Pandemic and Restricted Human Rights

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ABSTRACT

The coronavirus crisis has covered the world and threatened the major benefits of humanity: life, health and democracy. In one of the statements, the UN Secretary General calls this crisis as the human crisis. Unlike the United Kingdom, in the course of the pandemic in Georgia, a list of effective measures and appropriate mechanisms were not created, through which the growth of unemployment in the country would have been minimized and the standard of protection of workers’ rights would be raised. In the near future problematic issue in the form of labor disputes arising from the pandemic will stand to Georgia’s judiciary. According to this scientific work I will raise a new issue: are the judges able to evaluate to what extent the company, which fired employee due to economic circumstances, had the opportunity to take alternative measures, adapting its budget to the current economic situation, to manage finances more efficiently, to avoid the financial crisis and the need to reduce the workforce. I suggest following:

- Judges should be trained in this area;
- An appropriate qualified team should be set up in court.

However, the management of the pandemic, the protection of human life and health, in some periods led to the restriction of some of the basic rights guaranteed by the Constitution of Georgia and the European Convention.

Which is the triad of fundamental rights that has been overshadowed by the pandemic? On what grounds can these rights be restricted? What does the consequential result of the restriction of a fundamental right mean? What is the difference between freedom of movement and freedom of assembly? What does the specific proviso of the law mean? Does the proviso set any priority from the hierarchy of normative acts of Georgia and namely the proviso: the interference should be carried out on the basis of law?

In my opinion, the Constitutional Court of Georgia should take the responsibility of the key mission such as: introducing precise definitions and interpretations of fundamental rights for both lawyers and civil society. My scientific work suggests how the foregoing may be achieved.

"Freedom is a conscious necessity". - Georg Wilhelm Friedrich Hegel.

KEYWORDS: Pandemic, The rights of employees, Freedoms of assembly and movement

“COVID-19 is not just a health issue; it can also be a virus that exacerbates xenophobia, hate and exclusion”
António Guterres¹

If we recall the recent past, local virus attacks and pandemic situations have occurred several times in some countries in the 21st century. However, 2020 turned out to be a particularly heavy year for the whole world. The coronavirus crisis has covered the world and threatened the major benefits of humanity: life, health and democracy. In one of the statements, the UN Secretary General calls this crisis as the human crisis. These two

¹ UN Secretary-General. https://www.un.org/en/un-coronavirus-communications-team/protecting-human-rights-amid-covid-19-crisis.
words clearly show the huge and severe traces of the pandemic on the path of human development.

Since the start of the COVID-19 outbreak, United Nations human rights officials and UN-appointed independent experts have been stressing the importance of protecting the rights of people for democracy, because it was obvious to all human rights defenders that to fight the pandemic, the world would have to restrict a number of basic rights for some time. UN High Commissioner for Human Rights Michelle Bachelet in her statement underlined that every state must use all resources and unprecedented measures to protect the key rights, as has happened in Europe. Employee rights are number one in the list of key rights. The state must take all effective measures to minimize the number of people who have lost their jobs as a result of the pandemic and made unemployed.

Unfortunately, in the course of the pandemic in Georgia, a list of effective measures and appropriate mechanisms was not created through which the growth of unemployment in the country would be minimized. I think, our country should further take into account the regulation on health in England adopted by the Parliament of the United Kingdom on the basis of which new national restrictions were set from November 5 on a number of issues. With these restrictions, we also meet a high standard of protection for employees, according to which workers in any part of the UK can retain their job, even if their employer cannot afford to pay them, and be paid at least 80% of their salary up to £2500 a month. With the above Coronavirus Job Retention Scheme, the United Kingdom has fulfilled a positive obligation towards its population. In regard to the budget of our country, it is of course difficult to take obligation of paying at least 80% of salary to workers in period of the force-majeure situation. However, our country was able to partially fulfill the basic obligations of the social state defined by the Constitution and during the pandemic period, was able to help with a minimum monthly amount to the employees left without salary. Why did I mention this topic and how it is linked to judiciary? The answer is simple, the pandemic results are slowly affecting a not-so-small number of employees, in the near future, those people will apply to court, who were dismissed from work by employers as if this dismissal was in accordance with rules of Labor Code, given in Articles 47 and 48. It is also noteworthy that most small businesses, will cite on economic circumstances that led to the reduction of labor force as grounds of the termination of the employment contract and to prove it they exactly will bring the reduced profit on the background of the pandemic. In my opinion, we should prepare our justice system exactly in this part: what will be the view of the court in this situation, when the current legislation provides for the dismissal of an employee due to economic circumstances?

I suggest to the judiciary system to take the following steps: judges should be trained in this area and an appropriate qualified team should be set up in court, who will be able to see what extent the company, which fired employee due to economic circumstances, had the opportunity to take alternative measures, adapting its budget to the current economic situation, to manage finances more efficiently to avoid the financial crisis and the need to reduce the workforce. However, at the same time the judge should consider the fact that the company’s profit-making cannot be considered from the moral angle and at the same time we cannot limit one of the most important achievements of a democratic state – free and competitive business.

In my opinion, in today’s world, which is battling a pandemic and watching the coming years with fear, it would be good if we had an entry similar to the UK regulation in the Labor Code. This entry should be clear and coming into force only in the event of an officially recognized pandemic in the world and in our country and relate solely to the right of employees to retain their job despite the non-acceptance of salary. The whole world recognized that Georgia was one of the leading countries in terms of coronavirus control, management and healthcare system management.

However, the management of the pandemic, the protection of human life and health, in some periods led to the restriction of some of the basic rights guaranteed by the Constitution of Georgia and the European Convention.

Particularly evident is the triad of fundamental rights in the shadow of the pandemic:

- Freedom of assembly;
- Freedom of expression;
- Freedom of movement.

The above three rights are quite interrelated, although all three are independently functioning and full-fledged freedoms. None of them has characteristics of accessory. However, often, unfortunately, a right that is connected to another right in such a manner that it cannot exist without the latter right is an accessory right.

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2 https://www.gov.uk/guidance/new-national-restrictions-from-5-november?fbclid=IwAR2k2sFyLh3ILpbgW5n3y_wuEvEy8k2JDxO_buENb-h4lkQ2Y-HTBX1egg#moving-home.

3 https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme.
Ordinance of the Government of Georgia N670 on making amendments to Ordinance of the Government of Georgia N322 “On the Approval of Isolation and Quarantine Rules” (Ordinance N670 – date: 09.11.2020).

lawyers confuse “consequential result” and accessory. Restriction of the freedom of assembly by the state in a certain territory does not automatically prohibit movement in that territory, if it is not stated in the Restrictions Act. As for the consequent result, we see this result when freedom of movement is prohibited for a certain period of time. The consequent result here is the restriction of the freedom of assembly for that period of time in the open air, if, of course, this freedom also is not restricted by the law of the same restriction. The most obvious example of this was the time limit 22:00 to 05:00 set by the Ordinance5 of the Government of Georgia in November 2020. According to the background of the pandemic, given the current epidemiological situation in Georgia and the rapid increase in the number of infected, by the decision of the Interagency Coordinating Council, local restrictions were imposed, which meant restrictions on movement, both on foot and by vehicle, from 22:00 to 05:00. Misinterpretation of the law often leads to further incorrect legal assessment. From 22:00 to 05:00 the freedoms of assembly and expression normally continue to function indoors, however with the effect of the consequent result on outdoors gathering. This means: the restriction of freedom of movement caused the territorial restrictions of freedom of assembly. As all lawyers know, freedom of movement is not an absolute right and it can be subject to a number of restrictions. According to Paragraphs 1 and 2 of Article 11 of the Constitution of Georgia (freedom of movement):

“1. Everyone lawfully staying in Georgia shall have the right to move freely within the territory of the country, to choose a place of residence freely and to leave Georgia freely.

2. These rights may only be restricted in accordance with law, for ensuring national security or public safety, protecting health or administering justice, insofar as is necessary in a democratic society”.

The fact is that in order to protect health, the state has the right to restrict freedom of movement. However, in addition to the legitimate aim, restriction must correspond to a set of principles and elements in order to be subject to constitutional-legal justification and not be qualified as an infringement of human rights. Before I list these universal principles, I would like to point out that freedom of expression and freedom of assembly are non-absolute rights. However, these rights are regarded to be one of the fundamental values and in case of their restriction, the aim of the state must be absolutely transparent.

We are a party to the European Convention (High Contracting Party), so I will list legitimate aims in which freedom of assembly may be restricted:

According to paragraph 2 of Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, there are aims in which a State may restrict this right:

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society:

- in the interests of national security or public safety;
- for the prevention of disorder or crime;
- for the protection of health or morals or for the protection of the rights and freedoms of others.

Also, if we rely on the European Convention on Human Rights, the interference with fundamental rights permissible if it is:

- Prescribed by law;
- Serves the achievement of a legitimate interest;
- Necessary for a democratic society;
- the extent of the limitation is proportionate in pursuit of the identified legitimate aim (measures were proportionate to the legitimate aims pursued).

As I have already mentioned, the interference of the state with fundamental human rights in order to be subject to constitutional-legal justification or, to put it simply, not to be considered as a violation of human rights, must meet certain principles such as:

(guiding principles on the margin of appreciation)
- The principle of proportionality;
- The restriction must be effective to achieve the legitimate aim

(effectiveness of procedural measures taken);
- Restriction must be necessary.

the existence of a pressing social need in the period of the interference

Finally, and most importantly, all lawyers should be aware that interference with the area protected by fundamental rights may be subject to constitutional justification if:

- It is based on the constitutional-legal limits of a fundamental right;
- This limit has been legitimately and proportionally imposed by the public authorities.

One of the types of constitutional legal limit, in particular, the specific proviso of the law, can be found in the article on freedom of movement, according to which:

1. Interference should be prescribed by law;
2. The law must serve the certain purposes or be based on certain situations: namely the law on
the basis of which is carried out the interference with the protected area.

It is clear that the limit (namely the proviso that interference must be carried out on the basis of law) does not set any priority from the hierarchy of normative acts of Georgia to any certain type of act. It's negligible for this entry, be it Organic Law of Georgia, Law of Georgia or just a normative act made under Law of Georgia. The main thing is that this act has legal force.

I will review the Ordinance of the Government of Georgia on the Approval of the Isolation and Quarantine Rules, which restricted the freedom of movement:

- The general regulations of this Ordinance defines the purpose for which this Ordinance was created, which includes determining isolation and quarantine rules provided for by the Law of Georgia on Public Health for the prevention of the mass spread of the coronavirus (COVID-19), and determining appropriate measures to minimize the possible threat to the life and health of the country's population and managing the epidemiological situation;

- And the first article of the Ordinance states the legitimate basis on the basis of which this normative document was created. Therefore, if we look at one of these grounds, Article 6 453 of the Law of Georgia on Public Health, we will see that Law of Georgia the last in the hierarchy of normative acts according to Georgian legislation clearly states that “The rules of isolation and/or quarantine shall be 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. Law of Georgia on Public Health defines measures adopted by the normative act 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 movement of persons.

In view of the above reasoning, it is clear that the Government of Georgia had full legitimate basis for restricting freedom of movement. Similarly, we can cite the Regulation7 of the Secretary of State of the United Kingdom, which entered into force on 5 November 2020. This regulation applies to a number of health-based restrictions in England. I will shortly point the list of restricted rights, which is quite large:

- Restriction of Freedom of assembly (which is different for funerals, weddings and various activities);
- Restriction of freedom of movement. (Unless there is a pressing need to leave the house);
- Restriction of movement between cities, there is an exception in the case of the change of residence in that moment;
- The third part is entirely devoted to the essence of the assembly and a number of restrictions to participation in indoor gathering and in outdoor gathering.
- The fifth part deals entirely with the enforcement of restrictions and requirements. It is noteworthy that a relevant person may take such action as is necessary to enforce any restrictions imposed by these Regulations. When the relevant person considers that the number of persons present at the gathering is contrary to the rules established by the regulation, he may call for the dissolution of these persons and also, a relevant person exercising the power to remove a person from a gathering may use reasonable force, if necessary, in exercise of the power.

The fact is that in civil society as well as in some lawyers this issue has caused a great deal of anxiety due to a lack of in-depth knowledge of these issues.

In my opinion, the Constitutional Court of Georgia should take responsibility of the key mission such as:

- Introducing exact definitions and interpretations of fundamental rights for both lawyers and civil society;
- Improving the knowledge of lawyers in following issues: the areas protected by fundamental rights, the boundaries and measures of restriction, forms of limits and issues of principles necessary for the qualification of the restriction in accordance with European Convention on Human Rights, case law and the judgments of the European Court of Human Rights.

The foregoing may be achieved in a variety of forms: by publishing relevant articles in the legal journal of the Constitutional Court of Georgia, creating relevant brochures and planning informative events. Only this will solve the problems I have raised in relation to the above-mentioned fundamental rights.

“Freedom is a conscious necessity”. – Georg Wilhelm Friedrich Hegel.

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6 Temporary measures to be taken until January 1, 2021.
7 https://www.legislation.gov.uk/uksi/2020/1200/pdfs/uksi_20201200_en.pdf?fbclid=IwAR24UxMI_6z2U6Y7aQep-WG_oLRBibMZ3f5dD1dU6qwbyNNhJIgkCMHFUU.
პანდემია და შეზღუდული ძირითადი უფლებები

ირინა ბათიაშვილი
საკონსტიტუციო სამართლის და ადამიანის ძირითად უფლებების კურსის ლექტორი,
საქართველოს ტექნიკური უნივერსიტეტის სამართლისა და საერთაშორისო ურთიერთობების ფაკულტეტი

შეკრების და მიმოსვლის თავისუფლება

"COVID-19 აქ არის მხოლოდ ჯანმრთელობის საკითხი; ეს არ არის მხოლოდ ჯანმრთელობის საკითხი. ამ რიგში არის ადამიანის უფლებათა სიაში ნუმერაცით პირველი. ზოგიერთ ადამიანი პარიზში მკვდრდება, თუმცა არ არის საკუთარი ხანგრძლივობა. ამ შემთხვევაში ადამიანს უფლება აქვს თავის პარიზში მკვდრდების მსხვერპლს ადამიანის უფლებათ შეაფაროს, რათა თავის რესურსებს გამოიყენოს.

1 გაეროს გენერალური მდივანი. https://www.un.org/en/un-coronavirus-communications-team/protecting-human-rights-amid-covid-19-crisis
რთლმსაჯულებასთან არც ალებას ლმწიფომ 2  https://www.gov.uk/guidance/new-national-
ჩვენმა შაოს ქვეყანაში ჩვენი შეზღუდვები მთელმა ამ მთელმა რომელმაც განსაზღვრა შენდეგი დასაქმებულთა რიგ რომელმაც გაშვებას გახ გამო უნდა იყოს გარემოება როცა ქვეყანაში შემცირება გარემოება მაშინაც შედეგად გადახდის შემთხვევაში ხელმძღვანელობის მიერ ეკონომიკური სამეფოს შემცირება, თუმცა წინ მოქმედი არა საქართველოში მინიმალიზირებული მოქმედი ადგილური პარლამენტის გახდა არ სამუშაო შეინარჩუ რომლებაც გათავისუფლებს გასათვალისწინებელი სამუშაო კომპანიის გაძლიერებამ ითვალისწინებს ვერ ათავისუფლებს კომპანიას ქვეყანაში მინიმალური შეძლო რთლისთვის გამოყენებით რამდენად გარემოება განცხადება დასაქმება %3, 48-
2  https://www.gov.uk/guidance/new-national-
3 https://www.gov.uk/guidance/claim-for-wages-through-

საათამდე

5 საქართველოს მთავრობის დადგენილება N670

4 აქცესორულია უფლება, რომელიც ისეა დაკავშირებული ამის კონტექსტში. ყველა ლიტერატურული არ ხელმისაწვდომი
5 სახაზგო საიდუმლოდ, მიმოხილვის პერიოდში N670 „იმავეს, როგორც და წარმოდგენის მიხედვით იმ შემთხვევაში, როდესაც 2020 წლის 23 პალიტ N322 დაეგზომოს მოძღვრება შევინახოთ 12 კვირაში, (შედეგი, თაორმილი 2020 წლის 9 ივნისს)}
შელახვად შეიძლება როების ვნელოვანი ბული კონვენციას ბათა.
1. შეზღუდვა (და პროპორციულობის მიღებული და უნდა სიტუაციებს ცულ
არ კანონის ზღვარი; იგი ხუთათვლებით სახელმძღვანელო)
ათასობით ფართოდ კერძოდ ამავდროულად უნდა საფუძველზეც იგი სამართალი შეეძლო და პრედიქტიულ საზოგადო კანონებში.

- პროპორციულობის პრინციპი / თანახმად ინტერესთან აკმაყოფილებდეს გარკვეულ პირის თანახმად:

  - შენახვა მიენიჭა წინა სახელმძღვანელ საბრძოლო ინსტიტუტი (და სხვ.
  
  - ფართოდ კერძოდ ამავდროულად უნდა სამართლის სახელმძღვანელ პრინციპი
  
  - გამართლებას ზუსტად, რომელიც ყოველგზით სათავსობა ხოლო თქვენ
  
  - გამართლება საქართველოს დემოკრატიულ საზოგადო კანონებში.

- თავისობა.

6. 2021 წლის 1 იანვრამდე გასატარებელი დროები-
ბერს ვების მთლიანი შეზღუდვის, ● მიმოსვლის, ● მესამე, ● მეხუთე რეგულაცია აშკარაა. აქტებით დროს გამოწვეული სასამართლო უფლებათა ფორმები სასამართლო ამაღლების გამოცემით ზემოაღნიშნულ ფარგლებზე უნდა პრინცი. ცოლა, რომ მრავალჯიურ სამართლისუფლები ან სავაჭრო უფლებებზე მოხდა მხოლოდ განხორციელება უფლების სასამართლო სამსარმელო ამაღლების გამოცემით.

ჰყავს Ῥოსტომახია. სამოქალაქო უფლებები სასამართლო უფლებებთან ეს ფორმები სასამართლო ამაღლების განხორციელება უფლებათა ფორმები სასამართლო სამინიჭებლო გამოიყენოს.

7 https://www.legislation.gov.uk/uksi/2020/1200/pdfs/uksi_20201200_en.pdf?bibcid=IwAR24UsMF_6z2U6Y7aQep-WG_oLRBibMZ3f5dD1dU6qwbyNNhJgkCMHIUU