

საია-ს შეფასება საგანგებო მდგომარეობასთან
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GYLA's assessment on the legislative amendments adopted in connection with the state of emergency

On April 23rd, the Parliament of Georgia has adopted legislative amendments to the Code of Administrative Offenses of Georgia, the Criminal Code of Georgia and the Law on Public Health. The legislative amendment has determined an administrative responsibility for violating the rules of isolation and quarantine, as well as the state of emergency by the Decree of the President and other relevant normative acts, while according to the amendment to the Criminal Code, in case of committing repeated offenses of these actions, criminal responsibility is established.

First of all, it should be noted that the information about the bill was disseminated on March 17th, 2020 and was registered in the Parliament on the same day, although it was not publicly available until April 13th, 2020, until the Parliamentary Bureau submitted it to the relevant committee for consideration. During this period, **the introduction of the bill to the stakeholders, and the possibility of submission of the relevant comments had not been ensured.** It should also be noted that **the bill was considered only by the Committee on Legal Issues and was not considered by the Committee on Human Rights and Civil Integration,**

the participation of which was important in this process. Consequently, the legislative process was conducted behind closed doors and there was no possibility of any form to participate in it.

Amendments to the Code of Administrative Offenses

The amendment to the Code of Administrative Offenses stipulates that in case of violation of the rules of isolation and/or quarantine as well as the state of emergency or martial law, the case of administrative violation is considered, a protocol is drawn up and a penalty is imposed by the bodies determined by the Ministry of Internal Affairs of Georgia, the Ministry of Finance and the Presidential decree and governmental resolution. We think that on these types of offenses that have the importance of judicial notice for the use of criminal liability and, therefore, has the criminal content, **a decision on imposing the liability should have been taken not by the Ministry of Interior Affairs or the Ministry of Finance, but by the Court**, in accordance with the article 208 of the Code of Administrative Offences. The case-law of the European Court of Human Rights stipulates that the procedural rights provided in Article 6 of the Convention, which apply to the notion of criminal charge, also apply to administrative offenses of a criminal nature.

Accordingly, the judgment delivered on the case, which may become the basis for criminal liability, must be verified not in the event of an appeal of the protocol by a party but must be subject to judicial review, as it is in the case of other offenses for which repeat offense implies criminal liability (e.g. carrying a cold weapon, illegally cutting down a tree-shrubs).

The amendment to the Code of Administrative Offenses also determines that in case of violation of the rules of isolation and quarantine, an authorized person of the Ministry of Internal Affairs has the right to take a person and place him/her in the appropriate space as an implementation of the preventive measure, which cannot be considered as detention. Although it is true that subparagraph “e” of the point 1 of the Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides the possibility of depriving a person of his/her liberty without observing the procedures established by law to prevent the spread of communicable diseases, and point 2 of the Article 11 of the Law on Public Health makes possible that this decision to be appealed, however, according to this rule **during the transfer to an appropriate space his/her rights are not explained to a person, they do not have a possibility effectively getting legal aid or presenting an appeal that prevents him/her from exercising his/her right to**

protection.

Amendments to the Criminal Code

The amendment to the Criminal Code is also flawed, according to which criminal liability is established for repeated violations of the rules of isolation and/or quarantine, as well as the state of emergency or martial law. According to the implemented amendment, it is not clear, and therefore, **it is inexplicit how the criminal prosecution would be started against a person in the conditions in which the administrative protocol has been drawn up against a person, but it has not entered into force yet**, because a penalized person has not yet used the possibility to appeal because until the end of the state of emergency according to the paragraph one of the Article 13 of the Resolution N181 of the Government on March 23rd, 2020, terms for submission and review of the administrative complaint is suspended. Thus, in this case, the amendments needed more clarity.

It should also be noted that the amendment to the Criminal Code established liability for violation of the state of emergency or martial law, and imprisonment for up to six years is determined as a sentence unless otherwise provided by the Presidential decree. In this case, according to Article 8, Paragraph 2 of Decree N1 of the President of Georgia of March 21st, 2020, imprisonment for a term of up to three years is defined as a punishment, and therefore, this sentence will be applied during this state of emergency.

As for the sentence reflected in the Criminal Code by this amendment, it is disproportionate to cases where the violation of the regime did not cause significant damage. Therefore, **it was necessary to impose a more proportionate punishment for a violation of the state of emergency or martial law, and if the violation of the regime resulted in significant damage, in this case, the use of strict liability.**

It should not be overlooked also that the determination of sentencing for up to six years imprisonment for this action puts it to the category of a serious crime, although in this case it should not be considered a serious crime, as the Presidential Decree only provides imprisonment for up to three years. Accordingly, **the procedural actions specified in the Criminal Procedure Code, which apply only to the category of serious and/or grave crimes**

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(including covert investigative actions), **cannot be used.**

In view of all the above, GYLA negatively assesses the process of conducting the legislative change behind closed doors, without the engagement of stakeholders, and considers that part of the legislative change is vague, and part does not meet the human rights standards recognized and strengthened by the Constitution of Georgia.