

VIRUS OF URGENCY

- Constitutional Order in Georgia & Responses to Covid 19 Crisis
- Responses from Democracies

by
CIVIC IDEA



HANDS



FACE



SPACE



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INTRODUCTION

The world has faced a new reality in 2020. The Pandemic caused by COVID-19 has changed the way of everyday life of every single human being. As the spread of the disease had had an increasing tendency, the majority of states took to instigating state of emergency mechanisms. Some of the countries showed more experience and law obedience in the process and have been able to halt the total panic spread in the society by making rational, sensible and consistent decisions. It is also important to mention that these decisions set minimal restrictions on fundamental human rights and freedoms. However, **many countries when introducing a state of emergency were unable to safeguard a fair balance between guaranteeing safety, on the one hand, and interests to protect fundamental human rights, on the other, and have completely ignored or significantly restricted fundamental civil rights by adopting harsh measures.** Therefore, defining individual roles for the democratic institutions during the state of emergency regime became a pressing issue as you could only achieve the abovementioned balance through their coordinated actions. Based on the forms of government there are differences in how the roles of actors are divided, although, in any case, the issue of active involvement and awareness of the Parliament as a controlling body is essential.

Professor of Law and Political Science at Yale University, **Bruce Ackerman** in his paper: **"The Emergency Constitution"**, discusses the issue of restrictions on fundamental rights during the state of emergency on the example of 9/11 Terrorist attack in 2001. His work discusses the dire consequences of the adoption of restrictive and harsh legislation by politicians in times of state of emergency, in terms of protection of human rights. In his view, **"After each successful attack, politicians will come up with repressive laws and promise grea-**

ter security - only to find that different terrorist band manages to strike a few years later. This disaster, in turn, will create a demand for even more repressive laws, and on end on. Even if the next half-century sees only four or five attacks on the scale of September 11, this destructive cycle will prove devastating to civil liberties by 2050."

Ackerman's prediction applies not only to terrorist attacks but also to emergency situations triggered by any other causes and which are on a scale equal to or possibly even greater than terrorist acts. We can consider the pandemic caused by the new ovid-19 virus to be of the above type, engaging the states with a kind of state of emergency test, not only in terms of maintaining human rights standards but also in terms of testing the resilience of their democratic institutions.

Former Minister of Defense and a chair of the Civic IDEA platform Tinatin Khidasheli comperes the crisis caused by COVID-19 to this kind of war and argues that both during the war and during the pandemic: **"people die en masse, the economy and infrastructure are destroyed, there is a great panic and ideological crisis among the world community, the distinctive features of right and wrong, legitimate and illegitimate are muddled. Everything is justified by a greater purpose with an argument of and duty to save lives. Consequently, just as in the great, devastating war, the rule of law, the democratic procedures, the management of the legitimate use of force and restraint, freedom of information space and impartiality seem to be of a lesser value."**

As the world's rampant virus in 2020 is distinguished for its periodic "explosions", the governments introduce newer degrees of restrictions with each new outbreak, which in turn translate into new stages of "restraints" on civil rights and the realization of Ackerman's predictions in an even shorter time. The effective way to stop, regulate and control this process is the cooperation based on mutual agreement between and the observance of democratic principles by the democratic institutions, which in turn means not

so much the creation of the uniform legislation customized specifically for the state of emergency at the expense of blanket and complete restrictions of human rights but means the adoption of flexible regulations with a flexible time chart and minimal restrictions.

Based on the objectives of our research, we consider the democratic institutions on the example of Georgia and how:

- ✓ They react and respond during the state of emergency;
- ✓ They are involved in the legislative process;
- ✓ Purpose-oriented and effective are regulations they have adopted;
- ✓ Necessary and proportional are the decisions they have made.

GEORGIAN CONSTITUTIONAL ORDER AND THE STATE OF EMERGENCY LEGAL FRAMEWORK

MECHANISMS FOR DECLARING A STATE OF EMERGENCY IN THE CONSTITUTION OF GEORGIA

According to the 2018 edition of the Constitution of Georgia, Article 71 provides for preconditions for declaring a state of emergency and martial law in the country and sets directives for operating in this regime.

Article 71.3. Constitution of Georgia	Under the supreme law of Georgia, the President of Georgia can upon recommendation by the Prime Minister issue decrees that have the legal force of the Organic Law and which remain in force until the martial law or the state of emergency is revoked. A decree enters into force upon its issuance. A decree is submitted to Parliament immediately. Parliament approves the decision upon its assembly. If Parliament does not approve the decision following a vote, it becomes null and void.
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It should be noted that a separate article on the state of emergency did not exist in the Constitution of Georgia until 2018. For example, in the 2017 edition, the above reservation in Chapter Four (President of Georgia) was:

Article 73, sub-paragraph "j" Constitution of Georgia 13/10/2017 - 23/03/2018 edition	The President... "issues decrees having the force of law during a state of emergency or martial law that shall be valid until the end of the state of emergency or martial law (...); the decrees shall be submitted to Parliament when it is assembled;"
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According to the constitutional provisions, in the previous edition of the Constitution, there was a different principle of distribution of forces during the state of emergency and the role of state institutions was different too. The President did not need a recommendation from the Prime Minister to issue a decree, and the decrees were submitted to Parliament upon convening, and so on. In 2018, this reservation was modified and now it is submitted to the Parliament immediately, i.e. the Parliament is now obliged to convene during a state of emergency. Moreover, in 2017, by the Constitution, the President had 48 hours to submit to the Parliament a decree on declaring a state of emergency and/or to restrict certain rights, but with the latest amendments, he is obliged to submit them to the Parliament immediately. According to the current version of the Constitution of Georgia, the degree of mutual control between the branches of government has increased, but it is another question to what extent has the government managed to effectively implement the new mechanisms in practice.

THE ROLE OF THE PARLIAMENTS IN MANAGING THE STATE OF EMERGENCY BASED ON EXAMPLES OF GEORGIA AND EUROPEAN COUNTRIES

The details of the state of emergency mechanism enshrined in the Constitution of Georgia and the issue of the involvement of the Parliament are also regulated by the "Rules of Procedure of the Parliament of Georgia" according to which **the Parliament shall discuss immediately, and vote without preliminary committee hearings and other relevant procedures on the declaration of a state of emergency or martial law and decrees of the President of Georgia.**" And on the above matters **decisions by Parliament shall be adopted by a majority of the total number of its members.**"


As already mentioned the Parliament immediately starts debating decisions proposed by the President and approves them by relevant majority. Another provision of the Constitution has to be mentioned in the beginning. Namely, Article 44 states that:

Article 44.3. Constitution of Georgia	<p>The Parliament shall meet for the Extraordinary Session upon the declaration of a state of emergency or martial law by the President.</p> <p>The Extraordinary Session continues until the state of emergency or martial law is revoked.</p>
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It is thanks to this provision that flexibility and adaptability of the legal regulation of the state of emergency are possible depending on the aggravation or alleviation of the overall situation. Parliament convenes as soon as a state of emergency is declared by the President and does not dissolve until it is revoked.


In order not to cause violations of conditions for preventing the spread of the pandemic and to ensure social distancing and at the same time adhering to the democratic principles enshrined in the Constitution, the European Par-


liaments started to immediately implement novel methods within the framework of similar constitutional regulations.

In Sweden  for example, political parties agreed to reduce the size of Parliament during face-to-face meetings, therefore, only 55 out of 345 MPs attended voting in the building, making it possible to maintain a proportional system. On April 22, 2020, Kerstin Lundgren, Vice-Speaker of the Riksdag (Swedish Parliament) stated during the second web discussion organized by the Civic IDEA:


“ So far we are managing to keep our model working quite well as has been seen and Norway and Denmark are also opening up... they were using Sweden as an example.”

In Estonia  the Parliament, while working during the pandemic, not only debated the scope and soundness of the state of emergency **but also conducted completely normal legislative activities and amid the parliamentary debates and discussions has successfully passed the first anti-crisis package to support small businesses.** It is clear that these countries are aware of the consequences of rapidly changing worlds and are trying to effectively adapt to new realities and share their successful experiences with their partners.

During the regular international web-discussions organized by the Civic IDEA, the Chairman of the Parliamentary Committee on EU Integration of Ukraine, Irina Kolimpush-Tsintsadze spoke about the experience of the Parliament of Ukraine  in coping with the challenges of the Covid-19 crisis and noted that **the Parliament had successfully implemented a system of online meetings. According to the legislation requirements the sessions had been held in the building but all sanitary requirements (gloves, medical glasses, masks, etc.) had been observed.**

Lithuania  is one of those countries, which rapidly evolves in terms of consuming information society achievements. 80% of internet usage falls to work processes, as almost everything has gone digital. Children receive online education at home, despite having no knowledge of Zoom and other similar platforms before the pandemic and having no appropriate technologies. Authorities effectively managed to equip schools and school spaces with appropriate equipment within two weeks. During the discussions with us, the Deputy Minister of National Security of Lithuania stated that the situation caused by the pandemic was an excellent opportunity for technological development, which would be very useful for the world in the end because people will acquire new cyber skills in a force majeure environment.

Belgium

Belgium  was also able to adapt quickly and effectively to the epidemiological situation. In March, the Belgian House of Representatives amended its Rules of Procedure according to which in certain cases, a member of the Chamber is now considered to be "present" regardless of whether or not he or she is physically present at the Plenary Session and committee meeting. Also, according to the new regulations, members have been given the opportunity to vote electronically or by e-mail. Voting at remote committee meetings is done by a show of hands or verbally, using software capabilities. Voting for the plenary session is done through the digital voting system developed by the IT Department of the Parliament during the pandemic for those members who attend physically and remotely. In May, the experience of the House of Representatives was adopted by the Senate.

Unfortunately, the examples of European countries not only have not been embraced by the Parliament of Georgia but also have been completely ignored. During the web-discussions, the former Speaker of the Parliament of Georgia, Davit Usupashvili, noted that the epidemiological situation in Georgia had clearly shown how our state stood on matchsticks.

“It was clear to me that the Parliament would distance itself from these processes, but I could not imagine it would completely stop working,” - says Davit Usupashvili, the former speaker of the Georgian parliament.

The "framework mechanism" for declaring and managing a state of emergency in Georgia includes the efficient cooperation between the two branches of government - the Executive and the Legislature, in the following order:



At first glance, this mechanism is quite solid, since it contains elements of mutual control and balance between the branches of government and is aimed at limiting authoritarian actions by the executive during the state of emergency; however, it is another matter how it works in practice. Since, today the Parliamentary Majority and the Government are composed of members of one party and the President is elected with the clear support of this party, it is difficult to imagine any parliamentary oversight and critical evaluation of the Executive branch. Besides, the issues of approval of presidential decrees are immediately discussed in the Parliament and voted on without going through preliminary committee hearings and other relevant procedures. When talking about the state of emergency that was declared in Georgia in connection to the spread of Coronavirus, it is important to remember that the Constitution of Georgia delegates the prerogative of decision-making during the state of emergency to the Executive with the reservation that these decisions are subject to parliamentary control and need approval by the legislature. Basically, the constitutional principles of most of the democratic states are practically similar.

Despite the role of Parliament being secondary in this process, as it only reviews decisions that are already in force and only having a negative force (it cannot change, it can only confirm or reject), its role is still very important in preventing the state of emergency turn into an authoritarian regime.



As discussed above, the Georgian "State of emergency mechanism" does not allow Parliament to properly consider the restrictive regulations set out in the Presidential Decree before approving them. Also, according to the Rules of Procedure of the Parliament of Georgia, there is no debate when considering the issue of declaring a state of emergency, which means that the Member of Parliament has his or her powers to ask questions, demand and evaluate replies from the rapporteur, co-rapporteur and the chairperson are significantly limited. This restriction caused a bit of nuisance at the Extraordinary Session of the Parliament of Georgia on April 22, 2020, where members of parliament were not allowed to ask questions to the representatives of the executive branch. Although Salome Samadashvili, a Member of Parliament, applied the right tactics and expressed her protest over the procedure in the remarks part the Speaker of the Parliament did not allow the MP to finish her speech, as he considered her remarks on the state of emergency an attempt to start a discussion and, consequently, immediately turned the microphone off. Eka Beselia, MP, also noted that the procedure and format of the discussions on the Presidential Decree had been conducted incorrectly as according to Article 238 of the Rules of Procedure of the Parliament, "there is no debate" during the discussions on the decision of the President of Georgia on declaring a state of emergency or martial law, however, this legal norm does not deem it impossible to ask questions, therefore, MPs should have been allowed to ask questions to the representative of the Executive branch.


As mentioned before, precisely because the Parliament has a different, more restricted regime than during its normal functioning, it is particularly important to adhere to the constitutional procedures and principles so that its oversight role is not completely lost and the Executive does not/cannot ignore the democratic principle of accountability. Unfortunately, after the establishment of the Covid crisis management regime in 2020, the situation we have in Georgia is completely opposite as the parliamentary oversight component has been virtually lost because of the provisions of the Presidential Decree № 1 of March 21, 2020. It should also be noted that the decree was approved with great enthusiasm by the majority of Parliament - 115 for and 0 against.


The Prime Minister did not "lag behind" the Parliament in this regard. Even though Georgia is a Parliamentary Republic by the Constitutional provisions, the Prime Minister did not appear before the Parliament at any stage of the state of emergency. For example, by the end of the first month of the crisis, instead of the Prime Minister, the head of his staff, who is free from political responsibility, appeared in parliament to demand unconditional and total support from MPs. During the parliamentary speech, the government representative did not even give a brief summary of the results of existing regulations, of how the country had improved its health infrastructure, or what measures had the government taken to save the economy, create jobs, or any other issue on which the population expected responses and visions from the government. Despite a complete information vacuum the Parliament still agreed to adopt the regulations.

THE ROLE AND INFLUENCE OF RELIGIOUS ASSOCIATIONS IN THE MANAGEMENT OF THE EPIDEMIOLOGICAL SITUATION


The first wave of Covid-19 and the mass "explosion" of the virus in the spring of 2020 coincided with various religious holidays, including Easter, which Christendom celebrates in the spring. Religious associations faced significant challenges amid the state of emergency bans. In some countries, this was met with a high sense of duty and responsibility. The clergy urged their parishioners to abide by the regulations, including staying home on Easter night and listening to a live broadcast of the service.

During our regular web-discussions, many speakers spoke about the high responsibility of religious associations in terms of social distancing and "stay at home" policies. In Estonia  and Sweden , for example, both Protestant and Orthodox Easters were celebrated, though, churches followed government instructions and rituals were performed without a parish and were broadcast live.


In Ukraine , many people stayed at home and remotely watched the church service live on Easter night. Virtually all churches in Ukraine performed ecclesiastical rituals remotely, without a parish, except for the largest, the Russian Orthodox Church, which called on people to come and physically attend services. Ms. Irina Klimpush-Tsintsadze stated during our discussions that according to many experts, the appeal and stance of the Russian Church indicated that their goal was to aggravate the crisis in Ukraine by endangering the lives of Ukrainian citizens. The positions of the state and the government were similar. For example, the Minister of Internal Affairs of Ukraine, Arsen Avakov, assessed the actions of the clergy as irresponsible and disrespectful to human life and health.

The Patriarch of Serbia , Irinej, tried until the last minute to persuade the authorities to ease the curfew restrictions before the Easter holiday so that believers could gather and receive Holy Communion in the church. It is noteworthy

too that Patriarch Irinej has some influence over the political life of the country. In addition, the President of Serbia, Aleksandar Vučić, had repeatedly publicly expressed his respect for the Patriarch. Nevertheless, the President met the patriarch's calls very firmly and was immune to his influence and he not only did not ease the restrictions on Easter night but further tightened them and from April 14 introduced a new curfew for a period of one week, which operated from 5 pm to 5 am.

 In Armenia, the Apostolic Church celebrated Easter on April 12. Due to the outbreak of the virus, the clergy began to hold services behind closed doors, while the parishioners watched the service live. The service conducted by the Armenian Catholicos Garegin II in Echmiadzin Cathedral will be published on the official website of the Armenian Church.

The World Patriarch also addressed the Orthodox world and called on believers to pray from their homes: —„Now is the time for personal and social responsibility. Therefore, our dear children, we entreat you as your spiritual father to respond faithfully and patiently to all the difficult but necessary measures proposed by our health authorities and nations. Everything is being done for our protection, for our common good, in order to contain the spread of this virus. Our liberation from this distress depends entirely on our own cooperation. Perhaps some of you have felt that these drastic measures undermine or harm our faith. However, that which is at stake is not our faith it is the faithful. It is not Christ it is our Christians. It is not the divine-man but human beings."

Unfortunately, the  Georgian Patriarchate did not acknowledge the above-mentioned attitudes and the plea of the World Patriarch, thus becoming one of those countries that did not follow the recommendations against the virus, opposed the government and held the liturgy as usual. The Georgian Orthodox Church jeopardized the lives of people and called on parishioners to physically attend Easter night liturgy. Regrettably, the Government also proved powerless before the church. Despite the restrictions on gathering and

movement during the period, large numbers of people gathered in temples in enclosed spaces. By Ordinance №252 of April 16, 2020, the Government restricted any movement by mechanical vehicles for a certain period, although the clergy ignored this ban and they still drove their own SUVs. The statement of the Prime Minister Gakharia in this regard which unequivocally showed the victory of the Church authority over state institutions was extremely damaging to the state:

“ During the citywide car movement ban, it was "unimaginable" and "impossible" for him not to allow clergy to travel on the Easter night”

It is also noteworthy that the clergy were not fined for violating the regulations. The disobedience of the Georgian Church was so stark and aggressive that even CNN responded to it with an article - „Georgia's defiant Orthodox church will host Easter worshipers despite lockdown“:

“ The powerful Georgian Orthodox Church is planning major celebrations that public health officials say could prove deadly... If huge crowds turn out for Easter celebrations, in contravention of calls from leading public health officials, Georgia's record of success in fighting coronavirus could be in doubt.”

It is clear that in this case too, the Georgian Church has tried its hand at power and has demonstrated its influence on the Government and the Georgian political community in general. This explains its insistence on holding liturgy in churches, although most Orthodox churches in different parts of the world performed the service without parishioners.

CONSTITUTIONAL LIMITS FOR RESTRICTIONS OF FUNDAMENTAL RIGHTS

The Constitution of Georgia gives President the ability to limit by decree the rights listed in Articles 13, 14, 15, 17, 18, 19, 21 and 26 of the Constitution, which include, respectively -

- Right to human liberty,
- Right to freedom of movement,
- Right to personal and family life,
- Right to personal space and privacy of communication,
- Right to freedom of opinion, information, mass media and the internet,
- Right to fair administrative proceedings,
- Right to access to public information,
- Right to informational self-determination and compensation for damage inflicted by public authority,
- Right to property,
- Right to freedom of assembly,
- Right to freedom of labour,
- Right to freedom of trade unions,
- Right to strike and freedom of enterprise.

In addition, as mentioned above, the Presidential Decree enters into force from the moment of its issuance. Here, it is necessary to clarify what the Constitution says.

“ President of Georgia shall have the right to restrict by decree...across the entire territory of Georgia or in any part of it.”

Paragraph 4 of Article 71 of the Constitution of Georgia

As the text makes it clear, the president "has the right" and not the obligation or necessity. Accordingly, it is for the sake of reasonableness and necessity, by keeping the balance between the rights and the requirements of the state of emergency, that the President should exercise that power when issuing any decree.

In fact, the Presidential Decree № 1 of 21 March, 2020 includes only a list of articles of the Constitution that had to be limited by the decree, and the right to determine the scope, format and duration of the restriction was granted to the Government of Georgia. Besides, at that specific moment, not a single explanation was offered about the urgency terms of the necessity and reasonableness of all possible right restricting. For example, Article 1 of

the Decree restricted the freedom of movement provided for in Article 14 of the Constitution of Georgia, while at the same time it granted the Government of Georgia the right to define isolation and quarantine rules.

On March 23, 2020, the Government of Georgia indeed adopted a Resolution №181 on approving the measures to be taken to prevent the spread of the new Coronavirus in Georgia, within the framework of which it stipulated in detail,

- ✓ Limits of restriction of fundamental rights enshrined in the Constitution,
- ✓ The economy was paralyzed. Food outlets were shut down and most of the companies, depending on their ability, switched to remote operation mode,
- ✓ Lots of people lost their jobs and therefore their source of income,
- ✓ Intercity movement and public transport traffic in the capital were banned, and Resolution №252 of April 16, 2020, restricted any movement of vehicles for a certain period.

COOPERATION AND MUTUAL CONTROL BETWEEN INSTITUTIONS DURING THE STATE OF EMERGENCY

As we have noted above, according to Article 71 of the Constitution of Georgia, a Presidential Decree requires the approval of the Parliament, while the Government of Georgia adopts an Ordinance through a standard procedure and it cannot be subjected to an active parliamentary control. **Particularly, in accordance with the first paragraph of Article 39 of the Rules of Procedure of the Parliament of Georgia, "committee is authorized to examine the compliance of the normative acts of the Government of Georgia, of Minister, of the head of other state institution of the executive branch to the Georgian legislation", and according to the third paragraph, "In cases of failure in fulfilling an obligation or recommendation outlined in this article, the committee ma-**

kes an appropriate decision." Consequently, the Parliament of Georgia cannot exercise effective control over the by-laws already adopted by the Government of Georgia and is limited to recommendations only.

The president, therefore, by formally bypassing the Constitution handed over the reins of governance entirely to the Government, as he empowered the Government to adopt regulations under the state of emergency. By doing so, he **neglecting the purpose and interest protected by the Constitution for the restrictions imposed during the state of emergency to have the legitimacy of both the executive and the legislature, on the one hand, and to be fully relevant to the situation, on the other.**

According to the collection of opinions and reports of the Venice Commission on the state of emergency, **in any case, there should be a parliamentary monitoring mechanism for declaring and extending (and terminating) a state of emergency.** Otherwise, there is a suspicion that **"the pandemic is in danger of becoming an unlimited excuse that can be used to justify increasing restrictions on personal freedoms and greater intervention in different spheres of everyday life."** Consequently, for this "suspicion" to fail, the Executive should be empowered to act singlehandedly for as little time as possible and which will be sufficient for the legislature to convene and discuss the matter. At the same time, absolutely restrictive or empowering provisions in decisions should be reduced to a minimum and there should be constant attempts of debate and balance. According to Professor Ackerman, the regime operating under one decision can be in force for one or at most - two weeks. In connection to severe restrictions imposed under a state of emergency, he quotes Abraham Lincoln as saying:

“ Are all the laws but one to go unexecuted, and the Government itself go to pieces lest that one be violated?”

Giving the Prime Minister authority to do whatever he wishes for an indefinite period of time implies, in itself, a course towards authoritarian rule. In this process, **the panic accompanying the pandemic is in turn transformed into an engine of bureaucratic repression.** Unfortunately, the scenario that unfolded in Georgia exactly matched Ackerman's forecast. Instead of containing public panic and convincing citizens that everything is under control because the state had developed effective short-term measures against the spread of the virus, the government opted for a much simpler way that ran through total, gross and disproportionate restrictions on basic human rights and freedoms. Simply put, **human rights were merely abolished during the state of emergency in Georgia in 2020.**

To prevent the state of emergency to be indefinite and allow the public to sensibly plan the future, to allow the businesses to make economic forecasts and continue to operate on it, there needs to be a mechanism for extending the state of emergency to maximize the prevention of singlehanded, politically motivated decisions. In Professor Ackerman's "Emergency Constitution", a model of such a mechanism is proposed, according to which, **the state of emergency should be extended only if it is supported by a majority, which in turn should deal with the emergency situation in the shortest possible time - for two or three months. The extension should need a super-majority - 60% for the next two months, 70% after a month, and 80% for the following month. Before each vote, there should be a debate in which politicians, the press and the rest of the public will be obliged to ask a question once again: Is this state of emergency really necessary?**



In response to Ackerman's argument, it would be fair to say that despite the violation of the Rule of Law and the standard requirements of democracy, the declaration of a state of emergency in Georgia in the Spring of 2020 had a full public support and legitimacy. During the web-discussions, Member of Parliament of Georgia, **Elene Khoshtaria** said that **"because of Covid,**

the citizen is ready to give up human rights for the sake of protection from this epidemic. The issue of the rule of law is often problematic in the post-Soviet space. The foundations of a young liberal-democratic state need to be toughened by setting more precedents." During the same discussions, Davit Usupashvili also spoke about the need to mobilize public opinion. He noted that **"this pandemic is not an enemy you can chase across the border and enjoy peace. It can come back again. That is why the topic of forming a public opinion is very important, it is very important to set precedents. We shall not allow the precedent of imposing a state of emergency to be deemed a weapon to punish anyone, we shall also look at this aspect carefully and the Constitutional Court shall not approve that the imposition of a state of emergency is always justified in every way."**

INTERNATIONAL EXPERIENCE

As part of our research, in addition to Georgia, we also would like to review paths chosen by other states under the state of emergency regime. We would like to evaluate the reactions of their democratic institutions and actions taken to combat the pandemic, as well as regulations adopted and the issue of their usefulness and proportionality. The international experience exactly makes it possible to share best practices and use them to take rational and effective steps in the country.

STATE OF EMERGENCY IN SWEDEN AND ESTONIA

Sweden  and Estonia  are good examples of how to deal effectively with the epidemiological situation, where transparent measures against the virus were introduced quickly and effectively. They did not need to adopt strict isolation rules and regulations because people acted with a high sense of responsibility and adhered to the rules of social distancing. **The introduction**

of such approaches has been facilitated by the cultural peculiarities of the Nordic countries. It was during the first phase of the pandemic that the Estonians jokingly worried "when would they return to normal social distancing since the distance of 2 meters seemed too close".😊

Naturally, the sound healthcare system has played a positive role: the hospitals were well equipped and ready to overcome the crisis. Elderly people who belonged to the risk groups stayed at home for safety reasons. **Due to a ban on public gatherings, educational institutions in the countries with maximum levels of internalization and computerization instantly switched to distance learning.** It is important to note that Estonia was already well experienced and trained in digital technologies before the Coronavirus outbreak, so they managed to move online easily and did not face any problems in this regard.

STATE OF EMERGENCY IN POLAND

Unfortunately, in some states, the use of restrictions for political purposes under a state of emergency has also been reported. For example, in recent years in Poland, the restrictions of women's reproductive rights at the legislative level have been a dynamic and resonant topic and have been accompanied by mass protests and resistance. **Under COVID-19 the right to protest through demonstrations was restricted in Poland as well as around the world.** The Polish parliament is trying to exploit this opportunity to pass legislation banning abortion. In response to these processes, the Council of Europe Commissioner for Human Rights, Dunja Mijatović stated that

“ In this extraordinary time of the COVID-19 pandemic, politicians and decision-makers must resist a temptation to push through measures that are incompatible with human rights.”

In addition, the active spread of the virus in Poland coincided with the midpoint period of the presidential election campaign. Fearing that a pandemic crisis could destroy incumbent President Andrzej Duda's ratings and popularity among the population, President Duda's political party Law and Justice (PiS) made every effort to hold elections despite the pandemic crisis. Consequently, the Government did not declare a state of a natural disaster (which includes an epidemic), which in turn would halt the election preparations. Instead, the executive branch made legislative changes that replaced the standard voting rule in elections with postal voting that jeopardized the constitutional principle of universal suffrage. **The European Union, the OSCE, and even the Polish Election Commission have expressed concern about it because "presidential elections are unlikely to be free or fair using postal ballot papers."** Even during the election campaign, of course, the candidates did not enjoy equal opportunities, as the incumbent President used administrative resources to commute and campaign, while other candidates were in self-isolation. However, following the critical statements by courts and opposition, the Justice and Law Party was forced to back off a few days before the vote and postpone the elections.

STATE OF EMERGENCY IN HUNGARY

Hungary too followed a suit of the Georgian model of distribution of power during a state of emergency. **As discussed above, in Georgia, the President has handed over the constitutional powers to the Government whose regulations in turn are not subjected to active parliamentary control.** In Hungary, the Parliament has delegated its powers to the Prime Minister. Such a distribution of powers among branches of government is unprecedented across the EU. On March 30, 2020, the Hungarian Parliament presented the Prime Minister with the so-called Enabling Act, which granted him „Dictatorial powers hidden under the cover of the state of emergency declared to deal with COVID-19”.

This particular Act gives the Executive powers to extend the term of this very Act until the state of emergency is over. And the issue of ending the state of emergency is assessed and decided by the government itself without any parliamentary control. Georgia faces the same problem. Although the restrictions imposed by the government decrees are limited to the period set by the same decrees, the Prime Minister may at any time extend this period and/or extend restrictions.

STATE OF EMERGENCY IN THE CZECH REPUBLIC

On April 29, 2020, during the third web-discussions on the challenges of COVID-19 organized by the NGO "Civic IDEA", on the Czech Government's reaction to the pandemic the rapporteur Philip Jirous noted:

“The government continues to send very confusing messages and, basically there is a power struggle among coalition members. Also, it seems that some of them are mainly focused on their own PR and not on figuring out how to deal with this (crisis) effectively. Even more striking is the fact that the government does not make decisions based on any data. No research is carried out on the necessary issues that would serve as arguments for where and when actions should start or end. Therefore, it is very bizarre and confusing.”

During the same web-discussions, the speaker from Germany, Didi Kirsten Tatlow spoke about the paths chosen by the governments of those states whose actions embrace autocratic goals:

“In a dictatorship, there are only Leninist positions where purpose justifies the means. So everything is justified if it produces some result. Every minute I hear this logic, I think we need to realize what we are dealing with. We are dealing with systems that are ready to sacrifice everything in order to achieve very specific political goals.”

STATE OF EMERGENCY IN TURKEY

Turkish media, like in Poland and the Czech Republic also reported on the instances of political manipulations during the Covid pandemic. In particular, Ali Karakoç, a doctor of medicine and Head of Turkish Medical Association in Ankara, accused the Turkish government of not releasing real numbers of daily COVID-19 registered cases and deaths related to the virus. In an interview with the Turkish daily - Cumhuriyet, Karakoç stated that the health ministry announces 1,500 daily cases a day but this is even less than the numbers in Ankara alone. In addition, according to the Head of Medical Association, there are not enough beds in hospitals for the infected patients, human resources are drained and doctors often have to choose which patient to treat. Besides, the medical staff is exhausted from working under intense conditions and the Government is not able to provide them with the necessary equipment, risking their lives. However, during the pandemic, the power grab by the Turkish authorities and their use for political purposes did not end there. According to human rights activists, Recep Tayyip Erdogan is in no need to take advantage of the current epidemiological situation caused by the Coronavirus, as it was in the case of the Hungarian Prime Minister since all the power is already in his hands. However, the Turkish Government is determined to take more control of the media content during the crisis. According to BBC, hundreds have been arrested for "provocative posts" about Covid-19 on social media. Hurrem Sonmez, a lawyer, who represents defendants in freedom of speech cases, says the epidemic outbreak is a moment of opportunity for President Erdogan as the pandemic makes society and the opposition weaker.

STATE OF EMERGENCY IN THE AZERBAIJAN

Azerbaijani President Ilham Aliyev took advantage of the epidemiological situation during the Novruz holiday and attacked the opposition by threatening that their role during the Coronavirus pandemic crisis might necessitate tougher measures against them. According to him, the opposition will try to incite unrest and panic in the country through provocations. This autocratic attitude of the President was also evident in his statement, according to which, in case a state of emergency is declared isolating the opposition representatives would become a historical necessity. Critics argue that the government in Baku closed borders with Iran when it was too late, prompting the spread of the virus in the country. Thus, the Coronavirus crisis in Azerbaijan can be used in a directed fight against the opposition, which has been the case for the last two years. This is evidenced by the fact that shortly after the President's address, some opposition members were attacked by security forces and some of them were even arrested.

GERMAN ECONOMY IN A PANDEMIC

In this respect, the economic indicators of other states were no different either. Due to the pandemic, of course, every single country has experienced an economic downturn, and GDP numbers have decreased significantly, although few states began to actively work to strengthen the economy, for example, in the second half of 2020, Germany significantly cut VAT, took appropriate measures to attract investment and increase consumption. At this rate, Germany expects GDP growth of 5¼% by 2021. In addition, on April 29, 2020, during the third web-discussions on the challenges of COVID-19 organized by the NGO "Civic IDEA", the rapporteur, Kirsten Tatlow spoke about actions taken by the German Government during the pandemic and assessed them against the general background in Europe: „The German government instantly and effectively offered

assistance to independent "freelance" businesses and workers. The amount of 5000 euros was offered to almost everyone who needed help or declared to be in need of the amount. In fact, this offer spread quite quickly among society and many grabbed the opportunity. The Government has received hundreds of thousands of applications for this assistance. 5000 Euros, of course, is not enough to save a business or a freelancer who lost contracts due to the pandemic, but it was a gesture of support and solidarity."

THE PROPORTIONALITY ISSUE CONCERNING RESTRICTIONS AND SANCTIONS IN GEORGIA

As it can be deduced from the examples already discussed, in the developed democracies experts could not allow themselves to remain calm and Georgia was no exception here too.

The problems of the state of emergency mode in Georgian are not limited to an imbalance of power distribution between the branches of government. Restrictive regulations set by the government ordinances and presidential decrees that fail to meet the standard of foreseeability fail to stand up to any scrutiny.

For example, the Presidential Decree №1 of March 21, 2020 stipulates that administrative liability will result in cases of "violations of the regime of the state of emergency determined by this Decree and the ordinance of the Government of Georgia", and if an administratively fined person repeatedly commits the same act, criminal liability will arise. Such phrasing of the norm does not correspond to the principle of foreseeability, as "violations of the regime of the state of emergency" is a general and broad concept. Under it, one can consider punitive actions of different severity and class. Such an approach is plainly unjust and disproportionate. A severe form of liability, such as criminal liability, should be imposed on a person only in cases where it is specifically prescribed by law. The present case is a clear example of the disproportionate use of force by the government. In any democratic country, such provisions would have been the subject of many discussions and parliamentary debates, alas, not in our country.

It is easy to handle the epidemiological situation under strict regulations and sanctions when civil rights are limited and society lacks the ability to resist, the state is singlehandedly run by only one branch of government, and the legislature and judiciary are only formally involved in the proceedings, yet with insignificant intensity. "That is why the government is extremely tempted to make its life easier and instantaneously prevent, limit and close everything that seems to be the cause of a present and imminent catastrophe. A bit more prudent and accountable government after coming out of the first shock..."

It should also be noted that Article 8 of the Presidential Decree № 1 of 21 March, 2020, provides for unreasonably high fines. According to the decree, despite the seriousness of the act, the violation of the state of emergency resulted in an administrative liability - a fine of 3,000 GEL for individuals and 15,000 GEL for legal entities. According to Radio Liberty, from March 27 to April 10, 2020, fines amounting to more than 9 million GEL were imposed for violations of the state of emergency and quarantine rules. Restrictions were expanded by the government ordinance on 1 April and a curfew and other regulations were added to the state of emergency. For example,

- It was forbidden for more than 3 people to sit in a car at the same time and to place a passenger in the seat next to the driver,
- The curfew was imposed, which meant that from 9 pm to 6 am, people were forbidden to be outdoors,
- Gathering of more than 3 people was forbidden and two-meter obligatory social distancing was imposed outdoors.

To call for a better illustration, if the spouses did not keep a two-meter distance while walking during the term of these regulations the police would consider that as giving them authority to fine each of the spouses with 3000 GEL. As it was

forbidden to allow a passenger next to the driver in a car the families consisting of 4 members and already living in one space and belonging to the same "cluster", were restricted from traveling by one car. In each case of violation of the above rules, each person was fined 3000 GEL. It is obvious that such restrictions and sanctions are completely irrational as their purpose and fitness are unclear:

- Why are those individuals who live in the same space every day and spend time together are prohibited to be closer than two meters from each other?
- The only answer to this question is that the Government has just avoided going through the path of complicated and detailed regulations and arbitrarily introduced a regime of absolute bans, which in turn have brought numerous absurd bans in the daily lives of citizens.

Nastasia Arabuli, a Radio Liberty journalist, spoke to several people fined during the state of emergency. These interviews further illustrate that government-imposed regulations were unreasonable and disproportionate. Here we offer one of the stories: „Lado Absandze was fined by the Criminal Police officers before the state of emergency measures got tougher on March 30. He went to one of the supermarkets in Zugdidi with his son to buy products and waited outside for his turn. It was at this time that the Criminal Police officers came to him, asked him to follow them to the car and fined him for not keeping the obligatory distance of two meters from his own son. His son, who is an adult, did not get any fine.

Lado appealed to the Police Department, where, as he says, they did not believe that he had been fined just for queuing up at the store with his own son and kept asking him whether he had committed any other violations that could justify the fine." We followed this story through to find out that, luckily, Lado was eventually cleared and did not have to pay.

Equally important in terms of restrictions on freedom of movement is the fact that the Government Ordinance №305 of 14 May 2020 lifted the restriction on **gathering of more than 3 people, both indoors and outdoors although at the same time left intact restrictions on 3 people commuting by car**, raising many questions among society. It was not clear to people what purpose the "3 people restriction" rule was to serve when commuting by car, while, by the new ordinance, it was permitted for up to 10 people to gather in open and closed spaces. Prime Minister Gakharia offered the following explanation in this regard:

“**Despite everything this restriction carries a very important epidemiological meaning as our doctors suggest and we do believe them, you know.**”

The Prime Minister's explanation is unequivocally ambiguous and unsubstantiated. It seeks to get validity from a person with high legitimacy and is naturally incompatible with elementary principles of accountability on the one hand and transparency of regulations, on the other. This format of restriction does not even meet the legitimate public purpose and usefulness test associated with the interference with rights because it has no logical explanation.

Why does a gathering of 4 people in a car pose a higher risk of spreading the virus than a gathering of 10 people in an enclosed area?

The same story was repeated on May 23, 2020, when the Government passed an ordinance on N322 approving the isolation and quarantine rules, according to which the **restrictions on gathering of more than 3 people on all kinds of vehicles were lifted except for taxis.**

The Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, Ekaterine Tika-radze, explained the decision by saying that

taxis change passengers frequently and there is a risk of spreading the disease. It is obvious that the Minister's explanation is illogical and unreasonable. For example, if 3 people want to travel by taxi for the same purpose and/or in the same direction, they will have to use two taxis, as all three of them cannot be accommodated by a taxi driver in one car due to restrictions. Eventually, these three individuals will still meet each other at their destination, will still have contact and spread the disease. Moreover, if we follow the logic of the Minister, in this case, the probability of spread has doubled as they are transported by two taxis. Thus, the real purpose of the government to keep the restrictions only for taxis is unclear given that many people have lost their jobs, economic conditions have significantly deteriorated and in this case, for example, a family of 3 who needs to travel by taxi will face double costs to commute.

Managing the epidemiological situation became much easier when the Georgian government "locked" the country and suspended socio-economic processes. The country stood out for its small numbers of infected people and at first glance, the measures taken by the government proved to be effective, although this is only a small part of the full picture. On May 29, 2020, Geostat (National Statistics of Georgia) published the economic growth indicators for April 2020, according to which the Georgian economy had shrunk by 16% in May compared to the same period in 2019. This was the highest rate of economic downturn for a particular month over the past decade. In the first 4 months of 2020, the rate of economic decline was 3.6%. Of course, not only Georgia but also the whole world has been affected by economic problems caused by Covid-19 but several countries, in addition to fighting against the pandemic have acted appropriately to stop the economic downturn. For example, "Spain has developed so-called short-term work schemes (ERTEs), which have played an important role in halting the trend of job cuts. According to economists at this rate by 2021 the annual

GDP growth rate in Spain should increase by 7%. Similarly, in Latvia in the first quarter of 2020, the economy shrank by 2.9% compared to the previous quarter; however, the Government has developed an incentive package aimed at boosting consumption and investment growth, as in the case of Germany, which in turn should lead to a 6% increase in GDP by 2021. Unfortunately, the Georgian government has not embraced the approach of European states and sacrificed the country's economy to the fight against the pandemic.

CONCLUSION

The cases discussed above represent clear examples that the pandemic has hit the world economy on a global scale and almost every country has suffered significant damages in this regard, although actions of governments were aimed not only at strengthening health systems but also at maintaining economic stability, which cannot be said about Georgia. **According to the data from September 2020, the national currency of Georgia depreciated by 4.35 Tetri against the US dollar and the value of one dollar reached 3.3332 GEL. And in relation to the Euro, the exchange rate depreciated by 5.2 Tetri and the value of one Euro became 3.88 GEL.**

The big picture allows for the government's decisions to be carefully evaluated. Today, it is clear that the measures taken by the Government were catastrophic for the Georgian economy that was unstable even before the pandemic. Instead of a short-term model and a concrete action plan with minimal restrictions of rights that should have been offered by the Executive and the Parliament the Georgian society instead was granted strict restrictions announced by the Government. Despite the systematic removal of restrictions, citizens have lost their sense of stability because the government could at any time impose the same or harsher restrictions under a new ordinance. In addition to all this, is the fact that due to the forthcoming

elections or, more generally, due to the lack of the medium to long-term plans the Georgian Executive refuses to hold a public debate in the Parliament. This sort of attitude intensifies a feeling of confusion and hopelessness in society.

As we can see, both in the South Caucasus and in the Eastern European countries there are numerous facts of a "temptation" for a power grab. It is quite a difficult challenge to create a strong constitutional regime under a state of emergency as it is always in danger of being politically influenced. Even the EU member states could not be safe from it, as we have seen in Polish and Hungarian examples. Accordingly, it is necessary to develop a mechanism that will better protect the principle of separation of powers and the interest of exercising civil rights even within a state of emergency. Otherwise, the state will be entirely dependent on the goodwill of politicians, which could lead the economic and social development of the country to a certain catastrophe. Unless the appropriate precautionary steps are taken, the emergency measures, as is their nature, will continue to exist for longer than necessary. According to the Venice Commission, the most serious human rights violations take place in the state of emergency situations. The Parliamentary Assembly of the Council of Europe stated that

„The need for security often leads governments to adopt exceptional measures. These must be truly exceptional, as no State has the right to disregard the principle of the rule of law, even in extreme situations. At all events, there must be statutory guarantees preventing any misuse of exceptional measures“.

Once the pandemic is over, states will face new challenges in both, socio-economic and democratic development because no one knows how easily governments will relinquish their increased powers under a state of emergency. Countries with weak democratic traditions and fragile institutions are particularly at risk.

“Fighting the pandemic with a “locked-in” attitude may create a “less open, less free, and less prosperous world.”

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Virus of Urgency
Constitutional Order in Georgia & Responses to Covid 19 Crisis
Responses from Democracies



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