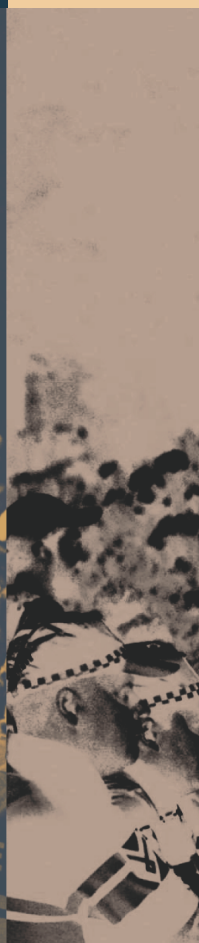


ACTIVISM AND THE EXERCISE OF THE RIGHT TO FREEDOM OF ASSEMBLY

Analysis of Georgian Practice



Activism and the Exercise of the Right to Freedom of Assembly

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Introduction

The political crisis and socio-economic predicaments in the country often give rise to various types of public protests. In the wake of the convoluted political and social background in recent years, the handling of public or political conflicts by the state through the police apparatus has shown disposition. The government's attempt to create venues and precedents for genuine political or public dialogue are proving more and more futile. In the exercise of good governance, conversely, greater emphasis is placed on police restraint and control measures.

The police force is rapidly emerging as a primary vehicle for managing processes, both during political crises and in conflicts related to various social concerns. It is particularly problematic for the authorities to sustain a balance between freedom of peaceful assembly and the maintenance of public order and security. Furthermore, in most cases, the government favors the latter and ensures this by employing disproportionate police force, the immediate outcome of which is an unjustified restriction of individual freedoms. At the same time, the ineptitude and apparent passivity of the police in individual cases, resulting in egregious abuses of the rights to peaceful assembly and bodily integrity, should be recognized.

Excessive force (and, in some situations, a lack of authority) by law enforcement not only violates individuals' freedom of expression in specific gatherings but also has a chilling effect, impeding freedom of assembly and expression throughout the country as a whole. This works to instill fear in society, which in turn suppresses the protest spark.¹

This report envelopes the administered cases and their respective analyses within the framework of the project "Legal Aid Network for Activists" in the period from the beginning of 2021 through March 2022. The document assesses the police actions during the peaceful demonstrations during the above-mentioned period, the proportionality of the force employed, and the efficacy of the state response to the violations.

The document also details the shortcomings of the administrative proceedings and the findings of the ongoing investigation pertaining to the citizens and the police. The document is based on information collected from relevant agencies, accessible documents available through public sources, as well as surveys/reports produced by organizations involved in the project.

1 Nurettin Aldemir and Others v. Turkey, § 34; Balçık and Others v. Turkey, § 41; The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria, § 135; Nemtsov v. Russia, § 77-78

The trends and findings presented in the study are based on legal assistance and strategic litigation administered by partner organizations (Georgian Democratic Initiative, Georgian Young Lawyers Association, Social Justice Center, Rights Georgia, and Human Rights Center) from July 1, 2021, to March 31, 2022. It is noteworthy that during this period, partner organizations provided legal assistance to 172 individuals. Of these, 108 cases pertain to administrative offenses, including 40 cases related to the rallies held in October-November, and 18 concerning those who were detained for the solidarity of Ukraine and criticism of the Georgian government. It is noteworthy that in almost a third of administrative liability cases, the court-imposed fines on activists (the amount of the fine varied from 2,000 to 3,800 GEL), while in a third, the proceedings have not yet been completed. At this stage, 21 cases were completed (proceedings were terminated / no fact of violation was established / resolution was revoked / or a reprimand was issued).

There are 66 cases administered by organizations in the field of criminal law. Of these, 57 are victims of criminal cases (although some of them have not yet received their victim status). Of note are 34 cases of journalists and activists who incurred losses as a result of the July 5 attacks, as well as 13 cases of victims of illegal wiretapping by the SSSG. In 3 criminal cases, the organizations defend the interests of the accused activist, and in 6 cases the persons interviewed as witnesses.

I. The use of restraint by police

1. Police inaction

The events of July 5, 2021, in Tbilisi were a striking example of police inaction and demonstrative passivity, resulting in the physical injuries of number of journalists and activists of varied severity. As it is known, on this day, hate groups, with pre-organized violent actions, thwarted a “March of Dignity” on Rustaveli Avenue in Tbilisi, organized by “Tbilisi Pride” and other civil/activist groups. Not only was the state unable to properly prevent violent incidents by dispatching an insufficient number of police forces mobilized at the gathering place, but the police apparatus itself was inert and ineffective in the immediate incident prevention process.

In the days leading up to July 5, threats of violence against certain groups were broadcast live, and it was immediately clear that the mobilization of a small number of police forces at the “March of Dignity” gatherings could not contain the violence about to be perpetrated by the counterdemonstrators, especially in light of the many violent disruption experiences against LGBTQI + support marches.² As a result, due to the inaction of the police, the organizers of “Tbilisi Pride” canceled the “March of Dignity” to avert the impending danger.³ The events of July 5 are also notable for the fact that hate groups deliberately assaulted not only activists but also the media representatives, resulting in 53 journalists suffering bodily damage of varying severity.⁴ In addition, 11 activists/individuals and 7 law enforcement officers were physically injured during these events.⁵

Other violent situations, such as large-scale violent incidents near the Shame Movement’s office, an intrusion at the Tbilisi Pride office, and the use of pyrotechnics in the yard of the Tbilisi Human Rights House, were not prevented by the mobilized law enforcement officers’ passive involvement. Furthermore, video footage produced by the online publication “Publica” clearly demonstrates that, despite a large police presence, law enforcement officials not only failed to apprehend the perpetrators of the violent acts, but also allowed one of the counter-organizers, demonstration’s Konstantine Mor-

2 9 years of May 17 in Georgia, Available at: <https://tabula.ge/ge/news/646487-17-maisis-9-celi-sakartveloshi> [Last accessed: 23.07.2021];

8-year chronicle of May 17, see: <https://bit.ly/3epQFyu> [Last accessed: 23.07.2021];

How was IDAHO celebrated in Georgia – Chronology of May 17, see:

3 Legal assessment of the events of July 5-6, “Social Justice Center”, 2021 https://socialjustice.org.ge/uploads/products/pdf/5_ივლისის_მოვლენების_სამართლებრივი_შეფასება_1630915639.pdf

4 The list of journalists who were attacked by violent groups on 05.07.2021, available at: <https://www.mediachecker.ge/ka/mediagaremo/article/88604-dashavebuli-zhurnalistebissia>, [Last accessed: 10.04.2022];.

5 Letter N13 / 48550 of the General Prosecutor’s Office of Georgia dated August 10

goshia, to enter the building, along with other members, in the lobby, where the “Shame Movement” office is located, to see for themselves that the perpetrators of the violent acts were not in the lobby or at the office.⁶

The inaction of the police on July 5 should not be attributed to the improper assessment of the threats, or the lack of preparedness for that matter. In these circumstances, it was evident that the government and law enforcement agencies did not intend to allow the “Pride March” to take place. This became particularly apparent after the blatantly violent occurrences when the state lacked the political will to take legal action against the organizers of the violent acts.⁷ At the same time, the inaction of the police was preceded by the statement of the Prime Minister of Georgia – Irakli Gharibashvili on the morning of July 5, declaring that 95% of the population opposes the “March of Dignity” propaganda and its holding is “inappropriate” and there is a “radical opposition” behind the March.⁸

These events were a culmination, *per se*, of incitement to violence by hate groups, disruption of public order, and the failure of the state to perform its basic functions. These events have also shown that such inefficiency of the state poses a threat not to one particular group but to public order and peace as a whole. At the same time, we can observe signs of instrumentalization of violent groups by the authorities, as evidenced by the ineffective investigation into the events of July 5 and the impunity of the direct organizers of the violent incidents, which we shall discuss in detail in Chapter 3.

2. Mobilization of excessive/intensive police forces

The nonviolent protest of the local population against the construction of the Namakhvani HPP, to which the state reacted primarily with police forces while ignoring constructive and dialogue-oriented solutions, was a clear example of the use of excessive police force. Through rigid and repressive methods, the police unjustifiably and arbitrarily interfered with the right to peaceful assembly of the Rioni Valley Defenders. Such blatant and unwarranted interference with the fundamental rights of the Rioni Valley Defenders through excessive police measures risked further complications with regard to the processes.

6 Chronology of the attack on the office of “Shame Movement” and Lekso Lashkarava, 17.07.2021, <https://bit.ly/3DhG3MV>, Last accessed: 03.09.2021.

7 Legal assessment of the events of July 5-6, “Social Justice Center”, 2021 https://socialjustice.org.ge/uploads/products/pdf/5_ივლისის_მოვლენების_სამართლებრივი_შეფასება_1630915639.pdf

8 Irakli Gharibashvili: “March of Dignity” is “inexpedient”, “radical opposition” is behind it, 05.07.2021, Available at: <https://civil.ge/ka/archives/430534>, Last accessed: 03.09.2021.

The authorities attempted to erect physical barriers to prevent the Rioni Valley Defenders from holding a legitimate, peaceful, and fair protest. Since April of last year, the mobilization of police forces in the village of Namokhvani and surrounding areas has intensified and events have occurred against a backdrop of increased police control. From April 2021, the police set up roadblocks on the way to Rioni Gorge, alleging to some abstract threats, restricting freedom of movement in the direction of the village Namokhvani, which was the initial cradle of the spark. It was not clarified by law enforcement as to what specific and immediate threat prevention these measures served. Ultimately, the decision of the law enforcement agencies resulted in unwarranted and disproportionate restrictions on the freedom of movement, as well as the freedom of assembly and expression.

The conduct of law enforcement officers was unjustifiable also on April 11, 2021, when they dispersed the tents of the Rioni Gorge Defenders in the village of Namokhvani and refused to allow the protest participants to remain there in this form. The possibility of the Rioni River overflowing was mentioned by law enforcement officers as the basis for the tents' deconstruction, albeit the pertinence of these risks has yet to be proved. In addition, the police refused the pleas of the protesters to have their tents placed in a reasonable alternative space in the village of Namokhvani; this once again shows that the objective of the police was not to secure the protesters but rather to stop the gathering at a specific location, Namokhvani. For the organizers of the protest, holding a demonstration in the village of Namokhvani was an essential component of their expression, because from this location they could directly observe the preparatory works of the HPP and deliver the protest messages to the addressee. Due to the continuous nature of the protests, the tents were an important means for participants to exercise their freedom of assembly and expression effectively.⁹

The police used repressive methods against the participants of the Namakakhvah HPP protest, such as detention and fines, which contributed to the escalation of the process, however, administrative detentions by law enforcement officers are more actively exercised during the protests with political connotations.

The legality and validity of police restraint techniques employed during the Namokhvani demonstration have been challenged in court, albeit the court has not yet reached a decision.

9 Evaluation of Police Measures during the Namokhvani Protest, Social Justice Center, 2021 Namokhvani- Rights to Essembly and Movement_1621496881.pdf(socialjustice.org.ge)

3. The practice of detaining assembly participants and appealing police measures

The actions of law enforcement officers and the coercive measures used in protest rallies show a repressive form of police. The arrest of the activists highlighted the police's distinctively repressive and harsh nature. Overall, the administrative detentions used by law enforcement during the protest were disproportionate and unreasonable given the peaceful and non-violent nature of the protest. It should be noted that the large-scale arrests in 2021,¹⁰ were preceded in the spring by amendments to the Code of Administrative Offenses of Georgia when the detention period was extended to 48 hours and the sanction for petty hooliganism and disobedience to police demands was tightened. These changes have opened up even more space for the arbitrary use of police repressive mechanisms and sanctions.¹¹

Balanced and proportional use of police force is critical in the management of protests and demonstrations. Even if individual protesters go beyond the frames of peaceful assembly, the police must take all possible measures to ensure that coercive measures are taken against specific offenders and that the force used does not have a material impact on the possibility to hold the assembly as a whole. At the same time, in this process, a clear presumption must work in favor of the rights of assembly and expression.¹²

All kinds of gatherings, except those that have violent aims and reject democratic values, deserve proper protection. In a peaceful assembly, regardless of its content, when demonstrators are not involved in acts of violence, the state must show a “degree of tolerance.” Otherwise, the freedom of assembly itself will be completely deprived of any content.¹³

The political protests of 2021 were accompanied by the use of mechanisms by the police against the right to assembly and demonstration envisaged under the Code of Administrative Offenses. In this regard, a protest held in front of the General Prosecutor's Office on June 3, 2021, against the events pertaining to the Ninotsminda Boardinghouse is noteworthy. Police arrested one of the participants, Giga Makarashvili, without prior

10 The facts of the arrest of the protesters participating in the rallies by the opposition parties on November 10, 2021 in front of various administrative buildings in Tbilisi.

11 Statement of the Social Justice Center- The Code of Administrative Offenses is becoming even more repressive. 26.04.2021

12 NGOs – Police Violated Rights of Citizens Arrested on November 10 – Social Justice Center (socialjustice.org.ge), 10.11.2021

13 Novikova v. Russia, 3. 164, karabulut v. Turkey, §. 37;

warning, using force under administrative rules, and broke his hand during the arrest, although Makarashvili did not resist.¹⁴ With the assistance of GDI's lawyer, the police action was appealed and investigated by the State Inspector's Office, however, the prosecution and the court refused to grant Makarashvili the status of a victim despite much evidence of bodily harm to the activist.¹⁵

The case of Giorgi Mumladze, a civil activist, administered by Rights Georgia, is also important in this regard. On April 14, 2021, during the protest in front of the central office of the Georgian Dream, the representatives of the Ministry of Internal Affairs of Georgia started detaining the participants under administrative proceedings. Among them was Giorgi Mumladze, a member of the non-governmental organization Movement for Georgia. 7 law enforcers were involved in the arrest process, who endangered the life and health of Giorgi Mumladze by using disproportionate and illegal physical violence. In particular, law enforcement officials used inhumane methods, preventing him from breathing by pressing his lungs and throat. Giorgi Mumladze bit the policeman on the hand in self-defense to save himself. In relation to this incident, a criminal case was launched against Giorgi Mumladze on the grounds of resisting the police, the expedited investigation was carried out and at this stage, the case is being considered in the Tbilisi City Court. In addition, the State Inspector's Office has launched an investigation into the use of disproportionate force by police, however, the investigation is so ineffective that the alleged perpetrators have not been questioned to date and Giorgi Mumladze has not been granted victim status.

In addition, the protest rallies held by opposition parties in Tbilisi on November 10, 2021, in the vicinity of different administrative buildings, when the police levers provided for in the amendments of spring of 2021 were activated.¹⁶ During the gathering, law enforcement officials arrested a total of 46 citizens on this day alone on the grounds of petty hooliganism and disobedience to a lawful request from a police officer.

GYLA was defending a person who was detained on charges of petty hooliganism and disobedience to a lawful request from the police while interviewing a journalist. Another person, represented by GYLA, was crossing the road from the opposite side at the time of the arrest. During the court hearing of his case, the video footage revealed that he had

14 Georgian Democratic Initiative, Human Rights in Georgia 2021, p.8, Available: <https://gdi.ge/uploads/other/1/1419.pdf>

15 The first part of Article 353 of the Criminal Code of Georgia;

16 In the spring of 2021, legislative amendments to the Code of Administrative Offenses of Georgia extended the detention period to 48 hours and tightened sanctions for petty hooliganism and disobedience to police demands.

been arrested 10-15 seconds after crossing from the SSSG building so this time could not be theoretically enough to commit the act of which he was arrested.

As it was revealed as a result of the administrative cases and as can be observed from the footage, disseminated through the media, some of the citizens were detained by the law enforcers away from the epicenter of the events, at which time there were no signs of violation by specific individuals.¹⁷ Moreover, the police did not provide explanations on the grounds of the police force employed throughout the arrest process. It's also worth noting that lawyers were not permitted to enter police stations for hours in order to visit detainees and provide legal assistance. Detainees were held in temporary detention facilities for more than 10 hours in certain circumstances, during which time they were forced to wait in police vehicles or department yards. Detainees were also prohibited from informing family members of their whereabouts.¹⁸

The grounds for administrative detention of a citizen are established by Article 244 of the Code of Administrative Offenses of Georgia, according to which, to prevent administrative offenses were so expressly provided for by the legislative acts of Georgia, when other sanctions have been exhausted, to identify a person, to prepare an administrative offense report, if its preparation is necessary but impossible at the scene, for the timely and due consideration of the administrative offense case and the enforcement of a ruling on an administrative offense case, a person may be placed under administrative arrest, subjected to personal inspection, an inspection of belongings, and seizure of the belongings and documents.

The legality and appropriateness of police actions during peaceful assemblies should be judged on how well the law enforcement officers comply with the rules of mandatory conduct generally laid down for them. It should be noted that the "Guidelines for the Behavior of Employees of the Ministry of Internal Affairs of Georgia during Assemblies and Demonstrations" provide for the possibility of negotiations to avoid forceful interference with the protester. The instruction further stipulates that before the use of coercive measures, the law enforcer is obliged to warn the participants of the rally/demonstration in advance, giving them a reasonable amount of time to comply with the legitimate request, unless such a warning is unjustified/impossible.¹⁹

17 Formula at 11:00 a.m. – November 10 – YouTube [Last accessed: 10.04.2022];.

18 November 10 Statement of Non-Governmental Organizations – Police Violated the Rights of Citizens Arrested on November 10 – Social Justice Center (socialjustice.org.ge)

19 Order N1002 of the Minister of Internal Affairs of December 30, 2015 "On Approval of the Guidelines for the Behavior of Employees of the Ministry of Internal Affairs of Georgia during Assemblies and Demonstrations", Paragraph 2 of Article 5 of the Instruction.

The analyzed cases revealed that in many cases, the activists were detained arbitrarily without any justification, and the reason for the arrest was their presence at the protest. Moreover, the 8 activists in the proceedings of “Rights Georgia” were detained without any cause before the protest started. In particular, the non-governmental organization “Movement for Georgia” planned to hold a peaceful rally in front of the government administration building on February 22, 2022. They reported on this plan in the previous days. Accordingly, the Ministry of Internal Affairs of Georgia and other state agencies were well informed about the protest plan. In this case, law enforcement officers restricted the freedom of peaceful assembly guaranteed by the constitution prior to the start of the protests and detained 8 activists before they reached their destination and began to protest. An important circumstance, in this case, was the fact that 8 detainees were placed not in the Tbilisi Temporary Detention Center, but relocated to several cities, although the scale of the detention was not large and there were many free places in the Tbilisi Detention Center. This significantly limited the right of detainees to defend themselves or to be assisted by counsel.

It is also concerning that the Ministry of Internal Affairs took advantage of the amendments to the Code of Administrative Offenses, which allow the police to extend the 24-hour detention period, for an additional 24 hours at a time. In practice, as a rule, after the 24 hours of detention has expired, the pre-trial custody period is extended for another 24 hours, which the MIA can do only if it justifies in writing the need to extend the detention period to obtain evidence.²⁰ Unfortunately, the rationale for extending the term is usually superficial and perfunctory and it is not susceptible to meaningful judicial oversight.

For instance, according to materials presented in the case filed by the Social Justice Center, on November 11, 2021, the Patrol Police Department requested that the head of the Mtskheta Tbilisi Temporary Detention Center extend the administrative term by 24 hours under Article 247 of the Criminal Code, because “information on the detainee’s administrative liability and conviction under the Criminal Code shall be collected, the body camera recording shall be obtained.” The video recordings were not submitted to the court, moreover, the person who compiled the arrest protocol testified at the trial that he did not have the body camera on him during the arrest because he had dropped it. There are no papers in the case file suggesting that another patrol police officer’s body cams were checked, and this circumstance was not substantiated at the trial. Consequently, the representatives of the Ministry of Internal Affairs did not submit the video recordings of the body cameras confirming K.B.’s breach of the law, therefore, the case concerns the arbitrary prolongation of the detention and the abuse of the norm.

20 Code of Administrative Offenses, Article 247, Part 2;

The issue of the legality of the detention was also a matter for contention in the GYLA-administered case of Tamar Kuratishvili, an activist of the “Shame Movement”. She was detained on November 13, 2021, during the action performance “How many of will you catch?” in the vicinity of the State Security Service building in Batumi. It is noteworthy that the protesters attempted to express their protest silently, by unfolding a banner, which the police refused to allow. About 5-6 minutes after the start of the protest, Tamar Kuratishvili was arrested on the charges of petty hooliganism and defying the lawful request of a police officer. She was sent to a temporary detention center after her arrest and held there for 48 hours despite the lack of appropriate legal grounds. The legality of her detention has been challenged before a higher administrative body, but the case is still being considered at the time of writing this report.

When deciding on the administrative offense case, it is important to note that the judge does not examine the legality of a person’s detention by police officers. Interested parties may appeal administrative detention, personal examination, item inspection, and document confiscation to a higher authority (official) or the prosecutor under Article 251 of the Code of Administrative Offenses. Despite the fact that resistance to the police may be the basis for an administrative charge, the court does not assess the proportionality and legality of the police force even though it is during the arrest process that resistance to the police may form the basis of an administrative charge.

It is also problematic that the mechanism for administrative appeals pertaining to the legality of detention is also ineffective. The Social Justice Center has appealed to a higher administrative body against the legality of the detention of one of the activists arrested on November 10. The Ministry of Internal Affairs did not consider the administrative complaint and indicated that the deliberation on the legality of the detention is a matter for the court to decide.²¹ The case is currently being appealed in the Tbilisi City Court, although no court decision has been issued yet.

The existing mechanism for reviewing the lawfulness of detention is ineffective insofar as the court declares a person an offender without assessing the lawfulness of their detention, and the judicial control of the detention is exercised after the person concerned files an administrative complaint with a higher administrative body, which is a time-consuming process. As a result, we get a situation when the judge considering the administrative offense does not assess the legality of the detention, recognizes the person as an offender, and the Ministry of Internal Affairs either does not review the complaints or does not satisfy them. Consequently, the case is returned to the court again and after several months, the court re-evaluates the factual circumstances.

21 Letter from the Ministry of Internal Affairs MrA 7 2103289485, Social Justice Center, 15.12.2021

The exercise of judicial control is also ineffective over the police actions during the Namokhvani protest (blockade by the police). Assessing the legality of a restrictive police measure, even in this case, is firstly the prerogative of the superior administrative body and then the court. The Ministry of Internal Affairs considered the police measures taken by the Director of the Imereti, Racha-Lechkhumi, and Kvemo Svaneti Police Department during the protest to be lawful, and the judicial control has not been exercised on the illegal restriction of movement through police checkpoints for months from April 4, 2021. The case is still being considered in the Administrative Cases Panel of the Kutaisi City Court.

II. Court hearings

As it has been revealed as a result of the observation of the proceedings and processes of the administrative violation cases, the court hearings of the cases are also extremely problematic and the rights of the persons are violated in many directions. In many cases, trials of administrative offenses are formal, with decisions being made on a routine, conveyor system basis without assessing individual circumstances. A wide-ranging definition of failure to comply with a lawful request of a police officer or petty hooliganism, under a Code of Administrative Offenses, during public gatherings and demonstrations, is problematic.

Restricting citizens' access to a lawyer after an arrest is a particular problem. Legal advice/assistance is critical in the early stages of detention, as there are risks of police obtaining information from an administrative detainee through coercion. There were cases during the reporting period when, due to the lack of communication channels of the lawyer with the detainee, necessary for the proper exercise of the right to protection, the lawyer was only able to contact detainees for a few minutes at the start of the trial.

The review of individual cases of persons under administrative liability took place in a critically short amount of time (a few minutes), during which a template protocols of administrative liability and testimonies of police officers were used as sufficient evidence for the conviction of detainees and the imposition of administrative detention. From the cases in progress, the administrative offense protocols were routinely filled out, and in some cases, police officers who were not involved in apprehending or preventing the offense were questioned as witnesses. Furthermore, police personnel were frequently unable to recall the particular location where the suspect was apprehended.

In one of the GYLA cases, the police presented video recordings of a person being detained 10-15 seconds after crossing the road and joining an active protest march. In the same case, the detainee argued that the detainee had been called upon to stop swearing and given a reasonable time to do so (according to him, this period was about 10 minutes). The testimony of a witness did not match the evidence presented by the opposing party. Nevertheless, the court still recognized the person as an offender.

One of the essential elements of petty hooliganism – a violation of public order or the peace of citizens – was not sufficiently assessed during the court hearings in the cases of petty hooliganism provided for in Article 166 of the Code of Administrative Offenses. In addition, the court did not consider the social or political significance of the rallies and the question of “swearing in public”, essentially relying on the general wording of

police officers. For example, in one case, the activist's words "Wipeout Bidzina Ivanishvili" during a protest led to their arrest and for these words, the court found them guilty of an offense.²²

In case of disobedience to a lawful request of the police (Article 173 of the Civil Code), for an act to qualify under this article, the request or ordinance of a law enforcement officer must be lawful, i.e. based on a specific legal provision, which entitles the said subject to request from the person to carry out an action of the specific content or to refrain from carrying out the action;²³ During the court hearings, there was a tendency not to check with sufficient clarity when the request of a police officer is lawful, nor to indicate the legal basis of the request. Moreover, as a rule, the law enforcers themselves could not name what lawful request was made to the person. Instead of providing factual evidence of a disobedience to specific lawful order, the police officers, in the administrative detention report, use the template phrase – "did not obey the lawful request of the police and resisted it", without describing the specific circumstances that led to the action.

An important problem remains the substantiation of the fact of administrative violation with objective, neutral evidence. The most effective mechanism for this would be a full video-audio recording of the incident, although in the cases investigated, law enforcement officers typically indicated that body cameras were either damaged or not on. Consequently, the testimony of law enforcement officials was not substantiated by neutral evidence. Such records could be submitted by the officers directly involved in the detention, as well as to other law enforcement officers in the surrounding area, although, as a rule, no such information was provided to the court.

Accordingly, during the hearing of the case, the judge usually had to choose between the conflicting testimony of the law enforcer and the participant of the assembly. Between two identical pieces of evidence with equal probative value, it was often vague as to why the judge preferred to rely on information provided by the police, why such testimony was considered more credible, and why the final decision was based on the said record.

In addition, during the hearings, the court largely refused to grant important motions for the proper exercise of the right of defense, such as obtaining evidence and postponing the process for the identification of witnesses. Observations of administrative proceedings and trials also revealed that the principle of selection of sanctions by the court was inconsistent and unsubstantiated with respect to detainees and that decisions

22 Judgment of Koba Chagunava, Judge of the Administrative Cases Panel of the Tbilisi City Court, dated November 11, 2021, in the case of D.M. administrative violation;

23 Resolution of the Administrative Chamber of the Kutaisi Court of Appeals of November 27, 2015;

were made without assessing the individual characteristics of the person. It was unclear on what criteria the judge would choose to impose fines on individuals and under what circumstances – administrative detention.

The above-mentioned challenges pertaining to the consideration of administrative offenses at court were evident, for example, in the case of Alik Kuprava, who was represented by the GDI. Kuprava was detained under Articles 166 and 173 of the Code of Administrative Offenses²⁴ and was not allowed a call in this process.²⁵ Kuprava told the court that the police officers in the courtroom were not the ones who detained him.²⁶ It is noteworthy that none of the police officers recalled who handcuffed Kuprava during the arrest and then who was driving the patrol car.²⁷ Also, the judge did not satisfy the motions of the defense party to interrogate the interviewed persons in court, obtain video recordings and submit arrest footage.²⁸ Nevertheless, Kuprava was sentenced to 3 days in jail only on the basis of police statements.

One of the cases of GYLA Telavi office is also noteworthy. In particular, on February 26, 2022, in the vicinity of the Telavi Theater, Z.Kh. together with his friends (about 10-12 people) expressed solidarity with the Ukrainian people and protested against the Russian invasion of Ukraine. Police arrested Z.Kh. and another person on charges of petty hooliganism. In particular, the police accused Z.Kh. of swearing in the street, for which he was subjected to administrative detention for 48 hours.

An interesting circumstance, in this case, was that no evidence could be presented by the police to prove the fact of violation by Z.Kh., the court relied on the statement of only one police officer, who confirmed that Z.Kh. was cursing in the street. Conversely, the 3 witnesses questioned in the case stated that there had been no swearing and disturbance of public order by Z.Kh. Despite the lack of evidence, the court still found Z.Kh. guilty, however, a verbal reprimand was imposed instead of a sanction.

The review of detention cases, once again, exposed the current situation in the court

24 Human Rights Center, Monitoring Trials of Allegedly Politically Motivated Cases, Concluding Report, 2022, p. 37

25 Human Rights Center, Monitoring Trials of Allegedly Politically Motivated Cases, Concluding Report, 2022, p. 39-40

26 Human Rights Center, Monitoring Trials of Allegedly Politically Motivated Cases, Concluding Report, 2022, p. 40

27 Human Rights Center, Monitoring Trials of Allegedly Politically Motivated Cases, Concluding Report, 2022, p. 40

28 Human Rights Center, Monitoring Trials of Allegedly Politically Motivated Cases, Concluding Report, 2022, p. 38-39

system and the fundamental problem of the Code of Administrative Offenses, which practically precludes the proper exercise of the right to a fair trial. These problems are most acute for those detained during rallies and demonstrations. As a rule, cases were considered in an extremely short time, in the absence of evidence necessary for an objective assessment. The court hearings followed a concrete pattern, at which time, in almost all cases, administrative fines were imposed on citizens based on police testimony.

III. Ineffectiveness of the investigation

The lack of political will of the authorities is evident in the cases of mass, pre-organized violence on July 5-6, 2021, during the anti-Pride rally, when none of the organizers of the violent protest was prosecuted, despite their open and direct calls for violence, as well as giving instructions to specific individuals on the spot; In addition, the investigation has not yet commenced on the facts of interference with the exercise of the right to hold or participate in an assembly (Article 161 of the Criminal Code), while the signs of the said crime were unequivocally present during the events of July 5-6, and these actions were well-organized;

According to the Ministry of Internal Affairs, in relation to the events of July 5-6, the prosecution is ongoing under the articles pertaining to the obstruction of the legitimate professional activities of journalists, persecution, participation in group violence, violation of the inviolability of an apartment or other property.²⁹

Statements by counter-protest organizers and their supporters prior to July 5 should have been a wake-up call for the authorities. Statements and detailed plans for disrupting the march of dignity and using violence were spread through the media a few days earlier. The organizers of the counter-demonstration used homophobic, hateful, and derogatory language, and ³⁰ already on July 4, they set up tents in the vicinity of the Rustaveli metro station to plan the actions to be taken the next day.³¹ On the same day, they were voicing threats about taking lives.³² Both the form and the intentions of the rallies announced by the hate groups were not classified as “peaceful” from the beginning, contained obvious elements of the use and encouragement of violence, and threatened not only the realization of the right of assembly but also the right to life, health, and dignity of others. At the same time, the experience of the past years has further intensified the feeling that the counter-demonstrators would thwart the march of dignity in any possible way.

Unfortunately, the ineffectiveness of the investigation into these events and its fragmentary, ad hoc nature once again shows that the authorities have no real will to adequately curb such violent incidents and to adequately protect the freedom of expression of any group. Moreover, the ineffectiveness of the investigation, on the one hand, exacerbates

29 Statement of the Ministry of Internal Affairs, 30.07.2021 <https://police.ge/ge/shinagan-saqmeta-samin-istrom-5-ivliss-/14835>

30 <https://www.radiotavisupleba.ge/a/31334344.html>, [Last Accessed 10.04.2022];

31 There may be victims, I am announcing once again – another threatening statement by Guram Palavandishvili available at: <https://rustavi2.ge/ka/news/203650>, [Last Accessed: 10.04.2022];

32 *ibid*;

the syndrome of impunity in violent groups and, on the other hand, has a “chilling effect” on the right to expression in the country.

For example, the Georgian Young Lawyers’ Association has been actively involved in the case of the victims of the protest against Tbilisi Pride since July 5. As part of various investigations, GYLA has protected the interests of 21 victims. Shortly after the interviews, in accordance with procedural law, all persons under GYLA’s protection were granted victim status. 21 people have been charged with possible crimes committed against 7 persons under the protection of GYLA. All of them were sentenced to imprisonment, which remained in force even after the revision. However, the investigation into the violence against the other 14 GYLA-represented persons is still fruitless. Although they were victims of violence and have been granted victim status, no prosecution has been launched against anyone.³³ At the same time, it should be noted that the prosecutor’s office refused to grant Tbilisi Pride members and LGBT activists the status of victims, despite the fact that they were persecuted on homophobic grounds all day and their lives and health were in danger. With the assistance of the GDI, 5 such individuals applied for victim status, although neither the prosecution nor the court granted them such status.³⁴

In the cases of July 5-6, 2021, the Human Rights Center (HRC) dealt with 11 cases, including representing the interests of 9 victims.

Of the victims represented by the Center, only the Tbilisi Human Rights House and the two activists who were harmed by the attack on the Human Rights House do not have a status. Despite the appeal of the Human Rights Center, the Tbilisi Human Rights House was denied the status of a victim both by the prosecutor’s office and after an appeal – by the court.³⁵

It should be noted that instead of identifying and prosecuting those responsible for the July 5-6 events, the government imposed an administrative penalty on Giorgi Tabagari, a member of the Tbilisi Pride represented by the GDI, who was an actual victim of violence. In particular, on July 5, the investigator called Giorgi Tabagari and asked him to

33 See GYLA Report “Chronology and Legal Assessment of the July 5-6 Events”, Available at: <https://bit.ly/3KR8qVb>, [Last accessed: 10.04.2022];

34 GDI Statement: Tbilisi City Court rejected the complaint of the victims (activists) of the crimes committed on July 5 regarding the granting of victim status; 29.10.2021;

35 On July 5, 2021, at approximately 3 o’clock, the office of the Tbilisi Human Rights House (HRHT) was attacked by violent members of a homophobic group who were aggressive towards the “March of Dignity”. See: Statement of the Human Rights House 28.03.2022 <http://www.hrc.ge/365/geo/> [Last Accessed: 12.04.2022];

come to the Tbilisi Pride office while Tabagari was fleeing the perpetrators by car.³⁶ A representative of the Ministry of Internal Affairs demanded that Tabagari comes to the epicenter of the violence when Tabagari's life and health were in danger due to the inaction of the police. While talking on the phone, Tabagari used obscene words against the police officer,³⁷ which is why the court recognized him as an offender under Article 173 of the Code of Administrative Offenses.³⁸

Another clear example of an ineffective investigation is the legal proceedings pertaining to the secret recordings leaked to the media on September 13-14, 2021. The issue of illegal wire-tapping and surveillance, unfortunately, remains one of the most important legal challenges in the country so far, and the investigation of this crime as quickly and efficiently as possible should be of special interest to the prosecutor's office. Unfortunately, the state has repeatedly failed to respond effectively to the violation of the right to privacy, and the records released on September 13-14 were no exception.

According to media reports, the files concerned details of personal communications of clerics, journalists, lawyers, diplomats, and other public groups allegedly obtained and processed by the State Security Service of Georgia. Based on the volume, scale, and content of the materials disseminated, the alleged systemic criminal act of violation of the secrecy of private life by the State Security Service is revealed, the effective investigation of which is the primary responsibility of the state.³⁹

The Prosecutor's Office of Georgia has launched an investigation into the disclosure of secret recordings under the article violating the secrecy of private communication. According to a statement issued by the agency on September 18,⁴⁰ in the framework of the investigation, in order to determine the legality of obtaining and disseminating the information, as well as its authenticity, the persons involved in the case are interviewed and the necessary investigative/procedural actions are carried out to identify the compilers and extractors of the materials, as well as the authenticity of the materials.

36 Giorgi Tabagari's offender status is a dangerous precedent, see: <https://gdi.ge/ge/news/giorgi-tabagari-sakme.page>

37 Giorgi Tabagari's offender status is a dangerous precedent, see: <https://gdi.ge/ge/news/giorgi-tabagari-sakme.page>

38 Giorgi Tabagari's offender status is a dangerous precedent, see: <https://gdi.ge/ge/news/giorgi-tabagari-sakme.page>

39 Social Justice Center: Covert Surveillance in Counterintelligence Activities – Analysis of the Institutional and Legislative Framework 2021

40 Statement of the Prosecutor's Office of Georgia (pog.gov.ge), 18.09.2021

Despite some investigative actions, the response of law enforcement agencies is ineffective in this case as well, as so far neither the authenticity of the materials has been confirmed, nor the interviewed persons are recognized as victims. Also, the public does not have information so far, for example, whether the state security officers were questioned as part of the investigation, at what stage, in general, the investigation is at, and what type of investigative measures are being taken.

The lack of investigations into cases of unlawful wiretapping and the release of covert recordings in the past and the lack of justice further encourages the arbitrariness of law enforcement and also show the lack of political will to investigate these matters. At the same time, the risks of wrongful invasion of privacy in Georgia are largely due to insufficient legislation and low accountability of the security services. This once again confirms the need for the fundamental reform pertaining to both the issue of wiretapping and the State Security Service.⁴¹

41 Social Justice Center: Covert surveillance within counter-intelligence activities – analysis of the institutional and legislative framework, 2021

Summary

The past period and developments have once again demonstrated the lack of a strategy and peace-oriented policy on the part of the state to resolve social and political crises. Authorities have always responded to the protests with police forces, but constructive ways of solving the problem were overlooked. The events of July 5 were particularly vexing since authorities refused to stand up for the right to peaceful expression, human dignity, health, and life. Moreover, it permitted and indirectly encouraged violent acts. In this context, the fact that the legal liability of the organizers of the perpetrated violence and the political responsibility of the authorities have yet to be established paints an even worse image.

Furthermore, systemic shortcomings in the actions and strategies of the law enforcement system were once again exposed, which finally constituted a basis for curtailing demonstrators' right to peaceful assembly and the use of disproportionate force against them. The problem of the use of administrative detention again emerged on the perfunctory grounds of petty hooliganism and disobedience to the lawful request of a police officer. The wide interpretation of this norm and the use of the detention mechanism grossly violate the rights to assembly, manifestation and expression, and have a "chilling effect" on the future exercise of these rights.

Vague legislation, misaligned with human rights norms, low accountability of law enforcement agencies, and weak judicial control, taken together, create a broad domain for police arbitrariness and unjustified restrictions on citizens' constitutional rights. These problems are not new to the Georgian context, and civil society organizations have long advocated for amendments to legislation and law enforcement as well as court practice. Unfortunately, rather than improving, a number of legislative amendments have occurred in recent years, extending the scope of police arbitrariness and increasing the possibility of civil rights breaches. The most obvious example is the increased length of administrative detention and administrative fines, which are becoming a financial burden on ordinary citizens.

The freedom to peaceful assembly and expression is much more crucial in a complicated political and social setting. Unfortunately, in the midst of escalating political instability, it is becoming increasingly difficult to publicly express protest in a way that does not result in unjustified restrictions on fundamental human rights by the police. Excessive police force by the state only raises the risks of conflict and public tensions while also eroding public trust in government institutions.