

**Cases Connected with the Events
of June 20-21, 2019:
A Political Justice and Disputed Amnesty**

Legal Analysis

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Human Rights Center



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GENERAL OVERVIEW

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The investigation into the alleged offenses, committed during the disperse with the police force of the anti-occupation demonstration held on June 20-21, 2019, was launched by two investigative agencies simultaneously. In particular, with a purpose to react on the facts of alleged group violence on the part of the protesters¹, the legal proceedings were initiated by the Ministry of Internal Affairs, while for the cases of alleged excess of power through using violence on the part of legal enforcers when dispersing the demonstration was initiated by the Investigative Department of the Office of the Prosecutor General of Georgia².

Initially, the investigation was instituted into the facts of organizing and leading a group violence and participating in the group violence by some of the protesters. Later, the subsumption was ascertained and the investigation took on board the allegations of violent overthrow and uptake of power through rebellion by some of the individuals³. In the course of the criminal prosecutions against the citizens on the part of the State, number of suspicions have emerged regarding the independence and impartiality of the judicial authorities both at local⁴ and international levels, connected with the criminal prosecution of numerous civil rights activists, protesters and politically active individuals, including the rekindling the proceedings over alleged offenses, rendered judgments of conviction and applied custodies in which the signs of selective justice were evident⁵.

From the initial stage of the criminal prosecution, the problem stemmed from the striking quantitative difference in the statistics⁶ between f the injured and prosecuted common citizens and that of the injured and prosecuted law enforcement officers; further, leading the investigation from the perspective of overthrowing the government raised legitimate questions among the public

¹ Article 225 of the Criminal Code of Georgia.

² Article 333 (3)(b) of the Criminal Code of Georgia.

³ see: Statement of the Prosecutor's Office of Georgia: The information is available at: <https://bit.ly/3ePAeMA>. Last seen 04-May-21.

⁴see: The Statement of Human Rights House and its member organizations from August 9, 2019: <https://bit.ly/2MCNQvF>. Last seen 04-May-21.

⁵The Statement by Human Rights Center: <https://bit.ly/2AwUhO6>. Last seen 04-May-21.

⁶see: Legal Analysis of the Cases connected to the Events of June 20-21, 2019, Human Rights Center. 2020 p.: 27. <https://bit.ly/2XUIHFN>.

regarding the issues of independence and impartiality of the investigative authorities. In relation to the alleged offense, the evidence available to the investigation was not released to the public strengthening the suspicions regarding the subsumption of the rebellion with a purpose to overthrow the government.

The steps taken by the investigative authorities in the criminal proceedings against the protesters clearly leave an impression of deliberately exhibiting the accused in a negative context. For instance, such an approach is evident on the part of MIA against the accused Bezhan Lortkipanidze. The investigative agency released a fragment ⁷ of the footage as an evidence in the criminal case against Lortkipanidze depicting the accused physically assaulting the police officers. However, the full video footage later shown in the media allowed an objective observer to draw completely different conclusions about Bezhan Lortkipanidze's behavior at the rally⁸.

The same approach was identified towards Morris Machalikashvili who was at the demonstration with his uncle Malkhaz Machalikashvili. The prosecution also accused Machalikashvili of the violence against the law enforcers. According to the HRC assessment, the evidence in the files of the criminal case failed to prove the intention of the accused to use violence against the police during the June 20-21 rally. The video footage did not show any attempt by him to break the cordon and attack, further to use violence against the police, seize their gear, and even actively repel them in self-defense⁹. Accordingly, some suspicions regarding the political motives have emerged and also regarding the use of the case against Malkhaz Machalikashvili¹⁰ as an instrument of influence¹¹.

The legal proceedings initiated in connection with the events of June 20-21 indicate an attempt by the authorities to retaliate against the protesters, some of whom suffered health injuries of various degrees. In this regard, noteworthy are the administrative detentions used en masse against the protesters, the high rate of

⁷ see: The fragmentary footage released by MIA: <https://bit.ly/2RkNolo>. Last seen: 04-May-21.

⁸see: The full footage requested from MIA: <https://bit.ly/2RnNr6f>. Last seen: 04-May-21.

⁹see: Legal Analysis of the Criminal Cases connected to the Events of June 20-21, 2019. Human Rights Center, 2020: <https://bit.ly/3oi2Cdq>.

¹⁰More information: <https://bit.ly/3onfT4A>. Last seen: 04-May-21.

¹¹ see: Initial Assessments of the non-governmental organization Social Equality regarding the case of Morris Machalikashvili: <https://bit.ly/33ME9n3>. Last seen: 04-May-21.

application of remand in custody as a measure of restraint and the length of subsequent investigations, the practice of plea bargaining, and in some cases the judgments of conviction rendered against them.

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On April 19, 2021, the ruling political party Georgian Dream and a part of the opposition parties¹² signed a compromise agreement¹³ presented by the President of the European Council, Charles Michel, titled "A way ahead for Georgia." The instrument is of five points and includes the issues of politically motivated justice, the initiation of a draft law on amnesty addressing all violations and arrests related to the protests of June 20-21, 2019, and the ambitious electoral reform, the judicial reform, the distribution of power in the Parliament and other issues related to the future local government elections.

HRC called on the government of Georgia and all the political parties involved in the agreement process, not to allow adoption of the Law on Amnesty in the form covering the crimes committed on the part of law enforcement officers while dispersing the demonstration of June 20-21, 2019, notwithstanding the subsumption applied to the offenses on the national level. Envisaging the spirit of the European Convention and the established practice of the European Court that is endorsed by almost every international human rights organization and instrument, it is inadmissible to apply amnesty against the persons who have committed offenses of inhuman or degrading character. Further, the fact, whether the investigation is carried out with the correct subsumption at the national level, is not relevant for the purposes of Article 3 of the Convention. Moreover, beside the fact, that during the disperse of June 20-21 demonstration, the investigation against the arrested law enforcement officers was not carried out under the proper subsumption, namely under Article 144(3) of the Criminal Code of Georgia, the acts committed by the officers have to be assessed as inhuman and degrading acts

¹² **Note:** Michel's document was signed by the following opposition parties: "Lelo" [Badri Japaridze, Mamuka Khazaradze], "Strategy Agmashenebeli" [Giorgi Vashadze], Republican Party [Khatuna Samnidze], "Girchi" [Vakhtang Megrelishvili], "Citizens" [Aleko Elisashvili]. There were also individual signatures, namely: Salome Samadashvili, Davit Bakradze and Zurab Japaridze. See information at: <https://bit.ly/3husEbX>. Last seen: 04.05.2021.

¹³see: A compromise document presented by the President of the European Council, Charles Michel, titled "A way ahead for Georgia." The Document is available at: <https://bit.ly/33LcFOX>.

eliminating the possibility to apply the amnesty against the mentioned persons according to the binding standards established by the European Court.

Two years have passed since the events of June 20-21, 2019, and there are still legitimate questions among the public about the plan and implementation of the dispersal operation. However, up to the date, no person has been identified as being politically and/or legally liable based on the principles of equality before the law and that of the rule of law.

METHODOLOGY

This document is based on the analytical documents prepared by HRC, the court monitoring reports, the material available from public sources, and the special report by the Public Defender on the ongoing investigation by the Prosecutor's Office into the events of June 20-21, 2019. Moreover, during the research, the bills of indictment, the motions of the defense and that of the prosecution, the rulings, the interim decisions, the judgments or rulings made by the courts as available in the case files have been examined.

CRIMINAL CASES RELATED TO THE EVENTS OF JUNE 20-21

During 2020, HRC monitored the court hearings of the criminal cases related to the events of June 20-21. As a result, several analytical documents¹⁴ including interim and summary reports¹⁵ have been prepared.

The purpose of studying the criminal cases discussed in this document is not to establish the guilt or innocence of the accused and convicted persons, but to identify the violations and problems revealed during the proceedings.

¹⁴ See: 1) Legal Analysis of the Cases connected to the Events of June 20-21, 2019, Human Rights Center. 2020: <https://bit.ly/2XUJHFN>. 2) Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, Human Rights Center. 2020: <https://bit.ly/31NEpka>. 3) Criminal Case of Giorgi Rurua, Legal Analysis, Human Rights Center. 2020: <https://bit.ly/2CkSOfd>.

¹⁵ See: 1) Monitoring the Court Proceedings of the Cases with alleged Political Motives: Interim Report; Human Rights Center. 2020: <https://bit.ly/2JZ0eZh>. 2) Monitoring the Court Proceedings of the Cases with Alleged Political Motives - Final Report; Human Rights Center, 2020. <https://bit.ly/3eQZ1jf>.

Furthermore, each problematic issue is assessed in accordance with the national and international law and the standards and requirements established by the European Court of Human Rights.

1. The Case of Irakli Okruashvili. The Leader of the party *Victorious Georgia*, Irakli Okruashvili was accused under article 225 of the Criminal Code related to the events of June 20-21, 2019 envisaging the organisation of group violence and participation in the violence. Following the judgment from April 13, 2020, Okruashvili was sentenced to 5 years of imprisonment as he was charged with the participation in the offense, while being acquitted in the part of organizing the violence. Okruashvili left the penitentiary facility on May 15, 2020 based of the Act of Pardon by the President. Notwithstanding the pardon, Okruashvili appealed the judgment before Tbilisi Court of Appeals where the hearings on the case have not begun yet. Judge Vepkhvia Lomidze will hear the case¹⁶.

2. The Case of Nikanor Melia. The MP, Nikanor Melia is charged under article 225(1) and (2) of the Criminal Code of Georgia envisaging the organisation of acts of group violence and participation in the acts of group violence. The criminal case is linked with the protest demonstrations of June 20-21, 2019. HRC has observed the criminal case ongoing against Nikanor Melia in the document Legal Analysis of the Criminal Cases connected with the Events of June 20-21, 2019¹⁷.

By ruling from July 2, 2019, Tbilisi Court of Appeals ordered the Prosecutor's Office to carry out electronic monitoring over the movement of Nika Melia through attaching a tether to his arm¹⁸. When making a speech, Nikanor Melia an MP candidate in 2020 Parliamentary Elections, removed the tether from his arm, threw it away and stated that he was no longer going to wear it¹⁹.

On November 3, 2020, the Office of Prosecutor General of Georgia filed a motion with the court to apply more sever measure of restraint against Nikanor Melia because he had removed the tether attached to him for monitoring reasons and

¹⁶ See: Legal Assessment of the Criminal Cases Ongoing against Irakli Okruashvili, Human Rights Center. 2020: <https://bit.ly/31NEpka>.

¹⁷Legal Analysis of the Cases connected with the Events of June 20-21, 2019, Human Rights Center. 2020 p.: 7.: <https://bit.ly/2XUIHFn>

¹⁸ See: Statement of the General Prosecutor's Office of Georgia: <https://bit.ly/3ePTSb7>. Last seen: 04.05.2021.

¹⁹ The information is available at: <https://bit.ly/3eS5xq5>. Last seen: 04.05.2021.

thus had violated the terms of the measure of restraint used against him. In particular, the Prosecutor's Office of Georgia requested to remand Nikanor Melia in custody as a measure of restraint, which was later changed requesting to remand Nikanor Melia on bail of GEL 100,000 instead of previous GEL 30,000 as a measure of restraint²⁰. Tbilisi City Court assessed the removal of the tether as a violation of the terms of the measure of restraint and increased the bail of Nikanor Melia to GEL 70,000 with the deadline for payment of December 23, 2020²¹. Melia, did not pay the bail by December 23, 2020 and refused to pay it afterwards. The Prosecutor's Office of Georgia did not respond to the fact even after a month and a half and the case was processed only on February 5, 2021²².

On February 16, 2021, the Parliament of Georgia lifted the immunity of Nikanor Melia through an opaque procedure²³. Further, on January 21, 2021, Tbilisi City Court replaced remand on bail with remand in custody as a measure of restraint²⁴.

The Public Defender assessed the court ruling allowing to arrest Melia and stated that the decision to detain Nikanor Melia was not substantiated and was not necessary²⁵.

The leader of the main opposition party was detained by the riot police during a special operation in the Tbilisi office of United National Movement. Other leaders of United National Movement were also present at the office of the party at that time. The Prime Minister Giorgi Gakharia did not approve the arrest of Nikanor Melia in this manner resulting in the resignation of the Prime Minister. The arrest of the Chair of United National Movement has deepened the political crisis in Georgia²⁶. Dialogue between the government and the opposition has been hampered, due to which the President of the European Council, Charles Michel and also European diplomat Christian Danielson on behalf of Michel were involved in the process as mediators. Ambassadors of the European Union and the United States accredited to Georgia, as well as diplomats of other friendly countries, also

²⁰ The information is available at: <https://bit.ly/3w7ONRq>. Last seen: 04.05.2021.

²¹ The information is available at: <https://bit.ly/3oo7m0V>. Last seen: 04.05.2021.

²² The information is available at: <https://bit.ly/3hsnhtJ>. Last seen: 04.05.2021.

²³ The information is available at: <https://bit.ly/3foljmO>. Last seen: 04.05.2021.

²⁴ See: Appeal of Human Rights Center regarding the arrest of Nika Melia: <https://bit.ly/3bO6qyb>. Last seen: 04.05.2021.

²⁵ See: Statement of the Public Defender: <https://bit.ly/2TrG6n2>. Last seen: 04.05.2021.

²⁶ The information is available at: <https://bit.ly/3hua7MU>. Last seen: 04.05.2021.

actively participated in the mediation process. After several weeks of negotiations, a Charles Michel agreement document was drafted, according to which Melia was to be released by the Parliament under the "Amnesty Law". At the same time, it was reported that the European Union was ready to pay the bail for Melia of GEL 40,000 to which Nikanor Melia finally agreed²⁷.

Finally, on 19 April 2021, in accordance with the Agreement adopted through the EU mediation, Nika Melia was released on GEL 40,000 bail allocated under the auspices of the European Union by the European Endowment for Democracy²⁸, after which Tbilisi City Court granted the motion of the Prosecutor's Office to change the measure of restraint from remand in custody to remand on bail²⁹.

3. The Case of Giorgi Rurua. Giorgi Rurua, one of the founders and shareholders of TV company *Mtavari Arkhi*, and one of the organizers of the protest demonstrations of June 20-21, 2019, is charged under article 236(3)(4) of the Criminal Code (illegal purchase, storage and carriage of firearms); he was also charged under article 381(1) of the Criminal Code envisaging the failure to execute a court decision or interference with the execution of a court decision. On July 30, 2020, the judge of criminal panel of Tbilisi City Court, Valerian Bugianishvili rendered a judgment of conviction against Giorgi Rurua sentencing him to 4 years of imprisonment. The court found Giorgi Rurua guilty of both charges. The President of Georgia refused to pardon the convict, but after the document brokered by Charles Michel was signed, on April 27, 2021, the President agreed to pardon the convict³⁰. The defense is filling an appeal against the judgment of the first instance court with Tbilisi Court of Appeals.

HRC published an analytical document: The Criminal Case of Giorgi Rurua: Legal Analysis³¹.

²⁷ The information is available at: <https://bit.ly/3ydGrcR>. Last seen: 04.05.2021.

²⁸ The information is available at: <https://bit.ly/2QIEfPm>. Last seen: 04.05.2021.

²⁹ The information is available at: <https://bit.ly/3wcdpgq>. Last seen: 04.05.2021.

³⁰ The information is available at: <https://bit.ly/3eRnC7L>. Last seen: 04.05.2021.

³¹ See: The Criminal Case of Giorgi Rurua: Legal Analysis, Human Rights Center, 2020: <https://bit.ly/2CkSOfd>.

4. **The Case of Giorgi Javakhishvili and Tornike Datashvili.** The court found Giorgi Javakhishvili and Tornike Datashvili guilty under article 225(2) of the Criminal Code envisaging the leadership, organisation of a group violence and participation in the group violence. The above case was heard in the conjunction with the case of Irakli Okruashvili related to the events of June 20-21, 2019, however the case was split into separate proceedings and after the plea agreements were reached with the accused persons: Javakhishvili and Datashvili, they were released shortly afterwards.

5. **The Case of Besik Tamliani, Zurab Budaghashvili, Tsotne Soselia and Kakhaber Kupreishvili.** Besik Tamliani, Zurab Budaghashvili, Tsotne Soselia and Kakhaber Kupreishvili are charged under article 225(2) of the Criminal Code of Georgia envisaging the participation in group violence accompanied by violence, raid, damage or destruction of another person's property, use of arms, armed resistance to or assault on representatives of public authorities. A plea agreement was concluded between the Prosecutor's Office and the accused persons: Zurab Budaghashvili, Tsotne Soselia and Kakhaber Kupreishvili. On March 23, 2020, the measure of restraint used against Besik Tamliani was changed with remand on bail of GEL 4,000. He left the prison. The hearing of the criminal case against Besik Tamliani continues in Tbilisi City Court³².

6. **The Case of Bezhan Lortkipanidze.** An employee of the public organization *Nekresi*, Bezhan Lortkipanidze was charged under article 225(2) of the Criminal Code envisaging the leadership, organization of and participation in the group violence. Bezhan Lortkipanidze does not plead guilty. The charges are related to the events of June 20-21, 2019. A field biologist and researcher of wild nature, Bezhan Lortkipanidze was arrested on June 20, 2019 and he was remanded in custody for 2 months. At the time being, the measure of restraint is changed to remand on bail. The court proceedings are not over yet.

³² Ibid: P. 17.

7. The case of Morris Machalikashvili. Morris Machalikashvili is a cousin to Temirlan Machalikashvili killed during a special operation in Pankisi Gorge on December 26, 2017. For more than a year, Morris and his uncle, Malkhaz Machalikashvili, have been demanding assertion of legal consequences for the case of Temirlan Machalikashvili and criminal charges against the perpetrators. On July 26, 2019, Morris Machalikashvili was arrested together with Bezhan Lortkipanidze under Article 225(2) of the Criminal Code. On July 27, 2019, Tbilisi City Court remanded Morris Machalikashvili in custody when applying the measure of restraint. The ruling of the first instance court against Morris Machalikashvili was upheld by the court of appeals.

On February 6, 2020, a plea agreement was signed between Morris Machalikashvili and he was released from the courtroom³³. Tbilisi City Court approved the plea agreement reached between the parties, found Machalikashvili guilty of the offense under 225(2) of the Criminal Code (participation in a group violence) conditionally sentencing him to 2 years of imprisonment³⁴. Morris Machalikashvili said he pleaded guilty but denies the intention to invade the Parliament. He says that he was defending his uncle Malkhaz Machalikashvili³⁵.

8-9-10. The Cases of Former Officers of Special Forces. Levan Imerlishvili, Giorgi Esiashvili and Mindia Ambardnishvili are charged under article 333(3)(b) of the Criminal Code of Georgia envisaging the acts in excess of the official powers by an official or a person equal thereto resulting in the substantial violation of the rights of natural or legal persons, or of the lawful interests of the public or the State. The cases against the former officers of special forces are heard in Tbilisi City Court by several judges separately³⁶.

In 2020, during the HRC monitoring, no court hearings were held in the ongoing cases against Levan Imerlishvili and Mindia Ambardnishvili. The hearing of Levan Imerlishvili's case was scheduled several times, however it was postponed on every occasion. As what Giorgi Esiashvili concerns, during the monitoring, 4 court hearings were held attended by a court monitor.

³³ The information is available at: <https://bit.ly/3hdOZl9>. Last seen: 04.05.2021.

The information is available at: <https://bit.ly/2YhNjVu>. Last seen: 04.05.2021.

³⁵ See: Legal Analysis of the Criminal Cases connected with the Events of June 20-21, 2019. Human Rights Center, 2020. P. 23.: <https://bit.ly/3oi2Cdq>.

³⁶ Ibid: P. 27.

For some time the accused were remanded in custody. At the moment, they are remanded on bail of GEL 10,000 (ten thousand). The reason for changing the measure of restraint to Levan Imerlishvili was the deterioration of the health condition of the accused; the Court agreed with the opinion and granted the defense's motion.

The hearing on merits of the criminal case against Giorgi Esiashvili commenced on September 17, 2019 in Tbilisi City Court. Afterwards, since the judge who was hearing the case was replaced, the new judge decided to re-examine the evidence on the case as prescribed by Article 183 of the Criminal Procedure Code of Georgia.

On March 18, 2021, following the petition from the defense, a statement concerning the reconciliation of the victims with the accused (there are two victims in the present case) and the fact of full compensation of the damage by the accused was included into the criminal case files under consideration. According to the statement, the victims admit that they have no claim in this case and welcome reaching a plea agreement with the accused.

On April 22, 2021, Tbilisi City Court granted the motion of the defense on the revocation of the additional measures applied against accused Giorgi Esiashvili. As the additional measure the following was used: an obligation to inform the investigating authority, and without the consent of the latter not to leave the residence, and to appear to the investigating authority once a week.

Giorgi Esiashvili fully agrees with the allegations put against him. According to the media, Levan Imerlishvili also pleads guilty, while Mindia Ambardnishvili's lawyer reports that his client has not acted ultra vires and needs no amnesty, as he will be acquitted in this case³⁷.

PRACTICE OF ADMINISTRATIVE ARRESTS OF THE PROTESTERS AFTER THE DISPERSAL OF THE RALLY

According to the official information, on the night of June 20-21, MIA officers detained a total of 342 people for violating public order and disobeying the lawful

³⁷ See: Human Rights Center Press release regarding the monitoring of the ongoing cases against law enforcement officers involved in the events of June 20-21: <https://bit.ly/33QsGTn>. Last seen: 06.05.2021.

request of law enforcers³⁸. From these, only 23 persons were transferred to pretrial detention facilities before being brought to court, while 59 detainees were released on their own recognizance (against the formal written promise they would behave good)³⁹. Furthermore, due to the large number of administrative detainees and the lack of space in the pretrial detention facilities, it was impossible to transfer all detainees to the pretrial detention facilities before the trial. In particular, 260 persons were detained by the police in police stations, police station yards or police cars⁴⁰.

Finally, Tbilisi City Court ordered 121 people arrested on June 20-21, 2019 to 14 days of administrative detention, while the rest were released with the imposition of administrative fines or verbal reprimands. Some of the hearings of the administrative cases were postponed⁴¹. These statistics on the use of administrative detentions in 2019 account for about 30% of the total number of the persons detained by the courts under the administrative court proceedings⁴².

On June 20-21, 2019, MIA submitted to the court the reports of administrative offenses and detentions drawn up in the same standard way for almost all detainees⁴³. The reports did not include the individual circumstances, in some cases incorrectly depicting the place and time of the detentions. Moreover, it was revealed that, as a rule, law enforcement officers did not mention the grounds of the detentions and the rights to the detainees.

PRACTICE OF REACHING PLEA AGREEMENTS

After monitoring the trials and reviewing criminal case files in 2020, HRC found that those arrested during the events of June 20-21 were released mainly under plea

³⁸ Letter MIA31902221560 of the Ministry of Internal Affairs of Georgia dated August 21, 2019.

³⁹ see: "Beyond the Lost Eye", legal assessment of the events of June 20-21, Georgian Young Lawyers Association, 2019. P. 76.: <https://bit.ly/3d5AcMg>.

⁴⁰ see: EMC: "June 20 events: Dispersal of the rally and the main practice of human rights violations": <https://bit.ly/3ONjvmg>.

⁴¹ see: Statement of the Ministry of Internal Affairs of June 22, 2019: <https://bit.ly/3eP4jMj>.

⁴² Letter N3-0446/3679559 of Tbilisi City Court of May 18, 2020.

⁴³ see: Legal Analysis of the Events of June 20-21, Human Rights Center, 2019: <https://bit.ly/2Rge0uo>.

agreements or on bails⁴⁴. In accordance with Article 209 of the Code of Criminal Procedure, a plea agreement means a judgment to be rendered without a hearing on the merits when the accused pleads guilty and an agreement on the charges or punishment is reached⁴⁵. The study showed that the accused had to agree to disadvantageous terms because due to the stretched and intensified proceedings they had to confess to a crime they might not have committed and there was no neutral evidence on file other than the police testimony. The accused were particularly faced by the choice where a custody was applied against them as a measure of restraint. The courts relied mainly on information from law enforcement officers who were questioned by the prosecution as witnesses in the court proceedings. Their testimonies were, in most cases, considered as reliable evidence by the courts.

In deciding on the plea agreement, the court did not check the substantiation of the accusation, the legality of the requested sanction, whether there was incontrovertible evidence in the case to prove the culpability, and so on. The above requirements have not been observed on the criminal cases related to the events of June restrict 20-21, 2019.

THE PRACTICE OF APPLYING MEASURES OF RESTRAINT

Article 3(11) of the Criminal Procedure Code of Georgia lays down the standard of evidence for the application of a measure of restraint⁴⁶. In particular, for a measure of restraint to be applied against a person, there must be a probable cause i.e. a totality of facts or information that, together with the totality of circumstances of a criminal case in question, would satisfy an objective person to conclude that a person has allegedly committed a crime. According to the case law of the European Court of Human Rights, remand in custody as a measure of restraint against an accused cannot be used without assessing the grounds for applying the custody, and without assessing the risks in accordance with the available standard. Accordingly, the threats should be assessed not abstractly, but in particular terms, based on the evidence. The European Court of in the case of *Boicenko v. Moldova* held that the use of pre-trial detention *in abstracto*, based on abstract threats and

⁴⁴ Legal Analysis of the Criminal Cases connected with the Events of June 20-21, 2019. Human Rights Center, 2020. P. 23: <https://bit.ly/3oi2Cdq>. Further, Report of the HRC court monitor on the cases of the persons arrested on June 20-21. Hearings on the merits: 20.11.2019, 16:10- 16:12.

⁴⁵ See: Paragraph 1 of Article 209 of the Criminal Procedure Code of Georgia.

⁴⁶ See: Paragraph 11 of Article 3 of the Criminal Procedure Code of Georgia:

intuitions, is inadmissible. The measure of restraint should be used only under strictly defined grounds, while the detention as an extreme measure should be used only if duly substantiated and necessary⁴⁷.

In the criminal cases ongoing against the protesters in relation with June 20-21 events, the bills of indictment, the evidence and other case files submitted by the Prosecutor's Office of Georgia do not constitute a reasonable cause that the convicted/accused persons participated in the group violence, let alone attacked the law enforcement officers operating on the location. The prosecution failed to convincingly enough and based on the evidence argue why the court should have used remand in custody as a measure of restraint against the accused persons.

In order to prove an involvement of a person in a group violence, the prosecution must have evidence that clearly shows the intention of the person to be involved in the group violence, to attack law enforcers and by his own acts facilitate the group actions. In case of requesting the custody as a measure of restraint, the prosecution must present sufficiently clear and convincing arguments, and the court must assess the following threats based on the specific evidence in according with the relevant standard: 1. Risk of absconding the justice, 2. Risk of committing a new offense, 3. Risk of interfering with the administration of justice. These risks must be properly substantiated. Consequently, the court's reasoning when using custody as a measure of restraint should not be of a general, abstract and stereotypical nature.

In the above cases, the collection of the facts and information contained in the indictments and in the case files namely the reports of interviews with the witnesses, the reports of search and seizure, the reports of inspections, the opinions of forensic examinations are of general nature and does not provide sufficient factual grounds for the application of custody as a measure of restraint yet alone for the conviction.

The comparative analysis of the cases of arraigned enforcement officers and protesters related to the events of June 20-21 reveal that the State applied a differentiated approach to the similar cases without referring to reasonable and objective grounds, expressed in the initiation of criminal prosecution against the protesters and their detentions where through 'one size fits all', abstract and often completely unsubstantiated motions from the prosecution and the rulings of the

⁴⁷ See: Judgment of the European Court of Human Rights in the case *Boicenko against Moldova*, N41088/05 from July 11, 2006: <https://bit.ly/3btjvg8>.

courts having granted the motions, every protester was remanded in custody.

REGARDING THE PROBLEM RELATED TO THE INITIATION OF THE DRAFT LAW ON AMNESTY

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The document⁴⁸ titled 'A way ahead for Georgia' envisages as one of the subject matters the reaction to the issues of perceived politicized justice. According to the relevant paragraph, "[i]n the interest of Georgia's political stability and in order to implement this agreement, the signatories commit to address, within one week of signing this agreement, the two cases of perceived politicized justice, either by an amnesty and/or by taking such steps as to produce an equivalent outcome⁴⁹. In particular, within one week of signature of the agreement, a party represented in Parliament shall initiate an amnesty law for all violations and convictions stemming from the 19-21 June 2019 protests." On April 27, 2021, it turned out that the ruling party Georgian Dream had a fundamentally different approach to the amnesty law than the part of the opposition who took up their seats in the Parliament. In particular, according to the opposition⁵⁰, the law on amnesty must provide for the specific articles of the Criminal Code to which the act of amnesty would be effective, while Georgian Dream states that the amnesty should cover all articles except for the offenses under Articles 117, 144¹-144³ of the Criminal Code of Georgia envisaging an intentional grievous bodily harm, torture and degrading or inhuman treatment⁵¹.

According to the official data, there were 275 citizens registered during the events of June 20-21 as having received health injuries of various severity, including: 187 civilians, 39 journalists⁵², 73 employees of MIA. 28 people needed surgery due to their injuries, including 8 underwent ocular surgeries and 4 underwent neurological

⁴⁸A compromise document presented by the President of the European Council, Charles Michel, titled 'A way ahead for Georgia': <https://bit.ly/33LcFOX>.

⁴⁹ *The criminal cases against Nikanor Melia and Giorgi Rurua are meant here.*

⁵⁰ The information is available at: <https://bit.ly/3brUnGf>. Last seen: 06.05.2021.

⁵¹ Ibid:

⁵² See: List of injured journalists. The information is available at: <https://bit.ly/3e1fy1m>. Last seen: 06.05.2021.

surgeries⁵³. Moreover, three (3) civilians lost an eye as a result of the injuries⁵⁴. Further, several of the victims suffered significant damage to their eyesight⁵⁵.

Up to the date, criminal proceedings have been launched against 17 protesters. Based on the initial motion of the prosecutor's office, 16 detainees were remanded in custody and one person was remanded on bail as a measure of restraint. Later, the custody of 8 defendants was changed to bail. In the same case, 68 police officers are recognized as victims⁵⁶.

Further problems stem from the practice of recognizing persons as victims. Initially, along with other individuals, the Prosecutor's Office refused to grant the status of victim to Mako Gomuri and Giorgi Sulashvili each of them having lost an eye from rubber bullets⁵⁷. However, after several months of a struggle, they were granted the status of victim. Among other individuals, the absolute majority of journalists suffered from serious injuries have not yet been granted the status of victim⁵⁸.

HRC proceeds the cases of three journalists injured during the June 20-21 events: Merab Tsaava (Guria News), Beslan Kmuzov (Kavkazski Uzel) and Zaza Svanadze whose rights and legitimate interests are defended by HRC lawyers. HRC applied to the European Court of Human Rights after exhausting all available legal means at the national level to have the journalists under the defence by HRC be recognized as victims by the Office of the Prosecutor General and to make the Prosecutor's Office conduct a timely, effective and impartial investigation. The applications refer to the violations of Article 10 of the European Convention on Human Rights (freedom of expression); further that of the Article 11 (freedom of assembly and association); and Articles 13 (effective remedy)⁵⁹. The prosecutor's office granted

⁵³ see: "Beyond the Lost Eye", legal assessment of the events of June 20-21; Georgian Young Lawyers Association: <https://bit.ly/2UC5Rif>.

⁵⁴ The information is available at: <https://bit.ly/3e1fTtE>. Last seen: 07.05.2021.

⁵⁵ The information is available at: <https://bit.ly/30LwZiw>. Last seen: 09.05.2021.

⁵⁶ Letter N13/27251 of the Office of the Prosecutor General of Georgia from May 18, 2020.

⁵⁷ The information is available at: <https://bit.ly/3fgNTto>. Last seen: 04.05.2021.

⁵⁸ The information is available at: <https://bit.ly/3fkBp42>. Last seen: 04.05.2021.

⁵⁹ see: Press release by Human Rights Center: <https://bit.ly/37FPTsB>. Last seen: 04.05.2021.

the journalists the status of victims only after the Strasbourg court began communicating with the State⁶⁰.

Disproportional forces and methods used by the police during the dispersal of the peaceful demonstration on June 20-21, 2019, caused a mass violation of the rights of the protesters and justifiably left the impression of punishing the protesters. Because of using disproportional forces for dispersing the demonstration, the facts of ill treatment on the part of law enforcement officers when arresting the protesters and in the following periods, illegal interference with the journalistic activities and inefficient investigation of the cases we may deal with the violation of the right of prohibition of torture under Article 3 of the European Convention both in terms of substantive and procedural rights.

Accordingly, HRC emphasizes that *it is unacceptable to apply the act of amnesty/pardon in relation to the offenses committed by state representatives against the right to be protected from inhuman and degrading treatment or punishment, which occurred during the dispersal of the June 20-21 rally*. Pursuant to the case law of the European Court of Human Rights, the application of amnesty to the persons who have committed the crimes of inhuman or degrading treatment (*regardless of whether the investigation is being conducted at the national level under the right subsumption*) is contrary to Article 3 of the European Convention. Such an outcome makes illusory the safeguards created by the prohibition of ill-treatment⁶¹. Consequently, the application of amnesty to the persons who were responsible on the part of the State for the offenses against the prohibition of inhuman and degrading treatment is a violation of international law. The same position is shared by almost all international human rights organizations and

⁶⁰ see: HRC Press Release: the Prosecutor's Office has now granted the status of victim to three journalists who were injured in June 2019. 06.04.2021: <https://bit.ly/3wcDmYQ>. Last seen: 04.05.2021.

⁶¹ See: Judgments of the European Court of Human Rights on the case: *McCann and Others v. the United Kingdom*, Series A no. 324, 27.09.1995, § 146. The Document is available at: <https://bit.ly/3wfEECr>. Further see: *Margus v. Croatia*, no. 4455/10, 27.05.2014, § 127. The Document is available at: <https://bit.ly/3y9xmBM>. The same approach is shared by CAT, - "*The Committee has also continuously criticized amnesty laws and stressed that waivers of prosecution and statutes of limitations do not apply under any circumstance to the crime of torture.*" - CAT, 'Concluding Observations: Algeria '(2008) UN Doc CAT / C / DZA / CO / 3, para 11.

documents⁶². According to Georgian Young Lawyers' Association, the use of amnesty towards the persons representing the State being liable for the offenses against the prohibition of inhuman and degrading treatment is a violation of

pg. | 20 international law⁶³.

The very fact under what subsumption the investigation is conducted at the national level, is not relevant for the purposes of Article 3 of the Convention. Therefore, irrespective of the fact, that the investigation against the enforcement officers arrested following the dispersal of June 20-21 demonstration was not carried out under the proper subsumption, namely under Article 144(3) of the Criminal Code of Georgia, the acts committed by some of the officers have to be assessed as inhuman and degrading acts eliminating the possibility of using amnesty against the mentioned persons according to the binding standards established by the European Court. Furthermore, the European Court of Human Rights interprets the principles and legal terms provided for in the European Convention and its Additional Protocols in their autonomous meaning. The interpretation of the ECtHR may not coincide with the meaning given to these terms and principles by the national law of the states⁶⁴.

CONCLUSION

During the dispersal of the rally on June 20-21, 2019, it became clear that the State still does not have an effective, reasonable plan to intervene in the right to assemblies and demonstrations, to manage the masses of protesters in accordance

⁶² **For example:** Inter-American Court - *Barrios Altos v. Peru judgment*, Series C No. 75 [2001], IACHR 5, 14.03.2001, § 41; The document is available at the link: <https://bit.ly/3tSH8VE>. UN Commission on Human Rights - *UN Commission on Human Rights, Commission on Human Rights Resolution 2004/72: Impunity*, E / CN.4 / RES / 2004/72, 21.04.2004, § 3. The Document is available at: <https://bit.ly/2RW0oUU>; UN Committee against Torture - *Committee Against Torture, Concluding observations on the third periodic report of Tajikistan*, CAT / C / TJK / CO / 3, 18.06.2018, §13-4. The Document is available at: <https://bit.ly/33M9bvt>; OSCE - *OSCE / ODIHR, Eliminating Incentives For Torture in the OSCE Region, Baseline Study and Practical Guidance*, 2020, p. 64, §4. See.: Further, *Recommendations to OSCE participating States, international conference on "Effective Multilateralism in the Fight against Torture: Trends in the OSCE region and the way forward,"* 2019, Recommendation 16.

⁶³ See: Statement of Georgian Young Lawyers' Association: <https://bit.ly/3z7tn9p>.

⁶⁴ See: W. Strasser, *The European Convention on Human Rights: Some Reflections on its Role in the Light of the Practice of the Convention Organs*, in: *Austrian Soviet Round-Table on the Protection of Human Rights*, F. Matscher & W. Karl (Eds.), 1992, 105.

with international human rights standards. Instead, every government uses en masse and indifferently disproportionate police forces and violates the rules for the use of riot police and their equipments.

The problems of conducting an effective and thorough investigation into the events of June 20-21 within a reasonable time, identifying the criminal actions of the persons responsible for planning the dispersal of the rally and imposing proper liabilities are still acute in the country. However, the investigation focuses only on ordinary police officers and is not aimed at revealing the alleged criminal actions of the police chiefs: those who issued the order.

Further, the serious human rights violations identified during the investigation of the events of June 20-21, the offenses on the part of the police and the practice of criminal prosecution, raise a number of questions about the selective approach of the State and about a deliberate initiation of the legal proceedings against specific individuals reflecting in the desire to punish the protesters and arrest them rather to eliminate the systemic gaps. This is also evidenced by the compromise document presented by the President of the European Council, Charles Michel, with one of the subjects to react on the issues of perceived politicized justice. In particular, within one week of signature of the agreement, a party represented in Parliament shall initiate an amnesty law for all violations and convictions stemming from the 19-21 June 2019 protests. However, it seems that the ruling forces plan to implement the agreement in violation of the Constitution of Georgia and international standards.

Therefore, HRC calls on the government of Georgia and all the political parties involved in this process, not to allow the adoption of the Law on Amnesty in the form covering the offenses committed on the part of law enforcement officers while dispersing the demonstration of June 20-21, 2019, notwithstanding the subsumption applied to these acts on the national level. International legal acts that provide for such a prohibition are an integral part of the Georgian legislation and are the highest in rank after the Constitution. Accordingly, Georgia is obliged to fulfill them both in front of the international bodies as well as own citizens.