



MONITORING OF THE PROTEST DEMONSTRATIONS

Interim Report

2020



HUMAN RIGHTS CENTER

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INTRODUCTION

The purpose of this report is to legally analyze the offenses identified during the rallies held in Georgia before the reporting period of 2020, and to determine the compliance of the actions of law enforcement officers with the international standards. This document examines the results of the monitoring of protest rallies of political content and other types organized by different political parties and civil movements in Tbilisi and other regions from March 1 to August 1, 2020.

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In general, it can be said that unlike in 2019, the vast majority of the protests held during the reporting period took place in a calm environment. This was most likely due to the small number of activists/demonstrators participating in the protests. And this, in turn, was caused by a number of restrictions imposed by the state itself in the country due to the threats exposed by the coronavirus pandemic. Among them, gatherings and demonstrations were limited/restricted¹.

METHODOLOGY

The rallies are observed by 3 monitors who have received relevant training from the experts specially invited from OSCE / ODIHR². The observers write down the information received after each assembly and court hearing, which is evaluated, and afterward analytical documents are prepared by the project analyst-lawyer.

Within the monitoring, the main source for the preparation of the analytical document is the personal report prepared by the observers themselves during the rallies and court proceedings, and in addition, photos and videos taken by the project's public relations manager, civil activists and media outlets during the protests.

The monitoring of the assemblies, due to the coronavirus pandemic, was also carried out remotely through various online platforms through live streaming. Information about the time and place of the observed protests was monitored by the observers from various sources, including the social network of Facebook, where the organizers disseminated information about the protests to be held.

¹ see:

Decree N1 of the President of Georgia of March 21, 2020.

<https://matsne.gov.ge/ka/document/view/4830372?publication=0>

² see:

Information on OSCE/ODIHR training. :

<https://bit.ly/2Qmse8R>

This paper assesses the extent to which procedures related to the right to freedom of assembly and expression are consistent with recognized practices and international obligations.

1. Rally of the Opposition Forces in front of the Parliament of Georgia - (February 18, 2020, Tbilisi);
2. Rally for the demand of realization for the sale of products and the removal of restrictions - (April 22, 2020, Marneuli);
3. Rally of the political party *Girchi* at the hippodrome, "Demanding the abolition of the state of emergency and fines imposed during this period" - (April 23, 2020, Tbilisi);
4. *Rally of "Requesting the Revocation of the Oni and Namakhvani HPP Construction Permit"* - (May 24, 2020, Tbilisi);
5. Rally in support of Rezo Tsulukidze and Eldar Antadze - (May 27, 2020, Batumi);
6. Political Party - "Lelo for Georgia" Rally against the election of Merab Turava as Chairman of the Constitutional Court - (June 25, 2020, Batumi);
7. Rally - "Together against occupation" - (June 20, 2020, Tbilisi);
8. Rally - "To Save the Broadcaster" - (June 26, 2020, Batumi);
9. *Rally of "Supporting Giorgi Rurua"* - (June 26, 2020);
10. Rally - "Demanding Water Supply" - (July 4, 2020, Ruisi);
11. Rally on Subsidizing Utility Bills - (July 13, 2020, Gori);
12. Rally of the Political Party - "Georgian Choice" against the General Director of "Sante" - (July 20, 2020, Tbilisi);
13. Rally demanding the protection of animal rights - (July 21, 2020, Tbilisi);
14. Rally - "Do not kill me, investigate the crime" - (July 22, 2020);
15. Rally of the "Center for Law Enforcement Reforms" in connection with the effective investigation of recently high-profile criminal cases (July 23, 2020).
16. Rally of "Georgian March" Demanding a Ban on Georgian Open Society Foundation - (July 30, 2020, Tbilisi);
17. *Rally of "Supporting Giorgi Rurua"* - (July 30, 2020, Tbilisi);
18. NGO "No to Murderers" rally in front of the Ministry of Internal Affairs - (August 10, 2020, Tbilisi).
19. Rally - "No to HPPs" - (August 15, 2020, Guria).

ANALYSIS OF THE LEGISLATIVE FRAMEWORK FOR THE FREEDOM OF ASSEMBLY AND EXPRESSION

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The right to assembly and demonstration is protected by the Constitution of Georgia, which is a key element of democracy³. In the practice of the Constitutional Court, this is an instrumental right that enables a person exercising this right (his/her political, social, artistic, religious, and other rights etc.) to express his feelings and views⁴. According to the practice of the European Court of Human Rights, the right of assembly protected by Article 11 of the European Convention on Human Rights also includes a form of protest that irritates and insults those who disagree with the ideas that the rally serves to promote⁵. Nevertheless, the right of assembly and demonstration is never absolute. Restriction of this right, as well as other forms of freedom of expression, is permissible in order to ensure the existence of a legitimate basis provided by the Constitution, other constitutional rights and principles.

Georgian law in detail defines the conditions for exercising freedom of assembly and demonstration of the rally⁶, but in practice there are frequent cases when a lot of problems related to this right occur, meaning that in exercising this right the law is violated both by the assembly / demonstration organizers, and by the law enforcers. The violations of the law by the law enforcers is mainly manifested in an abuse of their power⁷.

Ultimately, the right to freedom of assembly (demonstration) to address the issues of public importance is an integral part of the democratic governance. Hence, the possibility of equal and full enjoyment of the right determines the degree of openness and democracy of the society⁸.

³ see:

Article 21 of Tax Code of Georgia)

<https://matsne.gov.ge/ka/document/view/30346?publication=35>

⁴ see: the judgment of the Constitutional Court of Georgia N2 / 482,483,487,502 of April 18, 2011 on the case, Political Union of Citizens `Movement for United Georgia`, Political Union of Citizens` Conservative Party of Georgia`, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens And Jaba Jishkariani, Public Defender of Georgia v. Parliament of Georgia, II-4

⁵ European court of human rights, Plattform "Ärztefür das Leben" v.

Austria, judgment of 21 June 1988, Series A no.

139, p.12, § 32. <https://hudoc.echr.coe.int/fre?i=001-57558>.

⁶ see: Law of Georgia on Assemblies and Manifestations, 14.08.1997.

<https://matsne.gov.ge/ka/document/view/31678?publication=16>

⁷ see: Freedom of the Assembly and Demonstration, GDI, 2018:

<https://gdi.ge/uploads/other/0/672.pdf>

⁸ see: OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §§ 165-16.

<https://www.osce.org/files/f/documents/4/0/73405.pdf>.

<https://www.osce.org/files/f/documents/4/0/73405.pdf>

1. BEHAVIOR OF THE PROTESTERS AT RALLIES

Because of the fundamental importance of the right to demonstrate in public, the state has a number of positive and negative obligations to promote and prevent arbitrary and unlawful interference with the right to demonstrate⁹.

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Observing the 19 protests held during the reporting period, it can be said that the vast majority of the rallies were peaceful. In other cases, the scale of the protesters' actions did not reach the point where they posed a real threat of an unlawful outcome. In general, the behavior of the protesters was of such a nature and quality that their participation in the demonstration was legitimate under both the national law and under Article 11 of the European Convention protecting the right to peaceful assembly.

2. LAW ENFORCEMENT ACTIONS ON RALLIES

Some of the rallies in the reporting period were planned spontaneously. When a rally is held without prior notice to the police, the first police unit to arrive on the spot must take certain measures. The main goal of this unit shall be to promote peaceful and calm assembly/demonstration and to stabilize the situation as much as possible¹⁰.

During the reporting period, there were certain cases when the police, acting against the right to assembly and demonstration, dispersed the protestors by threatening to use the mechanisms provided by the Code of the Administrative Offenses¹¹. In particular, the dispersal of peaceful participants mainly took place on the grounds of violation of Article 166 (Hooliganism), and Article 173 (Disobedience to a lawful request of a law enforcement officer)¹², or the violation of the declared state of emergency. The reason was the protection of the protestors from COVID-19¹³.

During the monitoring of one of the rallies, it was observed that the protestors were not allowed to disperse naturally, nor leave the area without the intervention of the police.

⁹ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, SECOND EDITION, §§ 165-16. <https://www.osce.org/files/f/documents/4/0/73405.pdf>

¹⁰ See Human Rights Handbook on Policing Assemblies, p.96 <https://www.osce.org/files/f/documents/c/5/226981.pdf>

¹¹ Rally of the political party "Girchi" at the hippodrome, "Demanding the abolition of the state of emergency and fines imposed during this period" - (April 23, 2020, Tbilisi); Patrol police officers called on the protestors to disperse, otherwise, they would face fines or the arrest.

¹² see: Article 166 (Petty Hooliganism) and 173 (Disobedience to a law enforcement officer's demand for a lawful request) of the Code of Administrative Offenses of Georgia. <https://matsne.gov.ge/ka/document/view/28216?publication=465>

¹³ Rally of the political party "Girchi" at the hippodrome, "Demanding the abolition of the state of emergency and fines imposed during this period" - (April 23, 2020, Tbilisi);

For example, police by using a force arrested a young woman, took away her cellphone and get her into the police car¹⁴. According to OSCE guidelines, if the assembly has no or small impact on the rights and freedoms of the others or the well-being of the local population, and if it takes place in a safe place, then the police should allow the participants to continue the action.¹⁵ Hence, the force was disproportionately used against the person.

However, it should be positively assessed that, with rare exceptions, law enforcement officers who arrived at the rally site did not resist the protestors in their demands and demonstrations. They ensured the peaceful nature of the rallies, ensured the safety and security of the participants, and in cases of minor disturbances, ensured that this behavior was not spread to other participants and did not endanger others.¹⁶

3. THE NEED AND PROPORTIONAL NUMBER OF THE LAW ENFORCEMENT OFFICERS.

According to Article 21 of the Constitution of Georgia, the state has both negative and positive obligations. It is a positive obligation of the state to ensure that assembly and demonstration proceed smoothly, without violations. At the same time, according to international standards, the number of police officers on the site must be present for the maintenance of public order and security, and besides, must be proportional to the number of demonstrators. Furthermore, the approach of the police should be in compliance with international human rights standards and therefore these approaches should be proportionate, necessary. Moreover, they should take into account the minimum police actions which are required to achieve the desired goals. These principles should underpin the whole decision-making process.¹⁷ And in the event of dispersing the assembly-demonstration, according to the European Court of Human Rights, the state shall apply proportionate measures. Even if law enforcement agencies have to carry out an operation to disperse the assembly, the operation must be designed to minimize the risks of harming protesters.¹⁸

In terms of proportionality, it must be noted that in the majority of cases, the number of law enforcers was indeed proportional. However, protest monitors, in some cases,

¹⁴ Rally of the political party "Girchi" at the hippodrome, "Demanding the abolition of the state of emergency and fines imposed during this period" - (April 23, 2020, Tbilisi);

¹⁵ See Human Rights Handbook on Policing Assemblies, p.98
<https://www.osce.org/files/f/documents/c/5/226981.pdf>

¹⁶ Rally of "Realization for the sale of products and the removal of restrictions - (April 22, 2020, Marneuli);

¹⁷ see: Human Rights Handbook on Policing Assemblies, p.36.
<https://www.osce.org/files/f/documents/c/5/226981.pdf>

¹⁸ See: Makaratzis v. Greece, Application No. 50385/99, 2004.
<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20MAKARATZIS%20v.%20GREECE.pdf>

recorded cases where the number of law enforcers who were mobilized at the rally site significantly exceeded the number of protesters. For example, the rally of the non-governmental organization "No to the Murderers" had about 8-10 demonstrators in front of the Ministry of Internal Affairs (August 10, 2020, Tbilisi). Meanwhile, about 6 law enforcers were mobilized on the site. Also, up to 20 demonstrators were present at the rally of the political party "Girchi", at the hippodrome, which was held demanding the abolition of the state of emergency and the fines imposed during its period (April 23, 2020, Tbilisi). Meanwhile, around 10 law enforcement representatives were present on the site.

Despite the fact that the attitude of the police towards the protesters was neutral, in accordance with international standards, the disproportionate number of law enforcers is itself a problem, as it is likely to have a significant impact on the full realization of the protesters' right to freedom of expression and the implementation of the protest.

CONCLUSION

Taking into account the evaluation of monitoring reports of the assemblies held during the reporting period of 2020, based on the analysis of identified violations, and the assessment of the compliance of the actions of law enforcement officers with international standards, it can be said that at the majority of the protests the right to freedom of assembly and demonstration, and the relevant standards were respected at large.

However, in a number of cases, among the cases identified by the Human Rights Center monitors, there were reports of disproportionate force mobilization, arrests, and demands to disperse with threatening to impose fines or to dispersed by using force.

In sum, most of the rallies were held in a peaceful way. Furthermore, the actions of both the demonstrators and the law enforcers were legitimate and were carried out within the framework of both national law and the right to peaceful assembly under Article 11 of the European Convention of Human Rights.