

JUNE 20-21 EVENTS

Legal Analysis



2019

JUNE 20-21 EVENTS

Legal Analysis



Tbilisi, 2019

JUNE 20-21 EVENTS - Legal Analysis

The Report was prepared by Human Rights Center

Author: Lazare Jibladze

Editor: Aleko Tskitishvili, Nino Tlashadze

Translator: Nino Tlashadze

Cover photo: Giorgi Zhamerashvili "Interpresnews"

Non-governmental organization the Human Rights Center, formerly Human Rights Information and Documentation Center (HRIDC) was founded on December 10, 1996 in Tbilisi, Georgia. The HRIDC aims to increase respect for human rights, fundamental freedoms and facilitate peace building process in Georgia. To achieve this goal it is essential to ensure that authorities respect the rule of law and principles of transparency and separation of powers, to eliminate discrimination at all levels, increase awareness and respect for human rights among the people in Georgia.

Human Rights Center is member of following international networks:

- International Federation of Human Rights (FIDH); www.fidh.org
- World Organization against Torture (SOS-Torture – OMCT Network); www.omct.org
- Human Rights House Network; www.humanrightshouse.org
- Coalition for International Criminal Court; www.coalitionfortheicc.org

Address: A. Gakhokidze St. 11a, Floor 3rd, 0160 Tbilisi, Georgia. Tel.: (+995 32) 237 69 50, (+995 32) 245 45 33, (+995 32) 238 46 48 Fax: (+995 32) 238 46 48

E-mail: hridc@hridc.org

Web-portal: www.humanrights.ge; www.hridc.org.



The Report was prepared with the financial support of National Endowment for Democracy (NED). The report does not necessarily reflect the views of the donor. Human Rights Center bears sole responsibility for the content of the report.

CONTENTS

I. INTRODUCTION 4

 DEVELOPMENTS BEFORE JUNE 20..... 4

 JUNE 20-21 PROTEST DEMONSTRATIONS..... 5

II. FORMAL GROUNDS TO DISPERSE THE DEMONSTRATION..... 7

 LEGAL ASSESSMENT OF THE DISPERSAL OF JUNE 20-21 DEMONSTRATION..... 8

III. ABUSE OF POWER DURING DISPERSAL 12

 DISPERSAL OF THE ACTION WITH THE SPECIAL MEANS 12

 CHASING THE PROTESTERS OF JUNE 20-21 DEMONSTRATION 17

IV. INTERFERENCE IN THE PROFESSIONAL ACTIVITIES OF JOURNALIST 20

V. DETENTIONS OF THE DEMONSTRATORS AND COURT HEARINGS 24

 COURT PROCEEDINGS IN THE TBILISI CITY COURT ON JUNE 21 24

VI. CONCLUSION..... 27

VII. RECOMMENDATIONS 28

I. INTRODUCTION

The events developed on June 20-21, 2019 in Tbilisi revealed that the ruling political party, Georgian Dream continues governance in the manner, which was established by the previous government.

The use of disproportionate and excessive power against the large-scaled protest demonstration by the law enforcement bodies created an impression that they wanted to punish the protesters.

In the modern history of Georgia, alongside with the November 7, 2007 and May 26, 2011, now we have the new date – June 20-21, 2019 when the state used force against people.

In respect of human rights and for the prevention of the use of excessive force against demonstrators in future, it is necessary to correctly and impartially evaluate the developments of June 20-21 and punish the perpetrators.

Developments before June 20

On June 17, 2019, MP Giorgi Kandelaki of the European Georgia disseminated information about the Inter-parliamentary Assembly on Orthodoxy, which was scheduled on June 19 and MPs from the Russian Duma were also going to participate. According to MP Kandelaki, the visit of the Russian Duma members in the country was not acceptable and also harmful for the Georgian sovereignty and its international reputation¹.

The member of the Russian Duma from the Communist Party Sergei Gavrillov was the head of the Russian Delegation; he also coordinates the inter-fraction group on the protection of Christian values in the Duma and has received awards from the Russian Orthodox Church². According to the information disseminated by the Georgian parliamentary opposition³, Gavrillov had participated in the Abkhazian war against Georgians (information and sources about it are no longer available) and at the same time, he, as the Member of the Duma, during the August 25, 2008 ballot, voted for the recognition of the independence of the separatist regions of Abkhazia and South Ossetia.

The opening session of the 26th Inter-parliamentary Assembly on Orthodoxy started in the Ceremonial Palace of Georgia on June 19 in parallel to the protest rally outside the building. The members of the opposition political parties – European Georgia and United National Movement participated in it. They protested the session and

¹ MP Giorgi Kandelaki's statement <https://bit.ly/2kqz6YY>

² See <https://bit.ly/2kFFF7x>

³ See <https://bit.ly/2pj6lYd>

visit of Sergei Gavrilov in Georgia. The opposition members stated that it was a shame of the government that Russian MP, who has voted for the occupation of Georgia and independence of South Ossetia and Abkhazia, arrived in the country.

June 20-21 protest demonstrations

The Georgian society got particularly anxious on the second day of the Assembly – on June 20, when the Russian MP Gavrilov sat in the chair of the Georgian Parliament Speaker in the plenary hall of the Parliament of Georgia and led the 26th Parliamentary Assembly in Russian language. The MPs from the European Georgia and UNM protested Gavrilov's speech in the Parliament of Georgia. After a break they occupied the presidium of the plenary hall and did not allow the Assembly to continue the session. In parallel to that, inside and outside the Parliament building, civil society groups started mobilization. Consequently, the Parliamentary Majority decided to stop the Assembly session. Soon, the Russian delegation, together with MP Gavrilov, left the parliament building and then the country in protest.

The spontaneous action, which started during the day, in the evening of June 20 turned into a large-scaled protest demonstration. The anti-occupation rally of the civil activists under the slogan "It is a shame" started in front of the parliament building at 19:00 pm. The citizens protested the visit of the Russian delegation and the Russian occupation in Georgia. Simultaneously, the protesters and organizers voiced their requests – resignation of the Parliament Speaker, Minister of Internal Affairs and the Head of the State Security Service. Few minutes later, thousands people gathered in the Rustaveli avenue; political leaders made statements during the demonstration.

During several hours the protest demonstration was peaceful without any incidents. At 21:09 pm, MP Nikanor Melia of the United National Movement addressed the Government members and gave one-hour time to resign the Parliament Chairman Irakli Kobakhidze, the Head of the State Security Service Vakhtang Gomelauri and the Minister of Interior Giorgi Gakharia; otherwise, Melia said, the protesters will go inside the parliament.

In response to his words, the law enforcement officers, with special equipments, deployed alongside the parliament building behind the specially arranged stage on the stairs to the parliament. One part of the special riot unit, unlike other cases, deployed in front of the main gate to the Parliament, which caused clash between the protesters and the special unit members.

The situation dramatically changed after the one-hour deadline set by some opposition leaders expired. At about 21:50 pm, one part of the demonstrators, as appealed by the opposition politicians, tried to break into the parliament building

JUNE 20-21 EVENTS - Legal Analysis

through the police cordon – about 300 protesters standing right in front of the parliament gate pushed the law enforcement officers and tried to break through the cordon, which ended up into one-hour-long clash between the protesters and the police. Some part of the demonstrators threw different items (pebbles-full bottles, stones and more) in the direction of the police officers standing in the cordon. There were facts of physical abuse of police officers, their disarmament and in some instances, kidnapping of the officers from the cordon. According to the information provided by the MIA, the protesters kidnapped 30 police officers from the cordon and seized special equipment (special shields and helmets) from more than 300 officers⁴.

The police officers, during several hours, tried to protect the parliament building without special means and did not allow the protesters to enter the building. In parallel to that, special riot units and equipment were being mobilized inside the parliament yard. At 20:22 pm, riot police officers with special equipment in yellow buses entered the parliament yard. By that time, large number of the law enforcement officers was already mobilized in the yards of the Parliament and Government buildings. In parallel to the ongoing protest demonstration, the Special State Protection Service expelled the accredited journalists from the building of the Parliament of Georgia.

Although the actions of the protesters did not contain any preliminary intentions and they were spontaneous, which started after some politicians called on them to enter the parliament building, from about 21:50 pm the action of some protesters become non-peaceful.

It must be mentioned that the action of the demonstrators was not homogenous; one part of them used violent methods, who were standing right in front of the parliament.

The demonstration was spontaneous and the loud-hailer megaphones were working with some problems. Because of large number of the protesters, the people standing in the far corners of the action could not hear what the speakers said. Consequently, only those, who stood close to the parliament gate, heard the speakers. Many others, standing on the opposite side of the parliament and in the vicinities of the Kashueti Church, did not know what one part of the protesters were planning – break into the parliament. Also, as soon as the demonstration started, the protesters complained about the low quality of telephone signals either and stated that allegedly the government purposefully hindered the dissemination of the information to prevent mobilization of more people in front of the parliament.

⁴ The letter # MIA 4 19 02478594 18/09/2019 of the Ministry of Internal Affairs to Human Rights Center

At 23:56 pm, night of June 20, the law enforcement officers started the use of special means for the dispersal of protesters without any preliminary warning and the dispersal lasted several hours.

II. FORMAL GROUNDS TO DISPERSE THE DEMONSTRATION

The right to freedom of assembly is guaranteed by the Article 20 Paragraph I of the Universal Declaration of Human Rights, by the Article 21 of the International Pact on Civil and Political Rights, by the Article 11 of the European Convention on Human Rights and Basic Freedoms, by the Article 12 of the EU Charter on Fundamental Rights and the Article 21 of the Constitution of Georgia.

With regard to the content of this right, the European Court of Human Rights determined that the right to freedom of assembly includes the right to peaceful assembly and it is central aspect of the democracy because peaceful protest is the extremely important way to achieve changes. The state bears negative obligations to ensure the freedom of assembly. Namely, the State shall not combat, hinder or restrict the peaceful assembly. On the other hand, the State bears positive obligations too, which aim to entitle the authoritative bodies to take reasonable and adequate measures to protect the individuals, who wish to express their opinions in assembly with others and to ensure their right to freedom of assembly. With regard to the scope of the right, the ECtHR determined that regardless the key importance of the freedom of assembly in the development of an individual and establishment of pluralistic society, the right to freedom of assembly is not absolute and may be restricted⁵.

Page | 7

In accordance to the Article 11 Paragraph 2 of the European Convention on Human Rights, no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. However, the intensity and proportion of intervention shall be assessed independently as the use of the force by the state shall not restrict human rights. The authority is always restricted with constitutional principles and even when protecting the legal interests, it cannot refrain from the obligation to protect commensurability and proportionality of the use of force. The commensurability of the restriction of the right means the use of least restrictive measures that are necessary to achieve legitimate goals.

⁵ See case ZILIBERBERG v. MOLDOVA: <https://international.vlex.com/vid/ziliberberg-v-moldova-26811081>

JUNE 20-21 EVENTS - Legal Analysis

The right to freedom of assembly protects only peaceful assembly. At the same time, the ECtHR clarified in its decision on the admissibility of the case “Ziliberberg vs Moldova⁶” that the right of an individual to peaceful assembly for sporadic violence or other punishable actions, which were committed by other demonstrators, if the individual himself remains peaceful in his intentions or actions⁷. Besides that, in accordance to the **Paragraph 1.3** of the OSCE Guideline Principles⁸, which is actively applied by the ECtHR, “an assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent. The term “peaceful” should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties.” The guideline principles mention several times that **“the use of violence by a small number of participants should not automatically lead to the categorization as non-peaceful of an otherwise peaceful assembly.”**⁹ In similar case, any intervention should aim to deal with the particular individuals involved rather than dispersing the entire event.¹⁰ Similarly, if agents provocateurs infiltrate an otherwise peaceful assembly, the authorities should take appropriate action to remove the agents provocateurs rather than terminating or dispersing the assembly or declaring it to be unlawful¹¹. Therefore, according to the ECtHR clarifications, an assembly should be deemed peaceful if its organizers have professed peaceful intentions, and this should be presumed unless there is compelling and demonstrable evidence that those organizing or participating in that particular event themselves intend to use, advocate or incite imminent violence¹².

Page 8

Legal assessment of the dispersal of June 20-21 demonstration

In order to determine formal legality of the intervention in the right to assembly, it is essential to evaluate the peaceful character of the demonstration because only peaceful manifestation is guaranteed by the Article 21 of the Constitution of Georgia and the Article 11 of the European Convention on Human Rights. Unlawful manner of the protest is direct pre-condition for intervention in accordance to the Article 21 Paragraph III of the Constitution of Georgia. The European Convention has the same approach, which excludes the guarantees under the Article 11 of the Convention with regard to non-peaceful demonstrators. Therefore, first of all, it is necessary to determine whether the protest was peaceful or not.

While the protest is peaceful, it is inadmissible to disperse it. The dispersal must be the ultimate measure applied by police and it shall be carried out in accordance to the international standards (OSCE Guideline Principles Paragraph 165). It is

⁶ See <https://international.vlex.com/vid/ziliberberg-v-moldova-26811081>. (application no 61821/00, Ruling of May 4, 2004)

⁷ Ibid

⁸ See <https://www.osce.org/odihr/73405?download=true>

⁹ Ibid Paragraphs 25, 164 and 167

¹⁰ Ibid Paragraph 164

¹¹ Ibid Paragraph 167

¹² Ibid Paragraph 25

inadmissible to disperse assembly: 1) directly, so that the law enforcement bodies have not yet applied to all reasonable measures to facilitate and protect the assembly from harm ((including by, for example, quieting hostile onlookers who threaten violence); 2) if there is no imminent threat of violence (Paragraph 166 of the Guideline Principles). At the same time, it shall be possible to clearly and individually identify the law enforcement officers, who participate in the dispersal of the manifestation.

In the evening of June 20, after the statements of some politicians were followed by the attempt of the one part of protesters to break into the parliament, the demonstration became violent, which lasted several hours with the physical controversy. The police units deployed on the place tried to protect the parliament building that ended up with the physical damages of the law enforcement officers and protesters, disarmament of police officers and their physical and verbal assaults. Part of the demonstrators, with their violent actions, acted beyond the frames of the freedom of assembly and the assembly guaranteed by the Article 21 of the Constitution and the Article 11 of the Convention.

However, in accordance to the case law of the ECtHR, violent actions of some individuals or groups, shall not become ground to disseminate the same legal measures against the peaceful participants of the demonstration. Consequently, independently from the violent transformation of the protest, peaceful protesters maintained their guarantees under the Article 11 of the Convention. Also, all peaceful protesters shall be protected by the Article 21 of the Constitution. Therefore, the further activities of the state require particular caution to envisage all possible risks of unlawful interference in the right.

At about 22:00 pm, the MIA disseminated special statement: “The Ministry of Internal Affairs calls on the participants of the protest rally to immediately stop the violations of law and violence, do not follow provocations, obey the police request and leave the territory of the parliament. Otherwise, police will take measures provided by law¹³.

At the same time, the Minister of Interior, who was in the parliament building, called on the protesters in his TV address at 22:04 pm and at 22:27 pm to obey the police request and said that the events outside the parliament was attack on the government bodies. At 22:45 pm, the Tbilisi City Mayor made the similar statement¹⁴.

At about 22:24 pm, the members of the European Georgia Giga Bokeria, Gigi Ugulava and Sergo Ratiani tried to calm down the protesters, who wanted to break

¹³ See <https://police.ge/en/shinagan-saqmeta-saminsitros-sagangebo-gantskhadeba/12820>

¹⁴ Watch <https://imedineews.ge/ge/dzalovnebi/109322/qakharia-roqorts-ki-sachiroeba-iqneba-qadavdgebi>

JUNE 20-21 EVENTS - Legal Analysis

into the parliament. They called on the protesters to keep hands up and calm down that temporarily soothed the situation.

In that period of time, law enforcers did not use special means of dispersal against protesters. Moreover, at 23:50 pm, Prime-Minister Mamuka Bakhtadze told the journalists in the parliament: “According to the information disseminated in social media and the UNM ruled media reports, we are using rubber bullets, gas and other means against protesters. It has never been and will never be the method of the Georgian Dream when we are speaking about peaceful citizens¹⁵.” His statement created an impression that it was not necessary to use special means for the facilitation of the demonstration and the protesters did not expect any threat.

In parallel to the PM’s statement, the opposition leaders announced that the Minister of Interior Giorgi Gakharia offered them to start negotiations and respective videos are available¹⁶. The leaders asked the protesters opinions about negotiations and upon their agreement, they were going to start negotiations but it never started because 6 minutes after the PM Bakhtadze’s announcement, at 23:56 pm, the special riot police started dispersal of the protesters with the use of special means.

In accordance to the OSCE Guideline Principles, if dispersal is deemed necessary, the assembly organizers and participants should be clearly and audibly informed prior to any intervention by law-enforcement personnel. Participants should also be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law-enforcement officials intervene further. Third parties (such as monitors, journalists and photographers) may also be asked to disperse, but they should not be prevented from observing and recording the policing operation¹⁷. **The policing operation should be characterized by a policy of “no surprises.”** Law-enforcement officers should allow time for people in a crowd to respond as individuals to the situation they face, including any warnings or directions given to them¹⁸. In accordance to the OSCE Guideline Principles, under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene¹⁹.

In accordance to the official position of the MIA, intervention into the rights of assembly was caused not only by the threat of violence but by the presence of the violence, when protesters tried to break through the police cordon and committed multiple violent acts. In its letter, the MIA did not mention anything about the measures used against separate violent groups and their attempt to return peaceful character to the demonstration. However, it shall be stated that in the initial stage of

¹⁵ watch <https://bit.ly/2Hivs9j>

¹⁶ watch <https://bit.ly/2kbTWZw>

¹⁷ See <https://www.osce.org/odihr/73405?download=true> (paragraph 168)

¹⁸ Ibid Paragraph 150

¹⁹ Ibid Paragraph 176

the controversy, police managed to arrest several demonstrators that did not significantly influence the conduct of other peaceful demonstrators. Besides violent groups, there were thousands other peaceful protesters, who did not participate in the aggressive actions. Nevertheless, the intensity and manner of the violent acts created chance to isolate dozens of aggressive protesters to keep the peaceful character of the demonstration.

It is worth to mention the insufficient and ineffective attempt of the organizers to return peaceful character to the demonstration. Furthermore, the statements of some leaders caused escalation of the situation. In this light, the controversy during the demonstration made the intervention of the government legitimate that resulted into grave physical injuries of law enforcement officers and protesters. Despite that, it is noteworthy that the government did not make the decision [about dispersal] during several hours and when the aggressive actions were particularly intensive, the law enforcement officers tried to facilitate the demonstration without special means. The decision on the dispersal was made after the organizers publicly announced their readiness to start negotiations, which was also confirmed by the Minister of Interior in his later TV interviews. According to the Minister Giorgi Gakharia, the negotiations failed because the organizers could no longer facilitate the process²⁰. This argument cannot be shared because the demonstrators did not have reasonable time. Several minutes before the dispersal, the leaders announced about the launch of negotiations but later, it was reported that the negotiations failed because the dispersal started²¹.

It must be noted that regardless non-peaceful activities of one part of the protesters, which created legitimate ground for the intervention in the right to freedom of assembly and expression, the disproportionate use of special measures and the situation before using them raises doubts that the government used force against protesters not for the sake of public order but for the punishment of the opposition and demonstrators. Not using such tools of protest facilitation like negotiations and other less harmful methods encourages the society to feel injustice and believe that the state used violence against its citizens.

Human Rights Center condemns the irresponsibility of the parties and failure of the both sides to use the way of peaceful solution of the conflict. Escalation of the situation by the statements of some opposition leaders was irresponsible behavior and the activities of some protesters contained the signs of criminal offence that need accurate and adequate investigation.

Human Rights Center believes that the State failed to ensure the use of smooth methods of the de-escalation of the situation when respective government officials made decisions; even

²⁰ Watch <https://bit.ly/2n1qO8v> last seen on 09/30/2019

²¹ Watch <https://bit.ly/2kbTWZw> last seen on 09/30/2019

JUNE 20-21 EVENTS - Legal Analysis

more, with their rhetoric, the Government members tried to dramatize the situation and evaluated the ongoing events in front of the parliament as an attempt to overthrow the government that cannot be verified. However, it influenced the opinion of the big part of the society, and with it the Government tried to widen the legitimacy of its actions. The issue of proportionality and commensurability of the used power shall be considered separately.

III. ABUSE OF POWER DURING DISPERSAL

At 23:56 pm, on June 20, the riot police started dispersal of the protesters with teargas. The dispersal continued with various special means during several hours. As a result, 240 persons were injured, 80 of them were police officers. Three persons lost eyes. 38 journalists received physical injuries. The police was arresting the protesters throughout the night with the use of excessive force. The facts of inhuman and degrading treatment were observed when detaining the people. There were facts, when some riot officers unlawfully used special means (rubber bullets were fired directly at targets, were fired from short distance and trajectory, and more).

Page 12

Dispersal of the action with the special means

First of all, it must be noted that in accordance to the international standards, when the assembly is believed to be unlawful based on the national law, law enforcement bodies shall not use force against demonstrators because of its unlawfulness. The determination of the lawfulness of the assembly or part of it automatically does not mean the necessity of intervention and the use of special means²².

Before the dispersal, the use of some other less grave means by the government is not their kind will but the conventional precondition for the intervention into the right to freedom of assembly and expression. With regard to this issue, the OSCE Guideline Principles views the dispersal of an assembly as the last mean of the restriction, which shall not be applied until the law enforcement bodies have used all reasonable measures for the mitigation of harm and when there is the threat of imminent violence.

The use of force is admissible only in case of valid reasons – for the public safety and prevention of crime. In accordance to the OSCE/ODIHR Guideline Principles, governments should develop a range of means of response that enable a differentiated and proportional use of force. These responses should include the development of non-lethal incapacitating weapons for use in appropriate situations. Moreover, law-enforcement officers ought to be provided with self-defense equipment, such as shields, helmets, fire-retardant clothing, and bullet-proof vests and transport in order to decrease the need for them to use weapons of any kind.

²² OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION

Although the use of force by police is often necessary for the prevention of crime or for the detention of offenders and alleged offenders, it shall happen in a manner that the use of force was exceptional measure. This measure shall not be used selfishly, shall be proportionate to the threat and aiming at the mitigation of the harm and only in the framework that is necessary to achieve the legitimate goals.

The information provided by the MIA demonstrated as well as the statements of the senior officials of the MIA that they associate the creation of real threat of violence with the moment of controversy between protesters and police officers, which started at about 21:50 pm. However, they did not make decision on the dispersal during few hours and the law enforcement officers tried to protect the parliament building without special means. The statement of the PM in the parliament, as well as the interview of the vice-speaker of the parliament Mamuka Mdinardze convinced the population that there was no necessity to use special force by police and neither ruling party had political will to disperse the demonstration. Furthermore, few minutes before the dispersal, the negotiations between the opposition leaders and that-time Minister of Interior Giorgi Gakharia was scheduled via the mediator (Pavle Kublashvili)²³ that instilled more hope about the de-escalation of the situation via negotiations.

Page | 13

The fact that the government did not take adequate response measures and the Chairman of the Parliament did not take the political responsibility over the situation timely shall be evaluated as a political mistake of the authority. It was confirmed with the resignation of the Parliament Chairman Irakli Kobakhidze on the next day. His early resignation had critical importance to avoid painful developments during the demonstration.

The Government failed to implement its positive and negative obligations, which are imposed on it because of fundamental importance of the right to manifestation in public life. Respective bodies of the government, before the dispersal of the demonstration with special means, did not apply all necessary measures (inter alia) and did not use all their measures like dialogue and negotiations to avoid the violent dispersal of the assembly and other consequences that casts doubts over the legitimacy of the use of special means by police.

Use of the disproportionate force during the dispersal of the June 20-21 demonstration

During the night of June 20, at about 23:56 pm, the law enforcement officers started the use of special means to disperse the demonstrators. It happened without preliminary warning of the protesters and allowing them some time to disperse. In

²³ watch <https://bit.ly/2kbTWZw> last seen 09/28/2019

JUNE 20-21 EVENTS - Legal Analysis

its letter to HRC, the MIA clarified that considering the gravity of the situation and upcoming threat, it was unreasonable to preliminarily warn protesters that meets the requirements of the OSCE Guideline Principles in similar situations.

This assessment lacks all arguments. The analysis of the developments and photo-video materials taken during the demonstration demonstrate that the situation before the dispersal, in comparison to other developments of the day, was not particularly tense and consultations about the negotiations had already started. Some politicians tried to calm down the protesters. The MIA in its letter mentions their statement published on the official website of the Ministry and TV-interviews of the Minister Gakharia when he called on the demonstrators to obey the requests of the police officers. However, it cannot be evaluated as execution of the obligation to preliminarily warn the citizens about the planned dispersal. Consequently, the police started the dispersal of the demonstration with special means through the violation of the law.

Page 14

Initially, the riot police unit tried to disperse the demonstrators with teargas but they fired in the direction of the peaceful demonstrators, who were standing opposite the parliament building; it was followed by shooting the rubber bullets at about 00:14 am. When special means were used, initially, the protesters ran away; their big part moved towards the April 9 Park. But later, they returned back to the Parliament building, where special unit members shot them rubber bullets and there were facts of physical clashes between the police officers and the protesters. Media sources video-recorded the facts, when riot police fired rubber bullets directly at demonstrators and they were disseminated in social media.

The protesters several times tried to return back to their initial position in front of the parliament but the riot police and special equipment deployed there did not allow them to approach the building. During the next one hour, the protesters stood in front of the Hotel Tbilisi Marriot. At that time, rubber bullets were used only when protesters tried to walk towards the police officers. The riot police actively used so-called pepper and teargas, which was blown back to the police officers by the wind. Consequently, the police officers, who were without special equipment, had also problems. Soon the riot police started to use the water cannon but before that they warned the demonstrators from the megaphone.

The riot police used the special means for the dispersal throughout the night that resulted into the grave physical injuries of dozens of people: 240 persons received various injuries, mostly in the face. Three persons lost eyes. 38 journalists got injured when they were implementing their professional duties. 305 protesters were arrested, who complained about the abuse of power and inhuman treatment from the side of police officers in the moment of detention.

a) Use of the rubber bullets

During the dispersal of the June 20 protest demonstration, the undifferentiated use of the special means, particularly of the rubber bullets, was problematic.

Article 33 of the Law of Georgia on Police states that “a police officer shall use passive and active special equipment to ensure public security and legal order including various gas, water cannon, acoustic equipment, non-lethal weapon and more²⁴.” However, the law and the international practice do not legitimate the use of the special equipment in any case, without assessing the factual circumstances of the individual cases, and without the assessment of expected/upcoming threats and needs.

In accordance to the case law of the European Court of Human Rights, which relies on the requirements declared in international documents, the use of rubber bullets, as the ultimate means for the dispersal, shall be used only in case of necessity and with the intensity which ensures the achievement of the legitimate purpose of the State. At the same time, the principle of differentiation shall be respected, which requires to distinguish the protesters from each other considering the threats coming from them and their action in that particular moment. Also, when using the abovementioned weapons, there should be clear and appropriate instructions, which will disable the police to use excessive force and prevent the damage of health and life of the demonstrators. In parallel to that, the states are obliged to ensure that police officers are tolerant towards peaceful demonstration to avoid possible injuries of the demonstrators even if the legitimate force is used against them.

Page | 15

During the dispersal, the rubber bullets were used through the violation of the international standards. The police used the special means in the situation, when there was no necessity to use it as ultimate measure and most of all, they used them against the demonstrators, from whom there was no real and imminent threat of violence in that concrete/individual cases. The particular problem was created when rubber bullets were shot from the short distance targeting at the faces and head that resulted into grave and in some cases inevitable damage of the health of some participants.

In accordance to the report of the UN Parliamentary Assembly, any weapon, including non-lethal or semi-lethal weapons, may become lethal if it is used with concrete form/method. The European Court of Human Rights evaluated the proportionality of the use of special means in accordance to the reports of the Council of Europe Anti-Torture Commission and UN Human Rights Council. Namely, in the case *Giuliani and Gaggio v. Italy*²⁵, the respondent state claimed in

²⁴ See <https://matsne.gov.ge/en/document/download/2047533/7/en/pdf>

²⁵ See <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-104098%22%7D>

JUNE 20-21 EVENTS - Legal Analysis

front of the Strasbourg Court the prohibition of the rubber bullet against demonstrations because it was liable to cause loss of life if it fired from a distance less than 50 meters (See application no. 23458/02, Grand Chamber ruling of March 24, 2011, paragraph 205). After the use of rubber bullets caused loss of life of three protesters, loss of one or both eyes and other grave injuries of multiple people in the Northern Ireland in 1970-1975, the United Kingdom replaced the rubber bullets with plastic ones. Besides that, in the UK, it was inadmissible to fire the rubber bullet targeting at the protester and it was meant that it could be ricocheted. The abovementioned UK practice with regard to rubber bullets is described in the case *Kathleen Stewart v. United Kingdom* (ECtHR ruling of July 10, 1984)²⁶. The use of this weapon may also cause the violation of the principle on the prohibition of torture, inhuman and degrading treatment.

b) Teargas, water cannon

Teargas was also used for the dispersal of the demonstration, which is not chemical weapon in accordance to the January 13, 1993 Paris Convention, which was ratified by Georgia on April 29, 1997²⁷. The European Court of Human Rights shares the same position with regard to the teargas but also determines that the use of the teargas is admissible in all cases and is safe for the health and life of an individual.

The teargas is the source of unidentified use and does not differentiate protesters and non-protesters, healthy and unhealthy citizens. The ECtHR speaks about the non-reasonability of the use of the tear and pepper gas in many of its rulings. In the case *Oya Ataman v. Turkey*²⁸, the Court clarified that because of the huge risk associated with the use of this weapon, they must be used in extreme situations when all other measure were used for the de-escalation of the situation.

Also, it is essential that before the use of this means respective pre-conditions were followed. Namely, the demonstrators shall be warned about the planned use of the teargas and then they should have open/free space to leave the territory where the tear gas is released.

During the dispersal of June 20-21 demonstration, the protesters were not preliminarily warned about the planned use of the abovementioned means and consequently some protesters were not able to leave the area in advance. Besides that, even if the pepper or teargas is released in the open space, the Anti-Torture Committee has determined special preconditions. Namely, if in exceptional case it is necessary to use the teargas or pepper gas, the clearly measured guarantees shall

²⁶ See APPLICATION N° 10044/82 - Kathleen STEWART v/the UK - DECISION of 10 July 1984 on the admissibility of the application

²⁷ See "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction"

²⁸ See <https://policehumanrightsresources.org/oya-ataman-v-turkey-74552-01>

be present and ensured. For example, the individual who were poisoned by gas, shall have immediate access to doctor and antidote.

Chasing the protesters of June 20-21 demonstration

Initial detentions of the June 20 protesters started with the demonstrators standing in front of the Parliament building after one part of them tried to push the police cordon and break into the parliament. The police and riot police arrested first protesters at about 23:00 pm on June 20. Later administrative detentions took place after the dispersal and lasted till 2:00 am of June 21 when law enforcement officers arrested many people in the vicinities of the Freedom Square and the parliament building in accordance to the Articles 166 and 173 of the Administrative Code of Georgia, which refer to minor hooliganism and disobedience to the lawful request of police officers. The mass detentions started after 04:00 am of June 21, far from the main location of the protest – in the vicinities of the Rustaveli Underground Station and Melikishvili Avenue where the demonstrators walked up after the police and riot police occupied the territory in front of the parliament. This fact is important to evaluate the entire situation because the intensive detentions of the demonstrators happened late at night and early in the morning in the territories where demonstration was not going on. These detentions because of many reasons were problematic.

Page | 17

It is curious which territory was to be freed from the protesters in accordance to the police instructions because the MIA stated that they started dispersal to protect the parliament building and not only because of the threat of violence. However, the demonstrators were arrested far from the parliament building - in the vicinities of Melikishvili Avenue. In this view, the content of the order on dispersal is particularly important, which was not made public. For several days, the society did not know who issued the order on the dispersal. Later, the Minister of Interior Giorgi Gakharia stated on TV that he personally ordered the dispersal of the demonstration²⁹. Nevertheless, the content of the order is not still known to the society, which is critically important to evaluate the different episodes of the action of law enforcement officers. The order shall clearly indicate at the concrete territory which must be freed by police. In similar situation, the content of the order is absolutely obscure and unavailable based on which, in the concrete time frame, the law enforcement officers acted when dispersing the June 20 demonstration and freeing the territory in front of the parliament. Conduct without the mentioned action plan, of course increases the risk of rude interference in the constitutional rights and freedoms of individuals. In parallel to that, it hinders the process of the selection of proportionate power and risk assessment, which may cause the use of unjustified and excessive power that unfortunately was not eradicated by the government during the dispersal of the June 20-21 demonstration.

²⁹ Watch <https://bit.ly/2ocQ2l2>

JUNE 20-21 EVENTS - Legal Analysis

The fact that some part of the demonstrators standing in front of the parliament acted violently, to stop whom the police used power for the protection of the parliament and prevention of violent actions, does not justify the so-called “hunting” of the demonstrators far from the parliament building – close to the Rustaveli Underground Station, Melikishvili Avenue and Freedom Square. The fact that law enforcement officers did not warn or clarify to the protesters about their intention to free the territory and did not explain in what direction they should walk, is subject of particular criticism. It is fact that police found absolutely peaceful demonstrators dangerous because it is beyond criticism how they used absolutely irrelevant, non-differentiate and disproportionate force against this part of demonstrators that finally blatantly violated the rights and freedoms of demonstrators.

The detentions had violent, mass and non-individual character that is an acute example of the demonstration of the power by the government. It contradicted both negative and positive obligations of the state though each step taken by the government shall aim to inevitably respect it in respect to the constitution and international agreements.

The law enforcement officers used disproportionate power. *In accordance to the Article 32 Part I of the Law of Georgia on Police, “a police officer shall have the right to use physical force, among them special holds of martial arts to ensure his/her safety and/or safety of other persons, to prevent crimes and/or administrative offences, to arrest a criminal who has committed a crime and/or an administrative offender if the use of non-violent methods cannot ensure performance of police functions vested in the police officer under the law.”³⁰*

During the dispersal of June 20-21 demonstration, the videos disseminated by various news agencies and detainees, as well as the information about the physical and verbal assault of the detainees, demonstrate the facts of criminal and disciplinary offences committed by police.

MIA officially reported that 305 participants of the demonstration were arrested under the charge of various violations and it demonstrates the mass character of the detentions.

Selfish and arbitrary detentions were observed on June 21. Besides that, in most cases, the police used disproportionate power. It is alarming that several facts of beating and degrading treatment of the protesters were observed even though they were under the effective control of the police and no threat was coming from them.

³⁰ See the Law of Georgia on Police Article 32

According to the MIA, in connection with the June 20-21 developments and as a result of internal investigation of the General Inspection of the MIA, disciplinary liability was imposed on 11 officers of the MIA. Three police officers were charged for the abuse of official power and the Office of the Prosecutor General is investigating their cases³¹.

As mentioned above, the mass detentions of the protesters after the 4:00 am of June 21 started from the Republic Square, while the territory in front of the parliament and the vicinities were absolutely free of the protesters. The riot police deployed in front of the Rustaveli Theater started chasing/hunting after the protesters in the direction of the Republic Square when they intensively used teargas, water cannon and rubber bullets. In parallel to that, one part of the police officers started mass, arbitrary detentions. The law enforcement officers, who chased the demonstrators from the parliament vicinities, did not announce any anticipated and clear requests to the people in the area for what the police's request was not clear for the demonstrators.

At the same time, the police, during detentions, acted in conflict with the law. Namely, they did not act in accordance to the individual guiltiness and responsibility which is proved by the absolutely identical detention protocols issued by the police officers. The protocols did not contain any factual circumstances, which could prove that the detainee violated the administrative law. In accordance to the Article 239 of the Administrative Code of Georgia, representative of the law enforcement body is authorized to indicate at the essence of the administrative offence³².

It is a pity that during the detentions the State failed to respect the standard of proportionality. In the end, the detention process, in many cases, acquired the character of the selfish restriction of citizens' freedom.

Human Rights Center believes that the MIA's respond to the violations of the law enforcement officers was not sufficient and proportionate. Consequently, the Office of the Prosecutor General of Georgia shall accurately and impartially investigate the cases of possible offences and impose respective responsibilities on the people, who were responsible for the dispersal of the demonstration as well as those law enforcement officers, who breached the law. As for the cases, where the journalists were injured, the investigation shall focus on the illegal interference in the professional activities of journalists.

³¹ The letter # MIA 4 19 02478594 18/09/2019 of the Ministry of Internal Affairs to Human Rights Center

³² See the Administrative Code of Georgia, Article 239

JUNE 20-21 EVENTS - Legal Analysis

No independent investigation has started yet, which could investigate the selfish and arbitrary detentions by police officers and alleged facts of inhuman treatment of the detainees.

IV. INTERFERENCE IN THE PROFESSIONAL ACTIVITIES OF JOURNALIST

Journalistic activities play the important role in the critical situations because covering the demonstrations and public riots does not aim only providing the society with the information but it has critical importance to ensure respect of human rights. Covering the events accurately, timely and comprehensively may have positive impact on the elimination of critical situations. Besides that, in some cases, media coverage may prevent the attempt of the state to use excessive power. In this light, the government representatives are authorized to regularly provide media representatives with the information about ongoing events and ensure their safety.

Page 20

The Law of Georgia on Assembly and Demonstrations clearly state that the Government shall ensure access of media to all assemblies. The organizers of assemblies or demonstrations and representatives of law enforcement bodies shall be obliged not to obstruct professional activities of journalists with identifying signs covering the assembly or demonstration³³.

Therefore, Human Rights Center particularly criticizes the use of excessive power by law enforcement officers against media representatives and interference in their professional activities during the dispersal of June 20-21 demonstration. It is a pity that the State failed to implement its obligations to ensure safety of journalists and to adequately respond to concrete violations against journalists. In concrete instances, the law enforcement officers could identify journalists and differentiate them from the protesters (they wore so-called press-vests, badges and special equipment). Nevertheless, the journalists became subjects of the use of excessive force by police and often, they were targets of illegal actions of the police. It may be evaluated not only as the abuse of power, but as an assault on the freedom to disseminate information. The government could ensure implementation of its positive obligation to effectively defend journalists.

According to the relevant case-law of the European Court of Human Rights, the “watch-dog” role of the media has particular importance in such contexts, since their presence is a guarantee that the authorities can be held accountable for their conduct vis-à-vis the demonstrators and the public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order. Any attempt to remove journalists from the scene of demonstrations must therefore be subject to strict scrutiny. The protection afforded

³³ See the Law of Georgia on Assembly and Demonstrations, Article 2 Paragraph 4

by Article 10 of the Convention to journalists is subject to the provision that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism³⁴.

During the dispersal of the June 20-21 demonstration, among the victims of the excessive use of power and disproportionate use of special means by the MIA were the media representatives, who carried out their professional activities. In accordance to the Georgian Journalistic Ethic Charter, 38 media representatives got injured on June 20. The injured journalists reported that although they wore special badges indicating at their profession, the riot police fired rubber bullets targeting at them³⁵.

Several hours after the demonstration started, as it was reported by the press-center of the Parliament of Georgia, together with the bailiff service, the Special Protection State Service and MIA took up the responsibilities to protect the parliament building. The head of the SPSS Anzor Chubinidze told media representatives to leave the building. As the service later clarified, it was necessary to ensure safety of the media representatives. The SPSS demanded the media to take the equipment too from the building. The decision was protested by the opposition leaders and called on the journalists to stay in³⁶.

Page | 21

The police did not allow the journalists and MPs, who had left the building, to go back to the Parliament. There were cases when law enforcement officers forcibly expelled journalists from the parliament building³⁷. The police representatives verbally insulted and degraded the media representatives. Police officers beat and insulted journalist Giorgi Diasamidze of the Netgazeti, damaged his equipment and hindered his professional activities. In his interview he said: *"I had facebook live on and was explaining the situation to the viewers, when aggressive police officer rushed up to me, pushed my telephone down, dragged me out by force and expelled me from the building. I showed him my badge and warned not to violate the law by hindering my journalistic activities. In parallel to that, other police officer cursed and beat me. Finally, one of them kicked me in the back and forced me out of the parliament yard. Then they threw my telephone out at me."*³⁸

The Article 17 of the Constitution guarantees the freedom of opinion, information, mass information and internet. This right means that any individual has right to freely receive and disseminate information. Paragraph 5 of the same article stipulates the constitutional pre-conditions for the restriction of this right: " The

³⁴ See CoE - Thematic factsheet. Updated: August 2017- MEDIA COVERAGE OF PROTESTS AND DEMONSTRATIONS

³⁵ Watch <https://bit.ly/2n8XEUP> last seen on 9/25/2019

³⁶ <https://imedineews.ge/ge/saqartvelo/109326/jurnalists-parlamentis-shenobas-atovebineben>

³⁷ <http://www.tabula.ge/ge/story/150781-tabulas-zhurnalisti-policiam-parlamentis-shenobidan-dzalis-gamokenebit-gaatria-video>

³⁸ <https://bit.ly/2Omcoxp>

JUNE 20-21 EVENTS - Legal Analysis

restriction of these rights may be allowed only in accordance with law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognized as confidential, or for ensuring the independence and impartiality of the judiciary.”

In the initial stage of the dispersal, journalists were mobilized in front of the parliament, from where they were covering the ongoing events. Before the dispersal, the law enforcement officers did not warn them about planned dispersal. Moreover, part of the injured media representatives state that riot police fired rubber bullets targeting at them and physically and verbally abused them.

The activities of the journalists aimed to cover the ongoing events in front of the parliament and to inform the society. Consequently, there was no ground to restrict their activities. At the same time, the CoE Recommendation R (96)⁴ on the protection of journalists in situations of conflict and tension affirms that “the freedom of the media and the free and unhindered exercise of journalism must be respected in situations of conflict and tension, since the right of individuals and the general public to be informed about all matters of public interest and to be able to evaluate the actions of public authorities and other parties involved is especially important in such situations.” The Criminal Code of Georgia determines criminal liability for the illegal interference in the professional activities of journalists.

In accordance to the Special Report of the OSCE about media freedom, the senior officials of the law enforcement bodies bear constitutional obligation not prohibit or restrict the journalistic activities during public demonstrations. Journalists shall have right to expect fair and restrained treatment from the side of police.

The OSCE report imposes responsibility for the activities and violations of the police officers over the senior officials of the law enforcement bodies: **“senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behavior vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not. A swift and adequate response from senior police officials is necessary to ensure that such an overreaction is not repeated in the future and should send a strong signal that such behavior will not be tolerated³⁹.”**

It is particularly alarming that independent investigation over the violence against journalists and illegal interference in their professional activities has not yet commenced separately from the cases of the other victims of the dispersal. In the

³⁹ See <https://rm.coe.int/factsheets-demonstrations-final-rev1august2017/1680735d83>

frame of relevant investigative conditions, considering the sensitiveness and importance of the issue, the independent investigation could ensure the conduct of effective procedures and determine comprehensive and impartial truth in such criminal cases.

According to the Office of the Prosecutor General of Georgia, they started investigation into such cases in accordance to the Article 333 Part 3 “b” of the Criminal Code of Georgia, which refers to the abuse of professional power. The requests of the civil society and the Journalistic Charter to start investigation under the Article 154 of the CCG, which refers to the illegal interference in the professional activities of the journalists, have not been satisfied yet.

Human Rights Center petitioned the Office of the Prosecutor’s General of Georgia with the regard to the cases of its beneficiaries – injured journalists Beslan Kmuzoff (online edition Caucasian Knot) and Merab Tsaava (Guria News) and requested to grant victim status to them⁴⁰. In response, the Prosecutor’s General Office stated that the investigation over those cases are undergoing in accordance to the Article 333 Paragraph 2 – “b” of the CCG and the journalists may receive victim status after the prosecutor’s office examines all evidence.

Page | 23

HRC is concerned with the dragged out investigation and insufficient information provided to the society. None of the journalists, injured during the June 20-21 dispersal, received the victim status although they video-recorded the illegal activities committed against them and these videos are available both for the investigation and the wider society. Similar inactivity of the investigative bodies demonstrate the lack of political will, which was observed during the dispersals of past protest demonstrations too (November 7 and May 26) and unfortunately, nothing has changed in this regard. Also, none of the senior officials of the MIA took up responsibility for the unlawful conduct of police officers against journalists. Lack of the accountability hinders prevention that makes the media representatives vulnerable in similar situations in Georgia.

⁴⁰ See the address of the Human Rights Center <http://humanrights.ge/index.php?a=main&pid=19973&lang=eng>

V. DETENTIONS OF THE DEMONSTRATORS AND COURT HEARINGS

As a result of the use of disproportionate and undifferentiated power by police forces the peaceful demonstrators and passer-by citizens and journalists got injured. The riot police and police officers, through blatant violation of the law, arrested hundreds of citizens. They arrested everyone – including ordinary passers-by and demonstrators. The police arrested them through blatant violation of their power, namely the citizens were physically abused; family members did not know the whereabouts of the detainees – in which police unit and temporary detention settings they were placed. It is noteworthy that due to high number of detainees and lack of sufficient places in the Tbilisi based temporary detention settings, the detainees were taken to the TDSs in the regions.

Page 24

Particularly problematic is that all detainees, without the assessment of the individual behavior of each of them, were charged under the Articles 166 and 173 of the Administrative Code of Georgia which refer to the minor hooliganism and disobedience to the police request. The police officers did not clarify to any of the detainees the basis of the detention and their rights. Particularly alarming is that the detainees spent hours shackled in the detention settings or police cars while administrative detention reports were issued on the others.

The trials over the detainees' cases were held on June 21, 2019. Initially, two judges were assigned for the examination of their cases. Later, due to high number of the detainees, other judges were also assigned.

HRC is one of those NGOs, who actively observed the ongoing developments on June 20-21 and defended the interests of the detainees in the Tbilisi City and Appellate Courts. With their legal aid, several detainees were freed from the courtroom; the court stopped legal proceedings against some of them based on the HRC advocacy.

Court proceedings in the Tbilisi City Court on June 21

The events in the court, with its intensity and time-long developments, can be divided in three main stages:

Stage I

Due to high number of the detainees, initially, the judges unified the cases and discussed the cases of several detainees together. It resulted into the low level of justice that violates the constitutional rights of the detainees to the effective and fair trial. In order to avoid the violation of the terms established by the law for the

examination of similar cases, the judges tried to act within the timeframe but it impacted the quality. In accordance to the Article 6 Paragraph 3 –“b” of the European Convention on Human Rights, everyone charged with an offence has the right to have adequate time and facilities for the preparation of his defense. Consequently, the limited timeframes determined by the domestic law cannot justify the negligence of the right to adequate defense. The lawyers and the family members did not know the whereabouts of the detainees for a long time. Majority of the detainees did not have lawyers. The court chancellery did not issue information whether they were brought to the court or not. The cases were examined directly during the court proceedings. The detainees did not have chance and time to preliminarily communicate the lawyers that contradicts the Article 6 of the European Convention.

The police officers, who had not arrested the detainees but had prepared the detention reports, participated in the court proceedings. Lack of the procedural guarantees for the detainees did not hinder the court to discuss their cases and pass guilty verdicts against almost all of them. Initially, the majority of the court judgments were equal – all detainees were sentenced to 12-14 administrative imprisonments. The court relied only on the testimonies of the police officers. Initially the judges did not envisage the testimonies of the witnesses. At the same time, the validity of the testimonies made by the police officers was problematic. None of them could answer where they had arrested the detainee and how he had disobeyed the police or breached the public order. The similarity of the detention reports submitted to the courts, where only personal data of the detainees differed, further reinforces the doubts over the accuracy of the charges and the legality of the court judgments. Majority of the detainees stated that police officers arrested peaceful and non-peaceful protesters since the moment of dispersal; they used to take them inside the parliament yard, where they were forced into buses and then taken to police units, where the detention reports were prepared. The big part of the detainees refused to sign the reports that irritated the police officers and they compelled the detainees to sign the documents. Majority of the detainees stated that the riot police officers had arrested them and not those officers, who appeared in the court. All these facts ended up with the inconsequent and obscure testimonies of the police officers because they could not name where the detainees were arrested, how they resisted the police or violated the public order. The administrative proceedings from 10:00 am till 16:00 pm on June 21 can be evaluated as the most grave and unfair.

Stage II

From 17:00 pm on June 21, the judges of the other panels of the court also started examination of the detainees' cases that made the process healthier. Like during the first stage, the cases were unified on the second stage too but the judges started examination of the cases and studied the factual circumstances and evidence individually. At the same time, there were instances when the proceedings were

JUNE 20-21 EVENTS - Legal Analysis

postponed because the police officers, who had not arrested but prepared the detention reports, represented the MIA. During the second stage, human rights lawyers from various nongovernmental organizations, including HRC, and the lawyers from the Georgian Bar Association, got involved the process and they provided the detainees with free legal aid. It assisted the process to develop in the frame of legal framework. Consequently, more trials were postponed because judges gave chance to the parties to provide additional evidence or/and bring more witnesses to the court. When the cases were postponed, the judges freed the detainees from administrative imprisonment.

Stage III

At the third stage, which started at about 21:00 pm, the court radically changed its approach towards the detainees. The judges demanded additional evidence; it is also noteworthy that they no longer shared the inconsequent testimonies of the police officers. The administrative imprisonments were changed into 1000 GEL fines or rebukes. Trials over many cases were postponed with the request that those police officers will appear in the court, who actually arrested the defendants. Also, the defense side was allowed to provide additional evidence.

Page 26

It is alarming that on June 20-21, the police and riot police officers “hunted” citizens. Among the detainees, there were many people, who did not participate in the demonstration at all and were ordinary passers-by. There were cases, when riot police officers arrested a person, who had left the nearby café and had no connection with the protest demonstration. Nevertheless, the court imposed 1000 GEL on him only based on the testimony of the police officer.

The trials over the cases of the detainees during the dispersal revealed that the prosecution was not well-prepared and the charges were very weak. The judiciary authority was not ready to cope with such an extraordinary situation. Due to limited resources and urgent situation, the court could not adequately overcome the challenge. The court superficially considered the cases, did not carry out comprehensive and impartial examination of the evidence and did not try to determine any connections of the evidence with the case that violated the rights of many people, which were guaranteed by the Constitution and the Convention.

VI. CONCLUSION

The developments of June 20-21 have been one of the gravest in the recent history of Georgia. Unfortunately, none of the parties of those events managed to avoid negative outcomes of the events and it further encouraged the polarization in the Georgian society. The society once again saw how the State used excessive force and violence against its citizens.

As a result, instead imposing political responsibility, the Minister of Internal Affairs was promoted to the position of the Prime Minister; in parallel to that we see the criminal prosecutions against opposition leaders, many detained protesters and unanswered questions.

It is true that the events of June 20-21 created a new political agenda and all political powers witnessed the Georgian-national consolidation against Russian occupation. The influence of these events, unfortunately, will stay the indivisible part of the Georgian reality.

It is a pity that several months after the June 20-21, the questions are still without answers. None of the senior officials of the law enforcement bodies took political responsibility for the use of excessive power during the dispersal. Only several police officers were punished, whose illegal actions were publicly broadcasted on TV. It means, there is no political will to depoliticize the law enforcement system to make it healthier, and ensure that people will no longer become victims of the use of excessive force from the side of the State. Instead, the government plans to punish the opposition leaders, though the charges brought against them are the topic of another dispute, and some protesters, against whom the weak evidence convince the society to feel injustice.

VII. RECOMMENDATIONS

Office of the Prosecutor General of Georgia

- To timely grant victim status to the citizens injured during the dispersal of the June 20-21 demonstration;
- To impartially investigate the cases and impose respective liabilities over the offender police officers;
- To immediately update the society about the ongoing investigations into the cases of the journalists injured on June 20-21. To qualify the criminal cases in accordance to the adequate articles of the criminal law – in all cases, where journalists are victims, the investigation shall be conducted on the interference in the professional activities of the journalists;
- It is necessary to conduct independent investigation into selfish and groundless detentions, abuse of power and each fact of alleged ill-treatment during detentions;

Page 28

To the Ministry of Internal Affairs:

- To eradicate the systemic miscarriages about the use of special means during the dispersal and facilitation of order during demonstrations;
- It is essential that all victims received compensation for the material damage, which they received as a result of illegal activities of law enforcement officers;
- To dedicate particular attention to the rules of conduct of the law enforcement officers with the media representatives in the curricula of the Police Academy of the MIA, particularly during the demonstration; the awareness of the law enforcement officers about their obligations shall be raised;

To common courts:

- It is necessary to adequately analyze the miscarriages in the judiciary authority and take all necessary measures to ensure smooth functioning of the courts in critical situations;
- It is necessary to enhance the judiciary control over the alleged human rights violations by the law enforcement officers during the detentions.