



**MONITORING FINDINGS REGARDING  
ADMINISTRATIVE CASES  
AGAINST CIVIL ACTIVISTS**

**2024**

## Human Rights Center



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## INTRODUCTION

In the frame of the monitoring of court proceedings of motivated cases with alleged political motives, the Human Rights Center monitored the administrative cases against civil activists Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze, Grigol Prangishvili, Shota Tutberidze and Levan Nishnianidze in the Tbilisi City Court. These cases are also known as the “cases of blank papers,”<sup>1</sup> as the police arrested the human rights defenders and activists, when, in front of the Parliament of Georgia, with various banners and blank papers among them, they were protesting the statement of the Prime Minister of Georgia he had made at the Global Security Forum.<sup>2</sup> The police charged them with minor hooliganism and disobedience to the lawful orders of the police. Hearing of the cases in the Tbilisi City Court ended. The Court found all defendants guilty under Article 166 Part I of the Administrative Offences Code of Georgia and imposed an administrative fine on them; the judge canceled proceedings against some of the defendants under Article 173 of the Administrative Offences Code of Georgia due to the absence of the offense.<sup>3</sup> The Court found Nodar Sikharulidze and Levan Nishnianidze guilty under both Articles of the Administrative Offences Code of Georgia and imposed a fine of 2,000 GEL as a penalty on each.

Miscarriages identified as a result of the trial monitoring are related to both administrative detention of Human Rights Defenders (“HRDs”) and civil activists and the hearing of their cases in court. Among them were: police officers failed to clarify the grounds of their arrest; their rights and responsibilities in the moment of detention were not clarified; the grounds for extending their detention term were unverified;<sup>4</sup> low standards of obtaining and presenting the evidence in the court by the administrative body; regardless high public interest in the ongoing proceedings, trials were held in small courtrooms; those police officers were interrogated in front of the court, who did not participate in the detention process as the defense side alleged; the video-evidence was examined in the computer placed on the judge’s desk; technical problems were in the courtrooms, etc.

This document aims to analyze the coherence of the court decisions on the abovementioned administrative cases with the case law of the European Court of Human Rights. Also, the Document will assess the boundaries of freedom of assembly and speech about obscenity, when the object of similar protest is the political statement of the government member. Lastly, the document aims to determine the responsibility of the State to protect the freedom of peaceful protest.

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<sup>1</sup> Protest with Blank Paper, Radio Liberty, available at <https://rb.gy/qtwps8> [21.01.2024].

<sup>2</sup> Prime Minister of Georgia at the Bratislava Global Security Forum, PB Channel 1, May 30, 2023, available at <https://rb.gy/weyluf> [21.01.2024].

<sup>3</sup> September 23, 2023 ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23, September 28, 2023 Ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/5969-23.

<sup>4</sup> Amicus Curiae on the case of Saba Brachveli, N15-5/5562, Public Defender of Georgia, 13/06/2023, 26, available at <https://rb.gy/tpa5q> [05.02.2024].

## METHODOLOGY

The monitoring of the cases with alleged political motives is carried out by the Human Rights Center (HRC), based on the methodology of monitoring the court proceedings designed by HRC, the purpose of which is to assess the compliance of the monitored court proceedings and domestic legislation with international standards of fair trial, and to identify and analyze alleged political motives and shortcomings in the cases.

The monitoring of the court proceedings is carried out by 2 court monitors who received special training in court monitoring. To ensure a smooth monitoring process, special questionnaires were developed in the initial stage. After each monitored trial, the monitor lawyers analyze the information obtained during the trials. After reading and analyzing reports provided by the legal monitors, the legal analyst analyses the information and prepares analytical documents and public reports. Besides the reports from trial monitoring, the Document refers to the information disseminated by various public sources as well as to various documents published in relation to the monitored cases.

The monitoring of court proceedings is strictly based on the principles of objectivity and noninterference in the court proceedings. In parallel to that, in due respect to the independence of judicial bodies, HRC regularly provides the public, the media, and the parties to the proceedings with essential information about the court hearings and relevant findings.

### **1. ADMINISTRATIVE CASE AGAINST EDUARD MARIKASHVILI, SABA BRACHVELI, NIKA ROMANADZE, NODAR SIKHARULIDZE, GRIGOL PRANGISHVILI, SHOTA TUTBERIDZE AND LEVAN NISHNIANIDZE**

#### **1.1. What Charges Were Brought by Police against the Human Rights Defenders and Civil Activists**

Police arrested Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze, and Grigol Prangishvili near the Parliament of Georgia on June 2, 2023, under administrative law.<sup>5</sup> The Ministry of Internal Affairs of Georgia (MIA) brought charges against them for minor hooliganism<sup>6</sup> and disobedience to the lawful order of the police officer.<sup>7</sup> Alongside the civil society organizations,<sup>8</sup> the Public Defender of Georgia also echoed the administrative detention of the activists. The Public Defender condemned interference with freedom of expression by law enforcement officers and called on the MIA to ensure the protection of peaceful protesters’

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<sup>5</sup> September 27, 2023 Ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23.

<sup>6</sup> Article 166 Part I of the Administrative Offences Code of Georgia.

<sup>7</sup> Ibid, Article 173 (1).

<sup>8</sup> Urgent Appeal of CSOs about the Arrest of HRDs, Social Justice Center, June 03, 2023, available at <https://rb.gy/5vgwu5> [11.02.2024].

freedom of assembly and expression.<sup>9</sup> In accordance with the Public Defender, declaring the detainees as lawbreakers will result in an unjustified interference with the freedom of assembly and expression guaranteed by the Constitution of Georgia, which, in turn, will create a danger that peaceful and non-violent behavior aimed at expressing protest may be qualified as a violation of law in the future.<sup>10</sup>

As the MIA representatives clarified in the court,<sup>11</sup> the detainees were in a public place on Rustaveli Avenue, in front of the Parliament of Georgia; they were holding offensive and obscene posters, while Grigol Prangishvili was wearing a white shirt with lewd text on it.<sup>12</sup> In doing so, they were violating public order and the peace of citizens.<sup>13</sup> Regardless of many appeals of the police to hide the banners, human rights defenders and civil activists continued using them, insulting the police officers calling them “slaves,” “scums,” and “Putin’s Militia”<sup>14</sup> and did not obey the order of the police.<sup>15</sup> With regard to the latter circumstance, it is worth mentioning that “neither the insulting speech of the protesters nor the demands of the law enforcement officers towards them, which were allegedly ignored, was heard in the video footage presented by the administrative body in the court.<sup>16</sup> The video footage showed that the law enforcement officers demanded that the protesters remove banners (papers) and clarified that similar action was inadmissible in public places.<sup>17</sup>

At the stage of clarification during the trial, Eduard Marikashvili clarified that he was also holding a banner with “Irak’li”<sup>18</sup> but he was arrested for holding a blank paper – given that the police had seized the banner with the said text before his detention.<sup>19</sup> Other detainees stated at the stage of clarification that a similar form of expression was protected by the Constitution of Georgia and the case law of the European Court of Human Rights. They were expressing solidarity with Shota Tutberidze and other individuals, who were subjected to administrative arrest for their protest though they had neither insulted police officers nor resisted them.<sup>20</sup>

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<sup>9</sup> Public Defender’s Statement on the Events Developed at the Rally on Rustaveli Avenue, June 04, 2023 available at <https://rb.gy/68pfz9>, [28.01.2024].

<sup>10</sup> Public Defender Applies to Court relating to Cases of Protesters Detained on June 2, June 16, 2023, available at <https://rb.gy/tedd11> [05.02.2024].

<sup>11</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 23.06.2023

<sup>12</sup> September 27, 2023 Ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23.

<sup>13</sup> Ibid.

<sup>14</sup> “Detainees on the case of “Irak’li” were found guilty and fined, Publika, September 27, 2023, available at <https://rb.gy/t8fgnb> [09.02.2024].

<sup>15</sup> Judge fined citizen with 500 GEL for holding blank paper, Radio Liberty, September 27, 2023, available at <https://rb.gy/2owoj8> [21.01.2024].

<sup>16</sup> Ibid.

<sup>17</sup> September 27, 2023 Ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23.

<sup>18</sup> While the word “Irak’li” (ირაკლი) itself does not mean anything in Georgian language, the last three letters phonetically resemble a vulgar synonym for male genitalia in the colloquial Georgian language.

<sup>19</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 23.06.2023.

<sup>20</sup> September 27, 2023 Ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23.

The police charged Shota Tutberidze and Levan Nishnianidze with minor hooliganism and disobedience to the lawful order of the police officers.<sup>21</sup> In accordance with the clarifications of the MIA representatives and the police officers interrogated in the court, on June 2, Shota Tutberidze was administratively arrested near the parliament before the abovementioned people were arrested.<sup>22</sup> He was holding a banner with the word “Irak’li”. Regardless of many appeals from the police, Tutberidze continued, as police officers alleged, using the obscene and insulting paper and violating public order in a public place. At the same time, he insulted the police officers.<sup>23</sup> By the clarification of Shota Tutberidze, he had not insulted the police, as for the mentioned word on the banner, it was a degrading/mockery form of the male name “Irakli” and this form of protest is protected by the freedom of expression.<sup>24</sup>

In accordance with the statement of the MIA, on June 2, 2023, Levan Nishnianidze was arrested for the violation of public order near the Parliament of Georgia, while he was hindering the police officers to arrest another participant of the demonstration. The law enforcement officers several times called on him to refrain from interference, but Nishnianidze insulted the officers. Additionally, he was holding an obscene banner.<sup>25</sup> As Levan Nishnianidze clarified in the court, he and his allies were participating in the protest rally to express solidarity with the administrative detainees for holding the blank papers. They were holding banners with the text written in old Georgian script, which was not obscene and the police did not order them to remove the banners either.<sup>26</sup>

## 1.2.Key Findings of the Trial Monitoring

The Chamber for Administrative Cases at the Tbilisi City Court examined the cases of the human rights defenders and civil activists arrested near the Parliament of Georgia under administrative law. Based on the June 16, 2023, ruling of the Chamber, the cases of Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze, and Grigol Prangishvili were unified under one court proceeding.<sup>27</sup>

The court monitoring revealed the same miscarriages and challenges, which were identified by the Public Defender of Georgia in his *Amicus Curiae*.<sup>28</sup>

One of the major findings of the trial monitoring was the lack of evidence standard, which was appealed by the defense side.<sup>29</sup> In these cases, the MIA presented the arrest and law offense

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<sup>21</sup> September 28, 2023 Ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/5969-23.

<sup>22</sup> Court monitoring report about the administrative case against Shota Tutberidze: 02.08.2023; court monitoring report about the administrative case against Levan Nishnianidze: 25.09.2023.

<sup>23</sup> Court monitoring report about the administrative case against Shota Tutberidze: 15.09.2023.

<sup>24</sup> September 28, 2023 Ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/5969-23.

<sup>25</sup> Court monitoring report about the administrative case against Levan Nishnianidze: 25.09.2023.

<sup>26</sup> Ibid.

<sup>27</sup> September 27, 2023 Indictment Decree of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23.

<sup>28</sup> Public Defender Applies to Court relating to Cases of Protesters Detained on June 2, June 16, 2023, available at <https://rb.gv/teedd11> [05.02.2024].

<sup>29</sup> Fining human rights defenders and activists for “Irak’li” is unlawful, Social Justice Center, September 28, 2023, available at <https://rb.gv/j4bm8j> [09.02.2024].

protocols, photos of the alleged perpetrator, video footage, and testimonies of police officers.<sup>30</sup> The case files were not enclosed with the footage from the police officers' body cameras,<sup>31</sup> except the case files on Eduard Marikashvili, when the parties examined the footage from the police body cameras at the desk of the judge.<sup>32</sup> In accordance with the trial report, the footage from the body camera allegedly depicted the developments before Eduard Marikashvili was arrested.<sup>33</sup> When human rights defenders asked the MIA representatives why the video footage presented in the court did not depict the scenes of the detention, they clarified that the video cameras were off at that moment.<sup>34</sup>

The interrogated police officers did not have a homogeneous position about the absence of body camera footage as evidence in the court. Some of them stated that the cameras were on but they fell during the detention,<sup>35</sup> others said they did not have information as to why the footage was not presented;<sup>36</sup> some police officers stated it was raining and as cameras could get damaged, they had them off.<sup>37</sup>

No lewd or obscene words were heard in the video footage presented in the court by the representatives of MIA.<sup>38</sup> Consequently, while there was no video footage from body cameras, the main evidence against the protest participants, particularly about the verbal insult of police officers,<sup>39</sup> were the testimonies of the witnesses, whose credibility and trustworthiness were questioned by the defense.<sup>40</sup> At the same time, “the defense lawyers of Saba Brachveli appealed the prosecutor’s office about the false testimony made by the police officer and requested to launch an investigation into intentional unlawful detention”.<sup>41</sup>

The administrative detainees and their defense lawyers claimed that the interrogated police officers, who allegedly arrested them, were not present near the Parliament of Georgia during the detention at all and their testimonies were not trustworthy.<sup>42</sup> When examining the video footage in Nika Romanadze’s case, the police officer confirmed that he could not recognize himself in

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<sup>30</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 23.06.2023

<sup>31</sup> Court monitoring report about the administrative case against Shota Tutberidze: 02.08.2023;

<sup>32</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 04.09.2023.

<sup>33</sup> Ibid

<sup>34</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 23.06.2023.

<sup>35</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 01.09.2023.

<sup>36</sup> Court monitoring report about the administrative case against Shota Tutberidze: 15.09.2023;

<sup>37</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 05.07.2023.

<sup>38</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 23.06.2023.

<sup>39</sup> Ibid.

<sup>40</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 23.06.2023; “Case of detainees because of “Irak’li” – court started substantial hearing of the case, Publika, June 26, 2023, available at <https://rb.gv/8s38ih> [09.02.2024].

<sup>41</sup> Detainees on the case of “Irak’li” were found guilty and fined, Publika, September 27, 2023, available at <https://rb.gv/t8fgnb> [09.02.2024].

<sup>42</sup> Judge fined citizen with 500 GEL for holding blank paper, Radio Liberty, September 27, 2023, available at: <https://rb.gv/rdqqkc> [28.01.2024].



the video.<sup>43</sup> Another police officer, allegedly having detained Saba Brachveli, also confirmed that he could not see himself in the video.<sup>44</sup>

In terms of publicity of court hearings,<sup>45</sup> two key problems were identified”

1. Regardless of high public interest in the cases, the proceedings were held in small courtrooms;
2. There were technical problems in the courtrooms and video evidence was examined at the desk of the judge.

After the administrative cases against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze, and Grigol Prangishvili were unified, the court proceedings of the case were held in the 30<sup>th</sup> courtroom of the Tbilisi City Court, which is small. The defense side petitioned the court to move proceedings to the large courtroom as they were deprived of the right to enjoy the right to defense without restriction; neither the public had the possibility to attend the case hearings. The judge did not grant the solicitation and noted that there was no vacant large courtroom in the Court. However, the chairs were added in the mentioned courtroom.<sup>46</sup>

Technical problems still prevail in the courtrooms that hinder the parties from comprehensively examining the videos. For example, when video evidence was examined in the case against Shota Tutberidze, the voice was not heard in the courtroom,<sup>47</sup> and the judge had to postpone the hearing as there was no voice amplifier in the room.<sup>48</sup> Examination of the video footage was carried out in the computer placed near the judge’s desk, for which the attendees could not get the information provided by the evidence.<sup>49</sup>

### **1.3.Nature of the Judgments of the Chamber for Administrative Cases at the Tbilisi City Court**

The Tbilisi City Court stopped administrative proceedings against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, and Grigol Prangishvili ongoing under Article 173 Part I of the Administrative Offences Code of Georgia due to the absence of administrative offense. As for the charges brought under Article 166 Part I of the same code, the Court found the mentioned individuals guilty and fined 500 GEL as a penalty to each. Nodar Sikharulidze was found guilty under both charges and was fined 2,000 GEL.<sup>50</sup> Eduard Marikashvili appealed this judgment in

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<sup>43</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 05.07.2023.

<sup>44</sup> “Case of detainees because of “Irak’li” – court started substantial hearing of the case, Publika, June 26, 2023, available at <https://rb.gv/8s38ih> [09.02.2024].

<sup>45</sup> In accordance with the Article 62 Part 3 of the Constitution of Georgia, “Court hearings shall be open. Closed hearings shall be permitted only in cases provided for by law. A court judgment shall be declared publicly.”

<sup>46</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 23.06.2023.

<sup>47</sup> Court monitoring report about the administrative case against Shota Tutberidze: 19.09.2023.

<sup>48</sup> Court monitoring report about the administrative case against Shota Tutberidze: 15.09.2023.

<sup>49</sup> Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 01.09.2023; Court monitoring report about the administrative case against Eduard Marikashvili, Saba Brachveli, Nika Romanadze, Nodar Sikharulidze and Grigol Prangishvili, 05.07.2023.

<sup>50</sup> September 27, 2023 Decree of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23.

the Appellate Court. The Tbilisi City Court found Shota Tutberidze guilty of the violation of Article 166 Part I of the Administrative Offences Code of Georgia and fined 500 GEL; as for the proceedings started under Article 173 Part I of the same code, the Court stopped proceedings due to the absence of the fact.<sup>51</sup> The Court found Levan Nishnianidze guilty of the violation of Articles 166 and 173 Part I of the Administrative Offences Code of Georgia and fined the 2,000 GEL as a penalty.<sup>52</sup>

Based on the provided evidence the court concluded that the defendants were holding a poster with the text “Irak’li”. At the same time, Grigol Prangishvili was wearing a white shirt with the same text and other obscene words; as for Nodar Sikharulidze, he was holding a banner with the text “You Are Irak’lis”.<sup>53</sup> Using such obscene and insulting banners by the defendants violated the public order and peace of other citizens. To the court’s clarification, “it is inadmissible to justify the use of such obscene statements for the sake of freedom of expression or/and assembly because it destroys the purpose of the protection of public morals”.<sup>54</sup>

In the mentioned judgment, the Tbilisi City Court underlined that freedom of expression guaranteed under Article 17 of the Constitution of Georgia is not an absolute right and it can be restricted. The Court refers to the assessment of the Constitutional Court of Georgia and notes that expressing opinion with slogans, banners, and posters is one of the key forms of communication, which may aim to inform society about political, cultural, social, or other issues.<sup>55</sup> Additionally, the Court referred to the case law of the European Court of Human Rights and noted that statements “which are obscene and have no political, cultural, educational or scientific value” are excluded from the protection area of the freedom of expression.<sup>56</sup>

Under the court’s judgment, the text on the banners, which the administrative detainees were holding, and on the shirt, which Grigol Prangishvili was wearing, contained the wording “that could be perceived as obscenity by any impartial viewer and their purpose was to insult somebody”.<sup>57</sup> At the same time, the Court believes that the text on the banner was perceived as obscenity by society because citizens were walking in the street during the demonstration, and among them were minors too, the action of the protesters attracted the attention of society, who were dissatisfied, and protested their action.<sup>58</sup>

When examining the proportionality of restriction of freedom of assembly and expression, the Court noted that the interference with the freedom of expression was triggered by the administrative detainees, who breached the public order as they were using obscenity. At the same time, police interference with the freedom of expression aimed to achieve the legitimate goal which is protection of public order and the rights of other individuals.<sup>59</sup>

When examining the factual circumstances in the light of Article 173 (1) of the Administrative Offences Code of Georgia, the Court noted that the presented video footage failed to prove

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<sup>51</sup> September 28, 2023 Ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/5969-23.

<sup>52</sup> Court monitoring report about the administrative case against Levan Nishnianidze: 02.10.2023.

<sup>53</sup> Ibid, para. 7.4.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> September 27, 2023 Decree of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23, para 7.4.

<sup>59</sup> Ibid.

allegations regarding verbal insult from the side of Saba Brachveli, Eduard Marikashvili, Nika Romanadze, and Grigol Prangishvili. Similarly, the Court considered that witness testimonies were insufficient for upholding or discarding the charges brought against the said persons.<sup>60</sup> As for Nodar Sikharulidze, based on the testimonies of both witness and video evidence presented, the Court concluded that his action constituted an administrative offense under Article 173 (1) of the Administrative Offences Code of Georgia.<sup>61</sup>

It is worth mentioning that the Court had the same approach towards the case against Shota Tutberidze too, and found him guilty of the violation of public morals. Tutberidze appealed the September 27, 2023 judgment of the Chamber for Administrative Cases at the Tbilisi City Court in the Appellate Court and requested to annul the part of the decree, where he was found guilty and fined.<sup>62</sup> As the claimant stated, the Tbilisi City Court failed to examine the audio recording in the case files cumulatively with other evidence. The Appellate Court did not grant the arguments of the applicant and upheld the decree of the Tbilisi City Court.<sup>63</sup>

## **2. ARE OBSCENITY OR/AND PROFANITY PROTECTED BY FREEDOM OF ASSEMBLY AND EXPRESSION – INTERNATIONAL PRACTICE**

Initially, the Tbilisi City Court<sup>64</sup> and then the Appellate Court<sup>65</sup> concluded the banner with the text “Irak’li” was obscenity and profanity. The Court stated that the use of the banner in public places caused public disorder. To verify their assessment, the Courts referred to the Case Law of the European Court of Human Rights. Thus, it is interesting to evaluate whether obscenity and profanity, which target government policies, are protected by the freedom of assembly and expression or not, when it is used in public places.

Freedom of expression is the unity of those tools, that are necessary to express, disseminate or/and receive information or views. Banners and posters are such tools.<sup>66</sup> The European Court of Human Rights ruled in the case of *Handyside v. the United Kingdom* in its 1976 judgment that Article 11 of the European Convention on Human Rights (Right to Freedom of Assembly and Association) protects the views that offend, shock or disturb the State or any sector of the population.<sup>67</sup> “Profanity used in the sites of public gathering, usually, is referred to the fields protected under the basic freedoms (rights)”.<sup>68</sup>

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<sup>60</sup> Ibid.

<sup>61</sup> September 27, 2023 Decree of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23.

<sup>62</sup> Ibid.

<sup>63</sup> November 27, 2023 Decree of the Chamber for Administrative Cases at the Tbilisi Appellate Court, Case N4/a-1428 – 23.

<sup>64</sup> September 27, 2023 Decree of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/4086-23; September 28, 2023 Ruling of the Chamber for Administrative Cases at the Tbilisi City Court on the case N4/5969-23.

<sup>65</sup> November 27, 2023 Decree of the Chamber for Administrative Cases at the Tbilisi Appellate Court, Case N4/a-1428 – 23.

<sup>66</sup> General comment No. 34, Article 19: Freedoms of opinion and expression, Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 12.

<sup>67</sup> *Handyside v. The United Kingdom*, no. 5493/72, § 49, 7 December 1976.

<sup>68</sup> Abesadze D., *Is the Constitution of Georgia violated, when the State imposes penalty on the individual for using obscene speech in the site of public assembly*, Scientific-Research Institute of Election Systems and Representative Democracy, Constitutional Law and Policy Magazine, N1, 2022, 32.

The European Convention on Human Rights aims to guarantee the peaceful and lawful articulation of political views even if they are unacceptable to the government or the larger group of citizens or/or contradict the public rules.<sup>69</sup> The Constitutional Court of Georgia also made the same assessment in one of the cases examined and noted that “different ideas and views shall be freely circulated in the society, among them the views, which may be disturbing, shocking and offending for some groups of the society”.<sup>70</sup>

In accordance with the ruling of the European Court of Human Rights, any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it.<sup>71</sup> In this light, “harsh negative reaction caused by an individual statement cannot *a priori* create grounds for the state interference and restriction of basic right shall be additionally justified in similar conditions.”<sup>72</sup> “The Government should not have the power to ban a demonstration because they consider that the demonstrators’ “message” is wrong”.<sup>73</sup>

When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered “necessary in a democratic society” the Contracting States enjoy a certain but not unlimited margin of appreciation.<sup>74</sup> Additionally, there is little scope for restrictions on political speech or debates on questions of public interest.<sup>75</sup>

In the case of *Peradze and Others v. Georgia*,<sup>76</sup> the European Court of Human Rights reiterates that the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression under Article 10 as it may well serve merely stylistic purposes.<sup>77</sup> The court additionally clarifies that when the lewd word is used as a stylistic tool to express disapproval towards certain policies, it cannot be grounds to restrict freedom of expression.<sup>78</sup> Furthermore, any demonstration in a public place may cause a certain level of disruption to ordinary life. This fact in itself does not justify an interference with the right to freedom of assembly.<sup>79</sup>

Under the Case Law of the European Court of Human Rights, freedom of expression may be restricted, “if the sole intent of any form of expression is to insult, or gratuitous personal attack, a proportionate sanction would not, in principle, constitute a violation of the right to freedom of

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<sup>69</sup> *VONA v. HUNGARY*, no. 35943/10, § 63, 09/12/2013.

<sup>70</sup> July 27, 2023 Judgment of the Constitutional Court of Georgia, N1/4/1394 on the case “*Zviad Kuprava v. the Parliament of Georgia*,” II-4.

<sup>71</sup> *Kudrevičius and Others v. Lithuania*, no. 37553/05, § 145, 15 October 2015.

<sup>72</sup> Abesadze D., *Is the Constitution of Georgia violated, when the State imposes penalty on the individual for using obscene speech in the site of public assembly*, Scientific-Research Institute of Election Systems and Representative Democracy, Constitutional Law and Policy Magazine, N1, 2022, 33.

<sup>73</sup> Guide on Article 11 of the European Convention on Human Rights, Freedom of assembly and association, Council of Europe/European Court of Human Rights, 2022, 17.

<sup>74</sup> *Peradze and Others v. Georgia*, no. 5631/16, § 34, 15/03/2023.

<sup>75</sup> *Bumbeș v. Romania*, no. 18079/15, § 92, 03/08/2022.

<sup>76</sup> Participants of the Protest Rally against Panorama Tbilisi Won Trial against the State in the Strasbourg Court, Radio Liberty, December 15, 2022, available at <https://rb.gy/12naso> [03.02.2024].

<sup>77</sup> *Peradze and Others v. Georgia*, No. 5631/16, § 44, 15/03/2023.

<sup>78</sup> *Peradze and Others v. Georgia*, No. 5631/16, § 45, 15/03/2023.

<sup>79</sup> *Ibid.*, § 36.

expression”.<sup>80</sup> “In accordance with the Case Law of the US Supreme Court, the first amendment to the US Constitution protects the obscene speech which has literary, artistic, political or scientific value (and vice versa, if obscene speech lacks any of these values, shall not be protected under the Constitution as the extreme obscenity)”.<sup>81</sup>

To assess the statement containing the obscenity, attention shall be paid to the purpose and context of similar expression, and no priority shall be given to the lewd expression separately. The British Court exercises a similar practice as well, where “when using any obscene speech, the context where it was used, shall be assessed whether those words provoked violence against anybody, or contained morally inadmissible and insulting meaning and whether it had concrete consequence”.<sup>82</sup>

Thus, in accordance with the case law of the European Court of Human Rights, obscene speech or profanity is protected under the Convention, because “the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. Style constitutes part of the communication as the form of expression and is as such protected together with the content of the expression”.<sup>83</sup> It shall also be taken into consideration, that the State Parties of the European Convention do not have a common concept of morals.<sup>84</sup> Therefore, profanity is protected by the European Convention on Human Rights and the Case Law.

### 3. STATE OBLIGATION TO PROTECT FREEDOM OF PEACEFUL ASSEMBLY

The right to freedom of peaceful assembly is one of the foundations of a democratic, tolerant, and pluralist society.<sup>85</sup> Police play a key role in ensuring the peaceful organization of assembly and law enforcement agencies should adopt a human rights-based approach to all aspects of the planning, preparation, and policing of assemblies.<sup>86</sup> This obligation of the State is demonstrated in two directions: 1) negative obligation - “State institutions, officials and citizens may not obstruct the organization and holding of assemblies or demonstrations under the procedures defined in this Law, as well as the expression of opinions by citizens”;<sup>87</sup> 2) positive obligation – the State shall take all necessary measures to ensure holding of peaceful assembly.<sup>88</sup> “In due

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<sup>80</sup> European Commission for Democracy through Law (Venice Commission), CDL-AD (2016)002, Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey, Strasbourg, 15 March 2016, § 68.

<sup>81</sup> Abesadze D., *Is the Constitution of Georgia violated, when the State imposes penalty on the individual for using obscene speech in the site of public gathering*, Scientific-Research Institute of Election Systems and Representative Democracy, Constitutional Law and Policy Magazine, N1, 2022, 39; *See: Miller v. California*, 413 U. S. 15, 24 (1973).

<sup>82</sup> Amicus Curiae of the Tbilisi Free University to the case of *Konstantine Chachanidze v. the Parliament of Georgia*, N2/6/1367, October 6, 2020, para. 1.1.1.

<sup>83</sup> *Uj v. Hungary*, no.23954/10, § 20, 19 July 2011.

<sup>84</sup> *Müller and Others v. Switzerland*, no. 10737/84, § 35, 24 May 1988.

<sup>85</sup> Guidelines on Freedom of Peaceful Assembly (3rd edition), CDL-AD(2019)017rev, Study n° 769/2014, European Commission for Democracy Through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Strasbourg / Warsaw, 15 July 2020, 4.

<sup>86</sup> *Ibid*, 11.

<sup>87</sup> Law of Georgia on Assemblies and Demonstrations, Article 12, para. 2.

<sup>88</sup> Freedom of Peaceful Assembly (The field protected under this right and standard to manage the assembly), Special Report of the Public Defender of Georgia, Tbilisi, 2020, 34.

respect to the context of the constitutional right to hold an assembly, the State, on the one hand, is obliged not to interfere with the peaceful assembly process, and on the other hand, the Constitution determines the obligation to protect peaceful organization of this process”.<sup>89</sup> The Police Law of Georgia, in the chapter on police powers, states that within other authorities, the police “shall ensure the safety of the participants of meetings, demonstrations, and other mass events”.<sup>90</sup> This provision in the law demonstrates the particular function of the police to ensure the effective realization of the freedom of assembly.<sup>91</sup>

When the protest participants do not act violently, it is important that the Government institutions are tolerant towards similar peaceful assemblies.<sup>92</sup> “All kinds of gatherings, except those that have violent aims and reject democratic values, deserve proper protection”.<sup>93</sup> “In a peaceful assembly, regardless of its content, when demonstrators are not involved in acts of violence, the state must show a “degree of tolerance.” Otherwise, the freedom of assembly itself will be completely deprived of any content”.<sup>94</sup>

It shall be taken into account, that the term ‘peaceful’ includes conduct that may annoy or give offense to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote. It also includes conduct that temporarily hinders, impedes, or obstructs the activities of third parties, for example by temporarily blocking traffic. The peaceful intentions of organizers and participants in an assembly should be presumed, unless there is convincing evidence of intent to use or incite violence.<sup>95</sup>

As it was mentioned above, obscene or/and vulgar speech is protected by the freedom of assembly and expression. “Protection of similar speeches depends on the context and purpose of the criticism. In the cases, where expressions targeted public authority, “sharp” or “cruel speeches” are more tolerated”.<sup>96</sup>

“The State may restrict freedom of expression if these restrictions have lawful purposes.”<sup>97</sup> In accordance with the Constitution of Georgia, “the restriction of these rights may be allowed only in accordance with the law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognized as confidential, or for ensuring the

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<sup>89</sup> June 24, 2014 Judgment N1/3/538 of the Constitutional Court of Georgia on the case Political Union Free Georgia v. the Parliament of Georgia, II-8.

<sup>90</sup> Police Law of Georgia, Article 17, Paragraph 1 (d).

<sup>91</sup> Freedom of Peaceful Assembly (The field protected under this right and standard to manage the assembly), Special Report of the Public Defender of Georgia, Tbilisi, 2020, 34.

<sup>92</sup> *İzci v. Turkey*, no. 42606/05, § 89, 23 July 2013.

<sup>93</sup> Activism and the Exercise of the Right to Freedom of Assembly - Analysis of Georgian Practice, Social Justice Center, 2022, 12. Available at <https://rb.gy/mf3fhp> [28.01.2024].

<sup>94</sup> Ibid.

<sup>95</sup> Guidelines on Freedom of Peaceful Assembly (3rd edition), CDL-AD(2019)017rev, Study n° 769/2014, European Commission for Democracy Through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Strasbourg / Warsaw, 15 July 2020, 9.

<sup>96</sup> Judgment of the Supreme Court of Georgia on the case No as-697-651-2017, May 20, 2021.

<sup>97</sup> Amiranashvili G., “Cassation Privilege” of the Freedom of Expression, Revaz Gogshelidze – 65, Anniversary Edition, publishing house Meridiani, Tbilisi 2022, 361.

independence and impartiality of the judiciary”.<sup>98</sup> Additionally, the imposed restrictions shall be non-discriminative, and proportionally restrictive and the benefit from the restriction shall be more than the harm expected from the same restriction.<sup>99</sup> It shall be taken into account that “the burden of proof for limitation of freedom of speech shall lie with the initiator of the limitation. Any reasonable doubt that cannot be confirmed under the procedure established by the law shall be resolved against the limitation of the freedom of speech”.<sup>100</sup>

It is noteworthy that “arbitrary detentions, even if they are short term, directly impacts the freedom of assembly and expression, movement, personal safety of the protest demonstrators.”<sup>101</sup> Detention shall be used only if there is an urgent necessity to combat serious crime and where imprisonment is absolutely necessary (ex. to combat violent action).<sup>102</sup> In accordance with the Public Defender of Georgia, “in the process of policing the assembly, the administrative detentions under the charges of minor hooliganism and disobedience to the lawful order of the law enforcement officer, is malicious practice and result of wrong interpretation of the law”.<sup>103</sup>

## CONCLUSION

The rulings of the Tbilisi City and Appellate Courts on the case of the activists and human rights defenders analyzed in this document are important for consideration and analysis. In accordance with the court judgments, writing “Irak’li” on the banner violated the public order, because the text on the banner was insulting and obscene. At the same time, such form of expression was not protected by the Constitution, as they did not have a political, legal, social, or cultural context. The Courts failed to take the context and purpose of the expression into account, that it deprived the possibility to conduct any unlawful action, violate the privacy of third persons or interests of minors; also the text on the poster did not contain hate speech.<sup>104</sup> They did not hinder transport or citizens’ movement and did not block entry to any building.<sup>105</sup> With similar clarifications of the court, “any obscene speech made in a public place is not protected by the Constitution.”<sup>106</sup> At the same time, the courts failed to take the rulings of the European Court of Human Rights on similar cases into account”.<sup>107</sup>

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<sup>98</sup> Constitution of Georgia, Article 17, para. 5.

<sup>99</sup> Law of Georgia on Assembly and Demonstrations, Article 3; *See also*: Amicus Curiae of the Public Defender of Georgia on the case of Saba Brachveli, N15-5/5562, 13/06/2023, 8, available at <https://rb.gy/tpra5q> [05.02.2024].

<sup>100</sup> Law of Georgia on Freedom of Speech and Expression, Article 7 para. 6.

<sup>101</sup> UN Human Rights Committee, *General Comment No. 35 on Article 9 (Liberty and Security of Person)*, CCPR/C/GC/35, 16 December 2014.

<sup>102</sup> Guidelines on Freedom of Peaceful Assembly (3rd edition), CDL-AD(2019)017rev, Study n° 769/2014, European Commission for Democracy Through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Strasbourg / Warsaw, 15 July 2020, 83.

<sup>103</sup> Freedom of Peaceful Assembly (The field protected under this right and standard to manage the assembly), Special Report of the Public Defender of Georgia, Tbilisi, 2020, 45.

<sup>104</sup> Abesadze D., *Is the Constitution of Georgia violated, when the State imposes penalty on the individual for using obscene speech in the site of public gathering*, Scientific-Research Institute of Election Systems and Representative Democracy, *Constitutional Law and Policy Magazine*, N1, 2022, 50-51.

<sup>105</sup> *Public Defender Applies to Court relating to Cases of Protesters Detained on June 2, June 16, 2023* available at <https://rb.gy/x1rtah> [05.02.2024].

<sup>106</sup> Abesadze D., *Is the Constitution of Georgia violated, when the State imposes penalty on the individual for using obscene speech in the site of public gathering*, Scientific-Research Institute of Election Systems and Representative Democracy, *Constitutional Law and Policy Magazine*, N1, 2022, 50-51.

<sup>107</sup> *PERADZE AND OTHERS v. GEORGIA*, no. 5631/16, 15/03/2023.

The miscarriages identified during the trial monitoring are worth mentioning as well; among them were: lack of standard of verification by the administrative body; holding the hearings in small courtrooms regardless of high public interest in the examined cases; interrogation of those police officers in the court, who, as the defense side stated, did not participate in the detention process at all; examination of video-evidence in the computer placed on the judge's desk; technical problems in the courtroom.<sup>108</sup>

The problematic issues identified during the trial monitoring require additional steps to be taken as they hinder adequate protection of the right to trial; those administrative offenders also have the right to a fair trial and were sentenced to administrative imprisonment.<sup>109</sup> At the same time, by the assessment of the defense side, comprehensive examination of neutral evidence by the court and the aggregation with other evidence is still a problem;<sup>110</sup> “finding a person guilty based on the law offense protocol and testimonies of the police officers, who were interrogated in the courtroom, while there is no concrete standard of the allegation”.<sup>111</sup>

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<sup>108</sup> See Paragraph 1.2.

<sup>109</sup> *Frumkin v. Russia*, no. 74568/12, §155, 06/06/2016.

<sup>110</sup> Ruling of the Chamber for Administrative Cases at the Tbilisi Appellate Court, Case N4/a-1428-23, November 27, 2023.

<sup>111</sup> Amicus Curiae of the Public Defender of Georgia on the case of Saba Brachveli, N15-5/5562, 13/06/2023, 13, available at <https://rb.gy/tpa5q> [05.02.2024].