

Special Statement of the Public Defender of Georgia on the State of Emergency

On March 21, 2020, due to the threat of the spread of epidemic throughout Georgia, the President of Georgia declared a state of emergency until April 21, 2020. After the declaration, the President issued a decree, which took effect upon publication.

The state of emergency restricts the rights enshrined in Articles 13, 14, 15, 18, 19, 21 and 26 of the Constitution of Georgia in various respects. These rights are: (a) Right to liberty; (b) Freedom of movement; (c) Right to family and private life, privacy and communication; (d) The right to fair administrative proceedings, access to public information, informational self-determination and compensation for the damages inflicted by public authorities; (e) Property rights; (f) Freedom of assembly; (g) Freedom of labour, freedom of trade union, the right to strike and freedom of entrepreneurial activity. The decree also sets out some regulations.

Given the high public interest, the Public Defender of Georgia considers it necessary to further explain the legal regime of the state of emergency, restricted rights and new regulations related to human rights.

According to the practice of the European Court of Human Rights, the state of emergency: must be actual and imminent; must affect the population; must constitute a threat to the organised life of the community; the crisis or danger should be exceptional in that the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health and order are plainly inadequate.

The State has the power to restrict certain human rights during the state of emergency, but this discretion is not unlimited. Each measure taken by the State must be strictly required by the exigencies of the situation. It is important to bear in mind various factors, including whether or not the continuation of specific measures is justified, and whether there is other, less restrictive alternative.

According to Georgian legislation, the state of emergency is a temporary measure, which is declared in accordance with Georgian legislation for an epidemic and other reasons, when state bodies lack the capacity to fulfil their constitutional duties normally. The state of emergency takes effect upon the promulgation of the President's order.

During the state of emergency, the President of Georgia shall issue decrees that have the force of the organic law. The decree shall be promulgated immediately and shall take effect upon its official publication. If the Parliament does not approve the decision, it shall become null and void.

It should be noted that the state of emergency declared on March 21, 2020 does not restrict "the rights to freedom of opinion, information, mass media and the internet" set forth in Article 17 of the Constitution of Georgia. Therefore, the restrictions do not apply to the means of dissemination of information and opinion, such as mass media, the Internet, press, etc.

The state of emergency restricts the following rights:

1. According to the decree of the President of Georgia on the state of emergency, the Government shall be entitled to restrict the **right to liberty** enshrined in Article 13 of the Constitution of Georgia. In case of the violation of the isolation or quarantine rules established by the Government of Georgia, the relevant state bodies designated by law shall be allowed to forcibly transfer a person to a place selected by the Government of Georgia. It is important for the Government to clearly and comprehensively specify, by the relevant decree, the conditions of mandatory isolation and quarantine and the categories of persons subject to isolation and quarantine.

2. The Government of Georgia, with the view of limiting the **freedom of movement** enshrined in Article 14 of the Constitution, shall be entitled to prescribe:

- Rules of isolation and quarantine
- Rules different from the currently applied legislation on freight and passenger transportation on the territory of Georgia

International passenger travel by air, road and sea shall also be halted, with the exception specified in the Government's decree.

It should be noted that freedom of movement is not restricted within the country, but this does not rule out restrictions in the future. Therefore, in the event of imposition of such a restriction, it is important to detail conditions and to properly inform the public by the mass media.

3. In terms of the right to private and family life, privacy and communication enshrined in Article 15 of the Constitution of Georgia, only the defendants and convicts' right to visits have been restricted in penitentiary establishments.

4. The decree of the President of Georgia also empowers the Government to prescribe different rules of public service delivery and administrative proceedings, in terms of restricting the **fair administrative proceedings, access to public information, informational self-determination and compensation for the damages inflicted by public authorities** under Article 18 of the Constitution. For example, this means that it is possible to prescribe different rules for requesting information from public agencies and/or reviewing administrative complaints.

5. The decree of the President of Georgia empowers the Government, if necessary, to restrict the **right to property** enshrined in Article 19 of the Constitution of Georgia, in particular, to use the property and other material resources of natural and legal persons for quarantine, isolation and medical purposes.

It should be noted that according to Article 4 (i) of the Law of Georgia on State of Emergency, the use of property during emergency necessarily implies an obligation to provide adequate compensation after the state of emergency is completed.

In addition, paragraph 3 of Article 19 - “the expropriation of property shall be admissible in cases directly provided for by law, based on a court decision or in the case of urgent necessity established by the organic law, provided that preliminary, full and fair compensation is paid” remains in force.

6. The decree also restricts the right of persons **to assemble publicly and unarmed, without prior permission** under Article 21 of the Constitution. It is noteworthy that the decree does not specify the permissible limit of the number of participants of the assembly, or exceptions to this limitation to be implemented by the governmental decree. Therefore, at this stage any assembly is prohibited, in particular:

- Assembly is defined under the Law of Georgia on Assemblies and Demonstrations as *“an indoor or outdoor gathering of a group of citizens, a meeting in public places to express solidarity or protest”*
- Demonstration is defined under the Law of Georgia on Assemblies and Demonstrations as *“an assembly of citizens, mass public march, and street demonstration to express solidarity or protest, or march using posters, slogans, banners and other visible means”*
- Gathering of people - we do not have a legislative definition of this term, so we must assume it to be any gathering of people at a certain place (indoors or outdoors). It should not include the collective, implied gathering of people (transportation, job specifications, etc.).

Exceptions may be made to this rule by the Government’s decree.

7. Restrictions apply to **freedom of labour and entrepreneurial activity** enshrined in Article 26 of the Constitution of Georgia. Namely:

- The entities of private law designated by the decree of the Government of Georgia may be prohibited or restricted from or tasked with performing certain activities in accordance with the procedure prescribed by the same decree. It is important to specify in the governmental decree the activities that are subject to restrictions;
- The decree of the Government of Georgia may prescribe special sanitary and hygienic rules for natural and legal persons and public institutions;
- The Government of Georgia may, if necessary, regulate prices for essentials, medical services, medicines and medical substances important for life and health;

In addition, the decree of the President of Georgia stipulates that the Government of Georgia shall be empowered to mobilize persons with appropriate medical education and authority in accordance with the procedure established by the decree of the Government of Georgia. In addition, the Government shall have the right to prescribe regulations (rules and conditions) different from the rule established by the Law of Georgia on Education.

It is noteworthy that, in addition to limiting the above rights, various regulations have been imposed in a number of areas. Namely,

1. The Minister of Justice of Georgia has been empowered to ensure the protection of the statutory regime by (1) probationers and (2) persons released on parole, as well as to regulate their arrival at a place and time prescribed by (3) probation officers according to the rule different from Georgian legislation. In this case, relevant provisional rules should be developed and different rules should be established by the Ministry of Justice.

2. The trials provided for by the Criminal Procedure Code of Georgia may be held remotely, by using electronic means of communication. In case of holding a trial in this manner, no person participating in the trial shall have the right to refuse to attend the trial remotely on the ground of wanting to attend it physically.

Thus, the special regulation shall apply only to the hearing of criminal cases that are held remotely, by using electronic means of communication. The Public Defender's Office will, as far as possible, observe the application of this rule.

It is important to note that all natural and legal persons are obliged to obey the regime of emergency. Otherwise, individuals will be fined GEL 3,000 and legal entities - GEL 15,000, while the repeated violation of the regime by a person fined under administrative rules shall result in criminal liability that carries a sentence of up to 3 years in prison. And the legal entity shall be punished with a fine, suspension of its activity or with liquidation and a fine.

According to the presidential decree, law enforcement agencies shall be entitled to use coercive measures provided for by law to protect the regime established during the state of emergency.¹

According to Georgian legislation, declaring a state of emergency does not cause suspension of the activities of the Public Defender. The Public Defender's Office will proactively monitor the ongoing developments and will review the complaints/applications of citizens.

¹ Coercive measures include physical force, special equipment and firearms. Special equipment include: bulletproof vests, helmets, shields, gas masks and other personal protective equipment, handcuffs and other restraining equipment, special batons, tear gas, pepper gas, acoustic devices, non-lethal weapons (including non-lethal shells), psychological thunder-flash devices, means of forcedly stopping vehicles, water cannons, armoured vehicles and other special vehicles, special paint, police dogs and horses, electroshock devices and capturing nets.