

The Impact of COVID-19 Related Emergency Measures on the Democracy and Human Rights in Armenia

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The Government of Armenia declared a State of Emergency (SoE) in March 2020 and extended it five times followed by a similar regime of quarantine in order to manage the spread of COVID-19 in Armenia. At the same time, the decisions accompanying the SoE constantly adapted to the evolving situation. Authorities introduced a number of tools and mechanisms and different levels of lockdowns and restrictions depending on the situation. While in the beginning they underestimated the risks related to the pandemic, shortly after they decided to take strict measures to prevent further spread of the virus but were not consistent in their reinforcement. Some of the measures were proportionate but there were instances when the restrictions were eased at the peak of the pandemic and when disproportionate measures were put in place, due to political and economic realities.

Armenia is one of the few countries that continued parliamentary plenary and committee sessions through physical attendance without skipping any regular parliamentary sittings but also convened a large number of extraordinary sittings, both for the purpose of extending the SoE and endorsing decisions by the Commandant's Office established by the Executive, as well as following its regular agenda.

The most sensitive issues that transpired in relation to the impact of emergency measures on human rights, democracy and good governance were the choice of the legal modality of the SoE, its duration and replacement with quarantine, information restrictions, inability to combat disinformation, digital tracking, cancellation of the constitutional referendum, ban on civic protests, disproportionate behaviour of the police, and punitive nature of some of the measures. The complaints by citizens addressed to the Office of Human Rights Defender (HRD) have multiplied during the pandemic. Parliamentary oversight was active but ineffective, which resulted in the establishment of an Inquiry Committee in relation to COVID-19 in the second semester. Although awareness raising of the authorities' public and strategic communication was often successful, it was inconsistent at times. It faced additional challenges during the 44-day war in Nagorno Karabakh making it difficult to follow anti-pandemic guidance and ensure timely response. Overall, the inefficiency of imposed measures resulted in a general public perception that the authorities have failed to effectively manage the pandemic throughout 2020.

Background Information and Chronology

Since April 2020, Armenia has been severely affected by COVID, having the highest ratio of new cases per capita in the region and being included in the list of high-risk countries globally between May and July.¹

Armenia confirmed its first case of COVID-19 on 1 March 2020 originating from Iran. The government had started taking measures to prevent the penetration and spread of the virus in Armenia beforehand, such as the suspension of the newly introduced visa-free regime with China and closure of the border with Iran. Citizens were urged to suspend non-essential travel to high-risk countries, passengers coming from Iran were urged to isolate, schools and universities were shut down and transitioned to online mode.² However, some of the measures were inconsistent and belated. For example, Ryan Air started Yerevan-Milan flights in January 2020, one of which brought two virus carriers at the beginning of March who were not quarantined and consequently spread the virus.³

¹ 'Armenia' Worldometer
<www.worldometers.info/coronavirus/country/armenia/> accessed 9 February 2021.

² Lusine Sargsyan, 'Observations About Armenia's COVID-19 Response' EVN Report (6 July 2020)
<www.evnreport.com/covid-19/observations-about-armenia-s-covid-19-response> accessed 7 February 2021.

³ 'COVID-19: Updates From Armenia' EVN Report (13 March 2020) <www.evnreport.com/raw-unfiltered/covid-19-updates-from-armenia> accessed 7 February 2021.

On 16 March, when Armenia had 30 confirmed cases, the Government published a decision declaring a state of emergency (SoE), accompanied by measures to be applied, temporary restrictions on rights and freedoms, and measures ensuring the legal regime of the SoE.⁴ Measures introduced included, but were not limited to, travel restrictions for citizens and residents from high-risk countries and the formation of an Office of Commandant for the SoE led by Deputy Prime Minister Avinyan. All citizens and residents of Armenia, as well as their family members and representatives of diplomatic missions based in Armenia and the family members of those categories were allowed to enter Armenia. Testing, hospitalization, contact tracing and isolation were the key elements of the prevention strategy.

On 24 March, a national lockdown was imposed. Stricter measures to enforce the restrictions on movement were introduced in April when everyone was required to self-isolate in their residences and leave their homes only for essential purposes and having filled out a standardised form about their movement. Public authorities were required to work remotely, when and if possible. Public transport did not operate. Hotels were used to quarantine people, including asymptomatic patients and those who had interacted with patients. A number of hospitals were dedicated to treating COVID-19 patients, and the healthcare sector increased its capacity. Between mid-March and mid-September, the Government extended the state of emergency five times, replacing it with the quarantine regime starting on 11 September.

At the same time, starting on 3 May, strategies for easing lockdown and other restrictions were adopted, and economic activities were resumed in several stages. At the time of the easing of the lockdown, there was insufficient evidence about the stable decrease of the spread of virus. The easing of restrictions was accompanied by strict rules of co-existence. The Government's strategy was focused on ensuring that the number of people infected stayed as low as possible and remained manageable for the healthcare system, at the same time not allowing the economy to collapse. People were requested to exercise social responsibility and follow anti-epidemic guidance.⁵ However, a significant part of the population did not comply due to scepticism about the seriousness of the risk or the sense of social responsibility.

On 25 May, Armenia made the wearing of face masks compulsory in closed areas. The government admitted that Armenia had very high rates of COVID-19 per capita regionally and globally. The Prime Minister expressed frustration with the lack of discipline by citizens, the spread of fake news and conspiracy theories about the virus and instructed the police to be strict in enforcing the measures determined by the Commandant.

With effect from June, wearing masks was required not only in closed but also open areas. The measure was eased in mid-August and then again in January 2021. The apparent peak of the first wave of pandemic in Armenia was in June-July. This measure generated public debate on its health implications, feasibility and proportionality. Some believed that this measure was aimed at penalizing citizens and collecting fines, rather than preventing the spread of the virus.

On 12 August, even though the SoE was extended for the fifth and last time, in light of the decrease of new daily cases, a number of restrictions were eased due to public pressure. Holding of assemblies and strikes was allowed with certain rules, the entry to Armenia by non-citizens and non-residents was allowed, given that they would be tested or self-isolate.

On 11 September, the SoE was replaced with a quarantine regime for four months, which was extendable for up to 6 months, causing significant dissatisfaction by the opposition which claimed that it was aimed at suppressing the civic space. As from 15 September, schools and universities, libraries and museums re-opened, and open-air cultural events reconvened. Wearing masks was still required

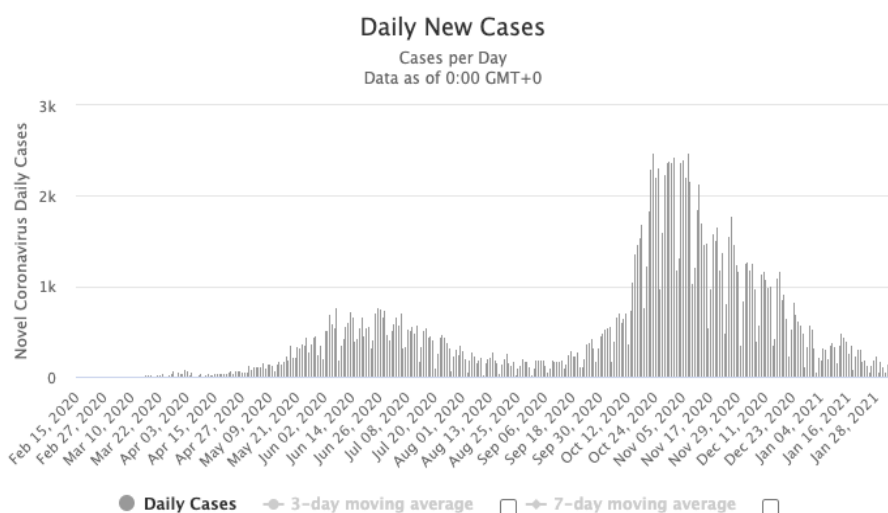
⁴ 'The Government of the Republic of Armenia Decision on Declaring a State of Emergency in the Republic of Armenia' Ministry of Justice of the Republic of Armenia (16 March 2020) 298-N <www.moj.am/storage/uploads/298voroshum_ENG_24032020.pdf> accessed 7 February 2021.

⁵ 'Armenia: State of Emergency Guidelines: 17 March 2020' EVN Report <www.evnreport.com/raw-unfiltered/armenia-state-of-emergency-guidelines> accessed on 7 February 2021.

on public transport and in taxis but not in personal cars and open-air non-crowded areas in nature. No new fines were introduced but those applied during the SoE were maintained. The requirement of wearing masks for citizens remained in place and the Commandant's Office stopped functioning.

The number of new daily cases had reduced to 328 by 26 September, and the country had started to overcome COVID-19.⁶ However, Azerbaijan started a war in Nagorno Karabakh on 27 September, which was in violation of the appeal of the UN Secretary General for a global cease-fire during COVID-19.⁷ As a security guarantor of ethnic Armenian population of Nagorno Karabakh, Armenia was deeply involved in the military support and humanitarian assistance to it. Large numbers of people were displaced, wounded and required medical care, which put the health-care systems of both Armenia and Nagorno Karabakh under unprecedented pressure. A large number of the military servicemen and volunteers were mobilized to be part of the defence army. Regular bombardments forced civilians of Nagorno Karabakh to seek refuge in large groups in basements and bunkers within confined spaces, thus increasing the chance of further spread of the virus. During 44 days of war, the daily number of COVID-19 cases in Armenia increased multifold reaching 2,476 at its highest on 7 November. Since the cease-fire was established on 9 November, the COVID-19 situation has been gradually improving. As of the first week of February, the average number of daily new cases has decreased to 143-211.⁸

Daily New Cases in Armenia



Source: Worldometers⁹

The State of Emergency (SoE)

Article 120 of the Constitution adopted in 2015 and the Law on the Legal Regime of the State of Emergency of Armenia authorize the Government to declare a SoE in the event of an imminent danger

⁶ Airazat M Kazaryan, Bjørn Edwin, Ara Darzi, Gevorg N Tamamyanyan, Mushegh A Sahakyan, Davit L Aghayan, Åsmund A Fretland, Sheraz Yaqub, Brice Gayet, on behalf of the Doctors Against The War collaborators, 'War in the time of COVID-19: humanitarian catastrophe in Nagorno-Karabakh and Armenia' *The Lancet* (27 November 2020) Published by Elsevier Ltd under the CC BY-NC-ND 4.0 license
<www.thelancet.com/action/showPdf?pii=S2214-109X%2820%2930510-6>.

⁷ '170 signatories endorse UN ceasefire appeal during COVID crisis' *UN News* (24 June 2020)
<<https://news.un.org/en/story/2020/06/1066982>> accessed 6 February 2021.

⁸ 'Armenia' Worldometer
<www.worldometers.info/coronavirus/country/armenia/> accessed 9 February 2021.

⁹ 'Armenia' Worldometer
<www.worldometers.info/coronavirus/country/armenia/> accessed 9 February 2021.

posed to the constitutional order, including attempts to change or overthrow it by force, attempted seizure of power, armed riots, national, racial and religious conflicts, terrorist acts, seizure or blockade of special facilities, organization and activities of illegal armed groups.¹⁰

The package of decisions by the Government to announce a SoE starting 16 March prescribed the measures and temporary restrictions on the rights and freedoms to be applied in line with the principle of proportionality. A number of amendments to the Code of Administrative Violations and the Criminal Code were endorsed, including fines for noncompliance with the rules of isolation, self-isolation and other restrictions on freedom of movement including not having identification documents. In cases when noncompliance with the rules would lead to certain consequences, ie infecting others, they would be charged with criminal responsibility¹¹.

According to the modalities of the SoE, upon the instruction of the Commandant units of the Police, the National Security Service (NSS) and the Ministry of Defence could have been involved in ensuring the implementation of measures and the application of temporary restrictions on the rights and freedoms. It is worth noting that armed forces or special services were not involved in enforcing the SoE, and it was tasked to the police, the Ministry of Emergency Situations and various inspectorates under the auspices of the Government.

The Choice and the Duration of the Emergency Measures

The choice of the legal regime of the SoE was not straightforward. In his speech the PM acknowledged that the SoE did not envisage epidemic situations.¹² The government explained the choice of this legal regime by the following factors:

- a) The massive spread of the infection is a threat to the life and health of people, and thus to the constitutional order. The human being is the highest value, and the State is obliged to take measures for the protection of life and health.
- b) The implementation of appropriate preventive activities and measures aimed at ensuring the protection of life and health of persons requires restricting the fundamental rights and freedoms of citizens, in particular, personal liberty (Article 27 of the Constitution), right to freedom of movement (Article 40), freedom of assembly (Article 44), right of ownership (Article 60), etc.

There is another legal regime provided by the Law on the Population Protection in Emergency Situations adopted in 1998, applicable for a major accident, man-made, natural or environmental disaster, epidemic, livestock epidemic, widespread infectious disease of plants and agricultural crops, which leads to or may lead to human casualties, significant damage to human health and the environment, major material losses, and disruption of normal living conditions.¹³

Shortly before the start of the pandemic, a new draft law on Disaster Risk Management and Protection of Population was finalised with the assistance of the experts of the Disaster Risk Reduction project of UNDP in Armenia. It specifies the modalities of the declaration of 'emergency situations', which is different from the 'state of emergency', the first applies to disasters and the second to threats to constitutional order. The draft law provides guidance on citizens' rights and obligations and the protection of population throughout emergency situations, the system of central and local self-government bodies and organizations involved in it, reduction of disaster risks, quick response in

¹⁰ Amendments to the Constitution of the Republic of Armenia (adopted 06.12.15) Constitution of the Republic of Armenia (with the Amendments of 27 November 2005) National Assembly of the Republic of Armenia <www.parliament.am/legislation.php?sel=show&ID=1&lang=eng> accessed 7 February 2021.

¹¹ 'Decisions of emergency commandant. Covid-19' The Government of the Republic of Armenia <www.gov.am/am/commandant-decisions> accessed on 7 February 2021.

¹² 'Remarks Delivered by Prime Minister Nikol Pashinyan at National Assembly Debate on Declaring State of Emergency in the Republic of Armenia' The Prime Minister of the Republic of Armenia (16 March 2020) <www.primeminister.am/en/statements-and-messages/item/2020/03/16/Nikol-Pashinyan-National-Assambly> accessed 7 February 2021.

¹³ The Law of the Republic of Armenia on Population Protection in Emergency Situations (adopted 02.12.1998) National Assembly of the Republic of Armenia <www.parliament.am/legislation.php?sel=show&ID=1760&lang=eng> accessed 7 February 2021.

emergency situations and the implementation of the post-disaster recovery. During the working discussion on the draft law initiated by the parliamentary Standing Committee on Defence and Security on 19 February, the Chair of the Committee, participants from the Ministry of Emergency Situations and UNDP, including the author of this paper referred to the differences between the definitions 'state of emergency' and 'emergency situation,' implying that the first is applicable for an attempt to overthrow the constitutional order, violent civil unrest, terror attack and the second for a natural or man-made disaster.¹⁴ However, parliamentary hearings on this draft were postponed indefinitely due to the pandemic, the war and post-war crisis management.

Article 5 of the Law on the Legal Regime of the State of Emergency defines that the SoE shall be established for 30 days and can be extended in the whole territory of the country for up to 60 days. At the same time, it leaves room for further extension if the reasons for declaring a SoE haven't been eliminated.¹⁵ This provision has been used by the Government to justify the extension, the legitimacy of which was questioned by the opposition and civil society. In particular, they raised the issue of ensuring fundamental freedoms and human rights, such as civic protests, labour rights, freedom of information, digital tracking of personal data and proportionality of the law enforcement during a six-month lengthy period of the SoE. The opposition claimed that the real objective of extending the state of emergency after having lifted the lockdown and having allowed most of the economic activities since May was to suppress the opposition and the activists' ability to exercise their right of expression through civic protests in light of the accumulating problems in the country.

Finally, based on the Law on Making Amendment and Addenda to the Law on Ensuring the Sanitary-Epidemiological Security of the Population of the Republic of Armenia and the associated draft legislative package introducing amendments to a number of laws to allow further measures, penalties and restrictions beyond the State of Emergency, the SoE was replaced by a quarantine on 11 September.¹⁶ It was endorsed by the PM for 4 months and subsequently extended up to 11 July 2021. The opposition, the Human Rights Defender, human rights advocates and civil society questioned the measures, penalties and restrictions imposed under a new regime, in particular: access by the state bodies to the personal medical, travel and contact information of citizens, restriction of fundamental freedoms and human rights during self-isolation, the precedence of the WHO requirements over the national legislation without ratification of an international convention, the right of the police to use force to suppress civic protests and public gatherings, restrictions on the access to information, the requirement for citizens to wear masks both in closed and open public spaces, and finally, 11 types of fines for breaking the requirements of quarantine. Apart from the restrictions of human rights and fundamental freedoms, the opposition expressed concern in relation to the potential long-term stigmatization of Armenia and its citizens as high-risk for the pandemic preventing inward and outward tourism. After the defeat in the war, some opposition figures and experts have suggested that the hidden agenda of maintaining the quarantine is preventing probable migration caused by the post-war crisis.

Information Restrictions and Infodemic

Between mid-March and mid-April, media agencies and social media users were required not to post unverified news and information on COVID-19 and to refer to official sources. The proposed amendment to Article 183 (8) of the Code of Administrative Violations established that if information doesn't comply and is not deleted within one day after the notification, a fine will be imposed.

¹⁴ 'Working Discussion on Draft Law on Disaster Risk Management and Defense of Population' National Assembly of the Republic of Armenia (19 February 2020)

www.parliament.am/news.php?cat_id=2&NewsID=12687&year=2020&month=02&day=19&lang=eng accessed 7 February 2021>

¹⁵ Law of the Republic of Armenia of April 12, 2012 No. ZR-106 About the Legal Regime of Emergency State (as amended on 05-05-2020) Legislation of 11 countries members of Commonwealth of Independent States <https://cis-legislation.com/document.fwx?rgn=66655> accessed 8 February 2021.

¹⁶ 'Quarantine: Police informs' Police of the Republic of Armenia (14 September 2020) www.police.am/en/news/view/haytkarant140920.html accessed 7 February 2021.

In response to concerns raised about media restrictions, the Government amended this provision. The original amendment required the use of reports from the Commandant's Office, however in the amended version they could also refer to reports by public officials, official websites or social media pages of the heads of state or government bodies and official websites of international organizations accredited in Armenia or affiliated with Armenia. Those restrictions were also lifted on 13 April due to the criticism about media censorship.¹⁷

At the same time, Armenia was severely affected by infodemics and conspiracy theories in relation to COVID-19. A significant number of Armenians, including some prominent figures and doctors claimed that they did not believe in the existence of the virus or severity of the disease, and linked it to the conspiracies by globalists, with further claims of the intention to vaccinate people. Open Caucasus Media, an independent media organisation revealed that some of the authors of fake news were financed by or linked with foreign sources.¹⁸ These have been largely anti-globalist, anti-liberal and anti-vaccination sources also active in other countries. Monitoring of social media shows that in other cases the authors of fake news have a domestic origin, being linked with the opposition and discouraging people to follow the guidelines and restrictions recommended by the government, but subsequently accusing it of failure to manage COVID-19.

The authorities were criticised also for the failure to combat fake news on COVID-19. However, human rights defenders believe that legal restrictions and censorship are not the right way to fight fake news and that, instead, the government needs to develop consistent and adequate communication strategies to neutralize the impact of fake news.

Tracking Mobile Phone Data

On 31 March, the legislative package on Making Addenda to the Law on Legal Regime of the State of Emergency and on Making Addendum to the Law on Electronic Communication was adopted.

The amendment authorized the government to gather information available to mobile operators and consolidate them into a centralised database, including the location of users of mobile phones, the phone numbers of those they contacted, and the start and end times of the communication. The justification was the necessity of identifying the circle of contacts of those who test positive for COVID-19 so as to place them under quarantine.

The government clarified that the restrictions exclusively pertain to the SoE declared due to the pandemic, that the data will be deleted once the SoE is lifted, and that the system is fully automated with no human intervention. However, the bill raised many concerns among the opposition, the Human Rights Defender's Office (HRDO)¹⁹, civil society and the public in general. One issue was the oversight of the body that was tasked to collect and destroy the information. Others questioned the logic of the measure since telecommunication doesn't necessarily indicate a physical meeting.²⁰

Although the legislative package was passed by parliament, the members of the National Assembly (NA), especially those from the opposition, continued to question how the measure was applied and what its results were during the sittings of the NA. Human Rights Watch has expressed an opinion that the adopted amendments impose restrictions on the right to privacy and allow the authorities access to confidential medical information related to people exposed to the virus.²¹ The impact of this measure

¹⁷ 'Armenia: State of Emergency Guidelines: 17 March 2020' EVN Report <www.evnreport.com/raw-unfiltered/armenia-state-of-emergency-guidelines> accessed on 7 February 2021.

¹⁸ 'Armenian COVID-19 'fake news' site was funded by US', OC Media 28 May 2020 <<https://oc-media.org/armenian-covid-19-fake-news-site-was-funded-by-us>> accessed 7 February 2021.

¹⁹ 'Legal position of the Human Rights Defender on draft laws restricting the privacy of correspondence and other rights' Human Rights Defender of the Republic of Armenia (31 March 2020) <https://ombuds.am/en_us/site/ViewNews/1137> accessed 8 February 2021.

²⁰ Lusine Sargsyan, 'Observations About Armenia's COVID-19 Response' EVN Report (6 July 2020) <www.evnreport.com/covid-19/observations-about-armenia-s-covid-19-response>.

²¹ 'Armenia: Law Restricts Privacy Amid COVID-19 Fight. Any Limits Require Human Rights Protections' Human Rights Watch (3 April 2020) <www.hrw.org/news/2020/04/03/armenia-law-restricts-privacy-amid-covid-19-fight>.

was not visible, therefore its feasibility and necessity remained questionable until the end of its application in mid-September.

The Planned Referendum to Resolve a Constitutional Court Crisis and its Cancellation Due to the Pandemic

A constitutional referendum of significant political importance was planned in Armenia on 5 April. The referendum was aimed at amending Article 96 of the Constitution in order to resolve a crisis over the tenure of the Constitutional Court in line with the vision of the majority faction in spite of the disagreement of the opposition to it.²² Between mid-February and mid-March, the ruling majority and its supporters were conducting a campaign for the referendum. They were criticised by the opposition and the civil society for not delaying the campaign as a result of the pandemic, even though there were no known cases of the spread of the virus due to the campaign. In mid-March the campaign was suspended, and a few days later it was postponed upon the declaration of the SoE. According to the Constitution and the Electoral Code, referendums cannot be held in Armenia during a SoE. Once the SoE concludes, any postponed referendums must be held within 50-65 days.²³ However, during the months of the SoE, there was an apparent decrease of popularity of the majority faction due to the alleged failure of COVID-19 management but not limited to it, and subsequently undermined confidence that the referendum would result in its intended outcome.

In May, the Ministry of Justice sent a request to the European Commission of Democracy through Law (Venice Commission) for its opinion on a new alternative solution for the constitutional crisis.²⁴ In its opinion, the Venice Commission acknowledged the NA's power to revoke its own decision calling for a referendum.²⁵ Moreover, it recognised that the aim of implementing fully the provisions of the constitution concerning the composition of the Constitutional Court is legitimate and invited the Armenian authorities to be guided by the Venice Commission recommendations to overcome the constitutional crisis through smooth implementation of the relevant provisions of the 2015 Constitution and in accordance with the Council of Europe standards.²⁶

A draft amendment to the 'Law on Referendums' proposed by the majority faction allowed the NA to cancel the referendum and avoid the automatic resumption of the referendum campaign after the expiry of the SoE.²⁷ In spite of objections by the opposition, the NA approved constitutional changes calling for the immediate dismissal of some members of the country's Constitutional Court on 22 June. According to the monitoring of the media, including social media, some of the opposition claimed that coronavirus was an excuse for the government to cancel the constitutional referendum, because the authorities were not sure they maintained sufficient public support for the constitutional amendment in question. The leading party justified its cancellation with health concerns during the pandemic.

²² Dr. Nerses Kopalyan, Lusine Sargsyan, 'Resolving the Constitutional Court's Crisis of Legitimacy' EVN Report (25 June 2020) <www.evnreport.com/politics/resolving-the-constitutional-court-s-crisis-of-legitimacy> accessed 8 February 2021.

²³ Electoral Code of the Republic of Armenia (amended as of 30 June 2016) Legislationonline by ODIHR <www.legislationline.org/download/id/6201/file/Armenia_Electoral_Code_as%20of%2030June2016.pdf> 8 February 2021.

²⁴ 'Armenia - Three legal questions in the context of the draft constitutional amendments concerning the mandate of the judges of the Constitutional Court' CDL-REF(2020)025-e (Strasbourg, 26 May 2020) <[www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2020\)025-e#](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2020)025-e#)> accessed 8 February 2021.

²⁵ 'Armenia - Opinion on three legal questions in the context. of draft constitutional amendments concerning the mandate of the judges of the Constitutional Court adopted by the Venice Commission on 19 June 2020 by a written procedure replacing the 123rd Plenary Session' CDL-AD(2020)016-e (Strasbourg, 22 June 2020) <[www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)016-e)> accessed 8 February 2021.

²⁶ 'Secretary General: 'The constitutional crisis in Armenia can be solved with the Venice Commission's guidance' (22 June 2020) <www.coe.int/en/web/portal/-/secretary-general-the-constitutional-crisis-in-armenia-can-be-solved-with-the-venice-commission-s-guidance->> accessed 8 February 2021.

²⁷ Ejmin Shahbazian, Maritsa Mandalyan, 'What Happened to the Constitutional Referendum?' EVN Report (7 June 2020) <www.evnreport.com/politics/what-happened-to-the-constitutional-referendum> accessed 8 February 2021.

Right to Freedom of Peaceful and Unarmed Assembly

According to Article 29 of the Constitution, everyone shall have the right to freedom of peaceful and unarmed assembly; however, that right is restricted during SoE. While in the first two months of the SoE this restriction was not questioned since the threat of the pandemic was of the highest priority, other issues of the concern for the opposition and the civil society gradually re-emerged. Starting in May, there were a number of protests by individuals associated with the previous authorities, the opposition faction Prosperous Armenia and environmental activists, and the right for civic protests became an issue in light of their total ban during the SoE. Some protesters were apprehended, and in some cases, allegedly disproportionate force was applied by the police. Prosperous Armenia was accused of violating COVID-19 rules during their protests, resulting in the infection of some of its members. As from May, the right to civic protests was raised by the opposition in the NA and debated in discussions and public hearings organised by the Human Rights Defender's Office and civil society representatives, and the conclusion was that the restriction of this right cannot be absolute as summarised in a report sent to the Commandant by the HRD. In particular, it was underlined that citizens shall still be entitled to exercise their right of protest and assembly following certain rules, such as social distancing, wearing masks and avoiding a large number of participants.²⁸

In June and July respectively, two minority political factions, Bright Armenia and Prosperous Armenia, presented a draft decision of the NA on Declaring Invalid the Implementation of the Events Designed by the Legal Regime of the State of Emergency, proposing to challenge the restrictions and bans on organizing assemblies or public events established by Chapter 4 of the decision supplement of the March 16 N 298-N by the government. The majority faction voted against it in both cases thus reinforcing the ban on civic protests and public gatherings.²⁹

The extension of the SoE on 12 August was accompanied by a decision to allow the holding of assemblies and strikes with certain rules of social distancing and wearing masks, finally resolving the issue of civic protests.

Law Enforcement

The police were instructed to monitor the movement of people, which included stopping people to check their compliance with the measures determined by the Commandant such as carrying identification documents, leaving the apartment only in cases defined by law during several weeks of lockdown between March and May, and wearing masks since the end of May.

The police have been criticised for either lack of enforcement of the rules or excessive use of force, and a rigid approach on one side, inconsistency of enforcement or double standards on the another, while fining or apprehending citizens for not complying with the established rules.

During the lockdown, the police were predominantly ignoring the non-compliance of citizens with the rules of lockdown. Such soft behaviour combined with citizens' lack of willingness to comply with imposed measures, led to the inefficiency of the anti-pandemic measures. Subsequently, once the failure of effective management of the pandemic became apparent in May-June, the police were largely perceived as responsible for it by authorities, as well as citizens with a high sense of social responsibility. The Chief of the Police was replaced on 8 June, and the PM publicly instructed the police to strictly reinforce the application of law enforcement measures in relation to the pandemic, with a

²⁸ 'The restriction on the freedom of assembly due to the State of Emergency should not be absolute: The Defender sent the results of the discussion to the Commandant's Office' Human Rights Defender of the Republic of Armenia (8 August 2020) <www.ombuds.am/en_us/site/ViewNews/1273> accessed 8 February 2021.

²⁹ 'Special Sitting of National Assembly Convened' The National Assembly of the Republic of Armenia (13 July 2020) <www.parliament.am/news.php?cat_id=2&NewsID=13186&year=2020&month=07&day=13&lang=en> accessed 8 February 2021.

focus on wearing masks in public places and carrying ID cards because of the lack of social responsibility of the people.³⁰

The instructions about the enforcement of COVID-related rules by the Commandant's Office were of a general nature, and there were no legal regulations or Standard Operating Procedures (SOPs) accompanying them. The police were automatically following orders and were unable to tailor their enforcement to in different situations, without applying analytical thinking on a case-by-case basis to identify whether the given person has really created a risk to become infected, or to infect, in the given situation, focusing on form rather than substance. Apart from the lack of detail in the decisions, this was explained by the lack of respect between the police and the citizen, the lack of trust between the command of the police and regular policemen since the first expected the latter to fine a certain number of citizens to demonstrate results, and most importantly, lack of appropriate training and critical thinking skills of the police to make the right situational decisions.³¹

This became especially obvious as from 3 June, when wearing masks became obligatory not only in closed but also open spaces. It led to the tendency of wearing masks not for the purpose of prevention of infection or infecting others with the virus but rather to avoid being stopped, fined or apprehended by the police. Since the police mostly patrol the streets and parks in Armenia, citizens started wearing masks in open public spaces where the risk of infection was minimal, more diligently due to the risk of being penalized by the police. However, there was apparently a higher risk of being infected or infecting in closed public spaces such as public transportation, supermarkets, banks or post offices where the police are rarely ever present in Armenia. This was apparently counterproductive and risky behaviour. The enforcement of this measure by the police was neither consistent nor proportionate – they would penalize someone walking on an empty street or in a park alone or with nuclear family but ignore groups and gatherings in crowded places and enclosed places. Moreover, there was an obvious application of double standards, evidence of which were complaints by young women for being stopped by the police more frequently than men because there were seen as soft targets.³²

On 17 September, the HRD stated that the conduct of the Police with regard to fining persons for not wearing a mask, or for failure to wear it properly, and their apprehension by the Police had become punitive, the minimal rights of the apprehended persons were not ensured, and cases of disproportionate use of force have been recorded. On the other hand, he noted that the police officers themselves have become the 'legal victims' of the existing uncertain and unpredictable regulations. There should be detailed rules or guidelines for police officers with regard to their work under the conditions of the coronavirus pandemic. The police officer should take an individual approach in carrying out his activities, given the peculiarities of a particular case. Police officers should undergo training on minimum requirements, so that they are able to explain to citizens both the legal and health consequences of not wearing a mask and support them. Finally, the HRD stated that disciplinary proceedings had acquired an episodic and ineffective character.³³

There have been written and verbal interpellations to the Police on those issues, mostly by the opposition MPs. This may be due to the acknowledgment by the majority faction that the police had an instruction from the executive to be tough after the initial failure to enforce the quarantine, and the tendency not to question but rather justify the executive in key issues.

Finally, internal or external oversight of the police by the executive or the legislative has been a long-pending issue in Armenia due to the abolition of the Ministry of Interior in the 2000s and the direct reporting of the police to the PM after Armenia's transition to the parliamentary governance system. It

³⁰ Observations based on monitoring by the author.

³¹ Observations verified through confidential interviews with several senior officers of the Police of the Republic of Armenia in July-August 2020.

³² Observations based on monitoring by the author.

³³ 'It is evident that the administrative fine for not wearing a mask or failure to wear it properly and depriving a person of liberty are acquiring a punitive nature: Legal Opinion by the Human Rights Defender of Armenia' Human Rights Defender of the Republic of Armenia (17 September 2020) <https://ombuds.am/en_us/site/ViewNews/1301> accessed 8 February 2021.

created problems for the parliamentary oversight of the police since according to the Constitution, only Ministers but not the Heads of Security Agencies are called to the parliament for interpellations.

The main focus of the parliamentary oversight of the police has been the development of the police strategy led by the Ministry of Justice, with strategic contribution by the Standing Committee of Defence and Security of the NA, based on the realization that police need to be reformed fundamentally. The police reform strategy and its 2020-2022 action plan were approved by the government on 23 April, including the provision on the establishment of a Ministry of Interior (Mol).³⁴ The Ministry will be in charge of policy-making and will bear political responsibility for the implementation of reforms. It will also facilitate the institutionalized parliamentary oversight of the police. The creation of the Ministry is envisaged for the first semester of 2021.

Parliamentary Oversight

Parliamentary oversight is even more crucial and sensitive during the SoE, lockdowns and quarantines to ensure checks and balances, good governance, human rights and rule of law.

Armenia switched from presidential to parliamentary system of governance in 2018. The leading faction, My Step, occupied 88 out of 132 seats in the NA. The minority factions are Prosperous Armenia and Bright Armenia. Due to the current parliamentary governance system in Armenia, and because the parliamentary majority has formed the government, publicly it mostly allies with the government on key issues. It is assumed that there is more oversight by the legislature towards the executive taking place backstage through internal discussions.

Armenia is one of the few countries that continued parliamentary plenary and committee sessions through physical attendance without skipping any regular parliamentary sittings but also convened a large number of extraordinary sittings, both for the purpose of extending the SoE and endorsing decisions by the Commandant's Office and also debating and endorsing accumulated draft laws.

Article 48 of the Constitution requires convening a special sitting of the NA in case of a declaration of a SoE. However, it doesn't require the NA to approve the SoE before starting its application, instead giving it a right to cancel the SoE or the implementation of measures provided for under its legal regime by a majority of votes.

Upon the promulgation of the decision on the SoE by the PM and pursuant to Paragraph 2 of Article 120 of the Constitution and Article 48 of the Constitutional Law of the Rules of Procedure of the National Assembly (NA), a special sitting was convened. The Speaker Mirzoyan affirmed that the SoE would not affect the activities of the legislative body in any way. No parliamentary faction challenged the government's initiative to declare a SoE.³⁵

Every month since the pandemic, in accordance with Paragraph 2 of Article 120 of the Constitution and Article 48 of the Constitutional Law of the Rules of Procedure of the NA, a special sitting was convened, and Extending the State of Emergency and on Making Amendments and Addenda of the N 298-N Decision of the RA Government of 16 March 2020 was discussed.³⁶ The Commandant presented the Government proposal to extend the SoE for another month, presented the current state of the pandemic, and provided answers to the questions of members of the NA.

At the same time, the modalities of the SoE prohibited gatherings involving more than 20 people and imposed social and physical distancing of 1.5 meters. The reaction of the public to the continuing NA sittings was controversial – on one side, it has been positive showing their work, and on the other side,

³⁴ 'Police Reform Strategy of the Republic of Armenia approved' Ministry of Justice of the Republic of Armenia (23 April 2020) <www.moj.am/en/article/2706> accessed 8 February 2021.

³⁵ 'RA National Assembly Convenes Special Sitting' National Assembly of the Republic of Armenia (16 March 2020) <www.parliament.am/news.php?cat_id=2&NewsID=12789&year=2020&month=03&day=16&lang=eng> accessed 8 February 2021.

³⁶ The Constitutional Law of the Republic of Armenia, Rules of Procedure of the National Assembly, (adopted 16 December 2016) National Assembly of the Republic of Armenia <www.parliament.am/parliament.php?id=bylaw&lang=eng> accessed 8 February 2021

many citizens believed that the sittings were conducted in violation of the SoE and lockdown rules, discriminating between MPs and regular citizens and increasing health risks.³⁷

The NA could not switch to online mode due to the lack of e-voting rights in the legislation. However, the current legislation allows the NA to conduct meetings and public hearings online. With the assistance of international organisations, such as but not limited to UNDP, the transition into digitalisation of their work increased with the deterioration of COVID-19 dynamics. It also established a rotational system of physical presence of the staff in the premises of the NA, which was 20% at its lowest during lockdown.³⁸

One tool that was negatively affected by COVID-19 is inclusive and participatory parliamentary hearings that were common in 2019. Due to restrictions caused by the SoE and restrictions in relation to large gatherings causing health risks, there haven't been any parliamentary hearings between the beginning of the pandemic in March and 24 September 2020. They have been replaced with predominantly online public discussions that are not comparable in terms of inclusiveness, participation and interaction. Some stakeholders are not fond of virtual discussions, even if they participate in them. While HRDO, leading CSOs and many MPs seem to have got used to it, the security institutions and law enforcement bodies rarely practice online discussions. Online discussions, mostly organised by international actors, addressed some issues related to human rights and rule of law issues during COVID-19 management, the impact of the crisis on marginalised groups, domestic violence, economic implications and mitigation measures but seemed to avoid the most sensitive issues such as the behaviour of the police mentioned above or lack of the consistent communication strategy on COVID-19 by the authorities.³⁹ On 16 July, an amendment to the Constitutional Law on the Rules of Procedure of the RA NA established the possibility for MPs to vote in writing if they have been instructed to be in isolation by the Commandant's Office.⁴⁰

It was frequently underlined that MPs were expected to be role models for the public, and whether they chose to wear masks or not, the public might follow their example. The public saw a large number of MPs attending plenary or committee meetings without preserving physical distance or wearing masks for several weeks after it had become obligatory for all other citizens. Although individual MPs were voluntarily wearing masks during sittings, it only became mandatory as of 26 June when a number of MPs were infected with COVID-19. The public perceived this late adoption of a key anti-pandemic measure by the legislature as either elitism or negligence.⁴¹

In August, the opposition MPs were against the extension of the SoE, insisting that there was no ground for it, presenting a draft law on Removing the State of Emergency authored by Bright Armenia. They suggested amending and applying the Law on Protection of the Population in Emergency Situations to replace the legal regime of the SoE with a less restrictive one. They also expressed concern about the actions of the police to enforce wearing masks. However, the Commandant insisted that extending the SoE was the best legal solution and the majority faction voted against it.

Finally, a parliamentary scrutiny mechanism was established to oversee COVID-19 management by the Executive. On 2 July, in accordance with Article 20.1 of the Constitutional Law on the Rules of Procedure of the NA, an intention to establish an Inquiry Committee (IC) was announced in order to prevent the spread of COVID-19, to have effective measures carried out by the government and the Commandant's Office for mitigating or eliminating the consequences of the fight against the virus, as well as to study the efficiency and the legality of the restrictions of human rights and fundamental freedoms during the period of the SoE. This Committee has been established based on the request of two opposition factions - Prosperous Armenia and Bright Armenia and is chaired by the latter. The

³⁷ Observations based on the monitoring by the author

³⁸ Ibid

³⁹ Ibid

⁴⁰ 'At Extraordinary Sitting of RA NA Standing Committee on State and Legal Affairs' National Assembly of the Republic of Armenia (16 July 2020)

<http://www.parliament.am/news.php?cat_id=2&NewsID=13206&year=2020&month=07&day=16&lang=eng>.

⁴¹ Observations based on the monitoring by the author.

Committee has 12 members, out of which the majority faction has 7, and the minority Prosperous Armenia and Bright Armenia factions respectively 3 and 2 members. It is expected to function for a six-month period, to be renewed once and to have the investigative and oversight powers of the Standing Committees. After less than two weeks, Armenia got involved in the defence of Nagorno Karabakh in a 44-day war with Azerbaijan and most of the parliamentary activities were either frozen or focused on the war-related issues during that period. However, it finally convened its first session on 25 January 2021 during which the ruling faction reiterated that the process to combat the pandemic has not ended yet, and there is still no best model for it.

The Chair has stated that the work of the Committee will be based on studies by experts, including lawyers and economists.⁴²

Conclusions

The government has invested a lot of effort to manage pandemics; however, the measures undertaken have not always been timely, consistent and proportionate. The assessment of the management of COVID-19 in Armenia is over-politicized, when the opposition has been accusing the government of failing to manage COVID-19, not taking sufficient responsibility for it and blaming citizens for the lack of social responsibility, at the same time making the government's task even more difficult by organizing protests or refusing to wear masks. The majority faction has been supporting the government in endorsing measures aimed at pandemic management, aiming to justify failure to effectively manage it by the global nature of the problem, similar failure of other countries, the lack of social responsibility of citizens, and accusing the opposition of manipulating the problem of COVID-19 and politicizing it against authorities.

The very active work of the Armenian NA has been impressive by its intensity, but it could have improved oversight over the executive and law enforcement in pandemic management in relation to sensitive issues related to human rights, rule of law, law enforcement, democracy and good governance. Discussions involving members of parliament, HRDO and civil society during the COVID-19 situation addressed some but not all of the human rights issues, avoiding the most sensitive such as law enforcement and communications strategy. The NA of Armenia could increase its digitalisation through amending regulations in relation to e-voting. The establishment of an Inquiry Committee to scrutinise the problems of COVID-19 management is a positive but belated step; it would have been much more efficient to have established an ad hoc Committee during the first wave of the pandemic to monitor the implementation of anti-pandemic decisions and measures, and assess their proportionality and impact.

The Human Rights Defender has made statements and expressed legal opinions on a range of issues that were generated during the pandemic, such as information restrictions, digital tracking, labour rights, civic protests and the alleged abuse and excessive use of force by the police while stopping and apprehending people to enforce COVID-19 related measures. The problem of information restrictions was resolved within a month due to the criticism about censorship by the HDR, NA and civil society.

Finally, the most obvious violation of a global cease-fire in relation to COVID-19, and the subsequent 44-day war in the Caucasus proved the direct correlation between the military operations, mobilization of the military personnel and volunteers, displacement of people on one side, and the growth of COVID-19 cases and the reduction of the absorption capacity of hospitals to ensure appropriate medical treatment to the injured in the war and pandemic patients on the other side at the same time.

In more general terms, it would be useful to focus on the feasibility, substance and effectiveness rather than the form and punitive nature of the measures in relation to the enforcement of COVID-19 related measures. Towards that end, the role of strategic communication and awareness raising through

⁴² 'First Sitting of NA Inquiry Committee Held' National Assembly of the Republic of Armenia (25 January 2021) <www.parliament.am/news.php?cat_id=2&NewsID=13626&year=2021&month=01&day=25&lang=eng>.

dialogue between the authorities and the public and well-designed effective public campaigns would be useful.

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