

# Beyond the Lost Eye

Legal assessment of June 20-21 events





# BEYOND THE LOST EYE

## LEGAL ASSESSMENT OF JUNE 20-21 EVENTS

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**The report supervisor: NONA KURDOVANIDZE**

**Authors: GIORGI GOTSIRIDZE  
EKA MAMRIKISHVILI  
TAMAR ONIANI  
NIKOLOZ SIMONISHVILI  
MIKHEIL JAKHUA  
NINO JOMARJIDZE**

**Interviews conducted by: MAKA ABULADZE  
GIORGI ANTADZE  
REVAZ ATCHARADZE  
NINO BAGHASHVILI  
MERI DAUSHVILI  
NINO KATAMADZE**

**Editor: KHATUNA KVIRALASHVILI**

**Tech. editor: IRAKLI SVANIDZE**

**Cover designed by: NINO TSITLIDZE**

**Translation from Georgian: NATO JMUKHADZE**

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## INTRODUCTION

On 20 June 2019, a session of the Inter-Parliamentary Assembly of Orthodoxy was held in the Parliament of Georgia. Sergei Gavrilov, a member of Russian Duma, sat in the chair reserved for the Chair of the Georgian Parliament and delivered a speech in the Russian language. The appearance of the Russian MP in the parliament building sparked massive protests. A part of protesters soon spontaneously gathered in front of the parliament building. Later, the protest entitled “It’s a Shame” took on a relatively organized form and continued in front of the parliament building in Rustaveli Avenue.

Meanwhile, the Ministry of Internal Affairs made a decision to disperse the assembly. The implementation of the above decision escalated into a large-scale violation of the rights of protesters (including those exercising their right to peaceful assembly), journalists and persons accidentally happening to be present at the epicenter of the events. The report analyzes systematic and individual cases of violations of human rights identified by the Georgian Young Lawyers’ Association (hereinafter the GYLA) based on the information available to the organization for the time being. Given the limited mandate and lack of data, the GYLA does not exclude that there were other cases of infringement of human rights on June 20-21, which are not included in the report.

According to official data, June 20-21 events resulted in 275 victims who suffered bodily injuries of various severity, among them 187 were civilians, 15 journalists (according to information obtained from various sources, the number of injured journalists is 32), and 73 employees of the Interior Ministry. 28 persons had to undergo surgery due to the sustained injuries. Of these, 8 underwent an ophthalmologic operation and 4 had a neurosurgical surgery.<sup>1</sup> It has been confirmed that 2 civilians lost their eyes due to the inflicted trauma.

The Chief Prosecutor’s Office of Georgia has launched an investigation into alleged exceeding of official powers by certain employees of the Ministry of Internal Affairs of Georgia (MIA) during the dispersal of the rally participants and demonstrators in Rustaveli Avenue, Tbilisi, on June 20-21, 2019. As of today, three MIA officers have been charged. However, other serious cases of health damage are yet to be investigated. At present, only 7 civilians have been known to be victims. Within the framework of the investigation being carried out by the Ministry of Internal Affairs, 17 protesters have been charged and 67 employees of the Ministry of Internal Affairs have been recognized as victims.<sup>2</sup>

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<sup>1</sup> The letter № 01/13936 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia of August 1, 2019.

<sup>2</sup> The letter №13/70105 of the Chief Prosecutor’s Office of Georgia of October 04, 2019.

## SUMMARY

On June 20, the Ministry of Internal Affairs failed to manage the conflict situation effectively and did not resort to communication, negotiation and dialogue mechanisms to properly control and de-escalate the tension, which posed questions regarding the legitimacy of the force used against peaceful demonstrators. Regardless of whether the decision to disperse the demonstration was lawful, it is clear that the Ministry of Internal Affairs extensively applied unlawful and disproportionate force. Along with tear gas, the Ministry of Internal Affairs unlawfully used rubber bullets. Allegedly, the rubber bullets were used within a wide scope of discretion, without prior consent and instruction, which once again provides for the ground to suppose that the use of rubber bullets was illegitimate. The rubber bullets were applied against those civilians who were not posing any danger. It has also been confirmed that law enforcement officers were firing rubber bullets from close range and in the direction of vital organs.

During the events of June 20-21, 2019, there were numerous cases of physical and verbal abuse by law enforcement officers, and this was carried out in the situation where protesters / passers-by were not a menace, which could have justified the use of excessive force. The cases studied and identified by GYLA show that there was no prerequisite, necessity or urgency for using force at the moment of detentions. In particular, protesters became the victims of ill-treatment while being under effective control of the police. Demonstrators were posing no threat or exerting violence against law enforcement and were not resisting police officers during the detention. Consequently, the force applied by police was excessive and unjustified. The measures implemented by law enforcers have constituted inhuman treatment and the State is obligated to conduct an effective and impartial investigation in this regard.

The evidence at GYLA's disposal shows that persons who were under effective control of law enforcers after the detention were subjected to degrading treatment. The physical and verbal abuse within the so-called "police cordon" arranged at the stairs to the gates of the parliament yard and in the parliament courtyard reached the minimum level of severity, which provides for the ground to suspect that detainees were treated inhumanely. Consequently, the cases must be investigated to identify and impose relevant criminal liability on the perpetrators. The practice of applying single-use plastic handcuffs and the conditions provided in the cells of Tbilisi City Court has generated further questions regarding ill-treatment.

On June 20-21, 2019, there were serious cases of violations of the rights of media professionals, including the right to freedom of expression, the right to be protected against inhuman treatment, and the right to property, as well as the cases of preventing media professionals from carrying out journalistic activities. According to GYLA, the Chief Prosecutor's Office of Georgia, within the framework of the ongoing investigation, is investigating the cases of alleged violations against journalists. However, as of today, the Chief Prosecutor's Office of Georgia has not yet charged anyone for the violations committed against media professionals.

On June 20-21, the Ministry of Internal Affairs extensively applied the practice of administrative detention against participants of the protest rally. As a result, 342 persons were deprived of their liberty and 121 of them were subjected to the most severe punishment - administrative imprisonment. The extent of the practice used confirms that the State is maintaining the current Administrative Offences Code of Georgia as an instrument to unjustifiably restrict the right to peaceful assembly and manifestation. The existing legislation does not guarantee an impartial and fair trial in criminal case proceedings and allows for the fundamental human rights to be violated from the moment of imposing administrative detention to court proceedings in the last instance court, which entails a high risk of subjecting detainees to inhuman treatment.

On June 20-21, the Ministry of Internal Affairs applied administrative detention indiscriminately without evaluating individual circumstances, including against those individuals who were not protesters and/or whose actions did not give rise to any legal grounds for imposing administrative imprisonment. The Ministry of Interior submitted to the Court formal and identical protocols of administrative violations and administrative detention against almost all detainees. In some cases, the protocols neither included any individual circumstances, nor properly specified the place and time of the detention, which overall affected the process of comprehensive and impartial examination of the cases. It was also established that law enforcement officers did not inform detainees of their rights and the grounds of their detentions, which prevented detainees from contacting their lawyers, communicating about their whereabouts and receiving medical services. Another problem with regards to detainees was keeping persons charged with administrative violations in police units, police vehicles and the yard of the police stations. On June 20-21, 260 detainees remained in conditions that involved a high risk of inhuman treatment.

The unconstitutional application of the Administrative Offences Code allowed for the formulaic examination of cases in the court and once again indicated the systemic and practical challenges in handling administrative court proceedings. The examination of the cases has confirmed that instead of examining and evaluating individual circumstances, judges preferred to proceed the cases promptly without due examination of case materials. This has been confirmed by the judges merging several unrelated cases into a single court proceeding. The chaotic system of case distribution and the inability of lawyers to communicate with detainees significantly hindered the implementation of the right of detainees to legal remedy.

The fundamental problem caused by the absence of the procedure for the imposition of the burden of proof and standard of proof in court proceedings was evident in the June 20-21 cases. In all cases (82 cases) studied for the purposes of the report, the main evidence submitted to the court was protocols of administrative detention and administrative violations drawn up by the same person. Both types of protocols contained identical information on an alleged violation. In several cases, police officers appearing before the court trial were not the actual persons arresting detainees for administrative violations,



but judges still considered their statements credible. Although the offence protocols did not contain a precise description of the actions committed by individuals, the court still found the offence to have been committed and did not reflect in the final decisions which action was deemed a violation. At case hearings, judges occasionally expressed negative attitudes against detainees formulated as a result of the media coverage of the protest rally. Furthermore, the sanctions were determined unjustifiably, leaving the impression that judges acted in a preliminarily agreed and arranged manner rather than conducted an individual and independent review of the cases.

## **RECOMMENDATIONS**

### **To Chief Prosecutor's Office of Georgia**

- To conduct an effective, impartial and unbiased investigation in a timely manner in order to identify alleged violations by higher officials, including former Interior Minister Giorgi Gakharia and other persons responsible for the planning and implementation of the dispersal of the manifestation in order to determine appropriate measures of liability;
- To conduct an effective, impartial and unbiased investigation in a timely manner concerning the use of rubber bullets and to determine whether the rubber bullets were used based on a relevant order and, if any, the issuer of the order;
- To conduct an effective investigation into alleged ill-treatment of protesters by law enforcers during and after detention in order to identify alleged exceeding of powers in the latter's actions and impose appropriate measures of responsibility on the violators;
- To grant the victim's status within the scope of the investigation to injured participants of the rally, as well as ordinary passers-by who accidentally happened to be present at the manifestation;
- To conduct an effective, impartial and unbiased investigation promptly into the violations against media professionals and to ensure identification and persecution of the perpetrators by the Prosecutor's Office;
- To grant the victim's status in a timely manner to the injured journalists within the scope of the investigation and apart from abuse of power also to continue the investigation under Article 154 of the Criminal Code, which envisages interference with journalistic activities;
- To periodically inform the public about the progress of the investigation and the actions taken due to the high public interest in the ongoing criminal investigation.

## To Ministry of Internal Affairs of Georgia

- To provide a relevant warning in the manner as prescribed by law in the event of dispersal of a manifestation and prior to using any special means in circumstances of non-imminent danger;
- To give strict instructions to Police in order to adhere to the rules on the use of rubber bullets;
- To provide clear instructions to law enforcers to limit the scope of their authority prior to applying rubber bullets;
- To maintain the record of Robocop equipment in order to easily identify those law enforcement officers who exceed their official powers;
- To apply the communication, negotiation and dialogue resources promptly for de-escalating tense situations;
- To train the MIA employees regarding the functions, responsibilities, and rights of media professionals, especially on their role during a public assembly in order to prevent any interference with the activities of journalists and other media outlets during any public assembly in the future;
- To introduce the relevant standards and to provide training to law enforcement employees so that they can distinguish between media professionals and demonstrators in case of dispersal of manifestations;
- To take effective actions to eradicate the practice of arranging a “police corridor”;
- 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 respond promptly to those detainees who may be complaining about the form and intensity of the handcuffs. With the view to performing their role effectively, to equip the police with special handcuff removing devices;
- To arrest the individuals only on legitimate grounds without excessive use of force;
- To contain a detailed description of the violation in an administrative offence protocol;
- To provide detainees with proper medical services if it is impossible to place them in administrative detention facilities;
- 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;

- To develop a rule regarding the timeframes for storing information on an offence depending on the type of a violation;
- To introduce special software that can automatically delete information about a violation as soon as one year has elapsed since the imposition of an administrative sanction.

#### **To Parliament of Georgia**

- 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 international standards, which will put an end to using the Administrative Offences Code as a political instrument and policing measure;
- To abolish imposing administrative detention as a form of sanction for an administrative violation;
- To apply the procedural rights guaranteed for the accused under the Criminal Procedure Code of Georgia to offences under the Code of Administrative Offences.

#### **To the court**

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

### **METHODOLOGY**

The report evaluates the legitimacy and proportionality of the decision to disperse the protest rally on June 20-21, 2019, the cases of inhuman treatment, the cases of excessive use of force against journalists and interference with journalistic activities. The report also analyzes the practice of imposing administrative detentions and judicial review of cases in connection with the events of June 20-21.

The report has been prepared using various tools:

- **Public information** - GYLA requested public information about the events of June 20-21 from a number of agencies (Ministry of Internal Affairs of Georgia (MIA), Chief Prosecutor's Office of Georgia, Tbilisi City Court and Tbilisi Court

of Appeals, Public Defender's Office, Tbilisi City Hall, LEPL Tbilisi Medical Emergency Center, Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia). In the process of working on the report, the information provided by the Ministry of Internal Affairs was particularly important, yet the MIA refused to disclose specific information concerning several important issues. The Ministry did not provide us with the information on the action plan of the rally dispersal, the identities of persons involved in the event, including those responsible, as well as the number of rubber bullets used. The confidentiality of the information made it difficult to evaluate the decision on the dispersal of the manifestation and to decide whether the measures used were legitimate and proportional.

- **Media Monitoring** - The events of June 20-21 were being broadcast live by a number of media outlets. GYLA addressed TV companies with the request to obtain the continuous video footage shown live. "TV Pirveli" and "Georgian Public Broadcaster" forwarded the respective video footage, however, "TV Imedi", "Maestro" and a new Head of "Rustavi 2" demanded payment of cash in return for the footage. Accordingly, the video materials of the aforementioned televisions were obtained by the authors of the report from open sources. Furthermore, live streaming provided by various online editions and other open domains regarding the events of June 20-21 were also studied within the scope of the report.
- **Case materials of administrative detentions** – With the view to analyzing the practice of applying administrative detentions, the administrative case materials of 50 persons arrested during the events of June 20-21 (protocols of administrative violation and administrative detention, reports and statements produced by police, information retrieved from the database of Information-Analytical Department of the Interior Ministry, and judgments and court trial protocols from Tbilisi City Court and Tbilisi Court of Appeals) were examined. In order to study the court practice, 28 case proceedings (administrative detention protocols, administrative offence protocols, court hearing protocols, and judgments rendered into the cases) against 82 persons conducted by Tbilisi City Court were analyzed. The number of cases distributed and reviewed by the judges is as follows: Ekaterine Jinchvelashvili - 7 cases, Ivane Agniashvili - 5, Tamar Okropiridze - 4; Marie Guluashvili -3; Nino Buachidze - 3; Ana Chkhetia - 2; Natia Togonidze - 2; Tamar Meshveliani-1 and Lela Chincharauli - 1. Furthermore, 6 case proceedings against 41 persons at Tbilisi Court of Appeals (2-2 cases were considered by Judges Levan Murusidze, Nino Kanchaveli, and Shorena Kavelashvili, respectively) were analyzed as well.
- **Interviews** - The team working on the report conducted face-to-face interviews with 66 persons using a pre-designed questionnaire. Among them were 19 representatives of 10 local media outlets (Civil.ge -1; Georgian Public Broadcaster

- 2; OC Media - 1, “Radio Liberty” - 2, “TV Pirveli” - 2; “Adjara Television” – 2, “On.ge” - 3; “Rustavi 2” - 3; “Interpressnews” - 2; “Netgazeti” - 1), who were reporting the events of June 20-21 from the epicenter; 30 protesters / victims / detainees; 2 employees of the Public Defender’s Office; 12 lawyers who provided free legal assistance to persons detained for an administrative violation on June 20-21 (the Georgian Young Lawyers’ Association – 5 lawyers, Human Rights Education and Monitoring Center (EMC) - 2; “Article 42 of the Constitution” - 1; Human Rights Center “-1. Also, 3 private lawyers who provided free legal assistance on behalf of the Bar Association of Georgia). Moreover, the interviews were conducted with three higher officials of different departments of the Ministry of Internal Affairs who were present at Rustaveli Avenue at the moment of the dispersal. Some of the interviewees, including officials of the Interior Ministry, refused to disclose their identities. Therefore, their names and surnames are not given in the report. Since in some cases, using the initials would also involve the risks of disclosing a person’s identity, it was decided to use conventional symbols in the report.

- **Analysis of the legislation and relevant standards** - relevant constitutional and international standards, practice of the Constitutional Court and the European Court of Human Rights were analyzed.

The assessments and conclusions offered in the report have been based on the comprehensive analysis of the information obtained from different sources. The report may contain some controversial facts that have been cited by various sources. Some specific facts that GYLA was not able to verify given its limited mandate have not been incorporated in the report.

# CHAPTER 1

## INCORRECTLY SELECTED TARGET

THE LEGITIMACY OF THE DECISION TO  
DISPERSE THE PROTEST RALLY AND THE  
PROPORTIONALITY OF THE FORCE USED

This chapter analyzes the prerequisites and the legitimacy of the decision taken by the Ministry of Internal Affairs of Georgia to disperse the public rally. In addition to the legitimacy, the chapter also evaluates the lawfulness and proportionality of the force used.

### 1.1. The chronology of June 20 events

On 20 June 2019, a session of the Inter-Parliamentary Assembly of Orthodoxy was held in the Parliament of Georgia. Sergei Gavrilov, a communist party member of Russian Duma, sat in the chair reserved for the Chair of the Georgian Parliament and delivered a speech in the Russian language.<sup>3</sup> The appearance of the Russian MP in the parliament building sparked massive protests. A part of protesters soon spontaneously gathered in front of the parliament building, while the opposition political parties and a group of citizens were protesting the occurrence inside the parliament building. Eventually, the Assembly session was terminated and the participants, including Sergey Gavrilov, left the Parliament building.<sup>4</sup>

Later, the protest demonstration entitled “It’s a Shame” took on a relatively organized form in front of the parliament building in Rustaveli Avenue at 19:00.<sup>5</sup> The assembly did not have a prominent leader, was peaceful and participants demanded the resignation of Irakli Kobakhidze, the Speaker of the Parliament of Georgia.

At about 18:33, the units of the Ministry of Internal Affairs of Georgia started gathering in the yard of the parliament building.<sup>6</sup> The number of law enforcers was increasing in parallel with the progress of the protest rally. According to the official data, there were up to 5,000 MIA employees in total at various times in Rustaveli Avenue rotating and replacing each other.<sup>7</sup> By the time the assembly was opened, law enforcement officers had already been deployed on Rustaveli Avenue near the entrance to the parliament building as well as in the yards of the State Chancellery and the parliament building.

Various demands were spontaneously voiced during the protest rally. At about 20:53 pm, Gigi Ugulava, a member of the political union “European Georgia,” addressed protesters<sup>8</sup> and presented the main demands of the assembly: resignation of Irakli Kobakhidze, Speaker of the Georgian Parliament, Giorgi Gakharia, Minister of Internal Affairs and Vakhtang Gomelauri, Head of the State Security Service. He said, “The victory of the Georgian people today must be firm and peaceful.” For meeting the demands, Gigi

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<sup>3</sup> “Netgazeti”, Available at: <https://netgazeti.ge/news/373319/> [Last accessed: 12.09.2019].

<sup>4</sup> “Netgazeti”, Available at: <https://netgazeti.ge/news/373537/> [Last accessed: 12.09.2019].

<sup>5</sup> The same above.

<sup>6</sup> A special edition of “Kurieri”. Available at: <http://bit.ly/2mFaaM3> [Last accessed: 29.09.2019]

<sup>7</sup> The letter MIA 1 19 02105576 sent to GYLA by the Ministry of Internal Affairs of Georgia on 09.08.2019.

<sup>8</sup> “Netgazeti”, a live broadcast from the public rally, 07:49 min; Available at: <https://bit.ly/2kNbZVY> [Last accessed: 12.09.2019].

Ugulava set the deadline for the ruling party until the end of the day. Another demand was to introduce a proportional electoral system.<sup>9</sup>

At 21:00, a member of the National Movement, Grigol Vashadze addressed protesters.<sup>10</sup> He declared that if the Georgian authorities did not surrender to the will of the Georgian population, “civil disobedience” would be inevitable.”

At 21:07, Nika Melia, a member of the United National Movement, appealed to protesters with the following words: “Why do we have to stand in front of the parliament and why cannot we stand inside the parliament building? [...] I believe, If someone who has to resign, fails to resign within an hour, we should peacefully with raised hands enter the parliament building [...]”<sup>11</sup> At 21:17, Nika Melia addressed protesters again “I want to ask you again, does Gavrilov have the right to sit in this building but Georgian people do not even have the right to stand in the parliament yard?”<sup>12</sup> He declared that if the Georgian authorities did not fulfill the protesters’ demands in ten minutes, they would enter the Parliament building peacefully with their hands up. These words were followed by cheers and excitement of some protesters.<sup>13</sup>

During the public rally, the majority of the protesters were not able to hear clearly the speakers due to technical flaws.<sup>14</sup> A few minutes later, the microphones were off.<sup>15</sup>

## 1.2. The first episode of escalation of the situation

In the interval between 21:50-21:54, the situation at the protest rally escalated. Some of the protesters, who were standing near the stairs to the Parliament building, jointly started forcing the police cordon, while several others managed to overcome the police cordon and the metal constructions located in front of the Parliament building.<sup>16</sup> Following the escalation of the situation at 21:54, further forces were added to the police cor-

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<sup>9</sup> The same above, 08:33 min.

<sup>10</sup> A special edition of “Kurier”; Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019]. Also, Netgazeti live broadcast from the public rally. Available at: <https://bit.ly/2kNbZVY> [Last accessed: 12.09.2019].

<sup>11</sup> The video footage forwarded by Georgian Public Broadcaster, 21:07 min; Also, Netgazeti live broadcast from the public assembly, 20:49 min. Available at: <https://bit.ly/2kNbZVY> [Last accessed: 12.09.2019].

<sup>12</sup> The same above, 57:51 min.

<sup>13</sup> The same above, 1:02:56 min.

<sup>14</sup> Netgazeti live broadcast from the public assembly, 49:07 min. Available at: <https://bit.ly/2kNbZVY> [Last accessed: 12.09.2019]. Also, an interview provided by the rally protester “D” to GYLA.

<sup>15</sup> Netgazeti live broadcast from the public assembly, 56:07 min. Available at: <https://bit.ly/2kNbZVY> [Last accessed: 29.09.2019].

<sup>16</sup> A special edition of “Kurier”, 00:50am. Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019]. Also, the video footage provided to GYLA by the Georgian Public Broadcaster, which shows some protesters break through the police cordon and move to the parliament gates.



don at the arches of the parliament building.<sup>17</sup> Police, manually as well by means of the police cordon, were trying to fight off those who were trying to storm into the courtyard of the parliament building.<sup>18</sup>

At 21:56, some protesters started throwing plastic bottles at law enforcement officers.<sup>19</sup> Approximately 5 rally participants climbed the pedestal of the parliament building.<sup>20</sup> In order to overpower the police cordon, rally participants started dismantling the metal fences<sup>21</sup> and removing the metal constructions away from the territory of the parliament.<sup>22</sup> Some protesters managed to seize law enforcers' shields and rubber batons and passed them from hand to hand.<sup>23</sup> The police cordon at the entrance to the parliament failed to de-escalate the situation. A part of the protesters continued to seize shields, helmets, and batons of the law enforcers standing at the arches of the parliament.<sup>24</sup> Moreover, a group of protesters managed to pull over several law enforcers off the cordon,<sup>25</sup> yet no physical abuse was reported: *"If say a special force officer was pulled over, the protesters would create a corridor to let him walk through untouched and to prevent him from being assaulted. Protester would tell each other not to touch him."*<sup>26</sup>

A considerable part of protesters was not involved in the processes taking place on the stairs to the parliament building and continued to protest in a peaceful manner.<sup>27</sup> Initially, those who were standing at the bottom of the stairs were not even aware that some protesters were trying to storm into the parliament yard: *"Nothing was happening down the stairs, it was calm. On the contrary, people would meet, talk, and exchange ideas. No one could even realize that someone was going to storm into the parliament building [...] those standing in the back rows were not aware for a long time what was happening in the frontiers and what caused the disturbance. The situation escalated between the police and citizens standing on the stairs of the parliament. I have no information why the tension started. I, personally, did not hear any calls to exacerbate the situation or to*

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<sup>17</sup> Public Broadcaster, the TV program "Moambe", 21: 54-21: 59. Also, an interview given to GYLA by Giorgi Garsevanishvili, head of the Citizens' Reception Department of the Office of the Public Defender of Georgia: *"Initially, the police officers deployed at the entrance to the Parliament did not have any special equipment; later, the riot police appeared equipped with shields, helmets and other special equipment."*

<sup>18</sup> The same above, also, a special edition of "Kurier", 00:52am. Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019].

<sup>19</sup> The same above, 00:56am.

<sup>20</sup> The same above, 01:02am.

<sup>21</sup> The same above, 01:00am.

<sup>22</sup> The same above, 01:05am.

<sup>23</sup> The same above, 01:08 and 01:13am.

<sup>24</sup> The same above, from 21:58 to 22:42. Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019].

<sup>25</sup> The same above, 24:14 and 22:20.

<sup>26</sup> The interview given by Davit Shekiladze, a rally participant, to GYLA.

<sup>27</sup> The Georgian Public Broadcaster, the TV program "Moambe", 22:25-22:28.

enter the parliament.”<sup>28</sup>

### 1.3. The first alleged use of tear gas and subsequent events

The Ministry of Internal Affairs does not confirm that active special measures were used until 20 June, 23:50. However, the live footage provided by various media outlets clearly shows a white smoke at 22:22 near the special task force cordon, which protesters, as well as journalists present at the scene reporting the events, referred to as tear gas and which finally made them retreat for a few seconds.<sup>29</sup> It was likely the first episode when the MIA used tear gas, but the Interior Ministry refuses to confirm the same.

At 22:33, the situation on the stairs to the Parliament calmed down and until 23:23, the assembly remained relatively peaceful.<sup>30</sup> At about 23:23, the live footage of various media outlets depicted certain noise among the protesters and the words “it’s a provocation, don’t rise to it” can be heard. By that time, law enforcement officers had appeared on the pedestal in front of the parliament building, after which the situation escalated dramatically.<sup>31</sup> The video footage analyzed for the report does not contain any specific leads about the cause of the protesters’ dissatisfaction, however, according to several journalists and protesters, the irritation was caused by law enforcers on the pedestal who were throwing water onto the protesters: *“It was about half-past eleven when I heard a noise coming from the left side of the parliament, under the Georgian flag. I saw a policeman wearing a black t-shirt with the inscription MIA who was splashing water from the bottle onto the rally participants. This caused the irritation among the demonstrators and compelled them to attack the riot police.”*<sup>32</sup> *“I don’t know the exact reason why the situation got escalated. As I learned later, the protesters were splashed with water and that served as the prerequisite.”*<sup>33</sup> *“There were several policemen wearing black T-shirts with the inscription MIA on the pedestal to the parliament. Some were giving us bottled water, while others were throwing water onto the protesters, which led to the unrest. After the incident, people started forcing the riot police.”*<sup>34</sup> Khatia Dekanoidze, a member of the Unit-

<sup>28</sup> The interview given by Davit Shekiladze, a rally participant, to GYLA.

<sup>29</sup> A special edition of “Kurier”, from 22:21. Available at: <https://bit.ly/2k1xqm3> [Last viewed: 12.09.2019]. Also, a journalist of the Georgian Public Broadcasting (GPB) noted in the program Moambe at 23:28pm that the Ministry of Internal Affairs specified the information that it was not tear gas.

<sup>30</sup> Public Broadcaster. The program “Moambe”. Also, a special edition of “Kurier”, 22: 42–23: 23. Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019].

<sup>31</sup> Public Broadcaster, The program “Moambe”, 23:23. Also, a special edition of “Kurier”, Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019].

<sup>32</sup> The interview given by journalist Tornike Koshkadze to GYLA.

<sup>33</sup> The interview given by the rally participant “A” to GYLA.

<sup>34</sup> The interview given by rally participant “B” to GYLA.

ed Movement, says that the irritation of the protesters was caused by the MIA officers standing on the pedestal and throwing water onto the rally participants.<sup>35</sup>

Once the situation got tense, the protesters on the stairs in front of the parliament again took active actions and tried to break through the police cordon.<sup>36</sup> Seizing shields, police batons and helmets of law enforcers, throwing various items and pulling police officers over the cordon continued intensely. In response, law enforcement officers were using batons, shields and a “live chain”.<sup>37</sup> *“They were responding to the actions of the protesters by swinging their batons and hitting the assembly participants.* At some point, I noticed that members of the Special Force Unit took an offensive.”<sup>38</sup>

By that time, the situation at the entrance of the parliament yard had become uncontrollable. Those wishing to deliver a speech at the public rally could do it only through the loudspeakers as the connection between speechmakers and protesters was lost: *“The most important thing is that the communication between the protest rally, politicians and public figures was interrupted.”* Davit Khvadagiani recalls that Gigi Ugulava and Sergo Ratiani were urging protesters *“Don’t push forward, go back,”[...] In fact, the situation had become unmanageable due to the loss of the connection.*<sup>39</sup>

At 23:56, law enforcers began firing the tear gas.<sup>40</sup> Subsequently, the use of active special means at various times continued intensely.

#### **1.4. The legitimacy of the decision to disperse the rally**

The right to freedom of association is crucial to the functioning of a democratic society, as well as an essential prerequisite for other fundamental freedoms and for the protection of human rights. As one of the forms of expression, the right to assembly and manifestation promotes the development of interests and aspirations of a free and democratic society and each of its members.<sup>41</sup>

It is the duty of the State to take efforts to respect and promote the rights of each individual and refrain from restricting their rights where it is not expressly permitted under

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<sup>35</sup> A special edition of “Kurier”, 2:50:32. Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019].

<sup>36</sup> Public Broadcaster; The TV program “Moambe”, 23:49.

<sup>37</sup> The same above.

<sup>38</sup> Public Broadcaster, The program “Moambe”, also, a special edition of “Kurier”, 23:40, Available at: <https://bit.ly/2k1xqm3> [Last accessed: 29.09.2019], as well as the interview given by Kote Grigalashvili, a cameraman, to GYLA.

<sup>39</sup> The interview given by Davit Khvadagiani, a rally participant, to GYLA.

<sup>40</sup> Public Broadcaster, The program “Moambe”, also, a special edition of “Kurier”, 23:57, Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019],

<sup>41</sup> Guidelines on Freedom of Peaceful Assembly – Strasbourg- Warsaw, 9 July 2010, Studyno. 581/2010, CDLAD(2010)020 – European Commission for Democracy Through Law (Venice Commission), OSCE/ODIHR p.7.

international law. The obligation to protect the rights is a positive obligation of the State, which requires the State to guarantee and at the same time protect the rights.<sup>42</sup>

The Constitution of Georgia protects the right to assemble publicly and unarmed without prior permission.<sup>43</sup> Authorities may terminate an assembly only if it assumes an unlawful character.<sup>44</sup> Accordingly, when the State decides to disperse an assembly, it is important to assess the legal character of the assembly itself.

The European Convention on Human Rights and the Constitution of Georgia ensure the right to peaceful assembly. In practice, the only type of events that do not qualify as “peaceful assemblies” is those in which the organizers and participants intend to use violence.”<sup>45</sup> “Violence by a small group of participants shall not render automatically the assembly non-peaceful. A demonstration is considered peaceful if organizers express their intention of peace, and this presumption is valid until there is firm and clear evidence that the organizers or participants intend, advocate, or cause imminent violence.”<sup>46</sup>

Law enforcers shall be obliged to distinguish between peaceful and non-peaceful participants: the mere existence of isolated violence or violent acts by some participants during a manifestation shall not in itself form a solid basis for restricting the right of civilians to peaceful assembly.<sup>47</sup> Law enforcers should not treat gathered people uniformly while arresting or dispersing an assembly (as a last resort).<sup>48</sup> The use of force against protesters who are not among those resisting cannot be justified even though a small group of demonstrators may be confronting the police.<sup>49</sup>

On June 20, the Ministry of Internal Affairs made a decision to disperse the entire public rally. According to the Interior Ministry, “The protest rally on Rustaveli Avenue, on June 20, 2019, at 19:00 was initially legitimate. However, at about 21:50, based on the calls made by individual politicians to storm into the parliament, protesters launched organized violence that continued nonstop, which did not abate and over time became more and more intense and large-scale. The protesters started throwing various solid objects at law enforcement officers. The rally participants were forcefully pushing the police force to break into the parliament building, hitting police officers with batons and seizing their protective equipment, shields, and helmets. The protesters managed to pull

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<sup>42</sup> European Court of Human Rights, *PlattformÄrztzefür das Leben v. Austria*, application No. 10126/82, 21 June 1988.

<sup>43</sup> Article 21 of the Constitution of Georgia.

<sup>44</sup> The same above.

<sup>45</sup> European Court of Human Rights, *Cisse v. France* (2002), para.37.

<sup>46</sup> European Court of Human Rights, *Christian Democratic People’s Party v. Moldova (No.2)* (2010), p..23.

<sup>47</sup> European Court of Human Rights, *Ziliberberg v. Moldova* (2004, admissibility), p.10, citing *Ezelin v. France* (1989), para. 34.

<sup>48</sup> European Court of Human Rights, *Solomou and Others v. Turkey* (2008).

<sup>49</sup> European Court of Human Rights, *Izci v. Turkey* judgment

over approximately 30 law enforcers from the live chain of police officers and physically assaulted them. Consequently, there were not only urges to violence, but they escalated into resistance. Thus, after 21:50, due to the intensive violent actions by protesters, the assembly went beyond the constitutional limits of freedom of expression and manifestation and gave rise to the legitimate grounds for its termination.”<sup>50</sup>

The Ministry of Internal Affairs also notes that law enforcement officers did not use active special means (tear gas, non-lethal weapons, and water cannons) for about 2 hours, in particular, until 23:50, and were trying to beat off the violent actions of protesters by the so-called “live chain” of police. The Ministry of Internal Affairs also declares that “the estimated number of the protesters prior to the dispersal had amounted to 12,000 to 15,000 persons, and after the start of the dispersal it was 5,000 to 7,000 (at different times).” In an interview with GYLA, an official of the Ministry of Internal Affairs noted that “at least 500 persons were extremely active within the front rows and they were replacing each other. Possibly, they were more than a thousand. Their participation in the violations was pre-organized. Other protesters might also have been aggressive, but those in the frontiers were between 500 and 1,000 persons.” One of the demonstrators noted that the number of those involved in an active face-to-face confrontation with the police was about 300 persons: “...A very small part of the whole rally was gathered on the stairs to the parliament, approximately 300 persons. Other participants of the manifestation were just hanging around and looked surprised at seeing others trying to storm into the parliament [...]”<sup>51</sup>

**Consequently, based on the information received from various sources, including, the video footage, it has been confirmed that a large majority of the rally participants were not involved in the processes happening on the stairs to the parliament and were protesting peacefully.**<sup>52</sup> According to the established practice of the European Court of Human Rights, “the use of violence by a small number of participants in an assembly (including the use of inciteful language) does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly, and any intervention should aim to deal with the particular individuals involved rather than dispersing the entire event.”<sup>53</sup>

On 20 June, the Ministry of Internal Affairs decided to disperse the entire rally without distinguishing between peaceful and aggressive participants of the assembly.

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<sup>50</sup> The reply letter №MIA 1 19 02105576 sent by the Ministry of Internal Affairs of Georgia to GYLA on 09.08.2019.

<sup>51</sup> The interview given by the rally participant “C” to GYLA.

<sup>52</sup> Public Broadcaster, the program “Moambe”, 22:25- 22:28.

<sup>53</sup> OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §164.

### 1.5. Was the resource for the dialogue exhausted?

According to the established practice of the European Court of Human Rights, even if an assembly becomes violent, but authorities have a reasonable time to negotiate with protesters / organizers, they should try their best and start a dialogue with appropriate efforts to ensure the protection of peaceful protesters.<sup>54</sup> The Court views negotiations as an important part of the State's positive obligation to the right of assembly and manifestation, which can help to avoid disorder and ensure the safety of peaceful civilians.

According to the Code of Conduct of MIA Employees during Assemblies and Manifestations,<sup>55</sup> law enforcement officials shall **separate/distinguish** between peaceful participants and potential perpetrators;<sup>56</sup> In addition, law enforcers shall carry out **negotiations** with assembly organizers / participants to avoid using force to the maximum extent possible and to de-escalate situation peacefully.<sup>57</sup> The Code also provides that law enforcers **shall warn** participants of an assembly in advance upon any possible use of force and other special means and allow them a reasonable time to comply with the demand.<sup>58</sup>

The Ministry of Internal Affairs **indicates that 21:50**<sup>59</sup> was the moment when the legitimate grounds for the dispersal of the event emerged. However, the use of active special measures against protesters began at 23:56.<sup>60</sup> During that period, between 22:42 and 23:23,<sup>61</sup> the assembly was held in a peaceful manner. The things got tense again at 23:23. Accordingly, it must be determined to what extent the Ministry of the Interior had anticipated the situation to escalate until 23:23 so that it could start the negotiations with the protesters or warn them against the use of force in the event of escalation.

**It is obvious that the time indicated by the Ministry of Internal Affairs as the moment of the emergence of the legitimate ground for the dispersal does not actually coincide and is an hour and 33 minutes earlier than the actual launch of the tear gas. Therefore, during the above time interval, especially given that the assembly remained peaceful for about 40 minutes, the Ministry of the Interior was able to communicate with the**

<sup>54</sup> European Court of Human Rights, *Frumkin v. Russia* (2016) paras. 128-130.

<sup>55</sup> Approved by Order №1002 of the Minister of Internal Affairs on 30 December 2015.

<sup>56</sup> The same above. Article 4, paragraph 2(b).

<sup>57</sup> The same above. Article 4, paragraph 2(a). Article 6 specifies the possibility of a dialogue before, during and after the launch of an event.

<sup>58</sup> Article 7, paragraph 1 of the Order №1002 of the Minister of Internal Affairs of 30 December 2015.

<sup>59</sup> The letter MIA 1 19 02105576 sent by the Ministry of Foreign Affairs of Georgia to GYLA on 09.08.2019. In addition, as it was mentioned, at 22:07, an official statement of the MIA was disseminated which was urging the rally participants to give up being violent.

<sup>60</sup> Public Broadcaster, the program "Moambe", also, a special edition of "Kurier", 23:57, Available at: <https://bit.ly/2k1xqm3> [Last accessed: 29.09.2019],

<sup>61</sup> Public Broadcaster, the program "Moambe", also, a special edition of "Kurier", 22:42- 23:23, Available at: <https://bit.ly/2k1xqm3> [Last accessed: 29.09.2019],

**organizers / protesters of the rally especially that the actions of the protesters allowed the possibility for the dialogue.<sup>62</sup>**

The sources available to GYLA at the time of elaborating the report confirm that the Ministry of Internal Affairs failed to properly manage the conflicting situation and did not use communication, negotiation and dialogue resources to ensure de-escalation. It should be noted that the Interior Ministry did not disclose to GYLA the action plan (which shall include actions and measures to be carried out during an assembly, such as routes, alternative scenarios in case of emergency, information associated with risks) approved by the Minister of Internal Affairs on June 20-21.<sup>63</sup>

Therefore, GYLA was not able to assess whether the Ministry of Interior had the possibility, given the resources mobilized at the parliament building,<sup>64</sup> to give a relevant warning to protesters before the dispersal of the rally. **However, the dynamics of the development of the events clearly indicate that the Ministry of Internal Affairs did not have a relevant action plan for the assembly dispersal, the Ministry failed to take appropriate measures to avoid inflicting the injuries on those who were not involved in violent actions, which casts doubts over the legitimacy of the force used against peaceful demonstrators. As part of the investigation, it is important to determine whether the Ministry of Internal Affairs could use the negotiation resource and distinguish between peaceful / non-peaceful demonstrators.** The investigation must also establish whether the MIA security action plan envisaged the possibility to conduct negotiations and give a relevant warning.<sup>65</sup> Since the action plan is classified, GYLA has found it difficult to answer the above questions.

### **1.6. Providing a warning prior to the dispersal**

The law provides for the obligation to give an advance warning regarding an imminent dispersal of an assembly. At 22:04, the then Minister of Internal Affairs, Giorgi Gakharia, announced at the parliament building that the calls to attack the state institution and the implementation of such acts was a tragedy and that perpetrators would be punished with extreme severity.<sup>66</sup> At 22:07 and 22:32, media outlets disseminated an official statement of the MIA urging the protesters to stop the violence immediately, refuse to respond to provocations, comply with the demands of police, and leave the territory of

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<sup>62</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), Warsaw, 8 July 2019 CDL-AD(2019)017. Para. 176. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)017-e) [Last accessed: 24.09.2019]

<sup>63</sup> The letter MIA 1 19 02105576 of the Minister of Internal Affairs of 09.08.2019. Also, Article 5 of the Order №1002 of the Minister of the Interior of 30 December 2015.

<sup>64</sup> The letter MIA 1 19 02105576 sent by the Ministry of Internal Affairs to GYLA on 09.08.2019.

<sup>65</sup> The Article 5 of the Order №1002 of the Minister of the Interior of 30 December 2015.

<sup>66</sup> A special edition of "Kurieri", 22:29, Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019],

the parliament peacefully, otherwise, the agency would use the measures envisaged by law.<sup>67</sup> According to the Ministry of Internal Affairs, the agency addressed the protesters via media outlets and urged them to comply with the official demands on June 20 at about 22:04 and 22:37, and at 22:59, it was Kakha Kaladze, Tbilisi Mayor, who made the similar appeal.<sup>68</sup>

**It is most likely that the statements made through the media outlets failed to reach the protesters and did not inform them upon the imminent danger. Therefore, the announcements made in the above manner did not ensure the standard established by law.**

### **1.7. The intensity of the use of special means and obligation to issue a prior warning**

The law does not envisage the sequence of using active special means, though it explicitly states that coercive measures can only be used where necessary and to the extent that shall ensure the achievement of legitimate objectives. Using water cannons, rubber bullets and tear gas simultaneously or in parallel against participants of an assembly shall not be permitted.<sup>69</sup> When using any coercive measure, a police officer must try to cause minimal and proportionate damage. In any specific case, the form and extent of a coercive measure to be used shall be determined based on the nature of a violation and specifics of an individual perpetrator.<sup>70</sup>

Before applying special coercive measures, police officers shall issue a relevant warning. Along with the warning, participants of an assembly shall be allowed a reasonable time-frame (at least 30 minutes) to comply with lawful demands. However, the law provides for an exception where the force can be used without issuing a prior warning. This is believed to be a situation where any delay may cause encroachment on the life and/or health of a person and/or police officer, or other serious consequences, or if such a warning can be unjustifiable or impossible in a given circumstance.<sup>71</sup>

With regards to the obligation of issuing a prior warning, the Ministry of Internal Affairs, on the one hand, refers to the information disseminated by the press service of the Ministry of Internal Affairs through media, as well as the statements made by the Minister of Internal Affairs and the Mayor of Tbilisi via the media outlets, and on the other hand,

<sup>67</sup> A special edition of “Kurieri”, 22:29, Available at: <https://bit.ly/2k1xqm3> [Last accessed: 29.09.2019], A live broadcast of “TV Pirveli” from the protest rally, 1:23am. Available at: <https://bit.ly/2lWRc2p> [Last accessed: 12.09.2019], also, a statement made by MIA. Available at: <https://bit.ly/2XnMFrO> [Last accessed: 12.09.2019]

<sup>68</sup> The reply letter MIA 1 19 02105576 of the Minister of Internal Affairs of 09.08.2019.

<sup>69</sup> Article 9, paragraph 1(p) of the Order №1002 of the Minister of the Interior of 30 December 2015;

<sup>70</sup> The Law of Georgia “On Police”, Article 31.

<sup>71</sup> Article 7 of the Order №1002 of the Minister of Interior of 30 December 2015.



states that pursuant to the Law of Georgia “On Police,” there was no obligation to immediately warn demonstrators,<sup>72</sup> as “given the intensity and magnitude of the violence, before the use of tear gas and rubber bullets, issuing a warning on the spot was impossible and pointless, as there was a real threat of encroaching on the life and health of police officers, as well as the intrusion into the parliament building.”<sup>73</sup> An official of the Ministry of Internal Affairs noted that prior to the use of special measures about 500 to 1,000 demonstrators were trying to break through the police cordon, which resulted in the injury of up to 60 police officers.<sup>74</sup>

On June 20-21, the Ministry of Internal Affairs used tear gas as well as rubber bullets and water cannons. According to the confirmed information, the Ministry of Internal Affairs started using active special means on June 20 at 23:56 without a prior warning. The use of coercive measures of varying intensity continued for several hours.

### **1.8. The use of force on 20 June from 23:56 to 21 June 01:44 am**

The video footage disseminated by several media outlets has confirmed that, before the tear gas was fired, a part of protesters had been trying to push the police cordon to storm into the courtyard of the parliament building, while another part of protesters was throwing plastic bottles at law enforcers. Some participants of the rally managed to seize the equipment of law enforcers and pulled several police officers off the police cordon.<sup>75</sup> The law enforcers were wearing “Robocop” equipment (armour, helmets, gas helmets, shields). The Robocop equipment, due to its weight, made it difficult for the protesters to break through the police cordon. Besides, law enforcers were using police batons against any demonstrator approaching the cordon. It is noteworthy that at that very moment a vast majority of the rally participants remained within the scope of a peaceful assembly.

At 23:56, law enforcement officials started an intensive use of special coercive means. Between 23:56-23:58, the tear gas was fired at least 20 times.<sup>76</sup> Law enforcers fired tear gas in the direction of the Artist’s House. This did not manage to dissolve the protesters gathered on the stairs to the parliament but managed to drive away peaceful protesters

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<sup>72</sup> The Law of Georgia “On Police”, Article 31(3) – “Before using physical force, special means and firearms, a police officer shall warn a person and allow a reasonable period of time to carry out a lawful order unless the delay may cause a harm to life and health of a person and / or a police officer or other severe consequences, or if such warning is unjustifiable or impossible in a given situation.”

<sup>73</sup> The reply letter MIA 1 19 02105576 sent to GYLA by the Minister of Internal Affairs of 09.08.2019.

<sup>74</sup> The interview given by a MIA official to GYLA.

<sup>75</sup> A special edition of “Kurieri”, 2:29 am, Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019],

<sup>76</sup> Public Broadcaster, the TV program “Moambe at 21:00”, a live broadcast from the public assembly. Available at: <https://bit.ly/2kyUPvr> [Last accessed: 12.09.2019].

standing on the motorway.<sup>77</sup> “[...] the gas shells were fired in the rear, as firing the gas in the front rows would have caused the crowd jostle and much damage. [...] the tear gas dispersed not the protesters on the stairs, but those gathered far from the stairs. The gas weakened the back of the protesters fighting on the stairs,” an official of the Interior Ministry said in an interview with the GYLA.

**Although the tear gas disturbed only the peaceful protesters standing on the motorway lane, it was the only effective and at the same time the least severe measure to tackle the situation that had developed by 23:56. According to evidence at the GYLA’s disposal, law enforcers adhered to the rules of firing tear gas.<sup>78</sup> The gas capsules were fired in the air to minimize the risk of serious injury to protesters.**

At 00:03-00:06 am, the firing of the tear gas was resumed, leading to the dispersal of the protesters crowded on the stairs to the entrance of the parliament building.<sup>79</sup> At 00:07 am, the tear gas was fired once again, but in about two minutes, a part of the protesters began to return to the stairs of the parliament.<sup>80</sup> The video footage released by media outlets clearly shows that by 00:07am, the entrance of the parliament and the stairs had been completely freed from the protesters. However, the Ministry of Internal Affairs did not start occupying Rustaveli Avenue after 00:07 am and allowed the protesters to return to Rustaveli Avenue. If done otherwise, it would have significantly prevented the likelihood of a renewed escalation in front of the parliament building and would have enabled law enforcers to use less coercive measures against those protesters who were no longer enjoying the right to a peaceful assembly. In contrast, law enforcers failed to use the time effectively and waited until the protesters returned to be confronted once again with the tear gas. The actions of the Ministry of the Interior during the above-mentioned period indicate the impracticality of their action plan, which definitely complicates to evaluate the proportionality of the force subsequently used.

By 00:11 am, a part of the protesters continued throwing plastic objects at law enforcement officers, and police fired the tear gas for the fourth time already without a prior warning.<sup>81</sup> At the same time, police started firing rubber bullets without a warning, and at 01:30 am, the use of the rubber bullets became more and more intense.<sup>82</sup>

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<sup>77</sup> The same above.

<sup>78</sup> ABDULLAH YAŞA AND OTHERS v. TURKEY, par. 7 and 48.

<sup>79</sup> Public Broadcaster, the TV programm “Moambe at 21:00”, a live broadcast from the public assembly. Available at: <https://bit.ly/2kyUPvr> [Last accessed: 12.09.2019].

<sup>80</sup> The same above.

<sup>81</sup> The same above.

<sup>82</sup> The same above.

### 1.8.1. Unlawful use of rubber bullets

Based on the evidence obtained by GYLA, it has been confirmed that law enforcers started using rubber bullets at 00:11 am. Police were using two special means simultaneously, which is a violation of the law. Along with the fact that law enforcers started using rubber bullets together with other measures, it is likely that police officers were shooting rubber bullets within a broad scope of the authority without explicit instructions, which is obviously a violation.<sup>83</sup>

According to Order №1002 issued by the Minister of Internal Affairs of Georgia, “as per the principles of lawfulness and proportionality and in the light of existing risks, the order to use non-lethal weapons, including non-lethal shells/bullets, in the event of dispersal of an assembly shall be issued with the consent of a higher supervisor of the unit participating in the event and if any delay may cause a real threat to the life and / or health of a person – by the head of the unit participating in the event.”<sup>84</sup>

In an interview with GYLA, an official of the Interior Ministry noted that during the night of June 20-21, law enforcers were acting within the scope of wide discretion when firing rubber bullets: “...**no centralized instruction regarding the use of rubber bullets had been issued**, though there was a reference concerning the use of tear gas and any subsequent use of water cannons [...]. The first gas shells were followed by a second and more aggressive attack by protesters, the intensity of which was growing and growing. I, as one of the leaders and the participant of the battle, was standing on the front line and watching the situation, I found myself witnessing the developments, and post factum realized that rubber bullets had been used. The police had to shoot rubber bullets as it was a force majeure circumstance and it was necessary to protect their own life and health and their colleagues in an emergency situation, as well as to defend the institution which the protesters were trying to storm into. “

The Ministry of Internal Affairs, with the pretext of minding the interests of the investigation, did not provide the GYLA with the information on the number of rubber bullets used. Consequently, it is not possible to estimate the precise extent of their use. Consequently, the investigation must determine whether there was the consent of an authorized person to use rubber bullets and if yes, such consent must be considered an unlawful order, as, given the circumstances, there were no prerequisites for firing rubber bullets. If the consent had not been issued (as the official of the Ministry of the Interior indicates), then, we have the case of using rubber bullets within a wide discretion without prior consent or instruction, which again constitutes the unlawful use of rubber bullets.

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<sup>83</sup> The same above.

<sup>84</sup> Annex to Order №1002 of the Minister of Internal Affairs of Georgia, dated 30 December 2015, Article8 (d);

### **1.8.2. Using rubber bullets from close range, in the direction of vital organs and / or against persons not posing threat**

**Even if there had been legal grounds for the use of rubber bullets (which did not occur on June 20-21), the cases studied by the GYLA prove that rubber bullets were fired against those who were not posing a menace.<sup>85</sup> It has been also confirmed that on June 20-21, officers of the Ministry of the Interior used rubber bullets disproportionately from close range and in the direction of vital human organs.**

Although rubber bullets are considered non-lethal weapons, their use in certain circumstances or in a particular manner can cause death.<sup>86</sup> Where a rubber-casing metal bullet can create deadly risks, then the same restrictions that are used with regards to a firearm must apply.<sup>87</sup> According to the International Network of Civil Liberties Organizations, any inappropriate use of kinetic impact shells (rubber bullets, plastic bullets) may cause death, permanent disabilities, and blindness. According to the organization, the impact of the kinetic bullet in the head, throat, and torso may result in the same consequences.<sup>88</sup> Police should avoid shooting the kinetic impact bullets at a close range or in the direction of vital organs unless the target is attempting to blow a life-threatening attack at a police officer.<sup>89</sup>

In order to minimize the impact of injury or damage, the bullet should be aimed at the lower extremities of the body (except for life-threatening cases when aiming the rubber bullet is allowed on any part of the body). The indiscriminate shooting of the kinetic impact bullet may pose a risk of injuring a person who may not at all be the target of the shooter. Therefore, the kinetic impact bullet shall be fired at a specific perpetrator, and not indiscriminately in the direction of the masses of people.<sup>90</sup>

“A law enforcement officer shall be prohibited from using non-lethal weapons and non-lethal shells against a person standing twenty meters away, as well as in the areas of vital organs (head, neck, abdomen, genitals) except for the cases where any delay may cause encroachment on the health and life of a person or a group of persons or any other seri-

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<sup>85</sup> See Tea Meskhishvili's case. news.on.ge a live broadcast from the public assembly, from 30 minutes. Available at: <https://bit.ly/2IP8I95> . [Last accessed: 12.09.2019].

<sup>86</sup> Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 2015, page 23. Available at: <https://bit.ly/2kntVGM>[Last accessed: 12.09.2019]. Also, the European Court of Human Rights in the case of “KILICI v. TURKEY” found a violation of Article 3 of the Convention due to the police firing rubber bullets at an assembly.

<sup>87</sup> Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 2015 page 138.

<sup>88</sup> Available at: <https://bit.ly/2IXbmt9> [Last accessed: 12.09.2019].

<sup>89</sup> Tzekov v Bulgaria, p. 65. Available at: <http://hudoc.echr.coe.int/eng?i=001-72546> [Last accessed: 12.09.2019].

<sup>90</sup> Amnesty International, Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 2015 page 157.

ous consequences.”<sup>91</sup>

The Interior Ministry has confirmed the use of three types of rubber bullets on the night of June 20-21: 12-caliber rubber case - pellets and single projectile and a 38mm rubber shell (pellets); the search of a 12-caliber rubber bullet in the open domain of the Internet has confirmed that it is an orange rocket-shaped bullet.<sup>92</sup> The latter visually coincides with the large orange bullet used on June 20-21.<sup>93</sup> As for the 38mm rubber shell (pellets), its visual description available in the open sources<sup>94</sup> coincides with those black rubber balls that were also used on the night of June 20-21.<sup>95</sup>

In connection to the 12-caliber rubber shells, the manual issued by the manufacturer of the same type of bullets indicates that the bullet can be lethal if fired from the distance less than 10 meters. In case of aiming at the vital organs from the less distance than 10 meters, the restrictions as per firearms shall apply.<sup>96</sup> Thus, with respect to both types of rubber bullets, it was particularly important for law enforcement to adhere to the principles of strict necessity and proportionality.<sup>97</sup>

One of the officials of the Ministry of Internal Affairs interviewed by the GYLA does not rule out the fact of shooting rubber bullets from less distance than 20 meters. According to him, the 20-meter distance requirement may be ignored when the life and health of police officers are in danger. The MIA official refers to the Law of Georgia “On Police”, which does not provide for any distance requirement when using a rubber bullet to fight back an attack against a police officer. However, the requirement is included in the Order №1002 issued by the Minister of Internal Affairs. In this regard, the MIA representative makes the following explanation: “The guideline contains the instruction on the use of a rifle. The order and instruction may be neglected and the provisions of the Law “On Police” can come into play that envisage using coercive measures in case of urgent necessity. The issues such as a prior warning and compliance with the distance requirement were of secondary importance, as the protection of the life of police officers was the number one task on the agenda.”<sup>98</sup>

**Just after 00:11am on June 21, when police began using the rubber bullets extensively,**

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<sup>91</sup> Annex to Order №1002 of the Minister of Internal Affairs of Georgia, dated 30 December 2015, Article 9 (1) (c).

<sup>92</sup> Available at: <https://bit.ly/2kO2bLB>. [Last accessed: 12.09.2019].

<sup>93</sup> “TV Pirveli”, a special edition of the “News of the Day”. Available at: <https://bit.ly/2kttLNQ>. [Last accessed: 12.09.2019].

<sup>94</sup> Available at: [http://www.okcrich.com/contents.php?contents=p\\_rubber](http://www.okcrich.com/contents.php?contents=p_rubber) [Last accessed: 12.09.2019].

<sup>95</sup> “TV Pirveli”, a special edition of the “News of the Day”. Available at: <https://bit.ly/2kttLNQ>. [Last accessed: 12.09.2019].

<sup>96</sup> Available at: <http://www.sterling.com.tr/en/Urunler/Detay/57/sterling-less-lethal-12-cal-rubber-slug>

<sup>97</sup> United Nations General Assembly Resolution 34/169 of 1979 on the Code of Conduct for Law Enforcement, Article 3.

<sup>98</sup> The interview given by a MIA official to GYLA.

law enforcement officers were equipped with Robocop equipment: armour, helmets, and shields, which protected them from any deadly threat to life and health. Moreover, no shooting of life-threatening objects at law enforcement took place near the parliament building. During other incidents as well, police were wearing protective equipment, and demonstrators were not throwing any dangerous objects (e.g. stones, metal bars) in their direction. In addition, in a number of cases, rubber bullets were fired at persons who were not posing a menace, which excluded the necessity for using the rubber bullets.<sup>99</sup> *“What I was able to see from the distance was that the rubber bullets were fired directly at the torsos of people. As for the distance, initially, the bullets were fired towards the stairs of the parliament and then in the proximity of Malkhaz Machalikhshvili protest tent. Some participants got their backs bruised as a result of rubber bullets. I was not hit by a rubber bullet but I saw some protesters injured and bleeding due to the impact of the bullet. Those law enforcement officers who were firing rubber bullets were wearing helmets while others were not and their faces were visible.”*<sup>100</sup>

For example, the video footage taken by “on.ge” shows that a special force officer shoots a rubber bullet from the distance closer than two meters in the direction of Tea Meskhishvili’s leg, a participant of the protest rally, who is standing near the central entrance of the parliament and is not violent against police.<sup>101</sup> According to Tea Meskhishvili, 9 small pellets were recovered from her leg as a result of the medical intervention. The shooting damaged her thigh tendons and nerve endings. The shootings from the distance closer than 20 meters have also been reported in relation to other persons.<sup>102</sup>

In the video footage provided by “on.ge,” one can hear a shot followed by a man falling to the ground. There is also smoke two meters away from the down-fallen man, which suggests that the rubber bullet was fired from very close range.<sup>103</sup> “PalitraNews” released footage depicting the shooting of a man in the lower part of his body from about 3-4 meters away. The footage shows a man approaching the police cordon and verbally insulting a law enforcement officer. In response, one of the law enforcers standing in front of the parliament building shoots a rubber bullet towards the area of his groins from about 3-4 meters. Slightly away from the same man, within the permissible distance of 20 meters, another man receives a rubber bullet into his face area, which leaves him injured in his left eye.<sup>104</sup>

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<sup>99</sup> See Tea Meskhishvili’s case. news.on.ge a live broadcast from the public assembly, from 30 min. Available at: <https://bit.ly/2IP8I95>. [Last accessed: 12.09.2019].

<sup>100</sup> The interview given by “D” to GYLA.

<sup>101</sup> The live broadcast of news.on.ge from the public rally from 30 min. Available at: <https://bit.ly/2IP8I95>. [Last accessed: 12.09.2019].

<sup>102</sup> The interview given by Tea Meskhishvili to GYLA.

<sup>103</sup> A live broadcast of news.on.ge from the public assembly from 30 min. Available at: <https://bit.ly/2IP8I95>. [Last accessed: 12.09.2019].

<sup>104</sup> PalitraNews. Available at: <https://bit.ly/2IVKOsg> [Last accessed: 12.09.2019].

According to “Z”, Nika Gvaramia was accompanied by 4-5 security guards. They were standing on the stairs to the parliament building, approximately 5-7 meters away from the law enforcement officers wearing Robocop equipment. One of the bullets fired from that distance hit Giorgi Sulashvili, a security guard at Rustavi-2, in his left eye.<sup>105</sup> The fact of firing a rubber bullet at a close range in the direction of Nika Gvaramia was depicted by a Facebook live of the former director general of “Rustavi-2”.<sup>106</sup>

19-year-old Mako (Maia) Gomuri lost her eye as a result of a rubber bullet. Mako Gomuri recalls the details of the incident as follows.<sup>107</sup> Having finished her shift at 23:45, she heard from strangers in Marjanishvili metro station that the protest rally on Rustaveli Avenue was dissolved using tear gas. Mako’s two older sisters were taking part in the manifestation. She called one of them and agreed to meet up near Freedom Square. Mako Gomuri met her sister at the exit to Freedom Square metro station. At 00:45am, Mako Gomuri went to meet her other sister who was in the vicinity of Tbilisi Classical Gymnasium №1. Once they reunited, Mako Gomuri and her sister decided to go down to a pharmacy shop to buy some water and face masks. At about 01:30am, they returned to the classical gymnasium, but could not find their sister anywhere. They walked towards the parliament building and spotted her sister who they were looking for. The minute Mako Gomuri reached the area where journalists were stationed, the shooting began. Mako squatted to protect herself from bullets. Then, Mako Gomuri, together with her sisters, sheltered behind the April 9 memorial. At 01:40am, the shooting was reopened, due to which Mako Gomuri rushed to Freedom Square metro station, but on her way, she came across officers in Robocop equipment approaching the Parliament building. Mako Gomuri got frightened and retreated to the April 9 memorial where together with her sisters started urging the protesters to dissolve. A few minutes later, while Mako Gomuri was running towards Kashueti Church, she noticed two young men carrying a man of 50 whose face was covered in blood. Suddenly, the young men tripped and dropped the man on the stairs of the parliament. Mako’s sister hurried to help them with the man. In the meantime, Mako Gomuri was standing with her left side facing the parliament building, and her sister was standing on her right. Nothing was there between the Special Force officers and Mako Gomuri’s left side. It was the moment when Mako Gomuri was shot with a rubber bullet, as a result of which she lost her eye.<sup>108</sup>

Apart from the fact that the cases studied by GYLA clearly indicate the use of rubber bullets in the circumstance of non-imminent threat, it is obvious that the Ministry of Interior misinterpreted the Law “On Police”. Although the Law of Georgia “On Police” does not provide for a distance restriction for the use of rubber bullets, police must be guided by a subordinate act - the Minister’s Order- which explicitly requires the adher-

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<sup>105</sup> The interview given by “Z” to GYLA.

<sup>106</sup> <https://www.facebook.com/nika.gvaramia.129/videos/1266511926850464/>

<sup>107</sup> “on.ge” - “Girl with Green Headphones”, available at: <https://bit.ly/2msdyU> [Last accessed: 12.09.2019].

<sup>108</sup> TV program “Formula of Politics”, available at: <https://bit.ly/323InU5> [Last accessed: 01.11.2019].

ence to the distance limit of 20 meters. According to the case-law of the European Court of Human Rights, “only legislative provisions which describe the powers conferred on the police in the use of force are not sufficient in themselves to make the shooting of rubber bullets a police action. The European Court, therefore, finds it impossible to offer the level of protection of the physical integrity of individuals that is required in contemporary democratic societies in Europe.”<sup>109</sup>

Therefore, the use of the rubber bullets was unlawful as they were fired from the closer distance than 20 meters in the direction of head, face, and torso, when the life and health of law enforcement officers were not in danger.

### **1.9. The use of force on 21 June from 01:44 am to 04:20 am**

**The Ministry of Internal Affairs continued to use the force without a prior warning on June 21 from 01:44 am to 02:59 am. Law enforcers applied rubber bullets and water cannons along with the tear gas.**

At 01:44 am, a unit of the Special Forces appeared from the direction of Freedom Square followed by a water cannon vehicle and sound resonators. At 01:47 am, a group of riot police fired tear gas at the protesters who had gathered at Hotel Tbilisi Marriott by that time. Again, no prior warning on the dispersal had preceded the shooting of the tear gas capsules. At the same time, law enforcers on Rustaveli Avenue fired water cannons against protesters without issuing any prior warning.<sup>110</sup>

At 02:08 am, the police cordon was deployed in the territory adjacent to Kashueti Church, near Jorjadze Street turning. The demonstrators were gathered near Tbilisi Marriott Hotel.<sup>111</sup> At 02:10 am, law enforcers once again fired tear gas in the direction of Tbilisi-Marriott.<sup>112</sup> At 02:21 am, the demonstrators who were gathered near Tbilisi Marriott began chanting in unison “Georgia,” “Georgia” and started in the direction of the police forces deployed near Kashueti Church. From 02:24 to 02:44 am, the law enforcement officers positioned near Kashueti Church kept shooting the tear gas capsules at the demonstrators near Tbilisi Marriott without a prior warning.<sup>113</sup> During that period, the firing of the tear gas at the demonstrators was interrupted and resumed from time to time.

At 02:56am, law enforcers resumed shooting the tear gas against the protesters near

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<sup>109</sup> KILICI v. TURKEY. P. 35. Available at: <http://hudoc.echr.coe.int/eng?i=001-188109> [Last accessed: 12.09.2019].

<sup>110</sup> “Public Broadcaster”, “Moambe at 21:00”, a live broadcast from the public assembly. Available at: <https://bit.ly/2kyUPvr> [Last accessed: 12.09.2019].

<sup>111</sup> The same above.

<sup>112</sup> The same above.

<sup>113</sup> The same above.



Tbilisi Marriott, again without prior warning.<sup>114</sup> Once the tear gas was fired, the law enforcers at Kashueti Church switched on the recording: “Please dissolve, otherwise the measures envisaged by law will be used in order to restore public order and civil peace. Please take away children, women and the elderly from the areas of unrest.” The warning was first sounded at 02:59am, an hour and 15 minutes later after law enforcement had cleared up the territory in front of the parliament building from protesters. It is noteworthy that the riot police had stopped firing tear gas capsules against the protesters near Tbilisi Marriott just a minute earlier. Following the warning, the Special Forces resumed firing water cannons against the protesters at 03:00 am. The above warning was voiced four times in total between 02:59 and 03:01am.<sup>115</sup>

**Thus, at 01:44 am, while law enforcers were marching from Freedom Square towards the parliament building, they had sufficient time and proper means to switch on the loudspeakers and alert people gathered near the parliament building and give them reasonable time to dissolve. There is no evidence suggesting that law enforcement officers on Rustaveli Avenue were attacked by protesters, so the failure to issue a warning cannot be justified by the existence of an imminent threat. Of note, a part of law enforcers was using the special means - water cannons- for the first time and prior to their launch, it was especially important to warn the protesters upon any consequences.**

Police, while marching from Freedom Square and upon reaching the territory near Kashueti Church, had sufficient time to alert protesters regarding their plans. During that time, the protest rally participants were not resisting actively against the Special Forces, which might have excluded any possibility of issuing a relevant warning. The resistance by some of the protesters at that moment was expressed in several of them lying on the asphalt in front of law enforcement or standing with their backs to them.<sup>116</sup> The protesters were not armed, posed no threat to the life and health of law enforcers, and there was no imminent threat of storming into the parliament yard. Consequently, police failed the chance to give a relevant warning.

No warning was issued at 2:10 am either when law enforcers were standing in the vicinity of Kashueti Church and protesters nearby Hotel Tbilisi Marriott. Therefore, since there was a considerable distance between the police and the protesters, the life and health of special task force officers were not under a life-threatening danger.

The use of rubber bullets from close range continued during the above period as well. For example, when law enforcement officers equipped with special ammunition were deployed in Alexander Chavchavadze Street at 4:20 am, a rally participant was shot in his

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<sup>114</sup> The same above.

<sup>115</sup> The same above.

<sup>116</sup> A live broadcast of “TV Pirveli” from the protest rally, 01:14am, Available at: <https://bit.ly/2IWRc2p> [Last accessed:12.09.2019].

eyebrow. He recalls the incident as follows: *“I was at the outset of Alexander Chavchavadze Street when I was allegedly hit by a rubber bullet in the area of my eyebrow from a close distance, presumably from about 4-5 meters; I am sure about it as I heard the sound of the shot from a very close distance. I got seriously injured as a result of the rubber bullet, I got the fractured bones in my eye and forehead, which damaged my eyesight [...] once I was hit by the bullet, I started bleeding, a guy helped me and took me to Chavchavadze Street where I asked the police for help. The police took me to Rustaveli Avenue from where I was rushed to a hospital in an ambulance car.”* At 04:30 am, he was depicted by the video camera of “TV Pirveli” when he was being carried by two police officers near the parliament building.

**Consequently, the use of tear gas and water cannons without a relevant warning was unlawful on June 21 at 01:44 am.<sup>117</sup> In the same period, the unlawful use of rubber bullets continued.<sup>118</sup>**

#### **1.10. Problem with the identification of law enforcers**

The investigation cannot be conducted effectively unless it is identified which law enforcement officer exceeded the official powers. Robocop equipment, for example, makes it difficult to identify law enforcement officers who fired rubber bullets in violation of the law. According to an official of the Ministry of Internal Affairs, *“shields, helmets, Robocop or T-shirts that we use bear no surnames. The passive means such as helmets, shields or police batons are not strictly recorded, and therefore, for example, to find a shield and then identify the holder in a logbook is impossible.”*

It is true that indicating the identity on the shield, helmet and Robocop equipment may not be justified due to safety reasons of law enforcement, yet it is important to strictly record any special means by assigning it a reference number that will enable investigative bodies to easily identify any relevant law enforcement officer.

#### **1.11. Summary**

On June 20, a small group of protesters went beyond the scope of a peaceful assembly, yet the Ministry of Interior failed to properly manage the tense situation and did not use the resources of communication, negotiation, and dialogue, which generated the grounds for the doubts regarding the legitimacy of the force used against protesters. Regardless of whether the decision to disperse the public assembly was lawful, it is clear that the Ministry of Internal Affairs largely used the force unlawfully and disproportionately. Along with the tear gas, the Interior Ministry unlawfully applied rubber bullets.

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<sup>117</sup> The law of Georgia “On Police” Article 31(3).

<sup>118</sup> See the previous paragraph.

The rubber bullets were allegedly used within the scope of wide discretion, without prior permission and instructions. The rubber bullets were fired against those protesters who were not posing any danger. It has been also confirmed that law enforcers fired rubber bullets at a close range and in the direction of vital human organs.



# CHAPTER 2

## VIOLENCE IN THE NAME OF PUBLIC ORDER

DETENTIONS AND INHUMAN TREATMENT IN  
THE LATER PERIOD

The Ministry of Internal Affairs arrested 342 persons under the Administrative Offences Code of Georgia in connection with the events of June 20-21, 2019. The detention of protesters / passers-by began after 10pm on June 20<sup>119</sup> and continued up until 9am on June 21. The evidence obtained by the GYLA shows that in certain cases, law enforcement officers used disproportionate force and physical and verbal insults against protesters / passers-by during the arrests. This was confirmed by an official of the Public Defender, who noted that police officers were particularly aggressive during detentions: “Frequently people were kicked or insulted verbally or otherwise.”<sup>120</sup> The rally participants and passers-by were subjected to different forms of inhuman treatment, including punching, kicking, beating with police batons, and application of plastic handcuffs.<sup>121</sup> There were also verbal insults and degrading treatment against detainees, which seriously damages the dignity of detainees.

Prohibition of torture, inhuman and degrading treatment is one of the fundamental values in a democratic society with the primary purpose to protect the dignity and physical integrity of an individual.<sup>122</sup> In order for ill-treatment to fall within the scope of Article 3 (prohibition of torture), it must attain a minimum level of severity. The assessment of this minimum depends on all the circumstances of the case, such as the duration of treatment, its physical or mental effects and, in some cases, the sex, age, and state of health of the victim.<sup>123</sup> Ill-treatment that reaches the minimum level often involves actual bodily injury, physical or mental suffering. However, treatment is held to be “degrading” when it comes to arousing in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it is such as to drive the victim to act against his will or conscience and falls within the scope of Article 3.<sup>124</sup> Where upon the detention a detainee has injuries, the State shall be obliged to prove what has caused the injury, and the failure to do so shall bring responsibility in accordance with Article 3 of the Convention.<sup>125</sup> When assessing the proportionality of the force used against a person, attention shall be paid to the circumstances in which the force was used. Where the use of physical force was not strictly necessary in the light of the person’s conduct, such force may degrade human dignity and constitute a violation of the right under Article 3 of the Convention.<sup>126</sup>

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<sup>119</sup> “Public Broadcaster”, “Moambe at 21:00”, 20 June, 22:25. Available at: <http://tiny.cc/gi5acz> [Last accessed: 12.09.2019]. Also, a special edition of “Kurier at 21:00,”Rustavi-2”, 22:24, Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019]

<sup>120</sup> The interview provided by a representative of the Public Defender to GYLA.

<sup>121</sup> “TV Pirveli”, a special edition of the “News of the Day”, from 04:04:00 am, available at: <http://tiny.cc/u34acz> [Last accessed: 12.09.2019]

<sup>122</sup> *AbdullahYasa and Others v. Turkey*, no. 44827/08, para. 37, 16/07/2013.

<sup>123</sup> *El-Masri v. The Former Yugoslav Republic of Macedonia* [GC], no. 39630/09, para. 196, 13/12/2012.

<sup>124</sup> *Gäfgen v. Germany*, [GC], no. 22978/05, para. 89, 01/06/2010.

<sup>125</sup> *Rivas v. France*, no. 59584/00, § 38, 01/04/2004.

<sup>126</sup> *Timtik v. Turkey*, no. 12503/06, §§ 47-49, 09/11/2010, *Izci v. Turkey*, no. 42606/05, para 55, 23/07/2013.

According to the information provided by the Chief Prosecutor's Office of Georgia,<sup>127</sup> the investigation is underway into the fact of alleged exceeding of official powers by some employees of the Ministry of Internal Affairs using violence or a weapon during the dispersal of the participants of the protest rally and manifestation on Rustaveli Avenue in Tbilisi on June 20-21, 2019.<sup>128</sup> Furthermore, according to the information released by the Prosecutor's Office, one of the MIA employees was charged with a criminal offence for abusing physically a person detained for an administrative violation.<sup>129</sup> In the course of the ongoing investigation, the State must ensure a timely and effective investigation of ill-treatment of protesters / passers-by, including the facts listed below, and the effective persecution of perpetrators.

### **2.1. Cases of ill-treatment on Rustaveli Avenue and in the adjacent territory**

Following the dispersal of the protest rally on June 21, 2019, protesters relocated to Rustaveli Avenue, upon which the police began massively detaining them on Rustaveli Avenue and in the surrounding areas. In certain cases, demonstrators became the victims of inhuman treatment by police during the detention.

Multiple cases of excessive force applied by law enforcement against protesters during the arrests have been depicted by video footage recorded by various media outlets. The video footage released by the "Georgian Public Broadcaster" shows a man holding his hands up, and several police officers approaching him. One of the policemen who is wearing a black T-shirt with the inscription "POLICE" starts talking to the demonstrator (the content of their dialogue cannot be heard in the footage). Although the behavior of the man is not posing a threat to the police, they nonetheless apply unnecessary force; in particular, a Special Force officer dressed in black who is standing at the left side hits the man with his left hand.<sup>130</sup>

The footage disseminated by the same TV station shows another case of ill-treatment, namely, the video footage shows several law enforcement officers chasing and trying to arrest a rally participant on Rustaveli Avenue. In the process of the detention, one of the policemen wearing a black T-shirt with the inscription "POLICE" hits the man with his left elbow in the face. Further, the footage shows the police taking the detained protester towards the Opera House. One of the police officers, wearing a blue T-shirt and a vest with yellow reflective stripes, catches up with the detainee and suddenly kicks him from the back.<sup>131</sup> In the next episode, the same footage shows that law enforcement officers

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<sup>127</sup> The letter №13/53835 of the Chief Prosecutor's Office of Georgia of 24 July 2019.

<sup>128</sup> The Criminal Code of Georgia, Article 333 (3) (b).

<sup>129</sup> The statement released by the Chief Prosecutor's Office of Georgia, available at: <http://tiny.cc/on3ccz> [Last accessed: 12.09.2019].

<sup>130</sup> Public Broadcaster, "Moambe at 21:00", June 20, 2019, 04:05 am.

<sup>131</sup> The same above, 04:21 am.

apply unnecessary and excessive physical force against a person while forcing him into the police vehicle, namely, a law enforcement officer equipped with special ammunition punches him in the face. Due to the impact of the blow, the rally participant bends over, after which, the same officer hits him with his right hand on the head.<sup>132</sup>

Another fact of disproportionate force used against a protest rally participant has been depicted by the video footage disseminated by Radio Liberty. The footage shows an almost unconscious down-fallen demonstrator surrounded by police officers who are physically assaulting him. The police officers give up beating the man once one of them notices that the journalist is recording the incident and refers to others with the following words *“we’re being filmed, we’re being filmed”*.<sup>133</sup>

Brothers Irakli and Davit Khvadagiani, in the conversation with the GYLA, spoke about the excessive use of force during their detention. The police arrested them both on Rustaveli Avenue at around 4-5am.<sup>134</sup> According to Irakli Khvadagiani, *“first, one of them [police officer] caught up with my brother and the minute he was going to hit him in the head with the police baton, I managed to cover my brother and shouted “don’t hit him, why are you doing this” and he stopped, and at that very moment, the baton hit me.”*<sup>135</sup> Irakli was hit with the baton in his eye, causing the fractures of the bones. Irakli’s brother witnessed the fact of injuring his brother’s eye with the baton. *“I remember I was forced to lie down on the ground, and while I was falling I saw him [a police officer] hit my brother with the baton in the area where his eye is injured now. This was happening in less than no time, but I still remember when Irakli was falling [to the ground], a policeman kicked him in the face like a ball and that very moment he started bleeding, the blood even splashed on my hands, which sent me to a panic, as I thought he died,”* recalls Davit Khvadagiani.<sup>136</sup> The brothers Khvadagiani were physically and verbally abused by 4-5 law enforcers.<sup>137</sup> According to Davit Khvadagiani, once he fell to the ground, police officers jumped on him and started beating him severely. Eventually, the police officers applied plastic handcuffs on both of them and drove them to an MIA unit in a police car.

Dimitri Pochkhidze, a rally participant, and his wife decided to leave the public assembly once the riot police started to appear from Freedom Square in the direction of Rustaveli Avenue. Pochkhidze was getting into his vehicle parked near the Public Library when police officers arrested him.<sup>138</sup> *“Approximately 10 officers rushed to me and started arresting me. [...] they [the police officers] pushed me to the ground and started beating*

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<sup>132</sup> The same above, 04:25 am.

<sup>133</sup> Radio Liberty, “How a protester is treated,” Available at: <https://bit.ly/2IVTLBQ> [Last accessed: 12.09.2019].

<sup>134</sup> The interview given to GYLA by Irakli Khvadagiani, a rally participant.

<sup>135</sup> “Radio Liberty”, “Irakli Khvadagiani: “The attack on us resembled a military action scenario,” Available at: <https://bit.ly/2lyCK0F> [Last accessed: 12.09.2019].

<sup>136</sup> The interview given to GYLA by Davit Khvadagiani, a rally participant.

<sup>137</sup> The interview given to GYLA by Irakli Khvadagiani, a rally participant.

<sup>138</sup> The interview given to GYLA by Dimitri Pochkhidze, a rally participant.

*and kicking me, one of the policemen was holding my neck so tightly that I started to suffocate. I kept asking again and again what they wanted, why they were arresting me, but the questions would fly them into a rage. Finally, one of them pulled my leg and started dragging me,”* - Pochkhidze recalls.<sup>139</sup> After that, the police officers applied the handcuffs and took him to a MIA unit.

Nikoloz Sharvashidze, another participant of the protest rally, was also subjected to inhuman treatment by police. After the physical abuse, he was left with multiple bruises to his body and face.<sup>140</sup> Moreover, Sharvashidze witnessed the battery of his friend: *“He [my friend] was already detained and was not resisting at all, he was handcuffed and while a police officer was taking him away, another policeman assaulted him physically.”*<sup>141</sup>

## **2.2. The use of excessive force on Pikris Gora and the surrounding territory**

On the morning of June 21, 2019, just after about 6:00 am, protesters moved from the Philharmonic to Kostava Street. Some of them proceeded to Heroes Square, while others remained in Kostava Street. Law enforcement officials followed them. The video footage released by the Georgian Public Broadcaster shows that at 6:40 am the protesters are running back from Heroes Square towards Kostava Street and together with the protesters gathered on Kostava Street head for the First turn of Kostava Street.<sup>142</sup> The law enforcers follow them. Police arrested a number of protesters on Pikris Gora and in the surrounding areas. Law enforcers arrested protesters on the street, as well as in the entrances to residential houses or on the roof of the garages. In certain cases, the protesters were subjected to physical abuse by police officers as well as degrading treatment even though the detainees were no longer resisting law enforcers. An eyewitness in an interview with a journalist of “Rustavi 2” recalls the detention of the protesters on Pikris Gora on June 21 as follows: *“I looked out from the window, the yard [was] full of police, they [the police] were chasing the guys, twisted their hands, the neighbours were yelling at them ‘shame on you, shame on you, what are you doing’; some guys were dragged out of the building entrances; police would storm into the entrances of the residential houses, and pulled the protesters outside and twisted their hands.”*<sup>143</sup>

“F”, along with several other protesters, found a shelter in the entrance of a residential building. The police detained them right there. According to “F”, *“police officers insulted the detainees physically and verbally while dragging them out of the building.”*<sup>144</sup> “I was

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<sup>139</sup> The same above.

<sup>140</sup> The interview given to GYLA by Nikoloz Sharvashidze, a rally participant.

<sup>141</sup> The same above.

<sup>142</sup> The Public Broadcaster, “Moambe at 21:00”, 20 June 2019, 06:30-06:50 am.

<sup>143</sup> Available at: <https://www.youtube.com/watch?v=CcJnh3wza9w> [Last accessed: 12.09.2019].

<sup>144</sup> The interview given to GYLA by “F”, a rally participant.



*beaten; I also saw some other guys beaten with police batons.*<sup>145</sup>

The cases of inhuman treatment during the arrests were confirmed by the residents of the nearby streets. The video footage provided by an eyewitness clearly shows four persons pushing the rally participant off the garage roof. The same footage shows a police officer punching the protester who had fallen off the roof.<sup>146</sup>

Later, the video footage was disseminated through the Internet, which shows inhuman and degrading treatment carried out against a rally participant. Specifically, in the footage, the rally participant is being taken by two police officers towards the patrol car. At that moment, another policeman who is passing them by spits into the face of the detained demonstrator, and before pushing the protester into the car, a police officer standing to the left of the rally participant hits him with his right hand in the head.<sup>147</sup>

### **2.3. Ill-treatment of persons who were not the rally participants**

During the events of June 20-21, 2019, law enforcement officials carried out ill-treatment against those civilians who were not taking part in the protest rally and just accidentally occurred to be present at the epicenter of the events or came to the site to help injured persons or their relatives.

Davit Shubitidze arrived at the gathering in search of his wife on June 20 at around 00:00am. Their son also arrived at the rally with the same aim. Once all three reunited, they decided to go home. They walked down Rustaveli Avenue to Freedom Square to catch a taxi. According to the video footage released by “TV Pirveli”,<sup>148</sup> a policeman addresses another officer standing slightly away with the following words “*Call him and if he flees, then, that’s him.*” Having uttered that, the police officers rush first up to his son and then to him, and start arresting them. According to Davit Shubitidze, although he was not resisting the police during his detention, he was still beaten. The police officers physically assaulted his son as well. As a result of the violence, his son was left with a bruised eye. Then, the officers applied plastic handcuffs on both of them and took them to an MIA unit in a patrol police car.<sup>149</sup>

Konstantine Karelidze and “H” were arrested by police on Rustaveli Avenue near Hotel Radisson. Both of them explained to the police the reason for their stay in the area, neither of them resisted, and obeyed the police demands, yet the police officers assaulted them physically. After 02:00 am, “H” was distributing water to protesters affected by

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<sup>145</sup> The same above.

<sup>146</sup> “Rustavi 2”, “The Hardest Footage from the Bloody Dispersal of June 20 - Police Officers Push a Detainee from the Second Floor”, available at: <http://tiny.cc/vm5acz> [Last accessed: 12.09.2019]. Also, see: <http://tiny.cc/in5acz> [Last accessed: 12.09.2019].

<sup>147</sup> Available at: [https://www.myvideo.ge/?video\\_id=3811142](https://www.myvideo.ge/?video_id=3811142) [Last accessed: 12.09.2019].

<sup>148</sup> The video footage provided to GYLA by “TV Pirveli”.

<sup>149</sup> The interview given to GYLA by Davit Shubitidze.

tear gas poisoning. He was standing near Hotel Radisson when he saw law enforcement officers running in his direction.<sup>150</sup> *“One of the policemen approached me. I didn’t even think of fleeing as I was not doing anything illegal. He pushed me to the ground, twisted my hands and five policemen started punching me. Then, another officer told them to leave me and catch others,”*<sup>151</sup> “H” recalls. Similarly, Konstantine Karelidze, who works as a taxi driver for a taxi service company, drove a passenger to Hotel Radisson at around 04:30am on June 21. After dropping the passenger, he got out of the vehicle to throw some trash into a dustbin when suddenly the police appeared to arrest him.<sup>152</sup> Karelidze recalls in his statement: *“No one asked me anything, nor did they listen to me. They told me to lie down and certainly, I obeyed the order. At least five officers were beating me for 2-3 minutes. I was asking them why are you beating me, are you not ashamed, how can I imagine that you love my country more than me? Meanwhile, “Rustavi 2” cameraman appeared and they abandoned me. No one said anything, no one listened to me. I was holding a packet of cigarettes in my hand, I asked them, why are you arresting me, I have done nothing, to which one of them [told me], then why are you holding a hand grenade?!”*<sup>153</sup> After the detention, the police took both of them to the parliament yard.

#### 2.4. The “police corridor” and violence in the parliament courtyard

During the dispersal of the protest rally on June 20-21, a part of the detainees was taken by police into the parliament yard where city buses were waiting for their further transportation.<sup>154</sup> On the stairs to the gates of the parliament yard, the so-called “police corridor” was arranged,<sup>155</sup> which detainees had to go through to enter the parliament yard. Based on video the footage and the statements given by detainees, they were subjected to ill-treatment by law enforcement officers while walking through the corridor,<sup>156</sup> which was expressed in physical and verbal insult.<sup>157</sup>

The footage taken by “TV Pirveli” shows a policeman punching a detainee in his back and

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<sup>150</sup> The interview given to GYLA by “H”.

<sup>151</sup> The same above.

<sup>152</sup> The interview given to GYLA by Konstantine Karelidze.

<sup>153</sup> The same above.

<sup>154</sup> The interview given to GYLA by Dimitri Porchkhidze, a rally participant: *“After the detention, the policemen took me to the Parliament building where the buses were parked. 3-4 buses were full. I was forced to get on in one of them.”*

<sup>155</sup> A live broadcast of “TV Pirveli” from the protest rally, from 02:46:00 am -02: 47: 00 am, Available at: <https://bit.ly/2kuvsuC>, [last accessed: 12.09.2019].

<sup>156</sup> The interview of lawyer Giorgi Antadze: *“Most of them noted that excessive force was applied during the detention. They also mentioned the so-called “corridors of shame”, through which they were ruthlessly beaten.”*

<sup>157</sup> The interviews given to GYLA by the protest rally participants, Vladimer Gorozia, Koka Kiguradze, Mikheil Maglakelidze, Shakro Adeishvili, Alexander Selepanov, and “B”. Also, Paata Grigolaya’s statement at the court hearing - Case №4 / 6846-19, The protocol of the court trial: 12:38: 16-12:42: 31.

head area while he is walking to the parliament yard via the “corridor”.<sup>158</sup> The detainee “B” recalls: *“A police officer caught my hand and told me he would take me to a peaceful place, to which I replied that I would go myself. When he repeated the same again, I no longer resisted and followed him to the parliament yard. Before walking into the yard, at the entrance to the parliament, near the iron doors, the police had arranged the corridor which I had to walk through, and while doing so, I was punched and verbally insulted.”*<sup>159</sup> Shakro Adeishvili also notes the violence in the “corridor”: *“Whoever could reach me everyone was punching, insulting and swearing at me.”*<sup>160</sup> The footage also shows that the demonstrators who are not arrested yet are forcefully pushed by Special Forces officers to walk through the “corridor.”<sup>161</sup> In an interview with GYLA, Koka Kiguradze notes that law enforcers acted on the principle of “abducting” demonstrators, namely, they were standing in several line cordon, they would open up the front line a little for a short time to allow the so-called “abducted” citizens into their rows, then they would close the front line again and would hand the demonstrator to other law enforcement officer, after which the rally participant had to go through the “corridor” before getting into the yard.<sup>162</sup> The live footage of “Imedi TV” and the “Georgian Public Broadcaster” of June 21, 00:27-00:39 am, shows a law enforcement officer trying to catch D.Ch. from his back to drag him into the police cordon.<sup>163</sup> A person detained for an administrative violation noted before the court that the cordon would periodically open, criminal police officers would capture anyone standing nearby and pulled him into the yard of the parliament, after which the cordon would close again.<sup>164</sup> The detention of protesters in the above manner has been confirmed by a person presented as a witness in a case proceeding.<sup>165</sup> ***“Suddenly, Special force officers pulled me out of the crowd and pushed me into the cordon. Police officers wearing black t-shirts started punching me. They were quite many, I couldn’t even count. They punched me with open hands and fists both in my back area, chest and face. I was verbally insulted and asked, “Why have you come here, what are you doing here?” I replied, “I’ve come for the sake of Georgia.” Hearing***

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<sup>158</sup> A live broadcast of “TV Pirveli” from the protest rally, from 02:46:08 am -02: 46: 20am, Available at: <https://bit.ly/2kuvsuC>, [Last accessed: 12.09.2019].

<sup>159</sup> The interview given to GYLA by “B”, a protest rally participant.

<sup>160</sup> The interview given to GYLA by Shakro Adeishvili, a rally participant.

<sup>161</sup> A live broadcast of “TV Pirveli” from the protest rally, from 02:40:00-02: 40:07 am, Available at: <https://bit.ly/2kuvsuC>, [Last accessed: 12.09.2019].

<sup>162</sup> The interviews given to GYLA by the protest rally participants, Koka Kiguradze, Mikheil Maglakelidze, Shakro Adeishvili.

<sup>163</sup> The protocol of the court hearing of the Administrative Cases Panel of Tbilisi City Court of June 27, 2019 into the Case №4/6867-19, 16:25:52-16:32:23.

<sup>164</sup> The protocol of the court hearing of the Administrative Cases Panel of Tbilisi City Court of June 26, 2019 into the Case №4 / 6867-19, 12:52:20-12:56:40.

<sup>165</sup> The protocol of the court hearing of the Administrative Cases Panel of Tbilisi City Court of June 27, 2019 into the Case №4 / 6867-19, 16:00:25.

*this drove them mad and they continued beating me even fiercer.*<sup>166</sup>

Some detainees mentioned that ill-treatment was carried out in the parliament yard as well. According to the statements, there were cases when law enforcement officers dragged persons off the busses parked in the yard, beat them and then returned them to the bus again.<sup>167</sup>

The evidence available to the GYLA does not confirm that detainees were resisting police or the so-called “law enforcement corridor”,<sup>168</sup> which excludes the urgent necessity of using force against them. Therefore, the State failed to implement the positive obligation to ensure and protect human dignity and prohibit inhuman treatment.<sup>169</sup> Physical violence and verbal abuse against persons who walked through the police corridor reach the minimum level of severity that constitutes ill-treatment.<sup>170</sup> Furthermore, it is also noteworthy that forcing and beating persons in the police corridor, in its essence, aimed at humiliating and degrading the victim’s dignity apart from inflicting a person the physical pain. The same applies to the cases when persons were dragged out of the busses, beaten, verbally insulted, and then returned to the bus to other detainees. At that time, along with the physical pain, the victim may develop the feeling of humiliation and insult, which is equivalent to degrading treatment.<sup>171</sup>

## **2.5. The form, intensity, and duration of handcuffs**

The persons interviewed by the GYLA note that some detainees were restrained with plastic handcuffs immediately upon their detention,<sup>172</sup> while others after arriving at the detention facility.<sup>173</sup> With regards to the rally participants who were forced by police to walk through the corridor, they were handcuffed while passing the corridor and before getting on the bus.<sup>174</sup> However, some detainees were not handcuffed at all.<sup>175</sup>

The detained individuals mention that their hands were tied tightly with plastic hand-

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<sup>166</sup> The interview given to GYLA by Vladimer Gorozia, a protest rally participant.

<sup>167</sup> The same above.

<sup>168</sup> *Berlinski v. Poland*, Application N. 27715/95, 3009/96, 20.06.2002, §62;

<sup>169</sup> *Ribitsch v. Austria*, Application No. 18896/91, 04.12.1995, §38;

<sup>170</sup> The interview given to GYLA by Vladimer Gorozia, a protest rally participant.

<sup>171</sup> *Bouyid v. Belgium*, Application 23380/09, 28/09/2015, §87; *M.S.S. v. Belgium and Greece*, Application No. 30696/09, 21/01/2011, §220.

<sup>172</sup> The interview given to GYLA by Kote Grigalashvili.

<sup>173</sup> The interview given to GYLA by “F”, a protest rally participant.

<sup>174</sup> The interview given to GYLA by Shakro Adeishvili, a protest rally participant.

<sup>175</sup> The interview given to GYLA “H”.

cuffs<sup>176</sup> at their back.<sup>177</sup> Konstantine Chkheidze notes that he was handcuffed so tightly for an hour that he had difficulty moving one finger for several days after his release.<sup>178</sup> As Davit Shubitidze noted, due to the tightness of the handcuffs, he developed the feeling as his fingers would bleed soon.<sup>179</sup> Nikoloz Sharvashidze also notes that his hands were tied for about an hour with a pair of plastic handcuffs which were so tight that his hands went numb. An hour later, at his request, law enforcers removed the handcuffs.<sup>180</sup> However, in certain cases, even though the tightly applied handcuffs were causing pain and numbness in the hands of detainees, law enforcement officers were not equipped with proper tools to cut the handcuffs off. According to Davit Khvadagiani, *“they (law enforcers) had a firearm, a small police baton, a torch and a pair of handcuffs. They even had a pocket knife, but they couldn’t cut the handcuffs off. People were suffering from pain. Then, they started looking for the so-called “clippers”. They really made efforts to remove the handcuffs.”*<sup>181</sup> Some detainees recall being handcuffed all night long,<sup>182</sup> while others were restrained with the handcuffs even up to the court trial.<sup>183</sup>

Handcuffs, or other means of restraint, for the protection of public safety and order, are used as an active special means that reduces a person’s ability to resist a police officer for a short period of time and/or assists a law enforcement officer to perform police functions.<sup>184</sup> Rubber / plastic handcuffs are a widespread tool in policing operations during demonstrations where a large number of arrests are expected to be held.<sup>185</sup> However, it should be emphasized that in performing this action, the police officer should give a detained person a warning that struggling / resistance may cause the handcuffs to tighten and cause an unnecessary injury.<sup>186</sup> It is true that detention may be accompanied by the use of proportionate physical force,<sup>187</sup> and often for the law enforcement

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<sup>176</sup> The so-called “clamps” are single-use handcuffs that have no density-reducing mechanism, and in case of resistance, the handcuffs become even more tightened. The handcuffs can only be removed by a special handcuff cutter, the use of a knife or scissors may cause a bodily injury. For further information please see Counter-insurgency Operations, Washington, 2004, 9, Available at: <https://bit.ly/2IHjT3p>, [Last accessed: 12.09.2019].

<sup>177</sup> The interview given to GYLA by Vladimer Gorozia, a protest rally participant.

<sup>178</sup> The interview given to GYLA by Konstantine Chkheidze, a protest rally participant.

<sup>179</sup> The interview given to GYLA by Davit Shubitidze.

<sup>180</sup> The interview given to GYLA by Nikoloz Sharvashidze, a protest rally participant.

<sup>181</sup> The interview given to GYLA by Davit khvadagiani, a protest rally participant.

<sup>182</sup> The interviews given to GYLA by Giorgi Shubitidze, Davit Gogichaishvili, and Davit khvadagiani.

<sup>183</sup> The interview given to GYLA by Konstantine Karelidze.

<sup>184</sup> The Law of Georgia “On Police”, Article 33. Also, Article 2 of the Order № 1006 of the Minister of Internal Affairs of Georgia “On Approval of the Procedure for Storing, Carrying and Using Special Equipment in Police Ammunition”.

<sup>185</sup> Hunsicker A., “Behind the Shield: Anti-Riot Operations Guide”, Universal Publishers, 2011, 136, available at: <https://bit.ly/2k6tpN1>, [Last accessed: 12.09. 2019].

<sup>186</sup> The Manual of Policy, Procedure and Guidance on Conflict Management, Northern Ireland Police, Chapter 6, Handcuffs, 66, available at: <https://bit.ly/2l198Ow>, [Last accessed: 12.09. 2019].

<sup>187</sup> Graham v. Connor, 490 U.S. 391 (1989).

to carry out their actions effectively, the detainee must be handcuffed so tightly as to prevent any arbitrary release of his hands,<sup>188</sup> yet this does not absolve the law enforcement officer from the obligation to take appropriate measures based on the threats that a detained person is posing (to remove or minimize the tightness), when the detainee is complaining about the intensity of the handcuffs, and of any possible injury.<sup>189</sup> Tightly applied handcuffs may cause swelling, bruising, redness, numbness or other nerve damage of the hand, which may in certain cases reach the minimum level of ill-treatment. From a procedural point of view, it is also important for a police officer to record in a protocol that police provided the detainee with information and checked whether the handcuffs are too tight.<sup>190</sup>

## 2.6. Conditions provided in the cells in Tbilisi City Court

In connection with the events of June 20-21, 342 persons were arrested, 59 of whom were released on a written acknowledgement.<sup>191</sup> Therefore, with the maximum term of detention envisaged by law,<sup>192</sup> police presented at least 283 detainees before the court on June 21.<sup>193</sup>

Prior to case hearings in Tbilisi City Court, only a part of the detainees had been placed in the cells of the court, while others had been waiting outside the cells in the corridor<sup>194</sup> or in the yard of the court under the supervision of law enforcers.<sup>195</sup> According to the public information obtained from the LEPL Department of Common Courts, the agency does not have a formal regulation or instruction<sup>196</sup> on the placement of detainees in the cells, so it is unclear based on what criteria some detainees were distributed to the cells, while others were allowed to wait outside the cells. Based on the statements obtained by the

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<sup>188</sup> *Estmont v. City of New York*, 371 F.Supp.2d 202, 214 (E.D.N.Y., 2005).

<sup>189</sup> See *Bastien v. Goddard*, U.S Court of Appeals, First Circuit, No. 00-2224, 2002. *The case was decided in favor of the applicant, who, for more than four hours, had been telling the police about the intensity of the handcuffs applied on him and requested them to be removed or released, in the connection of which no appropriate measures had been taken. The tightness of the handcuffs caused a temporary disability in both of his hands due to post-traumatic / occlusive character of the injury.* Available at: <https://bit.ly/2m0p8LD>, [Last accessed: 12.09.2019].

<sup>190</sup> Analysis of complaints involving the use of handcuffs, Police Ombudsman for Northern Ireland, 2008, 23-27, Available at: <https://bit.ly/2k5TcoB>, [Last accessed: 12.09.2019].

<sup>191</sup> The letter MIA 4 19 02105876 sent by the Ministry of Internal Affairs of Georgia, [Last accessed: 12.09.2019].

<sup>192</sup> The Administrative Offences Code of Georgia, Article 247.

<sup>193</sup> In the letter №3-0487/3098218 dated July 17, 2019, Tbilisi City Court informed GYLA that Tbilisi City Court was not processing detailed information on the number of administrative cases reviewed on June 21.

<sup>194</sup> The interview given to GYLA by Ivane Skhirtladze.

<sup>195</sup> The interview given to GYLA by G.Ch.

<sup>196</sup> According to the letter №06-8772 of the LEPL Department of Common Courts dated 20.09.2019, *there are 34 cells in Tbilisi City Court, 31 of which are for adults and 3 for juveniles. The cells are of various sizes, the smallest one is 4.85 sq. m., and the largest 21.60 sq. m.*

GYLA, some of the detainees were housed in four cells arranged in the court,<sup>197</sup> with 15-20 persons in each, leading to adverse air conditions and impossibility to breathe.<sup>198</sup> One of the detainees observed that badly injured detainees or those acting aggressively towards police were generally put in the cell.<sup>199</sup> Vakhtang Megrelishvili recalls: *“We were the first to arrive and went into the almost empty basement of the court. Soon the basement began to fill up speedily. Twelve people were locked up in a five-square-meter cell where seven persons were sitting side-by-side in a Russian П shaped space, while five others were able to stand only.”*<sup>200</sup> It is noteworthy that the detainees have given a similar description of the situation in the cells and corridors: *“The cells were crowded and stuffy;”*<sup>201</sup> *“There were too many people and it was impossible to breathe.”*<sup>202</sup> It is of note that among the court cells only three cells for minors have a stained-glass window, while the adult cells have no windows.<sup>203</sup> The statements confirm that the police and detainees were constantly smoking tobacco, which caused the smoke accumulation and difficulty in breathing, especially that the cells had no windows and were not ventilated. The accumulated smoke was extremely unbearable for those who were non-smokers or had health issues.<sup>204</sup> *“The police officers were smoking cigarettes in the corridor, in a non-ventilated space, which led to terrible stuffiness. It made the situation even more unbearable.”*<sup>205</sup>

Some detainees note that they had to stay in the cells and corridors prior to the launch of their court hearings up until the end of the day, and in some cases, until late night.<sup>206</sup> During the time, they were provided with water, but not with food.<sup>207</sup> They could not relax due to the above-mentioned conditions either.<sup>208</sup>

The State must ensure that persons deprived of their liberty are provided with conditions that ensure to respect human dignity.<sup>209</sup> Detained persons should not experience

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<sup>197</sup> The interview given by Koka Kiguradze to GYLA.

<sup>198</sup> The interview given by Davit Kalandadze to GYLA.

<sup>199</sup> The interview given by Koka Kiguradze to GYLA.

<sup>200</sup> Vakhtang Megrelishvili, “The Story of One Day,” June 23, 2019, Available at: <https://bit.ly/2lulZDH>, [Last accessed: 12.09.2019].

<sup>201</sup> The interview given by Giorgi Shubitidze to GYLA.

<sup>202</sup> The interview given by Irakli Bakhtadze to GYLA.

<sup>203</sup> The letter №06-8772 of the LEPL Department of Common Courts dated 20.09.2019.

<sup>204</sup> The interviews given by Vladimer Gorozia and Ivane Skhirtladze to GYLA.

<sup>205</sup> The interview given by Koka Kiguradze to GYLA.

<sup>206</sup> The interviews given by “I” and “H” to GYLA.

<sup>207</sup> The interview given by Davit Gogichaishvili to GYLA.

<sup>208</sup> The interview given by “H” to GYLA: “My court trial began at 22:00, I was starving and sleepy.”

<sup>209</sup> For the purposes of international law, the concept of detention is not confined to prisons or police cells as a result of deprivation of liberty. Wherever a person is detained, the standards of detention must be consistent to those requirements envisaged by Article 3 of the European Convention on Human Rights; See Reidy A.,

stress or difficulty, the intensity of which exceeds the inevitable level of suffering that exists in the deprivation of liberty.<sup>210</sup> Everyone deprived of liberty shall be treated humanely and with dignity,<sup>211</sup> provided with the minimum standards at a placement facility, personal hygiene, food and access to medical services (and other relevant matters).<sup>212</sup> When assessing ill-treatment, it is not a negligible aspect whether the detainee is placed in a smokers' environment.<sup>213</sup> With respect to temporary detention facilities, where detainees can be placed for several hours to several days, mandatory compliance with the same standards<sup>214</sup> is not required, such as in relation to a prison cell.<sup>215</sup> Despite this, it should be noted that according to the case-law of the European Court of Human Rights, the existence of economic or other accompanying organizational or actual circumstances in states with regards to overcrowding or sanitation cannot be the justifying factors for these deficiencies.<sup>216</sup> When overcrowding reaches a particular level, the lack of space may act as a central element in the assessment of ill-treatment<sup>217</sup> and where a personal space of the detainee is less than 3 square meters in the cell, it constitutes a violation of Article 3 of the Convention.<sup>218</sup>

## 2.7. Summary

During the events of June 20-21, 2019, there were numerous cases of physical and verbal abuse by law enforcement officers. Ill-treatment was carried out in the situations where no threat or risks were coming from protesters / passers-by, which could justify the use of excessive force. The cases identified and studied by the GYLA show that there was no prerequisite, urgency or necessity for the use of force during the arrests. In par-

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Prohibition of Torture and a guide to the implementation of Article 3 of the European Convention on Human Rights, Council of Europe, 2005, 88, available at: <https://bit.ly/2k4fN4T>, [Last accessed: 12.09.2019];

<sup>210</sup> Norbert Sikorski v. Poland, application. No. 17599/05, 22/10/2009, §131;

<sup>211</sup> UN Human Rights Committee (HRC), International Covenant on Civil and Political Rights, General Opinion no. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty, April 10, 1992, available at: <https://bit.ly/2IAhdod> [Last accessed: 12.09.2019];

<sup>212</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), A/RES/70/175, UN, December 17, 2015, available at: <https://undocs.org/A/RES/70/175>, [Last accessed: 12.09.2019].

<sup>213</sup> *Florea v. Romania*, Application N. 37186/03, 14.09.2010, *Kalashnikov v. Russia*, Application No. 47095/99, 15/07/2002; *Helling v. McKinney*, 509 U.S. 25 (1993).

<sup>214</sup> Standards developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) On living space per prisoner in prison establishments, CPT / Inf (2015) 44, Strasbourg, December 15, 2015, 1, available at: <https://rm.coe.int/16806cc449>, [last accessed: 12.09.2019].

<sup>215</sup> The same above.

<sup>216</sup> Reidy A., Prohibition of Torture and a guide to the implementation of Article 3 of the European Convention on Human Rights, Council of Europe, 2005, 83, available at: <https://bit.ly/2k4fN4T>, [Last accessed: 12.09.2019]; Also, *Iorgov v. Bulgaria* No. 40653/98, 11.03.04.; and *GB v. Bulgaria*, No. 42346/98, 11.03.04.

<sup>217</sup> *Karalevičius v. Lithuania*, Application No 53254/99, 07.02.2005, §39.

<sup>218</sup> *Kantjyrev v. Russia* Application no 37213/02 , §§ 50-51, 21.07.2007; *Andrei Frolov v. Russia*, Application no 205/02 , §§ 47-49, 29.03.2007.



ticular, protesters became the victims of inhuman treatment when they were under effective police control. Furthermore, protesters were not posing any threat or inflicting violence against law enforcement and they were not resisting police officers during their detention. **Consequently, the force applied by police was excessive and unjustified. The measures carried out by police amount to ill-treatment and constitute a violation of Article 3 of the Convention.**

The State has the obligation to ensure an effective investigation into the cases of ill-treatment and identify those responsible.<sup>219</sup> Therefore, it is important that the State, within the framework of the ongoing investigation, ensure a timely and effective investigation into ill-treatment cases by law enforcement officers against protesters / passers-by, including the above-mentioned facts, and prosecute perpetrators in a timely manner.

Based on the evidence at GYLA's disposal, it also appears that the physical and verbal abuse by law enforcers against protesters under the effective control of police in the "police corridor" and the parliament yard during the protest rally of June 20-21 reached the minimum level of severity, which constitutes inhuman treatment against detainees and requires an investigation to identify the violators and impose criminal liability on the perpetrators. Furthermore, the application of single-use plastic handcuffs is problematic. The cells arranged in Tbilisi City Court fail to meet the standards of proper detention of large numbers of detainees, which further raises questions concerning inhuman treatment.



<sup>219</sup> TZEKOV v Bulgaria, p. 69. Available at: <http://hudoc.echr.coe.int/eng?i=001-72546> [Last accessed: 12.09.2019].

# CHAPTER 3

## BULLET-RIDDEN FOURTH GOVERNMENT

THE CASES OF INTERFERENCE WITH  
JOURNALISTIC ACTIVITIES AND USE OF  
EXCESSIVE FORCE

On June 20-21, 2019, during the dispersal of the public assembly on Rustaveli Avenue, Tbilisi, there were numerous cases of interference with the activities of media representatives. A number of violations have been reported against media professionals. In particular, some journalists suffered various types of bodily injuries as a result of active and passive means used by law enforcement officers during the dispersal of the rally or became the victims of physical and verbal abuse, while others were not allowed to report the ongoing events.

In a democratic society, press performs a vital role of a public watchdog.<sup>220</sup> The impartial and independent dissemination of information and ideas on the issues of public interest is a key obligation of media representatives, and the public, in turn, has the right to receive such information. The “primary role” of media also includes reporting the public on political gatherings and manifestations and providing the public with information about any events taking place.<sup>221</sup> The information disseminated by media may serve as an important tool for evaluating the actions of organizers and participants of the assembly, as well as law enforcement, and also contribute to the formation of the public opinion on particular matters.

Law enforcement officials have a responsibility not to prevent or obstruct the activities of journalists during public demonstrations, but on the contrary, to facilitate the reporting of current events.<sup>222</sup> Once the decision is made to disperse a demonstration, law enforcement must be able to distinguish between media representatives and assembly participants. Media representatives may also be asked to disperse, but they should not be prevented from observing and recording the policing activities.<sup>223</sup> Law enforcement should ensure to the maximum possible extent the safety of journalists and other media professionals when dealing with conflict situations, however, these safeguards should not be used as a pretext to limit the rights of media professionals.<sup>224</sup> Any actions that may prevent journalists from doing their work violate international standards, including the freedom of expression protected under Article 10 of the European Convention on Human Rights.<sup>225</sup> Besides, it shall not be permitted to intentionally confiscate and / or damage the equipment of a journalist and other media professionals, including any foot-

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<sup>220</sup> *Fatullayev v. Azerbaijan*, no. 40984/07, § 88, 22/04/2010.

<sup>221</sup> *Najafli v. Azerbaijan*, no. 2594/07, § 66, 02/10/2012.

<sup>222</sup> OSCE Representative on Freedom of the Media, Special Report: Handling of the media during political demonstrations, Observations and Recommendations, June 2007, Available at: <https://bit.ly/2ICWVKA> [Last accessed: 03/09/2019].

<sup>223</sup> OSCE, ODIHR, Guidelines on Freedom of Peaceful Assembly (SECOND EDITION), 2010, §§ 168-170, Available at: <https://www.osce.org/odihr/73405?download=true> [Last accessed: 03/09/2019].

<sup>224</sup> Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis, 26/09/2007, Available at: <https://bit.ly/2ISOFGx> [Last accessed: 03/09/2019].

<sup>225</sup> *Gsell v. Switzerland*, no. 12675/05, § 49, 8/10/2009.

age taken.<sup>226</sup> Such actions constitute the practices prohibited by international standards and may be perceived as censorship against media representatives.

Similar to international standards, unlawful interference with the journalist's professional activities, including by coercing or using an official position, shall constitute a punishable act under the Criminal Code of Georgia.<sup>227</sup>

According to the data provided by the Georgian Charter of Journalistic Ethics and evidence obtained by the GYLA, as well as the video footage disseminated by various media outlets, it has been confirmed that approximately 40 media professionals were prevented from performing their professional activities during the protest rally.<sup>228</sup> Of these, **32 media representatives** were injured in various parts of their body,<sup>229</sup> **6 of them** were prevented from reporting the events,<sup>230</sup> and **1 journalist** was subjected to an unlawful deprivation of liberty.<sup>231</sup>

### 3.1. The facts of interference with the performance of the professional activities of the media representatives

During the events of June 20-21, 2019, law enforcement officials carried out inhuman treatment against media professionals as well. This was expressed in abusing media representatives physically and verbally and firing rubber bullets. As a result, 32 media professionals were injured, 15 of whom applied to different medical facilities for medical services.<sup>232</sup> Journalists suffered the injuries to various parts of their body, including face, chest and shoulders. In a number of cases, the journalists were injured in several areas on their bodies.

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<sup>226</sup> OSCE Representative on Freedom of the Media, Special Report: Handling of the media during political demonstrations, Observations and Recommendations, June 2007.

<sup>227</sup> The Criminal Code of Georgia, Article 154.

<sup>228</sup> The Georgian Charter of Journalistic Ethics, "Journalists' Appeal to the Government of Georgia, the Minister of Internal Affairs and the Diplomatic Corps", available at: <https://bit.ly/2ltlc4N> [last accessed: 04/09/2019]. For the purposes of the report, GYLA interviewed 19 media representatives. The number of media professionals who were injured during the events may not be precise, and other incidents may have been reported against them besides those identified by GYLA.

<sup>229</sup> Ana Vakhtangadze, Tamar Baghashvili, Tornike Koshkadze, Gela Bochikashvili, Gvantsa Nemsadze, Giorgi Chumburidze, Guram Muradov, Ekaterine Abashidze, Zura Salakaia, Zurab Kokaia, Tamaz Tkilishvili, Iliia Samurganidi, Kote Grigalashvili, Lika Alelishvili, Mariam Nikuradze, Nino Khozrevanidze, Levan Melikidze, Kakha Jonjua, Merab Tsaava, Teona Tskhomelidze, Keta Tsitskishvili, Lika Urotadze, Beka Ashortia, Dito Kirimlishvili, Beslan Kmuzovi, David Akhaladze, Dato Kokoshvili, Giorgi Pachikashvili, Giorgi Osadze, Alex Megrelishvili, Giorgi Diasamidze, Nika Mukhigulashvili.

<sup>230</sup> Alex Megrelishvili, Gela Bochikashvili, Giorgi Diasamidze, Zurab Kokaia, Nika Mukhigulashvili, Ketevan Grigorashvili.

<sup>231</sup> Nika Mukhigulashvili.

<sup>232</sup> The letter №01/13936 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of August 1, 2019.

According to the case-law of the European Court of Human Rights, in the course of carrying out professional activities, ill-treatment of a journalist by public officials seriously impedes the exercise of the right to receive and impart information which results in the interference with journalistic activities. The State must prove that the use of force against a media professional is strictly necessary because of his or her behavior or that he or she is aggressive towards police or poses a threat to them and / or there is any other reason justifying the use of force, otherwise the force used by police must be considered unnecessary and excessive and a violation of the rights.<sup>233</sup>

On June 20-21, media representatives sustained injuries while being at the epicenter of the events and reporting the ongoing events. While covering the assembly, some media representatives were wearing T-shirts and/or vest with the inscription “PRESS”, holding a relevant document i.e. a press card asserting their accreditation of journalists and / or relevant journalistic equipment (video cameras, microphones, etc.). Consequently, based on the journalists’ outfits and / or equipment, it was highly possible to differentiate them from the demonstrators. The footage recorded during the protest rally and the statements of those directly interviewed confirm that there were no prerequisites and necessity for using the force against media professionals as they were not posing any danger to life and health of law enforcement officials and / or other persons, were not armed with shields or / other objects, were not acting aggressively, nor were they resisting police in any form. As the journalists noted, law enforcement officers in most cases could easily identify journalists performing their professional activities, yet they still fired rubber bullets in their direction intentionally and, in some cases, from close range.

In an interview with GYLA, Gela Bochikashvili, the editor of “news.on.ge,” recalls: *“while I was standing on the left side of the stairs to the parliament and until I moved towards the tent, I came across my friend Dato Kokoshvili, a journalist (Netgazeti.ge). We were talking about the events taking place when Dato said: ‘I think we’re being targeted and will be soon shot.’ Dato shouted, ‘Don’t shoot, we are the journalists.’ I looked in the direction of the special force officers standing on the stairs [of the parliament] and indicated at our inscription on our T-shirts- Press. Despite my urges and explicit body language, I was still shot [...] obviously due to my journalistic activities.”*<sup>234</sup>

Tazo Tkhillishvili, a cameraman at “Rustavi 2”, also speaks about the deliberate shooting of rubber bullets by the riot police: *“I was trying as much as I could to keep the footage fixed at the epicenter of the events in front of the parliament. As I understand now, one of the special force officers noticed this and remembered me. At that moment, I was looking into my camera with one eye; I was trying to keep the camera over my face to protect me against stray bullets and was balancing the video camera with my hands. [...] the minute*

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<sup>233</sup> *Najafli v. Azerbaijan*, no. 2594/07, §§37-39, 67-69, 02/10/2012.

<sup>234</sup> The interview given to GYLA by the journalist Gela Bochikashvili; See also NEWS.On.ge, “Tear gas Launched,” 44 min. Available at: <https://bit.ly/2IVYzHv> [Last accessed: 12.09.2019].

*I raised my head off the camera, the officer would start aiming at me.*<sup>235</sup> Giorgi Chumburidze, an operator at Radio Liberty, who sustained a bullet wound to his abdomen, also confirms the fact of intentional shooting by special unit officers.<sup>236</sup>

The former journalist at “Rustavi 2”, Tamar Baghashvili, was standing at the bottom of the stairs on the right side to the parliament among the protesters and was reporting the events when an orange bullet hit her in her left arm: *“I felt an acute pain in my arm, I looked down and saw an orange bullet stuck into my arm. I could not realize at once what it was, so I pulled and removed it.”*<sup>237</sup> Due to the inflicted injury, she got a fracture in her shoulder.<sup>238</sup>

As a result of a rubber bullet, the GPB operator was also injured in the face. The footage released by “Rustavi 2”<sup>239</sup> and other broadcasters at 00:11am shows the GPB operator holding a camera in his left hand. He is standing on the stairs in front of the parliament, just a few meters away from the Special Forces. Suddenly, the operator collapses, and the camera falls next to him. The footage clearly shows that the operator sustained an injury in the area close to his nose near his right eye. His colleagues, including Nino Khozrevanidze, a reporter at “Adjara TV” and “Radio Bureau in Tbilisi”, hurried to his rescue. Nino Khozrevanidze recalls: *“3-5 minutes later [after a Facebook live], I noticed that one of my colleagues had been hit by a rubber bullet and was injured. This was happening at the stairs to the Parliament. While I was trying to find out what injuries he had sustained, I got hit by a bullet into my left thigh.... I can assure you it was intentional and targeted interference with the journalistic activity, as I was standing on the stairs, I was holding a video camera and I was doing my job, there were not many people around me and the citizens nearby were not aggressive.”*<sup>240</sup> According to the reporter, she received a rubber bullet in the area of her abdomen and a thigh.

Guram Muradov, a photojournalist, also sustained injuries caused by rubber bullets. Muradov recalls the fact of his injury as follows: *“I was standing between the special forces officers and civilians, more precisely, at the central pillars /central entrance in front of the parliament. I was standing facing the parliament building [...] I was hit by the bullets from close range as the pellets failed to expand. [...] I suppose either one person fired*

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<sup>235</sup> The interview given by Tazo Tkhillishvili to GYLA.

<sup>236</sup> The interview as well as the video footage provided by Giorgi Chumburidze to GYLA.

<sup>237</sup> The interview given by the journalist Tamar Baghashvili to GYLA; Also, TV Pirveli video footage 1:04:00 - 1:04:07 min, available at: <https://bit.ly/2kttLNQ>, also, Rustavi 2, “A special edition of “Kurieri” at 21:00”, 01:42 - 01:43 Available at: <https://bit.ly/2k1xqm3> [Last accessed: 12.09.2019].

<sup>238</sup> “Rustavi 2” - “What Are the condition of those who had been target-shot by police,” Available at: <https://bit.ly/2kz2uKd> [Last accessed: 12.09.2019].

<sup>239</sup> Rustavi 2, “A Special Edition of Kurieri at 21 :00 ”, 3:11:45 am Available at: <https://bit.ly/2k1xqm3>, NEWS. On.ge, “Tear gas Launched,” 06:00 am. Available at: <https://bit.ly/2IVYzHv> [Last accessed: 12.09.2019].

<sup>240</sup> The interview given to GYLA by Nino Khozrevanidze.

*several bullets or two persons standing side by side fired simultaneously.*<sup>241</sup> As a result, Muradov was left with 11 open wounds in the area of the back, excoriations in his left arm and another open wound in his left forearm.<sup>242</sup>

Apart from the rubber bullets, media professionals were subjected to physical and verbal abuse during the events of June 20-21, 2019. According to Nika Mukhigulashvili, a journalist at the Georgian Public Broadcaster, police officers used excessive physical force against him when he refused to delete the video footage depicting the arrest of protesters. One of the policemen slapped Nika in the face, causing him to bleed from his nose, and then 4-5 police officers started kicking and hitting him in the face with police batons. Afterwards, the journalist was arrested, and another policeman beat him with the police baton before bringing him to the place of his deprivation of liberty.<sup>243</sup> Law enforcers physically assaulted “TV Pirveli” journalist Alexi Merebashvili as well, who was standing in front of Café Gallery at dawn and recording the ongoing events. A special unit officer hit him with a shield, damaged his camera and injured him in his hand.<sup>244</sup>

Apart from bodily harm to media representatives, other cases of interference with professional journalistic activities have been reported as well. In particular, 6 cases of preventing media professionals from recording / covering the events by law enforcement agencies have been identified.

Ketevan Grigorashvili, a reporter at “TV Pirveli,” and her operator were hindered in their professional activities when they were reporting the moment of the detention of David Shubitidze<sup>245</sup> and his son in Freedom Square. Grigorashvili and her cameraman approached the scene and began recording from the close range the process of the detention. At that very moment, a policeman blocked the operator’s camera with a shield, while another policeman pushed the cameraman and forced him to move about 50 meters away, shouting, “Come, come, it’s not safe here, come on, go ..., you can’t be safe here.” The policeman went back, and the cameraman and the journalist approached the scene again. However, this time other police officers prevented the journalist and the operator from recording the moment of forcing the detainee into the car, namely, one of the officers tried to blind the camera several times, while the other blocked the camera with his shield.<sup>246</sup>

Giorgi Diasamidze, a journalist for Netgazeti, was prevented by law enforcers when he was in the parliament yard. The police officers demanded switching off the camera.

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<sup>241</sup> The interview given to GYLA by the photo-journalist Guram Muradov.

<sup>242</sup> “Rustavi 2”, “I am a sure survivor really, but what can 18-year-old Mako say – the injured during the events on June 20, may appeal to the European Court,” Available at: <https://bit.ly/2ktbxMt> [Last accessed: 12.09.2019].

<sup>243</sup> The interview given to GYLA by journalist Nika Mukhigulashvili.

<sup>244</sup> The interview given to GYLA by journalist Alex Merebashvili.

<sup>245</sup> The interview given to GYLA by David Shubitidze.

<sup>246</sup> The video material provided to GYLA by “TV Pirveli”.

*“A police officer [...] rushed to me and snatched my phone and the selfie stick. [...] he knocked them to the ground. As a result, the screen protector got off and a small portion of the screen and the selfie stick got damaged. [...] Identifying me as a journalist was easy as I was wearing the parliament accreditation card and several times I said I was a journalist. [...] but nothing worked, the officer was still treating me aggressively, threatened to “smash my equipment onto my head” and was insulting me,”* Giorgi Diasamidze recalls.<sup>247</sup> The journalist asked police officers standing nearby for help, but most of them did not respond at all. Eventually, as a result of the coercive measures used by the police, the journalist was forced to leave the parliament yard.<sup>248</sup>

### **3.2. Unlawful deprivation of liberty of a journalist**

According to the information obtained by GYLA, during the events of June 20-21, 2019, law enforcement officers arrested one journalist. According to the European Court of Human Rights, any attempt to expel journalists from the demonstration site must be subject to a strict scrutiny. For deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure is taken and executed in conformity with national law, but it must also be necessary within specific circumstances.<sup>249</sup>

On June 21, at dawn, when law enforcers were arresting protesters in the territory of Pikris Gora, Nika Mukhigulashvili was reporting the ongoing detentions together with his cameraman. The journalist recalls: *“Several law enforcement officers approached and told us that we had to delete the footage. I reckon they did not want the footage to depict them exceeding power during the detention, but we did not have the footage of such facts anyway, though we had managed to record an incident where a special force officer punched a detainee in the face. Once we refused to delete the footage, they started disconnecting the power cables and removing the parts of the camera, which we were trying to resist. One of the policemen forcefully pushed me aside, while another slapped me with an open hand in my face, causing me to bleed from my nose. Another officer hit me from aside and knocked me to the ground [...] about 4-5 law enforcers were beating me.”*<sup>250</sup>

As Nika said, the battery lasted for about a minute, after which he was arrested without any explanation and taken in the direction of the Varazi Gorge. *“I was asking them to allow me to breathe normally as I was swallowing the blood coming out of my nose and could not breathe, but they refused and forced me to move even faster. Before reaching*

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<sup>247</sup> The interview given to GYLA by the journalist Giorgi Diasamidze.

<sup>248</sup> “Netgazeti”, “Chaos near the Parliament – police are using tear gas and rubber bullets”, 40:00 mins, available at: <https://bit.ly/2IXffOI> [Last accessed: 12.09.2019]

<sup>249</sup> Butkevich v. Russia, no. 5865/07, §64, 13/02/2018.

<sup>250</sup> The interview given to GYLA by the journalist Nika Mukhigulashvili.



*the destination point, another law enforcement officer approached me from the right side and asked me what had happened. I told him I was a journalist and was arrested unlawfully. After hearing this, he hit me with the police baton in my stomach with such force that I bent over with the excruciating pain,*<sup>251</sup> Nika Mukhigulashvili recalls. After the detention, the journalist was taken to one of the MIA's units, where a report of his detention was drawn up on the grounds of disobedience and resistance to a police officer's lawful demands. Nika was detained at the police station for about 4-5 hours, after which he was released.

There was no legal ground to justify the detention of the journalist in the specific circumstances especially in those circumstances when there was no evidence to confirm that the police issued a legal demand on the one hand, and that Mukhigulashvili disobeyed the lawful order, on the other. Despite this, the journalist was still deprived of his liberty for several hours.

### 3.3. Summary

During the dispersal of the demonstration on June 20-21, 2019, law enforcement officials violated the rights of media professionals, including the right to freedom of expression, the right to the prohibition of ill-treatment, and property rights. **In the event of interference with journalistic activities, the State shall ensure that perpetrators are punished in a transparent and timely manner. Insufficient efforts by the authorities, including delaying the investigations and the failure to prosecute violators, encourage impunity, promote violence against journalists and other media professionals, and furthermore, undermine public confidence.** According to information obtained by the GYLA, within the framework of the ongoing investigation, the Chief Prosecutor's Office of Georgia, is investigating alleged offences committed against journalists. However, as of today, the Chief Prosecutor's Office of Georgia has not yet charged any person for the violations against media professionals.

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<sup>251</sup> The same above.

# CHAPTER 4

## “LOTTERY-BASED” DISTRIBUTION OF DETAINEES

THE ANALYSIS OF ADMINISTRATIVE  
DETENTION PRACTICES

On June 20-21, 2019, police arrested 342 individuals and charged them with petty hooliganism and /or disobedience to lawful demands of a police officer.

#### 4.1. Drawing up offence protocols without examining individual circumstances

For the purposes of the report, 50 case materials have been analyzed. In 49 of them, the administrative offence protocols were drawn up under Article 166 (petty hooliganism) and 173 (non-compliance with a lawful demand of a law enforcer) of the Administrative Offences Code of Georgia, and in one case, only for petty hooliganism.

**The description of the violations in protocols is general and none of them contains the details of the actual circumstances and the substance of a violation. All protocols include a record that a detained person was violating public order, swearing and using bad language in a public place and was not complying with lawful demands of the police to stop unlawful actions.<sup>252</sup> In some cases, the protocols provide even more general references that the arrests were conducted due to petty hooliganism and disobedience to lawful demands of a police officer,<sup>253</sup> and in single cases, the offence protocol provides that a detainee was arrested as he was a protest rally participant.<sup>254</sup>**

The attorneys involved in administrative case proceedings also note the formulaic manner of drafting detention protocols: *“Once Special Forces officers detained a person, a call was made to the department from where they got instructions, I am citing, “charge him under Articles 166-173.”<sup>255</sup>*

The detainees point out that the protocols were agreed in advance and drawn up without investigating any factual circumstances by law enforcement officers who had no information about the circumstances of the detention. <sup>256</sup> “They had a template protocol drafted by a certain Yoska (referred to that way by police officers). The template indicated in a blanket manner that all detainees were swearing, insulting, resisting, and tried to storm into the parliament,”<sup>257</sup> - Koka Kiguradze recalls.

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<sup>252</sup> The administrative detention protocols: Nღ000049077, Nღ000049070, Nღ000049089, Nღ000049080, as well as the administrative violation protocols: Nღ000090541, Nღ000090553, Nღ000090540; Nღ000090539.

<sup>253</sup> The administrative detention protocols: Nღ000048147, Nღ000061323, Nღ000061324, as well as the administrative violation protocols: Nღ000020880, Nღ000041881, Nღ000041888.

<sup>254</sup> The administrative detention protocols: Nღ000028686, Nღ000028551. Also, the administrative violation protocols: Nღ000036115, Nღ000034113.

<sup>255</sup> The interview given by Lawyer Kamral Amjanoglu to GYLA.

<sup>256</sup> The interviews given to GYLA by Konstantine Chkheidze, David Gogichaishvili, Mikhail Maglakelidze, V.G., Ivane Skhirtladze, K.K., N.SH. and Shakro Adeishvili.

<sup>257</sup> The interview given by a rally participant, Koka Kiguradze to GYLA.

## 4.2. The discrepancy between the actual place of detention and protocol data

Drawing up official documents without examining individual circumstances has been confirmed by the fact that often the place of detention indicated in protocols does not coincide with the actual place of detention.

For example, R.A. and N.J. were both arrested by law enforcers in Griboedov Street near the Conservatory, witnessed by neighbours.<sup>258</sup> However, their detention protocols indicate that one of them was arrested on Rustaveli Avenue<sup>259</sup> and the other near Freedom Square.<sup>260</sup>

The discrepancy regarding the place of detention in R.M.'s case<sup>261</sup> can be found in the administrative detention protocol and the detention report. In particular, the protocols on the administrative offence and administrative detention indicate that he was arrested on Freedom Square,<sup>262</sup> while Melikishvili Avenue is indicated as the place of his detention in the detention report.<sup>263</sup>

The interviewed lawyers have also noted the inconsistencies between the actual places and the data provided in the protocols.<sup>264</sup> Ekaterine Pavlenishvili, the GYLA's lawyer, notes that according to the protocol, all her clients were arrested in front of the Parliament, but actually, they were detained in Gogebashvili Street and the surrounding area.<sup>265</sup>

## 4.3. The discrepancy between the actual time of detention and protocol data

The interviews with the lawyers and detainees have revealed that the time of the detentions in connection with the June 20-21 protest rally and the time indicated in detention protocols do not coincide. This was identified in 12 out of 50 cases studied. For example, in case of D.Ch.,<sup>266</sup> the protocol of administrative detention and the administrative violation indicated that he was arrested on June 20, 2019 at 23:4,<sup>267</sup> however, the live broadcast of the GPB and Imedi TV clearly shows that he was in front of the Parliament build-

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<sup>258</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the case N4 / 6962-19 dated June 21, 2019, 17:55:12.

<sup>259</sup> Case N4 / 6962-19 of Tbilisi City Court; Case N4 / A-480-19 of Tbilisi Court of Appeals;

<sup>260</sup> The administrative violation protocols N0j 000048347; Also the administrative detention protocol N0n 000041213.

<sup>261</sup> Case N4 / 7119-19 of Tbilisi City Court.

<sup>262</sup> The administrative violation protocols N0j000036115, as well as the administrative detention protocol N0m000028686.

<sup>263</sup> The report №1614634 drawn up by N.K. on 21 June 2019.

<sup>264</sup> The interview given by Lawyer Shota Tutberidze to GYLA.

<sup>265</sup> The interview given by Lawyer Ekaterine Pavlenishvili to GYLA.

<sup>266</sup> Case №4/6867-19 of Tbilisi City Court.

<sup>267</sup> The administrative violation protocol N0j000041428; also the administrative detention protocol N0n000049115.

ing and trying to calm down the protesters on June 21, 2019 from 00:27 to 00:39 am.<sup>268</sup>

Giorgi Tabatadze, the GYLA's lawyer, has also noted the inaccuracies concerning the actual time of detention and the time indicated in the protocols. According to him, in one of the cases, the time of the detention was indicated 23:00, June 20, 2019, while the actual time of the arrest was 01:00am, June 21, 2019 as he had had a live broadcast through his social network just several minutes before his detention.<sup>269</sup>

#### **4.4. Persons arresting and presenting detainees**

A particularly negative tendency was the fact that the persons arresting individuals for administrative offences and those drafting the violation protocols were not the same persons. As a rule, the authors of the protocols would declare that they had detained arrested persons, but the detainees indicated otherwise. In certain cases, the above was confirmed by additional evidence. In only eight cases, the drafters of the protocols did state that they had not actually arrested the detainees. The practice had an impact on the outcome of the court proceedings.

For example, in the case of G.Zh,<sup>270</sup> the police officer who prepared the protocol admitted that he had not carried out the arrest of G.Zh and that the detainee had been transferred to him by other police officers after his detention.<sup>271</sup> It is noteworthy that an official of the Interior Ministry declared at a court hearing that it is a common practice when one police officer arrests a person and then transfers him/her to another officer for drawing up a protocol.<sup>272</sup> The same statement was made by a representative of the Ministry of Internal Affairs in one of the case hearings in the Court of Appeals. He argued that it is perfectly lawful for a policeman to arrest a person, and then transfer him/her and inform another officer of the charge to be imposed on the detainee.<sup>273</sup> The approach often complicates the identification of an actual performer of the arrest, and may sometimes eliminate the possibility of his/her summoning and questioning in the court.

The above practice has been noted by the lawyers as well. Ani Nasrashvili, a lawyer at the Human Rights Education and Monitoring Center (EMC), indicates that in two of five cases conducted by her, police officers said to have carried out the arrest, while in three cases, actual persons arresting the detainees did not show up. In all cases, the detainees

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<sup>268</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the case №4/6867-19 dated June 27, 2019, 16:41: 40. 16: 25: 52-16: 32: 23.

<sup>269</sup> The interview given by Lawyer Giorgi Tabatadze to GYLA.

<sup>270</sup> Case №4/6893-19 of Tbilisi City Court.

<sup>271</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the case №4/6893-19 dated July 12, 2019, 14:27:54-14:28:21.

<sup>272</sup> The same above, 14:16:37-14:17:36.

<sup>273</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi Court of Appeals into the case №4/3-515-19 dated July 26, 2019, 13:56:10.

noted that the police officers presenting them in the court were not those who had actually detained them.<sup>274</sup> According to Giorgi Antadze, the GYLA's lawyer, the actual performer of the arrest of the defendant was known only in one of his 15 cases, while the rest of the detainees claimed that the persons who had detained them were not present at court trials. According to Giorgi Antadze, detainees happened to see police officers drafting the protocols at the police station, where the police at random distributed the detainees for compiling the reports.<sup>275</sup> *"They [police officers] distributed the detainees on a lottery-based principle, saying you arrest this and you arrest that. Then, another officer came and said if you need me, I'm here and I will be the person arresting someone,"* recalls a detainee.<sup>276</sup> Lawyer Lasha Tsutskiridze notes that in 90% of his cases, the persons arresting the detainees did not participate in the case proceedings. In one case, the police officer admitted drawing up the protocol only and not being the actual person who carried out the detention.<sup>277</sup>

#### **4.5. The practice of arresting persons who were not the protest rally participants**

The analysis of the case materials and statements of the detainees in connection with the events of June 20-21 has revealed a significant trend, according to which, during the night and in the early morning on June 21, police officers started to detain persons who did not have any connection with the demonstration, and even the court confirmed in relation to a part of such persons that they had not committed any offence.

In the cases of R.A.<sup>278</sup> and N.J.,<sup>279</sup> both detainees noted that they were friends and neighbours, and were standing together with their friends in Griboedov Street near the Conservatory, while protesters who were fleeing from police started into their direction. As the police officers took them for protesters, they arrested them in Griboedov Street.<sup>280</sup> The fact was witnessed by their neighbours.<sup>281</sup>

The detainee in M.B.'s case<sup>282</sup> noted that he was going from his home in Agmashenebeli Avenue to work in Chovelidze Street through Javakhishvili uphill when police officers mistakenly took him for a rally participant and arrested him.<sup>283</sup> M.B.'s employer submit-

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<sup>274</sup> The interview given by Lawyer Ani Nasrashvili to GYLA.

<sup>275</sup> The interview given by Lawyer Giorgi Antadze to GYLA.

<sup>276</sup> The interview given by Aleksandre Selepanov to GYLA.

<sup>277</sup> The interview given by Lasha Tsutskiridze to GYLA.

<sup>278</sup> Case №4/6962-19 of Tbilisi City Court; Case №4/ს-480-19 of Tbilisi Court of Appeals.

<sup>279</sup> Case №4ს/470-19 of Tbilisi Court of Appeals.

<sup>280</sup> The interview given by "I" to GYLA.

<sup>281</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the case №4/6962-19 dated June 21, 2019, 17:55:12.

<sup>282</sup> Case №4/6936-19 of Tbilisi City Court; Case №4/ს-556-19 of Tbilisi Court of Appeals.

<sup>283</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the case №4/6936-19 dated July 12, 2019, 19:51:10-19:51:55.

ted a certificate to the Court of Appeals,<sup>284</sup> stating that at the time of M.B's arrest, he was on duty and was going to perform his official responsibilities, and his route was through Javakishvili uphill and he had no connection with the protest rally.

In the case of Z.J.,<sup>285</sup> a person charged with an administrative violation explained that he had been arrested in Freedom Square while he was waiting for a friend of his at the taxi and had no connection with the protest rally.<sup>286</sup> Tbilisi City Court accepted the explanation of the detainee and terminated the case proceedings against him.<sup>287</sup>

The detainee in the case of D.K.<sup>288</sup> noted that he had been detained while he was on his way to the Round Garden from Rustaveli Metro station. Police took him for a rally participant and arrested him.<sup>289</sup>

In the case of R.M.,<sup>290</sup> it was revealed that the person arrested had not participated in the protest rally at all. The detainee explained that he works in one of the bars in Kote Abkhazi Street and was going home through Freedom Square where he was detained.<sup>291</sup>

The video footage provided by the Georgian Public Broadcaster to the GYLA has confirmed an attempted arrest of a local resident in Pikris Gora. The footage clearly shows that criminal police officers are trying to arrest a person while another officer tells them "let him go, he lives here," after which they immediately release the detained person.<sup>292</sup>

The detainee "A" arrested at the protest rally noted that after his detention, he witnessed the police detaining non-protesters who were just hanging in the street and drinking beer;<sup>293</sup> 'F' recalls that he met a detainee at the police station who had not participated in the public rally at all.<sup>294</sup> Moreover, Konstantine Karelidze said that he was not participating in the demonstration, he is a taxi driver, and after dropping a passenger at Hotel Radisson, while he was getting out of his car to throw some trash into the dustbin,

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<sup>284</sup> The appeal, Case №4/ს-556-19 in Tbilisi Court of Appeals.

<sup>285</sup> Case №4/6814-19 of Tbilisi City Court;

<sup>286</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the case №4/6814-19 dated June 21, 2019, 19:38:26. The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the case №4/6814-19 dated June 24, 2019, 17:22:20.

<sup>287</sup> The judgment of Tbilisi City Court of 24 June 2019 into the Case №4 / 6814-19.

<sup>288</sup> Case №4/6922-19 of Tbilisi City Court;

<sup>289</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the case №4/6922-19 dated June 21, 2019, 20:00:07-20:02:32.

<sup>290</sup> Case №4/7119-19 of Tbilisi City Court;

<sup>291</sup> The protocol of the court hearing of the Administrative Cases Panel of Tbilisi City Court into the case №4/7119-19 dated June 21, 2019, 21:22:35-21:22:58.

<sup>292</sup> The video footage provided to GYLA by the Georgian Public Broadcaster, an excerpt from the live broadcast of June 21, 2019, 06:43 am

<sup>293</sup> The interview given by a rally participant "A" to GYLA.

<sup>294</sup> The interview given by a rally participant "F" to GYLA.

police arrested him without any explanation.<sup>295</sup> The lawyer Dimitri Nozadze said that the majority of his clients were not protesters at all.<sup>296</sup>

#### **4.6. Placing detainees in isolators before bringing them to the court**

According to the official reports, 342 persons in total were arrested for administrative violations in connection with the events of 20-21 June 2019, of which only 23 were placed in pre-trial temporary detention facilities, and 59 were released based on a written acknowledgment.<sup>297</sup> Consequently, police kept 260 persons detained in police stations, in police vehicles or in the yards of the police units. Most of the detainees were deprived of the opportunity to receive medical services in the detention facilities. This has been confirmed by a number of detainees in the interviews with the GYLA.<sup>298</sup> For example, the arrested G.Zh. was not transferred by police to a temporary detention facility and was not provided with medical care. A medical examination conducted on June 23 confirmed that he had sustained the brain concussion.<sup>299</sup> The above practice has been indicated by attorneys as well.<sup>300</sup>

#### **4.7. Informing detainees of the grounds of detention and their rights**

In case of administrative detention, the arresting officer shall inform the detainee upon placing him/her under arrest in an understandable form:

- Of the administrative offence committed by him/her and the basis of the arrest;
- Of his/her right to have a defense counsel;
- Of his/her right, if desired, request that the fact of his / her arrest and his / her location be made known to a relative named by him / her, as well as to the administration at his / her place of work or study.<sup>301</sup>

Based on the information provided by the detainees and their lawyers,<sup>302</sup> the detainees

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<sup>295</sup> The interview given by Konstantine Karelidze to GYLA.

<sup>296</sup> The interview given by the lawyer Dimitri Nozadze to GYLA.

<sup>297</sup> The letter MIA 4 19 02105876 of the Ministry of Internal Affairs of Georgia dated 9 August 2019.

<sup>298</sup> The interviews given to GYLA by the participants of the protest rally, Koka Kiguradze, David Pochkhidze, Shakro Adeishvili, V.G., D.Sh., Konstantine Chkheidze, "F", David Khvadagiani, "H", N.Sh. and "D".

<sup>299</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the case №4/6893-19 dated July 12, 2019, 14:08:50.

<sup>300</sup> The interviews given to GYLA by the lawyers Ani Nasrashvili, Giorgi Antadze, Giorgi Tabatadze, Dimitri Khachidze, Ekaterine Pavlenishvili, Lasha Bekishvili, Lasha Tsutskiridze, Rati Tinikashvili, Kamral Amjanoghli, Ketii Chutlashvili and Shota Tutberidze.

<sup>301</sup> The Administrative Offences Code of Georgia, Article 245(1).

<sup>302</sup> The interviews given to GYLA by the lawyers Giorgi Antadze, Giorgi Tabatadze, Ekaterine Pavlenishvili, Lasha Bekishvili, Lasha Tsutskiridze, and Rati Tinikashvili.



were not informed of the grounds of their arrest and their rights.<sup>303</sup> The attorneys Dimitri Khachidze and Kamral Amjanoghli note that the grounds of the detention and the rights of detainees were communicated in a formal manner only, as stated in the protocol,<sup>304</sup> while Katie Chutlashvili mentioned that her detainees were informed of the grounds of their detention, but not their rights.<sup>305</sup> The detainee Giorgi Shubitidze<sup>306</sup> recalls that he was informed of the grounds of his detention and his rights once he was brought to the court. Ivane Skhirtladze<sup>307</sup> notes to have been informed of the detainee's rights only in writing after being charged with an administrative violation on the way to the detention facility. The lawyer Ekaterine Pavlenishvili has recalled the judge's remark during the hearing "there was no time [for informing the rights and grounds of the arrest] in that situation."<sup>308</sup>

#### **4.8. The right to make a telephone call**

Non-homogeneous practice regarding the right to a telephone call has been identified based on the information provided by detainees and their lawyers. In certain cases, detainees had the possibility to call family members and lawyers using their own mobile phones,<sup>309</sup> yet in some other cases, detainees' phones were confiscated and they were refused to make a telephone call.<sup>310</sup> There were some detainees who could not enjoy their right to make a phone call due to the lack of awareness of their right to do so.<sup>311</sup>

#### **4.9. Right to receive medical services**

According to the information provided by detainees and their lawyers, varied practices have been applied regarding the examination of injuries of detainees and their health status. As lawyer Dimitri Nozadze said his clients received proper medical care,<sup>312</sup> yet GYLA's lawyer Lasha Bekishvili noted that there were several cases when the detainees did not receive appropriate medical care not only upon their detention and until appear-

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<sup>303</sup> The interviews given to GYLA by "I", "A", "F", Davit Forchkhidze, K.K and "D".

<sup>304</sup> The interviews given to GYLA by lawyers Dimitri Khachidze and Kamral Amjanoghli.

<sup>305</sup> The interview given to GYLA by lawyer Ketii Chutlashvili.

<sup>306</sup> The interview given to GYLA by lawyer Giorgi Shubitidze.

<sup>307</sup> The interview given to GYLA by the rally participant Ivane Skhirtladze.

<sup>308</sup> The interview given to GYLA by lawyer Ekaterine Pavlenishvili.

<sup>309</sup> The interviews given to GYLA by "I", V.G and Irakli Khvadagiani.

<sup>310</sup> The interviews given to GYLA by Giorgi Shubitidze, Konstantine Chkheidze, Irakli Bakhtadze, "D" and N.Sh.

<sup>311</sup> The interviews given to GYLA by lawyer Giorgi Antadze, Lasha Bekishvili, Kamral Amjanoghli and Shota Tutberidze.

<sup>312</sup> The interview given to GYLA by lawyer Dimitri Nozadze.

ing before the court, but also after the imposition of administrative imprisonment.<sup>313</sup>

D.Sh., a person detained at the demonstration, mentioned that he was provided with a medical examination and appropriate care after being transferred to a temporary detention facility.<sup>314</sup> According to V.V., he required medical assistance after being transferred to the police station, and the police officers called for an ambulance. N.Sh. recalls that after his detention he needed medical care and he was promptly taken to a hospital.<sup>315</sup> According to Irakli Khvadagiani, after the determination of his administrative detention, he was provided with medical care in the pre-trial detention facility.<sup>316</sup> Koka Kiguradze noted that he was injured during the demonstration, yet he was not provided with a medical examination.<sup>317</sup>

#### **4.10. Unlawful processing of personal data**

The analysis of the administrative violations has revealed that the Ministry of Internal Affairs maintains the practice of processing personal information for more than one year from the moment an offence is committed. In particular, in 10 cases out of 50 detainees,<sup>318</sup> the Ministry of Internal Affairs presented before the court the extracts from the electronic database of the Ministry of Internal Affairs Informational (info.police.ge), which, in majority of the cases, contained the information on the offences committed more than a year before.

The above practice is contrary to the decision №1/2/622 of the Constitutional Court of Georgia of February 9, 2017 into the case “Citizen of Georgia Edisher Goduadze v. Minister of Internal Affairs of Georgia”<sup>319</sup> and the regulations introduced into the legislation of Georgia thereafter. The Constitutional Court held that the availability by the State of the information about the act committed by an individual makes that person feel that despite serving his/her sentence he/she is still perceived as a permanent perpetrator by the State, which, in itself, complicates the moral rehabilitation of the individual.<sup>320</sup>

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<sup>313</sup> The interview given to GYLA by lawyer Lasha Bekishvili.

<sup>314</sup> The interview given to GYLA by D.Sh.

<sup>315</sup> The interview given to GYLA by N.Sh.

<sup>316</sup> The interview given to GYLA by the rally participant Irakli Khvadagiani.

<sup>317</sup> The interview given to GYLA by the rally participant Koka Kighuradze.

<sup>318</sup> The cases of Tbilisi City Court: N6811-19, N4 / 6824-19, N4 / 6840-19, N4 / 6892-19, N4 / 6915-19, N4 / 6922-19, N4 / 6936-19, N4 / 6990-19 , N4 / 7075-19, N4 / 7049-19.

<sup>319</sup> Article 15, paragraph 1 of the Decree №271 issued by the Minister of Internal Affairs of Georgia on March 1, 2006 “On Approval of the Rule for Unified Accounting, Managing the Database and Analytical Activities within the Ministry of Internal Affairs of Georgia” provided for the possibility to store information on violations in an electronic format in the database for an indefinite period of time.

<sup>320</sup> The Decision №1/ 2/622 of the Constitutional Court of Georgia of 9 February 2017 into the Case “Citizen of Georgia Edisher Goduadze v. Minister of Internal Affairs of Georgia” II, 27.

Therefore, it is permissible for the State to retain personal information only for a reasonable time period and to the extent necessary to achieve a relevant legitimate objective. Formal retention of personal data is not a necessary means for achieving the stated legitimate purpose.<sup>321</sup>

Following the decision of the Constitutional Court and based on the amendment introduced to the normative act, records in the Unified Database of Administrative Offences may be retained in an electronic format for up to one year.<sup>322</sup> The Law of Georgia “On Personal Data Protection” stipulates that “data may be kept only for the period necessary to achieve the purpose of data processing. Once the purpose of data processing is achieved, the data must be blocked, deleted or destroyed, or stored in a format that excludes the identification of a person, unless it is otherwise determined by law.”<sup>323</sup>

Consequently, it has been established that the Ministry of Internal Affairs uses personal information stored in the unified electronic database in the process of administrative proceedings and submits it to the court as evidence.

#### 4.11. Summary

The current Administrative Offences Code of Georgia and the case-law do not provide the guarantees for the protection of the rights of a person whose liberty has been deprived under the administrative law. **It has been identified that on June 20-21, the Ministry of Internal Affairs applied administrative detentions indiscriminately without examination of individual circumstances, including against the individuals who were not protesters and / or whose actions did not give rise to any legal grounds for imposing administrative detention. The Interior Ministry produced and presented to the Court formulaic and similar protocols of administrative offences and administrative detention against almost all detained persons. The protocols did not include individual circumstances, and in some cases, the protocols did not indicate accurately the place and time of the detention, which overall affected the comprehensive and impartial examination of cases. It was also revealed that law enforcers did not usually inform detainees of the grounds of their arrest and their rights, which affected the ability of the detainees to contact a lawyer, communicate their whereabouts and receive medical services.**

The analysis of the cases has also revealed that the Ministry of Internal Affairs uses in the process of administrative proceedings and submits to the court as evidence personal information stored in the unified electronic database, which is a violation of the law.

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<sup>321</sup> The same above, II, 30.

<sup>322</sup> Article 15, paragraph 1 of the Decree №271 issued by the Minister of Internal Affairs of Georgia on March 1, 2006 “On Approval of the Rule for Unified Accounting, Managing the Database and Analytical Activities within the Ministry of Internal Affairs of Georgia.”

<sup>323</sup> The Law of Georgia “On Personal Data Protection”, Article 4 (e).

Particularly alarming is delaying persons under administrative detention in police stations, in police vehicles and in the yards of the police units. 260 persons arrested by police during the June 20-21 events were held in police stations, in police cars or in the yards of the police stations. Accordingly, the majority of the detainees were deprived of the possibility to receive a medical examination in a temporary detention facility. The above practices increase the risks of inhuman treatment.



# CHAPTER 5

## LEGAL BASIS OF INJUSTICE

THE PRACTICE OF CONSIDERING  
ADMINISTRATIVE CASES IN THE COURT AND  
COURT JUDGMENTS

For the purposes of the report, 28 administrative case materials (administrative detention protocols, administrative offence protocols, protocols of court hearings, court judgments) heard by Tbilisi City Court against 82 persons in relation to the events of June 20-21 have been examined. The following number of the cases considered by Judges of Tbilisi City Court has been studied: Judge Ekaterine Jinchvelashvili - 7, Ivane Aghniashvili - 5, Tamar Okropiridze - 4; Mary Guluashvili -3; Nino Buachidze - 3; Ana Chkhetia - 2; Natia Togonidze - 2; Tamar Meshveliani-1 and Lela Chincharauli -1. Six case proceedings against 41 persons in Tbilisi Court of Appeals have been also analyzed (2 cases considered by Judge Levan Murusidze, 2 cases by Judge Nino Kanchaveli and 2 cases by Judge Shorena Kavelashvili).

### **5.1. Considering administrative cases in the court**

Complete malfunctioning of the system for reviewing administrative violations in the court was particularly obvious when analyzing the cases of June 20-21.<sup>324</sup> According to official data, police released only 59 out of 342 detained in connection with the events of June 20-21 based on a written acknowledgement, and postponed the consideration of 14 cases for another time.<sup>325</sup> Therefore, given the limited timeframes for the consideration of administrative detention, on June 21, 2019, police presented case files of at least 297 individuals<sup>326</sup> to Tbilisi City Court.

As the lawyers noted, the number of the cases submitted to the court on June 21 was increasing and increasing since the morning, so as the number of the reviewing judges. Accordingly, making a telephone call to an assistant judge was often meaningless and specifying/ obtaining information concerning a case was also complicated.<sup>327</sup>

On June 21, the corridors of Tbilisi City Court were full of the relatives of detainees. Most of them demanded the involvement of lawyers into the case proceedings of their relatives, yet they did not know exactly in which courtroom, when and which judge would conduct the trial.<sup>328</sup> In some cases, detainees were imposed administrative penalties, while their family members were not even aware when and in which courtroom the trial had been held.<sup>329</sup>

The chaotic system of case distribution and the inability to communicate with detainees significantly impeded the right to receive a legal protection. Prior to court hearings, the

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<sup>324</sup> The interviews given to GYLA by lawyers Giorgi Antadze, Giorgi Tabatadze, and Shota Tutberidze.

<sup>325</sup> The letter MIA41902105876 of the Ministry of Internal Affairs of Georgia dated 9 August 2019.

<sup>326</sup> Tbilisi City Court did not send to GYLA relevant public information, thus GYLA could not locate any specific information thereof.

<sup>327</sup> The interviews given to GYLA by lawyers Giorgi Antadze and Dimitri Nozadze.

<sup>328</sup> The interview given to GYLA by lawyer Giorgi Antadze.

<sup>329</sup> The interview given to GYLA by lawyer Dimitri Nozadze.

detainees were placed in special rooms in the court (in some cases under police surveillance in the court yard), and lawyers were able to communicate with detainees only for a few minutes before entering the courtroom.<sup>330</sup> According to the GYLA's lawyer, Giorgi Tabatadze, he was not given even a minute to communicate with the detainee and agree upon the defense strategy.<sup>331</sup> The same problem has been mentioned by EMC lawyer Ani Nasrashvili.<sup>332</sup>

Due to the inability to communicate and jointly review the case details with detainees prior to the court hearings, the confidentiality of lawyer and client communication was violated. Lawyers had to interview detainees in the courtroom in the presence of other individuals, including police officers and the judge.<sup>333</sup>

## 5.2. Merging and accelerated consideration of cases

The cases of administrative violations presented to Tbilisi City Court on June 21, 2019, were distributed among judges in an unclear fashion without due consideration to the correlation between the cases, time and individual circumstances of the detentions. Moreover, quite unreasonably judges united the cases of several individuals into one proceeding. The cases studied for the purposes of the report show that the only possible prerequisite for merging the cases was detention protocols drawn up by the same police unit. The artificial merging of cases prevented a thorough examination of individual cases.

For example, Judge Mary Guluashvili in the Case №3/ 6922-19 united the cases of 5 persons<sup>334</sup> who had been detained at different times and in different circumstances. One of them was arrested at 02:15am near Freedom Square, the second at 03:55am in the same Freedom Square, the third at 05:30am near Kostava Street, the fourth - in Melikishvili Avenue on June 21 at 07:10am and the fifth at 09:55am near the Varazi Gorge. The judge, upon the opening of the court hearing, noted that all the accused had been arrested in connection with the same fact and she considered it expedient to merge the cases into a single court proceeding. The artificial merging of the cases affected the interests of the detainees. The judge's aim was to hear the cases at an accelerated pace, and in doing so, she failed to properly scrutinize the details of the cases as she was hastening the parties.

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<sup>330</sup> The interviews given to GYLA by lawyer Lasha Bekishvili.

<sup>331</sup> The interview given to GYLA by lawyer Giorgi Tabatadze.

<sup>332</sup> The interview given to GYLA by lawyer Ani Nasrashvili.

<sup>333</sup> The interviews given to GYLA by lawyers Giorgi Tabatadze, Giorgi Antadze and Kamral Amjaogli and Ekaterine Pavlenishvili.

<sup>334</sup> The protocol of the court hearing of the Administrative Cases Panel of Tbilisi City Court, dated June 21, 2019 (21: 20: 42-21: 20: 52) into the Case №3 / 7119-19, Judge Mary Guluashvili.



**“I have united three cases into one proceeding, so we can finish them promptly in one hearing,”** with this argument Judge Mary Guluashvili merged the cases against the three individuals who had been detained at different times and in different locations.<sup>335</sup> The motion of the lawyer to postpone the hearing for another time was declined by Judge Guluashvili with the following remark: **“Let’s finish ok? You’ll have to come here again, and do you want this? This is what we’ve got, nothing more will emerge [...]”**<sup>336</sup>

Judge Tamar Okropiridze merged the cases of 7 persons into one proceeding,<sup>337</sup> noting that they were related to the same fact, yet she did not explain what she deemed as the same fact. However, after the opening of the court hearing, the judge decided not to merge the case of the eighth person with the other seven as the detainee had not been brought yet into the courtroom by that time.<sup>338</sup>

Judge Tamar Okropiridze applied the same approach when uniting the cases of persons detained at different times and different locations into two different proceedings.<sup>339</sup> The same practice was adopted by the following judges: Ana Chkhetia,<sup>340</sup> Ekaterine Jinchvelashvili,<sup>341</sup> and Ivane Agniashvili.<sup>342</sup>

The lawyer Giorgi Antadze involved in one of the cases merged by Judge Giorgi Agniashvili recalls: **“[the judge] asked the police to briefly explain what had happened. The text provided was the exact reiteration of the violations envisaged by Articles 166 and 173 of the Administrative Offences Code of Georgia delivered without any specific details, extremely brief and lacking in substance. The detainees denied committing the incriminated offences. The judge did not require any additional evidence, did not ask further questions, nor did he take any action that would render the picture a bit clearer, and directly pronounced the detainees offenders and sentenced them to 8 days in prison, after which the next 8 persons were brought into the hall. The scenario was exactly the same [...] after a brief hearing of the cases the detainees were sentenced to 8 days in**

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<sup>335</sup> The Administrative Cases Panel of Tbilisi City Court, Case №3 / 7119-19, Judge Mary Guluashvili.

<sup>336</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court, dated June 21, 2019 (21:22:08-21:22:15) into the Case №3/7119-19, Judge Mary Guluashvili.

<sup>337</sup> The same above.

<sup>338</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court, dated June 21, 2019 into the Case №4/7114-19, 17:56:40 -18:01:14, Judge Tamar Okropiridze.

<sup>339</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the Case №4/6915-19 and Case №4/7079-19, Judge Tamar Okropiridze.

<sup>340</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the Case №4/6892-19, Case №4/6888-19, Case №4/7098-19, Judge Ana Chkhetia.

<sup>341</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the Case №4/6971-19, Case №4/6966-19, Case №4/6962-19, Judge Ekaterine Jinchvelashvili.

<sup>342</sup> The protocol of the court hearing in the Administrative Cases Panel of Tbilisi City Court into the Case №4/6824-19, Case №4/6840-19, Case №4/6846-19, Case №4/6838-19 Judge Ivane Agniashvili.

***prison, after which other 8 persons were brought in.***<sup>343</sup>

However, contrary to the foregoing, several cases of the persons detained under the same circumstance and locations were not merged into one proceeding and were examined by different judges.<sup>344</sup>

Merging the cases in Tbilisi Court of Appeals was even more obscure. According to the information provided by Tbilisi Court of Appeals, 90 applications were filed with the Court of Appeals, of which Judge Levan Murusidze united 9 cases against 12 persons into 2 court proceedings,<sup>345</sup> Judge Shorena Kavelashvili united 13 cases against 23 persons into 4 case proceedings,<sup>346</sup> and Judge Nino Kanchaveli merged 6 cases<sup>347</sup> against 12 persons into 2 case proceedings.<sup>348</sup>

The merging of the cases at the Court of Appeals halted the expedient review of cases instead of speeding up, as the united cases included the cases of those who had been placed in detention facilities in different cities. The transportation of the administrative detainees to Tbilisi Court of Appeals was provided by the Ministry of Internal Affairs. Therefore, due to the lack of staff and the remoteness of the detention places, the court hearings were delayed for hours in the Court of Appeals. Furthermore, there were cases when court hearings scheduled at various times were held simultaneously which prevented lawyers from carrying out necessary activities to enable the administrative detainees to properly enjoy their right to legal remedy.

**The studied cases leave the impression that the primary intention of the judges was to review the cases formally within the shortest possible timeframes rather than to properly investigate and examine the cases and determine adequate sentences or discharge detainees.**

### **5.3. Formal reference to the essence of violations**

The established vicious practice of detaining protesters without adequate grounds and evidence, based on petty hooliganism (Article 166) and non-compliance to lawful demands of police officers (Article 173) still occurred in court proceedings of the individuals detained during the events of June 20-21, 2019. The examined cases confirm that

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<sup>343</sup> The interview given to GYLA by lawyer Giorgi Antadze.

<sup>344</sup> Z.L.'s case was heard by Judge Anna Chkhetia at Tbilisi City Court (Case № 4 / 7098-19) and the case of J.K. and M.L. by Tamar Okropiridze (Case №7079-19).

<sup>345</sup> The cases of six persons were merged into the case №4s / 470-19.

<sup>346</sup> Four cases against 9 persons were merged into the case №4s/469-19, and the cases of 5 persons were merged into the case №4s/474-19.

<sup>347</sup> Two cases of 6-6 persons, respectively were merged into the case №4s/480-19, 5 cases against 6 persons were merged into the case №4s/468-19.

<sup>348</sup> Letter №3 / 5683 of Tbilisi Court of Appeals dated July 26, 2019.

participation in the public demonstration was considered an offence. The court, without due consideration to the circumstances, regarded specific phrases (e.g., swearing at the President of the Russian Federation) uttered by certain individuals as a violation, although it constituted the right to freedom of expression.

The administrative violation and administrative detention protocols did not adequately provide the essence of a violation and only offered general reference: **“He [a detainee] was insulting and swearing, he was a demonstrator and did not comply with the lawful demands of the police.”**<sup>349</sup> Such protocols did not provide the possibility to evaluate the actions committed by specific individuals whether it was a violation or not. In some cases, **“participation in the protest rally”** was referred to by police as a violation.<sup>350</sup>

Although the offence protocols did not contain an exact description of the actions carried out by individuals, the court still considered the violation committed and did not provide adequate reasoning in the final decisions what specific action was deemed as a violation.

In certain proceedings, judges expressed negative attitudes against the detainees formulated as a result of the media coverage of the protest rally. Judge Mary Guluashvili, after hearing the statement of the detainee, remarked:

**“... So everybody was going somewhere and who were those people I saw on TV, where did they go? Was I watching something different? ...” “So, no one was there who I have heard today, well, did I watch another country last night?”**<sup>351</sup> The same judge asked questions in another case proceeding<sup>352</sup> not for the identification of the actions committed by specific individuals, but rather in relation to the rally in general.<sup>353</sup>

In some cases, the above attitude had an impact on the decisions rendered into the cases. For example, Ana Chkhetia, Judge at Tbilisi City Court, took into consideration the publicly known facts of the protest demonstration on Rustaveli Avenue, Tbilisi, on June 21, 2019, when assessing the responsibility of the detainees in her judgment.<sup>354</sup> The court ruling<sup>355</sup> rendered by Levan Murusidze, Judge at the Court of Appeals, can be

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<sup>349</sup> The Administrative Cases Panel of Tbilisi City Court, Case №3 / 6922-19, Judge Mary Guluashvili. Also, the administrative violation protocol drawn up against D.K.

<sup>350</sup> The Administrative Cases Panel of Tbilisi City Court, Case №3 / 6922-19, Judge Mary Guluashvili; Also, Administrative violation protocols prepared against K.Ch., D.Kh. And D.Sh.; The Administrative Cases Panel of Tbilisi City Court, Case №3 / 6894-19; Administrative violation protocols prepared against I.Kh.

<sup>351</sup> The Administrative Cases Panel of Tbilisi City Court, Case №4 / 7119-19, Judge Mary Guluashvili, The protocol of the court hearing of 21 June 2019, 21: 29: 02-21: 29-09, 21: 30: 00-21: 30: 10.

<sup>352</sup> The Administrative Cases Panel of Tbilisi City Court, Case №4/6922-19 Judge Mary Guluashvili;

<sup>353</sup> Judge Mary Guluashvili: “I tell you what I have seen on TV”.

<sup>354</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/7098-19 of 21 June 2019; Judge Ana Chkhetia;

<sup>355</sup> The decision of the Administrative Cases Panel of Tbilisi Court of Appeals into the Case №4/ს-458-19; Judge Levan Murusidze.

read as follows: "... It has been confirmed that by approximately 11-12 pm, the warning on the forthcoming dispersal had been repeatedly made and police used tear gas and other means for the effective implementation of the measures, but the persons charged did not leave Rustaveli Avenue and its surrounding area ..." Thus, the judge assessed the above action as a violation.

#### **5.4. Standard of proof**

The fundamental problem associated with the distribution of the burden of proof and standard of proof in administrative case proceedings was apparent in the cases related to the events of June 20-21.

When referring to Articles of the Administrative Offences Code of Georgia, such as petty hooliganism and non-compliance with lawful demands of police officers, a person must be provided with the same procedural safeguards as those provided for individuals detained with criminal charges. The obligation to adhere to the said standards stems from the fact that any alleged misconduct, given its nature and the severity of the sanction, is of criminal nature. However, the current Administrative Offences Code does not provide such guarantees and leaves a person unprotected before the court. Furthermore, within the current law, the impartiality and independence of the court are neglected and the judge actually acquires the role of the prosecution and acts as both the prosecutor and the head of the court.<sup>356</sup>

Notwithstanding the rights-restricting legislation, a judge can, in good faith, be guided by the Constitution of Georgia and any relevant Articles of the European Convention on Human Rights and conduct a case proceeding properly based on the principle of consolidated evidence and appropriate distribution of the burden of proof.

**The contrary practice has been identified in the cases related to the events of June 20-21. Different departments of the Ministry of Internal Affairs of Georgia submitted to the court uniform evidence which often coincided in the contents. In all of the cases (82 cases) studied for the purposes of the report, the main evidence attached to the cases was the protocol of administrative offence and administrative detention, usually drawn up by the same person. Both protocols contained an identical description of an alleged violation. In most cases, police officers appearing at the court trial were not the actual arresting persons of the individuals charged with an administrative violation, yet the judges still considered their statements credible.**

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<sup>356</sup> Karelin v. Russia, 926/08, 2016.

For example, Judge Ekaterine Jinchvelashvili in her final decision<sup>357</sup> states that the Administrative Offences Code of Georgia does not oblige a party to present consolidated evidence (e.g. in some cases, it is sufficient to submit only a report of an administrative offence, a statement of a person charged with an administrative offence, a witness statement, a forensic report or video footage ...).<sup>358</sup> It has been also confirmed that the court formally examined evidence and formally reflected the parties' statements in the court decisions. For example, in the rulings delivered by Judge Ivane Agniashvili, the statements provided by different detainees are identical, with the same wording. The court judgment delivered into the same cases does not contain the statements of two witnesses into the case, nor are they indicated in the list of the submitted evidence.<sup>359</sup> The same judge noted in another ruling that the two persons had confessed to committing the offence under Article 166 and Article 173, while pursuant to the case materials, it has been established that the persons had confessed only to petty hooliganism.<sup>360</sup>

Judge Ivane Agniashvili referred to the necessity for the consolidated evidence in the case of Ts. Ts. examined in the early morning hours of June 21, 2019,<sup>361</sup> yet sentenced the person to administrative imprisonment based merely on the police statements and protocols. The same Judge no longer considered the statements and protocols submitted by police officers sufficient and relevant substantiation of the offence into the case reviewed in the evening hours of the same day and terminated the case proceedings.<sup>362</sup>

It is important to note the case of a person arrested during the events of June 20-21, which was presented to the court by police on August 6, 2019. Judge Lela Chincharauli made a correct remark when she said that in the circumstances that the detainee challenged the reference made by the party drawing up the protocol on his commission of the administrative offence, the burden of proving the offence had to be imposed on the party that had prepared the protocol. As the party preparing the protocol failed to refute the argument of the defendant, the Judge terminated the case proceedings.<sup>363</sup>

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<sup>357</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Cases №4/7075-19, №4/6971-19 of 21 June 2019; Judge Ekaterine Jinchvelashvili;

<sup>358</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/6936-19 of 21 June 2019; Judge Ekaterine Jinchvelashvili;

<sup>359</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/6840-19 of 9 July 2019; Judge Ivane Agniashvili;

<sup>360</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/6824-19 of 9 July 2019; Judge Ivane Agniashvili;

<sup>361</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/6811-19 of 21 June 2019; Judge Ivane Agniashvili;

<sup>362</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/6824-19 of 9 July 2019; Judge Ivane Agniashvili;

<sup>363</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/8730-19 of 6 August 2019; Judge Lela Chincharauli;

In contrast, Judge Ivane Agniashvili attached particular importance in one of his decisions to the statements provided by police officers. In the case, the position of the accused who denied committing the violation was backed by the testimony of a witness, but the judge held that "... the information provided by a public servant usually contains not only the reference to particular events, but also the conclusions and explanations thereupon. The value of his/her testimony shall be determined not only by impartial reporting of any fact that he might have learned as a result of the execution of his professional duties but also by his/her ability to explain and make relevant conclusions into such facts."<sup>364</sup> The particular importance of the statements given by law enforcers is highlighted by Judge Tamar Okropiridze as well.<sup>365</sup>

Judges Ekaterine Jinchvelashvili,<sup>366</sup> Mary Guluashvili,<sup>367</sup> and Anna Chkhetia,<sup>368</sup> in the affirmative reasoning part of their judgments, attached special importance to eyewitnesses who were, generally, police officers. The same decisions consider the statements provided by the detained persons less credible.

## 5.5. The practice of applying sanctions

The court hearings of persons detained during the 20-21 June events were conducted differently during June 21, which was mainly manifested by applying sanctions. On June 21, the case hearing in Tbilisi City Court can be divided into three phases: the first phase involved imposing most severe punishment, 8-12 or 13 days of administrative imprisonment without examining the details and specific circumstances related to the cases, as well as without involvement of the lawyer; In the second phase, judges began using mostly fines, and in the third phase, the judges started postponing the case hearings for another time or giving a verbal reprimand.<sup>369</sup>

In total, Tbilisi City Court sentenced 121 persons to administrative imprisonment.<sup>370</sup> Tbilisi City Court did not provide us with the information on the number of judges who reviewed the cases of the persons detained during the events of June 20-21 in the first-

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<sup>364</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/6838-19 of 21 June 2019; Judge Ivane Agniashvili;

<sup>365</sup> The decisions of the Administrative Cases Panel of Tbilisi City Court into the Cases №4/7079-19, №4/7114-19; №4/6915-19 of 21 June 2019; Judge Tamar Okropiridze;

<sup>366</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Cases №4/6962-19, №4/6971-19 of 21 July 2019; The decision into the Cases №4/6893-19 of 12 July 2019, Judge Ekaterine Jinchvelashvili;

<sup>367</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/6922-19 of 21 June 2019; Judge Mary Guluashvili;

<sup>368</sup> The decisions of the Administrative Cases Panel of Tbilisi City Court into the Cases №4/6892-19, №4/6888-19, №4/7098-19 of 12 July 2019; Judge Ana Chkhetia;

<sup>369</sup> The interviews given to GYLA by lawyers Giorgi Antadze and Kamral Amjanogli.

<sup>370</sup> The letter № MIA41902105876 of the Ministry of Internal Affairs of Georgia dated 9 August 2019.

instance court, the number of judges who imposed administrative detention and within what time period.<sup>371</sup> **However, according to other sources, judges imposed administrative imprisonment extensively in the first half of the day until about 16:00-17:00.**<sup>372</sup> **In the same period, the judges rejected the motions presented by lawyers to adjourn the case proceedings for a reasonable term.**<sup>373</sup> **For example, in one of the cases, the judge gave the party only an hour to present a witness. To the objection of the lawyer that the witness would not be able to make for the court physically, the judge explained that due to the restricted timeframes into the administrative cases, lawyers were required to identify and interview the witness in advance.**<sup>374</sup>

For example, Judge Tamar Okropiridze reviewed the cases of three persons within 14 minutes during the first half of the day and sentenced them to 13 days in jail based on a mutual agreement.<sup>375</sup> Contrary to the principle of selecting an individual punishment, Judge Tamar Okropiridze imposed 13-day imprisonment on all the detainees in another case proceeding where seven cases were heard, despite the fact that two detainees admitted to the actions indicated in the protocol.<sup>376</sup>

Judge Nino Buachidze sentenced Irakli Khvadagiani to 9 days in jail. The Judge did not substantiate in the court ruling the factual or legal grounds for applying the severe sentence.<sup>377</sup> A similar approach has been identified in the court judgments delivered by Ekaterine Jinchvelashvili.<sup>378</sup>

On June 21, after about 16:00-17:00, the judges simultaneously changed the practice applied during the first half of the day, and instead of imprisonment, the detainees were generally imposed a fine.<sup>379</sup> According to the Ministry of Internal Affairs of Georgia, 70 persons were imposed a fine.<sup>380</sup>

The practice of unsubstantiated selection of the form and size of the sanction persisted in the process of applying fines.<sup>381</sup> For example, Judge Mary Guluashvili reviewed a case

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<sup>371</sup> The letter №3-0487 / 3098218 of Tbilisi City Court dated July 17, 2019.

<sup>372</sup> The interviews given to GYLA by lawyers Ketii Chutlashvili.

<sup>373</sup> The interviews given to GYLA by lawyers Ani Nasrashvili.

<sup>374</sup> The Administrative Cases Panel of Tbilisi City Court, Case №4/6838-19, Judge Ivane Agniashvili, The protocol of the court hearing of June 21, 2019, 16:19: 00-16: 19:28.

<sup>375</sup> The Administrative Cases Panel of Tbilisi City Court, Case №N4/6915-19, Judge Tamar Okropiridze.

<sup>376</sup> The Administrative Cases Panel of Tbilisi City Court, Case №4/7114-19, Judge Tamar Okropiridze.

<sup>377</sup> The decision of the Administrative Cases Panel of Tbilisi City Court into the Case №3/6894-19 of 12 June 2019; Judge Nino Buachidze;

<sup>378</sup> The Administrative Cases Panel of Tbilisi City Court, Case №4/6971-19 and Case №4/6962-19, Judge ekaterine Jinchvelashvili.

<sup>379</sup> The interviews given to GYLA by lawyer Kamral Amjanogli.

<sup>380</sup> The letter №MIA41902105876 of the Ministry of Internal Affairs of Georgia dated 9 August 2019.

<sup>381</sup> The Administrative Cases Panel of Tbilisi City Court, the Cases №4/6966-19, №4/7075-19, №4/6936-19, Judge Ekaterine Jinchvelashvili.

of the violations committed by 5 persons.<sup>382</sup> All five detainees denied the commission of the offence, but the police reported substantially uniform facts with respect to all of them. The judge fined 4 people with 1000 GEL and terminated the case proceedings in one case.

**The case materials studied for the purposes of the report confirm that the aspects of the violation which the judges considered at the start of the day severe to determine the strictest form of punishment were evaluated as a minor violation and served as the basis for a fine or a verbal reprimand in the afternoon. Moreover, the court rulings did not substantiate with proper reasoning the use of less stringent sanctions. In one case the judge, on the basis of sincere confession, found it unreasonable to impose administrative responsibility and applied a verbal reprimand,<sup>383</sup> although the case files confirmed that the person had not made the confession.**

In the evening hours of June 21, the judges granted the motions presented by lawyers to postpone the case hearings for a reasonable time period. The cases that were adjourned for a definite time period were either terminated by the judges or a verbal reprimand was applied against those who admitted to the violations.<sup>384</sup> According to the Ministry of Interior, a verbal reprimand was issued against 77 persons, and the case proceedings against 29 individuals were terminated.<sup>385</sup>

During the daytime of June 21 and afterward, the practice of imposing sanctions leaves the impression that it was mutually agreed between the judges, rather than conducted based on individual and independent consideration of cases.

## 5.6. Reducing the imprisonment term and prosecutor's objection

Consideration of the cases in the Court of Appeals created the impression that it had been agreed in advance with the aim to reduce the term of detentions and release persons from custody directly in the courtroom. Following the court judgments rendered by the first instance court, 90 persons filed the applications with the Tbilisi Court of Appeals.

According to the data provided by the Tbilisi Court of Appeals, the size and form of the punishment imposed on 54 individuals were changed, the detention term was reduced

<sup>382</sup> The Administrative Cases Panel of Tbilisi City Court, Case №4/6922-19, Judge Mary Guluashvili.

<sup>383</sup> The Administrative Cases Panel of Tbilisi City Court, Case №4/7119-19, Judge Mary Guluashvili.

<sup>384</sup> The Decisions of the Administrative Cases Panel of Tbilisi City Court into the Cases №4/6840-19, №4/6824-19 of 9 July 2019; Judge Ivane Agniashvili; The Decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/6990-19 of 3 July 2019; Judge Nino Buachidze; The Decision of the Administrative Cases Panel of Tbilisi City Court into the Case №4/8730-19 of 6 August 2019; Judge Lela Chinchauruli;

<sup>385</sup> The letter №MIA41902105876 of the Ministry of Internal Affairs of Georgia dated 9 August 2019.



in the case of 53 persons and in one case the court proceeding was terminated.<sup>386</sup> The practice of delivering unjustified decisions by the Court of Appeals has been evidenced by the fact that the sentences were changed / reduced not because of individual circumstances but rather based on the period of time that a person had already served in custody.

For example, on June 23, Judge Levan Murusidze reviewed the cases of three persons combined into one proceeding and reduced the term of the detention against all them to three days, as they had already spent three days in custody and therefore, were released from the courtroom.<sup>387</sup>

In another case, the consideration of the case which started in the late hours of June 24 was closed by the same judge at 1:30am on June 25, and the sentence imposed against 9 persons was reduced up to 4 days, actually to the term served in custody.<sup>388</sup> On the same day, on June 24, Judge Nino Kanchaveli reduced the sentence of six persons up to 4 days, with the argument that the objective of the punishment had been achieved.<sup>389</sup>

Judge Shorena Kavelashvili in her decision noted on the one hand that individual circumstances should be taken into consideration when determining the size and extent of the punishment, and on the other hand, sentenced the persons to the identical form and extent of punishment or reduced the existing punishment up to 4 days, without taking into consideration the individual circumstances.<sup>390</sup>

It is noteworthy that the Prosecutor's Office applied to Tbilisi City Court requesting to reduce the sentences for those who could not or did not appeal the judgments of the first instance court. To this end, the Chief Prosecutor's Office resorted to a long-forgotten provision of the Administrative Offences Code of Georgia,<sup>391</sup> which envisages an objection of the prosecutor and states that a prosecutor may file an objection against a decision delivered on an appeal filed against an order issued in an administrative case. Thus, the Article provides for a mechanism for reviewing a court judgment, the authority of which is exercised by a body (the Prosecutor's Office) which is not involved in any other stage of the investigation of the case and is not a party of the prosecution. The Prosecutor's Office is deprived of the opportunity to review case materials and to assess the accuracy of the decision. That is why the prosecutor's objection is not usually utilized in practice.

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<sup>386</sup> Letter №3/5683 of Tbilisi Court of Appeals dated July 26, 2019.

<sup>387</sup> The Decision of Tbilisi Court of Appeals into the Case №4ს/458-19 of 23 June 2019; Judge Levan Murusidze;

<sup>388</sup> The Decision of Tbilisi Court of Appeals into the Case №4ს/470-19 of 25 June 2019; Judge Levan Murusidze;

<sup>389</sup> The Decision of Tbilisi Court of Appeals into the Case №4ს/468-19 of 24 June 2019; Judge Nino Kanchaveli;

<sup>390</sup> The Decision of Tbilisi Court of Appeals into the Case №4ს/474-19 of 24 June 2019; Judge Shorena Kavelashvili;

<sup>391</sup> The Administrative Offences Code of Georgia, Article 280.

According to the information disseminated by Tbilisi City Court, on June 25, 2019, the Administrative Cases Panel of Tbilisi City Court reviewed and granted the objections of the Prosecutor's Office of Georgia, according to which the sentence - imprisonment - imposed as a punishment for administrative offences against 51 persons on June 21 was changed and reduced. Based on the decisions of the judges of Tbilisi City Court, 51 persons were immediately released from the administrative custody.<sup>392</sup> Since the Court's statement does not indicate a partial granting of the objection, it is likely that the Prosecutor's Office requested and therefore the Court's decision reduced the sentences which 51 persons had already served. While working on the report, the GYLA did not have a possibility to examine the case materials in which the Prosecutor's Office presented the objection. Accordingly, it is difficult to assess whether the arguments contained therein and the Court's decisions were substantiated and reasonable. However, the scale of using the "Prosecutor's objection" raises doubts that the Prosecutor's Office used the above mechanism to weaken the intensity of the protest caused as a result of imposing administrative imprisonment without proper substantiation.

## 5.7. Summary

The unconstitutional application of the Administrative Offences Code of Georgia allowed for the formulaic examination of the cases in the Court and once again indicated systemic and practical problems that are associated with case proceedings. The analyzed cases confirm that instead of examining and evaluating individual circumstances, judges opt for proceeding quickly without giving due consideration to case materials. This has been evidenced by the fact that judges united the cases that were not related to one another.

The chaotic system of case distribution and not providing the detainees with the opportunity to communicate with their lawyers significantly prevented the detainees from exercising their right to legal protection.

The fundamental problem associated with the absence of the rule for the distribution of the burden of proof and standard of proof in administrative proceedings was obvious in the June 20-21 cases as well. In all cases studied (82 cases) for the purposes of the report, the main evidence presented before the court was protocols of administrative detention and administrative violations, usually drawn up by the same person. Both types of protocols contained identical information on an alleged offence. In a number of cases, police officers appearing before the court hearings were not the actual persons arresting the detainees, but the judges still deemed their statements credible. Although the offence protocols did not contain a precise description of the actions carried out by individuals, the court still considered the violation to have been committed and did not provide the reasoning in the final decisions specifically what was considered a violation.

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<sup>392</sup> Available at: <https://bit.ly/2mjJbVH> [Last accessed: 12.09.2019]

At court trials, the judges, in some cases, expressed a negative attitude against detainees created preliminarily as a result of the media coverage of the protest rally.

Furthermore, the applied sentences were unreasonable, giving the impression that it was a pre-agreed and pre-arranged action by the judges, rather than the one based on individual and independent consideration of the cases.



