



DEMOCRACY AND
HUMAN RIGHTS
DURING PANDEMIC
AND THE STATE OF
EMERGENCY



DEMOCRACY AND HUMAN RIGHTS DURING PANDEMIC AND THE STATE OF EMERGENCY



AUTHOR: GIORGI KAKUBAVA

EDITED BY: ALEKO TSKITISHVILI

TRANSLATED BY: NINO TLASHADZE

ENGLISH VERSION

EDITED BY: NINO TSAGAREISHVILI

LAWYERS: TAMAR KURTAULI
DIMITRI NOZADZE

2020

NGO **HUMAN RIGHTS CENTER (HRC)** was established on December 10, 1996 in Tbilisi. The objectives of HRC is to strengthen the respect for human rights, fundamental freedoms and to promote peace processes in Georgia. In order to achieve the above objectives, it is of utmost importance that the awareness of the public is raised and human rights are observed, further the government respects the rule of law and principles of transparency and distribution of power and ensures the elimination of discrimination at all levels.

HRC IS A MEMBER TO THE FOLLOWING INTERNATIONAL NETWORKS:

- International Federation for Human Rights (FIDH); www.fidh.org
- World Organization against Torture (OMCT - SOS Network - Torture); www.omct.org
- Human Rights House Network www.humanrightshouse.org
- Coalition of NGOs for the International Criminal Court (CICC); www.coalitionfortheicc.org

ADDRESS:

0160 Tbilisi, A.Gakhokidze Street 11a, Floor III

Tel.: (+995 32) 237 69 50, (+995 32) 238 46 48

Email: hridc@hridc.org

Webpage about human rights www.humanrights.ge

Webpage: www.hridc.org

This report was made possible by the financial support of the Open Society Foundation. The contents of this report are the sole responsibility of the NGO Human Rights Center and do not necessarily reflect the views of the Foundation.



1. INTRODUCTION

Human Rights Center, in the frame of the joint project implemented by the International Society for Fair Elections and Democracy (ISFED), Georgian Democracy Initiative (GDI) and Human Rights Center (HRC) - Democracy and Human Rights during Pandemic and the State of Emergency¹, prepared this report, which presents information about the legal aid provided to the citizens of Georgia from June through December of 2020. The report also reflects the problems identified during the state of emergency and following period based on the applications of the citizens.

The main purpose of the legal aid provided within the framework of the project was to support the individuals, whose rights were violated by the State in the period of the state of emergency and/or needed adequate and immediate response to their human rights violations from the side of the State.

At the same time, within the framework of the project, citizens could get free legal aid after the end of state of emergency in relation to the problems, needs and human rights issues caused by the novel coronavirus.

The project – Democracy and Human Rights during Pandemic and the State of Emergency was made possible by the financial support of the Open Society Foundation.

¹ See more information about the project
<http://www.humanrights.ge/index.php?a=main&pid=20165&lang=eng>

2. THE STATE OF EMERGENCY AND RESTRICTED RIGHTS

The world faced a huge challenge with the rapid and vast spread of the novel coronavirus (COVID-19) in 2020. Georgia was not an exception in this crisis.

At the briefing on February 26, 2020, the Minister of Healthcare of Georgia announced about the first case of COVID-19 infection in Georgia². With the increased number of the COVID-positive cases, the government started active negotiations about the introduction of the state of emergency in the country.

The state of emergency is the situation, when the government is equipped with special powers to introduce restrictive measures, which cannot be done in ordinary situation. As a rule, it is declared during natural disasters, outbreaks of pandemic/epidemic, civil or armed conflicts. The goals and rules of the state of emergency are defined and regulated under the Law of Georgia on State of Emergency³. The Article 71 Paragraph 2 of the Constitution of Georgia lists the pre-conditions, which enable the President of Georgia to declare the state of emergency in the country⁴.

On March 21, 2020, the Parliament of Georgia held a special session and approved the Order of the President of Georgia on the introduction of the state of emergency⁵. Also, the Parliament approved the March 21, 2020 Decree N1 of the President of Georgia “On the Measures to Be

² See more <https://bit.ly/32WD1gF>;

³ See more <https://matsne.gov.ge/en/document/view/33472?publication=7>

⁴ See the Constitution of Georgia at <https://matsne.gov.ge/en/document/view/30346?publication=36>

⁵ See the Edict of the President <https://bit.ly/3lPt9g4>;

Implemented in Connection with the Declaration of a State of Emergency throughout the Whole Territory of Georgia⁶”.

The Presidential Decree N1, which was approved by the Parliament of Georgia on March 21, 2020, restricted the basic rights guaranteed under the Chapter 2 of the Constitution of Georgia, namely – the right to liberty, freedom of movement, right to private and family life, right to fair administrative proceedings, right of property, right to assembly and labor. The freedom of opinion and expression, which is guaranteed under the Article 17 of the Constitution, was not restricted by the Presidential Decree.

On May 22, 2020, the Parliament of Georgia approved the amendments to the Law of Georgia on Public Health⁷. The introduced changes aimed to enable the Government of Georgia, without the introduction of the state of emergency, to carry out restrictive measures. After the respective amendments were introduced in the law, the definitions of the isolation and quarantine measures were changed. Also, with the amended law, it was made possible to establish the rules and restrictions on the movement, property rights, labor rights, activities of public agencies, professional or economic activities, unlawful migration/international protection, also for the physical persons to organize some events.

On November 9, 2020, the May 23, 2020 Resolution N322 of the Government of Georgia on the Adoption of the Isolation and Quarantine Rules was amended⁸ and in big cities - Tbilisi, Batumi, Kutaisi, Rustavi, Zugdidi, Gori and Poti - movement of the citizens (both on foot and by transport) was banned from 22:00 pm till 5:00 am. Presence in public space

⁶ See the Decree N1 of the President <https://bit.ly/32XWrSu>;

⁷ See the normative act <https://matsne.gov.ge/ka/document/view/4876537?publication=0>;

⁸ See the Ordinance <https://bit.ly/38VhoRw>;

was also banned, among them this restriction was applied to the pre-election campaigning (electioneering).

The project participant organizations evaluated the non-constitutionality of the mentioned amendments with a joint statement. The restrictions introduced by the GoG for the prevention of the spread of the COVID-19, in its essence, is a curfew, though the government does not have respective legal leverages to introduce it. *Contrary to constitutional requirements and international standards, Georgian government, has in fact replaced the legislature and, without any public discussion, has introduced a new, high-intensity restriction, in violation of the principle of separation of powers*⁹.

3. LEGAL AID

In the beginning of the project, Human Rights Center prepared a social video-roll, which aimed to provide society with the information about the project activities and the free legal aid offered in the frame of it¹⁰; as a result many citizens with the breached human rights applied to the organization for help.

The HRC lawyers provided the citizens with free legal aid, whose rights were breached during the state of emergency declared in connection with the COVID-19 pandemic. The free legal aid was provided after the state of emergency ended as well.

⁹ See the joint statement of the ISFED, GDI, HRC and TI <https://bit.ly/2WssYfD>

¹⁰ Watch the video-roll <https://bit.ly/35LWVfW>;

THE TENTATIVE TARGET CASES OF THE PROJECT WERE:

| | |
|---|--|
| 1 | DEFENSE OF THE LABOR RIGHTS OF THE EMPLOYEES |
| 2 | FINES IMPOSED ON PHYSICAL AND LEGAL PERSONS FOR THE VIOLATION OF THE RULES ESTABLISHED DURING THE STATE OF EMERGENCY |
| 3 | FACTS OF ILL-TREATMENT AND ABUSE OF POWER BY THE LAW ENFORCEMENT OFFICERS |
| 4 | THE CASES OF DOMESTIC VIOLENCE |
| 5 | THE CASES RELATED WITH THE COMMERCIAL BANKS, POSTPONED DEBTS AND INCREASED PERCENTAGE ON LOANS |
| 6 | THE ALLOWANCES ESTABLISHED BY THE GOVERNMENT OF GEORGIA FOR THE SOCIALLY VULNERABLE GROUPS, INCLUDING SELF-EMPLOYED PEOPLE AND PEOPLE WITH DISABILITIES IN THE FRAME OF THE ANTI-CRISIS PLAN |
| 7 | OTHER NEEDS, PROBLEMS AND HUMAN RIGHTS ISSUES RELATED WITH THE THE SPREAD OF NOVEL CORONAVIRUS |

The analysis of the legal consultations given by the project lawyers based on the applications of the citizens, made it possible to reveal the key problematic issues, which became particular burden for the citizens during the state of emergency and afterwards due to the restrictions established by the Government of Georgia.

FROM JUNE 2020 THROUGH DECEMBER 2020, THE HRC LAWYERS PROVIDED 465 CITIZENS WITH FREE LEGAL AID.

THE MAIN CONTENT OF THE LEGAL CONSULTATIONS WAS THE FOLLOWING:

- 1 THE CITIZENS VICTIMIZED BY THE PANDEMIC COULD NOT GET 300 GEL SINGLE ALLOWANCE AND 200 GEL MONTHLY COMPENSATION DURING SIX MONTH PERIOD FOR LOSING JOBS DURING THE STATE OF EMERGENCY
- 2 LABOR DISPUTES – PRIVATE COMPANIES SENT THEIR EMPLOYEES TO UNPAID VACATIONS OR UNLAWFULLY FIRED THEM BECAUSE OF PANDEMIC
- 3 DURING THE STATE OF EMERGENCY PEOPLE WERE UNLAWFULLY FINED WITH 3 000 GEL BY PATROL POLICE
- 4 BANK ISSUES – DURING THE PREFERENTIAL PERIOD THE COMMERCIAL BANKS INCREASED THE PERCENTAGE AND MONTHLY INSTALLMENTS ON THE LOANS
- 5 CITIZENS WERE KEPT IN THE QUARANTINE SPACES THROUGHOUT THE COUNTRY FOR UNREASONABLE TIME WITHOUT ANY GROUNDS
- 6 THE ALLOWANCES ENVISAGED FOR THE VULNERABLE GROUPS OF THE SOCIETY IN THE FRAME OF THE ANTI-CRISIS PLAN, AMONG THEM FOR THE SELF-EMPLOYED PEOPLE AND PEOPLE WITH DISABILITIES

4. THE TENDENCIES IDENTIFIED BY HUMAN RIGHTS CENTER IN THE COURSE OF CASE PROCEEDINGS

HRC LAWYERS USED TO PROACTIVELY TAKE UP THE CASES, WHERE THE STATE, AS WELL AS THE PRIVATE COMPANIES, VIOLATED THE RIGHTS OF THE CITIZENS.

IN THE FRAME OF THE PROJECT, THE HRC LAWYERS WORKED ON 27 CASES

| | |
|----------|---|
| 10 CASES | ARE CURRENTLY EXAMINED IN COMMON COURTS |
| 9 CASES | ARE PROCESSED IN ADMINISTRATIVE AND PRIVATE COMPANIES |
| 5 CASE | WERE SUCCESSFULLY FINALIZED |
| 3 CASES | OTHER |

On the basis of the violation of the curfew during the state of emergency in the country, as well as rules regarding the transportation of passengers and driving throughout the country, many citizens were fined by the police¹¹.

The second wave of fines was associated with the November 9 amendments to the Resolution N332 of the Government of Georgia on the Adoption of the Isolation and Quarantine Rules, which was enforced on the same day.

¹¹ The statistic figures about the facts of the violation of the state of emergency rules were updated on daily basis on the website of the Ministry of Internal Affairs of Georgia <https://bit.ly/33ftUI1>;

In accordance with the amendments, the movement was banned in the big cities from 22:00 pm till 5:00 am.

The HRC lawyers addressed the relevant service of the MIA regarding the cases they worked on and requested the annulment of the 3 000 GEL fines imposed on concrete individuals. In the mentioned period, 1 fine was annulled. The court decisions on the 4 other cases are pending. At the same time, in some cases, the lawyers got involved in the case proceedings from the stage of court examination.

On the basis of the requirements of the state of emergency, in certain cases, the citizens were fined unlawfully. Particularly, the patrol police did not take the fact of urgent necessity into account, in the frame of which the citizens were acting. Such facts were observed when the citizens had to violate the rules of the curfew and travel to buy medicines, or necessary items for the children. At the same time, without any grounds, homeless people living in the street were also fined, notwithstanding the fact that they had no alternative place to stay during the hours of curfew.

HRC successfully litigated the case related with the administrative offence, where the police officer had drawn an administrative offence report against a citizen¹². Based on the report, the citizen was fined with 3 000 GEL. The citizen had to violate the rules because of urgent necessity related with the health problems of the underage child. For that reason, the citizen had to leave home during the curfew. He informed the patrol police officers about the problem but they did not take the urgent necessity into account and fined him with 3 000 GEL.

¹² See <http://www.humanrights.ge/index.php?a=main&pid=20228&lang=eng>

The HRC lawyers offered free legal aid to two citizens, who lived in the street and the patrol police fined them for the violation of the curfew rules. It is noteworthy that in similar situation, fining a citizen for the violation of the curfew is unlawful. One of the significant principles of the Constitution of Georgia is **the “Principle of a Social State”, with which the Constitution stipulates that the State *must take care to guarantee the principles of social justice, social equality and social solidarity within society***¹³. It is worth to note that no normative document allows an exception for the citizens, who live in the street and do not have a shelter. Therefore, the court shall establish a practice and provide respective clarification whether it is lawful to fine homeless citizens in similar situation. The organization lodged a complaint to the MIA with regard to the fine in the mentioned case and is waiting for the decision. Unless the fine is annulled, the HRC will defend the legal rights of the homeless citizen in the court.

One of the significant problems was the decision of the private companies to send their employees to unpaid vacations or to fire “undesirable” employees from jobs based on the motive of the created financial crisis in the companies. In the course of the project implementation, many citizens applied to the organization for legal aid with similar problems. In the cases where unscrupulous employers in fact violated the Labor Code and the agreement conditions against their employees, the organization started litigation and currently 2 such cases are examined in the common courts.

The most applicants (about 55%) complained about their disputes with the commercial banks, as they could no longer implement their responsibilities undertaken based on the loan agreements.

¹³ See <https://matsne.gov.ge/en/document/view/30346?publication=36>

In March 2020, the society learned about the offer of the commercial banks on the preferential period on the loans. Obscure clarifications and expectations that the preferential period aimed to assist the people to overcome the financial difficulties caused misunderstandings in the society. From the beginning of September, majority of the population who had loans in banks faced the reality when their monthly installments were increased and in fact they could not implement the responsibilities before the banks. In order to find the way out of the crisis, with the legal aid of the HRC lawyers, the applicants received some preferential periods from the banks. Thus, it was possible to suspend the activation of the enforcement mechanisms against problem debtors.

Another case where the lawyer of Human Rights Center represented the beneficiary in Tbilisi City Court is fining of citizen with 26 000 GEL. In this particular case, the issue of delivering the correspondence and filing an appeal became problematic because of the restricted transportation movement between the municipalities. Since the transport movement was banned in the country, the beneficiary living in a village could not timely travel to the capital and take necessary measures to avoid the problem. He appealed the ordinance of the Tbilisi City Hall in the upper governmental body with the administrative complaint but it was not satisfied. Therefore, the HRC lawyer appealed to the Tbilisi City Court. The organization is now waiting for the court to start hearing of the case.

People placed in the quarantine zones also applied to the organization for help. They claimed that the isolation period, which was determined by the law, had already expired¹⁴ but they were not allowed to leave the quarantine spaces. In these situations, the HRC lawyers pro-actively

¹⁴ See the Ordinance # 322 of the Government of Georgia on the Approval of the Isolation and Quarantine Rules <https://matsne.gov.ge/ka/document/view/4877009?publication=69>

appealed to the Ministry of Healthcare and requested clarifications on concrete cases and to immediately dismiss those individuals from the quarantine spaces. The requests of the organizations were satisfied.

At the same time, the people from the quarantine zones complained about food and sanitary-hygiene conditions¹⁵. A citizen living in the Batumi based quarantine space applied to the organization for help. She complained about critical situation related with food and living conditions and sent respective photos too. The HRC lawyer immediately petitioned the administration of the hotel, the National Food Agency and the Tourism Administration to study the case. *In accordance with the information provided by the Agency, based on the petition of the HRC, they carried out both scheduled and non-scheduled inspection of the hotel. Having discovered some miscarriages in relation with the hygiene standards, the Agency gave concrete recommendations to the business operator and set the deadline to eradicate the problems*¹⁶.

People were discontent with the fact that part of the population was groundlessly refused to pay 1200 GEL compensation during six months and 300 GEL single compensations. According to the Government's decision, the individuals who lost jobs because of the COVID-19 related state of emergency would receive 1200 GEL compensations – monthly 200 GEL for 6 months; as for the self-employed people – they could get 300 GEL compensation. The people who could not get these compensations and were groundlessly refused to get it applied to the organization for help. Initially the organization started communication with their employers and then with the Revenue Service, the Ministries of Finances and Healthcare. Having received negative answers from the mentioned institutions, the

¹⁵ See <https://bit.ly/3jsUXFo>;

¹⁶ See <https://bit.ly/35Y6E2W>;

HRC lawyers appealed to the courts. The cases should have been regulated under the administrative law and examined by the administrative panel of the common courts, but the City Court forwarded them to the collegium of civil cases.

Many restrictions were established for the prevention of the spread of the novel coronavirus in the country. The restrictions and recommendations were made concerning the Unified National Examinations of 2020. According to the media reports¹⁷, one of the students was tested positive of COVID-19 after having attended the exam of the Georgian language and literature. Reportedly, the student herself and others, who were in the same room with her, were not allowed to take next exams. Human Rights Center petitioned the Ministry of Education to allow the students to take next exams.

In accordance with the clarifications of the National Assessment and Examination Center (NAEC), the Unified National Examinations of 2020 were conducted pursuant to the May 29, 2020 Order N01-227/o of the Minister of IDPs from the Occupied Territories, Labor, Healthcare and Social Protection. It is noteworthy that based on the agreement with the Ministry of Education, Science, Culture and Sport, the student infected with the COVID-19 was allowed to take the last exam. Consequently, in order to defend the rights of the concrete student on the one hand, and on the other hand to ensure the protection of health and safety of the other students, the COVID-19 infected student was allowed to take the exam in the medical clinic. The other students, who had contact with her, were taken to the quarantine space and they also took the remaining exams in accordance with the recommendations approved by the May 29, 2020 Order of the

¹⁷ See <https://bit.ly/2KFUDqZ> ;

Minister of IDPs from the Occupied Territories, Labor, Health and Social Defense.

When people applied to the organization for legal aid, the lawyers identified a significant problem, which was related with the situation created in the common courts caused by the spread of the novel coronavirus. Due to the the spread of the COVID-19, the courts do not timely schedule hearings of the administrative and civil cases. The hearings are not scheduled even in online format regardless the respective recommendations of the High Council of Justice¹⁸ to hold the court hearings in online regime.

Human Rights Center responded to the forced dismantling process of the illegally constructed buildings in the so-called Africa settlement in Tbilisi on December 15, 2020 based on the order of the Tbilisi Mayor. Human Rights Center believes that the Tbilisi Mayor made unacceptable and inadequate decision to dismantle the buildings in such grave epidemiological and social-economic conditions¹⁹. With the decision of the City Hall, the Article 5 of the Constitution of Georgia was violated, which guarantees the principle of the social state. HRC called on the state to take care of the health and social protection of the people, to provide them with subsistence minimum and honorable livelihood, and to take care of the protection of family welfare.

HRC lawyer met the owners of the deconstructed buildings in the so-called Africa settlement and gave legal consultations on the place.

¹⁸ See the recommendations of the HCoJ <http://hcoj.gov.ge/ge/iustitsiis-umaghlesi-sabchos-rekomendatsiebi/3701>

¹⁹ See the statement of the HRC <https://bit.ly/34pxAHD>;

Now, the HRC lawyers continue working on the cases of the beneficiaries to defend their rights in front of the private and public institutions. The lawyers continue representation of the beneficiaries in the administrative and judiciary bodies to assist them in the defense of their rights.

5. CONCLUSION

In parallel with the spread of the novel coronavirus (COVID-19), the restrictions established by the Government of Georgia both in the frame of the state of emergency and following period created many legal problems and revealed miscarriages in the legislation. Consequently, the issues left beyond the regulation became evident in practice and caused legitimate questions of the society. At the same time, the difficulty of keeping respective balance in relation with the constitutional standards and the risk of the violation of basic human rights became evident.

Within the frame of the project – Democracy and Human Rights during the Pandemic and the State of Emergency, the free legal aid activities of Human Rights Center made it possible to evaluate the unprepared activities of the state in different directions. The GoG was unprepared to respond to the challenges created by the novel coronavirus without violating the basic human rights and remaining faithful to the principle of the social state.

Since the timeframe of the spread of the pandemic is still unknown, the state must take immediate effective measures to eradicate the flaws in the normative acts, as well as ensure smooth functioning of the institutions and full respect to the constitutional principles.