

FINDINGS IN THE MONITORING OF PROTEST DEMONSTRATIONS



2020



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Non-governmental organization the **HUMAN RIGHTS CENTER**, formerly the Human Rights Information and Documentation Center (HRC) was founded on December 10, 1996 in Tbilisi, Georgia. The HRIDC aims to increase respect for human rights, fundamental freedoms and facilitate the peace-building process in Georgia. To achieve this goal, it is essential to ensure that authorities respect the rule of law and principles of transparency and separation of powers, to eliminate discrimination at all levels, and increase awareness and respect for human rights among the people in Georgia.

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INTRODUCTION

The Right to freedom of expression is the fundamental and functional milestone of the democratic society. A possibility of holding assemblies (manifestation) for the consideration of the significant issues is an integral part of democratic governance. The opportunity to equally and comprehensively enjoy this right ensures the level of public openness and democracy level in the country. A verbal dispute between different opinions feeds the democratic and pluralistic society.

The purpose of this report is to legally analyze the offenses identified during the rallies held in Georgia before December 15, 2020, and to determine the compliance of the actions of the law enforcement officers with the international standards.

This document examines the results of the monitoring of protest rallies of political content and other types organized by different political parties and civil movements in Tbilisi and other regions from March 1 to December 15, 2020. HRC monitored 56 protest rallies in the reporting period.

In general, it can be said that unlike in 2019, the vast majority of the protests held during the reporting period took place in a calm environment. This was most likely due to the small number of activists/demonstrators participating in the protests. And this, in turn, was caused by a number of restrictions imposed by the state itself due to the threats exposed by the coronavirus pandemic. Among them, gatherings and demonstrations were limited/restricted¹.

¹ See: Decree N1 of the President of Georgia of March 21, 2020. <https://bit.ly/36ZQVkw>.

From November 9, 2020, the Government of Georgia again established restrictions for the prevention of the spread of the COVID-19², which had negative impact on the freedom of assembly and manifestation.

METHODOLOGY

The rallies were observed by 3 monitors who have received relevant training from the experts specially invited from OSCE / ODIHR³. The observers wrote down the information received after each assembly and court hearing, which was evaluated, and afterward analytical documents were prepared by the project analyst-lawyer.

Within the monitoring, the main source for the preparation of the analytical document is the personal reports prepared by the observers themselves during the rallies and court proceedings, and in addition, photos and videos taken by the project's public relations manager, civil activists and media outlets during the protests.

The monitoring of the assemblies, due to the coronavirus pandemic, was also carried out remotely through various online platforms through live streaming. Information about the time and place of the observed protests was monitored by the observers from various sources, including the social network of Facebook, where the organizers disseminated information about the protests to be held.

This paper assesses to what extent procedures related to the right to freedom of assembly and expression are consistent with recognized practices and international obligations.

² See: Ordinance N670 of the Government of Georgia on the introduction Amendments to the Ordinance # 322 of May 23 2020 of the GoG "About the Isolation and Quarantine Rules <https://bit.ly/3m6DtiV>

³ See Information on OSCE/ODIHR training <https://bit.ly/2Qmse8R>

REVIEW OF THE LEGISLATIVE FRAMEWORK FOR THE FREEDOM OF ASSEMBLY AND EXPRESSION

The right to peaceful assembly and demonstration is protected by numerous international human rights documents, among them: Article 20 of the UDHR⁴, Article 21 of the ICCPR⁵, Article 11 of the ECHR⁶, Article 15 of the ACHR⁷ and Article 7 of the FCNM⁸. The right was determined by the UN Declaration of Human Rights Defenders and the document paid particular attention to its importance for the promotion and defense of human rights and fundamental rights on the domestic and international levels⁹.

Pursuant to the international standards, all restrictions shall be coherent with the principle of lawfulness, necessity and proportionality. Besides that, the restrictions shall meet the requirements of the other fundamental human rights norms, for example – prohibition of discrimination and it shall not be applied in a manner that would impair the right to the freedom of peaceful assembly¹⁰. As it was once again confirmed by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, the states shall ensure that a detailed and timely written explanation for the imposition of any

⁴ See Universal Declaration of Human Rights, Article 20. <https://bit.ly/3oAijlC>.

⁵ See International Covenant on Civil and Political Rights, Article 21. <https://bit.ly/3gyFhAo>.

⁶ See European Convention on Human Rights, Article 11. <https://bit.ly/3gp9925>.

⁷ See American Convention on Human Rights, Article 15. <https://bit.ly/3ovCVF0>

⁸ See Framework Convention for the Protection of National Minorities and Explanatory Report, Article 7. <https://bit.ly/3gud9Oy>.

⁹ See Declaration on Human Rights Defenders, Article 5. <https://bit.ly/3oC6ODB>.

¹⁰ See general comment N31 of the UN Human Rights Committee “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” UN Document CCPR/C/21/Rev.1/Add.13, May 26, 2004, Paragraph 6

restriction is provided, and that said restriction can be subject to an independent, impartial and prompt judicial review¹¹.

On the national level, the freedom of assembly is protected by the Article 21 of the Constitution of Georgia, which guarantees right to public and unarmed assembly¹². The mentioned constitutional provision, alongside with the international documents and agreements, creates the basis to regulate the freedom of assembly. Some aspects of the right are regulated by the Law of Georgia on the Assemblies and Demonstrations¹³ and the Law of Georgia on Police¹⁴.

In accordance with the Law of Georgia on the Assemblies and Demonstrations, an assembly is an indoor or outdoor gathering of a group of citizens, a meeting in public places to express solidarity or protest¹⁵. As for the “demonstration”, it is an assembly of citizens, mass public march, and street demonstration to express solidarity or protest, or march using posters, slogans, banners and other visible means¹⁶. It is also noteworthy that an assembly is associated with the existence of a group of co-thinkers and is a collective opportunity to express views¹⁷. In this regard, for the respective qualification, the assembly shall be necessarily attended by at least two individuals. However, each person individually realizes his/her right to freedom of assembly. Considering the current

¹¹ See A/HRC/23/39, April 24, 2013 Paragraph 81(c)

¹² See Article 21 of the Constitution of Georgia <https://bit.ly/3r2O2jg> also see the June 24, 2014 Ruling of the Constitutional Court of Georgia №1/3/538 II, Par I

¹³ See the Law of Georgia on the Assemblies and Demonstrations <https://bit.ly/3oEM6mS>.

¹⁴ See the Law of Georgia on Police <https://bit.ly/3m10kN1>.

¹⁵ See the Law of Georgia on the Assemblies and Demonstrations, Article 3-a <https://bit.ly/3qR0biT>

¹⁶ Ibid Article 3 –“b”

¹⁷ See the April 18, 2011 Ruling №2/482,483,487,502 of the Constitutional Court of Georgia, II, Par. 132 <https://bit.ly/3gtH75r>

regulations, demonstration is one of the forms of assemblies¹⁸, which is separated and defined by the law. The legislation does not provide other definitions of the assembly. For example, the legislation does not recognize the notion of spontaneous gatherings and regulates the simultaneous gatherings only fragmentally. Therefore, it is problematic that the law does not include the norms regulating the various forms of specific gatherings¹⁹.

The legislation on the freedom of peaceful assembly and related practice shall be fully compliant with the international human rights standards.

BEHAVIOR OF THE PROTESTERS AT RALLIES

Having observed, the 56 protests²⁰ held during the monitoring period, it can be said that the vast majority of the rallies were peaceful²¹. In other cases, the scale of the protesters' actions did not reach the point where they posed a real threat of an unlawful outcome. In general, the behavior of the protesters was of such a nature and quality that their participation in the

¹⁸ See A. Pirtskhalashvili, Comment to the Constitution of Georgia, Chapter 2, Georgian Citizenship. Fundamental Human Rights and Freedoms, 2013, p 284 available at <https://bit.ly/3bN7UXE>

¹⁹ One of the rapporteurs of the Venice Commission also underlined this problem, see: European Commission for Democracy through the Law (Venice Commission), Comments (N2547/2009; CDL(2009)153), about the Law of Georgia on the Assemblies and Demonstrations, 01.10, 2009, Par. 15

²⁰ See the Interim Report – Monitoring of the Protest Demonstrations, Human Rights Center, 2020 <https://bit.ly/2JYasJi>

²¹ For example, see Action – No to HPPs, Protesting the construction of micro-HPPs, Chokhatauri-Surebi highway 15.08.2020; Parents' rally to protest online schooling, 15.09.2020; "Peaceful Manifest – Rally at the Chancellery" Human Rights Education and Monitoring Center (EMC). 02.10.2020. the protest rally of the Opposition Parties and Their Supporters at the Parliament of Georgia with regard to the October 31 Parliamentary Elections, 02.11.2020; Rally – Solidarity with Our Prisoners, Amnesty to Prisoners; Amnesty Me; 04.09.2020; Rally 05.11.2020 in Tbilisi, in front of the Mtatsminda District Election Commission, where the complaints lodged during the October 31 Parliamentary Elections were about to be examined. 05.11.2020; Rally of the United Opposition, 14.11.2020.

demonstration was legitimate under both the national law and under Article 11 of the European Convention protecting the right to peaceful assembly²². This was most likely due to the small number of activists/demonstrators participating in the protests. And this, in turn, was caused by a number of restrictions imposed by the state itself in the country due to the threats exposed by the coronavirus pandemic. Among them, gatherings and demonstrations were limited/restricted²³.

It should be positively evaluated that except for rare cases²⁴, the law enforcement officers on the site did not create barriers for the protesters to express their protest and requests. They ensured peaceful environment for the demonstrations, protected their safety and in case of small incidents, ensured not to spread the incident among other protesters that could create threats for other demonstrators²⁵.

On November 3, 2020 the Ordinance N660 of the Government of Georgia was enforced, based on which wearing a facemask in public places became obligatory²⁶. Violation of the rule is punishable in accordance with the Administrative Offences Code of Georgia. In some cases, the law-enforcement officers called on the protesters to keep distance and wear facemasks, yet in most cases the protesters did not do.

During the reporting period, the HRC monitors identified certain cases of the police, acting against the right to assembly and demonstration, while

²² See the European Convention on Human Rights and Fundamental Freedoms, Article 11, <https://bit.ly/3gsxd49>.

²³ See: Decree N1 of the President of Georgia of March 21, 2020. <https://bit.ly/36ZQVkw>.

²⁴ See the rally of the political party Girchi on the Hippodrome "Demanding the abolition of the state of emergency and fines imposed during this period" - (April 23, 2020, Tbilisi); the patrol police officers were calling on the protesters to disperse otherwise they warned them being fined or arrested.

²⁵ See Human Rights Handbook on Policing Assemblies, p. 98 <https://bit.ly/2VXr3zC>.

²⁶ See the Ordinance N660 of the Government of Georgia, November 3, 2020 <https://bit.ly/3qKITVs>.

dispersing the protestors by threatening to use the mechanisms provided by the Code of the Administrative Offenses²⁷.

The results of the protest rally organized on November 8, 2020 near the Central Election Commission were absolutely contradictory and grave, which will be assessed in this document below based on the national and international standards.

LAW ENFORCEMENTS' ACTIONS ON RALLIES

During the monitoring of one of the rallies, it was observed that the protestors were not allowed to disperse naturally, nor leave the area without the intervention of the police. For example, the police by using a force arrested a young woman, took away her cellphone and got her into the police car²⁸. According to the OSCE guidelines, if the assembly has no or small impact on the rights and freedoms of the others or the well-being of the local population, and if it takes place in a safe place, then the police should allow the participants to continue the action²⁹. Hence, the force was disproportionately used against the protesters.

On November 4, 2020, the complaints lodged about the October 31, 2020 Parliamentary Elections were to be examined in the offices of the Vake, Saburtalo and Isani DEC in Tbilisi. The opposition parties and their supporters held protest rallies in front of the DEC premises. The supporters of the opposition political parties: "Strategy Agmashenebeli," "Lelo for Georgia," "European Georgia," and "Aleko Elisashvili –

²⁷ Rally of the political party "Girchi" at the hippodrome, "Demanding the abolition of the state of emergency and fines imposed during this period" - (April 23, 2020, Tbilisi)

²⁸ Rally of the political party "Girchi" at the hippodrome, "Demanding the abolition of the state of emergency and fines imposed during this period" - (April 23, 2020, Tbilisi);

²⁹ See Human Rights Handbook on Policing Assemblies, p. 98. <https://bit.ly/37KoXsa>.

Citizens” were participating in the rallies. They protested the results of the parliamentary elections and claimed they were fraud.

Aleko Elisashvili requested a permission to enter the DEC and participate in the vote-counting process but was not allowed. It ended up in the controversy between Aleko Elisashvili, youth branch members of the opposition political parties and police officers³⁰. *As a result of the controversy, three persons were arrested in front of the Saburtalo DEC office based on the Articles 166 and 173 of the Code of Administrative Offenses*³¹. *A leader of the United Georgia Otar Tavartkiladze was among detainees*³².

According to the statements of the political parties, the complaints were formally examined in the DECs³³ that caused the protests of the election subjects and their supporters. This was followed by a controversy between the protesters and the police in front of the Isani DEC office³⁴. *As a result of the controversy, several people have gotten sick. Seven individuals, among them the member of the opposition political party United National Movement and the majoritarian MP candidate Giorgi Kapanadze were arrested*³⁵ *based on the Articles 166 and 173 of the Administrative Offences Code of Georgia – minor hooliganism and disobedience to the lawful order or demand of the law*

³⁰ See full information at <https://bit.ly/3kTFmnr>. Last seen on 09.12.2020. Also, see the report of the HRC monitor 04.11.2020

³¹ See the Articles 166 and 173 of the Administrative Offences Code of Georgia <https://bit.ly/37eBbdt>

³² See full information at <https://bit.ly/2I2esHu> and <https://bit.ly/3mSPZng>. Last seen 09.12. 2020. Also, see the report of the HRC monitor 04.11.2020

³³ See full information <https://bit.ly/3jTVeRv>. Last seen on 09.12.2020. See also the report of the HRC monitor – 04.11.2020

³⁴ See full information <https://bit.ly/3eyfR4L>. Last seen on 09.12.2020. See also the report of the HRC monitor – 04.11.2020

³⁵ See the report of the HRC monitor – 04.11.2020

*enforcement officers or commission of any other unlawful act against such person*³⁶.

OSCE/ODIHR Venice Commission's Election Observation Handbook presupposes "respect for basic fundamental freedoms like freedom of peaceful assembly without any restrictions."³⁷ The state is authorized to promote and protect peaceful gatherings and ensure that this freedom is not subject to unwilling bureaucratic regulations. "Everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards."³⁸ Furthermore, given that the police clearly demonstrates the power of the authority, it is committed to uphold the rule of law and public order, to protect the fundamental human rights and freedoms, to prevent crimes, to fight against them and to provide citizens with help and service³⁹.

In the mentioned cases, the requirements of the international standards were violated that indicate at the unlawfulness of the actions of the law enforcement officers. The police failed to assess the reality and clearly identify immediate threats coming from the demonstrators that would serve as legitimate pre-conditions to disperse the rally and arrest protesters.

In accordance with the special report of the Public Defender of Georgia, in the absence of direct and clear legislative regulations, the nature of the

³⁶ See the Articles 166 and 173 of the Administrative Offences Code of Georgia <https://bit.ly/3mnrqyd>

³⁷ OSCE/ODIHR Election Observation Handbook, Second Edition (Warsaw/Strasbourg, 2010), Par 2.1.

³⁸ Copenhagen 1990, Paragraph 9(2)

³⁹ Human Rights Handbook on Policing Assemblies (Vienne: OSCE Senior Policing Advisor, 2008). SMPU's publications Volume 1, second edition <https://bit.ly/3716rwh>.

peaceful assembly is determined and the decisions are made within the discretion of a police officer that is irrationally odd responsibility due to the perspective of the police and may have negative impact on its effectiveness⁴⁰. The above cases clearly demonstrate the complicated situation of the police, when they, alongside with the complex challenges, are granted with the wide range situation assessment and decision-making authorities as well as increased responsibilities that often becomes the ground of unlawful interference into this right. It, often, results into unlawful restriction of the rights of peaceful protesters while the police, within its discretion, decides to stop the entire assembly because of separate violent acts. This practice contradicts both the national legislation and international standards.

The arrest of the civil activists Lekso Matchavariani, Giorgi Mzhavanadze and Nodar Rukhadze on November 9, 2020 based on the Articles 166 and 173 of the Administrative Offences Code of Georgia clearly demonstrated how problematic the wide range and increased responsibility of the police is in the assessment of the situation and decision-making authority. All three activists tried to bring firewood to the territory of the parliament of Georgia for heating which was not allowed by the law enforcement officers. Lekso Matchavariani told one of the officers: “We will break you.” The officer asked – “what will you do?!” and Lekso Matchavariani answered: “We will break the government.” This was followed by the arrest of Lekso Matchavariani⁴¹.

The action of the law enforcement officers, in this particular case too, was disproportionate and unlawful. Besides that, it may aim to threaten

⁴⁰ See the Special Report of the Public Defender of Georgia “Freedom of Peaceful Assembly”, 2020 <https://bit.ly/3oIgCMu>.

⁴¹ See the report of the HRC monitor 09.11.2020

the protesters and restraining them from enjoying their right to freedom of peaceful assembly. to freedom of peaceful assembly. Above that, although the administrative arrest, unlike criminal law mechanisms, is less intensive interference in the freedom, it does not discharge the state from the obligation to assert that the interference in the right satisfied the test of proportionality and is less restrictive means for achieving the legitimate purpose. A reasonable doubt is the link between the concrete individual and concrete offence. The doubt is a subjective attitude of an individual but the freedom of an individual cannot be interfered based on the doubt which is solely built upon the subjective feelings of another person⁴². Similar approach could be a green light for arbitrariness that was a case in this particular situation.

IMPOSING A CURFEW (GOG ORDINANCE N670)

Since November 9, 2020, the Government of Georgia, in fact, imposed a curfew from 10:00 pm until 5:00 am⁴³ though the ordinance did not mention the term at all. In accordance with the assessment of several nongovernmental organizations (GDI, ISFED, HRC and TI), in the light of current national events, the restrictions established by the GoG, may be perceived as an attempt of the government to disrupt democratic processes and to fight the wave of protests that have been unfolding, rather than the spread of COVID-19. The organizations stated that this is especially noteworthy due to the fact that curfew has been extended to pre-election campaign (political agitation), when activities carried out

⁴² See the ECtHR ruling on the John Murray v. UK, January 25, 1996

⁴³ See the Ordinance of the GoG N670 <https://bit.ly/3m6DtIV>.

within the pre-election campaign were an exception to other restrictions imposed by the Government of Georgia⁴⁴.

On November 24, 2020, the Norwegian Helsinki Committee and the Human Rights Center released a statement, which reads that the new restrictions are disproportionate interference into the freedom of movement. They undermine the realization of right to peaceful assembly and manifestation and indirectly restrict it as well. The Georgian government is not authorized to restrict right to peaceful assembly and manifestation under such conditions, according to Georgian legislation. The timing and nature of these restrictions give impression that they were enacted in order to suppress the increased protest movement⁴⁵.

Human Rights Center believes that the decision of the GoG contradicts the Organic Law of Georgia on Normative Acts. Furthermore, the assumption that the GoG can differently arrange the rules of the adoption of the normative acts and their publishing, significantly contradicts the constitutional principle of legal security. Besides, the introduction of the curfew by the Government of Georgia, without the engagement of the legislative body in the decision-making process, comes in conflict with the Constitution of Georgia.

The GoG established the new restrictions based on the Article 45³ of the Law of Georgia on Public Health⁴⁶, which was adopted by the Parliament of Georgia on May 22, 2020 in haste in order to enable the GoG to restrict a set of human rights and basic freedoms even after the state of emergency is lifted that contradicts the Constitution of Georgia and the standards established by the Constitutional Court of Georgia. Also, it enables the executive government to abuse its authority.

⁴⁴ See the Statement of the GDI, ISFED, HRC and TI Regarding an Introduction of the Curfew Order <https://bit.ly/37YrCPc>

⁴⁵ See the joint statement of the NHC and HRC <https://bit.ly/3oLvRUy>

⁴⁶ See the Law of Georgia on Public Health, Article 45³ <https://bit.ly/3nnpzBX>

The curfew disabled the court and protest rally monitors of the Human Rights Center to implement their professional activities because in accordance with these restrictions they are prohibited to move after 22:00 pm; in case of violation, they will be fined based on the Administrative Offences Code of Georgia. Therefore, the HRC monitors were compelled to monitor the protest rallies only until the curfew hours.

It can be said that in the contrary to the constitutional requirement and international standards, the Government of Georgia, in fact, replaced the legislative body – the Parliament and without any public discussions and disputes, through the violation of the the principle of separation of powers imposed a new, highly intensive restriction.

Large-scale restriction on the freedom of movement, impacted on ongoing manifestations and exacerbated the already tense political situation in the country.

THE NEED AND THE PROPORTIONAL NUMBER OF THE LAW ENFORCEMENT OFFICERS

In accordance with the international standards, the police is entitled to support the assembly in compliance with the notification submitted to it or the terms agreed with the organizers. The law enforcement officers shall always try to deploy minimal number of the police resources on the site, which will be enough to ensure peaceful assembly. Also, in the course of the gathering the tactical leaders shall permanently introduce corrections in the police operation. Throughout the assembly their practical actions shall be based on the decision-making model⁴⁷.

⁴⁷ See Human Rights Handbook on Policing Assemblies, p. 92. <https://bit.ly/37KoXsa>.

The approach of the law enforcement officers shall be coherent with the international human rights standards and hence, those approaches shall be proportional and necessary. Above that, minimal police actions shall be envisaged to achieve the goals. These principles shall be the basis of the entire decision-making process⁴⁸.

On the national level, in accordance with the Article 21 of the Constitution of Georgia, the state has both negative and positive obligations to ensure that assembly and demonstration proceed smoothly, without violations.

In the course of monitoring, in terms of proportionality, in the majority of the rallies, the number of the law enforcement officers was proportional to the number of the protesters. However, the HRC monitors, in separate cases, particularly during the rallies held in November of 2020, observed the facts, when the number of the police officers deployed on the sites significantly exceeded the number of the protesters⁴⁹.

LEGAL ASSESSMENT OF THE POLICE POWER USED DURING THE NOVEMBER 8 2020 PROTEST DEMONSTRATION

On November 8, 2020, a protest rally “Protect Your Vote” was organized in front of the Parliament of Georgia. After the rally was over, one part of the demonstrators walked to the building of the Central Election Commission.

⁴⁸ See *Makaratzis v. Greece*, Application No. 50385/99, 2004. <https://bit.ly/33TsF1B>.

⁴⁹ *Note*: there were about 8-10 protesters at the rally of the nongovernmental organization - “No to Murderers” in front of the premises of the MIA (August 10, 2020 Tbilisi). About 6 law enforcement officers were deployed on the site. Also, in the hippodrome, about 20 protesters participated in the rally of the political party Girchi against the state of emergency and imposed fines (April 23, 2020 Tbilisi). In parallel to that, about 10 law enforcement officers were deployed on the site.

A few minutes after a small part of the demonstrators arrived at the CEC premises, the law enforcement officers, without any warning, used a special mean of dispersal – released the water cannon and so-called pepper spray against the demonstrators⁵⁰. Before using the special means, some protesters tried to break the iron fence around the CEC building; however, the core part of the demonstrators were peacefully protesting⁵¹.

At the same time, before using the water cannon, the representatives of the law enforcement bodies did not try to calm down the situation in front of the CEC building with other means. Besides that, the law enforcement officers did not demand those protesters, who tried to break the protection barriers, to stop their action. The police did not warn the demonstrators about using the force either. As the media footage and the monitors' reports showed, the water cannon was opened against the peaceful protesters and media representatives too⁵².

The media representatives got injured with the special means used by the law enforcement officers; their equipment was also damaged⁵³. While using the special means, the representatives of the law enforcement bodies did not follow the requirements of the national and international laws – not to hamper the professional activities of the journalists wearing the identification cards/badges, who cover the ongoing assembly or manifestation. HRC monitors observed the protest rally on November 8, 2020 throughout the day both in front of the Parliament of Georgia and then in front of the CEC.

⁵⁰ See the report of the HRC monitor 08.11.2020. Also watch <https://formulanews.ge/News/39378>.

⁵¹ See the report of the HRC monitor 08.11.2020

⁵² See the report of the HRC monitor 08.11.2020, also information at <https://bit.ly/3kfG2OV>.

⁵³ See full information at <https://bit.ly/370N4n7>.

As the monitors reported, on the one hand, in the beginning of the protest rally, there was no need to use the special means by the police officers and on the other hand, the law enforcement officers breached the requirements of the law, based on which they had to warn the protesters about the use of the special means in advance.

After the water cannon and the pepper spray was used, from 22:20 pm, for about one hour, the police was intensively warning the citizens from the CEC yard to disperse “otherwise they would use the legal means to restore the public order.” The police did not specify which concrete means they were going to use but there were two water cannon vehicles on the place and the protesters expected that the police would use the water cannon again. At the same time, the police was calling on the organizers to send old people, children and women away from the site that shall be evaluated positively⁵⁴.

At about 00:10 am, the police started using the water cannon again and they opened several cannons against protesters in a non-stop manner – it lasted about 20 minutes. The video-footage of the TV Company Formula shows that 5-6 water cannon vehicles were on the site, which released the water cannon against the protesters⁵⁵. With it, the police could temporarily disperse the demonstrators. In response to that, one part of the protesters were cursing the police officers and throwing various items at them. The journalists were reporting that the protesters were mostly throwing bottles. The video-footage released by the police showed that the protesters were

⁵⁴ See the report of the HRC monitor 08.11.2020

⁵⁵ See the livestreaming of the TV Formula <https://bit.ly/3nfSyA8>.

throwing stones and burning woods in the direction of the water cannon. The windows of the special vehicles were smashed with stones⁵⁶.

Use of the water cannon and the so-called pepper spray against the protesters in front of the CEC premises qualifies as a disproportionate use of force, which blatantly violated the requirements of the Georgian legislation and international human rights standards. As for the second stage, after the police dispersed the protesters without warning, the protesters became aggressive and their resistance was caused by the violent action of the police – it is important element to be taken into account when evaluating the freedom of assembly.

The behavior of the law enforcement officers shall be evaluated in three directions:

- a) **Compliance with the law** – pursuant to the Article 31 – Paragraph 3 of the Law of Georgia on Police⁵⁷, before using the physical force, special means and firearms, a police officer shall warn a person and give a reasonable period of time to carry out the lawful order except if the delay may cause encroachment on life and health of a person and/or of a police officer, or other severe consequences, or if such warning is unjustifiable or impossible in a given situation.

In accordance with the international standards, the legislation allows the police to use the special means against protesters after preliminary warning. Warnings should always be issued to an assembly before any use of force. The only exception is when any delay may lead to immediate loss of life or serious injury. A warning must be given using an appropriate amplification device in the appropriate language and on more than one occasion. The warning should be clear and audible and not limited by

⁵⁶ See the video footage of the MIA <https://bit.ly/3oIEOyj>.

⁵⁷ See the Law of Georgia on Police, Article 31 Paragraph 3 <https://bit.ly/3nowqnv>.

other sounds, such as excessive engine noise. It may be necessary to give the warning from more than one location so that all participants can hear it.⁵⁸

In this particular case, the police initially used the water cannon without warning that was later confirmed by the MIA too⁵⁹. Also, it is noteworthy that there was no necessity to use the special means without preliminary warning because in that moment there was no immediate threat that the demonstrators would break into the CEC building. Also, there was no real and immediate threat towards the health and lives of the police officers or others nearby. Therefore, the actions of the police violated the law.

As for the second stage of the use of special means, the requirements of the law to warn the protesters in advance were, formally, met. But it should be taken into account that the action of the police officers in the first stage of the dispersal convinced the demonstrators that the law enforcement bodies had decided to disperse the protest that caused the anger of the demonstrators. Afterwards, the police started warning the demonstrators to go away and stop violent actions.

Pursuant to the international standards, knowledge of the various groups participating in the assembly is the essential pre-condition. It is important that the police knew the norms, values, intentions and aims of the demonstrators. It is also important that the law enforcement officers were aware what is right and acceptable for the demonstrators, what stereotypes they believe and what they expect with regard to other groups, what is their background (including the history of the rallies they had

⁵⁸ See Human Rights Handbook on Policing Assemblies, p. 103. <https://bit.ly/2VXr3zC>.

⁵⁹ See the statement of the MIA <https://bit.ly/2IAYC7q>.

organized previously) and other details, which have symbolic importance⁶⁰. Similar knowledge helps the police to understand the interests and goals of the groups and allows to promote their lawful goals. With this knowledge, the law enforcement officers also learn what kind of actions are perceived by them as provocational from the side of the police that can cause conflict.

Consequently, although the law enforcement officers met the obligatory requirement of the law to warn the protesters, yet it is not enough precondition to declare the use of the special means as legitimate. Therefore, the issue shall be evaluated cumulatively, together with the component of the necessity of *proportionality*.

- b) **Proportionality** – in accordance with the Article 31 Paragraph 1 of the Law of Georgia on Police, to perform police functions, a police officer may use fit and proportionate coercive measures only in the case of necessity and to the extent that shall ensure achievement of legitimate objective⁶¹. Pursuant to the international standards, the preferred option for the police should always be to allow and enable people to disperse naturally. The dispersal of an assembly by the police should always be a measure of last resort and should only be utilized in response to acts of violence or the imminent threat of violence. Before using any other operational options, police should first explore the use of verbal and visual requests to leave and negotiation with the organizers or key influencers and stewards to facilitate the movement away from the site of the assembly. This should be the routine approach when people refuse to leave, unless

⁶⁰ See Human Rights Handbook on Policing Assemblies, p. 31. <https://bit.ly/2VXr3zC>.

⁶¹ See the Law of Georgia on Police, Article 31 Paragraph 1 <https://bit.ly/3nowqnv>

there is already widespread violence taking place and any delay may result in immediate danger to public safety personnel⁶².

In the mentioned case, in the first stage of the dispersal, water cannon was used against peaceful demonstrators and individuals while no mass violations were observed in front of the CEC building and there was no immediate threat coming from the protesters. Therefore, the use of the water cannon in the first stage was disproportionate. At the same time, about 10 protesters received injuries during the dispersal⁶³.

Besides, the use of the water cannon and the so-called pepper spray in cold climate, particularly considering the current epidemiological situation and the crisis in the healthcare system, was especially alarming. In accordance to the international standards, in similar situations, within the scopes of reasonability, heated water shall be used during the dispersal⁶⁴.

During the second stage of the dispersal, when some violent actions were identified, the issue of the proportionality of the force used by the law enforcement officers is still problematic. Namely, in accordance to the international standards, even if an assembly is considered unlawful under domestic law, police should not resort to the use of force just because of its unlawfulness⁶⁵. The force may be used only in cases where it is necessary

⁶² See Human Rights Handbook on Policing Assemblies, p. 103. <https://bit.ly/2VXr3zC>.

⁶³ See the statement of the MIA <https://bit.ly/3qZqYcl>

⁶⁴ See UNITED NATIONS HUMAN RIGHTS, GUIDANCE ON LESS-LETHAL WEAPONS IN LAW ENFORCEMENT; p. 38; paragraph. 7.7.3. 2020 . <https://bit.ly/2W5gE4T>.

⁶⁵ See the Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 2015, Guideline No.7, p. 147-148, <https://bit.ly/2xrAUBn>.

for the establishment of public order and for the prevention of the crime⁶⁶. In this particular case, after the first dispersal of the rally, the protesters resisted the law enforcement officers as they were provoked by the violent behavior of the police officers themselves and when assessing the proportionality of the interference in the freedom of assembly, it is necessary element to be taken into account. At the same time, the fact that the law enforcement officers did not segregate the peaceful and non-peaceful protesters during the dispersal and did not use individual approach to each of them, shall also be taken into consideration while assessing the fact. If the law enforcement officers had approached the protesters individually (as it was not large-scaled gathering in front of the CEC building), it could ensure the control of the use of disproportionate force by them that could serve as a prevention of grave outcomes.

- c) **Necessity** – in accordance with the international standards, before using any form of force during a rally the police shall first consider its necessity. If any aims can be achieved through peaceful methods, then force must not be used. In addition, when force is used, its proportionality shall be considered through which the legitimate purpose of the defense of public order can be achieved⁶⁷.

In this particular case, in the first stage of the use of special means, majority of the demonstrators protested peacefully. Only some protesters were disobedient and acted violently that could have been individually responded by the police officers. In similar cases, when every person individually exercises his/her right, the violent acts of some individuals or

⁶⁶ See Inter-American Commission on Human Rights, Report on the situation of human rights defenders in the Americas, 2006, § 68. <https://bit.ly/3oCWxHs>.

⁶⁷ See Human Rights Handbook on Policing Assemblies, p. 30. <https://bit.ly/2VXr3zC>.

small groups of individuals shall not revoke the freedom of assembly, who continued peaceful protest⁶⁸. At the same time, when a real risk of disorder is identified and it is beyond the control of the assembly organizers, the assembly shall not be excluded from the field of defended rights⁶⁹. Therefore, in similar cases, any interference in the right shall aim to respond to the violent actions of the concrete individuals and not the entire assembly⁷⁰.

Thus, in the first stage of the dispersal, the special means used by the law enforcement officers was not coherent with the law, proportionate and necessary.

In the second stage of the dispersal, although the obligatory requirement of the preliminary warning was followed formally, the grounds of starting the dispersal were problematic. More precisely, as it was noted, violent nature of the action of one part of the protesters was the result of the non-constitutional action of the police in the first stage of the dispersal that was infuriated the protesters. After that the law enforcement officers started warning of the demonstrators in advance to disperse and stop violent actions. Consequently, their aggressive actions resulted from the failure of the law enforcement officers to have clear, reasonable and human rights based plan to ensure legitimate goals of the decision of dispersing the rally and to prevent the abuse of power by police officers.

⁶⁸ See OSCE/ODIHR Human Rights Guidelines for the Police During Assemblies, 2016 p. 18

⁶⁹ See CoE/European Court of Human Rights, Guideline of the Article 11 of the ECHR, Freedom of Assembly and Manifestation, First Edition, August 31, 2019. Paragraph 26.

⁷⁰ See the OSCE/ODIHR and European Commission for Democracy through the Law (Venice Commission); Guideline principles on Freedom of Assembly, second edition, 2010 paragraph 164.

After the first stage of the dispersal of the assembly with special means, the action of the assembly participants was of a violent nature. It was caused by the fact that the law enforcement officers dispersed the protest based on insufficient grounds and in suspicious circumstances, namely – they did not make appropriate warning about the planned dispersal and the excessive and unjustified force was used, which was disproportionate and exceeded the frames of the reasonability which is obligatory for the state⁷¹. In similar cases, although the police officers provoked a part of the protesters, in the second stage, when the protesters acted violently (aggression, burning glasses, bottles and various items were thrown to the police officers), the police officers had legitimate grounds to disperse the assembly. Hence, there was a necessity to use proportionate force against one part of the protesters to protect the lives and health of the demonstrators, who were under the threat considering the violent nature of the action of one part of the protesters.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of the UN, which was adopted in 1990, reviews those basic principles in the frame of which the force may be used and they apply to all police officers. The “basic principles” underline that the use of force shall be the last resort rather than a norm and when the force is used, it shall be proportionate and aim to respect the human life⁷². In accordance with the Article 2 Paragraph 3 of the Law of Georgia on Assemblies and Demonstrations, the restriction of the right to assembly shall be addressed to achieve the benefits protected by the Constitution of Georgia; shall be considered under the law, shall be necessary for a democratic

⁷¹ See Case of Ter-Petrosyan v. Armenia, Application no. 36469/08, 2019. <https://bit.ly/2Yrq8qD>.

⁷² Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of the UN (Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 1990) <https://bit.ly/341bdZ5>.

society; shall be non-discriminatory; shall be proportionally restrictive; shall be such that the benefit protected by the restriction exceeds the damage caused by the restriction. In this regard, although the violent actions were provoked by the actions of the law enforcement officers, the force used during the second stage, formally, satisfied the component of the relevance to the law and necessity as the protesters' violent actions were identified and they required an immediate response from the law enforcement officers. However, the issue of proportionality is still problematic because the law enforcement bodies did not have an effective and comprehensive plan or strategy to control the behavior of the protesters and to de-escalate the situation that finally resulted in the abuse of power and injury of the protesters.

As for the journalists, the police must always recognize the rights of journalists to attend and report on public assemblies. The police have a positive obligation to facilitate the rights of journalists at such events and a negative obligation not to obstruct or prevent the work of the media. It is in the interest of the police to facilitate the work of journalists at assemblies: when journalists receive easy access to the event, the chances are higher that the reporting regarding the role of the police in handling of the event will be in a more positive tone. It also generates trust between journalists and police⁷³.

Injury of the journalists and damage of their equipment with the cold water cannon in front of the CEC was alarming and it continues the tradition of the police actions established during the events of June 20-21, 2019, when dozens journalists received various health injuries⁷⁴.

⁷³ See Human Rights Handbook on Policing Assemblies, p. 33. <https://bit.ly/2VXr3zC>.

⁷⁴ See the statement of the Journalistic Ethic Charters, 2019, 21.06 <https://bit.ly/37dhF1b>.

CONCLUSION

Taking into account the evaluation of monitoring reports of the assemblies held during the first reporting period of 2020 (August 16, 2020), based on the analysis of identified violations, and the assessment of the compliance of the actions of law enforcement officers with international standards, it can be said that at the majority of the protests the right to freedom of assembly and demonstration, and the relevant standards were respected at large.

Although, in a number of cases, among the cases identified by the Human Rights Center monitors, there were reports of disproportionate force mobilization, arrests, and demands to disperse with threatening to impose fines or to disperse by using force, all in all, most of the rallies were held in a peaceful way. Furthermore, the actions of both the demonstrators and the law enforcers were legitimate and were carried out within the framework of both national law and the right to peaceful assembly pursuant to the international standards.

Mainly, the peaceful nature of the demonstrations was most likely conditioned by the small number of activists/demonstrators participating in the protests. And this, in turn, was caused by a number of restrictions imposed by the state itself in the country due to the threats exposed by the coronavirus pandemic.

As for the second reporting period (*From August 16 to December 15, 2020*), particularly after the 2020 Parliamentary Elections, a part of the protest rallies was accompanied by violent incidents. The November 8, 2020 protest assembly in front of the CEC was particularly problematic, when the use of the force and special means – water cannon and so-called

pepper spray against the demonstrations was not neither coherent with the law, nor proportionality restrictive and necessary; at the same time, the demonstrators and media representatives got injured as a result of the use of the special means and their equipment was damaged.

Several facts of ungrounded arrests and administrative fines were identified in the second reporting period.

Wide range of decision-making process and increased responsibilities of the police officers proved to be problematic. This factor often became the ground to unlawful interference in the right. The facts were identified, when the number of the deployed law enforcement officers significantly exceeded the number of the protesters⁷⁵ that may have influenced the full realization of the right to freedom of assembly of the protesters.

The unilateral introduction of the curfew by the Government of Georgia, without the engagement of the legislative body in the decision-making process, should be evaluated negatively as it is a violation of the Constitution of Georgia. This had a grave impact on both the protest rallies and the monitoring process.

In sum, despite the positive tendencies, in the turning points, the state failed to fulfill its negative and positive obligations. The state was unable to ensure the maintenance of the assemblies and demonstrations without delays and incidents; furthermore, grave violations were identified during the protest rallies held after the initial results of the 2020 Parliamentary

⁷⁵ **Note:** there were about 8-10 protesters at the rally of the nongovernmental organization - "No to Murderers" in front of the premises of the MIA (August 10, 2020 Tbilisi). About 6 law enforcement officers were deployed on the site. Also, in the hippodrome, about 20 protesters participated in the rally of the political party Girchi against the state of emergency and imposed fines (April 23, 2020 Tbilisi). In parallel to that, about 10 law enforcement officers were deployed on the site.

Elections were announced that present the violations of the standards of the Constitution of Georgia and a number of standards of international law.

RECOMMENDATIONS

To the Ministry of Internal Affairs:

- ✓ *To ensure the safety of media representatives and allow them to freely and without delays implement their professional duties during the demonstrations;*
- ✓ *To eliminate systemic miscarriages in the use of special means during the dispersal of protest demonstrations and management of public order during rallies;*

To the Parliament of Georgia:

- ✓ *To regulate the institution of preliminary warning of the protesters on the legislative level and determine the obligatory mechanism of the preliminary negotiations;*

To the Prosecutor's Office of Georgia:

- ✓ *To investigate the cases of arbitrary and groundless arrests, acts of violence and ill-treatment during demonstrations;*
To pursue objective and impartial investigation and hold law enforcement officials accountable.

To the Judiciary Authority:

- ✓ *to intensify the judicial control over possible human rights violations by the law enforcement officers during the detentions in the common court.*