

Partner Note

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In what circumstances will criminal law liability be imposed for violating the rules of the state of emergency?

What shall we know

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1. Executive Summary

Amendments to the Criminal Law Code of Georgia (hereinafter the “**Code**”) concerning the application of criminal law liability over the infringement of the rules of state of emergency, that took effect from 2 May 2020 (hereinafter the “**Code Amendments**” or the “**New Regulations**”) includes various flaws and discrepancies which can create serious problems and misunderstandings while its application and enforcement in practice, in particular:

- Code Amendments are substantially flawed in terms of their formulation and legal techniques;
- Description/disposition of criminal action is vague and incomprehensive, that gives an opportunity of its broad interpretation, what is more, it gives the possibility of unfair interpretation of the new rules;
- Due to the ambiguity of the New Regulations, the purpose of the rule that is crime prevention may not be achieved;
- Due to the ambiguity of the New Regulations, it will be virtually impossible for its addressees, individuals and legal entities, to anticipate liability and thus prevent from committing the crime;
- The gravity of the liability is a concern as the subject of the New Regulations might not have a clear understanding of them.

Below we provide a short analysis of the above-mentioned flaws and discrepancies related to the Code Amendments.



2. Analysis of New Regulations

On April 23, the Parliament of Georgia adopted Code Amendments in an expedited manner and added two Articles:

- (i) **Article 248¹** “Violation of isolation and/or quarantine rules”; and
- (ii) **Article 359¹** “Violation of rules of the state of emergency and/or martial laws”.

The Code Amendments took effect on 2 May 2020.

Before the Code Amendments were proposed, the President of Georgia also considered the similar provisions in her Edict, dated 21 March 2020 (hereinafter the “**Edict**”);¹ however, we believe such provisions of Edict contradicts with the law and may not be applied.² We believe this is the reason it became necessary to make the above changes into the Code.

Unfortunately, the Explanatory Note that accompanies the draft law of Code Amendments (hereinafter the “**Explanatory Note**”) is itself in contradiction with the proposed amendments, includes various discrepancies and cannot be used for proper interpretation of the New Regulations. Therefore, correct understanding of the Code Amendments is more problematic for its addressees and fails to ensure on the one hand the mass violation of the New Regulations and on the other hand prevention from manipulation with such laws.

Disposition of both Articles is indicative, i.e. the Articles themselves do not describe the criminal offense but make reference to the other normative acts, infringement of which shall be considered a criminal offense. Unfortunately, according to our practice, such a description of criminal offense always involves certain risks, provides a wide range of opportunities for investigative authorities and the court to give the various interpretation of the norms, including the unfair application of the law or exceeding the authority.

2.1. What is prohibited by New Regulations? What are the particular norms referred to by the Code Amendments (violation of which is punishable)?

Analysis of Article 248¹

According to Article 248¹ of the Code, violation of isolation and/or quarantine rules established by the law of Georgia on Public Health is prohibited.

What are the isolation and/or quarantine rules and by which normative act are such rules established?

According to the first and second Articles of the Edict, the isolation and/or quarantine rules shall be established by the Government of Georgia.

On 23 April 2020, the amendments were adopted in Article 11 of the law on Public Health, according to which the isolation and/or quarantine rules shall be established by the Government of Georgia or the Ministry to whom the former assigns such authority.

Although the above-mentioned changes took effect only from 2 May 2020, on 23 March 2020 the Government of Georgia has assigned its authority to establish isolation and/or quarantine rules to the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia (hereinafter the “**Ministry of Health**”) by Article 6 of its Decree N 181 on the Approval of Measures to be Implemented in connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia (hereinafter the “**Decree N181**”). On 25 March 2020, the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia has issued the Order N 01-31/N by which the rules of isolation and quarantine was established (hereinafter the “**Order N01-31/N**”).

We believe Article 6 of the Decree N181 by which the Government of Georgia has assigned its authority to establish isolation and/or quarantine rules to the Ministry of Health is in contradiction with the Edict which explicitly provides that it is the Government of Georgia who shall determine the said rules. Such delegation of authority would comply with the Edict if the latter provided that the Government of Georgia establishes the rule of determining the rules of isolation and/or quarantine. Instead, the Edict provides that itself the rules of isolation and/or quarantine shall be determined by the Government of Georgia.

Therefore, it is debatable whether the violation of regulations determined by the Ministry of Health can be considered as the administrative or the criminal offense. The validity of sanctions imposed concerning the violation of isolation and/or quarantine rules determined by the Ministry of Health under the Order N 01-31/N is also controversial.

Although the Explanatory Note that accompanies the amendments to the Code says nothing as to which norm (New Regulations: Articles 248¹ and 359¹) prohibiting the infringement of the rules of isolation and/or quarantine shall be applied when we shall be guided with the construction of the norms and conclude that Article 248¹ does not apply within the period of the state of emergency; Article 359¹ will cover all infringements of rules of isolation and/or quarantine committed within the period of the State of emergency. Since the isolation and/or quarantine rules established by the Order N 01-31/N are adopted within the state of emergency application (and the Order N 01-31/N shall be repealed parallel to lifting the State of emergency) for the purposes of Article 248¹ the said rules shall not be applied.

Analysis of Article 359¹

Under Article 359¹ of the Code, violation of the state of emergency regime or martial regulations determined by the Edict or other normative acts (including the isolation and/or quarantine rules established in connection with the matters covered by the law on Public Health, if such rules are applicable within the State of emergency regime) is prohibited.

What is the state of emergency regime?

The disposition of Article makes reference to the infringement of state of emergency regime established by the Edict or other normative acts that are not further identified. Logically, we shall look for the definition of the term "State of Emergency Regime" and the acts establishing such regime, however neither by the Edict nor by any of the normative acts the definition of the term State of Emergency Regime is not provided.

Paragraph 14 of the Decree N181 has the following title: "Protection and control of state of emergency regime"; however, the provision itself does not specify the definition of the term State of Emergency Regime. The said provision makes reference back to the Edict, the Decree N181 itself, and to the other normative acts establishing the state of emergency regime. This provision has no more clarity.

Since we could not identify the definition of the term State of Emergency Regime, we shall proceed with the identification of normative acts to which references are made and which allegedly provides the said definition. As it has been discussed above, Article 359¹ makes reference to (i) Edict and (ii) other normative acts, that determine the state of emergency regime.

- (i) The reference to the Edict is explicit, however, such document does not determine set rules of conduct, but makes reference to normative acts that shall be issued by the Government (or in particular cases, by other State agencies).

- (ii) We could not identify any other normative act that define the state of emergency regime and its scope. Thus, such reference is inersive to the term “regime” which is not defined.

For the purpose of implementation of Edict the Government of Georgia issued Decree N181. The preamble of Decree N181 provides that it is issued for implementation of the Edict; while the Edict assigns the Government of Georgia to adopt particular regulations.

Therefore, in order to determine whether an action is characterized with the particular signs of a criminal offense (provided by Article 359¹), one shall look at the Edict, and at the regulations that are adopted by the Government of Georgia pursuant to the Edict; such regulations shall be provided in the normative acts adopted by the Government or in the exhibits to such acts.³

In case the normative act is not adopted by the Government in line with the requirements established by the Edict, infringement of such normative act may not be regarded as the basis for the application of criminal law liability.

The same critic applies to Article 359¹ as discussed above in connection with the Article 248¹; i.e. in order the particular action to be considered as a violation of Article 359¹, such action shall constitute the violation of rules related to isolation and/or quarantine established by the Government of Georgia (that have yet to be adopted) and the Ministry of Health, provided that the latter adopts such rules only after 2 May 2020 in line with the assignment of Government of Georgia (such rules have also yet to be adopted).⁴



3. Importance of proper interpretation of New Regulations

Proper formulation of the norm, especially the norm related to the criminal law and public's proper understanding of such norm has paramount importance for the interest of its implementation and adherence by the addressees. Disposition of norm shall be explicit to ensure obedience to such norm. In this respect, the New Regulations cannot withstand criticism.

A clear formulation of Code Amendments is also important as the new disposition of crimes in Code is qualified in the category of serious crimes,⁵ sanction for which provides for imprisonment for up to 6 years.⁶

For the legal entity, the New Regulations provide the sanction that is a fine, deprivation of the right to operate, or liquidation and a fine. It shall be noted that the same sanction is established for the violation of money laundering regulations; while in case of New regulations, infringement may be related to non-use of the primer 2 times or incompliance with the 2metres distance rule in the pharmacy 2 times. It shall be considered that legislators did not link the conduct to the actual result (for example, serious consequences, endangering the health of others, and so on).

In the case of a legal entity, a fine may be imposed as a principal or an additional sanction; the minimum amount of such fine shall be GEL 100 000 pursuant to Articles 42 and 107⁶ of the Code. The maximum amount of the fine is not established by the law and can be determined at the discretion of the judge.

Our advice:

In all cases where you are subject to administrative or criminal law liability, you shall make sure that:

- ↑ You have actually infringed the regulation;
- ↑ Request the identification of particular normative act/rule;
- ↑ Pay attention to normative act/rule you are accused of infringing;
- ↑ Check whether the infringement of normative act/rule actually provides administrative/criminal law liability;

Since administrative liability is a prerequisite for criminal law liability, it is important to make sure that applied measure of liability is fair and lawful. For the above purposes, you shall seek qualified legal assistance.

1. Edict N1 of the President of Georgia, dated 21 March 2020, Article 8.
2. Partner Note, dated 27 April 2020 available here <http://blb.ge/en/news/14/partnioris-analizi-maia-mtsariashvili>
3. Enforcement of law against particular criminal offense is complicated also due to frequent changes proposed in Decree N181 (since its adoption the regulations have been changed 30 times).
4. All comments and critics discussed herein are also applicable to the amendments proposed in the Administrative Offences Code.
5. By attributing the new regulations to the category of serious crimes, the legislator deprived the judge of the opportunity to use non-custodial sentences. Such a sentence can be used in case the accused person concludes the Plea Agreement with the Prosecutor's Office, which can only be achieved in case of the latter wishes so.
6. The sanction is subject to the following reservation: "in case the Edict provides otherwise". Such reservation is a legal and logical misunderstanding since the Edict provides sanction that is imprisonment for up to 3 years, while the Code provides that sanction is imprisonment for up to 6 years. In any case, the Edict provides otherwise, than the Code; thus in each circumstance, the sanction shall be applied in line with the Edict and not the Code.



This material has been prepared for general informational purposes only and it is not intended to be relied upon as legal or other professional advice.

In case you require detailed guidance or have any questions in connection with the criminal or administrative law liability for the infringement of state of emergency regime, please contact to our COVID-19 Taskforce.

Our email account COVID19Taskforce@blb.ge works on emergency regime and queries received here are tackled first.