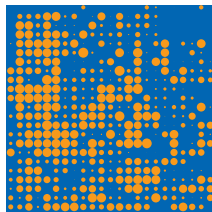


**DEMONSTRATIONS
UNDER OBSERVATION**



**Tbilisi
2020**

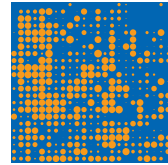
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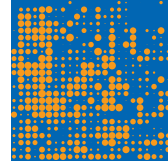


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1. Introduction

Eight years after the violent disruption of an assembly on 26 May 2011, on the night of 20-21 June 2019, for the first time, the authorities used disproportionate force to disrupt a demonstration. This gave rise to the need for enhancing civil society control over assemblies and demonstrations.



The present document discusses the outcomes of monitoring of demonstrations and political performances organised by political parties and civil movements in Tbilisi from 31 December 2019 to March 2020 inclusive.¹ Furthermore, it was a subject of our interest to monitor court hearings on administrative violations allegedly committed by activists participating in demonstrations.

This report aims at assessing the compliance with the legislation of Georgia of the manner assemblies and demonstrations were organised and held; analysing from a legal point of view the violations identified in the course of demonstrations; and assessing the compliance of law-enforcement officers' conduct with relevant international standards. The main observation is that most demonstrations were held in peace. The gathering held on 31 December 2019 was an exception as there were incidents of abuse of power by the authorities when disrupting the spontaneously organised demonstration in front of the parliament. There were also incidents of verbal confrontation between law-enforcement officers and demonstrators during various assemblies. Restrictions on entry of civil activists with the appropriate permits to the parliament building have also become a certain trend.

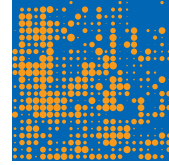
The monitoring of court proceedings showed that reports on violations drafted upon arrests of demonstrators are identical and based on formulaic statements. This gives rise to serious misgivings that in most cases, patrol police officers do not base their reports on actual facts. Inconsistencies were identified in testimonies of patrol police officers questioned as a witness before the court. Certain information adduced to the court by them did not correspond to the facts depicted on video footage.

The report describes the methodology framework of the monitoring, analyses general trends identified in court proceedings conducted against individuals

¹ Due to the pandemic caused by COVID-19, demonstrations have not been held since the first week of March 2020.

arrested in the course of political assemblies and demonstrations; the report also contains an analysis of the legal and political context of assemblies and demonstrations. The concluding part of the report summarises the major recommendations.

2. Methodology Framework



In the reporting period, the organisation's observers monitored 22 demonstrations and 9 court hearings. Right at the initial stage of the observation, based on the Handbook on Monitoring Freedom of Peaceful Assembly of OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), we elaborated a special form of monitoring of assemblies and demonstrations. Based on this tool we managed to systematise significant incidents and violations in the course of demonstrations.

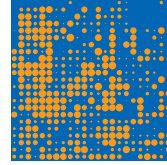
In the process of regular observations, general characteristics of demonstrations were analysed and the following were assessed from the legal point of view: the court practice developed regarding administrative arrests and court hearings on administrative violations as well as incidents of infringement of the right to freedom of assembly and demonstration.

Upon the launch of the project, meetings were held with representatives of civil movements: It's a Shame; Dare It, I Can See You, and Change It. We received information about demonstrations announced by political actors with the help of their press offices, social and online media platforms.

Within the monitoring, the following approaches have been used for data analysis:

- » Requesting public information from administrative bodies;
- » Personal reports elaborated by monitors involved in the observation; and
- » Analysis of photographs and video footage recorded by civil activists and media outlets in the course of demonstrations.

3. Political Context



Considerable political polarisation and growing resentment of social groups towards the ruling political power preceded the observation of demonstrations. These trends were associated with violent disruption of the demonstration of 20 June 2019 and later the voting down of the promised constitutional amendment on transition to the proportional election system.

On 20 June 2019, a deputy of the Russian State Duma, Sergei Gavrilov, attempted to preside over the 26th General Session of the Inter-parliamentary Assembly on Orthodoxy while sitting in the chair of the President of the Parliament of Georgia. This fact caused indignation among certain politicians and members of the public and within a few hours a large-scale demonstration started in front of the parliament building. Later, some demonstrators engaged in altercations with law-enforcement officers. In the midnight, at approximately 12 o'clock, the police used tear gas, water cannons and rubber bullets to disrupt the demonstration.² As a result of the use of force over 200 individuals sustained injuries.

According to the assessment rendered by NGOs, the Ministry of Internal Affairs resorted to unlawful and disproportionate force when disrupting the demonstration on 20 June 2020.³ Furthermore, incidents of ill-treatment of demonstrators being under the police control,⁴ ineffective investigative measures, and the need for radical reform of the Code of Administrative Violations of Georgia have been identified.⁵

In response to demonstrations protesting the use of excessive force by the authorities, on 24 June, the president of Georgian Dream made an announcement concerning an initiative of the party to change the election system and its openness for discussions in this regard.⁶

² D. Sanaia, What Happened on 20 June in Tbilisi – In a Nutshell, available at: <https://bit.ly/3dm9Irq>, (accessed on 22.03.2020).

³ The Georgian Young Lawyers' Association, Legal Assessment of the Events of 20-21 June, 2019, p. 6, available at: <https://gyla.ge/ge/post/angarisish-dakarguli-tvalis-mighma-prezentacia#sthash.tunYPv3g.PhGi8hiH.dpbs>

⁴ Ibid., p. 6.

⁵ Ibid., footnote 5, pp. 1-12.

⁶ Radio Tavisupleba, 2020 – Proportional Elections with Zero Threshold, 24 June, 2019.

3.1. Voting Down the Draft Law of on the Proportional Election System and Demonstrations of the Opposition

In the summer and autumn of 2019, demonstrations organised by civil movements continued and demonstrators demanded release of individuals arrested during the events of 20-21 June and resignation of the Minister of Internal Affairs of Georgia, Giorgi Gakharia. However, the ruling party supported the candidacy of Giorgi Gakharia to the position of the Prime Minister of Georgia;⁷ and on 14 November, the ruling party voted down the draft constitutional amendment on transition to the proportional election system.⁸

In response, civil movements and political parties decided to mobilise their supporters and block the parliament. Stemming from the number of demonstrators blocking the parliament entries and peaceful nature of the assembly, DRI assessed as disproportionate the disruption of the demonstration of 18 November 2019 with water cannons and tear gas.⁹

On 28 November, the Ministry of Internal Affairs sealed off the area near the parliament building with metal constructions so that to prevent demonstrators from gathering in front of the parliament. According to DRI, there was no legitimate ground for implementing this measure by the ministry as the law did not permit it.¹⁰ It is also noteworthy that police failed to ensure safety of demonstrators during the incident of 2 December 2019 when law-enforcement authorities through their inactivity allowed supporters of the ruling party to attack peaceful demonstrators.¹¹

3.2. Violent Groups in the State and Using Them Against Minorities and Political Opponents

2019 was punctuated by unprecedented activeness of far-right radical ideology

⁷ NGOs calling upon MPs not to support Gakharia's candidacy, 6 September 2019, available at: <http://www.democracyresearch.org/geo/152>.

⁸ The Draft Law on Proportional Election System Voted Down, Netgazeti, 14 November 2019, available at: <https://netgazeti.ge/news/405122/>

⁹ DRI, Assesses the Disproportionate Measures Taken by the Authorities as Illegitimate. 18 November 2019, available at: <http://www.democracyresearch.org/geo/97>.

¹⁰ DRI Reacts to Closing of the Territory Near the Parliament by the Ministry of Internal Affairs, 28 November 2019, available at: <http://www.democracyresearch.org/geo/159>.

¹¹ Assessment by DRI of Altercation Near the Central Office of Georgian Dream, 4 December 2019, available at: <http://www.democracyresearch.org/geo/160>.

groups, which was followed up by tolerant and indifferent response from the Ministry of Internal Affairs of Georgia.¹² As a distinct trend, on numerous occasions, violent groups of radical ideology confronted protesters whose main dissatisfaction was with the government.¹³ In such cases, the Ministry of Internal Affairs mostly took a tolerant approach towards the aggressive groups. This created the sense of impunity among radical groups, on the one hand and on the other hand, limited protesters' right to peaceful assembly.

For instance, on 8 July, far-right violent groups occupied the territory adjacent to the parliament building on Rustaveli Avenue to disrupt the procession organised by Tbilisi Pride. They engaged into altercation with anti-occupation demonstrators who had been gathering on the said area for the entire week.¹⁴ In order to separate demonstrators of these two groups, law-enforcement officers were deployed on the entire territory.¹⁵ However, they did not respond to counter demonstrators' aggressive and violent calls; there was no response from law-enforcement officers to incidents of consumption of alcohol, hurling various objects in the direction of demonstrators and other incidents involving the breach of public order.

On 8 November 2019, the above-mentioned groups managed unprecedented mobilisation with the purpose of violent disruption of the premiere of a Georgian-Swedish movie on a queer topic *And then We Danced*.¹⁶ According to the assessment made by DRI, the demonstration of 8 November 2019 exceeded the scope of a peaceful assembly from the very beginning and became distinctly violent. While due to certain measures taken later the far-right groups could not disrupt the screening of the movie in cinemas, the response of the authorities should be considered insufficient, belated and inadequate. It should be noted in particular that the official investigation conducted against the leaders of the far-right radical groups was protracted thus allowing these persons to mobilise a large number of supporters and to re-offend.¹⁷

¹² Law-enforcement authorities did not respond to the statement made by the representative of the World Congress of Families, Levan Vasadze on 16 June 2019 regarding setting up armed formation, see at: <http://www.tabula.ge/ge/story/150536-vasadze-policias-tu-kordonis-garghvevisas-dagvitskebt-cemas-miighcvt-komblebis>; furthermore, the Ministry of Internal Affairs made a statement regarding threats voiced by violent groups that they could not ensure safety of the Tbilisi Pride team considering the places and format of the events, see at: <https://police.ge/ge/shinagan-saqmcta-saministros-gantskhadeba/12775?print=1>.

¹³ For instance, see the outcomes of the monitoring of the rally held in front of the Chancellery of the Government of Georgia on 14 June 2019, available at: <http://www.democracyresearch.org/geo/53>.

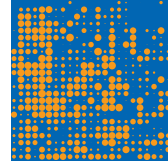
¹⁴ DRI, Monitoring Assemblies and Demonstrations of Far-Right Extremist Groups in Georgia (outcomes of monitoring conducted in May-August), p. 16, available at: <http://www.democracyresearch.org/files/6DRI%20-%20shkrebcbis%20monitoringi.pdf>.

¹⁵ Ibid., p. 16.

¹⁶ DRI, Outcomes of Monitoring the Rally in Front of Amirani Cinema, 11 November 2019, available at: <http://www.democracyresearch.org/geo/88>.

¹⁷ Idem.

4. Analysis of the Legal Framework of Freedom of Assembly and Freedom of Expression



The forms of freedom of assembly and demonstration and the rules of its procedural implementation are determined by the Law of Georgia on Assemblies and Demonstrations. On a number of instances, the provisions of the law are obscure and create artificial obstacles for right holders.

In this regard, the wording of Article 5.1 of the law is noteworthy. It implies the necessity of prior notification of an executive body of the local self-government if an assembly or a demonstration is held on a road or blocks traffic; except for those cases, where traffic is blocked due to another reason other than the assembly/demonstration. The law does not envisage such cases where it is objectively impossible to inform competent authorities in advance about assemblies/demonstrations due to their spontaneous nature or other objective reasons.

Under international standards, the state is obliged to protect a spontaneous assembly held without a prior notification and to ensure it is conducted until the assembly is peaceful.¹⁸

Under the guidelines adopted within the OSCE/ODIHR and the Venice Commission, where legislation requires advance notification, the law should explicitly provide for an exception from the requirement where giving advance notice is impracticable.¹⁹ The deficiency of the existing regulation has been pointed out in the 2011 opinion of the Venice Commission as well, which recommended corresponding amendments to be made to the law.²⁰ While this obscurity has posed no obstacles for organisers or participants of the opposition demonstrations in the reporting period, it is important to redeem the legislative gap concerned to prevent obstacles in terms of organising spontaneous demonstrations in future.

¹⁸ Oya Ataman v. Turkey, application no. 74552/01, judgment of the European Court of Human Rights of 5 December 2006.

¹⁹ OSCE/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Handbook on Monitoring Freedom of Peaceful Assembly, 2011, p. 76, available at: <https://www.osce.org/odihr/82979>.

²⁰ European Commission for Democracy Through Law (Venice Commission), Final Opinion on the Amendments to the Law on Assembly and Demonstrations of Georgia, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)029-c](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)029-c).

4.1. Problems Related to the Practical Application of Articles 166 and 172 of the Code Administrative Violations

As evidenced by practice, when disrupting assemblies and demonstrations, police often applies Articles 166²¹ and 173²² of the Code of Administrative Violations jointly in order to ‘defuse’ demonstrators.²³ It should be noted that the Code of Administrative Violations of Georgia was adopted in 1984 and despite numerous legislative amendments it fails to comply with modern standards. This has been a subject of concern and criticism. Unfortunately, a code that would be based on human rights and tailored to modern challenges has not been drafted to this day.

The monitoring conducted by DRI with regard to political demonstrations and court hearings of individuals arrested during demonstrations showed that along with defective legislative regulations, the practical interpretation and application of the relevant norms by law-enforcement authorities is also problematic.

Verbal Abuse of a Law-Enforcement Officers and its Sepa-ration from Petty Hooliganism

As a result of the monitoring conducted on court hearings involving examination of the cases of activists arrested during demonstrations, the wrong practice of joint application by law-enforcement officers of Article 166 and 173 of the Code of Administrative Violations became evident in two cases. In particular, law-enforcement officers characterise the verbal abuse they are subjected to as petty hooliganism, whereas the said action has the elements of other violations as well. Thus, it is important to give a clear legal analysis of the violation at stake. According to legal theorists, hooliganism, in its essence, implies the manifestation of obvious disrespect towards the society through various actions.²⁴ Therefore, the motive driving a person committing petty hooliganism is to insult a particular person or group of persons as well as to demonstrate publicly his/her disrespect towards the public and citizens.

²¹ Article 166, Petty Hooliganism.

²² Article 173 – Disobedience of a lawful order or a demand of a law-enforcement officer; a military service person, an officer of the Special State Protection Service, an officer of the enforcement police or an employee of the Special Penitentiary Service, an employee of the General Inspectorate of the Ministry of Justice of Georgia or an employee of the National Agency of Crime Prevention, Enforcement of Non-Custodial Sentences and Probation under the Ministry of Justice of Georgia or an equal-status person, or commission of any other unlawful act against such a person.

²³ GYLA, Protest Deemed to be a Violation, Tbilisi, 2017, p. 12.

²⁴ See M. Lekveishvili, G. Mamulashvili, and N. Todua, The General Part of Substantive Criminal Law, Book I, 7th edition, Tbilisi, 2019, p. 776.

In this context, it is important to assess those situations where abusing law-enforcement officers that constituted manifestation of negative attitude towards them in an unethical form was characterised under Article 166 of the code. In the situation concerned, the action constitutes not petty hooliganism but an action under Article 173 of the Code of Administrative Violations – verbal abuse of and/or any other abusive act against a law-enforcement officer being in the line of duty. This provision aims at protecting officers of law-enforcement bodies and other agencies and ensures unimpeded discharge of duties by them. Accordingly, Article 173 by its rationale and the scope of protection is distinct from petty hooliganism. In particular, Article 173 of the Code of Administrative Violations has a special field of application relevant for particular situations and group of actors and is directly concerned with abusive actions against law-enforcement officers discharging their official duties; whereas petty hooliganism is a general provision aimed at securing public order and public peace.

Two administrative cases against civil activists arrested near the parliament on 31 December 2019 on account of verbally abusing police officers were instituted under the provision on petty hooliganism jointly with another provision. Such an approach contributes to legal errors and creates multiple accounts of violations artificially.

Deficient Legislative Definition of Petty Hooliganism

The monitoring of demonstrations, assemblies and demonstrations as well as court hearings showed that in certain cases, law-enforcement officers face difficulties in identifying actions under Article 166 of the Code of Administrative Violations and separating them from expression of opinions protected by freedom of expression.

Petty hooliganism means swearing and uttering obscene words in public places, abusive pestering of citizens and other similar actions that breach public order and public peace.²⁵

An action is characterised as petty hooliganism also when a perpetrator aims at abusing a particular person or a group of persons.²⁶ This is stated in the wording of petty hooliganism, in particular, there is a reference in the provision to the abusive pestering of citizens. However, an action also incorporates the

²⁵ The Code of Administrative Violations of Georgia, Article 166, available at: <https://matsne.gov.ge/document/view/28216?publication=445#>.

²⁶ GYLA, Protest Deemed to be a Violation, Tbilisi, 2017, p. 11 available at: <https://gyla.ge/files/news/2008/geo.pdf>.

elements of petty hooliganism when a person swears and utters obscene words in public without directing them at a particular person or engages in another obscene action in public (for instance, making obscene and abusive gestures, etc.). An action is abusive since it violates moral and ethical norms established in people's lives thus amounting to breach of public order and public peace. For the application of this article it is necessary for a person's action to result in a breach of public order and public peace.

In this case, the deficient legislative interpretation of an insult is also problematic. Due to this problem, law-enforcement authorities often find it difficult to separate demonstrators' protest from the actions covered by Article 166 of the Code. According to the existing regulations, it is difficult to foresee which forms of public protest are protected by freedom of expression and what will be characterised as petty hooliganism. The court monitoring has demonstrated that legislation in force opens room for broad interpretation of *corpus delicti* of petty hooliganism; it runs counter to free speech and freedom of expression as it allows arbitrary restriction by police of the forms of exercising freedom of assembly and freedom of expression by demonstrators.

Therefore, Article 166 of the Code of Administrative Violations of Georgia does not comply with the requirement flowing from the expression "prescribed by law" as the ground for restricting a right. According to the requirements established in the case-law of the European Court of Human Rights, a provision cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct; he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.²⁷

The existing shortcoming in the legislation is further worsened by contradictory practice of national courts. When hearing the cases of individuals arrested on 31 December 2019, the court opined that the Ministry of Internal Affairs of Georgia had failed to meet the standard of proof necessary for holding arrested persons responsible. In one case, where the fact that a person was speaking obscenities in a loud voice was confirmed by a video recording a judge held the person responsible for petty hooliganism without discussing whether such a result was foreseeable for the defendant or to what extent the defendant was supposed to foresee the possibility of being held responsible. On the other hand, a decision adopted by Justice Lasha Tavartkiladze of Tbilisi Court of Appeals on 9 December 2019 is noteworthy for the interpretation of this provision. The

²⁷ *Delfi AS v. Estonia*, application no. [64569/09](#), judgment of the Grand Chamber of the European Court of Human Rights of 16 June 2015, para. 121.

court opined that in certain circumstances the wording of petty hooliganism was not sufficiently clear and did not enable citizens to foresee a possible outcome of a particular action to a reasonable extent.²⁸

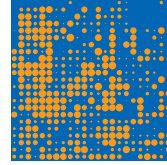
Result as a *Conditio Sine Qua Non* for a Violation

When characterising a conduct under Article 166, law-enforcement officers, as a rule, do not determine to what extent a person violated public order and peace that would be a legitimate ground for interference. Outcomes of monitoring of demonstrations and court hearings showed that the majority of law-enforcement officers arresting demonstrators consider swearing and uttering obscene words in public to be a sufficient element for characterising the action as petty hooliganism, irrespective of a result (whether this action actually breached public peace or public order).

Officers of the Patrol Police questioned as a witness before the court were unable to explain how arrested individuals' conduct had breached public order or public peace. Some of the officers (in two cases) were unable to repeat fully the wording of Article 166 of the code (that it is necessary for an action to result in a breach of public peace or public order to be a violation) when requested by a lawyer to do so. This gives rise to questions about the legality of arrests made by police on 31 December 2019.

²⁸ GDI, Freedom of Expression in Georgia, 2020, pp. 31-32.

5. Outcomes of Monitoring Demonstrations



DRI observers monitored 22 political demonstrations held by political parties and civil movements from 30 December 2019 to 31 March 2020. The number of participants of assemblies and demonstrators ranged from 20 to 500. Law-enforcement officers often outnumbered demonstrators considerably.

With some exceptions, demonstrations were conducted peacefully. On one occasion,²⁹ demonstrators were removed from the place of gathering (the area adjacent to the parliament) against their will, with the use of force. The tents owned by demonstrators and their personal belongings were also removed forcibly from the area. Furthermore, there were verbal altercations among demonstrators and law-enforcement officers in the course of 5 demonstrations; activists of the ruling party and demonstrators confronted each other during two demonstrations.

The demonstrations were mainly organised by following civil movements: Dare It, Change It, It's a Shame and the following opposition parties: United National Movement, European Georgia, Lelo for Georgia, Girchi, etc. On one occasion, representatives of the NGO, Law-Enforcement Reform Centre held a performance demonstration.

The following principal demands were voiced in the course of the assemblies and demonstrations:

- » Implementation of the proportional election system;
- » Eradication of arbitrariness of public political officials;
- » Change in the pro-Russian policy of the state;
- » Release of political prisoners against the background of Gigi Ugulava's detention; and

²⁹ The rally of 31 December 2019.

- » Solidarity towards Malkhaz Machalikashvili, the father of Temirlan Machalikashvili killed as a result of a special operation.

The appointment of former Chief Prosecutor, Irakli Shotadze to the position of the Prosecutor General was another topical issue in February.³⁰ It was followed by a wave of protest of civil movements and united opposition.

5.1. Events of 31 December 2019

On the morning of 31 December 2019, officials of the Security City Service of the City Hall started dismantling tents that Malkhaz Machalikashvili and up to 20 activists had set up in front of the Parliament of Georgia. They also removed demonstrators' personal belongings and journalists' equipment from the territory. According to the activists, officials of the Security City Service of the City Hall forced them to leave the area after which the Cleaning Service of the City Hall started cleaning up the territory. There were up to 100 police officers deployed on the spot. According to the demonstrators, while police officers did not take part directly in their removal from the area they helped officials of the Security City Service of the City Hall to prevent resistance from the activities when needed.

Activists of civil movements Dare It, Change It and It's a Shame planned a spontaneous demonstration – Solidarity for Fighters Against Injustice, no Time for Celebrations – to voice their protests concerning dismantling tents. Leaders of opposition political parties and their supporters also joined the demonstration. Later, law-enforcement officers arrested 9 demonstrators under the pretext of petty hooliganism and disobedience to the legal orders of police.³¹

According to the statement made by the City Hall of Tbilisi, the place near the parliament was cleaned up for arranging a recreational area for children. While a theme park was arranged on the spot, the territory was sealed off with metal constructions for the next 48 hours. Thus, citizens did not have access to the theme park.

Under Article 2.3.e) of the Law of Georgia on Assemblies and Demonstrations,

³⁰ Irakli Shotadze held the position of the Chief Prosecutor in 2015-2018.

³¹ In the majority of the cases heard regarding those arrested in the course of the rally of 31 December 2019, the court ruled that the party (the Ministry of Internal Affairs) failed to meet the standard of proof necessary to hold persons responsible under the provisions invoked. In one case, an individual was held responsible for the violation of Article 166 of the Code of Administrative Violations and in another case, an individual was held responsible under Article 173 of the same code. The cases of administrative arrests are discussed in detail in the subsequent chapters.

a measure restricting a legal right shall be proportionate.³² Therefore, any restriction used should have been the least restrictive measure in order to achieve the aim laid down by Article 17.5 of the Constitution of Georgia.³³ The principle of proportionality requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city.³⁴

Considering the fact that on 31 December 2019, there was a Christmas Village arranged for children and small entrepreneurs on the First Republic Square and the Dedaena Park in Tbilisi, it was possible to find an alternative space for the New Year festivities taking place in front of the parliament without restricting demonstrators' right to freedom of assembly previously stationed there. Due to the circumstances indicated above, the measures used against demonstrators gathered in front of the parliament on 31 December cannot be deemed proportionate.

It is also noteworthy that according to the regulations of the Security City Service of the City Hall, the mandate of the service is limited to ensuring safety in the Tbilisi City Hall facilities, gardens, parks and squares.³⁵ Therefore, officials of the Security City Service are not entitled to disrupt a demonstration or use force or otherwise assume police functions. The authorities not competent to carry out policing measures act *ultra vires* and without legal authorisation.

After the children's theme park was removed from the area near the parliament, renovation works began on Rustaveli Avenue and right in front of the parliament building. This has prevented demonstrators from holding demonstrations in the central part of Tbilisi for a considerable time. On 8 January 2020, DRI requested public information in writing from the Tbilisi City Hall regarding the planning of renovation works in front of the parliament building.³⁶ There has been no answer from the City Hall to this day.³⁷

³² The Law of Georgia on Assemblies and Demonstrations, Article 2.3.f).

³³ The Law of Georgia on Assemblies and Demonstrations, Article 3.h).

³⁴ OSCE/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Handbook on Monitoring Freedom of Peaceful Assembly, 2011, p. 74, available at: <https://www.osce.org/odihr/82979>.

³⁵ Regulations of the Security City Service of the Tbilisi City Hall, available at: <https://matsne.gov.ge/ka/document/view/4001128?publication=0>.

³⁶ Letter no. 20200108/41 of DRI.

³⁷ As of 16 April 2020.

5.2. Law-Enforcement Officers' Actions in the Course of Demonstrations

The actions of law-enforcement officers present at demonstrations were mostly proportionate and in line with legislation in force. Police response to violations identified in the course of assemblies and demonstrations were often limited to verbal warnings; however, during several demonstrations restricting measures were used in a disproportionate measure.

Despite the fact that demonstrators had special permits to enter the building of the representative body, law-enforcement officers without stating a relevant statutory provision, did not allow them to enter the building on five occasions.³⁸ This contradicts the principle of public accessibility of the representative bodies and is a wrong practice. Furthermore, on one occasion,³⁹ demonstrators were not allowed to enter chancellery of the Palace of the Parliament (which is located in the public are of the parliament building). It is noteworthy that on this occasion, even those having a special permit could not enter the building of the legislature.

Under the Law of Georgia on the Special Protection Service of Georgia, the objective of the service is to protect the following persons from unlawful acts within its competence: the buildings and structures of the supreme bodies of the state authority of Georgia, the adjacent territory, and order on this territory.⁴⁰ Besides, the law empowers officers of the Special Protection Service to restrict access to this territory or movement in a specific area while implementing security measures.⁴¹ In order to enhance control, it is also possible to restrict the use of special permits for entering the Palace of the Parliament of Georgia.⁴²

Based on the above-mentioned, the restriction of entry of persons with special permits to the building is only possible due to imperative state or public safety, in the interests of avoiding disorder or crime. At the same time, in those cases, when it is necessary to enhance safety control, it is possible to restrict the use of special permits. There was no necessity to enhance safety control in the given case.

³⁸ Demonstrates were not allowed to enter the parliament on three occasions (21 January 2020, 4 February 2020 and 17 February 2020) and were not allowed on two occasions into the Sakrebulo building (24 and 27 January 2020).

³⁹ 26 February 2020.

⁴⁰ The Law of Georgia on the Special State Protection Service of Georgia, Article 4.1.

⁴¹ *Ibid.*, Article 8.e).

⁴² Part 19 of Order no. 259/3 of 30 December 2016 adopted by the President of the Parliament of Georgia On the Safety Regime in the Palace of the Parliament and Adjacent Territory.

On one occasion,⁴³ law-enforcement authorities did not allow MPs from the United National Movement together with demonstrators to enter the Sakrebulo building. This violated the Rules of the Parliament.⁴⁴

As DRI monitors observed, the conducted demonstrations, considering the number of their participants and the peaceful nature of the assembly, did not pose threat that would make it necessary to prevent citizens from entering the Parliament/Sakrebulo building (especially the chancellery located in the public area) in order to protect the legal interests concerned. The fact that officers of the Special State Protection Service deployed on the spot were not aware of the reasons for sealing off the area strengthens the assumption that there was no actual threat.

The response of the law-enforcement authorities was also disproportionate when managing the demonstration⁴⁵ organised by a civil movement Dare it near Ivanishvili's business centre. In particular, the Patrol Police fully closed the part of the tunnel that is an entrance to the Tbilisi Botanic Garden and Ivanishvili's business centre. This measure restricted demonstrators' freedom of movement without any explanation or legal basis.

Furthermore, on numerous demonstrations, DRI monitors spotted individuals wearing civilian clothes whose frequent and direct communication with law-enforcement officers gave rise to reasonable suspicion that they belonged to law-enforcement authorities and they were present at the demonstrations without proper identifying uniforms and badges.

While, in most cases the actions taken by representatives of law-enforcement authorities were proportionate, on rare occasions, they failed to assess the atmosphere of the demonstrations adequately, the nature of demonstrators' actions and the need for interference; in such cases, while it was possible to achieve the aim through other less restricting means, they resorted to disproportionate force.

⁴³ On 27 January 2020 when demonstrators were protesting regarding battery of Levan Khabeishvili, deputy of Sakrebulo.

⁴⁴ Under Article 8.1.b.a) of the Rules of the Parliament of Georgia, "A member of the parliament shall have a right to enter all state institutions without hindrance exception for the cases established by law."

⁴⁵ 18 February 2020.

5.3. Demonstrators' Behaviour in the Course of Demonstrations

Monitoring of 22 demonstrations held during the reporting period showed that there were no illegalities on the part of demonstrators of the scope that would give rise to a real risk of an unlawful result. However, it is evident that there is a need for raising awareness among them about the legislation governing assemblies and demonstrations.

In two cases,⁴⁶ demonstrators, in breach of legislation in force⁴⁷ posted posters and pictures on the Sakrebulo building. In one case,⁴⁸ representatives of civil movements posted posters with inscription – Security Services is Planted in Ajara TV – on the glass fence of the building of the State Security Service; they, however, removed the posters once the demonstration was over. In this last case, law-enforcement authorities did not follow up.

In three cases,⁴⁹ demonstrators made inscriptions/graffiti on pavements and roads with spray cans: on two such occasions (on 30 January and 17 February) on the territory near the president's residence and the territory near the parliament building⁵⁰ and on the third occasion (31 January), on the territory adjacent to the central office of Georgian Dram.⁵¹ Protestors were not fined in any of the above cases.

Stemming from the legitimate aims to protect public order and safety, life and health of demonstrators and pertinent legislative provision,⁵² demonstrators are prohibited from having easily inflammable substances. In the reporting period, on two occasions, demonstrators set certain objects on fire in the area where demonstrations were held. On 25 February 2020, in the course of a demonstration held in front of Ivanishvili's business centre, despite the resistance of law-enforcement officers, demonstrators set a snake made of fabric on fire. Police officers put out fire promptly with fire extinguishers. On 5 February, in the course of a demonstration held in front of the parliament building, activists burned the Soviet Union flag. This action, however, did not endanger people

⁴⁶ On 24 and 27 January 2020.

⁴⁷ The Code of Administrative Violations, Article 1502.1, available at: <https://matsne.gov.ge/document/view/28216?publication=445#>.

⁴⁸ During a rally held on 6 March 2020.

⁴⁹ In the course of demonstrations held on 30 January 2020, 31 January 2020 and 17 February 2020.

⁵⁰ This amounts to a violation of Article 1502.3 of the Code of Administrative Violations.

⁵¹ It is punishable with an administrative penalty under Article 1502.1 of the Code of Administrative Violations.

⁵² Article 11.2.a) of the Law of Georgia on Assemblies and Demonstrations, available at: <https://matsne.gov.ge/ka/document/view/31678?publication=15>.

around and was not followed up by police officers either.

The demonstration organisers notified the executive body of the local self-government about assemblies and demonstrations only on one occasion.⁵³ In three other cases (demonstrations of 31 January,⁵⁴ 17 January,⁵⁵ and 18 February⁵⁶), according to the information supplied to DRI, the demonstration organisers did not notify the City Hall. Due to the nature of the assembly and the number of its participants there was no obligation to notify the executive body of the local self-government in advance.

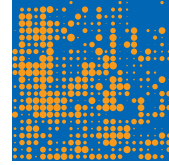
53 The rally organised by civil movements Change It, Dare It, and united opposition in front of the building of the Parliament of Georgia on 5 February 2020.

54 The rally was held near the central office of Georgian Dream. Despite the fact that demonstrators stood on the road, the traffic was not disrupted.

55 The assembly organised by Change It and Lelo for Georgia near the Parliament of Georgia disrupted the traffic at the entrance of the Parliament.

56 The rally organised near the Parliament disrupted the traffic. It was organised by civil movement, Change It, and opposition parties: Lelo for Georgia, New Georgia, European Georgia, and the United National Movement. Due to the number of demonstrators, police closed Tchonqadze Street. Despite this, law-enforcement officers called upon demonstrators to vacate the area. After activists ignored these calls, police by resorting to force (pushing) tried unsuccessfully to remove demonstrators from the said territory. This became the reason of altercation between the sides.

6. Outcomes of Monitoring Court Proceedings



Representatives of DRI observed four court proceedings, in total, nine court hearings on arresting civil activists on account of petty hooliganism and disobedience to police officers' legal requests on 17 December 2019 in the administrative building of the Tbilisi Sakrebulo and on 31 December 2019 on the territory near the Parliament of Georgia.

6.1. Technical Violations Identified in the Course of Administration of Justice

The following should be noted as the principal observations:

- » Almost all court hearings (except for one hearing) started late due to the following reasons: a) courtrooms were unexpectedly changed right before the main hearings (on four occasions); this information was not duly posted on respective websites or the information desk of the Tbilisi City Court; b) a judge appeared late (on two occasions); c) a party appeared late (on one occasion);
- » Despite the considerable public interest towards the cases concerned and the number of those members of the public willing to attend court hearings, proceedings were conducted in smaller courtrooms and therefore, some citizens were deprived of the possibility to attend them.
- » During court proceedings, due to the lack of technical equipment, only the parties were able to examine fully the material adduced before the court as evidence; those attending the hearings were deprived of this possibility.

6.2. Incidents of Inadequate Discharge of Duty by Law-Enforcement Officers

When questioned as a witness, certain law-enforcement officers stated that in breach of the requirements of the Code of Administrative Violations⁵⁷ they had not communicated the following to demonstrators upon their arrest:

- » An administrative violation committed by them and the ground of arrest;
- » Their right to a lawyer; and
- » Their right to notify, if they wished, a relative named by them about the arrest and their location.

Furthermore, two patrol police officers stated that when arresting demonstrators, they had not their video recording equipment switched on;⁵⁸ this can be deemed as a failure to discharge statutory duties in a diligent manner.

6.3. Relevance and Trustworthiness of Evidence Adduced Before the Court

Some evidence adduced by representatives of the Ministry of Internal Affairs before the court was irrelevant and unrelated to the subject-matter in any way. For instance, the video recording admitted in evidence to prove an alleged action of one of the arrested persons (N.R) did not show N.R at all.

Furthermore, considering the outcomes of the examination of evidence, the trustworthiness of testimonies given by law-enforcement officers as a witness was questioned seriously. In particular, the facts described by arresting law-enforcement officers in their reports on administrative violations contradicted the testimonies given by them before the court. For instance, one of the officers stated in the report on an administrative violation that the person arrested was swearing in public; however, when questioned as a witness, the police officer stated before the court that the person concerned was merely shouting.

⁵⁷ The Code of Administrative Violations, Article 245.

⁵⁸ The Law of Georgia on Police, Article 24.1 and Article 24.2.

It was revealed at the stage of examination of evidence that reports on administrative violations were almost identical. This gives rise to serious misgivings that the majority of the reports had not been drafted by those arresting demonstrators. Therefore, the arrest reports did not describe the actual circumstances. This assumption is strengthened further by the fact that on three occasions, patrol police officers confirmed unanimously their direct involvement in the arrests of concrete individuals; however, the video recordings showed clearly that those officers arrived on the spot only after arrests had been made by other officers and civil activists had been sitting in Patrol Police vehicles.

The examination of evidence showed substantial contradictions between testimonies made by law-enforcement officers and actual circumstance depicted on video tapes.

6.4. Problems related to Legal Assessment of Arrested Persons' Actions

Monitoring of court hearings revealed the wrong practice of the joint application by police officers of Article 166 and Article 177 of the Code of Administrative Violations to concrete violations (petty hooliganism and disobedience to legal requests of a law-enforcement official). On some occasions, law-enforcement authorities apply Article 166 and Article 177 of the Code of Administrative Violations against persons arrested in the course of assemblies and demonstrations practically automatically; however, considering the circumstances of a case, only the elements of one violation can be present. Such an approach creates multiple accounts of violations artificially, which worsens the legal status of individuals in an arbitrary manner.

In the cases of activists arrested during the demonstration held in front of the parliament on 31 December 2019, on two occasions, calling police officers abusive names (calling a “slave”, and comparing policemen with various animals) was characterised by law-enforcement officers wrongly as petty hooliganism. Under court decisions, administrative proceedings instituted against arrested persons under the head of petty hooliganism were discontinued due to the absence of *corpus delicti* of petty hooliganism. Abusive comments made by various persons regarding police were characterised (in one case) as a violation under Article 173 of the Code of Administrative Violations – a verbal abuse of a police officer discharging official duties. Thus, legal assessment of each particular action should be made based on detailed examination of facts and the full applicability of a particular article to the circumstances of the action committed (both in formal and substantive aspects).

6.5. Court Decisions

In the cases of civil activists arrested on 31 December 2019, as a result of assessment of evidence admitted by the court, the resistance to police and disobedience to their legal requests was not established. The video footage adduced as evidence does not show the activists' illegal actions that would warrant taking preventive policing measures in order to prevent disorder.

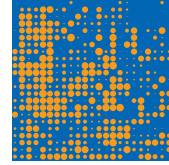
A police officer's orders and requests can be considered legal when they are based directly on legislation in force.⁵⁹ It is necessary to establish those facts that would create a ground for issuing specific requests or orders by police and render this action legal. In the cases concerned, the case-files did not establish either resistance or any other illegal actions.

Therefore, due to the lack of *corpus delicti*, the court discontinued proceedings instituted under Article 173 of the Code of Administrative Violations in the majority of cases instituted against arrested activists. However, in one case, the court deemed calling a police officer a "slave" was a personal insult and considered it to be a violation under Article 173 of the Code of Administrative Violations.

When adopting the decision, the court practically relied on the results of examination of material evidence in the form of video recordings and fully accepted those facts that were depicted on the video footage. This material evidence often contradicted the testimonies given by patrol police officers questioned as a witness before the court. This implies in express terms that the majority of evidence given by patrol police officers was not accepted by the court. Due to the short period of the research and shortage of research materials, it is however, difficult to assess whether this is a major trend or an isolated case in the judicial practice.

⁵⁹ GYLA, Protest Deemed to be a Violation, Tbilisi, 2017, p. 14

7. Recommendations



To the Parliament of Georgia:

- » To amend the wording of Article 5.1 of the Law of Georgia on Assemblies and Demonstrations implying the obligation of prior notification of an executive body of the local self-government to the effect of determining exceptions, where due to actual special circumstances, it is objectively impossible to give prior notification to competent authorities about holding an assembly/demonstration.
- » To implement radical reform of the Code of Administrative Violations adopted in 1984.
- » To respect the principle of public accessibility of the parliament. To restrict the entry of persons with special permits only in the cases stipulated by law – when it is necessary in the interests of the state or public safety, for the prevention of disorder or crime.

To the Ministry of Internal Affairs of Georgia:

- » To ensure independent, effective and impartial investigation of the incidents involving abuse of power by police officers when arresting demonstrators on 31 December 2019.
- » In order to prevent the use of force by violent groups against peaceful demonstrators, to ensure effective preventive measures preventing violence and separating groups from each other;
- » To conduct investigation in a timely manner on violent incidents against peaceful demonstrators by members of radical groups and counter-demonstrators in order to prevent reoffending and to inform the public about progress of investigation periodically;
- » To retrain police officers regarding due characterisation of actions of individuals arrested in administrative proceedings, drafting documentation on an administrative violation (*inter alia*, a report on an

administrative violation) and adequate notification of arrested persons about their rights; and

- » When observing assemblies and demonstrations law-enforcement authorities should consider that presence of officers without appropriate uniforms and identifying badges at demonstrations can have a chilling effect for demonstrators and restrict their right to freedom of assembly and freedom of expression.

To the Tbilisi City Hall

- » Not to allow the use of the Security City Service of the City Hall for ulterior reasons not determined by the regulations of the service.

