



RIGHT OF PEACEFUL ASSEMBLY AND MANIFESTATION IN GEORGIA

MAIN FLAWS IN LAW
AND PRACTICE



2021

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HUMAN RIGHTS CENTER (HRC)

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REPORT SUMMARY

The following report provides an overview of the legal framework concerning the right to peaceful assembly and manifestation in Georgia, as well as the situation of its practical realization and identifies main gaps existing in law and practice which hinder its free exercise. The report overviews various types of assemblies held during the past year (September 2020 – August 2021) and examines cases where state authorities failed to ensure unhindered realization of right to peaceful assembly, as well as cases where it applied excessive and disproportionate force. Some cases from earlier period where right to peaceful assembly and manifestation was blatantly violated are also referred and analyzed in the report.

The chapter “Legal Framework” reviews various pieces of Georgian legislation concerning the right to peaceful assembly and manifestation and evaluates its compliance with international human rights standards. The analysis includes overview of how the legislation developed in recent years. It looks into the decisions of the Constitutional Court of Georgia and recommendations of European Commission for Democracy through Law (Venice Commission) of Council of Europe which gave rise to certain legislative changes and advanced the standard of protection of right to peaceful assembly and manifestation in Georgia. The chapter also looks at flaws which still remain in the legislation, hindering effective realization of right to peaceful assembly and manifestation.

The chapter “Administration of Assemblies” identifies relevant governmental bodies and analyzes their roles and powers in terms of administration of assemblies and manifestations. It looks into the flaws existing in the procedure of making prior warning/notification about holding of assembly to municipal authorities. The chapter also explores the responsibilities of respective governmental bodies in regards with the restriction of time and place, as well as banning and termination of assemblies and assesses the issue of lack of delineation of decision-making powers in this process. The issue of lack of processing statistical information about the assemblies and manifestations by the municipal and law enforcement bodies is examined in this chapter as well.

The chapter “Policing Assemblies” reviews main responsibilities of the police in relation to safeguarding and ensuring public order and security at assemblies and manifestations. It looks into the flaws existing in the legal acts, as well as in practice, in relation to the excessive use of special means. This chapter also examines the problem of reluctance to use force to address violent assemblies of far right groups, despite existence of sufficient grounds, while often applying disproportionate force towards those who express political dissent to the government. The issue of lack of processing relevant

statistical information about the use of force, use of special means and arrests of protesters at assemblies and manifestations is also assessed in this chapter.

The chapter “Right to Peaceful Assembly and Manifestation of LGBTQI+ People and Their Allies” overviews systematic suppression of right of LGBTQI+ people and their allies to freely assemble and manifest in the desired place and location. It looks into the specific cases from July 5 and 6, 2021, where government authorities once again drastically failed to ensure right to peaceful assembly and manifestation of LGBTQI+ people and their allies. The lack of police action to restrain mass violence exercised by the far rights groups on July 5 assembly and unprecedented assaults on journalists and other representatives of media are also addressed in this chapter.

The chapter “Cases of Use of Excessive Force and Disproportionate Restrictions” looks into specific cases from past two years (June 2019 – July 2021) where government applied excessive force and disproportionately restricted right to peaceful assembly and manifestations. The following cases are included in this chapter: November 8, 2020 Assembly in front of Central Election Commission, Protest Actions in Relation to Construction of Namakhvani Hydroelectric Power Plant, June 20-21, 2019 Anti-Occupation Protest Rally, Blocking Entrances of Buildings.

The chapter “Unlawful Restriction of Use of Tents” reviews cases from 2021 when the law enforcement authorities unlawfully denied the protesters right to set up tents in the area of the protest action, under unclear and unsubstantiated grounds.

The chapter “Pandemic and Assemblies” reviews emergency measures adopted to fight the spread of pandemic in Georgia and their impact on the free exercise of right to peaceful assembly and manifestation. It looks at instances when the right to peaceful assembly and manifestation was disproportionately restricted due to the reasons of fighting pandemic. It explores how Covid 19 regulations affected the organization of and participation in assemblies and manifestations. The assemblies which conveyed protest towards the existing emergency measures and their heavy toll on socio-economic situation of population of Georgia are reviewed in this chapter as well. The chapter also looks at how the Covid 19 recommendations and rules were complied at the assemblies and manifestations.

The chapter “Monitoring Assemblies and Manifestations during pandemic” looks how restrictions affected the work of the human rights organizations to monitor the assemblies and manifestations.

The chapter “Facilitation of Movement of Demonstrations” looks at cases from September 2020 – September 2021 where police facilitated the movement of demonstrations. The chapter includes following cases: “*Open the Country*” (2020), “*No to Soviet Regime*” (2021), “*March for Freedom*” (2021), “*End Curfew*” (2021), Protest Demonstration of Rioni Valley Guards (2021).

The section “Recommendations” presents recommendations to different branches of government, such as Parliament of Georgia to enact necessary amendments in various pieces of legislation, as well as executive government on central level, such as Government of Georgia, Ministry of Internal Affairs, Office of Chief Prosecutor of Georgia and local government, such as executive bodies of municipalities. The recommendations indicate as to what changes are needed in practice, as well as in legal acts to advance the right of peaceful assembly and manifestation in Georgia.

The report analyzes results of monitoring of 15 assemblies held during the period of September 2020 – September 2021 in capital Tbilisi, as well as 7 semi-structured interviews conducted with civic movements and political parties which hold assemblies and manifestations in Georgia and human rights organizations which carry out monitoring. The government institutions did not reply to Human Rights Center’s request of interview. Public information was requested from City Halls of Tbilisi and Kutaisi municipalities, as well as Ministry of Internal Affairs. Kutaisi City Hall and Ministry of Internal Affairs partially replied to the request of Human Rights Center. Tbilisi City Hall did not respond to the request of public information.

The method of comparative legal analysis is applied when examining the gaps existing in law and practice which hinder free realization of right to peaceful assembly and manifestation. Specifically, the existing flaws are examined in the light of Georgian legislation and international human rights standards, including the European Convention of Human Rights, case law of European Court of Human Rights, OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly and opinions of Venice Commission regarding the Law on Assemblies and Manifestations of Georgia. The reports of Public Defender of Georgia, local and international NGOs have also been applied and referenced in the report while analyzing various cases of violation of right to peaceful assembly and manifestation in Georgia.

LEGAL FRAMEWORK

❖ Constitutional and Legal Guarantees

Right to peaceful assembly and manifestation is guaranteed by the Constitution of Georgia and Georgian Law on Assemblies and Manifestations. Georgian Constitution enshrines the basic principle of free realization of right to peaceful assembly and manifestation for all members of society. It establishes that everyone, except those enlisted in the defense forces or bodies responsible for state and public security, shall have the right to assemble publicly and unarmed, without prior permission. According to the Constitution of Georgia, the law may establish the necessity of prior notification of authorities if an assembly is held on a public thoroughfare.

Law of Georgia on Assemblies and Manifestations provides detailed regulation of right to peaceful assembly and manifestation, including the content and scope of the right, rights and responsibilities of the initiators and organizers of assembly, procedure of submission of prior notification/warning regarding the holding of assembly, responsibilities of the state bodies in relation to the regulation and management of the assemblies and grounds for the restrictions. The Law of Georgia on Assemblies and Manifestations establishes the obligation to submit prior notification/warning regarding the holding of assembly to the local government body if the assembly is going to be held on the roadway or if it will hinder the movement of transport.

The Constitution of Georgia does not attach significance to the goal or motive of the assembly. The right to peaceful gathering of everyone, with the only exception of those enlisted in the defense forces or bodies responsible for state and public security is acknowledged by the Constitution, notwithstanding the goal or motive of the assembly¹. However, the Law of Georgia on Assemblies and Manifestations specifies that the assembly has to have a specific goal – expression of solidarity or protest. According to the Law of Georgia on Assemblies and Manifestation, *“assembly is a gathering of group of citizens under the ceiling or outside, rally in the public space, with the goal to express solidarity or protest”*.

Besides the above described pieces of legislation, certain provisions of Law of Georgia on Police and Code of Administrative Offenses of Georgia also deal with the assemblies and manifestations.

¹ Annual Report of Public Defender of Georgia, Situation of Protection of Human Rights and Freedoms in Georgia, 2009, p. 175:
<https://ombudsman.ge/res/docs/2019040411373662896.pdf>

The Law of Georgia on Assemblies and Manifestations was adopted in 1997. The Law has been amended 7 times since its adoption. The latest amendments were made to the Law in 2015. Notwithstanding number of amendments, there are still significant gaps in the Georgian legislation which hinder the free realization of right to peaceful assembly and manifestation. Besides, there are serious problems in practice, including excessive and disproportionate use of force at the assemblies and lack of political will to ensure right to peaceful assembly and manifestation for LGBTQ+ individuals.

The Constitutional Court of Georgia has issued number of decisions which have helped to refine the Law of Georgia on Assemblies and Manifestations and raise the standard of protection of right to peaceful assembly and manifestation.

The original version of the Law of Georgia on Assemblies and Manifestations gave possibility to the local government bodies not to accept the prior warning/notification regarding the holding of assembly if it did not meet the requirements of the law. The Constitutional Court of Georgia decided that this provision was against the Constitution of Georgia as it equated the institute of warning to that of the permission. According to the assessment of the Constitutional Court, the legislator did not specify what would happen as a result of the non-acceptance of warning. However, as the Court stated, it seemed from the content of the provision in question that the non-fulfillment of its requirements could have been the ground for prohibiting the assembly and manifestation².

“The formulation “non-acceptance of warning” equates the institute of warning to that of permission. Warning implies informing the government about the holding of assembly only in order for the latter to ensure the possibility of application of this right. It is a unilateral act which in no way covers the obligation to expect response from the government. When the legislator gives possibility to the government not to accept the warning, it assumes that the government denies concrete persons a possibility to apply this right in practice. In other words, it does not give permission to hold assembly or manifestation. The institute of non-acceptance of warning is in and of itself is against the Constitution. Obviously, it does not matter under what ground the warning is not accepted. In any way, the government does not have such constitutional authority” – underlined the Constitutional Court of Georgia in a decision delivered on November 5, 2002³. The provision of the Law on Assemblies and Manifestations which envisaged the possibility of non-acceptance of the prior warning regarding the holding of assembly by

² Paragraph 6, Decision of Constitutional Court of Georgia, November 5, 2002: <https://www.constcourt.ge/ka/judicial-acts?legal=241> (decision available only in Georgian)

³ Paragraph 6, Decision of Constitutional Court of Georgia, November 5, 2002: <https://www.constcourt.ge/ka/judicial-acts?legal=241> (decision available only in Georgian)

the local government body was found to be unconstitutional and it was subsequently repealed.

❖ Amendments in 2009

Number of amendments were passed to the Law of Georgia on Assemblies and Manifestations on July 17, 2009⁴. According to these amendments, the list of governmental buildings increased within the radius of twenty meters of which holding assemblies and manifestations became prohibited. The list included **buildings of all government institutions and local government bodies, Parliament of Georgia, Presidential Administration, Constitutional Court, Supreme Court, common courts, Office of Prosecutor, police, penitentiary establishments, law enforcement bodies, military units and points, railway stations, airports, ports, hospitals, diplomatic entities, organizations with special regime of labor security or having armed guards**. The new amendments also prohibited blocking of entrances of any building⁵.

The above described provision was assessed to be excessive by the European Commission for Democracy through Law of Council of Europe (Venice Commission). In the comments given in October 2009, the Venice Commission stated in relation to the ban of assemblies and manifestations in twenty-meter radius of governmental buildings: *“given the impossibility of having regard to the specific circumstances of each particular case, the incorporation of such blanket provisions in legislation (and their application) may be found to be disproportionate unless **a pressing social need can be demonstrated**”*. Referring to the case law of ECtHR, the Venice Commission stated that the text of the European Convention on Human Rights provided sufficient basis for deciding upon restrictions on assemblies, including as far as the location of holding an assembly is concerned, *“on a case by case basis, pending on the specific circumstances”*⁶. Venice Commission recommended to the Georgian authorities to apply paragraph 2 of Article 11 of European Convention on Human Rights (ECHR) when assessing a certain individual case and to introduce a provision in the law which would reflect the content of paragraph 2 of Article 11 of ECHR⁷.

According to paragraph 2 of Article 11 of ECHR, no restrictions shall be placed on the exercise of right to peaceful assembly and manifestation other than such **“as are**

⁴ Amendments passed to the Georgian Law on Assemblies and Manifestations on July 17, 2009: <https://matsne.gov.ge/ka/document/view/89572?publication=0> (link available only in Georgian)

⁵ *ibid*

⁶ European Commission for Democracy through Law (Venice Commission), Council of Europe – Comments on the Law on Assemblies and Manifestations, October 1, 2009: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)153-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)153-e)

⁷ *ibid*

prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State”⁸.

❖ **Draft Amendments in 2010**

On 1 March 2010, the Georgian authorities submitted to the Venice Commission a set of draft amendments to the Law of Georgia on Assemblies and Manifestations for their assessment. The draft amendments, *inter alia*:

- Introduced a general provision according to which *“restrictions of the right to freedom of assembly must pursue one of the legitimate aims listed in Article 24 § 4 of the Georgian Constitution”*. This provision relates to the freedom of expression. It lists the legitimate aims for restricting the exercise of that fundamental right as follows: ***“ensuring state security, territorial integrity or public safety, for preventing of crime, for the protection of the rights and dignity of others, for prevention of the disclosure of information acknowledged as confidential or for ensuring the independence and impartiality of justice”***;
- Provided a definition of proportionality of a restriction as follows: *“restriction in line with the values protected by Article 24 § 4 of the Constitution of Georgia, if it is the most effective and the least restrictive for the achievement of the aim. Application of stricter norms shall take place only when it is otherwise impossible to achieve the values protected by Article 24 § 4 of the Constitution”*;
- Deleted the blanket restriction on holding demonstrations 20 meters from the entrance of the Parliament and the Presidential Administration;
- introduced a rule that *“State agency, where an assemblage or a manifestation is held may limit the distance of an assemblage or a manifestation, but not exceeding the 20 meter limit from the entrance of the building”⁹.*

The Venice Commission welcomed the efforts made by the Georgian authorities to bring the law into alignment with ECHR requirements. However, it found it problematic

⁸ Paragraph 2, Article 11 of European Convention on Human Rights:
https://www.echr.coe.int/documents/convention_eng.pdf

⁹ European Commission for Democracy through Law (Venice Commission), Council of Europe - Draft Interim Opinion on the Draft Amendments to the Law on Assemblies and Manifestations of Georgia, March 8, 2010:
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2010\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)025-e)

that the draft amendments envisaged restriction of right to peaceful assembly and manifestation under the grounds which were not provided for in paragraph 2 of Article 11 of ECHR¹⁰. These included power to restrict exercise of the right ***"to avoid the revelation of information acknowledged confidential and to guarantee the independence and impartiality of justice"***¹¹.

The Venice Commission positively assessed the lifting of blanket prohibition on holding assemblies within 20 meters from the entrances of number of state buildings which were often an important site for demonstrations of a political nature. However, it criticized that not all blanket restrictions were lifted under the new draft amendments. They were to be maintained 20 meters around the entrance to the Constitutional Court, the Supreme Court, all ordinary courts, the Prosecutor's office, the police (all police stations), facilities of imprisonment and deprivation of liberty and law enforcement bodies; railways, airports and ports.

In its October 1, 2009 opinion, the Venice Commission also assessed the provision of the Law of Georgia on Assemblies and Manifestations according to which *"In organizing or holding an assembly or manifestation, it is prohibited to call for subversion or violent change of the constitutional order of Georgia, infringement of independence or violation of the territorial integrity of the country, also to make calls which constitute propaganda of war and violence and trigger a national, ethnic, religious or social confrontation"*. The Venice Commission referred to the 2008 OSCE/ODIHR – Venice Commission Guidelines according to which calls for the imminent and violent overthrow of the constitutional order may provide a sufficient ground for restricting an event. However, an assembly where non-violent change of the constitutional order was advocated, deserved protection. The proportionality condition for stopping such an assembly was met when the *"violent overthrow of the constitutional order called by the assembly participants was also "imminent"*¹².

The 2010 draft amendments to the Law of Georgia on Assembly and Manifestation proposed amended version of the above provision, according to which: *"In organizing or holding an assembly or manifestation, it is prohibited to make calls for subversion or*

¹⁰ European Commission for Democracy through Law (Venice Commission), Council of Europe - Draft Interim Opinion on the Draft Amendments to the Law on Assemblies and Manifestations of Georgia, March 8, 2010: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2010\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)025-e)

¹¹ European Commission for Democracy through Law (Venice Commission), Council of Europe - Draft Interim Opinion on the Draft Amendments to the Law on Assemblies and Manifestations of Georgia, March 8, 2010: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2010\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)025-e)

¹² European Commission for Democracy through Law (Venice Commission), Council of Europe – Comments on the Law on Assemblies and Manifestations, October 1, 2009: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)153-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)153-e)

*violent change of the constitutional order of Georgia, infringement of independence or violation of the territorial integrity of the country, or to make calls which constitute propaganda of war and violence and trigger a national, ethnic, religious or social confrontation and which create **clear, direct and substantial danger of such acts***¹³.

The Venice Commission noted in its March 2010 Interim Opinion that the above draft amendment took into account the recommendations made by the rapporteurs.

The Constitutional Court of Georgia, *inter alia*, evaluated the constitutionality of the above described provision in the decision delivered on April 18, 2011. The Constitutional Court of Georgia clarified that the above described provision prohibited the calls which created real danger of committing the underlined acts¹⁴.

The Constitutional Court of Georgia clarified that the impugned norm prohibited **the calls to a violent and illegal act and not the changes which may come as a result of peaceful assemblies**. When defining the meaning of the “*subversion or violent change of the constitutional order of Georgia*”, the Court stated:

*“Subversion of the constitutional order is always related to a violent act. Subversion is directed to the destruction of the existing order by methods which are contrary to the Constitution and illegal. Therefore, it includes the element of violence. As for the “violent change”, it also implies the replacing of the existing system with an alternative one*¹⁵. (...)

However, the “subversion” of the government should not be equated with the changes which may come as a result of peaceful assemblies and manifestations. The citizens have a right guaranteed by the Constitution to assemble and express their will and attitude towards the government. This may have an impact on the ongoing political or public processes, cause the resignation of the government or its member, change of political order or form of government. It is substantially incorrect to equate such process, characterizing the democratic society, to the “subversion of government”¹⁶”.

The Constitutional Court of Georgia, *inter alia*, assessed the constitutionality of the 2009 amendments to the Law on Assemblies and Manifestations in the decision delivered

¹³ European Commission for Democracy through Law (Venice Commission), Council of Europe - Draft Interim Opinion on the Draft Amendments to the Law on Assemblies and Manifestations of Georgia, March 8, 2010: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2010\)025-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)025-e)

¹⁴ Decision of the Constitutional Court of Georgia, April 18, 2011: <https://www.constcourt.ge/ka/judicial-acts?legal=401> (link available only in Georgian)

¹⁵ Paragraph 89, Decision of the Constitutional Court of Georgia, April 18, 2011: <https://www.constcourt.ge/ka/judicial-acts?legal=401> (link available only in Georgian)

¹⁶ Paragraph 91, Decision of the Constitutional Court of Georgia, April 18, 2011: <https://www.constcourt.ge/ka/judicial-acts?legal=401> (link available only in Georgian)

on April 18, 2011. According to the decision of the Constitutional Court of Georgia, right to peaceful assembly and manifestation implied freedom to choose concrete location of assembly. This right could be restricted only in case of existence of legitimate aim and use of proportionate means of intervention. The list of institutions within the radius of twenty meters of which the assemblies and manifestations were prohibited fulfilled significant state or public functions and their effective functioning was vitally important. **However, the constitutionality of territorial restriction of assemblies and manifestations must be decided according to the concrete situation, location of the institution, its functions and dangers caused by holding assembly and manifestation in its vicinity. Such restrictions may be justified in case of certain institutions, considering their competence and specificity of their functions, but may be excessive in case of others.** The Constitutional Court found it problematic that despite the difference of the enlisted institutions, the provision in question envisaged identical restrictions towards all of them¹⁷.

The Constitutional Court shared the position of the plaintiffs according to which considering the landscape of the cities and the populated area and the location of the administrative organs and institutions, under new restrictions it would be practically impossible to realize right to peaceful assembly and manifestation in certain cases. Some institutions are so closely located that the twenty-meter radiuses from their entrances may be crossing each other. The law also prohibits occupying of roadway unless the number of participants requires so. Thus, under the new restrictions, the possible public space where the assemblies could be held were significantly decreased and in certain cases – totally inexistent¹⁸. Therefore, the Constitutional Court of Georgia decided that the impugned provision restricted right to assembly and manifestation more than it was necessary for achieving the legitimate aim. The Constitutional Court of Georgia found the above described provision unconstitutional and it was subsequently repealed.

The above described opinion of the Constitutional Court of Georgia is similar to that of the Venice Commission which also found that the blanket prohibition on holding of assembly in twenty-meter radius from the entrances of the state buildings was excessive and it recommended to decide upon the restriction in terms of the location of assembly on a case-by-case basis, taking into account the specific circumstances of a particular case.

In its 2011 decision, the Constitutional Court of Georgia also assessed the constitutionality of the provision of the Code of Administrative Offenses of Georgia

¹⁷ Paragraph 56, Decision of the Constitutional Court of Georgia, April 18, 2011: <https://www.constcourt.ge/ka/judicial-acts?legal=401> (link available only in Georgian)

¹⁸ Paragraph 58, Decision of the Constitutional Court of Georgia, April 18, 2011: <https://www.constcourt.ge/ka/judicial-acts?legal=401> (link available only in Georgian)

according to which holding of assemblies and manifestations in twenty-meter radius from the buildings of the common courts of Georgia constituted the administrative offense. Similar to the ban of assemblies and manifestations in twenty-meter radius from the governmental buildings, in this case as well the Court considered that the impugned norm served legitimate aim – that of ensuring unhindered work of the judiciary, its independence and impartiality and protecting it from pressure. However, the Court found that the restriction set by the impugned provision was disproportionately strict means for achieving the legitimate aim¹⁹.

The Court explained that there may be assemblies and manifestations held in the vicinity of the Court buildings which pose no danger to the work of the court, for instance, silent actions or/and assemblies which include small number of participants. In this connection, *“the right to express your own opinion in the vicinity of the Court building must be guaranteed, except for the instances when the realization of this right hinders the work of the Court. The restriction of this right may also be justified by the security requirements of the ongoing proceedings in the court”*²⁰.

The Court noted that the territorial restriction which excludes the possibility of the realization of right to peaceful assembly and manifestation even in case when it does not create danger for the public order or for the rights of others, is not justified: *“It is impossible to preliminary determine as to what distance would serve the legitimate aim. At different times, considering the nature of the assembly and manifestation, the number of participants and other factors, this distance may be different. The assembly and manifestation may be restricted if it substantially hinders the judicial process, hinders the work of the court (or other institution), whether or not it is held within the radius of twenty meters”*²¹. Thus, the provision of the Code of Administrative Offenses of Georgia according to which the holding of assemblies and manifestations in twenty-meter radius from the buildings of the common courts of Georgia constituted the administrative offense was found to be unconstitutional as well and it was subsequently repealed.

❖ **Amendments in 2011**

In July 2011, number of amendments were passed to the Law of Georgia on Assemblies and Manifestation. New amendments, *inter alia*, laid out the requirements that need to be met when restricting right to peaceful assembly and manifestation.

¹⁹ Paragraph 60, Decision of the Constitutional Court of Georgia, April 18, 2011: <https://www.constcourt.ge/ka/judicial-acts?legal=401> (link available only in Georgian)

²⁰ Paragraph 60, Decision of the Constitutional Court of Georgia, April 18, 2011: <https://www.constcourt.ge/ka/judicial-acts?legal=401> (link available only in Georgian)

²¹ Paragraph 61, Decision of the Constitutional Court of Georgia, April 18, 2011: <https://www.constcourt.ge/ka/judicial-acts?legal=401> (link available only in Georgian)

According to the new provision, the restriction of rights envisaged by the Law on Assemblies and Manifestations must meet following criteria:

- a) Directed towards the fulfillment of the values envisaged by paragraph 4 of Article 24 of the Constitution of Georgia (Paragraph 5 of Article 17 of the current version of the Constitution) – *“ensuring state security, territorial integrity or public safety, for preventing of crime, for the protection of the rights and dignity of others, for prevention of the disclosure of information acknowledged as confidential or for ensuring the independence and impartiality of justice”*;
- b) Necessary in a democratic society
- c) Non-discriminative
- d) Proportionally restrictive
- e) The value protected by the restriction must exceed the harm caused by it.

New amendments defined the principle of proportionality as it follows: *“the proportionality of restriction is a relevant restriction of the values envisaged by paragraph 4 of Article 24 of the Constitution which is the most effective and the least restrictive means for the achievement of the aim. Application of stricter norms shall take place only when it is otherwise impossible to achieve the values protected by paragraph 4 of Article 24 of the Constitution”*²².

The new amendments reduced the list of the state buildings and sites in the twenty-meter radius of which it was prohibited to hold assemblies and manifestations. According to the new amendments, it became prohibited to hold assemblies and manifestations in the following buildings and in the territory of twenty-meter radius from their entrances: office of prosecutor, police, penitentiary and detention facilities, law enforcements organs, railway stations, airports and ports. The amendments absolutely prohibited blocking of entrances of any building, as well as auto highways and railways during the process of assemblies and manifestations²³.

According to the 2011 amendments, the administrative organ, in the vicinity of which the assembly or manifestation is taking place, is authorized to set restriction concerning the holding of assembly in the territory away from its building, in order to prevent the blocking of the building or hindrance to its work. The restriction may concern the territory no longer than twenty meters. This decision must be taken on a case-by-case basis, taking

²² Amendments Passed to Law of Georgia on Assemblies and Manifestations on July 1, 2011: <https://matsne.gov.ge/ka/document/view/1405292?publication=0>

²³ Amendments Passed to Law of Georgia on Assemblies and Manifestations on July 1, 2011: <https://matsne.gov.ge/ka/document/view/1405292?publication=0>

into account the existing circumstances and public interests at stake, in such way that the essence of the constitutional right of peaceful assembly and manifestation is not violated²⁴.

According to the 2011 amendments, the court in the vicinity of which the assembly or manifestation is taking place, is authorized to set restriction concerning the holding of assembly in the territory away from the building of the court, in order to prevent the blocking of the building, hindrance to its work and ensuring of independence and impartiality of the judiciary. The restriction may concern the territory no longer than twenty meters. This decision must be taken on a case-by-case basis, taking into account the existing circumstance and public interest at stake, in such way that the essence of the constitutional right of peaceful assembly and manifestation is not violated²⁵.

The amendments passed in 2011 specified as to what kind of calls would be prohibited at the assemblies and manifestations. The *“calls for subversion or violent change of the constitutional order of Georgia, infringement of independence or violation of the territorial integrity of the country, calls which constitute propaganda of war and violence and trigger a national, ethnic, religious or social confrontation”* became prohibited if they created *“clear, direct and substantial danger”* of commission of acts mentioned in the calls²⁶.

The amendments made to the Law of Georgia on Assemblies and Manifestations in 2011 provided certain improvements of the law, however, significant gaps still remain in the legislation as well as practice which hinder effective realization of right to peaceful assembly and manifestation.

The introduction of the concrete criteria for the restriction of right to peaceful assembly and manifestation is an important step forward. As acknowledged by the Venice Commission in its final opinion on the 2011 amendments, amendments introduced vital principles of legality, necessity and proportionality when restricting the right to peaceful assembly and manifestation²⁷.

However, it is problematic that the grounds for the restriction of right to peaceful assembly and manifestation are wider than those envisaged by the European Convention on Human Rights. The 2011 amendments maintained the aims of *“avoidance of the revelation of confidential information”* and *“ensuring the independence and impartiality of*

²⁴ *ibid*

²⁵ Amendments Passed to Law of Georgia on Assemblies and Manifestations on July 1, 2011: <https://matsne.gov.ge/ka/document/view/1405292?publication=0>

²⁶ *ibid*

²⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2011\)092-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2011)092-e)

judiciary” as legitimate grounds for the restriction of right to peaceful assembly and manifestation. As Venice Commission deliberated in its final opinion given on 2011 amendments, the above described grounds, which are not provided in Article 11 (2) of ECHR, may be permissible for the restriction of right to peaceful assemblies and manifestations in certain circumstances, but not automatically²⁸. Venice Commission recommended to further amend the law to bring it into compliance with the strictly prescribed and exhaustive list of possible limitations set out in Article 11 (2) of ECHR. This recommendation has not been fulfilled by the Georgian authorities²⁹. The above provision has not been modified.

Another problematic aspect of 2011 amendments is the absolute prohibition of blocking of entrances of any building. This provision still remains the same in the law. This blanket prohibition is excessive, considering that it excludes the possibility of making assessment on a case-by-case basis and allowing state authorities to exhibit the due tolerance when the blocking poses no substantial threats to the public interests. As the European Court of Human Rights stipulated in the judgement on the case of *Olya Ataman v. Turkey*, **“where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance”**³⁰. What can be the *“relevant level of tolerance”* must be decided based on the concrete circumstances of the case³¹. It is impossible to make this determination *“in abstracto”*³².

It is also problematic that the 2011 amendments maintained blanket restrictions on holding assemblies in twenty meters around the entrances to the office of prosecutor, police stations, facilities of imprisonment and deprivation of liberty³³ and law-

²⁸ European Commission for Democracy through Law, Final Opinion on Amendments to the Law on Assemblies and Manifestations of Georgia, October 17, 2011:

<https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282011%29029-e>

²⁹ European Commission for Democracy through Law, Final Opinion on Amendments to the Law on Assemblies and Manifestations of Georgia, October 17, 2011:

<https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282011%29029-e>

³⁰ Judgment on the Case of *Olya Ataman v. Turkey*, December 5, 2006:

<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-78330%22%5D%7D>

³¹ Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, pages 17-18:

<https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

³² Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, pages 17-18:

<https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

³³ According to the amendments passed to the Law of Georgia on Assemblies and Manifestations on May 1, 2015, the term “facilities of imprisonment and deprivation of liberty” was replaced by the term “penitentiary establishments”:

enforcement bodies. The Venice Commission criticized this provision, stating that the need to decide on a case-by-case basis must be provided also in relation to these buildings, as it would have allowed the Georgian authorities to ensure a balance between the need for these institutions to function safely and the individual right to freedom of assembly³⁴.

ADMINISTRATION OF ASSEMBLIES

❖ Notification Requirement

According to the Law of Georgia on Assemblies and Manifestations, if the assembly or manifestation is going to be held in the vehicle transportation sector or if it will hinder the movement of transport, it is necessary to submit a prior warning/notification to the executive body of the municipality. For other kinds of assemblies, there is no obligation of prior warning/notification.

The warning must be made no later than 5 days before the holding of the assembly. The warning must include information about the form of the assembly or manifestation, its goal, the site of the assembly, the route in case of procession, the starting and ending time, the presumable number of the participants, the name of the initiator of the assembly, the name of the responsible persons, their place of residence (address), the phone numbers and date and time of submission of the warning.

According to the law, the executive body of the municipality is authorized to discuss the issue of changing place and time of the assembly/manifestation with the persons responsible for it. Such discussion must be held in three days after submitting the warning. The executive body of the municipality is authorized to make recommendation regarding the changing of time and date of the assembly if it creates real threat for the normal functioning of the companies, institutions and organizations or if there is another action planned in the same place and time (regarding which the warning was made earlier to the executive body of the municipality). This recommendation must be issued in written form in three days after submitting the warning.

❖ Restriction of Time and Place

The executive body of the municipality is authorized to restrict the place and time of the assembly in order to ensure the balance between the freedom of assembly and rights

http://sps.gov.ge/images/files/pdf/text_14206258940.pdf

³⁴ European Commission for Democracy through Law, Final Opinion on Amendments to the Law on Assemblies and Manifestations of Georgia, October 17, 2011:

<https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282011%29029-e>

of those who live and work in the areas where the assembly or manifestation is taking place. The restriction must serve legitimate aim, it must be necessary in a democratic society, non-discriminative and proportionate for the legitimate aim.

❖ **Banning Assemblies**

The law authorizes the executive body of the municipality not to allow the holding of assembly or manifestation if there is a clear evidence verified by the police according to which the holding of assembly or manifestation poses direct threat to the constitutional order and life and health of the citizens. The fact that it is the executive body of municipality entitled to make a concluding decision regarding banning of assembly due to underlined grounds and not the law enforcement authority is problematic. The latter is the most suited institution to properly assess the threats that the assembly brings to the life and health of the citizens or to the constitutional order. It is also the most relevant institution which holds necessary knowledge and resources as to the mitigation of these risks. Therefore, it is obscure as to why is it the executive body entitled to make concluding decision on this matter and not the law enforcement authority.

It should be noted that the decision of the executive body of municipality may be appealed to the court which should make judgement on the issue in two working days.

❖ **Termination of Assemblies**

Another problematic aspect in terms of administration of assemblies is the fact that according to the Law on Assemblies and Manifestations, it is the representative of the executive body who makes decision regarding termination of assembly when following requirements are violated massively: calls are made for overthrow or change of the constitutional order of Georgia by force, for the encroachment of independence and territorial integrity of the country, as well as calls which propagate war or violence and incite national, regional, religious or social hostility and pose obvious, direct and substantial threat of underlined actions; participants of an assembly are carrying firearms, explosives, flammable and radioactive substances or cold weapons; participants have tear and nerve gases and/or toxic substances. The representative of the executive body of municipality shall make request to the organizers/participants of the assembly to immediately terminate assembly in these instances. If the assembly or demonstration is not terminated, law enforcement bodies shall take measures under international law and the legislation of Georgia to terminate assembly or demonstration and disperse its participants.

It is the law enforcement body which has necessary knowledge and resources to assess whether or not above described requirements are violated massively by the

assembly participants. Therefore, the law enforcement authorities should be entitled to make decision regarding the termination of assembly in such instances and not the executive body of the municipality³⁵. It should be noted that in practice, it is the law enforcement authorities who make decisions regarding these matters.

❖ **Appealing Restriction**

The Law on Assemblies and Manifestations specifically regulates the right to appeal the decision regarding the banning of the assembly/manifestation to the court and determines as to how long the court can take for reaching decision on this issue. However, there is no similar provision in regards with the **decision of the executive body of the municipality on the restriction of time and place of assembly/manifestation. It is essential to specifically regulate the right to appeal the decision of restriction of the time and place of the assembly to the court and provide prompt time frame for the judicial determination on this matter, considering the need of speedy resolution of such issues.** If there is no such prompt time frame provided, then the court will hear the case under the general rules of administrative law which do not ensure speedy resolution of the matter at stake.

❖ **Spontaneous Assemblies**

There is significant flaw in Georgian legislation when it comes to the regulation of spontaneous assemblies which block the vehicle transportation sector or hinder the movement of transport. According to the Law on Assemblies and Manifestations, when the assemblies block the vehicle transportation sector or hinder the movement of transport, it is necessary to submit prior written warning/notification to the relevant authorities no later than 5 days before holding of assembly. This rule does not envisage any exception which is problematic because in cases of spontaneous assemblies which are the immediate reaction to the sudden developments, it is obviously impossible to submit such prior warning/notification to the relevant authorities. This flaw has been criticized by the Public Defender of Georgia numerous times. The Public Defender has indicated that such legislative flaw created vagueness regarding the legal possibility of holding spontaneous assemblies which block the vehicle transportation sector or hinder the movement of transport³⁶.

³⁵ Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, page 37: <https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

³⁶ Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, page 9: <https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

The Venice Commission has underlined that notifications cannot be required for spontaneous assemblies. It has recommended Georgian authorities to make 5-day time limit within which a notification has to be submitted, more flexible³⁷.

Human Rights Center monitored 15 assemblies throughout the September 2020 – July 2021 in the capital Tbilisi. In number of cases, according to the observation of the monitors of Human Rights Center, the police enabled the spontaneous actions where the roadways were naturally blocked due to the high number of people. However, there are other cases which demonstrate inconsistent approach of police when it comes to the issue of regulation of the spontaneous assemblies. For instance, police reaction to the spontaneous assembly held in the surrounding territory of the night club Basiani on May 12, 2018, protesting the investigative activities carried out in the club. The law enforcers were not allowing the peaceful protesters to occupy the vehicle transportation sector although their number required so. Some of the protesters have been detained in relation to this incident.

Most respondents interviewed within the frameworks of the current research who have held assemblies and manifestations in recent years stated that they do not submit a prior warning/notification regarding the holding of assembly as a rule. Some stated that the law did not require so. Some stated that it would have no meaning. According to the information provided by most of the respondents, they address the executive body of the municipality when they need certain infrastructural assistance, such as with lighting, cleaning service or set-up of toilets. Similarly, they address the law enforcement authorities mostly in cases when their assistance is needed, such as blocking vehicle transport sector in order to enable large number of participants to freely move during manifestations.

As the interviews held within the frameworks of the current research have demonstrated, there is a need of clarity and information as to who the organizers should address when they require certain assistance. The Law on Assemblies and Manifestations does not touch upon the issue of providing assistance to the assembly organizers, except for the cases of blocking transport movement. As for other issues, such as infrastructural support during assemblies, there is no public document which would idea to the organizers as to what kind of assistance they can request and from which governmental bodies.

³⁷ European Commission for Democracy through Law (Venice Commission), Council of Europe – Comments on the Law on Assemblies and Manifestations, October 1, 2009:
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)153-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)153-e)

❖ Access to Information Concerning Administration of Assemblies

Human Rights Center applied to the City Halls of the Tbilisi Municipality and Kutaisi Municipality and requested public information regarding issues related to the administration of assemblies and manifestations. The requested information concerned the period since January 1, 2021 up until July 15, 2021. Following information was requested from the executive bodies of the municipalities, *inter alia*:

- The number, type and form of assemblies held within the territories of respective municipalities
- The number of prior warning/notification made to the municipalities regarding the holding of the assemblies
- The type and form of the assemblies regarding which the prior warning/notification was made to the executive bodies of the municipalities
- The number and type of spontaneous assemblies
- The number of instances when the assemblies occupied the vehicle transportation sector or hindered the movement of transport and whether there was prior warning made regarding such assemblies
- The number of recommendations made by the executive body of municipality regarding the changing time and place of the assemblies and grounds for such recommendations
- The number of decisions regarding the restriction of time and place of the assemblies
- The number of decisions regarding the banning of assemblies and grounds for such decisions

The City Hall of Tbilisi Municipality did not provide response to the official request of the Human Rights Center.

The Kutaisi City Hall provided the response according to which there was no prior warning/notification made to the City Hall regarding the holding of the assembly or manifestation during the requested period. Therefore, as the City Hall stated they have not issued recommendations regarding the issues indicated in the letter. Other information requested by Human Rights Center, such as the number and type of protest actions held in the territory of the municipality, as well as information about the spontaneous actions was not provided.

The executive bodies of municipalities should follow and process information about the assemblies and manifestations held within the territory of the municipality, even when there is no prior warning/notification made about the assembly. The executive bodies of the municipalities are entitled to make decisions regarding the restriction of time and place and even banning of assemblies according to the Law of Georgia on Assemblies and Manifestations. Information about the past assemblies can be crucial for making such decisions.

POLICING ASSEMBLIES

According to the Law of Georgia on Police, the police is responsible to ensure the security of the participants of the assemblies, manifestations and other mass events.

The Law of Georgia on Police provides list of general police measures (crime preventive and response measures) which may be used for ensuring public safety, preventing the violation of legal order and reacting to the facts of offenses. These measures include, *inter alia*: questioning a person, identification of a person, frisk and examination, special inspection, special police control, request to leave a territory and prohibition of entry onto a certain territory, restriction of movement of a person or a vehicle and restriction of possession of an item and operative-investigative measures.

The Law on Police also provides the list of coercive measures, such as special means and physical force, which may be used for fulfilling police functions. Police officer may use fit and proportionate coercive measures only in case of necessity and to the extent that shall ensure achievement of legitimate objectives. Police officer may use passive and active special means in order to ensure public security and legal order.

Passive special means shall ensure protection of life and health of a police officer and/or of a person protected by police officer. Passive special means include, *inter alia*: bulletproof vests, helmets, riot shields, gas masks and other special body protective equipment.

Active special means disable a person to resist a police officer for a short period of time and/or assist a police officer to perform police functions. Active special means include, *inter alia*: batons, tear gas, pepper spray, sonic weapons, non-lethal weapons (including non-lethal shells), flash-bang device of psychological effect to temporarily disorient senses, device to stop a vehicle by force, water cannons, armored car and other special transportation means.

The above described general police measures and special means may be used at assemblies and manifestations, under the relevant circumstances envisaged by law.

Police actively uses general police measures, such as request to leave a territory or prohibition of entry onto a certain territory, restriction of movement of a person or a vehicle and restriction of possession of an item at assemblies. The request to leave a territory and prohibition of entry onto a certain territory is one of the main measures which is often used at simultaneous actions in order to prevent physical confrontation among the opposed parties, such as the assemblies of LGBTQ+ community and counter actions, as well as the assemblies of political nature³⁸.

As for the special means, the Law on Police stipulates the circumstances under which concrete special means may be used. The circumstances provided as the basis for using certain special means, such as non-lethal shells (e.g. rubber bullets) and water cannons are too broad, falling short of international human rights standards, such as UN Human Rights Guidance on Less Lethal Weapons in Law Enforcement.

According to the Law of Georgia on Police, *“tear gas, pepper spray, sonic weapons and non-lethal weapons (including non-lethal shells) are used to repel an attack on a person, a police officer and/or protected facility, to prevent mass and group violations of legal order, when detaining a person who has committed a crime or an action posing threat to the public at large, or when forcing such person to leave an occupied territory, vehicle or building and construction that the person is using as a shelter”*³⁹. This list of circumstances under which the non-lethal shells may be used are much broader than those envisaged by international human rights standards. According to UN Human Rights Guidance on Less Lethal Weapons in Law Enforcement, kinetic impact projectiles should generally be used only in following circumstances - when addressing ***“an imminent threat of injury to either a law enforcement official or a member of the public”***⁴⁰. According to Amnesty International Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, ***“Kinetic impact projectiles may only be used as a tool to stop individuals engaged in violence against persons. They must not be used as a general tool to disperse a crowd”***⁴¹. The Amnesty International

³⁸ Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, page 38:

<https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

³⁹ Law of Georgia on Police, Article 33 (paragraph C, part 3):

<https://matsne.gov.ge/ka/document/view/2047533?publication=29>

⁴⁰ UN Human Rights Guidance on Less Lethal Weapons in Law Enforcement, Paragraph 7.5.2:

https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

⁴¹ Amnesty International Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, August 2015. Page 157:

Guidelines further endorse: ***“Rubber bullets shall only be used for defensive purposes, when there is threat to the physical integrity of members of the security force, protesters or third parties. In no circumstances they shall be used as a means to disperse a demonstration^{42”}***.

Although rubber bullets are considered a less lethal weapon, if used in a certain way or in certain circumstances, they may cause death or serious bodily injury, such as permanent disability and blindness. Therefore, they can be used only in **specific circumstances and under specific rules⁴³** according to the international human rights standards described above.

On June 20-21, 2019, at the anti-occupation assembly⁴⁴ held in front of the Parliament Building, the law enforcement officers intensively used rubber bullets against the peaceful protesters who were not taking part in the violent actions and were not posing threats to anyone⁴⁵. As a result of unjustified use of rubber bullets, tens of people received grave bodily injuries⁴⁶. Such manner of use of rubber bullets gave impression that the law enforcers were using them as a general tool to disperse protesters that is strictly unacceptable by international human rights law.

N1002 Order of Minister of Internal Affairs of Georgia regarding the Guidelines on Conduct of Employees of Ministry of Internal Affairs of Georgia during Assemblies and Manifestations provides more detailed regulation of use of special means, including less lethal weapons. The law enforcers used rubber bullets at June 20-21 protest action in violation of the specific regulations established by N1002 Order of Minister of Internal Affairs of Georgia. According to N1002 Order, *“A law enforcement officer shall be prohibited to use non-lethal weapons and non-lethal shells against a person at twenty-meter distance, as well as in the areas of vital organs (head, neck, abdomen, genitals), except for the cases where any delay may cause encroachment on the health and life of a person or a group of persons or any other serious consequences⁴⁷*. At June 20-21 rally,

https://www.amnestyusa.org/files/amnesty_international_guidelines_on_use_of_force-2.pdf

⁴² *ibid*

⁴³ Amnesty International Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, August 2015. Page 157:

https://www.amnestyusa.org/files/amnesty_international_guidelines_on_use_of_force-2.pdf

⁴⁴ On June 20, in the opening of a session of the Inter-Parliamentary Assembly on Orthodoxy in the Parliament of Georgia, the member of Russian Duma, Sergei Gavrilov seized the chair of the Parliament and commenced the session in Russian language. Thousands of individuals gathered in front of the Parliament Building to protest against this act and occupation of Georgia by the Russian Federation.

⁴⁵ See in detail Chapter “June 20-21 Anti-Occupation Protest Rally” of current report

⁴⁶ Two Years from the Events of June 20-21: A Statement by Human Rights Center:

<http://www.hrc.ge/232/eng/>

⁴⁷ Annex to Order N1002 of December 30, 2015 of Minister of Internal Affairs

there were frequent instances when law enforcers fired rubber bullets against persons closer than twenty-meter distance, in the vital organs, although the targeted persons posed no threat to the health and life of anyone.

Although it provides detailed regulation of the use of special means, N1002 Order of Minister of Internal Affairs of Georgia has a status of **individual legal act**⁴⁸ - **it is not a public document and is not part of the legislation. The detailed regulation of the use of special means must be provided in the act which has a status of a normative act and therefore is part of the legislation. According to the decision of the European Court of Human Rights in the case of Kilici v. Turkey, the legislative provisions which determine the circumstances for the usage of rubber bullets by the law enforcers are not sufficient if there are no specific regulations, providing “relevant level of protection of physical integrity of individuals”⁴⁹**. Such level of protection cannot be achieved by the document the content of which is not accessible for the wider society.

The circumstances under which the water cannons may be used according to the Law of Georgia on Police are too broad as well. The water cannons may be used *“to suppress mass violations of legal order, to repel a group attack on the state and/or public facilities, to stop a vehicle by force if the driver does not obey a police officer’s demand and to stop and detain an armed criminal”*⁵⁰. According to UN Human Rights Guidance on Less Lethal Weapons in Law Enforcement, in general, water cannon should only be used in situations of serious public disorder where there is a *“significant likelihood of loss of life, serious injury or the widespread destruction of property”*⁵¹. The provision of Law on Police gives possibility to use water cannons beyond these instances, in non-violent situations.

The law enforcers have applied water cannons against the peaceful protesters in number of instances in 2019. On November 18 and November 26, the law enforcers dispersed peaceful protesters who had blocked the entrance of Parliament Building for several hours with water cannons⁵². Several people were injured as a result of excessive use of water cannons in these incidents.

⁴⁸ Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, page 56:
<https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

⁴⁹ Judgment on the Case of Kilici v. Turkey, November 27, 2018, Paragraph 35:
[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-187829%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187829%22]})

⁵⁰ Law of Georgia on Police, Article 33 (paragraph G, part 3):
<https://matsne.gov.ge/ka/document/view/2047533?publication=29>

⁵¹ UN Human Rights Guidance on Less Lethal Weapons in Law Enforcement, Paragraph 7.7.2:
https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

⁵² See in detail Chapter “Blocking Entrances of Buildings” of current report.

Georgian legislation does not provide clear rules regarding the issue of giving warning to participants of assembly before the usage of special means. According to paragraph 3 of Article 31 of the Law on Police, before the usage of special means, the policeman is obliged to warn the targeted person and provide reasonable time for him/her to obey the lawful request of the policeman, except for the cases when the delay may cause the deprivation of life or grave damage of health of policeman or/and any other person, or when giving warning is unjustified or impossible in the provided circumstances. This provision does not specify that the law enforcers should provide information about the **concrete type of the special means to be used when giving warning**. It is essentially important to oblige the law enforcers to provide information **as to the type of the special means to be used when giving warning to the assembly participants**, considering the fact that certain type of special means, such as rubber bullets, may cause serious injuries. Therefore, assembly participants should be adequately informed and warned, in order to decide whether or not to disassemble willfully.

It should be noted that some other legal acts also touch upon the issue of giving warning to the assembly participants before the usage of the special means, such as N1006 Order of Minister of Internal Affairs of Georgia regarding the Rule of Keeping, Usage and Carrying of Special Means Existing in the Police Armament⁵³, issued on December 31, 2013, and N1002 Order of Minister of Internal Affairs of Georgia regarding the Guidelines on Conduct of Employees of Ministry of Internal Affairs of Georgia during Assemblies and Manifestations, issued on December 30, 2015. However, none of these acts specify the obligation of law enforcers to provide information **as to the type of the special means to be used when giving the warning**⁵⁴.

There has been number of instances in recent years when the law enforcers did not give warning to the participants of the assembly before the usage of special means, although there was no imminent threat of deprivation of life or grave damage of health of the policemen or other persons. On November 8, 2020, the law enforcers used water cannons against the group of protesters gathered in front of the building of Central Election Commission without warning⁵⁵. There was no warning given to the protesters

⁵³ This legal act has a status of normative act and is part of the legislation. However, It largely repeats the provisions of Law of Georgia on Police and does not provide specific regulations regarding the use of special means.

⁵⁴ Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, pages 54-55:
<https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

⁵⁵ See in detail Chapter: “November 8 Assembly in front of Central Election Commission” of current report

before the usage of special means, water cannons, tears gas and rubber bullets at June 20-21 protest action either⁵⁶.

While police frequently applies excessive force towards the protesters who express political dissent towards the government and its policies, such as at June 20-21 anti-occupation protest action protesting the occupation of Georgia by the Russian Federation and loyal policies of Georgian government towards Russia (2019), November 18 and November 26 protests picketing the entrances of Parliament Building protesting the refusal to change the electoral system to that of proportional representation (2019), November 8 assembly held in front of the Central Election Commission protesting the electoral violations (2020), November 14 protest action in the village Zhoneti protesting the construction of Namakhvani Hydroelectric Power Plant in the valley of river Rioni(2020)⁵⁷, **it is reluctant to apply any force against the violent groups who persecute LGBTQI+ community and their allies.**

The LGBTQI+ community and their allies are systematically denied right to peaceful assembly and manifestation in the desired place and time. The law enforcement authorities repeatedly fail to ensure protection of the LGBTQI+ individuals and their allies against the aggressive counter demonstrators. On July 5, the state authorities called on the LGBTQI+ community to cancel upcoming peaceful assembly in the public space, while allowing free march of violent Anti-LGBTQI+ groups at the central Rustaveli Avenue who physically assaulted and injured 53 journalists and camera operators. Despite high risks of violence from the side of the Anti-LGBTQI+ groups, the law enforcement authorities took no preventive measures and deployed critically small number of policemen on the ground who were unable to tackle the widespread violence⁵⁸.

The law enforcement authorities did not deploy sufficient and relevantly equipped police force at July 6 protest action either which was held in solidarity of LGBTQI+ community and injured journalists. Although anti-LGBTQI+ groups were resorting to mass violence for several hours, such as throwing explosives and stones to the direction of the peaceful protesters, breaking through the police cordon and physically assaulting the peaceful protesters and chasing those who left the protest area, special forces with relevant equipment were sent to the protest site only when the protest action was largely over⁵⁹.

⁵⁶ See in detail Chapter: “June 20-21 Anti-Occupation Protest Rally” of Current Report.

⁵⁷ See in detail Chapter: “Protest Actions against Construction of Namakhvani Hydroelectric Power Plant”

⁵⁸ See in detail Chapter: “Right to Peaceful Assembly and Manifestation of LGBTQI+ People and Their Allies”

⁵⁹ See in detail Chapter: “Right to Peaceful Assembly and Manifestation of LGBTQI+ People and Their Allies”

Another problematic tendency observed at the assemblies is the active usage of the administrative arrests against the protesters for minor hooliganism and disobedience to the lawful request of the law enforcement officer⁶⁰. On April 29, the amendments were adopted to the Code of administrative offences, increasing sanctions for the offenses of minor hooliganism and police disobedience. The Code of Administrative Offences of Georgia was adopted in 1984, during the Soviet period and has never gone through a comprehensive reform. The Code includes substantive flaws, such as lack of due process and fair trial guarantees and standard of proof required for holding the person responsible. Instead of developing these guarantees that would have prevented unsubstantiated arrests of the protesters, the state increased the sanctions. The amendments are therefore largely seen to be endangering the freedom of expression and right to peaceful assembly and manifestation.

On the positive note, it should be mentioned that Human Rights Center has observed number of cases when police adequately facilitated the conduct of the assemblies. Particularly, in several instances, the police actively followed the movement of demonstrations and blocked and opened the roadways and transport movement when necessary, in order to enable the free march of the protesters. These cases are described under the chapter “Cases of Facilitation of Movement of Demonstrations” of this report.

Human Rights Center has addressed the Ministry of Internal Affairs and requested public information regarding following issues, *inter alia*: (requested information concerned the period of January 1, 2021 – July 15, 2021 and cities of Tbilisi and Kutaisi):

- How many assemblies were dispersed during the requested period by the law enforcers? What was the ground of dispersal?
- How many times did the police apply special means at the assemblies? What kind of special means was applied at the assembly?
- How many times did the protesters occupy the vehicle transportation sector due to the high number of people? Was there prior warning/notification made to the relevant authorities about such assemblies?
- How many times did the protesters occupy the vehicle transportation sector in such way that it was not required by the number of assembly participants? How did the police respond to such instances?

⁶⁰ Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, page 38:
<https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

- How many times was the assembly banned because it posed threats to the life and health of the citizens? Was this decision appealed to the court? What was the result of the judicial determination?
- How many times was the assembly restricted in order to ensure the balance of the freedom of assembly and rights of those who work and live in the area where the assembly is taking place?
- How many times were the assembly participants arrested? What was the ground of arrest?
 - Number of cases when the law enforcers were found liable criminally or by disciplinary rule in relation to his/her conduct at the assembly
 - The number, type and form of assemblies held during the requested period and number of instances when there was a prior warning/notification made regarding the assembly.

According to the official response of the Ministry of Internal Affairs, the Ministry does not process any above mentioned information *“in requested form”*.

RIGHT TO PEACEFUL ASSEMBLY AND MANIFESTATION OF LGBTQI+ PEOPLE AND THEIR ALLIES

Introduction

The right to peaceful assembly and manifestation is one of the fundamental civic rights. It enables to freely and publicly share critical ideas and generate the necessary public debates over acute social and political issues. Often, the peaceful protest in the form of physical gatherings is the only effective way for the marginalized groups to voice the problems that they are experiencing and advocate for change. As the history of development of modern democratic societies shows, this right has been particularly instrumental for combatting discrimination against the minority groups, such as the LGBTQI+ people.

According to the Law of Georgia on Elimination of All Forms of Discrimination, the rights enshrined in the Georgian legislation must be equally ensured for all physical and legal persons, despite their race, colour of skin, language, sex, age, citizenship, origin, place of birth, residence, financial or social status, religion or faith, national, ethnic or social belonging, profession, family status, state of health, physical disability, sexual orientation, gender identity and expression, political or other opinion or any other feature.

Although the right to peaceful assembly and manifestation is guaranteed for everyone in the law, the picture is different in practice. The quote by one of our respondents, a representative of the LGBTQI+ community interviewed within the frameworks of the current project, well summarizes the state of realization of the right to peaceful assembly for LGBTQI+ individuals in Georgia: ***“Since 2012 up until today we are unable to exercise this right. Every year, we face different kinds of challenges. Since 2012 till 2021, there has not been a single fact when we exercised this right freely and without hindrance”.***

Since 2012, the LGBTQI+ community and their allies have been systematically denied the right to freely assemble in the desired time and location. Year after year, the state authorities fail to provide adequate protection to the LGBTQI+ individuals against the aggressive counter-demonstrators. The right to march in the central areas of the cities in the form of the manifestation has never been made possible due to the lack of effective protection.

On May 17, 2013, the massive group of counter-demonstrators violently dispersed the peaceful assembly held by the LGBTQI+ community and their allies in celebration of International Day against Homophobia and Transphobia, physically assaulting and injuring numerous activists⁶¹. Although the police cordon tried to separate the two actions, the aggressive counter-protestors managed to break through the police cordon and physically assault the peaceful assembly of LGBTQI+ activists. The policemen were not equipped with protective gear and special means which could have prevented the attack to some level⁶². In 2012, the aggressive mob physically stopped the peaceful manifestation of LGBTQI+ activists and their supporters at central Rustaveli Avenue and assaulted a number of activists. The activists had to end their peaceful march as a result⁶³. In both of these cases, there was a prior warning/notification submitted to the City Hall of Tbilisi Municipality, as well as the Ministry of Internal Affairs regarding the holding of the actions⁶⁴.

⁶¹ Magazine *Liberali*, Video Summary of May 17:

<https://www.youtube.com/watch?v=em7vcgEe0cs>

⁶² Annual Report of Public Defender of Georgia – Situation of Human Rights and Freedoms in Georgia, 2013, page 190:

<https://ombudsman.ge/res/docs/2019062409162473497.pdf>

⁶³ Annual Report of Public Defender of Georgia – Situation of Human Rights and Freedoms in Georgia, 2012, pages 279-280;

<https://ombudsman.ge/res/docs/2019062409162473497.pdf>

⁶⁴ *ibid*

Due to the danger of violence and lack of guarantees of protection, it was not possible to hold the actions for celebration of May 17 in 2014, 2016 and 2019. As for 2015, 2017 and 2018, the actions on May 17 were restricted in terms of the location and time. The LGBTQI+ community was unable to hold the march for dignity in the desired location within the frameworks of June 18-23, 2019 pride week either⁶⁵.

In 2014 LGBTQI+ community held the so-called “*shoe protest*” – a protest “*for the invisible and against invisibility*” - on May 18, 2014 in the central part of the city, Pushkin square, where the shoes laid as a form of protest against invisibility of LGBT individuals and on behalf of those rendered invisible⁶⁶.

Events of July 5 and 6 (2021)

LGBTQI+ community was once again denied right to freely assemble in the desired public space on July 5, 2021, in the conclusion of July 1-5 pride week.

During the week of July 1-5, the *union of LGBTQI people and their allies, Tbilisi Pride*, as well as the movement *Shame* and other civic activists organized Pride Week and held various events of celebration. On July 5th, the concluding event – “*March for Dignity*” – was planned to take place in central part of the city. Since the morning of July 5th, the violent homophobic groups started to march on the central *Rustaveli Avenue*, in order to prevent the March for Dignity of LGBTQI+ activists. The homophobic groups were resorting to mass violence, especially targeting the journalists - 53 representatives of various media outlets⁶⁷, including the journalists and camera operators were physically injured while covering the anti-LGBTQ violent protest. According to the monitors of Human Rights Center who were present at Rustaveli avenue and observing the ongoing events, there was critical lack of policemen in the course of the violent march. In numerous instances, the police failed to protect the journalists who were severely beaten by the violent protesters. The aggressive mobs also attacked the offices of organizers of the Pride Week, the union *Tbilisi Pride* and movement *Shame*. There was critical lack of police presence in these instances as well, allowing the violent attack and ransacking of offices of the organizers of Pride Week.

⁶⁵ Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, pages 11-12;

<https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

⁶⁶ <https://17maisitbilisi.wordpress.com/2014/05/18/protest/>

⁶⁷ <https://police.ge/en/shinagan-saqmeta-saministros-informatsia-5-ivliss-politsiis-mier-gamovlenili-kanondarghvevis-faqtebis-da-matze-momkhdari-reagirebis-shesakheb/14763>

Amid the widespread violence, the organizers of the *Pride Week* decided to cancel the March for Dignity, planned to take place at 6:00 pm on July 5.

According to the monitors of Human Rights Center, as a general tendency, the policemen either did not intervene in the attacks against the journalists or tried to take the victims away from the protest area, by police cars. The policemen did not have protective gears or special means of force, such as water cannons. Mostly, there were ordinary policemen present in the area. High ranking law enforcement officials who would be in charge of the management of the protest action were not present. The policemen present at July 5 protest action had no communication with the protest organizers or participants.



Photo: Policemen Observing the Demonstration from Afar

Considering high risks of violence that were to be expected from the homophobic groups, taking into account the previous experiences, it was essential to deploy sufficient police force on the ground, including the policemen equipped with the protective gears and special means. The fact of relevant police equipment in and of itself could have had deterring effect against the widespread violence. It was also essential to have an overall plan as to how to manage the situation in case the violence erupted, involving high ranking law enforcement officials who would supervise the situation, make assessments on the ground and give respective orders.

Another important tendency observed at the July 5 protest action by the monitors of Human Rights Center was the frequent use of hate speech – homophobic speech and terms – by the participants of the action. According to the Law of Georgia on Assemblies and Manifestations, during the organization or course of the assembly, it is prohibited to make calls “*make calls which constitute propaganda of war and violence and trigger a national, ethnic, religious or social confrontation and which create clear, direct and*

substantial danger of such acts”. If this rule is violated en masse, the assembly or manifestation must stop immediately, upon the request of the relevant government representative. If the assembly or manifestation does not stop, the law enforcement bodies may use the measures envisaged by the international law and Georgian legislation for ending the assembly and manifestation and disassembling its participants. If the above described rule is violated on a lesser scale, then the relevant government representative has to give warning to the organizers of the assembly to eradicate the underlined violation. The organizer is obliged to make calls to the participants of the assembly during the nearest 15 minutes for the eradication of the underlined violation. If the organizer does not fulfill this obligation, he/she will be held liable in accordance with the Georgian legislation.

The assessment regarding the violation of the above described rules and decision as to what actions must be taken requires sufficient police presence and leadership on the ground. The July 5 protest action critically lacked such police force.

The events of July 5 demonstrate that the state once again failed to fulfill one of the fundamental principles of democratic state – ensuring freedom of expression and right to peaceful assembly and manifestation for all members of society. The law enforcement authorities called on the organizers of peaceful action, *Pride March*, not to hold a march “*in an open, public space*”⁶⁸, due to high risks of danger, while allowing the violent groups to freely march on *Rustaveli Avenue* and exercise violent acts against numerous media representatives. This completely contradicts the essence of right to peaceful assembly and manifestation. Instead of fulfilling its positive obligation and facilitating the peaceful assembly of LGBTQI+ community members, the state allowed the holding of violent march.

According to the OSCE/ODIHR and Venice Commission guidelines on freedom of peaceful assembly, individuals have a right to gather as counter-demonstrators to express their opposition with the views expressed at a public assembly. When there is a threat of physical interference with the first assembly and risk of imminent violence that cannot be mitigated or prevented, as a rule, it is the counter-demonstration that may be restricted in terms of venue and time, not the first assembly⁶⁹.

In the judgement delivered on the case of *Identoba and Others v. Georgia*, the European Court of Human Rights stated: “*Given the attitudes in part of Georgian society towards the sexual minorities, the authorities knew or should have known of the risk of*

⁶⁸ <https://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/14760>

⁶⁹ OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly, Page 9: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)

tensions associated with the applicant organisation's street march to mark the International Day Against Homophobia. They were thus under an obligation to use any means possible, for instance, by making public statements in advance of the demonstration to advocate, without any ambiguity, a tolerant, conciliatory stance, as well as to warn potential law-breakers of the nature of possible sanctions. Furthermore, it was apparent from the outcome of the LGBT procession, that the number of police patrol officers dispatched to the scene of the demonstration was not sufficient, and it would have been only prudent if the domestic authorities, given the likelihood of street clashes, had ensured more police manpower by mobilising, for instance, a squad of anti-riot police"⁷⁰.

Instead of advocating a tolerant stance and warn the potential law-breakers about the possible sanctions, in accordance with the ECHR standards, the Prime Minister of Georgia stated amid the ongoing violence on July 5 that **for the majority of the population, holding of Pride March was unacceptable and therefore, it should not have been held at Rustaveli Avenue**⁷¹. Referring to pride march, he stated: *"These kinds of actions and events contribute to their discrimination. When their distinction is excessively highlighted, I consider that this is exactly their discrimination. Our population of course does not have any problem with anyone, including with these people. Every day these people, the representatives of minority, work and live in absolutely normal conditions and regime. They face no danger in our country. There is no fact of discrimination. If there was a certain fact ever, we cannot generalize it"*⁷².

The Prime Minister's understanding regarding the essence of freedom of assembly and manifestation is exact opposite to that of the ECHR. In the judgement delivered on case of *Alekseyev v. Russia*, the European Court of Human Rights stated: ***"The Court further reiterates that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on it being accepted by the majority. Were this so, a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention"***⁷³.

⁷⁰ Judgment on the case of *Identoba and Others v. Georgia*, May 12, 2015, paragraph 99:

<https://hudoc.echr.coe.int/eng#{%22fulltext%22:%22%22CASE%20OF%20IDENTOBA%20AND%20OTHERS%20v.%20GEORGIA%22%22},%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-154400%22}>

⁷¹ <https://palitraneews.ge/video/dghes-daanonsebuli-marshis-chatareba-mimachnia-mizansheutsonlad-is-sheitsavs-samokalako-dapirispirebis-safrtkhes-premieri>

⁷² <https://palitraneews.ge/video/dghes-daanonsebuli-marshis-chatareba-mimachnia-mizansheutsonlad-is-sheitsavs-samokalako-dapirispirebis-safrtkhes-premieri>

⁷³ Judgment on the case of *Alekseyev v. Russia*, October 21, 2010: paragraph 81:

<https://hudoc.echr.coe.int/eng#{%22fulltext%22:%22Alekseyev%20v.%20Russia%22},%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-101257%22}>

According to the Georgian legislation which corresponds to the international human rights standards, during the organization or the course of assembly and manifestation, it is prohibited to make calls which propagate violence, as well as calls which incite national, regional, religious or social animosity and create clear, direct and substantial threat of such acts. When these requirements are violated en masse, the state must immediately stop the assembly and manifestation, according to the Georgian Law on Assemblies and Manifestation. Also, the state is authorized not to allow the holding of assembly and manifestation when there is a clear evidence that it will pose danger to the life and health of citizens. During the march of hate groups at Rustaveli Avenue, the violent groups were massively propagating, as well as resorting to violence. The state bore obligation to stop the course of such violent action and protect the peaceful citizens. Instead, it deployed scarce number of law enforcers on the ground who were unable to stop the violent attacks against the numerous media representatives, as well as attacks and vandalism against the offices of organizers of Pride Week.

When interviewing the representatives of various groups regarding the realization of right to peaceful assembly and manifestation, one of the questions asked by Human Rights Center was what are the main challenges that hinder effective realization of this right for them. One of the representative of the LGBTQI+ community stated following as a response to this question: *“In the first place, it is probably the lack of political will. I would single that out the most. Since 2012, I have never doubted that the state has resources to ensure right to peaceful assembly. However, it is not done consciously, either for political interests, for instance, the approaching elections or for the interests of the Patriarchate or other influential groups. The lack of political will is probably the main problem. Perhaps the homophobic attitudes play their part in all of this as well. However, in my understanding it is still a contrived process, notwithstanding the homophobic attitudes existing in the society”.*

The violence in the central part of the capital continued on July 6 as well. Different groups of society held the action of solidarity in front of the Parliament Building on *Rustaveli* Avenue in the evening of July 6, in support of those people who were injured during the previous day. The aggressive counter demonstrators soon gathered near the surrounding premises and applied wide range of violent means in order to dissolve the peaceful solidarity action, including physically pushing the police cordon, as well as throwing stones, bottles full of stones and even explosives to the direction of the peaceful action, as well as towards the journalists. Tens of protesters were arrested and the special forces appeared at the protest area at about midnight. Nevertheless, it was the peaceful protesters who had to stop the action and leave the protest area through the specially created police corridor due to high risks of danger coming from the counter protesters.

The violent mob took place of the peaceful protesters in front of the Parliament Building at the end and demonstratively tore down and burned the flag of European Union.

According to the monitors of Human Rights Center, the situation especially intensified after the LGBTQI+ activists set up the LGBTQI+ flag and fired colorful fireworks. The participants of counter action became particularly aggressive after this fact.

The aggressive counter demonstrators besieged the peaceful assembly from all sides. It was possible to leave the site of the assembly only through the specially created police corridor on the left side of the Parliament building. However, after going through this corridor, the safety was still not adequately ensured. The attacks were frequent against those people who left as well. As a result, many individuals refrained from leaving the site of the assembly. However, it was problematic to remain at the assembly as well. The violent groups who surrounded the assembly from both sides were throwing blunt objects, including the stones, bottles full of pebbles and even explosives to the direction of peaceful protesters.

Considering the existing threats and the actions of the violent groups on July 6, the number of the policemen present at July 6 actions was not sufficient. The police cordons were broken several times. As a result, the participants of the counter action managed to break in the group of peaceful protesters and assaulted them physically. The law enforcers managed to detain these persons in several instances and take them out.

The special forces, equipped with water cannons appeared to the scene of the assembly late, at about 23:00 pm. At this time, the protest action was practically over and the special forces helped the remaining individuals to leave the protest area.

Lekso Laskharava, one of the cameramen attacked and severely beaten on July 5 was found dead at home on July 11. Lashkarava was with the fellow *TV Pirveli* journalist, Miranda Bagharturia in the building housing the office of the *Shame* Movement when a violent mob broke in. As Miranda Bagharturia recalled in a TV interview, the attackers were mercilessly beating Lashkarava for 20 minutes to such an extent that she was afraid they would kill him⁷⁴. Lashkarava sustained broken facial bones and a concussion and underwent surgery as a result. The exact cause of his death is yet to be determined.

The attack against the journalists on July 5 was unprecedented in its scale and gravity. Sadly, it is not an isolated case of mass violence against the journalists who are merely fulfilling their professional duties by reporting on assemblies and manifestations of high

⁷⁴ TV Channel *Formula*, Interview with Miranda Bagharturia:
<https://www.facebook.com/TVFormula/videos/822690448619785/>

public interest. During the anti-occupation protest demonstration on *Rustaveli Avenue* on June 20-21, 2019, 38 representatives of various media outlets who were carrying out their professional duties at the rally were physically injured as a result of disproportionate use of force by the law enforcers, including the unlawful and indiscriminate firing of rubber bullets from the close distance⁷⁵. Not a single perpetrator has been brought to justice for the violent acts widely exercised against the journalists by the law enforcers on June 20-21, some of which bear the signs of inhuman and degrading treatment.

CASES OF USE OF EXCESSIVE FORCE AND DISPROPORTIONATE RESTRICTIONS

November 8, 2020 Assembly in front of Central Election Commission

On November 8, 2020 the opposition political parties gathered in front of the Parliament Building on Rustaveli Avenue in order to express protest regarding the electoral violations and demand new elections. After protesting in front of the Parliament, they announced to move to the building of the Central Election Commission and continue protest there. The HRC monitors were observing the entire process of the peaceful demonstration in front of the Parliament of Georgia and afterwards in front of the Central Election Commission.

At about 21:30 pm, according to the monitors of Human Rights Center, approximately 100 protesters were gathered in the vicinity of the building of Central Election Commission (CEC), in front of the metal plate fence which was erected few days prior as a response to the increased protests actions. At this time, most of the protesters had not yet arrived from the action held in front of the Parliament building. The journalists of various TV channels, as well as operators and representatives of other media outlets were also present at the action at this time.

The part of the participants of the protest action stood in front of the metal plate fence and started to bang on the fence with stones and fists as a form of protest. All of a sudden, in the horizontal continuation of this fence, in front of the metal net fence, there was a commotion. Presumably, the protesters tried to break off the fence. At this moment, in about 2-3 minutes, the vehicle with water cannon appeared on the right side of the building of Central Election Commission. This vehicle fired water cannon at the protesters without any warning. This happened at 21:42 pm.

⁷⁵<http://www.hrc.ge/232/eng/?fbclid=IwAR2uZmEUs8tZ0fyfE7pxzIKbkHeTKQRSXqCkYFQZwQcvttX0ff78pQESn5l>



Photo: Police Fires Water Cannons against Protestors in front of the Building of Central Election Commission

After firing of the water cannon, the special forces also appeared from the backyard of the CEC, equipped with helmets and shields. At this moment, the protesters who were injured and got wet by the water cannon started swearing towards the direction of special forces. Some protesters threw stones towards the water cannon vehicle. The commotion and chaos was created at the scene of the action. The described actions of several protesters was followed by the dissatisfaction of other protesters and resulted in arguments. During this period, someone threw a firing object (presumably pyrotechnics) towards the policemen located in the yard of the CEC.

At about 10:10 pm, part of the protesters felt discomfort and had a problem of breathing. The monitors of Human Rights Center felt specific smell at this moment. As it was officially announced later, the police used pepper spray. No warning was made before the use of pepper spray.

Afterwards, the police started to make warning to the protesters to disassemble, by the automatic audio voice, for about one hour. *"Otherwise, the measures envisaged by law will be used to restore law and order and civic peace"* – warned the law enforcers. The police did not specify as to what kind of measure would be used. However, there were two water canon vehicles present in the protest area. Therefore, the protesters thought that the police would use water cannons against them. In the warning message, the police also called on the organizers to *"take elderly, children and women away from the place where the order would be restored"*.

Since about 00:10 am police started to use water cannon again. The police fired water cannon at the protesters for about 20 minutes continuously. At this time, about 5-6 water

cannon vehicles were mobilized at the protest area which were firing water cannon at the protesters⁷⁶. In this way, the police managed to temporarily disperse the protesters. The protesters were swearing at the policemen and some were throwing different objects to the direction of policemen. According to the information of certain media outlets, these were mainly bottles⁷⁷. From the video footage disseminated by the police it is visible that the protesters were also throwing stones and firing wood towards the water cannon vehicle. The stones broke the windshield of the water cannon vehicle⁷⁸.

Part of the protesters felt bad due to the strength of the water cannon and shock received as a result of cold. The TV operators of *TV Formula* and *TV Pirveli* were taken to the hospital by the ambulance cars⁷⁹.

According to the observation of the HRC monitors, initially, there was no need to use any of the special means against the protesters. Also, the law enforcers did not follow the law when using the special means – there was no preliminary warning given to the protestors about the usage of the special means. The use of water cannons and pepper spray against the protesters in the observed circumstances was a disproportionate use of force violating the legislation of Georgia and international human rights standards.

According to the Law of Georgia on Police, water-cannons, armored car and other special transportation means may be used *“to suppress mass violations of legal order, to repel a group attack on the state and/or public facilities, to stop a vehicle by force if the driver does not obey a police officer's demand to stop; to detain an armed criminal”*. As for the pepper spray, this may be used *“to repel an attack on a person, a police officer and/or protected facility; to prevent mass and group violations of legal order; when detaining a person who has committed a crime or an action posing threat to the public at large, or when forcing such person to leave an occupied territory, vehicle or building and construction that the person is using as a shelter”*.

According to the observation of the HRC, none of the above actions took place in front of the CEC that would justify the use of the water cannons and pepper spray against

⁷⁶ Live Coverage of TV Formula – Demonstrators were once again dispersed by the water cannon: <https://www.facebook.com/TVFormula/videos/870606000431814>

⁷⁷ See the comment of journalist from the live coverage of on.ge: https://www.facebook.com/watch/live/?v=377744056879426&ref=watch_permalink

⁷⁸ See the videos disseminated the police which show how the protesters are throwing stones to the direction of the water cannon vehicle while it is firing the water cannon to the direction of protesters: <https://www.interpressnews.ge/ka/article/628339-shss-ceskoston-ganvitarebul-movlenebtan-dakavshirebit-videokadrebs-avrcelebs>; <https://police.ge/ge/shinagan-saqmeta-ministris-pirveli-moadgilis-kakha-sabanadzis-brifingi/14119>

⁷⁹ See the Live Coverate of TV Formula <https://www.facebook.com/TVFormula/videos/870606000431814>

the protesters. Some of the protesters were hitting fists and other items onto the fence in front of CEC. However, this action cannot be assessed as an act giving rise to the use of water cannons and pepper spray as envisaged by the Law of Georgia on Police.

Under article 31 of the Law on Police, the police shall warn a person of using the special means and give the person reasonable period of time to carry out the lawful order *“except the cases where the delay may cause infringement 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.”* As a justification for not warning the protesters, the Deputy Minister of Internal Affairs referred to this exception envisaged by the law and stated that when there is an urgent necessity and the violence may endanger the life and health of the police officers or other persons or may cause other grave consequences, the police can use special means including water cannons. However, according to the monitors of Human Rights Center, there were no such situation observed at the action.

The use of water cannons and pepper spray against the protesters in front of the CEC building contradicted international human rights standards as well. According to UN Human Rights Guidance on Use of Less Lethal Weapons in Law Enforcement, water cannons, in general, may be used only under following circumstances – likelihood of loss of life, serious injury or widespread destruction of property. At the initial instance of use of water cannons in front of the CEC building, none of these grounds were present.

Relevant amendment should be made to the Law of Georgia on Police, laying out the obligation of the law enforcers to provide information as to the type of the special means to be used when giving warning to the assembly participants.

Protest Actions against Construction of Namakhvani Hydroelectric Power Plant

Throughout the past year, active protests were ongoing in various parts of the country against the construction of the Namakhvani hydroelectric power plant in Western Georgia, the largest energy project in Georgia⁸⁰. In April 2021, after 169 days of peaceful protests in tents in the village Namakhvani where the construction works are underway, the police removed the tents of the protesters under unsubstantiated grounds and prohibited them to protest anywhere else in the village. Afterwards, the police erected metal constructions/barriers at the entrance of the village and prohibited the protesters to enter the village. The state authorities provided no official explanation as to the

⁸⁰ Statement by Human Rights Center on Disproportionate Dispersal of Peaceful Protest in Zhoneti: <http://humanrights.ge/index.php?a=main&pid=20278&lang=eng>

reasons of the total closure of the village for the protesters. The state actions gravely violated fundamental civil rights, such as freedom of expression, right to assembly and manifestation and freedom of movement.

According to the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and Council of Europe's Venice Commission Guidelines on Freedom of Peaceful Assembly, "*people have the right in principle to choose the location or route of an assembly in publicly accessible places*"⁸¹. **Publicly accessible places mean places which are generally accessible to everyone, independently of possible private ownership**⁸². Such places are, as an example, public parks, squares, streets, roads, avenues, sidewalks, pavement, footpaths, and open areas near public buildings and facilities⁸³. Although certain land in Namakhvani village may be under the ownership of the private company *Enka Renewables* which is implementing Namakhvani project, there are obviously places inside the village which are generally accessible to everyone. Therefore, closing the whole village for the protest had no legitimate grounds and it gravely violated the above described international human rights principles.

This is not an isolated case of violation of right to peaceful assembly and manifestation in relation to Namakhvani protests. On November 14, 2020, police employed disproportionate force in order to disperse the peaceful protesters in the Village Zhoneti who blocked the road for few hours. The police physically pushed the protesters who were chained to one another off the road, causing their physical injuries. No prior warning was given and no attempt of negotiation was made.

When restricting a peaceful assembly, the balance must be maintained between the public and private interests. The issue of which interest outweighs in the particular case should be decided by the individual circumstances of the case and not by a blanket prohibition.

In this case, the rally was held in the village of Zhoneti, Tskaltubo district, by the local population, together with the local residents of neighboring villages. The public spaces where this group of people would be able to express their protest on the critical social

⁸¹ Paragraph 61, Guidelines on Freedom of Assembly - European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

⁸² Paragraph 12, Guidelines on Freedom of Assembly - European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

⁸³ Paragraph 61, Guidelines on Freedom of Assembly - European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

issues, so that the protest would actually reach the wider public and be perceived by it, are scarce. In the village of Zhoneti and neighboring villages, apart from the road going through the village, there is virtually no public space where the protest rally of the local population would attract the attention of the general public. The essence of the right to peaceful assembly is to convey the message of protest to the general public, not just the public on the local level. It is also important to take into account the fact that they had blocked the road only for few hours⁸⁴. The dispersal of the action in these circumstances therefore constituted disproportionate restriction of right to peaceful assembly and manifestation.

June 20-21, 2019 Anti-Occupation Protest Rally

On June 20, a session of the Inter-Parliamentary Assembly on Orthodoxy was planned to take place in the Parliament of Georgia. In the opening of the session, the member of Russian Duma, Sergei Gavrillov seized the chair of the chairman of the Parliament and commenced session in Russian language. Thousands of individuals gathered in front of the Parliament Building to protest against this act, occupation of Georgia by the Russian Federation and Georgian government's loyal policy towards Russian Federation.

The rally was going on peacefully for several hours. However, from about 10:00 pm, part of the protesters tried to break into the Parliament Building that resulted in one-hour long physical confrontation between the protesters and law enforcers⁸⁵. As the situation escalated, the law enforcers applied special means, tear gas, water cannons and rubber bullets to disperse the assembly. The special means were used without giving prior warning to the protesters. Rubber bullets were fired against the peaceful protesters who were not taking part in the violent actions and posed no threat to anyone, including from close proximity, in the direction of vital organs of the targeted persons. The actions of law enforcers constituted grave violation of international human rights law and bore signs of inhuman and degrading treatment.

An unprecedented number of journalists were injured at June 20-21 protest rally as a result of unjustified use of rubber bullets by the law enforcement officers. According to the Georgian Charter of Journalistic Ethics, 38 representatives of media who were carrying out their professional duties at the rally received various types of physical injuries.

⁸⁴ Statement by Human Rights Center on the disproportionate dispersal of peaceful protest in Zhoneti by police force:

<http://www.humanrights.ge/index.php?a=main&pid=20278&lang=eng>

⁸⁵ Human Rights Center – Report “June 20-21 Events – Legal Analysis”:

<http://hridc.org/admin/editor/uploads/files/pdf/hrc2019/20-21%20ivnisi-eng..p>

The investigative bodies have not yet determined the issue of liability of high ranking officials of the law enforcement bodies in relation to the facts of ill-treatment of the peaceful citizens and use of excessive force when dispersing the protest demonstration of June 20-21, 2019. On June 20-21, that time Minister of Internal Affairs, Giorgi Gakharia, his deputies and that time director of the Special Tasks Department of MIA were in charge of protecting and restoring the public order in front of the Parliament premises. They were present at the site and were supervising the dispersal operation. These officials were responsible to adequately react in order to prevent the facts of unlawful use of rubber bullets and inflicting grave bodily harm to peaceful civilians. To what extent have the high ranking officials carried out their official duties, what actions have they undertaken for these purposes and what kind of investigative actions were carried out by the investigative bodies to ascertain this issue are the questions answers to which are not available even for the persons who hold victim status. No actions were taken by the investigative bodies to identify the low rank officers who were using rubber bullets unlawfully against the peaceful protesters of the rally either. As of now, only one person is held liable in relation to the fact of using rubber bullets unlawfully⁸⁶.

Blocking Entrances of Buildings

According to the Law on Assemblies and Manifestations of Georgia, it is forbidden to block the entrances of buildings during the assemblies and manifestations. This is a blanket ban which means that it is applied in all cases of such blocking and it envisages no exception.

The practical application of this blanket legislative prohibition is following - when the peaceful protesters who block the entrances of government buildings disobey the request of the law enforcement authorities to vacate the area, the law enforcement authorities at times resort to the use of force, such as special means (water cannons) and arrest of the protesters. There have been number of cases in 2019 in Georgia when the law enforcement authorities dispersed the peaceful protesters who had blocked the entrances of the Parliament Building by the use of special means, water cannons. On November 18, 2019, participants of peaceful assembly blocked the entrance of the Parliament building to express protest towards the Parliament decision not to change the electoral system to that of proportionate representation, breaching promise given by the government as a result of June 20-21 protests. The peaceful protesters did not allow several members of the Parliament to enter the Parliament building. The special forces used water cannons and dispersed the peaceful protesters in several hours after blocking

⁸⁶ *ibid*

of the building⁸⁷. 6 people were injured as a result⁸⁸. The water cannons were used against the peaceful protesters who blocked the Parliament Building on November 26 as well⁸⁹. The water cannons were used in violation of UN Human Rights Guidance on Less Lethal Weapons in Law Enforcement as there was no likelihood of loss of life, serious injury or widespread destruction of property to justify its application⁹⁰.

According to OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly, blanket legal restrictions, such as, banning all assemblies at particular locations, constitute excessive restrictions violating the right to freedom of assembly. Blanket bans may fail the proportionality test because they *“fail to differentiate between different ways of exercising the right to freedom of assembly and preclude any consideration of the specific circumstances of each case”*⁹¹.

Blanket ban on blocking the entrances of buildings is a disproportionate restriction, not giving possibility to consider the individual circumstances of each case and to allow blocking when there is no overriding legitimate interest. The relevant legislative amendment must be made in the Georgian legislation, lifting the blanket ban and giving discretion to the law enforcement authorities to make individual assessment of the situation on case-by-case basis.

UNLAWFUL RESTRICTION OF USE OF TENTS

Throughout the year of 2021, there have been number of instances when the police unlawfully restricted protesters right to set up tents at the site of the assembly, including the following cases:

On February 21, the law enforcement authorities did not allow civil activists to set up the tents in front of the Parliament Building. The activists wanted to set up a tent, entitled Tent 100, in relation to the one hundred year anniversary of the Constitution of Georgia⁹². 8 people have been arrested in relation to this incident, under Article 173 of the Code of Administrative Offenses of Georgia – Disobeying Lawful Request of Employee of the Law

⁸⁷http://ajaratv.ge/article/51732?fbclid=IwAR246g_w8_hJP5_yLM6cSTCtPuhOINrk9COTSb_yqmdpvzO1zvuidT3zrv0

⁸⁸ <https://cutt.ly/Ptj9rU>

⁸⁹ Special Report of Public Defender of Georgia – “Right to Peaceful Assembly and Manifestation – Sphere Protected by the Right and Standard of Management of Assembly”, 2020, pages 17-18:
<https://www.ombudsman.ge/res/docs/2020061620213679437.pdf>

⁹⁰ UN Human Rights Guidance on Less Lethal Weapons in Law Enforcement, Paragraph 7.7.2:
https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

⁹¹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, paragraph 133;
[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

⁹² <https://www.radiotavisupleba.ge/a/31113907.html>

Enforcement Body. Ministry of Internal Affairs disseminated statement, according to which the participants of the assembly have been restricted a possibility to set up tents in front of the Parliament Building *“according to the Law of Georgia on Police, in order to ensure the public safety and rule of law and prevent the commission of offenses”*. However, the MIA did not provide any argument as to how the tents were threatening the public safety and rule of law or how they were related to the commission of offenses⁹³.

On April 11, 2021, the police dismantled tents of the protesters who are opposing the construction of Namakhvani Hydroelectric Power Plant in the valley of River Rioni, in the village Namakhvani. The dismantling of the tents followed the police activities in relation to the search of the person who disappeared in the village territory, allegedly in the river Rioni. In the beginning, the police told the protesters that the tents were hindering the search activities and therefore they had to be removed. Later, the Ministry of Internal Affairs (MIA) disseminated official statement, according to which the water level of the Rioni River was above the signal level and given the current weather forecast, a significant increase in the water level and potential flooding of the river was expected. As MIA stated, they decided to remove the tents from the danger zone *“in order to avoid danger and protect the protesters' life and health”*. This explanation raises serious questions regarding its credibility, considering that there was no evacuation announced for the local population living in those areas. If the likelihood of the river Rioni to flood was so high that the protesters' tents had to be removed from the surrounding areas, in order to protect their life and health, the state also had to protect the life and health of the local population living there and should have warned and called on them to leave. This never happened. The situation was further aggravated as the protesters were not given right to put up tents in any alternative place in the village Namakhvani and were prohibited to enter the village at all and hold protests there.

According to OSCE ODIHR - Venice Commission Guidelines on Freedom of Peaceful Assembly, freedom to choose the manner/form of assembly is essential part of right to peaceful assembly⁹⁴. The freedom of manner of assembly includes right to set up tents and other non-permanent constructions at the protest site. This freedom may be restricted in order to safeguard legitimate interests of the state, public or the rights of other individuals. The restrictions must be proportionate for achieving the legitimate

⁹³ <https://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/14417>

⁹⁴ OSCE ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly, paragraph 148: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)

aim⁹⁵. Similar principles are reflected in the Georgian legislation as well regarding the use of tents or other non-permanent constructions at the protest site.

In cases presented above, there was no legitimate ground envisaged by the Georgian legislation or by international human rights standards which would justify the prohibition of use of tents. The tents did not block the entrances of buildings, nor did they hinder the movement of transport or posed any threats to public safety or rights of other individuals. The protesters were unlawfully restricted right to erect tents in the site of the assembly, under unclear and unsubstantiated reasoning, in contradiction with Georgian legislation and international human rights principles.

PANDEMIC AND ASSEMBLIES

The freedom of peaceful assembly and manifestation has been disproportionately restricted at various stages of Covid-19 pandemic in Georgia. At the initial stage of the outbreak of coronavirus, during the state of emergency, right to peaceful assembly and manifestation was completely banned. The gatherings of the individuals, which did not convey a particular idea or opinion, were also restricted. The list of the rights restricted during the state of emergency were determined by the Presidential Decree. The Presidential Decree, as a rule, banned all types of assemblies, manifestations and gatherings of individuals, but it allowed the executive government to make exceptions from this general rule⁹⁶. The government did not make any exceptions and completely banned assemblies and manifestations, without providing relevant justification. This was not necessary and proportionate for achieving the legitimate aim of fighting coronavirus. The same aim of protection of public health and prevention of spread of pandemic could have been pursued by less strict measures, such as imposing specific regulations on gatherings, including in regards with the number of participants, keeping physical distance and wearing masks, rather than totally banning the assemblies⁹⁷.

The state of emergency ended and ban on assemblies was lifted in May 2020. During the summer of 2020, there were no strict measures operating against the spread of Covid-19 in Georgia. In October 2020, the number of infections reached a record high and Georgia became a high risk “red” zone in terms of the spread of Covid-19. However, no significant measures were introduced for containing the spread of the virus. This period coincided with the pre-election period and therefore it was important for the political

⁹⁵ *ibid*

⁹⁶ Decree N1 of the President of Georgia – “Measures to be taken in relation to the announcement of the state of emergency in the whole territory of Georgia”, March 21, 2020, Part 6 of Article 1: <https://matsne.gov.ge/ka/document/view/4830372?publication=0>

⁹⁷ <http://www.hrc.ge/163/eng/>

parties to have freedom to hold electoral meetings and gatherings. However, timely and reasonable restrictions were necessary to avoid further aggravation of Covid-19 situation in Georgia. The government imposed restrictions on the movement of people and being in public space when the political tensions escalated and anti-government rallies became particularly frequent, after the Parliamentary Elections of October 31. This created perceptions that restrictions were a response to political situation rather than a response to the critically worsened Covid 19 situation.

Human Rights Center monitored a pre-election gathering of opposition political parties – *United National Movement – Unified Opposition* – which was held in the central part of Tbilisi, in Freedom Square on October 29, 2020, two days before the parliamentary elections. Considering existing recommendations for fighting the spread of the new coronavirus, the organizers of the rally placed chairs in the Freedom Square for the participants of the assembly, keeping a distance of two meters between them. The organizers also called on the participants to wear masks and to keep two-meter physical distance. Approximately 10 thousand people took part in this gathering. Due to the high number people, it was not possible to fully keep the recommended physical distance among the participants.

On November 8, a large protest rally of opposition political parties was held in front of the Parliament Building, expressing distrust towards the results of the parliamentary elections, demanding new elections and release of political prisoners. The protesters later moved to the building of CEC where the law enforcers used special means, water cannons and pepper spray against them, without giving prior warning and in violation of Georgian legislation and international human rights principles. The government announced nationwide curfew next day, on November 9, referring to the aims of fighting coronavirus and protection of life and health of citizens as a justification of new measures. However, due to the timing of their introduction, the new restrictions were largely perceived to be an attempt to quell the protest movement which especially intensified in the wake of the parliamentary elections.

On November 9, 2020, opposition political parties held assembly in front of the Parliament Building on Rustaveli Avenue, requesting the resignation of the head of the CEC, new parliamentary elections and release of political prisoners. The leaders of the political parties decided not to obey the rules of curfew and stay in the area of the action overnight. They advised the participants of the action to individually decide whether or not they wanted to stay overnight. Some of the participants of the assembly decided to do so. During the hours of curfew, following tendency was observed at the protest action – the people who left the area of the protest rally were fined for violating the rules of

curfew. The people who stayed inside the perimeters of the protest action, were not fined.

According to the rules of curfew, movement of people, either by car or on foot, as well as being in public space was prohibited during 10 pm – 5 am in the whole country. On November 28, the curfew hours changed to 9 pm – 5 am. The restrictions were introduced according to the Law of Georgia on Public Health which was amended earlier, in May 2020, expanding the government powers to enact nationwide restrictions on number of fundamental rights as "quarantine measures" in times of pandemic or epidemic⁹⁸. The violation of the curfew was deemed administrative offense and resulted in imposition of disproportionately high fines against the offenders⁹⁹. Since March 2020, the public transportation was banned in capital Tbilisi and six other cities of Georgia - Kutaisi, Batumi, Rustavi, Zugdidi, Gori and Poti.

The curfew and restriction of freedom of movement created obstacles for full realization of right to peaceful assembly and manifestation. The law enforcement authorities fined the protesters for violating the curfew when the protest actions continued during the hours of curfew, when the movement was banned (between 21:00 pm and 05:00 am). For many people it was not possible to participate in protest actions considering the fact that they had to work until 6 pm and time left afterwards was too short to manage to join the action and return home on time before the start of the curfew.

Sanctioning protesters for violating rules of curfew must be assessed as unlawful interference into the right to peaceful assembly and manifestation. The Law on Public Health of Georgia which authorizes government to enact measures for fighting coronavirus, does not allow restriction of freedom of peaceful assembly. It grants government a right to restrict freedom of movement and gatherings of individuals for conducting social events, but does not refer to assemblies and manifestations. Therefore, the movement of the participants of the protest actions should have been protected under the right to peaceful assembly and manifestation. This line of reasoning was, unfortunately, not supported by the Constitutional Court of Georgia¹⁰⁰.

⁹⁸ <http://hrc.ge/files/reports/121Final%20Quarterly%20Report%20COVID19%20Georgia%20Jan%20-eng%202021.pdf>

⁹⁹ approximately 500 EUR (2.000 GEL) in case of physical persons and approximately 2.500 EUR (10.000 GEL) – in case of legal entities. These fines were not considerate of severe socio-economic situation in Georgia that especially worsened during the pandemic. As of 2019, an average monthly income per 1 person is 336 GEL (approximately 102 dollars), according to the National Statistics Office of Georgia.

¹⁰⁰ <http://www.hrc.ge/files/9covid-analitic-eng.pdf>

The rules of curfew and ban on public transportation significantly hampered the organization of assemblies and manifestations and affected the number of people who came to join the assemblies. When assessing how the regulations related to curfew affected the organization of assemblies and manifestations, one of our respondents, a leader of a civic movement stated - *“The curfew was directly aimed at the prohibition of protest. We therefore held the action of disobedience”*.

The ban on public transportation made it difficult for many people to participate in the protest actions. *“It is not possible for many people to drive to the site of the assembly by a personal car. Consequently, the number of assembly participants decreased. Also, the increased expenses were required to ensure compliance with the recommendations related to the prevention of pandemic, such as distribution of masks to the assembly participants. We had a group of volunteers who distributed masks to the assembly participants. These measures increased the expenses”* – stated one of the respondents, a leader of a civic movement, interviewed by the Human Rights Center within the frameworks of the current project.

On January 30, 2021, the representatives of the tourism and service sector held a protest action *“Open the Country”* in capital Tbilisi, in front of the building of the Government Administration. The representatives of entertainment centers, fitness centers, owners of the shops, owners of the restaurants, tour guides, photo artists and other representatives of service and tourism sector participated in the action. The peaceful protesters called on the government to lift the curfew regulations, lift the ban on the public and intercity transportation, open the restaurants and cafes with relevant regulations, lift the restrictions existing on the work of winter resorts, open the art facilities.

On April 3, 2021, a protest action, entitled *“End Curfew”* was held by the civic movements - *Shame and Change*, political movement - *It is Time*, and a political party - *Girchi – More Freedom* - in front of Parliament Building on Rustaveli Avenue. The protesters gathered in three different locations in the central parts of the city and peacefully marched to the Parliament. As announced beforehand, they were going to violate the curfew as a form of protest. There were tents set up in the area of sidewalk in front of the Parliament, occupied by the representatives of the civic movements, including those who came from the regions of Georgia.



Photo: The protesters start to gather in the pedestrian sidewalk, near the tents

At 19:30 pm, there were about 7000 people gathered in front of the Parliament. Their main demand was to lift the curfew and repeal the fines imposed on the citizens for violation of Covid 19 regulations. The people who wished to disobey the curfew rules stayed in the protest area and spent a night near the Parliament Building. According to the leader of one of the groups who organized the action, the decision about the disobedience was voluntary. *“This action was not held a priori for the disobedience. The disobedience was voluntary. The main part of the assembly participants did not violate the curfew”*. The action passed peacefully. The people who stayed within the perimeters of the protest action until the morning were not fined.

After the improvement of Covid 19 situation and a reduction of the indicators of the spread of the disease, by April 2021, most of the restrictions in the country were lifted, including those related to holding of social events, except for the so-called curfew and restriction of freedom of movement during evening hours. On May 17, the curfew hours were changed to 23:00 pm – 05:00 am. On July 1, the curfew was lifted. Overall, the curfew and restriction of freedom of movement was in force in Georgia **continuously for approximately seven and half months**, without proper explanation regarding their relevance and effectiveness and a plan as to what factors may have affected its abolishment. Therefore, it was a matter of legitimate concern that the real reason for keeping the curfew in force for so long was to quell the growing protest movement in Georgia.

Human Rights Center made following observations regarding the compliance with the Covid 19 regulations and recommendations at the assemblies monitored throughout September 2020 – September 2021. In most of the cases the two-meter physical distance among the participants of assembly was not kept. This was especially problematic at large assemblies in which thousands of individuals participated. The assembly participants and

law enforcers wore masks in most of the cases. However, the instances of incorrect wearing of masks, such as wearing it in such way that it did not cover the full face, were frequent. In many cases, the organizers of assemblies supplied participants with the masks.

MONITORING ASSEMBLIES AND MANIFESTATIONS DURING PANDEMIC

The restrictive measures and prohibitions of freedom of movement negatively affected the work of the civil society organizations, especially the human rights organizations. The government provided no realistic possibility for the human rights defenders to receive permits which would have enabled them to move outside during the evening hours and carry out monitoring on assemblies and manifestations. According to the existing regulations, the permits were given to the representatives of certain government bodies, economic activities, journalists and lawyers who held the order regarding the implementation of concrete procedural activity. The permits could also be given for “extraordinary circumstance” or for the “circumstance not envisaged preliminarily”. Human Rights Center had been in communication with the government bodies and inquired whether the human rights work and monitoring of the protest actions could be considered such ground, giving rise to the issuance of permits. There was no positive response from the government regarding this issue. Existing situation negatively affected the work of the human rights organizations and human rights defenders as they were not able to move outside during the evening hours and observe possible violations taking place at the assemblies. The monitors had to leave the site of the assembly before the start of curfew hours and continue monitoring online.

CASES OF FACILITATION OF MOVEMENT OF DEMONSTRATIONS (2020 – 2021)

Throughout September 2020 – September 2021, according to the observations of Human Rights Center, there were number of good examples when police facilitated the movement of demonstrations, by blocking and opening of the roadways and transport movement when necessary. This happened in case of both spontaneous and planned assemblies.

Action “Open the Country” (2020)

On January 30, 2020, the organizers of the protest action “Open the Country” – the representatives of the tourism and service sector - gathered in two locations in the central parts of the city – Pushkin Square and surrounding territory of Government

Administration at Ingorokva Street. The protesters from the Pushkin Square peacefully marched to the Government Administration where the main action was to be held. The march was assisted by the patrol-inspectors who stopped the cars coming from the direction of the Rustaveli Avenue when the protesters crossed Freedom Square. After the protesters passed the Freedom Square and turned to the Giorgi Leonidze Street, the policemen restored the movement of transport.



Photo: Protesters Marching from Pushking Square to Government Administration

At Giorgi Leonidze Street, the patrol policemen requested the demonstrators to take the right side of the pedestrian sidewalk in order not to hinder the movement of transport. The big part of the demonstrators obeyed the request of the policemen. Soon the demonstration passed to the Pavle Ingorokva Street where the movement of transport stopped due to the number of protesters occupying the whole roadway. At the end, the demonstrators joined the newly started action in the main location in front of the Government Administration. The whole process of demonstration was peaceful.

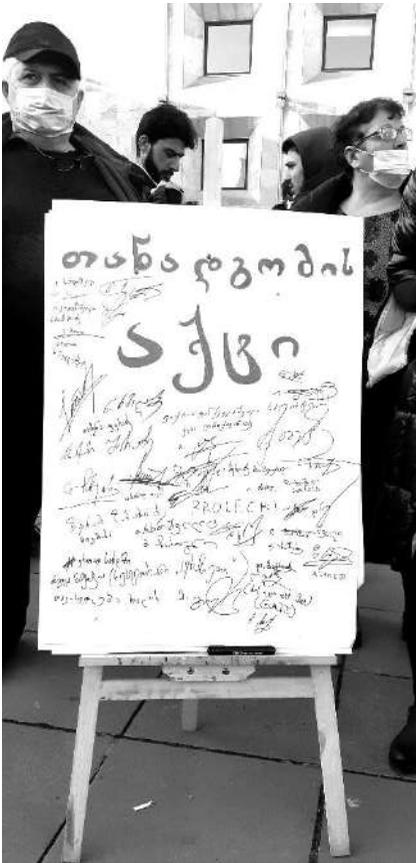


Photo: Poster – “Act of Support”

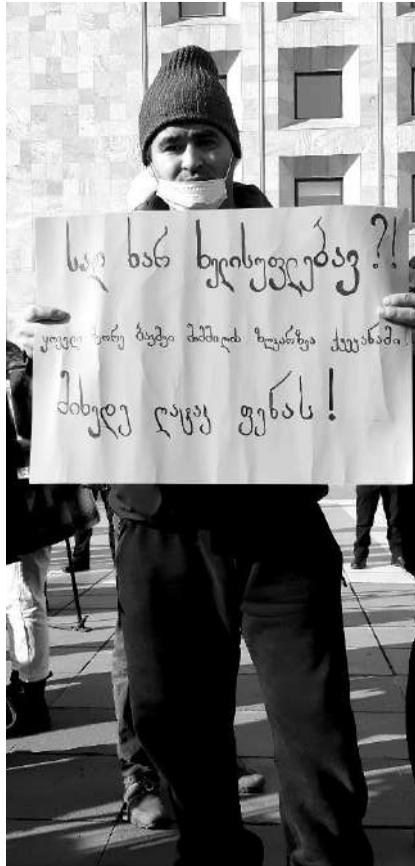


Photo: Poster – “Where are you Government – Take Care of Poor!”

Protest Action “No to Soviet Regime” (2021)

On February 23, 2021, a protest action entitled “No to Soviet Regime”, organized by the leaders of the opposition political parties and civil activists was held in front of the building of the government administration. This action followed the detention of the leader of opposition political party, United National Movement. The main requests of the participants of assembly was to release Nika Melia and schedule early parliamentary elections.

In one hour after the start of the action, the organizers decided to move to the Parliament Building in the form of the demonstration. The march went on peacefully. After the participants of the assembly moved fully to the front of the Parliament Building, due to the high number of people they occupied the vehicle transportation sector of

Rustaveli Avenue. The police closed automobile road at Tbilisi Marriott and Freedom Square.

The protesters started to disassemble at about 18:00 pm. The action ended at about 19:00 pm. After the end of the action, the movement of transport was quickly restored at Rustaveli Avenue.

United Action of the Opposition – March for Freedom (2021)

The united protest action of the opposition political parties March for Freedom was held on February 26, 2021, in the wake of the arrest of Nika Melia, leader of the opposition political party, United National Movement. The protesters demanded release of Nika Melia and early parliamentary elections.

The participants of the demonstration March for Freedom gathered in several different locations – Tbilisi Concert Hall, The First Block of Tbilisi State University, Parliament Building and Building of Government Administration.

At 13:15 pm, the march of Political Party Lelo joined the supporters of other political parties near the Tbilisi Concert Hall. Demonstration consisting of thousands of people occupied the roadway of Kostava Avenue. The march was joined by other supporters at the Metro Rustaveli.

At 13:30 the demonstrators totally occupied the Rustaveli Avenue and joined the protesters present in front of the Parliament Building.



Photo: Rustaveli Avenue Fully Occupied by Protesters

At 14:00 pm, when the rally started in front of the Parliament Building, the police closed all roadways connecting to the Rustaveli Avenue.

At 14:30, the leaders of the rally called on the participants to move to the building of Government Administration in order *“to make the government hear the people’s voice”*. The protesters planned to come back to the Parliament building after holding the action at the Government Administration.

The protesters marched to the building of Government administration. At 15:00 pm, the participants of the assembly occupied the square in front of the government administration and Ingorokva Street where policement stopped the traffic. The police cordon protected the building of the Government Administration. The protest action was peaceful. After half an hour, the protesters came back to the surrounding area of the Parliament, at Rustaveli Avenue.

At 16:00 pm, the number of participants drastically decreased. At this time, there were about 5000 protesters in front of the Parliament, while earlier, during the peak of the action, approximately 10 000 people. The drastic decrease of the number of the protesters is presumably connected to the fact of the curfew and need to leave early as some people had arrived from the regions.

At this time, the traffic was still disabled at Rustaveli Avenue. The police had blocked all roadways connecting to the Rustaveli Avenue.

At 18:00 pm, protesters set up tents in vehicle transport sector of Rustaveli Avenue. The representatives of the MIA asked the protesters to move the tents to the pedestrian sidewalk as they would hinder the movement of transport. The protesters took away the tents soon and moved them to the pedestrian sidewalk. The action ended at 20:00 pm.

Action “End Curfew” (2021)

The action “End Curfew” was planned to be held at 17:00 pm on April 3, 2021 in front of the Parliament Building. The protesters were to march from three different locations: The movement “Shame” - at Vaso Godziashvili Garden, movements “Social Explosion” and “It is time” – at Ivane Javakhishvili Tbilisi State University and political party “Girchi” – in Vake Park.

The marches were to join at the surrounding territory of Concert Hall and afterwards proceed to the Parliament Building on Rustaveli Avenue through a joint march.

Before the start of the march from the Vaso Godziashvili Square, there was a dialogue held between the organizers of the march, representatives of movement *Shame* and the representatives of Ministry of Internal Affairs. According to their conversation, the police would free the right line of the vehicle transportation sector where the protesters could march freely. The organizers welcomed this decision.

According to the agreement of the organizers and the representatives of the MIA, the march started in the right line of the vehicle transportation sector. The policemen were informed to facilitate the movement of march. The march proceeded peacefully, facilitated by the patrol police cars. The policemen directed other cars to slow the movement and not to take the side of the protesters.

At Melikishvili Street, the march of *Shame* joined the march of movement “Girchi”. Two marches joined another March *Social Explosion* at Tbilisi Concert Hall and they all continued to march together towards the Parliament Building. From the area of Hotel Tbilisi Marriott, the protesters occupied all lines of the vehicle transportation sector. Therefore, the police fully stopped the movement of transport on Rustaveli Avenue from Tbilisi Marriott to the Parliament Building.



Photo: Protesters Holding Posters “Is it Allowed for Pozner?!” “კმა'END,ვეთი”

Due to the high number of people, the movement of pedestrians was hindered at pedestrian sidewalk. However, the pedestrians did not express protest regarding this issue.

Since 17:00 pm, the protesters fully occupied the vehicle transportation sector in front of the Parliament Building, on Rustaveli Avenue. The police blocked the movement of transport as a result. It should be noted that the police did not allow the participants of protesters gathered in front of the Parliament to occupy the vehicle transportation sector until the other marchers came to join them. The policemen allowed the protesters to

occupy Rustaveli Avenue afterwards. The policemen tried maximally not to block the movement of transport on Rustaveli Avenue. They stopped the traffic after the protesters occupied this area.

Protest Demonstration of Rioni Valley Guards (2021)

The Rioni Valley guards who are protesting the construction of the Namakhvani Hydroelectric Power Plant, announced holding of a large protest action for May 24, 2021 in capital Tbilisi several days prior to the event. The protesters were demanding, *inter alia*, the termination of agreement between the government of Georgia and the company Enka Renewables regarding the construction of the Namakhvani Hydroelectric Power Plant and the company to leave the Rioni Valley and resignation of the Minister of Economy and Sustainable Development. As the leader of the Rioni Valley guards announced, if their requests were not fulfilled, they would paralyze the capital.

The organizers called on the population of the capital Tbilisi to gather at the Republic Square on May 24, at 12:00 pm, where the plan of the subsequent actions would be announced, depending on the responses from the government. Approximately 50 tents were occupying the Republic Square. Due to the low number of people, the traffic was only partially blocked.

At 15:30 pm the organizers started to march towards the direction of Rustaveli Avenue. As the road was blocked by the police, the protesters changed direction and went to the side of Hotel Radisson and Rezo Tabukashvili Street. The plan was to go to Justice House passing through Tabukashvili Street. At 16:00 pm, the demonstration marched from Rezo Tabukashvili Street to the Dry Bridge. The police stopped the movement of transport on Tabukashvili Street. The policemen were preceding the action and ensured the stopping of traffic when necessary.

At 16:30 pm, the demonstration went to Gia Chanturia Street, then passed Soliko Virsaladze Street and moved to the right bank of River Mtkvari. Here, the police tried to maintain the movement of transport in the half of the auto highway. However, the protesters quickly occupied the highway and the police had to stop the traffic flow completely.



Photo: Approximately 3000 protesters occupy the right bank of River Mtkvari

The demonstration stopped in front of the Justice House for about half an hour. The leaders made speeches and gave comments to media. During this time, the traffic was completely stopped at the right bank of River Mtkvari.

At 17:30 pm the protesters gathered at the Freedom Square. Like other locations, the police blocked the roads here as well and stopped the movement of transport. The protesters occupied a part of the Freedom Square.

At 18:00 pm, the peaceful demonstration of Rioni Valley guards moved to Rustaveli Avenue. The protesters came near the Republic Square, the starting location of the demonstration, in the center of Rustaveli Avenue and blocked the main avenue of the city.



Photo: Protesters Block Rustaveli Avenue

The protesters returned to the Republic Square at about 20:00 where the participants who came from the regions spent night in the tents.

RECOMMENDATIONS

To Parliament of Georgia:

- Introduce amendment to the Law of Georgia on Assemblies and Manifestations according to which the blanket prohibition of blocking the entrances of buildings during the assemblies and manifestations will be removed and the law enforcers will be given discretion to decide whether or not allow the blocking of entrances of buildings on a case-by-case basis, considering the specific circumstances of concrete case;
- Introduce amendment to the Law of Georgia on Assemblies and Manifestations according to which the grounds - *to avoid the revelation of information acknowledged confidential and to guarantee the independence and impartiality of justice* – will be removed as permissible grounds for restricting the assemblies and manifestations;
- Introduce a provision in the Law of Georgia on Assemblies and Manifestations which will envisage the right to appeal the decision of executive body of municipality regarding restriction of time and place of assembly to the court and provide prompt time frame for the judicial determination of this matter;
- Introduce a provision in the Law of Georgia on Assemblies and Manifestations which will envisage exception from the rule of submitting prior warning/notification regarding the holding of assembly when the assembly blocks vehicle transportation sector or hinders movement of transport - to not require warning for the spontaneous assemblies. Introduce a definition of spontaneous assembly in the Law of Georgia on Assemblies and Manifestations;
- Introduce amendment in the Law of Georgia on Police according to which when giving warning regarding the usage of special means to the participants of the assembly, the law enforcers should provide information as to the type of special means to be used;
- Amend the provision of Law of Georgia on Police which determines the circumstances under which the non-lethal shells may be used and bring it in compliance with the UN Human Rights Guidance on Less Lethal Weapons in Law Enforcement;
- Amend the provision of Law of Georgia on Police which determines the circumstances under which the water cannons may be used and bring it in compliance with the UN Human Rights Guidance on Less Lethal Weapons in Law Enforcement.

Executive Bodies of Municipalities:

- Develop a public document that will provide information to the organizers of the assemblies about the kind of assistance they can request from the executive bodies of the municipalities during the assemblies and procedures they have to follow for making such requests;
- Process and keep statistical information about the protest actions held within the territory of the municipalities, such as type of the assembly and approximate number of participants, even if there is no prior warning/notification submitted to the municipalities about the holding of the assembly;

To Government of Georgia and Ministry of Internal Affairs:

- Ensure right to peaceful assembly and manifestation equally for all members of society, despite their race, colour of skin, language, sex, age, citizenship, origin, place of birth, residence, financial or social status, religion or faith, national, ethnic or social belonging, profession, family status, state of health, physical disability, sexual orientation, gender identity and expression, political or other opinion or any other feature;
- Ensure right of the LBGTQI+ community members and their allies to freely gather and march in the desired time and location in any publicly available space;
- Assess the risks deriving from the anti-LBGTQI+ assemblies, take preventive measures, develop plan of management/policing at such assemblies, deploy high ranking police officials on the ground who can make relevant tactical decisions and give respective orders, including in regards with the use of special means in order to respond to mass violations of legal order; deploy adequate police force, equipped with protective gears and special means to effectively deter mass acts of the violence;
- Process and keep statistical information regarding the usage of special means at the assemblies and manifestations, such as the number of such instances, the official grounds for usage of special means, number of victims who were injured as a result of the usage of the special means, number of cases when the law enforcers were found liable criminally or by disciplinary rule in relation to his/her conduct at the assembly;
- Use force at the assemblies and manifestations only when it is strictly necessary for protecting the values enshrined in the European Convention on Human Rights and Constitution of Georgia, by complying the principle of proportionality, choosing the least intrusive measure and taking into account that the value protected with the use of force must exceed the harm caused by it;

- Train law enforcers regarding the rules of usage of special means, in accordance with the international human rights standards, such as UN Human Rights Guidance on Use of Less Lethal Weapons in Law Enforcement;
- Issue warning before the usage of special means at the assemblies unless the delay poses imminent danger to the life or grave injury of the health of the law enforcers or any other person;
- Regulate the specific rules of usage of the special means by a normative act;
- Allow erection of tents and other temporary constructions at the site of the assemblies when they do not block the entrance of the building or hinder the movement of transport and pose no other threats to the rights of others.

To Office of Chief Prosecutor of Georgia and Ministry of Internal Affairs:

- Carry out a transparent, impartial, immediate and thorough investigation into the mass acts of violence committed by the anti-LGBTQI+ groups on July 5, identify and prosecute all responsible persons, including the perpetrators and accomplices, such as organizers, instigators and those who aided the commission of the crimes;
 - Ensure a thorough and effective investigation of the actions of the law enforcement officials, including those on high level of ranking, in relation to the lack of crime prevention and response measures at July 5-6 events;
 - Ascertain the issue of liability of high ranking law enforcement officials who were supervising the operation of dispersal of June 20-21, 2019 protest action, in relation to the excessive use of rubber bullets by the low ranking officers which inflicted serious injuries on the protesters and constituted inhuman and degrading treatment in certain cases. Identify the low level officers who resorted to the unjustified use of rubber bullets against the non-violent participants of assembly and journalists;
 - Ensure a thorough and effective investigation of the actions of law enforcement officials in relation to the dispersal of protesters by the unjustified use of water cannons at November 8, 2020 assembly in front of the building of Central Election Commission, as well as dispersal of protesters in the village Zhoneti on November 14, 2020, by the excessive use of physical force.

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