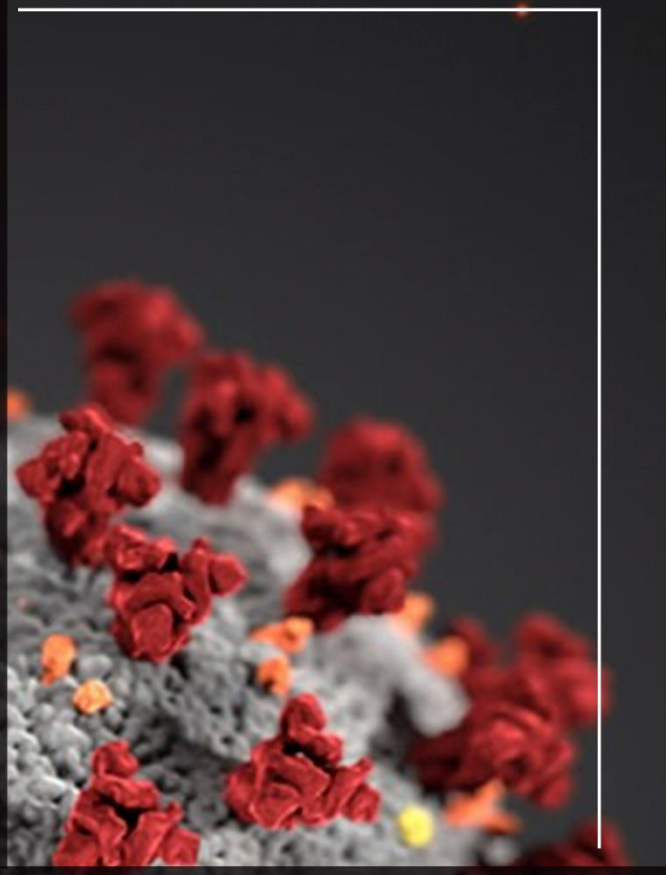
HELSINKI CITIZENS' ASSEMBLY VANADZOR

Human Rights Situation in the Republic of Armenia Under the State of Emergency Established for the Prevention of COVID-19 Pandemic

16 March – 14 April, 2020



REPORT

Part 1

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Contents

Introduction

On 11 March 2020, the World Health Organization (WHO) announced an outbreak of the COVID-19 virus (COVID-19 virus), which was first detected in December 2019 in the Chinese city of Wuhan, reaching the level of a pandemic. The WHO called for states to take urgent and aggressive action to curb the spread of coronavirus. The WHO statement stressed that countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights.

The first event aimed at COVID-19 in the Republic of Armenia (RA) was the formation of an interdepartmental commission coordinating the work to prevent the spread of coronavirus defined by the RA Prime Minister's decision No. 93-A of 30 January 2020.

The first case of infection was registered on 29 February 2020. The work of educational institutions was stopped from March 2 to 8, the march dedicated to the memory of the victims of March 1 was canceled, but on March 6, the "Civil Contract" party headed by the Prime Minister launched a campaign ahead of the April 5 referendum on constitutional amendments. From March 6 to 12, within the framework of the campaign, meetings and rallies were organized in Yerevan, Stepanavan, Syunik and Vayots Dzor regions.

Prior to that, according to the recommendation No. zh/6078/2020 of 27 February 2020 of the first Deputy Minister of Labour and Social Affairs of the Republic of Armenia, the visits to the care facilities for the elderly were limited.

From 25 February 2020, visits of parents and relatives of servicemen to all military units of the RA Armed Forces, all types of leaves and release of conscripts, including rehabilitation (medical) leaves (except for servicemen who serve under the "I am" military service program) have been prohibited.

On 11 March 2020, the Prime Minister of the Republic of Armenia announced that three new cases of coronavirus had been registered in Armenia. On March 12, the "Yes" campaign was discontinued, on March 13 the work of educational institutions was stopped again, while on March 14 the Central Electoral Commission of the Republic of Armenia was still organizing training courses for members of precinct election commissions. On March 15, a new case of infection was registered in one of the factories of Yerevan.

A state of emergency was declared in the entire territory of the Republic of Armenia from 16 March 2020, 18:30 to 14 April 2020, 17:00, inclusive.

As of 22:00 on March 16, 694 tests of coronavirus disease were carried out in Armenia, 45 of which were positive. As of 11:00 a.m. on April 13, 1039 cases of coronavirus infection have been confirmed, 211 of which have been cured and 14 of which have resulted in death.

For a full assessment of the current legal regime of the state of emergency, we consider it necessary to point out the following initial circumstances.

The first circumstance: the latest state of emergency in the Republic of Armenia was declared on 1 March 2008 to prevent the peaceful protests by political opposition for the falsifications of the 19 February 2008 presidential election results. At that time, a state of emergency was declared in the city of Yerevan by the RA president R. Kocharyan's decree, without the existence of the RA Law “On the Legal Regime of the State of Emergency,” which was adopted only on 21 March 2012.

The second circumstance: by declaring the state of emergency, the authorities used mass political persecutions of the opposition through illegal criminal prosecution, criminal proceedings and arrests. An emergency regime was established in the Republic of Armenia not for the protection of the interests of the population, but for the purpose of illegal persecution of citizens.

The third circumstance: the RA Law “On the Legal Regime of the State of Emergency” was adopted on the basis of the previous experience of the state of emergency and has not defined proper approaches to the issues of proportionality and legality of human rights limitations in emergency situations, management and decision-making issues in emergency situations.

The COVID-19 pandemic is a serious challenge not only for Armenia but for all countries. The pandemic revealed a number of institutional problems relating to ensuring of legislation, administration, human rights and freedoms under the state of emergency. It should be noted that the shortcomings should be addressed exclusively in accordance with the standards of protection of human rights and fundamental freedoms.

A statement from the United Nations (UN) experts, issued on 26 March 2020, stated that "Everyone, without exception, has the right to life-saving interventions and this responsibility lies with the government. The scarcity of resources or the use of public or private insurance schemes should never be a justification to discriminate against certain groups of patients. Everybody has the right to health."

Attaching importance to the respect of human rights in emergency situations, Helsinki Citizens' Assembly-Vanadzor office, (HCAV), initiated awareness-raising, legal support, monitoring of legislative changes due to the COVID-19 virus epidemic. The results of the monitoring of legislative changes are summarized in this document (Report).

The report aims to assess the compliance of the legal acts adopted in the conditions of the state of emergency with the norms and principles of international human rights law, to identify the legislative and practical problems in the implementation and protection of human rights under the state of emergency, and to come up with recommendations and approaches.

The report assesses the measures taken during the state of emergency declared from 16 March 2020, 18:30 to 14 April 2020, 17:00.

The legal assessment is based on the approaches, recommendations of international human rights organizations, the principles, statements developed by intergovernmental organizations, international obligations undertaken by the Republic of Armenia in the field of human rights protection, the experience of bodies acting on the basis of international agreements, RA legislation, as well as scientific articles and other materials.

1. The Legal Regime of the State of Emergency and the Scope of the Limitations Applied

"The rule of law, democracy and human rights are a whole that cannot be violated by the state of emergency, either as an exception or temporarily" (Mr. Leandro Despouy, UN Special Rapporteur on Human Rights).

Illegal limitations of human rights and fundamental freedoms pose a real threat to the entire human rights system. In the event of a state of emergency, the possible expansion of the permissible scope of the limitation of rights may lead to the violation of the fundamental principles of the Convention rights and the rule of law.

Universal and regional human rights treaties distinguish limitation and derogation. In case of limitation of rights and derogation from the international obligations taken by the state, there are various guarantees of protection of rights.

The idea of limitations is based on the recognition that most human rights are not absolute but rather reflect a balance between individual and community interests[1].

Limitation clauses in human rights treaties apply at all times, irrespective of whether a state of emergency or exception is in effect, although they may be invoked more frequently, and sometimes unlawfully, in times of crises[2].

[1]Erica Daes, The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the U.D.H.R., UN Doc. E/CN.4/Sub.2/432/Rev.2 (1983) (part 3 of which deals with derogations)

[2] International Commission of Jurists, Legal Commentary to the ICJ Geneva Declaration Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis. Geneva, 2011, p. 58

States may impose limitations on the enjoyment of many rights such as the right to freedom of expression, association and assembly for certain legitimate purposes. Such limitations are often called “ordinary” limitations since they can be imposed permanently in normal times. So-called derogations, on the other hand, are designed for particularly serious crisis situations that require the introduction of extraordinary measures[3]. According to the declared state of emergency, certain rights may be subject to temporary derogations. The derogation of a right or a part of it leads to the partial or complete cessation of the performance of an international obligation[4]. The logic of the International Covenant on Civil and Political Rights is that states limit the rights as much as possible and not derogate from them[5].

Although the limitation of rights and derogation from the Convention assume autonomous legal procedures, international human rights law requires that they be based on the general principles of legality, necessity and proportionality, which should be guidelines for assessing the legitimacy of measures taken by the state.

International Human Rights Standards

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". ICESCR requires the states to take measures “necessary to prevent, control and treat epidemic, specific and other diseases.”

Each state is obliged to assess the nature and scope of measures taken in the event of a threat to the lives of the population: whether the scope of their application should be limited to the general regulations relating to the protection of public health, or whether exceptional measures should be taken that require derogation from the state obligations.

A definition test of the “state of emergency threatening the life of the nation” was conducted by the former European Commission on Human Rights[6] that developed the conditions describing the situation of the state of emergency.

1) it should be actual or imminent;
2) it must affect the entire nation;
3) it must threaten the continuance of the organised life of the community;
4) the crisis or threat must be exceptional, such that the ordinary measures or limitations permissible by the Convention, such as to ensure public security, health and order, are plainly inadequate[7].

The provisions on the limitation of the rights enshrined in the International Bill of Human Rights are intended to protect human rights from possible state abuse. During a state of emergency, the scope for possible violations of rights expands, given the high prevalence of limitations of human rights.

UN Committee on Economic, Social and Cultural Rights (CESCR) has emphasized that the

[3]Human Rights in the Administration of Justice: A manual and facilitator's guide on human rights for judges, prosecutors and lawyers,UNITED NATIONS, New York and Geneva, 2003, p. 814

[4] Dominic McGoldrick, The interface between public emergency powers and international law, p. 383.

[5] Dominic McGoldrick, The interface between public emergency powers and international law, p. 384.

[6] The European Convention on Human Rights originally provided for two judicial bodies: the Court and the Commission. Article 19 of the Convention provided for the establishment of the European Commission of Human Rights alongside the European Court of Human Rights. From 1953 to 1999, the Commission acted as a mediator to protect the Court from unfounded claims. The commission was to examine the cases and then submit its reports to the Court, the only body competent to make legally binding decisions.
More details at:
https://web.archive.org/web/20060828115011/http://www.law.columbia.edu/library/Research_Guides/internat_law/eur_hr#commission

[7] The European Commission for Democracy through Law, Compilation Of Venice Commission Opinions And Reports On States Of Emergency, Strasbourg, 16 April 2020, p. 6-7.

Covenant's limitation clause, article 4[8], is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations[9] by States. The same legal logic applies to the application of the provisions of the International Covenant on Civil and Political Rights (ICESCR), which states that "Nothing can be interpreted in this Covenant as meaning that any State, any group or any person has the right to engage in any activity or to perform any activity aimed at destroying or limiting any right or freedom recognized in this Covenant to a greater extent than specified in this Covenant."

Article 29 of the Universal Declaration of Human Rights defines the conditions for limitations:

1. should be determined by law;
2. should secure due recognition and respect for the rights and freedoms of others to meet the just requirements of morality, public order and the general welfare in a democratic society.

Article 4 of ICESCR allows the state, during a state of emergency, in which the life of the nation is in danger and about the existence of which is officially declared, to take measures that derogate from its obligations under this Covenant. In order to derogate the Covenant provides for a condition, according to which it is carried out as required by the exigencies of the situation. This condition stipulates that State Parties must not only substantiate their decision to declare a state of emergency in detail, but also any specific action arising from such a decision. The mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation. In practice, this will ensure that no provision of the Covenant, however validly derogated from will be entirely inapplicable to the behaviour of a State party[10].

One of the conditions for the justifiability of any derogation from the provisions of the Covenant is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

The Syracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, the general comments of the United Nations Committee on Economic, Social and Cultural Rights and the United Nations Human Rights Committee have set the permissible limits and conditions for human rights limitations.

The general interpretative principles relating to the justification of limitations, inter alia provide:

1) the scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned;
2) whenever a limitation is required in the terms of the Covenant to be "necessary," this term implies that the limitation:
   (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant,
   (b) responds to a pressing public or social need,
   (c) pursues a legitimate aim, and
   (d) is proportionate to that aim.

Any assessment as to the necessity of a limitation shall be made on objective considerations.

[8]The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

[9] Комитет ООН по экономическим, социальным и культурным правам, Замечание общего порядка № 14: Право на наивысший достижимый уровень здоровья (статья 12 Международного пакта об экономических, социальных и культурных правах), 11 августа 2000, E/C.12/2000/4, п. 28, доступ по следующему адресу: https://www.refworld.org.ru/docid/47ebcc3c2.html [последняя дата доступа 8 апреля 2020]

[10] UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, par. 4, available at: https://www.refworld.org/docid/453883fd1f.html [accessed 2 May 2020]

3) every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application;

4) in applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation;

5) no limitation on a right recognized by the Covenant shall be discriminatory (…)[11].

Derogation from the obligations during the state of emergency requires from domestic bodies to follow the principle of strictly necessary, according to which the severity, duration, and geographic scope of any derogation measure shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent. A measure is not strictly required by the exigencies of the situation where ordinary measures permissible under the specific limitations clauses of the Covenant would be adequate to deal with the threat to the life of the nation. Each measure shall be directed to an actual, clear, present, or imminent danger and may not be imposed merely because of an apprehension of potential danger[12].

The UN Committee on Economic, Social and Cultural Rights has made important additions, noting that restrictions must be in accordance with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society[13].

Any State Party to the ICCPR availing itself of the right of derogation shall immediately inform the other States Parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Within the framework of the Council of Europe legal system, the rule of derogation from international obligations under the state of emergency also applies. In accordance with Article 15 of the European Convention on Human Rights (ECHR) in a time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

The European Court of Human Rights has given states a wide range of options for the application of Article 15, taking into account the priority of domestic authorities in assessing the threat to the life of the nation. Despite that reality, the European Court of Human Rights (ECHR) has ruled that states have no unlimited powers in this area: the Court is empowered to rule on whether the States have gone beyond the “extent strictly required by the exigencies” of the crisis[14].

ECHR examines, inter alia,

1) whether ordinary laws would have been sufficient to meet the danger caused by the public emergency;
2) whether the derogation is limited in scope and the reasons advanced in support of it;
3) whether the measures were subject to safeguards;
4) whether judicial control of the measures was practicable

[11] UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, pp. 2, 10,8, 11, 9 available at: https://www.refworld.org/docid/4672bc122.html [accessed 7 April 2020]

[12] ibid., para. 51, 53, 54

[13] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, par. 28

[14] Guidelines on Article 15 of the European Convention on Human Rights, Council of Europe / European Court of Human Rights, 2016, para. 17:

5) whether the measures were proportionate to the purpose pursued and whether they involved any unjustifiable discrimination[15].

The state, both in case of derogation from the provisions of the ICCPR, and for the application of Article 15 of the ECHR, informs about the measures it has taken and the reasons for their application.

Customary international law prohibits in all circumstances the denial of such fundamental rights[16].

1) the right to life (except for human casualties in connection with legitimate hostilities);
2) freedom from torture or cruel, inhuman or degrading treatment or punishment and from medical or scientific experimentation;
3) the right not to be held in slavery or involuntary servitude;
4) the right not to be subjected to retroactive criminal penalties as defined in the Covenant[17];
5) the right to be free from discrimination.

Statements Made by International Intergovernmental Institutions and Human Rights Organizations on Ensuring Human Rights under COVID-19

On 12 March 2020, Amnesty International released preliminary observations on COVID-19 restraint measures and human rights obligations of the authorities. The organization urged the governments of all countries and other actors engaged in the process of preventing the spread of COVID-19 virus outbreak "(…) to guarantee strict adherence to all human rights provisions and standards during the implementation of COVID-19 virus prevention measures to ensure protection of public health and help the most vulnerable groups."

On 16 March 2020 the UN human rights experts urged States to avoid overreach of security measures in their response to the coronavirus outbreak and reminded them that emergency powers should not be used to quash dissent. The experts reminded States that any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory.

On 20 March 2020 the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic. Any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Persons deprived of their liberty should receive comprehensive information, in a language they understand, about any such measures.

On 24 March 2020 Freedom House human rights organization called on governments to protect civil and political rights during and after the pandemic by following principles. Any emergency restrictions should be clearly communicated, enacted in a transparent manner, well grounded in law, necessary to serve a legitimate purpose, and proportionate to the threat. Emergency restrictions affecting basic rights, including freedoms of assembly, association, or internal movement, should be limited in duration, subject to independent oversight, and imposed and extended based only on transparent criteria. Individuals should have the opportunity to seek remedies and compensation for any unnecessary or disproportionate rights violations committed during the crisis.

On 1 April 2020 Human Rights Watch published a report Human Rights Dimensions of COVID-19 Response where referred to the application of Siracusa Principles[18].

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[15] ibid., para. 19

[16] UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, pp. 69, The European Commission for Democracy through Law, Compilation Of Venice Commission Opinions And Reports On States Of Emergency, Strasbourg, 16 April 2020, p. 5.

[17] Nothing prevents any person from suing or punishing any act or omission that, at the time of committing, constituted a criminal offense under the general principles of the law recognized by the international community.

On 7 April 2020 CoE developed and published "Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis. A toolkit for member states." The document underlines that "States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort should be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness. While derogations have been accepted by the Court to justify some exceptions to the Convention standards, they can never justify any action that goes against the paramount Convention requirements of lawfulness and proportionality."

Domestic Law

Article 76 of the RA Constitution prescribes that during state of emergency, basic rights and freedoms of the human and the citizen may be temporarily suspended or subjected to additional restrictions under the procedure prescribed by law, only to the extent required by the existing situation within the framework of international commitments undertaken with respect to derogations from obligations during state of emergency.

In the event of a state of emergency, the following rights, fundamental freedoms and legal provisions may not be restricted: human dignity, the right to life, the right to physical and mental immunity, the prohibition of torture, inhuman or degrading treatment or punishment, general equality before the law, prohibition of discrimination, equality of women and men, freedom of marriage, parental rights and responsibilities, rights of the child, right to education[19], right to freedom of thought, conscience, religion[20], citizenship of the Republic of Armenia[21], right to apply to the Human Rights Defender, ban on deportation or extradition[22], the right to preserve one's national and ethnic identity, the right to judicial protection and the right to apply to international human rights bodies, the right to a fair trial, the right to legal aid, the right to be exempt from the obligation to testify, the presumption of innocence, the right to be defended against a charge, prohibition of double jeopardy, the right of the convict to appeal, the right to amnesty, the principle of guilt and the principle of proportionality of punishment, principle of legality in determining crimes and punishments, principle of the retroactive effect of laws and other legal acts.

In accordance with Article 10 of the RA law "On the Legal Regime of the State of Emergency of the Republic of Armenia" "1. Restrictions on the rights and freedoms set forth in this law shall be applied exclusively to the purposes for which they were intended, and shall be proportionate to those purposes. 2. In the event of a state of emergency, the actions of the executive branch shall be proportionate with the situation based on the circumstances to declare a state of emergency. 3. In the event of a state of emergency, the measures provided for in this Law and the temporary restrictions on the rights shall comply with the requirements of Article 76 of the Constitution of the Republic of Armenia." Article 11 of

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[18] Limitations used shall at least 1) be provided for by law and be compatible with the law objects and implemented in accordance with the law, must pursue a legitimate aim for the common interest, 2) be strictly necessary in a democratic society to achieve that aim, 3) provide the goal achieved with minimal interventions and limitations, 4) be based on scientific facts, the use of restrictive measures should not be arbitrary or discriminatory, 5) should be temporary, ensure respect for human dignity, and be reviewed.

[19] It is applicable to the provisions of Article 38, Part 1 of the Constitution: Everyone shall have the right to education. The programmes and duration of compulsory education shall be prescribed by law. Secondary education within state educational institutions shall be free of charge.

[20] It is applicable to the provisions of Article 41, Part 1 of the Constitution: Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to change religion or belief and, either alone or in community with others and in public or in private, the freedom to manifest them in preaching, church ceremonies, other rites of worship or in other forms.

[21] A child born to citizens of the Republic of Armenia shall be a citizen of the Republic of Armenia. A citizen of the Republic of Armenia may not be deprived of citizenship. Citizens of the Republic of Armenia, while beyond borders of the Republic of Armenia, shall be under the protection of the Republic of Armenia on the basis of international law.

[22] A citizen of the Republic of Armenia may not be extradited to a foreign state, except for the cases provided for by the international treaties ratified by the Republic of Armenia.

this law provides for the right to protection of the rights and freedoms of individuals and legal entities violated during the state of emergency in an administrative and judicial manner.

Taking into account the spread of new coronavirus disease (COVID-19) in Armenia and in the world, as well as the statement of the WHO Director-General of 13 March 2020, describing the infection as a pandemic (…), a state of emergency was declared by Decision N 289-N of 16 March 2020 of the RA Government.

In order to carry out the joint management of the forces and means ensuring the legal regime of the state of emergency, a Commandant's Office was established by the mentioned decision[23]. Deputy Prime Minister of the Republic of Armenia, Tigran Avinyan (hereinafter referred to as "the Commandant") has been appointed a Commandant for the management of the Office. The instructions of the Commandant are mandatory for the staff, the head and representatives of the public administration, as well as for the police, national security and defense forces used to ensure the legal regime of the state of emergency. Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia stipulates that by the Commandant's instruction the forces and means of the state authorized bodies ensuring the legal regime of the state of emergency - the police, national security, may be involved in order to ensure the implementation of measures used within the state of emergency for ensuring the use of temporary limitations of rights and freedoms[24].

The appendix to Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia envisages the measures imposed in a state of emergency, prohibitions and limitations relating to the rights of persons to free movement, movement of vehicles, right to ownership, right of persons in special institutions, to having rallies or public events, transportation of goods from the Republic of Armenia, certain types of economic activities, provision of services, activities of educational institutions, certain media publications, reports in mass media, as well as protection of personal data, inviolability of private and family life, freedom and secrecy of communication.

According to Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia, the envisaged measures and temporary limitations of human rights and freedoms, taking into account the principle of proportionality, are applied throughout the territory of the Republic of Armenia or within the territories determined by the Commandant's Office.

On 20 March 2020, the Republic of Armenia informed the Secretary General of the Council of Europe, the Secretary-General of the United Nations about the declaration of a state of emergency in the Republic of Armenia and ECHR obligations in accordance with Article 15 of the ECHR and derogation from the provisions set forth in Article 9 of ICCPR (right to liberty and security of person), Article 12 (right to free movement) and Article 21 (right to peaceful assembly).

As of 14 April 2020, 10 states[25], exercising their right to derogate from their obligations, informed the Secretary General of the Council of Europe about the measures taken and the reasons for their application.

As of 14 April 2020, 12 states[26] sent a notification to Secretary-General of the United Nations in accordance with paragraph 3, Article 4 of ICCPR.

The legality of the restrictive measures envisaged by the Annexes to Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia must be assessed in accordance with the presented international human rights standards and principles.

Principles of Legality, Proportionality and Necessity

[23] The Commandant's office includes the Ministers of Emergency Situations, Health, Economy, Finance, and Territorial Administration and Infrastructures, Head of State Revenue Committee, Chief of Police, Head of the National Security Service, Deputy Chief of Staff of the PM's Office, Head of coordinating office of PM's staff inspection bodies, Head of the Health and Labour inspection body, and Head of Food Safety inspection body.

[24] Available at: https://www.arlis.am/DocumentView.aspx?docid=141644

[25] Albania, Armenia, Estonia, Georgia, Latvia, North Macedonia, Republic of Moldova, Romania, Serbia, San Morino

[26] https://treaties.un.org/pages/CNs.aspx?cnTab=tab2&clang=_en

Human rights limitations can only be implemented by law, guaranteeing proportionality, not distorting the essence of the right (due to the limitation the right shall not be deprived of its essence, its existence shall not be jeopardized)[27].

Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia "On Declaring a State of Emergency in the Republic of Armenia" was adopted on the basis of the provisions of the Constitution of the Republic of Armenia (Article 76, Part 1 of Article 120) and of the RA Law on the Legal Regime of the State of Emergency (Articles 1, 3, 4 and 8). The government found that it would not be possible to ensure adequate preventive measures, means to protect people's lives and health in the event of the increasing scope of the infection and the number of infected people without restricting human rights and fundamental freedoms, particularly personal liberty (Article 27), the right to freedom of movement (Article 40), freedom of assembly (Article 44), property rights (Article 60) and other rights and freedoms subject to limitation during the state of emergency under the Constitution of the Republic of Armenia - to temporary suspend or subject to additional limitations based on the situation and in accordance with the law.

The declared state of emergency was conditioned by the demand to prevent the spread of the new coronavirus disease and the qualification of the infection as a pandemic.

In order to assess the legality of the restrictive measures defined by Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia, it is necessary to understand the compliance of the legislative changes made after the declaration of the state of emergency with the RA Constitution, laws and norms of international human rights law.

Even in genuine cases of emergency situations the rule of law must prevail[28]. State action must be in accordance with and authorized by the law[29]. In this context, the "Law" includes not only the acts of the parliament, but also, for example, the decisions of the executive, provided that they have a constitutional basis[30]. Any new legislation must comply with the Constitution and international norms and, if necessary, be reviewed by the Constitutional Court. Any new legislation should comply with the Constitution and international standards and, where applicable, be subjected to review by the Constitutional Court[31].

After entry into force of Decision No. 298-N of 16 March 2020 of the Government of the Republic, it was amended by decisions 19.03.2020,N310-Ն, 22.03.2020,N324-Ն 22.03.2020,N324-Ն, 24.03.2020,N345-Ն, 26.03.2020,N353-Ն, 03.04.2020,N461-Ն 07.04.2020,N 494-Ն.

On 29 March 2020, the Government submitted as legislative initiative the draft laws "On Making Amendments to the Law on the Legal Regime of the State of Emergency" and "On Making Amendments to the Law on Electronic Communications" (hereinafter referred to as the Draft Package).

The Draft Package foreseeing amendments, intended to have limitations of the rights to protection of personal data, private and family life, freedom and secrecy of communication.

The conclusion of the RA NA State and Legal Expertise Department on the Draft Package stated that the envisaged limitations do not correspond to the constitutional principle of proportionality[32]. The legislative changes were negatively assessed by local[33] and international human rights organizations[34], as well as by "Bright Armenia" and "Prosperous Armenia" factions.

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[27] SDO-649 decision of 4 October 2004 of the RA Constitutional court on the compliance of Article 11 of the Law of the Republic of Armenia "On Social Security Cards" to the RA Constitution, based on the applications of citizens M. Kocharyan and H. Davtyan.

[28] See the Venice Commission, Opinion on the protection of human rights in emergency situation, CDL-AD(2006)015), para. 13

[29] See the Venice Commission Rule of Law Checklist (CDL-AD(2016)007), para. 44 and 45.

[30] Information Documents, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis A toolkit for member states, SG/Inf(2020)11, 7 April 2020, p. 3.

[31] ibid., p. 3

[32] Available at: http://www.parliament.am/draft_history.php?do=showdiveval&Div=5&ID=11454

[33] Available at: https://hcav.am/nakhagits-hayt/

[34] See Human Rights Watch, Armenia: Law Restricts Privacy Amid COVID-19 Fight Any Limits Require Human Rights Protections

The Draft Package was adopted on 30 March 2020 in the first reading. On 31 March 2020, the National Assembly discussed the issue of adopting the Draft Package submitted by the Government in the second reading and in full. The members of parliament from "Bright Armenia" and "Prosperous Armenia" factions, making very critical speeches against the Draft Package, did not take part in the voting and the draft laws were not adopted. However, on the same day, at 17:32, the Government invited a special sitting of the RA National Assembly, the agenda of which again included the Draft Package not adopted in the second reading. The members of parliament "Bright Armenia" and "Prosperous Armenia" factions were absent from the special sitting. The laws were adopted in the second reading and in full.

After the entry into force of the legislative acts, by decision 03.04.2020,N 461-Ա of the Government of the Republic of Armenia, the relevant amendments and additions were made to Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia. In order to apply self-isolation, the Government of the Republic of Armenia established that the control over the detection of persons, self-isolation or limitation of the right to free movement can also be carried out electronically.

By the decision of the Government of the Republic of Armenia, additional measures were taken to restrict the human rights, which were not originally envisaged by the decision of the Government of the Republic of Armenia on Declaring a State of Emergency in the Republic of Armenia.

By virtue of point 3, Article 120 of the Constitution of the Republic of Armenia, as well as pursuant to, point 1, Part 4 of Article 48 of the Constitutional law on the Rules of Procedure of the National Assembly of the Republic of Armenia, “a draft decision of the National Assembly on the abolition of any measure envisaged by the legal regime of the state of emergency may be submitted.”

The Government of the Republic of Armenia, envisaging additional limitation measures of rights, deprived the members of parliament of the National Assembly of the Republic of Armenia of the opportunity to use the supervision function, to check the legality, proportionality and the necessity of limitations during the state of emergency envisaged by Article 48 of the RA Constitutional law. It should be noted that in addition to the supervision function defined by Article 48, Article 107 of law on the Rules of Procedure of the National Assembly allows the NA faction to submit a draft decision to the National Assembly during the state of emergency to cancel the state of emergency or cancel the implementation of measures envisaged by the state of emergency. Despite the fact that the amendments made by Decision No. 03.04.2020,461-N in Decision No. 298-N of 16 March 2020, were not discussed in accordance with the procedure defined by Article 48 of the RA Constitutional Law, they are subject to parliamentary supervision by the force of Article 107 of the RA Constitutional Law on the Rules of Procedure of the National Assembly.

It should be reminded that the Government of the Republic of Armenia have implemented the requirement to inform the relevant bodies about derogations from the obligations relating to rights and freedoms defined by international legal documents, except for additional measures to protect personal data, inviolability of private and family life, freedom and secrecy of communication.

In this section of the report, the legal assessment of the limitation of the rights to the protection of personal data, inviolability of private and family life, freedom and secrecy of communication is out of the scope of discussion, and will be discussed in detail in the respective section. However, in order to discuss the issue of compliance with Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia, it is necessary to return to the RA Law on Making Amendments to the RA Law on the Legal Regime of the RA State of Emergency.

Article 4 of the RA Law on the Legal Regime of the State of Emergency clearly stipulates that the RA Government's decision on declaring a state of emergency defines the temporarily limited rights and freedoms of individuals and legal entities, as well as the scope of limitations of the rights and freedoms in accordance with the requirements of Article 7 of the law. In other words, the Government of the

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https://www.hrw.org/news/2020/04/03/armenia-law-restricts-privacy-amid-covid-19-fight?fbclid=IwAR2grTzxkQxXf1YAqOs0mOvxGgYm2rTETI1ZuMODiea5mAmd26zU3q-mXIk

Republic of Armenia cannot envisage limitation of rights to the extent that it is beyond the requirements of Article 7.

Does the requirement of the new limitation provided for in Article 7 of the RA Law on the Legal Regime of the State of Emergency comply with the RA Constitution and the principles on the means chosen to limit the rights defined by international human rights law and are the temporary limitations and measures for the rights and freedoms provided for in this Article sufficient to achieve the intended goal?

According to the RA Constitution, it is allowed to limit the right to protection of personal data, inviolability of private and family life, freedom and secrecy of communication during the state of emergency, as far as the situation requires. According to Article 78 of the Constitution of the Republic of Armenia, the means chosen for restricting basic rights and freedoms must be suitable and necessary for achievement of the objective[35] prescribed by the Constitution. The means chosen for restriction must be commensurate to the significance of the basic right or freedom being restricted."

The new point 17 amended to Part 1 of Article 7 of the Law on the Legal Regime of the State of Emergency provides for limitations of the right to protection of personal data, inviolability of private and family life, freedom and secrecy of communication for the **purpose,** cases and scopes defined in Article 9.1 of the mentioned law. State and Legal Expertise Department of the National Assembly of the Republic of Armenia noted that the new Article 9.1 of the Law on the Legal Regime of the State of Emergency does not contain any general regulation on the purpose of limitations of the right to protection of personal data, inviolability of private and family life, freedom and secrecy of communication, which may also substantiate the specific restrictions provided for in Parts 1 and 2 of the new Article 9.1 of the Law on the Legal Regime of the State of Emergency[36].

In addition to the above, a number of problematic regulations have been established that create disproportionate and unnecessary limitations of the right to protection of personal data, inviolability of private and family life, freedom and secrecy of communication. Apart from the state bodies, it is envisaged to regulate the personal data of third parties. The legislative act does not clearly answer the question of which state bodies and legal entities established by the state will process the data. The definition of the scope of these bodies is reserved to the Government.

The uncertainty of entities for data processing, management or transfer poses a significant risk to both the exercise of rights and freedoms and to the effectiveness of measures to protect them. Such an approach can lead to arbitrary interference with the right to protection of personal data.

The lack of an effective and applicable mechanism for recording and preventing possible abuses as a result of the proposed limitations can lead not only to uncontrollable human rights violations, without reaching the presumed goal of preventing coronavirus infection, but can further impair people's lives and safety.

We believe that limitations of the right to protection of personal data, inviolability of private and family life, freedom and secrecy of communication should be abolished, and the new legislative changes should be revoked, as they do not meet the requirements of legality, proportionality and the necessity defined by the international human rights law.

The declaration of a state of emergency in the Republic of Armenia was conditioned by a real and inevitable danger to the life and health of the population, which continues to be a direct threat to the constitutional order. As of 13 April 2020, 1039 cases of coronavirus disease have been confirmed, of which 211 have been cases of cured and 14 cases of death (since 16 March 2020, the number of cases

[35] See Part 2, Article 31 of the RA Constitution: The right to inviolability of private and family life may be restricted only by law, for the purpose of state security, economic welfare of the country, preventing or disclosing crimes, protecting public order, health and morals or the basic rights and freedoms of others. Part 2, Article 33 of the RA Constitution: Freedom and secrecy of communication may be restricted only by law, for the purpose of state security, economic welfare of the country, preventing or disclosing crimes, protecting public order, health and morals or the basic rights and freedoms of others.

[36] Available at: http://www.parliament.am/draft_history.php?do=showdiveval&Div=5&ID=11454

has increased to 1009)[37]. In this regard, Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia is considered legal and necessary.

The Legality of the Decisions Adopted by the Commandant

Though Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia does not raise any questions relating to the legislative techniques, the legal force and significance of the decisions, adopted by the Commandant, is highly disputable in the RA legal system, according to the following justifications.

The RA Law on the Legal Status of the State of Emergency provides for norms relating to the legal status and decisions of the Commandant, according to which a Commandant's office may be established by the decision of the RA Government in order to eliminate the circumstances that served as a basis for declaring a state of emergency. The Commandant's office carries out the joint management of the forces and means providing the legal regime of the state of emergency in the territory of the state of emergency. The Commandant's instructions are mandatory for the staff of the Commandant's office, the heads and representatives of public administration bodies, as well as the police, national security, Ministry of Defense forces, territorial administration and local self-government bodies used to ensure the legal regime of the state of emergency.

The RA legislation[38] does not stipulate that the Commandant can adopt regulatory legal acts. Despite this legislative gap, the conditions, scope and nature of the limitations of the rights and freedoms applied throughout the territory of the Republic of Armenia due to the legal status of the state of emergency, were determined only by Decision No. 298-N of the Government of the Republic of Armenia. The RA Law "On Making Amendments and Changes to the Code of the Republic of Armenia on Administrative Offenses," adopted on 23 March 2020, provided for an administrative penalty in case of violation of the restrictions of the right to free movement. The act defined by the RA Code of Administrative Offenses is a blanket norm, which, in order to assess, we should be guided by the provisions of the relevant legal acts, which refer to the rules of limitation applied to the rights of free movement of persons. The mentioned rules of limitation of the right to free movement are defined by the Commandant's decision. The RA Police monitors the implementation of the Commandant's decision on limitations of the free movement of persons. According to official data, from 9 a.m., April 8 to 9 a.m., April 9, records of administrative violation was drawn up against 430 people for violating the rules of isolation or self-isolation or other limitations of the right to free movement, and after the entry into force of the Commandant's decision, until 9 o'clock on April 9, against 7609 persons - 2914 persons in the capital city, 4695 in the regions.

Are the Decisions of the Commandant Qualified as Secondary Regulatory Legal Acts?

In accordance with paragraph 2, Article 5 of the RA Constitution (...) secondary regulatory legal acts must comply with constitutional laws and laws.

[37] See Decision No. 543-N of 13 April 2020 of the Government of the Republic of Armenia on Extending the state of emergency declared in the Republic of Armenia on 16 March 2020 and Making amendments and changes to Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia

[38] During the preparation of the report the RA Law on Making Amendments and Changes to the RA Law on the Legal Regime of the State of Emergency was adopted on 29.04.2020. It was envisaged that before the entry into force of this law, the acts adopted by the Commandant will continue to act as secondary legal acts of the Deputy Prime Minister. See HCAV assessment on the provisions of the RA draft law on making amendments and changes to the RA law "On the legal regime of the state of emergency".

The principle of lawfulness prescribed by Article 6 of the RA Constitution requires that state and local self-government bodies and officials shall be entitled to perform only such actions for which they are authorized under the Constitution or laws. Bodies provided for by the Constitution may, based on the Constitution and laws and with the purpose of ensuring the implementation thereof, be authorized by law to adopt secondary regulatory legal acts. Authorizing norms must comply with the principle of legal certainty.
In accordance with Article 152 of the RA Constitution "Members of the Government shall be entitled to adopt secondary regulatory legal acts." Article 153 of the RA Constitution "the Government shall be entitled to adopt secondary regulatory legal acts." The RA Constitution authorizes autonomous bodies[39], the Supreme Judicial Council[40], the Council of Elders of a community[41], the Central Electoral Commission[42], the Television and Radio Commission[43], the Central Bank[44] to adopt secondary regulatory legal acts.

Therefore, only the above-mentioned bodies and officials have the right to adopt regulatory legal acts.

Point 3, part 1, Article 2 of the RA law "On Regulatory Legal Acts" defines the concept of the secondary regulatory legal act — a regulatory legal act is an official written document provided for by law and adopted by the bodies prescribed by the Constitution within the scope of their powers, in cases and as prescribed by the Constitution, laws of the Republic of Armenia[45].

In light of the above-mentioned legislative norms, we can conclude that the secondary regulatory legal act must meet the following mandatory requirements:

1. adopted by the bodies envisaged by the RA Constitution;
2. it is adopted by the bodies envisaged by the Constitution of the Republic of Armenia in case of being authorized by law;
3. adopted to ensure the implementation of the RA Constitution and laws;
4. adopted on the basis of the RA Constitution and laws;
5. a written legal act that contains mandatory rules of conduct for an indefinite number of persons.

According to the above-mentioned norms of the RA legislation, Deputy Prime Minister Tigran Avinyan, being a member of the Government and acting ex officio, has the right to adopt secondary regulatory legal acts. This legal reality is an indisputable fact.

Tigran Avinyan, appointed in the position of a Commandant by Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia, actually continued to exercise the powers entitled to the RA Deputy Prime Minister by the RA legislation in order to carry out the joint management of the forces and means ensuring the legal regime of the state of emergency. It turns out that all the legal tools of the Deputy Prime Minister have been transferred to the Commandant. There is no norm in the RA Law on the Legal Regime of the State of Emergency that provided for the right of the Commandant to adopt secondary regulatory legal acts[46], in addition, Decision No. 298-N of 16 March 2020 does not

[39] RA Constitution, Article 122, para. 3
[40] RA Constitution, Article 175, para. 3
[41] RA Constitution, Article 182, para. 3
[42] RA Constitution, Article 194, para. 2
[43] RA Constitution, Article 196, para. 5
[44] RA Constitution, Article 200, para. 5
[45] Regulatory legal act is an official written document — provided for by law and adopted by the people of the Republic of Armenia, which contains bodies of the Republic of Armenia within the scope of their powers, in cases and as prescribed by the Constitution, contains mandatory rules of conduct for an indefinite number of persons .
[46] During the preparation of the report the RA Law on Making Amendments and Changes to the RA Law on the Legal Regime of the State of Emergency was adopted on 29.04.2020. It was stipulated that (...) it can be defined that the Prime Minister or the Deputy Prime Minister defined by that decision officially acts as a Commandant of the state of emergency during the state of emergency, as well as it was envisaged that before the entry into force of this law, the acts adopted by the Commandant will continue to act as secondary legal acts of the Deputy Prime Minister. See HCAV assessment on the provisions of the RA draft law on making amendments and changes to the RA law "On the legal regime of the state of emergency".

stipulate that Tigran Avinyan is acting ex officio. It is noteworthy that it is clearly stated about the bodies included in the Commandant's Office that they are acting ex officio. Non-comprehensive and contradictory regulations of RA Law on the Legal Regime of the State of Emergency create problematic precedents in the context of the epidemic, which endanger the principles of security and the rule of law. In a state of emergency, the urgency of decision-making and the flexibility of procedures in the event of a real and imminent threat to the lives of the population are assessed by the authorities as a priority, overshadowing the basic principles of the rule of law.

Based on the above, we can conclude that the Commandant's decisions, which define the rules of isolation or self-isolation or other limitations of the right to free movement, have been adopted without proper legislative regulation, and therefore the principle of legality has been violated.

Even if we take into account the hypothesis that the powers of the Deputy Prime Minister post factum refer to the Commandant, the adopted decisions cannot be considered secondary regulatory legal acts, taking into account the following requirements of the provisions of the RA Law on Regulatory Legal Acts:

1. Regulatory legal acts shall be adopted on the basis of the Constitution and laws and for the purpose of ensuring their implementation.
2. Draft regulatory legal acts shall undergo compulsory state expert examination.
3. The rules of legislative technique referring to the secondary regulatory legal acts are subject to execution. For instance, the secondary regulatory legal act has a preamble that states the article or part of the legal act (Constitution, constitutional laws and laws), which includes the authorizing norms defined by Part 2 of Article 6 of the Constitution.

The substantive and procedural study of the Commandant's decisions proves that these acts were adopted on the basis of Decision No. 298-N of March 16, 2020 of the Government of the Republic of Armenia "On Declaring a State of Emergency in the Republic of Armenia", in order to ensure its implementation and not of the legal act. Therefore, we have a situation when the secondary regulatory legal act is adopted in fulfillment of another secondary regulatory legal act. The legislation of the Republic of Armenia clearly requires that the secondary regulatory legal acts be in accordance with the constitutional laws and the laws and be adopted in order to ensure their implementation. The legal confusion created by the state of emergency can have serious consequences on the legal security and the provision of constitutional guarantees.

Therefore, it is necessary to make urgent legislative changes to bring all legal acts in line with the Constitution of the Republic of Armenia and the requirements of the international human rights law[47].In regards with this, the principle of necessity requires that emergency measures must be capable of achieving their purpose with minimal alteration of normal rules and procedures of democratic decision-making[48]. Given the rapid and unpredictable development of the crisis, relatively broad legislative delegations may be needed, but should be formulated as narrowly as possible in the circumstances, in order to reduce any potential for abuse[49].

Summing up the issues discussed in this section, we can conclude that:

[47] During the preparation of the report the RA Law on Making Amendments and Changes to the RA Law on the Legal Regime of the State of Emergency was adopted on 29.04.2020. It was stipulated that before the entry into force of this law, the acts adopted by the Commandant will continue to act as secondary legal acts of the Deputy Prime Minister. See HCAV assessment on the provisions of the RA draft law on making amendments and changes to the RA law "On the legal regime of the state of emergency".

[48] The principle of necessity is not referred directly in the context of the institutional emergency measures, but may be derived from the requirement of proportionality and necessity of the emergency measures in the field of human rights – see the Venice Commission, Opinion on the Draft Constitutional Law on "Protection of the Nation" of France, CDL-AD(2016)006, para. 71.

[49] Information Documents, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis A toolkit for member states, SG/Inf(2020)11, 7 April 2020, p. 4.

1. Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia is assessed as necessary.

2. Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia is assessed as illegal insofar as it contradicts the part of the current law On the Legal Regime of the State Of Emergency in the Republic of Armenia, which authorizes the Commandant to adopt an act on the immediate limitation of the rights and freedoms.

3. We assess the amendments made to Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia on protection of personal data, inviolability of private and family life, freedom and secrecy of communication as illegal, unnecessary and disproportionate.

4. After declaring a state of emergency in the Republic of Armenia, the decisions of the Commandant on defining the limitations of rights and freedoms contradict the RA Law on the Legal Regime of the State of Emergency, the RA Law on Regulatory Legal Acts and the RA Constitution.

2. The Legality of Human Rights Limitations in a State of Emergency

2.1 Freedom of Speech and Access to Information

International Human Rights Standards

In accordance with part 2 of Article 19 of ICCPR " Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Access to information is a key element of access to healthcare that includes the right to seek, receive and impart information and ideas about health issues[50]. This right can only be subject to restrictions in limited circumstances, including in the interests of public health[51]. Any restriction on access to official information must be exceptional and proportionate to the aim of protecting public health[52].

UN Committee on Economic, Social and Cultural Rights confirmed that the obligation of the State to ensure access to basic health problems in the community, including the prevention of such problems and to provision of access to information on methods of combating them, is comparable to the primary obligations of the State in relation to the right to health[53].

Official communications cannot be the only information channel about the pandemic. This would lead to censorship and suppression of legitimate concerns. Journalists, media, medical professionals, civil society activists and public at large must be able to criticize the authorities and scrutinize their response to the crisis. Any prior restrictions on certain topics, closure of media outlets or outright blocking of access to on-line communication platforms call for the most careful scrutiny and are justified only in the most exceptional circumstances[54].

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[50] CESCR General Comment 14, para. 12(b).

[51] See also: Responses to covid-19 and states' human rights obligations: preliminary observations, Amnesty International Public Statement, 12 March 2020, p. 4.

[52] Information Documents, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis A toolkit for member states, SG/Inf(2020)11, 7 April 2020, p. 7

[53] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, par. 44, available at: https://www.refworld.org/docid/4538838d0.html [accessed 3 May 2020]

[54] Information Documents, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis A toolkit for member states, SG/Inf(2020)11, 7 April 2020, p. 7, Cumpănă and Mazăre v. Romania, no. 33348/96, para. 118

Governments everywhere are obligated under human rights law to provide reliable information in accessible formats to all, with particular focus on ensuring access to information by those with limited internet access or where disability makes access challenging[55].

In their joint statement, the United Nations, the Inter-American Commission for Human Rights, and the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe urged the governments to make exceptional efforts to protect the work of journalists. Resorting to measures, such as content take-downs and censorship, may result in limiting access to important information for public health and should only be undertaken where they meet the standards of necessity and proportionality[56].

CoE Commissioner for Human Rights mentioned in relation to the access to information in times of pandemic that persons with disabilities have a variety of very particular needs, which have not been met on many occasions. The Commissioner welcomed the fact that some, such as the French government, took steps to create dedicated information for persons with disabilities on their main webpage on the coronavirus, and many governments made efforts to provide information in easy-to-read or sign-language versions, for example in Germany, Italy, Romania and France, where an easy-to-read version of the form necessary to leave one's house is also available. The outstanding work done by national NGOs in this domain must be supported and amplified through all available communication channels.

Human Rights Watch published information which says that in a number of countries, governments have failed to uphold the right to freedom of expression, taking actions against journalists and healthcare workers. This ultimately limited effective communication about the onset of the disease and undermined trust in government actions.

Human Rights Watch made recommendations stating that Governments should fully respect the rights to freedom of expression and access to information, and only restrict them as international standards permit.

Governments should ensure that the information they provide to the public about COVID-19 should be accessible and available and accessible for all. Rights-based legal safeguards should govern the appropriate use and handling of personal health data. Reliable and unfettered access to the internet should be maintained and steps should be taken to ensure internet access be available to people with low incomes.

Domestic Law

Article 23 of Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia stipulated that "public dissemination, transmission (...) of publications, information materials, interviews, reports on information causing (...) panic or danger causing panic situation (...) by natural and legal persons, including by mass media, shall be carried out only with reference to the information provided by the Commandant's office." Point 23 of Decision No. 298-N of 16 March 2020 was changed by Decision No. 310-N of 19 March 2020 of the Government of the Republic of Armenia. The public dissemination of information subject to restriction was amended with a qualitative requirement, so that the panic be "obvious" and that the danger of creating a panic situation be "real." Exceptions were also made to reports made by state officials or to the links to their reports, to the websites of the heads of foreign states, of state bodies and (or) their representatives, to links to official social media pages, and to the official websites of international organizations affiliated with the Republic of Armenia or accredited in the Republic of Armenia.

By Decision No. 345-N of 24 March 2020 of the Government of the Republic of Armenia, the formulation "information causing obvious panic or containing real danger of creating a panic situation" was removed from Article 23 of Decision No. 298-N of 16 March 2020 of the Government of the

[55] Available at: https://www.osce.org/representative-on-freedom-of-media/448849
[56] ibid.

Republic of Armenia. According to the amendment made by Decision No. 345-N, the ban on certain publications and reports through the mass media remained only for the mass media.

On 23 March 2020, the Law of the Republic of Armenia on Making Amendments and Changes to the Code of the Republic of Armenia on Administrative Offenses provided for a fine in the amount of one hundred to three hundred minimal salary for violating the rules of publishing or disseminating information by the media during an emergency. Within one day after the imposition of the fine, not removing the information published in the state of emergency in violation of the rules of dissemination shall result in imposition of a fine in the amount of five hundred to one thousand of the minimal salary.

The OSCE Representative on Freedom of the Media, Harlem Désir, expressed his concerns about a package of amendments to the criminal and administrative codes, introduced in Armenia on 23 March, in the context of the fight against disinformation related to the COVID-19 pandemic. Journalists and editors have criticized this decision, stating that there is no precise definition of which messages may or may not cause panic. "The law should not impede the work of journalists and their ability to report on the pandemic. Publishing only information provided by the authorities is a very restrictive measure which would limit freedom of the media and access to information disproportionately."[57]

By Decision No. 543-N of 13 April 2020, the chapter defining the ban on certain publications and messages through the mass media lost its force.

The restrictions on dissemination of information in the state of emergency should strictly comply with the requirements of legal certainty, necessity and proportionality, which were not originally defined by Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia. The decision restricting the freedom of speech was criticized by a number of international organizations[58].

Numerous changes, which eventually led to the lifting of restrictions on the publication or dissemination of information by natural and legal persons during the state of emergency, prove that the restrictive measures taken by the authorities are illegal and disproportionate.

During the state of emergency in the Republic of Armenia the access to information about the pandemic prevention and protection measures was not ensured for the entire population.

The Council of Europe has issued a statement urging states to ensure that materials on the fight against coronavirus are available in the languages of national minorities[59] reminding that it is mandatory for the states that ratified the European Charter for Regional or Minority Languages - (it is in effect for Armenia since 1 March 2002[60]).

In this context, the Yezidi Human Rights Center and the staff of the Human Rights Defender of the Republic of Armenia have done some work for the minorities living in the country. Materials on the prevention of the virus have been translated into Yazidi, Greek and Assyrian. The guide of the Human Rights Defender on the new Coronavirus and human rights in the State of Emergency was translated into Assyrian and Hindi, Russian, English, Yazidi and Kurdish.

2.2 The Right to Free Movement

International Human Rights Standards

Freedom of movement under international human rights law protects, in principle, the right of everyone to leave any country, to enter their own country of nationality, and the right of everyone lawfully in a country to move freely in the whole territory of the country. Restrictions on these rights can only be imposed when lawful, for a legitimate purpose, and when the restrictions are proportionate, including in considering their impact. Travel bans and restrictions on freedom of movement may not be

[57] Available at: https://www.osce.org/representative-on-freedom-of-media/449098
[58] See at: https://www.osce.org/representative-on-freedom-of-media/449098?fbclid=IwAR2oxOBK7y5T6t81inlM-RtWDubGNu3oFaykAjZsIMAqpFWSi2rp6VNlpKs, Journalists without Borders https://twitter.com/RSF_inter/status/1239640272415469569
[59] https://www.coe.int/en/web/portal/-/covid-19-crisis-vital-that-authorities-also-communicate-in-regional-and-minority-languages
[60] https://www.gov.am/u_files/file/kron/1%20Charter%20komiteji%20kartsiqy-2009%20%20hayeren.pdf

discriminatory nor have the effect of denying people the right to seek asylum or of violating the absolute ban on being returned to where they face persecution or torture[61].

In accordance with Article 13 of the Universal Declaration of Human Rights:

1. Everyone has the right to freedom of movement and residence within the borders of each state.
   Everyone has the right to leave any country, including his own, and to return to his country.

In accordance with Article 12 of ICCPR:

2. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
3. Everyone shall be free to leave any country, including his own.
4. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
5. No one shall be arbitrarily deprived of the right to enter his own country.

In accordance with Protocol No. 4 to the Convention for the Protection of Human Rights:

6. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
7. Everyone shall be free to leave any country, including his own.
8. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
9. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

According to Siracusa Principles public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured[62].

First of all, freedom of movement must be distinguished from the right to liberty and security of person. The differences may not always be obvious, so circumstances such as the nature, duration, purpose of the restriction must be taken into account in each case. Although the right to liberty does not include the right to free movement, there are cases where restriction on the right to free movement under certain conditions is considered a violation of the right to liberty. In particular, such may be the cases of keeping a person in "open prison", disciplinary battalion or psychiatric institution under certain conditions[63].

The European Court of Human Rights has ruled that the requirements not to leave the residence, not to leave the place of residence at certain hours, and not to return to the place of residence at a specific time is not a restriction on the right to personal liberty, but a restriction on the right to freedom of movement and based on the facts, it established a violation of the person's freedom of movement[64].

[61] Human Rights Watch, Human Rights Dimensions of COVID-19 Response, March 19, 2020 p.6.
[62] UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, para. 25.
[63] Guzzardi v. Italy, Judgment of 6 November 1980, De Wilde, Ooms and Versyp v. Belgium, Judgment of 18 June 1971, Ashingdane v. the United Kingdom, Judgment of 28 May 1985, Nielsen v. Denmark, Judgment of 28 1988
[64] Raymond v. Italy, Judgment of 22 February 1994.

Domestic Law

By Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia, "On Declaring a State of Emergency in the Republic of Armenia", inter alia, restrictions were also envisaged in connection with the exercise of the right to free movement of a person[65].

The Constitution of the Republic of Armenia declares the right to freedom of movement as a basic human right, which, based on the principle of inadmissibility of restricting the right of a citizen to enter the Republic of Armenia, includes the following three components:

2. the right to movement within the territory of the country;
3. the choice of place of residence within the territory of the country;
4. the right to leave and return to any country, including its territory.

In accordance with part 4 of Article 40 of the RA Constitution:

"4.The right to freedom of movement may be restricted **only by law**, for the purpose of state security, preventing or disclosing crimes, protecting public order, **health** and morals or the basic rights and freedoms of others. The right of a citizen to enter the Republic of Armenia shall not be subject to restriction.''

In a state of emergency, the requirement of self-isolation, given the purpose, the nature as well as the means of the restriction, is assessed as a restriction on the right to freedom of movement.

Thus, although the right to freedom of movement is declared a basic right, the possibility of restricting the mentioned right is envisaged both by the RA Constitution and by international legal norms. However, this possibility is limited and constrained on certain grounds, one of which is the legal regime of the state of emergency, under which the restriction on the right to free movement must be carried out in case of simultaneous existence of the following conditions:

1. shall be provided by law;
2. shall be carried out in accordance with the Constitution, as well as for the purpose set forth within the framework of its international obligations. Restrictions must be commensurate with the aim being pursued and the situation[66];
3. discrimination must be ruled out;
4. in practice, there must be a real opportunity for judicial oversight[67];
5. guarantees must be provided in parallel with the restriction[68].

Only in case of the existence of the mentioned conditions can we state about the legality of restricting the right to freedom of movement under declared state of emergency in the Republic of Armenia.

The Constitutional Court of the Republic of Armenia has established the legal criteria by which it is possible to identify the degree of intervention to the restriction on the person's right to movement in the RA, which is the subject of discussion. They are:

1) The right to freedom of movement defines the scopes and limits of human and citizen's freedom of movement, which prohibits the unlawful interference of the state.

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[65] Although international legal norms, in particular the International Covenant on Civil and Political Rights, refer to the term "freedom of movement", in this report we will be guided by the term "right to movement" enshrined in the Constitution of the Republic of Armenia.

[66] See: A. And others v. The United Kingdom 3455/05, 19.02.2009, ECtHR judgment, point 190.

[67] See: Breningan and McBride v. Great Britain 14553/89, 26.03.1993, ECtHR judgment, point 59.

[68] See: Ireland v. Great Britain ECtHR judgment, 18.01.1978, 216-219 points.

2) This right is not absolute and may be restricted in the presence of grounds provided by law and in accordance with the established objectives.

3) Restriction on the right to freedom of movement must be defined by law,

4) Reasonable and proportionate legislative regulation of this right presupposes ensuring a fair balance of public and private interests, without diminishing and illegally restricting the scope and limits of individual human and citizen's liberty.

5) Restriction on the right to freedom of movement must pursue a legitimate aim,

6) The scope and limits of that right must be proportionate to the aim pursued[69].

According to Article 7, Part 1, Point 1 of the RA Law "On the Legal Regime of the State of Emergency," [70] the following measures and temporary limitations of rights and freedoms of persons may be applied in the territory of the state of emergency during the state of emergency: limitation of the persons' right to freedom of movement, as well as establishment of a special regime for entry into the territory and leaving the territory, including restrictions for foreign nationals and stateless persons on entering and being in the territory."

Part 4 of Article 40 of the Constitution of the Republic of Armenia, Part 3 of Article 2 of the ECHR Protocol 4, Part 3 of Article 12 of the ICCPR declare the protection of public health as a goal of restricting the right to free movement.

The Government of the Republic of Armenia, aiming to protect public life and health in the event of epidemic, stated that circumstances regarding the entry of potentially infected persons from the countries with high rates of infected population into the Republic of Armenia, the free movement of persons within the territory of the Republic of Armenia essentially contribute or may contribute to the spread of the infection, and may hinder the prevention.

In this case, it is essential to what extent the restrictions of the right to free movement proposed by the state contribute to the prevention and control of the infection spread, and consequently to the exercise of the protection of public health, the protection of the fundamental rights and freedoms of others, and other legitimate goals.

By the decision[71] of the Government of the Republic of Armenia "On Declaring a State of Emergency in the Republic of Armenia" various legal opportunities are envisaged for the citizens of the Republic of Armenia and persons without RA citizenship. In particular, according to the 1st paragraph of the 1st chapter of the decision: "The entry into the territory of the Republic of Armenia of citizens of the Republic of Armenia and their family members who are not a citizen of the Republic of Armenia, persons that are not a citizen of the Republic of Armenia but have the right to reside in the Republic of Armenia upon lawful grounds shall be permitted through the check points."

Entry shall be prohibited to other persons that are not a citizen of the Republic of Armenia, except for:

1) representatives of diplomatic representations, consular offices and international organisations, and their family members; 2) **cases when, upon the decision of the Commandant, taking into account the epidemiological situation in those countries (territories), entry of persons is permitted;**

By Decision No. 1 of 17 March 2020 of the Republic of Armenia Commandant, the list of countries (territories) having a tense epidemiological situation was defined, which was amended and changed by Decision No. 10 of 22 March 2020. Taking into account the epidemic situation, the countries

[69] See Decision of the Constitutional Court of 04.04.2017 on the complience of Article 8, Part 4 of the RA Law "On the Passport of the Citizen of the Republic of Armenia," Article 86, Part 3, Point 7 of the RA Criminal Procedure Code, Point 19 of the Passport System Regulation in the Republic of Armenia approved by Decision No. 821 of December 25, 1998 and "t" sub-point, point 5, Annex 1 to No. 884 of June 22, 2006 of the Government of the Republic of Armenia with the RA Constitution, based on the application of the RA Human Rights Defender.

[70] RA Government's Decision "On Declaring a State of Emergency in the Republic of Armenia" adopted and entered into force on16.03.2020.

[71] RA Government's Decision "On Declaring a State of Emergency in the Republic of Armenia" adopted and entered into force on16.03.2020.

with a tense situation have been distinguished, but the countries from where people are allowed to enter Armenia have not been distinguished by the Commandant.

By virtue of the 2nd sub-point of the 2nd point of the 1st chapter of the RA Government's decision "On Declaring a State of Emergency in the Republic of Armenia", the entry of persons from any country into the RA is practically prohibited, as the decision simply states: "It is forbidden if it is not allowed." In such circumstances, the logic of the ban on citizens of non-tense epidemic countries is unclear, while the decision itself distinguishes the tense epidemic situation.

We consider that this regulation is problematic from the point of view of Article 14 of the ECHR, Article 29 of the Constitution of the Republic of Armenia, Article 4 of the ICCPR, as Article 76 of the Constitution prohibits the restriction on Article 29 of the Constitution even in a state of emergency. ICCPR also stipulates the observance of the principle of non-discrimination in case of derogation from international obligations under the state of emergency.

In addition, it should be noted that Article 12 of the ICCPR does not define the term "country of citizenship", but uses the term "own country", which is broader and includes the connection with the country besides citizenship. According to the above, ICCPR obliges the State to grant a proportionate right to persons permanently residing in the Republic of Armenia[72].

Thus, it can be stated that there is a violation of the legality of restriction in terms of excluding unjustified discrimination.

In parallel with the restriction on the right to free movement, no additional guarantees have been created to ensure effective judicial/administrative protection, at least in respect of unlawful restrictions applied. The issue of judicial control of the restriction on rights is presented in the section on the right to a fair trial.

Restrictions on Entry, Exit and Internal Movement

Restrictions on Entry

In accordance with decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia and the decisions adopted by the Commandant, is permitted

- entry into the territory of the Republic of Armenia of citizens of the Republic of Armenia and their family members who are not a citizen of the Republic of Armenia, persons that are not a citizen of the Republic of Armenia but have the right to reside in the Republic of Armenia upon lawful grounds
- entry into the territory of the Republic of Armenia of representatives of diplomatic representations, consular offices and international organisations, and their family members;
- entry into the territory of the Republic of Armenia of one driver and substitute driver of the vehicle transporting goods from the countries envisaged by the appendix to Commandant's decision No. 1 of 17 March 2020, the entry of the personnel of the aircraft carrying out passenger, cargo transportation, military or sanitary flights[73];
- entry into the territory of the Republic of Armenia of persons from the border troops of the Russian Federation in the Republic of Armenia and their family members[74];
- entry into the territory of the Republic of Armenia, in special cases- in the presence of urgent health, economic or production needs, or for the purpose of attending a funeral of the close relatives[75] of the deceased[76];

[72] See UN Human Rights Committee General Comment No. 27 (67)* 4 CCPR/C/21/Rev.1/Add.9 ** 1 November 1999

[73] See The list of countries with a tense epidemiological situation and Decision No. 1 of 17 of March 2020 of the Commandant on defining the special cases of entry allowed through the check point. https://www.gov.am/files/docs/3950.pdf and Decision No. 4 of 18 of March 2020 on makng changes in the mentioned decision https://www.gov.am/files/docs/3953.pdf

[74] Parents and children living together, the husband, the wife are considered members of the family within the meaning of this decision.

[75] Within the meaning of this decision, the parents of the deceased parents, the husband, wife, children, sister and brother are considered close relatives in case the relevant grounds are presented.

- in other special cases by Commandant's decision[77],

Subjects whose entry is prohibited:

- entry of other persons who do not have the RA citizenship.

Restrictions on Exit

It is prohibited:

- Exit of citizens of the Republic of Armenia through check points of the land border shall be prohibited, except for persons carrying out the transportation of goods, and where exports have not been prohibited as prescribed by point 18 of this Annex.

Restrictions on Internal Movement

In accordance with Point 7 of Chapter 1 of Decision No. 298-N of 16 March 2020 of the Government of the Republic of Armenia, the following restrictions may be applied within the administrative borders of a particular community (communities) of the Republic of Armenia: a special regime for entering into the administrative border and exiting the administrative borders of the community, except for cases of supply of essential goods, items, food, medications, fuel, as well as entries and exits made based on the need to eliminate the circumstances having served as a ground for declaring state of emergency and resolving other urgent issues, upon the instruction of the Commandant.

By the Commandant's Decision No. 16 of 24 March 2020, the right of people to move freely throughout the territory of the Republic of Armenia was restricted and mandatory self-isolation of persons was established in their permanent residence or in another place of their choice[78].

Implementation of measures deriving from the special regime for entering into the administrative border and leaving the territory of the relevant community is ensured by relevant subdivisions of the Police of the Republic of Armenia, representatives of the Ministry of Healthcare of the Republic of Armenia, the Ministry of Emergency Situation of the Republic of Armenia, the Healthcare and Labour Inspectorate of the Republic of Armenia, the Food Safety Inspection Inspectorate of the Republic of Armenia, the representatives of regional government (marzpetarans) and the municipalities, and, upon the instruction of the Commandant, other bodies of the state administration system as well. Despite the mandatory requirement of self-isolation, exceptions were made for a certain group of persons in accordance with the terms and conditions set forth in the decision.

"Movement Permit"

By the Commandant's Decision No. 16 of 24 March 2020 in the case of permitted movement, the requirement to submit certain documents was defined, i.e.:

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[76] See The Commandant's decision No. 7 of 20.03.2020 on defining the special and urgent cases of entering the Republic of Armenia https://www.gov.am/files/docs/3958.pdf and Decision No. 8 of 21 March 2020 of the Commandant on making amendment in the mentioned decision. By the way, the entry of the mentioned persons into the territory of the Republic of Armenia is allowed by the decision of the Commander of the Border Troops of the RA NSS.

[77] The tense epidemiological situation in the countries is taken as a basis for the admissibility of these cases. See the list of countries with a tense epidemiological situation at: https://www.gov.am/files/docs/3950.pdf https://www.gov.am/files/docs/3962.pdf

[78] See Commandant's Decision No. 16 "On Restrictions on the Movement of Persons in the Whole Territory of the Republic of Armenia"

- the request for submission of a paper or electronically completed document containing the information specified in the appendix to the Commandant's Decision No. 16 of 24 March 2020 and of an identity document.
- the requirement for submission of a paper or electronic certificate issued by an employer of the persons working with the economic entities engaged in the types of unrestricted economic activities as specifies in appendix 2 to Commandant's Decision No. 27 of 31 March 2020, in some cases an official certificate, and an identity document.

The exercise of the right to free movement is currently directly dependent on the person's possession of a passport and a movement permit.

First of all, we would like to state that in any legal act, both in the decisions of the Government and in the decisions of the Commandant, there is no substantiation of the legal and logical purpose of the mentioned prohibition.

In addition, we believe that the mere fact that a person does not have a passport or a movement permit cannot in itself justify the restriction on the right to free movement. The restriction on the right must be based on clear criteria, and in case there is no legal justification for the mentioned restriction. There is a need for a strong and objective justification for the extent to which the restriction contributes to the prevention of the COVID-19 epidemic, and to what extent the necessary and appropriate measures protect the public health.

Mandatory Requirement for Isolation and Self-isolation

In accordance with sub-point "e" of part 1 of Article 5 of ECHR "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: the lawful detention of persons for the prevention of the spreading of infectious diseases (…).

In accordance with Article 27 of the Constitution of Armenia "Everyone shall have the right to personal liberty. No one may be deprived of personal liberty otherwise than in the following cases and as prescribed by law: (6) for the purpose of preventing the spread of contagious diseases dangerous for the public (…)."

In accordance with Article 277.1 of the RA Criminal Code, Article 182.3 of the RA Code on Administrative Offenses and Point 9.1, Chapter 1 of Decision No. 298-N of March 16, 2020 of the RA Government, ''Isolation is considered separation of persons, including a patient or an infected person or contact persons (contactors) in a certain area intended for that purpose, in order to exclude direct contact with other persons and to prevent the spread of infection. Self-isolation is considered separation of persons, including a sick or infected person or persons in contact with them, in their permanent place of residence or in their preference, in another place, in order to limit their direct contact with other persons and to prevent the spread of infection.''

Thus, isolation is, in fact, considered legal detention, self-isolation restricts a person's right to free movement.

In accordance with Point 7 of the 1st Chapter of Decision No. 298-N of 16 March 2020 of the RA Government:

7. Upon the instruction of the Commandant, the following restrictions may be applied within the administrative borders of a particular community (communities) of the Republic of Armenia:

2) isolation (self-isolation) of persons in the places of permanent residence thereof or in other places upon their preference, regulation of free movement, and exercise of necessary control over them;

4) in case of a suspicion on existence of the infection with persons, or detection thereof, transfer of persons to specially designated quarantine places or institutions providing medical assistance and service.

As it was mentioned, the Commandant's decision No. 16 of March 24, 2020 limited the right of people to move freely throughout the territory of the Republic of Armenia and imposed mandatory self-isolation of persons in their permanent residence or in another place of their choice.

In accordance with Point 5 of the 1st Chapter of Decision No. 298-N of March 16, 2020 of the RA Government: “After the entry of persons into the territory of the Republic of Armenia through the check point, a special examination for revealing symptoms of the infection shall be immediately conducted. After the examination all the persons are subject to self-isolation, unless hospitalization and / or other restrictive measures are applied to the them due to the presence of symptoms. In case of refusal to undergo medical examination, hospitalisation, isolation (self-isolation) and/or other restricting measures after the entry of persons — through the check point — into the territory of the Republic of Armenia, persons may be temporarily isolated in specific places prescribed by the Commandant, for the purpose of check-up, treatment, and prevention of the spread of the infection.

According to point 6 of the same chapter of the decision, persons having arrived from the countries listed, upon the directive of the Minister of Healthcare of the Republic of Armenia, as having a tense epidemiological situation, must be transferred to specially designated quarantine places, or they may be ordered to go into self-isolation.

In accordance with Decision No. 5 of 18 March 2020 of the Commandant “For persons entering the territory of the Republic of Armenia from Italy or being in Italy during the last 14 days, regardless of the presence of the symptoms mentioned in point 1 of this instruction, a call is registered in the RA Ministry of Emergency Situations by medical-sanitary control point employees. Through the transport provided by the latter, the given persons are transferred to the quarantine place defined by the RA Ministry of Health and are subject to 14-day isolation. ”

Restrictions provided for in Annex to Decision No 298-N of 16 March 2020 of the RA Government Persons who provide immediate care to a patient with confirmed coronavirus disease or having contact with a patient (including workplace, classroom, cohabitation, events, any kind of vehicle, etc.) in the territory of the Republic of Armenia shall be applied, as defined by the Ministry of Health of the Republic of Armenia by transferring them to quarantine facilities or by their own form of self-isolation for a period of 14 days[79].

Means of Liability for Violation of the Rules of Limitation on the Right to Free Movement

One of the most important elements of the rule of law declared by Article 1 of the Constitution of the Republic of Armenia is the principle of legality, which implies that legal acts must be implemented in accordance with the law and within the timeframe required by law on the condition of compulsory execution by all the subjects of law. According to the RA Constitution, the basic rights can be limited only by law.

The RA laws On Making Amendments and Changes to the RA Code on Administrative Offenses[80] and On Making Amendments to the RA Criminal Code[81] adopted on March 23, 2020

[79] Based on the sub-point 5, point 7, chapter 1 of the Government's decision, by decisions No. 16 of 24 March 2020 and by decision No.18 of 26 March 2020 on making changes in the latter, as well as by decision No. 27 adopted later restrictions on the movement of vehicles have been defined.

[80] Article 182.3: „«10. Violation of the rules of isolation or self-isolation or other restrictions on the right to freedom of movement as a restriction during a state of emergency may result in a fine in the amount of one hundred to two hundred and fifty minimal salaries.”

[81] Aricle 277.1. „1. Violation of the rules of isolation or self-isolation or other restrictions on the right to free movement during a state of emergency, which caused negligent infection, is punished with a fine in the amount of three hundred to five hundred

envisage liability measures for violating the rules of isolation or self-isolation provided as a restriction during a state of emergency and for violating other restrictions on the right to free movement.

In order to assess the proportionality of the punishment and the conditions for the legal certainty of disposition envisaged by the new article of the RA Criminal Code, it is necessary to refer to Article 277 of the RA Criminal Code, which provides punishment for the breach of sanitation and epidemic regulations which negligently caused mass diseases or poisoning of humans, with a fine in the amount of up to 200 minimal salaries, or with deprivation of the right to hold certain posts or practice certain activities for up to 3 years, or with imprisonment for the term of up to 3 years. The same action which negligently caused heavy damage to health or human death, is punished with imprisonment for the term of up to 5 years.

The disposition of Article 277 of the RA Criminal Code is blanket[82], which means that it does not define elements of crime, but refers to other legislative acts or departmental regulatory acts[83]. The blanket disposition describes the action (inaction) as a feature of the objective side of a particular crime, noting that that action (inaction) violates special rules established by regulatory legal acts in other branches of law[84]. In order to assess the act defined by Article 277 of the RA Criminal Code, it is necessary to be guided by the provisions of the relevant regulatory legal acts, which refer to the sanitary epidemiological rules. According to Article 4 of the RA Law on Ensuring Sanitary and Epidemiological Safety of the Population of the Republic of Armenia, the procedure for developing, approving, reviewing and implementing sanitary rules shall be established by the Government of the Republic of Armenia.

The theory of criminal law has established the approach that the rules set forth in the blanket dispositions of specific articles of the Criminal Code shall also be defined by law in order to avoid the extended interpretation of those rules by various bodies, including the relevant agencies[85]. The existence of blanket norms in the Criminal Code "expands" the criminal law by other (non-criminal) laws and (or) other regulatory legal acts, without which it is impossible to apply the Criminal Code. As a result, from the viewpoint of criminal and legal qualification, the work of law enforcers is significantly hampered, as well as it enables other bodies, especially the executive body (in case of secondary legal acts), in addition to the legislature, to have influence on the field of criminal liability[86].

In V. Avetisyan's case, ESHD / 0131/01/15, the RA Court of Cassation expressed a legal position stating that "a person cannot be held accountable for an act that is not provided for in the current law in a manner that meets the criterion of legal certainty." Developing the positions expressed in Avetisyan's case, the Court of Cassation noted in D. Simidyan's case: (…) The criminality and punishment of the offense must be provided for by law that meets the criterion of legal certainty. In this regard, the European Court of Human Rights has set out in its precedent accessibility and predictability as qualitative criteria for the concept of "law" (...). These qualitative requirements must be met both for the crime and for the time of appointing punishment for the crime (...). From the literal perception of the

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minimal salaries or detention for a term of up to one month, with deprivation of the right to hold certain posts or practice certain activities for up to two years or without it."

2. "The same action which negligently caused heavy damage to health or negligently caused infection to two or more people, is punished with a fine in the amount of 500 to 700 minimal salaries, or with detention for the term of 1 to 3 months, or imprisonment for the term of up to two years with deprivation of the right to hold certain posts or practice certain activities for up to three years or without it."

3. The same act which negligently caused human death, is punished with imprisonment from 2 to 4 years with deprivation of the right to hold certain posts or practice certain activities for up to three years or without it.

[82] RA Criminal Law. Special part:/S. Arakelyan, A. Gabuzyan, H. Khachikyan, G. Ghazinyan, N. Maghakyan, A. Margaryan, T. Simonyan, V. Kocharyan.- Yer.: Yerevan University, publ., 2006, p. 667:

[83] Уголовное право России. Общая часть: Учебник / Под ред. В.П. Ревина. – М.: Юстицинформ. 2016. էջ. 50-51:

[84] Уголовное право. Общая часть: Учебник. Издание второе переработанное и дополненное / Под ред. доктора юридиче-ских наук, профессора Л.В. Иногамовой-Хегай, доктора юридических наук, профессора А.И. Рарога, доктора юриди-ческих наук, профессора А.И. Чучаева. — М.: Юридическая фирма «КОНТРАКТ»: ИНФРА-М, 2008, p. 26:

[85] Уголовное право России. Общая часть: Учебник / Под ред. В.П. Ревина. – М.: Юстицинформ. 2016. p. 52:

[86] Available at: http://ysu.am/files/25Anna_Vardapetyan.pdf

relevant provision and from the interpretation given by the courts in connection with it, the person should understand for which actions and inaction criminal liability is envisaged, what punishment will be imposed for the commitment of those actions and/or inaction (...)[87].

The "law", being accessible" and "predictable", should enable the addressee of that law to realize the permissible limits of his rights and freedoms, to adapt his behavior to the requirements of the norms enshrining those frameworks, and to assess the legitimacy of his conduct anticipating the legal consequences in case of unlawful conduct. The Court of Cassation emphasizes that this refers to both the mandatory and additional features of the crime stipulated by the descriptive disposition existing in the RA Criminal Code, and the norms of other legal acts revealing the features of the crime described in the blanket disposition, the violation of the requirements of which leads to criminal liability. Only then can a person be guaranteed the opportunity to understand the permissible limits of disposability of exercising his or her rights and freedoms. Otherwise, the legal norm, the alleged violation of which is blamed on a person, cannot be considered a "law", as it does not comply with the principle of legal certainty (res judicata), i.e. it will not be formulated with sufficient clarity, which will allow the citizen to combine it with his or her behavior[88].

In order to characterize the anti-legal behavior, the provisions set forth in the RA Government's decision on declaring a state of emergency in the Republic of Armenia and the Commandant's decisions should have primary importance, which should be predictable and certain. According to the mentioned decisions, there is no reference to the need and necessity to differentiate between the violation of the conditions for the legal regimes of isolation and self-isolation.

The RA Code on Administrative Offenses, the amendments to the RA Criminal Code of 23 March 2020, use the terms of isolation rules, self-isolation rules and other restrictions of the right to movement. It is becoming clear that self-isolation is a restriction on the right to movement, and is therefore subject to be prescribed by law rather than by a secondary legal act. It is obvious that self-isolation has been established through an improperly chosen regulatory legal act, and the situation has required regulating all restrictions of basic rights by law, including rules that are restrictions.

In addition, self-isolation, as a legal status, is not differentiated from isolation, and therefore the violation of the rules leads to the same administrative or criminal and legal assessment, depending on the public danger of the consequences.

Therefore, this is a step backwards from the principle of legality, protection of human rights and fundamental freedoms. The legislative regulation of restrictions of the person's right to free movement is imperative, after which we can only talk about the measures of responsibility based on the violation of these restrictions.

Based on the above, we consider that all the restrictions and rules of isolation, self-isolation, as well as other restrictions of movement are urgent and necessary to be prescribed at the legislative level.

In accordance with Article 79 of the RA Constitution when restricting basic rights and freedoms, laws must define the grounds and extent of restrictions, be sufficiently certain to enable the holders and addressees of these rights and freedoms to display appropriate conduct. 1. Violation of the restriction of isolation, 2. Violation of the restriction of self-isolation, 3. Violation of other restrictions of the right to free movement were mentioned as anti-legal behavior in the administrative offenses and the RA Criminal Code.

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[87] Decision of the Court of Casation on number ԵՇԴ/0131/01/15 case, point 13. Available at: https://www.arlis.am/DocumentView.aspx?docID=126295

[88] Decision of the Court of Casation on number ԵՇԴ/0131/01/15 case, point 13

Decision of the Court of Casation on Vardan Ghazaryan's case of 27 February 2015, number ԱՎԴ/0002/01/14, point 20, Decision of the RA Constitutional Court of 18 April 2006, number ՍԴՈ 630, point 11, Decision of 9 June 2015, number ՍԴՈ-1213, point 9

By its decision of 15 November 2019, the Constitutional Court of the Republic of Armenia stated that the principle of legal certainty presupposes **existence of as clear a legal regulation as possible, and ensuring its predictability.**

The codes, foreseeing provisions of anti-legal behavior, prescribe only the definition of the two: isolation and self-isolation, in particular, points 4 and 5 of Article 277.1 of the RA Criminal Code and Part 11 of Article 182.3 of the Code of Administrative Offenses. Under such circumstances, it remains unknown what the term "other restriction on the right to free movement" means, what restrictions it contains and to what extent.

In fact, in case of such a legislative formulation, any violation of the right to free movement will lead to either administrative or criminal liability, depending on the legal consequences, and it is not known what those restrictions are.

This is a derogation from the principle of legal certainty, which implies the regulation of legal relations exclusively by laws that meet certain qualitative characteristics: **they are clear, predictable and accessible**[89].

Based on the above, it can be stated that the formulation of "other restrictions on the right to free movement" does not meet the criteria of clarity, predictability or accessibility and is subject to reformulation, specifying all cases of restriction, the violation of which may result in unfavorable consequences for a person.

In accordance with part 1 of Article 124.1 of the RA Criminal Code “Infecting a person with new coronavirus (2019n-CoV) is punished with a fine in the amount of 400 to 800 minimal salaries, or with detention for up to1 month, or with imprisonment for up to 1 year.”

In accordance with the mentioned regulation, regardless of whether the act was committed intentionally or through negligence, the act is subject to criminal liability.

If we make a comparative analysis of the articles of the RA Criminal Code, which stipulate liability for infecting with other infections, in particular, the articles regarding the human immunodeficiency virus prescribed in Article 123 and the venereal disease or other sexually transmitted diseases in the article 124, we will note that the dispositions of the articles state that infection causes criminal offense only if **the infection is transmitted by a person who knew he or she had the disease.**

It is unclear why the legislature has taken a different approach to COVID-19 infection in the case of legislation, while some of these infections have higher rates of risk.

The principle of proportionality in the Republic of Armenia, as a constitutional norm, was prescribed in 2015, after the constitutional changes. Before that, the RA Constitutional Court and RA Court of Cassation referred to the principles of justice and proportionality of punishment in their decisions. In its decision SDO-1291, the RA Constitutional Court reflected the constitutional principle of proportionality of punishments. The Constitutional Court has stated that the exercise of public power is, first and foremost, limited to the general principle of proportionality, which is one of the most important principles underlying legal liability (…). In particular, Part 2 of Article 71 of the Constitution of the Republic of Armenia (with amendments in 2015) stipulates that the punishment prescribed by law, as well as the type of punishment and punishment imposed, must be proportionate to the act committed[90]. Referring to the content of the principle of proportionality, the Constitutional Court of the Republic of Armenia noted that "…the principle of proportionality requires a fair balance between the prescribed measure and amount of responsibility and the legitimate aim pursued by the definition of liability. [91]" The Court of Cassation notes that the justice of the punishment is manifested with the obligation to respond to the crime with criminal and legal measures, as well as with ensuring the proportionality of the crime

[89] See ՍԴՈ–1270 decision of 7 May 2016 of the RA Constitutional Court

[90] See Decision ՍԴՈ-1291 of 8 July 2016 of the RA Constitutional Court. Page 10-11. Available at: http://www.concourt.am/armenian/decisions/common/2016/pdf/sdv-1291.pdf

[91] See Decision ՍԴՈ-920 of 12 October 2010 of the RA Constitutional Court. page 5. Available at: http://www.concourt.am/armenian/decisions/common/2010/pdf/sdv-920.pdf

and the means of punishment. Punishment is fair if it is proportionate to the crime committed, as well as sufficient from the viewpoint of achieving punishment goals. Retreating from the requirements of fairness of the punishment can lead to the imposition of too mild or too severe punishment. In this regard, the Court of Cassation emphasizes that the court must apply the principle of fairness of punishment in the context of other principles of sentencing, as well as in the context of the purposes of punishment[92].

The criminal and legal measures chosen to limit fundamental rights and freedoms must be useful and necessary to achieve the goal. The measures chosen for the criminal and legal restriction must be adequate to the significance of the restricted fundamental right and freedom[93].

The principles of legal certainty and the proportionality of punishment, the international practice, and the legal approaches to criminal law show that appropriate measures must be taken to prevent the spread of infectious diseases. Criminal and legal enforcement measures prevail in cases where the act was committed with the intention of causing death or other serious consequences. The type of offender is also important in determining the act and the punishment. In order to prove the existence or absence of the principle of proportionality in the most obvious way, it is expedient to present an exemplary international practice.

In accordance with Article 355 of the Criminal Code of Bulgaria "A person who violates the regulations for prevention of spread or cause of infection diseases shall be punished by probation punishment or with a fine from one hundred to three hundred Bulgarian levs. If the violation was durian epidemics and death has followed, the punishment shall be imprisonment for up to one year or probation."

In accordance with Article 180 of the Criminal Code of Croatia "Whoever fails to comply with regulations or orders of the competent state authority ordering check-ups, disinfection, disinsectisation, deratisation, quarantining of patients or another measure for the prevention and suppression of infectious diseases among people or the prevention and suppression of infectious animal diseases that can also be contracted by people and where consequently the danger of spreading an infectious disease among people or the transmission of the infectious disease from animals onto humans occurs shall be punished by imprisonment not exceeding two years. Whoever by not complying with the measures of protection infects another person with a dangerous infectious disease shall be punished by imprisonment not exceeding three years. [94]"

In accordance with the Criminal Code of Moldova "Failure to comply with the measures of prevention or fight against epidemic diseases, if it caused the spread of such a disease, is punishable by a fine from 550 to 750 conventional units or by imprisonment for up to 1 year and the legal entity is punishable by a fine from 2000 to 3000 conventional units with (or without) the liquidation of the legal entity. The same acts resulting by imprudence in the serious or average injury to the health of a person or its death are punishable by imprisonment of up to 5 years, by a fine imposed on the legal entity from 2000 to 3000 conventional units with the liquidation of the enterprise. [95]"

In accordance with Article 287 of the Criminal Code of Montenegro" Whoever does not comply with regulations, decisions, orders or instructions ordering measures for the suppression or prevention of a dangerous communicable disease shall be punished by a prison sentence for a term not exceeding one year. [96]"

The study of the above-mentioned practice shows that in terms of the upper and lower limits of punishment, the countries have adopted a more humanitarian approach.

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[92] See Decision number ԵԿԴ/0042/01/11 of 22 December 2011 of the RA Court of Cassation. Availale at: http://www.datalex.am/?app=AppCaseSearch&case_id=14355223812275584

[93] See Ter-Gevorgyan V. The principle of proportionality as a constitutional and legal criterion for limiting the discretion of the legislator in the field of criminal law regulation. Collection of the Professors' conference of the YSU, Faculty of Law. ԵՊՀ: - Եր., ԵՊՀ, 2017, p. 528

[94] https://www.legislationline.org/download/id/7896/file/Croatia_Criminal_Code_2011_en.pdf

[95] Available at https://www.legislationline.org/download/id/8281/file/Moldova_CC_2002_am2018_en.pdf

[96] Available at https://www.legislationline.org/download/id/8406/file/Montenegro_CC_am2018_en.pdf

Thus, given the extent of restrictions of the right to free movement as a fundamental constitutional right under the state of emergency, it is the constitutional and international legal imperative for the protection of human rights for the State to ensure the implementation of its positive commitment with additional measures and guarantees, otherwise, the right to free movement will lose its essence and will become an instrument of practically unusable and vulnerable intervention in terms of protection.

2.3 The Right to Protection of Personal Data, Private and Family Life, Freedom and Secrecy of Communication

International Human Rights Standards

The intrusive potential of modern technologies must not be left unchecked and unbalanced against the need for respect for private life. Data protection principles and the Council of Europe Convention 10897 (and its modernized version) have always allowed a balancing of high protective standards and public interests, including public health. The Convention allows for exceptions to ordinary data-protection rules, for a limited period of time and with appropriate safeguards (e.g. anonymisation) and an effective oversight framework to make sure that these data are collected, analysed, stored and shared in legitimate and responsible ways. 98.

In the case of automated personal data processing, the Convention on the Protection of Individuals (28 January 1981, "Convention 108+") was a unique and first legally binding international instrument in the field of data protection.

The Convention was modernized in 2018 ("Convention 108+") to respond to new challenges in the digital era, allow safer exchanges of personal data at international level and strengthen the effective implementation of the Convention99.

The Republic of Armenia ratified the CoE Convention 108 on 9 May 2012100.

"Convention 108+" provided amendment to Article 5 of "Convention 108" according to which data processing shall be proportionate in relation to the legitimate purpose pursued and reflect at all stages of the processing a fair balance between all interests concerned, whether public or private, and the rights and freedoms at stake. Each Party shall provide that data processing can be carried out on the basis of the free, specific, informed and unambiguous consent of the data subject or of some other legitimate basis laid down by law (…)[101].

Article 6 of "Convention 108" prescribes that personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions. "Convention 108+" amended the abovementioned Article with the following point: "Such safeguards shall guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination." In accordance with Article 7 of "Convention 108" "Appropriate security measures shall be taken for the protection of personal data stored in automated data files against

[97] See Անձնական տվյալների ավտոմատացված մշակման դեպքում անհատների պաշտպանության մասին Կոնվենցիա:
[98] Information documents, SG/Inf(2020)11, Ժողովրդավարության, օրենքի գերակայության եւ մարդու իրավունքների պահպանումը COVID-19 սանիտարական ճգնաժամի շրջանակներում, 7 April 2020, page 19
[99] See more at: https://rm.coe.int/leaflet-data-protection-final-26-april-2019/1680943556
[100] Available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108/signatures?p_auth=W0JaOjG2
[101] Article 5 of Convention 108 prescribes that Personal data undergoing automatic processing shall be: a. obtained and processed fairly and lawfully; b. stored for specified and legitimate purposes and not used in a way incompatible with those purposes; c. adequate, relevant and not excessive in relation to the purposes for which they are stored; d. accurate and, where necessary, kept up to date; e. preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.

accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination."

Under CoE data protection law, processing personal data constitutes lawful interference with the right to respect for private life and can only be carried out if it:

- is in accordance with the law;
- pursues a legitimate aim;
- respects the essence of the fundamental rights and freedoms;
- is necessary and proportionate in a democratic society to achieve a legitimate purpose[102].

Data protection is guaranteed by Article 8 of the ECHR, and the exercise of this right may be restricted in accordance with the law and when it is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms.

The European Court of Human Rights (ECHR) has ruled that the collection of personal data by state agents systemically and storage in the form of a file refers to "private life" within the meaning of Article 8, part 1 of the Convention[103].

The European Court of Human Rights held that domestic law has to provide sufficient safeguards against any use of personal data which is interference with the rights under Article 8 of the ECHR. In the case at hand, the ECtHR concluded that there had been a violation of Article 8 of the ECHR because domestic law had failed to indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on insurance companies acting as public authorities in insurance disputes to conduct secret surveillance of an insured person. In particular, it did not include sufficient safeguards against abuse.

The ECtHR finds that the need for safeguards is greater when it comes to the protection of personal data subject to automatic processing, especially when it is used for police purposes. Domestic law must also include guarantees that will effectively protect from misuse and abuse of registered personal data[104].

Data subjects should receive transparent information on the processing activities that are being carried out and their main features, including the retention period for collected data and the purposes of the processing. The information provided should be easily accessible and provided in clear and plain language. It is important to adopt adequate security measures and confidentiality policies ensuring that personal data are not disclosed to unauthorised parties. Measures implemented to manage the current emergency and the underlying decision-making process should be appropriately documented[105].

If measures allowing for the processing of non-anonymised location data are introduced, a European Union Member State is obliged to put in place adequate safeguards, such as providing individuals of electronic communication services the right to a judicial remedy[106].

The principle of proportionality says that the least intrusive solutions should always be preferred, taking into account the specific purpose to be achieved. Invasive measures, such as the "tracking" of individuals (i.e. processing of historical non-anonymised location data) could be considered proportional under exceptional circumstances and depending on the concrete modalities of the processing. However, it should be subject to enhanced scrutiny and safeguards to ensure the respect of data protection principles (proportionality of the measure in terms of duration and scope, limited data retention and purpose limitation) [107].

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[102] Handbook on European data protection law, European Union Agency for Fundamental Rights and Council of Europe, 2018, p.36.

[103] See Ուղեցույց Մարդու իրավունքների եվրոպական կոնվենցիայի 8-րդ հոդվածի վերաբերյալ, Անձնական և ընտանեկան կյանքը հարգելու իրավունք, էջ 42:

[104] See Ուղեցույց Մարդու իրավունքների եվրոպական կոնվենցիայի 8-րդ հոդվածի վերաբերյալ, Անձնական և ընտանեկան կյանքը հարգելու իրավունք, էջ 49:

[105] See Statement on the processing of personal data in the context of the COVID-19 outbreak. Adopted on 19 March 2020, p. 2: https://edpb.europa.eu/sites/edpb/files/files/news/edpb_statement_2020_processingpersonaldataandcovid-19_en.pdf

[106] ibid., p. 2.

[107] ibid., p. 3.

On 25 May 2018 the EU Regulation on General Data Protection (GDPR), entered into force by Decision number 2016/679 of the Council of Europe (Regulation)[108]. The main purpose of the Regulation is to provide certain control opportunities to EU citizens in the field of personal data protection and privacy, creating a common law enforcement practice.

In accordance with the Regulation personal data can be collected and processed only if the person has given a consent or if the following grounds exist:

- data processing is carried out by official authority in the public interest;
- data processing is based on the existing agreement obligations;
- there is protection of the legitimate interests of a third party;
- the controller is carrying out his or her legal obligations.

As the legal relations, that form the basis of the content of the regulation, guarantee the fundamental rights of the person, the scope of the regulation is not limited to the territory of the EU and is of an extraterritorial nature[109]. The extraterritorial scope includes the organizations, which

- carry out monitoring services, where EU citizen are included;
- collect data for risk assessment - discovery of money laundry;
- location surveillance via computer or mobile devices.

The term “Monitoring” is referred to as a person’s “profiling,” and is defined as the predicting and control of behavior and preferences[110].

Therefore, any organization dealing with the processing and/or collection of personal data of EU citizens must strictly follow the regulation in order to avoid fines of 20 million euros or 4% of the total turnover. In accordance with the regulation ‘Personal data’ means any information that is directly or otherwise related to a person: e-mail address, message, photos, phone calls, etc.

In the Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement the following principles[111] of personal data processing are enshrined , according to which personal data should be:

- processed lawfully, fairly and in a transparent manner (the principle of lawfulness, fairness and transparency);
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (…) (the principle of purpose limitation’);
- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (the principle of data minimisation);
- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (‘the principle of accuracy’);
- kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; (the principle of storage limitation);
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (the principle of integrity and confidentiality).

[108] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

[109] Available at: https://www.privacy-regulation.eu/en/article-3-territorial-scope-GDPR.htm

[110] Available at: https://iapp.org/news/a/what-does-territorial-scope-mean-under-the-gdpr/

[111] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Article 5 Principles relating to processing of personal data:

- The controller shall be responsible for, and be able to demonstrate compliance with the above-mentioned points ('accountability').

On 2 April 2020 a number of international human rights organizations made a joint statement calling on all governments to ensure that the use of digital technologies to track and monitor individuals and populations is carried out strictly in line with human rights. An increase in state digital surveillance powers, such as obtaining access to mobile phone location data, threatens privacy, freedom of expression and freedom of association, in ways that could violate rights and degrade trust in public authorities – undermining the effectiveness of any public health response. If governments enter into data sharing agreements with other public or private sector entities, they must be based on law, and the existence of these agreements and information necessary to assess their impact on privacy and human rights must be publicly disclosed – in writing, with sunset clauses, public oversight and other safeguards by default. Individuals who have been subjected to surveillance must have access to effective remedies[112].

The most significant is the experience created by the competent state bodies of Singapore, which implies the use of "trace together" application[113].

- the application does not track the movement of people and contacts;
- anonymous;
- defines a clear date and order for data destruction.

In case of contact with an infected person or in case of danger, the program requests permission for the health authorities to contact the person. Germany, North and South Korea, as well as the United States, have adopted this version.

Domestic Law

In accordance with Article 34 of the RA Constitution „1. Everyone shall have the right to protection of data concerning him or her.2. The processing of personal data shall be carried out in good faith, for the purpose prescribed by law, with the consent of the person concerned or without such consent in case there exists another legitimate ground prescribed by law."

In accordance with Article 78 of the RA Constitution "The means chosen for restricting basic rights and freedoms must be suitable and necessary for achievement of the objective prescribed by the Constitution. The means chosen for restriction must be commensurate to the significance of the basic right or freedom being restricted."

In accordance with Article 79 of the RA Constitution "When restricting basic rights and freedoms, laws must define the grounds and extent of restrictions, be sufficiently certain to enable the holders and addressees of these rights and freedoms to display appropriate conduct."

In accordance with Article 5 of the RA law "On Protection of Personal Data" "1. The processing of data must pursue a legitimate purpose, measures to achieve it must be suitable, necessary and moderate. 2. The processor of personal data shall be obliged to process the minimum volume of personal data that are necessary for achieving legitimate purposes. 3. The processing of personal data that are not necessary for the purpose of processing of data or are incompatible with it shall be prohibited. 4. The processing of personal data shall be prohibited where the purpose of processing of data is possible to achieve in a depersonalised manner. 5. Personal data must be stored in such a way as to exclude the identification thereof with the data subject for a period longer than is necessary for achieving predetermined purposes."

[112] Available at: https://www.hrw.org/news/2020/04/02/joint-civil-society-statement-states-use-digital-surveillance-technologies-fight
[113] Available at: https://www.gov.sg/article/help-speed-up-contact-tracing-with-tracetogether

In accordance with Article 26 of the RA law "On Protection of Personal Data" „1. The processor may transfer personal data to third parties or grant access to data without the personal data subject's consent, where it is provided for by law and has an adequate level of protection. 2. The processor may transfer special category personal data to third parties or grant access to data without the personal data subject's consent, where: (1) the data processor is considered as a processor of special category personal data prescribed by law or an interstate agreement, the transfer of such information is directly provided for by law and has an adequate level of protection; (2) in exceptional cases provided for by law special category personal data may be transferred for protecting life, health or freedom of the data subject."

The Government of the Republic of Armenia invited a special sitting of the National Assembly of the Republic of Armenia on 30 March 2020. The agenda included drafts of the RA Law on Making Amendments to the Law on the Legal Regime of the State of Emergency and other legal acts related to it. The purpose of the legislative initiative was to have limitations on the protection of personal data, private and family life, freedom and secrecy of communication, in the form of personal data processing. The data will be processed by the state bodies and legal entities established by the state in accordance with the RA Government's decision on declaring a state of emergency.

The RA Law on Making Amendments to the RA Law on the Legal Regime of the State of Emergency was adopted and entered into force on 31 March 2020.

The transferred or processed data shall be destroyed by the developers after the end of the state of emergency, within the period defined by the decision of the Government of the Republic of Armenia on declaring a state of emergency. In all cases, the data must be deleted no later than one month after the end of the state of emergency.

Restrictions on the right to free movement, control over them, and the possibility of exercising and using electronic means of communication have been established. Failure to use electronic means of communication or violation of the rules of their use and application, in accordance with the law, shall be considered a violation of the regime of restriction on the right to free movement during a state of emergency, in the administrative and criminal sense[114].

Data processors (...) may require from medical authorities and organizations, as well as medical care and service providers (...) data that include medical secret.

The RA Law "On Making Amendments to the RA Law on the Legal Regime of the State of Emergency" contains a number of problematic regulations that endanger the realization and protection of personal data, the right to respect for private and family life. The legal tools to prevent the spread of the new coronavirus (COVID-2019), which intervene in the inviolability of private and family life, do not meet the requirements of legal certainty, proportionality and necessity in a democratic society.

In accordance with new Article 9.1, Part 1, Point 2 amended in Law on the Legal Regime of the State of Emergency by Article 2 to the RA Law "On Making Amendments to the RA Law on the Legal Regime of the State of Emergency," in case of state of emergency caused by pandemic, the operators of the public electronic communication network shall be obliged to provide the state bodies and legal entities established by the state 2) the telephone numbers that were directly or indirectly connected with the client's telephone number, the date of the start of the telephone conversation, the necessary information to find out the start, and in case of call forwarding or transmitting, the data on the telephone number to which the call was transmitted.

Within the framework of the data control tools used, it is obvious that data on EU citizens residing in the Republic of Armenia can be collected, whose rights are guaranteed by the General Data Protection Regulation. The points that define the disclosure of directly or indirectly connected telephone numbers are also problematic. In particular, the direct or indirect limits of persons in contact with the person are not clear, which can lead to violations by collecting more than necessary (the principle of data minimization). The targeted and purposeful use of personalized data collection in this way is not

[114] Justification of the Republic of Armenia Draft Law on Making Amendments to the Law on the Legal Regime of the State of Emergency, page 9. Available at: http://www.parliament.am/draft_docs7/K-534_himnavorum.pdf

clearly defined. Transparency in the activities is not ensured and the person cannot track the entire database of information about him/her, receive information about third parties for whom the data have been disclosed, and have effective remedies in case of violations.

The RA NA State and Legal Expertise Department clearly stated in the conclusion on the draft law of the Republic of Armenia "On Making Amendments to the Law of the Republic of Armenia" On the Legal Regime of the State of Emergency" that the provision on the obligation to provide the necessary data to identify the location of ***each person*** receiving the RA public electronic communication services, and the phone numbers having direct or indirect connection to his/her phone number, the phone conversation (…) is not substantiated and proportionate.

Human Rights Watch referred to the RA Law on Making Amendments to the RA Law on the Legal Regime of the State of Emergency, noting that while restrictions on the right to privacy to contain the pandemic may be permissible, the RA government must ensure that such restrictions are lawful, necessary, and proportionate.

Thus, the amendments to the RA Law on the Legal Regime of the State of Emergency do not comply with the principles of international human rights law, the principle of effective protection of rights, and create a dangerous precedent for the formation and application of domestic law for personal data protection.

2.4 The Rights of Persons Deprived of Their Liberty

Persons deprived of their liberty comprise a particularly vulnerable group owing to the nature of the restrictions which are already placed upon them and their limited capacity to take precautionary measures. Within prisons and other detention settings, many of which are severely overcrowded and insanitary, there are also increasingly acute problems[115].

International Human Rights Standards

Rule 24 of Standard Minimum Rules for the Treatment of Prisoners states that “the provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic on 20 March 2020.

CPT reminded all actors of the absolute nature of the prohibition of torture and inhuman or degrading treatment. CPT pointed out that protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty. The principles, inter alia, provide that any restrictive measure taken vis-à-vis persons deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in time. Any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-overInternet-Protocol communication). All relevant authorities should make greater use of alternatives detention, fundamental safeguards against the ill-treatment of persons in the custody of law enforcement officials

[115] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020), p. 1.

(access to a lawyer, access to a doctor, notification of custody) must be fully respected in all circumstances and at all times[116].

On 25 March 2020 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment made recommendations on the measures taken by the participating States and national preventive mechanisms in the context of the coronavirus disease. The recommendations, inter alia, include the measures taken by authorities in all detention places, including in respect of those in immigration detention and closed refugee camps, psychiatric hospitals and other medical institutions, official places of quarantine.

The UN Subcommittee urges to, inter alia:

1. Reduce prison populations and other detention populations wherever possible by implementing schemes of early, provisional or temporary release for those detainees for whom it is safe to do so, taking full account of non-custodial measures indicated as provided for in the Tokyo Rules;
2. Review all cases of pre-trial detention in order to determine whether it is strictly necessary in the light of the prevailing public health emergency and to extend the use of bail for all but the most serious of cases;
3. Ensure that any restrictions on existing regimes are minimised, proportionate to the nature of the health emergency, and in accordance with law;
4. That where visiting regimes are restricted for health-related reasons, provide sufficient compensatory alternative methods for detainees to maintain contact with families and the outside world, for example, by telephone, internet/e mail, video communication and other appropriate electronic means. Such contacts should be both facilitated and encouraged, be frequent and free;
5. Enable family members or relatives to continue to provide food and other supplies for the detainees, in accordance with local practices and with due respect for necessary protective measures;
6. Prevent the use of medical isolation taking the form of disciplinary solitary confinement; medical isolation must be on the basis of an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards;
7. Ensure that fundamental safeguards against ill-treatment remain available and operable, restrictions on access notwithstanding[117].

Taking into account that quarantine facilities are de facto a form of deprivation of liberty all those so held should be able to benefit from the fundamental safeguards against ill treatment, including information of the reasons for their being quarantined, the right of access to independent medical advice, to legal assistance and to ensure that third parties are notified of their being in quarantine[118].

Domestic Law and Practice

The issue of releasing persons on bail under the COVID-19 pandemic was discussed in the RA courts.

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[116] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, issued on 20 March 2020: Non official translation is available at: https://hcav.am/cpt-covid-19/

[117] More details at: Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020), p. 3-4

[118] ibid., p. 4:

Arman Hovhannisyan and Davit Harutyunyan, judges of the Court of General Jurisdiction of the City of Yerevan, made decisions to release on bail, among other circumstances, referring to European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)'s principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, issued on 20 March 2020[119].

On 3 April 2020, the RA General Prosecutor's Office initiated the process of changing the detention of people who are vulnerable in regards with coronavirus[120].

A total of 58 prisoners have been released from various prisons of Armenia from 16 March to 5 April according to Nona Navikyan, head of Public Relations department of Penitentiary Institutions[121].

In accordance with decision N 298-N of 16 March 2020 of the Government of the Republic of Armenia in the penitentiary institutions of the Republic of Armenia, in penitentiary institutions and arrest facilities, the following shall be prohibited: (…) receiving and sending deliveries, parcels and packages; having visits (except for video calls); (…).

The procedure for using video calls is defined by Decision number1543-N of 3 August 2006 of the RA Government. According to it video calls may be used by foreign detainees or convicts whose close relatives cannot visit them, as well as by detainees or convicts whose close relatives cannot use the short-term visit. Video calls are provided twice a month for up to twenty minutes.

It is unclear how during the state of emergency the right to use/organize video calls will be exercised and whether there are sufficient technical resources for all persons deprived of their liberty to have access to video calls. There are no rules or regulations for using taxophones in an emergency situation. It should also be noted that the use of taxophones is not financially available to all prisoners.

Referring to the ban on deliveries, it should be noted that there are twelve penitentiaries in Armenia, and only in two of them food is served by private sector and according to the RA Minister of Justice, 100% of the convicts and detainees have this food[122]. Other institutions continue to have problems relating to the food quality and quantity, the conditions of making it, the lack of special diet for people with medical problems, which are regularly raised by both the Human Rights Defender's Office and the Group of Public Monitors Implementing Supervision over the Criminal-Executive Institutions and Bodies of the Ministry of Justice of the RA (Group of Public Monitors). The food provided in these establishments is mainly used by those who do not receive deliveries. Prohibition of deliveries was expected to raise a wave of protest among convicts, but since March 16, neither the HCA Vanadzor office (which is also a member of the Group) nor the Group of Public Monitors has received any complaint about restrictions on visits, ban of deliveries or food quality. The absence of complaints from detainees may be due to the restriction of contact with the outside world, or to deeper reasons that need to be further investigated.

Thus, in parallel with the establishment of substantial restrictions on visits to detainees and receipt of deliveries in penitentiaries due to the coronavirus infection, the state did not address the issue of alternative mechanisms or means of ensuring these rights. In such a situation, severely restricted access to the outside world is a matter of concern in terms of failing to ensure the effectiveness of preventing human rights violations in closed institutions.

Safe and secure conditions for the health of the staff and detainees in penitentiaries is also worrying.

After a visit to Armavir Penitentiary of the RA Ministry of Justice on 31 March 2020, the group of monitors published information on the preventive measures taken in penitentiary institutions in connection with the state of emergency. The group assessed the measures taken to prevent the spread

[119] Available at: https://hetq.am/hy/article/115399 , https://hetq.am/hy/article/115054
[120] See at: https://www.lragir.am/2020/04/03/533867/
[121] See at: https://epress.am/en/2020/04/08/58-prisoners-released-in-the-time-of-state-of-emergency.html
[122] The pilot program of providing food by a private company started in "Nubarashen" penitentiary on October 15, 2019, and in "Armavir" penitentiary on October 16. The efficiency of the program was assessed high by the RA Minister of Justice, who stated that the indivator of convicts and detainees using food is 100%.

of the epidemic in penitentiaries as unsatisfactory, including the insufficient provision of medical staff with antiviral security measures[123]. In response to the urgent report of the Monitoring Group, the Ministry of Justice of the Republic of Armenia informed that the divisions of the Penitentiary Medicine Center SNCO (hereinafter referred to as the SNCO) located in the RA MoJ Penitentiary Institutions has taken appropriate measures to prevent the spread of the COVID-19 epidemic among persons deprived of their liberty and in penitentiaries in general.

On April 2, five employees of Vardashen Penitentiary Institution were diagnosed with COVID-19.

We believe that the staff of penitentiaries, especially the medical staff, is not provided with sufficient level and scope of antiviral security measures.

Summing up the above, we propose to review the decisions on choosing detention as a measure of restraint, expanding the possibilities of using bail, to legally guarantee the real and effective realization of the right of persons deprived of their liberty during the epidemic to communicate with the outside world.

2.5 Electoral Right

As a result of the COVID-19 epidemic, at least 47 countries have postponed various national and local elections scheduled for 2020 March to September. At the same time, 14 countries have decided to hold elections[124].

Taking into account the current situation, the states must ensure a balance between the health of citizens and democracy. When deciding whether or not to postpone elections, countries must take into account both political and health consequences.

Freedom House human rights organization states that the postponement of the elections may lead to abuses and decline of democracy, therefore, in the event of any emergency, the postponement of the elections should be the last option available and countries should take all measures possible to allow free and fair elections to go forward[125].

According to the research done by the International Foundation for Electoral Systems in case of elections in the state of emergency it is preferable to hold the processes remotely – to avoid public events and gatherings, organize voting by post or online, and in case of in-person voting to rearrange polling station layout and ensure a sufficient physical distance between the participants of the election process, provide gloves, masks, pens, disinfecting liquids or soap in the polling station, and display information posters promoting safety and hygienic etiquette. It is recommended not to involve medical workers in the election process, who are more burdened with servicing the victims of the epidemic[126].

It should be noted that the electoral process, even when carried out in compliance with the above-mentioned instructions, restricts the rights of many people and the possibility of expressing free will, in fact by forcing voters to risk their lives in order to exercise their right to vote.

After the confirmation of the 4th case of infection in the Republic of Armenia on March 12, the "Yes" party of the referendum stopped the campaigns, but the postponement of the referendum was not

[123] Details available at: http://pmg.am/hy/news/successful-cases/covid-20
[124] Global overview of COVID-19: Impact on elections
https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections
[125] The Coronavirus Takes Aim at Electoral Democracy
https://freedomhouse.org/article/coronavirus-takes-aim-electoral-democracy
[126] Guidelines and Recommendations for Electoral Activities During the COVID-19 Pandemic
https://www.ifes.org/publications/guidelines-and-recommendations-electoral-activities-during-covid-19-pandemic

on the agenda yet. In fact, the RA legislation does not envisage any other reason for the suspension of the announced elections or referendum except the state of emergency.

Meanwhile, on March 15, the elections of the community head in 4 rural communities took place without any special measures.

The planned constitutional referendum was postponed as a result of the state of emergency declared in Armenia on March 16. Article 208 of the RA Constitution stipulates that Referendum shall not be held during martial law or state of emergency and the process that has already started shall be suspended. The referendum may be called no earlier than the 50th day and no later than the 65th day after the end of the state of emergency.

The number of confirmed cases of coronavirus on April 5 was 823 – in the conditions of the strict quarantine regime that started on 24 March 2020 and extended until 31 March, which means that in the case of absence of restrictions and having the referendum, the number of confirmed coronavirus cases would be significantly higher, making it impossible for virus carriers to receive proper medical care; and to control the spread of infection.

We believe that the decision to postpone the referendum was delayed but well-substantiated, however, the approaches to organizing local elections are not clear.

2.6 The Right to a Fair Trial

International Human Rights Standards

The principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant[127].

States have an international obligation to comply fully with the provisions of international human rights law relating to states of emergency, including continuing protection against human rights abuses. Whatever measures are taken to deal with a situation of crisis, the judiciary must play an independent role in reviewing them and supervising their operation to ensure compliance with domestic law and with international human rights law and standards[128].

The control of the judiciary over the lawfulness of emergency measures is part of a system based on the Rule of Law. Judicial oversight of states of emergency is an inherent consequence of the principle of legality[129].

In situations of crisis, means and mechanisms must be provided to challenge the lawfulness of measures that limit or restrict human rights, and to provide effective remedies for any abusive application[130].

In order for the judiciary to have an opportunity to oversee and review the measures adopted to address the crisis, those affected by such measures, who seek to challenge their legality, must have full access to justice and have the opportunity to exercise their right to fair and effective judicial proceedings[131].

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[127] UN doc. GAOR, A/56/40 (vol. I), p. 206, para. 16

[128] International Commission of Jurists, Legal Commentary to the ICJ Geneva Declaration Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis. Geneva, 2011, p. 58.

[129] International Commission of Jurists, Legal Commentary to the ICJ Geneva Declaration Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis. Geneva, 2011, p. 63

[130] ibid., p. 65:

[131] ibid., p. 65:

The preventive measures taken against the spread of COVID-19, in particular the establishment of a state of emergency in the Republic of Armenia, make the issues of justice and protection of the constitutional rights of individuals more critical.

States have obligations to take effective protection measures arising from the right to life and right to health; at the same time, as in any other emergency, the State's other human rights and rule of law obligations remain applicable[132].

Committee on Civil and Political Rights, referring to Article 4 of the ICCPR, stated that States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence[133].

Greater use of electronic evidence by courts in civil and administrative proceedings can help overcome some of the restrictions imposed in connection with the Covid-19 crisis, for example with increased use of videoconferencing facilities to take the evidence of witnesses without the need to attend court. The Guidelines on the use of electronic evidence in such proceedings, adopted by the Committee of Ministers last year, offer national courts invaluable guidance in this respect, particularly in ensuring the quality and integrity of the evidence submitted to them. Further guidelines are currently being developed by the European Committee on Legal Co-operation on designing online legal dispute resolution mechanisms in accordance with the fair trial and effective remedy guarantees of Articles 6 and 13 of the European Convention on Human Rights, and thus contribute to ensuring that the Convention is being duly applied when IT tools are being introduced[134].

Judicial institutions primarily feature in international human rights law in three roles: the right to fair trial by an independent and impartial court; the right to judicial control of deprivation of liberty and the right to an effective remedy[135].

Given the need for human rights protection and the rule of law in a state of emergency ICJ[136] (International Commission of Jurists) developed the Geneva Declaration on "Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis" as an instrument for addressing these threats to human rights protection. The Declaration sets forth 13 core principles indicating key elements of particular responsibility for judges and the legal profession and for the conduct of States in situations of crisis.

The role of the judiciary and legal profession is paramount in safeguarding human rights and the Rule of Law in times of crisis, including declared states of emergency[137].

The existence of a remedy against human rights violation must be sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness[138].

Urgent are considered

- the violations of constitutional rights;
- significant violations relating to women, children and the elderly;
- the rights of persons with disabilities;
- the restoration of the rights of persons deprived of their liberty, in particular, if the issue concerns the extension of the detention period and it is not possible to set a reasonable period of time, then the detention should be replaced by another measure.

The courts of France, Denmark, Germany, Italy and other EU countries have suspended their activities, except for "urgent" cases, taking into account the priority of the protection of the above rights.

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[132] Available at: http://opiniojuris.org/2020/04/03/covid-19-symposium-the-courts-and-coronavirus-part-i/

[133] CCPR/C/21/Rev.1/Add.11, par. 11

[134] Available at: https://www.coe.int/en/web/cdcj/covid-19

[135] The Courts and COVID-19, The International Commission of Jurists, 6 April 2020, p. 1.

[136] The International Commission of Jurists (ICJ) is a non-governmental organisation devoted to promoting the understanding and observance of the rule of law and the legal protection of human rights throughout the world.

[137] https://www.icj.org/wp-content/uploads/2011/05/ICJ-genevadeclaration-publication-2011.pdf

[138] African Commission on Human and Peoples' Rights, Sir Dawda K Jawara v. The Gambia, Communications 147/95 and 149/96, 11 May 2000, para. 35

Canada, Ireland and Great Britain have adopted a procedure of hearing cases remotely, in particular, Great Britain has adopted a Protocol regarding remote hearings within Civil Justice in England and Wales, which regulates the procedure for holding a court hearing remotely, defining the appendices through which the hearings, the exchange of documents and evidences will be carried out. In any case, the investigation of cases should not be arbitrary, all circumstances should be assessed, depending on civil and criminal cases, and should not lead to significant violations, in particular, the rights of personal presence at the court hearing, confidentiality of communication with a lawyer and other rights relating to the proceedings should be ensured. In the above-mentioned countries, this procedure is carried out in small civil cases, as some rights in criminal cases should be exercised only in court.

Measures which aim at adapting modalities of access to courts should be designed in a way that is compatible with Article 6 of the ECHR, not least in cases where special procedural diligence is required (vulnerable litigants, family and labour litigations, etc). Derogations under Article 15 may enlarge the range of permissible measures under Article 6 of the Convention and broaden the state authorities' margin of manoeuvre in complying with certain timelimits and other ordinary procedural requirements. However, the fundamental prohibition of detention without legal basis or timely judicial review, and the need to provide detainees with essential procedural safeguards, such as access to a doctor, a lawyer or next-of-kin, should in principle be observed in the present circumstances. States also remain under a general obligation to ensure that trials meet the fundamental requirement of fairness (such as equality of arms) and respect the presumption of innocence, and ensure that no steps are taken which would amount to an interference with the independence of judges or of courts[139].

Domestic Law

In accordance with Article 61 of the RA Constitution "Everyone shall have the right to effective judicial protection of his or her rights and freedoms."

In accordance with Article 63 of the RA Constitution "Everyone shall have the right to a fair and public hearing of his or her case, within a reasonable time period, by an independent and impartial court."

In accordance with Article 76 of the RA Constitution "During state of emergency or martial law, basic rights and freedoms of the human being and the citizen — with the exception of those referred to in (…) Articles 61, 63-(…) of the Constitution — may be temporarily suspended or subjected to additional restrictions under the procedure prescribed by law, only to the extent required by the existing situation within the framework of international commitments undertaken with respect to derogations from obligations during state of emergency or martial law."

Article 7 of the RA Law on the Legal Regime of the State of Emergency stipulates that during the state of emergency the implementation of the measures envisaged by this Article cannot hinder the normal activity of the RA National Assembly, the RA Constitutional Court, the RA Courts and the RA Human Rights Defender.

In accordance with Article 11 of the RA Law on the Legal Regime of the State of Emergency "1. Each natural and legal person has the right to defend his or her violated rights and freedoms in administrative and judicial order. 2. The natural persons injured in the result of the circumstances serving as a ground for declaring a state of emergency or of the activities aimed at eliminating the consequences thereof shall receive a refund for their losses and be provided with necessary assistance as prescribed by the Government of the Republic of Armenia. Individuals and legal entities, whose property and other assets have been used to ensure the legal regime of the state of emergency, have the right to receive adequate compensation in accordance with the procedure established by the Government of the Republic of Armenia. 3. The property confiscated during the state of emergency shall

[139]Information Documents SG/Inf(2020)11, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, 7 April 2020, p. 6.

be returned to their owners or persons entitled to own or use it within one week after the termination of the state of emergency.

It is obvious that the norm on the guarantees of the rights of natural and legal persons during the state of emergency regulates in practice only the legal protection of the violations of property rights, while, for example, in case of illegal restriction of the right to free movement or personal data protection, to private and family life, freedom and secrecy of communication, it does not contain any toolkit to provide effective protection of the right, in a simplified manner, including electronic. It turns out that in the case of such restrictions, the remedies are the same as under normal circumstances, ***while the international obligations undertaken by the Republic of Armenia provide additional guarantees in case of any restrictions***. Under the mentioned circumstances, the question remains as how, for example, in the event of an illegal restriction of movement at a check point, a person should exercise the protection of his or her rights when there is no real opportunity to file an application to the administrative court and the superior administrative body[140]. Though by Commandant's decision No. 15 of 24 March 2020 all public authorities, including the courts and state and local self-government bodies, are obliged to ensure the uninterrupted implementation of their functions, it should be noted that it is of a declarative nature and is limited to the announcements made by the mentioned bodies.

Article 145 of the RA Civil Procedure Code regulates the participation of the participants of the trial in the court session with the use of video and telecommunication means. Upon the reasoned motion of the trial participant, the court shall allow him or her to participate in the court session using video and audio telecommunications, if the courtroom has such a communication system. The interpreter may not participate in the court hearing using video and audio communications, nor a face-to-face interrogation can be carried out (Article 145, Part 1). The court rejects the motion to participate in the court session using video and telecommunication means, if: 1) there is no technical possibility to participate in the court session by using video and telecommunication means; 2) the motion has been filed in violation of the term[141] defined in Part 2 of this Article; 3) a closed court session is held (Part 7 of Article 145).

Thus, the RA Civil Procedure Code provides for the possibility of a remote hearing in case of the following conditions:

- a reasoned motion was filed by the trial participant;
- the motion was filed at least seven days before the hearing;
- no translator required;
- there is no request for face-to-face interrogation.

The terms of the procedure are exhaustively defined in the article, but the court is left out of that jurisdiction and, consequently, is not endowed with the initiative. It is also problematic that the article does not specify through which video and audio programs the trial will be conducted, which can create security problems. The lack of technical opportunities in court actually causes disproportionate and illegal restrictions on the exercise of rights.

Considering the postponements of the court hearings, we find that the constitutional rights of individuals are significantly violated, in particular, the rights of judicial protection and fair trial defined by Articles 61 and 63 of the RA Constitution, which are not subject to restrictions in accordance with Article 76 and point 3, Article 7 of the law On the Legal Regime of the State Of Emergency.

Legislative provisions referred clearly state that in a state of emergency, a number of rights are not subject to any restrictions under international obligations and domestic law.

On 15 March 2020, the Supreme Judicial Council of the Republic of Armenia (SJC) issued a statement saying that "Given the viral situation in the country, the judiciary is taking all possible

[140] See Commandant's decision number 15 of 24 March 2020.

[141] Part 2, Article 145 of the RA Civil Procedure Code. The motion of the person participating in the court hearing on the use of video or telecommunications may be submitted to the court at least seven days before the commencement of the hearing. A motion on the next court hearing may be submitted during the court hearing. Available at: https://www.arlis.am/DocumentView.aspx?docid=141291

measures to ensure for the smooth implementation of its activities to ensure the possibility of exercising the constitutionally guaranteed fundamental rights to judicial protection and to a fair trial." With its statement the SJC, inter alia, "urges the parties to be satisfied with the participation of their representatives in the court hearings, except when the presence is mandatory."

The Chamber of Advocates made a statement on 15 March 2020, where it urged advocates to refrain from participating in court hearings and investigative actions (**except urgent cases**) **until 23 March 2020**, and to file motions to adjourn the court hearings scheduled for those days (...).

On 23 March 2020, the SJC stated in another statement that, taking into account the need to ensure the normal functioning of the courts within the framework of measures to prevent coronavirus infection in the country and the existing legislative opportunities, all the courts of the Republic of Armenia were provided with cameras and projectors, in accordance with Article 145 of the RA Civil Procedure Code, in order to ensure the participation of the participants of the trial in the court hearings by the use of video and audio communication means, at the same time noting that the court hearings through video communication will be launched in the coming days.

Pursuant to the implementation of the Commandant's decision No. 15 of 24.03.2020 on the restrictions on the implementation of public service in the whole territory of the Republic of Armenia, guided by the RA Law on the Legal Regime of the State of Emergency, Article 89 of"Judicial Code" constitutional law, the SJC decided until 23 March 2020, at 11:59 p.m. 1. Upon the start of court hearings with the introduction of a video and audio communication system in all courts of the Republic of Armenia, with the consent of the trial participants, hold the hearings remotely/online using all available electronic applications. 3. Any document addressed to the Supreme Judicial Council, the RA Courts, the RA General Assembly of Judges and the Judicial Department will be received electronically. 3.1 Ensure the exercise of the right to access the materials of the cases pending before the courts through the use of all available electronic applications. 3.2 Propose to the judges of the Republic of Armenia to accept the documents received electronically, provided that, as necessary, their originals are requested later. 4. Propose to the RA judges and the participants of the trial, upon in advance consent, to postpone all the court sittings, except for the cases to be examined immediately[142].

On 24 March 2020, the Chamber of Advocates submitted an application to the Commandant not to restrict and allow the provision of legal aid as a type of activity. After that, point 73 was added to the appendix to decision No. 14 of 24 March 2020 - legal activity, exclusively in terms of "69.10.0"advocate's activity. Thus, in case of emergency, the activity of advocates was allowed.

HCA Vanadzor office, not being constrained by the mentioned announcements and appeals, attaching importance to the right of each person to health, has developed a tactics of actions, adopting the principle of not harming.

On 25 March 2020, the SJC announced that "at least one courtroom in all courts of the Republic of Armenia is equipped with the necessary video and audio equipment, and that a remote communication system had been launched."

Thus, in the context of effective protection of human rights, uninterrupted work of the judiciary and, of course, respect for the right to health, the state must take effective steps to ensure that after the declaration of state of emergency there are enough courtrooms in the courts to conduct the hearings through video and audio communication, in the conditions of which a person's right to a fair trial would be fully guaranteed.

The requirement for e-justice is becoming more urgent in the state of emergency, so the legislation needs to be based on the need for new adaptive approaches in the state of emergency and international experience, which are aimed at ensuring human constitutional rights and creating a new vision for effective judicial activity.

[142] Available at: http://court.am/hy/decisions-single/530

RECOMMENDATIONS

1. Eliminate the restrictions on the protection of personal data, private and family right, freedom and secrecy of communication, and revoke point 17, part 1 of Article 17 and Article 9.1 of the RA Law on the Legal Regime of the State of Emergency.
2. Distinguish self-isolation as a legal status (rights, responsibilities, liability, guarantees) from isolation.
3. Establish the rules of isolation or self-isolation or other restrictions on the right to free movement by legislative acts.
4. Edit Part 10 of Article 182.3 of the Code of Administrative Offenses of 6 December 1985 with the following content: “violation of the rules of mandatory self-isolation, as a limitation, during the state of emergency declared due to emergency situation."
5. Supplement Article 182.3 of the RA Code on Administrative Offenses of 6 December 1985 with the following content: “Violation of restrictions on the right to freedom of movement during a state of emergency declared due to emergency situation, except for the offense under Part 10, Article 182.3 of this Code.
6. Article 124.1 of the RA Criminal Code needs to be edited with the following content: "**Intentionally** infecting a person with a new coronavirus infection (2019n-CoV) **by a person who was aware of having the disease.**”
7. Provide criminal liability for leaving the place specifically designated for isolation during a state of emergency.
8. Provide criminal liability in case transmission of dangerous infectious diseases. Determine the list of dangerous infectious diseases by the decision of the Government of the Republic of Armenia.
9. Amend Article 145 of the RA Civil Procedure Code, defining the possibility for the judiciary of initiating a hearing remotely.
10. Create effective guarantees, in parallel with the restriction of rights and freedoms, in order to ensure effective judicial/administrative control of unlawful restrictions.
11. By the legal acts of SJC define the technical programs/software through which the sessions will be held remotely, as well as define security measures for data protection.
12. Create a unified platform for obtaining the necessary documents for the case and ensure their proper implementation.
13. Define the scope of urgent cases in accordance with international obligations.
14. Establish a procedure of remote proceedings also for criminal cases related to the application of a measure of restraint or modification of its term or replacement by other means: release on bail, release on guarantee or signature not to leave.
15. Create necessary technical conditions for prisoners in penitentiaries to ensure communication with the outside world and the lawyer (e.g. video call).
16. By the RA Law “On the Legal Regime of the State of Emergency” define the right to receive information on the reasons for being in a certain area intended for the isolation of isolated persons, as well as the rights to independent medical care and access to legal aid.
17. Make the decisions of the Commandant in compliance with the requirements of the RA Constitution, the RA Law “On Regulatory Legal Acts.”