of wearing a mask outdoors between November 3, 2020, and February 18, 2021, is largely debatable.

⁹⁵ Draft Law on Amendments to the Code of Administrative Offenses. See the [Link](#)

The constitutional standards in Georgia, as well as international instruments, indicate the need for several basic procedural and material guarantees, both specifically on restrictions on freedom of movement and the use of mechanisms restricting basic human rights in an extraordinary situation. These include the restriction being prescribed into legislation, proportionality, and the exercise of judicial and parliamentary oversight.⁹⁶

5.1. PARLIAMENTARY OVERSIGHT

Apart from traditional legislative powers, the Parliament has to exercise an oversight function too. As Georgia is a parliamentary republic, the basic law of the state gives the legislators several mechanisms for political and legal oversight over the executive.

Although the Parliament has delegated its authority to the Executive to restrict basic human rights during a pandemic, it has never exercised its powers of oversight over the Executive.⁹⁷

An exception to such is the questions from members of parliament. In 2021, the MPs addressed the Government 500 times with various questions.⁹⁸ This oversight mechanism was intensified, especially after the "Charles Michel Agreement" was reached and the opposition returned to Parliament.

As mentioned above, the Parliament has been asked to participate in the Interagency Coordination Council. However, this mechanism cannot replace the legislative mechanisms for exercising parliamentary oversight.

⁹⁶ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), opinion No. 995/2020. INTERIM REPORT ON THE MEASURES TAKEN IN THE EU MEMBER STATES AS A RESULT OF THE COVID-19 CRISIS AND THEIR IMPACT ON DEMOCRACY, THE RULE OF LAW AND FUNDAMENTAL RIGHTS. See also. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), opinion No. 842/2016 "ON THE LEGAL FRAMEWORK GOVERNING CURFEWS".

⁹⁷ Mechanisms / powers that are used at the initiative of the Parliament of Georgia and not the periodic instruments provided by law (for example, annual reports, Ministerial Hour, etc.).

⁹⁸ MP Questions Asked During 2021. See the [Link](#)

In terms of the effectiveness of parliamentary oversight, the 2020 report of the Parliament is noteworthy, as a separate part is dedicated to the legislative measures implemented within the framework of parliamentary oversight.⁹⁹ According to the report, "even in the event of a pandemic, the parliament actively exercised its oversight powers under Georgian law, used oversight tools, and oversaw the activities of the Georgian government."¹⁰⁰ It is clear from the same report that parliamentary oversight has hardly touched upon the measures taken to restrict basic human rights during the pandemic. Namely, the relevant part of the report mentions that the Parliamentary Committee on Diaspora and Caucasus Affairs discussed the measures taken in terms of assistance to citizens abroad.¹⁰¹ The Sports and Youth Committee heard information on sporting outcomes, pandemic activities, and the post-crisis plan.¹⁰²

The factor to be considered is the post-election political crisis following the October 31, 2020, elections. The refusal of opposition parties to participate in parliamentary activities has naturally hampered the exercise of effective parliamentary oversight over the executive branch.

5.2. JUDICIAL OVERSIGHT

Judicial power is exercised by the Constitutional Court and the common courts of Georgia. The Constitutional Court of Georgia is a judicial body of constitutional control, while justice shall be administered by common courts [Constitution of Georgia, Article 59].

At this stage, the problem of delayed justice has been identified within both bodies of judicial power, that significantly reduces the efficiency of the judiciary. The data available to us indicates that pandemic-related cases are not being considered promptly in either the common courts or the Constitutional Court. IDFI devoted an extensive analysis to the delay in considering cases in the Constitutional Court of Georgia.¹⁰³ Unlike the Constitutional Court, common courts do not publish their decisions, and at this stage, it is impossible to draw complete conclusions about their efficiency in time. One notable case is the administrative

⁹⁹ 2020 Report on the Activities of the Parliament of Georgia and Action Plan for 2021. See the [Link](#).

¹⁰⁰ *Ibid*, p.64.

¹⁰¹ *Ibid*, p.80.

¹⁰² *Ibid*, p. 94.

¹⁰³ Covid-19 and Constitutional Review: Assessment of the Effectiveness of the Constitutional Court of Georgia

lawsuit registered in the Tbilisi City Court on March 5, 2021, which concerns the legality of the existence of a curfew. The preparatory hearing for the case was scheduled three months after the filing of the lawsuit, the decision of the preparatory hearing was announced on the first of July, namely, the case was adjourned because the curfew was no longer valid.

As for the Constitutional Court, several complaints regarding the constitutionality of the curfew were registered in the first quarter of 2021. The Constitutional Court has not taken any action in relation to these complaints. Since the curfew has been abolished and the disputed norms have lost their force, per the established practice of the Constitutional Court, the case will be terminated.¹⁰⁴

An important circumstance is that the common courts discontinued publishing their decisions after the first quarter of 2020. At this point, it is impossible to find common court practice in administrative disputes related to Covid-19. Moreover, in October 2020, IDFI requested copies of the decisions of the Tbilisi City Court regarding the violations under Article 42¹⁰ of the AOC (violation of the rules of isolation and quarantine). According to the Tbilisi City Court, the court did not record the mentioned information at all.

5.3. CIVILIAN OVERSIGHT

Civil society plays an important role in increasing state accountability. Exercising an oversight function is impossible without access to information. Access to information has a significant impact on the quality of oversight exercised by civil society. Information can be obtained by processing publicly available sources and/or requesting public information.

Requesting public information is one of the methodologies the current report is based on. Public information provided by the authorities involved in pandemic management and enforcement is usually incomplete and issued in violation of the terms established by law. All in all, it complicates the ability of oversight in a timely and evidence-based manner.

During the state of emergency (March 21, 2020 to May 22 of the same year), the executive branch blankly suspended "the deadlines set by the legislation of Georgia for the issuance of public information and personal information."¹⁰⁵

¹⁰⁴ Paragraphs 2 and 7 of Article 29 of the Organic Law of Georgia on the Constitutional Court of Georgia.

¹⁰⁵ Paragraph 2 of the Article 13, Resolution N181 of the Government of Georgia of March 23, 2020 "On the approval of measures to be taken to prevent the spread of the new coronavirus in Georgia." Valid until 22 May 2020.

It is extremely alarming that even after the state of emergency is formally over, the state substantially delays information that does not need to be processed and that is not even proactively available. For example, it took IDFI 45 days to obtain the Statute of the Interagency Council, which was established to manage the pandemic, and 1 month to receive the Statute of the Government Operational Headquarters. According to Article 40 of the General Administrative Code of Georgia, both of these pieces of information should have been issued immediately.

Here, IDFI deems it necessary to single out the LEPL Labor Inspection Service, which provided us with a copy of each violation report issued. Based on these documents, it became possible to create data on fines for legal entities and study the main trends. The efforts made by the Labor Inspection Service deserve a positive assessment, and the commentary on the overall state of affairs does not extend to the Service.

Obstructing the dissemination and extraction of information by the state suggests that it is trying to conceal information about its actions. For example, IDFI sought to obtain information on unequal and discriminatory enforcement of established regulations. The Ministry of Internal Affairs left this part of the request for public information unanswered, and the Operational Headquarters did not provide any information on the total number of persons entitled to move during the curfew. IDFI is taking additional measures to obtain information and will present the final report on access to information in further studies.

The Parliament of Georgia only symbolically uses the powers vested in it by the Constitution and the Rules of Procedure to control the executive branch. The circumstances, the combination of which calls into question the effectiveness of the judiciary, and the problems with access to information substantially impede evidence-based civilian control of state actions.

To prevent the spread of the Covid-19, the Parliament has taken into account both, administrative and criminal liabilities, to ensure the implementation of the regulations established in the state. In particular, a total of five liability norms have been added to the AOC and the CC. Two of them, namely, Article 177¹⁵ of the AOC and Article 359¹ of the CC apply only in cases of state of emergency/war. And one article¹⁰⁶ deals exclusively with the violation of the rule of wearing a mask.

In the current part of the report, we will focus on Article 42¹⁰ of the AOC, which is, in fact, the main legal basis for fining individuals for violating restrictions (other than the rule of wearing a mask) against the spread of covid-19. The legal analysis also refers to Article 248¹ of the CC, which, in case of repeating the same act, envisages the possibility of imprisonment, and in the case of a legal entity- the possibility of liquidation.

6.1. VIOLATION OF THE RULES OF ISOLATION AND QUARANTINE: THE COMPOSITION OF THE PROHIBITED ACTION

On April 23, 2020, Article 42¹⁰ was added to the AOC, which declared as an offense to violate the rules of the isolation/quarantine enshrined by the "Law of Georgia on Public Health".¹⁰⁷ This norm is indicative. Otherwise, a natural or legal person cannot grasp what action is prohibited by the Parliament of Georgia. It is necessary to get acquainted with other normative acts - the rules of isolation and/or quarantine established in connection with the issues provided by the "Law of Georgia on Public Health".

In parallel, the CC was also amended. In particular, Article 248¹ was added with the following content: "[v]iolation of the isolation and/or quarantine rule established in connection with the issues provided by the Law of Georgia on Public Health, committed by a person convicted of an administrative offense under the Article 42¹⁰ of the Administrative Offences Code of Georgia and/or convicted of a crime under this Article."

¹⁰⁶ Article 42¹¹ of the Administrative Offences Code of the Georgia, Source of Publishing: Presidium of the Supreme Council of the Georgian SSR, 12, 31/12/1984, Date of Issuing: 15/12/1984.

¹⁰⁷ Law of Georgia on Amendments to the Administrative Offences Code, Source of Publishing: website, 24/04/2020. Date of Issuing: 23/04/2020.

The cited norm of the CC clearly indicates that it has the identical content of an offense under Article 42¹⁰ of the AOC. Namely, in case of violation of the isolation and/or quarantine rule established in connection with the issues stipulated by the Law of Georgia on Public Health, the person will be held administratively liable, and in case of repeating the same action within 1 year, the person will be held criminally liable.¹⁰⁸ Otherwise, the difference between the named norms of the CC and the AOC lies only in the number and periodicity of the commission of the prohibited act. The content of the prohibited act itself is identical in both cases.

Article 42¹⁰ of the AOC, as well as Article 248¹ of the CC, has an open composition of an act declared a crime/offense, which includes all prohibitions imposed by the executive. Otherwise, in the field of combating the novel coronavirus, the Parliament of Georgia has indirectly given the executive uncontrollable power to determine the composition of the norm establishing administrative/criminal liability, which is limited only by the general reservation of the principle of proportionality.

6.2. CONSTITUTIONAL COMPETENCE TO DETERMINE PROHIBITED ACTS AND PUNISHMENTS

The general requirements for the so-called liability norms are defined by Article 31, Paragraph 9 of the Constitution, which indicates that the 'liability norm' must be adopted as a law. "The formal requirement established by the Constitution to regulate this or that issue by law, as a legitimate decision-making body on a specific issue, serves to define the Parliament of Georgia. In particular, the Constitution of Georgia names the issues that only the Parliament of Georgia has the authority to regulate".¹⁰⁹ At the same time, the observance of this requirement of the Constitution can be identified and used in assessing the constitutionality of the norm establishing responsibility for other articles of the Constitution of Georgia (relevant substantive rights).¹¹⁰

It should be noted that in terms of clarifying/applying the formal requirements of the Constitution of Georgia, it is insignificant whether the 'liability norm' is part of the criminal or

¹⁰⁸ According to Article 248¹ of the Criminal Code of Georgia, a person is liable who is fined under Article 42¹⁰ of the Administrative Offenses Code. According to Article 39 of Administrative Offenses Code, a person is considered to be administratively liable within 1 year from the imposition of the fine.

¹⁰⁹ Judgement N^o1/4/757 of the Constitutional Court "Citizen of Georgia Giorgi Kraveishvili v. The Government of Georgia", II-20.

¹¹⁰ Judgement N^o1/10/703 of the Constitutional Court "Citizen of Georgia Giorgi Kartvelishvili v. The Parliament of Georgia"

administrative legal spaces. The main determining factors are the general (public) legal nature of the norm, its prohibitive content and the responsibilities provided.¹¹¹

Recognition of the exclusive authority of the Parliament is part of the clear and established practice of the Constitutional Court of Georgia regarding the determination of administrative offenses/criminal offenses and the corresponding sentence/punishment. "Determining an action as an offense, imposing a penalty and determining its gravity is the exclusive competence of the state (legislator) [...]".¹¹² The Constitutional Court has repeatedly made such an explanation about the norms establishing liability.¹¹³ For example, in its decision N2/7/779 of October 19, 2018, the Constitutional Court linked the norms establishing public legal liability to a list of actions publicly condemned, stating that "it is the exclusive competence of the legislator to consider an action as an offense".¹¹⁴ The Constitutional Court did not rule on the violation of the formal requirements of the direct liability norm, although the severity of this requirement became clear in the decision on the constitutional claim N703.

In particular, the Constitutional Court considered that the Supreme Court had created the interpretation to the norm establishing liability, which was never intended by the Parliament of Georgia. It should be noted that the court declared this norm unconstitutional not because of its foresight or other qualitative requirements, but because it violated a formal requirement of the Constitution. In particular, the Constitutional Court has indicated that the imposition of liability for action and the determination of the corresponding liability is the exclusive competence of the Parliament of Georgia.¹¹⁵

Thus, from the presented practice, it is clear that the prohibition of action and the establishment of criminal or administrative legal responsibilities for them is considered by the Constitution of Georgia as the exclusive competence of the Parliament of Georgia.

¹¹¹ Recording Notice N^o1/13/733 of the Constitutional Court "Citizens of Georgia Gela Tarielashvili, Giorgi Kvirikadze, Vladimer Gaspariani, Ivane Machavariani, and others (9 Claimants)", II-9.

¹¹² Recording Notice N482,483,487,502 of the Constitutional Court of Georgia "Political Union "Movement for United Georgia", Political Union "Georgian Conservative Party", the citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, the Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. Parliament of Georgia", II-8.

¹¹³ "The decision to declare an action punishable is the exclusive authority of the legislator. Accordingly ... the court should not be allowed, on the basis of judicial practice, to create the composition of a criminal act "(mutatis mutandis see the Judgement 2/2/516,542 of the Constitutional Court of Georgia "Citizens of Georgia - Alexander Baramidze, Lasha Tugushi, Vakhtang Khmaladze and Vakhtang Maisaia v. Parliament of Georgia ", II-37). The same should be said about determining the appropriate punishment for a punishable act." Judgment N^o1/10/703 of the Constitutional Court of Georgia "Citizen of Georgia Giorgi Kartvelishvili v. Parliament of Georgia, II-37.

¹¹⁴ "Considering an action as an offense is the exclusive competence of the legislator". Judgment N^o 2/7/779 of the Constitutional Court of Georgia "Citizen of Georgia Davit Malania v. Parliament of Georgia", II-28

¹¹⁵ Judgement N^o1/10/703 of the Constitutional Court "Citizen of Georgia Giorgi Kartvelishvili v. The Parliament of Georgia", II- 24-26, 37-38.

6.3. TERMS OF DELEGATION OF EXCLUSIVE CONSTITUTIONAL COMPETENCE

Formal guarantees of the Constitution of Georgia provide an opportunity for a certain range of relations needs to be regulated by law to be elaborated by the executive.¹¹⁶ Clearly, parliament falls within a strict constitutional framework when deciding whether to delegate a certain issue to another state body, including the executive. The Constitution prohibits the delegation in several cases, including when it is established that the Parliament delegates a fundamentally important part of its powers and/or it delegates the sphere with special impact on human rights,¹¹⁷ thus refusing to exercise its constitutional powers.¹¹⁸ Such requirements are enshrined in the Constitution of Georgia concerning several fundamental rights, and their non-observance has repeatedly become the basis for declaring the norms unconstitutional.

The explanations provided indicate that both the prohibited action and the amount of liability imposed on it should be determined by the supreme legislative body - the Parliament. At the same time, the Constitution prohibits the delegation of matters within Parliament's exclusive competence if it delegates a significant part of its powers or if it delegates issues that have a fundamental impact on fundamental human rights.

6.4. THE SYSTEMIC PROBLEM OF CONSTITUTIONALITY

As we have discussed, the repeatedly named norms of the Administrative Offenses Code and the Criminal Code, are indicative. The existence of indicative norms is justified in terms of legislative technique. However, special care needs to be taken concerning the legal areas within the exclusive competence of the Parliament, especially about the norms establishing responsibility.

¹¹⁶ Judgement №2/2/867 of the Constitutional Court "Remzi Sharadze v. the Parliament of Georgia", II-16.

¹¹⁷ Judgement №1/7/1275 of the Constitutional Court "Aleksandre Mdzinarashvili v. the Georgian National Communications Commission", II-38. In this case, the Constitutional Court declared unconstitutional the delegation of even a small part of the powers to regulate the substantive freedom of expression.

¹¹⁸ Judgment №3/3/763 of the Constitutional Court "Members of the Parliament of Georgia (Davit Bakradze, Sergo Ratiani, Roland Akhalaia, Giorgi Baramidze and others, 42MPs total) v. the Parliament of Georgia", II-78

6.4.1. 'LIABILITY NORMS' INDICATING ON OTHER LAWS

The liability norms, which refer to another piece of legislation, namely the law, to determine the content of a prohibited action, are not unconstitutional per se, unless the content of the norm clearly indicates a specific action, which the legislature wants to prohibit, and points to another act only in terms of clarifying technical issues. Also, if another specified act is a law adopted by the Parliament, from which the content of the prohibited action is distinctly clarified.

A parallel can be drawn with Article 223¹ of the CC, which declares 'membership of the criminal underworld' as a punishable act, while the Law of Georgia on Combating Organized Crime and Racketeering defines various substantive concepts of an act recognized as a crime under the CC.¹¹⁹

To determine the content of the action, it is important to determine what normative act is indicated by the supreme legislative body. One is a reference to a legislative act passed directly by Parliament itself that meets the requirements of foreseeability, while the wholly different case is a reference to the statutory acts adopted by the executive, automatic transfer of the defined, or still undefined requirements to be determined in the run as part of an action prohibited by the norm establishing liability.

6.4.2. 'LIABILITY NORMS' INDICATING ON BYLAWS

When the 'liability norm' refers to a bylaw to examine the content of the action, it implies the transfer of a certain part of the determination of the composition of the action to another state body, in this case, to the executive. Given the specifics of the field to be regulated, this can often be not only natural but necessary and even inevitable.

For instance, the Constitutional Court of Georgia in its decision N1/7/1275 of August 2, 2019, indicated that the substantive regulation of freedom of expression is within the exclusive competence of the Parliament of Georgia. Despite the Constitution not prohibiting the delegation of this very sphere, the Constitutional Court clarified that the substantive

¹¹⁹ See Judgement N45554/08 of the European Court of Human Rights on „CASE OF ASHLARBA v. GEORGIA“, P. 33-40.

regulation of freedom, of expression, was part of the fundamental authority of the Parliament and its delegation is not to be allowed. In this case, the Constitutional Court declared unconstitutional establishing the substantive restriction of freedom of expression by the National Communications Regulatory Commission since the regulation of this area is the exclusive competence of the Parliament. However, the Court noted that it would not be unconstitutional to delegate the technical enforcement of restrictions imposed by the Parliament - for example, what technical means/methods should be used to restrict access to a videotape of personal life circulating on the Internet.

Otherwise, simply the fact of delegating the regulation of the legal acts that are within the exclusive competence of the Parliament, may not be enough to conclude unconstitutionality, but it is an important and solid argument in its favor. In such a case, it should be assessed in what legal field and to what extent the Parliament refuses to exercise its powers.

6.4.3. DELEGATING THE DEFINITION OF THE CONTENT OF 'LIABILITY NORMS'

As mentioned above, determining the content of 'liability norms' is the exclusive prerogative of the legislature. At the same time, the Parliament did not give the executive the power to specify the technical or substantive details of a specific offense, but allowed it to create a whole new offense/crime in any area of life. To illustrate the scale, we can cite Articles 42¹⁰ and 42¹¹ of the Administrative Offenses Code.

Article 42¹¹ of the AOC established responsibility for violating the rule of wearing a mask. Although the liability norm itself does not prescribe the rule of wearing a mask, it is clear that the supreme legislative body considers the violation of the rule to be a publicly condemnable act and provides for an appropriate penalty. Via this norm, the executive determines other issues related to wearing a mask, where and how a person should wear it. The problem in this regard is the foreseeability of the composition of the action (e.g., can a person remove the mask while eating or drinking on the street, etc.)

Article 42¹⁰ of the AOC, as well as Article 248¹ of the CC, do not enlist the prohibited actions. The list of specific prohibitions can be found in Ordinance N322 "On the Approval of Isolation and Quarantine Rules". Article 3 of that Ordinance recognizes Decree N164 "On the Approval of Measures to Prevent the Possible Spread of the Novel Coronavirus in Georgia and the Emergency Response Plan for Cases of Novel Coronavirus Disease" as its integral part (if it does not contradict the rules specified by Ordinance N322).

The named legal acts alone reflected more than 200 different amendments since adoption to October 12, 2020. Assuming that only one normative requirement is envisioned in each of them, Decree sets out at least 250 mandatory rules to follow. At the same time, these rules

must be adhered to only if they do not contradict Ordinance N322, which envisions a far more generous list of the rules.¹²⁰

According to Paragraphs 1 and 2 of Article 45³ of “Law of Georgia on Public Health”, all these rules are part of the quarantine measures. Accordingly, Article 42¹⁰ of the Administrative Offenses Code prohibits violation of them¹²¹ and defines fixed sanctions. In particular, it does not provide freedom to tailor the sanctions to the actual risks that person exposed the public health to. The relevant body is obliged to apply a fine of 2000 GEL for individuals or a fine of 10 000 GEL for legal entities. Mandatory rules and recommendations apply to virtually every area of life and every member of society. It is clear that every offense considered in the norm under consideration has the same purpose, but committing prohibited acts harms the protected good to varying degrees.

It is clear from the content of Article 42¹⁰ of the AOC that it does not contain a political decision on issues of fundamental importance or prohibited actions. The purpose of the named norm is not to clarify the substantive or technical issues related to the prohibited action; its purpose is to hand over to the executive the complete policy of determining the violations related to the novel coronavirus. The scope of authority delegated to the Government of Georgia is not limited to decisions made by the legislature.

The challenges posed by the spread of the Covid-19 have affected all areas of life, including law. Thus, it is reasonable to assume that the need to respond quickly to these challenges will further soften the executive/traditional human rights standards for delegating powers to the executive. However, the architecting the crime and punishment is a historical power vested in the legislative body. It is an integral part of its mandate, even one of the determinants of the existence of such a mandate. Thus, the policy of softening the control of delegated powers will affect the least discussed constitutional requirement.

The Parliament of Georgia, as the highest legislative body directly elected by the people, is obliged by the Constitution to establish an exhaustive list of publicly accountable actions. The regulation of technical issues related to prohibited actions, including substantive issues, may be justified by the need to combat covid-19. However, the Parliament must make political decisions on issues of fundamental legal importance, recognize the unlawful nature of specific actions, and establish appropriate responsibilities. For example, as it did by establishing responsibility for violating the rule of wearing a mask. At the same time, the differentiation of offenses would allow the individualization of liability according to the degree of severity of the prohibited actions.

¹²⁰ The number of attribute data corresponding to the html code of the consolidated version published on the Legislative Herald of Georgia (www.matsne.gov.ge) is used to determine the points and subparagraphs in the named normative acts. Minus the number of other data that was denoted by the same attribute data. (Probability of error: 10%. However, it is implied that each paragraph/subsection contains at least one normative requirement.

¹²¹ If the issue does not concern the violation of the rule of wearing a mask.

On June 24, 2021, the Prime-Minister of Georgia declared that an amnesty would be announced for violations of Covid regulations. According to the Prime-Minister, all fines will be written off and all ongoing criminal prosecutions will be terminated.¹²²

According to the draft law initiated by the Government of Georgia,¹²³ persons that have yet to pay the fines would be liberated from the obligation. The amnesty applies to Article 8 of the Decree N1 of the President of Georgia, as well as to the administrative violations established by 42¹⁰, 41¹¹ and 177¹⁵ of the Administrative Offenses Code. The amnesty is not limited to any given period of time.

The amnesty will also apply to the crimes under Articles 248¹ and 359¹ of the Criminal Code of Georgia committed before June 23, 2021.

As mentioned above, many problems pose risks of human rights violations with the introduction and enforcement of Covid regulations. Clearly, amnesty, as an act directed towards the past, will not be able to prevent systemic problems.

The legitimate expectations raised by the Prime-Minister's statement and the relevant draft law must be emphasized. The Prime-Minister did not provide a specific date (precisely what period will be covered by amnesty). The date is not stipulated in the draft law either. If the law is adopted in that way, it will apply to all administrative violations before its adoption. Given that the law has not been adopted yet and no relevant date has been specified in it, the executive has declared amnesty for administrative offenses yet to be committed.

Given the current pace of vaccination, it is likely that Georgia will face the need to impose restrictions yet again. This decision by the executive will encourage violations of Covid regulations in the future, which in turn will lead to the strengthening of repressive mechanisms of the state. The amnesty announced is associated with significant problems in terms of both legal and epidemiological points of view. Such a decision¹²⁴ by the executive branch and the ruling party has raised suspicions that the amnesty was suggested due to upcoming local elections.¹²⁵

¹²² See the Link

¹²³ See the Link

¹²⁴ The Prime-Minister said that the announcement of the amnesty was agreed with the Georgian Dream, which has the majority needed to announce the amnesty in the parliament. See the Link

¹²⁵ See the Link

Legal responsibilities set to prevent the spread of novel coronavirus are regulated by the Administrative Offence Code and Criminal Code. In sum, there are three Articles: Articles 42¹⁰ and 42¹¹ of the AOC and Article 248¹ of the CC.

Further we present some basic commentary to rules that are deemed to be Covid-19 related offenses:

ARTICLE	DESCRIPTION OF THE OFFENCE ACTION
AOC. Art. 42 ¹¹	<p>This Article applies exclusively to the rule of wearing a mask. Offenses and related fines are:</p> <ul style="list-style-type: none"> A Violation of the rule of wearing a mask outdoors or indoor public spaces during a pandemic and/or epidemic - Fine 20GEL B Admission of a person without a mask in an indoor public space during a pandemic and/or epidemic - Fine 500GEL C Violation of the rule of wearing a mask while traveling by public transport- Fine 20GEL D Violation of the rules of wearing a mask while traveling by Taxi- Fine 20GEL
AOC. Art. 42 ¹⁰	<p>This offense has no legal composition of its own. The article declares violation of the rules of isolation and/or quarantine to be an administrative offense. These rules not to be broken are fully defined by the Executive.</p> <p>Fine for an individual: 2000GEL Fine for a legal entity: 10 000GEL</p>
CC. Art. 248 ¹	<p>Nor does the Criminal Code prohibits a specific action. The article just points to AOC Art. 42¹⁰ and sets that if a person breaks the rules set by the government twice within 1 year, becomes criminally liable</p>

FIGURE 9

IDFI has devoted an extensive analysis to the compatibility of the above-mentioned Articles with the Constitution. The study revealed that there are important legal questions concerning the constitutionality of the Articles that set penalties for violating the rules related to the Covid-19.¹²⁶

Several authorities have been tasked with enforcing restrictions imposed to prevent the spread of the novel coronavirus. The MIA and the Ministry of Health should be singled out among these bodies. It is they who bear the main burden of detecting the relevant offenses.

NOTE: On June 24, announcing the draft amnesty law, the Prime Minister of Georgia announced that the amnesty would apply to 245,000 citizens, 344 legal entities. The total amount of unpaid fines by them is 76 000 000 GEL. The data we provide below has not been updated as of June 24.

8.1. FINES ISSUED BY THE MINISTRY OF INTERNALLY DISPLACED PERSONS FROM THE OCCUPIED TERRITORIES OF GEORGIA, LABOR, HEALTH AND SOCIAL AFFAIRS

According to Paragraph 2 of Article 9 of the Ordinance "On the Approval of Isolation and Quarantine Rules", "the monitoring of the fulfilment recommendations on work places given by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia in relation to entities engaged in economic activities or entrepreneurial entities (except for medical institutions) shall be carried out by the Labour Conditions Inspection Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia [...]".

IDFI has requested and received all fines issued by the Ministry of Health. The latest fine is dated March 22, 2021. The data below thus reflects all the fines issued by the Ministry between 23 May 2020 [date of promulgation of the liability norms] and 22 March 2021.¹²⁷

¹²⁶ Covid-19 and Sanctions: Systemic problem of constitutionality, see the [link](#)

¹²⁷ We addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia twice, and our request has been referred to the Labour Conditions Inspection Department.

According to the provided data, the Labour Conditions Inspection Department (LCID) revealed 181 administrative violations throughout Georgia in the reporting period 23/05/2020-22/03/2021 (10 months). The legal basis for imposing liability in all cases was Article 42¹⁰ of the AOC.¹²⁸

Given that from May 23, 2020, to February 2021, the MIA held responsible only 17 legal entities for violating the same Article, we assume that the data generated based on the information provided by the LCID thoroughly reflects the statistics of violations by economic entities.

LOCATION	SUM	LEGAL PERSON	IND. E	%
TBILISI	124	86	38	68,51%
BATUMI	25	22	3	13,81%
KUTAISI	13	7	6	7,18%
TSKALTUBO	5	3	2	2,76%
TELAVI	3	2	1	1,66%
GORI	2	2	0	1,10%
KOBULETI	2	2	0	1,10%
MTSKHETA	2	1	1	1,10%
POTI	2	1	1	1,10%
ZUGDIDI	2	1	1	1,10%
TKIBULI	1	1	0	0,55%

FIGURE 10. THE TERRITORIAL DISTRIBUTION OF IDENTIFIED VIOLATIONS

Territorial analysis of the revealed violations indicates that the LCID efforts are mainly focused on the large cities of Georgia. About 90% of the detected offenses come from only three cities.

It should be noted that no violations were revealed by the LCID in the regions of Guria and Svaneti and Rustavi city. LCID is the only body that oversees the implementation of Covid regulations by economic entities (cafes, bars, clubs, restaurants, shops, etc.).

¹²⁸ See Data generated as a result of processing the information provided by the Labour Conditions Inspection Department, based on the quantitative analysis presented below.

Statistics of administrative offenses over time:

YEAR	MONTH	QUANTITY	%
2020	ივნისი / JUNE	21	11,60%
2020	ივლისი / JULY	36	19,89%
2020	აგვისტო/AUGUST	2	1,10%
2020	სექტემბერი/SEPTEMBER	15	8,29%
2020	ოქტომბერი/OCTOBER	30	16,57%
2020	ნოემბერი / NOVEMBER	8	4,42%
2020	დეკემბერი / DECEMBER	30	16,57%
2021	იანვარი / JANUARY	9	4,97%
2021	თებერვალი / FEBRUARY	20	11,05%
2021	მარტი / MARCH ¹²⁹	10	5,52%

FIGURE 11

A temporal analysis indicates that approximately 30% of administrative offenses detected by the LCID fall within June and July. In August, the number of detected violations was drastically reduced to 1% (only two violations were detected in Georgia in August).

Temporal and territorial analysis of administrative violations detected during the summer months provides significant data. In particular, during June, July, and August, no violations were detected at the mountain resorts. As for the seaside resorts, the violations were detected only in Batumi, where they were recorded during the first two months of summer and accounted for about 10% of the total number of violations detected during this period. All other offenses during this period were detected in Tbilisi.

At the same time, there are significant fluctuations in statistics over the months, which are not explained by the variability of restrictions imposed by the state on economic entities.

As for the types of violations, during the reporting period, various types of restrictions were imposed on economic entities and, consequently, the reasons for imposing liability were different. Analysis of the data provided by LCID indicates that most often the following reasons were the grounds for imposing administrative liability.

¹²⁹ Including 22 March.

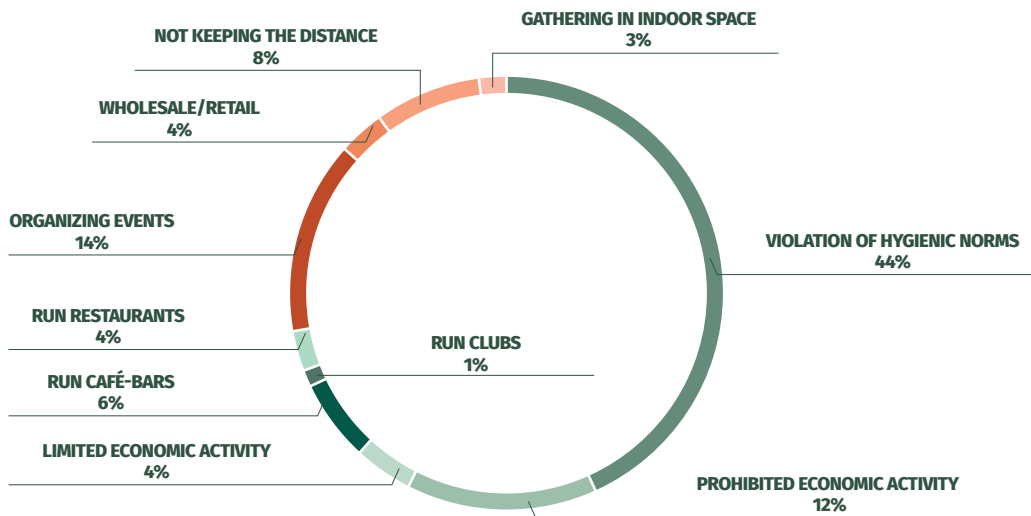


FIGURE 12

8.2. STATISTICS ON THE EXECUTION OF COVID RELATED REGULATIONS BY THE MINISTRY OF INTERNAL AFFAIRS

The MIA is responsible for detecting and controlling violations of the rules of wearing a mask, as well as isolation and quarantine rules. This control is mainly concentrated on individuals.

IDFI has requested various types of unprocessed data related to fines and enforcement of fines for violating Covid related regulations from the MIA. Unfortunately, the Ministry provided the requested information only in summary form, and moreover, the data was incomplete.

Below is the data provided to us by the MIA in the form of public information, which reflects the current situation from May 23, 2020, to February 2021 (hereinafter referred to as the "reporting period").

During the reporting period, a total of 104,073 violations of Covid regulations were revealed by the MIA. The vast majority of them (93,642) are breaches of the rules for wearing a mask.

BREACH	PHYSICAL PERSON	LEGAL PERSON	TOTAL
AOC, ART. 42 ¹⁰	10414	17	10 431
AOC, ART. 42 ¹¹	93 633	9	93 642

THE FINES IMPOSED ON INDIVIDUALS TOTALS AT A MINIMUM OF 22,700,660 (GEL) AND 174,500 (GEL) FOR LEGAL ENTITIES.

FIGURE 13. TOTAL DATA ON VIOLATIONS DETECTED BY THE MINISTRY OF INTERNAL AFFAIRS

For comparison: during the two-month state of emergency declared in Georgia from March 21 to May 22, 2020, during which similar restrictions applied to individuals and legal entities (except for the rule of wearing a mask), 8737 violations were detected by the MIA, and the total sum of fines was 26 463 000 GEL.

The fines issued by the LEPL Labor Inspection Service and the MIA amount to approximately GEL 50,000,000. The data indicate that the efforts of the MIA to enforce Covid regulations are mainly aimed at identifying violations committed by individuals.¹³⁰ Of approximately 104,000 fines, legal entities have only been identified as offenders in 26 cases.

Unfortunately, the data of the MIA does not allow to break down the accuracy of cities and is exhausted only by regional distribution.

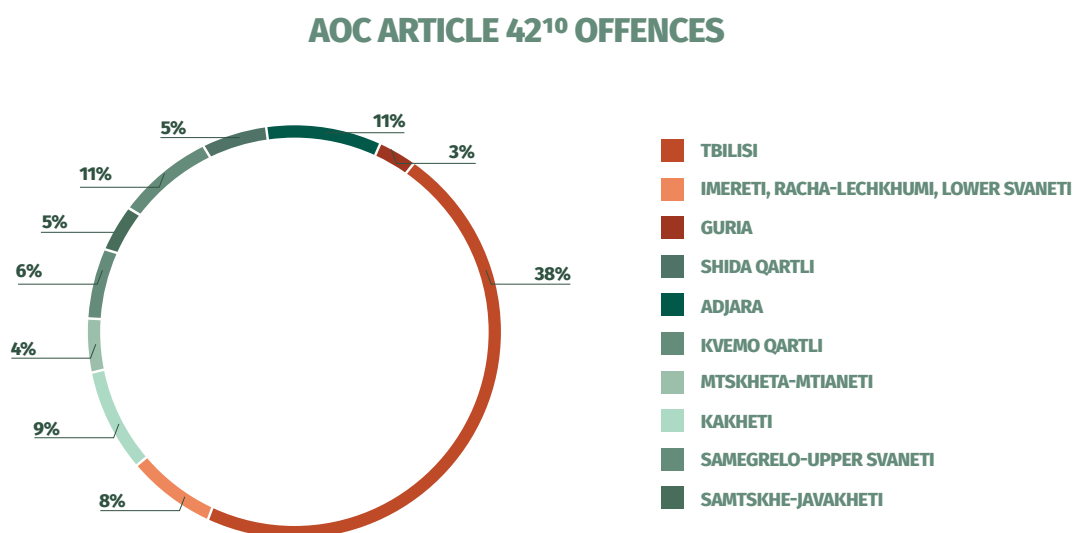


FIGURE 14.

¹³⁰ It is impossible to distinguish between a natural person and an individual entrepreneur from the data provided by the Ministry of Internal Affairs.

As mentioned above, the MIA did not provide us with full data, and in some cases, no data was provided at all. This makes it impossible to draw valuable conclusions about the penalties and enforcement process related to Covid regulations. A kind of "black box" is the issue of enforcement of fines, namely, what are the appeal/satisfaction statistics, how many of the individuals paid the fine, etc. There are many problems with the enforcement of fines that remain unanswered.¹³¹

8.3. PROSECUTOR'S OFFICE OF GEORGIA AND THE MINISTRY OF INTERNAL AFFAIRS: PROSECUTION STATISTICS FOR VIOLATION OF PANDEMIC RELATED RULES

As mentioned above, repeated violation of the rules of isolation and quarantine by an administratively convicted person (within 1 year) is a crime under Article 248¹ of the CC.

According to the information provided by the Prosecutor's Office, as mentioned during 2020, only 1 person was prosecuted under this Article, while during the first quarter of 2021 the number of convicted persons was 50.

Statistics of registered crimes are available on the website of MIA. However, it does not contain information on the number of times the Ministry detected an instance of a crime established by article 248¹ of the Criminal Code of Georgia being committed.

¹³¹ There is insufficient data to investigate this issue. The Ministry of Internal Affairs did not provide IDFI with any information about the execution of the fines.

SUMMARY

Georgia has been trying to deal with the pandemic caused by the spread of the novel coronavirus for more than 18 months. The reassuring start of the struggle, achieved at the expense of large-scale restrictions on basic human rights and significant economic sacrifices, lasted until October 2020.








The two-month state of emergency declared on March 21, 2020, was replaced by a *de facto* state of emergency in May 2020. Virtually nothing has changed in the pandemic management model since then. The unusually increased regulatory power of the executive cannot be balanced by formal legal rules. The preventive and follow-up mechanisms for the protection of fundamental human rights have been significantly weakened.

Numerous problematic limitations have been identified in pandemic conditions. One of them is the curfew, which had been operating continuously for 8 months and has repeatedly become the basis for the violation/restriction of freedom of movement, assembly and demonstration, freedom of religion, and equality. Under the pandemic, thousands of presumably illegal fines were imposed.

Effective judicial, parliamentary, and civilian control over the restriction of basic human rights by the executive during a pandemic has been weakened. Proper and evidence-based civilian control is substantially hampered by the opaque activities of the executive branch.

Overall, the pandemic has dealt a major blow to the quality of the rule of law and significantly hampered the proper enjoyment of fundamental human rights and freedoms.

KEY RECOMMENDATIONS

-  The involvement of the Parliament in decisions regarding the restriction of basic human rights during the pandemic must be increased. The Parliament should utilize all of the oversight instruments assigned to it by the Constitution and the Rules of Procedure. The issues regarding the curfew should be the subject of parliamentary debate.
-  The legal vertical of pandemic management needs to be refined. Transparency and the involvement of the Interagency Council should be increased. The procedures for the activities and decision-making of the Interagency Council should be clearly defined.
-  The Government, the National Security Council (Operational Headquarters), and the Ministry of Internal Affairs should ensure proactive access to open data and information related to pandemic management and enforcement.
-  The state should pay special attention to the protection of equality in the process of introduction and enforcement of Covid related regulations.
-  Common and Constitutional Courts should give priority to cases that have challenged the constitutionality/legality of existing restrictions on pandemic management.
-  The common courts should ensure that decisions on pandemic cases are published and/or otherwise accessible.
-  The Parliament of Georgia must ensure the timely adoption of the amnesty announced by the Prime-Minister for the violation of Covid regulations and the conformity of the law with the legitimate expectations created by the executive power.

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