

Monitoring the Protest Demonstrations



Interim Report

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INTRODUCTION

The purpose of the interim report is to provide a legal analysis of the violations identified during the protests held in Georgia before the reporting period of 2021 and to assess the compliance of the actions of the law enforcement officials with international standards.

The document reviews the results of monitoring of the social and political rallies and other protest demonstrations significant to the public organized by civil movements, political parties, ultra-right groups, representatives of media and civil activists in Tbilisi and the regions from February to August 10, 2021.

Generally, we can say that unlike the protests held during 2019¹, in most of the cases the protests were carried out in a confrontational environment. On the one hand, this was due to the failure of the State to take reciprocal actions vis-a-vis the activists / demonstrators participating in the rallies and due to pursuing the repressive policies. Such a policy of the government, on the one hand, included the deployment of great police forces, the arrests of peaceful demonstrators, aimed at marginalizing the protesters, and, on the other hand, the lack of reactions to the specific acts of violence further discussed in the document.

METHODOLOGY

The rallies were monitored by three monitors with legal background having received relevant training from the experts of OSCE/ODIHR who were invited particularly for this purpose². The monitors were incorporating the obtained information in notes after observing each of the rallies, afterwards a legal analyst summarized the information and reflected them in the reports or analytical documents.

Within the monitoring, the main sources for the preparation of reports and analytical documents are the reports prepared by the monitors during the protests, photos and videos taken by the project public relations manager, civil activists and media outlets during the protests.

The observation of the protests was carried out also remotely via Live Streaming on the Internet from various online platforms. The monitors obtained the information about the time and venue of the protests to be observed from various sources, including the social network Facebook, where the organizers disseminated the information about the protests to be held.

The Interim Report assesses the extent to which the procedures related to the right to freedom of assembly and expression are in line with the recognized practices and international obligations.

LEGAL FRAMEWORK FOR THE FREEDOM OF ASSEMBLY AND EXPRESSION

Georgian legislation defines in detail the conditions for exercising the freedom of assembly and demonstration³, however in practice there are frequent cases when difficulties and problems related to the exercise of the right emerge. In particular, when exercising the right, the legislation is violated

¹ See Monitoring the Protest Demonstrations: Interim Report. Human Rights Center, 2020.: <https://bit.ly/3CvhLP7>

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

³ See The Law of Georgia on Assemblies and Demonstrations. 14-Aug-97. : <https://bit.ly/3iAEdhK>

by both the participants of the assembly / demonstration and the representatives of the law enforcement bodies. The violations on the part of the law enforcers are mainly manifested in abuse of power⁴.

Due to the fundamental importance of the right to demonstration for the public life, the State has a number of positive and negative obligations to promote and prevent arbitrary and illegal interference with the right to demonstrate⁵. The right to assembly and demonstration is not of an absolute nature. Restriction of this right, as well as of other forms of freedom of expression, is permissible only against the existence of legal grounds provided for by the Constitution, and for ensuring the exercise of other constitutional rights and principles.

The Constitution of Georgia and the Law of Georgia on Assemblies and Manifestations⁶ provide for the possibility to cease the rally in case the protest takes an illegal nature, stipulating that in such cases the assembly shall be ended in accordance with the specific rules and procedures. At the same time, according to the Law, the assembly shall be terminated when there are calls made to overthrow or violently change the constitutional order of Georgia, to compromise the independence and territorial integrity of the country, or such calls that constitute the **propaganda of war and violence** and trigger a national, ethnic, religious or social confrontation and which create clear, direct and substantial danger of such acts⁷. Thus, the Law provides for a legal possibility to interfere with the freedom of assembly if there are legitimate reasons for this.

In addition to the above, the judgment of the European Court of Human Rights in the case *Identoba and Others v. Georgia* must be taken into account. By the judgment from 2015, the European Court of Human Rights found that the failure on the part of Georgia to protect the peaceful demonstrators violates Articles 3 (prohibition of inhuman or degrading treatment) and Articles 14 (prohibition of discrimination) of the ECHR⁸.

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

Having observed 26 rallies held during the reporting period, it can be said that the majority of the rallies were peaceful on the part of the protesters. Even 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, the resistance by demonstrators 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 a 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.

⁴ See Monitoring the Protest Demonstrations: Interim Report. Human Rights Center, 2020.: <https://bit.ly/3CvhLP7>

⁵ See OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §§ 165-16.: <https://bit.ly/3jVlptp>

⁶ See The Law of Georgia on Assemblies and Demonstrations: <https://bit.ly/3Clj6YX>

⁷ See Article 11(1) of the Law of Georgia on Assemblies and Demonstrations: <https://bit.ly/3Clj6YX>

⁸ Case of *Identoba and Others v. Georgia* (12 May 2015), application no. 73235/12: <https://bit.ly/3jrqpdp>

In the result of the monitoring carried out in the recent years to see the practice of exercising the right to assembly and demonstration, there were identified as problem issues the restrictions by the law enforcement officials on the possibility to erect non-permanent constructions during the assembly, 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 protests⁹.

In this regard, the **rallies in front of the Parliament of Georgia on February 19-20, 2021** are noteworthy, when 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 camps¹⁰. 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.

Further, 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 road.¹¹ 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 on February 20-21, 2021 and the actions of the law enforcers were unlawful and unconstitutional within the scope of exercising the right to peaceful assembly and demonstration.

On November 14, 2020, a **rally was held in village Zhoneti** against the construction of Namakhvani Hydropower Plant¹². The protesters blocked for several hours the roadway through village Zhoneti connecting Kutaisi with Lechkhumi region. Their actions were within the limits of peaceful assembly. The locals residents demanded the construction works to be suspended. According to the protesters, the construction was carried out by the company and the State without investigating the impact and risks of Namakhvani HPP on the environment. The demonstrators protested against the risks posed by the hydropower plants and against the failure of the authorities to estimate the risks and demanded a meeting with the relevant authorities. Instead of holding a dialogue, the authorities dispersed the rally using police forces¹³. Considering the fact that the most of the protesters were enchained with each other, many of them fell down and were injured when they were dragged away by the police officers. As a result, several demonstrators received bodily injuries¹⁴.

⁹ 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: <https://bit.ly/3jtKddi>

¹⁰ 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

¹¹ 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>

¹² More information: <https://bit.ly/3q4ogm2>

¹³ More information: <https://bit.ly/3q4ogm2>

¹⁴ More information: <https://bit.ly/2JgnZuY>; <https://bit.ly/3q4ogm2>

The State has a number of positive and negative obligations to promote and prevent arbitrary and illegal interference with the right to demonstrate¹⁵. The above obligations include the duty of the respective state authorities to take all necessary measures inter alia the resources of dialogue and negotiation to prevent the termination of the assembly and other undesirable consequences. The dispersal of assemblies should be a measure of last resort¹⁶.

Dispersing the peaceful demonstration in village Zhoneti on November 14, was the classic example of a blanket restriction of peaceful assemblies. A blanket approach is when the State has the power to disperse any kind of demonstration at any place without an assessment of individual circumstances, without contrasting the public and private interests and giving due consideration as to which interest is prevailing in the specific case¹⁷.

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.

On April 12, 2021, in **village Gumati**, Tskaltubo Municipality, people 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 protesters¹⁸. 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.

¹⁵ See OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §§ 165-166.: The Document is available at: <https://bit.ly/3ycJ6m6>.

¹⁶ Ibid: §§ 165-166.

¹⁷The Statement by Human Rights Center: <https://bit.ly/3gkycEF>

¹⁸ See Footage of the clashes in full: <https://bit.ly/3qCxFIb>

The Director of the Imereti, Racha-Lechkhumi and Kvemo Svaneti Police Department of the Ministry of Internal Affairs, said that all those who would assault or resist law enforcement officers would be identified and held legally accountable. The protesters claim that a defamation campaign was launched against them, expressed in the actions by the police to attribute ('to plant') bottles of vodka and beer to the activists found when the police was taking down the camp. One of the organizers of the rally, Varlam Goletiani, said that if necessary, they would move to the capital and would not break up until their demands are fully met¹⁹. The activists marched from Kutaisi to the gorge²⁰.

The officers of the Ministry of Interior were deployed at various locations immediately on the site of the protest. The information on the protest was covered without any obstacles. 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 spot²¹. The protesters blocked the roadway and demanded to be allowed to enter village Namokhvani²². 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. No water cannon vehicles and riot police forces were deployed at the location²³. Due to the large number of people and vehicles, the traffic was overloaded and both roads entering village Namokhvani were blocked by the police²⁴.

According to OSCE/ODIHR guidelines, the erection of protest camps and other non-permanent constructions falls within the scope protected by the right to peaceful assembly²⁵. 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 ECHR as the erection of the camp acquired an inseparable symbolic meaning from the message of the protest²⁶.

Further, on the national level, the judgment by 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."²⁷

The justification of the actions brought by the Ministry of Interior was completely inconsistent and unreliable. The police actions presumably were aimed at disrupting the peaceful and lawful protest of Rioni Valley Defenders which is an unjustified and disproportionate interference with freedom of

¹⁹ See More information: <https://bit.ly/3h7CP5O>

²⁰ Human Rights Center, Monitoring Report on the Protest Rally in Village Gumati. Report prepared: April 12, 2021.

²¹ More information: <https://bit.ly/3wR82zL>

²² More information: <https://bit.ly/3uS46gB>

²³ See: Continuous live stream: <https://bit.ly/364wC44>.

²⁴ Human Rights Center, Monitoring Report on the Protest Rally in Village Gumati. Report prepared: April 12, 2021.

²⁵ See Guidelines on Freedom of Peaceful Assembly, second edition, §18, Warsaw/Strasbourg 2010. The Document is available: <https://bit.ly/3bpJ1C4>

²⁶ See: *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 (05 February 2009). <https://bit.ly/3bjcv4g>. Further see the 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. The Document is available at: <https://bit.ly/3hfx9R2>

²⁷ See Judgment of the Administrative Cases Panel of Tbilisi City Court of 31 August 2016 in case №3/6463–16.

assembly and expression. The assumption is proved by the repeated appeals of Rioni Valley Defenders towards the police to be allowed to erect the protest camp at another place in village Namokhvani instead of the camp removed by the police; the appeal was unreasonably ignored by the Ministry of Interior. Eventually, the protesters were forced to leave the protest site in village of Namokhvani and move to the people gathered near village Gumati.

Moreover, it should be noted that holding the rally in village Namokhvani was an essential component for the protest organizers to express their protest, as from that area the protesters could directly observe the preparatory works of the construction of Namokhvani HPP and could protest against the process peacefully. Due to the continuous character of the rallies, the camp was an essential tool for participants to effectively exercise the freedom of assembly and expression. At the same time, the character of the assembly was clearly peaceful as evidenced by the duration of several months of the rallies. Therefore, in the present case, the actions of the law enforcement officers were unlawful and unconstitutional.

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. During the whole period between April 3, 2021- June 18, 2021²⁸, before the mediation process conducted by the EU Energy Community Secretariat had commenced with a purpose 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 standards²⁹.

On July 1-5, 2021 **Tbilisi Pride demonstration** should have been held. 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)³⁰.

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 actors 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. The actors spread disinformation, homophobic, threatening statements and used hate speech on traditional and social media. The Patriarchate of the Georgian Orthodox Church also released a sharply homophobic statement³¹.

At the counter-rally of July 5, there was an unprecedented scale of violence against journalists. Unlike the recent actions, the participants of the protest on Rustaveli Avenue resorted to violent actions against the representatives of media and other individuals present at the rally; the facts of interfering with the professional activities were evident. The participants of the actions severely beat media

²⁸More information: <https://bit.ly/3weCLWg>

²⁹ See Article 25 of the Law of Georgia on Police: <https://bit.ly/361aTdv>

³⁰ Tbilisi Pride statement in full: <https://bit.ly/3lyXxhE>

³¹ Statement of the Patriarchate in full: <https://bit.ly/3hyFVzL>

representatives. The police intervened into violent incidents rather in a passive way without detaining the perpetrators. The police managed to remove only some of the victims from the scene.

Finally, on July 5, 2021, 53 journalists and cameramen from various media outlets working on the spot and peaceful civilians were attacked,³² 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 mutilated³³.

Lekso Lashkarava, the cameraman of TV Pirveli, who was also a victim of brutal violence while performing his professional duties on July 5, was found dead by family members at his home on the night of July 11³⁴. Despite the expedient and coercive investigative actions and the attempts by the authorities to eliminate the link of the cause of the death with the injuries received on July 5 by the victim, the relevant authorities failed up to the date to release convincing evidence, including the final results of the medical examination.

The arrests of the perpetrators began on July 5 after an international resonance followed the incidents and number of local and international organizations and friendly countries called on the authorities to investigate the violent crimes.

On July 6, 2021, the protest **Silent Rally** in front of the Parliament by the civil society was planned spontaneously by various civil and political leaders and activists to protest against the events of July 5. From 18:00, the citizens interested in the rally began to gather in front of the Parliament. At the same time, the homophobic and violent groups became more interested with the peaceful rally. Journalists have again become the target of the radical groups. From 18:30, the hate groups attacked PalitraNews journalist Beka Mshvildadze on Rustaveli Avenue, with the³⁵ Police arresting several people³⁶.

Representatives of Tbilisi Pride joined the action at 20:00. At the same time, the counter-demonstrators were gathering in the vicinity of the rally, and therefore the police made a cordon around the first assembly. By 20:30, the counter-demonstrators began to throw eggs, stones, plastic bottles full of pebbles, parts of pavement and other blunt objects at journalists, activists and other participants of the assembly.

At (approximately) 21:00 a transgender woman was attacked on Chitadze Street near the Parliament. The Police did not arrest the perpetrators removing only a few of them from the scene³⁷.

The situation became especially tense after 21:30, at about 21:35, when the representatives of Tbilisi Pride unfolded an LGBTQI+ flag and set up colorful fireworks. This caused a special aggression in the representatives of the counter-demonstration. From this time on, the actions of the counter-demonstrators were exceeding the limits of a peaceful manifestation. If until now we saw aggressive actions of some of the members of the group, around 20:30, the counter-demonstrators resorted to

³² See List of journalists attacked by the violent groups: <https://bit.ly/3yqBuNH>

³³ Ibid:

³⁴ More information: <https://bit.ly/3xkURWY>

³⁵ **Note:** In connection with the violent incident, the interests of Beka Mshvildadze is being protected by Dimitri Nozadze, a lawyer of Human Rights Center.

³⁶ More information: <https://bit.ly/3ytmrCC>

³⁷ More information: <https://bit.ly/3xr6L1J>

organized and systemic attacks. The attempts to attack and break through the police cordon have become more frequent. Through the attacks in groups, throwing blunt objects at the demonstrators, the instances of injuries to peaceful protesters significantly increased.

By 21:40, the counter-demonstrators attacked in group the police officers standing in a cordon, applying a spray of unknown origin to the eyes of officers. After the above fact, Chief of the Patrol Police Department, Vazha Siradze, appeared on the scene and began to give instructions on the ground after which the number of law enforcers increased³⁸. At the same time, the violent groups surrounded the assembly from both sides and it was possible to leave the site of the assembly only through the specially created police corridor on the left side of the Parliament building.

However, neither when going through the corridor nor after that the safety of the peaceful protesters leaving the assembly was adequately ensured. The attacks were frequent against those people who left the rally and, as a result, many individuals for a long time refrained from leaving the site of the assembly. However, it was also problematic to remain at the assembly as the violent groups who surrounded the assembly from both sides were throwing blunt objects, including the stones, bottles full of pebbles and even explosives to the direction of peaceful protesters. The perpetrators attacked "Anna's garden defender"³⁹; Poet Irakli Kakabadze was also injured at the rally⁴⁰. The special police forces appeared on Rustaveli Avenue quite late, at about 23:00. At this time, the protest action was practically over and the special forces helped the remaining individuals to leave the protest area⁴¹. Ambulances were not available on the territory of the assembly. They either came too late or did not arrive at all to help the victims.

From 22:00, it was reported that the Special Tasks Department of the Ministry of Interior was bringing water cannon vehicles and special forces to Rustaveli Avenue. At 23:00, special forces arrived to Rustaveli Avenue⁴².

The representatives of HRC left the rally at about 22:00. The representatives of HRC and a group of people who left the rally with them were attacked while walking to the back of the Parliament building trying to leave the place. A certain group of perpetrators, due to the insufficient number of the police officers, managed to enter the "safe corridor" created for the people leaving the assembly, and claimed by the police to be safe to move through. However, several peaceful protesters still became victims of physical violence there.

Members of the violent group broke the fence around the Palace of the Students which is under repair, and began throwing stones and bottles from there. The radical groups vandalized and damaged the cars of the law enforcement officers. From 23:00, the police began to intensively arrest the members of the violent group on Rustaveli Avenue. The law enforcers also were trying to help the participants of the peaceful demonstration to leave the place; together with the special forces, the water cannon vehicles appeared on the scene⁴³.

³⁸ Human Rights Center, Monitoring Report on the Protest Rally held on July 6. Report prepared: July 15, 2021

³⁹ See information: <https://bit.ly/3xqjUle>

⁴⁰ See information: <https://bit.ly/3xrXw1d>

⁴¹ Human Rights Center, Monitoring Report on the Protest Rally held on July 6. Report prepared: July 15, 2021

⁴² See more information: <https://bit.ly/37oveds>

⁴³ Human Rights Center, Monitoring Report on the Protest Rally held on July 6. Report prepared: July 15, 2021.

At 23:50, civilians gradually left Rustaveli Avenue, after which the radical groups occupied the area in front of the Parliament. They demonstratively tore down and destroyed the flag of the European Union⁴⁴. The representatives of the violent and radical groups remained in front of the Parliament for a long time and were moving chaotically. At around 01:00, the violent groups attacked foreign tourists on Rustaveli Avenue⁴⁵.

According to the statement released by the Ministry of Interior, the protest of some of the counter-demonstrators against the assembly gathered in front of the Parliament on July 6 has exceeded the limits of the freedom of expression and the freedom of peaceful assembly as provided for by the Law. The action of the people gathered in the vicinity of the First Classical Gymnasium and Kashveti cathedral became violent⁴⁶.

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

According to Article 21 of the Constitution of Georgia, the State has both negative and positive obligations. It is a positive obligation of the State to ensure that the assemblies and demonstrations proceed smoothly, without excesses. At the same time, according to international standards, the number of police officers deployed on the ground must be necessary for maintaining public order and security, and proportional to the number of demonstrators. Further, the police approach should be in compliance with international human rights standards and should, therefore, be proportionate and necessary⁴⁷.

Article 1 of the ECHR taken

together with Article 3, requires the State to take measures designed to ensure that individuals within the jurisdiction of the State are not subjected to any ill-treatment including such ill-treatment administered by private individuals⁴⁸. This obligation should include effective protection of, inter alia, an identified individual or individuals from the criminal acts of a third party, as well as reasonable steps to prevent ill-treatment of which the authorities knew or ought to have known⁴⁹.

According to the judgment of the European Court of Human Rights, the State must apply proportional measures in case of dispersing the assemblies and demonstrations. Even where the law enforcement agencies have to carry out the operation to disperse the assembly, the operation must be designed to minimize the risk of harm to protesters⁵⁰.

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

⁴⁴More information: <https://bit.ly/3fxN2Y6>

⁴⁵More information: <https://bit.ly/3rT84Fr>

⁴⁶ See Statement of the Ministry of Interior: <https://bit.ly/3y70WGV>

⁴⁷ See Human Rights Handbook on Policing Assemblies, p. 36.: <https://www.osce.org/files/f/documents/c/5/226981.pdf>

⁴⁸ See A. v. the United Kingdom, 23 September 1998, § 22, Reports on Judgments and Judgments 1998-VI).

⁴⁹See for instance T.M. and C.M. v. the Republic of Moldova, January 28, 2014. Application № 26608/11. § 36.

⁵⁰ See Makaratzis v. Greece, Application No. 50385/99, 2004: <https://bit.ly/3yzNAUN>

movement of persons guaranteed by the Constitution of Georgia and international human rights instruments⁵¹.

Moreover, there are also a number of discrediting campaigns demonizing the opponents of the Namakhvani HPP construction most common of which was the campaign regarding xenophobic statements allegedly expressed by *Rioni Valley Defenders* against the Turkish investor. Representatives of both the Government and the company, as well as some opposition parties, were actively involved in the campaign.

At the same time, on July 2, 2021, the movement "Save Rioni Valley" issued a statement⁵², concerning the March for Dignity planned in Tbilisi, and claimed that the movement does not support the March for Dignity as it was "propaganda of a non-traditional way of life" and "an action against the State and society." Further, on July 5, the leaders of the movement joined the counter-demonstration against the March for Dignity organized by the violent groups in Tbilisi, which from the very beginning was showing clearly violent character and intentions⁵³. Nevertheless, Rioni Valley Defenders stated that they responded to the call of the Georgian Patriarchate and were intending to attend the prayer and were distancing themselves from any violence⁵⁴.

The decision made by Rioni Valley Defenders to join the counter-demonstration that was declared to be violent was unacceptable to the organizations actively supporting Save Rioni Valley movement namely for the Center for Social Justice⁵⁵ and Green Alternative⁵⁶, due to which the organizations ceased to communicate with Rioni Valley Defenders, however, they continue the legal and political struggle against the construction of the Namakhvani hydropower plant.

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. The policemen were standing in groups: 1) near movie-theater Rustaveli; 2) at the beginning of Chitadze Street; 3) at the corner of Chichinadze Street near the First Gymnasium; 4) near Kashveti cathedral, at the entrance of April 9 Park. Rustaveli Avenue and adjacent streets near Freedom Square were also blocked by cars.

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 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

⁵¹ See Statement of the Center for Social Justice: <https://bit.ly/3mlxxXg>

⁵² See Statement of Rioni Valley Defenders: <https://bit.ly/36omC5M>

⁵³ More information: <https://bit.ly/3xyx07g>

⁵⁴ More information: <https://bit.ly/3k1xyi0>

⁵⁵ See Statement of the Center for Social Justice: <https://bit.ly/36LjHV4>

⁵⁶ See: Statement of Green Alternative in full: <https://bit.ly/3wWrTwm>

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 have 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

Beyond the restrictions on freedom of movement and the removal of the protest camp, the law enforcement officials used other methods of repression against protesters in Namakhvani, such as arrests and fines.

On April 3, 2021, after the law enforcement authorities blocked the roads towards Namokhvani, 12 people protesting against the construction of Namakhvani HPP in the Rioni valley were detained by the police in village Gumati on the grounds of violating 'the curfew' and were fined with GEL 2,000 each. 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 day⁵⁷.

On April 4, 2021, Mirian Maglaperidze, a resident of village Zarati was going to a shop in a nearby village (Mopurchkheti) to buy some bread, when he was stopped by the police and asked for his ID card after the police noticed that he was taking a video on his phone depicting the large number police officers deployed in the village. Maglaperidze responded to the request of the police that he never carries an ID card with him when moving within his native village. 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 disobedience⁵⁸.

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 courtroom⁵⁹.

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 coercion⁶⁰.

⁵⁷More information: <https://bit.ly/3qB4waf>

⁵⁸More information: <https://bit.ly/3jwb3S4>

⁵⁹More information: <https://bit.ly/3w7Bosh>

⁶⁰More information: <https://bit.ly/2TrjVNY>

On May 27, 2021, in village Gumati, where metal plate fence was installed by the police, clashes between the opponents of Namakhvani HPP and the police took place. The opponents of Namakhvani HPP were expressing the protest by clapping hands on the fence and creating noise, trying at the same time to cross the fence and head towards village Namakhvani, which was not allowed by the police deployed on the spot. During the clashes, the police detained 8 representatives of Rioni Valley Defenders⁶¹. The detained activists were released on May 28⁶².

According to the OSCE/ODIHR guidelines, detaining a person for the reasons of participation in a legitimate assembly would be considered arbitrary and unjustified⁶³. Further, imposing unjustifiably and disproportionately high penalties on the protesters might have a chilling effect on the participants of the event and might equal to indirect restrictions on the right to assembly.

During the protests against Namakhvani HPP, the administrative detentions and administrative fines applied against the demonstrators were in sum unsubstantiated and were aimed not at ensuring public order and peace, but at reducing the protest charge.

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 recognizance⁶⁴. As of August 5, 31 individuals have been detained under criminal proceedings for certain episodes of violent acts and interference with professional activities⁶⁵. 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)⁶⁶, 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.

HRC is processing 16 cases, the vast majority of which are related to the acts of violence against media representatives and interference with journalistic activities. By August 5, 2021, i.e. month after the offence, only 9 persons have the status of victim⁶⁷.

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.

5. Monitoring other protest demonstrations

On February 3, 2021 by the ultra-nationalist organization **Georgian March** held a protest rally in front of the Presidential Palace. The demonstration was a protest against the construction of a road by

⁶¹More information: <https://bit.ly/3h83Upu>

⁶²More information: <https://bit.ly/36baVPL>

⁶³European 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 36. The Document is available at: <https://bit.ly/3ydLgSu>

⁶⁴Statement of the Ministry of Interior: <https://bit.ly/2WPTtUj>

⁶⁵Statement of the Ministry of Interior: <https://bit.ly/3Ac9Bcp>

⁶⁶ See The Criminal Code of Georgia, Article 161. <https://bit.ly/3IEsXDj>

⁶⁷ See Statement by Human Rights Center: <https://bit.ly/3AcjJC7>

Azerbaijani side leading to Davit Gareja monastery complex and the seizure of the caves in Davit Gareja by the Azerbaijani military where Georgian priests used to live.

About 100-150 people took part in the demonstration, mostly men. At the demonstration, Sandro Bregadze, one of the leaders of Georgian March accused the President of Georgia, Salome Zurbishvili, of incompetence, betrayal and inspiring a territorial dispute between Georgia and Azerbaijan. He also announced the mobilization of 1,000 men who would disobey the Georgian border control forces and, if necessary, would enter the territory of Davit Gareja by using force.

In parallel with Sandro Bregadze's speech, one of the leaders, Giorgi Gabedava, and several supporters were forcibly trying to enter the Presidential Palace. Following to the fact, Giorgi Gabedava was detained by the police for the administrative offence, to which the protesters responded with violence. They tried to stop the police car by force and called the law enforcement officers 'slaves'.

At the beginning of the rally, the assembly was managed by about 20 police officers, which was not enough when the supporters of Georgian March tried to enter the Presidential Palace by force. Due to the small number, the law enforcers found rather difficult to detain those who wanted to invade the Palace, as well as to detain other offenders.

At the end of the rally, after the arrest of 2 demonstrators, the number of police officers increased. In addition, 3 vans of the patrol police arrived on the spot. At the beginning of the rally, there was only 1 van on the spot (taking the detainees), and there were 3 standard patrol cars⁶⁸.

On February 6, 2021, a pre-announced rally **"The March of Disobedience"** was held by the civil movement "Shame". The route of the demonstration was announced in advance: from Rustaveli Avenue (Parliament's building) to Dedaena Park (destination).

The aim of the rally and the demand of the participants was to remove the unjustified political restrictions of the government: the abolition of the curfew, the lifting of regulations and adopting the crisis management plan. The protesters claimed that the restrictions did not serve the fight against the coronavirus, but directly affected the socio-economic situation of the population. About 300 people took part in the demonstration. There were about 30 police cars and several hundred police officers deployed at the rally. They did not allow the demonstrators to leave the pavement to cross the road. One of the protesters who was behind the protest mass was fined with GEL 2,000 under the Code of Administrative Offenses of Georgia for violating the covid regulations⁶⁹.

On February 21, 2021, at a rally in front of the Parliament of Georgia dedicated to **"The 100th Anniversary of the Adoption of the Constitution"**, 8 activists were arrested for an attempt to set up tents. The number of participants in the meeting did not exceed 45-50 people. As for the law enforcers, they were deployed in a disproportionately big number. In total, in front of the Parliament, nearby, in

⁶⁸ Human Rights Center Monitoring Report - Violent Demonstration of the Georgian March in front of the Presidential Palace. Report prepared: February 03, 2021

⁶⁹ Human Rights Center Monitoring Report, Rally "March of Disobedience". Report prepared: February 06, 2021

the cars, there were more than 50 officers. Some representatives of non-governmental organizations also participated in the meeting⁷⁰.

On February 23, 2021, at 15:00, opposition leaders announced a protest rally in front of the Government Chancellery called **"No to the Soviet regime."** 2 demands were voiced at the rally: to free Nika Melia from the prison and to call the early elections. Before the start of the rally, near the Chancellery there were police units deployed, while the Roads Department of Georgia has released a statement regarding the restrictions applicable at the entrances of Tbilisi due to poor weather conditions. Later, the protesters moved to Rustaveli Avenue in front of the Georgian Parliament. The rally was peaceful. The number of protesters was about 100 people. The law enforcers did not interfere with the assembly, and they did not mind when the protesters erected a protest camp in front of the Parliament. Up to 20 patrol police car were mobilized directly at the assembly place, and up to 60 cars in a small square below the Chancellery. The rally was through in a peaceful environment, no clashes and provocations took place⁷¹.

On March 9, 2021, a rally called **"Come out for dignity" was held** organized by the civil movement "For Georgia" . The protesters initially gathered in front of the Georgian Parliament. Then they headed to the Chancellery of the Government of Georgia, where they arrived by 15:00. While walking to the Chancellery, the demonstration was playing loud the record of a telephone dialogue between Bera Ivanishvili and Irakli Gharibashvili discussing a violent retaliation against a schoolboy over a Facebook comment.

The main demand of the participants was the resignation of the Prime Minister of Georgia, Irakli Gharibashvili, and an objective investigation into the leaked audio recording. The building of the Chancellery of the Government of Georgia was guarded by the police in human chain. At the end of the rally, the protesters wrote on pieces of paper **"Hakimpasha to resign"** and left the papers in the government administration. According to the rally organizers, similar types of rallies will continue until each demand is met. The number of protesters was about 100 people⁷².

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 protesters⁷³.

⁷⁰ Human Rights Center Monitoring Report, Assembly "The 100th Anniversary of the Adoption of the Constitution". Report prepared: February 21, 2021

⁷¹ Human Rights Center monitoring report, Rally - "No to the Soviet regime". Report prepared: February 23, 2021

⁷² Human Rights Center Monitoring Report, Rally - "Come Out for Dignity". Report prepared: March 09, 2021

⁷³ Monitoring report of Human Rights Center, Rally against the construction of Namakhvani HPP, Kutaisi. Report prepared: March 14, 2021

In addition to the above, other protest actions⁷⁴, monitored by HRC, including those organized by the radical groups⁷⁵ were peaceful. We may say that the actions of both the demonstrators and the law enforcers were legitimate and were within the limits of both national law and the scope of the right to peaceful assembly under Article 11 of the ECHR.

CONCLUSION

Considering the results of the evaluation of the monitoring reports of the rallies held during the reporting period of 2021, the analysis of the identified violations, the results of the verification of the actions of the law enforcement officers, it can be said that at most of the rallies the right to freedom of assembly and demonstration was not observed.

In a number of cases, numerous instances of disproportionate police force mobilization, arrests, use of administrative detention, and fines were identified among the cases surveyed by the monitors of Human Rights Center. 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.

In relation to the protests against Namakhvani HPP, the authorities themselves contributed to the escalation of the process and left no room for substantive, constructive dialogue as the authorities had deployed much police forces for managing the protest demonstrations and introduced unjustified restrictions grossly violating the rights of local residents. Furthermore, this is accompanied by a number of arbitrary and unjustified arrests of the protesters for participating in a legitimate rally with a view to punish them, further aggravating the public protests and contributing to the escalation of the process. The authorities and the related actors are actually trying to demonize the protests bearing the social meaning, leaving no room for a constructive dialogue.

As the monitoring showed, for the most part, law enforcers reacted to the actions of assembly participants based on principles of selective justice. For example, while the law enforcement officers did not allow civil society activists to put up posters on fences, to bring firewood, and / or erect non-permanent constructions, the more intense offenses of far-right extremist groups committed at the rallies amounting sometimes to criminal offenses have not been reacted to up to the date.

The events of July 5-6, 2021 are particularly alarming. An unprecedented scale of violence against journalists was observed during the counter-demonstration. The arrests of the perpetrators began on July 5 after an international resonance followed the incidents and number of local and international organizations and friendly countries called on the authorities to investigate the violent crimes.

⁷⁴ **For example: 1)** Rally "Lift the curfew". The monitoring report by HRC: 03.04.2021; 2) Rally - "Against the construction of Namokhvani HHP", Tbilisi, the Republic Square. The monitoring report by HRC: 23.05.2021; 3) Rally - "The murderous government to resign", Tbilisi, in front of the Parliament of Georgia. The monitoring report by HRC: July 17, 2021

⁷⁵ **For example:** The rallies of ultra-nationalist organizations: 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: June 30, 2021 **Note:** A total of 20 people attended the rally.

The law enforcement agencies have so far not arrested any organizers of the violence, although it has become evident that the physical violence against the civil activists, members of sexual minorities, and journalists was deliberate and well-organized.

Despite the large-scale violent incidents, no special forces or special means were deployed at the site of violent counter-demonstrations on July 5-6. The law enforcement officials were rather passive as reflected in the fact that they not only failed to take particular actions to stop the violent acts, but they did not even make clear appeals towards the counter-demonstrators.

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 law enforcement agencies:

- *The Ministry of Interior must respect the constitutional right to peaceful assembly guaranteed to citizens by the Constitution, which, in turn, may affect ongoing democratic political or public processes leading to the resignation of the Government or its members, or even to the change of the political system or form of government;*
- *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.*
- *A thorough and objective investigation process must be carried out in order to 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.*

To the Government of Georgia:

- *To end the unjustified, disproportionate and arbitrary restrictions on both freedom of expression and freedom of movement; to give Rioni Valley Defenders the opportunity to protest peacefully, and to choose a way towards the meaningful dialogue with the population to resolve the problem;*
- *To facilitate the 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 increase the transparency and efficiency of the process, to set up a multi-faction commission under the auspices of the Parliament, and to enhance the cooperation with the relevant agencies of the partner states in order to conduct the investigation effectively.*