



Funded by
the European Union



NETHERLANDS
HELSINKI
COMMITTEE



Hertie School
Executive Education



Summary Report on

MONITORING PUBLIC ASSEMBLIES

2023

Summary Report on
Monitoring Public Assemblies



2023



ევროკავშირი
საქართველოსთვის



 **Hertie School**
Executive Education



AUTHOR: Gia Chkhaidze
EDITORS: Aleko Tskitishvili, Ana Jabauri

THE DOCUMENT WAS PREPARED BY THE HUMAN RIGHTS CENTER

Human Rights Center (HRC) was founded on December 10, 1996 in Tbilisi. The objectives of HRC are to strengthen the respect for human rights, and fundamental freedoms and to promote peace processes in Georgia.

HRC IS A MEMBER OF THE FOLLOWING INTERNATIONAL NETWORKS:

- International Federation for Human Rights (FIDH): www.fidh.org
- World Organization Against Torture (OMCT - the SOS-Torture Network); www.omct.org
- Human Rights House Network: www.humanrightshouse.org
- Coalition for the International Criminal Court (CICC): www.coalitionfortheicc.org

ADDRESS:

0160, Tbilisi 11a, Gakhokidze St. III floor.

Tel: (+995 32) 237 69 50, (+995 32) 238 46 48

Email: hrc@hrc.ge

The online edition of Human Rights: www.humanrights.ge

Website: www.hrc.ge

This publication is produced with the support of the European Union. Its content is the sole responsibility of the Human Rights Center and may not reflect the views of the European Union.

CONTENTS

INTRODUCTION.....	4
METHODOLOGY.....	4
1. Detention of the activists.....	5
2. Disproportionate number of police officers.....	8
3. Unidentified police officers.....	11
4. The practice of preventing the setting up of a tent.....	13
5. Dispersing the protest through special means.....	15
6. Safety of participants of the assembly.....	18
CONCLUSION.....	21
RECOMMENDATIONS.....	22

INTRODUCTION

This report presents the main findings of the monitoring of assemblies and demonstrations organized by political parties, civil movements, and activists in Tbilisi. **With the project - "Strengthening Monitoring and Advocacy Capacities for Rights in Georgia", the Human Rights Center (HRC) monitors observed 15 protests in the period from January to December 2023.**¹ Most of the protests were planned through the social network, therefore, they had a spontaneous character.

The purpose of the report is to review violations of the freedom of peaceful assembly, assess them legally and analyze the compliance of the identified practical issues with international standards.² The Human Rights Center has also developed recommendations to ensure effective protection of the right to peaceful assembly.

According to the assessment of the Human Rights Center, during the reporting period, the facts of restriction of freedom of assembly and expression were identified, among which are: violation of national and international legislation during the dispersal of protesters by special means, disregard of the rights of persons detained administratively at the demonstration, prohibition of setting up tents in order to express protest, the tendency to mobilize a disproportionate number of unidentified policemen in the process of facilitating the assembly.

METHODOLOGY

2 monitors of the Human Rights Center participated in the monitoring of public assemblies and demonstrations, who prepared monitors' reports based on the results of the observations. In order to document the developed events, the report

¹ 1. Protest of the "United National Movement" near the Government Chancellery; 2. "This is Georgia - glory to the heroes" - Ukrainian solidarity action at the Parliament of Georgia; 3. Demonstration on March 7 - "No to the Russian law"; 4. March 8-9 protests - "No to the Russian law, come out to defend your dignity"; 5. "Alt-Info" and "Conservative Movement" march from Saakadze Square to Rustaveli Avenue; 6. Protest of "United National Movement" - "Together in Europe"; 7. Protest by Gia Gachechiladze ("Utsnobi") and Zaza Papuashvili - "I'm coming - Georgia first"; 8. Protest "Against Russification Policy"; 9. Protest of Beka Grigoriadis; 10. Irakli Bebuia solidarity action; 11. Protest of the "European Georgia" party - "Against Russification Policy"; 12. Tamaz Ginturi's solidarity action - "Georgian people against Russian evil"; 13. Protest at the national bank; 14. "Our Voice to Europe" - rally of the President of Georgia near the Orbeliani Palace; 15. "End Child Marriage".

² see. INTERIM REPORT ON MONITORING PUBLIC ASSEMBLIES, Human Rights Center, 2023, available at: <https://rb.gy/l4f590> [12/19/2023].

on each public assembly was accompanied by a photo and video material evidencing the facts.

Monitors of the Human Rights Center observed the protests in the city of Tbilisi, at the location of the protests. The monitors received information about the time and place of the announced assemblies from various sources, including - from the social network - Facebook, where the organizers of the assembly published information in advance.

The report also refers to such assemblies that were not directly observed by the monitors of the Human Rights Center. Such as: Pride festival, which was not observed on the spot by the monitors of the Human Rights Center, considering the non-observance of security norms and the increased risks; Also, the protests of Saba Brachveli, Eduard Marikashvili and other civil activists in front of the Parliament of Georgia. The Human Rights Center obtained information about these protests from TV and other media sources.

In addition to observing the protests, the report uses open information from public sources. Furthermore, during the reporting period, the Human Rights Center recorded 9 interviews with the organizers of the assembly, including members of political parties, representatives of human rights organizations and civil activists. Also, for data analysis, the center additionally requested public information from the administrative bodies regarding the holding of the assemblies, the warning of the administrative bodies and the restriction of the traffic movement.

1. Detention of the activists

Among the protests observed during the reporting period, administrative arrests were made at Beka Grigoriadis's protest and at March 7-9 protests.³ In addition to this case, the violations observed during the administrative detention of Saba Brachveli, Eduard Marikashvili and other human rights defenders are also concerning.⁴ In particular, at the protest held on June 2, 2023, the police arrested

³ see. Assessment of the Events Occurring at the Protest Rallies of March 7-8, Human Rights Center, March 9, 2023, available at: <https://rb.gy/4xkka> [12/16/2023];

⁴The chain of problems beyond the blank pages, news.on.ge, available at : <https://rb.gy/t8onae> [09.12.2023].

several activists, some of whom were holding blank sheets of paper, and some of them were holding papers with different content inscriptions, as well as protest banners. It is worth noting that within the framework of the project of monitoring allegedly politically motivated court processes, the Human Rights Center observed the case of Saba Brachveli, Eduard Marikashvili, Nika Romanadze, Nodar Sikharulidze and Grigol Frangishvili, who were recognized as offenders by the Tbilisi City Court.⁵

During the observation of the Beka Grigoriadis's protest, cases of violation of the procedural norms of the Administrative Offences Code of Georgia and possible abuse of power by the police during the arrest of the activists were identified.⁶ In addition, according to the HRC monitors, "the actions of the law enforcement officers violated the freedom of assembly and expression of Beka Grigoriadis and his supporting activist - Bezhan Tsvimitidze."⁷

On June 1, 2023, Beka Grigoriadis was arrested while trying to set up a tent at Oliver and Marjorie Wardrop Square near the Parliament of Georgia. Earlier, he and his supporters had informed the police gathered nearby that they were going to set up a tent and if the police intended not to allow them to set up the tent that they should have given the proper warning. In the absence of such warning, Beka Grigoriadis was arrested on the scene while setting up the tent.⁸ The police officers did not explain to him the procedure of seizure and subsequent return of the item.⁹ Considering that there was no relevant legal norm on the prohibition of placing a tent in the square, there is no legitimate basis for administrative arrest of a person

⁵The Report of the court monitor of the Human Rights Center: 27.09.2023. According to the decision made by Judge Nino Shcherbakov on September 27, 2023, the administrative proceedings against Marikashvili, Brachveli, Romanadze and Frangishvili in the first part of Article 173 (disobedience to the police and insulting the police) were terminated due to the absence of a legal offense. In the first part of Article 166, all four of them were found to be offenders. A fine of 500GEL for each was defined as the form and measure of the penalty. Sikharulidze was found to be an offender for committing the offense provided for by the first part of Article 166 and the first part of Article 173, and a fine of 2,000 GEL was determined as the form and measure of the penalty.

⁶Monitoring Report regarding the Protest Demonstration of Beka Grigoriadis, the Human Rights Center, 13 July 2023, available at: <https://rb.gy/xlui5o> [16.12.2023].

⁷ Ibid

⁸A Brief Monitoring Report regarding the Practice of Preventing the Placement of Tents in Public Spaces to Exercise the Freedom of Assembly, HRC, 30 November 2023, available at: <https://rb.gy/qwhi4i> [12/16/2023].

⁹Monitoring Report regarding the Protest Demonstration of Beka Grigoriadis, the Human Rights Center, 13 July 2023, available at: <https://rb.gy/xlui5o> [16.12.2023].

for setting up a tent. "Choosing a location is one of the fundamental parts of the right to assembly" to express a protest.¹⁰ According to the assessment of the European Court of Human Rights, if the solo assemblies of one person does not interfere with the traffic or the normal functioning of administrative bodies, the freedom of expression is violated by conducting administrative proceedings against this person.¹¹ "Even short periods of detention will directly affect participants' right to assembly."¹²

Before that, on May 29, at the same assembly, a civil activist Bezhan Tsvimitidze was arrested, while he was recording the events of the assembly on his mobile phone. After his arrest, his whereabouts were unknown for several hours and he was not given the opportunity to contact his lawyer. "By 2 AM, he was transferred to the Dusheti temporary detention facility, which is about 50 kilometers from Tbilisi."¹³

According to the Administrative Offences Code of Georgia, in the event of an administrative arrest, the arresting officer shall inform the arrestee upon placing him/her under arrest, in a form that he/she understands: a) of the administrative offence committed by him/her and the basis of the arrest; b) of his/her right to a defense counsel; c) of his/her right, if desired, to request that the fact of his/her arrest and his/her location be made known to a relative named by him/her.¹⁴

"Following the arrest, the police officers did not explain to Bezhan Tsvimitidze the basis of his arrest and did not allow him to get in touch with the family and defense lawyer."¹⁵ There were questions about the need to transfer him to the Dusheti temporary detention center, while the administrative law obliges the arresting officer to transfer the detainee to the nearest facility.¹⁶ As for the case of arresting the civil activists, the police arrested 7 participants of the protest for holding blank

¹⁰ Guideline for participants and organizers of the protests, IPHR, Georgian Young Lawyers' Association, HRC, 2023, 7.

¹¹ *Glukhin v. Russia*, no. 11519/20, 4 July 2023, § 88.

¹² Guidelines on Freedom of Peaceful Assembly (3rd edition), CDL-AD(2019)017rev, Study n° 769/2014, European Commission for Democracy Through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Strasbourg / Warsaw, 15 July 2020, 82-83.

¹³ *Ibid*

¹⁴ Administrative Offences Code of Georgia, Article 245, part 1.

¹⁵ Monitoring Report regarding the Protest Demonstration of Beka Grigoriadis, the Human Rights Center, 13 July 2023, available at : <https://rb.gy/xlui5o> [16.12.2023].

¹⁶ see Administrative Offences Code of Georgia, Article 245, part 4.

papers and other banners (so called “blank papers case”). Among them were human rights advocates, who held an assembly in front of the Parliament of Georgia and called on the authorities to protect the right to peaceful assembly.¹⁷ In this case too, the police did not explain to the detainees the reason for the arrest and their procedural rights. Moreover, the lawyers of the detainees were not informed about the whereabouts of their clients and were not allowed to see them in the first hours following their arrest.¹⁸ According to civil society organizations, in the case of “blank papers” there was an obvious violation of their freedom of assembly and expression.¹⁹

According to the practice of the European Court of Human Rights, the state has a negative obligation not to interfere with the freedom of assembly without a legitimate, legal basis and not to allow a disproportionate restriction of this right. Accordingly, the police should make a decision to arrest a protester only if there is a need to prevent a violation of the law (for example, violent behavior).²⁰

2. A disproportionate number of police officers

Mobilization of disproportionate number of police officers at the assemblies was identified as one of the trends during the monitoring. At some of the assemblies, in facilitating the protests, compared to the participants of the protest, far more police officers were involved than would have been sufficient to ensure public order, given the content, nature and number of participants of the protest. On the other hand, during some of the observed assemblies, on the contrary, there was no sufficient number of the police officers that would have ensured peaceful conduct of the assembly, if necessary. In addition, there was no problem with mobilizing a proportional number of police officers at some assemblies, for example - at the assembly in support of Irakli Bebuia, where, according to the monitoring report, the

¹⁷Georgia: End Arbitrary Prosecution and Protect Freedom of Expression, The Observatory for the Protection of Human Rights Defenders, Norwegian Helsinki Committee, HRC, 22.06.2023, available at: <https://rb.gy/268z7v> [10.12.2023].

¹⁸ Ibid

¹⁹see CIVIL SOCIETY ORGANIZATIONS ARE RESPONDING TO THE FACTS OF THE DETENTION OF HUMAN RIGHTS DEFENDERS, GYLA, 3 June 2023, available at: <https://rb.gy/hayzzj> [12/16/2023].

²⁰Guidelines on Freedom of Peaceful Assembly (3rd edition), CDL-AD(2019)017rev, Study n° 769/2014, European Commission for Democracy Through Law (Venice Commission), Osce Office for Democratic Institutions And Human Rights (OSCE/ODIHR), Strasbourg / Warsaw, 15 July 2020, 85.

police were represented in a proportionate number.²¹ The same applies to the assembly held on Rustaveli Avenue - "Together in Europe".²²

The police have a crucial role in ensuring the peaceful conduct of the assemblies. Law enforcement agencies should adopt a human rights-based approach to all aspects of the planning, preparation and policing of assemblies.²³ In order for the police to perform this function effectively, it is important to have as many police officers at the assembly as possible, on the one hand, to fully protect public order and, on the other hand, to guarantee the safety of the participants of the assembly.²⁴ At the same time, it is necessary to show caution on the part of law enforcement officers because "disproportionate and excessive intervention of the police, instead of reducing tension, may, on the contrary, create a confrontational situation and, instead of de-escalating a possible conflict, lead to tension."²⁵ This stems from the fact that the organizer may fear that a heavy police presence in a particular location would be perceived by participants as unnecessarily confrontational situation."²⁶

At the protest of Beka Grigoriadis, on June 3, around 1:30am, the number of police officers was 3 times greater than the number of participants of the assembly.²⁷ Up to 15 participants took part in the protests of May 29, 30 and June 1, and approximately 60 policemen were mobilized on the same location.²⁸ The same trend was observed on July 31 at the assembly of civil organizations near the Parliament building – "Russia is an enemy, not a guest!"²⁹ In contrast, at the rally organized by

²¹HRC monitor's report on the monitoring of assemblies: 24.10.2023.

²²HRC monitor's report on the monitoring of assemblies: 09.04.2023.

²³ Guidelines On Freedom Of Peaceful Assembly (3rd EDITION), CDL-AD(2019)017rev, Study n° 769/2014, European Commission For Democracy Through Law (Venice Commission), OSCE Office For Democratic Institutions And Human Rights (Osce/Odihr), Strasbourg / Warsaw, 15 July 2020, 11.

²⁴ Policing Assemblies, Amnesty International Dutch Section, Police and Human Rights Program – Short paper series No. 1, 2013, 5.

²⁵OSCE Office for Democratic Institutions and Human Rights, Report on Monitoring of Freedom of Peaceful

Assembly in Selected OSCE Participating States (May 2011 – June 2012), 9 November 2012, para. 201, Can be accessed at: <https://rb.gy/smw90> [20.12.2023].

²⁶ European Commission for Democracy through Law (Venice Commission)/ OSCE Office for Democratic Institutions and Human Rights, Guidelines On Freedom Of Peaceful Assembly, 2 nd edition, Strasbourg-Warsaw, 9 July 2010, Study no. 581/2010, para. 187, Can be accessed at: <https://rb.gy/c0bbf> [12/20/2023].

²⁷HRC monitor's report on the monitoring of assemblies: 03.06.2023

²⁸HRC monitor's report on the monitoring of assemblies: 29.05.2023; 30.05.2023; 01.06.2023.

²⁹HRC monitor's report on the monitoring of assemblies: 31.07.2023.

Gia Gachechiladze ("Utsnobi") and Zaza Papuashvili - "I'm coming - Georgia first", there were about 11,000 citizens³⁰, while about 100 police officers were mobilized at the scene of the assembly.³¹

According to the assessment of the Human Rights Center, the problem of mobilizing an inappropriate number of police officers was observed on July 8, 2023, during the "Pride Festival"³², which was canceled as a result of improper assessment of the risks expected during its implementation. A counter-rally by the far-right groups was announced shortly after this event was planned.³³ Although, through online platforms, information about organized counter-demonstration and expected violent actions was available in open sources,³⁴ the State failed to fulfill its positive obligation to protect the participants of the Pride Festival from the aggressive actions of the counter-demonstrators."³⁵

According to the practice of the European Court of Human Rights and international standards, the state must properly assess the risks expected and associated with the assemblies organized by vulnerable groups, when the domestic authorities know or ought to have known of holding such an assembly.³⁶

According to the Law of Georgia "On Police", the police, in the part of performing preventive functions, ensure the safety of the participants of assemblies, demonstrations and other mass events.³⁷ "The state must take reasonable and

³⁰see How many people attended the demonstration of "Utsnobi" at the Republic Square? Myth Detector, available at: <https://rb.gy/gjrex> [10.12.2023].

³¹HRC monitor's report on the monitoring of assemblies: 30.04.2023.

³² Monitoring Report regarding the Amount of Police Force and Unidentifiable Law Enforcement Officers Mobilized at Protest Demonstrations, HRC, 27 September 2023, available at: <https://rb.gy/lhko0> [16.12.2023]; Timeline of the canceled Pride that the police did/couldn't protect from the perpetrators, Netgazeti, 8 July 2023, available at: <https://rb.gy/ntzsu> [10.12.2023].

³³Opponents of "Pride Festival" started marching, Radio Liberty, July 8, 2023, available at: <https://rb.gy/pw9lx> [10.12.2023].

³⁴MIA is still tolerant of hate groups - civil organizations, Netgazeti, 8 July 2023, available at: <https://rb.gy/bsu48> [10.12.2023].

³⁵ Monitoring Report regarding the Amount of Police Force and Unidentifiable Law Enforcement Officers Mobilized at Protest Demonstrations, HRC, 27 September 2023, available at: <https://rb.gy/xlmg7> [16.12.2023].

³⁶ *Identoba and Others v. Georgia*, no. 73235/12, §72, 12 May 2015; see also: OSCE/ODIHR, Human Rights Handbook on Policing Assemblies, 2016, p. 16, Can be accessed at: <https://rb.gy/8ccdt> [20.12.2023].

³⁷Law of Georgia on Police, Article 17 (1)(d).

appropriate measures to ensure the peaceful conduct of the assembly.”³⁸ This means that if violent actions are expected at the assembly, as many police officers shall be mobilized as needed to prevent the manifestation of violence, and vice versa - if there is no such threat, it is necessary to ensure presence of such number of police officers that is proportionate to the situation.³⁹ In each specific case, the police should act according to the situation both to ensure the realization of the freedom of peaceful assembly and to protect the physical safety of the participants of the assembly, therefore, it refers to the mobilization of a proportional number of police officers at the assemblies.⁴⁰ “Best practice indicates that, as a general rule, the number of police officers needed to maintain public order should be determined jointly by law enforcement agencies and protest organizers.”⁴¹ Such cooperation helps to build trust and reduce possible tensions between the participants of the assemblies and the police.⁴²

3. Unidentified police officers

At the assemblies observed during the reporting period of the monitoring, in most cases, together with uniformed policemen, there were non-uniformed police officers, who were difficult or impossible to identify.⁴³ They had a communication with uniformed policemen⁴⁴ and were in the vicinity of the assembly.⁴⁵ In addition, they were not wearing any distinguishing marks that would make it possible to

³⁸ *Plattform „Ärzt für Das Leben“ v. Austria*, no. 10126/82, 21 June 1988, §34.

³⁹see Monitoring Report regarding the Amount of Police Force and Unidentifiable Law Enforcement Officers Mobilized at Protest Demonstrations, HRC, 27 September 2023, available at: <https://rb.gy/lhhko0> [16.12.2023].

⁴⁰ OSCE Office for Democratic Institutions and Human Rights, Handbook on Monitoring Freedom of Peaceful Assembly, Warsaw, 2011, p. 24.

⁴¹ European Commission for Democracy through Law (Venice Commission)/ OSCE Office for Democratic Institutions and Human Rights, Guidelines On Freedom Of Peaceful Assembly, 2 nd edition, Strasbourg-Warsaw, 9 July 2010, Study no. 581/2010, para. 187, Can be accessed at: <https://rb.gy/c0bbf> [12.12.2023].

⁴² OSCE Office for Democratic Institutions and Human Rights, Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2017–June 2018), Warsaw, 19 September 2019, para. 289, Can be accessed at: <https://rb.gy/ppi0u> [19.12.2023].

⁴³An exception was the demonstration held at the National Bank. see HRC monitor’s report on the monitoring of an assembly: 20.09.2023.

⁴⁴HRC monitor’s report on the monitoring of an assembly: 03.06.2023; HRC monitor’s report on the monitoring of an assembly: 29.05.2023; 30.05.2023; 01.06.2023.

⁴⁵HRC monitor’s report on the monitoring of an assembly: 07.1.2023.

identify them and perceive them as police officers. However, according to the respondents of the Human Rights Center, “Such police officers are easy to recognize because they are active, they record conversations of protesters and take photos.”⁴⁶

Along with the non-uniformed policemen, unidentified Škoda type cars⁴⁷ with fogged windows were also present at the assembly; The policemen without uniforms were in those cars.⁴⁸

According to the order N1310 of the Minister of Internal Affairs⁴⁹, “a patrol policeman involved in the regulation must wear uniform clothes determined by the head of the security unit (depending on the season), wear a badge”⁵⁰, also, during foot patrols, which are carried out in places of public gathering, the policeman must wear a uniform.⁵¹

According to international practice, police crews participating in the process of policing assemblies must wear uniforms or be identifiable.⁵² “Law-enforcement personnel should be clearly and individually identifiable.”⁵³ This requirement applies to all police officers who are involved in the process of facilitating a peaceful assembly⁵⁴, therefore, if an authorized police officer maintains order around the assembly and promotes the constructive conduct of the assembly, he/she must wear an appropriate uniform or be clearly identifiable.

Establishing the mentioned obligation for the police officer ensures the strengthening of responsibility and accountability among the police officers. Taking

⁴⁶ Interview of the Human Rights Center with representatives of the "Lelo" political party, 16.11.2023.

⁴⁷HRC monitor's report on the monitoring of an assembly: 24.10.2023; HRC monitor's report on the monitoring of an assembly: 28.05.2023.

⁴⁸HRC monitor's report on the monitoring of an assembly: 24.02.2023;

⁴⁹Order N1310 of December 15, 2005 of the Minister of Internal Affairs regarding the approval of the instruction "On the rules for patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia".

⁵⁰ Ibid., first paragraph of Article 12.

⁵¹Ibid., paragraph 2 of Article 10.

⁵² OSCE Office for Democratic Institutions and Human Rights, Guidelines on Freedom of Peaceful Assembly, 2nd edition, Warsaw, 2010, p. 78, §153.

⁵³ Ibid

⁵⁴ European Commission For Democracy Through Law (Venice Commission)/OSCE Office for Democratic Institutions and Human Rights, Guidelines on Freedom of Peaceful Assembly, CDL (2008)062, 4 June 2008, p. 35.

into account that they are under the attention of the participants of the assembly, in case of exceeding the power or otherwise violating the law, it will be possible to hold them accountable.⁵⁵

“Consequently, to increase the effective accountability of police officers, the police officers shall be always easily identifiable to public, and shall wear uniforms or other identification symbols.”⁵⁶

The Ministry of Internal Affairs of Georgia should ensure the participation of uniformed and identifiable police officers in the process of facilitating the assemblies and demonstrations.

4. The practice of preventing the setting up of a tent

From May 28 to June 4, monitors of the Human Rights Center observed the protest of Grigoriadis's father, Beka Grigoriadis, which took place in the square adjacent to the Parliament of Georgia.⁵⁷ During the protest, Beka Grigoriadis tried to set up a tent in the square. On May 28, the law enforcement officers did not allow him to do so. “Beka Grigoriadis was not able to set up his tent during the following days either, moreover “the policemen confiscated Beka Grigoriadis's tent several times and did not provide him with explanations regarding the procedure for seizure or the return of the property by drawing up the corresponding report.”⁵⁸

According to the Human Rights Center, by preventing the right to set up a tent, which is a constituent part of freedom of expression⁵⁹, the police violated the law, including

⁵⁵ Boyle M., Vullierme J., A Brief Introduction to Policing Public Gatherings: A guide for Practitioners, Council of Europe, 2021, p. 39.

⁵⁶ Monitoring Report regarding the Amount of Police Force and Unidentifiable Law Enforcement Officers Mobilized at Protest Demonstrations, HRC, 27 September 2023, available at: <https://rb.gy/lhko0> [16.12.2023].

⁵⁷ Monitoring Report regarding the Protest Demonstration of Beka Grigoriadis, 13 July 2023, available at: <https://shorturl.at/fsuAN> [19.12.2023].

⁵⁸ A Brief Monitoring Report regarding the Practice of Preventing the Placement of Tents in Public Spaces to Exercise the Freedom of Assembly, 2023 November 30, Human Rights Center, <https://rb.gy/r0sa4w> [17.12.2023].

⁵⁹ European Commission for Democracy through Law (Venice Commission)/ OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Guidelines on Freedom of Peaceful Assembly, Strasbourg / Warsaw, 15 July 2020 Study n° 769/2014 CDL- AD(2019)017rev., 3 rd edition, para. 148.

the procedural norms, which led to an unjustified restriction of freedom of assembly and expression.⁶⁰

The freedom of assembly and expression is guaranteed by the Constitution of Georgia, the legislator has established a constitutional-legal basis for limiting this right - "Authorities may terminate an assembly only if it assumes an unlawful character."⁶¹ According to the assessment of the Constitutional Court of Georgia, "the authority to terminate the assembly arises when: 1) Article 11¹ of the Law of Georgia "On Assemblies and Demonstrations" is violated as a whole; 2) the requirement established by this article (one of the paragraphs of the article) is violated."⁶²

According to the practice of the European Court of Human Rights, it is part of the freedom of expression to set up a tent if it serves to express a political opinion.⁶³ The restriction imposed to limit this right must have a legal basis and serve to achieve one or more legitimate goals (for example - national security, public order, rights of others, etc.) and the restriction must be necessary and proportionate to achieve the legitimate goal.⁶⁴

The legislation of Georgia does not establish a ban on setting up a tent as a form of protest. According to the Law of Georgia on Assemblies and Demonstrations, "it shall be prohibited to block the traffic roadway by cars, various structures and/or items."⁶⁵ Clearly, protesting should not violate the constitutional rights of others, or endanger the normal functioning of administrative bodies or disrupt traffic. Thus, if setting up a tent does not disrupt traffic or block administrative buildings, it is not

⁶⁰see Monitoring Report regarding the Protest Demonstration of Beka Grigoriadis, 13 July 2023, available at: <https://shorturl.at/fsuAN> [17.12.2023].

⁶¹Paragraph 3 of Article 21 of the Constitution of Georgia.

⁶²Decision No. 2/482,483,487,502 of the Constitutional Court of Georgia of April 18, 2011 on the case "Citizens' Political Union "Movement for United Georgia", Citizens' Political Union "Conservative Party of Georgia", Georgian citizens - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, citizens Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia against the Parliament of Georgia", II-46.

⁶³ *Frumkin v. Russia*, no. 74568/12, § 107, 5 January 2016.

⁶⁴ Guidelines On Freedom Of Peaceful Assembly (3rd edition), CDL-AD(2019)017rev, Study n° 769/2014, European Commission for Democracy Through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Strasbourg / Warsaw, 15 July 2020, 11.

⁶⁵Article 11¹ (4) of the Law of Georgia on Assemblies and Demonstrations.

permissible to prohibit placement of the tent.⁶⁶ The current legislation does not prohibit placement of a tent in the square, which is located 20 meters away from the administrative building.

On October 5, 2023, the Parliament of Georgia adopted an amendment to the Law “On Assemblies and Demonstrations” in an accelerated manner.⁶⁷ According to the assessment of the HRC, “The primary goal of the amendments to the Law of Georgia “On Assemblies and Demonstrations” is to prohibit the use of temporary structures, including tents, during assemblies and demonstrations for the purpose of protesting.”⁶⁸ The amendments to the legislation caused protests by the public defender and civil society⁶⁹, and the president vetoed the amendment.⁷⁰ According to the assessment of the Office for Democratic Institutions and Human Rights (OSCE/ODIHR) of the Organization for Security and Cooperation in Europe (OSCE), the draft legislative amendments are not compatible with the requirements of international law for the protection of freedom of assembly.⁷¹ Moreover, the restriction imposed by the draft law does not meet the requirement of necessity, proportionality and prohibition of discrimination; 15 days of administrative detention for simply erecting temporary constructions may have a chilling effect on the exercise of the right to freedom of peaceful assembly⁷².

5. Dispersing the protest through special means

During the reporting period of the monitoring of the protests, among other things, the subject of the study was the evaluation of the expediency and legality of the dispersing of the protests using special means, which took place at the assemblies

⁶⁶Monitoring Report regarding the Protest Demonstration of Beka Grigoriadis, 13 July 2023, available at: <https://shorturl.at/fsuAN> [17.12.2023].

⁶⁷see A Brief Monitoring Report regarding the Practice of Preventing the Placement of Tents in Public Spaces to Exercise the Freedom of Assembly, HRC, 30 November 2023, available at: <https://rb.gy/qwhi4i> [16.12.2023].

⁶⁸ Ibid

⁶⁹Parliament Approves Bill Limiting "Temporary Constructions" at Rallies, Radio Liberty, 5 October 2023, available at: <https://rb.gy/o6959q> [19.12.2023].

⁷⁰President Vetoes Amendments to the Law on "Assemblies and Demonstrations", Interpressnews, 17 October 2023, available at: <https://rb.gy/rjilzg> [17.12.2023].

⁷¹ Urgent Opinion On Proposed Amendments To The Law Of Georgia On Assemblies And Demonstrations And To The Administrative Offences Code, OSCE/ODIHR, Warsaw, 6 November 2023, 2-4.

⁷² Ibid

held in front of the Parliament on March 7-9. Observing these assemblies revealed several main problems, including:

1. During the dispersing of the protest, the rules of procedure for using special means was violated;
2. The police used disproportionate force against the protesters;
3. International standards were violated during dispersing the protest using special police means.⁷³

The police dispersed the participants of the rally several times with special means. On March 7, around 20:20, the police used pepper spray on Chichinadze Street without prior warning.⁷⁴ Soon after, the police used water cannons without warning. There were questions about the proportionality and necessity of the special means used, in the conditions when, according to the Human Rights Center monitors, the assembly on March 7 was peaceful.⁷⁵

Special means were used by the police on March 8-9.⁷⁶ In addition, in the footage distributed by public sources, a policeman was seen spraying a pepper spray in the direction of the eyes of one of the participants of the protest.⁷⁷ A fact of mixing the pepper spray with a water cannons was also observed.⁷⁸

According to OSCE standards, the use of pepper spray is allowed only to repel individual protesters who act violently, and not indiscriminately against all protesters.⁷⁹ Moreover, it is forbidden to use it from a distance of less than 1

⁷³Assessment of the Events Occurring at the Protest Rallies of March 7-8 , Human Rights Center, 9 March 2023, available at: <https://rb.gy/eyubm9> [16.12.2023].

⁷⁴HRC monitor's report on the monitoring of an assembly: 07.03.2023.

⁷⁵ Ibid

⁷⁶HRC monitor's report on the monitoring of an assembly: 08/09.03.2023.

⁷⁷A civilian was sprayed with pepper spray in the face, Formula, available at: <https://rb.gy/916ynu> [16.12.2023].

⁷⁸Mtavari Channel, *pepper spray and water cannon - special forces started to disperse the protest*, available at : <https://rb.gy/zezc9> [16.12.2023]; see also: Radio Liberty, GYLA: *The simultaneous use of tear gas and water canon is against the international standard*, 9.03.2023, available at: <https://rb.gy/nnooc> [20.12.2023].

⁷⁹ OSCE Office for Democratic Institutions and Human Rights, *Human Rights Handbook on Policing Assemblies*, Warsaw, 2016, p. 79.

meter.⁸⁰ Simultaneous use of pepper spray and water cannons is contrary to international standards, as in such a case there is a risk of intentional human injury.⁸¹ Thus, when using special means, all the rules related to the approach based on the protection of human rights must be observed.⁸²

Regarding the use of special means, the Law of Georgia "On Police" establishes a number of requirements.⁸³ In addition, the guidelines for its use are given in a separate individual administrative legal act, which obliges the authorized person of the police to warn the participants of the assembly/demonstration in advance and give them a reasonable time (not less than 30 minutes) to comply with the legal request before using special means.⁸⁴ In order for all participants of the protest to clearly and distinctly hear the sound of the warning, it may even be necessary to announce it from different places. In addition, "the police should give adequate time to the participants of the protest to comply with the second warning."⁸⁵

On March 7, "the warning about the use of special means was announced only post-factum - when the participants of the rally no longer had enough time to disperse"⁸⁶ In accordance with the standards established by the OSCE, in the presence of a legitimate goal of dispersing the protest, it is necessary to give a proper warning.⁸⁷

According to the Law of Georgia on Police "water-cannons, armored car, and other special transportation means are used to suppress mass violations of legal order, to

⁸⁰ Resource Book on the Use of Force and Firearms in Law Enforcement, UN Office on Drugs and Crime (UNODC) & UN Office of the High Commissioner for Human Rights (UN OHCHR), (New York: UNODC & UN OHCHR, 2017), 87, available at: <https://rb.gy/4th4x> [19.12.2023].

⁸¹ Ibid. 90.

⁸²see Guidelines On Freedom Of Peaceful Assembly (3rd EDITION), CDL-AD(2019)017rev, Study n° 769/2014, European Commission For Democracy Through Law (Venice Commission), OSCE Office For Democratic Institutions And Human Rights (Osce/Odihr), Strasbourg / Warsaw, 15 July 2020, 11.

⁸³Article 33 of the Law of Georgia on Police.

⁸⁴"On the approval of the guidelines for the behavior of the servants of the Ministry of Internal Affairs of Georgia during assemblies and demonstrations" - Article 7 of the Order No.1002 of December 30, 2015 of the Minister of Internal Affairs of Georgia.

⁸⁵ OSCE Office for Democratic Institutions and Human Rights, Human Rights Handbook on Policing Assemblies, Warsaw, 2016, p. 103, Can be accessed at: <https://rb.gy/m5t9g> [12/17/2023].

⁸⁶Brief report of the Human Rights Center regarding the use of special means by the police, Human Rights Center, 31 October 2023, available at: <https://rb.gy/O7c3eu> [16.12.2023].

⁸⁷ OSCE Office for Democratic Institutions and Human Rights, Guide on Law Enforcement Equipment, Most Commonly Used in the Policing of Assemblies, 2021, p. 81.

repel a group attack on the state and/or public facilities, to stop a vehicle by force if the driver does not obey a police officer's demand to stop; to detain an armed criminal.”⁸⁸ Although, the March 7 protest was peaceful.⁸⁹ Accordingly, there was no legitimate purpose to justify the dispersal of the protesters.⁹⁰ In such circumstances, international practice expressly prohibits the use of water cannons against peaceful protesters.⁹¹ Furthermore, the police did not take into account the requirement of necessity, in order to disperse the protest by using special means. Although some protesters behaved aggressively and violated the law on March 8, “individual, isolated incidents of violence do not automatically render the entire assembly non-peaceful, so as to create a legal basis for dispersing such an assembly.”⁹² In such a situation, the police have an obligation to use a differentiated approach towards a violent group and keep them away from the assembly. Otherwise, if the police start to disperse the entire assembly, it could lead to an escalation of confrontation and violence, which is exactly what happened on March 8.⁹³

6. Safety of participants of the assembly

In order to effectively use the freedom of assembly, among other things, it is important to ensure the safety of the participants of the assembly, which means both physical and digital safety of the participants.⁹⁴ “It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the

⁸⁸Article 33, Part 3, sub-paragraph "g" of the Law of Georgia "On Police".

⁸⁹HRC monitor's report on the monitoring of an assembly: 07.03.2023.

⁹⁰"Any decision to restrict or prohibit an assembly should be based on legislation that reflects applicable standards and clearly describes the decision making procedures." see: Guidelines On Freedom Of Peaceful Assembly (3rd EDITION), CDL-AD(2019)017rev, Study n° 769/2014, European Commission For Democracy Through Law (Venice Commission), OSCE Office For Democratic Institutions And Human Rights (Osce/Odihr), Strasbourg / Warsaw, 15 July 2020, 10.

⁹¹ OSCE Office for Democratic Institutions and Human Rights, Guide on Law Enforcement Equipment, Most Commonly Used in the Policing of Assemblies, 2021, p. 81.

⁹² Human Rights Handbook on Policing Assemblies, OSCE/ODIHR, 2016, p. 103, Can be accessed at: <https://rb.gy/m5t9g> [17.12.2023].

⁹³Brief report of the Human Rights Center regarding the use of special means by the police, Human Rights Center, 31 October 2023, available at: <https://rb.gy/yo7gtr> [10.12.2023].

⁹⁴Human Rights Center's interview with Davit Mdzinarishvili: 25.10.2023.

freedom of assembly is practically enjoyed.”⁹⁵ Obviously, where there is no sense of security, it is possible for people to change their mind to go to the rally and protest⁹⁶, which would render the existence of this freedom meaningless. This applies, among other things, to threats and risks arising from counter-protests. This is why, “positive obligation requires the state to protect the participants of a peaceful assembly from any persons or groups (including agents provocateurs and counter-demonstrators) that attempt to disrupt or inhibit them in any way”.⁹⁷ In the process of facilitating a peaceful assembly, protection of the safety of the participants should be given a significant role. To this end, the organizers of the assembly must also take appropriate measures to ensure the peaceful conduct of the assembly, for example, if threats are expected, they must send a notification to the state authorities before holding the assembly, so that the authorized bodies can minimize the expected incidents.⁹⁸

During the monitoring of assemblies, 2 specific examples can be singled out, where in one case, the physical safety of the participants of the assembly, including the safety of journalists, was put into question, and in the other case - of the third parties who did not participate in the assembly. In this regard, the protests of March 7-9⁹⁹ and the protest march of "Alt-Info" and "Conservative Movement" from Saakadze Square to Rustaveli Avenue should be distinguished.¹⁰⁰

During the dispersal of March 7-9 protests, the safety of those persons was threatened who were not behaving aggressively and were protesting peacefully.¹⁰¹ "Law enforcement officers are required to separate peaceful and non-peaceful participants ... should not treat the assembled crowd uniformly when arresting participants or (as a last resort) forcibly dispersing the assembly."¹⁰² In addition, the

⁹⁵ Guidelines on Freedom of Peaceful Assembly, OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2007, 14.

⁹⁶ Human Rights Center's interview with security expert Davit Mdzinarishvili: 25.10.2023.

⁹⁷ Ibid, p. 29.

⁹⁸ see *Oya Ataman v. Turkey*, No. 74552/01, § 39, 5 December 2006.

⁹⁹ HRC monitor's report on the monitoring of an assembly: 07.03.2023; HRC monitor's report on the monitoring of an assembly: 08/09.03.2023.

¹⁰⁰ HRC monitor's report on the monitoring of an assembly: 14.03.2023.

¹⁰¹ HRC monitor's report on the monitoring of an assembly: 07.03.2023; HRC monitor's report on the monitoring of an assembly: 08/09.03.2023.

¹⁰² Assessment of the Events Occurring at the Protest Rallies of March 7-8, Human Rights Center, 9 March 2023, available at: <https://rb.gy/eyubm9> [16.12.2023].

facts of alleged violence against journalists by the police were observed, on which the "Media Advocacy Coalition appealed to the Special Investigation Service, regarding illegal interference in journalistic activity and other violations, and called for the opening of an investigation."¹⁰³ The Special Investigation Service announced that it has started the investigation regarding received reports with the signs of the crime provided by Article 333, Part 3, Paragraph "B" of the Criminal Code of Georgia.¹⁰⁴

As for the protest-march of the "Conservative Movement", the tension of the situation on Rustaveli Avenue was caused by the throwing of various objects, including stones, in the direction of the office of Zaza Bibilashvili, the founder of the "Chavchavadze Center", by the participants of the "Alt-Info" rally.¹⁰⁵ According to Bibilashvili, one of the stones thrown at the office almost hit an employee of the office, however, he managed to protect himself.¹⁰⁶

The Pride festival should be mentioned separately, which was not observed by the monitors of the Human Rights Center due to the non-observance of the security norms and the increased risks, and which was canceled due to the aggressive behavior of the counter-demonstrators.¹⁰⁷ Given the aggression of the counter-demonstrators, the physical safety of the festival participants was seriously threatened, as the violent groups were able to break through the police cordon and disperse the citizens gathered on the private property.¹⁰⁸

Thus, the state is responsible for protecting the right to expression and assembly. The Ministry of Internal Affairs shall take all necessary measures to ensure the enjoyment of this right in a safe environment.¹⁰⁹ "The state's duty to protect

¹⁰³see The Media Advocacy Coalition's statement on March 13, 2023, available at: <https://rb.gy/25piuc> [14.12.2023].

¹⁰⁴see Statement Of The Special Investigation Service Regarding The Current Investigations On The Rally Of March 7-9 <https://rb.gy/37ujg> [14.12.2023].

¹⁰⁵HRC monitor's report on the monitoring of an assembly: 14.03.2023.

¹⁰⁶According to Zaza Bibilashvili, "Alt-Info" members threw stones and various objects at his office. Interpressnews, available at: <https://rb.gy/iyaak> [20.12.2023].

¹⁰⁷ The Pride Festival has been canceled, the organizers are leaving the area, 8 July 2023, available at: <https://rb.gy/py1req> [14.12.2023].

¹⁰⁸"The Final Event has been canceled" - says Public Defender on "Pride Festival," RFE/RL, July 8, 2023, available at: <https://rb.gy/9ggbme> [14.12.2023].

¹⁰⁹see The Public Defender comments on the events that developed today, Public Defender of Georgia, July 8, 2023, available at: <https://rb.gy/k0et6i> [14.12.2023].

peaceful assembly is of particular significance where the persons holding or attempting to hold an assembly are espousing a view that is unpopular, as this may increase the likelihood of hostile opposition.”¹¹⁰

To ensure the safety of assembly participants and maintain peaceful conduct, organizers must also take responsibility. If there is a probability of a counter-demonstration or the incitement of tension, it is advisable to share information about the assembly and its scale with both the City Hall and the Ministry of Internal Affairs.

CONCLUSION

From February 1, 2022 to December 1, 2023, the assemblies and demonstrations observed by the monitors of the Human Rights Center were held at the initiative of political parties, public movements and civil activists. Each assembly had its own request and purpose. The participants of the assembly protested the current political or social events in the country. However, in most cases such assemblies were spontaneous¹¹¹ and the assemblies had organizers.

Although freedom of assembly and expression is protected by legislation in the country and citizens have the opportunity to express protest, there are several challenges that have been identified during the monitoring stage and which require the implementation of appropriate changes by state structures. In this regard, the main findings of the monitoring are:

1. Violation of national and international legislation when dispersing the assembly by special means;
2. Violation of the rights of those who were detained administratively at the assembly;
3. Participation of unidentified policemen in the process of facilitating the assembly;
4. Mobilizing a disproportionate number of police officers at assemblies;

¹¹⁰ Guidelines on Freedom of Peaceful Assembly, OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2007, 30; *Bączkowski and Others v. Poland*, 2006, para. 68.

¹¹¹ "Article 21 of the Constitution of Georgia protects the possibility of spontaneous assembly and demonstration", see Decision No. 3/3/1635 of the Constitutional Court of Georgia dated December 14, 2023 in the case "Public Defender of Georgia against the Parliament of Georgia", II-9.

5. Unsubstantiated prohibition of setting up a tent for the purposes of expression of the protest;
6. Problems related to the safety of the participants of the assemblies.

For the effective realization of freedom of assembly and expression as an "instrumental right"¹¹² and to protect peaceful assembly, the state has the responsibility to take all relevant measures and not to allow unreasonable and unjustified restrictions of human rights. For the restriction of this fundamental freedom, there must be a legal basis, and a legitimate purpose, and international standards of proportionality and human rights must be respected in each specific case. In the case of Beka Grigoriadis's protest, there was no legal basis for the police to restrict the placement of a tent in the square. Also, the violation of the rights of human rights defenders and civil activists during their detention has a chilling effect, which negatively affects the effective use of freedom of assembly and public mood; This requires the state to take appropriate preventive measures.

Thus, in exercising the freedom of assembly, the following issues remain: to take appropriate measures for the peaceful conduct of the assembly, to mobilize a proportional number of policemen, to comply with national legislation and international standards when dispersing the protest by using the special means, and to properly protect the rights of those arrested at the assembly.

RECOMMENDATIONS

To the Parliament of Georgia:

- refrain from imposing unjustified restrictions on the freedom of assembly while exercising the law-making authority;
- when adopting legislation regulating freedom of assembly and expression, or making amendments to such legislation, take into account the practice of the European Court of Human Rights and international standards.

¹¹²Decision No. 3/3/1635 of the Constitutional Court of Georgia dated December 14, 2023 in the case "Public Defender of Georgia against the Parliament of Georgia", II-3.

To the Ministry of Internal Affairs:

- effectively ensure the protection of freedom of expression and assembly of all citizens;
- not to allow the illegal restriction of the freedom of assembly protected by the Constitution of Georgia and to allow the participants of the assemblies to set up and use the tent to protest without hindrance;
- to ensure the participation of uniformed and identifiable policemen in the process of facilitating the assembly or demonstration;
- ensure the mobilization of a proportional number of policemen during assemblies and demonstrations;
- to ensure the protection of participants of peaceful assemblies from counter-demonstrators;
- to follow the requirements of the national legislation and international standards when dispersing the protest by using special means;
- before using special means, by the requirements of the legislation of Georgia, the authorized representatives of the Ministry of Internal Affairs shall issue a preliminary warning and give the participants of the assembly a reasonable time to comply and disperse;
- to ensure the use of special means by the principle of proportional force, only in cases of extreme necessity;
- to train the employees of the Ministry about the use of special means and to ensure the use of special means in accordance with the guidelines approved by the Minister of Internal Affairs.

To the Special Investigation Service:

- To ensure a timely, complete, and objective investigation of cases related to possible abuse of power by law enforcement officers, violence committed against activists participating in the protest, or the use of disproportionate force.