

1 YEAR OF THE *de facto* STATE OF EMERGENCY IN GEORGIA AND HUMAN RIGHTS DURING PANDEMIC

INTERIM REPORT





ევროკავშირი
საქართველოსთვის
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Key Findings

A. Regarding the Parliament of Georgia

1. The Parliament of Georgia has fully delegated the authority to restrict the basic human rights during the pandemics to the Executive branch.
2. In a pandemic, the role of parliament in restricting basic human rights is effectively exhausted by just delegating powers to the Executive.
3. On December 29, the Parliament supported the extension of the delegated authority to the executive by 6 months. The decision was reached in the first reading.
4. The effectiveness of parliamentary oversight has been weakened by the boycott of the opposition parties to enter the Parliament.
5. In the aftermath of the October 31, 2020, parliamentary elections, oversight over the executive in terms of pandemic management is ineffective.
6. By the Members of the 10th convocation of Parliament, only 3 questions were sent to the Executive with regards to human rights. The executive has not responded to any of them. The time limit to respond set by the Rules of Procedure of the Parliament is already exhausted for 2 of the questions.

B. Regarding the Executive Branch

1. All major decisions on pandemic management issues in Georgia, including the restriction of basic human rights, are initiated by the Interagency Council, which is the deliberative body of the government. All members of the Executive simultaneously are members of the Council too. Interagency Council has no rules of the procedures. The government only determined its composition.
2. The meetings of the Interagency Council are closed. The Georgian government has not yet responded to our written request to attend these meetings.
3. The Operational Headquarters is established on the premises of the National Security Council and is accountable to the Interagency Council. One of the functions of the Operational Headquarters is to issue the permits/passes (granting the freedom of movement during the curfew).
4. In the process of issuing permits/passes, several legal problems pose risks of unequal treatment, circumvention of the formal order, and violation of several fundamental rights.
5. The impression remains, that the executive cannot cope with the organizational burden caused by the prolonged curfew.

6. The risks of issuing permits/passes are exacerbated by the complete opacity of the process. E.g. The body that coordinates permits/passes does not process the information on how many people across the country enjoy having the so-called Multiple- pass.

Curfew

1. There is no research publicly available conducted within Georgia that would assess the extent of the positive effects of the current curfew regime and the degree of its effectiveness in terms of pandemic retention [It is unknown whether such a document exists].
2. According to Google, despite the curfew, the number of people staying at their places of residence has increased by only 2 percent in the last 4 months [compared to the pre-pandemic indicator].
3. The impression remains that the state does not use the curfew as an extremely necessary, narrowly tailored measure to the exigencies. The duration of the curfew calls into question the proportionality of this instrument.

Judicial and Civil Oversight

1. The proper exercise of civil oversight is substantially impeded by the restriction of access to information. Public institutions usually do not proactively publish many important pandemic-related data.
2. The vast majority of responses to public information requests provided by public institutions were issued in violation of the deadlines provided by law. Moreover, the data provided often proved to be incomplete.
3. It is clear that both the common courts and the Constitutional Court do not respond promptly to current systemic legal problems related to the pandemic.

Regarding the enforcement of Covid regulations

1. Signs of punitive and exemplary punishment or intimidation of persons exercising freedom of expression [manifestatio /protest] were identified.
2. Quantitative reasoning decisions made by the Executive poses an increased threat of religious discrimination.

3. All fines imposed for violating the rules of wearing a mask outdoors until February 18, 2021, are highly likely to be illegal. As of February 2021, 93,642 fines have been imposed for violating the rules of wearing the masks.
4. As of February 2021, the Ministry of Internal Affairs has detected 8737 cases of violating the rules of the state of emergency, and 10431 cases of violation of the rules of isolation and quarantine, in addition, the “Ministry of Health” has detected 181 cases of violation of Covid regulations by economic entities.
5. Enforcement of regulations on economic entities was particularly weakened in August 2020. Only 2 violations were detected by the “Ministry of Health” throughout Georgia during this period. 90% of the violations revealed by the “Ministry of Health” fall into three main cities (Tbilisi, Batumi, Kutaisi).
6. 38% of the violations of isolation and quarantine rules identified by the MIA is from Tbilisi. Adjara and Kvemo Kartli share second place with 11%, while Kakheti shares third place with 9%.
7. According to the number of violations detected jointly by the Ministry of Internal Affairs and the “Ministry of Health”, Tbilisi ranks first, with 31% of violations, followed by Guria with 5%.
8. In total, the Ministry of Internal Affairs of Georgia and the Labour Conditions Inspection Department imposed a fine of more than 50,000,000 GEL during the pandemic.
9. Due to the lack of relevant data provided by public institutions, there are some unresolved questions regarding the process of detecting violations of Covid-19-related regulations, as well as the enforcement of detected violations.

Introduction

For more than a year, Georgia has been trying to deal with a pandemic caused by the spread of a novel coronavirus. The effects of this endeavor have left no domain of social relations untouched. The spread of the pandemic most severely affected basic human rights, as it was their restriction that became the main tool in the fight against the pandemic.

This fight against the pandemic can be divided into three stages in Georgia: before the state of emergency, in the course of the state of emergency, and under the de facto state of emergency. The latter one 'launched' on May 22, 2020, and it is related to the transfer of extraordinarily large powers by the Parliament to the Executive without formally declaring the respective state of emergency.

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

Almost a year has passed since entering into the de facto state of emergency. Numerous constitutional rights were restricted during this period. Many substantive and procedural problems were identified both in terms of setting restrictions and enforcing them. Every part of it has negatively affected the quality of human rights protection and the rule of law in Georgia. This report focuses on the main problems identified in this regard.

1. A general overview of the current legal regime for pandemic management

On May 23, 2020, the state of emergency caused by the pandemic terminated. The end of the state of emergency, naturally, could not end the pandemic. Consequently, it was necessary to establish a legal framework for managing the pandemics. To that end, Georgia has chosen to radically increase the regulatory powers of the executive branch. Namely, based on the nominal amendments to the Georgian legislation, the Parliament gave full authority to the executive to manage the pandemic, thus establishing a de facto state of emergency in the state¹.

On May 22, 2020, Article 45³ was added to the Law of Georgia "on Public Health". According to the first paragraph of this article, "The rules of isolation and/or quarantine shall be

¹ In our estimation, the "de facto state of emergency" best describes the legal model that operates in Georgia today. Though, "de facto state of emergency" is the legal regime recognized by the legislation of Georgia, the current regime drastically differs from the ordinary situation, is not familiar to legislation and does not have any legal definition.

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

Along with the amendments to the Law of Georgia “on Public Health”, the Administrative Offences Code of Georgia and the Criminal Code of Georgia have also been amended. In particular, the named normative acts provided for sanctions for violation of quarantine rules defined by the government.

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

1.1. The role of the Parliament of Georgia in pandemic management

The threats caused by the novel coronavirus, in some cases, require an immediate response from the state. Traditional, ordinary legislative processes can significantly delay the decision-making process, making it difficult to manage the pandemic as a whole.

This problem (difficulty of managing a pandemic) is not a Georgian phenomenon and the whole globe has faced the necessity to overcome this challenge. Due to this reality, the powers of the executive have increased intensely worldwide. Although increased powers of

the executive have become a universal feature of pandemic management, the response from states and the methods of pandemic management differ largely. The selected model must be compatible with the constitutional system established in the respective state.

After May 23, 2020, the Georgian Parliament's legislative activity was exhausted by the following activities:

- **Primary temporary delegation of authority**

On May 22, 2020, the Parliament of Georgia delegated the authority to the Executive to regulate public services related to the exercise of fundamental human rights.² According to the delegated authority, a normative act adopted by the Executive may establish regulations that differ from the legislative acts.³ The expiration date of the delegated authority was set for July 15, 2020 (less than 2 months);⁴

- **Amendments to the legal norms that establish public legal responsibility.**

On April 23⁵ and June 12⁶, 2020, amendments were made to the Code of Administrative Offenses of Georgia. Namely, Articles 42¹⁰ and 42¹¹ were added respectively. These norms impose liability for violating the rules of isolation and quarantine, as well as the rule of wearing a face mask.

- **Extension of the term of the delegated authority**

On July 14, 2020, the Parliament of Georgia invariably overdue the delegation of power.⁷ The deferred deadline was set for January 1, 2021 (approximately 5 months and 15 days).⁸

- **Repeated extension of the term of the delegated authority**

² *Law of Georgia No 5972 of 22 May 2020*

³ The Law of Georgia on Amendments to the Law of Georgia on Public Health, Article 1, accessible on [link](#).

⁴ *Idem*.

⁵ *Law of Georgia No 5887 of 23 April 2020*

⁶ *Law of Georgia No 6344 of 12 June 2020*

⁷ The Law of Georgia on Amendments to the Law of Georgia on Public Health, Article 1, 14/07/2020 accessible on [link](#).

⁸ *Idem*.

On December 29, 2020, the Parliament once again extended the term of the delegated authority.⁹ The expiration date of the delegated authority was set for July 1, 2021 (duration 6 months).¹⁰

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

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

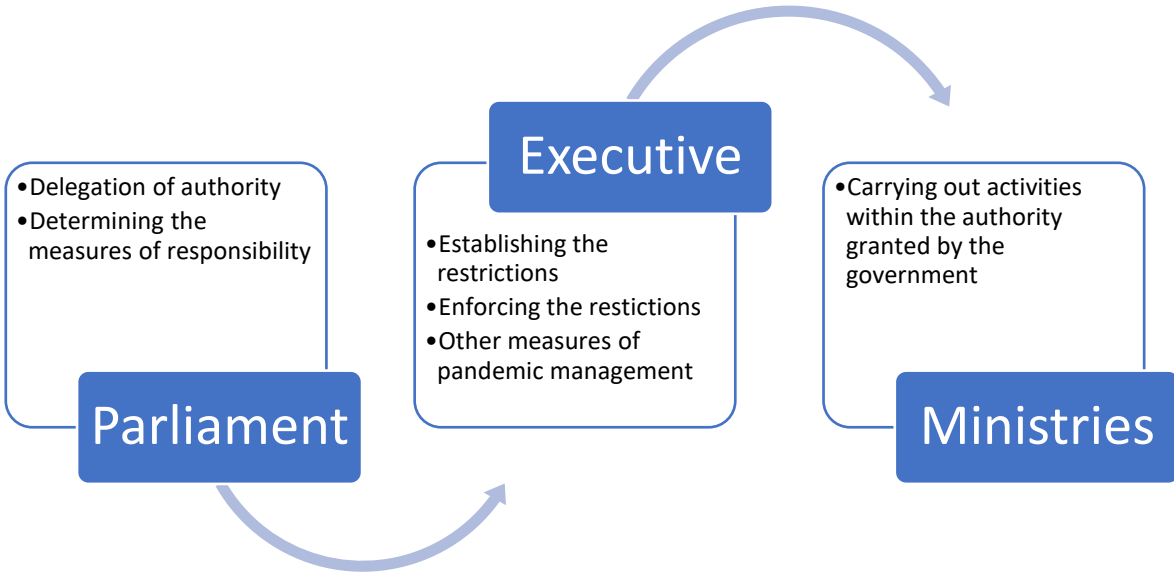


Figure 1

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

⁹ The Law of Georgia on Amendments to the Law of Georgia on Public Health, Article 1, 29/12/2020, accessible on [link](#).

¹⁰ Idem.

Even though the Georgian model of constitutional democracy is based on the basic principles of a Parliamentary Republic, Georgia's supreme legislature has exhausted its participation in the management of the pandemic by fulfilling its explicit (explicit) obligations under the constitution. In particular, the motivation of the highest legislative body of Georgia, the constitutional ambition did not go beyond fulfilling the direct requirements of the Constitution. There are many question marks about the latter as well.¹¹

1.2. The role of the Executive in pandemic management

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

After May 22, 2020, the Executive is authorized to regulate differently from the law¹²:

- A Activities of public institutions and provision of public services
- B Freedom of movement for persons
- C Property rights
- D Freedom of labor¹³
- E Professional or economic activity
- F Illegal migration and international protection
- G Gathering of persons for social events

Figure 2

¹¹ Civil society representatives have repeatedly expressed concern that the Georgian Parliament is failing to meet its constitutional obligations.

¹² Article 45³ of the Law of Georgia “on Public Health”, Paragraphs 1 and 2.

¹³ According to the decision of the Constitutional Court of Georgia 111/1 / 1505,1515,1516,1529 of February 11, 2021 (in the case "Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili and Lika Sajaia v. Parliament and Government of Georgia") The delegation of the Parliament of Georgia to the executive branch was declared unconstitutional in the part related to the delegation of the regulation of freedom of labor.

But this power of the Executive is not unlimited. Namely, the condition for the exercise/restriction of the powers delegated is the observance of the constitutional principle of proportionality and equality.¹⁴

Most of the legal restrictions and other temporary regulations in force during the pandemic are contained in the Ordinance N322 of the Government of Georgia of May 23, 2020 "On the Approval of Isolation and Quarantine Rules". Otherwise, the main restrictions related to the pandemics are formulated by a legal act of the government, although it is clear from public press conferences that the initiative for key substantive regulations in terms of pandemic management belongs to the Interagency Coordinating Council.

The Government has established an Interagency Coordination Council (hereinafter referred to as the "Council") to prevent the spread of the novel coronavirus. It is important to note that the Council is not an instrument specifically designed to manage pandemics. There are several inter-agency councils in Georgia - it is, in essence, a deliberative body.

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

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

It should be noted that, unlike other inter-agency councils set up by the government, the rules and composition of the Council set up to prevent a pandemic have not been published in the Legislative Herald of Georgia.¹⁵ On October 26, 2020, IDFI addressed the Government and requested legal acts defining the composition and rules of operation of the Pandemic Prevention Council. The government responded to our request in violation of the deadlines

¹⁴ Below we will discuss in detail the extent to which the Government of Georgia adheres to this scope of delegated powers.

¹⁵ The Legislative Herald of Georgia has published the legal acts of the Government of Georgia, on the basis of which a number of inter-agency councils have been established. It should be noted that among the published acts is the Decree of the Government of Georgia on the Establishment of the Interagency Coordination Commission for the Introduction of COVID-19 Vaccination in Georgia. The consistency between these government decisions is not perceptible.

provided by the General Administrative Code of Georgia. After 45 days decree of the Government of Georgia of March 30, 2020, on the establishment of an interagency council to prevent the spread of the new coronavirus in Georgia was provided to us.¹⁶

The Decree of the Government of Georgia of 30 March 2020 (hereinafter "the Decree" on the Establishment of an Interagency Council to Prevent the Spread of New Coronavirus in Georgia) indicates that the Council consists of 17 ex-officio¹⁷ members (see Figure N2). Representatives of the Parliament and the President¹⁸ were asked to participate in the activities of the Council, however, we do not know to what extent the representatives of these bodies are involved in the activities of the Council.

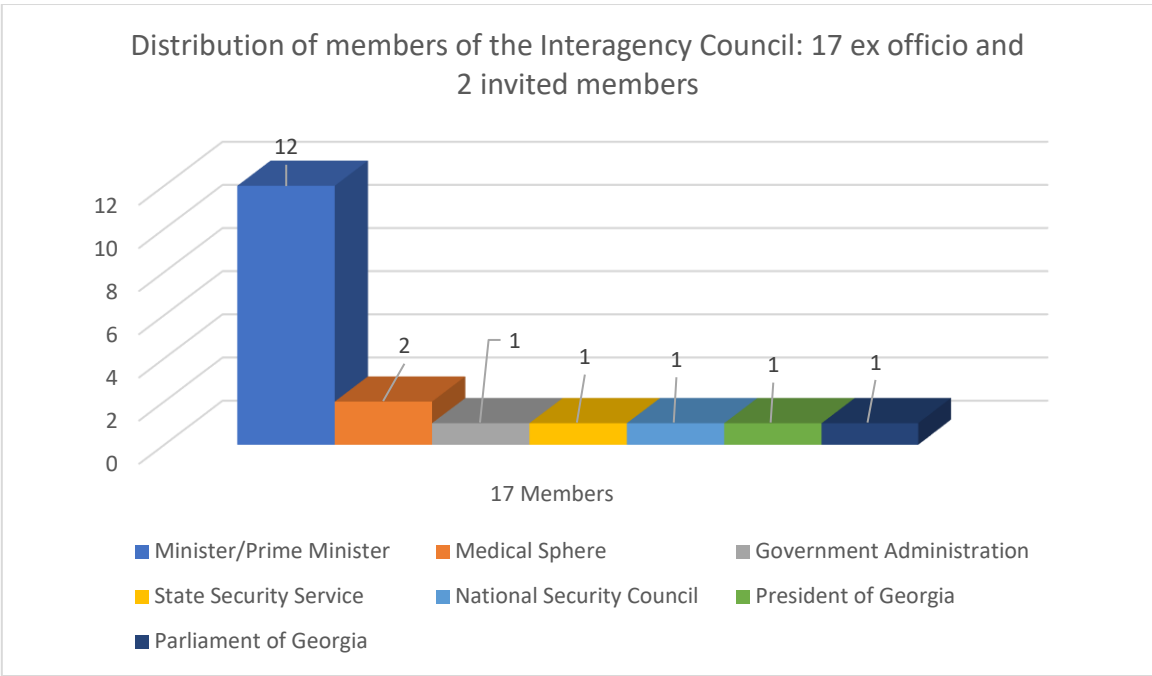


Figure 3 : Distribution of Representation of Interagency Council Members

Today, the public has the sense that it is the Council that administers the pandemic, including making decisions to restrict basic human rights during a formalized Council’s decisions. Representatives of the Executive constantly emphasize that the decision on any

¹⁶ The main substantive aspects of this ordinance will be discussed in the next subsection.
¹⁷ The members of the Interagency Council are appointed ex officio and not individually.
¹⁸ According to Article 29 of the Law of Georgia “on the Structure, Authority and Rules of Operation of the Government of Georgia”, Persons who are not part of the executive power may not be required to be members of the deliberative body of the executive power.

specific restriction or regulation was made by the Council.¹⁹ The letter provided to us by the Government in response to a request for public information, highlights this trend. IDFI requested copies of the conclusions and proposals adopted by the Council which then were submitted to the Government for approval per Article 29 Paragraph 4 of the Law on Georgia “on the Structure, Authority and Rules of Operation of the Government of Georgia”. The Government informed us that the decisions and recommendations of the Council are reflected in the legal acts and referred us to the Legislative Herald of Georgia to seek them.²⁰

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

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

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

It should be noted that IDFI obtained the Decree of the Government of Georgia of March 30, 2020 “On the Establishment of an Interagency Council to Prevent the Spread of the New Coronavirus in Georgia” by requesting public information. The request was formulated as follows:

¹⁹ For an example, see the latest [information card](#) published on the Government of Georgia website: April 14.

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

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

A. Determines the composition of the Interagency Coordination Council;

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

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

Figure 4. Content of IDFI public information request

This decree only determines the composition of the members of the board and establishes the possibility of involving other persons in the activities of the board. The decree does not define at all the rules of operation of the Council. For comparison, the government has defined the rules of procedure of the Council on Covid-19 Vaccination - "Regulation".²¹

Excluding comments made by members of the Council to the media, the transparency of the Council is close to zero. IDFI requested the conclusions and proposals adopted by the Council, but the request was not redressed.²² Besides, IDFI requested the possibility for a representative of the organization to attend the meetings of the Council, although the administration of the executive branch has not yet responded.

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

²¹ On the Establishment of the Interagency Coordination Commission for the Implementation of COVID-19 Vaccination in Georgia. Accessible at <https://matsne.gov.ge/ka/document/view/5052488?publication=1>

²² As mentioned above, the Government has referred us to the Legislative Herald and informed us that the decisions of the Interagency Council are reflected in the normative acts of the Government.

2. The possibility of restricting some constitutional rights to prevent a pandemic

During the pandemic, many constitutional rights were restricted under Article 45³ of the Law of Georgia “on Public Health” and Ordinance N322 of the Government of Georgia “On the Approval of Isolation and Quarantine Rules”. It is important to clarify that, in general, in the Georgian legal system, from a constitutional legal point of view, the effects of the restriction of any right are not assessed separately. Namely, if the restriction of one right substantially affects the realization of another, it means that the only right that is restricted is the one to which the relevant norm and the restriction were aimed. For example, the main purpose of the curfew is to reduce mobility in the state. Consequently, it restricts freedom of movement. However, the curfew has a significant impact on the realization of many other fundamental rights - the free development of the individual, freedom of expression and religion, property right, and so on. Nevertheless, the constitutionality of the curfew can only be assessed concerning the freedom of movement provided for in the Constitution.²³ Surely, this approach does not mean that the negative effects of the constraint remain beyond assessment. It is simply that these effects must be taken into account when applying the principle of proportionality - mainly at the stage of narrow proportionality.

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

2.1. Freedom of movement - 7 months in curfew

Note: On May 17, 2020, it was reported that the curfew would change to 21:00 instead of 23:00. This report does not reflect this latest amendment, although it does not substantially affect the legal assessments set out below.

Ordinance N670 of the Government of Georgia of November 9, 2020, amended the Ordinance N322 of the Government of Georgia “On the Approval of Isolation and Quarantine Rules” and imposed restrictions on freedom of movement in 7 major cities of Georgia (from 22:00 to 05:00).

By the Ordinance N699 of the Government of Georgia of November 26, 2020, the content of the restriction of freedom of movement was intensified (from 21:00 to 05:00), as well as the area of operation was expanded to cover the entire territory of Georgia. The deadline

²³ Rarely, however, there may be such cases.

for the curfew was set to be December 31, 2020. Ordinance of the Government of Georgia of December 29, 2020, reformulated paragraph 6¹ of Article 2 of Ordinance N322 of the Government of Georgia “On the Approval of Isolation and Quarantine Rules”. According to this article, “For the population to remain at their places of residence, the movement of people on foot and by a vehicle, as well as their presence at public places, shall be prohibited throughout the entire territory of the country from 21:00 to 05:00.” In the current version of the curfew norm, the deadline for its completion is no longer defined.

About half a year has passed since the imposition of the curfew, and all this time this restriction has been applied with the same severity. In terms of the proportionality of the constraint, it is important to analyze this constraint in parallel with the epidemiological situation.²⁴ The data proactively published by the National Center for Disease Control does not allow us to generalize data according to the territory for, and the February-August 2020 data are only available in summary form. Data published after September 2020 provide important conclusions about the epidemiological situation.

Year	Month	Week	Cases per week	Positive result rate
2020	9	36	174	0,45%
2020	9	37	708	1,11%
2020	9	38	1303	1,81%
2020	9	39	1857	3,37%
2020	9	40	1088	4,03%
2020	10	40	2056	7,45%
2020	10	41	3576	8,08%
2020	10	42	6391	11,22%
2020	10	43	11640	20,63%
2020	10	44	10424	17,76%
2020	11	44	1852	27,44%
2020	11	45	18101	26,33%
2020	11	46	22155	27,41%

²⁴ Epidemiological data are prepared based on static information published on the website of the National Center for Disease Control. See. [Link](#). For data processing by IDFI, see. Appendix N1

2020	11	47	25855	29,55%
2020	11	48	26894	33,35%

Figure 5. Epidemiological situation September-November 2020

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

The curfew is still active to this day, and for this purpose, its high efficiency in terms of reducing human mobility is named, although, despite the sharp worsening of the epidemiological situation, the Executive did not activate the curfew in October. In November 2020, the epidemiological situation continued to aggravate. A record number of novel coronavirus infections were reported in November.

On November 9, 2020, the curfew was announced in 7 major cities of Georgia, and on November 26, the curfew covered the whole territory of Georgia. At the time of the declaration of the curfew, there were approximately 4,500 new cases of coronavirus infection per day, and the coronavirus detection rate was about 30%. It should be noted that against this background, the need to declare a curfew has not been questioned by anyone.²⁵

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

Year	Month	Cases per month	Positive result rate
2020	10	34087	13,41%
2020	11	98616	29,06%
2020	12	89067	19,49%
2021	1	29941	7,87%
2021	2	12567	2,57%

²⁵ Concerns have been expressed by civil society regarding the spread of the curfew during a demonstration to protest the October 31, 2020 parliamentary elections. It was also pointed out that the Georgian executive had no formal authority to declare a curfew.

2021	3	11342	1,69%
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Figure 6. Key figures for the epidemiological situation October / 2020-March / 2021

Nevertheless, the Executive has neither abolished the curfew nor reduced its intensity to the normative level.

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

I. Is the Executive using its power to manage a pandemic to abuse the ongoing public protests in the state?²⁶

II. How proportionate is maintain the curfew despite the sharp improvement in the epidemiological situation?

We have not found any evidence, information, and/or data that the Executive deliberately used/is using the curfew against freedom of expression. There were instances where it was apparent that the curfew had been used against protesters²⁷, although none of the identified cases indicated that the primary purpose of maintaining the curfew in the state was to suppress freedom of expression.

In our estimation, the main problem the curfew is its nonproportional application. Namely, the Executive does not use the curfew as an extremely necessary, one-time event.

2.1.1. Proportionality of the curfew

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

2.1.1.1. Effects of the curfew

²⁶ This question and opinion was mainly discussed in connection with the protests that began after the October 31, 2020 parliamentary elections, which were followed by a boycott of opposition parties and a continuous wave of protests.

²⁷ We will discuss these cases below in the section on freedom of expression.

In general, the use of curfew is a characteristic tool of authoritarian regimes. However, due to the immediate challenges posed by the pandemic, liberal democracies have had to use this tool. Thus, some courts have faced the need to assess the proportionality of restrictions on freedom of movement. There are no widely recognized standards set by international human rights courts to verify the legitimacy of a curfew's use to manage a Covid-19 pandemic. At the same time, it is prudent to use the standards established by national courts to the extent that too many legal and social factors related to pandemic management must be taken into account. Nevertheless, general principles can be found in international documents regarding the curfew. One such document is the conclusion adopted by the Venice Commission in 2016 on the legislation regulating the curfew.²⁸

Due to the essence of the curfew, it primarily affects the right to free movement, although the effects of the curfew go far beyond the scope of freedom of movement in the sense that it has an impact on other rights of the person. Depending on its duration and context, the curfew affects persons physical freedom and security, the right to privacy, freedoms of association and assembly, freedoms of religion, information and dissemination, property, education and dignity.²⁹

“[...] its duration (a certain number of hours per day or, far more rarely, a permanent, round-the-clock curfew); whether it is for a specified or unspecified period; geographical coverage (village, urban district or wider geographical area/territorial unit); the substance of the associated restrictions, which may not necessarily be confined to a ban on going out. The impact which curfew has on the social, economic, cultural and political life of the community concerned and the exercise of fundamental rights will depend to a large extent on these factors.”³⁰ Since a restriction on a person's freedom of movement affects a wide range of rights, a balance must be struck between this particular measure and the protection of human rights and freedoms.

The Venice Commission, therefore, pays particular attention to the need to adhere to the principle of proportionality and notes that the requirements of this principle must be strictly adhered to in both the decision on the curfew and its implementation.³¹ Like the curfew, all other measures related to its enforcement must be proportionate to the danger and its

²⁸ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW, opinion No. 842/2016, CDL-AD(2016)010 “Opinion on the Legal Framework governing Curfews” adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016).

²⁹ Ibid, paragraphs 18-19.

³⁰ Ibid, P.20

³¹ Ibid, p.87

inevitability. In addition to the urgent need, the Venice Commission focuses on the effectiveness of judicial and parliamentary control over the executive.

2.1.1.2. Georgian model of the curfew

According to Paragraph 6¹ of Article 2 of Ordinance N322 of the Government of Georgia "On the Approval of Isolation and Quarantine Rules", "In order for the population to remain at their places of residence, the movement of people on foot and by a vehicle, as well as their presence at public places, shall be prohibited throughout the entire territory of the country from 21:00 to 05:00." According to this norm, it is prohibited to be in public space/move in public space for an identified period. In a public space, which is mainly outdoors, for example, a street, a park, etc., the probability of spreading the coronavirus is low, compared to closed environment, especially in the conditions when the current legislation requires the wearing of a mask. Therefore, we can assume that the main purpose of establishing a curfew is not to prevent the movement/presence of persons in public space but to prevent the gathering of persons in different spaces and to reduce general mobility.

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

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

To equate the lifting of the restriction on freedom of movement with the automatic admission of all the listed activities and while calculating its effectiveness we should not entail these factors. For more clarity, Restaurants, cafes and bars in Tbilisi were restricted to function until 22:00 before the announcement of the curfew. Thus, despite being able to move around at specific times, people could not gather and spend time overnight in cafes, bars or restaurants.³² Otherwise, the state can reduce mobility at the expense of several other measures.

2.1.1.3. The legitimate aim of the curfew

³² Ordinance N659 of 3 November, 2020

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

2.1.1.4. the current model of the curfew- suitability and necessity

The requirements of proportionality mean that the curfew must be the very suitable and least intrusive means to achieve the named purpose.

It should be noted that the effectiveness of the curfew was debated largely by society. Arguments used to support these views are often manipulative and/or taken out of context, although it is still possible to identify legitimate concerns. Namely, the curfew reduces mobility during night hours, however, it increases its intensity. In particular, the curfew increases the concentration of mobility on public transport and in public places during the part of the day when movement is allowed. At the same time, the length of the curfew, which is almost half a year, in itself encouraged its violation.³³

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

At the same time, it is inconceivable to argue about less restrictive mechanisms, as, as already mentioned, in Georgia, documentary data on the degree of effectiveness of the curfew and other restrictions are not publicly available and there is no indication that such data is processed at the national level.³⁴ Nevertheless, Google Covid-19 Community Mobility Reports provides some interesting information about this data. (See further subsection).

³³ See. Part 4 of the report.

³⁴ The exception is the rule of wearing a mask. In Georgia, it is mandatory to wear a mask in the public space and the state calculates the percentage of fulfillment of this obligation, about which information is provided to the public through press conferences.

2.1.1.5. Google Covid-19 Community Mobility Reports: changeability of mobility in parallel with the Curfew.

Since 2020, Google has been making public the GPS data collected worldwide through one of its most widely used apps, google maps.³⁵

The data from the period before the spread of the pandemic (from January 3, 2020 to February 6 of the same year) were analyzed by Google and based on them the so-called Initial status - Baseline. The baseline of hours spent at the residence was calculated among them.³⁶ The temporal/time criterion is used to analyze the place of residence, while in all other cases it is quantitative.³⁷

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

Change in the length of time spent by the population of Georgia at the place of residence according to different periods Compared to the Pre-pandemic period				
N	Initial Point	End Point	% Change	Curfew Status
1	29.02.2020	11.04.2020	+16%	The curfew was valid for only 11 days (from March 30)
2	26.03.2020	07.05.2020	+20%	The curfew was in effect throughout the period
3	26.04.2020	07.06.2020	-2%	The curfew was valid for 26 days (until May 22).
4	29.05.2020	10.07.2020	+1%	The curfew was not in effect
5	26.06.2020	07.08.2020	-2%	The curfew was not in effect
6	28.07.2020	08.09.2020	-3%	The curfew was not in effect
7	28.08.2020	09.10.2020	+1%	The curfew was not in effect

³⁵ Google Covid-19 Community Mobility Reports. See the [Link](#)

³⁶ The instructions given are based on information provided by google about the data used by them- Section: Overview. See the [Link](#)

³⁷ *ibid.* Section: Understand the Data.

8	27.09.2020	08.11.2020	+2%	The curfew was not in effect
9	26.10.2020	07.12.2020	+13%	The curfew was in effect. From November 9 in 7 major cities From November 28 throughout Georgia
10	27.11.2020	08.01.2021	+12%	The curfew was in effect throughout the period
11	29.12.2020	09.02.2021	+5%	The curfew was in effect throughout the period
12	26.01.2021	09.03.2021	+1%	The curfew was in effect throughout the period
13	26.02.2021	09.04.2021	+5%	The curfew was in effect throughout the period
14	27.03.2021	08.05.2021	-3%	The curfew was in effect throughout the period

Figure 7. Curfew and google mobility report on Georgia

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

Figure N7 indicates that at the initial stage, the period spent by the population at home during the operation of the curfew increased significantly by 20%, and upon its removal, it dropped radically by 22% and descended to the pre-pandemic state. This does not mean that the curfew is so effective in ensuring that residents stay at home. Some other factors need to be considered that have an impact on the 'home stay rate' - e.g. How well does public transport, educational institutions, social gathering places, etc. work function? In Georgia, during the curfew, virtually all types of activities were prohibited or severely restricted, except for pharmacy and grocery stores and remote services.³⁸

This is indicated by the second Curfew announced in November. Initially, from November 2020 to December, the 'home stay rate' increased by about 12-13%. There were many other restrictions through this period, in particular, the movement of public transport was prohibited, educational institutions operated remotely, and public places (cafes, bars, restaurants, cinemas) were closed.

On January 21, 2021, the state began lifting restrictions. Operation of the educational institutions, public transport was gradually restored. In the following months, restaurants,

³⁸ See. Resolution N181 of the Government of Georgia of March 23, 2020 "On the approval of measures to be taken to prevent the spread of the new coronavirus in Georgia." Valid until 22 May 2020.

cafes and bars were added to this category, almost all restrictions were lifted or eased. The curfew continued to operate continuously.

Although the curfew regime has not changed, the number of people staying at home has decreased significantly. From March 27 to May 8, 2021, the number of hours spent by the population at home fell by 3% from the pre-pandemic rate.³⁹

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

2.1.1.6. Curfew - Proportionality in the narrow sense

Important arguments at the narrow proportionality stage are the intensity of the curfew and the question marks that exist in connection with its immediate need. The curfew is in force for almost half a year. Hence, within the last 4 months, the deadline for curfew is not set.⁴⁰ At the same time, the epidemiological situation has changed in many ways under the curfew. From the alarming figure, it has improved radically, and the Executive has uplifted or eased almost all restrictions except the curfew. And the [incomplete] figure for April 2021 indicates that the epidemiological situation has started to worsen again.

Year	Month	Cases per month	Positive result rate
2020	11	98616	29,06%
2020	12	89067	19,49%
2021	1	29941	7,87%
2021	2	12567	2,57%
2021	3	11342	1,69%

³⁹ A factor to consider is that this period coincided with the Easter holidays and the holidays announced by the government.

⁴⁰ From a purely technical point of view, the curfew's, as well as any restrictions imposed by the executive, deadline is July 2021, as it is at this time that the Parliament of Georgia must extend the term of delegated powers. Nevertheless, previous experience indicates that the Parliament of Georgia extended the term of office of the delegated executive power by 6 months when the curfew was announced without a deadline.

2021	4	unaccessible ⁴¹	4.03% ⁴²
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Figure 8. Continuous regime of the curfew in parallel with the epidemiological situation⁴³

Such attitude of the executive towards the curfew indicates that it uses this harsh measure not only as a temporary intervention (as an immediate and necessary measure) to balance the epidemiological situation, but also to maintain the epidemiological results achieved. Such a need, in theory, may exist in Georgia until the end of the pandemic, which, given the current rate of vaccination, may last for several years. ⁴⁴

The curfew is the strictest form of interference with a person's freedom of movement, the effects of which substantially diminish and make it impossible to enjoy many other rights, including freedom of expression, unhindered professional and economic activities, freedom of expression, free development, physical freedom, etc. The use of such a tool with such negative consequences on human rights, in our estimation, should be used only for urgent needs, for immediate intervention. In our view, curfew, in the long run, poses significant risks of disproportionate and excessive restriction of fundamental human rights to maintain the epidemic situation achieved.

2.1.2. Curfew: Risks of unequal treatment during implementation

Paragraph 6¹ of Article 2 of the Ordinance N322 “On the Approval of Isolation and Quarantine Rules” imposes the Curfew, while Paragraph 6² of the same Article enlists the type of people who are allowed to move freely despite the Curfew.

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

The absolute ban of movement during the curfew would significantly affect many fundamental rights and it would be unthinkable to consider it as a proportional measure.

⁴¹ The Center for Disease Control did not release the April data.
⁴² This percentage reflects the positive rate of the tests conducted on April 11-25.
⁴³ The curfew was announced in 7 major cities of Georgia on November 8, 2020, and on November 26 it was distributed throughout Georgia.
⁴⁴ According to the forecast of The Economist Intelligence Unit, Georgia is on the list of countries that will be able to vaccinate 60-70% of the population by the end of 2022. See. [Link](#).

To balance these threats, the Executive has established the exceptions, although several legal and practical problems are emerging at the stage of enforcement of this exceptional mechanism.

Per Article 8 of Ordinance N322 [‘on the Approval of the Rules on Isolation and Quarantine Rules’], Operational Headquarters were established. The Ordinance N322 does not mention the aim for creating the Headquarters, but as National Security Council indicates in the provided data, the main purpose of this body is to provide material and technical support to the Interagency Council and to carry out tasks dictated by the Council. The Operational Headquarters is set up on the base of the National Security Council.

The Headquarters does not directly implement the restrictions that were envisioned to manage the pandemics, but its powers have a significant impact on the exercise of rights, restricted by the Government. Here, we can discuss one such power- the authority to issue the permit to freely move during the Curfew.

As highlighted, Paragraph 6¹ of Article 2 of the Ordinance N322 “On the Approval of Isolation and Quarantine Rules” imposes the Curfew, while Paragraph 6² of the same Article enlists the exceptions and recognizes the so-called one-time-pass and multi-pass system.

- The so-called Multi Passes⁴⁵ are issued to representatives of public institutions and entities carrying out permitted economic activities. Journalists, representatives of the press and mass media are entitled to use the same type of permit.
- The person can be granted a one-time-pass⁴⁶ due to special and/or unforeseen circumstances.

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

⁴⁵ By Multi Passes we mean the list of persons and vehicles that are agreed with the Operational Headquarters on the basis of Paragraph 6².b. and 6².c of Article 2 of the Ordinance N322 “On the Approval of Isolation and Quarantine Rules”, to which the curfew does not apply.

⁴⁶ By One Time Passes we mean the list of persons and vehicles that are agreed with the Operational Headquarters on the basis of Paragraph 6².d of Article 2 of the Ordinance N322 “On the Approval of Isolation and Quarantine Rules”, to which the curfew does not apply.

The so-called Multi Passes: Normative and /or practical problems of unequal treatment

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

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

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

As a result, almost all legal entities and state bodies in Georgia are entitled to claim the right to freely move while the Curfew. All of these persons/bodies have the right to request/receive permits for their employees and vehicles only if the relocation of this employee is "critical to the performance of official duties".

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

Another legal problem is associated with this so-called Multi Passes. In particular, Ordinance N322 “On the Approval of Isolation and Quarantine Rules” is based on the principle that persons who have obtained a Multi-Pass permit are not subject to any restrictions on movement. Otherwise, the Ordinance allows for interpretation in such a way as not to assess whether the recipient person uses the pass for the very specific reason S/he was entitled to the Multi-Pass. The preconditions for obtaining Multi Passes are verified, but it is unclear to what extent these Passes are used for purposes they were distributed.

Accordingly, it creates a legal basis for a person to move under that pass at any time, even without the purposes for which he or she obtained the pass.

The information received by the IDFI within the framework of legal assistance verifies the mentioned problem.⁴⁷ In particular, the police do not inquire whether the person moves with the very aim, s/he was given the pass to. The police officers only verify whether the person has multi-Pass. It is important to note that there have been repeated reports in the public that officials who have the right to move during curfew are likely to have exercised this right for non-official purposes. For instance, on April 24, 2021, Formula TV broadcasted that a religious service was held during the curfew, which was also attended by the President of Georgia.⁴⁸ Earlier, it was reported that a birthday party was held during the Curfew, which was attended by government officials.⁴⁹

It should be noted that the IDFI requested the data about the total number of persons that enjoy the Multi-Pass. Also, the number of these passes per institution. However, the National Security Council did not provide this information. It is clear from the answer that the National Security Council does not process such information.⁵⁰

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

Quasi-normative rules: rules different from curfew related norms

Except for the so-called organizational burden, there have been some cases when the Operational Headquarters sets out the rules for free movement, different/contrary to the rules of isolation and quarantine. An example of this is the free movement of the lawyers. In particular, as mentioned above, the rules of isolation and quarantine entitles the freedom to move while quarantining to only those persons and vehicles that are agreed with the

⁴⁷ The Institute for the Development of Freedom of Information has provided some assistance to individuals who have been identified as offenders for being in and out of public space during curfew hours.

⁴⁸ Information and videos released by Formula TV on April 24. See the [Link](#)

⁴⁹ For an article prepared by Civil.ge based on media reports, See the [Link](#)

⁵⁰ The public information request letter contained two requests. A) Total number of persons, b) Number of persons broken down according to different categories. The letter also clarified that if the information was not processed in a requested format, we would like to receive it anyway in any format they had it.

Operational Headquarters.⁵¹ Although there is no other rule for the free movement other than the exceptions listed in Ordinance N322, on November 9, 2020 (after the curfew was enacted), the Georgian Bar Association released information stating that the curfew does not apply to lawyers who move while acting on professional duties. Otherwise, a normative agreement different from the Ordinance N322 was reached between the Bar Association and the Operational Headquarters.⁵²

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

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

2.2. Discrimination on religious grounds: Christmas Eve and football match

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

As early as November 27, 2020, a representative of the Georgian government said that an exception would be made on the night of January 7 and the population would be allowed to celebrate Christmas Eve in churches. According to the government, the curfew would not be lifted on the night of December 25, when followers of other religious faiths celebrate the same holiday.⁵³ The Executive based its decision on quantitative reasoning, noting that the majority of Georgia's population is Orthodox Christian. The government also clarified that religious minorities would be allowed to celebrate Christmas in churches and monasteries in other ways. Namely, by granting the one-time passes by submitting the lists of persons

⁵¹ Exceptions are international and domestic freight shipments.

⁵² Statement issued to the lawyers by the Georgian Bar Association. See the [Link](#)

⁵³ Statement of the Vice Prime Minister of Georgia on November 17, 2020. See the [Link](#)

of the respective religion (their data of a special category), which the denominations did not agree to.⁵⁴

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

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

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

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

It is known that different religious denominations celebrate Christmas on different dates. The use of different approaches to the exercise of religious freedom is particularly cautious. Deciding on religious issues based on neutral criteria does not always indicate its correctness. Moreover, neutral solutions are often the main cause of religious discrimination.⁵⁵

The decision that was allegedly based solely on mathematical, seemingly neutral, criteria, created a substantial difficulty for the minority religious denominations that celebrate

⁵⁴ Statement by the representative of the Georgian Catholic Church on December 24, 2020 on the principal and logistical difficulties of the government's proposal. See the [Link](#)

⁵⁵ It is noteworthy that out of 3 judgements made by the Constitutional Court of Georgia on the substantive right to freedom of religion, 2 concerned the restriction/violation of the right arising from neutral regulation. See the [Judgements](#)

Christmas on December 25, and they eventually refused to celebrate Christmas as a religious institution. By contrast, all the obstacles were lifted for the Orthodox Church and its parishioners, while the representatives of minority religious denominations were required to submit a comprehensive list of the parish.

In addition to the fact that the implementation of this requirement is associated with [many technical difficulties](#), it is also legally problematic. In particular, by law, information about religious beliefs is a special category of personal data,⁵⁶ the processing of which is subject to strict control. There was a high probability that if the members of religious denominations would submit their parish lists to the government, and that having such a list by the government would run counter to the requirements of the Law of Georgia on Personal Data Protection.

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

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

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

By the decision of the Government on March 19, 2021, the spectators were allowed to attend the football match between Georgia and Spain on March 28, 2021, which was to end in Curfew hours.⁵⁷ Executive officials explained that persons who had a ticket to attend a

⁵⁶ Paragraph b of the Article 2 of the the Law of Georgia on Personal Data Protection enlists the religious beliefs as a special category of personal data.

⁵⁷ According to the first article of the Resolution N119 of the Government of Georgia of March 19, 2021, the attendance of spectators was allowed to Judo Grand Slam Tournament to be held in Tbilisi and March 28, 2021, "During the qualifying match of the 2022 World Cup in Tbilisi (between the national teams of Georgia and Spain) and at the same time, 30% of the spectators will be admitted to the mentioned events, in compliance with the relevant epidemiological safety standards."

football match would not be penalized for violating the Curfew.⁵⁸ Naturally, attending football and celebrating Christmas are qualitatively different legal terms and their direct identification would not be correct, but the recognition of football tickets as a one-time pass indicates that the executive could have decided to take other measures instead of requesting specific lists of minority religious denominations.

The presented argument indicates that by easing the measures taken to fight the pandemic, the Georgian government has put people of different religions in a substantially unequal position. At the same time, it has not taken appropriate measures to eliminate this inequality, which in turn indicates discrimination on the grounds of religion. It is noteworthy that according to the government, on May 1, 2021, the Easter curfew will start late (instead of 21:00, it will start at 23:00), so that people can arrive at the churches and finish 1 hour earlier (instead of 05: 00 hours, will end at 04:00).⁵⁹

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

2.3. Freedom of Expression: exercising the rights of assembly and demonstration

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

It should be noted that neither the Government nor the Parliament has taken normative measures at any stage in terms of substantive regulation of freedom of expression. Nevertheless, the Curfew had a momentous effect on freedom of expression. Exemplary

⁵⁸ See the statement of the Georgian Football Federation. [Link](#)

⁵⁹ Interagency Council Briefing. See the [Link](#). This decision of the government has not yet been reflected in the relevant legal act.

punishment of participants in demonstrations in violation of the curfew has become a norm in Georgia.

2.3.1. Curfew and the rights to assembly and demonstrations

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

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

Amid a sharp worsening of the epidemiological situation, on November 6, 2020, the Prime Minister announced the expected restrictions, noting that these restrictions did not apply to freedom of expression,⁶⁰ although on the very next day (November 7) the government announced a Curfew in seven major cities.

With this decision of the government, indirectly, in advance, the rally planned by the opposition on November 9 was declared illegal. The legal way to implement this decision was significant. According to the Organic Law of Georgia on Normative Acts, for a normative act to acquire legally binding force, it must be published on the website of the Legislative Herald of Georgia. According to the same law, entry into force upon publication of a government decree is the fastest way to bind a legal act, and according to paragraph 2 of Article 22 of the same law, the normative act shall enter into force at 24:00 on the day of its promulgation.

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

Despite the alarming epidemiological situation, this decision of the government was followed by sharply negative legal and political assessments. Nevertheless, the executive authorities started the exemplary execution of the curfew from 22:00 on November 9, 2020, and fined persons who moved to participate in the demonstration.⁶¹

⁶⁰ See the Statement of the Prime Minister of Georgia on November 6, 2020. See the [Link](#)

⁶¹ See the [Link](#)

The announcement of the curfew by the executive branch was carried out chaotically, with a high probability of bypassing the law. The implementation process also had significant shortcomings - for example, on the night of the announcement of the curfew, a homeless person was reportedly fined for being on the street.⁶²

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

2.3.2. February 6, 2021: demonstration against the Curfew

To fine the protesters for violating the Curfew is a proven practice in Georgia,⁶³ but a demonstration of February 6, 2021, must be highlighted. The demonstration was called the "March of Disobedience" and was held against the curfew, in violation of the requirements of the curfew. The demonstrations were held in Tbilisi and Batumi.

Protesters were fined again, albeit, by unorthodox methods, that generally are not used by the state. In particular, the Ministry of Internal Affairs of Georgia in Tbilisi identified the participants after the rally and imposed administrative responsibility for violating the curfew, not on the night of the rally, but after it ended. Similar practices of fining individuals for pandemic regulations have been observed several times, and, to our knowledge, such enforcement of the law has been applied in all cases to protesters.

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

⁶² See the [Link](#)

⁶³ According to IDFI, the only manifestation when individuals were not fined for holding a rally during curfew was the protest against the visit of Vladimir Posner. Vladimir Posner and his guests, marching in violation of the curfew to celebrate a birthday, gathered at a restaurant which further fueled the protest.

assume that the primary purpose of the curfew is to violate freedom of expression, however, in our estimation, the state is actively using this tool against that right.

It is noteworthy that an investigation was launched against 19 people participating in this rally for committing a crime under Article 248¹ of the Criminal Code.⁶⁴ This article criminalizes repeated violations of isolation and quarantine rules (including curfew) within a year. It is noteworthy that according to the information provided by the Prosecutor's Office of Georgia, in the first quarter of 2021, a total of 51 persons were convicted under this article.

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

Russian journalist Vladimir Posner visited Georgia on March 31, 2021, to celebrate his birthday with approximately with his 50 guests. That same night, he left the hotel with his guests and headed to the restaurant for dinner, where the birthday celebration continued in violation of the curfew. The events were followed by a fierce public outcry, and demonstrations took place both at the restaurant where Posner was celebrating his birthday and at the hotel where he was staying.⁶⁵

Unlike other cases of demonstrations in violation of the curfew, the MIA did not fine the protesters either on the night of the rally or afterward.⁶⁶

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

2.3.3. Restaurants protesting, PM threatening

On January 30, 2021, 200 food outlets for a day suspended their delivery service, protesting against the restrictions imposed on them.⁶⁷ On February 2, the restaurant business announced that they would open arbitrarily from February 6.⁶⁸

⁶⁴ See the [link](#)

⁶⁵ Material prepared by Civil.ge, see the [Link](#)

⁶⁶ We have taken all rational measures to obtain this information. We also contacted the organizer of the rally, who confirmed that the protesters had not been fined for violating the curfew.

⁶⁷ See the [Link](#)

⁶⁸ See the [Link](#)

On February 4, 2021, the statement of the Prime Minister was published on the website of the Government. According to this release⁶⁹, "the head of government spoke at the meeting about the expected response in case of deliberate violation of restrictions by the organizations." According to the Prime Minister, a decision has been made that a deliberate violation of the rules imposed by the organizations will lead to a tougher response. **At the same time, such organizations will no longer receive state subsidies and will not be able to participate in state support activities in the future.**⁷⁰

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

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

On February 8, 2021, the Ordinance N51 of the Government of Georgia of February 4, 2021, was published in the Legislative Herald of Georgia. This normative act defines the category of entrepreneurial entities and the conditions that can benefit from the obligation of subsidy. It was expected that the decision voiced by the Prime Minister would be legally formulated in this very resolution and its content would be clarified, however, this normative act does not contain any provision that would dispel the ambiguity surrounding the decision announced by the head of government.

In addition to the ambiguity, there were signs of punitive use of economic subsidy mechanisms to suppress freedom of expression. In particular, according to the case law of the Constitutional Court of Georgia,⁷¹ the use of support programs as a punitive measure is directed at cases when the state deprives the possibility to equal access to the state programs since a certain circle of persons violates the requirements of any other law.

⁶⁹ See the [Link](#)

⁷⁰ See Video from 3:49 -<https://youtu.be/V-qOP2U0IFU?t=230>.

⁷¹ Judgment of the Constitutional Court of Georgia №2 / 3/663 of May 11, 2018, "Citizen of Georgia Tamar Tandashvili v. Government of Georgia".

It should be noted that the Constitutional has already declared one of the normative acts of the government unconstitutional due to the use of support programs as a punitive measure.⁷² Namely, on May 11, 2018, the Constitutional Court found a violation of the right to equality and dignity and declared invalid the part of the rule of forming a unified database of socially vulnerable families, which did not allow persons living illegally in state ownership to register in the database.⁷³

Violating the rules established are quite pricey for the organizations: the law provides a fine for GEL 10,000⁷⁴ and in case of repeating the same action, the legal entity can be punished with liquidation.⁷⁵ We do not question the authority of the State to impose a statutory and proportionate sanction in the event of a breach of mandatory regulations, although support programs have not been and probably will not be part of this package of sanctions.

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

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

To sum up, during the pandemic, the Executive did not have the authority to restrict freedom of expression and/or assembly and demonstration. However, it actively uses the Curfew against demonstrations, during which signs of selective enforcement of restrictions are revealed. At the same time, the state makes a special effort to punish the violation of the Curfew during the demonstration, which in turn contains elements of exemplary punishment. In addition to the problems arising from the enforcement of the restriction on

⁷² *ibid.*

⁷³ According to the Constitutional Court, “the use of the state as a means of achieving the goal of human socio-economic hardship goes beyond the permissible impact of a coercive measure. Therefore, deprivation of the opportunity to receive social assistance in the form prescribed by the disputed norm, in its essence, is a measure that can not be used to protect state property, as a measure of coercion. The measure established by the disputed norm is focused only on achieving the set goal, and the difficult social situation of the people is used as a means to achieve the goal.”

⁷⁴ Article 42¹⁰ of the Administrative Offences Code of Georgia

⁷⁵ Article 248¹ of the Criminal Code of Georgia

freedom of movement, there were also signs of a repressive threat to freedom of expression.

2.4. Obligation to use a mask outdoors: A large-scale problem of legality.

As mentioned above, the Executive has received extraordinarily great powers to manage the pandemic. The Parliament has limited itself to imposing sanctions. Administrative Offences Code of Georgia established two administrative offenses (Article 42¹⁰ and Article 42¹¹). Article 42¹⁰ does not specify prohibited actions and it may include all restrictions imposed by the Georgian executive on the management of the pandemic. It differs from Article 42¹¹, which deals exclusively with the wearing of a mask. The need to regulate differently was driven by the need for a different sanction. For comparison, for violating the rules of isolation and quarantine (this offense includes all the restrictions that are envisioned to prevent the spread of the pandemic [except for the rule of wearing a mask]) the fine for an individual is 2000 GEL. Repeated commission of the same act is punishable under criminal law,⁷⁶ while a person is fined GEL 20 for violating the rule of wearing a mask, and repeated commission of the same act is punishable by GEL 40.

On June 12, 2020, the Parliament imposed an obligation to wear a mask.⁷⁷ According to the primary version of Article 42¹¹ of the Administrative Offences Code of Georgia, the Parliament made it mandatory to wear a mask in indoor spaces and on public transport. The Code did not provide for the obligation to wear a mask outdoors. Consequently, no sanction was imposed.

On June 15, 2020, the Government approved the rule of wearing a mask.⁷⁸ The government decree established various rules related to the wearing of the mask. For example, what will be considered as a mask, and who will be released from the obligation to wear it.

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

⁷⁶ Article 42¹⁰ of the Administrative Offences Code of Georgia, Article 248¹ of the Criminal Code of Georgia

⁷⁷ Georgian law on "Amendments to the Administrative Code of Georgia" 12/06/2020.

⁷⁸ Decree of the Government of Georgia N368 on "Establishing the rules for wearing facemask". 15.06.2020.

On November 3, 2020, the Government of Georgia adopted a by-law⁷⁹ - a resolution indirectly expanding the content of Article 42¹¹ of the Administrative Offences Code of Georgia. In particular, the government introduced an obligation to wear a mask outdoors, and the responsibility for violating this rule was still vested in individuals under Article 42¹¹.⁸⁰ The latter, as already mentioned, imposed a sanction only for violating the rule of wearing a mask indoors.

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

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

- a) the issue in question is not regulated under a legislative act of Georgia;
- b) the issue does not fall within the authority of another body;
- c) the ordinance is caused by an emergency.

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

As mentioned above, the Parliament already had enlisted the sanction for not wearing a mask only indoors. Otherwise, the legislature discussed the need for wearing masks separately and took into account the relevant sanction. Naturally, the Georgian parliament

⁷⁹ Decree of the Government of Georgia N660 on the “Amendments to the Decree of the Government of Georgia N368 on “Establishing the rules for wearing facemask”, 3.11.2020.

⁸⁰ article 5 of the Decree on “Establishing the rules for wearing facemask” indicated that for violation mentioned decree fine shall be imposed by the Administrative Code of Georgia.

could have required the public to wear a mask outdoors too, but it precluded doing it. At the same time, it is the exclusive competence of the Parliament to envision public legal responsibility.⁸¹ Acts adopted by the executive have, in some cases, play an important role in determining the content of actions recognized as punishable. In the present case, we consider that the decision of the executive branch to impose an obligation to wear a mask outdoors and envision a relevant penalty for violating this rule is contrary to law. In particular, with such regulation, the government has expanded the content of the relevant article of the Administrative Offences Code of Georgia. At the same time, it went beyond the competence of the Parliament of Georgia.

It should be noted that the Sachkhere District Court, by its decision N4/1-21 of March 10, 2021, abolished the fine for not wearing a mask outdoors.⁸² The judge based the decision on the fact that Article 42¹¹ of the Administrative Offences Code of Georgia did not provide for a sanction for the act committed. Otherwise, the judge considered that the Government's ruling, which required the use of a mask outdoors and indicated that a sanction under Article 42¹¹ should have been used for violating this rule, did not constitute a legal basis.

It is noteworthy that the legal problem of the decision regarding the rule of wearing a mask outdoors does not end only at the stage of its adoption. According to Article 12 of the Organic Law of Georgia on Normative Acts, if the government exercises the powers prescribed in paragraph 2 of this Article, the regulation adopted is temporary and for it to retain its legal force, the Parliament of Georgia must intervene. According to Paragraph 3 of Article 12 “Not later than one month after adopting a normative act under the second paragraph of this article, the Government of Georgia shall submit to the Parliament of Georgia a draft legislative act specifying the authority of the Government of Georgia or of another body/official with respect to adopting/issuing subordinate normative acts on relevant issues. If the Parliament of Georgia fails to adopt the relevant draft law within three months after the submission, the ordinance of the Government of Georgia shall be considered void. In this case the Government of Georgia may not issue another ordinance on the same issue.”

⁸¹ Administrative Offences Code 42¹⁰: the composition of which is automatically filled by the restrictions imposed by the executive in connection with the pandemic, we will review below.

⁸² On May 14, 2021, it was reported that this decision had been upheld by the Court of Appeals. See the [Link](#).

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

The Executive has violated this obligation. The relevant draft law was not submitted to the Parliament. The amendment to the Administrative Offences Code of Georgia was made on February 18, 2021, about 4 months after the adoption of the relevant government decree.⁸³ During this time, the Ministry of Internal Affairs of Georgia has not stopped fining citizens for violating the rules of wearing a mask outdoors.

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

3. Problems of parliamentary, judicial and civil oversight over the executive

The constitutional standards in Georgia, as well as international instruments, indicate the need for several basic procedural and material guarantees, both specifically on restrictions on freedom of movement and the use of mechanisms restricting basic human rights in an extraordinary situation. These include the restriction being prescribed into legislation, proportionality, and the exercise of judicial and parliamentary oversight.⁸⁴

⁸³ Draft Law on Amendments to the Code of Administrative Offenses. See the [Link](#)

⁸⁴ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), opinion No. 995/2020. INTERIM REPORT ON THE MEASURES TAKEN IN THE EU MEMBER STATES AS A RESULT OF THE COVID-19 CRISIS AND THEIR IMPACT ON DEMOCRACY, THE RULE OF LAW AND FUNDAMENTAL RIGHTS. See also. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), opinion No. 842/2016 "ON THE LEGAL FRAMEWORK GOVERNING CURFEWS".

3.1.1. Parliamentary oversight

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

Although the Parliament has delegated the Executive to restrict basic human rights during a pandemic, it has never exercised its powers of oversight over the Executive.⁸⁵

Exceptions are questions from members of parliament. In 2021, the MPs addressed the Government 141 times with various questions.⁸⁶ Only two of these questions focused directly on obtaining information related to the human rights restrictions while managing the pandemics. It is noteworthy that the executive has not answered any of these two questions so far. The time limit to respond set by the Rules of Procedure of the Parliament is already exhausted for one of the questions.

The last question was asked on April 27, 2021, and the deadline for the executive to answer the question has not yet expired. However, the first question was asked on February 23, 2021. The latter was related to the total number of fines for not wearing masks.⁸⁷ The Ministry of Internal Affairs of Georgia was responsible for answering the question, but it has not answered the question so far.⁸⁸

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

In terms of the effectiveness of parliamentary oversight, the 2020 report of the Parliament is noteworthy, where a separate part is dedicated to the legislative measures implemented within the framework of parliamentary oversight.⁸⁹

According to the report, "even in the event of a pandemic, the parliament actively exercised its oversight powers under Georgian law, used oversight tools, and oversaw the activities of the Georgian government."⁹⁰ It is clear from the same report that the parliamentary oversight has hardly touched upon the measures taken to restrict basic human rights during

⁸⁵ Mechanisms / powers that are used at the initiative of the Parliament of Georgia and not the periodic instruments provided by law (for example, annual reports, Ministerial Hour, etc.).

⁸⁶ MP Questions Asked During 2021. See the [Link](#)

⁸⁷ Number of penalties imposed for violating the rules of wearing a mask by category (fines outdoors, indoor space, transport, etc.).

⁸⁸ MP Mikheil Sarjveladze, Member of Parliament of Georgia's question to the Minister of Internal Affairs of Georgia. See the [Link](#).

⁸⁹ 2020 Report on the Activities of the Parliament of Georgia and Action Plan for 2021. See the [Link](#).

⁹⁰ Ibid, p.64.

the pandemic. Namely, the relevant part of the report mentions the Parliamentary Committee on Diaspora and Caucasus Affairs discussed the measures taken in terms of assistance to citizens abroad.⁹¹ And the Sports and Youth Committee heard information on sporting outcomes, pandemic activities and the post-crisis plan.⁹²

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

3.1.2. Judicial Oversight

Judicial power is exercised by the Constitutional Court and the common courts of Georgia. The data available at this time do not allow for a thorough assessment of the effectiveness of judicial oversight. IDFI will address this issue in more detail in subsequent analyzes of the pandemic.

At this stage, the problem of delayed justice has been identified, which significantly reduces the efficiency of the judiciary. The data available to us indicate that pandemic cases are not being considered promptly in either the common courts or the Constitutional Court. IDFI devoted an extensive analysis to the delay of cases in the Constitutional Court of Georgia.⁹³ Unlike the Constitutional Court, common courts do not publish their decisions, and it is impossible to draw complete conclusions about the timing at this stage. Notable is the administrative lawsuit registered in the Tbilisi City Court on March 5, 2021, which concerns the legality of the existence of a curfew. The hearing of the common court was scheduled for June 9, 2021 - 3 months after the filing of the lawsuit.

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

⁹¹ Ibid, p.80.

⁹² Ibid, p. 94.

⁹³ Covid-19 and Constitutional Review: Assessment of the Effectiveness of the Constitutional Court of Georgia

3.1.3. Civilian Oversight

Civil society plays an important role in increasing state accountability. Exercising oversight function is impossible without access to the information. Information can be obtained by processing publicly available sources and/or requesting public information.

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

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

Here, IDFI deems it necessary to single out the LEPL Labor Inspection Service, which provided us with a copy of each violation report issued. Based on these documents, it was possible to create data on fines for legal entities and study the main trends. The efforts made by the Labor Inspection Service deserve a positive assessment and it would not be fair to spread the general comment on it.

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

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

4. Quantitative analysis of the enforcement of restrictions related to Covid-19

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

Here is some basic commentary to rules that are deemed to be Covid-19 related offenses:

Article	Description of the Offence Action
AOC. Art. 42 ¹¹	<p>This Article applies exclusively to the rule of wearing a mask. Offenses and related fines are:</p> <p>A) Violation of the rule of wearing a mask outdoors or indoor public spaces during a pandemic and/or epidemic - Fine 20GEL</p> <p>B) Admission of a person without a mask in an indoor public space during a pandemic and/or epidemic - Fine 500GEL</p> <p>C) Violation of the rule of wearing a mask while traveling by public transport- Fine 20GEL</p> <p>D) Violation of the rules of wearing a mask while traveling by Taxi- Fine 20GEL</p>
AOC. Art. 42 ¹⁰	<p>This offense has no legal composition of its own. The article declares violation of the rules of isolation and/or quarantine to be an administrative offense. These rules not to be broken are fully defined by the Executive.</p> <p>Fine for an individual: 2000GEL</p> <p>Fine for a legal entity: 10 000GEL</p>
CC. Art. 248 ¹	<p>Nor does the Criminal Code prohibits a specific action. The article just points to AOC Art. 42¹⁰ and sets that if a person breaks the rules set by the government twice within 1 year, becomes criminally liable</p>

Figure 9

The IDFI has devoted an extensive analysis to the compatibility of the above-mentioned Articles with the Constitution. The study revealed that there are important legal questions concerning the constitutionality of the Articles that set penalties for violating the rules related to the Covid-19.⁹⁴

Several authorities have been tasked with enforcing restrictions imposed to prevent the spread of the novel coronavirus. The Ministry of Internal Affairs and the Ministry of

⁹⁴ Covid-19 and Sanctions: Systemic problem of constitutionality, see the [link](#)

Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs should be singled out from these bodies. It is they who bear the main burden of detecting the relevant offenses.

4.1. Fines issued by the Ministry of Internally Displaced Persons from the Occupied Territories of Georgia, Labor, Health and Social Affairs

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

The IDFI has requested and received all fines issued by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia. The latest fine is dated March 22, 2021. The data below thus reflect all the fines issued by the named ministry from 23 May 2020 [date of promulgation of the liability norms] to 22 March 2021.⁹⁵

According to the provided data⁹⁶, the Labour Conditions Inspection Department (LCID) revealed 181 administrative violations throughout Georgia in the reporting period 23/05 / 2020-22 / 03/2021 (in 10 months). The legal basis for imposing liability in all cases was Article 42¹⁰ of the Administrative Offences Code.

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

LOCATION	SUM	Legal Person	Ind. E	%
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⁹⁵ We addressed the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia twice, and our request has been referred to the Labour Conditions Inspection Department.

⁹⁶ See Data generated as a result of processing the information provided by the Labour Conditions Inspection Department, based on the quantitative analysis presented below.

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

Figure 10. Territorial distribution of identified violations

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

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

Statistics of administrative offenses over time:

Year	month	quantity	%
2020	ივნისი / June	21	11,60%
2020	ივლისი / July	36	19,89%
2020	აგვისტო/August	2	1,10%
2020	სექტემბერი/September	15	8,29%
2020	ოქტომბერი/October	30	16,57%
2020	ნოემბერი / November	8	4,42%
2020	დეკემბერი / December	30	16,57%
2021	იანვარი / January	9	4,97%
2021	თებერვალი / February	20	11,05%

2021	მარტი / March ⁹⁷	10	5,52%
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Figure 11

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

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

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

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

⁹⁷ Including 22 March.

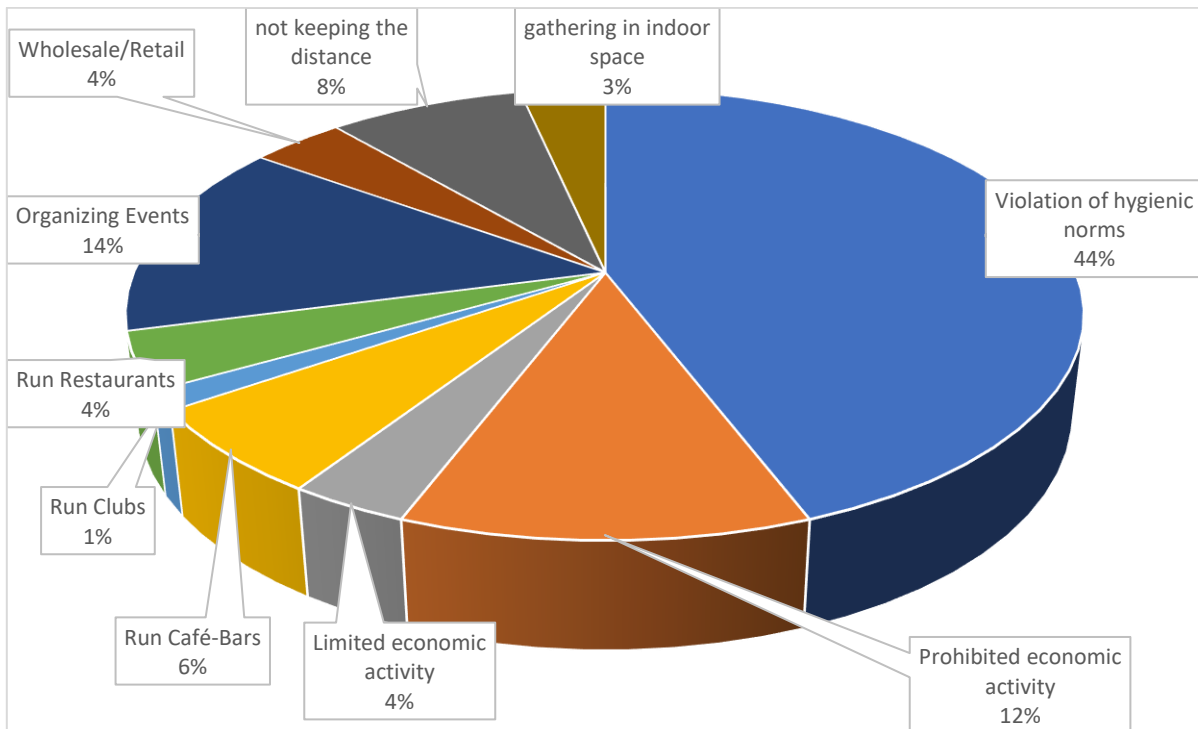


Figure 12

4.2. Statistics on the execution of Covid related regulations by the Ministry of Internal Affairs

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

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

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

During the reporting period, a total of 104,073 violations of Covid regulations were revealed by the Ministry of Internal Affairs. The vast majority of them (93642) are breaching the rules for wearing a mask.

<i>Breach</i>	<i>Physical Person</i>	<i>Legal Person</i>	<i>Total</i>
AOC, Art. 42¹⁰	10414	17	10431
AOC, Art. 42¹¹	93 633	9	93 642
<i>The fines imposed on individuals totals at a minimum of 22,700,660 (GEL) and 174,500 (GEL) for legal entities.</i>			

Figure 13. Total data on violations detected by the Ministry of Internal Affairs

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

The fines issued by the LEPL Labor Inspection Service and the Ministry of Internal Affairs amount to approximately GEL 50,000,000. The data indicate that the efforts of the Ministry of Internal Affairs to enforce Covid regulations are mainly aimed at identifying violations committed by individuals.⁹⁸ Of the approximately 104,000 fines, legal entities have only been identified as offenders 26 times.

⁹⁸ It is impossible to distinguish between a natural person and an individual entrepreneur from the data provided by the Ministry of Internal Affairs.

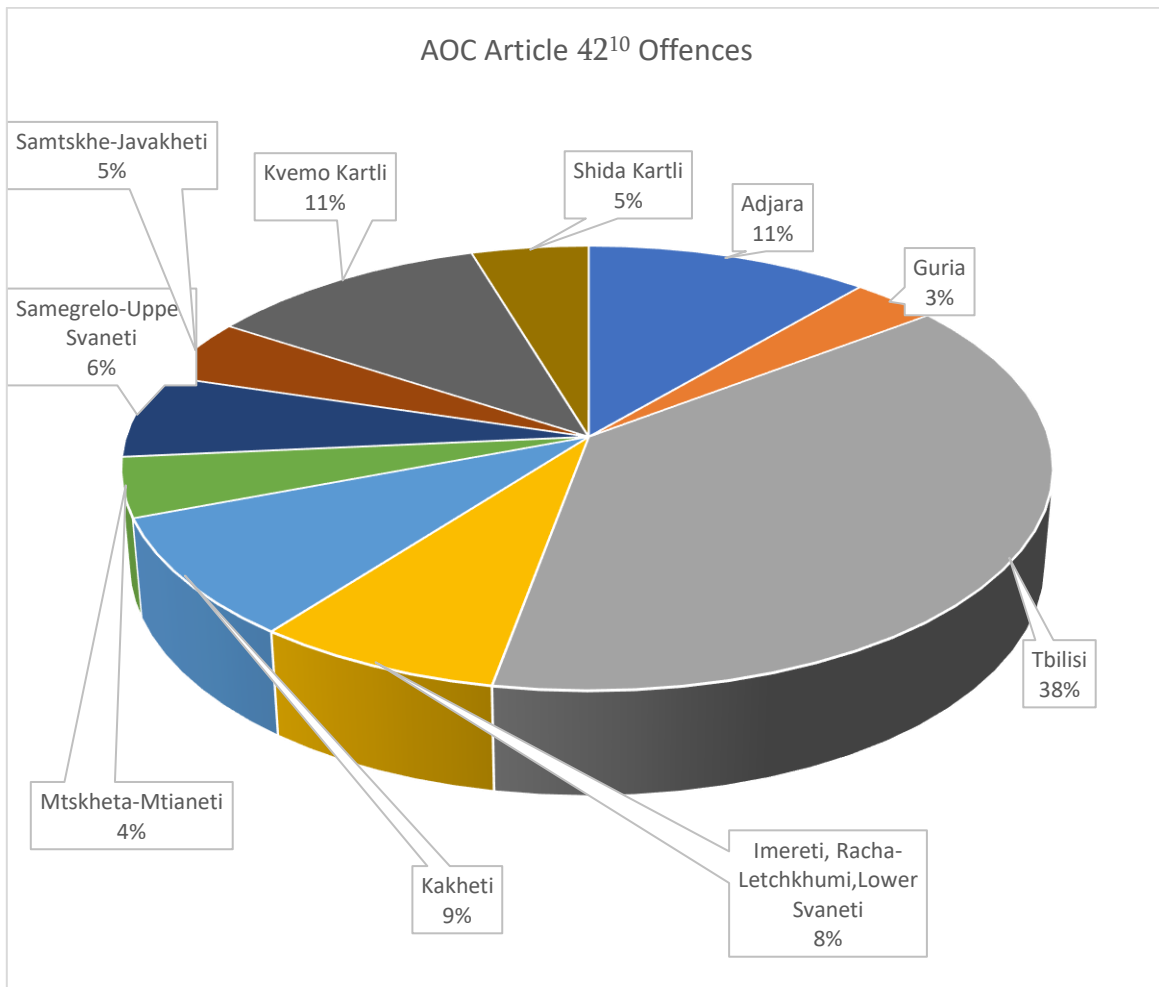


Figure 14.

As mentioned above, the Ministry of Internal Affairs did not provide us with full data, in some cases, no data was provided at all. This makes it impossible to draw valuable conclusions about the penalty and enforcement process due to Covid regulations. A kind of "black box" is the issue of enforcement of fines, namely, what are the appeal/satisfaction statistics, how many of the individuals paid the fine. There are many problems with the enforcement of fines that remain unanswered.⁹⁹

4.3. Prosecutor's Office of Georgia and the Ministry of Internal Affairs: Prosecution statistics for violation of pandemic related rules

⁹⁹ There is insufficient data to investigate this issue. The Ministry of Internal Affairs did not provide IDFI with any information about the execution of the fines.

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

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

Statistics of registered crimes are available on the website of MIA. However it does not contain information how many times did the ministry of internal affairs has detected the fact of committing the crime established by the article 248¹ of the Criminal Code of Georgia.

Basic Recommendations:

- The involvement of the Parliament in restricting basic human rights during a pandemic must be increased. The Parliament should utilize all the oversight instruments assigned to it by the Constitution and the Rules of Procedure. The issue of the way curfew is applied shall become the subject of parliamentary debate.
- The legal vertical of pandemic management needs to be refined. Transparency and involvement of the Interagency Council should be increased. The procedure for the activities and decision-making of the Interagency Council should be defined.
- The Government, the National Security Council (Operational Headquarters), and the Ministry of Internal Affairs should ensure proactive access to open data and information related to pandemic management and enforcement.
- The state should pay special attention to the protection of equality in the process of introduction and enforcement of Covid related regulations.
- Common and Constitutional Courts should give priority to cases that have challenged the constitutionality/legality of existing restrictions on pandemic management.
- The common court should ensure that decisions on pandemic cases are published and/or otherwise accessible.

