

Evaluation of police measures during the Namokhvani protest

(Analysis of the events of April 3-11 and the developments that followed)

Introduction

The ongoing protest against Namakhvani HPP is unprecedented in its duration, publicity, and the high degree of self-organization of the local community. For more than 200 days, the residents have been protesting peacefully against the construction of the HPP, through various means. Unfortunately, the main response of the state to this protest is the exercise of police measures, and for months, the government has largely shown nothing but neglect of the local population.

The use of police forces by the government to control social or political issues has become commonplace. The government frequently employs the special police procedures provided by the Law on Police for mass control during rallies and demonstrations, raising the risk of arbitrary and disproportionate interference with citizens' rights. The basic justifications for using police force usually refer to abstract threats, raising the possibility of arbitrary interference with citizens' rights. And, in the case of gross interference with the exercise of basic human rights in the name of maintaining public safety, the prevention of a hypothetical unlawful action is prioritized over freedom of assembly and expression.

The protest started by the locals in Rioni gorge is directed at the Namakhvani hydropower cascade project. The protest organizers point to a nontransparent procedure with little public participation, as well as contract clauses that ignore the public interest. In response to the criticism, the government refuses to engage in dialogue and attempts to ensure the continuation of the HPP construction process through force. The state unjustifiably and arbitrarily interferes with the Rioni Gorge Defenders' right to peaceful assembly by its harsh and repressive policies, particularly through the police force. The risk of further aggravating the process and possibilities of radicalization is increased by such blatant and unjustifiable interference with the Rioni Valley Defenders' fundamental rights through intensive police measures.

The paper examines the justification and proportionality of the police measures used by the state since the beginning of April.

Police checkpoints

As noted, peaceful protests against the construction of the HPP have been ongoing for more than 200 days. For a long time, the main site of the protest was the village of Namokhvani, the place from where the construction of the HPP was directly visible, and the main messages of the protest could be communicated directly to the intended audience. Therefore, holding a protest on the territory of Namokhvani is an essential component for the realization of the objectives of the assembly participants. As the protests persisted, protesters ensured the process's continuation by setting up tents in Namokhvani, which provided physical shelter, an essential means of protest.

On April 3, 2021, after the preparatory works for the construction of the Namakhvani HPP in the Rioni Valley were resumed, the Ministry of Internal Affairs mobilized a large number of police forces on the spot. At the same time, law enforcers set up police checkpoints on both roads leading to the village of Namokhvani (from Kutaisi and Lechkhumi) and blocked the entrance to Namokhvani on both sides.¹ On April 4, 2021, at 12:00, another protest rally was held against the construction of Namakhvani HPP. The protest supporters who traveled from other places to join these protests were denied entrance to the road leading to the tents by law enforcement officers stationed at checkpoints.² Since then, the events in the Rioni Gorge have evolved in response to policing control measures implemented by the Ministry of Internal Affairs, which restricted protesters' and the local population's freedom of movement in the valley, which was considered an unjustified and disproportionate interference with fundamental rights by both public organizations³ and the Public Defender⁴.

According to the Ministry of Internal Affairs⁵, the deployment of police forces in the Rioni gorge was related to the resumption of the preparatory work process for Namakhvani HPP to maintain security and law and order on the ground. The Ministry cited Articles 25 and 26 of the Law on Police as grounds for restricting the movement of citizens in the Rioni Gorge, explaining that

¹ Noise in Rioni gorge, 2 people detained - Namakhvani HPP construction works resumed, Formula, 03 Apr 2021 16:00, <https://formulanews.ge/News/48150>

² Police are mobilized in Rioni gorge, water cannon vehicle is brought out, Formula, 04 Apr 2021, <https://formulanews.ge/News/48176>

³ The police should leave the Rioni gorge immediately and the construction works of Namakhvani HPP should be stopped, <https://socialjustice.org.ge/ka/products/dauqovnebliv-datovos-politsiam-rionis-kheoba-da-shetsqdes-namakhvani-hesis-samsheneblo-samushaoebi>

⁴ Restriction of movement is disproportionate - Lomjaria met with "Rioni Gorge Defenders", <https://netgazeti.ge/news/533274/>

⁵ Statement of the Ministry of Internal Affairs, 04.04.2021, <https://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/14516>

“due to security measures ..., the temporary mobility restrictions remain in force to prevent the expected risks and further escalation of the situation.”

Chapter IV of the Law of Georgia on Police describes the preventive measures and distinguishes them from those taken in response to a breach of the law. Articles 25 (Demand to leave a place and prohibition of entry onto a certain territory) and 26 (Restriction of movement of a person or a vehicle or restriction of actual possession of an item) regulate preventive measures. Under Article 25, a police officer has the authority to order a person to leave a specific location for a certain period of time or, if necessary, to restrict them from entering a certain area in order to avoid danger. The restriction mentioned in paragraph 1 of this Article may be prolonged until the threat has been eliminated. The execution of the measures outlined in this Article must not result in a long-term restriction of a person’s right to enjoy their home.

According to Article 26 of the same law, the police are authorized to temporarily restrict a person's movement in accordance with Georgian legislation: a) if the person endangers his or her own life or the life and health of others through his or her actions; b) if a person fails to meet the requirement specified in Article 25 of this Law. The police are authorized, in accordance with the legislation of Georgia, to temporarily restrict the actual possession of the object or the movement of the vehicle in order to prevent danger, if it can be used by a person to endanger their own or others life and/or health or damage the property of another person.

A threat assessment by a police officer is a requirement for the deployment of a police measure, according to the Law of Georgia on the Police. The concept of threat restricts the police’s preventive activities, determines their scope, and, at the same time, and safeguards people' rights and freedoms from unwarranted government intrusion.

According to the Law of Georgia on the Police, a situation is considered a threat when there are sufficient grounds to believe that, in the case of an uninterrupted course of events, there is a high probability of harm to the good being protected by the police. The presence of a danger must be proven by objective conditions that would be sufficient for an objective observer to come to the same conclusion, taking into account the relevant circumstances.

Accordingly, in each situation, the police must examine the circumstances through the eyes of an impartial observer and determine whether such a development is likely to harm the protected good in the given circumstances. Despite existing regulations, in practice, police officers frequently fail to uphold this standard and, instead of acting from the standpoint of a neutral observer, they apply restrictive measures by pointing to an abstract threat, based on their

subjective assessment. This is particularly so given that the definition of a threat envisaged by the Law on the Police not only does not rule out the possibility of a subjective definition of a threat, but is also so broad that it can be applied at any time. Consequently, the exercise of this preventive measure on the grounds of an abstract threat leaves the possibility for law enforcement agencies to expand their powers.

The Constitutional Court, in the case of *Levan Izoria and Davit-Mikheil Shubladze v. the Parliament of Georgia*, examines the inadmissibility of restricting the right to liberty only on the basis of subjective perception: "[...] Interference with a person's liberty based solely on subjective feeling, prejudice or intuition is unacceptable. The suspicion that a person committed a criminal act must be based on a fact, circumstance or combination thereof that convinces the objective observer that the suspicion is well-founded."⁶

When the barricades were set up on April 3 on the roads leading to Namokhvani in the Rioni gorge, law enforcement officials did not clarify what type of danger they were expecting. In this particular case, the threat was not specific and immediate and was not substantiated by objective information and circumstances. As a result, the police's preventive measures infringed unjustifiably and grossly on both freedom of movement and freedom of assembly and expression. Concerning the restriction of any right in general, the Constitutional Court notes that "only clear, unequivocal rules may justify the restriction;" "The law must specify in detail, with sufficient conviction and clarity the specific purpose, objectives, and grounds for interference with the right. The rules governing the interference with the right must be unambiguous, clear, and foreseeable." According to the court, this requirement implies the creation of a legislative system that allows a person to determine the legal consequences of their actions and protects them from the arbitrariness of the law enforcer. Vague and incomprehensible legislation creates fertile ground for arbitrariness, therefore, the legislator should reduce the mentioned risks in the legal process as much as possible with a clear, well-defined normative regulation.⁷

It should be highlighted that the Constitutional Court imposes a particularly high standard on the norms establishing those policing functions (actions), among the activities of law enforcement agencies, which lead to the restriction of the rights provided by the Constitution."⁸

⁶ Judgment of the Constitutional Court of Georgia of 11 April 2013, "Citizens of Georgia - Levan Izoria and Davit-Mikheili Shubladze v. the Parliament of Georgia", II, para. 29;

⁷ Decision of 29 December 2017 in the case of *Rustavi 2 Broadcasting Company Ltd and Georgia TV Ltd v. Parliament of Georgia*, paras. 29; 37;

⁸ Decision No1 / 2 / 503,513 of the Constitutional Court of Georgia of 11 April 2013 in the case "Citizens of Georgia - Levan Izoria and Davit-Mikheili Shubladze v. Parliament of Georgia", II, para. 25.

To summarize, the installation of special checkpoints on the roads leading to the village of Namokhvani by the police on April 3 unjustifiably and disproportionately restricted the freedom of movement of citizens, which in turn hampered the right of assembly and expression on the ground in the village of Namokhvani.

Dismantling the tents

The police demolished the tents of the "Rioni Gorge Defenders" in the village of Namokhvani on April 11 and forbade the protesters from remaining at the location to continue the protest in this manner. The dismantling of tents by law enforcers and the subsequent termination of protests in Namokhvani in this way was an example of an excessive and unjustified police force. It is noteworthy that police justifications for demolishing the tents were conflicting, according to the protest participants⁹ on April 11, the first explanation they got was the disappearance of a young protester who had jumped into the river¹⁰ the day before. Later, the Ministry of Internal Affairs claimed a considerable rise in water levels in the Rioni River, as well as the risk of flooding the surrounding area, as justifications for removing the tents and halting the demonstrations.¹¹

It should be highlighted that a relevant meteorological report has yet to establish the dangers of river flooding. Nevertheless, the police have erected an iron wall, preventing the protest supporters from holding a peaceful gathering in Namokhvani to this day. Moreover, the hypothetical concerning of flooding were announced to put a stop to the gathering, rather than to ensure the safety of residents. Furthermore, the supporters' plea to move the tents to a another site in Namokhvani was also refused. ¹² It should also be noted that the area was dug up by the police the day after the tents were dismantled, implying that the goal of the law enforcers was not to protect the safety of the protestors but to halt the gathering process in Namokhvani.

Consequently, the actions taken by the Ministry of Internal Affairs, justified with abstract concerns, led to a concrete factual outcome - the termination of the protest. As a result, the local

⁹ Explanation of Maka Suladze, 16.04.2021, Gumati

¹⁰ The search for a young man who jumped into the Rioni river at Namokvani is ongoing <https://www.radiotavisupleba.ge/a/31197648.html>

¹¹ Statement of the Ministry of Internal Affairs <https://police.ge/ge/shinagan-saqmeta-saministros-gantskhadeba/14531>

¹² Varlam Goletiani: The Ministry of Internal Affairs, itself, disproves the declared explanation regarding the dismantling of the tents due to the Rioni flooding fears <https://www.radiotavisupleba.ge/a/31199012.html>

population was unjustifiably and illegally deprived of the opportunity to exercise their right to peaceful assembly and demonstration at a preferred location, through preferable means.

It should be noted that, for the organizers of the protest, holding a demonstration in the village of Namokhvani was an essential component of their expression because, from that area, they could directly observe the preparatory work of the HPP construction and peacefully oppose the process. Because the demonstrations were continuous, the tents were an essential instrument for participants to exercise their freedom of assembly and expression effectively. At the same time, the gathering was unequivocally peaceful, and several months of protests only confirmed this.

According to Article 21 of the Constitution of Georgia, everyone, except those enlisted in the Defence Forces or the Ministry of Internal Affairs, has the right to assemble publicly and unarmed, both indoors and outdoors, without prior permission. According to the Constitution, the government can interrupt an assembly or a demonstration only if it assumes an unlawful character.¹³

An assembly, according to the Law on Assemblies and Demonstrations, is an indoor or outdoor gathering of a group of citizens, a meeting in public places to express solidarity or protest.¹⁴ The gathering, in turn, is related to the existence of a specific group of like-minded individuals, and implies a collective opportunity to express an opinion.

The right to assembly and demonstration, as a form of expression, promotes the realization of the interests and aspirations of a free and democratic society, of its members. Furthermore, the right to assembly is not absolute. Restriction of this right, as well as other forms of freedom of expression, is permissible to ensure other constitutional rights and principles, given the legitimate grounds as defined by the Constitution. Accordingly, to ensure the peaceful nature of the assembly, the law imposes certain restrictions on its participants.

Namely, to prevent illegal actions and to maintain the peaceful nature of the assembly, it is prohibited to call for the overthrow of the government and/or its violent change, which poses a clear, direct, and substantial risk of action.¹⁵ In addition to this ground, any of the following conditions must be met for the state to exercise its right to end an assembly or demonstration:¹⁶

- a) Demonstration participants carry firearms, explosives, flammable, radioactive substances, or cold weapons;

¹³ Article 21(3) of the Constitution of Georgia.

¹⁴ Paragraph 1 (a) of Article 3 of the Law of Georgia on Assemblies and Manifestations;

¹⁵ Paragraph 1 of Article 11 of the Law of Georgia on Assemblies and Manifestations;

¹⁶ Paragraph 2 of Article 11 of the Law of Georgia on Assemblies and Manifestations;

- b) Carry an object or substance that is or may be used to the detriment of the lives and health of the demonstrators or other persons;
- c) to have tear and nerve gases and/or toxic substances;

In addition, according to the Law of Georgia on Assemblies and Demonstrations, participants are prohibited from purposefully obstructing the movement of vehicles.

Consequently, the prohibition on erecting tents and other temporary structures in public places is not recognized by national law.

At the same time, the Constitutional Court establishes a legal standard according to which only peaceful and non-violent gatherings are protected by the Constitution, because a constitutional right itself cannot be used to undermine the democratic order protected by the Constitution or serve as a foundation for unlawful action.¹⁷

To ensure the full realization of freedom of assembly, national legislation imposes two types of obligations on the state: 1. Not to interfere with the organization and conduct of the assembly or demonstration in accordance with the law, public expression of their views by citizens;¹⁸ (negative obligation); 2. Ensure that the demonstration is conducted peacefully and, to that end, take all necessary measures, including by drafting relevant legislation and enforcing it effectively¹⁹ (positive obligation).

In this case, at no stage of the protest in Namokhvani was there a call for the overthrow or violent change of Georgia's constitutional order, a violation of the country's independence and territorial integrity, or a call to propagate war and violence, stirring up nationalistic, regional, or religious hostility and posing an obvious, direct and substantial threat to that end. It is also noteworthy that during the protest, no action was taken by its participants, which is prohibited by law, including possession of prohibited items, blocking the entrances of buildings and blocking the roads, or impeding the activities of the institution. Consequently, the dismantling of tents by law enforcers and the cessation of protests in the preferred location, in this way, constitutes a gross and unjustified interference with the right to peaceful assembly.

Freedom to choose "time, place and form of the protest"

¹⁷ Decision No. 2 / 482,483,487,502 of the Constitutional Court of Georgia of 18 April 2011 - Political Union of Citizens "Movement for United Georgia", Political Union of Citizens "Conservative Party of Georgia", Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria And Jaba Jishkariani, Public Defender of Georgia v. Parliament of Georgia II, par. 90.

¹⁸ Paragraph 2 of Article 12 of the Law of Georgia on Assemblies and Manifestations;

¹⁹ Decision No1 / 3/538 of the Constitutional Court of Georgia of 24 June 2014 in the case Political Union Free Georgia v. Parliament of Georgia, II. para. 8.

The right to freedom of assembly and demonstration is an instrumental right that allows an individual or group of people to express their thoughts and opinions. It combines two equally essential rights: assembly and manifestation, as a form of expression of opinion, and a specific opinion conveyed by the assembly or manifestation [...]. According to the decision of the Constitutional Court of Georgia, "the participants of the assembly themselves determine the form that best expresses the purpose of the assembly." In addition, "the right to assemblies and demonstrations includes the right to choose the place, time, form, and content of the assembly." The Constitution of Georgia considers the restriction of this right permissible only if it assumes an unlawful character.

According to the established practice of the European Court of Human Rights, the right of assembly includes the freedom of choice by the participants of the assembly of the desired place, time, and form of assembly. In the case of *Balcik and Others v. Turkey*²⁰, the European Court of Human Rights noted that the State must not only protect the right to peaceful assembly, but also refrain from exercising unreasonable restrictions on that right. The Court considers that while the essence of Article 11 of the European Convention on Human Rights is to protect the individual from arbitrary interference by the State, this Article also imposes a positive obligation on the State to ensure the effective protection of the right guaranteed by this Article. In the same judgment, the Court noted that, while the demonstrators remain peaceful, the government officials must show tolerance for non-violent demonstrators so that the right guaranteed by Article 11 of the Convention does not lose its essence²¹;

According to the OSCE / ODIHR Guidelines, assembly participants should be able to effectively communicate their message and must be facilitated within the "sight and sound" of their intended audience.²² In addition, the construction of tents and other temporary structures is considered to be included in the protected field under the right to freedom of peaceful assembly. In the event of an urgent need to change the place of an assembly, a suitable alternative location, as close as possible to the location originally selected by the assembly participants, should be made

²⁰ *Balcik and Others v. Turkey*, ECHR, no. 25/02, 29.02.2008;

²¹ *ibid*, para. 52;

²² European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, paras 22, 147, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e);

available.²³ Similarly, it is not permissible to restrict the form of the assembly, including the tents, if it interferes with the assembly participants' ability to communicate their message effectively.²⁴ Assembly participants should also be given the opportunity to determine the duration of the protest. The duration of the assembly may itself be part of the message that the meeting participants are trying to convey.²⁵ According to Article 19 of the Peaceful Assembly Guidelines, the state should ensure that the assembly is held in a public place preferred by the assembly organizer and generally accessible to the public. The same guidelines state that conduct that temporarily hinders, impedes, or obstructs the activities of third parties falls under the scope of the freedom of "peaceful" assembly.

As a rule, the organizers of the assembly select the place and form of the gathering by evaluating whether the messages they try to convey can reach the intended addressee. The assembly should be held in such a way that the preferred audience can see and hear it. The form and location of the assembly are so important that exercising the right to assemble in any other form and location could lose its meaning. The case, which was decided in the United Kingdom in 2009, concerned holding a protest on a state-owned territory with tents. For 23 years, one organization set up tents, held public meetings and distributed leaflets near the Nuclear Weapons Facility on the second weekend of each month. The decision was taken in 2007 to restrict protesters from holding such a rally in a specific controlled area. The court found that the freedom of assembly and expression of the protesters had been violated and explained that the specific form and location of the protest (tents) had acquired a symbolic meaning, which was inseparable from the main message of the protest itself.²⁶

Restriction of the right to freedom of assembly is permissible only on the basis of a legitimate aim defined by law, in compliance with the principle of proportionality. Routine restrictions imposed

²³ European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, para 82, available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e);

²⁴ European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, para 148, available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e);

²⁵ European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, paras 60 and 146, available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

²⁶ *Tabernacle v. Secretary of State for Defence*, England and Wales Court of Appeal, 2009;

by the state that fundamentally change the nature of the assembly, such as the location of the assembly, should be considered disproportionate.²⁷

Restrictions on the right to freedom of assembly must be based on an objective and detailed evaluation of the circumstances. Restrictions on the right to assemble may not be based on unfounded fears and presumptions but on evidence. In that regard, the burden of proof lies with the authorities. Prohibition of a gathering should be a measure of last resort and should only be considered when a less restrictive response would not achieve the purpose pursued by the authorities.²⁸ In cases where the assembly may pose a threat to public safety, extra precautionary measures should generally be preferred over more extensive restrictions on the assembly itself.²⁹ Given all the above, the authorities are trying to create physical barriers and impede the legitimate, peaceful, and fair protest of the Rioni Gorge Defenders. The state, with its rigid, repressive, and violent policies, once again grossly violates the fundamental rights to freedom of assembly, expression, and free movement guaranteed by the Constitution of Georgia.

Arrests / fines

In addition to erecting police checkpoints and dismantling tents, law enforcers at the Namakhvani protests resorted to other forms of repressive measures, such as arrests and fines. The government, on the one hand, in its official statements, declares its readiness for dialogue, and, on the other hand, by mobilizing numerous police forces in the valley, imposing unjustified restrictions, and grossly violating the rights of locals, contributes to the escalation of the process and leaves no space for substantive, constructive dialogue.

On April 14, during a protest in the village of Gumati, the police arrested six people for violating Article 173 of the Code of Administrative Offenses. According to the Ministry of Internal Affairs, despite numerous warnings from the police, the activists did not clear the road and did not obey

²⁷ European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, para 29, available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

²⁸ European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, paras 129-135, available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

²⁹ European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, para 138, available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

the lawful demands of the police, after which the authorities applied proportionate coercive measures.³⁰ Similarly, the use of force against protesters took place in previous periods.

On April 3, after law enforcement agencies blocked the road, 12 people who had been protesting the construction of Namakhviani in the Rioni Gorge were fined 2000 GEL each for violating the curfew. They stayed in Gumati to spend the night in cars after law enforcement officers did not allow them to move in the direction of the tents in Namokhvan during the day and they could no longer go back due to a lack of time.³¹ On April 4, police stopped Mirian Maghlaperidze, a resident of the village of Zarati, who was shopping for bread in a nearby village (Mopurchkheti) and demanded his ID card after he was seen filming with his phone the mobilization of a large number of police officers in the village. Maghlaperidze responded that he did not have an ID with him because he was commuting to his own village. After he was refused by the police to commute to buy bread, he asked the law enforcers to buy bread for him, which was taken as an insult by the police officers and he was arrested on charges of petty hooliganism and disobedience.³² On April 9, in the village of Namokhvani, Lasha Kutateladze, a protester, was arrested for allegedly disobeying a lawful request of the police. At the trial, the police officer explained that Kutateladze had committed a violation as he commuted to the Rioni gorge. In this case, the judge did not recognize Lasha Kutateladze as an administrative offender and released him from the courtroom.³³ According to the UN Human Rights Committee, the detention of a person to punish them for participating in a legitimate assembly is arbitrary and unjustified³⁴. Unreasonable and disproportionately high sanctions for protest participants may have a chilling effect on assembly participants and amount to an indirect violation of their freedom of peaceful assembly.³⁵

³⁰ The police applied proportionate coercive measures, 6 people were detained "- MIA on Gumati <https://netgazeti.ge/news/534863/>

³¹ Police fined 12 activists against Namakhvani HPP with 2000 GEL each <https://reginfo.ge/people/item/21736-poliziam-namaxvanbasis-moxinaagmdegeebi-gumatshi-2000-%E2%80%93-2000-larit-daajarima>

³² Namokhvani blockade <https://mtisambebi.ge/news/people/item/1293-namoxvanis-blokada>

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³⁴ European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, para 220, available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

³⁵ European Commission for Democracy through law (Venice Commission) and OSCE office for Democratic Institutions and Human Rights (OSCE/ODIHR) guidelines on freedom of peaceful assembly (3rd Edition), Strasbourg/Warsaw, 8 July 2019, para 36, available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

In this case, too, the administrative detentions and administrative fines used during the protest against Namakhvani HPP were essentially unsubstantiated and were aimed not at ensuring public order and peace, but at crushing the spirit of the protest.

Summary and recommendations

More than a 200-day-long protest against the Namakhvani HPP demonstrates, on the one hand, the unprecedented level of organization of the local community, and, on the other, the failure of state policy to make important decisions for the local community through democratic, inclusive, and open processes. The Namokhvani protest also exposes the state's limited vision of social protest and discontent, which essentially relies solely on the police force, and views the concepts of dialogue and democratic engagement as just supplementary, purely formal methods.

The large-scale mobilization of law-enforcement forces on the ground since April of this year, the tightening of police control near the village of Namokhvani, and the forced cessation of ongoing protests on the ground are all directly related to a private company's interest in the HPP construction preparation work going smoothly. At the same time, the government has made no practical efforts to meet the demands of the protest organizers in any way. Rather than engaging in a dialogue on equal terms, the authorities constantly seek to delegitimize the arguments of the protesters through various means.

Webpage content

Assessment of police measures during the Namokhvani protest

The Social Justice Center (formerly EMC) has released a document evaluating the police measures applied during the Namokhvani construction protests. The document analyzes the legality and proportionality of police coercive measures used by the state during protest management.

According to the Social Justice Center, the state primarily used police forces to respond to nonviolent protests by the local community against the construction of Namokhvani HPP, while ignoring constructive and dialogue-oriented solutions. The deployment of police personnel in Namokhvani and surrounding areas has intensified since April of this year. The presented assessment is based on the police measures used by the state during this period:

1. Since April 3rd, police checkpoints have been erected on the road to Namokhvani in the Rioni Gorge, on the grounds of some abstract risks, which effectively restricted the freedom of movement at the original protest location –the village of Namokhvani. Law enforcement has not specified what specific and expedient threat prevention these measures serve. This decision of the law enforcement agencies resulted in unjustified and disproportionate interference with the freedom of movement, as well as the freedom of assembly and expression;
2. The action of the law enforcers was unsubstantiated and disproportionate on April 11, when the police dismantled the **tents** of the Rioni Gorge Defenders in the village of Namokhvani and did not allow the protesters to continue the protest in this form. Law enforcement officers cited the danger of the Rioni river overflowing as the reason for the dismantling of the tents, a concern that has yet to be substantiated by appropriate meteorological expert assessments. The police also refused to allow the protesters to set up

their tents in a different site; the next day, after removing the tents, they dug up the ground where the tents had been set up. This demonstrates that the police's goal was not to protect the protestors' safety, but to stop the gathering at this precise location. For the organizers of the protest, holding a demonstration in the village of Namokhvani was an essential component of the expression, because from this location they could directly observe the preparatory work of the HPP construction and deliver the protest messages to the intended audience. Due to the ongoing nature of the protest, the tents were an important tool for participants to exercise their freedom of assembly and expression effectively.

3. The police utilized oppressive tactics against Namakakhvi HPP protesters, such as imprisonment and fines, which exacerbated the situation and increased the possibility of radicalization.

According to the Social Justice Center, the state violates the Rioni Gorge Defenders' right to peaceful assembly unjustly and arbitrarily by its strict and oppressive policies, particularly through the police force. Such blatant and unjustified interference with the fundamental rights of the Rioni Valley Defenders through enhanced police measures creates further risks of the escalation of the process.