

Events of 20 June: Dispersal of the Rally and Related

Practices of Human Rights Violation

(Initial Legal Assessment)

Overview of the General Context

The events of 20-21 June 2019, that took place in Tbilisi, Rustaveli Avenue, namely dispersal of a large scale rally and the police power used to achieve this objective, turned out to be the most severe and intense governmental action of the last years. Since the 2012 government transition, this was practically the very first case¹ when the police decided to disperse a large-scale demonstration and in the course of several hours used special measures of different types and intensity against the demonstrators.

These events were preceded by a meeting of the International Assembly of Orthodox Church on June 20, which was held in the historic Hall of the Parliament of Georgia, in Tbilisi. A Member of Parliament of the Russian Federation, Sergei Gavrilov took the speaker's seat and addressed the participants of the Assembly in Russian. Considering the occupation of the Georgian territories by the Russian Federation, the presence of the Russian MP in the legislative body and the symbolic act of him taking the high tribune have caused great dissatisfaction and protests in public.

Following mobilization of the public groups inside as well as outside of the Parliament building, also after representatives of the parliamentary opposition blocked the presidium in the Parliament Chamber, the parliamentary majority announced the cancellation of the Assembly session.² As a result, the Russian delegation and Sergei Gavrilov first left the Parliament building and later Georgia.

The spontaneous demonstration and dissatisfaction during the day turned into a large-scale organized protest in the evening of June 20. Civil activists announced anti-occupation rally in front of the Parliament building.

The rally with the slogan "Shame" started at 7 pm in front of the Parliament building. The main demand of the protestors and organizers was the resignation of the Chairman of the Parliament of Georgia, the Minister of Internal Affairs and the Head of the State Security Service.³

The rally was peaceful in the course of the first several hours. However, later, when a part of the protestors under the direction of opposition political leaders, tried to break into the police cordon and enter the Parliament building, the situation escalated. It was followed by multiple episodes of severe massive physical confrontations among protestors and law enforcement personnel. Evidently, the behaviour and intentions of the rally participants nearby the police cordons obtained a violent character, which exceeded the scope of the freedom of peaceful assembly. As the situation escalated, the police made the decision to disperse the rally around midnight. During the dispersal, police used a variety of special means, including tear gas, rubber bullets and

¹ Note: recent facts of unprecedented mobilization of the police and use of special means were also observed on 21 April 2019 regarding the construction of HPPs in Pankisi gorge.

² Available at: <https://bit.ly/2NqWRjr>, last seen on: 02.07.19.

³ Available at: <https://bit.ly/2RPiDau>, last seen on: 02.07.19.

water cannons. The use of special means lasted for several hours and it clearly lost its purpose of preventing the attack on the Parliament building and threat coming from non-peaceful participants. Hence, it turned into the use of illegitimate and disproportionate force. At around 2 am, the police units moved from the territory in front of the Parliament building to Rustaveli Avenue and decided to clean the entire Rustaveli Avenue and its surrounding areas from rally participants. The confrontation between the police and part of the rally participants lasted all night. On 21 June, at dawn, police officers launched administrative arrests of the rally participants and citizens on Rustaveli Avenue and adjacent streets. Police demonstrated unjustified violence and inhuman treatment towards protestors. Some of the detainees point out that after arrests, the police, already having an effective control, used coarse force against them.

As a result of events of Rustaveli Avenue, the police subjected 305 individuals to an administrative arrest on 20-21 June,⁴ of which 121 were sentenced to administrative imprisonment.⁵ Later, as the cases were heard at the Tbilisi Court of Appeal, a large portion of detainees was released by shortening the term of imprisonment. In the context of the dispersal of rally, the number and condition of the victims and injured protestors were especially severe. According to the latest information, 240 were injured as a result of the clashes and used police force, out of which 34 were journalists and 80 policemen.⁶ Several rally participants have lost an eye and the health condition of two remains severe.

In connection with the events of June 20, the Prosecutor's Office of Georgia launched an investigation into the instances of abuse of power in certain episodes by police officers and expressed readiness to involve the Public Defender in the investigation process.⁷ On June 21, at a special briefing, the Ministry of Internal Affairs announced the launching of an investigation into the facts of the organization and leadership of the group violence and participation therein.⁸ Later on June 24, the Ministry of Internal Affairs also informed the public that authority of 10 law enforcement officers was suspended within the scope of the investigation conducted by the General Inspection, while the cases of the 2 law enforcement officers were sent to Prosecutor's Office.⁹ On July 3, it became public that the authority of the Director of the Special Tasks Department of the Ministry of Internal Affairs was also suspended.¹⁰

The practice of the police violence and arbitrariness of June 20-21 brought back a severe experience linked to rally dispersal of previous years (including 7 November 2007, 26 May 2011) into the collective memory of our society. Once again, the issue pertaining to institutional violence became an acute question of the political agenda. The police force of this scale is especially alarming when used at the anti-occupation rally, the problem of the past, which represents the most shared challenge and collective trauma of our society. Unfortunately, none of the political groups had enough political resources to prevent and de-escalate events of June 20. They failed to elevate the public discontent and anger into the formal political arena. It is particularly alarming that even considering the extreme exacerbation of the situation and engagement of the rally participants into the violent actions, none of the political groups, including the opposition, had taken necessary political steps to prevent violent actions and for the entire night the participants were left alone against anonymous forces of

⁴ Available at: <https://bit.ly/2KSsqvP>, last seen on: 02.07.19.

⁵ Available at: <https://bit.ly/2xruvWG>, last seen on: 02.07.19.

⁶ Available at: <https://bit.ly/2XeY20h>, last seen on: 02.07.19.

⁷ Statement of the Prosecutor General of 24 June 2019 on launching an investigation, available at: http://pog.gov.ge/geo/news?info_id=2102, last seen on: 02.07.19.

⁸ Statement of the Ministry of Interior Affairs of 21 June 2019, available at: <https://bit.ly/2FH6CPB>, last seen on: 02.07.19.

⁹ Statement of the Ministry of Interior Affairs of 24 June 2019, available at: <https://bit.ly/2XFrRvb>, last seen on: 02.07.19.

¹⁰ Statement of the Ministry of Interior Affairs of 3 July 2019, available at: <https://bit.ly/2LzR7fV>.

special units. Ignoring these values and rules of the game by the political actors is an extreme manifestation of negligence and it demands adequate political recognition and assessment from our society.

It is obvious that the events developed on the June 20, including the reasons for the public dissatisfaction, require multilateral and systematic political, social and legal analysis. However, with this initial report the Human Rights Education and Monitoring Centre (EMC) provides legal analysis of the events of 20-21 June 2019, the rally dispersal, legitimacy of the applied police force and legality of the arrests of the rally participants.

Official information on factual and legal issues necessary for assessment is not yet received from the Ministry of Internal Affairs and other agencies. Thus, the present assessment is substantially based on information existing in the public sources, including TV and online media and extensive photo-video material. Also, while preparing the legal assessment, in order to acquire and double check the information, EMC talked to several rally participants, who at different times found themselves on the main locations and in the centre of the events. Some of the interviewed individuals were also subjected to administrative arrests. Among the interviewed are journalists covering the events on Rustaveli Avenue. The official statements of the Ministry of Internal Affairs and other agencies provided on June 20 and during the subsequent days, were taken into consideration while working on this assessment.

The Report will address the issues in the following order:

- Assessment of the decision about the rally dispersal on 20 June;
- The practice of chasing and arresting the protestors after rally dispersal;
- Facts of alleged mistreatment following arrests;
- Cases of interference with the journalists' activities.

Interference in freedom of assembly and legal assessment of the dispersal of the rally

A decision to disperse the rally and use the police force shall be assessed in several aspects, including:

- Whether there was a legal ground for dispersal of the rally;
- Whether the police complied with the necessary pre-conditions and rules for the rally dispersal;
- Whether the force and means used for dispersal of the rally were legal and proportional.

In order to make a comprehensive assessment of the above issues, the EMC filed an application to the Ministry of Internal Affairs of Georgia and Tbilisi City Hall on June 25. EMC requested public information pertaining to the legal basis for making the decision to terminate the assembly, decision-makers and warnings given to the participants before terminating the assembly. As of today, no information has been received from the Ministry of Internal Affairs and Tbilisi City Hall. For this reason, as mentioned above, the events of 20-21 June are analysed in light of other publicly available sources, Georgian legislation and international standards.

a) Whether or not there was a legal ground for dispersing the rally

The exercise of freedom of assembly and manifestation as a collective action of public and the action taken by the people united around the common idea is essential for building a democratic society and promoting social transformation. Implementation of the freedom of assembly is of fundamental importance for government accountability and public involvement in civil processes, also for turning the citizens into important agents of democratic processes and public voices.¹¹

Constitution of Georgia protects freedom of peaceful assembly and includes provision on its termination if the rally acquires illegal nature. Clarification as to what constitutes illegal, and/or when assembly becomes such, is provided in the Law of Georgia on Assemblies and Manifestations (hereinafter, the Law).

It is important to emphasize that Georgian legislation, as well as the European Convention on Human Rights, declares that only “peaceful” assembly is the object of protection. Only assemblies where participants or organizers hold violent intentions from the very beginning, causing public disorder, fall outside the protection of the mentioned article. Violence or disorder, which carries incidental nature, cannot go beyond protection granted by Article 11 of the Convention. Although violence is generally in place, the intention of the participants and organizers to hold a peaceful assembly, as oppose to creating possible violence, is essential for entering the scope of protection under the article.¹² Even more so, the state has an obligation to isolate violent participants of the rally and to create conditions for other participants to enjoy their freedom of assembly.

On the June 20, citizens gathered in front of the Parliament building were demonstrating in a peaceful manner for several hours. They were protesting the occupation and demanding the resignation of several high-ranking officials. Approximately 3 hours later after the commencement of the rally, member of the United National Movement, Nika Melia addressed the rally participants and called for entry into the Parliament building should the government failed to satisfy the demands within the set timeframe.¹³ It was after the expiry of the time, set by Nika Melia, that situation at rally became strained. It turned out to be obvious that the behaviour of the part of the protestors was no longer peaceful. At around 21:50 a rather large group of protestors standing on the stairs of the Parliament building tried to break the police cordon and enter the Parliament courtyard.¹⁴

The special units on-site managed to restrain the first attempt of the group of protestors from entering the Parliament building.¹⁵ Some of them were arrested and taken inside the Parliament courtyard. Following the first clash, the situation temporarily went under control. The demonstrators tell¹⁶ that one of the participants informed the protestors via megaphone that negotiations were held between the ruling party and opposition and urged them to wait for the results. However, at 23:22 the same group of protestors suddenly pushed the special units’ cordon, threw various objects at them and tried to enter the yard of the Parliament building. At the same

¹¹ UN Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, A/HRC/31/66, §5, available at: <https://www.refworld.org/docid/575135464.html>, last seen on: 24.06.19.

¹² ECHR case of CHRISTIAN AGAINST FASCISM AND RACISM v. the UNITED KINGDOM, 1980, available at: <http://hudoc.echr.coe.int/eng/?i=001-74286>, also see Council of Europe/ECtHR, Article 11, The conduct of public assemblies in the Court’s case-law, 2013, § 9, available at: <https://bit.ly/2J0i9Jr>, last seen on: 02.07.19.

¹³ Available at: <https://bit.ly/2Yvb7UC>, last seen on: 02.07.19.

¹⁴ Available at: <https://bit.ly/306HvNP>, last seen on: 02.07.19.

¹⁵ Available at: <https://bit.ly/2FH8uI7>, last seen on: 02.07.19.

¹⁶ EMC’s phone interview of 26 June 2019, with a rally participant Koki Kighuradze and a journalist Giorgi Gogua.

time, the participants of the rally snatched the equipment, shields, truncheons and helmets of the special units and continued moving under and into the depth of the Parliament arcs. At this moment, the first line of the special units was trying to stop the protestors with shields, while the second line was making noise by beating on shields with their truncheon.¹⁷ However, aggressive part of the protestors managed to drag the members of the special units out of the first line of the police cordon and take them inside their groups. The special units' attempt to stop participants went on during several episodes from 22:50 to 23:55. On 20 June, at 23:56, the police made the decision to disperse the rally. That was when the special units fired tear gas on the opposite side of the Parliament building, towards the Museum of Contemporary Art.

The dispersal of the rally lasted for several hours and comprised of many episodes. Each episode requires individual assessment in the context of the right to assembly and manifestation, right to liberty and security of a person and prohibition of ill treatment. However, firstly, it is of utmost importance to assess the legality of the initial decision to disperse the rally. The interference into the freedom of assembly must be exercised by mutually assessing the legality (whether there was a legitimate ground for restriction of right), the existence of legitimate objective (whether interference serves any legitimate purpose prescribed by law) and proportionality of the means used to achieve this objective.

As it has been mentioned, the Constitution and the Law on Assemblies and Manifestations provide for the possibility of terminating an assembly when the relevant rules and procedures are complied with. Moreover, according to the Law, a rally can be dispersed when there is a call for the overthrow or change of constitutional order of Georgia by force, for the encroachment of independence and territorial integrity of the country, as well as to call for actions that are intended to **propagate war or violence** and that incite national, regional, religious or social hostility and pose **obvious, direct and essential threat**.¹⁸ Hence, the existence of legitimate objective as prescribed by the Law creates a legal possibility for interfering into the freedom of assembly.

As to the legitimate objective for interfering with the freedom - for now no official statements have been released by the Ministry of Internal Affairs and Tbilisi City Hall in relation to this issue. However, based on other publicly available materials, it can be said that the legitimate goal was to avoid illegal entry into the Parliament building and to prevent violence that would have followed this process. The events that took place on the 20th of June, after 21:50, clearly point out that a certain group of protestors exceeded the scope of the freedom of peaceful assembly and violently assaulted the police. It shall be taken into consideration that the actions of this group were not of a singular nature. In a short period of time, they tried to break the police cordon several times. Simultaneously, they managed to drag the policemen inside their groups by removing them from the first line of the police cordon. They also grabbed the special equipment from the police. Moreover, it became clear that Nika Melia's call to storm the Parliament building, repeated attempts of the part of protestors to enter the building of the legislative body from 21:50 to 23:55, posed an obvious, eminent and real threat. Therefore, the behavior of the part of the protestors and repeated physical clashes with the police created the ground for interference with the freedom of assembly and manifestation.

According to the international standards, if only small group/part of rally participants is violent, the law enforcers should take appropriate measures to make sure that only those directly involved in the violence are

¹⁷ Available at: <https://bit.ly/2Xj9eOg>, last seen on: 02.07.19.

¹⁸ Law of Georgia on Assemblies and Manifestations, Article 11, § 1.

subjected to the specific measures.¹⁹ The rally of the 20th of June was fairly crowded. Most of the peaceful participants remained in the territory of Rustaveli Avenue, even when the first line of the protestors actively attacked the police. Taking into consideration the overall number of rally participants, the aggressive part of the demonstrators was not a majority. However, their placement during the rally and the intensification of their aggressive actions could be seen as essentially disturbing to the management and progress of the entire rally. Considering the aggressive actions directed at the police and special units, while police resources were broadly focused on self-defence and protection of the yard of the Parliament building, practically, it became impossible for police units to isolate dozens of aggressive protestors and move them away from the rally territory, in order to allow other participants to continue peaceful demonstration.

It should be taken into consideration that police's attempt to detain part of the protestors could encourage other participants of the rally to engage in confrontation with the police. It is noteworthy that the organizers of the rally also demonstrated weak attempts to return the demonstration into its peaceful nature and de-escalate the situation. Despite the police's obligation to support peaceful protests and individually isolate aggressive participants of the rally, the events that took place in front of the parliament building on the 20th of June, indicated that arrests of singular protestors did not calm down the situation. Hence, the decision made by police on this day at around 12:00 am about the dispersal of the rally was appropriate measure for achieving the above legitimate objective. However, discussion of the proportionality of police operation is not limited to this factor. For purposes of proportionality of the interference with the freedom of assembly, it is also important to assess whether the standards for the dispersal of the rally were upheld and the adequate police force was used.

b) Whether the police complied with the necessary pre-conditions and rules for the rally dispersal

Determination of an unlawful nature of the assembly does not automatically imply forceful termination of the demonstration and use of special means against the participants.²⁰

In public life, because of the fundamental importance of the right to manifestation, the state has a number of positive and negative obligations to promote the right to manifestation and do not allow arbitrary and illegal interference. It is a part of this obligation that the relevant governmental bodies shall adopt all necessary measures, *inter alia*, use resources of dialogue and negotiations to avoid termination of the assembly and other related consequences. A dispersal of assemblies should be a measure of last resort.²¹ It should not occur unless law-enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm or unless there is an imminent threat of violence.²²

As it is known, after the radicalization of the situation on 20 June, several high-ranking officials came to the Parliament building, including the Prime Minister²³ and the Minister of Internal Affairs.²⁴ On June 20 and the following days information was revealed that for the purposes of de-escalation, the governmental representatives and political opposition were to meet in the Parliament building.²⁵ At this stage, it is unknown

¹⁹ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §167, available at: <https://bit.ly/2xrAUBn>, last seen on: 02.07.19.

²⁰ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §§ 165-166, available at: <https://www.osce.org/odihr/73405?download=true>, last seen on: 02.07.19

²¹ *Ibid*, §§ 165-166.

²² *Ibid*, §§ 165-166.

²³ Available at: <https://bit.ly/2KS3yo0>, last seen on: 02.07.19.

²⁴ Available at: <https://bit.ly/2RPIiju>, last seen on: 02.07.19.

²⁵ Available at: <https://bit.ly/2KS1Gvq>, last seen on: 02.07.19.

what was the objective and format of the attempted organization of the meeting, and/or extent of feasibility and sufficiency of the efforts made to organize the negotiations. However, as it is known, in the end, the meeting and negotiations did not take place until the rally was dispersed. At this stage, it is unknown if the relevant bodies, except for leaders of the opposition political groups, had communication with other organizers and leaders of the rally. Due to the lack of factual information, at the moment, it is difficult to estimate the extent to which the negotiation resources were utilized and exhausted. From this point of view, the statement made by the Prime Minister of Georgia a few minutes prior to the dispersal, is especially notable, as it excluded the use of special means for terminating the rally.²⁶

After a decision to terminate the rally is made, state representatives must comply with the requirements prescribed by the law. This first and foremost means to call for the termination of the rally and give reasonable time to disperse voluntarily. Moreover, it implies giving demonstrators a possibility to leave the territory of the rally peacefully and safely.

According to Article 13 of the Law of Georgia on Assemblies and Manifestation, if requirements of this Law are massively violated, an authorized representative of the enforcement body (the City Hall) shall urge the participants to termination the assembly. On the other hand, the assembly shall be terminated immediately upon such request. Only if participants then fail to disperse may law-enforcement officials adopt measures prescribed by the law.

As to the non-massive violation of the restrictions imposed by the law, in this case, the legislation establishes an even higher standard of protection for freedom of assembly and obliges the appropriate / authorized person to warn the organizer and give him/her an additional 15 minutes to warn the assembly participants to ensure voluntary dispersal. Only if the assembly is not terminated voluntarily after this term has lapsed and the warning has been given, may the police adopt the relevant measures to disperse the assembly.²⁷

Likewise for the national legislation, international standards draw attention to the obligation to inform organizers and participants of the assembly in a detailed manner, clearly and prior to any interference. The participants should also be given reasonable time to disperse voluntarily. Only if the assembly participants fail to disperse may the law enforcement officers use special measures to disperse the rally.²⁸ It is a necessary condition precedent for the legitimate dispersal of the rally by the relevant bodies to inform the rally participants on the decision to act so via proper means of information and in an appropriate form. It creates a ground for making an informed decision by the rally participants and minimizes grounds for the use of force.

Based on the information spread via media outlets²⁹ on the events of the 20th of June and clarifications given by the rally participants on this matter,³⁰ it becomes clear that the law enforcers did not comply with the requirement of law concerning the obligatory warning. No warning, which would be understandable and perceptible for the participants, was made as to illegal nature of the assembly and the necessity of its immediate

²⁶ Available at: <https://bit.ly/2RWc85J>, last seen on: 04.07.19.

²⁷ Law of Georgia on Assemblies and Manifestations, Article 13.

²⁸ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §168, available at: <https://bit.ly/2yrcfhz>, last seen on: 02.07.19.

²⁹ Available at: <https://bit.ly/2xqoHg9>, <https://bit.ly/2Lz2lKL>, <https://bit.ly/2J6nVf9>, last seen on: 02.07.19.

³⁰ All the participants of the June 20 rally interviewed by the EMC, deny presence of any type of verbal warning at any stage near Parliament, that would urge them to disperse the rally and leave the territory.

termination. Police started using special means directly without the relevant warning. It was the police action that made it clear for the participants that the decision on the rally dispersal had been made.

Even if the participants violated the law, whether jointly (mass-violation) or individually (non-mass-violation), the law, in any case, requires unconditional preliminary warning / call. The goal of this call is to minimize damage and severe consequences, including among bystanders.

As it was noted, no on-site announcement was made by law enforcers prior to the dispersal of the assembly (i.e. approximately before midnight of June 20). The Ministry of Internal Affairs of Georgia has released a statement through official web-site and urged the participants to stop violent actions,³¹ while the Mayor of Tbilisi, Kakha Kaladze, announce through the media channels that the actions went beyond the freedom of expression, obtained anti-constitutional character and told peaceful participants that the law enforcers would act accordingly.³²

It is obvious that the statements displayed on the websites of the Ministry of Interior Affairs and Tbilisi City Hall and the ones announced through media cannot be considered as the call for dispersal or warning. The authorized person did not directly address the participants of the rally on Rustaveli Avenue nor did she/he directly request termination of the protest with a warning to use police means should protestors have failed to comply. Statements of the high-ranking officials obviously carry a risk that participants will not be able to hear and take it into consideration. Therefore, these statements failed to meet the legal obligation to warn. Hence, it shall be noted that the police failed to comply with the necessary legal pre-conditions in the context of the dispersal.

c) Whether the police force and measures used to disperse the rally were legal, proportional and hence, legitimate

The state is obliged to respect the basic standards of human rights when using force during a police operation for dispersal of assembly, both legal and illegal. The mentioned obligation is stipulated in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.³³ According to these basic principles, law enforcement officials are obliged to, to the extent possible, use non-violent methods.

Under the international standards, even when the assembly is considered to be illegal from the point of view of the domestic state legislation, the law enforcement officials shall not use force only because of its illegality.³⁴ Use of force is permissible only if there are solid reasons for the prevention of public safety and crime.³⁵

According to the OSCE/ODIHR Guidelines, the state must adopt a means for proportional and differential use of force that implies equipping the law enforcement officials with non-lethal weapons. In addition, law

³¹ Available at: <https://bit.ly/2XnMFrO>, last seen on: 02.07.19.

³² Available at: <https://bit.ly/2KTuRyi>, last seen on: 02.07.19.

³³ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Available at: <https://bit.ly/2MJtcs9>, last seen on: 02.07.19.

³⁴ Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 2015, Guideline No.7, pp. 147-148, available at: <https://bit.ly/2xrAUBn>, last seen on: 02.07.19.

³⁵ Inter-American Commission on Human Rights, Report on the situation of human rights defenders in the Americas, 2006, § 68.

enforcement officials should be equipped with defence means such as helmets, fireproof clothing, bulletproof vests and adequate transport. The main purpose of this defence equipment is to minimize the need to use force against the protestors.³⁶

Although the use of police force is often necessary for preventing the crime or arresting the offenders or alleged offenders, it must be carried out in an exceptional manner, should not be used arbitrarily, must be proportionate to the risk, aimed at reducing the damage and should be adopted only within the scope required to achieve a legitimate objective.³⁷

On June 20, after 10 pm, the police, without using active power, managed to prevent a certain group of protestors from entering the Parliament building before 23:55. Prior to this, in several cases, special units located near stairs of the Parliament building captured participants. Police were verbally and physically abusive towards some protestors.³⁸ At 23:56 the special units fired tear gas in response to the actions revealed by the protestors. Giorgi Gogua, a journalist covering events at the time, tells that tear gas was shot in the direction of the “Museum of Contemporary Art”, targeting participants standing far away from the Parliament building while, supposedly, the purpose of the tear gas was to vacate the territory from the protestors trying to enter the Parliament building. However, it is even more unclear and unjustified that 20 minutes later after firing the tear gas - rubber bullets were fired.³⁹ At 00:13, in addition to tear gas, kinetic impact projectiles, so called rubber bullets were used against protestors.⁴⁰ Already at 00:14 the footage of citizens injured as a result of rubber bullets were airing via media outlets. As explained by the individuals attending the rally, the law enforcement officials were mainly using the rubber bullets when approaching the protestors and hence, the shootings were intentional.

On June 21, in 30-40 minutes following the first attempt to disperse the assembly, the protestors started returning to the Parliament building via the territory of Freedom Metro Station.⁴¹ Law enforcement officials continued using rubber bullets against participants. In certain moments, it is depicted how members of the special unit shoot by directly targeting the participants. They were targeting those posing no threat of violence at the moment and this behaviour of policemen lasted for the whole night.⁴²

Part of the participants started gathering back near the Parliament building at 00:30 am and later, at about 01:28 am, the tension between protestors and law enforcers official has increased once again.⁴³ Special units actively used tear gas and rubber bullets. Despite this, a specific group of protestors continued resisting. Clashes moved nearby School No. 1. The rally participants brought iron structures on-site and started beating the members of the special units.⁴⁴ Law enforcement officials used tear gas and rubber bullets for this occasion. After several

³⁶ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §172, available at: <https://bit.ly/2yrcfhz>, last seen on: 02.07.19.

³⁷ OSCE Guidebook on Democratic Policing (2008): Use of Force § 68.

³⁸ Explanations given to the EMC by the participants of the June 20 demonstration.

³⁹ This is reaffirmed by explanations provided by a journalist, Guram Muradov. He was one of the first victims of rubber bullets.

⁴⁰ Available at: <https://bit.ly/2KU9lcu>, last seen on: 02.07.19.

⁴¹ Available at: <https://bit.ly/2LyvFrB>, last seen on: 02.07.19.

⁴² Available at: <https://bit.ly/327IzmC>, <https://bit.ly/2YxJ6fg>, <https://bit.ly/2ZZ0dHc>, last seen on: 02.07.19.

⁴³ Available at: <https://bit.ly/2XrmXCG>, last seen on: 04.07.19.

⁴⁴ Available at: <https://bit.ly/2YuJ87I>, last seen on: 02.07.19.

severe resisting moments exposed by the participants, the water cannon vehicle appeared on Rustaveli Avenue at 01:45. The water cannons were used from this moment.⁴⁵

Despite the use of special measures, the protestors kept resisting the law enforcement officials. The video shortage shows that prior to about 4:30 am, the rally participants repeatedly returned to the territory near the Parliament building. Each time law enforcement officials replied with tear gas and rubber bullets.

From the point of view of the freedom of assembly and standards applicable to the dispersal of the assembly, police actions were problematic in light of the several issues, including:

- When managing the rally of June 20 the most important problem was the lack of effective and reasonable plan or strategy among law enforcement bodies to control the rally participants to de-escalate the situation. The police tried to control the mass gathered at the rally using special means that failed to deescalate the situation for several hours. In the given case, authorised officials became responsible for adopting the action plan and communicating it to the state enforcement bodies. Nevertheless, the EMC has not yet been informed whether there were any instructions given to the law enforcement officers by the responsible officials;
- The police lacked a thorough, reasonable and ‘human-rights-based’ plan, that would maintain enforcement of the decision on the dispersal within the scope of legitimate objectives and maximize prevention of the excessive use of force. After the first stage of the dispersal, the violent behaviour of the police outside the territory where the assembly was held, became massive. It is unclear as to why no immediate reaction or instructions followed from the high-ranking officials. The analysis of the dispersal demonstrates that the police actions were not subject to internal monitoring and their violent behaviour was neither controlled nor eliminated;
- The fact of using rubber bullets in a few minutes following tear gas is especially problematic. The police actions demonstrated that after the use of tear gas against the protestors, the police failed to assess a possible change in threats coming from the participants in a timely and systemic manner. It includes the feasibility and imminence of the initial intention to storm the parliament building in light of the newly formed reality. Hence, when planning the necessity of further use of special means, these circumstances were not taken into consideration;
- After the first dispersal of the rally, in some cases, resistance of the participants was actually triggered by violent behaviour demonstrated by the police. This is important factor to take into consideration when evaluating freedom of assembly;
- Undifferentiated use of special means, especially the rubber bullets, was problematic. In a number of cases, it is obvious that the police used rubber bullets against participants who, at that particular moment, posed no threat of violence / assault;
- The use of rubber bullets from a short distance and targeting the face and head was particularly problematic as it led to severe and sometimes irreparable injuries to a number of protestors.

⁴⁵ Available at: <https://bit.ly/2xruK44>, last seen on: 02.07.19.

According to the Law of Georgia on Police, Article 33, a police officer shall use passive and active special equipment such as tear gas, pepper spray, sonic weapons, and non-lethal weapons and etc., to ensure public security and legal order.

Obviously, the necessity to use each special equipment should be assessed on a case-by-case basis. A police officer may use suitable coercive measures only in case of necessity and to the extent that ensures achievement of the legitimate objectives.⁴⁶ In the given situation, special criticism is drawn to the use of rubber bullets within a few minutes after the police fired tear gas, when the resources of less damaging remedies, including water cannons, were not yet fully exhausted.

According to the Guidelines of Amnesty International, use of any force beyond a lethal weapon, that carries the likelihood or high risk of causing death must be subject to the same strict application of the principle of proportionality as it is established for the use of lethal firearm. Therefore, the use of special means is allowed only in extreme cases for the purpose of preventing death or serious injury.⁴⁷

Moreover, adherence to the principle of distinguishing is crucial when dispersing the rally. Participants are not a homogeneous group. The main ground for differentiation is not the group they belong to, but rather how they act. Therefore, when force is used against violence, the police must distinguish between the individuals who are engaged in violence and those who are not. A proportionate police force may be used only against those directly involved in violent actions.⁴⁸

According to the United Nations Parliamentary Assembly report, any weapon, including non-lethal or semi-lethal, can become lethal if used in a certain manner/form.⁴⁹ According to the UN Basic Principles, “use of a lethal weapon, that causes temporary disability, should be carefully evaluated in order to minimize the risk of endangering bystander [during violent action / disorder], and use of such weapons should be carefully controlled”.⁵⁰

Although the law enforcement officials may use an alternative weapon during assembly, its use may still violate the right to life, as well as freedom of assembly and the principle prohibiting torture and inhuman and degrading treatment. These freedoms may be violated when tear gas, water cannons, and rubber bullets are used.⁵¹

In the case of *Ter-Petrosyan v. Armenia*,⁵² the European Court established a violation of Article 11. This case concerns demonstration held by the opposition party in response to the 2008 presidential election in Armenia

⁴⁶ Law of Georgia in Police, Article 31.

⁴⁷ Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, short version, 2016, p. 24, available at: <https://bit.ly/32841HM>, last seen on: 02.07.19.

⁴⁸ Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 2015, Guideline No.7, p.148, available at: <https://bit.ly/2xrAUBn>, last seen on: 02.07.19.

⁴⁹ PACE, Committee on Legal Affairs and Human Rights, Urgent need to prevent human rights violations during peaceful protests, Doc. 14060, 10 May 2016, §§ 70-71, available at: <https://bit.ly/2xoSWEf>, last seen on: 02.07.19.

⁵⁰ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, 3rd Principle, available at: <https://bit.ly/2MJtcs9>, last seen on: 02.07.19.

⁵¹ PACE, Committee on Legal Affairs and Human Rights, Urgent need to prevent human rights violations during peaceful protests, Doc. 14060, 10 May 2016, § 54, available at: <https://bit.ly/2xoSWEf>, last seen on: 02.07.19.

⁵² Case of *Ter-Petrosyan v. Armenia*, Application no. [36469/08](https://bit.ly/2Yrq8qD), 2019, available at: <https://bit.ly/2Yrq8qD>, last seen on: 02.07.19.

that was followed by the dispersal and arrests of the participants. According to the Court's reasoning, the dispersal carried out by the police was insufficiently justified and took place in somewhat suspicious circumstances, namely no relevant warning was released and the excessive and unjustified use of force has occurred. Hence, the Court opined that it was disproportionate and exceeded the scope of reasonability in which the States are obliged to act.⁵³

In addition, due to the potentially lethal character of non-lethal weapon, in 2014, the Human Rights Council of the UN encouraged states to ensure "...thorough, independent and scientific testing of non-lethal weapons prior to deployment to establish their lethality and the extent of likely injury, and of monitoring appropriate training and use of such weapons."⁵⁴

International standards also established detailed instruction on the use of a non-lethal / less lethal weapon, which includes the following:

a) Use of water cannons and tear gas (chemical irritants)

The means not allowing differentiating and posing a higher threat to injuries, such as tear gas or water cannon, can only be used to disperse massive violence, yet only if all other means are incapable of stopping the violence.

Crucially, it can only be used when protestors have the possibility of disintegration, not when they are placed in a limited space, while other ways through which it would be possible for them to potentially flee are blocked. It is noteworthy that the participants of the assembly should be warned about the use of such method, after that they should be allowed to leave the place freely.⁵⁵ The information available at this point indicates that on the night of June 20, when a water cannon car was brought in front of the Parliament building, demonstrators had space/opportunity to leave the area and the exits were not blocked by the police.

b) Kinetic impact projectile

According to the UN Guidelines on Basic Principles,⁵⁶ kinetic impact projectiles are considered to be less lethal and one of the most frequently used devices to control public assemblies. They come in many various shapes and sizes: rubber bullets, plastic bullets, and rubber balls – all different in size, shape and material.

According to the mentioned Guideline, kinetic impact projectile can only be used to stop an individual directly engaged in violence against another individual. "They must not be used as a general tool to disperse a crowd, including by general firing of these projectiles aiming at the large crowd rather than specifically at individuals engaged in violence."⁵⁷

⁵³ *Ibid.*, § 64.

⁵⁴ Geneva Academy of International Humanitarian Law and Human Rights, „Use of Force in Law Enforcement and the Right to Life: The Role of the Human Rights Council“, November 2016, p. 26, available at: <https://bit.ly/2Xnapw6>, last seen on: 02.07.19.

⁵⁵ Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 2015, p. 156-159, available at: <https://bit.ly/2xrAUBn>, last seen on: 02.07.19.

⁵⁶ Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 2015, available at: <https://bit.ly/2xrAUBn>, last seen on: 02.07.19.

⁵⁷ *Ibid.*, p. 157.

Use of the mentioned means by targeting the crowd and accidental shootings creates serious injuries, especially when an individual is shot in the head or upper body. Therefore, in order to reduce the injury, as a rule, this weapon should be used aiming at the lower body (except when there is an imminent threat to life).⁵⁸ It is also considered inadmissible to aim at the ground because when bouncing back the shell loses precision and may increase the risk of heating the crowd.⁵⁹

According to the analyses conducted by Human Rights Watch concerning the dispersal of the 7th of November 2007, “shooting rubber bullets at close range into the backs of demonstrators, many of whom were also attempting to disperse... suggests that law enforcement personnel were seeking not only to disperse demonstrators, but also possibly to punish them for their participation in the rallies, or deter them from any further opposition.”⁶⁰

On 20-21 of June, the law enforcement personnel used rubber bullets disregarding the mentioned international standards and rules established by the national legislation, bypassing less harmful means, misusing it against peaceful demonstrators, in apparent violation of the instructions for the use of rubber bullets.⁶¹ As a result, in adopting the strategy of rally dispersal and in the process of first choosing and later using special means, the police violated principles of proportionality and prohibition of excessive use of force against the demonstrators. This type of massive and intensive mistreatment strips the police actions of legitimacy and creates doubts as to the ultimate unjustified objective to hurt and punish participants of the assembly.

Chasing the Participants of the Assembly and the Practices of Illegal Arrests

When evaluating the events of June 20, one should draw particular attention to the episode that developed late at night and at dawn far from the Parliament building. After occupying the territory near the Parliament building, the police units started moving towards Rustaveli Metro Station. Following the dispersal the main part of the rally participants went this direction. First of all, it shall be noted that neither intentions of the police for chasing the protestors nor their action plan as to which specific area was to be vacated from the demonstrators, was clear. The content of the dispersal order, that should have contained clear references as to what areas adjacent to the Parliament building were to be vacated by the police, is unknown. The decision to disperse the rally in front of the Parliament building should have enacted for a specific time frame covering the specific area. It is logical that the argument pertaining to the defence of the Parliament building and prevention of the violence was applied in the severe context emerged in front of the Parliament building. However, the same argument would not bear the same relevance for the police actions carried out on Rustaveli Avenue, Melikishvili Avenue and other adjacent territories.

It is problematic that police failed to make clear clarification and warning for the groups that after the dispersal of the rally left the area in front of the Parliament building and started moving towards Melikishvili Avenue through Rustaveli Avenue. For them, it was not foreseeable or clear as to which territory was to be vacated under the police orders and what would qualify as a breach of law and non-compliance with the police orders.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Human Rights Watch, *Crossing the Line, Georgia’s Violent Dispersal of Protestors and Raid on Imedi Television*, December 19, 2007, available at: <https://bit.ly/2Xk0Yxz>, last seen on: 02.07.19.

⁶¹ The EMC continues to acquire and process information on the specifications of rubber bullets used, their procurement and regulatory protocols.

In this context, arrest of the protestors was even more problematic due to its massive and non-individual nature. According to the Ministry of Internal Affairs,⁶² police detained 305 participants for various offences. Later, it became known that protesters were charged for minor hooliganism and non-compliance with a lawful order or demand of a law enforcement officer as prescribed in Articles 166 and 173 of the Administrative Offences Code of Georgia.

Initially, the arrest of the demonstrators took place at around 23:00, soon after the certain group of people standing in the front line of the demonstration in front of the Parliament building tried to storm it. The second wave of arrests emerged around 2 am on the territories of Freedom Square and in front of the Parliament building, while it reached its peak at 4 am when police launched massive arrests on Rustaveli Metro station and Melikishvili Avenue.

According to Koka Kighuradze, one of the participants of the assembly,⁶³ he was attending the rally from 23:00. He went to the stairs of the Parliament building out of interest towards destructive participants gathered there. He says that special units were dragging arrested citizens inside the yard by opening the shields. That's how Kighuradze himself got into the Parliament yard, where the special units had created the corridor. Arrested demonstrators were moved through this corridor where the members of the special units verbally and physically abused them. According to Kighuradze, the detained persons were placed in the several buses mobilized in the Parliament yard. Should the arrested verbally abuse the police officer, this person was brought out of the bus and subjected to verbal and physical abuse by the police.

Massive arrests of participants started after 4 am on the territory of the Republic Square. Since then, access to Parliament building and part of Rustaveli avenue were completely empty. Special units located near Rustaveli Theater marched towards Republic Square. At this point, a certain group of participants in front of the Opera House kept throwing different objects at special units. In return, water cannon, tear gas and rubber bullets were repeatedly used by the law enforcement personnel.⁶⁴ At 04:21 protestors moved to the territory adjacent to Rustaveli monument as the special unit mobilized on the territory of the Parliament started following them through Rustaveli Avenue. From that time on, media footage shows that the group of police officers were separated from the special unit and launched the mass arrests. Participants of the rally moving from Rustaveli towards Melikishvili Avenue were arrested by the criminal police and police patrol at 04:30 am. The police exceeded power during arrests of certain protestors.⁶⁵ Media recorded the footage where participants were beaten while being arrested on the territory adjacent to Rustaveli Avenue and on Melikishvili Avenue.⁶⁶ Law enforcement personnel verbally abused the demonstrators, used truncheons during physical abuses,⁶⁷ one could also see the facts of the participants being beaten by plastic handcuffs.⁶⁸

Irakli Khvadagiani, one of the participants of the rally told the EMC that he and other participants were arrested near the dawn on the territory of Republic Square on Rustaveli Avenue. According to him, approximately 100-150 protestors were on Republic Square at that time. Khvadagiani was there with his brother. One policeman tried to arrest his brother while simultaneously beating him with truncheons. Irakli Khvadagiani shielded his

⁶² Available at: <https://bit.ly/2KSsqvP>, last seen on: 02.07.19.

⁶³ EMC's 26 June 2019 phone interview with Koki Kighuradze.

⁶⁴ Available at: <https://bit.ly/2FK7umE>, last seen on: 02.07.19.

⁶⁵ Available at: <https://bit.ly/307rdEe>, last seen on: 02.07.19.

⁶⁶ Available at: <https://bit.ly/2Jloh01>, last seen on: 02.07.19.

⁶⁷ Explanation of a protestor - Irakli Khvadagiani, provided during the 26 June 2019 phone interview with the EMC.

⁶⁸ Available at: <https://bit.ly/2NBXthM>, last seen on: 02.07.19.

brother, as truncheon was just about to hit him. As a result, Irakli received a severe head injury. After this, 4 or 5 policemen beat him for half a minute.

Arrests continued from 5 am on the territory of Melikishvili Avenue where part of the protestors gathered once again and sat on the road for a short period of time.⁶⁹ This group of citizens raised barricades on Chavchavadze Avenue while other part of it went towards Hero Square. According to them, they wanted to continue protesting the Russian occupation.⁷⁰ The police followed them and carried on with fragmented arrests.

Explanations provided by a number of demonstrators, as well as statements of the arrested ones provided during the court hearing monitoring process, indicate that since the beginning of the assembly near the Parliament building and throughout the entire night, the police used disproportionate force against certain protestors while arresting them.

It is problematic that detainment of both - participants and by passers was conducted in the absence of individual responsibility, routinely, with references to violation of public order and disobedience to lawful demands of the police. It shall be noted once again, that no clear explanation or call for termination of concrete behavior and / or leaving a specific area preceded the arrests.

The protestors were subjected to an administrative arrest based on the Administrative Offences Code of Georgia that fails to uphold the current standards of human rights. According to Article 245 of the Code, in the event of an administrative arrest, the arresting officer shall inform the arrestee upon placing him/her under arrest, in a form that he/she understands, of the administrative offence committed by him/her and the basis of the arrest and of his/her right to a defence counsel. Based on the same norm, the arresting officer is obliged to take the arrested individual to the closest police station or other law enforcement facility. In the given case, most protestors pointed to the absence of explanation as to the grounds for detainment.

In addition, 9 demonstrators, which were subjected to the administrative arrest and currently remain under the EMC's defence, were not taken to the temporary detention facility after the arrest. The detainees remained in the yard of the Ministry building, located on Noe Ramishvili Street or in the police cars parked in the yard throughout the night. It shall be noted that European Court of Human Rights established a violation of Article 5 of the Convention when following the arrest of a person participating in a peaceful gathering for violation of public order, the police delayed the detainee in the police station for three hours.⁷¹

Article 239 of the Administrative Offences Code of Georgia determines a law enforcement officer's obligation to clarify the essence of the administrative offence. Detainment and administrative offence reports contain identical content, free from any specifications and refer to the offences prescribed by Articles 166 and 173. Because of this, neither report nor police clarifications made it practically possible to identify a person's actions on an individual basis. Information concerning the detainee's cases, including monitoring of the court hearings, in a number of cases, indicated that police used arrests in an arbitrary manner.

The European Court of Human Rights is crucially critical of the formal nature of the procedure for consideration by the domestic courts when it comes to such detentions. Namely, in the case of *Gafgaz Mammadov v.*

⁶⁹ Available at: <https://bit.ly/2XnpspN>, last seen on: 02.07.19.

⁷⁰ Available at: <https://bit.ly/2Jp5Jwe>, last seen on: 02.07.19.

⁷¹ Case of Emin Huseynov v. Azerbaijan, Application No. 59135/09, 2015, available at: <https://bit.ly/2JwvBX5>, last seen on: 02.07.19.

Azerbaijan, the court opines - “the domestic courts that imposed the administrative detention also acted arbitrarily in reviewing both the factual and the legal grounds for the applicant’s detention. They failed to examine whether the police had invoked the correct legal basis for the applicant’s arrest ... In such circumstances, the Court cannot but conclude that the applicant’s deprivation of liberty as a whole was arbitrary and therefore contrary to the requirements of Article 5, section 1 of the Convention.”⁷²

Another problem of detainment was a disproportionate physical force. According to Article 32 of the Law of Georgia on Police, a police officer shall have the right to use physical force, among others, to arrest an administrative offender only if the use of non-violent methods cannot ensure the performance of police functions vested in the police officer under the law.⁷³ According to Article 10 of the same Law, when using physical force measures carried out by a police officer shall be based on the principles of the proportionality and necessity. Even when a measure of physical coercion is to be justified by necessity, the used force shall be adequate. In the given situation, the footage spread by media outlets capturing physical and verbal abuse of the detainees demonstrates the alleged criminal and disciplinary violations by the police officers. The timely reaction of the investigative authorities will be crucial for assessing the serious violations identified during the assembly.

According to the case law of the European Court of Human Rights, interference with the right to freedom of assembly is not limited to direct prohibition, whether *de facto* or *de jure*. Interference may also be expressed in the state taking other measures. For the purposes of Article 12, Section 2 of the European Convention, the term “prohibition” must include measures adopted before, during, and after assembly. If direct prohibition prior to assembly has a chilling effect on those intending to participate in assembly, that constitutes interference in the right to freedom of assembly,⁷⁴ measures adopted by the state during the assembly, such as dispersal, detainment and imposition of a penalty or responsibility for participation in the meeting, also constitute restriction of freedom of assembly and interference with the right protected by Article 11.⁷⁵

The above-mentioned decision of the European Court of Human Rights in the case of *Gafgaz Mammadov v. Azerbaijan*,⁷⁶ concerns the dispersal of assembly and manifestation and illegal arrest, and establishes that the measures used by the state to arrest demonstrators and sentence them to 5 days of imprisonment serve the purpose not related to the grounds to justify deprivation of liberty and contain elements of misconduct and arbitrary behaviour by the police officers. The Court pointed out that although an applicant was formally accused of failing a lawful request of a policeman, in fact, he was arrested because he took part in the unauthorized peaceful demonstration.

According to the Joint Report of the UN Special Rapporteur, the detainment authority exercised in the name of human rights during the assemblies, the goal of which is to prevent future threats coming from the protestors,

⁷² Case of *Gafgaz Mammadov v. Azerbaijan*, Application no. 60259/11, 2015, §§108-109, available at: <https://bit.ly/1VTXRFC>, last seen on: 02.07.19.

⁷³ Law of Georgia on Police, Article 32.

⁷⁴ Case of *Gafgaz Mammadov v. Azerbaijan*, Application no. 60259/11, 2015, §50, available at: <https://bit.ly/1VTXRFC>, last seen on: 02.07.19.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

can play an important protective function.⁷⁷ However, no one may be subject to arbitrary arrest or detention. The arrest of protestors during an assembly to prevent or punish them for the exercise of their right to freedom of peaceful assembly, especially when the arrest is unjustified or exceeds principle of proportionality, does not meet international standards of human rights. Therefore, using the “mass arrests” method by the police is problematic as it entails high risks of arbitrary arrest.⁷⁸

According to the same Report, Special Rapporteur considers administrative arrests to be particularly problematic. The human rights committee underlined that arrest that does not impose any criminal responsibility upon a person, encompasses sharp risks of arbitrary deprivation of liberty.⁷⁹ Proportionality standards are exceptionally relevant for administrative penalties issued during assembly. None of the penalties should exceed the limits of the non-proportionality because generally it might have a “chilling effect” on the exercise of freedom of assembly.⁸⁰

On June 21, arbitrary and illegal arrests took place, including, in some cases, disproportionate use of force during the police raids. The beating of the participants and inhuman treatment practices were observed even when they were under police’s effective control and therefore did not pose any threat. In these circumstances, the use of force is inadmissible and it shows unjustified motives for punishing the participants. Police that has been moving from the territory adjacent to the Parliament building did not make any clear warnings addressing the people on Rustaveli Avenue, hence, it was not clear as to what was the requirement of police and what specific territory were they obliged to leave. During the arrests, the police were not guided by individual guilt and responsibility and part of the demonstrators were detained without any legal grounds.

The Practice of Post Arrest Mistreatment

The demonstrators themselves, when being interviewed by the EMC, referred to the facts of post- arrest mistreatment of the detainees on June 21. Video footage recorded by media outlets on-site⁸¹ clearly depicted the facts of post arrest abuse of power by the police against the citizens.⁸²

One citizen under the EMC’s protection explained that he was near the Parliament building during the peaceful demonstration and later left the territory. After watching television footage of protestors being injured with the rubber bullets, he and his friends decided to go back to the territory adjacent to the Opera and provide medical assistance to the injured. He was arrested at around 2 am and spent the entire night in the yard of an administrative building of the Ministry of Internal Affairs at Noe Ramishvili street. Despite a number of requests he was not allowed to use the restroom, hence, he was forced to satisfy his biological needs on-site. He also explained that the police officers demanded him to write explanations containing the recognition of alleged offenses, otherwise they threatened with tightening the handcuff causing additional pain to the detainee.

Other participants of the rally, Irakli Khvadagiani and Davit Khvadagiani also mentioned lack of access to medical care. In his statement, Irakli Khvadagiani stated that after police truncheon hit his eyebrow, his face was

⁷⁷ UN Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, A/HRC/31/66, §44, available at: <https://bit.ly/2XoV9iz>, last seen on: 02.07.19.

⁷⁸ *Ibid*, §45.

⁷⁹ *Ibid*, §§ 46-48.

⁸⁰ *Ibid*, §§ 46-48.

⁸¹ Available at: <https://bit.ly/2RLZ96A/>, last seen on: 02.07.19.

⁸² Available at: <https://bit.ly/2FLuXDM>, last seen on: 02.07.19.

bleeding while he was suffering from severe headache for the entire night. As he was brought into the building of the Ministry of Internal Affairs, he requested to be transferred to the hospital, yet he only received medical care through the treatment of his wound in the same building. The judge considering his case in administrative hearing sentenced him to 9 days of administrative imprisonment without showing any interest in his injuries. Later, after leaving the temporary detention facility, he was diagnosed with an orbital fracture. According to him, due to lack of proper medical care in the course of 3 days, he might need a surgery.

Two other demonstrators also pointed out during the court hearing that they were beaten after administrative arrest, but the judge, without clarifying additional circumstances, recommended them to apply to the investigative bodies.

The Law of Georgia on Police obliges police officers to use the forms, methods, and means of police activity that do not infringe human honour and dignity, right to life, physical inviolability, and other fundamental rights and freedoms. According to the same Law, torture, inhuman and degrading treatment shall be inadmissible when carrying out a police operation.⁸³

In order to perform police function assigned to him/her, under the Law on Police, a police officer should use proper and proportionate coercive measures only in the case of necessity and to the extent ensuring the achievement of legitimate objectives.⁸⁴ When using a coercive measure, a police officer shall try to ensure that damages are minimal and proportional.

On the morning of June 21, besides the matter of the legality of mass arrests, in certain cases, it also became clear that police mistreated detainees who were under their effective control. These detainees were beaten, deprived of the basic physical needs and their medical care was delayed and/or insufficient.

Interfering with the Journalistic Activities

Likewise the participants, the media representatives were also injured as a result of the police's disproportional use of special means during the dispersal of the protest rally held on 20-21 June 2019. According to the information provided by the Georgian Charter of Journalistic Ethics, more than 30 journalists were injured during the dispersal of the rally. Most of them injured their head and faces due to the rubber bullets.⁸⁵

During the first use of rubber bullets at the assembly in front of the Parliament building, soon after midnight, photos of a photographer Guram Muradov capturing his back being injured by rubber bullets were spread through media outlets.⁸⁶ In his interview with the EMC, Muradov pointed out that on the evening of the 20th of June, he was near the Parliament building, close to the special units' cordon. By the time the rubber bullets were shot at media representatives, the protestors were already scattered around. According to his perception, shooters were targeting the journalists. Muradov says that his journalistic activities must have been noticeable and perceptible for law enforcement officials, as he was holding a photo camera and wearing a journalist's badge. After being injured, he had to leave the rally to receive medical care.

⁸³ Law of Georgia on Police, Article 9.

⁸⁴ Law of Georgia on Police, Article 31.

⁸⁵ Available at: <https://bit.ly/2FO6U7n/>, last seen on: 02.07.19.

⁸⁶ Available at: <https://bit.ly/2xqLUPo>, last seen on: 02.07.19.

Journalist Giorgi Gogua was on the place of the accident from the beginning of the rally until the dawn. He provided EMC with the explanations concerning interference with the journalists' activities during the 20-21 June rally in front of the Parliament building. According to him, in the beginning, the police was arresting the destructive participants of the rally. However, after firing tear gas and rubber bullets, the law enforcement personnel started deliberately using these measures against peaceful protestors, forcing them to leave the rally. According to Giorgi Gogua, journalists were among injured.

On June 21, from 7 am, Nika Mukhigulashvili, a journalist for the Public Broadcaster, was on Melikishvili Avenue and Kostava street, where the protestors and law enforcers had gathered. He was covering post dispersal situation. Police arrested him on Nikoladze street where a couple of protestors entered a building to escape the police. Together with the operator, he was trying to capture this event on camera. According to Nika, police commanded him and the operator to stop recording as they started arresting the protestors. Their resistance was followed by police aggression and punches into their faces. As he explains, around 3-4 policemen were using their hands, feet and truncheons to beat him aiming at his body and head. As a result, Nika suffers from a brain concussion, excoriation and shoulder and nose injuries. The Prosecutor's Office had launched an investigation.

Article 17 of the Georgian Constitution protects the right to receive and impart information freely. Restriction of these rights in a democratic society is possible for a necessary state or public safety and to secure the rights of others as prescribed by the law.

In the case of the dispersal of the June 20-21 rally, neither verbal warnings from the law enforcement agencies nor any communication on leaving the territory for the protection of journalists was made. Therefore, their job was to cover events in front of the Parliament building and there was no reason for restricting this activity. According to the Criminal Code of Georgia, unlawful interference with the journalist's professional activities is a criminal offence. In this case, it is critical that investigation, by means of timely and objective actions, identifies persons responsible for various degrees of injuries caused to the journalists.

According to the OSCE Report, law-enforcers have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations, and journalists have a right to expect fair and restrained treatment by the police.⁸⁷ Although third parties, such as monitors, journalists and photographers may also be asked to disperse, it is important that they are not be prevented from observing and recording the police operation.⁸⁸

Summary

With this Report, the EMC provides the initial legal assessment of the 20 June events and at the time being, is based on the information accessible for the organization. Obviously, after more detailed analyses, human rights violations practices and individual cases will reach a larger scale and hence, will require more detailed and in-depth analyses. As of today, considering the materials at hand and limited methodological instruments for analyses, the EMC considers that on 20 June, the behaviour of the part of the protestors on Rustaveli Avenue gained uncontrolled violent character and gave to the police the legal ground for interfering with freedom of assembly and dispersal. However, during dispersal, the police disregarded legal requirement prescribed for

⁸⁷ Handling the Media during Political Demonstrations, Special Report (Vienna: OSCE, 2007), available at: <http://www.osce.org/fom/25744>, last seen on: 02.07.19.

⁸⁸ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, § 168, available at: <https://bit.ly/2yrcfhz>, last seen on: 02.07.19.

dispersal and failed to utilize negotiation recourses. Without having any effective, reasonable and thorough plan to manage the human masses, the police used excessive force massively and without differentiation, clearly violating the sequence and rules for use of special means and as a consequence, severely injured demonstrators and in some cases, caused irreparable injuries. After the first dispersal of the rally, at midnight, the police actions clearly became arbitrary. At this point, it became vague as to what was the legitimate objective for chasing, arresting and abusing those standing afar from the Parliament building for several hours.

The scale and intensity of the police abusive force, lack of systems for effective monitoring and prevention of the clear and massive violation of the human rights by the police, and continuing tolerance of these processes for several hours, clearly calls for legal and political responsibilities of relevant high-ranking and decision-making officials at the Ministry of Interior Affairs.

The Report provides a detailed description of the dynamics of the development of the demonstration, including, the rally participants' attempts and objectives to storm the Parliament building, episodes of the attack on the police cordon in front of the Parliament building. This very repeated aggressive behaviour and recurring attempts to break into the Parliament yard gave to the police a legal ground to disperse the demonstration. It is unfortunate that opposition political leaders too were engaging in such illegal encouragement. Even more so, in light of the escalated situation, the organizers of the rally did not even try to stop the violent behaviour of the participants and take steps towards de-escalation. Running of the democratic processes with such tactics inherently contradicts the idea of democracy and such irresponsibility calls for an appropriate legal and political evaluation.

Despite the legality of the decision on the dispersal of the rally, the consecutive police actions revealed a number of problematic, and among them, severe episodes. First of all, the police - in clear violation of the legislation regulating the assemblies and manifestations, failed to ensure proper warning of the participants prior to the dispersal.

The police launched dispersal at midnight by firing tear gas. Shortly, even though the recourses of the less intensive and severe special means were yet not been exhausted, tear gas was followed by the rubber bullets. Moreover, the threat, feasibility and imminence of repeated attempt to storm the Parliament building and/or attack the police units after tear gas was not adequately assessed.

Dispersal operation practically lasted the whole night. A certain part of the protestors exposed aggressive behaviour towards the police in various locations, by using different objects. However, the police failed to separate peaceful rally participants from the violent ones and the intense police force was applied without differentiation. This is most clearly confirmed by the dozens of injured journalists. Use of special means by the police caused severe injuries to the protestors. In some cases, the police fired rubber bullets from a close distance targeting the head and face, hence increasing the severity of the injuries. In the process of enforcement of the decision on dispersing the rally, the police failed to comply with the rules and sequence pertaining to the use of special means and used disproportionate force.

Dispersal of the rally was followed by arrests of dozens of protestors. Grounds for arrests and clarifications of the police personnel provided to the court are weak, hackneyed and extremely identical. In a number of cases, it indicates that the arrests were arbitrary. The information on physical abuse by the police during as well as after arrest is especially alarming. Part of the detainees pointed out that they were beaten, subjected to inhuman treatment and mistreated after being arrested.

The anti-occupation rally of the 20th of June, which later turned into the violence, was dispersed by the disproportional police force. Despite the legitimate grounds for the dispersal, in the process of planning and execution, the police violated various aspects of fundamental freedoms such as: freedom of assembly and manifestation, freedom and physical immunity, and prohibition of inhuman treatment. By all means, the harshly aggressive behaviour of the part of the participants and episodes of clashes with police is to be taken into consideration. However, it is clear that in the process of dispersal, the police failed to uphold the principle of differentiation and proportionality.

The dispersal of the 20 June rally also emphasized the institutional challenges, namely that the Ministry of Internal Affairs lacks enough strategy, technics, systems and human resources to manage mass gatherings in compliance with the human rights standards.

The systems necessary for formulating a reasonable and efficient action plan, measuring and preventing threats, monitoring, checking and harmonizing the processes are still fragile, faulty and weak. Engagement of the personnel of the Ministry of Internal Affairs in the violence of this scale against its own citizens substantially damages the trust towards law enforcement agencies. June 20 was a continuation of the severe political and social experience concerning coercive dispersal of the demonstrations that took place in previous years (including 7 November 2007, 26 May 2011). It is indicative of the practice of institutional violence and weakens the confidence into the state institutions and democratic processes.

In order to react properly to the plain violation of human rights, and more generally to the recurring, long-lasting and severe illegalities demonstrated by the police actions, the below listed is of utmost importance:

- The Minister of Internal Affairs should take political responsibility for the conducted operation and its consequences, and resign;
- The Prosecutor's Office should, for the purpose of applying appropriate liability measures, conduct a timely investigation in order to identify criminal behaviour of the individuals responsible for planning the dispersal of the rally and actions of individual policemen. The public should be informed as to the forms of responses adopted per each case;
- Where journalists are victims, the investigation should focus on the aspects of interference with journalistic activities;
- Episodes encompassing attacks on the policemen by the part of the protestors that took place on 20 June in front of the Parliament building and on other territories shall also be investigated in a timely manner; the same applies to the call for storming the Parliament building and subsequent actions of the protestors;
- Arbitrary and unsubstantiated arrest shall be subjected to an independent investigation, the same as the cases of arrest and subsequent abuse and inhuman treatment;
- It is important that the public is duly informed regarding the process and outcomes of the current investigations. In addition, for the purposes of transparency and confident into the investigation, it is crucial that the rights of the victims and their representatives are highly protected. Moreover, the supervisory role of the Public Defender must be attainably fostered;

- It is important that the Ministry of Interior Affairs duly analyses the systemic defects revealed on the 20th of June through dispersal, adoption of special means and management of large-scale masses of the protestors. The Ministry must address these defects on the institutional level;
- The government must fully support the rally victims by financing their medical and rehabilitation services.