



# People Against the **Russian Law**

The Assessment of the 7-9 March Assembly  
Dispersal and Related Facts of Human Rights  
Violations



**GEORGIAN  
YOUNG  
LAWYERS'  
ASSOCIATION**

# **PEOPLE AGAINST THE RUSSIAN LAW**

## **The Assessment of the 7-9 March Assembly Dispersal and Related Facts of Human Rights Violations**

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## **ABBREVIATIONS AND ACRONYMS**

|              |  |
|--------------|--|
| <b>CAO</b>   | Administrative Offences Code of Georgia              |
| <b>UN</b>    | United Nations                                       |
| <b>OSCE</b>  | Organization for Security and Co-operation in Europe |
| <b>NATO</b>  | North Atlantic Treaty Organization                   |
| <b>MIA</b>   | Ministry of Internal Affairs of Georgia              |
| <b>ECHR</b>  | European Convention on Human Rights                  |
| <b>ECtHR</b> | European Court of Human Rights                       |
| <b>ICCPR</b> | International Covenant on Civil and Political Rights |

## INTRODUCTION

In this report, GYLA assesses the developments related to the 7-9 March 2023 public protest, both in terms of the decision to disperse the rally and the lawfulness/proportionality of the means used, as well as in terms of identifying other forms of human rights violations during the dispersal of the rallies. The report also makes relevant recommendations.

For 29 years since its establishment, the Georgian Young Lawyers' Association has monitored a number of major public protests regarding the right to freedom of assembly and demonstration, thus, it has prepared relevant assessments on the State's violations of its obligations under the Constitution and International Agreements at different times. Additionally, it has issued relevant recommendations for the purposes of improving legal status of people, which would guarantee their right to peaceful assembly without either excessive interference or a limitation of the space for freedom of expression.<sup>1</sup> Also, it issued relevant recommendations in order to improve the legal status of people, so that they could enjoy the right to peaceful assembly without interfering with it, or narrowing the space for free expression.

It is unfortunate, that despite a number of judgments of the European Court of Human Rights on similar issues, the existence of relevant international obligations and/or recommendations, as well as the improved legal safeguards through the justice implemented by the Constitutional Court of Georgia over the years, the Government has demonstrated no willingness to respect the Constitutional principles of a legal and democratic state, especially during the major assemblies, which are of particular importance due to their interdependence on more politically sensitive matters. These constitutional values *"[...] require that the legislation of a country guarantees the full recognition of basic human rights and freedoms and that all appropriate safeguards are created for their protection."*<sup>2</sup> In March 2023, the use of force during the dispersal of the massive public protests against the so-called draft laws on Agents, more particularly, **against the attempts by the ruling party to persecute human rights defenders and the media through the use of the Russian-style legislative method**, confirms the above-mentioned.

## METHODOLOGY

The report explores the factual circumstances leading up to the public protest; analyses the human rights standards established by the international and national legislation; identifies the developments that occurred during the dispersal of the 7-9 March rally and assesses the legitimacy and proportionality of the decisions of the Government to disperse the 7-9 March 2023 protest; examines the cases of interference with the activities of the media representatives.

The assessments and conclusions offered in the report have been based on a comprehensive analysis of information obtained from different sources. Controversial facts were reflected only provided that several sources had indicated to them. Certain facts that GYLA was not able to verify given its limited mandate have not been incorporated in the report. To prepare this report, GYLA mainly applied the practice of triangulation, which involves the simulta-

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<sup>1</sup> See, for example, the reports of GYLA: "Report: 26 May, Analysis of Human Rights Violations during and related to the Dispersal of the May 26 Assembly", 2011, available: <https://shorturl.at/jqMTX>, [23.09.2023]; "Protests Considered to be an Offence", 2017, available: <https://shorturl.at/fNUV6>, [23.09.2023]; "Beyond the Lost Eye – Legal Assessment of June 20-21 Events", 2019, available: <https://shorturl.at/zFHL5>, [23.09.2023].

<sup>2</sup> The Judgment of the Constitutional Court of Georgia, N1/466, 28.06.2010, II, 2.

neous application of different types of sources and methods in order to obtain the most detailed information possible.<sup>3</sup>

For the purposes of preparing this report, a working group was established. The group worked in 2 different directions: obtainment of the information, documentation and analysis.

#### **For the obtainment of the information and documentation:**

- **For the purposes of obtaining public information**, various state agencies were addressed, including the Ministry of Internal Affairs, the Office of the General Prosecutor of Georgia, the Tbilisi City Court and Tbilisi Court of Appeals, the Public Defender's Office, Tbilisi City Hall, LEPL – Tbilisi Medical Emergency Center, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, the Special Investigation Service.
- **For the purposes of media monitoring**, GYLA requested TV companies to provide uninterrupted footage broadcast on their channels. During the preparation of the report, live broadcasts of various online outlets and other information available in open sources regarding the events of 7-9 March were also studied.
- **The Administrative Offence case files** were studied to the extent of those cases which had been litigated by GYLA and the persons held administratively liable expressed their consent to the processing of their cases for the purposes of preparing this report. Regarding the administrative liability, GYLA also analyzed 47 cases, where the interests of the detainees had been represented by civil society organizations.
- **For the purposes of studying the cases**, GYLA conducted 18 **semi-structured interviews**, within which 11 victims, 6 lawyers, 1 representative of the Public Defender were interviewed.

#### **For the analysis of the information:**

- **Doctrinal Research:** identification and analysis of legal sources deriving from Georgian legislation and international obligations of Georgia.
- **Adapting doctrinal research results** to factual circumstances and data.

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<sup>3</sup> GYLA, Academic Writing, 2022, 14, available: <https://shorturl.at/pRW26>, [23.09.2023]; reference: Mildred L. Patten and Michelle Newhart, *Understanding Research Methods: An Overview of the Essentials* (Routledge, 2017), 156; James D. Fearon and David D. Laitin, 'Integrating Qualitative and Quantitative Methods', in *The Oxford Handbook of Political Methodology*, ed. Janet M. Box-Steffensmeier, Henry E. Brady, and David Collier, vol. 1 (New York, Oxford University Press, 2009), <https://doi.org/10.1093/oxfordhb/9780199286546.003.0033>.



## SUMMARY OF THE REPORT

The decisions of the Ministry of Internal Affairs of Georgia regarding the dispersal of the 7-9 March 2023 protests violated the right to freedom of peaceful assembly and demonstration guaranteed by the Constitution of Georgia and international agreements of Georgia. Particularly, the right of the participants of the rally to gather and peacefully enjoy the assembly was repeatedly interfered and this interference neither had a legitimate aim nor was proportionate; In some situations, the authorities failed to effectively manage the conflict situation, including by failing to resort to the negotiations with the organizers or participants of the assembly in order to reduce the necessity and urgency of using special means. The vast majority of participants of the rally peacefully enjoyed the right to freedom of assembly and demonstration, and the response of law enforcement agencies to local law-breakings should not have had a significant impact on the course of the entire rally, and specific incidents could have been eliminated by applying individual means.

As a result of the assessment of the lawfulness and proportionality of the use of force by the State during the protests of 7-9 March 2023, it was determined that the representatives of the law enforcement agencies **had repeatedly violated** a number of State's obligations under the Constitution and domestic legislation, as well as the obligations arising from international agreements of Georgia, which were manifested in the following circumstances:

- I. **The unlawful decision by the Ministry of Internal Affairs to disperse the peaceful assembly, instead of applying to individual and limited responses to local law-breakings;**
- II. **In some cases, beginning to apply special means without prior warning;**
- III. **The violation of the obligation to differentiate between non-peaceful and peaceful participants during the dispersal of the rally and, accordingly, while resorting to the special means;**
- IV. **Simultaneous and parallel application of special means in violation of the rules prescribed by the legislation;**
- V. **The use of special means unlawfully and disproportionately (splashing pepper spray directly to faces, targeting people with water cannons, throwing tear gas canisters with aim);**
- VI. **Verbal insults, use of physical force, unlawful and mass detention of peaceful participants of the assembly;**
- VII. **Interference with the professional activities of media.**

The increased restriction of the right to freedom of assembly and demonstration was also facilitated with the practice of administrative detentions. In particular, the dispersal of the 7-9 March assemblies again demonstrated that the Administrative Offences Code of Georgia and the detentions in accordance with it/the judicial practice continue to be a tool to further limit the space for the exercise of civil rights. Particularly:

- VIII. **There was a massive practice of unlawful detention: the law enforcement officers mostly arrested not only specific individuals who had been violating the law individually, but also those who simply "came into their hands" during the dispersal of the assembly.**
- IX. **There deficiencies have been observed with regards to informing detainees of their**

rights guaranteed by the law, mostly arresting officers did not inform the detainees of their rights. In a number of cases, the detainees were not allowed to contact their relatives and lawyers.

- X. There were shortcomings regarding the drawing up of the Administrative Detention Reports, the detention time and data of arresting officers were incorrectly indicated in numerous reports.
- XI. The MIA extended the duration of 24-hour detention for another 24 hours and did not provide substantiated justifications – what the objective circumstances to extend the detention were.
- XII. One of the major challenges for the defence was insufficient time to gather evidence. Also, hearings were held outside working hours and sometimes the defence was not informed about the time of the commencement of hearings.
- XIII. The analysis of the case materials and court decisions has demonstrated the court’s unwillingness to request objective evidence from the MIA - a body camera recording – or to call neutral witnesses, and also, the decisions mostly do not specify what the insults addressed to the police and/or interference with the duties imposed on law enforcement officers were.
- XIV. The court mostly stated that people were administrative offenders and imposed a fine as a form of penalty.
- XV. The case files revealed unlawful processing of personal data.

It is still alarming that during the dispersal of the rally and administrative detentions, some participants of the assembly were subjected to ill-treatment, which was manifested in various methods, including verbal and physical abuse. In some cases, the application of single-use handcuffs was also problematic.

## **RECOMMENDATIONS**

In order to ensure that future decisions and actions of the representatives of the law enforcement authorities will not significantly violate the right to freedom of peaceful assembly guaranteed by the Constitution of Georgia and, in case of law-breaking by small groups of participants of the rally, the rights of the vast majority of the peaceful participants of the assembly will not be substantially violated by resorting to disproportionate and, in some cases, unlawful means, it is essential to give the following recommendations to the relevant authorities, listed below:

### **To the Ministry of Internal Affairs of Georgia:**

1. Due to the high public interest, to publicize the developed and approved security plan regarding the management/dispersal of the rally;
2. To promptly turn to communication, negotiation and dialogue in order to de-escalate conflict situations during the assembly;
3. To provide a relevant warning in the manner as prescribed by law in the event of dispersal of a demonstration and prior to using any special means in circumstances of non-imminent danger;

4. To strictly instruct law enforcement officers regarding the necessity to differentiate between peaceful and non-peaceful participants of the rally, and, in case of local and incidental violations, the importance of using individual and proportionate means only against particular law-breakers;
5. To strictly instruct law enforcement officers to apply special means in compliance with rules;
6. To ensure the supervision of the compliance of the use of special means by law enforcement officers with the rules;
7. To train the MIA employees regarding the functions, responsibilities, and rights of media professionals, especially on their role during a public assembly. This will contribute to prevention of any interference with the activities of journalists and other media outlets during any public assembly in the future;
8. To introduce the relevant standards and to provide teaching to law enforcement employees so that they can distinguish between media professionals and demonstrators in case of dispersal of demonstrations;
9. To detain participants of the rallies only on legitimate grounds without excessive use of force;
10. To maintain the meticulous record of Robocop equipment in order to easily identify those law enforcement officers who exceed their official powers;
11. To make detailed descriptions of administrative offence in Administrative Offence Reports;
12. To ensure that administrative detainees who cannot be allocated in the isolator receive an appropriate medical examination;
13. To train the police officers on the prerequisites for administrative detention, on the preparation of administrative offence documentation and on the ways of conducting appropriate communication with detainees;
14. To warn a detainee when applying single-use plastic handcuffs (clamps), that struggling / resistance may result in the tightening of handcuffs or cause bodily harm; To develop an appropriate protocol in this regard.

#### **To the Special Investigation Service:**

15. To ensure effective investigation of cases of disproportionate use of force by law enforcement officers, including crimes committed against media representatives, and to provide periodic updates about the progress of the investigation and the investigative actions taken to reflect the high level of public interest in the investigation.
16. To ensure that arbitrary detentions, physical violence against detainees, and other developments are investigated in a complete and objective manner.

#### **To the Parliament of Georgia:**

17. To fundamentally reform the Code of Administrative Offences of Georgia in order to replace the current legislation with a new code in line with the Constitution and inter-

national standards, which will put an end to using the Administrative Offences Code as a political instrument and policing measure;

18. To abolish imposing administrative detention as a form of sanction for an administrative violation;
19. To apply the procedural rights guaranteed for the accused under the Criminal Procedure Code of Georgia to offences of criminal nature under the Code of Administrative Offences.

**To the Court:**

20. To devote reasonable time to reviewing individual circumstances of the case by the judges when considering cases;
21. To refrain from considering a person as an administrative offender relying solely on the reports and witness statements provided by police, and decide in favour of the person being prosecuted if suspicions are not substantiated by relevant evidence.





# CHAPTER 1

## LEGAL FRAMEWORK OF THE RIGHT TO FREEDOM OF ASSEMBLY

For the purposes of this report, prior to the assessment of the circumstances related to the dispersal of the 7-9 March rally, it is important to look into the legal framework of the freedom of assembly in the Georgian legislation. For this reason, this Chapter encompasses four sub-topics, particularly, the essence and meaning of the right to freedom of assembly; the restriction on the right to freedom of assembly and its unlawful character; the proportionality of the use of force by State when the assembly becomes unlawful; the special safeguards for Media Representatives.

### 1.1. The Essence and Meaning of the Right to Freedom of Assembly

The Right to Assembly is guaranteed by the Constitution of Georgia, according to which, “*Everyone, except those enlisted in the Defence Forces or bodies responsible for state and public security, shall have the right to assemble publicly and unarmed, without prior permission.*”<sup>4</sup> As prescribed by the Law of Georgia on Assemblies and Demonstrations, “*assembly is an indoor or outdoor gathering of a group of citizens, a meeting in public places to express solidarity or protest*”,<sup>5</sup> while “*demonstration is an assembly of citizens, mass public march, and street demonstration to express solidarity or protest, or march using posters, slogans, banners and other visible means.*”<sup>6</sup> The scope of the right to assembly comprises participation as well as organization of assembly.<sup>7</sup>

The realization of the right to freedom of assembly, as a form of expression, is one of the most important aspects of the democratic society, which promotes the expression of a col-

<sup>4</sup> The Constitution of Georgia, Article 21(1).

<sup>5</sup> Law of Georgia on Assemblies and Demonstrations, Article 3(a).

<sup>6</sup> Law of Georgia on Assemblies and Demonstrations, Article 3(b).

<sup>7</sup> The Judgment of 18 April 2021 of the Constitutional Court of Georgia #2/482,483,487,502, Political Union of Citizens “Movement for Unified Georgia”, Political Union of Citizens “Conservative Party of Georgia”, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers’ Association, Citizens - Datchi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. the Parliament of Georgia, Reasoning Part, para. 4.

lective opinion and the participation of people in solving issues of high public interest.<sup>8</sup> The Constitutional Court of Georgia considers the freedom of assembly in close connection to the freedom of expression,<sup>9</sup> namely: *“freedom of assembly and manifestation facilitates free and democratic society, achievement of interest and aspirations of each member of society. Possibility of meeting to discuss the issues of public interest is indispensable element of democratic governance. Equal and complete opportunity to enjoy this right defines the degree of openness and democracy in society.”*<sup>10</sup>

To assemble serves as a form to disseminate specific ideas, opinions, or information, and express support to it, in front of state authorities or the general public. According to the Constitutional Court of Georgia, the right to freedom of assembly and demonstration has two equally important aspects: a) formal aspect of its realization and b) specific opinion, which is promoted by assembly or demonstration.<sup>11</sup> Hence, its purpose and content make the assembly fall within the scope of the Constitution.<sup>12</sup>

The scope of freedom of assembly and demonstration encompasses assemblies of a political character, premised on political reasons, assemblies that have social significance, and those assemblies which are not political.<sup>13</sup> Furthermore, the right to freedom of assembly encompasses the right to choose a place, time, forms, and substance of assembly.<sup>14</sup> In addition, the scope protected by the right to freedom of assembly extends to the rights to participate in assembly and to organize it.<sup>15</sup>

According to the Constitution of Georgia, the state has negative and positive obligations to ensure effective realization of the right to freedom of assembly. The negative obligation compels the state to abstain from interfering with the process of peaceful assembly and interfere only when the right to assembly exceeds the scope prescribed by law.<sup>16</sup> On the other hand, the positive obligation requires the state to promote the realization of the right to freedom of assembly and to ensure the peaceful exercise of this right, in particular, to take appropriate and necessary measures to protect the right to life and health of the participants of the assembly.<sup>17</sup> Therefore, when it comes to the enjoyment of the freedom of assembly, the state should pay attention to the level of interference with the right, as well as the extent of the use of necessary and appropriate means to ensure it.

## 1.2. Restriction on the Right to Freedom of Assembly and Its Unlawful Character

According to the Constitution of Georgia, the right to freedom of assembly and demonstration is not absolute and it can be subjected to restrictions within the limits of the Constitution

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<sup>8</sup> Collective of Authors, (editor: P. Turava), The Commentaries on the Constitution of Georgia, Chapter Two, Georgian Citizenship, Basic Human Rights and Freedoms, Regional Center for Research and Promotion of Constitutionalism, Tbilisi, 2013, p. 281.

<sup>9</sup> Collective of Authors (editor: Zaal Chkheidze), Human rights and the Practice of the Constitutional Court of Georgia, Tbilisi, 2013, p. 316.

<sup>10</sup> See footnote 7, Para II. 25.

<sup>11</sup> See footnote 7, para. 128.

<sup>12</sup> See footnote 8, p. 284.

<sup>13</sup> See footnote 7, para. 127.

<sup>14</sup> See footnote 7, para. 34.

<sup>15</sup> See footnote 7, para. 127.

<sup>16</sup> The Judgment of 24 June 2014 of the Constitutional Court of Georgia #1/3/538, Political Union “Free Georgia” V. the Parliament of Georgia, Reasoning Part, para. 8.

<sup>17</sup> Öllinger v. Austria, App no. 76900/01, (ECHR. 2006), para. 35.

and legislation of Georgia. Pursuant to the Constitution of Georgia, the interference is allowed only if an assembly assumes an unlawful character.<sup>18</sup> The termination of the assembly and demonstration is the most restrictive type of interference from the government. Thus, in order to significantly reduce the scope of discretionary powers of the state, it is crucial for domestic legislation to contain the basic standards to define unlawful character of the assembly. Apart from this, it is essential that the domestic legislation is in compliance with the established international standards in this field and the authorities pay particular attention to the well-established case-law of the European Court of Human Rights.

In accord with Guidelines on Freedom of Assembly, the term “peaceful” should be interpreted to include conduct that may annoy or give offence to someone, also, include conduct that temporarily hinders or impedes the activities of third parties.<sup>19</sup> According to the international standards, an assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent.<sup>20</sup> Pursuant to the European Court of Human Rights, the right to freedom of assembly implies the presumption of its peaceful conduct, except when there is clear and visible evidence that the organizers or participants undoubtedly intend to use, incite or provoke violence.<sup>21</sup> At the same time, in these circumstances, the violence from a small part of the participants does not automatically make an otherwise peaceful protest non-peaceful.<sup>22</sup>

The Law of Georgia on Assemblies and Demonstrations defines the unlawful character of the assembly and the reasons for its termination in the following circumstances<sup>23</sup>:

- The mass violation of Articles 11(1) and (2) of the Law of Georgia on Assemblies and Demonstrations (unlawful call and obvious, direct and essential threat to conduct these actions; Possession and use of illegal objects and/or substances);
- The violation of Article 11<sup>1</sup> of the Law of Georgia on Assemblies and Demonstrations (arbitrarily, partially or fully blocking the traffic roadway);

The Law of Georgia on Assemblies and Demonstrations stipulates that these rights should be limited a) if this restriction is in line with Article 17(5) of the Constitution of Georgia;<sup>24</sup> b) prescribed by law; c) necessary in a democratic society; d) non-discriminatory; e) proportionally restrictive; f) the benefit protected by the restriction exceeds the damage caused by the restriction.<sup>25</sup> According to the Constitutional Court of Georgia, the restrictions of formal character (the location of the assembly, time, etc.) should not be manifestly unreasonable, hard to comply with and should not deprive the significance of realization of constitutional

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<sup>18</sup> The Constitution of Georgia, Article 21(3).

<sup>19</sup> OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and European Commission for Democracy through Law (The Venice Commission); Guidelines on Freedom of Peaceful Assembly, Second Edition, 2010, para. 26.

<sup>20</sup> *ibid*, para. 1.3.

<sup>21</sup> Kudrevičius and Others v. Lithuania, Application no. 37553/05, ECHR (2015), para. 92. “The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society.” Cisse v. FRANCE, Application no. 51346/99, ECHR (2002), para. 37. “The only type of events that did not qualify as “peaceful assemblies” were those in which the organisers and participants intended to use violence.”

<sup>22</sup> Christian Democratic People’s Party v. Moldova (No.2), Application no. 25196/04, ECHR (2010), para. 23.

<sup>23</sup> Law of Georgia on Assemblies and Demonstrations, Article 13.

<sup>24</sup> Article 17(5) of the Constitution of Georgia: “The restriction of these rights may be allowed only in accordance with law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognised as confidential, or for ensuring the independence and impartiality of the judiciary.”

<sup>25</sup> Law of Georgia on Assemblies and Demonstrations, Article 3(3).

right.<sup>26</sup> While, discretionary power of state is significantly lower when content-sensitive restrictions are established and they should pursue the proportionate means of achieving the legitimate goals.<sup>27</sup>

As defined by the Constitutional Court of Georgia, the following circumstances should be taken into account when determining the unlawful character of the assembly: *“In all specific cases, the relevant authorities must have a prediction of a threat with discernible circumstances, which must be based on facts, circumstances of the case and other details. Taking into account the importance of the freedom of assembly, an assembly should not be terminated on the basis of a doubt or conjecture. The state agencies, particularly when imposing a preventive ban, should not apply light criteria to assess the threat, while there is still a possibility to disperse the rally later even if the predictions were wrong.”*<sup>28</sup> The peaceful nature of assemblies and demonstrations is significantly determined by participants’ compliance with the requirements established by law, including the undisturbed functioning of strategically important objects and/or state buildings. In that case, blocking and/or taking over the entrance of the mentioned objects and/or buildings by the participants of the assembly and demonstrations may hinder their functioning. As prescribed by the Georgian legislation, it is not permitted to hold assemblies or demonstrations in the following buildings and on the territory within 20 metres radius from their entrances: a) buildings of the Prosecutor’s Office, police, penitentiary institutions, and law enforcement bodies of Georgia; b) railway stations, airports and ports.<sup>29</sup> In addition, it is forbidden to hold an assembly or demonstration in the outer forbidden zone of the penitentiary institution and in the territory located within 20 metres radius from it, as well as it is prohibited to hold an assembly or demonstration in military units and facilities and in the area located within 100 metres radius from their entrances.<sup>30</sup> Blocking the entrances of buildings, motorways and railways shall be prohibited when assemblies or demonstrations are held.<sup>31</sup>

In the case of *Makarashvili and Others v. Georgia*<sup>32</sup>, the European Court of Human Rights discussed the issue of blocking the entrances to the Parliament building by the participants of the assembly, in particular, whether blocking the entrances to the building had hindered the effective functioning of the parliament and how much this action had been at odds with the democratic foundations of society. The ECtHR reiterated that Article 11 normally applies to all gatherings that do not have unlawful character and where its participants do not have violent intentions.<sup>33</sup> The Court outlined that for the purposes of the ECHR, the concept of “peaceful assembly” has an autonomous meaning and is independent of the question of whether that gathering was conducted in accordance with a procedure provided by domestic law.<sup>34</sup> Accordingly, the ECtHR indicated that the use of harmful forms of expression by assembly participants may, in certain circumstances, be protected within the framework of “peaceful assembly”.<sup>35</sup>

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<sup>26</sup> See footnote 7, para. 29.

<sup>27</sup> See footnote 7, paras. 28-29.

<sup>28</sup> The Judgment of 5 November 2002 of the Constitutional Court of Georgia #2/2/180-183, para. 10.

<sup>29</sup> Law of Georgia on Assemblies and Demonstrations, Article 9(1).

<sup>30</sup> Law of Georgia on Assemblies and Demonstrations, Article 9(2).

<sup>31</sup> Law of Georgia on Assemblies and Demonstrations, Article 9(3).

<sup>32</sup> *Makarashvili and others v Georgia*, applications nos. 23158/20, 31365/20, 32525/20, ECHR, 30.01.2023.

<sup>33</sup> *ibid*, para. 90.

<sup>34</sup> *ibid*, para. 91.

<sup>35</sup> *ibid*, para. 91.



In this case, the ECtHR established that the participants of the assembly neither had acted violently nor had been planning to commit such acts. Furthermore, the ECtHR outlined that while the disputed blocking of the Parliament building was an obstructive form of protest of political expression, in this case, it was not damaging the foundations of a democratic society and, *vice versa*, was promoting the democratic processes in the country.<sup>36</sup> Therefore, the ECtHR concluded that this particular case fell within the scope of Article 11 of ECHR, peaceful assembly, and the interference required assessment of “necessity”.<sup>37</sup>

### 1.3. The Proportionality of the Use of Force by State when the Assembly Becomes Unlawful

If the assembly becomes unlawful, the interference from the State requires individual and proportionate approach to strike a fair balance between the rights of the participants of the assembly and private and public interests.

According to the Constitutional Court of Georgia, “*the termination of an assembly is allowed only after the action has been taken. Firstly, it must be confirmed that it has become unlawful, and after that it is allowed to apply means of termination.*”<sup>38</sup> The Constitutional Court of Georgia ruled that when it comes to the application of the means of limitations or terminations of an assembly, “*discretion of government is limited with necessity of protection of rights of others, restoration of public order and security. Government is authorized to interfere in realization of right of assembly or manifestation, when the less restrictive measure for resolution of conflict of rights is not available or, when it will not work, or it is obvious, that alternative will not be effective.*”<sup>39</sup> The Constitutional Court of Georgia defined that “*termination or forced dispersal of an assembly is a last resort after other, less restrictive measures have proved to have been ineffective.*”<sup>40</sup>

As established by international standards, regardless of the collective character of the assembly, every person exercises the right to freedom of assembly individually. The unlawful conduct of an individual or a small number of people does not remove the right of those who continue to act in a peaceful manner.<sup>41</sup> According to the ECtHR, when restricting the right to assembly, the state is obliged to differentiate between peaceful and non-peaceful participants of the assembly, because only those involved in violent acts lose safeguards of protection of the right to freedom of assembly.<sup>42</sup> The ECtHR has ruled that during the detention of the rally participants or the forceful dispersal of the rally, law enforcement officers should not treat assembly participants in the same manner.<sup>43</sup> The ECtHR outlines that even if a small group of demonstrators confront the police, the use of force by the law enforcement authorities against the remaining participants cannot be justified.<sup>44</sup>

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<sup>36</sup> *ibid*, para. 92.

<sup>37</sup> *ibid*, para. 93.

<sup>38</sup> See footnote 28, para. 10.

<sup>39</sup> See footnote 7, para. 49.

<sup>40</sup> *ibid*.

<sup>41</sup> OSCE/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Human Rights Handbook on Policing Assemblies, 2016, p. 15.

<sup>42</sup> *Ziliberberg v Moldova*, Application no. 61821/00, ECHR (2004), (dec.) “[...] *an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.*”

<sup>43</sup> *Ziliberberg v Moldova*, Application no. 61821/00, ECHR (2004), para. 10.

<sup>44</sup> *Izci v Turkey*, application no. 42606/05, ECHR (2013).

Pursuant to international standards, while applying the use of force during assemblies and demonstrations, law enforcement officers should act in accordance with the following principles,<sup>45</sup> particularly:

- **Legality**

In order to narrow the scope of discretionary powers of law enforcement officials, the national legislation and internal rules of law enforcement agencies should precisely define grounds for the use of force, special means and the manner of their application.

- **Necessity**

The necessity of the use of force is assessed based on three components: a) Qualitative - Is force necessary at all or is it possible to achieve the legitimate objective without resorting to force? b) Quantitative - How much force is needed to achieve the objective? It is preferable that the level of force used be the minimum to achieve the objective; c) Duration – The use of force must be temporary and it must stop once the objective has been achieved or is no longer achievable.

- **Proportionality**

The principle of proportionality serves to determine whether there is a balance between benefits protected by the restriction and damage caused by it. The proportionality of the use of force by law enforcement authorities requires the police to respond to unlawful actions to ensure the realization of freedom of assembly.

- **Accountability**

The principle of accountability means that not only the individual law enforcement official must be held accountable for his/her actions and omissions, but also all superiors (who give orders), and high-rank officials of law enforcement agencies, who were involved in planning and preparing law enforcement operations in order to manage the assembly.

Given that international human rights law only protects peaceful assemblies, assembly participants may be prohibited from carrying weapons and weapon-like objects within the assembly area. As established by international standards, for the purposes of the safety of assemblies and demonstrations, law enforcement agencies have the right to control the entry of assembly participants into the assembly area, which is considered as one of the strategies of assembly management.<sup>46</sup> The international standards outline that the authorities may establish control points to check whether participants carry weapons or other prohibited objects if there is sufficient ground and evidence that they may do so.<sup>47</sup> However, this should be based on an individualized suspicion, without treating everyone attending the assembly as suspects, as this might have a chilling effect on those who want to exercise their right to assemble peacefully.<sup>48</sup> In addition to this, the authorities should always differentiate between items that are generally recognized as weapons and objects not normally considered to be weapons, but which may in some contexts be used as such. Such objects should be permitted during an assembly, unless there are clear indications that they will be used for acts of

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<sup>45</sup> Amnesty International Guidelines for Implementation of the UN Basic Principles on the Use of Force and firearms by law enforcement officials, 2015, pp. 17-21.

<sup>46</sup> Special Report of the Public Defender of Georgia, Freedom of Peaceful Assembly (The protective scope of the right and the standard of the management of the assembly), 2020, p. 45.

<sup>47</sup> Venice Commission and OSCE/ODHIR, Guidelines on Freedom of Peaceful Assembly, 3<sup>rd</sup> Edition, CDL-AD (2019)017, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e); para 154, p. 60.

<sup>48</sup> *ibid.*

violence.<sup>49</sup> In this case, representatives of law enforcement agencies are authorized to use policing measures to ensure that bringing and/or using prohibited and/or illegal items into the assembly territory is prevented.

According to international standards, when resorting to force, law enforcement officers must take into account the extent and possible consequences of its impact. If unlawful acts are committed by a small group of demonstrators or acts themselves are isolated and mild in nature, the use of excessive force by law enforcement officers may provoke the participants of the assembly and incite them to serious violations.<sup>50</sup> Therefore, law enforcement officers should apply less restrictive and preventive measures, as well as show a reasonable degree of tolerance towards the actions of the participants of the assembly.

The application of water cannons, as special means, is reasonable and proportionate provided that the violent or unlawful conduct of participants of the assembly cannot be terminated by limiting their particular conduct or sending them off from the territory.<sup>51</sup> In addition, when using water cannons, particular attention should be given to factors such as water temperature and environmental conditions, frequency of use, scale, etc. The use of water cannons must be stopped immediately when the participants of the assembly cease their violent actions or disperse.<sup>52</sup>

According to international standards, the use of chemical irritants (tear gas, pepper spray, hand grenades or non-lethal projectiles) by law enforcement officials possesses an indiscriminate effect creating a high probability of harming peaceful demonstrators, and the risk of its arbitrary use is high.<sup>53</sup> In addition to this, the purpose of using chemical irritants should be only to disperse the persons engaged in violent actions, and if used, the persons participating in the assembly should have sufficient space and opportunity to move around.<sup>54</sup> Furthermore, the national legislation should strictly, to a maximum extent, limit the use of chemical irritants in a wide area and allow its use only when violent actions are carried out by a vast majority of the participants of the assembly and it is not possible to contain it with other less restrictive measures.<sup>55</sup>

Hence, widespread and excessive use of chemical irritants, which affects civilians to a great degree, by law enforcement officials, is disproportionate.<sup>56</sup> Their use must be terminated immediately when the participants of the assembly cease their violent actions or disperse.<sup>57</sup>

The Law of Georgia on Police lists police measures that law enforcement authorities can carry out within the scope of their authority in order to prevent threats to public safety and order, or prevent law-breaking. These measures include: a) interviewing a person; b) identifying a person; c) inviting a person; d) carrying out frisk and examination of a person; e) carrying out special inspection and examination; f) carrying out special police control; g) ordering to leave a place and prohibiting entrance to a certain territory; h) restricting a person or a vehicle from moving or restricting actual possession of an item; i) using self-operating photo (ra-

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<sup>49</sup> *ibid.*

<sup>50</sup> Amnesty International Guidelines for Implementation of the UN Basic Principles on the Use of Force and firearms by law enforcement officials, 2015, pp. 17-21.

<sup>51</sup> *ibid.*, p. 158.

<sup>52</sup> *ibid.*, p. 159.

<sup>53</sup> *ibid.*, p. 21.

<sup>54</sup> *ibid.*, p. 154.

<sup>55</sup> *ibid.*, p. 157.

<sup>56</sup> *ibid.*, p. 158.

<sup>57</sup> *ibid.*, p. 158.

dar) and video equipment; j) developing and using technical means; k) carrying out criminal intelligence measures.<sup>58</sup> The mentioned policing measures may be used for the purpose of managing the assembly and demonstration, including when the participants of the assembly enter the assembly area, during the course of the assembly and after its completion. Carrying out special measures such as frisk and examination of a person, ordering to leave a place and prohibiting entrance to a certain territory, etc., is especially relevant in this case.

According to the Law of Georgia on Police, frisk of a person means patting down his/her clothing with hands or with a special device or instrument.<sup>59</sup> A police officer may stop a person for frisk within the frame of preventive measures if: a) there are reasonable grounds to believe that a person has an item, carrying of which is restricted, or which poses threat to his/her or other people's lives and health.<sup>60</sup> The mentioned Article has relevance to assemblies, as the Law of Georgia on Assemblies and Demonstrations establishes a list of items that participants in assemblies and demonstrations are prohibited from carrying.<sup>61</sup> As outlined by the Law of Georgia on Police, a police officer shall have the right to demand a certain place be left for a specific period of time or to prohibit a person to enter a certain territory, if it is necessary to prevent a threat.<sup>62</sup> This restriction may last until the threat is eliminated.<sup>63</sup>

The Law of Georgia on Police determines the list of passive and active special equipment that is used by law enforcement officers to ensure public security and legal order.<sup>64</sup> As per the Law, passive special means ensure protection of life and health of a police officer and/or of a person protected by police officer. Passive special means shall be: bulletproof vests, helmets, riot shields, gas masks and other special body protective equipment.<sup>65</sup> Active special equipment disables a person to resist a police officer for a short period of time and/or assist a police officer to perform police functions. Active special means shall be: handcuffs and other means of restraint, rubber batons, tear gas, pepper spray, sonic weapons, non-lethal weapons (including non-lethal shells), flash-bang device of psychological effect, device to stop a vehicle by force, barrier demolition equipment, water cannons, an armoured car and other special vehicles, special paint, police dogs and horses, electroshock devices and a capturing net.<sup>66</sup>

The list of special means established by the legislation of Georgia is in line with the special means determined by the Human Rights Handbook on Policing Assemblies of the OSCE/ODIHR Office for Democratic Institutions and Human Rights (OSCE/ODIHR).<sup>67</sup>

Even though the circumstances and grounds for the use of each special means are defined by the Law of Georgia on Police, several different special means can be applied on the same basis, which gives law enforcement officials wide discretionary powers to select a particular

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<sup>58</sup> The Law of Georgia on Police, Article 18(1).

<sup>59</sup> The Law of Georgia on Police, Article 22(1).

<sup>60</sup> The Law of Georgia on Police, Article 22(2).

<sup>61</sup> The Law of Georgia on Assemblies and Demonstrations, Article 11(2). The participants of an assembly or demonstration shall be prohibited: a) to carry fire arms, explosive, flammable and radioactive substances, or cold weapons; b) to carry such items or substances that are or may be used to injure the life and health of participants of the assembly or demonstration, or other persons; c) to have tear and nerve gases and/or toxic substances; d) to have alcoholic drinks.

<sup>62</sup> The Law of Georgia on Police, Article 25(1).

<sup>63</sup> The Law of Georgia on Police, Article 25(2).

<sup>64</sup> The Law of Georgia on Police, Article 33.

<sup>65</sup> The Law of Georgia on Police, Article 33(2).

<sup>66</sup> *Ibid*, Article 33(3).

<sup>67</sup> OSCE/Office for Democratic Institutions and Human Rights, Human Rights Handbook on Policing Assemblies, 2016, pp. 68-81.



mean in a specific case, creating a high risk of disproportionate decision-making.<sup>68</sup> Hence, high competence and a strong sense of responsibility on the part of the representatives of the law enforcement authorities is required so they shortly reach a decision regarding the use of appropriate, necessary and sufficient use of force.

Order #1002 of the Minister of Internal Affairs, dated 30 December 2015, establishes the conduct manual for the personnel of the Ministry of Internal Affairs during assemblies and demonstrations. According to the Order, during assemblies and demonstrations a security plan is developed, and it is approved by the Minister of Internal Affairs or by the person authorised by him/her in compliance with the requirements of state secrets.<sup>69</sup> The Security Plan, among other things, shall include: a) relevant departments of the Ministry that are involved in carrying out special means, their functions and sequence of actions; b) relevant persons of the Ministry responsible for using special means; c) a number of personnel; d) routes through which the participants will be able to leave the territory quickly and freely; e) existing risks; f) necessary special resources and equipments.<sup>70</sup>

According to the Order of the Minister, the representatives of the law enforcement authorities should resort to negotiations with organisers or participants of the assembly to avoid, as much as possible, forceful intervention and settle the situation peacefully.<sup>71</sup> The necessity for negotiation is due to the prevention of tension and expected violations during the assembly/demonstration.<sup>72</sup> Thus, the representatives of the law enforcement authorities should use a possibility of communication and negotiations with organisers or participants of the assembly when there is enough time, and avoid applying special means.

Law enforcement officials must differentiate between peaceful and non-peaceful participants, as against whom appropriate means prescribed by law may be used.<sup>73</sup> Furthermore, possible law-breakers should be removed from the territory so that the peaceful assembly/demonstration is not terminated or dispersed due to their actions.<sup>74</sup> The Order of Minister also regulates the standards for the use of force by the representatives of law enforcement agencies and establishes the principle governing proportional force, namely “the use of physical force and/or special means by the representatives of law enforcement agencies should be carried out in compliance with the principle of proportionality, only in cases of extreme necessity and in the minimum amount necessary for specific circumstances.”<sup>75</sup> The Order requires the responsible person to warn the participants of the assembly/demonstration in advance regarding the use of physical force and special means, and give them a reasonable period of time (at least 30 minutes) to comply with the lawful order.<sup>76</sup>

The Order of the Minister additionally outlines particular requirements for the use of special means, according to which specific **prohibitions** are defined for representatives of law en-

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<sup>68</sup> Special Report of the Public Defender of Georgia, Freedom of Peaceful Assembly (The protective scope of the right and the standard of the management of the assembly), 2020, p. 41.

<sup>69</sup> Order #1002 of the Minister of Internal Affairs, dated 30 December 2015, “Regarding the Approval of the Conduct Manual Instruction of the Ministry of Internal Affairs of Georgia’s Service Personnel During Assemblies and Demonstrations,” Article 5(1).

<sup>70</sup> *Ibid*, Article 5(2) and (3).

<sup>71</sup> *Ibid*, Article 4(2)(a).

<sup>72</sup> *Ibid*, Article 6(1).

<sup>73</sup> *Ibid*, Article 4(2)(b).

<sup>74</sup> *Ibid*, Article 4(2)(c).

<sup>75</sup> *Ibid*, Article 4(4).

<sup>76</sup> *Ibid*, Article 7(1).

forcement bodies, including:<sup>77</sup>

- To apply tear gas, pepper spray and hand grenades directly against a person who violates the law or in a group of people, or to use them repeatedly in a place where tear gas was already used;
- To use special truncheon in those parts of the body which can be dangerous to health and life, also against a person in a sitting or lying position;
- Simultaneous or parallel use of water cannons, rubber bullets and tear gas against the participants of the assembly/demonstration;
- The use of physical force and special means when the participants do not have enough space to leave the territory.

It is noteworthy that the above-mentioned Order of the Minister of Internal Affairs of Georgia cannot be found in the search system of the Legislative Herald of Georgia, which is an important deficiency in terms of predictability and availability of legal norms and needs to be rectified.

It is significant for representatives of law enforcement agencies to pay particular attention to practical protection and implementation of the rules established by international standards, national legislation and internal regulations, so that the force used during assemblies and demonstrations is necessary, appropriate and proportionate.

#### **1.4. The Special Safeguards for Media Representatives**

Media representatives, while exercising their vocational duties during an assembly, enjoy special safeguards, which derive from the right to freedom of expression protected by the Constitution of Georgia.<sup>78</sup> With regards to freedom of media, the State has not only a negative obligation to abstain from interference in the professional activities of media, but also a positive obligation to protect media representatives from violence by other members of society and to provide appropriate conditions for the implementation of journalistic activities.<sup>79</sup>

During assemblies and demonstrations, uninterrupted reporting from media has paramount importance for the purpose of continuous and complete dissemination of information to the public as well as for monitoring the use of force by law enforcement authorities against the participants of the rally. The media representatives have a pre-eminent role in terms of disseminating independent, impartial and objective information about the developments of the assembly, as well as the photo-video material obtained by them is important in terms of the accountability of the organizers and law enforcement officers.<sup>80</sup>

The international standards require the protection of media representatives, including, “citizen journalists” during the coverage of assemblies.<sup>81</sup> A call for participants of an assembly to disperse should not apply to media representatives and should not oblige them to leave

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<sup>77</sup> *Ibid*, Article 9.

<sup>78</sup> The Constitution of Georgia, Article 17(1).

<sup>79</sup> *Dink v. Turkey*, App no. 2668/07, (ECtHR 2010), §137; *X and Y v. the Netherlands* judgment of 26 March, Series A no. 91, 1985, §23). *Özgür Gündem v. Turkey*, App no. 23144/93, (ECtHR 2000), §42-43.

<sup>80</sup> Special Report of the Public Defender of Georgia, Freedom of Peaceful Assembly (The protective scope of the right and the standard of the management of the assembly), 2020, p. 33.

<sup>81</sup> UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 12 May 2012, A/HRC/20/27, para. 48.

the area (unless their individual safety is under a real risk). Moreover, journalists should not be detained as a result of their failure to leave an area once a dispersal order is given, unless their presence would unduly interfere with police action.<sup>82</sup> Media representatives should not be prevented from observing and recording police operations unless (exceptionally) their presence would significantly impede law enforcement officers from carrying out their duties.<sup>83</sup> In this case, journalists should be provided with clear instructions and adequate time to disperse. Afterwards, they should be provided with additional capacity to appropriately cover an assembly.<sup>84</sup>

A thorough and independent investigation should be conducted into the facts of violence or alleged use of force against media representatives, and, if warranted, criminal charges should be sought.<sup>85</sup> Eventually, “all necessary steps [should be taken] to bring the perpetrators of crimes against journalists and other media actors to justice”.<sup>86</sup> In addition to this, states should establish professional sanctions for police officers who commit violent acts against media actors. The ECtHR also sets a high standard for the protection of journalists during assemblies and demonstrations, and obliges Contracting States to take active measures to prevent interference with the activities of journalists.<sup>87</sup>

According to the Law of Georgia on Assemblies and Demonstrations and Order #1002 of the Minister of Internal Affairs, dated 30 December 2015, the representatives of law enforcement authorities shall be obliged not to obstruct professional activity of journalists with identifying signs covering the assembly or demonstration.<sup>88</sup> However, the Georgian legislation does not additionally define what can be considered as an “identifying sign” of a journalist, which is quite problematic during the use of force, in terms of classifying the crime as an unlawful interference with the journalist’s professional activities. It is noteworthy that even if a media representative is not wearing a special vest or a journalist’s badge on his chest, he/she should still be allowed to carry out his/her journalistic activities without any hindrance after his/her identity and profession is known to the police.<sup>89</sup> In this case, the aforementioned person should benefit from the same protections as any other member of the media.<sup>90</sup>

According to the Criminal Code of Georgia, unlawful interference with the journalist’s professional activities, i.e. coercing a journalist into disseminating or not disseminating information is illegal.<sup>91</sup>

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<sup>82</sup> OSCE/Office for Democratic Institutions and Human Rights, *Human Rights Handbook on Policing Assemblies*, 2016, p. 34.

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid.*

<sup>85</sup> Georgian Young Lawyers’ Association, *Practical Guide for Journalists: The Issues of Interference in Journalistic Activities and Redress*, 2023, p. 10.

<sup>86</sup> Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors (Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers’ Deputies) („Recommendation CM/Rec(2016)4“), §21, available: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806415d9#\\_ftn1](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftn1);

<sup>87</sup> *Najafli v. Azerbaijan* (application no. 2594/07), ECHR, 12 October 2012, para. 67.

<sup>88</sup> Law of Georgia on Assemblies and Demonstrations, Article 2(4); Order #1002 of the Minister of Internal Affairs, dated 30 December 2015, “Regarding the Approval of the Conduct Manual Instruction of the Ministry of Internal Affairs of Georgia’s Service Personnel During Assemblies and Demonstrations,” Article 4(6).

<sup>89</sup> Georgian Young Lawyers’ Association, *Practical Guide for Journalists: The Issues of Interference in Journalistic Activities and Redress*, 2023, p. 9, citing *Najafli v. Azerbaijan* (application no. 2594/07), ECHR, 12 October 2012, paras. 67-9.

<sup>90</sup> *ibid.*

<sup>91</sup> The Criminal Code of Georgia, Article 154(1).



## CHAPTER 2

### “THE RUSSIAN LAW” VERSUS THE GEORGIAN PEOPLE (CAUSES OF THE PUBLIC PROTEST)

The following chapter reviews the chronology of the developments which gave rise to 7-9 March protests.

**In 2022, also in September 2022**, the representatives of the “Georgian Dream” started discussing the sources and objectives of funds received by civil society organizations operating in Georgia.<sup>92</sup>

**By the end of 2022, on 29 December**, during a special briefing, the members of the Parliamentary majority announced the initiation of the so-called Foreign Agents Law.<sup>93</sup> The initiation was preceded by the growing rhetoric from the ruling party targeting representatives of civil society organizations and media, with the aim to damage their reputation and form negative attitudes in society. The latter had vivid similarities to how Russia started and through amending the legislation enforced the restriction on freedom of speech.<sup>94</sup>

**On 21 February 2023** over 400 civil society organizations released a joint statement and assessed the draft law as an attack on the key Georgian values of dignity, independence and solidarity.<sup>95</sup>

See the text of the Statement:

<sup>92</sup> Article of Netgazeti: “Ground for Legislative Amendments? – What are the purposes of questions regarding NGOs finances,” 13. 09.2023 available: <https://bit.ly/3sJLp2E>, [28.08.2023].

<sup>93</sup> With the draft law presented by the “People’s Power” [„ხალხის ძალა“], a registry of foreign agents would be introduced, in which registration for all “NGOs” and entities that are financed from foreign sources would be mandatory, 29.12.2022, available: <https://bit.ly/3MZdhrq>, [28.08.2023].

<sup>94</sup> Concerning the Experience of Russia, see the blog: “ECODEFENCE AND OTHERS V. RUSSIA – the case concerning how Russia started and through amending the legislation enforced persecution of human rights defenders”, Tamar Oniani, available: <https://www.gyla.ge/ge/post/ecodefence-and-others-v-russia-saqme-imis-shesakheb-tu-rogor-daitsyo-da-aghasrula-sakanonmdeblo-gzit-uflebadamcvelebis-devna-rusetma#sthash.5zg5rZi6.dpbs>, [28.08.2023].

<sup>95</sup> See: “RUSSIAN LAW IS NOT THE WILL OF GEORGIA”, the website of Georgian Young Lawyers’ Association, 21.02.2023, available: <https://bitly.ws/WIBg> [28.08.2023].

## **RUSSIAN LAW IS NOT THE WILL OF GEORGIA**

We, the people of Georgia, strongly oppose the bill initiated by the members of the Parliamentary Majority, also endorsed by the Speaker of Parliament and other MPs. We declare that the attempts to adopt this Russian bill attack not only the independent civil society organizations and the critical media, but the people of Georgia themselves.

This bill aims to leave defenseless the abused children and women; people with disabilities, minorities, scientists, workers, and the youth; to not provide assistance to the socially vulnerable families, farmers, miners, internally displaced, homeless, illegally laid off, detained, and other people fighting for their rights; to mute the voice of the people living in the peripheries of the country that can only communicate their troubles through the independent media.

This draft legislation acts as a response to the numerous facts of violence, corruption, lawlessness, and arbitrary execution of the laws that we, the civil society and the critical media, study and make public.

When Putin adopted a similar law in Russia, many organizations chose to disband rather than comply with its requirements. Those that continued to operate faced increased control, harassment, and repressions. This is not the type of governance that we have fought for many years to achieve, and Russian law is certainly not the type of governance that Georgian citizens aspire to have in our country.

Adopting this bill will amount to an attack on the key Georgian values of dignity, independence and solidarity with our communities and fellow people. Adopting this bill will amount to an onslaught not only against civil society and our democracy but will also damage our aspirations of Euro-Atlantic development. This law will obstruct our path to membership of the EU as this law was found illegal in the EU. Moreover, the execution of this law will be impossible without causing insurmountable harm to hundreds of thousands of citizens of Georgia.

The draft law was criticised by the representatives of media<sup>96</sup> and the opposition,<sup>97</sup> religious minorities,<sup>98</sup> representatives of educational institutions,<sup>99</sup> sport associations<sup>100</sup> and representatives of a private sector.<sup>101</sup> Also, the concerns was shared by many friends and strategic

<sup>96</sup> "No to Russian Law" – Journalists Protesting the Bill of "People's Power" in the Parliament, available: <https://bit.ly/3oBoapX> [28.08.2023].

<sup>97</sup> Giga Bokeria: This regime and Georgia's progress towards returning to the west are incompatible, available: <https://bit.ly/3BYZ6Mu>; Lelo on the Law: It is time to get united - A resistance movement of Georgian society will be created, available: <https://bit.ly/3qh3own>, [28.08.2023].

<sup>98</sup> The Evangelical Churches: the so-called law on agents brings us back to the realm of total control, available: <https://bit.ly/43a1Kha>, [28.08.2023].

<sup>99</sup> Even the discussion threatens the candidate statuses - the teachers on the Russian Law, available: <https://bit.ly/43bIKMG>, [28.08.2023].

<sup>100</sup> Dinamo Tbilisi: Any initiative that threatens the European direction is dangerous - Tabula, available: <https://bit.ly/43dPQ38>, [28.08.2023].

<sup>101</sup> Tbilisi Open Air on Russian Law: Shameful people should not carry out the plan, available: <https://bit.ly/3MZ2hu7>, [28.08.2023].

partners of Georgia, including representatives of the U.S.,<sup>102</sup> Estonia,<sup>103</sup> Sweden,<sup>104</sup> Germany<sup>105</sup>. There was a strong condemnation from NATO,<sup>106</sup> European Union,<sup>107</sup> UN,<sup>108</sup> OSCE<sup>109</sup>. Additionally, a number of international non-governmental organizations<sup>110</sup> expressed their concerns that the result of the bill would be the suppression of freedom of speech and association in Georgia.

**On 22 February 2023**, draft law “On the Registration of Foreign Agents” was officially registered by the initiative of the members of the Parliamentary majority, **Sozar Subari, Dimitri Khundadze, Mikheil Kavelashvili, Guram Matcharashvili, Irakli (Dachi) Beraia and Viktor Japaridze**.<sup>111</sup> The The initiators of the draft law later also registered a second bill, according to them of the American type, although, in fact, with the same goal.<sup>112</sup>

**On 2 March 2023**, the Joint Session regarding the draft laws on “Agents of Foreign Influence” by the Foreign Relations Committee and Defence and Security Committee of the Parliament commenced amid the noise.<sup>113</sup> More particularly, the participation of the media in the discussion process was mostly limited, and the part of the interested public only followed the events online. In parallel of the committee discussion, a peaceful demonstration was taking place in the vicinity of the Parliament.<sup>114</sup> On this day, the police detained 36 people, including

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<sup>102</sup> According to the Statement of the U.S. Department of State, this draft legislation appears to be based on similar Russian legislation, which was used to weaken and threaten independent journalist and civil society organizations, See, State Department Spokesperson Response to Media Question on Georgia’s “Foreign Agent” Draft Law, 16.02.23 available: <https://bit.ly/3MXh6MA>, [28.08.2023].

<sup>103</sup> Kallas: Events in Georgia remind us that democracies may also gradually erode at the hands of elected leaders, available: <https://bit.ly/3PwlgfG>, [28.08.2023].

<sup>104</sup> It is inconsistent with EU values and Georgia’s aspirations— The Ambassador of Sweden to Georgia on Russian Draft Law, available <https://bit.ly/3ZaEtI2>, [28.08.2023].

<sup>105</sup> Adopting law on Agents contradicts EU values - The Ambassador of Germany, available: <https://bit.ly/3RkttGp>, [28.08.2023].

<sup>106</sup> Colomina: NATO is concerned about the passed draft law, available: <https://bit.ly/45KE8hL>, [28.08.2023].

<sup>107</sup> Also, the European Union expressed deep concerns regarding the initiated draft law on foreign agents. In the statement, the High Representative of the European Union for Foreign Affairs, Josep Borrell outlined he proposed law raises “serious concerns” and it can have a severe effect on freedom of expression and assembly. Borrell also highlighted that the draft law is incompatible with EU values and standards, whose protection was Georgia’s stated objective. The European Union is a strong supporter of Georgia’s Euro-Atlantic aspirations, and the proposed law is seen as a setback on Georgia’s path to EU membership. See, Spokesperson of EU High Representative Borrell Issues Critical Statement on the Draft Law on Foreign Agents. 25.02.2023, available: <https://bit.ly/3NeopAQ>, [28.08.2023].

<sup>108</sup> According to the assessment of the United Nations, the draft law “would risk impeding the work of civil society and media and the essential contributions they make to Georgian democracy.” The UN also outlined that the bill do not comply with international standards of human rights, including, right to freedom of association and expression, See. United Nations in Georgia Expresses Concern over Draft Law on Foreign Agents, available: <https://bit.ly/3oK1rrZ>, [28.08.2023].

<sup>109</sup> FINAL Note on foreign agents legislation\_Georgia, OSCE Office for Democratic Institutions and Human Rights, 25.07.2023, available: <https://bit.ly/44KaCY3>, [28.08.2023].

<sup>110</sup> Georgia: ‘Foreign Agents’ Bill Tramples on Rights, Human Rights Watch, 08.03.2023, available: <https://bit.ly/3r6QZMd>, [28.08.2023]. Amnesty International also echoed concerns with regards to initiated law on Foreign Agents in Georgia. Marie Struthers, Amnesty International’s Director for Eastern Europe and Central Asia, stated that the bill is violates the freedom of expression and association and contradicts Georgia’s responsibilities under human rights, therefore, it should never be adopted. See, Georgia repressive foreign agent’s bill withdrawn after protesters brutally dispersed. 09.03.2023, available: <https://bit.ly/43KDpvx>, [28.08.2023].

<sup>111</sup> The Draft Law “On the Registration of Foreign Agents”, initiator Members of the Parliament: Sozar Subari, Dimitri Khundadze, Mikheil Kavelashvili, Guram Matcharashvili, Irakli (Dachi) Beraia, Viktor Japaridze, N07-3/296/10, available: <https://parliament.ge/legislation/25876>, [23.09.2023].

<sup>112</sup> The Second Draft Law “On Registration of Foreign Agents” was also registered in the Parliament, 27.02.2023. available: <https://bit.ly/3q5pAt5>, [28.08.2023].

<sup>113</sup> The Joint Committees Began to Discuss the Law “On the Transparency of the Foreign Influence” amid the Protest, available: <https://bit.ly/45wmBud>

<sup>114</sup> “No to Russian Law” – The Protests against the Draft Law by “People’s Power” is taking place inside and outside the Parliament, available: <https://bit.ly/3MHZjIW>



2 journalists, under Article 166 (Disorderly conduct) and Article 173 (Non-compliance with a lawful order or demand of a law-enforcement officer) of the CAO. 7 people were released in the same evening.<sup>115</sup>

**On 6 March 2023**, the Legal Issues Committee of the Parliament of Georgia discussed draft laws on “Agents”, which were afterwards endorsed by the Legal Issues Committee.<sup>116</sup>

**On 7 March 2023**, at the plenary session, the Parliament with 76 votes against 13 adopted the draft law “On the Transparency of the Foreign Influence” in the first reading. The MPs of “Georgian Dream” carried on voting amid the protest and calls from the opposition in the Parliament session hall. Initially, the ruling party announced that the so-called draft laws on foreign agents would be brought to the plenary session on 9 March. Nevertheless, by the end of a working day on 7 March, the chairman of the parliamentary faction “Georgian Dream”, Mamuka Mdinardze, put forward a proposal at the session to start the hearing on the same day. Simultaneously, a massive protest in front of the Parliament was taking place.<sup>117</sup> On this day, 76 MPs supported the bill, therefore, it was considered approved in the first reading.<sup>118</sup>

This fact led to mass protests on the evening of March 7 and 8, which lasted until the morning hours of March 9. The law enforcement authorities used force to disperse the assemblies, and the information regarding the latter is provided in detail in Chapter 3.

**On 9 March 2023**, due to mass protests, the Parliamentary majority “Georgian Dream” released a statement concerning the withdrawal of the draft law “On the Transparency of the Foreign Influence”.<sup>119</sup> On 10 March, the draft law was officially dropped in the second reading.<sup>120</sup>

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<sup>115</sup> The Investigation Started into the Alleged Facts of Exceeding Official Power by the Policemen on 2 March, available: <https://bit.ly/3oKjfmU>

<sup>116</sup> The Legal Issues Committee endorsed the Russian Draft Law on “Foreign Agents”, available: <https://bit.ly/42ibn9E>

<sup>117</sup> The Parliament Approved the Draft Law “On the Transparency of the Foreign Influence” in the First Reading, available: <https://bit.ly/45zpYjV>, [23.09.2023].

<sup>118</sup> The MPs who supported the Russian Law are as follows: Amilakhvari Giorgi; Benashvili Gia; Beraia Irakli; Beraia Dachi; Beradze Rima; Bitadze Maia; Bolkvadze Anzor; Bolkvadze Eliso; Botchorishvili Maka; Davituliani Beka; Dalakishvili Aleksandre; Dargali Zaur; Daseni Isko; Dugladze Zaal; Enukidze Gocha; Volski Giorgi; Zavrashvili Irma; Zarkua Irakli; Talakvadze Archil; Toloraia Edisher; Injia Fridon; Ionatamishvili Rati; Katcharava Davit; Kakhadze Lado; Kakhiani Giorgi; Kakhashvili Kakha; Kvizhinadze Paata; Kvitsiani Baia; Kyuregyan Sumbat; Kobakhidze Irakli; Kobiashvili Levan; Kontselidze Resan; Lashkhi Mariam; Lominadze Zaza; Matikashvili Davit; Manukyan Samvel; Matcharashvili Guram; Mgaloblishvili Levan; Mdinardze Mamuka; Mezurnishvili Irakli; Menagharishvili Maia; Meshveliani Gogi; Mirzoev Savalan; Mikanadze Givi; Mikeladze Zaal; Obolashvili Anton; Odisharia Beka; Okhanashvili Anri; Papuashvili Shalva; Samkharauli Gela; Samkharadze Dimitri; Samkharadze Nikoloz; Sanikidze Viktor; Sarjveladze Mikheil; Sepashvili Eka; Songhulashvili Davit; Subari Sozar; Tabatadze Aleksandre; Turdeladze Nodar; Kadagishvili Irakli; Karumidze Levan; Gudushauri Aluda; Kavelashvili Mikheil; Shatakishvili Irakli; Chankseliani Goderdzi; Chigogidze Vasil; Chikovani Irakli; Tsagareishvili Gia; Tsakadze Bezhan; Tsilosani Nino; Tsilosani Khatia; Tsitsava Greta; Chichinadze Givi; Khabareli Shota; Khundadze Dimitri; Japaridze Viktor; See the Article of Radio Tavisupleba, “The List – Who Voted for Draft Law on Agents and Who Refrained from ‘Georgian Dream’”, 07.03.2023, available: <https://www.radiotavisupleba.ge/a/32307319.html>, [23.09.2023].

<sup>119</sup> Amerikis Khma, “The Georgian Parliament Dropped Draft Law on ‘Agents’”, 10.03.2023, available: <https://www.amerikiskhma.com/a/majority-drops-the-bill-on-foreign-agents-in-the-second-reading/6999037.html>, [23.09.2023].

<sup>120</sup> *ibid.*





## CHAPTER 3

### THE LEGITIMACY OF THE DECISIONS CONCERNING THE DISPERSAL OF 7-9 MARCH ASSEMBLIES AND THE PROPORTIONALITY OF THE USED FORCE

While assessing the proportionality of the use of force during the assemblies and demonstrations in line with the standards discussed in Chapter 1, the following aspects should be taken into account:

- a) Nature of offence;
- b) Type of used special means;
- c) Sequence, intensity and duration of use of special means;
- d) Assessment of threats about committing potential offences and efforts to avoid the use of force;
- e) Severity of the consequences of the use of force.

When resorting to special measures, law enforcement officials need to take into account that the damage is minimal, reasonable and proportionate to the legitimate goal achieved.

**The information provided by the Ministry of Internal Affairs of Georgia to the GYLA<sup>121</sup> does not specify whether the security action plan for the management of the 7-9 March 2023 rallies had been developed and approved by the Ministry of Internal Affairs or not, nor it gives information about any issues included in the action plan. Given that the Security Plan, if exists, is a classified document, GYLA lacks the capability to discuss these issues. However, it should be emphasized that, generally, the society cannot observe and study the legality of these action plans and their compliance with international human rights standards, which leaves those who employ functions of a watchdog, for the establishment of a democratic and legal state, without a significant leverage.** For example, taking into account previous experience of GYLA with regard to the dispersal of the 20-12 June 2019 assembly, it can be concluded that the Prosecutor General's Office did not give victims access to the full case materials, including the action plan.<sup>122</sup> It was not even possible to identify the content

<sup>121</sup> The Letter of the Ministry of Internal Affairs of Georgia, 10 July 2023, #7230198118.

<sup>122</sup> See Press Release: GYLA Applies to the European Court on behalf of Demonstrators and Journalists Affected by June 20 Events, 07.04.2021, available: <https://gyla.ge/en/post/saia-20-ivniss-dazaralebuli-demonstrantebisa-da-zhurnalistebis-sakhelit-evropul-sasamartlos-mimartavs#sthash.zOukhW6Z.dpbs>, [29.08.2023].

of the mentioned plan through the documentation presented by the Government to the Strasbourg Court.

Furthermore, as a result of the monitoring, it is visible that an unprecedented number of law enforcement officers had been mobilized during the assembly, including police officers and employees of the Special Tasks Department, who had been equipped with special protective equipment. According to the assessment of the Public Defender of Georgia, the Ministry of Internal Affairs of Georgia created a menacing and perilous environment for the peaceful gathering's participants through the mass mobilization of the representatives of the law enforcement agencies during the assemblies of 7-9 March 2023.<sup>123</sup>

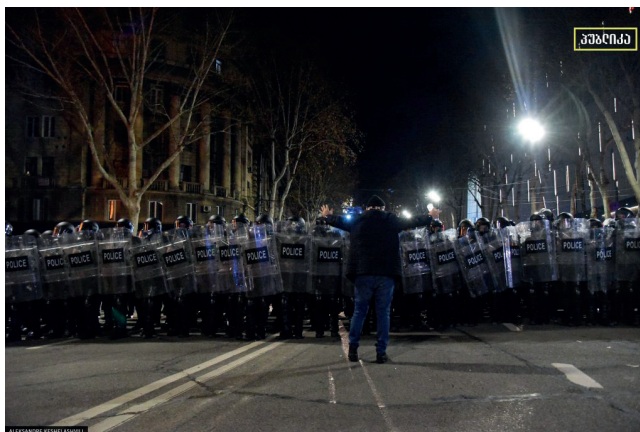
**During the assemblies of the 7-8 March 2023, several special means, including, water cannons, tear gas and “pepper spray”, also known as pepper gas, were used against the participants.<sup>124</sup> Therefore, it is important to consecutively evaluate the legality and proportionality of the application of special means.**

### **3.1. The Use of Force from 7 March 2023, 18:00 to 8 March 2023, 04:00**

To assess the legality and proportionality of the force used during 7-8 March 2023 demonstration, the need to analyze the following factual circumstances within the framework of the report was identified:

#### **a) Absence of Prior Negotiations/Communications with the Participants of the Assembly**

Following the discussion of the draft law in the legislative body of Georgia, from 8:16 p.m., the participants of the rally wanted to approach the side entrances of the Parliament and arrange so-called “corridor of shame”, which had been announced and the representatives of the law enforcement agencies had been informed in advance.<sup>125</sup> No statements had been made by the participants of the rally regarding the intention of violent acts and possible attacks against the MPs.<sup>126</sup>



In this case, **the representatives of the law enforcement agencies had had enough time and**

<sup>123</sup> Public Defender of Georgia Echoes March 7-9 Developments on Rustaveli Avenue, (ombudsman.ge), 13.03.2023, available: <https://ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsvel-i-rustavelis-gamzirze-2023-tslis-7-9-marts-ganvitarebul-movlenebs-ekhmianeba>, [27.09.2023].

<sup>124</sup> Footage provided by Mtavari TV, March 7, 20:47; 21:42-21:43; Footage provided by Mtavari TV, March 9, 00:05-06:00.

<sup>125</sup> Footage provided by Mtavari TV, 20:16, according to the provided footage, some of the participants of the rally want to arrange a corridor of shame near the entrance of the parliament (on Chitadze street), from where the MPs should leave the territory. However, they are not given the opportunity because hundreds of law enforcement officers are mobilized.

<sup>126</sup> Footage provided by Mtavari TV, 18:50-20:16. At around 18:51, speeches were made at the demonstration. Activists and well-known people appeared at the tribune, calling on citizens to come to the rally and engage in activism.



means to conduct prior negotiations with the participants of the demonstration and to ensure the possibility of organizing peaceful corridors without blocking the entrances to the Parliament building. However, the representatives of the Ministry of Internal Affairs mobilized additional police forces and blocked the side ascents of the Parliament, Chichinadze and April 9 streets with police cordons,

which led to a confrontation between the police and a small part of the protestors and **contributed to the escalation of the situation**. Even though some of the participants of the rally tried to communicate with the law enforcement officers (20:26), the latter did not engage in the negotiations.<sup>127</sup>

### b) Grounds of Use of Force and Compliance with the Obligation of Prior Warning

On 7 March 2023, at 20:34, the law enforcement authorities, without prior warning, started applying special means, particularly, tear gas and water cannons, against the participants of the assembly.<sup>128</sup> According to the information provided by the Ministry of Internal Affairs of Georgia, the reason for the use of special means was the aggressive actions of a part of the citizens towards the police officers, which was expressed in verbal insults, physical confrontations and attacks.<sup>129</sup> Following this, from 20:38 the Ministry of Internal Affairs started disseminating prior warnings concerning the use of force through a megaphone throughout the entire territory of the rally.<sup>130</sup>



In this case, the deployment of special means without prior warning by the representatives of the law enforcement agency against the participants of the rally grossly violates the requirements established by the legislation of Georgia, including the obligation of prior warning and the need to give reasonable time (30 minutes) for the participants of the assembly to leave the territory. **Therefore, on 7 March 2023, the Ministry of Internal Affairs of Georgia started resorting to special means in violation of the formal requirements prescribed by the Georgian legislation.**

<sup>127</sup> Footage provided by Mtavari TV, 20:26.

<sup>128</sup> The Joint Statement of Civil Society Organizations regarding the developments of 7-8 March 2023, available: Police used illegal and disproportionate force against the peaceful civil protest.

<sup>129</sup> The Letter of the Ministry of Internal Affairs of Georgia, 10 July 2023, #7230198118.

<sup>130</sup> Footage provided by Mtavari TV, 20:36-20:38.

Nevertheless, it is noteworthy that the decision of the Ministry of Internal Affairs to apply the force on 7 March 2023 at 20:38 also contradicts the legislation of Georgia, as at that time (20:38), the assembly had a peaceful character and there was no legitimate ground to terminate it or use force against it.<sup>131</sup> In such circumstances, the Ministry of Internal Affairs should have taken individual, necessary and proportionate measures against particular non-peaceful participants of the rally, taking into account their small number, in order not to interfere with the exercise of the right of peaceful demonstrators. Nevertheless, in this case, the law enforcement authorities did not differentiate between peaceful and non-peaceful participants



and started using special means against the participants of the assembly, including peaceful demonstrators, which contradicts the standard of necessary and proportionate interference with the right.<sup>132</sup> Thus, in this case, individual incidents of violation of the law by the participants of the rally became the basis for the use of mass force, the dispersal of the entire rally, as a result of which thousands of peaceful participants had to leave the area.

In the interview with GYLA, the representative of the Public Defender's Office of Georgia stated:

*“Even though the conflict for the first time took place at the entrance of the Parliament building, in the back area, the dispersal of the assembly started on the territory (in front of the Parliament), where the assembly continued peacefully and citizens enjoyed the right to peaceful assembly. A large part of the peaceful participants of the assembly had no information about the reasons and grounds for the dispersal of the rally because the means of communication in the existing territory did not function either partially or entirely. The majority of these people continued enjoying their right to freedom of assembly. Accordingly, under these circumstances, the attempt of the MIA to disperse peaceful participants, without a doubt, cannot be considered as a lawful, legitimate, necessary and proportionate measure.”<sup>133</sup>*

It is worth mentioning that on 8 March 2023, by 01:50, the police entirely occupied the entrances of the Parliament and the territory adjacent to the Parliament, where the assembly had been taking place.<sup>134</sup> At the same time, a megaphone called on the participants of the rally to leave the surrounding area.<sup>135</sup>

<sup>131</sup> Footage provided by Mtavari TV, 20:36-20:38.

<sup>132</sup> The Joint Statement of Civil Society Organizations regarding the developments of 7-8 March 2023, available: Police used illegal and disproportionate force against the peaceful civil protest; Public Defender of Georgia Echoes March 7-9 Developments on Rustaveli Avenue, (ombudsman.ge).

<sup>133</sup> An interview given to GYLA by a representative of the Public Defender's Office of Georgia.

<sup>134</sup> Footage provided by Mtavari TV, 01:50-01:55.

<sup>135</sup> Footage provided by Mtavari TV, 01:55-01:59.



In this case, the request by the law enforcement officers calling on the peaceful demonstrators to leave the territory of the Parliament **violated** the Constitution and legislation of Georgia. Concurrently, by this time, the use of special means against civilians did not fall within the scope established by Georgian legislation and grossly violated the right to peaceful assembly.

### c) Sequence, Intensity and Duration of Use of Special Means

In order to assess the proportionality of the use of force by the law enforcement officials, it is important to analyze the sequence, intensity and duration of their use.

On 7 March 2023 and in the morning hours of 8 March, the representatives of law enforcement authorities during the application of special means did not gradually transition from less restrictive measures to strict ones, as established by relevant standards. The law enforcement officials should start by using less restrictive measures against demonstrators and wait for a certain period of time to achieve the desired result.<sup>136</sup>

In this case, the representatives of law enforcement authorities employed several special means against the demonstrators – the application of water cannons and pepper spray started concurrently,<sup>137</sup> which **contradicts** international standards and national legislation. In this case, the duration between the use of different special means by the representatives of the law enforcement agencies was short-lived, and the law enforcement officers did not take into account that the use of only one special mean could have achieved the same result as the simultaneous use of several special means had achieved.<sup>138</sup>



In addition, as a result of the monitoring of the assembly, it was revealed that during the 7-8 March 2023 assembly, several special means (tear gas, water cannon, and pepper spray) were simultaneously used against the demonstrators by the law enforcement officers,<sup>139</sup> which, also, **is against** both international standards and rules established by the Minister of Internal Affairs of Georgia, according to which the simultaneous and parallel use of water cannons and tear gas is prohibited.<sup>140</sup> The simultaneous use of special means by law enforcement officials leads to increased health damage and intoxication of the participants of the assembly, which is why it is banned.<sup>141</sup>

<sup>136</sup> See the established standards in Chapter 1.2 of this Report.

<sup>137</sup> Footage provided by Mtavari TV, 20:47. The provided footage shows that a water cannon vehicle started moving on Chitadze Street in the direction of Rustaveli Avenue, where the citizens are standing. At the same time, the application of the pepper spray begins. In the footage, it can be seen that the representatives of the Ministry of Internal Affairs are spraying pepper gas indiscriminately.

<sup>138</sup> See the established standards in Chapter 1.2 of this Report.

<sup>139</sup> Footage provided by Mtavari TV, 20:47-20:50.

<sup>140</sup> Amnesty International Guidelines for Implementation of the UN Basic Principles on the Use of Force and firearms by law enforcement officials, 2015, pp. 17-21.

<sup>141</sup> *ibid*, pp. 17-21.



The media footage clearly shows that the law enforcement authorities, in many cases, applied special means against peaceful demonstrators **without any grounds**, including the cases when certain people approached the police officers peacefully (applying pepper spray directly to their faces),<sup>142</sup> which violates the requirements and standards regarding the use of special means. Moreover, several video materials released by media (21:42-21:43) clearly show **gross physical violence** from law

enforcement officers against citizens without any necessity or urgency.<sup>143</sup>

Additionally, during the assembly, the use of special means by the representatives of the law enforcement agencies was fully spread throughout streets<sup>144</sup> of the Parliament and in the vicinity in front of it, despite the fact that the incidents had a local and incidental nature.<sup>145</sup> Such decisions of the law enforcement authorities violate international standards regarding the use of special means. Also, the application of special means was not ceased albeit the fact that the actions of a small group of lawbreakers had been addressed and the vast majority of citizens continued to protest peacefully.<sup>146</sup> Accordingly, the intensity and duration of the use of special means by the representatives of the law enforcement agencies **went beyond the scope of legality and proportionality** and had a **punitive nature** against peaceful demonstrators. Moreover, the decision of the law enforcement officers to disperse the entire assembly and completely free up the adjacent territory of the Parliament was unlawful and disproportionate.



As a result of the **unlawful and disproportionate use of force** by the representatives of the law enforcement agencies against the demonstrators, a large number of the participants were injured and all the ambulances mobilized were occupied (23:37-23:39).<sup>147</sup> Moreover, some injured citizens were transferred to medical establishments.<sup>148</sup>

<sup>142</sup> Footage provided by Mtavari TV, 20:47-20:50.

<sup>143</sup> Footage provided by Mtavari TV, 21:42-21:43.

<sup>144</sup> Footage provided by Mtavari TV, 20:56-23:59.

<sup>145</sup> Footage provided by Mtavari TV, 20:56-23:59.

<sup>146</sup> See the established standards in Chapter 1.2 of this Report.

<sup>147</sup> See the established standards in Chapter 1.2 of this Report.

<sup>148</sup> See the established standards in Chapter 1.2 of this Report.

### 3.2. The Use of Force from 8 March 2023, 15:00 to 9 March 2023, 06:00

To assess the legality and proportionality of the force used during 8-9 March 2023 demonstration, the need to analyze the following factual circumstances within the framework of the report were identified:

#### a) Absence of Prior Negotiations/Communications with the Participants of the Assembly

On 8 March 2023, the assembly on Rustaveli Avenue resumed. In the vicinity of the metro station – Liberty Square – a large number of law enforcement officers had been mobilized, who stopped people walking along Rustaveli Avenue and carried out frisk examination. In this case, **it is not clear**, whether the representatives of law enforcement agencies resorted to this measure **on an individual basis** and whether there had been sufficient grounds for reasonable suspicion. According to the information provided by the Ministry of Internal Affairs, as a result of the examination of citizens, 10 persons, who had been carrying illegal items intended for violent acts, had been arrested.<sup>149</sup>

The 8 March assembly was taking place peacefully from 19:00 to 22:00 o'clock.<sup>150</sup> On 8 March 2023, at 22:05, Giorgi Vashadze called on the participants of the demonstration to peacefully move to both sides of the Parliament and to stand at the side entrances of it. The representatives of the law enforcement agencies were behind the entrances of the Parliament, in the inner territory. In this case, for the purposes of the continuation of the peaceful assembly in the area surrounding the entrances without blocking the entrances of the Parliament building, the law enforcement authorities **once again did not avail themselves of prior negotiations with the organizers and participants of the assembly**. Furthermore, under these circumstances, it was not clear whether the standing of the participants of the assembly at the entrances of the Parliament building meant *per se* blocking the entrances and how this would have affected the uninterrupted functioning of the Parliament.

#### b) Grounds of Use of Force and Compliance with the Obligation of Prior Warning

On 8 March 2023, from 22:20 o'clock, at the Parliament's back entrance, the protest by a small number of demonstrators went beyond the scope of a peaceful assembly and turned into violent actions; however, the violent actions by a small group of participants did not affect the peaceful continuation of the assembly by the majority of participants, which is why the assembly did not lose its peaceful character. According to the Ministry of Internal Affairs, the small number of participants of the assembly removed the protective barriers placed along the Parliament, damaged the windows at the rear entrance of the Parliament and threw various objects and pyrotechnics into the parliament building and inner yard.<sup>151</sup>

On 8 March 2023, from 22:52, the law enforcement officers stationed at the inner perimeter of the rear entrance of the Parliament, started using special means, namely water cannons, against the violent group of protestors without any warning, which violates Georgian legislation and international standards. In the present case, considering that the law enforcement officials were in the inner perimeter of the Parliament, and the entrances of the Parliament had not been damaged, **there was no threat to their lives or health or any other serious consequence** that would justify the use of water cannons without prior warning. The use of water cannons, **without prior warning**, lasted for 20 minutes, until 23:10. Besides, the repre-

<sup>149</sup> The Letter of the Ministry of Internal Affairs of Georgia, 10 July 2023, #7230198118.

<sup>150</sup> Footage provided by Mtavari TV, 19:00-22:00.

<sup>151</sup> The Letter of the Ministry of Internal Affairs of Georgia, 10 July 2023, #7230198118.



representatives of law enforcement authorities, **without prior warning**, resorted to force several times against the demonstrators in the morning hours of 9 March, regardless of whether those subjected to active special means were law-breakers or not.<sup>152</sup>

On 8 March 2023, at around 23:17, the law enforcement officers filled up the rear and side entrances of the Parliament, and were positioned on Chitadze and Chichinadze streets. Albeit the fact that the actions by a small group of participants of the assembly at the rear and side entrances of the Parliament, which fell outside the scope of the peaceful assembly, were ceased and terminated, the decision was made to completely free up the territory from Freedom Square in the direction to Rustaveli Avenue from the demonstrators, which represented **a violation** of the participants' right to freedom of peaceful assembly.

Similar to 7 March 2023, during the early morning hours of 8 and 9 March assemblies, law-breaking by different small groups of participants, in different areas of the assembly, had a local and incidental nature, which could have been ceased through individual and proportionate means, therefore, the decision of the law enforcement authorities to disperse the entire assembly and completely free up the adjacent territory of the Parliament was unlawful and disproportionate. Hence, in this case, the representatives of the law enforcement authorities again **did not** differentiate between law-breakers and peaceful civilians and resorted to use of special means uniformly.

### c) Sequence, Intensity and Duration of Use of Special Means

On 8-9 March 2023, the law enforcement officers continued applying several special means (water cannon, pepper spray and tear gas) simultaneously, which **violated** the legislation of Georgia and international standards.

On 9 March 2023, from 01:45, the footage broadcast publicly by media vividly shows that special means were **intensively used** by the law enforcement officers in violation of the law and the rules approved by the Minister of Internal Affairs, in particular: the targeted use of pepper spray in the face,<sup>153</sup> the use of tear gas canisters in large masses of demonstrators and in a wide area,<sup>154</sup> mixing tear gas or/and pepper spray in water cannons, or/and their simultaneous application,<sup>155</sup> physical assault on demonstrators,<sup>156</sup> and unlawful detentions, etc.

On 9 March 2023, at 03:20, GYLA issued a statement indicating that the application of special means without warning and their disproportionate nature contradicted the rules, called on the Ministry of Internal Affairs to give strict instructions to the law enforcement officers regarding the use of special means within the framework of the law:

*“Publicly released footage shows that [special] means are applied without prior warning, and tear gas and water cannon are used simultaneously, which is against international standards. Additionally, there have been instances of applying tear gas and water cannons intensively, shortly, and in a large scale, which not only has a disproportionate nature, but also amounts to ill-treatment of the peaceful civilians [...]”<sup>157</sup>*

<sup>152</sup> Footage provided by Mtavari TV, 00:13-00:23.

<sup>153</sup> Footage provided by Mtavari TV, 00:05-06:00.

<sup>154</sup> Footage provided by Mtavari TV, 00:05-06:00.

<sup>155</sup> Footage provided by Mtavari TV, 00:05-06:00.

<sup>156</sup> Footage provided by Mtavari TV, 00:05-06:00.

<sup>157</sup> Statement of the Georgian Young Lawyers' Association, 09.03.2023, Facebook Page of the Georgian Young Lawyers' Association, available: <https://bit.ly/3J7OHIA>.

The application of special means by the law enforcement officers continued until 06:45 on 9 March 2023; during this time, the use of force against peaceful demonstrators and the detention of peaceful participants of the assembly were actively taking place, which, considering the intensity, severity and duration of its use, represented a disproportionate restriction on the right to assembly. Under these circumstances, the representatives of the law enforcement authorities **were not differentiating** peaceful and non-peaceful participants, which is why all participants were subjected to uniform treatment.



## CHAPTER 4

### INTERFERENCE WITH PROFESSIONAL ACTIVITIES OF MEDIA DURING THE 7-9 MARCH 2023 ASSEMBLIES

During the assemblies of 7-9 March 2023, the representatives of law enforcement bodies unlawfully restricted the activities of journalists and prevented them from working freely.

According to the report of organization “Media Ombudsman”, in the course of 7-9 March 2023 assembly, the representatives of law enforcement agencies used violent methods against journalists, such as: splashing pepper spray at the faces, targeting water cannons, throwing tear gas canisters with aim, physical assault (dragging with belts, throwing scrolls, hitting on the head, beating operators with cameras on their shoulders in the back, kicking), verbal abuse (swearing, humiliating, threats of violence), covering a camera with a hand, forcibly removing from the filming location, throwing out from the Parliament building and so on.<sup>158</sup>

It is noteworthy that the violent actions by the law enforcement officers were mostly conducted against the so-called representatives of non-governmental media. According to the report of Media Ombudsman, with regards to 21 media representatives, there are clear signs of crime.<sup>159</sup> The report of the Media Ombudsman contains detailed information on the facts of interference and violence against particular journalists and operators.<sup>160</sup>

<sup>158</sup> The Second Report of N(N)LE Media Ombudsman, No to Russian Law, author: Natia Kapanadze, 07.07.2023, available: No To Russian Law, 02-09 March 2023, Second Report – Google Drive.

<sup>159</sup> *ibid*, p. 11.

<sup>160</sup> *ibid*, pp. 11-2, for instance: - *Mikheil Gvazabia, a journalist of online media outlets “Netgazeti” and “Batumelebi”* - “When the situation in front of the Parliament became tense, we went into the direction of the first school and we were going to the underground passage, I was filming when of the special forces officer came running, at this moment my editor, Nestan Tsetskhladze shouted that we were journalists and I was also wearing a press badge, but several seconds after this phrase, the special force officer kicked me, the recording of this video stops right at this moment. I hope this incident was recorded by the surveillance camera.” *Joni Bakuradze, an operator of “Formula”* - While filming the assembly, he became the target of aggression from the law enforcement officers more than once. Joni was first forced to move by aiming a water cannon at him, and then by throwing a tear gas canister they tried to stop the media, including the live broadcast of “Formula”.

In the interview with GYLA, the representative of the Public Defender’s Office of Georgia outlines:

*“There were instances of interference with the activities of media representatives; they were also physically injured. In our public statement we underlined that the Ministry of Internal Affairs should have taken special measures for physical safety of media representatives and that there should not have been cases of interference with their activities. Journalists should have had an opportunity to carry out their rights and duties without interference. We addressed the Special Investigation Service with a question whether the investigation into alleged inference and violence against journalists had been commenced. The Special Investigation Service has commenced an investigation into these cases as well.”<sup>161</sup>*

According to the information provided by the Special Investigation Service, on 7-9 March 2023, a total of 124 reports were received from different sources regarding possible illegal actions by law enforcement officers concerning the violations of the rights of the participants of the rally and individual journalists.<sup>162</sup> The Special Investigation Service started an investigation against the representatives of law enforcement agencies on the facts of abuse of official powers by violence and illegal interference in the journalists’ professional activity.<sup>163</sup>

Taking into account all of the above-mentioned, It is important that the State conducts a timely and effective investigation into the facts of illegal interference in the professional activities of journalists by the representatives of law enforcement bodies during the 7-9 March 2023 assemblies, as well as imposes the liability established by the legislation of Georgia on them.

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<sup>161</sup> An interview given to GYLA by a representative of the Public Defender’s Office of Georgia.

<sup>162</sup> *ibid*, p. 6.

<sup>163</sup> *ibid*, p. 6.



## CHAPTER 5

### ILLEGAL PRACTICE OF ADMINISTRATIVE DETENTIONS AND VIOLENCE ACCOMPANYING DETENTION

The analysis of public sources, as well as the interviews, attests that the detention of the demonstrators was often not aimed at preventing a specific offense, but rather at removing people indiscriminately from the area surrounding the assembly. The number of reports received by the Special Investigation Service also demonstrates the facts of the mass violation of the rights of the demonstrators during the detentions, the Special Investigation Service received in total 123 reports from different institutions on the facts of possible illegal actions by law enforcement officers against the rally participants, which along with participants of the assembly concerned the violation of the rights of journalists. Based on the above, the Special Investigation Service commenced an investigation into the exceeding official powers by violence<sup>164</sup> against particular employees of the Ministry of Internal Affairs.<sup>165</sup>

Based on the information provided by the lawyers of the detainees, the detainees were not informed regarding the basis of their detention and rights.<sup>166</sup> Not only the detainees were not given the opportunity to call a lawyer, many of them saw a lawyer for the first time after being brought to trial. The Ministry of Internal Affairs did not provide the families and lawyers of the detained people the information about the detainees. It is also noteworthy that the detainees were transferred to the detention centers in various cities.<sup>167</sup> In some cases, in the temporary detention isolators the detainees *indicated harsh forms of detention and had injuries* in the temporary detention isolators. There were instances of violations of the detainees' right of defence.<sup>168</sup> Therefore, a number of conspicuous trends can be observed, which worsen the legal situation of those detained on the basis of an administrative offence. These trends are further discussed below.

<sup>164</sup> With the signs of the crime provided by Article 333(3)(b) of the Criminal Code of Georgia.

<sup>165</sup> Statement Of The Special Investigation Service Regarding The Current Investigations On The Rally Of March 7-9, 13.04.2023, available: <https://sis.gov.ge/en/article/statement-of-the-special-investigation-service-regarding-the-current-investigations-on-the-rally-of-march-7-9/314>

<sup>166</sup> Administrative Offences Code of Georgia (Article 245).

<sup>167</sup> Public Defender of Georgia Echoes March 7-9 Developments on Rustaveli Avenue, (ombudsman.ge), 13.03.2023, available: <https://ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkho-damtsveli-rustavelis-gamzirze-2023-tslis-7-9-marts-ganvitarebul-movlenebs-ekhmianeba>

<sup>168</sup> *ibid.*

## 5.1. The Practice of Groundless Mass Detention

Parallel to the use of force by the police against peaceful civil protests on 7-8 March, there were instances of mass illegal detentions of the participants of the assembly and, in some cases, violence against them.<sup>169</sup> The detentions mostly took place by chance, in particular, law enforcement officers mostly did not arrest specific individuals who violated the law individually, but in some cases also those who simply “came into their hands” during the operation to disperse the assembly.

As per the information provided by the Ministry of Internal Affairs, on 7-8 March 2023 in total 146 people were detained administratively.<sup>170</sup>

According to the information from the Public Defender,<sup>171</sup> a total of 55 calls were received by the hotline of the Public Defender’s Office in order to determine the whereabouts of those detained during the 7-9 March 2023 protests. The Public Defender visited 101 detainees, who were allocated in temporary detention isolators in Tbilisi and in other various regions.<sup>172</sup> According to GYLA, in the period 09.03-13.03 (included), a total of 203 calls<sup>173</sup> were received by the hotline of civil society organizations, related to determining the whereabouts of persons detained on 7-9 March and asking for legal assistance.

In the interview with GYLA, the representative of the Public Defender’s Office of Georgia notes:

*“As you are aware, among other things, international standards stipulate that an incident of misconduct on the part of a citizen can be an administrative offence or a crime. Of course, in this case the police has the right to carry out individual measures, but these measures should be directed against those people who are actually involved in the incident, and not against everyone. In our case there were instances of detaining dozens of people, some of whom were simply talking to the policemen, expressing their concerns regarding the draft law. There were only verbal communications, not even the insulting phrases, and even in these cases people were detained. [...] which, I think, was intended to have a chilling effect on other citizens.”<sup>174</sup>*

Such practice was indicated by the participants of the assembly, who were interviewed by GYLA. For example, one of them confirmed that prior to his detention, he helped a policeman

<sup>169</sup> See, for example, the detention episode of Zura Japaridze, 08.03.2023, available: <https://t.ly/t2Cmg>, [26.09.2023].

<sup>170</sup> The Letter of the Ministry of Internal Affairs of Georgia, 10 July 2023, #7230198118.

<sup>171</sup> The Response from the Public Defender’s Office, N 24/4023, 25/04/2023.

<sup>172</sup> Main Division of Tbilisi Temporary Detention Department, Tbilisi N1 Temporary Detention Isolator (Unit) – 1 person; Main Division of Tbilisi Temporary Detention Department, Tbilisi N2 Temporary Detention Isolator (Unit) – 18 persons; Main Division of Tbilisi Temporary Detention Department, Tbilisi N3 Temporary Detention Isolator (Unit) – 25 persons; Regional Service Department of Shida Kartli and Mtskheta-Mtianeti, Gori Temporary Detention Isolator (Unit) – 9 persons; Regional Service Department of Shida Kartli and Mtskheta-Mtianeti, Khashuri Temporary Detention Isolator (Unit) – 9 persons; Regional Service Department of Shida Kartli and Mtskheta-Mtianeti, Mtskheta Temporary Detention Isolator (Unit) – 8 persons; Regional Service Department of Shida Kartli and Mtskheta-Mtianeti, Dusheti Temporary Detention Isolator (Unit) – 4 persons; Regional Service Department of Samtskhe-Javakheti, Bakuriani Temporary Detention Isolator (Unit) – 5 persons; Regional Service Department of Kvemo Kartli, Marneuli Temporary Detention Isolator (Unit) – 2 persons; Regional Service Department of Kakheti, Telavi Temporary Detention Isolator (Unit) – 7 persons; Regional Service Department of Kakheti, Gurjaani Temporary Detention Isolator (Unit) – 6 persons; Regional Service Department of Imeri, Racha-Lechkhumi and Kvemo Svaneti, Gurjaani Temporary Detention Isolator (Unit) – 7 persons.

<sup>173</sup> The Letter of JSC “Silknet”, 23.09.2023, N1431/08-8.

<sup>174</sup> The Interview given to GYLA by the Representative of the Public Defender’s Office, Gvantsa Chkhaidze.

who had fallen down to stand up, he then helped another woman who had fallen down, at which point he recalled that:

*“Suddenly they (policemen) grabbed my hand and dragged me away. I couldn’t understand the reason for the detention, if I had shouted or insulted, they might have wanted to detain me because of that, but nothing like that had happened. There wasn’t even any formal reason for the detention, people were just detained to scare us.”<sup>175</sup>*

Other citizens also recall similar circumstances.<sup>176</sup>

*“On 8 March, I alone went to the assembly. It was approximately 3:00 o’clock. I had not been there for even 10 minutes, as I was detained very soon. When I arrived, there were a few people remaining. There was no tension either. [...] The freeing up the road had been started by the police and that moment I was detained. I was near Kashueti [Church], at the underground. There were not even any more calls for police measures through the megaphone. I was standing on the road when they starting freeing up the road. When the flow of police started coming, there was no point in staying, so I turned around and was about to leave. I was walking a bit slowly. One policeman caught up with me at this time, he pushed me – [and told me] go a little faster. I turned to him and said with a smile – what’s the necessity, I’m leaving anyway. At this time, the second policeman told me that I was talking a lot and he asked me whether I wanted to be taken away. I asked where and why they should take me. They said they would tell me that after they would transfer me. They took me, but they did not explain the reason for it.”<sup>177</sup>*

The monitoring demonstrated that the police detained people who stayed on Rustaveli Avenue and the adjacent area for no reason and in this way tried to free up the territory from them. The representatives of various political parties were also detained during the rally.<sup>178</sup> Taking into account all of the above, it is clear that the representatives of the law enforcement bodies **exceeded the powers granted to them by law and the detention of the majority of the participants of the rally had an unlawful character.**

## 5.2. The Cases of Ill-treatment during the Detentions

During the March protests, there were also incidents of ill-treatment of detainees.<sup>179</sup> According to the information provided by the Special Investigation Service to GYLA, on 7-9 March 2023, a total of 124 reports were received from different sources regarding possible illegal actions by law enforcement officers concerning the violations of the rights of the participants of the rally and individual journalists. The letter also underlines that on 8 March, the Special Investigation Service opened an investigation into the criminal case concerning the facts of possible exceeding official powers of the individual law enforcement officers against the rally

<sup>175</sup> The interview given to GYLA by participant of assembly Jano Mumladze.

<sup>176</sup> The interview given to GYLA by participant of assembly Davit Samkharadze; The interview given to GYLA by participant of assembly Giorgi Mekvabishvili; The interview given to GYLA by participant of assembly Lado Sopromadze.

<sup>177</sup> The interview given to GYLA by participant of assembly Mukhran Shavadze.

<sup>178</sup> Member of United National Movement Giorgi Mumladze and Former Member Nika Oboladze; Founder and Leader of “Girchi - more freedom” Zura Japaridze.

<sup>179</sup> The Response of the Public Defender’s Office, N 24/4023, 25/04/2023.



participants, under the crime provided by Article 333(3)(b) of the Criminal Code of Georgia.<sup>180</sup>

As per the information of the Public Defender, the participants of the assembly were indicating that they had been subjected to ill-treatment during detention and, also, afterwards, which was manifested in, including: **1. Physical and verbal abuse during the moment of detention;**<sup>181</sup> **2. Physical and verbal abuse during transportation**, for instance, a policeman even spat on one of them.<sup>182</sup> Also, based on the sources, **the threat of resorting to force** is also highlighted.<sup>183</sup> There were **instances of ill-treatment from the members of the Special Tasks forces.**<sup>184</sup> Additionally, the practice of tightly applying single-use plastic handcuffs (clamps)<sup>185</sup> may amount to ill-treatment,<sup>186</sup> as tightly applied handcuffs may cause swelling, bruising, redness, numbness or other nerve damage, which may in certain cases reach the minimum level of severity.<sup>187</sup>

Based on the public information provided by the Public Defender's Office, on 7, 8 and 9 March, the authorized persons of the Public Defender visited 96 people detained during the protests. Some of them indicated the physical violence from the police and employees of the Special Task Forces. With regards to 3 persons, the authorized persons of the Public Defender applied to hotline of the Special Investigation Service.<sup>188</sup>

In addition to this, according to the information from the Public Defender's office, the temporary detention isolator applied to the Special Investigation Service regarding **person X**<sup>189</sup>, **who was received by the temporary detention isolator on 8 March with multiple injuries.**<sup>190</sup>

<sup>180</sup> The Letter of the Special Investigation Service, N 6 23 00007302, 28.04.2023.

<sup>181</sup> The Response of the Public Defender's Office, N 24/4023, 25/04/2023. For example, according to one person, on 8 March, at around 02:00, he was detained in the vicinity of the Kashueti Church, during this he was thrown down and treated degradingly, particularly, he was being dragged on the ground [„აფორთხილეს მიწაზე“] and his clothes were ripped up. He was hit in the neck in the car, after which he experienced severe pain; As per another person, he was detained on 8 March, at around 02:00. During the process of his detention, the representatives of the police and special forces were hitting him on the body; The lawyer of Transparency International Georgia, Viktor Kvitatiani, tells GYLA about one detainee who received a serious injury of the ribs after he had been dragged down during the detention.

<sup>182</sup> *ibid.* One person was detained on March 8 and criminal police officers took him to the police station on Tabukashvili Street. According to him, while he was in the police car, three policemen were cursing, one of them was taking a video and telling him that they would edit the video and upload it on “Facebook”. He was being interrogated in the department, and one policeman continued recording the video, while the other one put his foot on his ribs because he wanted to get the desired testimony. Before being transferred to the temporary detention isolator, a criminal police officer named Zura warned him that if he told anyone about what had happened in the department, he would be hurt and whoever he told “wouldn't be happy” either.

<sup>183</sup> *ibid.*

<sup>184</sup> *ibid.* On March 9, while talking to the authorized representative of the Public Defender, one detained person mentioned that he had come to the Parliament on the side of April 9 street in the night hours of March 9 with a friend. He was watching the participants of the protest throwing stones in the direction of the Parliament, when about 20 special forces came to him and started beating him for no reason, threw him down, hit him with truncheons and legs, and broke his nose. The person said that he wants to start an investigation on the mentioned fact. Another person was interviewed by the representative of the Public Defender on March 8, at which time he mentioned that on March 7, at approximately 11:00 p.m., he was at a peaceful demonstration near the Parliament building, when the so-called “Robocops” physically assaulted him with their hands and truncheons, and then detained him.

<sup>185</sup> The interview given to GYLA by lawyer of Transparency International Georgia Viktor Kvitatiani.

<sup>186</sup> *ibid.* One person mentioned that after the detention, his hands were tied with plastic handcuffs (so-called clamps) very tightly, which caused pain. The clamps were worn for about 3 hours. The person said that he wants to start an investigation in the mentioned facts.

<sup>187</sup> See the international standards regarding the use of clamps in the Report of GYLA, “Beyond the Lost Eye”, 2019, 44-46.

<sup>188</sup> The Response of the Public Defender's Office, N 24/4023, 25/04/2023.

<sup>189</sup> “X” designation is conditional for the purposes of maintaining the confidentiality of a person.

<sup>190</sup> *ibid.*

The ill-treatment from the Special Task Forces was also outlined by the person represented by GYLA, namely, Giorgi Mekvabishvili, who outlines that he saw policemen beating one person. After that, he approached them asking why they were beating him and started recording with his phone. Afterwards, Mekvabishvili was detained administratively. Regarding the incident captured by him, the organization also applied to the Special Investigation Service, provided the video and requested the initiation of the investigation into the exceeding official powers by the police.<sup>191</sup>

The lawyers interviewed by GYLA also point out the cases of ill-treatment of those they represent.<sup>192</sup> In an interview with GYLA, one of the interviewed lawyers recalls the injuries inflicted by law enforcement officers on various demonstrators, including politician Zurab Japaridze:

*“The injuries were inflicted on those persons I represent during their detention. For example, one boy was detained, thrown into the car and made bleed from his nose, beaten with fists. The video of Zura Japaridze and Nika Mosiashvili was also disseminated showing that the Special Task Force beating them and dragging them inside, where they are once again severely beaten with truncheon or kicking. Nika had a concussion, Zura had a multiple head injury and a jaw injury, Dimitri also had head injuries, and he was bleeding from the nose. I applied for the victim status on behalf of Zura Japaridze, which was not granted, I also asked to get acquainted with the case materials and they rejected it either. The same thing happened in the case of Nika Mosiashvili. [...] They were summoned and questioned, but they do not grant them victim status. Actually, these cases are just put “on the shelves”.”<sup>193</sup>*

### **5.3. The Grounds for the Detention and Informing the Detainees of their Rights, Right to Make a Call**

Similar to the developments of 20 June 2019,<sup>194</sup> the law enforcement officers did not improve their approaches with regard to informing the detainees about their rights, many detained people and their representative lawyers point out this shortcoming.<sup>195</sup> Several detainees outlined that they had not been given a chance to exercise their right to make a call.

According to one of the lawyers, the police officers themselves admitted at the hearings that they did not explain the rights to the detainees:

*“They argued that there had been no time for this. However, this is not allowed, the detained person must be immediately informed of the grounds for the detention. The detainee should be informed all his/her rights, for example, that he/she has the right to have a lawyer, to make one call, and so on.”<sup>196</sup>*

<sup>191</sup> The interview given to GYLA by Lawyer of GYLA Ilona Diasamidze.

<sup>192</sup> See, also, the interview given to GYLA by lawyer of Rights Georgia Nino Khetsadze; The interview given to GYLA by lawyer of Transparency International Georgia Viktor Kvitatiani.

<sup>193</sup> The interview given to GYLA by lawyer of Georgian Democracy Initiative Giorgi Tabatadze.

<sup>194</sup> “Beyond the Lost Eye”, Georgian Young Lawyers’ Association, 2020, available: <https://shorturl.at/zFHL5>, [28.09.2023].

<sup>195</sup> The interview given to GYLA by lawyer of Georgian Democracy Initiative Giorgi Tabatadze; The interview given to GYLA by lawyer of GYLA Tsira Jajanashvili.

<sup>196</sup> The interview given to GYLA by Lawyer of GYLA Ilona Diasamidze.

Below are quotes from interviews with other detainees that clearly demonstrate the absence of the reasons and grounds for detention, as well as the limitations on rights and the right to make calls:

*“The basis of the detention was not explained by anyone. During the process of my detention, I was thinking that they were trying to make me leave the assembly. I was sure that they would detain me for half an hour or an hour and then they would let me go. Nor did anyone mention anything about my rights.”<sup>197</sup>*

*“[...] I asked (the police), to inform me regarding my rights and one of them started by saying ‘you have the right to remain silent’ and then ‘got stuck’.. Keep going, keep going, I was telling him and when he could not continue, we both laughed about it. He told me that speaking was not his strong side [...]”<sup>198</sup>*

*“Nobody told me anything about my rights. Nobody even answered the questions I had. My relatives did not know my whereabouts for almost 12 hours [...]”<sup>199</sup>*

One of the lawyers representing the interests of the detained people points out that when the Administrative Detention Report is filled out, the detained persons also sign that they have been informed of their rights. In reality, they are not informed about these rights. They merely signed the report that they had been informed of the mentioned rights and all this is known to them (the rights of the detainees are written on a separate paper in the report). According to the lawyer, in practice neither the mentioned nor the reason for detention is explained verbally.<sup>200</sup>

## 5.4. Deficiencies related to the Drawing up an Administrative Detention Report

### a) The Incorrectly Indicated Time of Detention

In several cases, there was a difference between the actual time of detention and the time indicated in the detention report. According to one of the interviewed lawyers, the actual time of detention and the time indicated in the detention report regarding all persons under her protection did not match, which was also confirmed by video evidence.<sup>201</sup> In particular, according to her, there was an inaccuracy of about half an hour - forty minutes.<sup>202</sup>

### b) Arresting Officers - Falsified Information in the Report

In many interviews given to GYLA there have been a reference that the data of the person indicated as an arresting officer is sometimes – falsified. For example, one of the lawyers mentions how he witnessed the so-called the practices of “arresting officers” distribution. According to him, there was a fictitious process of distributing “arresting officers” for the purposes of drawing up the detention report:

<sup>197</sup> The interview given to GYLA by participant of the assembly Davit Samkharadze.

<sup>198</sup> The interview given to GYLA by journalist Zura Vardiashvili.

<sup>199</sup> The interview given to GYLA by participant of the assembly Lado Sopromadze.

<sup>200</sup> The interview given to GYLA by lawyer of Transparency International Georgia Viktor Kvitatiani.

<sup>201</sup> The interview given to GYLA by Lawyer of GYLA Ilona Diasamidze.

<sup>202</sup> This has been observed in the cases of Giorgi Mekvabishvili, Genad Tchanturia and Zura Vardiashvili.

*“.. As for the events taking place in the police building, I was on the highway. It was complete chaos. **The distribution of “arresting officers” was taking place like in a lottery. The phrases like ‘you will be his/her arresting officer’, ‘you – his/her’ could have been heard and that is how the developments were taking place.** It is like a theater of the absurd. It was difficult for the policemen to draw up these reports. Everyone was on the phones. From there they were dictated what to write and it was taking centuries.”<sup>203</sup>*

The detainees in their interviews with GYLA also referred to **the practice of fictitious distribution of “arresting officers”**.

*“The detentions had a comical nature, the employees of criminal police and patrol department were telling one another: no, you’re the arresting officer, no – you. I started laughing about this and they apologized to me saying they would take care of that. Then a third person was brought to be my arresting officer. It was a very funny situation.”<sup>204</sup>*

*“[...] then one person arrived asking me whether I had had an arresting officer or not. I told him that I did not know, I did not have any. I did not even know what this “arresting officer” meant, then, as I found out, an arresting officer is the one who “detained me” during the assembly. Then he told me, okay than, I will be your arresting officer. He took me to a place where there was a plank on tires and the administrative detention reports being drawn up. He wrote that I was cursing and resisting the police. There were also other things written and he was telling me to sign.”<sup>205</sup>*

### **c) Deficiencies related to Specifying the Grounds of an Administrative Offence**

After reviewing the case materials, it was revealed that Administrative Offence Reports were drawn up in a templated manner and with scant information. Particularly, the Administrative Offence Reports in the materials of the cases are similar and have a general content, mostly, it is not specified what was a particular offence of a person. There were only general indications of swearing and cursing, without specifying in what words the disorderly conduct was expressed.<sup>206</sup> It was sometimes not possible to clarify the content of the above-mentioned, even during the court hearings.<sup>207</sup>

#### **5.5. The Duration of the Detention**

When detaining a person administratively, he/she shall be, at first opportunity but not later than 24 hours, presented to the court. In order to collect evidence, the prescribed period may be extended by not more than 24 hours one time only. In this case, a relevant employee of an authorised body shall substantiate in writing the appropriateness of the extension of the period of administrative detention.<sup>208</sup>

On 7-8 March 2023, the practice of extended administrative detentions was mostly revealed

<sup>203</sup> The interview given to GYLA by lawyer of Georgian Democracy Initiative Giorgi Tabatadze.

<sup>204</sup> The interview given to GYLA by participant of the assembly Imeda Kldiashvili.

<sup>205</sup> The interview given to GYLA by participant of the assembly Jano Mumladze.

<sup>206</sup> The interview given to GYLA by Lawyer of GYLA Ilona Diasamidze.

<sup>207</sup> The interview given to GYLA by lawyer of GYLA Tsira Jajanashvili.

<sup>208</sup> Administrative Offences Code of Georgia, Article 247(1) (2).

in the cases litigated by the civil society organizations.<sup>209</sup> In most cases, this extension was not appropriately substantiated. The lawyers in their interviews with GYLA also make reference to this.<sup>210</sup>

## 5.6. The Right to a Fair Trial in Administrative Offence Cases

### a) Insufficient Time to Collect Evidence

It was problematic that the defence was given inadequate time, only 2-3 hours, to prepare the evidence, when some lawyers met with their clients for the first time in court, they had to consult them, to look for video material and the necessary evidence.<sup>211</sup> The illustrative example below, from an interview given to GYLA by one of the lawyers, shows well the whole chain of this process:

***“The time to obtain evidence was not reasonable.** For example, when G.Ch.’s trial started, I told the judge that I was seeing this person for the first time and I needed time to collect evidence. The judge asked us how many hours we needed. At this time, it was already 8 o’clock in the evening. It was necessary to call the witnesses, also to find out whether they were in the city or nor. Even obtaining the number is problematic at this time, as the phones of the detainees had been seized and they can only communicate with their lawyers in person. We managed to return the phones with motions, then we called the witness, at this time we did not have time and possibility to see live recordings. It was a serious pressure. This cannot be handled by the beneficiaries themselves alone. All this requires serious preparation, both materially and mentally. One person was telling me that when he/she was detained, another particular person was also being detained. Then I was looking for a relative of the latter, because the person himself/herself was also involved in court proceedings, so he was detained and did not have time to send us a video of his detention. That time it is already 11 o’clock in the evening. I told the judge that I had a video, but I could not open it at the hearing. The judge actually helped us in that regard, his/her assistant transferred the videos [in appropriate format] and gave them to us. No beneficiary can ever handle this on their own. The court does not even give the power of evidence if you merely show the video on the phone. If you don’t bring it and do they will not take it into account.*

*We were asking for postponement of the hearings, but the judge did not postpone any of the proceedings for a reasonable period of time. The judge asked us how many hours we wanted. The position of the judge was such that she/he would not postpone the process*

<sup>209</sup> See the Statement of GYLA: [https://www.facebook.com/photo/?fbid=589476913224335&set=a.485094690329225,08.09.2023, \[26.09.2023\].](https://www.facebook.com/photo/?fbid=589476913224335&set=a.485094690329225,08.09.2023, [26.09.2023].)

<sup>210</sup> The interview given to GYLA by Lawyer of GYLA Ilona Diasamidze: “..It is important to undersand what were the objective necessities to **extend the duration of the detention**. If you say that you needed time to collect evidence and at the same time only present to the Court an administrative offence report, administrative detention report, which are filled in by the policeman and present information about the detainee – personal information, which is already accessible to the police and do not present anything else, the question remains regarding the extension of the 24-hour duration. If you say you needed time to collect evidence, such evidence should be presented to the Court.”; The interview given to GYLA by lawyer of Georgian Democracy Initiative Giorgi Tabatadze: “The practice of extending the 24-hour period of detention allegedly to collect evidence should be highlighted, and in reality there is no reason for the extension. In some cases, they present one completely irrelevant video, and in some cases, they don’t even present any new evidence. They abuse the right to extend the detention duration up to 48 hours.”

<sup>211</sup> The interview given to GYLA by lawyer of Transparency International Georgia Viktor Kvitiani; The interview given to GYLA by lawyer of Rights Georgia Nino Khetsadze.

*for a reasonable period of time. She/he could only postpone it for a few hours. Before that, she/he would start other hearings. The court was telling me directly that I had to collect evidence during this period, otherwise the hearing would continue without evidence. Just like that, without any alternative, the judge put us in this situation. At the same time, they [detainees] are detained in the cells of the court. If the judge postpones the hearing, at the time she/he closes the process and you have only 2 minutes before they return the detainee back to the cell. At this time, the beneficiary still remains in the custody.”<sup>212</sup>*

## **b) Time of the Hearing**

The lawyers also expressed their concerns regarding the court’s approach to have the hearings at night. In particular, they did not know exactly what time their hearing would start and they had to wait for hours.<sup>213</sup>

## **c) Right to Receive a Reasoned Decision**

The judge is obliged to base the decision on objective circumstances. The grounds on which the decision is based should be sufficiently clear, which makes it possible for the person to exercise usefully the rights of appeal.<sup>214</sup>

The judicial acts do not include any description that would show what a particular offence was. The decisions of the City Court and the Appellate Court did not provide explicit justification for the questions raised by administrative offenders, by what particular action they committed an administrative offence. Accordingly, the judicial decisions lack reasoning with regard to the arguments of decisive importance for the case, which is incompatible with both the local legislation and the standards set by the European Court of Human Rights.

Especially when a person is being detained during the assembly, when he/she exercises his conventional rights, freedom of assembly and freedom of expression, it has particular decisive importance that reasons provided for decisions given by the domestic courts are not automatic or stereotypical.<sup>215</sup> In this case, the decisions were mostly of a stereotypical nature, since it is not clear what the offender committed individually, in some cases, there is neither an act described nor reference to any victim. For example, the decisions of the court only set out the relevant article of the offence with a general explanation that “offensive remarks were made both towards the police and in general. As well as, [there was] a non-compliance with the lawful order, obstructing the performance of official duties assigned to employees of the law enforcement authorities.”<sup>216</sup>

**Obtaining Objective Evidence by the Court** – the recordings of the body cameras - for the purposes of the public safety the police is entitled in accordance with the Georgian legislation to install/place and use photo-video equipment/resources or other technical equipment

<sup>212</sup> The interview given to GYLA by Lawyer of GYLA Ilona Diasamidze.

<sup>213</sup> The interview given to GYLA by lawyer of Transparency International Georgia Viktor Kvitiani; The interview given to GYLA by lawyer of GYLA Tsira Jajanashvili.

<sup>214</sup> *Hadjianastassiou v. Greece*, no. 12945/87, § 33, 16/12/1994.

<sup>215</sup> *Moreira Ferreira v. Portugal* (No.2) no. 19867/12, § 84, 11/07/2017.

<sup>216</sup> Administrative Cases Panel of Tbilisi City Court, Case #4/1505-23, Judge Nino Shcherbakovi; Administrative Cases Panel of Tbilisi City Court, Case #4/2241-23, Judge Nino Shcherbakovi; Administrative Cases Panel of Tbilisi City Court, Case #4/2242-23, Judge Nino Shcherbakovi; Administrative Cases Panel of Tbilisi City Court, Case #4/1935-23, Judge Nino Ehlukidze; Administrative Cases Panel of Tbilisi Court of Appeals, Case #4/5-631-23, Judge Nino Sharadze; Administrative Cases Panel of Tbilisi City Court, Case #4/2238-23, Judge Nino Shcherbakovi



on their uniform specified by the order of the Minister. Due to the need for neutral evidence, during assemblies, where there is an increased risk of detaining citizens, it is important for law enforcement officers to have body cameras and have them turned on.

The court also does not usually try to obtain objective evidence. Particularly, the court does not require the representatives of the Ministry of Internal Affairs to present objective evidence, e.g. the recordings from the body cameras. The policemen, “arresting officers”, did not have shoulder cameras. As stated by the lawyers, they were requesting the recordings from the body cameras, however, in most cases, the response was that the shoulder cameras had been taken off in order to prevent their damage during the assembly.<sup>217</sup> Some of them also indicated that their cameras had come off, dropped or had not been on.<sup>218</sup>

### 5.7. Imposed Sanctions

The cases of 47 persons, detained on 2-3 March and 7-9 March, whose interests were represented by civil society organizations, were studied and analyzed. It was observed that all of them had been charged by the Ministry of Internal Affairs of committing an administrative offence under Articles 166 and 173 of the CAO, namely, disorderly conduct and non-compliance with a lawful demand of a law enforcement officer. Under both Articles, a verbal warning was applied against 15 persons, a verbal warning was applied against 4 persons under only one article, while regarding the second article proceedings terminated. The fine was imposed on 28 persons. The amount of fine ranged between 2000-2300 GEL, in only one case a person was imposed a fine in the amount of 700 GEL.

### 5.8. Unlawful Processing of Personal Data

In several cases<sup>219</sup> there were instances of violations of personal data. Particularly, the Registration of the Notification contained the names, surnames, year of birth of 43 persons detained on 7 March 2023 and the reason for their detention. The Personal Data Protection Service of Georgia found that the MIA violated the Article 44(1) of the Law of Georgia on Personal Data Protection and imposed a fine of 500 GEL.

Similar deficiencies were also revealed in other cases the GYLA litigated.<sup>220</sup> Lawyers also mention such facts in the interviews given to GYLA:

*“We faced an unlawful processing of personal data in our cases. There was one evidence presented in all cases, where there was information regarding all detained persons (36 detainees): name, surname, date of birth and the articles these people were detained under. We have submitted three complaints to the Personal Data Protection Service. We expect that the fact of unlawful processing of personal data will be established.”<sup>221</sup>*

*“We have such a situation in one case. Attached to the case is a personal report that describes the developments of 8 March with an indication to what specific persons were doing before their detention, and then their names, surnames, dates of birth, identification numbers and articles of their detention.”<sup>222</sup>*

<sup>217</sup> The interview given to GYLA by lawyer of Transparency International Georgia Viktor Kvitiani; The interview given to GYLA by Lawyer of GYLA Ilona Diasamidze.

<sup>218</sup> The interview given to GYLA by Lawyer of GYLA Ilona Diasamidze.

<sup>219</sup> The Decision of the Personal Data Protection Service, #გ-1/126/2023;

<sup>220</sup> Administrative Cases Panel of Tbilisi City Court, Materials of the Case #4/1935-23.

<sup>221</sup> The interview given to GYLA by Lawyer of GYLA Ilona Diasamidze.

<sup>222</sup> The interview given to GYLA by Lawyer of Social Justice Center Mariam Pataridze.