

MONITORING THE PROTEST DEMONSTRATIONS



Summary Report

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(Summary Report)



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GENERAL OVERVIEW

Like in the past years¹, the political reality in Georgia demonstrates that opportunity to comprehensively enjoy the freedom of assembly ensures development of democratic, rule of law based, just state and promotion of substantial changes in the society.

The Constitution of Georgia² and the international documents³ acknowledge that freedom of expression is fundamental and functional element of the democratic society. A possibility of holding assemblies/manifestation for the consideration of significant issues is an integral part of democratic governance⁴.

The purpose of this report is to legally analyze the offenses identified during the rallies held in Georgia from February 1 before November 30, 2021, and to determine the compliance of the actions of the law enforcement officers with the international standards.

This document examines the results of the monitoring of protest rallies of civil movements, political parties, of so-called ultra-right groups, representatives of media organizations or other types organized by civil activists in Tbilisi and other regions.

Regardless years-long experience of holding assemblies in Georgia, the HRC monitoring revealed that majority of the protest demonstrations held in the country in 2021 was accompanied with the violation of the right to peaceful assembly and in parallel to that – liberal approach was observed with regard to the protest rallies organized by the violent groups. For example, during the July 5-6, 2021 large-scaled counter-

¹ See the Summary Report – Findings in the Monitoring of Protest Demonstrations, Human Rights Center, 2020 <http://hrc.ge/files/reports/37awciebis%20monitoringi-eng.pdf>

² See Article 21 of the Constitution of Georgia <https://bit.ly/37Pi0TY>; Ruling of the Constitutional Court of Georgia N1/3/538 of June 24, 2014, II, Paragraph 1.

³ Universal Declaration of Human Rights, Article 20. <https://bit.ly/3oAiJIC>; International Covenant on Civil and Political Rights, Article 21. <https://bit.ly/3gyFhAo>; European Convention on Human Rights, Article 11. <https://bit.ly/3gp9925>; American Convention on Human Rights, Article 15. <https://bit.ly/3ovCVF0>.

⁴ See “Political Union of Citizens “Movement for Unified Georgia”, Political Union of Citizens “Georgian Conservative Party,” citizens of Georgia – Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers’ Association, citizens Dachi Tsaguria and Jaba Jishkariani, the Public Defender of Georgia v. the Parliament of Georgia (paragraph 25) <https://matsne.gov.ge/ka/document/view/1309814?publication=0>

demonstration of the violent groups in Tbilisi, the state failed to fulfill its positive obligation that ended up with grave results⁵.

In the result of the monitoring carried out in recent years to see the practice of exercising the right to assembly and demonstration, the restrictions to erect non-permanent constructions during the assembly by law enforcement officials, further, the improper and inefficient management of the assembly, as well as the legislative gaps related to the impossibility to block the roads in spontaneous protests were identified as problem issues⁶ - the law enforcement officers did not allow the demonstrators to arrange temporary constructions like: tents, folding beds or banners and they arrested those people through exceeding their power, who tried to erect constructions. It is worth to note that similar incidents happen regularly though the right to erect temporary constructions is guaranteed by the Case Law of the European Court of Human Rights⁷, the rulings of the common courts of Georgia⁸ and by the guidelines of the OSCE/ODIHR⁹. The monitoring also revealed disproportionate restriction of freedom of movement; the organizers of the rallies and demonstrators were massively arrested and fined by using excessive force.

The law enforcement officers actively apply the mechanisms under the Code of Administrative Offences of Georgia against the right to assembly and manifestation mostly to discredit, threaten the demonstrators and to harm the protest rallies.

The court proceedings into administrative offences, which are under the monitoring of Human Rights Center, revealed that the participants of the peaceful assemblies are mostly arrested under the Article 166 (pity

⁵ See the Monitoring the Protest Demonstrations – Interim Report, Human Rights Center, 2021. <http://hrc.ge/files/reports/160aqciebi-eng.pdf>; also see Report on the Monitoring of the Protest Rallies of July 5-6, 2021 – Primary Legal Assessment, 2021 <http://www.hrc.ge/files/reports/167aqcieb-eng.pdf>

⁶ See Prohibited Rights: Legislative Standards for the Use of Non-Permanent Structures and Technical Means and Problems of Exercising in Practice, Human Rights Center, 2021:

<http://www.hrc.ge/files/6PROHIBITED%20RIGHTS.pdf>

⁷ See the ruling of the ECtHR: ECHR, *Tabernacla v Secretary of State for Defence*, 5 February 2009. <https://www.casemine.com/judgement/uk/5a8ff71160d03e7f57ea70a9>

⁸ See the decision N3/6463-16 of August 31, 2016 of the Administrative Collegium of the Tbilisi City Court

⁹ See Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR; §18, 2010. <https://bit.ly/3jVlptp>

hooliganism), Article 173 (disobedience to the lawful request of the law enforcement officer) and Article 150 (Defacing the appearance of a self-governing unit) of the Code of Administrative Offences of Georgia. The facts of restricting the freedom of assembly and manifestation by applying these articles were documented for years by the organizations, including Human Rights Center¹⁰.

The mentioned problem is particularly acute because the acting Code of Administrative Offences of Georgia was adopted in 1984, during the Soviet Union and it cannot meet the requirements of the fair process and each government uses it to unlawfully restrict freedom of peaceful assembly and expression. The Code determines less procedural guarantees than a defendant of the criminal offence may have – it does not respect the presumption of innocence beyond the reasonable doubt, as well as other procedural rights, etc. At the same time, the Code establishes such grave sanctions for the administrative offences like administrative imprisonment¹¹.

In accordance with the procedural regulations of the Code of Administrative Offences, the criminal offences, which are also presented in the Code of Administrative Offences, the justice is not rendered pursuant to the principle of fair court guaranteed under the Constitution of Georgia and international documents. Hence, the normative content of the disputed norms contradict the Constitution of Georgia and the European Convention on Human Rights, which aims to consider the criminal offences and to pass verdicts without the respective procedural guarantees¹². The recent changes were also critical that made it possible for law enforcement officials to increase the period of administrative detention of a person up to 48 hours in a blanket manner. Detaining a person for 48 hours, especially when the judgment of the Constitutional Court also explicitly emphasizes the adequacy of the 24-hour time frame for the purpose of bringing an alleged offender to the court, should be

¹⁰ See the Monitoring the Protest Demonstrations – Interim Report, Human Rights Center, 2021 <http://hrc.ge/files/reports/160aqciebi-eng.pdf>; Report Findings in the Monitoring of the Protest Demonstrations, 2020 <http://hrc.ge/files/reports/37awciebis%20monitoringi-eng.pdf>

¹¹ See: Right to a Fair Trial in Cases of Administrative Offences – Problem Analysis, Human Rights Center, 2021 <http://www.hrc.ge/319/eng/>

¹² Like: equal distribution of burden of proof, valid/neutral evidence, presumption of innocence, compatibility of parties, equality of arms and principle of adversariality

considered as an intensive and disproportionate interference¹³.

METHODOLOGY

The rallies were observed by 3 monitors who have received relevant training from the experts specially invited from OSCE / ODIHR¹⁴. The observers wrote down the information received after each assembly and court hearing, which was evaluated, and afterward analytical documents were prepared by the project analyst-lawyer.

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

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

On August 25, 2021, Human Rights Center published the interim report - Monitoring the Protest Demonstrations. The document presented the findings from the monitoring of the protest rallies of social and political content or other types held from February to August 10, 2021 in Tbilisi and in the regions¹⁵.

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

¹³ See “Administrative Error under the Shadow of Georgian Lawmaking”, Human Rights Center, 2021. P.13. <http://www.hrc.ge/files/122administraciuli-eng.pdf>

¹⁴ See Information on OSCE/ODIHR training <https://bit.ly/2Qmse8R>

¹⁵ See the Monitoring the Protest Demonstrations, Interim Report, Human Rights Center, 2021. <http://hrc.ge/files/reports/160aqciebi-eng.pdf>

MONITORING THE PROTEST DEMONSTRATIONS HELD IN 2021

Having observed 18 rallies held during the reporting period, it can be said that the majority of the rallies were peaceful on the part of the protesters. In the exceptional cases of the rallies held, the actions on the part of the protesters never reached the threshold where the risk of wrongdoing would be tangible. In several cases, there was tendency of the resistance by demonstrators that was provoked by the repressive policies on the part of police forces. In such cases, by a general assessment, the behavior of the demonstrators was of such nature and quality that their participation in the demonstration was legitimate both under the national law and in terms of the scope of the protection of the right to freedom of peaceful assembly under Article 11 of the ECHR. Some of the protest actions involved large-scale acts of violence, to which the relevant state authorities did not respond properly causing severe consequences.

1. Behavior of protesters and actions of law enforcement officers at the rallies

On February 7, 2021, in village Namokhvani, Tskaltubo Municipality, the protesters gathered from different regions of Georgia for the peaceful rally demanding the cessation of the construction works on the project of Namakhvani HPP. The main demand of the people gathered at the rally was to stop the construction of the HPP in the village of Namokhvani and company ENKA to leave the gorge of Rioni River. The number of protesters was about 500 people. The organizers of the rally erected a protest camp near Rioni River with the help of the protesters. Although, initially there was some resistance from the police to allow the camp erection, but eventually the resistance was exhausted. The protest participants said they were to continue to protest and spend the next day in the camp (which would be the 106th day and night of the protest). The rally was peaceful. In general, the protesters often made xenophobic/homophobic statements during the Namakhvani protests and the organizers usually stated, they apart themselves from any xenophobic calls.

Rallies were held in front of the Parliament of Georgia *on February 19-20, 2021*. During the rallies, police officers did not allow the demonstrators to erect protest camps and arrested about 20 civil activists who were trying to erect the protest camps¹⁶. It should be noted that these rallies took place on a wide pavement not impeding the traffic of cars, not blocking the entrance to the buildings, and not hindering the activities of public institutions. Thus, the rallies were fully protected by the freedom of assembly. Therefore, the restriction of the right to place tents, banners, posters and other non-permanent constructions important for the assembly in the vicinity of the Parliament of Georgia and the actions of the law enforcers were unlawful and unconstitutional within the scope of exercising the right to peaceful assembly and demonstration.

There is no provision in the Georgian legislation prohibiting the use of protest camps, folding beds, banners and other non-permanent constructions during rallies and demonstrations on the territory for pedestrian traffic. The Constitution of Georgia considers the restriction of this right to be permissible only if it attains an unlawful nature. Moreover, the applicable legislation of Georgia does not provide for the prohibition of non-permanent constructions including the protest camps, provided that they do not impede the movement on the road¹⁷.

On March 14, 2021, an action against the construction of Namakhvani HPP was held in Kutaisi with 22,000 people participating. The rally was peaceful despite the large number of people. The protesters have not blocked the road by means of any barriers. However, due to the large number of protesters, the traffic was stopped at the entrance from all sides of Kutaisi Central Square. No violent incidents occurred at the rally. No cases of confrontation were reported between the law enforcers and the protesters¹⁸.

On April 12, 2021, in village Gumati, Tskaltubo Municipality, people

¹⁶ Statement of the Public Defender: <https://bit.ly/3qCTX5F>; Human Rights Center, Monitoring Report on the Protest Rally in Village Gumati. Report prepared: February 21, 2021

¹⁷ See Political Union of Citizens Movement for United Georgia, Political Union of Citizens Conservative Party of Georgia, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. the Parliament of Georgia. 2011. The Document is available at: <https://bit.ly/3AXOfQr>

¹⁸ Monitoring report of Human Rights Center, Rally against the construction of Namakhvani HPP, Kutaisi. Report prepared: March 14, 2021

from different regions of Georgia gathered to hold a peaceful protest demanding the construction of Namakhvani HPP to be stopped and the population to be allowed to return to Rioni Valley. However, the day before i.e. April 11, 2021, after a person entered and disappeared in the Rioni River, the police took down the camp of Rioni Valley Defenders bringing as a reason rather conflicting theories. According to one of the versions, the need to take down the camp stemmed from the rising Rioni River and the possible floods in the surrounding area, and for another reason the police mentioned the ongoing search-and-rescue operation. Finally, the organizers of the protest decided to hold the rally in the village of Gumati.

The protesters intended to enter village Namokhvani but the law enforcement officers did not allow them to do so. On several occasions, the law enforcement officers clashed with the protesters¹⁹. One of the incidents of such clashes took place near the office of company ENKA. The activists demanded the ongoing construction works in Rioni Valley to be stopped and to be allowed to return to their own land. The citizens were expressing the protest with a peaceful gesture of hands raised up and by approaching the police cordon. At the same time, the law enforcement authorities managed to bring to the Rioni gorge water cannon vehicles and riot police forces.

During the rally, on several occasions, clashes took place between the law enforcement officers and the activists gathered there. A conflict situation near the office of company ENKA was defused on the spot²⁰. The protesters blocked the roadway and demanded to be allowed to enter village Namokhvani²¹. Some of the activists headed towards Kutaisi in a convoy of cars. Rest of them remained in Gumati. A large number of police officers were present at the rally. Due to the large number of people and vehicles, the traffic was overloaded and both roads entering village Namokhvani were blocked by the police²².

According to OSCE/ODIHR guidelines, the erection of protest camps

¹⁹ See video of the clash: <https://bit.ly/3qCxFlb>

²⁰ See more information: <https://bit.ly/3wR82zL>.

²¹ See more information: <https://bit.ly/3uS46gB>.

²² Human Rights Center, Monitoring Report on the Protest Rally in Village Gumati. Report prepared: 12.04.2021.

and other non-permanent constructions falls within the scope protected by the right to peaceful assembly²³. Any act banning the erection of protest camps and other structures in "the controlled areas" was deemed in one of the judgments against the United Kingdom to be contrary to the right to peaceful assembly protected under Article 11 of the European Convention on Human Rights as the erection of the camp acquired an inseparable symbolic meaning from the message of the protest²⁴. On the national level, the judgment by the Tbilisi City Court from August 31, 2016, held that the erection of a protest camp without prior consent falls within the right to peaceful assembly. The court interpreted that "the right to assembly and demonstration includes the right to choose the place, time, manner and content of the assembly, which in turn implies the possibility of erecting non-permanent constructions"²⁵.

The reasons for setting up the checkpoints next to village Namokhvani and thereby restricting Georgian citizens in freedom of movement across the country were unclear and unjustified that resulted into the violation of the right to peaceful assembly of citizens. During the whole period between April 3, 2021- June 18, 2021²⁶, (before the mediation process conducted by the EU Energy Community Secretariat had commenced to facilitate talks between the Government and Rioni Valley Defenders) there were special police measures taken in Rioni Gorge and the locals were restricted in the freedom of movement towards village Namokhvani and in the right to protest and express themselves in the village. The reasoning presented by the Ministry of Interior to justify the action did not meet the basic requirements for interference with the right as provided for by the Constitution of Georgia and human rights standards²⁷. Besides that, the police arrested and fined the protest organizers for enjoying their right to

²³ See Guidelines on Freedom of Peaceful Assembly, second edition, §18, Warsaw/Strasbourg 2010. available <https://bit.ly/3bpJ1C4>

²⁴ See *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 (05 February 2009). <https://bit.ly/3bjcv4q>. also see: European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, para 148. available <https://bit.ly/3hfX9R2>

²⁵ See Judgment of the Administrative Cases Panel of Tbilisi City Court of 31 August 2016 in the case №3 / 6463–16.

²⁶ See full information <https://bit.ly/3weCLWg>

²⁷ See Article 25 of the Law of Georgia on Police: <https://bit.ly/361aTDv>

peaceful assembly through grave violations.

Similar restriction of the freedom of movement hindered the demonstrators to reach the protest location – the most important site of their movement.

On May 23, 2021 the Rioni Valley Defenders held another demonstration in Tbilisi. Several days before they announced the large-scaled protest demonstration. On the first day of the rally in Tbilisi on May 23, the rally organizers announced that they were giving the authorities time until 12:00 am of May 24 to meet their demands. At about 12:10 am there was a noise in the middle of the assembly. Television reporters and cameramen surrounded the two young men, who left the rally and took a quick step towards Rustaveli Avenue. At that time, the organizer of the rally, Varlam Goletiani, using a loudspeaker addressed the crowd and the police that the incident was allegedly instigated. He called on those gathered not to pay attention to such provocations, and called on the police to take legal measures to defuse the situation and prevent any unlawful actions. As it turned out, two young people turned out to be activists of movement Shame: Zura Berdzenishvili and Salome Barker. Salome Barker carried a symbolic LGBT armband, which she has been wearing for two years. According to the Shame activists, they came to the rally in support of Rioni Valley Defenders, but the leaders of some homophobic groups, namely Guram and Alexander Palavandishvilis demanded from Salome Barker to remove the symbolic armband. After Barker refused to take off the armband, ‘Palavandishvili junior’ in an aggressive manner demanded her to leave the rally. Other aggressive individuals gathered around them, after which the activists of Shame abandoned the rally so that the verbal conflict would not turn into a physical confrontation. After the activists left, the police took no actions to find out whether the conduct of the Palavandishvilis were within the law and did not react in any other way to the incident.

It is worth to mention that the police were informed from the beginning that the protesters were planning to picket the roads in the city. Accordingly, the police from the very beginning showed readiness to maintain public order, to control the movement of vehicles in different locations of the city where the protesters would move. Where necessary, the police completely restricted the movement of vehicles.

On May 26, 2021, people from different administrative territorial units of Georgia gathered at the Republic Square in Tbilisi. Their main demand was to terminate the agreement signed on April 25, 2019 between the Government of Georgia and company ENKA Renewables on the construction of Namakhvani HPP on Rioni River and to leave Rioni Valley. The demonstration was preliminarily announced by various means, including TV and social media. During the rally, a convoy of motorcycles and scooters with Georgian flags passed by with hooters on. Despite a large number of people, not much police officers could be noticed at the place and, most importantly, groups of police officers were standing quite far from the place of assembly. During the rally, no clashes took place between the law enforcement officers and the activists gathered there. At the end of the rally, Rioni Valley Defenders headed towards the Rioni Valley and announced that they would continue the fight from there.

During the rally, part of the road on the Republic Square was blocked. Law enforcement officers controlled and facilitated the smooth movement of vehicles²⁸.

On July 1-5, 2021 Tbilisi Pride demonstration should have been held in Tbilisi. This included three major events over five days: the official first showing of March for Dignity, a documentary dedicated to the Pride Week held in Tbilisi for the first time in 2019 (July 1); Pride Fest featuring local and international artists (July 3); and March for Dignity organized by local public movements on Rustaveli Avenue (July 5)²⁹.

Following the announcement of the Pride Week by Tbilisi Pride on July 1-5 to be finalized with the March for Dignity on Rustaveli Avenue in Tbilisi on July 5, ultra-nationalist, pro-Russian forces and the actors linked with the Georgian Patriarchate became more active. Before the Pride Week and during the course of the Pride Week, the groups called on the citizens to be mobilized against the March for Dignity.

Public homophobic statements, made by the abovementioned groups including the representatives of the Patriarchate of the Georgian Orthodox Church, hindered the Tbilisi Pride Group to conduct the March for

²⁸ Human Rights Center, Monitoring Report on the Protest Rally in Tbilisi. Report prepared: May 26, 2021

²⁹ Tbilisi Pride statement in full: <https://bit.ly/3lyXxhE>

Dignity³⁰.

On July 5, 2021, the homophobic groups organized the counter-rally and violently assaulted journalists and defenders of the LGBTQ+ community members; these facts compelled the organizers to cancel the March for Dignity due to the security of the participants. The participants of the counter-rally brutally assaulted the media representatives. Police passively interfered in the violent incidents and did not arrest the harassers. They only managed to remove the injured victims from the site.

Finally, on July 5, 2021, 53 journalists and cameramen from various media outlets working on the spot³¹ and peaceful civilians were attacked, further, the offices of the organizations "Shame" and "Tbilisi Pride" were subjected to vandalism. The attacks on journalists were of varying intensity. Several media workers received severe bodily injuries and were mutilated³². The police failed to protect the journalists and demonstrators, one of the cameramen – Lekso Lashkarava was found dead in his house several days after he was beaten during the rally³³.

The police could not properly protect the participants of the second-day spontaneous rally – *Silent Rally*, who condemned the violence facts of the July 5³⁴.

On October 4, 2021, demonstration was organized near the Rustavi penitentiary facility in support of ex-president Mikheil Saakashvili. Under coordination of the political party National Movement a convoy of cars headed towards the Rustavi from Tbilisi. The organizers and supporters claimed that Mikheil Saakashvili is a political prisoner and demanded his freedom³⁵.

³⁰ the Patriarchate stated that the Pride “aimed to legalize grave sin,” and that homosexuality was “non-traditional way of life,” full text at <https://civil.ge/archives/429890> ; PM Irakli Garibashvili blamed the participants of the March for Dignity for “civic confrontation. See: PM Says Pride March ‘Unreasonable,’ Organized by ‘Radical Opposition’: <https://civil.ge/archives/430522>.

³¹ See List of journalists attacked by the violent groups: <https://bit.ly/3yqBuNH>

³² Ibid

³³ See full information <https://bit.ly/3xkURWY>

³⁴ Thousands rally in Georgia to protest anti-LGBTQ violence, Euractiv.com July 7, 2021 <https://www.euractiv.com/section/europe-s-east/news/thousands-rally-in-georgia-to-protest-anti-lgbtq-violence/>; Also see the Interim Report – Monitoring the Protest Demonstrations, Human Rights Center, 2021 p. 9 <http://hrc.ge/files/reports/160aqciebi-eng.pdf>

³⁵ See full information <https://reginfo.ge/politics/item/23784-rustavis-zixestan-mixeil-saakashvilis->

On October 14, 2021, large-scale demonstration was organized in Tbilisi in support of Mikheil Saakashvili. Citizens from different cities of Georgia arrived in Tbilisi in an organized manner, by cars; on their way to Tbilisi, opponents of the National Movement met them with brooms and crutches – according to their clarifications with the symbols of the crimes committed by the UNM government³⁶. The representatives of the opposition political parties clarified that it was organized by the Georgian Dream. In the end, the rally on the Liberty Square in Tbilisi finished peacefully. The participants demanded the freedom of the ex-president Mikheil Saakashvili. When parting with the demonstrators, the leader of the UNM Nika Melia called on the supporters to come to the elections on October 30.

On October 27, 2021 the ruling power – Georgian Dream organized so-called Closing Gathering of their supporters at the Liberty Square in Tbilisi. The ruling party brought citizens from the western and eastern Georgia. In parallel to that, information about the “misuse of the administrative resources and official powers by the Georgian Dream” was disseminated actively. ODIHR EOM observers stated that they had received credible reports that public employees were instructed by their supervisors to participate in the rally held by GD, raising concerns of abuse of office by the ruling party³⁷.

On November 19, 2021, another demonstration was held in Tbilisi, which started from the Republic Square and continued in front of the building of the Parliament of Georgia. The rally was announced by the opposition political parties and it aimed to demand the authorities to take Saakashvili to civil medical clinic and to set snap parliamentary elections in the country.

At about 16:00 pm, the protesters gathered in front of the Parliament of Georgia. The stage for the speakers was arranged on the opposite side of the Parliament because the area in front of the Parliament was blocked with iron barriers. The employees of the Tbilisi City Hall were on the site and they were erecting the New Year Tree. The fountains were also on in

[mxardasacherad-aqzia-gaimarta](https://www.radiotavisupleba.ge/a/31509892.html)

³⁶ See full information <https://www.radiotavisupleba.ge/a/31509892.html>

³⁷ See the Statement of Preliminary Findings and Conclusions, OSCE/ODIHR: <https://bit.ly/3o6GJOG>

front of the Parliament. The protesters fully occupied the territory from the Public School N1 to the surrounding area of the Parliament. After the protesters gathered around the stage, the police officers left the territory and moved in the backward.

The demonstration was peaceful. The songs were playing periodically. There was no construction and confrontation. Also, the protesters did not act without control, they did not try to erect barricades or block the buildings. Nobody was arrested³⁸.

Besides the abovementioned, other demonstrations monitored by the HRC were conducted in peaceful environment; the activities of the both protesters and law enforcement officers were legitimate and they acted within the frame of the freedom of peaceful assembly pursuant to the national legislation and the Article 11 of the ECHR³⁹. However, several rallies considering the demands voiced by organizers and concrete incidents occurred during the rallies, were not of peaceful character⁴⁰.

On November 30, 2021, the rally was held in front of the Tbilisi City Court in support of the third president of Georgia. Human Rights Center monitored the rally both on the site⁴¹ and from distance, through live

³⁸ HRC monitoring report: 19.11.2021

³⁹ For example: HRC monitoring report, rally – “March of Disobedience”; the report was prepared: 06.02.2021; HRC monitoring report, rally – “No to the Soviet Regime”; the report was prepared: 23.02.2021; HRC monitoring report, rally - "Come out for dignity"; the report was prepared: 09.03.2021; HRC monitoring report, rally Against the Construction of Namakhvani HPP; Kutaisi; the report is prepared: 14.03.2021; Rally "Lift the curfew". The monitoring report by HRC: 03.04.2021; Rally - "Against the construction of Namokhvani HHP", Tbilisi, the Republic Square. The monitoring report by HRC: 23.05.2021; Rally - "The murderous government to resign", Tbilisi, in front of the Parliament of Georgia. The monitoring report by HRC: July 17, 2021; A rally organized by the Society for the Protection of Children’s Rights and the Youth Center Zneoba in front of the premises of the EU Delegation to Georgia, where they demanded the cancellation the March for Dignity and removal from the country of the EU Ambassador to Georgia, Carl Hartzel, and the US Ambassador, Kelly Degnan, and declaring them "personas non grata". The report of the HRC monitor: 30.06.2021. Note: A total of 20 people attended the rally. See full information: Monitoring Protest Demonstrations – Interim Report, HRC, 2021 <http://hrc.ge/files/reports/160aqciebi-eng.pdf>

⁴⁰ For example: HRC monitoring report, violent rally of the Georgian March in front of the President’s Palace, the report was prepared: 03.02.2021; see full information: Monitoring Protest Demonstrations – Interim Report, HRC, 2021 <http://hrc.ge/files/reports/160aqciebi-eng.pdf>

⁴¹ See full information <https://fb.watch/9BJ5HyJ58g/> (last seen 30.11.2021); https://fb.watch/9BI_FDqedJ/ (last seen 30.11.2021).

streaming⁴².

Before the court proceeding started, the Ministry of Internal Affairs made an official statement, where they called on the citizens to protect the public order and obey the lawful demands of the police officers⁴³. Before the ex-president was delivered to the Tbilisi City Court, large number of police officers were deployed at the court building both inside the perimeter and in the surrounding area.⁴⁴ The police blocked both entrances to the court and the roads in the city.

The rally was accompanied with loud shouts and horn voice. There was several physical confrontations between the police officers and the protesters. The demonstrators tried to climb over the concrete wall of the court yard and to continue the protest in the yard but the police did not allow them to⁴⁵.

During the rally, the police officers arrested 15 civil activists⁴⁶ for the attempt to block the road in accordance with the Articles 166 and 173 of the Code of Administrative Offences of Georgia. Among the detainees was a leader of the opposition political party Gigi Ugulava, arrested under the Article 173 of the Code of Administrative Offences and the supporter and activist of the UNM Besik Tamliani⁴⁷. Later, the Prosecutor's Office of Georgia accused Besik Tamliani under the Article 353 of the Criminal Code of Georgia – resistance, threat or violence against the law enforcement officer or other representative of the authority.

The rally finished at about 4:00 pm after Mikheil Saakashvili left the building of the Tbilisi City Court⁴⁸.

⁴² See live streaming on <https://fb.watch/9BIBOp88yG/> (last seen 30.11.2021)

⁴³ See the statement of the MIA: <https://bit.ly/3d0HdAL> (last seen 30.11.2021).

⁴⁴ Information available at <https://bit.ly/3rkRU9u> (last seen 30.11.2021).

⁴⁵ See video <https://bit.ly/32Ay1km> (last seen 30.11.2021).

⁴⁶ Available at: <https://bit.ly/3I8Zvhh> (last seen 30.11.2021); <https://bit.ly/316mYiM> (last seen 30.11.2021); <https://bit.ly/3E7IDpT> (last seen 30.11.2021); <https://bit.ly/3D8emFh> (last seen 30.11.2021); https://fb.watch/9BFKlCs_ay/ (last seen 30.11.2021).

⁴⁷ Watch the arrest of Gigi Ugulava <https://bit.ly/3G00tZO> (last seen 30.11.2021);

<https://bit.ly/3FZ5TG1> (last seen 30.11.2021).

⁴⁸ See the HRC monitoring report, 29.11.2021

2. The need for and the proportional number of law enforcement officers

In accordance with the international standards, the police have a responsibility to facilitate an assembly as notified or agreed and should always aim to ensure that they deploy the minimum number of policing resources necessary to enable the event to take place in a peaceful manner. Tactical commanders should continually review the policing operation over the course of the assembly and should draw upon the decision-making model to inform their practice throughout the event⁴⁹.

On the national level, based on the Article 21 of the Constitution of Georgia, the State has both negative and positive obligations to ensure that the assemblies and demonstrations proceed smoothly, without excesses.

In the case of the protest demonstration against Namakhvani hydropower plant, the authorities are trying to create some obstacles and prevent the legitimate and peaceful social protest of Rioni Valley Defenders. The State uses the law enforcement system to pursue its rigid, repressive and violent policies and grossly violates the fundamental rights to assembly/demonstration, expression, free movement of persons guaranteed by the Constitution of Georgia and international human rights instruments.

On July 5, 2021, during a rally in Tbilisi, law enforcement officials were deployed at several locations. Basically, these locations were at the outer perimeter of the protest. There were no police officers in the middle of the assembly making the reactions to the violent attacks inefficient. Especially a small number of the police was evident.

Given the actions of violent groups gathered in counter demonstration of the Silent Rally held in front of the Parliament of Georgia on July 6, 2021, the number of law enforcers present on the ground, especially within a few hours after the beginning of both rallies, was insufficient. Therefore, at several occasions, the counter-demonstrators managed to break through the cordons of the police officers, to penetrate into the mass of peaceful protesters and to inflict bodily injuries on the protesters. The law enforcers

⁴⁹ Human Rights Handbook on Policing Assemblies, p. 92. <https://bit.ly/37KoXsa>; also: Makaratzis v. Greece, Application No. 50385/99, 2004. <https://bit.ly/33TsF1B>

were trying to react to the violent facts and at several occasions they managed to remove and/or detain the persons who had broken through the cordon. Nevertheless, due to the insufficient number of police officers and the aggression of the counter-demonstration, it became increasingly impossible for the protesters to stay on the protest area.

Unlike the rallies of previous years, despite the large-scale violence, no special forces or special means were deployed at the counter-demonstration. The law enforcement officials, as noted, were rather passive which was evident by the fact that they made no clear appeals to stop the violence.

In the cases of other rallies, there was a balance of proportionality between the demonstrators and the police forces deployed at the sites.

3. Practice of detaining/fining assembly participants

Law enforcement bodies actively continue to apply the mechanisms envisaged under the Code of Administrative Offences of Georgia against the rally participants to restrict their right to assembly and manifestations.

The law enforcement bodies still continue the irrelevant with the human rights practice, according to which the family members and defense lawyers of the detainees are not notified about the whereabouts of the detainees timely or at all. Accordingly, the lawyers cannot visit their clients timely, to speak with them and agree the defense strategy.

Even if the lawyers are informed about the whereabouts of the detainees, they cannot meet them during hours for some procedural barriers. Also, the main problem which requires particular attention is the increasing tendency of restricting the rights of the peaceful protesters based on the existing norms even when the assembly is conducted within frameworks of the law.

The monitoring revealed that during the protest, the administrative detentions and fines applied against the protesters were substantially ungrounded and aimed to reduce the protest rather than to ensure public order and peace. Fining 12 persons protesting against the construction of Namakhvani HPP in the Rioni valley on April 3, 2021 after the law enforcement officers blocked the roads towards Namokhvani is clear

example of this tendency. The police fined with GEL 2,000 each in village Gumati on the grounds of violating 'the curfew'. The fined persons were staying in Gumati spending the night in cars after the law enforcement officers did not allow them during the day to move in the direction of the protest camp in Namokhvani and the fined persons were out of time (due to the curfew) to return back the same day⁵⁰.

On April 4, 2021, Mirian Maglaperidze, a resident of village Zarati was going to a shop in a nearby village Mopurchkhети to buy some bread, when he was stopped by the police and asked for his ID card. After having been refused by the police to continue the movement to buy the bread, he asked the officers to assist him in buying the bread, which was regarded as an insult towards the police and he was arrested on charges of petty hooliganism and disobedience⁵¹.

On April 9, 2021, Lasha Kutateladze, a protester, was arrested in village Namokhvani for disobeying a lawful order of the police. At the court hearing, the police officer submitted that the offense committed by Kutateladze was expressed in the act of moving within the Rioni gorge. In this case, the judge did not held Lasha Kutateladze as an administrative offender and released him from the courtroom⁵².

On April 14, 2021, during the protest rally in the village of Gumati, the police arrested six persons for the offenses under Article 173 of the Code of Administrative Offenses. According to the Ministry of Interior, despite numerous warnings from the police, the activists did not leave the roadway, did not obey the lawful orders of the police, after which the police used proportionate measures of coercion⁵³.

On May 27, 2021, in village Gumati, during the clashes, the police detained 8 representatives of Rioni Valley Defenders⁵⁴. The detained activists were released on May 28⁵⁵. They wanted to enter the Rioni gorge.

On November 10, 2021, with the request to take Mikheil Saakashvili

⁵⁰ See full information <https://bit.ly/3qB4waf>

⁵¹ See full information <https://bit.ly/3jwb3S4>

⁵² See full information <https://bit.ly/3w7Bosh>

⁵³ See full information <https://bit.ly/2TrjVNY>

⁵⁴ See full information <https://bit.ly/3h83Upu>

⁵⁵ See full information <https://bit.ly/36baVPL>

to civil medical clinic, the protest rallies were held near various administrative buildings in Tbilisi. According to the statement of the MIA⁵⁶, the police detained 46 persons in accordance with the Code of Administrative Offences. The Ministry stated that the rally participants exceeded the limits allowed by the law on freedom of assembly and expression and made attempts to block the entrances of the administrative bodies. After the detention of this rally participants, the family members and their lawyers did not have information about the whereabouts of the detainees for a long time, for what they could not visit their clients and agree the defense strategies with them⁵⁷.

4. Legal proceedings related to the events of July 5-6

According to the official information released by the Ministry of Interior, 100 people were administratively detained on July 5, 2021, and 68 of the detained persons were shortly released on their own recognizance⁵⁸. As of August 5, 31 individuals have been detained under criminal proceedings for certain episodes of violent acts and interference with professional activities⁵⁹. It is noteworthy that the law enforcement agencies have not yet launched an investigation into the facts of infringing the right to assembly (Article 161 of the Criminal Code)⁶⁰, despite the fact that the signs of the mentioned offence were clearly evident during the events of July 5-6 and the wrongful actions were of a well-organized nature.

In accordance with the information requested from the Office of the Prosecutor General⁶¹, in relation with the July 5-6, 2021 events at the Rustaveli Avenue in Tbilisi, 45 journalists and cameramen received a status of a victim in the frame of the ongoing investigation. Criminal

⁵⁶ See the statement of the MIA <https://police.ge/en/shinagan-saqmeta-saministros-gantskhadeba/15032>

⁵⁷ Statement of the Public Defender of Georgia <https://www.ombudsman.ge/eng/190411044320siakhleebi/sakhalkho-damtsvelis-gantskhadeba-10-noembers-saprotesto-aktsiebze-dakavebul-pirebtan-dakavshirebit>

⁵⁸ See the statement of the MIA <https://bit.ly/31Af3Kf>

⁵⁹ See the statement of the MIA <https://bit.ly/3Ac9Bcp>

⁶⁰ See the Criminal Code of Georgia, Article 161 <https://matsne.gov.ge/en/document/view/16426?publication=235>

⁶¹ See the answer of the Office of the Prosecutor General #13/57936 to the HRC letter of September 23, 2021

proceedings were launched against 31 individuals, among them 26 persons are charged under the Article 154 Part 2, Article 156, Part 2-a and Article 225 Part 2 of the Criminal Code of Georgia; 1 person is charged under the Article 156 Part 2 – a and Article 225 Part 2 of the CCG; 3 individuals are charged under the Article 160 Part 2 – a and Part 3 – a, Article 156 Part 2-a and Article 225 Part 2 of the CCG and 1 person is charged under the Article 154 Part 2 and Article 156 Part 2-a of the CCG. Human Rights Center defends legal interests and rights of 9 journalists. All of them received the status of a victim⁶².

Unfortunately, the investigative bodies have not yet identified all the persons involved in the violent acts and, consequently, the organizers of the violent acts have not been prosecuted.

CONCLUSION

The monitoring of the rallies held during 2021 revealed numerous facts of disproportionate police force mobilization, arrests, use of administrative detention, and fines, as well as the disproportionate restriction of freedom of movement of protesters. Examples from the recent past further exacerbate the problem of maintaining the balance by the State between freedom of assembly and public order and security. The protesters are still deprived of the opportunity to erect non-permanent constructions (including protest camps) constituting an illegal restriction on freedom of assembly.

Taking into account the evaluation of monitoring reports of the assemblies, based on the analysis of identified violations, and the assessment of the compliance of the actions of law enforcement officers with international standards, it can be said that at the majority of the protests the right to freedom of assembly and demonstration, and the relevant standards were not respected at large. The authority uses the law enforcement bodies as an instrument of political repressions. Simultaneously, investigative bodies have not arrested a single organizer of the July 5-6 events. At the same time, physical violence against the civil activists, representatives of the sexual minorities and journalists,

⁶² See the HRC statement: <http://www.hrc.ge/265/eng/>

interference in the professional activities of the journalists had purposeful and well-organized character.

The monitoring showed that mostly, the law enforcement officers responded to the incidents with the principle of selective justice.

Also, the government uses the soviet time Code of Administrative Offences as an instrument of repressive politics so that the protest participants are deprived of the right to enjoy the fair trial. With the recent amendments, the Code became even more repressive and leaves risks to use it for narrow political purposes and in the arms of the government it can become the mechanism to control and restrict the public space.

All in all, grave violations were observed during the rallies that contradict the Constitution of Georgia and standards of the international law.

An important challenge for the organizers of the assemblies and manifestations was the need to observe the regulations under Covid-19 by the participants of the large rallies. Although the rally organizers basically took the necessary measures to prevent the spread of the virus, the physical distancing could not be observed at the large rallies. Oftentimes the protesters did not wear mask at all or they wore them in a wrong manner.

RECOMMENDATIONS

To the Government of Georgia:

- To avoid disproportionate restriction of peaceful assemblies;
- To avoid prohibition of erecting protest camps and other non-permanent constructions during peaceful assemblies;
- To facilitate identification of the organizers of the acts of violence and attacks on the reporters committed on July 5-6, which were pre-planned and well-organized actions, as well as to identify the organizations or individuals funding the radical forces;
- To make statements in respect of the freedom of

expression and clearly, unambiguously condemn violent statements and attacks on journalists.

To the Parliament of Georgia:

- To pass the new Code of Administrative Offences within the reasonable timeframe which will comprehensively respect the human rights and basic freedoms, public interests and the rule of law.

- To improve the defense of human rights and basic freedoms, to eradicate the systemic cases of ineffective, late and inadequate response of the investigative bodies to crimes, to intensify the parliamentary control on the responsible bodies of the executive government;

- To increase transparency and effectiveness of the investigation of the July 5-6, 2021 events, to cooperate with the respective bodies of the partner states; also, to ensure creation of multi-fraction commission in the parliament and to intensify the parliament's supervision function.

To the Judiciary Authority:

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

- To ensure higher level of justification in the rulings of judges over the cases of administrative offences;

- To comprehensively evaluate the evidence presented at the court proceedings as well as the legality how the evidence were obtained.

To the Law Enforcement Bodies:

- To respect the constitutional right of peaceful assembly;

- The MIA shall ensure safe and free environment for the media representatives to perform their professional activities during rallies;

- The relevant agencies must investigate the facts of restriction of the right to peaceful assembly and take appropriate legal actions;
- The Ministry of Interior must change the unlawful and arbitrary practice of restricting the erection of protest camps / other constructions during peaceful assemblies;
- To immediately identify all persons involved in the violent events of July 5-6 and to identify the organizers and to prosecute them in due manner under criminal procedure;
- It is necessary to upgrade the qualifications of law enforcement bodies to ensure that the right to assembly and demonstration is realized and the positive obligation of the State is fulfilled.