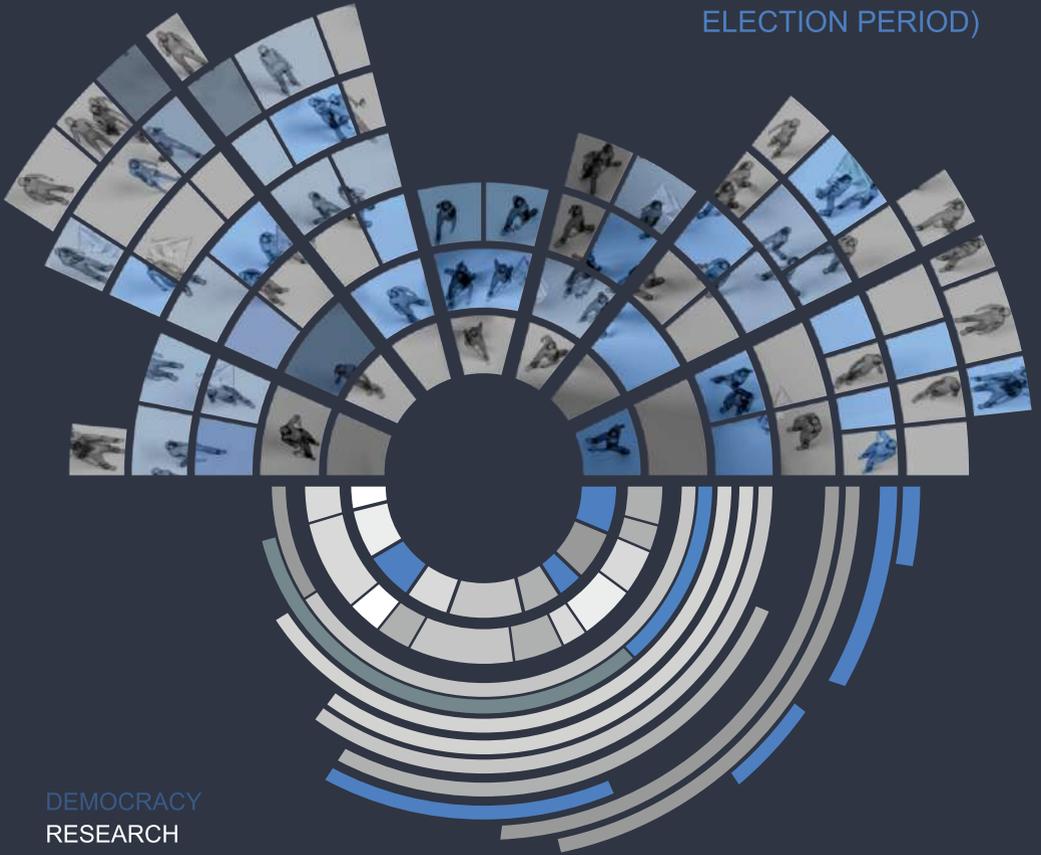


DEMONSTRATIONS UNDER OBSERVATION

(DURING THE PRE-ELECTION
CAMPAIGN AND POST-
ELECTION PERIOD)



DEMOCRACY
RESEARCH
INSTITUTE

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CONTENTS

INTRODUCTION	4
METHODOLOGICAL FRAMEWORK	5
1. OVERVIEW OF UNFOLDED EVENTS	7
1.1. POLITICAL CONTEXT	9
1.2. SOCIAL CONTEXT	11
2. BANNING ASSEMBLIES DURING THE PANDEMIC	12
3. FINDINGS OF OBSERVATIONS OF DEMONSTRATIONS	14
3.1. PRE-ELECTION RALLIES OF POLITICAL PARTIES	16
3.2. THE RALLY HELD AT THE TBILISI MUNICIPALITY CITY HALL ON 5 OCTOBER 2020	18
3.3. ULTRA-RIGHT GROUPS BECOMING ACTIVE IN PRE- ELECTION PERIOD	19
4. RALLIES HELD AFTER THE PARLIAMENTARY	23
ELECTION	23
4.1. RALLIES HELD AT THE CENTRAL ELECTION COMMISSION AND THE USE OF DISPROPORTIONATE FORCE BY LAW-ENFORCEMENT AUTHORITIES.....	23
4.2. “RALLIES OF DISOBEDIENCE” HELD BY CIVIL MOVEMENTS.....	26
4.3. VIOLATION OF FREEDOM OF EXPRESSION AT THE 28 NOVEMBER RALLY	27

5. RESULTS OF MONITORING COURT HEARINGS..... 29

5.1. INCIDENTS OF INADEQUATE DISCHARGE OF DUTIES
BY LAW-ENFORCEMENT AUTHORITIES**29**

5.2. LOW STANDARD OF PROOF AND INSUFFICIENT
SAFEGUARDS FOR THE PROTECTION OF RIGHTS**30**

5.3. INADEQUATE EVIDENCE ADDUCED BEFORE THE
COURT**31**

5.4. ASSESSMENT OF COURT JUDGMENTS**31**

CONCLUSION 33



INTRODUCTION

The agreement between the ruling and opposition parties on the format of the 2020 parliamentary elections has given rise to expectations of an improvement in the quality of democracy in the country. Therefore, the need for civil society's control over holding election gatherings and protest rallies freely during the pre-election campaign has become further significant.

Observations and legal analysis of current events conducted by the Democracy Research Institute (DRI) indicate that the degree of protection of freedom of assembly and freedom of expression has deteriorated in comparison to previous years. This might have been caused due to the restrictions introduced because of the coronavirus pandemic and the weakening of parliamentary oversight, as well as the government ignoring the legal framework on freedom of assembly.

The present report reviews the results of observations of pre-election gatherings and political protest rallies from September 2020 to the post-election period of the second round. The purpose of developing the report was to determine the conformity of organising and conducting gatherings and rallies during the pre-election campaign and post-election period with the legislation of Georgia, to provide a legal assessment of violations identified during the rallies and to analyse court decisions adopted against arrested individuals.



METHODOLOGICAL FRAMEWORK

The report is based on the analysis of information obtained by the DRI's observers during the monitoring of 40 rallies and three court hearings held concerning the cases of demonstrators arrested during these rallies.

As the monitoring of the demonstrations took place during the Covid-19 pandemic, the issue of following the rules and recommendations related to health and safety by the organisers and participants of the demonstrations (physical distancing, proper use of masks, etc.) was also observed.

Selection: The DRI's observers observed (with few exceptions) political protests and counterdemonstrations held by representatives of civil movements and/or political parties in Tbilisi, Rustavi, and Mtskheta. We learned about the planned rallies through public statements made by civil movements and political parties, social media posts or press offices.

Research Limits: Due to the small number of the observers and geographical reasons, it was decided at the initial stage to observe political rallies only in Tbilisi, Rustavi and Mtskheta. Furthermore, it was difficult to monitor spontaneous demonstrations. In the case of simultaneous rallies, the object of observation was chosen according to where there was a greater threat of violation of freedom of assembly.

Data Analysis and Research Tools - We analysed the data obtained during the monitoring using the following research approaches:

- **Individual reports by observers** – based on the Guidelines on Freedom of Peaceful Assembly of the OSCE Office for Democratic Institutions and Human Rights (OSCE / ODIHR), the project team developed a special form for monitoring rallies and demonstrations, which was used to identify all important incidents and violations that took place at the rallies;
- **Media monitoring** includes information obtained through video materials of various media outlets and live broadcasts by online platforms. We also studied photos and videos taken by civil activists and materials presented to the court; and
- Within the framework of the monitoring, we requested **public information** from the Tbilisi Municipality about the number of applications to hold rallies and, consequently, the restriction of traffic. It should be noted that Tbilisi City Hall has not provided the information to this day.

1. OVERVIEW OF UNFOLDED EVENTS

The rallies were observed against the background of the tense political, social and geopolitical situation in Georgia and the South Caucasus region in general. Since October, the surge in the number of coronavirus cases and deaths has been added to the problem, which has posed additional challenges for both the ruling party and the opposition.

Maintaining a proper balance between public health needs and freedom of political expression has become a real test for the government. In response to the existing problems, the ruling party granted the political actors complete freedom of assembly before the Election Day and held them politically and morally responsible for the spread of the coronavirus. On its part, the country's highest representative body has virtually refused to perform its legislative and oversight functions, and, with the May 2020 legislative changes, it has delegated some of its powers to government agencies. This situation gave rise to risks of abuse of power by the executive¹ and, at the same time, completely excluded participation of the public in legislative activities.

During the pandemic, the Parliament of Georgia proved to be unable to take any action within its mandate.² Public involvement was low, even in the process of resolving essential issues. The complete negation of political and social problems by state authorities gave rise to public protest.

¹ DRI, Amendments to the Law of Georgia on Public Health allow for disproportionate restrictions of human rights, 2020, <http://www.democracyresearch.org/geo/309> (accessed 9.12.2020).

² Democracy Index, Activities during the Spring Sessions and Extraordinary Sessions of the Parliament of Georgia 2020, Tbilisi, 2020, p. 9.

On the other hand, during the pre-election period, a significant challenge for the organisers of rallies and demonstrations was to ensure that participants of large assemblies followed regulations introduced because of Covid-19 (physical distancing and wearing a mask). Although physical distancing was not maintained at the large rallies and in many cases, protesters failed to wear masks properly, observations showed that the organisers were mostly taking the necessary measures to prevent the spread of the virus (they constantly pointed out the need to wear a mask and keep the distance, stickers indicating physical distance were taped around the area, protestors were handed masks, etc.).

In parallel to the renewed armed confrontation between Armenia and Azerbaijan over the disputed territories of Nagorno-Karabakh on 9 October,³ in early October, at the final stage of the election campaign, the Prosecutor General's Office of Georgia arrested two individuals on charges of making harmful decisions that could entail losing up to 3,500 hectares of land (including part of the David Gareji monastery complex). These individuals are Iveri Melashvili, the Head of the Service of Georgian State Border Delimitation, Demarcation and Border Relations of the Department of Neighbouring Countries at the Foreign Ministry and Natalia Ilychova, the Chief Inspector of the Land Border Defence Department of the Border Police under the Ministry of Internal Affairs of Georgia.⁴ The investigation of the criminal case has been conducted by the General Prosecutor's Office of Georgia since 17 August 2020 under

³ Which ended on 10 November with a ceasefire agreement between Armenia, Azerbaijan and Russia regarding Nagorno-Karabakh and the deployment of a Russian peacekeeping contingent, <https://bm.ge/ka/article/somxetis-jarebis-gayvana-rusi-samshvidoboebi---yarabagze-migweuli-shetanxmeba-/68378>, accessed 9.12.2020).

⁴ Statement of the General Prosecutor's Office of Georgia made on 7 October 2020, <http://pog.gov.ge/news/saqarTvelo-1> (accessed 9.12.2020).

Article 308.1 of the Criminal Code of Georgia.⁵ The charges were deemed unfounded, politically motivated and unsubstantiated by NGOs and most political parties.⁶ In October and November 2020, a number of rallies were held demanding the release of Iveri Melashvili and Natalia Ilychova from remand detention.

1.1. POLITICAL CONTEXT

In the parliamentary elections held on 8 October 2016, Georgian Dream received about 48% of the votes cast in the elections.⁷ Nevertheless, the electoral system in place at the material time allowed the ruling party to gain a constitutional majority in parliament. Therefore, political power was consolidated in the hands of one party and failed to ensure that the actual choices made by the electorate were reflected in the election results.⁸ The change of the electoral system was the main demand of the protests during 2019. The agreement between the ruling party and the opposition parties on the format of the 2020 parliamentary elections had given rise to expectations of an improvement in the quality of democracy in the country.

⁵ Under the order of the General Prosecutor's Office of Georgia of 30 August 2019 on determining the investigative and territorial investigative jurisdiction of criminal cases, the investigation of the crime under Article 308 of the Criminal Code of Georgia falls within the investigative jurisdiction of the State Security Service.

⁶ EMC, Cartographers' Case - Legal Assessment, 2020, <https://emc.org.ge/ka/products/kartografebis-sakme-samartlebrivi-shefaseba>, (accessed 1.12.2020), see also TI, GYLA and Others, Cartographers' Case – Politically Motivated New Investigation, 2020, <https://gyla.ge/ge/post/kartografebis-saqme-politikurad-motivirebuli-akhali-gamodzieba#sthash.aE9UzSSV.dpbs>, (accessed 1.12.2020).

⁷ The Central Election Commission, Report on 8 October 2016 Parliamentary Elections of Georgia, 2016, <https://cesko.ge/geo/static/2495/saqartvelos-parlamentis-2016-tslis-8-oqtombris-archevnebis-angarishi> (accessed 2.12.2020).

⁸ Vakhushti Menabde, Fair Election System for Georgia: Equality, Democracy and Stability, 2019, <https://civil.ge/ka/archives/307972>, (accessed 2.12.2020).

Political rallies in the second half of 2020 were mainly held in the run-up to the 31 October parliamentary elections.⁹ Furthermore, the organisers of political rallies also made the following demands:

- Lifting the two-week mandatory quarantine regime for Georgian citizens returning from abroad and opening Georgian airspace
- Postponement of the National Olympic Committee elections in 2021 and elimination of nepotism in the Georgian National Olympic Committee
- Termination of cohabitation with United National Movement and military neutrality (3 October, Alliance of Patriots of Georgia)
- Abolition of fines illegally imposed by the respective office of Tbilisi City Hall on the political platform Giorgi Vashadze - Strategy Aghmashenebeli; reducing interest rates on bank loans for pensioners, people with disabilities and other vulnerable groups
- Support to be rendered to Irakli Bebuia, a Georgian citizen arrested by the *de facto* authorities of Abkhazia for burning the Abkhazian flag; and
- Release of Iveri Melashvili and Natalia Ilychova, arrested in the so-called Cartographers' Case and immediate termination of criminal prosecution against them (four rallies of various political parties and civil activists in October-November).

According to some non-governmental organisations, the government failed to ensure that parliamentary elections of 31 October were held in accordance with democratic standards. The 2020 parliamentary elections were assessed as the least democratic and free among the elections held by the incumbent government.¹⁰ The main demands put forward by the rallies held by political parties and civil movements after the parliamentary elections were 1. re-

⁹ The Constitutional Law of Georgia on Amendments to the Constitution of Georgia, 2020, Article 2¹.1.

¹⁰ NGOs assess the 2020 parliamentary elections 2020, <http://www.democracyresearch.org/geo/448> (accessed 3.12.2020).

election or snap elections; 2. resignation of Tamar Zhvania, the Chairperson of the Central Election Commission of Georgia; and 3. release of political prisoners.

1.2. SOCIAL CONTEXT

Under the decision of the Government of Georgia, from 28 November 2020 to 31 January 2021, almost all types of economic activities were restricted. Both retail and wholesale of any goods/products in the marketplace was restricted, among others, in Tbilisi, Batumi, Kutaisi, Rustavi, Gori, Zugdidi, Poti, Telavi, Bakuriani Settlement of Borjomi Municipality, Gudauri Village of Kazbegi Municipality, Goderdzi Resort of Khulo Municipality and Mestia Settlement of Mestia Municipality.¹¹ The Covid-19 related restrictions have led to many severe changes in working conditions and incomes, as well as in the labour market as a whole.

In the second half of 2020, due to the dire social situation in the state, rallies were held to demand the state to take timely and effective steps to help entrepreneurs and businesses affected by the coronavirus and negotiate with the banking sector to have bank loans rescheduled.

¹¹ Resolution no. 322 of the Government of Georgia of 23 May 2020 on the Approval of the Rules of Isolation and Quarantine, Article 6.



BANNING ASSEMBLIES DURING THE PANDEMIC

To prevent the spread of the new coronavirus in Georgia, on 21 March 2020, the President of Georgia issued Decree no. 1 on Measures to be Taken in Connection with the Declaration of a State of Emergency throughout Georgia. Based on this decree, on 23 March 2020, the Government of Georgia issued Resolution no. 181 on Approval of Measures to Prevent the Spread of the New Coronavirus in Georgia. Article 5 of the aforementioned resolution prohibited the assemblies and/or demonstrations provided for by the Law of Georgia on Assemblies and Demonstrations during the state of emergency. The same decree also prohibited the gathering of more than 10 people in public places. The Constitution of Georgia provides for the restriction of freedom of speech and expression, as well as freedom of assembly during a state of emergency or war declared by the state.¹²

Resolution no. 322 of the Government of Georgia of 23 May 2020 on the Approval of the Rules of Isolation and Quarantine has eased the restrictions on freedom of speech and expression to a certain degree. In particular, unlike Resolution no. 181 of the Government of Georgia, Resolution no. 322 no longer prohibits in express terms the holding of rallies or demonstrations, nor does it prohibit any gathering of more than 10 persons in a public place, except for gatherings that are "related to communal social events (such as weddings, anniversaries of any kind, funerals, etc.)". However, the 9 September 2020 amendment made to Resolution no. 322 of the Government of Georgia specified the number of persons participating in assemblies held during the pre-election period. In particular, the pre-election campaign was allowed provided the

¹² The Constitution of Georgia, Article 71.4.

relevant recommendations laid down to prevent the spread of the new coronavirus were followed.

It is important to note in this regard that recommendations aimed at preventing the spread of Covid-19 were largely followed during both the pre-election and post-election rallies/demonstrations. In particular, most of the demonstrators were wearing masks, however, often incorrectly. Furthermore, social distancing was maintained, as far as possible.



FINDINGS OF OBSERVATIONS OF DEMONSTRATIONS

In the period of 1 September to 30 November 2020, the DRI observers observed 40 political rallies organised by political parties and civil movements.

As a rule, large gatherings planned as a part of the election campaign, as well as rallies/demonstrations, took place in a peaceful atmosphere. However, disproportionate and illegal force was used against protesters after the Election Day. In particular, on 8 November, in front of the Central Election Commission, law-enforcement officers used disproportionate force against protesters in the form of water cannons and presumably pepper spray.¹³ On one occasion,¹⁴ law-enforcement officers resorted to force and illegally dismantled the tents belonging to demonstrators that were erected near the City Hall.¹⁵ On 28 November, law-enforcement officers unjustifiably denied demonstrators their right to write on the metal structure erected at the rear entrance of the parliament. Disobedience to a police officer's request allegedly led to the arrest of one of the activists. A second activist sustained an injury during the arrest.¹⁶ On four occasions, there were cases of verbal or physical abuse of journalists and obstruction of their activities. There were verbal confrontations between demonstrators and law-enforcement officers at seven rallies.

¹³ DRI: The Report on Observing the Demonstration of 8 November 2020, 10 November 2020, available at: <http://www.democracyresearch.org/geo/456>.

¹⁴ On 5 October 2020.

¹⁵ DRI: The Dismantling of the Activists' Tents amounts to an Unjustified Interference with the Rights of the Demonstrators, 2020, available at: <http://www.democracyresearch.org/geo/427> (accessed 3.12.2020).

¹⁶ DRI: Democracy Research Institute Responds to Detention of Demonstrators on 28 November 2020, available at: <http://www.democracyresearch.org/geo/470>.

During most of the rallies, several people dressed in civilian uniforms actively monitored the rally and took photos of the demonstrators. Their close communication with patrol police officers gives grounds to suppose that they worked for law-enforcement authorities.

The number of participants in the assemblies/demonstrations ranged from 15 to 5,000. The maximum number of protesters was mobilised on 8 November 2020, during a rally on Rustaveli Avenue, when the opposition protested the results of the parliamentary elections.

As a basic observation, it can be said that, in most cases, the number of law-enforcement officers far exceeded the number of demonstrators. The only exception was the rally organised by Georgian March in the Davit Gareji monastery complex on 9 October 2020, where an unprecedentedly small number of law-enforcement officers was mobilised.

In most cases, almost half of the demonstrators were women. In many cases, the co-organisers of the rally were women. The group It's a Shame was distinguished from other civil movements by its large number of female organisers.

The organisers of the rallies were mainly civil movements, such as Dare, Change and It's a Shame. Among the political groups, United National Movement, European Georgia, Lelo for Georgia, Girchi, Georgian Labour Party, Aleko Elisashvili – Citizens, Giorgi Vashadze – Strategy Aghmashenebeli and others were particularly active.

Except for pre-election rallies and party manifesto presentations organised by political parties, the vast majority of the rallies were spontaneous, which became a significant challenge in the monitor-

ing process. Furthermore, the full implementation of the observations was hindered by the re-introduction of the curfew from 10 pm on 9 November 2020. Due to the restriction of movement, the monitors were unable to observe the so-called Disobedience Rally organised by the civil movement It's a Shame on 9 November 2020. For this reason, we used a media monitoring methodology to evaluate and analyse the demonstration. Furthermore, due to the curfew, a DRI representative was unable to attend the full hearing of the civil activists arrested near the Parliament of Georgia on 9 November.

3.1. PRE-ELECTION RALLIES OF POLITICAL PARTIES

In October 2020, in Tbilisi, the DRI representatives observed party programme presentations made by the Alliance of Patriots, United National Movement, Georgian March and Lelo for Georgia. At the party manifesto presentations, the organisers summarised the election campaign and presented the majoritarian candidates to their supporters. Leaders of all four political parties expressed dissatisfaction in their speeches against the leadership of Georgian Dream and assessed the pre-election environment negatively.

The party manifesto presentations took place mostly in a peaceful environment. The number of participants in the gathering in some cases reached 22,000.¹⁷ Full mobilisation of law-enforcement officers was observed near the rallies. The exception was a 200-strong rally of Georgian March on 27 October 2020, which was attended by only two law-enforcement officers.

¹⁷ Myth Detector, How many thousands of people attended the 8 November rally. 13 November 2020, available at: <https://www.mythdetector.ge/ka/myth/ramdeni-atasi-adamiani-mivida-8-noembris-aktsiaze> (accessed 26.01.2021).

In the other three pre-election events, law-enforcement officers blocked the rally area and even the adjacent streets. It should also be noted that, during the party manifesto presentation by the Alliance of Patriots on Freedom Square on 3 October, the restrictions imposed on the movement by law-enforcement authorities did not correspond to the number of protesters (1,000 people) and it can be considered excessive.

The DRI monitors observed whether organisers and demonstrators followed the regulations introduced with the view of preventing Covid-19. During the pre-election gatherings of Lelo for Georgia and United National Movement, the organisers of the event distributed masks to the participants and strictly controlled the rules of their wearing. There were problems in this regard at the pre-election gatherings of Georgian March and the Alliance of Patriots, where the organisers did not make sure demonstrators wore the masks.

Physical distancing was maintained fully during the pre-election meetings of Lelo Georgia and Georgian March. The organisers of the rally placed chairs spaced two metres apart for the attendees. Due to the large attendance, it was impossible to maintain physical distance at the campaign event of United National Movement, despite the fact that the organisers constantly called for the need to maintain distance.

Breaches in terms of wearing a mask and maintaining physical distance were also identified during a pre-election gathering held by Alliance of Patriots, despite the fact that the organisers had placed stickers at Freedom Square to help maintain distance.

During the pre-election period (until 31 October), the demonstrations were mostly peaceful. The exception was the rally held in

front of the Tbilisi City Hall on 5 October, which was marked by unjustified/illegal actions of the law-enforcement officers.

3.2. THE RALLY HELD AT THE TBILISI MUNICIPALITY CITY HALL ON 5 OCTOBER 2020

On 5 October 2020, the leaders of the political party Giorgi Vashadze – Strategy Aghmashenebeli held a rally near the Tbilisi City Hall. The demonstrators were protesting against the fines imposed on the party, the amount of which exceeded 100,000 GEL. They considered administrative offence reports issued by the municipal inspection to be illegal and demanded their cancellation. The demonstrators and organisers also protested against Tbilisi Mayor Kakhi Kaladze, accusing him of being involved in corrupt deals.

About 50 protesters took part in the rally. Up to 150 patrol and criminal police personnel were mobilised near the City Hall and at the City Hall entrance.

The meeting started at 1 pm and was going on in a peaceful atmosphere. The police right at the start of the demonstration blocked the entrance of the City Hall building and the protesters were not allowed to enter. In many cases, law-enforcement officers' instructions did not comply with the law. For example, when the demonstrators demanded that the application be submitted to the Chancellery, instead of an authorised employee of the City Hall, a patrol inspector checked the application form and the contents of the attachment. The situation at the rally escalated after the protesters set up tents bearing the name of their party in front of City Hall and across the street. In response, law-enforcement officers started dismantling the tents and arrested two activists on

the pretext of disobedience of a legal request.¹⁸ One of the leaders of the party, Paata Manjgaladze, who at the time was enjoying immunity under Article 122 of the Election Code of Georgia, was released without any documents justifying his arrest. Furthermore, law-enforcement officers stopped the arrest of another person without drawing any documentation after he became unwell and needed medical attention.

Article 17 of the Constitution of Georgia protects the right of a person to choose the form, means and place of expression at his/her discretion. In particular, an individual has the statutory right to express his/her opinions publicly and peacefully on that part of the street and in the form, he/she deems appropriate. Opinions can be expressed not only through speech, statements but also in silent form or through makeshift constructions.¹⁹ Accordingly, the use of force by law-enforcement officers to dismantle the tents erected by the activists, and the decision of the Municipal Inspection of the City Hall to fine the party Strategy Aghmashenebeli by 1,000 GEL²⁰ is an unjustified interference with the protestors' freedom of expression and assembly.

3.3. ULTRA-RIGHT GROUPS BECOMING ACTIVE IN PRE-ELECTION PERIOD

The 2020 parliamentary elections were marked by the involvement of far-right, extremist groups with anti-liberal and anti-Western ideologies in the electoral process. Prior to the parliamentary elections, the organisations Georgian March and Georgian Idea, registered as political parties, campaigned and participated in the parliamentary elections.

¹⁸ The Code of Administrative Offences, Article 173.

¹⁹ Judgment no. 3B/170-18 of the Tbilisi City Court of 9 February 2018.

²⁰ The act provided under Article 150³.3 of the Code of Administrative Offences.

The pre-election campaign of the abovementioned parties was marked by expressly homophobic, xenophobic and nationalist rhetoric. Georgian Idea also used theocratic narratives. Orthodox clergymen often appeared in their election clips. In the run-up to the election, the campaign of Georgian March focused not on the ruling party (Georgian Dream) but the opposition parties of liberal ideology and George Soros, the billionaire philanthropist.

Two of the rallies held by Georgian March during the pre-election campaign were directed against United National Movement, Lelo and Mamuka Khazaradze, one of the latter's founders.

On 29 October 2020, Georgian March's supporters blocked the Rustavi Highway at the entrance to Tbilisi to prevent supporters of United National Movement from entering Tbilisi and holding a rally on Rustaveli Avenue. Despite the fact that complete/partial blocking of the road is prohibited by the Law of Georgia on Assemblies and Demonstrations, and given the number of the members of Georgian March, the assembly did not require a roadblock and law-enforcement officers did not respond appropriately.²¹

On 18 September 2020, members of Georgian March held a rally in front of the Vake office of the Lelo party demanding a ban on Lelo and its removal from the elections. The protesters were going to picket the office, but Lelo supporters did not allow it. At the same time, police formed a human wall to separate the party building and the protesters. Also, a human wall was formed between the road and the demonstrators to ensure unimpeded traffic.

On 9 October 2020, leaders and supporters of Georgian March took a procession towards Davit Gareji. The purpose of the march was to protest the "sale" of the Davit Gareji monastery complex, which,

²¹ The Law of Georgia on Assemblies and Demonstrations, Article 11¹.1.

according to the demonstrators, was "committed by Mikheil Saakashvili against the will of the Georgian nation" during his time in office.

During the procession, Georgian March supporters hung posters of the former Georgian President Mikheil Saakashvili on the fence near the office of United National Movement with the caption "Punish Traitors". The demonstrators also broke wooden effigies, which, according to them, is the fate of traitors, namely, Sergo Orjonikidze and Mikheil Saakashvili. The gathering was regulated by a particularly small number of law-enforcement officers.

On 15 October 2020, members of Georgian March held a demonstration in front of the election office of Nikanor Melia, the majoritarian candidate of the United Opposition in Gldani. According to the organisers, with this demonstration, they were protesting against the slanderous statements made by United National Movement about the pro-Russian orientation of Georgian March and the leadership of Georgian Dream. According to an organiser of the rally, Irakli Shikhiashvili, he was going to hold a debate with Nikanor Melia to expose the political party with actual pro-Russian leanings. While the demonstrators threw brooms and hurled flammable items (blazing torches) at the members of United National Movement gathered at the office, the police did not stop the violations and none of the protesters was arrested.

After the 31 October 2020 parliamentary elections, leaders of Georgian March claimed that the election had been rigged and held two rallies in front of the Georgian Dream headquarters and the Central Election Commission building. The main demand of the protesters was to hold re-elections and to arrest Tamar Zhvania, the chairperson of the Central Election Commission.

In the pre-election period, there were also signs of the formation of a new, youth nationalist organisation. On 27 September 2020, the Facebook group Georgian Nationalism organised a demonstration towards Heroes' Square from Vake Park on the occasion of the 27th anniversary of the fall of Sokhumi, to honour the memory of those killed in the Abkhazia war. The rally differed from the existing far-right rallies in several respects. About half of the rally participants were women (which is not typical for groups with far-right ideological leanings); some protesters wore military clothes; some demonstrators hid their appearance with military-tactical masks; organisers of the rally referred to the demonstrators as a "squad" and there was a hierarchical relationship among the participants. According to the DRI observers, the rally was clearly militaristic. The demonstration was also marked by the presence of young demonstrators and calls for taking the lost territories of Georgia through force and the need for radical action to that end.



4. RALLIES HELD AFTER THE PARLIAMENTARY ELECTION

After the 31 October 2020 parliamentary elections, opposition parties held a slew of rallies demanding re-elections, the resignation of the Central Election Commission's chairperson Tamar Zhvania, the prosecution of those involved in election fraud, and the release of the individuals whose arrests were allegedly politically motivated.

Police used force to against protestors repeatedly. Violent confrontations between protesters and police were also frequent. As the number of people infected with the coronavirus increased, to which the government responded with restrictions on freedom of movement, civil movements began protesting against the restrictions,²² during which a number of protesters were fined and/or arrested in administrative proceedings. In the opinion of the DRI observers, the rallies held since 31 October 2020 have been marked by the use of disproportionate force by law-enforcement authorities, possible abuse of power and unjustified restrictions of freedom of expression.

4.1. RALLIES HELD AT THE CENTRAL ELECTION COMMISSION AND THE USE OF DISPROPORTIONATE FORCE BY LAW-ENFORCEMENT AUTHORITIES

Since 1 November 2020, DRI observers had monitored six rallies held by opposition political parties and civil movements at the

²² In particular, protesting against the curfew in "big cities" after 9 pm.

Georgian Central Election Commission and district election commissions.

On 8 November 2020, at 3 pm, in Tbilisi, on Rustaveli Avenue, near the Parliament of Georgia, a large number of opposition political parties held a rally demanding a re-run of the parliamentary elections and the resignation of Tamar Zhvania, the chairperson of the Central Election Commission. Large rallies took place in the area in front of parliament, including the grounds of Public School no. 1.

By 9 pm, the rally moved to the Central Election Commission building. A small portion of the protesters being ahead of the procession, about 250 people, approached the iron fence of the commission building and started hurling stones at it. Police and a riot control unit with special equipment were mobilised on the other side of the iron fence.

Before the opposition leaders and the majority of the demonstrators came to the area, the police, without warning, suddenly used water cannons, due to which the protestors and media representatives sustained various injuries. In response to the police action, the demonstrators pelted stones at them. In one case, a protester allegedly hurled a Molotov cocktail.

The situation calmed down only after the arrival of the main opposition leaders and the majority of the demonstrators. The rally was relatively quiet during the period from 10 pm to 12 pm. About 5,000 people had gathered in front of the Central Election Commission's office by this time. The situation was controlled by about 300 members of the patrol police, criminal police and special task forces.

After the use of water cannons and pepper spray against demonstrators, which is assessed as a disproportionate and illegal measure, police called upon the protestors to disperse. Despite the warning, the demonstrators did not leave the place of assembly. At around 12:30 pm, due to the proximity of the protesters to the police barricade and the aggression showed against the police, the police again used water cannons, which further escalated the situation between the protesters and the law-enforcement officers. At the same time, special task force units were called and the so-called Robocops set off in the direction of people. As a result, most of the demonstrators moved in the direction of the highway.

According to the Ministry of Internal Affairs, up to 14 law-enforcement officers, three members of the media and up to 10 demonstrators sustained various injuries during the rally. A total of 19 people were arrested in administrative proceedings for disturbing public order and disobeying the legal request of the police.²³

The initial actions taken by the police against the protesters were illegal, disproportionate and unnecessary. In this episode, the action of the police not only failed to achieve a legitimate goal but also escalated the situation. The actions of a small part of the protesters did not pose a real and immediate threat of breaking the law, in particular, invading the administrative building of the Central Election Commission or committing another violation.

Furthermore, the misuse and indiscriminate use of special means by the police, which was undoubtedly inconsistent with the nature and intensity of the protest and resulted in inflicting injuries to journalists and protesters should be considered unjustified. In this

²³ A statement of the Ministry of Internal Affairs of Georgia, 9 November 2020, (accessed 8.12.2020).

case, the requirements of Article 31 of the Law of Georgia on Police regarding the necessity of resorting to special means and the rules of their use were violated.

4.2. “RALLIES OF DISOBEDIENCE” HELD BY CIVIL MOVEMENTS

The amendments made to Resolution no. 322 of the Government of Georgia of 23 May 2020 on Isolation and Quarantine on 9 November 2020, to ensure that the public stayed home, introduced restrictions of movement of persons from 10 pm to 5 am both on foot and by vehicle, as well as being in public places in Tbilisi, Batumi, Kutaisi, Rustavi, Gori, Poti, and Zugdidi.²⁴ On 9 November 2020, two rallies were held on Rustaveli Avenue. The aim of the first rally organised by the opposition parties was to protest the results of the 31 October 2020 parliamentary elections, call for fresh elections and inform the public about the future action plan of the opposition.

The second rally organised by the civil movement It's a Shame started right after the end of the first one and its announced goal was to show disobedience to the curfew, which the organisers of the rally considered unfair and unfounded.

Opposition leaders stayed on Rustaveli Avenue during the curfew. They joined the rally of the civil movement It's a Shame. At about 10 pm, police arrested three It's a Shame activists for trying to bring firewood to the demonstration. According to one of the arrestees, he was physically assaulted by patrol inspectors after his arrest.

²⁴ Resolution no. 670 of the Government of Georgia of 9 November 2020 on Amending Resolution no. 322 of the Government of Georgia of 23 May 2020 on Isolation and Quarantine, Article 2.6¹.

From the very beginning of the protest rally, communication between the law-enforcement officers and the demonstrators had broken down. The situation became especially tense after the visit of the head of the patrol police, Vazha Siradze. Based on his order, another demonstrator, Giorgi Mzhavanadze, was arrested for attempting to bring firewood to the rally.

In this case, the police considered firewood to be a dangerous item as determined in Article 11.2.b of the Law of Georgia on Assemblies and Demonstrations, which could be used to endanger life and limb of the demonstrators or other persons. According to the rally organisers, the activists intended to use the firewood only for heating and the police illegally restricted its use at the rally.

4.3. VIOLATION OF FREEDOM OF EXPRESSION AT THE 28 NOVEMBER RALLY

On 28 November 2020, at around 3 pm, the civil movement It's a Shame, together with politicians Elene Khoshtaria and Khatia Dekanoidze, held a spontaneous rally to protest the statement of the Russian Foreign Ministry.²⁵ The rally was initially conducted peacefully. The situation escalated after police prevented, without any ground, the protesters from writing on a metal structure (not part of the building) erected at the entrance to parliament. This probably led to the arrest of one of the activists. However, the police based the arrest on disobedience to a law-enforcement officer's legal request.²⁶ During the arrest of the activist, one of the protesters sustained an injury.

²⁵ According to the statement made by the Russian Foreign Ministry, Karasin called on the Georgian side to allow Russian specialists into Lugar laboratory, 2020, <https://rustavi2.ge/ka/news/183456> (accessed 8.12.2020) the information was later refuted by the Ministry of Internal Affairs of Georgia.

²⁶ The Code of Administrative Offences, Article 173.

Article 173 of the Code of Administrative Offences determines responsibility for disobeying a legal request of a law-enforcement officer. An illegal request, and therefore resistance to that request, does not give rise to the consequences determined under Article 173 of the Code of Administrative Offences. An attempt to redeem this mistake can also be seen in the fact that later the police allowed civil activists and politicians to write on the construction erected at the entrance to parliament. Proceedings were instituted against the two arrested activists for alleged administrative offences.

The aim of the participants in the demonstration is not only to express their opinions but also to express opinions together with others. The state has a negative obligation not to restrict a person's freedom of expression, and it is important to have a comprehensive mechanism in place to investigate thoroughly allegations of abuse of power by law-enforcement officers against peaceful demonstrators.

It was particularly problematic in the cases of the individuals arrested during the 28 November 2020 rally that an arrested activist was left without a proper medical aid for the injury sustained during the arrest and at the same time protesters were held responsible for an administrative offence the commission of which was not confirmed by any neutral eyewitnesses.



5. RESULTS OF MONITORING COURT HEARINGS

On 9 November 2020, the DRI observes monitored three hearings held in the cases against the civil activists arrested near the Parliament of Georgia.

On 7 December, a DRI observer, along with other individuals wishing to attend the hearing, was not allowed to attend the hearings held about the demonstrators arrested at the parliament entrance on 28 November. With this decision, the process was closed, without any apparent legal basis.

During the monitoring of the hearings of the cases against the individuals arrested at rallies and demonstrations, other important circumstances were also identified, namely:

- In two cases, the hearing started several hours late. The demonstrators were not informed of the exact time of the start of the hearing, and their witnesses were not allowed in the courthouse due to restrictions related to Covid-19. Accordingly, the respondent and the representatives, together with the witnesses, waited for several hours in the cold, in the open air for the hearing to begin; and
- In one case, despite proceedings being pending since September, the Ministry of Internal Affairs shared evidence with the respondent on the day the hearing was held (in November), causing the judge to adjourn the hearing.

5.1. INCIDENTS OF INADEQUATE DISCHARGE OF DUTIES BY LAW-ENFORCEMENT AUTHORITIES

In two cases, arrested individuals stated before the court that they had not been explained the grounds for their arrest and had not

been notified of other rights provided by law. When questioned as witnesses before the court, some of the law-enforcement officers could not recall whether they had explained to the arrestees the following rights under the Code of Administrative Offences of Georgia:

- The gist of the administrative offence committed by them and the grounds for their arrest
- Right to a lawyer; and
- The right, if they wish, to inform their relatives about the arrest and their whereabouts.

Patrol inspectors who arrested the civil activists did not have special video recording equipment turned on before or during the arrest process, for unknown reasons. This can be considered as a failure by the police to discharge their statutory duty.

5.2. LOW STANDARD OF PROOF AND INSUFFICIENT SAFEGUARDS FOR THE PROTECTION OF RIGHTS

In one case, the videos submitted by the Ministry of Internal Affairs of Georgia showed only recordings of arrests of civil activists on 9 November 2020. This shortcoming was especially evident in the case of N.R. and G.M. The submitted video materials did not clearly show the incident involving the violation established in the arrest reports, in particular, the incidents of resistance to police,²⁷ petty hooliganism²⁸ or abuse of police officers by the demonstrators. The patrol inspectors did not record with bodycams the actual circumstances, particularly the actions of the activists, which served as the legal basis for their arrest.

²⁷ *Ibid.*, Article 173.1.

²⁸ The Code of Administrative Offences of Georgia, Article 166.1.

5.3. INADEQUATE EVIDENCE ADDUCED BEFORE THE COURT

The testimonies of the law-enforcement officers questioned as witnesses at the hearing were inconsistent and superficial and contradicted the actual chain of events that were unequivocally confirmed by the video material. The case of A.M. should be pointed out in this regard. The court observed that the civil activist was responsible for resisting the police on the account of requesting officers to substantiate the legality of banning firewood at the rally. The court accepted the testimonies of the patrol inspectors in full and ruled that the arrestee had resisted police actively. However, the resistance was not confirmed by the video material adduced before the court.

Most of the evidence adduced by the Ministry of Internal Affairs of Georgia to prove violations was not, in essence, directly related to the factual circumstances of the case. This failed to meet the standard of beyond reasonable doubt in terms of both the credibility of evidence, their sufficiency as well as the fact itself that the violation had been committed.

5.4. ASSESSMENT OF COURT JUDGMENTS

In one case, the Tbilisi City Court held all three arrested activities responsible for petty hooliganism and resisting the legal order of a police officer and imposed the following penalties on them. A.M. and N.R. were fined 1000 GEL and 1500 GEL respectively and G.M. was detained for three days.

In the opinion of the DRI, the judgment of the Tbilisi City Court lacked reasons with regard to all three activists, as the judge based the decision only on inconsistent and contradictory testimonies of the patrol inspectors.

With regard to the incident involving A.M., the court deemed several pieces of firewood as dangerous items, determined in Article 11.2.b) of the Law of Georgia on Assemblies and Demonstrations and which were used or might be used to endanger life and limb of demonstrators or other persons. The decision was based on the previous use of firewood by some demonstrators against police officers.

The rally held on 9 November 2020, by its very nature, did not pose a real or imminent danger of the commission of a crime. The small number of demonstrators had also to be taken into account, against the larger number of law-enforcement officers. Thus, when deciding whether the police should have banned demonstrators from having certain items and considered them dangerous, the specific circumstances present at the material time (the situation at the rally, the general behaviour of the demonstrators) should have been assessed in the first place instead of emphasising individual incidents that had taken place at other rallies.



CONCLUSION

The pandemic posed significant challenges to the government and the opposition during the pre-election period. Observations show that the government has failed to strike a fair balance between the interests of public health and freedom of political expression. During the pandemic, instead of attempting to reach a political consensus on regulating political assembly in the run-up to the election, the ruling political party, through the legislative amendments of May 2020,²⁹ delegated a part of parliamentary powers to government agencies, thus depriving the public of the opportunity to discuss the reasonableness of restrictions.

Holding political actors in the opposition politically and morally responsible for the spread of the coronavirus by organising rallies had not relieved the authorities of their duty to protect public health. After securing victory in the parliamentary elections, when restrictions on the freedom of movement significantly hampered the exercise of the right to assembly, the law-enforcement actions repeatedly violated the freedom of assembly.

On the other hand, a significant challenge for the organisers of the rallies and demonstrations was to ensure that participants of large assemblies followed regulations introduced because of Covid-19. Although the rally organisers were mostly taking necessary measures to prevent the spread of the virus, in the case of large rallies, physical distancing was not practised and often demonstrators failed to wear masks properly.

²⁹ DRI, Amendments to the Law of Georgia on Public Health allow for disproportionate restrictions of human rights, 2020, <http://www.democracyresearch.org/geo/309> (accessed 9.12.2020).

As the observation demonstrated, law-enforcement authorities mostly reacted, based on the principle of selective justice, to the actions of demonstrators. For instance, while law-enforcement officers did not allow civil society activists to bring firewood to the rally or put up posters on the fences, they did not respond appropriately to far more serious violations by members of a far-right extremist group.

Our monitoring of court hearings revealed that the standard of protection of the rights of individuals arrested during rallies and demonstrations has dropped significantly. When examining administrative offences, the court pronounced the arrested persons as offenders only based on inconsistent and contradictory testimonies of the patrol inspectors. This approach differs significantly from the results of the monitoring conducted by the DRI from 31 December 2019 to March 2020, when the court relied solely on the findings of the examination of video evidence, which in many cases substantially undermined the credibility of the testimonies adduced by the patrol inspectors questioned as witnesses.