

**Georgian Young Lawyers' Association**

**REPORT**  
**26 MAY**

**Analysis of Human Rights Violations  
during and related to the Dispersal of the May 26 Assembly**

**2011**

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## Introduction

This report focuses on the human rights violations resulting from the dispersal of the assembly held outside the Georgian Parliament building on May 26, 2011. This report was preceded by an interim report published on June 6, 2011 by GYLA<sup>1</sup>. In the previous report GYLA summed up the basic trends of the violations that occurred during the dispersal of the assembly or those that were related to the dispersal. A detailed analysis of the issues required obtaining and processing further factual information. Furthermore, an evaluation of important legal issues was needed for determining the extent of responsibility of the state, including the lawfulness of the dispersal and an analysis of the peaceful nature of the rally, as otherwise any other evidence within the context of the freedom of assembly would have been groundless.

In the process of obtaining factual evidence, serious human rights violations were identified, which required detailed examination and substantiation. GYLA sought to include in this report all the trends of human rights violations and individual cases identified that took place during the dispersal or were related to exercising the right of assembly. Consequently, this report contains the following issues and structuring:

1. Chapter One of the report analysis the practice of mass detentions prior to May 26 which were related to the exercising of the right of assembly. Research revealed the detentions of up to 100 individuals who were exercising their right of assembly in various ways, including in relation to assemblies planned for May 21-25. The detention of these individuals, as well as their trials, was conducted in gross violation of the law. For example, during their imprisonment they were subjected to inhumane treatment, which should be duly investigated.

2. Chapter Two of the report evaluates formal lawfulness of the decision made by the authorities. GYLA notes that May 25 assembly was peaceful *in general*, which triggered the state's obligation to comply with standards guaranteed by the international human rights law in the process of making the decision to interfere with the freedom of assembly. This chapter separately addresses conduct and nature of intentions of the so-called Oath of Fealty and application of Article 11 of the ECHR to them.

With regard to evaluation of formal lawfulness of The state's decision to terminate the assembly, GYLA notes that even if we consider that in view of individual factors parade can be deemed as a legitimate public interest, and the interest to hold the parade could have taken precedence over the interest to hold the assembly, due to the fact that the state did not resort to the mechanism of effective negotiation during the May 25 assembly (a possibility to hold the two event simultaneously) and thus it failed to resort to less intense means for restricting the right, the decision to disperse the assembly was disproportionate. Furthermore, in view of the fact that the authorities used clearly disproportionate force against peaceful protesters during the dispersal, the fact that the state's decisions to disperse the assembly can be formally justified becomes insignificant. Therefore, GYLA believes that Article 11 of the ECHR was violated against the peaceful protesters.

3. Chapter Three of the report analyzes the tactics and techniques that the police resorted to during the dispersal. The analysis of facts has revealed that half an hour before the dispersal began, the police had blocked the main exits from the rally scene. The operation underlying the rally dispersal itself was conducted by the police without giving the participants any actual opportunity to leave the area. Moreover, through the use of force the police intentionally hindered participants from leaving the area. Based on the analysis of use of force by the police (i.e. number of law enforcement officers, tactics, sequence, and intensity of using special measures, using force under certain conditions in individual cases), GYLA notes that use of force by the police was clearly disproportionate. This same Chapter also analyzes the deficiencies in Georgian legislation regulating the use of special measures that hinder the effective prevention and regulation of the use of force by the police.

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<sup>1</sup> Visit the website of GYLA: [http://gyla.ge/index.php?option=com\\_content&view=article&id=935%3A2011-26-&catid=1%3Alatest-news&Itemid=177&lang=ka](http://gyla.ge/index.php?option=com_content&view=article&id=935%3A2011-26-&catid=1%3Alatest-news&Itemid=177&lang=ka)

4. Chapter Four of the report analyzes individual cases of disproportionate use of force during the assembly dispersal. This Chapter also examines the intensity of the use of special measures during the dispersal as well as provides illustrations of such disproportionate use. The Chapter also analyzes various facts of inhumane and degrading treatment during the operation conducted in the course of the dispersal in Rustaveli Cinema House located on Rustaveli Avenue.

5. 5 cases of deprivation of life linked with the dispersal have been identified. Namely, the following 4 participants of the rally died in relation to dispersal developments – Nodar Tskhadadze, Nika Kvintradze, Suliko Asatiani and Temur Kapanadze, as well as a police officer - L. Masurashvili. Chapter Five of the report contains a detailed factual and legal analysis of the noted cases. Victims' assignees did not agree with GYLA (or any other human rights organizations) to represent their interests during the investigation in any of the noted cases of deprivation of life. Furthermore, they refrained from any communication/cooperation with GYLA for the purpose of obtaining information relevant to the case. Working on the cases that involved deprivation of life was rather difficult for the working group due to having no access to criminal case materials and the investigation's failure to make important evidence public. Therefore, evaluation of the cases is based on those factual circumstances and evidence the working group was able to obtain (witness testimonies, forensic findings, solicited medical documents, video and photo materials, etc.). In view of the aforementioned conditions, it is clearly difficult to construct a complete picture and identify the absolute truth in the given cases; however, the case materials obtained raise founded suspicions which question the official versions of the investigation. These need to be duly addressed by the investigation authorities.

With regard to the cases of deprivation of life, GYLA considers that in the spirit of Article 2 of the European Convention, the state has violated its positive obligation to plan and carry out the operation of the assembly dispersal in a way that would protect the lives and health of participants. Furthermore, GYLA believes that the independence, effectiveness and objectivity of the investigation into the cases of deprivation of life is highly questionable.

6. Chapter Six of the report focuses on official statements made by the Ministry of Interior Affairs of Georgia concerning the cases of deprivation of life. Analysis of the content and context of the statements proves that the Ministry violated fundamental rights to a fair trial and the principle of the presumption of innocence.

7. Chapter Seven of the report analyzes facts relating to interference with journalistic reporting during the rally dispersal. GYLA registered 29 cases where the work of journalists was hindered. During the assembly dispersals, police officers employed violence against journalists and/or detained them notwithstanding the fact that it was/should have been clear to the police that the noted individuals were journalists. It is noteworthy that although journalists were hindered in performing their professional duties, there were cases of some journalists (mostly TV based) pursuing their professional activity without any obstruction by law enforcement officers. The factual materials that the working group has obtained do not allow us to explain this differentiated treatment.

8. Chapter Eight of the report deals with the issue of allegedly missing persons, which was particularly pressing among the public during the first few days after the dispersal. As our analysis has revealed, it was impossible to determine the whereabouts of certain individuals for several days as law enforcement agencies did not allow them to contact their family. Furthermore, detained persons were transferred to various isolators without informing their family members or the detained individuals themselves or their attorneys, which seriously confused their family members about their fate and whereabouts. Such a practice also created certain problems in terms of providing an appropriate defense to the detained persons.

9. Chapter Nine is an overview of clear cases of inhumane treatment of individuals detained during the dispersal at police departments and isolators that call for effective and timely investigation.

10. Chapter Ten of the report analyzes the trials of individuals detained during the dispersal and evaluates their right to a fair trial within the noted context.

11. Chapter Eleven of the Report analyzes conditions at temporary detention isolators (TDIs), where individuals detained during the dispersal were placed. Ill-treatment of detainees was engendered not only by the fact that there are inadequate conditions at administrative imprisonment TDIs but also by individual cases of ill-treatment of individuals. It should be noted that the report does not contain the facts of administrative and criminal arrests following May 26. The issue will be dealt in a separate report by GYLA, possibly evaluating politically motivated detentions.

## Methodology

For the purpose of developing this report, a working group composed of GYLA's staff was designated, which focused on obtaining, documenting and analyzing relevant information. During its work, the group surveyed up to 70 victims and possible witnesses. In certain cases, members of the working group had to visit victims in the regions. By utilizing the resources of our lawyers in GYLA's regional offices, the working group managed to obtain statements from persons held in temporary detention isolators. It should be noted that in the course of looking for victims and communicating with them, the working group received assistance from corresponding political parties and NGOs engaged in monitoring. GYLA would like to express particular appreciation in this regard to NGO Public Defender.

It is also noteworthy that while working on individual cases, and those that involved deprivation of life in particular, the working group faced serious problems in communicating with victims and possible witnesses. Pointing to safety concerns, they refused to cooperate in any way or have their interests represented in the investigation. In this regard, while working on cases that involved deprivation of lives, it was difficult to obtain statements from relevant witnesses, and, in certain cases, individuals refrained from providing any information. In some cases, the working group had to act in the best interest of witnesses and hide their identity.

While working on the report, GYLA solicited public information from relevant state agencies, including the Ministry of Interior Affairs of Georgia, office of the General Prosecutor of Georgia, the Ministry of Health, Labor and Social Affairs of Georgia and various courts. In a number of cases, state agencies provided information; however, information concerning issues of essential importance were not provided by agencies, including the Ministry of Interior Affairs which refused to make any substantial evidence public in cases that involved deprivation of lives, to provide information on types of special measures used by the police during the dispersal or to provide the identity of police officers who had been subjected to disciplinary punishments *allegedly* due to human rights violations during the dispersal.

GYLA is still in the process of administrative and court disputes with the noted state agencies in order to obtain such public information.

It should be noted that assessment of some issues pertinent to the cases required special skills; therefore, the team turned to corresponding specialists and experts for consultations. Information and findings received from them were mostly oral but in some cases the working group obtained written findings as well.

While preparing the report, the working group obtained and processed photo and video material recorded by media outlets during the dispersal. The materials constitute important direct evidence for proving concrete human rights violations.

## Standard of Proof

In certain cases the working group resorted to *reasonable suspicion* as a standard of proof for establishing human rights violations. Therefore, the report contains only those facts of human rights violations that are corroborated in a concurrent and coexistent manner by information received from different sources. In specific circumstances, human rights violation were deemed by the working group as established only when individual victims and witnesses confirmed comparable and similar circumstances



in the survey, and furthermore, if additional evidence (including video and photo materials) existed to validate a disputed fact.

Clearly, in the process of validating facts and obtaining corresponding evidence, the resources of the working group were rather limited, which did not allow, *for instance*, the development of positive evidence in cases involving the deprivation of lives. Therefore, the working group limited itself to recording reasonable suspicions and assumptions.

### **Aim of the Report**

The aim of this report was to document human rights violations identified in relation to the dispersal of the assembly and the exercise of the right to protest, and to draw the attention of the state and public to the facts and practice of human rights violations revealed as a result. The ultimate purpose of monitoring the factual basis of these human rights violations was to promote an effective investigation and prosecution in the identified cases.

As the analysis of specific cases has demonstrated when using force during the dispersal, the police did not observe the requirements of lawfulness, proportionality and caution (positive obligations). The requirements of caution and proportionality were not observed in the process of preparing and planning for the rally dispersal. The police dispersed the assembly without giving protesters the possibility to leave the area and used clearly disproportionate force against them. The police massively used excessive force against the rally participants despite the fact that they had already been detained and completely subjected to factual control of law enforcement. Due to the aforementioned circumstances, the use of excessive force by the police during the dispersal may not be considered as merely sporadic and resulting from cases of individual defiance of orders and the officials that made the decision to disperse the rally and guided the operation should accordingly be held liable.

It should be noted that the response of the investigative authorities to the facts of human rights violations committed by law enforcement personnel during the dispersal was inadequate and inefficient. According to the reports, the Ministry of Interior Affairs held a total of 16 employees liable for disciplinary violations, including 4 employees that were dismissed<sup>2</sup>. However, MIA never made public the identity of the noted individuals or their official positions and the specific human rights violations that served as the basis for holding them liable. Furthermore, the Interior Ministry never made a statement about whether the high-ranking officials that planned and guided the rally dispersal were among the noted individuals. The public is also unaware whether individual cases of excessive use of force by the police, causing detriment to individual's health, are currently under investigation.

The facts of human rights violations committed during and following the dispersal require due and effective investigation. GYLA calls on the prosecutor's office to carry out an effective investigation into individual cases of human rights violations. In this regard, GYLA is ready to submit to the prosecutor's office all factual circumstances and evidentiary information (in consideration of the interests of individual concerned) that it currently possesses regarding individual cases.

Our analysis of the legislation of Georgia and international standards demonstrated important deficiencies in the existing legislation regulating the prevention and control of the use of disproportionate force by the police during a rally dispersal, which needs to be addressed. This is particularly true in regards to the differentiated use of special measures and the necessity to establish preconditions for using them, which is discussed in detail in Chapter Three of this report.

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<sup>2</sup> Official web-page of the Ministry of Interior Affairs: <http://www.police.ge/index.php?m=8&newsid=2649>

## CHAPTER ONE. ANALYSIS OF THE PRACTICE OF INDIVIDUALS' DETENTIONS ASSOCIATED WITH ASSEMBLIES WHICH TOOK PLACE PRIOR TO MAY 26

### Introduction

This Chapter covers the period between May 7-26, 2011, and examines the detention of individuals who were exercising their right to assembly and protest, or were otherwise associated with the planned and ongoing rallies, and whose detentions should be linked with the enjoyment of their right to assembly. The objectively measurable criteria used by the working group in the process of establishing the link between individual cases of detention with the right to assembly are as follows: 1. *Identity, status and political activity of a detainee*; 2. *His/her role in planning and preparing for the assembly*; 3. *Time, place and circumstances under which he or she was detained*. The facts surrounding the detentions of rally participants on or after May 26 are examined and evaluated in different chapters of this report. This Chapter focuses only on facts of detentions which occurred prior to May 26 but with objective circumstances indicating their link with the May 21-25 protest rally. Furthermore, this Chapter also examines facts of detention that occurred on May 7 in Rustavi and on May 21 in Batumi during rally dispersals or immediately following the dispersals, which amount to gross intrusions on the right to assembly.

The practice of mass detention of the individuals who were supporters of the Public Assembly and who were involved in one way or the other in preparations for May 21 rally, revealed and became the subject of research during the monitoring of the events of 26 May. The Public Assembly's executive board decided on 03:00 p.m. on May 21 as a starting time for protest rallies.<sup>3</sup> The noted time was publicly announced on May 2.<sup>4</sup> According to the same decision, the Public Assembly's headquarters was to ensure implementation of measures planned for May 2 - May 21, which supposedly meant active mobilization of supporters for holding an assembly on May 21, as well as tackling certain technical issues required for holding various measures for preparation, which are a part of the right to assembly. This activity falls within the protections of Article 25 of the Constitution of Georgia. In its April 4, 2011 decision, the Constitutional Court of Georgia clarified that "*effective realization of the right to assembly and manifestation means participation in assembly as well as the right to initiate and organize it*".<sup>5</sup> Therefore, prior to May 21, rally initiators and organizers were entitled to constitutional guarantees similar to those enjoyed by individuals directly engaged in the rally. Therefore, cases of detention of individuals who were rally organizers, or were otherwise responsible for the rally, up to several days before the May 21 rally, can be deemed as an intrusion of the right to assembly, which needs to be justified as legitimate and proportionate by the authorities, just as they must for in circumstances of right to assembly itself.

For the purpose of providing legal assistance to rally participants detained during the dispersal on May 26, GYLA lawyers attempted to find them in various TDIs. As it was difficult for the administration of TDIs to receive/confirm information about detainees taken in, GYLA's lawyers had to visit the TDIs themselves to find out the whereabouts of detainees. To this end, lawyers met with detainees in each isolator and received information about their identity, time and circumstances of detention. During this survey it was revealed that detentions of individuals linked with the May assemblies occurred prior to May 26 and some of the individuals still held at isolators had been detained before the 26<sup>th</sup>. In consideration of the aforementioned, in the course of preparations for the report, the working group sought to determine the total number of individuals detained prior to May 26 who were exercising their right to freedom of assembly and protest in one way or another or were otherwise associated with the planned/ongoing rallies (*hereinafter, individuals detained prior to May 26*).

The total number of individuals detained prior to May 26 also includes detainees who were not directly

<sup>3</sup> May 2, 2011 decision of the executive board of Public Assembly: <http://www.democrats.ge/ka/siaxleebi/akhali-ambebi/1142-sakhalkho-krebis-gadatsyvileba.html>

<sup>4</sup> Kurieri news program, broadcasted on May 2: [http://www.myvideo.ge/?video\\_id=1306816](http://www.myvideo.ge/?video_id=1306816)

<sup>5</sup> April 4, 2011 decision of the Constitutional Court of Georgia: [http://www.constcourt.ge/index.php?lang\\_id=GEO&sec\\_id=22&id=640&action=show](http://www.constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=640&action=show)

involved in rally organizing; however, in consideration of place, time and circumstances of these detentions it is impossible to examine them in isolation. *For instance*, detention of cab drivers who helped Public Assembly supporters transport various technical equipment necessary for holding the rally or who were detained and sentenced to administrative imprisonment together with the Public Assembly supporters.

While examining these circumstances, the working group learned that arrests allegedly associated with exercising the right to assembly and manifestation occurred in early May as well as several days before the May 21 assembly was held. The intensity of arrests was particularly high 2-3 days before the May 21 assembly. In determining the number of detainees, the working group was guided by four main sources, including, and most importantly, the information provided by GYLA's lawyers about individuals held at various isolators, as well as information received from NGO Public Defender and "Democratic Movement – Unified Georgia" political party and open sources (various websites). Based on the obtained information, the working group identified the detentions of 96 individuals (including 42 cases recorded by GYLA's lawyers and 54 cases provided by other sources) who were exercising their right to assembly and manifestation, while others were otherwise linked with the planned/ongoing protest rallies.<sup>6</sup>

Among the individuals detained prior to May 25, the working group was able to survey and receive statements from 18. For the purpose of analyzing their relevant circumstances, the working group also drew on information provided verbally by rally organizers and Public Assembly supporters. It goes without saying that the large number of detainees initially ruled out the possibility of a detailed analysis of every single case; however, we believe that the homogeneity of circumstances and coinciding facts contained by a number of cases is sufficient to prove that noted arrests were related to the exercise of the right to assembly and manifestation. Furthermore, analysis of these cases allows us to discuss common trends of rights violations that were characteristic to detentions in this period, including alleged violations of the right to a fair trial, the right to proper treatment, and the right to private and family life.

### 1.1. Facts Surrounding Detention of Participants of the Rally Held in Rustavi on May 7, 2011

Intrusions on the right of manifestation and initial instances of detention were observed in early May, when members of the youth organizations of Public Assembly and "Ara" (an NGO) held a rally within the "Expose an Executioner" movement. This rally occurred on May 7 outside the house of Valeri Dughashvili, head of Rustavi N1 police department. In analyzing the noted detentions, GYLA was guided by statements given to the working group by 7 individuals, as well as video material recorded by Maestro TV which showed the rally dispersal.<sup>7</sup>



*Peaceful assembly in Rustavi*

As chairperson of Ara, and one of the organizers of the rally, Levan Chitadze stated, the rally had been going on for 15 minutes. At the end of the rally he noticed a police patrol pickup approaching from one of the allies. It was followed by three more police patrol cars. According to Levan Chitadze's statement, suddenly, *"one of the persons present, who had not been a member of the movements of Ara or Public Assembly, verbally insulted the police-women. He even physically attacked one of them (slapping). Then he ran away towards the alley where the police cars had been stationed... While he fled, police officers formed a corridor and let him [though to] get away, without even trying to stop him; he was not chased by the police."* The above facts are confirmed by the video material released by Maestro TV.<sup>8</sup>

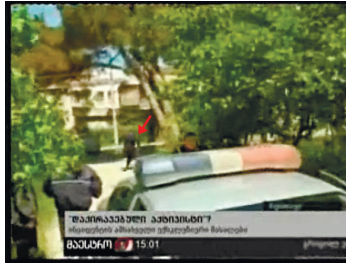
According to L. Chitadze, following the noted incident, people dressed in uniforms emerged from one of

<sup>6</sup> Note: The above number also covers the persons who were detained during 7 and 21 May rallies respectively in Rustavi and Batumi

<sup>7</sup> See <http://www.maestro.ge/?address=uc&id=20872&page=1>

<sup>8</sup> See: <http://maestro.ge/?address=uc&id=20901&page=1>

the neighboring streets. Having noticed their appearance, he announced through a speakerphone that the rally was finished and told protesters to disperse voluntarily. He repeated the instruction a number of times, so that the police could also hear. Protesters starting moving toward Chitadze Str. in order to leave the premises together; however, suddenly police officers besieged some of the participants and detained them.



Photos illustrate the behavior of alleged provocateur  
The last photo illustrates the rally disperse by police

The video material released by Maestro TV clearly shows the dispersal of the rally and detention of the protesters. There are no signs of group or individual resistance to the police on the part of the protesters. Nevertheless, police officers ordering participants to stop swearing are audible. The police are addressing protesters who are surrounded by law enforcement, completely subjected to their control, and following them toward police cars without putting up any resistance.<sup>9</sup>

The circumstances of the case demonstrate that the police allegedly used *agents provocateurs*, followed by illegal detention of rally participants. In consideration of the fact that the state has a positive obligation to protect peaceful protesters from counter-demonstrators and provocateurs, alleged use of agent provocateurs by the police for the purpose of deranging (interfering with) the rally, violates Article 25 of the Constitution.<sup>10</sup>

The police detained 13 participants of the May 7 rally, namely, **Gocha Tedoradze, Levan Chitadze, Vasil Balakhadze, Gia Nozadze, Gela Nakashidze, Otar Kavlashvili, Nika Samkharadze, Davit Dalakishvili, Shalva Makharashvili, Kakha Salukvadze, Giorgi Paresashvili, Levan Mtvishvili, Mirian Jashiashvili**. The rally participants were detained under Article 166 (*petty hooliganism*) and Article 173 (*disobedience to lawful orders or demands of law enforcement officers or military servicemen*) of the Code of Administrative Offences of Georgia. Fines as well as imprisonment for differing periods (*7 days, 15 days, 30 days*) were used as punishment.

Gross violations of human rights against the participants detained on May 7 also occurred during their trials and tenure at isolators, including right to a fair trial, physical abuse, and inhuman and degrading treatment, which is discussed in details below.

### 1.2. Facts Surrounding Detention of Participants of the Rally Held in Batumi on May 21

Intrusion on the right to assembly and manifestation were observed on May 21 in Batumi, during a protest rally held by the Public Assembly. With regard to this incident, representative of the working group met with representatives of the Batumi based organization Democratic Movement – Unified Georgia to receive information. As in preparing other parts of the report, detainees remained held in TDIs, which made



<sup>9</sup> See <http://www.maestro.ge/?address=uc&id=20872&page=1>

<sup>10</sup> GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY (2ND EDITION), OSCE/ODIHR EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), § 31, 2010, can be found at [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)020-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)020-e.pdf)

it difficult to communicate with them. As such, we draw on information and statements provided by their fellow party-members in oral and written form.

On May 21, an assembly was held at Europe Square, where the participants started walking toward Adjara TV at around 17:30, requesting airtime. However, as one of the organizers and participants of the rally, Guram Khozrevanidze, stated, the door of the office had already been locked upon arrival, and as a result the leaders of the rally did not have an opportunity to present the application containing the demands of the rally participants. Leaders of the rally gave the TV Company's leadership an ultimatum to accept the application within 15 minutes; otherwise, they stated that *"protesters would unlock the door by their own force."*<sup>11</sup> Several minutes after the ultimatum was made, without approval from rally leaders and in fact to their surprise, some of the rally participants started throwing rocks toward the television building. It should be noted that this was towards the general area where rally leaders were standing, and some leaders were even hit by rocks. In his statement Guram Khozrevanidze noted: *"3-4 minutes after the so-called 15 minute ultimatum was announced, I noticed an organized group of 15-20 men [civilians] started mingling with the rally participants. I did not recognize any of them; however, I remember their faces and I can identify some. The 15-minute ultimatum had not yet been expired when this group of 20 men started throwing rocks toward the entrance to the television station."* As a result, the windows of the television were shattered. Some policemen were also hit by rocks. Shortly afterward, with the involvement of law enforcement, the rally was dispersed; however, during the dispersal there were no arrests made on the scene, except for one of the participants who was detained after the protesters started walking from the television station office toward Europe Square.



As for the detention of other supporters of Public Assembly who participated in the May 21 rally, these occurred later at the office of Public Assembly, where at around 1:00 am Special Forces Units broke into the office. As one of the supporters of Public Assembly and a rally participant, Nodar Tsintsadze, stated, the Special Forces Unit had a list of individuals that they were supposed to detain.<sup>12</sup> According to individuals who were present at the office at the time of these detentions, representatives of the Special Forces started asking for their names and checking them against the list of names. If an individual's name was on the list, he was detained. It was during this raid that **Dimitri Cheishvili, Temur Chanturishvili, Davit Samnidze, Anzor Solomonidze and Jambul Sharabidze**, among others, were detained. As the list of those persons detained demonstrates, most of the detainees were heads of various regional organizations of Public Assembly; for instance, Temur Chanturishvili is the head of Batumi based branch of Democratic Movement – Unified Georgia, Davit Samnidze is the head of the Khelvachauri branch of Public Assembly, and Jambul Sharabidze is the head of Keda operations.

In this regard, the factual circumstances surrounding **Emzar Kadidze's** detention are rather peculiar. As Guram Khozrevanidze recalls in his statement, after the Special Forces Unit left the office, members and supporters of the party started planning for a rally to be held the following day. Emzar Kadidze, who had not been detained, was with them. He declared to his fellow party-members that he could mobilize dozens of supporters from the Keda district. As Guram Khozrevanidze stated, a couple of minutes afterward, Kadidze was contacted by a police officer and summoned to the police station, where he was arrested.

Out of the participants of the assembly held in Batumi on May 21, a total of 16 people were detained, including some arrested on May 21 at the office of the party, when the Special Forces Unit broke in and some on May 22, the following day. The noted persons were detained at various times and locations. One of the rally organizers, Tsothe Ananidze, was detained later, on June 7.

Some of the persons detained in Batumi were sentenced to administrative imprisonment for different

<sup>11</sup> Statement obtained by GYLA from Guram Khozrevanidze

<sup>12</sup> Statement obtained by GYLA from Nodar Tsintsadze

periods of time, including Temur Chanturishvili who was sentenced to 45 days, Davit Samnidze – 45 days, Jambul Sharabidze – 45 days, Roland Khozrevanidze – 60 days, Maradi Solomonidze – 60 days, Roland Abuladze – 60 days, Emzar Kadidze – 60 days, Khamza Giorgadze – 60 days. Criminal proceedings were instituted against some of the detainees, including Dimistry Cheishvili, Gocha Mukhashavria, Anzor Solomonidze, Khvicha Gamarjobadze, Davit Panteradze, Taniel Putkaradze, Tshotne Ananidze, Vakhtang Siordidze, Nugzar Giorgadze.

### ***1.3. Detention of Individuals Exercising the Right to Organize an Assembly***

As already noted, the frequency of detentions increased several days prior to the May 21 rally. Specifically, persons directly involved in preparations for the rally scheduled for May 21 were detained on May 18-21. In the course of preparation of this report, in some cases the working group managed to receive the statements about mentioned detentions personally from detainees. The number of **such detainees interviewed by GYLA was 7**. According to the information received, noted individuals were detained while exercising their right to manifestation or possibly in connection with that right. Such intrusion by the state can be viewed as interference with the right to manifestation. This subchapter contains several cases studied by GYLA in the process of preparation of the report, which illustrate that rally participants were detained while or in connection with exercising their right to manifestation. As noted in the introduction, in the process of assessing these events, GYLA was guided by objective criteria, including identity and status of a detainee, political activity, party role, and the time and circumstances of the detention. Furthermore, analysis of verbal statements made by the police officers during detentions is also of interest. These statements are similarly confirmed by a majority of detainees' statements (*see subchapter 1.4 below*).

On May 19, a supporter of Public Assembly, **Emzar Akhvlediani** was detained. He was posting flyers in Isani district at a bus station. According to Emzar Akhvlediani, he had been involved in rally organizing since early May; specifically, he participated in distribution of newspapers and booklets. He recalls that on May 19, at around 7:00 p.m., after he had posted flyers and talked to several young people, two policemen came up to him, demanding he show ID. Suddenly a white car stopped nearby and two men dressed in civilian uniforms got out and demanded he sit in the car. They took Emzar Akhvlediani to Isani police department where he was told that he had physically assaulted a police officer. Emzar Akhvlediani was sentenced by a court to 30 days of administrative imprisonment.

On May 20, at Puri Square, four supporters of Public Assembly were simultaneously detained – **Misha Namicheishvili, Davit Arghvliani, Vladimer Shakhpazidi and Murtaz Kharziani**. They state that they were transporting banners for the May 21 rally to the party office. The detainees were sentenced by a court to 30 days of administrative imprisonment for resisting and disobeying police officers. The minibus that was used for transporting the banners was taken by the police to a special holding lot.

One of Public Assembly's supporters, **Aliosha Orujovi** was detained outside his own house on May 26, at 6:30 am, in the village of Karajala. In the report on the detention, the police officer stated that the detainee was swearing without addressing anyone in particular. The court based its judgment on the testimony of the policemen and sentenced Aliosha Orusjovi to 90 days of administrative imprisonment under Article 173 of the Code of Administrative Offences. The detainee himself states that he participated in organizing the May 21 rally, and he planned to leave Telavi to attend the rally on May 21 together with other activists.

One of Public Assembly's supporters **Giorgi Kotaria** was detained outside his own house at 8:00 am on May 21. As the detainee states, he was involved in organizing the May 21 rally, which was planned and announced to be held on May 21 at 3:00 pm. A court sentenced him to 30 days of administrative imprisonment.

The head of the central office of Democratic Movement – Unified Georgia, **Gocha Tsiklauri** was detained by patrol police at Bakhtrioni Str. on May 21. According to the detainee, he was stopped by the

police at around 5:00 pm. After inspecting his documents, he was taken out of his car, cuffed and taken to the premises of the Technical University, without informing him of the grounds for his detention. The police held him for about an hour and a half. Afterward, a patrol police officer wrote him a fine for talking on his cell phone while driving. The receipt notes it was written at 20:35. The receipt also has Gocha Tsiklauri's signature on it. Furthermore, a police officer drew up a protocol of administrative detention, which lists 19:35 as the time the document was written. The protocol specifies that Gocha Tsiklauri was detained for verbally abusing a patrol-inspector and maliciously disobeying lawful orders a number of times. The protocol lists 19:30 as the time of the detention of Gocha Tsiklauri. This citation does not have the detainee's signature on it. As the detainee states, the officers were waiting an hour and a half for further directives; afterward, they wrote a fine and drew up a report of detention. Gocha Tsiklauri is the head of the central office of Democratic Movement – Unified Georgia. He was actively involved in dealing with organizational issues of the May 21 rally.

There were some people among those detained prior to May 26, who had not been involved in preparations for the rallies, and there are no clear signs indicating that their right to assembly and manifestation was infringed. However, these individuals believe that their detention was related to their participation in protest assemblies. Below are the cases of detention of three of such individuals.

**Giorgi Tandilashvili** was detained in village Tsinandali on May 22. As the detainee clarifies, at around 12:30 he was visited by police officers and taken to Telavi TDI without being given any explanation. Based on Article 173 of the Code of Administrative Offences, a court resorted to the maximum term of administrative imprisonment and sentenced him to 90 days of imprisonment. Giorgi Tandilashvili believes that this had to do with the protest rally that he attended before the detention.

A member of Democratic Movement – Unified Georgia, **Zurab Piriashvili and his fellow party-member Tengo Koblishvili** were detained in Zurab's house on May 23, at around 12:30. As Zurab Piriashvili clarifies, he was detained by 14 police officers who went into his house at night, and took him without explanation, cuffed him in the car and drove him to Dighomi TDI.<sup>13</sup> According to the detainee, he was detained for his party activities. He also notes: *"police officers were calling me a traitor to my country and were swearing at me. I am a member of Burjanadze's party. I participated in the rallies."* Zurab Piriashvili was sentenced by a court to 40 days of administrative imprisonment under Article 166 of the Code of Administrative Offences of Georgia.

#### **1.4. Facts of Human Rights Violation during Detentions**

According to statements by some of the detainees, during detention law enforcement officers abused their authority by physically and verbally abusing detainees.

As "Democratic Movement – Unified Georgia" member Zurab Piriashvili explains, during the detention he was physically abused. The physical injuries that he had sustained were evident at his trial; however, according to him, the judge did not react to his injuries and upheld a statement by a police officer that those physical injuries were sustained before the detention.<sup>14</sup>

Gocha Tedoradze likewise was both verbally and physically assaulted and threats were made to harm his family members.<sup>15</sup>

Statements by detainees further demonstrate that during verbal assaults police officers were stressing the detainees' involvement in party activities. This was confirmed by most of the persons surveyed by GYLA during preparation of this report. For instance, according to Vasil Balakhadze's statement, who was detained on May 7. During his detention police officers made threats that whatever came to him,

<sup>13</sup> Statement obtained by GYLA from Zurab Piriashvili

<sup>14</sup> Statement obtained by GYLA from Zurab Piriashvili

<sup>15</sup> Statement obtained by GYLA from Gocha Tedoradze

it would be all due to his party-related activities.<sup>16</sup> Gocha Tedoradze also stated that “*police officers did not even try to hide that we were detained for participating in the rally and getting ready for the May 21 rallies*”.<sup>17</sup>

In his statement, Aliosha Orujovi, detained on May 21, recalls that during detention not only were police officers referring to his party-related activities; they also verbally assaulted him.<sup>18</sup> Zurab Piriashvili’s story is quite similar. He recalls that during detention law enforcement officers swore at him and called him a traitor to his country.<sup>19</sup>

Such statements by the police in regards to the party-related activities of detainees reaffirm the close link between the detentions and ongoing political developments of that time. Furthermore, it indicates that police violated the principle of political neutrality.<sup>20</sup>

It is noteworthy that detainees were mostly not allowed to contact their family members and inform them about their detention but rather, the information was provided to families by detainees’ fellow party-members, friends or attorneys. This trend is confirmed by most of the individuals surveyed by GYLA. For instance, *Otar Kavelashvili* recalls that following his detention he was not allowed to make a telephone call. As for *Gia Nozadze*, his family members were informed of his detention only after the trial, by members of Public Assembly’s Rustavi organization. *Gela Nakashidze*’s family was informed of his detention by his friends.<sup>21</sup>

### **1.5. Facts of Human Rights Violations during Trials**

Statements of interviewed detainees demonstrate that violations of their right to a fair trial were common. For instance, judges allegedly applied a low standard of proof for establishing administrative violations. Furthermore, the principle of equality of parties and a public trial were violated. According to the statements obtained by GYLA, while reviewing a case judges were frequently guided solely by the statements of policemen; furthermore, they refused to grant motions filed by the defense. In a number of cases, courtrooms were filled with strangers dressed in civilian uniforms, making it impossible for supporters of the defense to attend trial.<sup>22</sup>

According to the statement of Gocha Tedoradze, who was detained in Rustavi on May 7, although the rally was recorded on a CD and the defense had filed a motion for opening it, the judge refused to grant the motion. *Otar Kavelashvili*’s statement confirms that detainees’ motions to present video-footage recorded by public TV and Maestro TV for the defense case were rejected by judges. *Levan Chitadze*, detained on May 7, is quite similar in this regard: “[*the judge*] did not consider any of the testimonies of rally participants who were examined as witnesses at the trial. He refused to grant any of the motions filed by my attorney including retrieval of video tapes from cameras of several television companies and police officers themselves, which would have clarified some issues in the case”.<sup>23</sup>

According to representatives of Public Assembly, during the trials of individuals detained in Batumi on May 21, the court did not conduct a comprehensive and objective examination of the circumstances in the cases. According to Public Assembly, the rally outside Adjara TV, including the incident that followed, were recorded by cameras installed by the Ministry of Interior Affairs. The cameras should have

<sup>16</sup> Statement obtained by GYLA from Vasil Balakhadze

<sup>17</sup> Statement obtained by GYLA from Gocha Tedoradze

<sup>18</sup> Statement obtained by GYLA from Aliosha Orujovi

<sup>19</sup> Statement obtained by GYLA from Zurab Piriashvili

<sup>20</sup> Guidebook on Democratic Policing, § 9, OSCE, 2008, accessible at: <http://www.osce.org/spmu/23804>

<sup>21</sup> Statement obtained by GYLA from Gela Nakashidze

<sup>22</sup> Statement obtained by GYLA from Vasil Balakhadze

<sup>23</sup> Statement obtained by GYLA from Levan Chitadze



recorded any participant's clash with police. The rally was also recorded by several television companies. Nevertheless, despite motions filed by the defense, the court ruled against opening the video recordings.

With regard to trials it should also be noted that the police officer that had drawn up a protocol of detention at the police department, or other location, was the one that testified against a detainee, as opposed to a police officer that had actually detained the individual concerned, which was a common practice for these trials.<sup>24</sup> Accordingly, the facts underlying charges of resisting a police officer and disobeying his lawful orders were confirmed at trial by an officer that was not present at the scene in the first place.

As detained participants of the rally held on May 7 in Rustavi confirm in their statements, courtrooms were intentionally filled by strangers in order to prevent supporters of the defense and detainee's fellow party-members from attending the trials. According to detainees, unfamiliar persons dressed in civilian uniforms were sitting in the courtroom. It should be noted that cases involving administrative offences are considered in a prompt manner, more specifically, cases involving offences envisaged in Articles 166 and 173 of the Code are decided by a court within 24 hours after bringing an alleged offender before court.<sup>25</sup> In light of this, it makes it even more peculiar that courtrooms were packed with complete strangers. As a result, the right to a public trial was allegedly restricted by using the noted method, which hindered interested individuals, including members of detainees' families, their friends and fellow party-members from attending trial and observing the process.

### **1.6. Ill-treatment at Temporary Detention Isolators**

Among the cases studied by the working group, there were several cases where facts of ill-treatment were revealed, including physical and verbal abuse, inadequate medical assistance, and problems related to water, food and parcels at temporary detention isolators (hereinafter, TDIs).

When describing the facts of ill-treatment in this chapter, the working group drew only on victims' statements. As detainees could not apply in a timely manner to medical facilities for examination, the working group was unable to obtain corresponding medical documents about their health conditions at the time of detention. It was already too late to conduct a medical examination at the time of preparing this part of the report. Therefore, we are unable to substantiate the facts of ill-treatment contained in this chapter with other evidence. However, under Article 110 of the Criminal Code of Georgia, the information contained in this report is nonetheless sufficient to serve as grounds for instituting an investigation into alleged facts of ill-treatment.

- Facts of physical abuse at isolators

According to 22-year old Levan Chitadze who was placed in Dighomi TDI, he was subject to particularly cruel treatment. He was held in a solitary confinement in Dighomi TDI from May 8 to May 21. He recalls that two days after his detention, late at night on May 9, security guards of the TDI took him out from his cell into a corridor and demanded he stand one meter away from the wall (with his face to the wall) and press his head against the wall. The detainee was ordered to remain in that position for one hour. As the detainee stated, he refused to follow illegal instructions of guards and he was punished as a result. According to the detainee, the guards summoned an individual dressed in civilian clothing (as he was not wearing a mask, L. Chitadze is able to identify him), who was referred to as "Alex". The noted person ("Alex") instructed guards to undress the detainee and order him to do squats without his clothes on. As the detainee refused to follow the order, "Alex" punished him. As Levan Chitadze recalls in his statement, *"it is hard for me to say exactly for how long but I had to stand for about 4-5 hours on my feet. When*

<sup>24</sup> Statement obtained by GYLA from Nika Samkharadze

<sup>25</sup> Para 2, Article 262 of the Code of Administrative Offences of Georgia

*they took me back to the cell, the sun was already rising.”<sup>26</sup>*

According to the detainee, he was also subject to abuse of power and other degrading treatment at Dighomi TDI. In his statement Chitadze notes: *“when they took me out for punishment on May 15, there were up to 10 employees of the TDI standing outside [in the corridor]. They tied me up, lifted me in the air and took my clothes off by use of force. All of them let their hands go off me at the same time and I was dropped from around 1 meter height on to the floor. “Alex” ran to me and “explained” that I was a traitor of my own county, an agent of Russia and I even deserved to die.”*

It should be noted that all security guards wore metal plates around their neck, with their names and surnames written on them. However, as Levan Chitadze clarifies, the noted means of identification was hidden behind their uniforms or worn upside down, so that it was impossible to read their names. However, Chitadze notes that as the person who was referred to as “Alex” by guards, as well as guards themselves did not wear masks, he is able to identify them. Clearly, this fact positively contributes to the need for an investigation into the facts of ill-treatment of Chitadze.

On the night of May 24 Chitadze was transferred to Kutaisi TDI. According to the detainee, after entering the TDI he had to walk through the so-called “corridor of shame” formed by 15 persons who started beating him with rubber truncheons.

Following his release Levan Chitadze underwent a clinical interview and examination at the Center for Psychological and Medical Rehabilitation for Victims of Torture from July 29 to August 5, with the assistance of GYLA. According to the findings of Khatuna Chkoidze, psychiatrist at the Center, Chitadze was suffering from a minor episode of depression. Following his release he also suffered from symptoms of acute stress disorder for a short period of time, namely, obsessing over unpleasant memories about events he had been subjected to, nightmares, apparent insomnia, irritation, etc. According to the findings, *“noted disorders are developed in response to strong traumatic events, which contain a threat to damage safety and physical inviolability of an individual; therefore, they were completely related to the torture, and instances of inhumane and degrading treatment that he underwent.”<sup>27</sup>*

According to **Gocha Tsiklauri** detained on May 21, he was subject to verbal and physical abuse at a TDI in Kvareli. He also claims that the head of Kvareli TDI was particularly cruel. Furthermore, the detainee recalls that *“every time they beat us up, they did not refuse to call a doctor. Brigades of Kvareli ambulance were called almost every other day. Detainees mostly suffered from high blood pressure and headaches”*.

**Gocha Tedoradze** detained on May 7 and held at Kvareli TDI also pointed to instances of ill-treatment. According to the detainee, from May 22 to May 30 detainees were subject to beating three times a day.<sup>28</sup>

- Verbal abuse and psychological pressure at isolators

Some of detainees held in Dighomi TDI noted that they were subject to verbal assaults and psychological pressure. They note that every morning they were stripped naked for inspection.

Further, employees of the TDI frequently violated the requirement of political neutrality when dealing with detainees. For instance, the statement of Emzar Akhvlediani, detained on May 21, reveals that when detainees were asking for water for the bathrooms in their cell, they responded – *“Burjanadze will come and supply you [with water]”*. Furthermore, employees of the isolator took detainees out from their cells and had them listen to the song *“Misha is Cool”*.<sup>29</sup> According to Levan Chitadze, the TDI in Sagarejo where he was held did not have a bathroom. This fact is confirmed by the statement of Zurab

<sup>26</sup> Statement obtained by GYLA from Levan Chitadze

<sup>27</sup> Findings about Levan Chitadze’s health condition; #4, 05/08/2011, issued by the Center for Psychological and Medical Rehabilitation for Victims of Torture

<sup>28</sup> Statement obtained by GYLA from Gocha Tedoradze

<sup>29</sup> Statement obtained by GYLA from Emzar Akhvlediani

Baramidze, also held in Sagarejo TDI.<sup>30</sup> In response to Chitadze's request for letting him use a bathroom, guards said "we do not let traitors use a bathroom".<sup>31</sup>

- Inadequate medical treatment

Some of the persons detained prior to May 26 complained about inadequate medical care. According to Vasil Balakhadze, detained on May 7, they refused to provide him with medical assistance at Dighomi TDI and his requests were responded to with political allegories. Furthermore, according to Gia Nozadze, detained on May 7, he had a heart attack at dawn on June 12 in Dighomi TDI; however, he notes that employees of the isolator failed to call an ambulance until the following day when he allegedly had a cardiac arrest.<sup>32</sup>

- Problems related to water, food and parcels

All individuals detained on May 7 and interviewed by GYLA pointed to issues related to food. Further, according to the detainees, they received parcels that had already been emptied; however, detainees were forced to confirm with their signature receipt of the missing items.

Otar Kavelashvili, who was initially held in Rustavi TDI and later transferred to Martneuli TDI, explains that over a period of 4 days he was not provided with food and he had only water to survive on. After those four days he was provided with 200 grams of bread.<sup>33</sup>

The chairman of the Kvemo Kartli youth wing of Democratic Movement United Georgia, Vasil Balakhadze, also pointed out problems related to food that he faced over 15 days after his detention in Dighomi TDI.

According to Levan Chitadze, detained on May 7, he was provided with water just once – on May 15 - for the entire period from May 11 to May 18 that he spent in Dighomi TDI.<sup>34</sup> On May 21, Chitadze was transferred to Sagarejo TDI, where he states that he did not receive any food at all. Zurab Baramidze, detained on May 21 and placed in Dighomi TDI, also cites problems related to food. According to him, one of the methods of punishment in Dighomi TDI was cutting off the water supply. Zurab Baramidze clarifies that having no access to water took a particular toll on him and two other persons that were held in the same isolator, as they suffered from diabetes.<sup>35</sup>

### ***1.7. Frequent Transfer of Detainees from One Isolator to Another***

As revealed by the statements of detainees, they were frequently transferred multiple times from one TDI to another without prior notification about the transfer. Furthermore, detainees were unaware of why they were transferred to a different TDI. According to Emzar Akhvlediani, he was initially placed in Dighomi TDI. A week later he was transferred to Mtskheta TDI, but the facility was unable to admit him due to overcrowding. Afterward, he was transferred from Mtskheta to Dusheti.<sup>36</sup> The transfers occurred without any explanation. The same was true for other detainees as well; specifically, Khardziani, Arghvliani and Namicheishvili were transferred from Dighomi TDI to Khashuri. After about a day

<sup>30</sup> Statement obtained by GYLA from Zurab Baramidze

<sup>31</sup> Statement obtained by GYLA from Levan Chitadze

<sup>32</sup> Statement obtained by GYLA from Gia Nozadze

<sup>33</sup> Statement obtained by GYLA from Otar Kavelashvili

<sup>34</sup> Statement obtained by GYLA from Levan Chitadze

<sup>35</sup> Statement obtained by GYLA from Zurab Baramidze

<sup>36</sup> Statement obtained by GYLA from Emzar Akhvlediani

and a half they were transferred to Borjomi for four nights. The detainees spent the rest of the time in Akhaltsikhe TDI. They were unaware of the reasons they had to change isolators so frequently.<sup>37</sup> Giorgi Kotaria was also subject to frequent transfer from one isolator to another; more specifically, he was initially placed in Dighomi TDI, then he was transferred to Khashuri for a single day. Afterward, he was transferred to Borjomi and from Borjomi he was taken to Akhaltsikhe TDI about four days later.<sup>38</sup>

Furthermore, as detainees themselves stated, their family members were not kept informed about their transfers, which complicated communication with attorneys who frequently had to look for detainees at different isolators.

### Findings

The analysis of these cases by GYLA for the purpose of evaluating general trends of detentions prior to May 26 revealed key problems affecting detainees. As stated above, detentions prior to May 26 mostly had one trend in common – detentions occurred when individuals were exercising their right to manifestation or detentions were otherwise related to the realization of the right to manifestation, both of which amount to violations of the right to assembly and manifestation. Analysis of these cases revealed that police conducted mass detentions of individuals who were organizers of the May 21 rally or were involved in preparations for the May 21 rally one way or the other. Clearly, mass detentions of individuals that fall under these categories allow us to maintain that they were arrested for the purpose of interfering with their right to assembly and manifestation, which amounts to violation of Article 25 of the Constitution of Georgia.

Most of the cases shared the same trend of violations to the right to a fair trial against individuals detained prior to May 26. Furthermore, some of the detainees were allegedly subject to poor and degrading treatment at temporary detention isolators. As the analysis of facts has demonstrated, some of the detainees were subject to punishment measures in the form of physical and verbal abuse. In certain cases, detainees lacked adequate access to medical care, water and food.

GYLA believes that the aforementioned information on alleged facts of ill-treatment at TDIs requires a corresponding response from the authorities. Furthermore, gross cases of ill-treatment, including the cases of Levan Chitadze and Gocha Tedoradze, require timely and effective investigation by the office of the prosecutor.

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<sup>37</sup> Statement obtained by GYLA from Murtaz Kharziani and Vladimer Shakhpazadi

<sup>38</sup> Statement obtained by GYLA from Giorgi Kotaria

## CHAPTER 2. FORMAL GROUNDS FOR DISPERSAL OF THE ASSEMBLY

### Introduction

Prior to giving an overview of facts of human rights violations (individual cases and practices) by the police during and related to the dispersal of the May 26 assembly, from the legal point of view it is essential to evaluate several issues of fundamental importance, related to the determination of legal regime to be applied to the assembly participants and analysis of the state's decision to disperse the assembly. In consideration of the factual circumstances related to the assembly dispersal (participation of the so-called Oath of Fealty in the assemblies and their conduct; conflict of interest between holding a parade at Rustaveli Avenue and holding an assembly on the very same territory; declared goal of the participants to prevent the authorities from holding a parade), whether the May 25 assembly was peaceful in nature and whether the state's decision to disperse the May 26 assembly complied with international human rights standards from formal point of view, was actively addressed in public discussions.

Evaluation of peaceful nature of an assembly is essential for determining whether the assembly participants were covered by Article 25 of the Constitution of Georgia (right of assembly and manifestation) and Article 11 of the European Convention. International human rights law protects right to a peaceful assembly. Non-peaceful nature of an assembly rules out *ratione materiae* application of Article 11 and guarantees envisaged by this Article toward participants. If it is determined that the rally is peaceful in nature, the state is binding by all obligations (including positive ones) prescribed by the international human rights law with regard to freedom of assembly, including, necessity and intensity of force used by the state during the dispersal is determined by nature of assembly.

If it is determined that intention and conduct of participants was *prima facie* peaceful in nature and correspondingly, it was covered by Article 11 of the European Convention, the next issue that needs to be addressed is lawfulness and proportionality of state's intrusion in freedom of assembly.

However, it is noteworthy that evaluation of lawfulness and proportionality of the decision made by the state is related to the criteria of threat to public order; therefore, it is impossible to address separately the conduct (intention) of participants within the context of violence and the state's decision to disperse the assembly.

In its official position, the authorities indicated expiration of term notification about the intent to hold a rally and the necessity to hold a parade on the territory where the May 26 rally was scheduled to be held as legal grounds for the rally dispersal. Correspondingly, for evaluating lawfulness and proportionality of intrusion in freedom of assembly, it is necessary to evaluate the following issues: (1) whether the authorities had formal grounds for termination of the assembly. In this regard, it is important to address the issue of expiration of the term of notification as a separate issue and in coexistence with the necessity of holding a parade amounts to formal (due to unlawfulness of the rally as the term for submitting the notice had expired) and material (due to parade as a legitimate public goal) grounds for terminating a protest rally; (2) whether the grounds cited by the authorities for termination of the rally (holding a parade) is a legitimate aim protected by the law, justifying restriction of freedom of assembly; (3) whether the rally dispersal as a form of restriction of freedom of assembly was a proportionate measure for reaching the legitimate goal (if we consider that holding a parade is a legitimate goal), i.e. (a) whether it was possible to reach the goal by terminating the rally, (b) whether it was possible to reach the very same goal by means less intense than rally dispersal, (c) which legal concern is more important for a democratic society – holding a parade or realizing freedom of assembly.

### 2.1. Whether participants of the May 25, 2011 assembly held at Rustaveli Avenue were exercising the freedom of peaceful assembly

The authorities did not question a peaceful nature of the protest rally of Representative Public Assem-

bly in any of its official statement. The authorities justified the dispersal only by expiration of term for submitting a notice and the necessity of holding a parade. Nevertheless, due to the aforementioned circumstances (work of the Oath of Fealty during protest assemblies and specifically on May 25-26, and before the dispersal of the assembly, and their officially declared goals) evaluation of nature peaceful or non-peaceful nature of the assembly within the context of May 25 assembly became an urgent issue.

### 2.1.1. Description of Activities of the Oath of Fealty and their Conduct

Among participants of assemblies held on May 21-25, a group of so-called Oath of Fealty particularly stood out. To a certain extent, the group was organized and was rather active during the rallies. The group was mostly manned by young males. Their number was approximately 150. The official web-site of the Representative Public Assembly notes that *“units of the Oath of Fealty constitute a ring of Public Assembly. [...] members of the Oath of Fealty protect citizens from authorities’ unlawful actions, by means of mechanisms not prohibited by law both by judicial and **physical** ways.”*<sup>39</sup>

To a certain extent the Oath of Fealty was an organized group<sup>40</sup> and actions of the group were planned in advance. The head of Isani organization of the Oath of Fealty, Besik Tabatadze clarified to GYLA that *members of the group were tasked by protecting order among protesters, avoiding provocations among demonstrators, making sure that a person under the influence of alcohol did not throw any items to the stage, preventing provocative actions towards policemen and invasion of the rally scene by zonder brigades.*

Since the very first day of protest rallies (May 21), the Oath of Fealty members had been equipped with plastic sticks (tubes) and carton placards.<sup>41</sup> Frequently the Oath of Fealty members wore masks. The plastic sticks were distributed at the rally in an organized manner.<sup>42</sup> As participants explained, the plastic sticks had flags on them, which were later removed.<sup>43</sup> Participants were carrying the sticks (handles) with or without flags.<sup>44</sup> However, it is noteworthy that from early days of the assemblies, they were mostly using the sticks without flags. During assemblies outside the television building, there were several cases where participants used the sticks for self-defense, including when unknown individuals deprived Gen. Gia Uchava (one of the participants) from liberty and forced him in a black Škoda. Later it turned out that these individuals were law enforcers and the car belonged to the Department of Constitutional Security. Protesters started hitting the car by plastic sticks, trying to free the detainee.<sup>45</sup> There was another case when protesters clashed with a group of individuals – possibly counter-demonstrators. The opposing sides resorted to use of the aforementioned plastic sticks.<sup>46</sup>

Journalists interviewed by the working group confirm that part of the demonstrators (mostly the Oath of Fealty) were rather aggressive (in verbal terms) towards journalists; however, rally organizers managed to regulate and stop their aggressive conduct.<sup>47</sup>

Although the rally was held outside police department, demonstrators did not express any intention of or perpetrate any violent actions against the police.

<sup>39</sup> <http://www.kreba.info/siakhleebi/335-dghes-qsakhalkho-krebisq-sheficultha-razmebi-dafudznda.html>

<sup>40</sup> Statement given by Tazo Kupreishvili to GYLA

<sup>41</sup> <http://www.netgazeti.ge/GE/59/News/5355/აქტივისტების-მზადება-თავდაცვისთვის--მაისის-საპროტესტო-აქცია.htm>

<sup>42</sup> Statement given by Malkhaz Chkadua, a journalist of Interpressnews to GYLA ,

<sup>43</sup> [http://www.youtube.com/watch?v=yuSBQSwSPG4&feature=player\\_embedded#at=255](http://www.youtube.com/watch?v=yuSBQSwSPG4&feature=player_embedded#at=255)

<sup>44</sup> Statement of Nino Mikiashvili

<sup>45</sup> [http://www.youtube.com/watch?feature=player\\_embedded&v=aAZMND5aMsE#at=14](http://www.youtube.com/watch?feature=player_embedded&v=aAZMND5aMsE#at=14)

<sup>46</sup> <http://www.itv.ge/News-View.aspx?Location=22052&LangID=1>

<sup>47</sup> Statement obtained by GYLA from Tazo Kupreishvili

Hence, during protest rallies outside the television building, participants' conduct mostly remained peaceful. There were certain sporadic facts of violence by the participants; however, law enforcers could suppress these facts and isolate them, and the noted facts did not affect peaceful nature of the assembly in general. Despite the noted circumstances, these facts were characteristic to general conduct of the Oath of Fealty.

Following relocation of the May 25 assembly to the territory outside parliament, participants mostly remained peaceful in their conduct. During the assembly outside the building of parliament, participants did not perpetrate any violent actions against private individuals or representatives of the authorities. The working group obtained video material that shows physical clash between the Oath of Fealty members and private persons. The video does not allow determining causes of the conflict. The fact is one of the sporadic cases of use of violence by the Oath of Fealty.<sup>48</sup>

Following relocation of the assembly to the territory outside parliament, demonstrators encircled the scene with special iron fences. Before the dispersal began, when the Special Forces Unit approached, the Oath of Fealty that was equipped with plastic sticks and carton shields, occupied borderline of the rally scene in an organized manner. The Oath of Fealty were demonstratively hitting the fence with plastic sticks, showing that they were not going to disperse voluntarily. By that time number of rally participants was at least 1700, while number of the Oath of Fealty members was 150-300.



Organized behavior of the Oath of Fealty members before the rally disperse

Before the rally dispersal started, the some of the protesters that were standing on the borderline territory did not express any aggression against the Special Unit that was stationed nearby. Before the dispersal started, the participants did not launch the attack or assault law enforces. As a result of use of force by the police, the Oath of Fealty was forced to leave the borderline area that they had occupied. Video materials released by open sources confirm only several facts of resistance of the Oath of Fealty to the police.

### 2.1.2. Definition of a Violent Assembly

Under what circumstances is a rally considered to be violent? We evaluated the noted issue based on the standards provided by the European Court of Human Rights and OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly.

In *Selmouni v. France*, the ECHR clarified that Convention is a living instrument which must be interpreted in the light of present-day conditions.<sup>49</sup> Due to the principle of dynamism, the ECHR's approach to the standard of a violent assembly of was changing over time but the definition of a violent assembly remains the same: "peaceful assembly does not cover a demonstration, where the organizers and the participants have violent intentions that result in public disorder".<sup>50</sup> The definition was applied by the ECHR in a case *M.C. against the Federal Republic of Germany* in 1989 and reaffirmed in *Cisse v. France* in 2002<sup>51</sup>.

<sup>48</sup> [http://www.youtube.com/watch?v=nNp10QMHwGM&feature=related&fb\\_source=message](http://www.youtube.com/watch?v=nNp10QMHwGM&feature=related&fb_source=message)

<sup>49</sup> *Selmouni v. France*, application #25803/94, judgment of 28 July 1999, paras.101;

<sup>50</sup> *M.C. against the Federal Republic of Germany*, application #13079/87, decision of 6 March 1989

<sup>51</sup> *Cisse v. France*, application # 51346/99, judgment of 9 April 2002, paras. 35-36;

Initially the European Court for Human Rights and the Commission provided broad definition of the term “peaceful” rally. The Human Rights Commission considered that general prohibition of assembly for a certain period of time does not contradict requirements of Article 11, as in consideration of the past experience, there was a serious threat of public disorder or inflicting damage to an individual or property. Therefore, the application in *Christians Against Racism and Fascism v UK*<sup>52</sup> was deemed inadmissible. The Human Rights Commission deemed holding a sit-in outside an American military base in the *case v the Federative Republic of Germany* as a violent assembly. Currently, holding a sit-in is no longer considered to be violent.

Currently the notion of a peaceful rally has been significantly broadened. In *Nurettin Aldemir and others v. Turkey* the ECHR did not consider violent an assembly which was initially peaceful, police was the first one to use force, followed by violent response of demonstrators. Although police vehicles were damaged and harm was inflicted to health of police officers, the ECHR took into account that violent response was provoked by the police.<sup>53</sup> Therefore, a protest rally may inflict damage to health of policemen, to property rights of third parties but the assembly may be deemed as peaceful. On the other hand, an assembly may not engender any harmful results in the end but be deemed as violent, not peaceful. In such cases the aim of assembly organizers and participants, and more specifically, whether they had an intention to disturb public order, followed by public disorder, is of decisive importance.

In compliance with the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, The term “peaceful” assembly includes conduct that may annoy or give offence to persons opposed to the ideas or claims that an assembly is promoting, and even conduct that deliberately impedes or obstructs the activities of third parties. Furthermore, the right to a peaceful assembly also includes the right to passive resistance.

In *Ziliberberg v. Moldova*, the ECHR differentiated between participants who are committing punishable actions and those who maintain peaceful conduct during the assembly. Specifically, the court declared: “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behavior.” Even if the assembly is gradually acquiring a violent nature, Article 11 of the Convention continues to be effective for an individual if it can be proved that the applicant himself remains peaceful in his own intentions and actions.<sup>54</sup>

### 2.1.3. Determination of Whether the May 25 Assembly was Violent according to the Case Law Standards

The first issue that needs to be addressed is whether the assembly was violent *ipso facto* due to the fact that some of the participants were equipped with plastic sticks and the noted group (Oath of Fealty) was organized to a certain extent. Furthermore, they had a declared purpose of protecting “citizens from authorities’ unlawful actions, by means of mechanisms not prohibited by law both by judicial and **physical** ways.”

Para. 2 of Article 11 of the Law of Georgia on Assemblies and Manifestations, effective at the time of the protest rallies, contained an exhaustive list of items that participants of assemblies and manifestations are prohibited to bear. Bearing plastic tubes and carton shields was not prohibited under the noted norm. Nevertheless, simple carriage of an object (an item) and risks of using it to inflict damage to health of others should be differentiated. Participants of the protest rally stated that they intended to use the shields and the sticks for self-defense.<sup>55</sup> In their statements to GYLA, rally participants Besik

<sup>52</sup> *Christian Democratic People’s Party v. Moldova (no. 2)*, application #25196/04, judgment of 2 February 2010.

<sup>53</sup> *Nurettin Aldemir and others v. Turkey*, applications ##32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, judgment of 18 December 2007, paras. 45-46;

<sup>54</sup> *Cristian Ziliberberg against Moldova*, Application no. 61821/00, decision of 4 May 2004;

<sup>55</sup> Statement given by a member of Public Assembly, Elene Makharadze to GYLA <http://www.netgazeti.ge/GE/59/News/5355/აქტივისტების-მზადება-თავდაცვისთვის--მაისის-საპროტესტო-აქცია.htm>



Tabatadze and Bidzina Gegidze discuss the function of self-defense attributed to flag handles. According to them, self-defense against unlawful actions of law enforcers was the purpose of using aforementioned items by rally participants.

However, in order to substantiate disturbance of public order (peace) by rally participants, it is necessary to prove that the threat is not only reasonable but immediate as well. More specifically, direct and substantial danger of an illegal consequence shall be evident.<sup>56</sup>

In the decision of the Chamber of Lords (2004) in the case of *Laporte*, concerning legitimacy of preventive intrusion by the police for protection of peace, the Court said it is not sufficient to prove there is a reasonable doubt of disturbance of peace on the part of rally participants; it is also necessary for the authorities to prove that the threat of peace disturbance is immediate. Furthermore, for protection of the right to assembly, the state is obligated to differentiate between participants committing violent actions and peaceful protesters. Termination of assembly can be justified if it is growing into a mass violence; however, freedom of peaceful assembly continues to apply to those protesters who remain peaceful in their intentions and behavior. In this regard, it is important to examine burden of proof. In *Christian Democratic People's Party v Moldova (2010)*, the ECHR deemed that burden of proving violent nature of assembly falls on the government. In the same case, the ECHR indicated that when discussing a peaceful nature of assembly, the state should not only prove that the intrusion was reasonable, timely and in a good faith, but also carry out prior to interference a detailed evaluation of relevant facts that may serve as the basis for its decision.<sup>57</sup>

The aforementioned standard established in the case *M.C. against the Federal Republic of Germany*, requires proving that rally organizers and participants have a clearly violent intent that will engender disturbance of public order. It means that noted outcome is evident or there is a present threat of such outcome. A present threat (identical to an urgent threat) means that all conditions are there for an individual to realize its intentions and the outcome depends on actions of this individual.

***Correspondingly, the fact of ipso facto plastic stick carriage by some of the participants on May 25-26 and before that, during the assemblies starting from May 21, may not be deemed as sufficient for proving violent intention of participants.*** If the authorities considered that the noted conditions produced a real threat to peace, it could have called on participants to cease using the noted means.

However, as the analysis of factual circumstances demonstrates, the intension to disturb public safety (order) became real when the Special Forces Unit and police appeared on the territory and rally participants occupied the perimeter of the territory at iron fences. They were using their plastic sticks and placards to demonstrate their determination not to leave. Facts obtained by the working group confirm that during the noted period of time, rally participants did not attack the police. During the dispersal itself, there were several individual cases of resistance to the police on part of protesters during the use of intense force by the police.

Self-defense can be legal only if it falls under within the cases of use of violence by an individual permitted by law (cases of extreme necessity, necessary withstanding, capturing of an offender, etc. envisaged by the Criminal Code of Georgia). Each case of legal use of force by an individual is a case of an unexpected threat that emerged at a given moment, which is impossible to prevent by coercive measures by the state or when any delays will cause irreparable harm. In the given case, as some of the demonstrators had been organized beforehand and considered a possibility of using force against police, they do not fulfill legal conditions for a necessary withstanding of an attack, as the latter implies immediate response to an unexpected threat.

Use of flag handles for self-defense against police's actions may not be deemed as passive resistance. In the given case, it was intended to withstand police by active actions. Passive resistance is a non-violent resistance. U.S. Federal Court of Appeals in *Forrester v City of San Diego* recognized the following as

<sup>56</sup> See Article 4 of the Law of Georgia on Freedom of Speech and Expression

<sup>57</sup> *Christian Democratic People's Party v. Moldova* (no. 2), application #25196/04, judgment of 2 February 2010, paras 27.

passive resistance: When police attempted to remove them, the demonstrators “passively” resisted by remaining seated, refusing to move, and refusing to bear weight.<sup>58</sup> Another tactics of passive resistance was established in another case of U.S. Federal Court of Appeals in *Amnesty America v Town of West Hartford*. Demonstrators refused to identify themselves, chained themselves together and covered their hands with maple syrup to impede the use of handcuffs.<sup>59</sup> May 26, 2011 protest rally lacked the noted technique of non-violent resistance. Demonstrators were planning to use against police items that were clearly violent and dangerous to others’ health.

The aforementioned circumstances clearly indicate that after the Special Forces Unit approached demonstrators for their dispersal, the Oath of Fealty had a clear intention to put up resistance by using means dangerous to human health. Although in several cases the Oath of Fealty members did resist police using shields and sticks, the intention of violence was not realized massively due to the law enforcers’ use of special measures.<sup>60</sup>

Due to the fact that resistance put up against police during the assembly dispersal was organized planned beforehand, the May 26, 2011 rally should be differentiated from the case of *Nurettin Aldemir v. Turkey* examined by the ECHR. In the noted case demonstrators blocked traffic in order to express their protest. Police immediately resorted to tear gas against protester, followed by spontaneous violent reaction of demonstrators. As a result, police vehicles were damaged and several policemen were harmed.<sup>61</sup>

In the aforementioned case, use of force against police was not premeditated. Protesters had not been equipped with items perilous to human health beforehand; there was no organized group responsible for active self-defense by use of force. Self-defense against violent actions of police was sudden and spontaneous for demonstrators.

On May 26, as soon as the rally participants became aware of the fact that police was starting to disperse the rally and the Special Forces United appeared on the scene, they started considering use of force against law enforcers and the resistance was further promoted by an organized nature of the Oath of Fealty and gearing. The fact that the group had been organized and armed, *in isolation*, did not fulfill the standard of disturbance of or posing a real threat to public order during the whole time; however, on May 25, when police started getting ready for the dispersal some of the protesters that occupied the line along the perimeter of the rally scene, armed with plastic sticks and expressing their intention not to leave, were in the mode of active and violent self-defense, which is not covered by freedom of peaceful assembly. Therefore, these protesters are not covered by Article 11 of the European Convention.

After the violent intention on part of the Oath of Fealty became real, their part of the assembly turned into a violent protest. It should be noted that at this time, actions of the Oath of Fealty had been coordinated with the assembly organizers and their conduct was controlled by them; therefore, it is safe to conclude that at this time the organizers did not fall within the frames of the right to a peaceful assembly either. However, this does not apply to other participants of the assembly (in this case, majority of participants) whose intentions remained peaceful. As it was noted above, in the case of *Ziliberberg*, “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behavior”. In this case the ECHR developed a concept of an individual approach and ruled that even if a rally gradually turns into a violent protest but it is proved that an individual applicant was not involved in violent actions or did not express any violent intention, Article 11 of the Convention continues to apply to him/her. Number of such protesters in the given case was majority of demonstrators; therefore, we argue that majority of rally participants was

<sup>58</sup> <http://openjurist.org/25/f3d/804/forrester-v-city-of-san-diego-d>

<sup>59</sup> <http://caselaw.findlaw.com/us-2nd-circuit/1303129.html>

<sup>60</sup> Statements of Levan Katamadze, founder of sando.ge and Andrey Gora, rally participant

<sup>61</sup> *Nurettin Aldemir and others v. Turkey*, paras.45-46.

exercising their right to peaceful assembly and was entitled to corresponding guarantees contained in the noted right.

It is noteworthy that the Oath of Fealty was created and used during the assembly under the initiative of the rally organizers and Public Assembly. Activities of the Oath of Fealty during the assemblies fell under the control of the organizers, which makes them (organizers) responsible for their activities. However, in general, the noted fact does not influence peaceful nature of the assembly, as the Oath of Fealty did not commit or called for any clear and mass violence, which would have made it clear for other participants that the conduct and intension of the Oath of Fealty was not peaceful in nature. Most of the assembly participants remained peaceful in their intention during the assemblies. As the ECHR noted in the case of *Ziliberberg* even if a rally gradually turns into a violent protest but it is proved that an individual applicant was not involved in violent actions or did not express any violent intention, Article 11 of the Convention continues to apply to him/her. In the given case, majority of rally participants remained peaceful in their intentions. Therefore, May 25 assembly should be viewed as a peaceful even as a whole, **which triggered the state's obligation to comply with standards provided by the international human rights standards for freedom of assembly in the process of making decisions about intrusion in freedom of assembly.**



*Behavior of peaceful assembly participants during the rally disperse*

## **2.2. Evaluation of formal lawfulness of the decision of the authorities to disperse the May 26, 2011 Protest Assembly**

### **2.2.1. Applicable international standards concerning formal lawfulness of state's decision to disperse an assembly**

The European Court of Human Rights has a well-formulated practice on lawfulness and proportionality of the state's decision to disperse an assembly.

The states should not only protect the right to peaceful assembly but also refrain from imposing unreasonable and indirect restrictions on participants. Article 11 of the Convention protects participants from arbitrary actions of the state and it also imposes effective obligation on the state to effectively ensure realization of rights guaranteed by Article 11.<sup>62</sup> The ECHR indicated that legal regulation of prior notification about the intention to hold an assembly and/or conduct of assembly participants by contracting states does not contradict Article 11 of the Convention. In *Oya Ataman v. Turkey*, applicable national legislation required notification seventy-two hours prior to the event. The ECHR noted that in principle, regulations of this nature should not represent a hidden obstacle to the freedom of peaceful assembly. It goes without proving that holding an assembly on a public space results in obstacles and disruption of a habitual course of public life to a certain extent. Therefore, rally organizers as well as other stakeholders of democratic process should respect regulations laid out by applicable law.

However, the ECHR also noted that absence of corresponding notification may not serve as grounds for restricting freedom of assembly. Purpose of notification is to enable state undertake corresponding

<sup>62</sup> *Oya Ataman v. Turkey*, judgment of 5 December 2006, application #74552/01, para.36

measures, including preventive measures for safety, in order to regulate disorder related to holding an assembly.

In *Oya Ataman v. Turkey*, assembly participants had been warned by the authorities multiple times on unlawfulness of the assembly, and that it disrupted public order during an active period of the day, and that an order to disperse the assembly had been made. Despite the noted callings, participants refused to disperse voluntarily. The police dispersed participants half an hour after the assembly was commenced. The Court noted that where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings.<sup>63</sup>

In *Éva Molnár v. Hungary*, an assembly that was held spontaneously, without submitting prior notice was dispersed by the authorities 8 hours after participants assembled. In the given case, the Court noted that participants had sufficient time for exercising their rights guaranteed by Article 11 of the Convention. Therefore, it deemed that the state showed certain degree of tolerance toward the gathering and it did not find violation of Article 11 against the applicant. In consideration of the factor of time, the Court differentiated the instant case from other cases where the dispersal was quite prompt.<sup>64</sup>

With regard to spontaneous demonstrations, the ECHR further specified necessary conditions for justifying dispersal of unlawful assemblies. In *Bukta and Others v. Hungary*, the Court noted that a prior notification requirement would not normally encroach upon the essence of that right. However, in special circumstances when an immediate response might be justified, to disperse the ensuing demonstration solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, may amount to a disproportionate restriction on freedom of peaceful assembly.<sup>65</sup>

However, the ECHR noted that it is wrong to argue that absence of prior notification can never serve as grounds for assembly dispersal. In *Hyde Park and Others v. Moldova (nos. 5 and 6)* the Court explained that the interest to hold assembly takes precedence over the interest to submit prior notification under special circumstances, and when an immediate response might be justified in the form of a spontaneous demonstration. Diversion from the general rule of prior notification can be justified if the response is absolutely pointless because of the delay.<sup>66</sup> Consequently, in *Hyde Park and Others v. Moldova* with regard to one of the impugned assembly, the ECHR noted that in the instant case there were no special circumstances evident that would have justified immediate response of the applicant, without prior notification. At the gathering in question, demonstrators were disputing the fact that the authorities exerted pressure against them during the first assembly. According to the ECHR, applicants could not prove why they could not wait, submit prior notification and hold the assembly after the term prescribe by the law expired. **Correspondingly, the ECHR indicated that it is ready to deem absence of notification as relevant grounds for dispersal when participants are able to hold the assembly afterward, following submission of prior notification.**<sup>67</sup> Eventually, in the noted case the ECHR found violation of Article 11 of the Convention based on several important arguments, including area where the assembly was held did not constitute appropriate conditions for assembly dispersal (unlike *Rai and Evans v. the United Kingdom* that was deemed inadmissible and where the assembly was held in a safe zone); sanctions (detentions) imposed on assembly participants were clearly disproportionate and unnecessary in a democratic society.<sup>68</sup>

As it was noted above, where demonstrators do not engage in acts of violence and remain peaceful in

<sup>63</sup> *Oya Ataman v. Turkey*, judgment of 5 December 2006, application #74552/01, para.41

<sup>64</sup> *Éva Molnár v. Hungary*, Judgment of 7 October 2008, application #10346/05, paras. 42-44.

<sup>65</sup> *Bukta and Others v. Hungary*, application # 25691/04, judgment of 17 July 2007, paras. 36-37.

<sup>66</sup> *Hyde Park and Others v. Moldova (nos. 5 and 6)*, judgment of 14 September 2010, Applications nos. 6991/08 and 15084/08, para.46

<sup>67</sup> *Hyde Park and Others v. Moldova (nos. 5 and 6)*, judgment of 14 September 2010, Applications nos. 6991/08 and 15084/08, para.47

<sup>68</sup> *Hyde Park and Others v. Moldova*, para.47.

their conduct and intensions, it is important for the authorities to show a certain degree of tolerance towards peaceful gatherings. In cases when participants engage in unlawful and disorderly activities or may engage in such activities, the state has the authority to intrude in freedom assembly, including terminating the event (Article 72 of the Guidelines on Freedom of Peaceful Assembly). Clearly, the issue of proportionality of intrusion in the right is determined for every individual case, in consideration of concrete factual circumstances. However, international standards require that risks of violent conduct should be real as opposed to hypothetical. Specifically, in *Makhmudov v Russia*, the ECHR noted: “neither a hypothetical risk of public disorder, nor the presence of a hostile audience is a legitimate basis for prohibiting a peaceful assembly”. In *Christian Democratic People’s Party v Moldova*, the ECHR declared that public order and safety may serve as grounds for restricting the right to assembly if there is a threat of physical clash.<sup>69</sup> In its same judgment, the ECHR emphasized that disturbing public order amounts to grounds for restricting assembly, which automatically means dispersal of such assembly.

According to OSCE Guidelines on Freedom of Peaceful Assembly, during intrusion in the freedom of assembly, the police should differentiate between peaceful and non-peaceful participants. Isolated facts of violence as well as violent actions of participants should not serve as grounds for termination of the whole event.<sup>70</sup>

The Constitutional Court of Georgia in its April 18, 2011 decision *in political union of citizens Movement for United Georgia [...] v Parliament of Georgia* noted that termination of assembly and manifestation by the state shall be allowed only when there is a meaningful threat of perpetrating violence and violence may be massively perpetrated.

Hence, according to the applicable international standards on termination of assembly, violent actions of mass extent committed by participants (or a real threat of committing such actions) and necessity of timely involvement of the authorities for protecting public order may serve as grounds for dispersal. Under the noted circumstances, participants will no longer be covered by Article 11 of the Convention, and consequently, the state will no longer have an obligation to protect freedom of assembly standards.

In other cases, assemblies of peaceful in nature trigger obligation of the authorities to ensure protection of freedom of assembly. According to OSCE Guidelines on Freedom of Peaceful Assembly, the police should have different options of actions for ensuring freedom of assembly (including, showing tolerance to unlawful assemblies, and holding negotiations with organizers) and they do not have to choose between no intrusion and termination or dispersal of assembly. Assembly dispersal should be the latest mean that the police may resort to.

### **2.2.2. Official position of the authorities on dispersal of May 26, 2011 protest assembly**

On July 5, 2011, the Georgian Young Lawyers’ Association applied to Tbilisi City Hall with a request for public information on legal grounds for dispersal of May 26, 2011 assembly.

Tbilisi City Hall informed us that according to the notification submitted by Representative Public Assembly on their intention to hold an assembly and manifestation, assemblies and manifestations were scheduled to be held from May 21, 2011 to May 25, 2011. The letter cites expiration of the noted term as grounds for the dispersal. The letter also refers to para. 1, 2 and 4 of Article 11 and Article 13 of the Law on Assemblies and Manifestation, as well as paragraph 1e of Article 9 of the Law on Police (see annex #1).

On May 26, 2011, following the rally dispersal, the Ministry of Interior Affairs released the following statement concerning lawfulness of the protest rally dispersal: “*In response to the written application by the “Public Assembly”, Tbilisi City Hall sanctioned their demonstrations from May 21 till May 26, 2011. On May 25, the demonstrators moved to the building of the Parliament, where the military parade is planned to be held dedicated to the national independence celebrations on May 26. Since the demonstrators de-*

<sup>69</sup> *Christian Democratic People’s Party v. Moldova* (no. 2), paras. 23, 28.

<sup>70</sup> Guidelines on Freedom of Peaceful Assembly, Second edition, § 159.

clared that they intended to continue their protest rally after May 25, at approximately 8 p.m. Tbilisi City Hall advised the demonstrators to change the place of rally and offered the alternative venue, but they refused. Before the sanction time expired, Tbilisi City Hall representative addressed the demonstrators once again and made clear that after the midnight, the demonstration would be considered illegal. At 00:10, the police cleared the territories adjacent to the Parliament building from the protesters. A number of participants of the unsanctioned rally were detained for resisting to the police. During dispersing the rally, 37 people were injured, including 8 policemen, 1 journalist and 27 civilians; two persons were killed, including one policeman, who were killed when the protest organizers were driving with high speed through the corridor created specifically for protesters to leave the Rustaveli avenue. Currently, up to 90 persons are arrested. Most of them were sentenced to two months administrative detention. Criminal offence investigation has been opened against several persons. Protest organizers are not detained.<sup>71</sup>

Statements of the City Hall and MIA demonstrate that the authorities viewed expiration of the term indicated in the notification in coexistence with the necessity to hold a rally as declared grounds for terminating the rally at a specific geographic area. Below we discuss relevance and substantiation of both grounds for justifying restriction of freedom of assembly.

Clearly, in this regard we should consider circumstances that existed before dispersal of the May 26 assembly and that *allegedly* influenced and caused necessity to make such decision in a democratic society.

Test of lawfulness and proportionality of intrusion in freedom of assembly contains the following several steps: 1. whether the intrusion was lawful; 2. Whether there was a legitimate reason for the intrusion. 3. Whether such intrusion was necessary in a democratic society and whether there was an urgent social need of such intrusion. The third step of the test should also address the following two issues: 1. Whether termination of the assembly, as one of the means of intrusion in the freedom of assembly (other means of restriction may include relocation, holding the assembly concurrently with another event, etc.) can be justified for protection of legitimate goals; 2. Whether the measure for terminating the assembly was carried out in a proportionate manner.

Finding violation in every step of the test is sufficient for finding violation of freedom of assembly as a whole. However, in consideration of the fact that contents of every step of the test are correlated and affected by one another, thorough evaluation of the case requires that the aforementioned steps are considered in coexistence and as a whole. It is noteworthy that such tactics is frequently applied by the ECHR for evaluating human rights violation.<sup>72</sup>

### Whether intrusion in freedom of assembly allowed by law in the present case

The Law of Georgia on Assemblies and Manifestation provides for grounds for termination of assembly. Under Article 13 of the Law, in an event of mass violation of Article 11, assembly or manifestation shall be terminated. In compliance with para. 1 of Article 11, an assembly or manifestation is held at a place and time indicated in a notification<sup>73</sup>, in compliance with purposes and directions laid out by the notification. Under para. 4 of Article 11 of the law, “the authorities shall be authorized to suppress assembly or manifestations held in violation of legal requirements.” As it appears, expiration of term indicated in a notification for intention of holding an assembly may serve as one of the coexistent grounds for terminating an assembly held on a carriageway, and this was the situation that the assembly participants and the state were facing.

<sup>71</sup> <http://www.police.ge/index.php?m=8&newsid=2504>

<sup>72</sup> Hyde Park and Others v. Moldova , para. 44

<sup>73</sup> When a protest rally is held on a carriageway, it is necessary to submit a notification to a local self-governance agency. Under para. 1 of Article 8 of the Law on Assemblies and Manifestation, a notification is submitted 5 days in advance. Para. 2a of the same Article stipulates that a notification should specify the date and time of starting and finishing an assembly and manifestation.

Representative Public Assembly submitted a notification for the period including May 25, 2011 (see annex #2).<sup>74</sup> The term of the notification expired on May 26, 2011, at 00:00. After the noted period, Article 11 of the aforementioned law was violated at the assembly organized by Public Assembly.

### **Whether there were legitimate causes protected by law for intrusion in the freedom of assembly**

Representative of Tbilisi City Hall was present at Rustaveli Avenue prior to dispersal of the assembly by the police. He notified participants that, a military parade was scheduled to be held on May 26, 2011 at Rustaveli Avenue. Therefore, he suggested participants change their location.<sup>75</sup> The official statement of the Ministry of Interior Affairs of Georgia also lists unsanctioned nature of the rally following May 25 and the necessity to hold a planned parade outside Parliament on May 25 among the causes of the dispersal.

Hence, holding a parade was declared by the authorities as a legitimate cause that justified the dispersal. It raises a question of whether a military parade was an event important enough to allow the authorities to make a decision to disperse the rally.

Para. 4 of Article 24 of the Constitution of Georgia allows authorities to restrict freedom of expression for the good of public safety. Holding a parade is a measure related to the discharge of public and governance authority of a state. Therefore, cancellation of a parade due to a protest rally may equal to interference with the state's function to govern.

### **2.2.3. Whether the necessity to hold a parade may serve as one of the coexistent grounds for terminating an assembly held on a carriageway**

The noted formulation of the question contains two independent legal issues in itself, which need to be separately addressed. More specifically, (1) whether the necessity to hold a rally justifies intrusion in the right to assembly, (2) whether dispersal (suppression) of the rally was proportional for the noted legitimate purpose as means of intrusion in the freedom of assembly and intrusion of the right.

#### **1. Parade, as a legitimate ground for intrusion of freedom assembly**

A parade is demonstration of a country's military capacity and may serve the purpose of protecting national interests. In view of its foreign and domestic policy, a state seeks to hold a proper parade at a proper level and identifies it with important state interests. However, in consideration of the principle of proportionality under various factual circumstances, an interest to hold a parade may be outweighed by freedom of assembly, which requires separate evaluation for each individual case. In this regard, a state can draw on a broad spectrum of evaluation for deciding in favor of one of the interests, which is later subject to a proportionality test. Various factual circumstances influence such decisions of the state (situation in the country, number of demonstrators, foreign policy, etc.) that are well beyond the legal sphere and fall within the field of political evaluation. In the given case, there are several factual circumstances that justify intrusion in the freedom of assembly for the purpose of holding a parade, including: 1. Participants had been informed beforehand about scheduled May 26 parade and the state was already implementing corresponding measures in preparations for the parade. 2. Participants relocated to the territory outside the building of Parliament due to their intention to have the parade cancelled. During negotiations with the authorities, they refused to abandon the intention. 3. Participants could have been given an opportunity to express their protest *simultaneously with* the parade but their

<sup>74</sup> <http://www.netgazeti.ge/GE/60/opinion/5384/შეიძლება-თუ-არა-აქცის-მალით-დამლა-იყოს-კანონიერი-მასის-საპროტესტო-აქცია.htm>

<sup>75</sup> <http://www.netgazeti.ge/GE/60/News/5380/სახალხო-კრების-აქცია--თბილისში--25-მაისი--განახლებადი-რეჟიმი.htm>

declared purpose to have the parade cancelled a priori ruled out the noted opportunity.<sup>76</sup>

In view of the aforementioned, it is safe to conclude that the May 26 parade constituted an adequate legitimate public cause in relations with individuals exercising their right to assembly.

## 2. Dispersal of assembly as a proportionate measure for intrusion in freedom of assembly

The aforementioned argument that the interest of holding a parade can be deemed as a legitimate ground s for freedom of assembly intrusion, does not necessarily mean that the decision made by the government to suppress the rally based on the noted grounds was substantiated and constituted a proportionate measure for intrusion. The issue needs to be separately addressed and, as it was noted above, the following issues need to be examined: (1) whether it was possible to achieve the aforementioned goal by terminating the rally, (2) whether it was possible to achieve the same goal by means less severe than the rally dispersal, and finally, (3) which legal concern is more important for functioning of a democratic society – a legitimate public cause or exercise of the right under the circumstances and in a way that was curtailed in a given case.

- Was it possible to achieve the goal of holding a parade by terminating the assembly?

Under para. 39 of the OSCE Guidelines on Freedom of Peaceful Assembly, interference with the right to assembly should serve the purpose of achieving the aim which justifies such intrusion. Whereas a number of other interfering measures are appropriate to use for achieving a purpose, the state should choose a less-restricting measure for achieving a legitimate goal. As it was noted above, participants had an intention to have the May 26 parade cancelled. By the time of the dispersal they had already occupied the territory prepped for holding the parade. Under the noted circumstances, it would have been impossible to hold the parade. Vacating the territory from assembly participants would have neutralized the threat to public order, produced by presence of demonstrators on the given territory. In view of the aforementioned, actions of the authorities serving the purpose of terminating the rally were logical. Therefore, it is safe to conclude that the goal of holding a parade safely could have definitely been achieved by terminating the rally.

- Was it possible to achieve the purpose of holding a parade by means less intense than rally dispersal?

Real risk to public order does not necessarily mean that the authorities should disperse a rally. Dispersal of a protest rally should be the very last mean to resort to, if less severe means fail to achieve the legitimate public purpose. Paragraph 45 of OSCE Guidelines on Freedom of Peaceful Assembly offers imposition of restrictions on the time or place of an assembly as a corresponding alternative. The same paragraph notes that any alternative must be such that the message which the protest seeks to convey is still capable of being effectively communicated to those to whom it is directed – in other words, within ‘sight and sound’ of the target audience.

Visual and verbal communication is possible when two events are held at the same place and time. Paragraph 122 of the OSCE Guidelines deals with simultaneous assemblies, saying that *“Where two or more assemblies are notified for the same place and time, the events should be facilitated together if they can be accommodated. If this is not possible (due, for example, to lack of space) the parties should be encouraged to engage in dialogue to find a mutually satisfactory resolution. Where such a resolution cannot be found, the authorities may seek to resolve the issue by adopting a random method of allocating the events to particular locations... This may, for example, be a ‘first come, first served’ rule”*. Prohibition to hold a public event where another event is scheduled to be held would be disproportionate response

<sup>76</sup> See statement of Nino Burjanadze. The statement can be viewed at: <http://www.youtube.com/watch?v=FzqtmD3tdc4> In this regard also view statement of Nona Gaprindashvili, available at <http://www.itv.ge/?m=16&CID=15996>



if both events can be conducted simultaneously.

As for a possible clash between participants of two different events and consequential legitimate purpose of protection of public interest, above we have cited the ECHR's decision in *Christian-Democratic People's Party v Moldova* where the ECHR deemed prohibition to hold a rally as a disproportionate measure. Instead, the Court stated that "it was the task of the police to stand between the two groups and to ensure public order".

Under Paragraph 19 of OSCE Guidelines on Freedom of Peaceful Assembly, these Guidelines apply to assemblies held in public places that everyone has an equal right to use (including, but not limited to, public parks, squares, streets, roads, avenues, sidewalks, pavements and footpaths). The State should always seek to facilitate public assemblies at the organizer's preferred location where this is a public place that is ordinarily accessible to the public.

Under Paragraph 20 of the Guidelines, Participants in public assemblies have as much a claim to use such sites for a reasonable period as everyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used.

Although term of notification submitted by Representative Public Assembly expired on May 26, 2011, protesters continued to occupy Rustaveli Avenue. They were blocking the traffic and controlled infrastructure for the parade. Continuation of the protest assembly in the noted form made it impossible to hold the parade. Furthermore, the authorities had expressed their intention to use the carriageway of Rustaveli Avenue as well as the territory outside the building of Parliament for the purpose of holding the parade earlier than protesters did. In addition to the purpose of holding an assembly, the noted territories as a public places can be used for other purposes as well. As the authorities were the first ones to express the noted intention, holding a parade should take precedence over holding a protest rally. The authorities had the formal right to undertake measures that would have enabled them to hold the parade as planned and without any obstructions.

It was also an option to hold both the parade and the rally organized by Public Assembly at the same location at Rustaveli Avenue. To this end, demonstrators should have opened the carriageway and allowed movement armed forces. The authorities, on their end, would have enabled demonstrators to express their protest on a neighboring sidewalk, without hindering movement of armed forces. Furthermore, demonstrators would have observed a distance necessary for safety of officials attending the parade. Police would have been stationed in front of demonstrators. Thus, the assembly would have been held within sight and sound of protesters' target – Georgian authorities, and the message that protest rallies seek to deliver would not have been lost despite the fact that the form of delivering the message would have been subject to certain intrusion and regulation by the state.

Regrettably, this common format of peaceful assemblies was not considered when the representative of Tbilisi City Hall addressed rally participants to change their location. Tbilisi City Hall offered Public Assembly to hold the protest rally in Vera Park, Park of Mother Tongue or Park of Vera, or any other area in Tbilisi.<sup>77</sup> The noted statement of Tbilisi City Hall ruled out Rustaveli Avenue as a venue for continuing the protest in a way that would not have interfered with the parade, which is clearly the responsibility of the authorities. Clearly, the latter falls under the responsibility of the authorities; nevertheless, Tbilisi City Hall failed to live up to its obligation of conducting due negotiation with demonstrators, fact analysis reveals a significant chance that organizers of Representative Public Assembly would have rejected the offer to continue the rally out of the way, on a sidewalk. The matter of proposing the noted offer was further complicated by the fact that cancellation of the rally was the declared purpose of the assembly organizers. Furthermore, in addition to carrying picket signs and megaphones, which is one of the necessary components for sound and visual contact during an assembly, protesters had also been armed with items that were unusual for a protest rally, which further increased the need of legitimate intrusion in the protest rally due to safety concerns. Under the given circumstances, together with re-

<sup>77</sup> <http://netgazeti.ge/GE/60/News/5380/სახალხო-კრების-აქცია--თბილისში--25-მაისი--განახლებადი-რეკიმი.htm>

location negotiations should have also addressed changing the form of protest rally and abandoning plastic items in order to maintain visual and sound contact with the key target of the rally.

In light of the aforementioned, and in consideration of the purpose and lack of flexibility of demonstrators' actions, as well as the fact that all possible (including formal) resources of negotiations had not been exhausted by the authorities, based on the principle of state's burden of proof in cases of human rights restriction, we argue that the state could have achieved the purpose of holding the parade with less intense means that dispersal of the rally but it failed to do so.

### Findings

Hence, in this Chapter we argue that the rally was peaceful in nature with regard to majority of participants of the rally who did not express any violent intention or intention of active self-defense against the police prior to the dispersal. Pre-meditated intent of the so-called Oath of Fealty to defend themselves in an organized manner against the actions of the police does not fall within the frames of right to peaceful manifestation. Therefore, after the noted threat is posed, they are no longer covered by Article 25 of the Constitution. In this regard, GYLA argues that the authorities did not take corresponding preventive measures for avoiding anticipated threats. Furthermore, the Oath of Fealty posed a real threat to public safety after the authorities were already realizing its decision on forceful termination of the rally. Therefore, the noted threat to public safety should be deemed as a factor determining proportionality of intrusion in the right to assembly, as opposed to independent legal grounds for intrusion in the right to assembly and use of force.

Additionally, in consideration of concrete factors, holding a parade can be deemed as a legitimate interest. At the same time, it is clear that a restrictive measure should not result in futility of freedom of assembly. Although the interest to hold a parade outweighed the interest to hold a rally in the given case, the state should have considered all possible forms of protection of assembly and whether there was a less intense measure for restricting the right, and it did exist in theory (holding the rally and the parade concurrently), the state had an obligation to use it. The authorities should have negotiated with the rally organizers about conducting the rally and the parade simultaneously, which was not the case on May 26, 2011.

In consideration of the aforementioned circumstances, the authorities' decision to disperse May 26, 2011 protest assembly can be justified from formal point of view. However, in view of disproportionate force used in the process of enforcement of the dispersal, the noted issue becomes rather insignificant in meaning.

## CHAPTER 3. ANALYSIS OF THE TACTICS AND TECHNIQUES USED BY THE POLICE IN PREPARATION FOR AND AT THE INITIAL STATE OF THE RALLY DISPERSAL

### Introduction

This Chapter lays out a factual and legal analysis of the planning and implementation of the assembly dispersal by the police on May 26, 2011. The Chapter does not cover individual cases of the use of force by the police against concrete individuals, as these issues are discussed in Chapter 4 of the Report.

The tactics and techniques used by the police *initially* at the outset of planning and implementing the operation define the framework of the proportionality of the force used by the police. Therefore, an analysis of this preparation and planning is important for evaluating the proportionality of force used by the police.

During the dispersal of the May 26 rally, the police were guided by the aim of vacating the premises outside parliament of the protesters.<sup>78</sup> Therefore, the police should have undertaken adequate measures for ensuring the peaceful exit of the demonstrators from the territory. In those cases where protesters put up resistance to law enforcement, the police were authorized to use proportional force and detain those protesters. *In contradiction to* this, the police planned and carried out the operation by blocking the main exits from the area almost half an hour before the dispersal. In the process of the dispersal itself, the police did not leave a corridor for demonstrators to leave the area. Furthermore, the police used excessive force against demonstrators that tried to flee from the scene.

In consideration of the fact that the police had adequate time for properly planning the operation and, furthermore, as participants of the May 25 rally did not escalate the situation, the police could have undertaken all necessary measures for minimizing the use of force and its consequential risks. Nevertheless, the force used by the police was *clearly* unnecessary, indiscriminate and excessive, which resulted in serious harm inflicted on rally participants and other individuals at the demonstration.

### 3.1. Analysis of the situation in which the police had to operate during the dispersal

The standard established by the European Court for Human Rights requires rally dispersals to be regulated and organized by the police in such a way as to minimize to the greatest extent possible any risk of serious bodily harm to individuals.<sup>79</sup> During the dispersal of the May 26 rally, the police were operating in an environment over which it had the exclusive and effective control. This gave the police an opportunity to undertake due measures for decreasing anticipated harm to participants, which the authorities failed to do.

The rally was relocated outside the Parliament building at around 4:00 pm. At 8:00 pm Tbilisi City Hall offered participants the option of holding the rally at another place but the offer was rejected.<sup>80</sup> Verbal statements made by the rally leaders before and after the offer was proposed made it clear that May 26 rally participants were not going to disperse voluntarily. Therefore, it is safe to conclude that the Ministry of Interior Affairs had sufficient time (8 hours in fact and a minimum of 4 hours) for ensuring proper planning of the dispersal operation and devising the tactics for dispersing the rally with minimum resources.



*Peaceful assembly participants before the rally disperse*

<sup>78</sup> See official website of MIA: <http://www.police.ge/index.php?m=8&newsid=2504>

<sup>79</sup> *Muradova v. Azerbaijan, application #22684/05, April 2, 2009 judgment, §113.*

<sup>80</sup> See the May 26, 2011 statement of the Ministry of Foreign Affairs, available at <http://www.police.ge/index.php?m=8&newsid=2504>

In order to analyze the period before the dispersal, another important issue should also be addressed. During the May 25 rally held outside Parliament, demonstrators did not commit any violence or escalate the situation in such a way that would have posed unforeseeable risks and threats to the police during operation of the dispersal.

The threat that assembly participants may have posed was foreseeable for the police before the dispersal. More specifically, on May 21, the day the rallies started, most participants had been armed with metallo-plastic as well as wooden sticks and veneer placards. Based on the material obtained by GYLA, the number of such participants was around 150-200, which constituted 9-12% of total number of demonstrators by the time of the dispersal (1700 persons).

Neither the material obtained by us nor statements made by the authorities confirm any indication that participants wielded cold arms and/or firearms, *including* at the time of dispersal. Furthermore, no *other* indications of escalating the situation on the part of the rally participants occurred at the time of dispersal. Hence, the conduct of the demonstrators at the time of the dispersal was predictable for the police, which worked in favor of planning the operation with an awareness of the security situation.

In view of the above, it is safe to conclude that during the dispersal the police acted in a situation over which it had exclusive and effective control. Therefore, in the process of planning the May 26 rally dispersal the police could have carried out all relevant measures for decreasing any risks to a minimum, including risks of serious harm to individuals' health.



*Peaceful assembly participants before the rally dispersal*

### **3.2. Limiting demonstrators' opportunity to leave the territory prior to the dispersal**

Reports obtained by the working group demonstrate that the police blocked the main exits from the rally premises approximately half an hour prior to the dispersal.

In his statement to GYLA, *Netgazeti* journalist Tazo Kupreishvili recalls that around 10:30 pm, when he arrived at the rally from Freedom Square, the Square had already been filled with Special Unit officers holding their positions in an organized manner. According to the journalist, *"by 10:40 Special Unit officers had already blocked all exits"*. In his statement, Tazo Kupreishvili names streets that he saw had already been blocked by that time: *"I saw that Chitadze Street, Chichinadze Street and Freedom Square were blocked by Special Forces officers"*. Furthermore, the journalist noticed a cordon of Special Forces Unit was also occupying the stairs nearby Freedom Square Subway Station that leads to the building of the Chancellery.<sup>81</sup>

In his statement, the editor of media.ge Davit Mchedlidze also confirms that at 11:35 there were Special Forces officers standing in groups at Freedom Square. Part of the Special Forces Unit was already stationed as an organized cordon. According to Davit Mchedlidze most of the Special Forces Unit was mobilized at the underground tunnel which goes to Pushkini Square. Davit Mchedlidze also notes that the Special Forces Unit had also blocked the stairs next to the Freedom Square Subway Station and a turn at the side from Freedom Square Subway Station, across the highway.<sup>82</sup>

In his statement, one of the participants Revaz Rekhviashvili recalls: *"at around 11:15 we inspected the territory outside parliament and saw that all possible exits from the territory had been blocked by the Special Forces. Chitadze, Purtseladze and Chanturia streets had been blocked, as well as Chichinadze str. located between parliament and the N1 school. Nika and I know the district very well, we know all possible exits, including unofficial exits but at about half an hour before the dispersal it was impossible to exit from*

<sup>81</sup> Statement obtained by GYLA from *Netgazeti* journalist Tazo Kupreishvili obtained by GYLA

<sup>82</sup> Statement obtained by GYLA from editor of media.ge Davit Mchedlidze

*the territory.*<sup>83</sup>

In his statement to GYLA, Beka Jikia from Human Rights Center, who was monitoring the rally dispersal, notes that while standing by the N1 School at 11:40 he saw that all streets had been blocked. He could only not view Purtseladze Street. According to Beka Jikia, around 11:40 Special Forces United approached Rustaveli Str. and the street leading up to Hotel Tbilisi Marriott (Chanturia Str.).<sup>84</sup>

Beka Jikia states that at 11:40 he saw several individuals who were not participants of the rally manage to get away from the territory toward Rustaveli Subway station, whereas a majority of protesters did not try to leave the territory before the start of the dispersal. GYLA could not find any information about participants who were trying and managed/or failed to leave the rally scene prior to the dispersal. Therefore, it is difficult to estimate whether rally participants could go through the cordons of the Special Forces stationed at exits around the area of the assembly before the dispersal began. **However, information obtained by the working group indicates instances of the police limiting opportunities to leave the rally area prior to the dispersal.**

In this regard, it is interesting to consider the case of Nizami Mamedov. On May 25, at around 11:00, before the dispersal was started, he left Rustaveli Avenue in order to get his coat from his car parked at Freedom Square. As Nizami Mamedov recalls, on his way to the car he was hit from behind and lost consciousness. He woke up in Mikhailovi Hospital and found a mark rubber bullet mark on his body. Nizami Mamedov suffered serious injuries and needs surgery on his leg as he still has a walking disability. *The case of N. Mamedov demonstrates that the police used force against the rally participants even before starting the dispersal and on territory located outside the rally perimeter.*

In her statement, presage.tv journalist Nino Mikiashvili confirms that there were certain barriers to leaving the territory prior to the dispersal by the police. More specifically, Nino Mikiashvili recalls that around 11:40 when she was exiting Freedom Square Subway Station, power was cut at the station. There were around 6 policemen at the station. They stated that there were some technical problems in the subway and it could no longer transport passengers. Police did not give citizens an opportunity to use the subway.<sup>85</sup>

As indicated by the information above, the police had already occupied key exits from the territory at least half an hour before the dispersal began. The police did not leave any open exits from the territory for rally participants to willingly leave the territory in safety and without any contact with the police.

### **3. 3. Evaluation of Lawfulness of Use of Force by the Police during the Dispersal**

On May 25, at 11:55, a representative of Tbilisi City Hall approached the rally organizers and submitted a notice warning that in the event of continuing the rally after 12:00 am, it would be deemed as unlawful and a peaceful dispersal order. Representatives of City Hall did not make a general public statement for the rally participants about the aforementioned warning. *Soon (about 5 minutes)* after the representative left the perimeter, the police issued a statement about undertaking corresponding measures for suppressing the unlawful meeting. Journalist Tazo Kupreishvili recalls that the statement was made from a police car parked on Chitadze Street. Although T. Kupreishvili was at Chitadze Street at that time, the warning was rather inaudible and it was impossible for him to hear the full statement. It should be noted that statements by rally participants and journalists to GYLA confirm that most of them could not hear the statement made by the police.

5 minutes after the police made this statement, the dispersal operation started.<sup>86</sup>

<sup>83</sup> Statement obtained by GYLA from rally participant Revaz Rekhviashvili

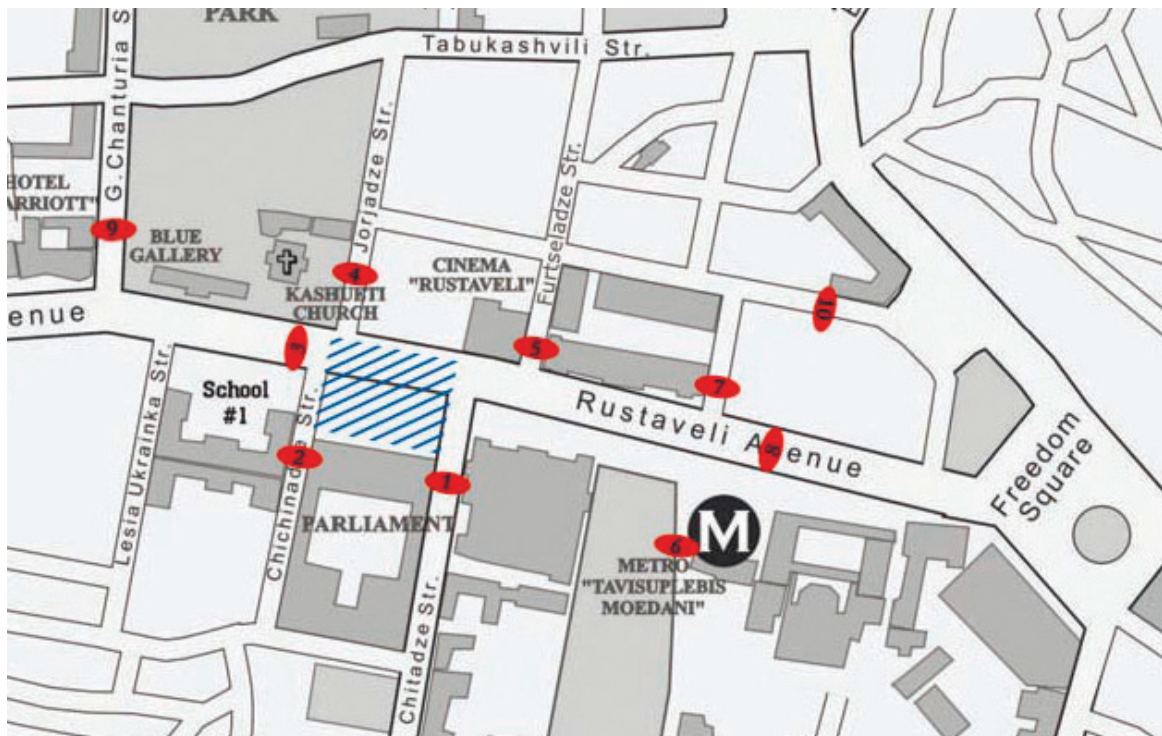
<sup>84</sup> Statement obtained by GYLA from Beka Jikia, Human Rights Center

<sup>85</sup> It is also confirmed by the statement obtained by GYLA from one of the rally participants Karen Arutinov

<sup>86</sup> Statement obtained by GYLA from Netgazeti journalist Tamaz Kupreishvili

By that time, all exits from the territory of the assembly had been blocked. We already noted that all key exits (streets) that had been closed by the police before the dispersal. All witnesses confirm that by the time of the dispersal *all possible* exits from the rally scene – streets or allies, had been closed as well, *including* Purtseladze, Jorjadze and Chanturia streets as well as the street leading down from the National Museum.

For the purpose of illustrating that all exits were blocked at the time of the dispersal, GYLA developed a map showing all exits that assembly participants could have used for leaving the territory but which had been blocked by the police. With regard to every exit, GYLA cites those sources (or a source) that confirm the blocking of the given exit at the time of (and before) the dispersal (please see the map).



**Evidences that prove blocking exits by the police during the rally dispersal**

1. Chitadze street – statements of T. Kupreishvili and B. Jikia, footage released by PalitraTV (<http://www.palitrav.ge/akhali-ambebi/shemthkhveva/4948-specrazmma-parlamentis-tsin-mimdinare-saprotesto-aqcia-dashala.html>);
2. Chichinadze Street – statements of T. Kupreishvili and B. Jikia, video material taken by Maestro (archive);
3. Rustaveli Avenue (area located near School #1) – statements of B. Jikia and N. Mikiashvili, footage released by Maestro (<http://maestro.ge/?address=uc&id=21900&page=1>);
4. Jorjadze street – statements of B. Jikia and L. Katamadze;
5. Furtzeladze street – statements of R. Rekhviashvili and L. Katamadze, footage released by Maestro;
6. Stairway situated on the left side of “Liberty Square” Metro Station– statements of T. Kupreishvili, D. Mchedlidze and B. Jikia;
7. The blind alley next to the Georgian Museum leading down to the Gudiashvili Street – statement of D. Mchedlidze, footage released by PalitraTV (<http://tv25.ge/videoshow.php?id=FLV/news/5027.flv>);
8. Rustaveli Avenue (area located near “Liberty Square” Metro Station) – statements of T. Kupreishvili and D. Mchedlidze, footage released by PalitraTV;
9. Chanturia street – photo taken by Jeffrey K. Silverman;
10. Gudiashvili street - video material taken by Maestro.

The police did not provide rally participants and other individuals with information about any open exits that they could turn to for leaving the territory. In this regard, it is interesting to analyze statements of journalists and rally participants on the territory.

In his statement, Tazo Kupreishvili recalls: *“people were basically held under a siege. All exits had been blocked by means of Special Forces Unit cordons.”*

In his statement, IPN journalist Tamaz Chkadua recalls: *“after the representative of the City Hall gave the warning, there was not a sufficient period of time left for a mass of people this big to move. There were no statements made about which exits they could turn to, as basically there were none.”*<sup>87</sup>

Expressnews journalist Tengiz Okujava also confirms that *“law enforcers did not provide participants with information about possible exits.”*<sup>88</sup>

The founder of sando.ge, Levan Katamadze recalls that *“a woman’s voice was calling for the participants to leave the territory, however no open exits had been left by that time. [...] Very soon after these proclamations, simultaneous operations began from Chitadze Street and the National Library, as well as Kashueti Church.”*<sup>89</sup>

Netgazeti journalist Konstantine Stalinki recalls in his statement: *“during the dispersal law enforcement officers did not warn or inform participants about exits (corridors)”*.<sup>90</sup>

The observations of Pirveli news agency journalist T. Gelashvili are identical: *“after the representative of the City Hall submitted the warning to demonstrators and the rally dispersal started, all exits were blocked; the police did not provide participants with information about exits”*.<sup>91</sup>

It should be noted that video footage recorded by Maestro TV shows police officers and Special Forces Unit personnel mobilized in the courtyard of the Parliament building and during the dispersal the Special Forces Unit launched its attack against participants from the direction of the courtyard as well.<sup>92</sup>

Within this context, it is noteworthy that the statement by the Ministry of Interior Affairs about a convoy carrying assembly organizers exiting from the territory is unsubstantiated, as the MIA claims, a convoy drove through the corridor created specifically for protesters to leave Rustaveli Avenue.<sup>93</sup>

Operative video material released by MIA shows that a massive cordon by the Special Forces Unit had blocked the whole perimeter of the highway at Freedom Square Subway Station. During and after the exit of the convoy, rally participants were not given any opportunity to leave the territory from the same exit. Otar Tskhadadze, who was trying to leave the area together with other participants by following the convoy recalls that Special Forces officers standing nearby were brutally beating participants who were following the convoy.<sup>94</sup> The fact that Special Forces officers beat participants is also shown on the video material released by Channel 25.<sup>95</sup> The fact that Freedom Square was blocked is confirmed by a statement of one of the participants, Boris Kalandadze: *“when I was running toward Freedom Square, I saw up to 100 people running back toward me [...], as Freedom Square had already been blocked and they could not find an exit anywhere.”*<sup>96</sup> In his statement, witness X notes: *“we ran toward the Youth House.*

<sup>87</sup> Statement obtained by GYLA from IPN journalist Malkhaz Chkadua

<sup>88</sup> Statement obtained by GYLA from Expressnews journalist Tengiz Okujava

<sup>89</sup> Statement obtained by GYLA from sando.ge journalist Levan Katamadze;

<sup>90</sup> Statement obtained by GYLA from Netgazeti journalist Konstantine Stalinki

<sup>91</sup> Statement obtained by GYLA from Pirveli news agency journalist T. Gelashvili;

<sup>92</sup> The information is also confirmed by the statement obtained by GYLA from a rally participant, Bidzina Gegidze;

<sup>93</sup> See official website of MIA: <http://www.police.ge/index.php?m=222&newsid=2504>

<sup>94</sup> Statement obtained by GYLA from participant of the rally Otar Tskhadadze;

<sup>95</sup> The video-material is available at <http://tv25.ge/videoshow.php?id=FLV/news/5027.flv>

<sup>96</sup> Statement obtained by GYLA from Boris Kalandadze;

*There was no point in going down to Freedom Square, as Special Forces had already been stationed there.” As there was no exit via Freedom Square, witness X found shelter in a garden next to the Youth House.<sup>97</sup>*

Based on the known facts, the dispersal started about 10 minutes after the representative from Tbilisi City Hall made the statement, at around 12:00 am, and 5-6 minutes after the police had issued the warning. Rally participants were *not* provided with the contents of the noted statements in a due manner. Furthermore, they were not given an adequate time and opportunity to make a decision about voluntary dispersal before the use of force by the police. Furthermore, the rally was dispersed when there were no corridors/exits left by the police that would have enabled demonstrators to follow the order of the police and vacate territory of the rally.

It is noteworthy that GYLA addressed MIA with a request for information regarding whether there were any exits left open by the police during the dispersal which would have allowed rally participants to leave the area. In this regard, GYLA asked MIA to present corresponding evidence (*including* video material) confirming any claims advanced by the MIA; however, the MIA did not respond on this issue.

In this regard the police violated the Guidelines for Freedom of Assembly which stipulates that assembly participants should be given a reasonable time and a safe exit to disperse voluntarily. Police should inform rally participants about exit(s) and notify that if they do not disperse voluntarily, they may be subject to arrest.<sup>98</sup>

If the police had left an open exit(s), through use of proportional force it could have dispersed participants from the territory in a way that would have decreased the risk of physical contact between the police force and participants.

Materials obtained by GYLA confirm that rally participants dispersed voluntarily before physical clashes between participants and the Special Forces Unit occurred. According to the statement of *sando.ge* founder Levan Katamadze: *“participants of the assembly voluntarily dispersed immediately after the dispersal, before physical clashes occurred between them and the Special Forces Unit, and were trying to run in different directions.”* L. Katamadze recalls several clashes between participants and the police that he witnessed on Chitadze Str.<sup>99</sup> Several sporadic acts of resistance by rally participants are confirmed by released video footage.<sup>100</sup> However, as confirmed by video material recorded at the scene, as well as by witness statements, there was no mass resistance and there were only a few such acts of resistance (not even a dozen). In this regard, it is interesting to consider Tazo Kupreishvili’s statement. He recalls: *“as soon as the Special Forces Unit started moving, rally participants dropped their sticks and ran away. Later I saw in the footage material that several individuals resisted the police, however it was not a mass resistance.”*<sup>101</sup>



Due to the fact that the exits had been closed, some participants entered the Rustaveli Movie House.<sup>102</sup>

Materials examined in preparation of the report confirm that the police not only did not provide an opportunity for participants to safely leave the territory but it also used excessive force against individuals who were trying to flee from the area.

In his statement, Malkhaz Jkadua notes that the police chased people *not only on the territory of the rally*

<sup>97</sup> Statement obtained by GYLA from participant of the rally X.Y;

<sup>98</sup> See OSCE/ODHIR Guidelines of Freedom of Peaceful Assembly, § 140, 2007, available at <http://www.osce.org/odihr/24523>;

<sup>99</sup> Statement obtained by GYLA from *sando.ge* journalist Levan Katamadze;

<sup>100</sup> Video-material recorded by Maestro TV;

<sup>101</sup> Statement obtained by GYLA from Netgazeti journalist Tazo Kupreishvili;

<sup>102</sup> Statement obtained by GYLA from participant Gia Burjanadze



but also on neighboring territory, trying to detain them.<sup>103</sup>

In his statement Tazo Kupreishvili recalls: “when I approached the Youth House building, I saw how people were trying to climb the fence surrounding the yard of the House and escape; however, the police were using rubber bullets and truncheons against them, hindering their escape. Officers of Special Forces were shooting them from below and throwing them down.” Nino Kakhishvili corroborated the same facts in her statement: “by Freedom Square I saw boys trying to climb over the fence but they were thrown down by Special Forces officers and beaten with truncheons”.<sup>104</sup> This is confirmed again by Netgazeti journalist Nestan Tsetskhladze.<sup>105</sup>

Maestro TV journalist, Khatuna Khvedelidze also recalls an interesting fact in this regard: “at Purtseladze Str. The Special Forces Unit opened the cordon and asked journalists to leave the area. Several demonstrators tried to go through the cordon but officers grabbed them and had them go back.” In her statement Khatuna Khvedelidze also recalls that when she and her cameraman were trying to leave the rally scene, a young man dressed in a red shirt was clutching the cameraman, asking him to get him out. Suddenly an officer of the Special Forces approached them, took the young man away from the cameraman, threw him down and started beating him with a rubber truncheon.<sup>106</sup>

Witness X, who spent the night hiding in a garden outside the Youth House, notes in his statement that the police were actively looking for people who had sought shelter in the garden and they even resorted to use of force in the process of doing so. As he recalls: “policemen were crying – come on out, we are not going to harm you. Suddenly I decided to show myself as I thought that they would not harm me but then I heard a terrible cry and the sound of a growl. I knew that those who were hiding in the garden and showed themselves were terribly tackled by the police. Therefore, we decided to stay on the roof...”

All night long the police conducted an intense search for participants who had found shelter in the Youth House and were trying to hide. According to one participant, Davit Jghenti, he was detained by the police at 5:00 am in the building of the Youth House. He says that before that the police had entered the building for inspection three times.<sup>107</sup>

Rally participant Giorgi Obgaidze recalls in his statement that a stream of participants trying to flee broke through a fence across from the Freedom Square Subway Station, between the Giordano shop and the National Museum; however, there were up to 500 officers of Special Forces waiting for them near the Tsekavhsiri building who used force against them.<sup>108</sup>



Rally participants trapped in a blind alley by special forces officers

The rally dispersal was finished in around 15-20 minutes.<sup>109</sup>

<sup>103</sup> Statement obtained by GYLA from IPN journalist Malkhaz Chkadua

<sup>104</sup> Statement obtained by GYLA from journalist Nino Kakhishvili

<sup>105</sup> Statement obtained by GYLA from Netgazeti journalist Nestan Tsetskhladze

<sup>106</sup> Statement obtained by GYLA from Maestro TV journalist Khatuna Khvedelidze

<sup>107</sup> Statement obtained by GYLA from participant Davit Jghenti

<sup>108</sup> Statement obtained by GYLA from participant Giorgi Obgaidze

<sup>109</sup> Statement obtained by GYLA from Beka Jikia

***In consideration of the fact that the purpose of the police was to vacate the place from demonstrators, the absence of the opportunity for participants to leave the territory and the use of physical force against participants who were trying to flee, makes the use of force by the police disproportionate.***

The OSCE Guidelines on Freedom of Peaceful Assembly stipulate that police should warn assembly participants that if they do not disperse voluntarily, they will be subject to detention. Detention of protesters by the police is justified only in the event that protesters put up resistance and disobey the police in the process of the suppression of the rally. Article 173 of the Code of Administrative Offences of Georgia (which served as the basis for detaining 170 persons during the dispersal of the May 26, 2011 assembly<sup>110</sup>) deems malicious disobedience to lawful orders or demands from law enforcement officers or military servicemen during the discharge of their official obligations as an action subject to administrative punishment. In the given case, the police started discharging their official duties when it started the dispersal and the use of measures allowed by the law for the mentioned purpose. If participants maliciously disobeyed lawful orders or demands of the police during the dispersal, police would have been authorized to detain them. Otherwise, if we start the evaluation of disobedience from the moment the police made its first announcement on the use of legal force for suppression of the rally, the police should have detained all participants who did not leave the territory after the announcement was made. Clearly, detention of all participants, during the course of a dispersal, who are present at an unsanctioned rally may not be held as a justified or proportionate measure for suppressing an assembly. In view of the facts that 1) following the police's statement on suppression of the rally, participants were not given opportunity or adequate time to disperse voluntarily and 2) in the process of the dispersal, all exits that demonstrators could have used for leaving the territory were blocked, the detention of protesters by the police was unlawful.



**The aforementioned factual circumstances and corresponding legal evaluations imply that the police used disproportionate force for the dispersal of May 26 rally. The dispersal was planned in a manner which did not give the protesters an opportunity to leave the rally either half an hour before the dispersal started nor during the dispersal itself. Therefore, use of force by the police transcended the legitimate purposes established by the law and became unlawful. Police planned the dispersal without leaving an open exit for participants, which increased the risk of physical clashes between participants and the police as well as the use of force by the police.**

Based on the aforementioned, it is important that

- *the Ministry of Interior Affairs and Prosecutor's Office investigate and prosecute officials who planned and led the operation of the May 26 rally dispersal;*
- *in the process of future assembly dispersals, participants are given reasonable time and means for leaving the territory voluntarily. Furthermore, during future dispersals the police should leave open exits/corridors for assembly participants to leave the territory without the need for the use of force by the police. GYLA considers that the noted issues require due legislative regulation in order to avoid risks of arbitrary actions by the police;*
- *law enforcement agencies must be clearly informed of the meaning of Article 173 of the Code of Administrative Offences of Georgia. Within the context of dispersals, only actions amounting to malicious disobedience to lawful orders of the police may serve as grounds for the detention of participants. The presence of demonstrators at an unsanctioned rally (despite the fact that they have been informed about the unlawfulness of the assembly) may not be qualified under Article 173 of the Code.*

<sup>110</sup> Information solicited by GYLA from Tbilisi City Court, June 19, 2011 (see annex #3).

### 3.4. Disproportionate Nature of Police Force Used during the Dispersal

The planning of the operation by the police as well as the amount and intensity of police force used at the initial stage of the dispersal did not contribute to a minimization of the risk of the use of disproportionate force by the police. Chapter Four focuses on individual cases of such disproportionate force, while this Chapter lays out general information about the amount, nature and intensity of force used by the police.

#### 3.4.1. Number and composition of policemen engaged in the dispersal of the assembly

According to the information provided to GYLA by the Ministry of Interior of Georgia, there were 5,000 officers of the Interior Ministry present on Rustaveli Avenue on the night of May 26, 2011, including 1,000 officers who participated in the dispersal of the unlawful rally while others were protecting the territory in relation to the scheduled parade.<sup>111</sup> The MIA further estimated that around 800-1,200 people participated in the unlawful assembly. The information provided by MIA confirms that the number of Special Forces officers and policemen was therefore almost equal to the number of rally participants.

As the facts obtained by the working group confirm, both Special Forces officers and individuals wearing jeans and shoes together with red jackets which said "police" were engaged in the dispersal. They wore cloth masks or helmets. Policemen dressed in blue uniforms were also engaged in the dispersal. According to the information provided by the MIA, however, only officers of corresponding units of MIA were involved in the process of dispersal.<sup>112</sup>



*Policemen without special equipment*

According to the observations of rally participants, the conduct of law enforcement officers without equipment was different from that of the Special Unit Forces, those in civilian clothing were clearly more aggressive. In this regard, the statement of Revaz Rekhviashvili is interesting: *"Special Forces officers were acting in a more professional manner, they were beating us in parts of our bodies so that we fell down and they could detain us. People in civilian uniforms were using excessive force and acted aggressively. They were also verbally assaulting us."*<sup>113</sup>

As witnesses recall, Special Forces officers were addressing each other with nicknames.<sup>114</sup>

It is noteworthy that vast majority of Special Forces officers and policemen in uniforms did not wear tags (name, surname or number) that would have allowed their identification. Video materials released show only a few Special Forces officers with a certain number on the back of their helmets which could aid in identifying them. In this regard, it is noteworthy that according to the information provided by



*Special forces officers without signs for identification. The last photo shows that the sign for identification on the helmet is erased.*

<sup>111</sup> Letter to GYLA from MIA, 01.09.2011 (see annex #4);

<sup>112</sup> Letter to GYLA from MIA, 01.09.2011 (see annex #4);

<sup>113</sup> Statement obtained by GYLA from participant Revaz Rekhviashvili

<sup>114</sup> Statement obtained by GYLA from participant Boris Kalandadze

the Interior Ministry to GYLA, each Special Forces uniform has a personal number;<sup>115</sup> however, neither the video/photo material recorded nor statements by rally participants and other neutral witnesses (journalists, monitors, etc.) confirm this fact. In any case, there were no visible signs for identification which would allow identification of individual Special Forces officers. The fact that the uniforms of policemen and Special Forces officers did not allow their identification gravely complicates the process of investigating and prosecuting the facts concerning the use of force by the police.<sup>116</sup>

In this regard, GYLA calls on the Ministry of Interior Affairs of Georgia to ensure that Special Forces uniforms have corresponding tags with necessary information on them, which would allow identification of a given individual and contribute to an investigation and prosecution of acts of excessive use of force.

### 3.4.2. Types and intensity of special means used by the police during the dispersal

As factual materials collected by the working group confirm, the police launched their attack from several different directions during the dispersal; specifically, the police started simultaneous attacks from Freedom Square, Rustaveli Avenue, Chitadze and Furttseladze Streets.

In the process of the dispersal the police did not differentiate the use of special means according to their power and aims and the risks that the police were facing,

Journalist L. Katamadze recalls that *“during the dispersal tear gas and asphyxiating gas, water cannons and rubber bullets were simultaneously used; afterward, they used rubber truncheons.”*



One of the participants, Bidzina Gegidze, illustrates the sequence of special means used by the police well:

*„the distance between us and the Special Forces Unit was 15 meters. Initially they launched water cannons and we fell to the ground. In couple of seconds they started firing tear gas. They were firing gas grenades as well. Panic broke out and confused attendees started looking for exits. That’s when the crowd crush started. Special Forces officers stationed at Chitadze Street and Rustaveli Avenue started marching toward participants, striking their shields with their truncheons. When the police approached us, I felt rubber bullets fired from the side. Special Forces Unit officers at Rustaveli Avenue moved away and fire engines started coming in. Special Forces officers were sitting on the vehicles, firing rubber bullets at us together with other officers on the sidewalk. This was accompanied by use of rubber truncheons.”<sup>117</sup>*

In his statement rally participant Giorgi Obgaidze recalls: *“police first used asphyxiating gas on us that caused dizziness and blocked our breathing orifices. We were unable to move. Afterward, they used tear gas and rubber bullets simultaneously; water cannons were also fired from the premises of the N1 School the Parliament building”<sup>118</sup>*

Witness statements confirm that police used gas and rubber bullets more intensely during the first stage of the rally dispersal. In his statement, rally participant Andrey Gora says: *“first the police fired a great amount of gas, followed by rubber bullets. At the same time they were also using water cannons and rubber truncheons”<sup>119</sup>*

Initially, before the participants were dispersed, the Special Forces actively fired rubber bullets at rally

<sup>115</sup> Letter to GYLA from MIA, 01.09.2011 (see annex #4);

<sup>116</sup> Guidelines for Freedom of Peaceful Assembly, § 153;

<sup>117</sup> Statement obtained by GYLA from participant Bidzina Gegidze

<sup>118</sup> Statement obtained by GYLA from participant Giorgi Obgaidze

<sup>119</sup> Statement obtained by GYLA from participant Andrey Gora

participants.<sup>120</sup> As journalist Davit Mchedlidze recalls in his statement: *“Suddenly, the Special Forces officers came running up from Purtseladze Street, firing from heightened parts of the sidewalk and targeting rally participants. The shooting continued for around 2-3 minutes; then they drew back to Purtseladze Street. These Special Forces officers were now replaced by other Special Forces officers armed with truncheons.”*<sup>121</sup>

As was already noted above, GYLA applied to the MIA with a request for information about the types and amount of special means used during the dispersal but the MIA did not provide any information about their amount.

It should be noted that in his statement journalist Malkhaz Chkadua, similarly to rally participant Revaz Rekhviashvili, recalls that police used sonic devices during the dispersal. This is confirmed by official information provided by MIA.<sup>122</sup>

In addition to special means, the police also resorted to physical force. Rally participants recall that Special Forces officers were kicking them and beating them with their hands. For example, participant Otar Tskhadadze recounts that he was kicked by a Special Forces officer in his eye causing his eyeball to fall out.<sup>123</sup>

International standards prohibit police from using disproportionate and excessive force during the dispersal of demonstrations. The rules for such use of force should be regulated by law. The law should determine cases where use of force is justified, as well as the extent of the force allowed in consideration of various risks.

Paragraph 2 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulates that governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for diverse options in the use of force and firearms. Under paragraph 3 of the document, the development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.<sup>124</sup>

International standards provide a detailed description of acceptable use of force in dispersal of unlawful peaceful assemblies and unlawful violent assemblies. Under paragraph 13 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary. Paragraph 14 of the UN Basic Principles also stipulates that in the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.<sup>125</sup>

**In the given case, the rally was peaceful in general (see subchapter 2.1.3. of the report above); therefore, the police had an obligation not to use force against participants, or if it was impos-**



*Attack from the Furttseladze street*

<sup>120</sup> Footage of Maestro TV

<sup>121</sup> Statement obtained by GYLA from journalist Davit Mchedlidze

<sup>122</sup> Letter of the Interior Ministry to GYLA, 01.09.2011 (see annex #4).

<sup>123</sup> Statement obtained by GYLA from participant Otar Tskhadadze

<sup>124</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, accessible at <http://www2.ohchr.org/english/law/firearms.htm>

<sup>125</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990 accessible at <http://www2.ohchr.org/english/law/firearms.htm>

**sible not to use it, it should have restricted the necessity of using force to the minimum extent possible.**

During the dispersal of the May 26 assembly, the police obliged to effectively ensure a controlled withdrawal of the participants without using force, or, at the very least, restricting the use of force to the minimum extent necessary. Only in individual cases where use of force was necessary, would the police have been authorized to use more affective means (*including* truncheons, rubber bullets) proportionate to the threat posed by participants. Instead, the police resorted to simultaneous and undifferentiated use of various special means during the dispersal. The police did not exhaust the resource of water cannons and tear gas before it resorted to *mass and indiscriminate* use of rubber bullets.

As we have noted above, effective control over the situation during the dispersal was exerted by the police. Protesters did not put up any physical resistance to the police, with the exception of a few sporadic acts. Therefore, it is safe to conclude that the police could have dispersed the assembly by use of less forceful means and it could have withdrawn protesters from the rally territory through open exits in a controlled manner, which was not the case.

Hence, the police's simultaneous use of different special means during the dispersal failed to pass the test of necessity and proportionality. Furthermore, use of police force during the dispersal was undifferentiated and indiscriminate.

It should be noted that the Law on Police and the December 30, 2009 Decree N1586 on adoption of procedures and conditions for storage, carriage and use of special means by officers of the Ministry of Interior Affairs do not differentiate between special means. Under paragraph 1, Article 4 of the decree N1586, police are authorized to use special means if other measures are ineffective to achieve their purpose. At the same time, the law does not differentiate between special means according to the criteria of their effectiveness in an individual case. Under paragraph 3, Article 10 of the law on police, different special means are defined according to concrete situations, the nature of violations and the individual characteristics of offenders. Furthermore, the stipulations of the Article concerning cases where use of special means is justified are almost identical for all special means, without providing differentiation between special means according to their extent of power. Furthermore, the law does not prohibit the simultaneous use of several different special means by the police.

Furthermore, the Law on Police as well as the December 30, 2009 Decree do not provide for specific restrictions on the use of special means. For instance, in the case of use of rubber bullets and truncheons the law does not prohibit their use against certain body parts (head, neck, genitalia, etc.). Furthermore, the law does not regulate a range for rubber bullets nor specific cases where firing rubber bullets are allowed.

The existing legislation furthermore does not prohibit throwing gas explosives directly at offenders or the throwing of explosives into crowds, nor the repeated use of explosive within the limits of the gased area.<sup>126</sup>

In this regard, it is noteworthy that according to the Interior Ministry's letter to GYLA, *the shooting range and instructions for the use of rubber bullets are determined by the company that produces them*. Individual weapons have their own instructions that impose limits on a shooting range.<sup>127</sup> However, the Interior Ministry did not publicize the information on specific types of weapon used during dispersal of May 26 as-



*The injuries on the heads of rally participants*

<sup>126</sup> See, [http://legislationline.org/download/action/download/id/3435/file/Moldova\\_Policy\\_Options\\_for\\_Improvement\\_of\\_Assembly\\_policy\\_management\\_en.pdf](http://legislationline.org/download/action/download/id/3435/file/Moldova_Policy_Options_for_Improvement_of_Assembly_policy_management_en.pdf)

<sup>127</sup> Letter from Interior Ministry to GYLA, 01.09.2011 (see annex #4).

sembly by the police and what were the instructions for their use.

Under the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, the use of means such as rubber bullets and water cannons must be strictly regulated; under no circumstances should force be used against people who are unable to leave the scene.<sup>128</sup>

International standards require that the use of force by the police should be subject to automatic and immediate control. It is a good practice for police to document the use of force in written form and in detail. It should be noted that Georgian legislation does not lay out any effective mechanisms for monitoring within an agency when special means have been used.

Correspondingly, GYLA argues that such a legislative setting allows for a broad discretion to the police and fails to provide for a hierarchy between special means in terms of restricting their use according to the extent of the risks/threats posed by an opposing party. **Clearly, this legal deficiency creates problems in terms of control and prevention of disproportionate use of force by the police and allows for a high possibility of arbitrary police action.**

The police violated the conditions for use of means that may harm the life and health of a person. According to international requirements, **the standards that apply to the use of lethal weapons equally apply to the use of non-lethal means that may harm life and health.** For example, due to the fact that rubber bullets may be lethal under certain circumstances, they should only be used strictly in accordance with the law for the use of firearms, as well as in accordance with the basic principles of the UN and applicable human rights conventions, and only in established limited cases.<sup>129</sup>

Contrary to these standards, the police used rubber bullets during the dispersal without exhausting any other more efficient means. Furthermore, the police used force without evidence of an extreme necessity. Specifically, in certain cases the police used rubber bullets in an indiscriminate manner, while in certain cases they targeted people who were not posing a threat to police officers or the life and health of others or resisting police officers in any way.

## Findings

In view of the aforementioned circumstances and contentions, it is safe to conclude that the May 26 assembly dispersal was planned without due prevention of the use of disproportionate force by the police. The police did not allow participants to leave the territory and resorted to excessive police force against them, *including*, when rally participants were trying to leave the rally scene or when they were detained and fully subject to the control of the police. Such tactics utilized by the police during the dispersal transcend the legitimate purposes of rally dispersals established by the law, making the use of force by the police unlawful.

<sup>128</sup> Guidelines on freedom of Peaceful Assembly, § 144

<sup>129</sup> See the report of Human Rights Watch “*Crossing the line*”, December 2007, p. 33, available at: <http://www.hrw.org/en/reports/2007/12/19/crossing-line> also, see: The report of the independent commission on policing for Northern Ireland, September, 1999. Available at: <http://cain.ulst.ac.uk/issues/police/patten/patten99.pdf>

## CHAPTER 4. EXCESSIVE USE OF FORCE DURING DISPERSAL OF PROTEST ASSEMBLY

### Introduction

Acts of excessive use of force occurred during the dispersal of the May 26, 2011 protests. Policemen resorted to the use of special means even when resistance of demonstrators had already been suppressed and moreover when demonstrators were under the effective control of law enforcement, such as having their hands tied and being thrown on the ground. Nevertheless, law enforcement beat them with rubber truncheons and verbally abused them. The most vivid example of excessive use of force is the beating with truncheons of a juvenile by several Special Forces officers. Special Forces Unit further fired rubber arms from short distances, aiming directly at the heads and faces of protesters; as a result, one of the participants suffered loss of eyesight. On top of this, detained demonstrators were subject to inhumane and degrading treatment, such as the so-called “corridor of shame”. Persons who were not participating in the rally were also subject to force by police. The people who found shelter at Rustaveli Movie Theatre were tackled by law enforcement officers in a particularly severe manner. Detainees who were taken out from the movie theatre by Special Forces officers were beaten with truncheons; there were cases of unlawful and groundless deprivation of liberty of the demonstrators.

### 4.1. Use of Special Means

Under Paragraph 3 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted at the eighth Congress of the UN, the development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

In compliance with the Guidelines for the Freedom of Peaceful Assembly, people engaged in violence should be isolated from peaceful demonstrators and subject to coercive measures.

Under Paragraph 1 of Article 11 of the Law on Police, an officer has the right to resort to physical coercion and special means in compliance subject to the principles of proportionality and necessity.

Under para. 4, Article 4 of the December 30, 2009 Decree N1586 on adoption of procedures and conditions for storage, carriage and use of special measures by officers of the Ministry of Interior Affairs, police are authorized to use special means if other measures are not practicable. At the same time, the law does not differentiate between special means according to the criteria of ineffectiveness in a given case. In the cases examined by this report, there was no necessity for law enforcement officials to resort to the use of force, as in one case the threat had already been neutralized, while in the rest of the cases demonstrators did not pose any threat whatsoever to law enforcers.

Frequently, the actions of policemen contradicted national standards for human rights protection and stipulations of the Law on Police. Nevertheless, deficiencies in the Law on Police should also be addressed, specifically, the grounds for the use of different types of special means, provided by the Law on Police, are almost identical, which allow for the exercise of various degrees of force under one and the same circumstances.

#### 4.1.1. Disproportionate Use of Truncheons

##### a) General manner of using truncheons

Subparagraph “b”, para. 1, Article 12 of the Law on Police allows use of rubber truncheons for repulsing an attack against a citizen, a policeman and/or protected objects; detaining a criminal, someone who disturbed public order if he or she is maliciously disobeying lawful orders of police, or for suppressing mass and group disturbances of public order.





Truncheons were used not only against individual demonstrators that resisted Special Forces officers by means of their shields and flag handles, but also against persons whose resistance had already been overcome, they had their hands tied and were laying on the ground. Special Forces officers also snuck up on fleeing demonstrators from behind and beat them with rubber truncheons.

There were certain sporadic cases of individual demonstrators putting up resistance to Special Forces officers with plastic pipes on May 26, 2011. Nevertheless, the use of force by the police even against such perpetrators was not proportionate.

One of the participants equipped with a shield and a flag handle engaged in single combat with a law enforcement officer. The policeman managed to knock the demonstrator down and suppress his ability to use the shield and the flag handle. Although the violent demonstrator was no longer posing a threat, Special Forces officers formed a circle around him and started kicking and beating the knocked down demonstrator with rubber truncheons.<sup>130</sup>

Furthermore, there were cases of the use of force against demonstrators who did not resist the Special Forces at all. In some cases, protesters were beaten with truncheons not only when they were totally harmless but when they were under the effective control of the police as well.<sup>131</sup> Although in such cases, demonstrators were physically unable to put up any resistance to the Special Forces Unit, the police used rubber truncheons against them anyways, without any necessity.



Special Forces Unit personnel resorted to indiscriminate and mass use of rubber truncheons against people on the territory of the dispersal. Special Forces officers usually chased<sup>132</sup> or snuck up<sup>133</sup> on demonstrators who were trying to escape from Rustaveli Avenue and beat them with truncheons. There was a case when a Special Forces officer beat a fleeing person with a rubber truncheon. Elene Makharadze, who was running away outside the Youth House, felt a strong blow to her waist and feet that threw her against the wall of the Youth House. Afterward, she was taken to a hospital.<sup>134</sup> There were cases when several Special Forces officers beat a protester that had already been knocked to the ground.<sup>135</sup> For example, two Special Forces officers were holding a young man at Purtseladze Street and the third one was beating him with a rubber truncheon.<sup>136</sup> The footage released by Maestro TV shows a policeman beating people with a truncheon who had already been thrown on the ground outside the Freedom Square Subway Station.

A demolished painter's house is separated from Rustaveli Avenue with a fence. On May 26, 2011, there was a car parked on Rustaveli Avenue with an arranged tribune on it. After Special Forces officers started moving from outside Tbilisi Marriott and Chichinadze Street simultaneously, and all other streets had been blocked, a crowd crush started outside the painter's house. As all exits from Rustaveli Avenue

<sup>130</sup> <http://www.palitrav.ge/akhali-ambebi/shemthkhveva/4961-specrazmelebisa-da-momitinges-khelcharthuli-brdzola.html>.

<sup>131</sup> For example, one of the protesters fell into a fountain outside the parliament. Taking advantage of the fact that the protester is unable to resist, a special unit officer beats him with a rubber truncheon: [http://www.youtube.com/watch?v=3gXOW66I\\_HA&feature=player\\_embedded#at=18](http://www.youtube.com/watch?v=3gXOW66I_HA&feature=player_embedded#at=18).

<sup>132</sup> Several Special Forces officers beating a citizen outside the Youth House [http://www.youtube.com/watch?v=LmWYO57Bvww&feature=player\\_embedded](http://www.youtube.com/watch?v=LmWYO57Bvww&feature=player_embedded)

<sup>133</sup> Special unit officers hit a person accompanying journalist of Maestro TV with a rubber truncheon [http://www.youtube.com/watch?v=W0crOzbZPW0&feature=player\\_embedded](http://www.youtube.com/watch?v=W0crOzbZPW0&feature=player_embedded)

<sup>134</sup> People fleeing the territory outside the parliamentary building beaten with rubber truncheons: [http://www.youtube.com/watch?v=W0crOzbZPW0&feature=player\\_embedded](http://www.youtube.com/watch?v=W0crOzbZPW0&feature=player_embedded) as well as statement of Elene Makharadze

<sup>135</sup> Several Special Forces officers beating a citizen outside the Youth House: [http://www.youtube.com/watch?v=LmWYO57Bvww&feature=player\\_embedded](http://www.youtube.com/watch?v=LmWYO57Bvww&feature=player_embedded)

<sup>136</sup> Statement obtained by GYLA from Guria News reporter Nato Gogelia

had been blocked and teargas diminished visibility, people outside the painter's house started falling over each other. Special Forces officers were beating the people knocked to the ground with rubber truncheons.<sup>137</sup>

In all of the above mentioned cases, people who were beaten with rubber truncheons were not attacking the police in any way, or, by the time of the use of the rubber truncheons, such attack had already been suppressed, the intrusions on public order were already detained and demonstrators were not putting up any resistance against law enforcers. Accordingly, the people who were beaten with rubber truncheons were not engaged in any mass or group disturbances of public order at that time or by the time of the use of rubber truncheons as such engagement had already been suppressed.



*Photos illustrate the cases of excessive use of force by police*

#### b) Use of force against a juvenile

First Caucasian TV released video footage showing Special Forces officers physically abusing a juvenile. The latter was crossing the street at the Rustaveli Movie Theatre on Rustaveli Avenue. Suddenly dozens of Special Forces officers formed a circle around him, knocked him down and beat him with truncheons and kicks.<sup>138</sup>

The act of beating a juvenile is confirmed not only by the footage of Georgian public television First Caucasian but also by a statement of Maestro TV reporter Anna Lapiashvili to GYLA.

Subparagraph "a" of Article 37 of Convention on the Rights of the Child prohibits the inhumane and degrading treatment of the child. In its general comment N13, the Committee on the Rights of the Child notes that the prohibition first of all applies to police and law enforcement officials. In its N8 comment the Committee notes that we should recognize the difference between a protective physical action and a punitive assault. Force used against children should be necessary and not punitive.



There was no necessity whatsoever for using the noted intensity of force against this juvenile as he did not pose any threat to law enforcement. The footage demonstrates that use of physical force against the juvenile was clearly uncalled for.

#### 4.1.2. Use of rubber bullets

During the dispersal, the police violated conditions for use of means that may harm life and threat of individuals. **According to international requirements, standards applicable to the use of lethal weapons equally apply to the rules for using non-lethal means that may harm the life and health of an individual.** For example, as rubber bullets under certain circumstances can be lethal, they should be used in compliance with the law for using firearms, key UN principles and applicable Human Rights

<sup>137</sup> Statement obtained by GYLA from Bidzina Gegidze

<sup>138</sup> [http://www.youtube.com/watch?v=NZHIqVy2M6U&feature=player\\_embedded](http://www.youtube.com/watch?v=NZHIqVy2M6U&feature=player_embedded)

Conventions, and only in established limited cases.<sup>139</sup>

In contradiction with these standards, the police used rubber bullets during the dispersal when other more effective means had not yet been exhausted. Furthermore, the police resorted to use of force without any extreme necessity. More specifically, in a number of cases the police resorted to the indiscriminate use of rubber bullets, frequently targeting people who did not pose any threat to the police or to the life and health of other individuals who put up resistance to the police at that time.

According to the Israeli Human Rights organization “B’Tselem”, in accordance with the Open Fire Regulation, use of rubber bullets on the occupied territory is prohibited within a distance of 40 meters.<sup>140</sup>

First of all, it should be underlined that unlike Israel, the Georgian legislation does not define use of rubber bullets as an extreme special means when the goal is not fulfilled by using gas, sonic devices or by firing warning shots in the air. Nonetheless, even in a problematic region like the Palestine occupied territory, specific distance is determined for use of bullets; however, there are no such restrictions in Georgian legislation. Nonetheless, in compliance with the Law of Georgia on Police, the rule of inevitability and proportionality must be pursued, which implies that a certain distance should be respected while using rubber bullets in order to prevent mutilation of a person or use of rubber bullets by the police when an aggressor approaches; instead, the police should resort to other means, such as a rubber truncheons, for instance.

Regrettably, during the dispersal on May 26 these rules were disregarded. At the beginning of the dispersal, the head of the Isani regional organization of Representative Public Assembly, Besik Tabatadze was outside Kashueti Church.

He was shot with 8-9 bullets in different parts of his body. As a result, Besik Tabatadze suffered a permanent loss of sight in his left eye.

In his statement to GYLA, Besik Tabatadze recalls *“I turned around to Kashueti and saw a line of Special Forces officers and suddenly, several shots were fired at me from the end of the line. I was hit with 8 bullets. They were firing from a 5-6 meters distance. I heard a bursting noise near my eye and immediately lost sight in my left eye. I touched my face, I saw blood and I felt pain.”*



After that, a tear gas capsule exploded right at Besik Tabatadze’s feet, which hurt his right eye and limited his vision. He regained his eyesight in his right eye after he was drenched with a spurt of water at the National Museum.<sup>141</sup> Besik Tabatadze was detained by the police as he was trying to escape through the construction site located between Giordano shop and the National Museum. Although he requested to have his hands tied in the front, so that he could wipe off the stream of blood flowing from his eye, his hands were tied on his back. Besik Tabatadze was taken to the MIA Tbilisi headquarters, where was allowed to see a doctor for the first time. The doctor demanded the immediate release of Besik Tabatadze and stationary medical assistance for him. An ambulance was called but it arrived three hours later, at 06:30 am. Besik Tabatadze was transported to Ghudushauri Clinic by ambulance; at the Clinic he underwent surgery and medical manipulations. He was released from hospital on May 26, 2011, at around 03:00 pm. He permanently lost sight in his left eye.

<sup>139</sup> See, Human Rights Watch report “Crossing the line”, December 2007 , p. 33. Accessible at <http://www.hrw.org/en/reports/2007/12/19/crossing-line> also, see the report of the independent commission on policing for Northern Ireland, September, 1999. Accessible at: <http://cain.ulst.ac.uk/issues/police/patten/patten99.pdf>

<sup>140</sup> [http://books.google.com/books?id=9FTxoncXDwwC&pg=PA384&dq=the+rules+on+the+use+of+rubber+bullet&hl=en&ei=7\\_nkTaD2BMvz-gaL8r3iBg&sa=X&oi=book\\_result&ct=result&resnum=2&ved=0CC0Q6AEwAQ#v=onepage&q=the%20rules%20on%20the%20use%20of%20rubber%20bullet&f=false](http://books.google.com/books?id=9FTxoncXDwwC&pg=PA384&dq=the+rules+on+the+use+of+rubber+bullet&hl=en&ei=7_nkTaD2BMvz-gaL8r3iBg&sa=X&oi=book_result&ct=result&resnum=2&ved=0CC0Q6AEwAQ#v=onepage&q=the%20rules%20on%20the%20use%20of%20rubber%20bullet&f=false)

<sup>141</sup> <http://www.palitravt.ge/akhali-ambebi/politika/5068-sakhalkho-krebis-aqciis-monatsile-masze-gankhorcielebul-dzaladobis-faqt-ikhsebebs.html> as well as the statement of Besik Tabatadze obtained by GYLA

There were other cases of shooting rubber bullets from a distance of 5-6 meters, which indicates that Besik Tabatadze's case was not an isolated incident.<sup>142</sup>

Demonstrators thrown to the ground with their hands tied were targets for rubber bullets fired from a distance of 2-3 meters.<sup>143</sup> Special Forces officers sitting on moving vehicles were going after demonstrators trying to escape and shot them in their heads and faces from a distance of 2 meters.<sup>144</sup> Rubber bullets were fired at demonstrators who were trying to find a way out from Rustaveli Avenue but in vain.<sup>145</sup> The police were shooting rubber bullets at people from behind. Demonstrators were trying to cover their heads.<sup>146</sup>

#### 4.2. Violation of Political Neutrality

Existing legislation promotes the principle of political neutrality in relation to the police; however, it does not contain a direct stipulation prohibiting the police from publicly expressing propagandist opinions of political content, particularly when they are discharging their official duties. Despite this deficiency, on May 26, 2011, law enforcement personnel violated legislative requirements related to the de-politicization of the police.

The Constitution of Georgia associates the principle of de-politicization with membership of a political union. However, it says nothing about active support of a political party or engagement in its activities. Under para. 5, Article 26 of the Constitution of Georgia, a person who is enrolled in the personnel of the armed forces or the forces of the bodies of internal affairs shall cease his/her membership in any political association.

Prohibition of party-membership is mirrored by para.3 of Article 21 of the Law of Georgia on Police. Under para. 2 of Article 4 of the Law, a policeman shall respect and protect the rights and liberties of an individual, despite his political or other beliefs. The noted stipulation obligates police to respect and not to violate the rights of an individual due to his political beliefs.

Article 3.16 of the Police Code of Ethics prohibits a police officer from pursuing political activities both while discharging his official duties as well as outside working hours. A police officer should further not disseminate propaganda material.

Participant of the assembly Giorgi Obgaidze declares that during beatings policemen verbally insulted Representative Public Assembly leader Nino Burjanadze. She was referred to as an agent of Russia.<sup>147</sup> According to another participant, Elene Makharadze, one of the Special Forces officers called her a traitor.<sup>148</sup> Davit Gaprindashvili noted that one of the Special Forces officers was threatening a woman. Davit Gaprindashvili covered the women with his body in order to protect her from a Special Forces officer who then hit him and said: *"are you, a slave of Russians, trying to pretend you're brave?"* Special Forces officers further said to Gaprindashvili: *"you are slaves of Russians, we are fighting against them and look what you're doing"*.<sup>149</sup> People in the hall of Rustaveli Movie Theatre were beaten to force them swear at Nino Burjanadze.<sup>150</sup> Demonstrator Boris Kalandadze was referred to as someone *"bought by*

<sup>142</sup> [http://www.youtube.com/watch?v=4Xad8dzCO8Q&feature=player\\_embedded](http://www.youtube.com/watch?v=4Xad8dzCO8Q&feature=player_embedded)

<sup>143</sup> Statement of Maestro TV journalist Anna Lapiashvili obtained by GYLA

<sup>144</sup> Statement of Bidzina Gegidze to GYLA

<sup>145</sup> Zhana Gujejiani's statement to GYLA

<sup>146</sup> Statement of Netgazeti journalist Nestan Tsetskhladze to GYLA

<sup>147</sup> Giorgi Obgaidze's statement to GYLA

<sup>148</sup> Elene Makharadze's statement to GYLA

<sup>149</sup> Davit Gaprindashvili's statement

<sup>150</sup> Boris Kalandadze's statement

*Putin's money*" by Special Forces officers.<sup>151</sup> They also referred to the people in the hall as traitors.<sup>152</sup> In his statement to GYLA, Bidzina Gegidze declares that at MIA headquarters in Tbilisi he was told by persons dressed in civilian uniforms: "we were real dirt-bags, we do not appreciate Misha, we do not like the police, Misha has been sent from above..."

The police made such propagandist statements in the process of discharging their official duties. Special Forces officers were clearly expressing their negative attitude toward the political activities of the assembly leaders. Their statements also implied the motivation for the ill-treatment that is the political beliefs of the protestors. Therefore, the police violated para.2, Article 4 of the Law of Georgia on Police by disrespecting the political beliefs of demonstrators and subjecting them to ill-treatment due to their political affiliations.

The political statements made in the process of discharging official duties can be viewed in general terms as political activity as propaganda statements are an essential part of any political activity. Hence, the police violated the prohibition stipulated by the Code of Ethics.

### 4.3. Inhuman and Degrading Treatment of Demonstrators at the Rally Scene

#### 4.3.1. General Analysis

In *Oya Ataman v Turkey* (the case involved use of teargas during dispersal of an assembly) the ECHR declared:

"The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. Treatment is considered to be "inhuman" if, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. Furthermore, in considering whether a treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3".

In *Balçık and others v. Turkey* the ECHR declared:

Article 3 of the Convention protects one of the fundamental values of a democratic society. Article 3 of the Convention does not envisage the exceptions or such diversion that are established by Article 15 of the Convention... Alleged ill-treatment should be supported by appropriate evidence. When evaluating the evidence, "the standard of proof beyond reasonable doubt" is applied. Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences. In the same case, the ECHR declared with regard to damages caused by use of police force for dispersal of a group of demonstrators, the burden of proof rests on the Government; more specifically, it should demonstrate with convincing arguments that the use of force that caused the bodily injuries was not excessive.

In *Tomasi v France*, the ECHR declared that the deprivation of liberty of an individual engenders a state of inferiority in individual, which increases the risk of ill-treatment.

Demonstrators of the May 26, 2011 assembly were subject to degrading treatment, such as the "corridor of shame". These individuals, who were left in a state of inferiority and therefore were unable to pose any threat the police, were insulted physically and verbally in a number of ways.

#### 4.3.2. „Corridor of Shame"

According to our information, the Special Forces Unit used the so-called "corridor of shame" against

<sup>151</sup> Boris Kalandadze's statement to GYLA

<sup>152</sup> Gia Burjanadze's statement to GYLA

May 26, 2011 demonstrators several times.

The “corridor of shame” was allegedly used by the police for the first time against participants of a spring 2009 rally. The corridor of shame entails the following: law enforcement officers are divided into two groups, facing each other, thus creating the so-called live corridor. Demonstrators walk between these two groups, while police beat them with fists and truncheons.

GYLA obtained a statement from Giorgi Gogashvili, a rally participant. According to him, after the Special Forces Unit started the dispersal, he ran towards the National Museum at Rustaveli Avenue. Special Forces officers caught up with him, hit him with a rubber truncheon and knocked him down. Allegedly he had to walk through the corridor of shame afterward, together with 8 more people.

Giorgi Gogashvili and 8 other individuals were allegedly sworn at in the corridor of shame.

The fact that police resorted to use of the “corridor of shame” on the territory nearby Freedom Square is also confirmed by an activist of Public Assembly, Davit Gaprindashvili:

“Special Forces officers had us, the detainees, walk through the corridor of shame. There were Special Forces officers standing on both sides of the corridor, beating us while we walked through” – declares Davit Gaprindashvili.<sup>153</sup>

In a statement to GYLA, detainee Lasha Javakhishvili notes that Special Forces officers held the so-called corridor of shame while removing people out from the hall of Rustaveli Movie Theatre. They had detainees pass through the corridor, one by one, beating them with truncheons from both sides. At the end of the corridor, Special Forces officers handcuffed detainees and took them to the foyer.<sup>154</sup>

#### 4.3.3. Ill-treatment on Rustaveli Avenue

The force used by the Special Forces officers was indiscriminate, to the extent that it was used against people who had not participated in the assembly and who were just accidental bystanders. For example, at the time of the dispersal a man went out to buy some bread at Purtseladze Street. He ran into Special Forces officers moving from Rustaveli Avenue. He showed them the bread but nevertheless, they fired rubber bullets at him.<sup>155</sup>

#### 1. Ill-treatment on Rustaveli Avenue and Neighboring Streets during Detention of Demonstrators

At the time of the dispersal, when the convoy of the rally organizers started driving from Rustaveli Avenue to Freedom Square, two participants – Otar and Nodar Tskhadadzes followed it. One of the cars was driving in front, two cars were following. The cars were driving at the speed of pedestrians. The Tskhadadzes thought that it was a safer way to leave Rustaveli Avenue. Otar Tskhadadze was holding on the left side of the car with his hand while Nodar Tskhadadze was holding on the right side. Suddenly, Special Forces officers hit Otar Tskhadadze, who let go of the windscreen-wiper. He fell down on the sidewalk close to the railings. Several Special Forces officers started beating him. Although Otar Tskhadadze was handcuffed, they continued to beat him. One of the officers ordered him to get up but he couldn't. Therefore, the officer kicked him in his left eye. Otar Tskhadadze lost consciousness as a result.<sup>156</sup>



<sup>153</sup> Gia Burjanadze's statement to GYLA

<sup>154</sup> Lasha Javakhishvili's statement to GYLA

<sup>155</sup> Statement of Maestro TV journalist Khatuna Khvedelidze to GYLA

<sup>156</sup> Otar Tskhadadze's statement to GYLA

Trying to leave Rustaveli Avenue, several demonstrators pretended to be journalists. Two demonstrators were trying to leave the scene by standing close to a Maestro TV camera crew. Special Forces officers stopped the Maestro TV journalists, cameraman and accompanying persons several times. They demanded accreditation documents. Officers were separating from journalists those accompanying individuals who failed to submit accreditation documents or did not carry a microphone or a camera. These people were not allowed to leave the territory. They were knocked to the ground, beaten with rubber truncheons and cuffed.<sup>157</sup>

Zaza Sanikiani was subject to cruel treatment during detention. He is a member of the Public Assembly. Furthermore, his function was to provide demonstrators with drinking water, food and medicine. On May 22, 2011, when Representative Public Assembly was holding the protest rally outside the Public Broadcaster, Zaza Sanikiani went to fetch some bread. Suddenly he was hit in the back with gas explosives – as a result of special means used by police against the demonstrators assembled outside public TV building. Zaza Sanikiani quickly took the explosive and threw it away. There were about 20-30 officers standing nearby.

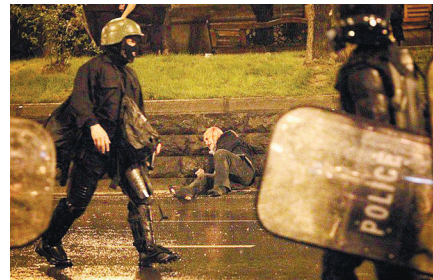
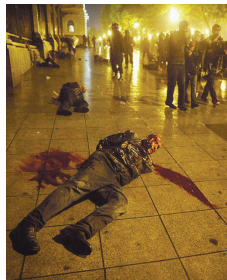
At the time of the dispersal, on May 26, 2011, Zaza Sanikiani went toward the Freedom Square Subway Station, hoping to leave the rally scene. Suddenly, one of the Special Forces officers pointed at him and told others – that’s not that person. Zaza Sanikiani recalls:

*“...there were a lot of them around me. They formed a circle, kicking me, beating me with their hands or rubber truncheons one by one. I tried to cover my face with a bag that I was holding but one of the officers took the bag away. He hit me in the eyes and smashed my eye-glasses. Then he hit me even more forcefully. I fell on the ground. Special Forces officers came right at me and started beating me. Afterward, one of them asked me – which hand did you use to distribute water? Then they made me put my left hand on the ground and started hitting my middle finger with a truncheon. They beat me so bad that my finger started bleeding. It appears that they knew who I was and what I was doing at the rally.*

*They were beating me, saying – how come you’re still alive. They were also swearing at me. One of the officers put a gun to my head and shot me with rubber bullets five times. I lost consciousness. When I woke up, I was lying on my back in front of the Freedom Square Subway Station, with my hands tied on my back. I could not feel my hands as they had grown numb.”<sup>158</sup>*

Davit Gaprindashvili was physically insulted during detention. According to him, at the time of the dispersal he was standing between the Youth House and Parliament. Davit Gaprindashvili noticed that one of the Special Forces officers was threatening a woman. He covered the woman with his body and the officer hit him:

*“Suddenly several Special Forces officers came at me and started beating me. They cuffed me and knocked me down on the sidewalk. There were other detainees as well lying on the ground. Men in black uniforms were beating us while we were lying on the ground” – states Davit Gaprindashvili.<sup>159</sup>*



*Injured rally participants as a result of excessive use of force by police*

<sup>157</sup> Statement of Anna Lapiashvili

<sup>158</sup> Zaza Sanikiani’s statement to GYLA

<sup>159</sup> Davit Gaprindashvili’s statement to GYLA

## 2. Ill-treatment on Rustaveli Avenue following Detention

Police officers were physically tackling people who had lost their ability to resist due to restrictive measures undertaken by the police. There were demonstrators lying on the ground at Rustaveli Avenue, outside the Youth House, nearby the stairs leading up to the Chancellery, on asphalt. Special Forces officers gathered demonstrators in one place, on Rustaveli Avenue, throwing them down. They had their hands cuffed with disposable plastic handcuffs. Although they had been deprived of their liberty, law enforcement officers continued the use of unnecessary force against them, which equals ill-treatment. Law enforcers beat people lying on the ground with rubber truncheons and targeting them with rubber bullets.<sup>160</sup>

Three or four Special Forces officers were beating a detainee who had been knocked down and cuffed. Detainees were keeping their heads down. If they lifted their heads up, officers beat them with rubber truncheons.<sup>161</sup> The cameras of Maestro TV caught Special Forces officers beating an elder man who had been knocked down on the ground with their rubber truncheons.<sup>162</sup> Demonstrators were stomping all over the demonstrators lying on the ground.<sup>163</sup>

Special Forces officers continued assaulting Davit Gaprindashvili after he was handcuffed. Davit Gaprindashvili, and other detainees lying on the ground outside the building of a former department store, were beaten by law enforcement officers dressed in red and blue uniforms. These officers were assaulting them with gloves with a sharp object attached to them: “one of the men wearing a blue uniform and a glove slapped me in the face. There was something pointy attached to the glove but I could not see exactly what it was. After he slapped me, a stream of blood burst out from the left corner of my lower lip. I was bleeding heavily and that was probably why they left me alone and stopped beating me” – declares Davit Gaprindashvili.<sup>164</sup>

Wrestler Luka Kurtanidze was detained in Rustaveli Movie Theatre and taken to Freedom Square on foot by law enforcers. The black shirt that Luka Kurtanidze was wearing had been torn off. He was accompanied by different teams of Special Unit officers, one by one. Law enforcers kept hitting and swearing at him.

Detained persons were transported by “Bogdan” yellow micro buses. While boarding the buses, detainees were assaulted and physically insulted by policemen who were beating them with rubber truncheons, hitting them with their hands and feet, and swearing at them.<sup>165</sup>

## 3. Ill-treatment in Rustaveli Movie Theatre

The protesters had set up a stage outside parliament which was attached to a trailer. After the Special Forces Unit started attacking demonstrators simultaneously with rubber bullets and tear gas, as well as water cannons, and all exits from Rustaveli Avenue had been blocked, the only place where demonstrators could escape these special means targeted at them was the trailer.<sup>166</sup> A stampede started between the trailer and a demolished building of a painter.<sup>167</sup> As a lot of people had gathered on the sidewalk outside the former painter’s house, there was a possibility that the construction fence would come down and demonstrators would fall over the fence and into a large hole. The rush of the crowd could have, further, overturned the trailer. Demonstrators were under siege with no place to go. The only safe place

<sup>160</sup> Statements of Anna Lapiashvili, Giorgi Obgaidze, Karen Arutinovi, Zurab Gongadze to GYLA

<sup>161</sup> Karen Arutinovi’s statement to GYLA

<sup>162</sup> [http://www.youtube.com/watch?v=Q5XJ3zrmsel&feature=player\\_embedded](http://www.youtube.com/watch?v=Q5XJ3zrmsel&feature=player_embedded)

<sup>163</sup> Statements of Bidzina Gegidze and Nato Gogelia to GYLA

<sup>164</sup> Davit Gaprindashvili’s statement

<sup>165</sup> Statements of Netgazeti journalist Nino Kakhishvili and participant Zurab Kikilashvili to GYLA

<sup>166</sup> Statement of Giorgi Burjanadze

<sup>167</sup> Bidzina Gegidze’s statement



where they could find shelter was Rustaveli Movie Theatre.<sup>168</sup> Those who were running from Rustaveli Avenue to Freedom Square found that all exits had been blocked. They had to turn back to find shelter in Rustaveli Movie Theatre.<sup>169</sup>

In order to prevent demonstrators from finding shelter in a closed building, the police fired teargas inside Rustaveli Movie Theatre. By that time some of the demonstrators were already inside the building together with movie audiences. Special Forces Unit entered the foyer before the teargas was fired.<sup>170</sup>

Law enforcement officers in the movie theatre ill-treated the people who were inside. For example, Gia Gachechiladze, who was leaning against a gaming machine on the second floor of the building, was hit in the shins with rubber truncheons.<sup>171</sup>

As a result of the raid, up to 50 demonstrators went rushing into the hall located on the second floor of Rustaveli Movie Theatre.<sup>172</sup> There was an ongoing movie screening at that time. After ten minutes the Special Forces Unit entered the same hall.<sup>173</sup> They stood at both exits. One of the doors of the hall was broken in by law enforcement.<sup>174</sup> The Special Forces Unit chose 30 persons from the audience who had their tickets with them and let them go. They also let go women who did not have tickets with them. The remaining people were forced to stay in the hall. Lasha Javakhishvili, who was in the hall with his wife and not participating in the rally organized by Public Assembly did not have a ticket to prove it, was forced to stay. Law enforcement officers started physically abusing them. There were cases where police could tell protesters and viewers apart by wet clothes.<sup>175</sup> There were around 200 Special Forces officers in the movie theatre. Initially, they attacked the protest rally leaders with rubber truncheons. 10 officers beat one of the Public Assembly leaders - Luka Kurtanidze. Afterward, the remaining people were forced to sit in chairs. Special Forces officers –one hundred in total - approached each demonstrator, one by one, asking which region of Georgia they were from. After receiving an answer, they hit them with rubber truncheons in the face.<sup>176</sup> Protesters from the regions were treated more aggressively than those who lived in Tbilisi.

According to Boris Kalandadze, demonstrators who had been cuffed were forced to lie down while Special Forces officers proceeded to stomp on them. They were also hit with plastic handcuffs. Boris Kalandadze was asked where he was from. He responded that he lived in Tbilisi. Special Forces officers demanded an ID card from him. In order to protect himself from the aggression of Special Forces officers, Boris Kalandadze moved to the last isle. Nonetheless, he was beaten by five officers. Those who were asking for medical help were also subject to such attacks.<sup>177</sup> Some were taken out from the hall and beaten,<sup>178</sup> thrown down on the ground in the foyer and physically attacked. The detainees did not resist the Special Forces officers at all.<sup>179</sup>

The most vivid illustration of ill-treatment was physical violence exerted against persons taken from Rustaveli Movie Theatre. Video footage from Palitra TV internet-television shows Special Forces offi-

<sup>168</sup> Giorgi Burjanadze's statement

<sup>169</sup> Boris Kalandadze's statement

<sup>170</sup> Statements of Alexandre Devdariani and Gia Burjanadze to GYLA

<sup>171</sup> Statement of Bidzina Gegidze

<sup>172</sup> Boris Kalandadze's statement

<sup>173</sup> Lasha Javakhishvili's statement

<sup>174</sup> Boris Kalandadze's statement to GYLA

<sup>175</sup> Statement of Shorena Latatia

<sup>176</sup> [http://geurasia.org/news/26-მაისს-დაშლილი-აქციის-ერთ/?fb\\_ref=fbrefferal&fb\\_source=home\\_oneline](http://geurasia.org/news/26-მაისს-დაშლილი-აქციის-ერთ/?fb_ref=fbrefferal&fb_source=home_oneline)

<sup>177</sup> Gia Burjanadze's statement

<sup>178</sup> Statement of Andrey Gora to GYLA

<sup>179</sup> Statements of Lasha Javakhishvili and Andrey Gora to GYLA

cers beating demonstrators on their heads, faces and backs with their hands and fists, as well as with truncheons on their chest and backs. It is noteworthy that all of the persons taken out from the movie theatre building had been detained at the time of the beatings, i.e. subjected to effective control of the state. None of them were putting up any resistance but were in fact following the officers' orders obediently. This is the context in which the aforementioned violent actions occurred.

Gia Burjanadze clarifies that when he was detained and taken down to the foyer of the movie theatre, he saw 8 men thrown on the floor. Their hands had been tied. Special Forces officers were kicking them or hitting them with rubber truncheons.

The removal of the demonstrators from Rustaveli Movie Theatre is the most vivid and authentic example of the alleged inhumane and degrading treatment violations committed by law enforcers on the night of May 26, 2011.

The aforementioned incidents clearly demonstrate inhumane and degrading treatment of the detainees, which is absolutely prohibited by Article 3 of the European Convention on Human Rights.



*Photos illustrate operation carried out by special forces officers in Rustaveli Cinema House*

#### 4.4. Allegedly Unsubstantiated and Unlawful Cases of Deprivation of Liberty

Following the dispersal of the May 26, 2011 rally, the MIA released official information about the detention of 90 persons. The list of detainees' names was released by the Ministry on May 27, 2011.<sup>180</sup>

There were persons among the detainees who were accidental bystanders and did not participate in the protest rally, as well as individuals who participated in the assembly but left the territory at 12:00 am as notification had expired. The detention of some of the individuals was not properly registered at MIA headquarters in Tbilisi but rather, these people were taken from the police department and left in an unpopulated area in handcuffs.

##### 4.4.1. Detention of Alleged Accidental Bystanders

For instance, according to prisoners held in Ozurgeti isolator – Khvicha Kvaratskhelia, Elguja Papunashvili, Giorgi Bujishvili, Givi Kurdiani as well as prisoners held in Lanchkhuti isolator – Vepkhia Devnozashvili, Gocha Lashkhia, Taniel Pluidze, Tengiz and Gela Mamniashvili, they did not participate in the May 26, 2011 protest but were accidental bystanders. Nevertheless, they were detained without any explanation and the materials of cases brought against them are similar to those brought against other detainees.<sup>181</sup> Lasha Javakhishvili served his administrative imprisonment in Telavi temporary detention isolator. He did not have a ticket at Rustaveli Movie Theatre and had never participated in the protest rally of Public Assembly. Nevertheless, he was considered to be a participant as he could not show a ticket.<sup>182</sup>

<sup>180</sup> <http://police.ge/index.php?m=8&newsid=2515> – Information released by the Interior Ministry

<sup>181</sup> Information provided by lawyers of GYLA office in Ozurgeti

<sup>182</sup> Statement of Lasha Javakhishvili

#### 4.4.2. Detention of Persons who participated in the Rally but Left the Scene before 12:00 A.M. on May 25

For instance, Giorgi Kolbaia, held at Lanchkhuti isolator, declares that he knew the sanctioned meeting was ending at 12:00 am; therefore, he took a cab ride home. However, he was forced to get out of the cab at the Circus and was then detained by Special Forces officers.<sup>183</sup>

#### 4.4.3. Unlawful Detention

Bidzina Gegidze was detained by the police in the foyer of Rustaveli Movie Theatre. He was handcuff with his hands tied behind his back. He was placed in a patrol car and together with four other individuals was transported to MIA headquarters in Tbilisi. Bidzina Gegidze was taken to the 6<sup>th</sup> floor of the building. Then he was taken to the seventh floor and in one of the rooms, he was physically assaulted for over 20 minutes with the involvement of an official dressed in a white shirt, military pants and combat boots. Later the official called on his cell-phone and said that Bidzina Gegadze refused to say anything. Bidzina Gegadze was taken out from the office to a foyer, taken downstairs where a person dressed in civilian clothes appeared and ordered the others to take the handcuffs off the detainees' hands and tie his hands in the front instead. After his order was followed, policemen dressed in crimson vests, three in total, approached him, placed him in a Volkswagen and took him from Dighomi Masivi west towards Mtskheta:

*"I was sitting in front. There were two policemen sitting next to me. The car made a turn to Mukhtagverdi. The policemen were discussing whether to take me far or somewhere close. [They said] "We have everything ready". One of them was staring at me. The car made a left turn before we reached Mukhtagverdi cemetery. There is a little lake, we passed by it... we drove 2 km. The car stopped. They left me 30 meters away from the road and told me to never go to rallies any more, [that] Misha is cool.*

*This whole time I was carrying a phone in my pocket. I could not extract it. I took a shortcut. I fell down and the phone fell out of my pocket. I called the first number that I saw and asked for help. I managed to reach the highway and I was picked up by a car" – states Bidzina Gegidze.*

The latter has never been prosecuted for any administrative or criminal offence. There is no charge that he testified as a witness or any other evidence that would confirm institution of any kind of legal proceedings. The police did not document his deprivation of liberty, although it is necessary to do so in all cases of deprivation of individuals' liberty. Both in cases of administrative and criminal detentions, it is necessary to draw up a protocol of detention. In compliance with Article 149 of the Criminal Procedure Code, the decision to bring a person under compulsion is necessary to secure participation of a witness in an investigation if the witness refuses to appear voluntarily.

Georgian legislation provides for a single case when deprivation of liberty is allowed without duly documenting it. Article 9<sup>1</sup> of the Law of Georgia allows for stopping a person at a place where a police officer reasonably suspected that a crime had been committed. The noted institute does not allow for any conveyance of the individual, especially to a police department, if there are no grounds for his detention.

The fact that instead of initiating legal procedures required by the law, law enforcers abandoned Bidzina Gegidze in a vulnerable position (with his hands tied) in an unpopulated area after he was taken from the police department implies the illegal nature of Bidzina Gegidze's detention.

<sup>183</sup> E.g., according to information provided by lawyers of GYLA office in Ozurgeti



*Injured rally participants transferred to the Republic Hospital after the rally dispersal*

## CHAPTER 5. ANALYSES OF DEPRIVATION OF LIFE CASES CONNECTED TO DISPERSAL OF THE RALLY

### Introduction

According to information acquired by GYLA five cases involving deprivation of lives which require an assessment in terms of the State's positive and negative obligations, were discovered in connection to the dispersal of the opposition rally on May 26, 2011. In particular, four rally participants (Nodar Tskhadadze, Nika Kvintradze, Suliko Asatiani and Temur Kapanadze) and one policeman (Vladimer Masurashvili) died in the process of dispersing the opposition rally. Each of these cases was spontaneous and had no factual links with the others (except that of Nika Kvintradze and Suliko Asatiani, as the Police discovered their bodies together). This chapter describes the facts of each case and suggests their legal analysis.

It should be noted that the investigations of the cases in this report have already concluded. As a result, final judgments were already rendered in the cases of Nodar Tskhadadze's and Vladimer Masurashvili's, resulting in approved plea agreements with the accused. As for the case of Nika Kvintradze and Suliko Asatiani, the investigation has stopped according to information submitted by the Ministry of Interior.

Every case involving a deprivation of life needs, on the one hand, an analysis of the fulfillment of the State's positive and negative obligations under the factual circumstances, and, on the other hand, an examination of the effectiveness and impartiality of the conducted investigation.

As our analyses demonstrates, each of the cases is supposedly linked to police mistakes and the excessive force applied in the process of planning and implementing the dispersal of the opposition rally. Furthermore, the effectiveness and independence of the official investigations into the cases is also questioned. None of the victims or accused has enjoyed the right to an effective defense, which apparently directly influenced the quality of the prosecution's proof.

### 5.1. Methodology

During the process of preparing this report the working group had no access to the criminal case materials. This was due to resistance from the victims and accused to GYLA's representation of their interest during the investigation. Representatives of the victims also refrained from any type of communication or cooperation on the case (with GYLA, as well as with other human rights organizations and mass media). Neither Nikoloz Zautashvili nor Alexander Bibiluri – the persons accused in Nodar Tskhadadze's and Vladimer Masurashvili's deaths - accepted GYLA's lawyers' assistance nor have they agreed to release the case materials to the working group for preparation of this report.

Considering the high public interest in the criminal cases, GYLA repeatedly applied to the investigative organs with a request to disclose substantial evidence and information, yet they did not respond to any of our applications.<sup>184</sup> Having requested public information from the domestic courts, the working group was also denied access to already finished criminal case materials<sup>185</sup>, therefore while examining the cases for this report the working group operated with limited resources and scarce information.

It should be noted that following the developments of May 26 the working group was proactive in acquiring information and evidence regarding the deprivation of these lives. The working group conducted interviews with persons linked to the events either directly or indirectly. By the initiative of the working group, expertise was carried out on certain cases and various specialists were asked to submit

<sup>184</sup> GYLA letter to the prosecutor's office Ng01/120-11 of 26.07.2011, GYLA letter to the Ministry of Interior and to the General Prosecution of Georgia 09.09.2011(Ng-01/133/01)

<sup>185</sup> The letter of the Tbilisi City Court to GYLA, 05.09.2011 (#5/09/2011-01); the letter of Tbilisi City Court to GYLA 28.10.2011 (#197/32067)

their expert opinions and consultations on specific issues. Moreover, the group has also requested and analyzed the video and photo materials released by mass media.

With the limited materials and resources obtained by the working group it is impossible to fully determine the truth in the cases and to restore the full picture of what actually happened. However, the information obtained allows us to judge the validity and credibility of investigation results.

## 5.2. International standards on protection of the right to life

According to the case law of the European Court of Human Rights, Article 2 of the Convention (right to life) applies not only to cases of intentional deprivation of life, but also to the use of force that results in a deprivation of life through negligence. Article 2 of the Convention acknowledges the positive obligation of the state to protect human life from third persons or/and risks to life.

Any use of force by the state must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in Article 2 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims. While assessing the legitimacy and proportionality of the applied force it is necessary to examine whether the operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force. Furthermore, the authorities must take appropriate care to ensure that any risk to life is minimised. The Court must also examine whether the authorities were negligent in their choice of action.<sup>186</sup>

As to facts that are in dispute, the Court’s jurisprudence confirms the standard of proof is “beyond reasonable doubt”. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.<sup>187</sup>

In almost all cases where a person is assaulted or ill-treated by the Police or soldiers, their complaints will fall to be examined under Article 3 of the Convention. Nonetheless, the degree and type of force used, and the intention or aim behind the use may among other factors, be relevant in assessing whether in a particular case the State agents’ actions in inflicting injury short of death are such as to bring the facts within the scope of the safeguard afforded by Article 2 of the Convention. For example, in the case of *Makaratzis v. Greece* the court examined whether the force used by the police against the applicant was potentially lethal.<sup>188</sup>

The state’s obligation to prevent and suppress risks to a person with through relevant police and operational measures also falls within the scope of a state’s positive obligation under Article 2 of the European Convention of Human Rights. In that regard the European Court introduced the following state liability test: States shall be responsible if the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.<sup>189</sup>

For ensuring the right to life, Article 2 of the Convention imposes a duty on states to put in place effective criminal law provisions to deter the commission of offences, backed up by law-enforcement machinery for the prevention, suppression and punishment of any breaches of those provisions. Article 2 of the Convention states that the state bears the responsibility of conducting an effective, official investigation into murder or other deaths under suspicious circumstances, notwithstanding whether the disputed act was committed by a private person, state agent or unidentified individual.<sup>190</sup>

<sup>186</sup> *Isayeva, Yusuoiva and Bazayeva v Russia*, application ## 57947/00, 57948/00 and 57949/00,

<sup>187</sup> *Isayeva, Yusuoiva and Bazayeva v Russia*, above paragraph 172

<sup>188</sup> *Makaratzis v. Greece*, application # 50385/99, judgment 20 December 2000, §§51-52

<sup>189</sup> *Osman v. the United Kingdom*, application # 87/1997/871/1083, judgment of 28 October 1998, § 116.

<sup>190</sup> *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 92.

Effective investigations must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. The investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements.

The European Court has pointed out in a number of cases that a state's procedural obligation under Article 2 is not an obligation of result, but of means.<sup>191</sup>

Article 2 of the Convention also obliges the state to ensure the adequate protection of victims through the investigation process. In compliance with Article 2 of the Convention, there must be a sufficient element of public scrutiny of the investigation, or its results, to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.<sup>192</sup>

### 5.3. Cases of Nodar Tskhadadze's and Vladimer Masurashvili's deprivation of life

#### 5.3.1. Introduction

According to the official investigations into the cases of Nodar Tskhadadze and Vladimer Masurashvili, their loss of life is linked to the departure from the territory of the rally by the cars of the escort of rally organizers.<sup>193</sup> On July 28 and 29 Tbilisi City Court rendered judgments in these cases and approved plea agreements with Nikoloz Zautashvili and Alexandre Bibiluri.<sup>194</sup> In both cases the accused pled guilty. Together with other offences, Nikoloz Zautashvili was sentenced to 7 years imprisonment for the life of Nodar Tskhadadze as well as 5 years' probation. Alexander Bibiluri was sentenced to 12 years total, seven years' of imprisonment and 5 years probation, in the case of Vladimer Masurashvili. The Court decisions in these cases make brief and general reference to any factual circumstances concerning the conditions of victims' death.

Since the working group had no access to the case materials, it is difficult to judge the sufficiency and trustworthiness of the evidence submitted by the prosecution. Yet, additional information acquired by the working group allows us to assess the effectiveness of the investigation and credibility of its outcomes. In this context we should mention some substantial facts that were distinguished in the process of working on the cases: 1. The investigative organs of the Ministry of Interior of Georgia conducted the inquiry into the cases concerned. If we take into account that employees of the Ministry of Interior participated in the dispersal of the rally, it was essential to transfer the case to the prosecution for an independent and impartial investigation of the offences connected to this event; 2. The results of the court judgments of July 28-29, 2011 do not comply with the content of first statements made by the Ministry of Interior on May 26, as the organ implementing the investigation. Moreover, as the final results of the investigation demonstrated, the video recordings disseminated by the Ministry of Interior on May 26 and later<sup>195</sup> do not realistically illustrate the situation surrounding Nodar Tskhadadze's and Vladimer Masurashvili's loss of life. 3. In the process of dispersing the rally, in general, as well as the process of the escorts leaving the rally, the state failed to observe its positive obligation to plan and implement the action in a way as to prevent any risk to the life and health of the policemen and participants of the rally. 4. Presumably, Nodar Tskhadadze was not provided with timely medical aid; 5. The investigation's con-

<sup>191</sup> *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71.

<sup>192</sup> *Ramsahai and Others v. the Netherlands [GC]*, no 52391/99 321-332

<sup>193</sup> Is available on the official web-side of the Ministry of Interior: <http://www.police.ge/index.php?m=8&newsid=2750>

<sup>194</sup> Tbilisi City Court submitted the judgments of July 28, 29 of 2011 to GYLA as public information

<sup>195</sup> See two video recording released by the Ministry of Interior: 1. <http://www.police.ge/index.php?m=8&newsid=2505>. 2. <http://www.palitravt.ge/akhali-ambebi/shemthkhveva/5048-shss-s-akhali-operatiuli-videomasala-bitsadzis-eskortis-shesakheb.html>.

clusions regarding the circumstances of the deprivation of Nodar Tskhadadze's life are not sufficiently valid and raise certain questions.

### 5.3.2. The sources, applied by the working group in the process of examining the cases

While examining Nodar Tskhadadze's and Vladimer Masurashvili's cases, the working group relied mainly on the following sources:

- The judgments of Tbilisi City Court rendered on July 28-29, 2011, against Nikoloz Zautashvili and Alexander Bibiluri, as well as judgments rendered in criminal cases against other drivers of the escort;
- Official statements from the Ministry of Interior and official materials disseminated regarding the cases;
- Photo and video materials recorded by various mass media;
- Additional information acquired by the working group, including witness interviews of people who saw Nodar Tskhadadze during or after dispersal of the rally or whose information was otherwise relevant for the case. The working group held interviews with the following people: 1. **Murman Tskhadadze** – Nodar Tskhadadze's friend and fellow villager who accompanied him until dispersal of the rally and who saw Nodar Tskhadadze's corpse before the funeral;<sup>196</sup> 2. **Otar Tskhadadze** – Nodar Tskhadadze's cousin, who was with Nodar during the dispersal of the rally and accompanied him to Purtseladze street following the car escort. Otar Tskhadadze saw Nodar Tskhadadze's body, presumably dead, at the scene after dissolution of the rally.<sup>197</sup> 3. **Ian Carver** – a journalist from the Open Democracy - and **Jeffrey K. Silverman** - from Human Rights Center - who saw Nodar Tskhadadze's body. 4. **Lasha Cheishvili**, Nino Burjanadze's security staff who submitted to the working group detailed information on the vehicles of the escort and their movement.

### 5.3.3. Analyses of initial and final versions of the investigation on the cases

- **Initial versions of the investigation regarding Nodar Tskhadadze's and Vladimer Masurashvili's deprivation of life**

On May 26, 2011 the Ministry of Interior made two statements on the facts leading to the deprivation of life. In particular, on May 26, 2011 the Ministry of Interior disseminated a statement that two persons had died during the dispersal: Vladimer Masurashvili- police lieutenant - and Nodar Tskhadadze – participant of the rally. According to the official information released by the Ministry of Interior both of them died when protest organizers were driving at high speeds through the corridor created specifically for protesters to leave the Rustaveli Avenue.<sup>198</sup> Later, on the same day, the Ministry of Interior made another statement and submitted more detailed information on the factual circumstances of their deaths. The statement provided:

*“On 26 May, 2011, at 00:10, Nino Burjanadze, together with her accompanying persons left the scene close to the Parliament. They left the place using their cars and driving with high speed in the direction of Freedom Square. Two cars from Burjanadze's escort crashed with several pedestrians. One of these cars was driven by the assistant of Nino Burjanadze - Ivane Chighvinadze and another by her party member Zakaria Zurashvili. During the accident, the employee of the Ministry of Internal Affairs, lieutenant Vladimer Masurashvili and citizen Nodar Tskhadadze were killed. Based on the preliminary examination, both*

<sup>196</sup> The interview taken by GYLA from Murman Tskhadadze in the village Zemo Sviri, 13.07.2011

<sup>197</sup> The interview taken by GYLA from Otar Tskhadadze in the village Zemo Sviri, 13.07.2011 and 12.08.2011

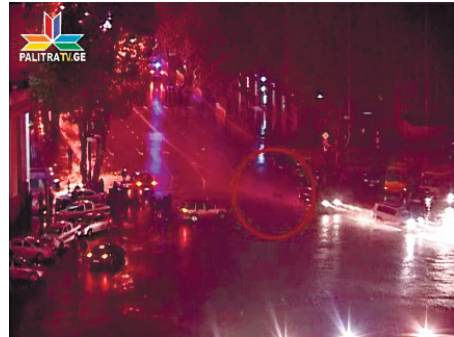
<sup>198</sup> Official web-page of the Ministry of Interior <http://www.police.ge/index.php?m=222&newsid=2504>



*men had multiple injuries that are common characteristics after accidents. In addition, several people were injured, including four policemen. The condition of one policeman is critical at the moment. During the arrest, Ivan Chighvinadze and Zakaria Zurashvili, together with their accompanying persons, resisted to the police.”<sup>199</sup>*

According to an official statement released by the Ministry of the Interior on May 26, the investigation into Nodar Tskhadadze’s and Vladimer Masurashvili’s deaths were linked to the facts of Ivane Chighvinadze’s and Zakaria Zurashvili’s car crashes.

Apart from this statement, the Ministry of Interior also released video material portraying the movement of Burjanadze’s escort in the direction of the Freedom Square.<sup>200</sup> At the beginning of the Freedom Square, in the middle of the road, a body is visible behind the sixth car of the escort (hereinafter we will number the cars in correspondence to the vehicles shown in the video record). The released video material does not show distinctly striking of the person by a car and/or a moment of the person falling from the car. The video is recorded from a distance and identification of the person is difficult. Ivane Chighvinadze was driving the fifth car (white Toyota Land Cruiser 200, with the state number QSQ 808) and the body becomes visible on the road after movement of the sixth car (black Mercedes Benz, with state numbers SOF 204).



*Escort movement on the territory of Liberty Square*

The video recording also provides Ivane Chighvinadze’s confession, stating: “[...]I think, this was the moment when I ran him down, I did not notice then, however, as it seems [presumably makes reference on the video material], than I probably struck him with the car mirror and made him loose balance, afterwards he was run down by a car following mine....”



*Escort movement on the road along «Liberty Square» Metro Station*

Later on, the Ministry of Interior released the second video record portraying the escort’s movement across Freedom Square subway station.<sup>201</sup> For a moment a car that was driven by Nikoloz Zautashvili (cream colored Toyota Forerunner, with the state number MIS 672) noticeably moves up and down, this might be considered as the sign of running over an object/body. At the initial stage of the investigation the Ministry of Interior made no official comments regarding the released video materials.

### • **The final, official version of Nodar Tskhadadze’s deprivation of life**

Nikoloz Zautashvili was found guilty as per Article 117, paragraph 2 (deliberate gross health injury that caused deprivation of life) of the Criminal Code in the case of Nodar Tskhadadze’s deprivation of life. Zautashvili was driving the fourth car<sup>202</sup>, the cream colored Toyota Runner (state number MIS 672)

<sup>199</sup> Official web-page of the Ministry of Interior <http://www.police.ge/index.php?m=222&newsid=2504>

<sup>200</sup> Official web-page of the Ministry of Interior <http://www.police.ge/index.php?m=222&newsid=2504>

<sup>201</sup> Is available on <http://www.palitravt.ge/akhali-ambebi/shemthkhveva/5048-shss-s-akhali-operatiuli-videomasala-bitsadzis-eskortis-shesakheb.html>

<sup>202</sup> Note: we make numbering of the cars according to the sequence of car movement on the freedom square. See the official web-page of the Ministry of Interior: <http://www.police.ge/index.php?m=8&newsid=2505>.

According to the graphic video recording released by the Ministry of Interior on August 21, 2011, Nodar Tskhadadze's deprivation of life took place in the moments surrounding the escort's movement near the Freedom Square station.<sup>203</sup> At the time the corridor of policemen was attempting to stop the escort.

The judgment of Tbilisi City Court of July 28, 2011 provides the following factual circumstances in Nodar Tskhadadze's death: "the car driven by Nikoloz Zautashvili picked up speed and ran down the policeman standing in the corridor; he also crashed into a citizen Nodar Tskhadadze, who was wearing black clothes. He fell down and the car ran over his knee with a wheel and afterwards the driver escaped from the scene of action. Nodar Tskhadadze was taken to the hospital, where he passed away from the serious injuries sustained to his knee."

Apart from the deprivation of Nodar Tskhadadze's life, Nikoloz Zautashvili is also charged with causing various injuries to policemen Giorgi Gegechkori and Mamuka Khachidze.

The decision of the Tbilisi City Court provides that apart from the submitted testimonies, other evidence in the case also proves the charges submitted against Nikoloz Zautashvili. These are R.CH's, T.S's, T. Ch's, G.G's, I.J's, A.T's, L.G's testimonies, O. Tskhadadze's - the assignee of the victim - testimony, testimonies of the victims G.G and M. X., forensic conclusions, traceology, auto-traceology, chemical expertise, seized objects and other case materials.

- ***The final official version of policeman Vladimer Masurashvili's deprivation of life***

In the case of Vladimer Masurashvili's deprivation of life Alexander Bibiluri was found guilty of committing an offence under Article 117, Paragraph 3, clause (a) of the Criminal Code (deliberate serious injuries to health concerning to official duties of the victim or his close relative or in relation to fulfillment of public duties) and paragraph 4 (an action envisaged by paragraph 3 which causes death). Alexander Bibiluri was driving the seventh car in the escort (Toyota Land Cruiser, with the state number CHG 001). The decision of July 29, 2011 of Tbilisi City Court provides that Alexander Bibiluri confessed guilt and a plea agreement was made with him. Consequently, Alexander Bibiluri was sentenced to 12 years, with 7 years in a penitentiary institution and 5 years' of probation.

According to the video recording released by the Ministry of Interior, Alexander Bibiluri's car struck Vladimer Masurashvili near the territory of "Freedom Square" metro station.<sup>204</sup>

The court decision of July 29, 2011 described Vladimer Masurashvili's deprivation of life in a following way: *"The black Toyota Land Cruiser from the escort, which was driven by A. Bibiluri, went in the direction of the policemen. The policemen, standing in the corridor and waving their hands, were signaling the driver to stop and to obey to their lawful demand. Even though the driver, A. Bibiluri, while driving the black Toyota Land Cruiser saw this, instead of giving chance to the policeman to vacate the area, or to change direction himself, picked up speed and hit Vladimer Masurashvili – an employee of the Constitutional Security Defense department of the Ministry of Interior of Georgia, with the right side of the car, pulled the body of the policeman for some meters and, after dropping him on the ground, ran over him by the back wheels of the car, and in the aftermath escaped from the scene of action. Vladimer Masurashvili was taken to the hospital, where he passed away from the sustained serious injuries"*.

The judgment provides that apart from A. Bibiluri's confession, his guilt is also proved by other evidence: testimonies of the witnesses: A.G; A.Ch; G. S, forensic evidence, auto-traceology, traceology and chemical expertise, seized objects, video recordings and a combination of other evidence.

<sup>203</sup> See: <http://www.palitravt.ge/akhali-ambebi/shemthkhveva/5048-shss-s-akhali-operatiuli-videomasala-bitsadzis-eskortis-shesakheb.html>

<sup>204</sup> See: <http://www.palitravt.ge/akhali-ambebi/shemthkhveva/5048-shss-s-akhali-operatiuli-videomasala-bitsadzis-eskortis-shesakheb.html>

- **Analysis of the initial and final versions of the investigation**

As this analysis of the final version of the investigations into the cases of Nodar Tskhadadze's and Vladimir Masurashvili's deprivation of life reveal, no charges were submitted against Ivane Chighvinadze and Shakria Zurashvili based on the facts as according to the initial statement of the Ministry of Interior.

Furthermore, an examination of the facts illustrates the incident shown in the video recording released by the Ministry of Interior on May 26 (the movement of the escort entering Freedom Square) has no link with Nodar Tskhadadze's and Vladimir Masurashvili's deprivation of life. As the judgment of the Tbilisi City Court of July 28, 2011 provides, charges were submitted against Ilia Zivzivadze, the driver of the sixth car in the escort, on the basis of the video evidence (black Mercedes Bents, with the state number SOF 204), whilst Valeri Khunjukashvili – a police officer, who sustained injuries, was considered a victim.

According to the second video released by the Ministry of Interior on August 21, Alexander Bibiluri's car struck Vladimir Masurashvili when the escort was moving into the territory of "Freedom Square" metro station. However, the car driven by A. Bibiluri (Black, Toyota Land Cruiser, with the state number CHG 001) is not visible in the video, therefore this video cannot show the circumstances of V. Masurashvili's deprivation of life. It should be noted, that the judgment of July 29, 2011 makes reference to video recordings as evidence, yet the content of the judgment, as well as the released video recording, does not shed light on the actual circumstances of the case. In reality it depicts merely the fact of an up and down movement by the car driven by Nikoloz Zautashvili and the fact that the car ran over some object on its left side. The issue is examined in details in paragraph 4.4.1. For now we would only stress that the video cannot prove the fact that the car ran down Nodar Tskadadze.

Therefore, the initial statements of the Ministry of Interior, as the agency carrying out an investigation, did not substantially support the outcome of the investigation of the case. Moreover, the video recordings released by the Ministry of Interior that, according to the statements of the Ministry, also proved the facts surrounding the deprivation of life, do not realistically portray Nodar Tskhadadze's and Vladimir Masurashvili's deaths.

#### **5.3.4. The analysis of the facts in the case of Nodar Tskhadadze's deprivation of life**

As mentioned already, since the working group had no access to the case materials on Nodar Tskhadadze's death, it is impossible to have a comprehensive picture in terms of his death or to deny/invalidate the findings of the investigation in that regard. Yet the additional factual circumstances acquired by the working group evoke certain doubts and raise questions concerning the official version of the events.

##### **1. Analysis of the video depicting the supposed incident**

As the judgment of Tbilisi City Court of July 28, 2011 ruled, the circumstances of Nodar Tskhadadze's deprivation of life are linked to the events surrounding the breaking of the corridor by the escort near the territory of "Freedom Square" metro station.

The Ministry of Interior released the video which shows the events constituting the charges submitted against Nikoloz Zautashvili. It illustrates the movement of the escort from the National Museum to the territory of "Freedom Square."<sup>205</sup> The video shows that a large number of people are following the escort. In that time the escort was moving at a low speed and rally participants were following the escort on foot. In the area near "Freedom Square" station, Special Forces are standing in the corridor blocking the road completely. On the road, above the bus stop near the underground station the Pickup breaks up the cordon and picks up speed. The second vehicle – black Toyota Land Cruiser Prado - follows it.

<sup>205</sup> Is available on: <http://www.palitravt.gov.ge/akhali-ambebi/shemthkhveva/5048-shss-s-akhali-operatiuli-videomasala-bitsadzis-eskortis-shesakheb.html>.

At this moment the other three cars are moving simultaneously nearly in parallel with the second car. These three cars are: a car driven by Ivane Chighvinadze (White Toyota Land Cruiser 200, with the state number QSQ 808), a car driven by Nikoloz Zautashvili moving in the middle of the road (Cream colored, Toyota Runner, with the state number MIS 672), and a car driven by Koba Kobauri on the left side of the road (silver colored Toyota Land Cruiser, with the state number VSV 888). At some point the last car takes the lead and the car driven by Nikoloz Zautashvili appears behind it. This is the moment when the up-down movement of the car driven by Nikoloz Zautashvili is visible.

***It should be assessed whether the video materials submitted by the Ministry of Interior depict the fact of hitting Nodar Tskhadadze's body or running over it by a car.***

The information collected on the case indicates that the mentioned video cannot depict the incident of Nodar Tskhadadze's deprivation of life. In its finding, the working group is governed by the following argumentation:

On the basis of Natia Korkotadze's application – the lawyer of Shakria Zurashvili (one of the drivers from the escort), an expert examination was held in Samkharauli State Bureau of Forensic Expertise on July 22, 2011. The expert report provides: *“Examination of the video recording portrays movement of the motorcade, with a group of people following it on the side. The cars are moving in the direction of a group of people standing in front. It is impossible to see a moment of the vehicles' having hit anybody or anything. The video recording is of low quality and sometimes the picture is moved and visibility is impaired. It is possible to see a distinct movement of the car up and down on the road that presumably is caused by running over the object”*. The expert report provides that this car is the fifth one in the escort that consists of six cars and is standing in front of the last one.

The judgment of July 28, 2011 provides that a car driven by Nikoloz Zautashvili hit Nodar Tskhadadze, made him fall down and ran over him over with its wheel. The content of the judgment does not provide the specific circumstances by which part of the car hit the victim. Nevertheless, by considering the submitted expert finding it becomes clear that the video recording does not depict the fact of hitting a person. Consequently, the video cannot either prove or disprove the fact that the car ran down Nodar Tskhadadze.

It should also be stressed that by considering the quality and angle of the video recording it is impossible to identify the persons standing nearby the car. Yet, the recording shows that after moving up and down, a fallen body is noticeable on the road that has a white colored horizontal light on it. As comparison with other video records reveals, it might have been the reflection of the title from the uniform of a policeman. Furthermore, it is also seen that participants of the rally presumably use sticks against him, which is also a reason to believe that he was not a participant of the rally. It is noteworthy that in connection to this, an investigation brought charges against Nikoloz Zautashvili for imposing injuries on two other policemen – Mamuka Khachidze and Giorgi Gegechkori. Therefore, the submitted facts intensify the possibility to prove that video recording released by the Ministry of Interior could not have depicted the fact of hitting Nodar Tskhadadze with the car driven by Nikoloz Zautashvili. We should also emphasize that in terms of this evidence, that in its judgment of July 28, 2011, in the listed evidence, the court makes no reference to the video recording.

**Therefore, the critical analysis of the video recording released by the Ministry of Interior provides that it could not have depicted the fact of Nikoloz Zautashvili's car hitting Nodar Tskhadadze. Therefore, the released video recording cannot prove the disputed fact. This circumstance complicates the prosecutor's burden of proof even more by obliging him to justify the proposed version of Nodar Tskhadadze's death with other evidence. Moreover, notwithstanding the high public interest in the case, the investigation did not submit to the public even a single piece of evidence that could have proved the factual circumstances of Nodar Tskhadadze's deprivation of life.**

## 2. Situational Analysis of the scene of action

Having examined the collected information on the case of Nodar Tskhadadze's deprivation of life, certain questions arise in terms of the scene of action. According to the video recording released by the Ministry of Interior, Nodar Tskhadadze's death took place on the road in front of the underground station "Freedom Square". However, as the video and photo materials submitted by mass media reveal and as testimonies of the interviewed witnesses<sup>206</sup> provide, Nodar Tskhadadze's corpse was found 100 meters below the scene of action, on the left side of the road, in front of the "Adidas" shop.

**Considering this state of affairs the following question emerges: "Why and how could Nodar Tskhadadze's corpse have appeared 100 meters away from the scene of action?"**

As the video recording released by the Ministry of Interior cannot prove the fact of that Nikoloz Zautashvili's car struck Nodar Tskhadadze, the first issue that requires assessment is whether a car accident could have taken place in the territory where the corpse was discovered according to the video and photo materials released by mass media. As video materials disseminated Channel 25 demonstrate no such incident happened near that area after the passing of the escort.<sup>207</sup> The recordings clearly portray the location and it is clear that as the escort passes no incident is noticeable there.

The question arises how and why Nodar Tskhadadze's corpse could have appeared 100 meters away from the scene of action? Considering the multiple injuries sustained it was practically impossible that Nodar Tskhadadze moved that distance himself. Moreover, the court judgment provides that he had serious injuries to his leg (knee), which ultimately resulted in his death. If we assume that Nodar Tskhadadze was taken from the road by policemen then the behavior of the policemen evokes a suspicion as to the taking of a seriously injured person from the scene of action to the far distance. One circumstance attracts attention in that regard. With a view to maintaining the evidence the police had to fix the location of the victim (including photo and video recording of the scene of action) and take it away only after these actions. It is noteworthy that the investigation did not release the mentioned photo/video materials. Obviously, had there been any risks of the loss of the victims' life or impairment of his health, the police should have taken the victim immediately from the scene for emergency medical aid. Yet, as the factual circumstances of the case reveal, for half of an hour after the escort left the scene Nodar Tskhadadze was not taken to the hospital (see below for more detailed information). Even if we presume that policemen took Nodar Tskhadadze from the scene of action to the front of the "Adidas" shop, it is still suspicious why the policemen moved the victim 100 meters away from the place he was struck (when such movement could have appeared lethal for the victim) instead of taking him somewhere near to the road on the pavement.

In analyzing the scene one factual circumstance deserves attention that was pointed out by mass media after the May 26 developments and that required an adequate response from the investigation.<sup>208</sup> As is shown in the video recording of Channel 25, when the escort is moving in this area (Rustaveli Street to the Pushkini Square), the group of special forces follow one rally member (the appearance of the person is not distinct) and beat him severely. The beating takes place in front of the "Adidas" shop near the iron fence. The working group examined the scene of action. The place shown in the video recording of the channel 25 absolutely complies with the place where Nodar Tskhadadze's corpse was placed according to the released video and photo materials (see the selection of photo and video materials). Obviously, the circumstance taken separately did not allow us to provide any positive proof and can be assessed only in combination with other evidence acquired by the investigation into the case.

As per article 37, paragraph 2 of the Criminal Procedure Code, the video and photo materials released by mass media required an adequate investigative reaction (the provision obliges the investigation to carry out a **comprehensive, thorough and impartial investigation**). Yet by considering the investiga-

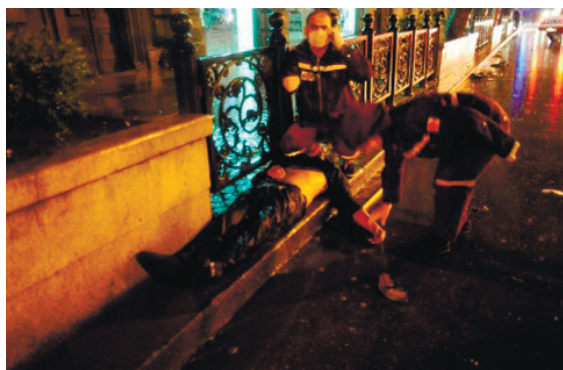
<sup>206</sup> The testimonies submitted by the witness Otar Tskhadadze as well as by journalists Ian Carver and Jeffrey K. Silverman

<sup>207</sup> See: <http://www.palitrav.ge/akhali-ambebi/shemthkhveva/5014-eskortis-chavla-kadrebi-ganskhvavebuli-rakursith.html>

<sup>208</sup> See the program of June 5, 2011 available on: [http://www.youtube.com/watch?v=LiQ0d6h\\_oWk](http://www.youtube.com/watch?v=LiQ0d6h_oWk)

tion process and its outcomes, the posed questions remain unanswered, which evokes doubts in terms of the effectiveness of the implemented investigation.

### Comparing the places where the debatable incidence took place and where the dead body of N. Tskhadadze was found



*Place where the body of N. Tskhadadze was found by the witnesses*



*Place where the car driven by N. Zautashvili hit N. Tskhadadze according to the information of MIA*



*Place where the group of special forces officers was severely v a rally participant according to the video material taken by 25TV.*



*Road in front of the "Adidas" shop*

### 3. The problem of rendering timely medical aid to Nodar Tskhadadze

It should be noted that as Ian Carver and Jeffery K. Silverman recall in their stories with GYLA (journalists who were interviewed by the working group), the police did not pay attention to Nodar Tskhadadze's corpse. Emergency medical staff only arrived when the journalists called the police and brought them on the scene of action. As journalists explained, by that time Nodar Tskhadadze was already dead. In particular, as Silverman stated, when he first saw Nodar Tskhadadze's body, nobody was nearby and only after his firm insistence the emergency car and police came to see the body. As journalists explained, by that time Nodar Tskhadadze' body was already cold and presumably he was dead. Ian Carver also recalled that only upon Silverman's firm insistence were doctors brought to inspect Nodar Tskhadadze's body.

The journalists saw Nodar Tskhadadze when the process of the rally dispersal was nearly over. As the journalists provided at that time, detainees were already being taken from the “Rustaveli” cinema.

Otar Tskhadadze –Nodar Tskhadadze’s nephew - also saw him approximately at the same period and in the same place. In his testimony the witness recalls that having been taken to Freedom Square after half an hour from the moment of his beating, he saw Nodar Tskhadadze near the iron fence in front of the “Adidas” shop.

As it is known, the cars of the escort left the territory of the meeting at the initial stage of dispersing the rally; therefore time has passed (approximately half of an hour) from the moment of the car accident until the fact when journalists called emergency doctors. During this period Nodar Tskhadadze was left without medical aid and was not taken to the hospital.

***Obviously, the effectiveness of timely medical aid should be assessed separately if taking into account multiple injuries imposed upon N. Tskhadadze, yet, the police were obliged to protect the lives and health of participants with all the available means. That, as the factual circumstances of the case reveal, was not performed.***

*Photos illustrate that the medical aid was not provided to Nodar Tskhadadze timely*



### 5.3.5. Effectiveness of Investigation into the case of Nodar Tskhadadze’s deprivation of life

In view of the working group’s limited access to Nikoloz Zautashvili’s case materials, it is difficult to assess in detail the thoroughness and effectiveness of the investigation. Yet, some facts acquired by the working group evoke reasoned doubts in the investigation process. Specifically,

#### 1. The problem of qualification of investigation

From the outset of the investigation it was clear that the Ministry of Interior made preliminary conclusions and findings without carrying out appropriate investigative actions, including the forensic expertise on the Tskhadadze’s corpse. In its statement released on May 26, while announcing that the car accident was the reason of Nodar Tskhadadze’s deprivation of life, the Ministry was governed by a general examination of the corpse that obviously lacked sufficient qualification and reasoning.

Furthermore, in its statements the Ministry pointed out specific individuals (Ivane Chighvinadze and Zakaria Zurashvili) whose guilty actions were linked to the facts of Nodar Tskhadadze’s and Vladimir Masurashvili’s deprivation of life. In this context the Ministry of Interior also released Ivane Chighvinadze’s confession. However, in contrast to the initial public statement of the investigation, the persons were not charged in the case. As for Nikoloz Zautashvili, he was accused later on July 27, 2011, a day before approving a plea agreement in the case of Nodar Tskhadadze’s deprivation of life. At the time of releasing this public statement by the Ministry of Interior Nikoloz Zautashvili had not been even arrested yet.

## 2. The problem of independence of investigation in the case

On June 2, 2011 Shota Utiashvili - the Head of Analytical Department of the Ministry of Interior - declared on Public Broadcaster (David Paichadze's program "Dialogue") that "*the death of persons was not linked to police actions either directly or indirectly.*"<sup>209</sup> Obviously, such assessments and conclusions made by the high official of the Interior Ministry influenced the outcome of the investigation and the impartiality of the process at the end.

The official statements of the Ministry of Interior released on May 26 and later on June 2 reveal that the Ministry, which was also the investigative organ in the case, from the outset excluded the possibility of considering other versions of Nodar Tskhadadze's deprivation of life. The Interior Ministry had already released its findings when no charges were submitted against specific persons on the case concerned. Such statements from the high official of the Ministry of Interior influenced the investigation process and its impartiality. While from the very beginning of the process the high official was making determinative statements, the chance of investigating the case any other way by his subordinates (by working on another version) was absolutely excluded. **Therefore, from the very beginning of the process such statements of the Ministry of Interior influenced and casted doubt on the independence and impartiality of the investigation.**

Moreover, the investigation failed to observe the standard of institutional independence. According to the order *defining the inquiry subordination on criminal cases #178* of September 29, 2010 of the Ministry of Justice, *the offences committed by policemen as well inter alia offences envisaged as per articles 332, 335, 337, 342 of the Criminal Code of Georgia (including abuse of official authority, exceeding official powers, neglect of official duties)* shall be investigated by prosecution. In light of the Criminal Procedure Code, the norms are defined in such a way as when there is a reasonable doubt to believe that the disputed offences might have been committed by policemen, or the disputed fact concerns the offence envisaged as per articles 332, 333 and 342 of the Criminal Procedure Code, the case should be subject to prosecution's investigation.

The case of Nodar Tskhadadze's deprivation of life, as well as other facts of human rights' violation should have been transferred to the prosecution for investigation. Presuming the guilty participation of the police in the specific case, the fact that human rights violations were linked or/could have been linked to abuse of official authority, including the exceeding of official powers or neglect of official duties by the policemen, there were sufficient reasons for transferring the cases to the prosecution for investigation, which in the instant case (as well as in other cases) did not happen.

## 3. The problem of effective enjoyment of the right to defense

The assessment of the validity and sufficiency of the proof submitted by the prosecution in the case of Nodar Tskhadadze's deprivation of life becomes even more complicated since neither prosecution side, nor the victim has enjoyed the right to effective defense.

Nikoloz Zautashvili was considered a suspect only on July 27, 2011 when he confessed his guilt and the second day plea agreement was approved with him. For the judiciary the prosecution's standard of proof is low while making plea agreements and apart from confession, other evidences should only *prima facie* prove the guilt of the person. Therefore in the case concerned the evidence collected by the prosecution was not examined comprehensively and neither their validity nor sufficiency was inspected in reality.

Furthermore, the assignees of the victim have not represented and protected their interests effectively even in view of the limited procedural opportunities granted by the Criminal Procedure Code. The assignees of the victim refused to cooperate with human rights organizations or media. One interesting

<sup>209</sup> The program dialogue with David Paichadze, available on: <http://www.1tv.ge/Video-View.aspx?VID=5152&Loc=58&CatID=1&LangID=1>.



fact shall be noted in that regard. As it became known to the working group O. Tskhadadze - Nodar Tskhadadze's brother - was considered a victim in the case rather than his spouse or full aged children. While working on the case, the working group contacted N. Tskhadadze's family members and friends and the fact that they refrained to have any communication can be explained by the influence of N. Tskhadadze's brother. He is considered to be an active supporter of the ruling party.

#### 4. The problem of comprehensiveness and thoroughness of investigation on the case

In the context of Article 2 of the Convention an effective investigation implies that an ongoing investigation should meet the criterion of thoroughness. *It means that investigation should entail implementation of all reasonable measures for acquiring all the evidence pertaining to the relevant incidents. The European Court of Human Rights envisages "all the reasonable steps" or general requirements to implement due attempts in that regard.*

Paragraph 2, Article 37 of the Criminal Procedure Code provides that investigators shall carry out a comprehensive, thorough and unbiased investigation. According to paragraph 1, Article 83 of the Criminal Procedure Code the prosecution shall transfer to the defense acquitting evidence possessed by the prosecution. Notwithstanding the competitive nature of the Criminal Procedure Code, pursuant to Article 2 of the European Convention (as well as Articles 3 and 6) and in consideration of the above mentioned norms of the Criminal Procedure Code, the investigation shall investigate the case comprehensively and thoroughly and acquire both convicting and acquitting evidences. The obligation becomes especially important when the investigation starts on the case and charges may be submitted against the person after some period when the defense is already deprived of the ability to acquire substantial evidence that excludes the enjoyment of the effective right to defense by the accused.

In view of the above, the investigators were obliged to carry out a comprehensive and thorough investigation of the case of Nodar Tskhadadze's deprivation of life. Before submitting charges against Nikoloz Zautashvili (July 27, 2011) the investigation had two months to conduct an effective investigation, including the collection of all substantial evidence. However, since the working group had no access to criminal case materials it is practically impossible to assess the issue. Yet, some circumstances might be emphasized for thorough investigation of the case that can serve as indicator of assessing the comprehensiveness of the investigation and that raises certain questions in the direction of state authorities. Specifically,

1. Whether there were any participants of the rally and journalists among the interrogated witnesses during the investigation, as indicated in the court judgment of July 28, 2011, which could prove the fact of hitting Nodar Tskhadadze by Nikoloz Zautashvili's car or could otherwise make any reference to the disputed facts.

In the process of its work, with its limited resources, the working group attempted, however unsuccessfully, to find such witness (participants of the rally, a journalist) who could prove the fact of hitting Nodar Tskhadadze by Nikoloz Zautashvili's car.

It should be noted that the policemen's testimonies alone cannot be sufficient proof. In the case *Licitsa v. Croatia* the court stated that the police are a part of the state system and in the process of criminal prosecutions can be considered as associated to the prosecution.<sup>210</sup> Therefore for the effectiveness of the investigation it is decisive to interrogate not only policemen, but also participants of the rally, journalists and other neutral persons who could justify the fact, especially if considering that vast number of rally participants who attended the event.

As for assessing the thoroughness of the conducted investigation, we should mention that none of the witnesses interviewed by the working group (Ian Carver, Jeffrey K. Silverman, Otar Tskhadadze) were interrogated by the investigation.

<sup>210</sup> *Lisica v. Croatia*, application #20100/06, judgment of February 25, 2010, para.56

2. Whether there was expert examination, including chemical expertise concluded, that could have proved the contact (crash, the fact of running over the body) between the trace of the wheel left on Nodar Tskhadadze's clothes and the car driven by Nikoloz Zautashvili. We wondered if micro particles of the car driven by Nodar Tskhadadze were discovered on Nikoloz Zautashvili's body and clothes as well as whether the fact of hitting N. Tskhadadze with Nikoloz Zautashvili's car was certified within the frames of traceologic expertise.

3. Whether the forensic expertise was imperatively providing that the injuries inflicted on Nodar Tskhadadze were the outcome of a car crash. We were interested if there were any other possibilities examined to sustain similar injuries, including by physical influence.

In view of the above, it becomes evident that there are some reasonable questions and doubts concerning the effectiveness and independence of the investigation implemented in the case of Nodar Tskhadadze's deprivation of life and that require suitable explanations from the state authorities.

### **5.3.6. Violation of the positive obligation of the state in the case in the context of Article 2 of the European Convention of Human Rights**

International Human Rights Standards oblige the state to plan the dispersal of the rally to the maximum extent possible to minimize the risks to human life and health. In that regard the European Court of Human Rights inspects the probability of the police (adequate time, created situation, conduct of offenders and third persons and so on) to plan the operation adequately. In the case *Rebock vs. Slovenia* the European Court of Human Rights pointed out, that "*In the instant case the applicant was not arrested in the course of a random operation which might have given rise to unexpected developments to which the police might have been called upon to react without prior preparation. The documents before the Court indicate that the police planned the arrest operation in advance and that they had sufficient time to evaluate the possible risks and to take all necessary measures for carrying out the arrest.*"<sup>211</sup> Identically to this case in *Muradova v. Azerbaijan* the court ruled that "*(In the instant case) it is not depicted that the state had to react in absolutely occasional conditions and in unprepared form and that it had not ability to assess the events and to take some measures in order to prevent unnecessary risks and to avoid application of unselective and disorderly force.*"<sup>212</sup> "

In the context of the cases concerning Nodar Tskhadadze's and Vladimer Masurashvili's deprivation of life, the assessment of the police's behavior (operation plan and its implementation) in planning the dispersal and specifically in the moment of meeting the escort, is of decisive importance. As the third chapter of the report provides, the police possessed sufficient time (approximately 8 hours, 4 hours at last) for planning the dispersal of the rally. For this period there was no escalation of the situation or any unforeseen action from the side of protesters, therefore police operated in foreseeable circumstances. Further, quite a large number of policemen participated in the dissolution of the rally which enabled them to implement the operation in a proper manner. As it was discussed in chapter three of the report, the police planned dispersal of the rally so that they disallowed protesters to leave the territory. In the beginning of the dispersal all the exits from the rally territory were blocked and the protesters could not escape from the police force used against them. The police were obliged to use adequate and proportional force for the dispersal of the rally and thus it had to leave open exits for the protesters. Had there been any resistance from the rally participants against dispersing the rally and vacating the territory the police could have been authorized to detain the protesters. In the context where rally participants were not given the real chance to leave the territory, the legitimacy of the police action and applied force during dispersing the rally is questioned from the beginning.

Such plan of dispersing the rally by the police instigated the participants to leave the territory by applying various means. They entered the buildings, followed the escort, penetrated the garden of the youth

<sup>211</sup> *Rehbock v. Slovenia*, application #29462/95 judgment of November 28, 2000, para. 72.

<sup>212</sup> *Muradova v. Azerbaijan*, application #22684/05, judgment of April 2, 2009, para. 11.

palace and etc. The police were trying to interfere and used intensive force against them. Identically to the escort, the police did not give a chance to the participants of the rally to escape and used life cordon against them. As the released video recording shows, the police cordon had completely blocked the perimeter of the road in front of the underground station “Freedom Squire” and was moving in the direction of the escort. In this process the police applied intensive force against the protesters who followed the escort of cars.

**In this context the actions of the police were strategically and operationally incorrect and did not envisage preventing/minimizing the foreseeable risks to the lives and health of policemen and rally participants.** In examining Nodar Tskhadadze’s and Vladimer Masurashvili’s deaths an assessment of the legitimacy of police action, aiming to stop the attempt of the escort to leave the rally territory, is not substantially important. It is still apparent that the police action was disproportional and did not adequately foresee predictable circumstances in terms of protecting policemen’s and rally participants’ lives.

- The policemen arranged the life cordon in front of the cars that were considered to be the source of an excessive threat and did nothing for protecting the policemen’s lives in case of the car drivers’ disobedience (which was predictable). Physical contact between the source of the excessive threat and the police officers excluded the chance of preventing the risk to the policemen’s lives and their health.
- The police did nothing to separate (distancing) participants of the rally from the cars and were applying unselective and disorderly force near the cars that was considered to be the source of excessive threat and thus increased the risk of injuring rally participants even more.
- Whereas there was no risk of impairing other lives, avoiding the offence or other protected legitimate aims, the means and tactics applied by the policemen for stopping the escort, which finally resulted in the deprivation of two persons’ lives and impairment of 9 policemen’s health was absolutely unacceptable and disproportional.

**We can prove in view of the above submitted circumstances that while dispersing the rally and in the moment of removing the escort from the territory of the meeting, the police had planned their action so that it failed to prevent/minimize the risks to the life and health of rally participants. In the process of planning the operation the state did not observe predictability norms for effective protection of participants’ life and health, which resulted in the deprivation of human life and injuries to others which is considered to be violation of the state’s positive obligation in the context of articles 2 and 3 of the European Convention of Human Rights.**

### 5.3.7. Findings

As the analysis of the case into Nodar Tskhadadze’s deprivation of life demonstrates, the initial version of the Ministry of Interior does not correspond with the final official version of the investigation. None of the video materials released by the Ministry of Interior concerning Nodar Tskhadadze’s and Vladi-



*Rally participants following the escort*



*The policemen arranged the life cordon in front of the escort*

mer Masurashvili's deaths portray the incidents of deprivation of their lives.

Moreover, significant questions and doubts arise on Nodar Tskhadadze's case in terms of the factual circumstances established by the investigation, including the irrelevance of the released video record portraying the incident, analyses of the scene of action, and the problem of providing Nodar Tskhadadze with timely medical aid.

Some doubts and questions emerge in terms of the effectiveness and independence of the investigation. As the investigation is already over, we regret that neither the assignees of the victims nor the accused are interested to apply to international mechanisms of legal protection.

Finally it should be stressed that the signs of violating the state's positive obligation are clearly evidenced in the case. The state planned the dispersal of the rally, including the exit of the escort from the territory of the rally, so that it did not prevent the foreseeable loss of lives and injuries to policemen and rally participants. The police used excessive and unselective force against the rally participants and increased the risk of harming rally members even more.

## 5.4. Case of Deprivation of Lives of Nika Kvintradze and Suliko Asatiani

### 5.4.1. Introduction

As of now, the investigation into the deaths of Nika Kvintradze and Suliko Asatiani has already been closed. According to the official version of the investigation, a forensic examination has confirmed that the noted individuals died as a result of coming in contact with the electric wires.<sup>213</sup> Despite high public interest in the case, the investigation has not publicized a single piece of evidence that would have substantiated its findings. The investigation was terminated without making the noted circumstances known to the public. An information vacuum around the case prevents the public from evaluating what has in fact happened.

It is noteworthy that the victims in the noted case refuse to communicate with the public in any way. Such conduct by victims can be attributed to the following circumstances: a twenty-two year old son of Nika Kvintradze, Shalva Kvintradze is currently serving a prison term that expires in several months. GYLA's employees personally met with members of Suliko Asatiani's family in the village of Tsikhesulori. For safety reasons, they also refused to communicate about the case or to have their interests defended. It is noteworthy that according to majoritarian MP Davit Lortkipanidze of Vani District, before the family of Suliko Asatiani learned about his death, the son of Suliko Asatiani, Paata Asatiani was taken by law-enforcers on the morning of May 27 and his whereabouts remained unknown the whole day.<sup>214</sup> Suliko Asatiani's members learned about his death from Paata Asatiani.

Therefore, the working group has to examine the case of Nika Kvintradze and Suliko Asatiani based on the MIA's public statements and additional factual circumstances it has obtained. Clearly, under the noted circumstances and in consideration of the informational vacuum around the case, it is impossible to conduct a thorough factual analysis of the case. Consequently, the purpose of the working group within the frames of this report is to address substantiated questions and suspicions around the case.

### 5.4.2. Factual circumstances in the case of the deprivation of lives of Kvintradze and Asatiani

- *Reports of open sources*

The initial source concerning the case of deprivation of life of Nika Kvintradze and Suliko Asatiani was the statement released by the Ministry of Interior Affairs of Georgia on May 27, 2011. *According to the*

<sup>213</sup> ob. <http://www.palitratv.ge/akhali-ambebi/politika/8403-shotha-utiashvili-saias-mtkicebulebebs-gamoekhmaura.html>

<sup>214</sup> Statement obtained by GYLA from Davit Lortkipanidze

statement, on the morning of May 27 bodies of two men were found on a roof of one of the shops nearby the Freedom Subway Station. According to preliminary reports, they died as a result of coming in contact with the electric wires. The investigation is examining their possible link with the protest assembly held at Rustaveli Avenue.<sup>215</sup> The statement released by MIA was followed by video material showing the work of forensic experts on the scene. The video material did not show the bodies of the dead persons on the scene.

Information about the noted individuals' deaths was made known to the broad public on the morning of May 28. On May 26, 12 pm news program Kurieri reported (at 12:18 pm) the deceased persons had been identified as a 62-year old Suliko Asatiani of Vani and a young man Nika Kvintradze of Tbilisi. The report also featured a statement of a doctor of the national forensic bureau Malkhaz Mitichashvili who noted: *"two bodies of unidentified individuals were admitted at the national forensic bureau. The examination revealed signs of electrolysis due to electric trauma, i.e. speaking in a plain language they died as a result of an electric shock".*<sup>216</sup>

On May 29, 2011, Studio GNS and Nana Lezhava in the TV program Weekly Report broadcast an interview with Rezo Rekhviashvili, a friend of Nika Kvintradze, who was together with Nika Kvintradze at the moment of the assembly dispersal and who identified his friend in one of the photos taken at the rally scene.<sup>217</sup> Following the report, on May 31, 2011, Rustavi 2 TV released video material in its news program, showing detained participants of the assembly, on a highway in front of Kashueti Church. The video clearly shows the face of a person who, according to Rezo Rekhviashvili, could have been Nika Kvintradze. In the TV report, a journalist compared the face on the video with a passport photo of Nika Kvintradze and stated that it was clear even with a naked eye that the person on the video could not have been Nika Kvintradze.<sup>218</sup>



Photo on which R. Rakhviashvili identified N. Kvintradze

The noted assumption was officially confirmed by the head of MIA's analytical department Shota Utiashvili on air on Public Broadcaster. With regard to the case of the deprivation of lives of Kvintradze and Asatiani, Utiashvili noted: *"in this case I can assure you that some media outlets clearly fabricated the facts. Thank God, we could find a photo of this man, compared it with other photos and it is absolutely clear that the person laying on asphalt and alleged to be Niko Kvintradze is a completely different [...] investigation is ongoing to find out whether they were at the rally. In any case, information released by journalists and the so-called NGOs is intentionally falsified and Kvintradze had never been detained [...]."* In the very same TV program, Shota Utiashvili noted that *"death of neither of the individuals was directly or indirectly related to activities of the police [...]."*<sup>219</sup>



Photo cut from the video material released by Rustavi 2

- **Factual circumstances obtained by the working group with regard to the case**

In consideration of information reported by media outlets and official statement of GYLA, the working

<sup>215</sup> See official website of MIA: <http://www.police.ge/index.php?m=8&newsid=2516>

<sup>216</sup> Can be viewed at [http://www.rustavi2.ge/news/video.php?fr=video&id\\_news=41753&ftp1=1&ftp2=0&ftp3=0](http://www.rustavi2.ge/news/video.php?fr=video&id_news=41753&ftp1=1&ftp2=0&ftp3=0)

<sup>217</sup> See the Weekly Report, 29/05/11. can be viewed at <http://www.youtube.com/watch?v=xxgbeg6YPTc>

<sup>218</sup> Can be viewed at [http://www.rustavi2.ge/news/video.php?fr=video&id\\_news=41806&ftp1=1&ftp2=0&ftp3=0](http://www.rustavi2.ge/news/video.php?fr=video&id_news=41806&ftp1=1&ftp2=0&ftp3=0)

<sup>219</sup> Dialogue with Davit Patchadze program, can be viewed at <http://www.1tv.ge/Video-View.aspx?VID=5152&Loc=58&CatID=1&LangID=1>

group tried to obtain additional factual circumstances with regard to the case of deprivation of lives of Nika Kvintradze and Suliko Asatiani.

1. Factual circumstances that confirm participation of Nika Kvintradze and Suliko Asatiani in the May 25 assembly

The information obtained by the working group confirmed the fact of participation of Nika Kvintradze and Suliko Asatiani in the May 25 assembly. Nika Kvintradze's participation was confirmed by his friend Revaz (Avtandil) Rekhviashvili in a statement with GYLA. The noted fact was also confirmed by video material released by the media.<sup>220</sup> The fact that Suliko Asatiani was present at the May 25 assembly is confirmed by the chairperson of Vani organization of Public Assembly, Zero Khurtsidze in his June 2, 2011 statement to GYLA. In the statement Z. Khurtsidze noted he saw Suliko Asatiani during the protest rallies outside the building of television and later, on May 25, at around 7:00 pm. at the assembly held outside parliament.<sup>221</sup> In a private conversation with the working group, members of Suliko Asatiani's family confirmed that Suliko Asatiani left for Tbilisi to participate in the assemblies, and they never saw him after May 21.

2. Factual circumstances that question the fact of finding bodies of Nika Kvintradze and Suliko Asatiani on the scene on May 27

The fact that police did not find two bodies on the roof of a shop until May 27 whereas the territory was under the effective control of the police during the rally dispersal on May 26 and in the morning, during preparations for the parade, raises serious questions in the given case. With regard to the noted fact, the working group interviewed participants of the rally that spent the night in a garden nearby the Youth House and left the territory on May 26, at 6:00 am, through the roof of the shop where, according to MIA, bodies of Nika Kvintradze and Suliko Asatiani were found in the morning of May 26 by the police.<sup>222</sup> In his statement witness X.Y. recalls the following:

*"It was around 6:00 am when I came down from the roof of the building. I started walking around in the garden, trying to find a way out but I couldn't. There was no one in the garden. Afterward, I got back to where I came down from. This side of the garden is facing Rustaveli Street. There is a small shop near Tavisupleba Subway station. You can get from the garden to the roof of this shop; to be more precise, there is direct way [to the roof] from the garden. I got on the roof and laid down. I was watching Rustaveli from there, observing the developments. There was no one but me on the roof. I was all alone there. There were electricity wires on the roof. I stayed there for about an hour".*

Statement of witness X.Y. indicates that there were no bodies on the scene in the morning on May 26. Therefore, it is peculiar that the police found bodies of the noted persons on the very same place the following day.

According to the statement of witness X.Y., police were actively looking for people who found shelter in a garden near the Youth House. Police were using dogs in the process of search. Witness X.Y. recalls: *"policemen were crying – come on out, we are not going to harm you. Suddenly I decided to show myself as I thought that they would not harm me but then I heard a terrible cry and sound of a growl. I knew that those who were hiding in the garden and showed themselves were terribly tackled by the police. Therefore, we decided to stay on the roof..."*

The fact that the Youth House was under the intense control of the police is confirmed by witness Davit Zhgenti, who found shelter in the Youth House during the dispersal. According to Davit Zhgenti, he was detained by the police at 5:00 am in the building of the Youth House. As the witness clarifies, by that

<sup>220</sup> See the Weekly Report, 29/05/11. can be viewed at <http://www.youtube.com/watch?v=xxgbeg6YPTc>

<sup>221</sup> Statement obtained by GYLA from Zero Khurtsidze;

<sup>222</sup> Note: GYLA's lawyers communicated with the noted individual within the mandate of a lawyer and in consideration of his interest, we choose not to reveal his identity. Therefore, he will be referred to as witness X.Y.

time the police had already conducted a search of the building three times.<sup>223</sup>

### 3. Could the person in photo and video materials have been Nika Kvintradze?

Following media reports about Nika Kvintradze's friend Revaz Rekhviashvili identifying Nika Kvintradze among one of the detained rally participants in a photo, the working group interviewed the witness. The group showed all video and photo materials to R. Rekhviashvili that could have been relevant to the case. In his statement R. Rekhviashvili reaffirmed that the person in the photo could have been Nika Kvintradze.<sup>224</sup> According to Revaz Rekhviashvili, after he was interviewed by journalists, he was summoned to the prosecutor's office for interrogation. However, during the interrogation investigators did not show them any photo or video materials for identification.

The investigation did not take further actions with regard to Revaz Rekhviashvili's statement and released photo and video materials. New factual circumstances were of substantial importance for the case. Proving that an individual in the photo was indeed Nika Kvintradze would have essentially questioned the initial version of the investigation about the deprivation of lives of Nika Kvintradze and Suliko Asatiani.

However, despite the importance and an intense nature of newly revealed evidence and high public interest in the case, the investigative authorities did not make a single statement credibly dismissing claims about the person in the photo being Nika Kvintradze. A report broadcast by the Rustavi 2 news program (as well as verbal statements of Sh. Utiashvili), comparing old passport photo of Nika Kvintradze to a person in the photo and video materials raised even more questions about the circumstances of the case and failed to dispel suspicions.

In light of serious questions and suspicions around the case, the working group deemed it expedient to conduct a forensic analysis to compare the person shown in the video and photo materials with Nika Kvintradze. Forensic findings on photo and video materials sent by the working group were provided by DABS Fingerprints/Forensics Ltd on August 26, 2011.<sup>225</sup> By means of morphological comparison, it was determined that no important differences could be found between Nika Kvintradze's post-mortem photos and the person shown on the images. The morphological comparison also found seven apparent similarities between the images, including a significant swelling on the left temple, possibly resulting from a blow. According to the forensic expert, the position, shape and size of the swelling were consistent.<sup>226</sup>

In consideration of the importance of the aforementioned forensic findings for the investigation, on September 6 GYLA publicized findings of the forensic analysis performed by DABS Fingerprints/Forensics Ltd. GYLA also referred it to the investigation for further action.<sup>227</sup>

In response to the forensic findings, MIA reported that the detained person shown in the images was Giorgi Bakradze currently living in Kareli district.<sup>228</sup> In an interview with media, Mr. Shota Utiashvili noted that after the investigation authorities found that the person shown in the images was Giorgi Bakradze, accordingly investigation into the case of deprivation of lives of Nika Kvintradze and Suliko Asatiani was terminated.<sup>229</sup> Despite high public interest in the case, information on the termination of

<sup>223</sup> Statement obtained by GYLA from Davit Zhghenti;

<sup>224</sup> Statement obtained from Revaz Rekhviashvili by GYLA;

<sup>225</sup> Note: DABS Fingerprints/Forensics Ltd is a member of British Association for Human Identification, registered in the UK register of Expert Witnesses and is a member of the British Institute for Professional Pornography

<sup>226</sup> The forensic findings can be viewed at GYLA web-site: [http://www.gyla.ge/index.php?option=com\\_content&view=article&id=1040%3A2011-09-06-10-06-18&catid=1%3Alatest-news&Itemid=177&lang=ka](http://www.gyla.ge/index.php?option=com_content&view=article&id=1040%3A2011-09-06-10-06-18&catid=1%3Alatest-news&Itemid=177&lang=ka)

<sup>227</sup> Letter of GYLA to the Ministry of Interior Affairs, 09.09.2011 (#c-01/133-01)

<sup>228</sup> [http://www.rustavi2.ge/news/news\\_textg.php?id\\_news=43036&im=main&ct=25](http://www.rustavi2.ge/news/news_textg.php?id_news=43036&im=main&ct=25)

<sup>229</sup> See <http://www.palitravt.ge/akhali-ambebi/politika/8403-shotha-utiashvili-saias-mtkicebulebebs-gamoekhmaura.html>

the investigation was not publicized. Moreover, MIA did not make public the information concerning Giorgi Bakradze, which would have dispelled suspicions among the public about Nika Kvintradze's case and would have allowed them to further evaluate the case.

After MIA released information about Giorgi Bakradze, the working group interviewed him. According to Bakradze, at the police station they showed him a photo that shows him from above with his back turned to the camera. The photo was not showing his face. He clarifies that he could identify himself with clothes and shape of hair. The working group showed Giorgi Bakradze the video material which according to MIA's allegations, showed Giorgi Bakradze. Giorgi Bakradze clarifies that they never showed him the video material at the police station and it was the first time he viewed it. The investigation did not conduct forensic analysis of images to find out whether the person shown in the image was in fact Giorgi Bakradze.<sup>230</sup>

In view of the information released by MIA on September 5 and additional factual circumstances obtained by the working group, *including* additional photo material provided by media outlets to GYLA,<sup>231</sup> there are contradicting materials and evidence in the case about the identity of the person shown in the photo and video materials. The mandate of the working group does not allow us to comprehensively examine the materials and circumstances but rather, the investigation authorities should take further action and respond the issue in a substantiated manner. Hence, this report focuses on other important questions and suspicions related to the case, which the investigation has not yet addressed and that cause high public interest. Basically, the investigation did not publicize any evidence of substantial importance in the case of deprivation of lives; therefore, public is still unaware of the circumstances and the manner of deprivation of lives of two participants in relation with the rally dispersal developments.

#### 5.4.3. Legal analysis of the case of deprivation of lives of Nika Kvintradze and Suliko Asatiani

In view of the fact that the MIA has not published even a single important piece of evidence in the case of deprivation of lives of Nika Kvintradze and Suliko Asatiani, it is almost impossible to evaluate sufficiency and substantiation of the investigation results.

According to the official version of the investigation, the cause of death of Nika Kvintradze and Suliko Asatiani was their coming in contact with the electric wires. The noted fact was confirmed by a forensic expert of Levan Samkharauli bureau in an interview to journalists. According to MIA, Nika Kvintradze did not show any signs of physical violence; however, MIA's official version raises several important questions that remain unanswered by the investigation. Furthermore, there are substantiated questions about impartiality and effectiveness of the investigation, more specifically:

##### 1. Independence and impartiality of investigation into the given case

According to MIA's statements, the deprivation of lives of Nika Kvintradze and Suliko Asatiani was investigated by MIA, which violates standards of independent investigation. In consideration of the fact that deprivation of lives of Nika Kvintradze and Suliko Asatiani was connected with the assembly dispersal on May 26 by MIA officers and at the preliminary stage of investigation questions about whether Nika Kvintradze could have been detained by the police were raised, the investigation should have been conducted by the prosecutor's office. View subchapter 4.5.2 above for a more comprehensive argumentation about the issue.

Furthermore, in his statement on air on Public Broadcaster TV on June 2, 2011, head of MIA's analytical department noted that the *"death of neither of the individuals was directly or indirectly related to activi-*

<sup>230</sup> Statement obtained by GYLA from Giorgi Bakradze in city of Kareli;

<sup>231</sup> Note: showing detention of Giorgi Bakradze in other situation during the assembly dispersal .



*ties of the police [...]*"<sup>232</sup> The statement was made by Sh. Utiashvili when the investigation was unaware about Giorgi Bakradze (the police interrogated Giorgi Bakradze for the first time on June 9, 2011) and the report aired on May 29, 2011 in Weekly Report and had raised substantiated suspicions about the fact that the deceased Nika Kvintradze could have been detained by the police in the process of the dispersal. Clearly, the suspicions should have been sufficient for referring the case to the prosecutor's office for investigation, which was a necessary precondition for conducting independent investigation.

## 2. Questionable official version of investigation

The official version of the investigation raises several important questions and suspicions that still need to be addressed by the investigation and that are of substantial importance for determining truth in the case. More specifically,

- When throughout the night of May 26 and afterward, during the parade, Rustaveli Avenue was under the effective control of the police, it is peculiar that the police could not find two bodies on the rooftop of a shop nearby (bordering) the garden of the Youth House. During the assembly dispersal, the Youth House garden was under the intense control of the police. According to the statement obtained by the working group from witness X.Y., the police were searching for participants hidden in the garden all night long. Furthermore, in preparations for the scheduled parade, the police (and security service) were implementing security control measures. Under the noted circumstances, it is peculiar that the police could not find bodies until the morning of May 27.
- The working group obtained a statement from one of the witnesses (GYLA does not reveal his identity in consideration of his interests) who spent the night on the territory of the garden of the Youth House and left the area at 6:00 am on May 26 through the shop rooftop, where according to MIA, bodies of Nika Kvintradze and Suliko Asatiani were found. The witness notes that at 6:00 am on May 26, he did not see any bodies on the rooftop.
- With regard to Nika Kvintradze, media outlets managed to take his post-mortem photos in morgue. Obtained photo material shows a swelling on the left temple of the deceased. The photos do not show other body parts. According to MIA's official statement, Nika Kvintradze's body did not display any signs of physical violence. However, the working group is unable to comprehensively evaluate the issue according to the information that it has. With regard to bodily injuries inflicted to the deceased, there are certain questions concerning Suliko Asatiani that need to be addressed. The working group met with wife of Suliko Asatiani, Shorena Asatiani as well as Nato Rukhvadze who participated in the process of embalming the body. In their verbal statements these persons noted that serious and clear injuries were evident on Suliko Asatiani's body. What were the causes of these injuries and when were the injuries sustained needs to be determined by forensic analysis. However, in consideration of the fact that despite high public interest the investigation did not public corresponding evidence, it is impossible to evaluate the issue.

## 3. The problem of accountability of the investigation in the given case

In compliance with Article 2 of the European Convention, the standard of effective investigation requires the state to take relevant measures for dispelling all suspicions that question the state's tolerance of unlawful actions. In consideration of the informational vacuum and suspicions in the case of the deprivation of lives of Nika Kvintradze and Suliko Asatiani, it is important for the investigation to fulfill the requirement of accountability before the public and make the aforementioned evidence public.

Despite high public interest in the case of the deprivation of lives of Nika Kvintradze and Suliko Asatiani, MIA did not publish even a single piece of important evidence in the case that would have addressed

<sup>232</sup> Dialogue with Davit Paitchadze program, can be viewed at <http://www.1tv.ge/Video-View.aspx?VID=5152&Loc=58&CatID=1&LangID=1>

questions and suspicions of the public about the case. In view of the disproportionate force used by the police during the dispersal as well as consequential mass violations of human rights, cases of deprivation of life are of particularly high public interest, which trigger's the state's obligation to address the suspicions and make public all evidence substantiating official version of investigation.

Regrettably, the investigation lacked transparency. Victims' successors refuse to use their lawful procedural opportunities for protection of their interests before the investigation. Such vacuum raises public suspicions about the process of investigation and credibility and impartiality of its outcomes.

In the process of working on the case, in written and verbal communication with MIA, GYLA was constantly requested publication of operative video material recorded on the scene showing positioning of bodies. Furthermore, GYLA was requesting publication of forensic findings and findings of technical analysis of electric wires found on the scene but none of the requests were fulfilled by MIA.

The vacuum created by the investigation around the case does not allow human rights organizations to evaluate outcomes of the investigation, leading to a situation where the public is unaware of circumstances of deprivation of lives of Nika Kvintradze and Suliko Asatiani.

#### 4. Problem of effectiveness of investigation into the given case

GYLA believes that the process of investigation and its outcomes failed to comply with requirements of thoroughness and effectiveness, including

- Having interviewed by media outlets, the investigation summoned Revaz (Avtandil) Rekhviashvili as a witness; however, no one showed him the impugned video and photo material and the investigation did not evaluate the issue with an important witness in the case. At that time, the investigation was unaware of Giorgi Bakradze; however, it initially ruled out the possibility of serious examination of the issue.
- As the working group found out from the statement of Giorgi Bakradze, during his interrogation at the police department, the investigation authorities did not show the video material that was essentially the subject of dispute. The police showed him only the photo that displayed only a person's back, without showing his face.
- The investigation determined similarities between Giorgi Bakradze and the person in the video and photo materials by visual examination only, without conducting relevant photo analysis.
- The investigation failed to respond to forensic of DABS Fingerprints/Forensics Ltd and rejected the results in advance, before the text of forensic findings was even provided to the investigation.

Superficial approach of the investigation to the case, in the process of examining newly obtained factual circumstances of the case and taking further action, as well as official statements made by MIA in this regard during the very first days of examination, ruling out any involvement of police in the incident, questions effectiveness of investigation. Under Article 2 of the European Convention, the state has a positive obligation to conduct effective investigation into the case and utilize all means available for finding truth in the case and prosecuting persons responsible. Therefore, due to clearly low interest of the investigation in newly revealed circumstances of the case, lack of thoroughness of investigation and its accountability before public, effectiveness of investigation into the case of deprivation of lives of Nika Kvintradze and Suliko Asatiani is disputable.

#### 5.4.4. Findings

Investigation into the case of deprivation of lives of Nika Kvintradze and Suliko Asatiani did not fulfill the requirement of accountability before public, leading to a situation where public is unaware of what actually happened. MIA limited itself to verbal statements only and despite high public interest in the

case it refused to make public even a single piece of evidence that would have promoted public confidence in the conclusive decision of the investigation.

Furthermore, the investigation failed to address a number of substantiated questions, including the fact that the police did not find the bodies on the rooftop of a shop at Freedom Subway Station until the morning of May 26, whereas during the dispersal and the parade held in the morning the territory was under effective control of the police. The suspicion is further reinforced by a statement of one of the assembly participants, noting that he did not see any bodies on the rooftop of the shop in the morning of May 26.

Independence of investigation into the case is essentially disputable. The case of deprivation of lives of Nika Kvintradze and Suliko Asatiani was investigated by MIA instead of the prosecutor's office, whereas MIA employees were directly involved in the process of dispersal and furthermore, there was a substantiated substantiations (that had not been dispelled at that time) that Nika Kvintradze could have been detained by the police. From the initial stage of the investigation, the culpability of the police was ruled out by the investigation authorities.

Regrettably, due to the position of the deceased persons' successor, it is impossible to provide effective legal assistance in the case. GYLA believes that in order to ensure transparency and accountability of the investigation, it is important for the investigation authorities to publicize any substantial evidence in the case that will enable public to make corresponding evaluations. Otherwise, lack of transparency of investigation will raise substantial suspicions about impartiality of the instigation.

### **5.5. Case of rally participant Temur Kapanadze deprivation of life**

During dispersal of rally on May 26 police beat unmercifully Temur Kapanadze and as a result he sustained serious physical injuries and emotional shock. After May 26 his health condition impaired significantly. Despite timely interference of doctors, as a result of disease, caused by injuries, received during dispersion of rally on May 26, he passed away eight days later.

#### ***5.5.1. The facts of the case in terms of beating Temur Kapanadze during dispersion of rally***

Temur Kapanadze was born on January 1, 1956. He had wife Eliso Shengelia and underage daughter. He lived in Tbilisi together with his family. He was an activist of Peoples' Assembly (Sakhalkho Kreba) and from May 21, 2011 he constantly participated in rallies, organized by Sakhalkho Kreba. On May 26 Temur Kapanadze was on the territory where rally took place. His friend Dato Gaprindashvili<sup>233</sup> and also one of the leaders of Sakhalkho Kreba Nona Gaprindashvili confirm his presence on the rally on the night of May 25. The fact of Temur Kapanadze's beating during rally dispersion and description of sustained injuries are based on the interviews taken from his wife Eliso Shengelia and his friend Dato Gaprindashvili and as well as on Temur Kapanadze's medical record.

In her interview Eliso Shengelia recalls, that on May 25 Temur Kapanadze was on a rally. At dawn on May 26 he returned home at 1:30 am approximately. He was absolutely wet and his head, face and clothes were in blood. Temur Kapanadze told his wife that during dispersion of rally the tear gas capsule hit him into the breasts as result of which he felt bad – had the feeling of asphyxiation and even lost consciousness for several seconds. When Temur Kapanadze regained consciousness, policemen were bludgeoning him.<sup>234</sup>

Dato Gaprindashvili who visited Temur Kapanadze at his place on May 26 also confirms the fact of tear gas capsule and bludgeoning of Temur Kapanadze during rally dispersal.

<sup>233</sup> View explanations of Dato Gaprindashvili, taken by GYLA on 13/07/2011

<sup>234</sup> Statement obtained by GYLA from Eliso Shengelia, 13.07.2011.

As it appears from the narration of Temur Kapanadze to Eliso Shengelia and Dato Gaprindashvili, the policemen were bludgeoning him when he was unconscious and thus unable to resist.

The signs of beating were visible on the head and back. Eliso Shengelia recalls in her interview: *“Temuri had injuries on the head and back, namely his head was broken and he had bruises on the back. On the first day he had intumescences and redness and on the next day the top of his back was black and blue. His skull cap was torn on two places but the injuries were not deep because no stitches were necessary, but these injuries were bleeding”*.<sup>235</sup>

The signs of beating and corresponding injuries of Temur Kapanadze during rally dispersion are verified by medical record, issued by LLC First Clinical Hospital, which provides that that Temur Kapanadze has the signs of beating on the sinciput. Namely he had excoriations on the sinciput and concussion of the brain.<sup>236</sup>

### 5.5.2. Deterioration of Temur Kapanadze’s health condition after May 26

After returning home Temur Kapanadze felt bad. He had severe pain in the breast and breathed heavily. Due to deterioration of his health condition it became necessary to call an ambulance. GYLA obtained Temur Kapanadze’s medical record from Emergency Situations’ Agency. Medical card No.681 verifies, that at 20:36 on May 26 the ambulance was called to Temur Kapanadze’s home. According to the card, patient complained of lack of air, heaviness in the breast and he was gasping<sup>237</sup>. Eliso Shengelia recalls in her interview, that according to the ambulance doctor, Temur Kapanadze had traumatic injuries and consequently pain in the thorax.<sup>238</sup>

#### 1. Medical treatment of Temuri Kapanadze in First Clinical Hospital on May 26-27

On May 26 the ambulance took Temuri Kapanadze to the First Clinical Hospital, where he was placed in therapeutic ward. The working group obtained Temur Kapanadze’s medical record. According to it upon arrival to the hospital the patient complained of lack of air, cough, general lethargy, temperature 37 degrees and pain in the thorax.<sup>239</sup>

Following diagnose was rendered as a result of medical examinations: double-sided pneumonia, acute coronary syndrome, chronic bronchitis, concussion of the brain, excoriations on the sinciput. Heart electrocardiogram revealed: sine tachycardia, hypertrophy of left ventricle and acute coronary deficiency. As it is shown in the medical record, after consultation with cardiologist, Eliso Shengelia was proposed to move her husband to the cardiological clinic, but Temur Kapanadze’s family, after consultations with family doctor, decided to move him to another clinic.

On May 27, 2011 Temur Kapanadze was discharged from the First Clinical Hospital. His health condition was satisfactory.

#### 2. Further deterioration of Temur Kapanadze’s health condition and the process of his medical treatment in Aladashvili Tbilisi State University Clinic in the period of May 31 - June 2

After returning home the pains in the thorax recurred. On May 30 his family members had to call an ambulance again. According to the card No. 573 *“the patient complains of lack of air, general lethargy*

<sup>235</sup> Statement obtained by GYLA from Eliso Shengelia, 13.07.2011.

<sup>236</sup> Medical Card of Temur Kapanadze No.647/399 issued by LLC First Clinical Hospital.

<sup>237</sup> Temur Kapanadze’s medical card No.681, issued by the Agency of Emergency Situations.

<sup>238</sup> Statement obtained by GYLA from Eliso Shengelia, 13.07.2011

<sup>239</sup> Temur Kapanadze’s medical card No.647/399 issued by LLC First Clinical Hospital.

*and these symptoms started 5-6 days before. In the anamnesis the patient is suffering from heart's ischemic illness, postinfarction cardiosclerosis. Several days ago the patient had pneumonia and afterwards his health condition deteriorated.*<sup>240</sup> "

On May 31 Temur Kapanadze's health condition becomes even worse. He felt heavy pains in the area of heart. At the same day he was moved to the Aladashvili Tbilisi State University Clinic where he was placed in the cardiological ward. According to the medical record, obtained by GYLA from Aladashvili Tbilisi State University Clinic, the patient got into rally dispersion on May 26 and as a result he experienced serious physical and psychoemotional stress. Since then the patient complained of the lack of air, heart pain, he was tired easily on light physical activity and even when idle. Also he had edema of lower extremities in the ankle area. His initial clinical diagnosis was: heart's ischemic illness, acute myocardial infarct<sup>241</sup>.

From May 31 until June 2 the patient was under medical treatment and felt much better.

On June 2 Temur Kapanadze had undergone coronarographic examination at the Aladashvili Tbilisi State University Clinic. Surgical procedure for Temur Kapanadze was planned on the basis of examination outcomes, namely: coronary angioplasty of the right artery, implantation of stents.

At 11:05 on June 2 three stents were implanted. But critical stenosis of ostial segment of basic tube was revealed and the tube angioplasty was planned on the next stage. After first phase of surgery patient felt the pain behind the breastbone. At 11:40 the conditions of the patient become extremely serious. Despite doctors' efforts, at 12:20 the patient passed away.

In the medical record issued by Aladashvili Tbilisi State University Clinic following is indicated as the reasons of death: acute myocardial infarction, old myocardial infarction (2000), coronal angioplasty (02.06.2011), arterial hypertension – II stage<sup>242</sup>.

### 3. Temur Kapanadze's health condition before May 26, 2011

Our evaluation of Temur Kapanadze's health condition before May 26, 2011 is based on the explanations of his wife and on the data of medical records, kept after May 26. Unfortunately we failed to obtain the records of Temur Kapanadze's prior medical examinations or medical treatment.

The medical card of patient No.1151 issued by Aladashvili Tbilisi State University Clinic provides, that according to patient he suffered posterior myocardial infarction in 2000 and as a result he permanently suffered from stenocardial attacks. In 2005 he underwent coronarographic examination and it revealed the necessity for angioplasty with implantation of two stents, but he failed to undergo the procedure due to lack of financial resources. Starting from 2010, during ordinary physical activity he felt retrosternal pain, which was gone only after taking nitroglycerine<sup>243</sup>.

As Eliso Shengelia recalls Temur Kapanadze's health condition was stable during the last five years and there was no need to visiting a doctor. He had heart complains which were gone after taking medicine "Nitromit"<sup>244</sup>.

#### 5.5.3. Examination of Temur Kapanadze's death cause

As the presented materials confirm, Temur Kapanadze received serious physical injuries and psychoemotional stress as a result of which the condition of his health drastically deteriorated. Namely police

<sup>240</sup> Temur Kapanadze's medical card No.573, issued by the Agency of Emergency Situations.

<sup>241</sup> Temur Kapanadze's medical card No.1151, issued by Aladashvili Tbilisi State University Clinic.

<sup>242</sup> Temur Kapanadze's medical card No.1151, issued by Aladashvili Tbilisi State University Clinic.

<sup>243</sup> Temur Kapanadze's medical card No.1151, issued by Aladashvili Tbilisi State University Clinic.

<sup>244</sup> Statement obtained by GYLA from Eliso Shengelia, 13.07.2011

bludgeoned him during rally dispersion and consequently, he had received serious injuries on the head and on the back. Moreover, the tear gas capsule hit him into the thorax as result of which he lost consciousness. It should be noted that application of tear gas has the following impact on human beings: feeling of lack of air, dryness, bronchial syndrome<sup>245</sup> which obviously would have negative influenced Temuri Kapanadze's health.

Psycho-emotional and physical trauma, received by Temur Kapanadze during rally dispersion caused coronary syndrome which in its turn is cardiovascular attack. Document issued by First Clinical Hospital on May 26 confirms that Temur Kapanadze had acute coronary syndrome.

The patient underwent medical treatment since May 26 but *despite this* he constantly felt lack of air and had pains in the chest area. On June 2, 2011 Temur Kapanadze was diagnosed with new infarction in Aladashvili Tbilisi State University Clinic but even before that, since the first day of his placement to the clinic on May 31 doctors indicated heart's ischemic illness, acute myocardial infarction as diagnosis. It is not obvious from documentation, requested by us, whether the patient had infarction before, but according to verbal explanations, given by cardiologists to the members of our group, the prolonged pains in the heart area indicate, that the patient had at least instable stenocardia or so called micro infarct. After coronarographic study on June 2 doctors decided to make implantation of stents to Temur Kapanadze. During the surgical procedure the patient's condition deteriorated so much that doctors failed to implant a stent in the tube area and postponed the procedure for the following stage. But in hour and a half the patient passed away.

The medical literature provides, that implantation of stents is successful in 95% of cases. The post-surgery complications are possible in 5% of all cases. The probability of lethal outcomes does not exceed 1%<sup>246</sup>. According to doctors' explanations the probability of lethal outcomes during acute infarction is 3%. Notwithstanding the low percentage of lethal probability after the stenting procedure, in Temur Kapanadze's case it became fatal.

In the death causes, together with the current reasons - acute myocardial infarction, coronal angioplasty (02.06.2011), arterial hypertension - II stage, cardiac infarction, which Temur Kapanadze had in 2000 is also indicated. It is obvious that previous cardiac infarction had complicated the patient's health condition, yet serious physical and psycho-emotional stress can cause the infarction to the person, whose medical records do not have any trace of heart problems but has predisposition towards ischemic diseases. Thus cardiac infarction, which Temur Kapanadze had in 2000 had only exaggerated his condition but did not cause new infarction, which was caused by emotional stress, received by Temur Kapanadze on May 26. As it is already mentioned, applicant's health condition before May 26 was stable and he lived in normal mode.

Thus Kapanadze's death presumably is a result of excessive power, used against him by police. As it is visible from the presented case, police violated the rule of prudence, necessary for the use of gas capsule, which should have ban its application against particular person (persons). Gas weapons give possibility of discriminatory application. From this perspective the issue of whether the police adhered to the rule of intensity and concentration of usage of gas weapons on the specific perimeter should be evaluated. GYLA tried to obtain information from the Ministry of Interior about types and quantities of special tools, used during rally dispersion but so far unsuccessfully.

<sup>245</sup> [http://en.wikipedia.org/wiki/Tear\\_gas](http://en.wikipedia.org/wiki/Tear_gas)

<sup>246</sup> <http://www.infarkta.net/patsientam/16321/16447>.

## CHAPTER 6. ALLEGED VIOLATION OF PRESUMPTION OF INNOCENCE

### Introduction

On May 26, 2011, the Interior Ministry officially confirmed the death of two individuals – officers of Interior Ministry, Lieutenant Vladimer Masurashvili and rally participant Nodar Tskhadadze. Corresponding statements were published on MIA's website, and official comments were made by MIA an official - the head of the analytical department, Shota Utiashvili.

Initial statements of MIA implicated Ivane Chigvinadze and Zakaria Zurashvili in the deaths of both individuals. They were detained the same day.

### 6.1. Presumption of innocence under Article 6 of the European Convention

Under para. 2, Article 6 of the European Convention on Human Rights, “everyone charged with a criminal offence shall be presumed innocent until proved guilty according to the law”. This presumption of innocence is lifted when the person concerned is proven guilty in compliance with the law. Being proven guilty in compliance with the law is determined by Article 10 of the Criminal Procedure Code of Georgia laying out by whom and at which stage of criminal proceedings a person concerned can be pronounced guilty. The same Article also establishes the role of the court in criminal proceedings and stipulates that a person should be deemed innocent even when he is detained or his liberty has been otherwise deprived and there is no legally effective verdict of guilty against him.

In a number of ECHR judgments it has been noted that the presumption of innocence is violated, “if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proven guilty according to law”. According to the ECHR’s case law, the presumption of innocence is binding not only on the investigative authorities or authorities examining the criminal case of an individual, but public officials as well who are making statements concerning the criminal case in progress.<sup>247</sup> The ECHR notes that para. 2 of Article 6 of the Convention does not prevent the authorities from informing the public about criminal investigations in progress, and the government has the freedom to impart information. However, it requires that they do so with all the discretion and circumspection necessary for the presumption of innocence to be respected.<sup>248</sup> In this regard, the ECHR also emphasizes the importance of the words used by public officials and the context of the statement.<sup>249</sup>

It is particularly important that investigative authorities protect and respect the presumption of innocence, which is on the one hand related to overcoming the preconceived belief that the person concerned has committed a crime, as well as to the reputation of an individual concerned and the formation of public opinion. An individual who has not yet been pronounced as guilty may not be treated or addressed as criminal. Even if investigative authorities are convinced that the person has committed a crime, they are prohibited from making statements that make the individual concerned look like a convict in the public eye until a decision of a court comes into legal force. Making such statements is particularly harmful considering that they may have a certain impact on investigative authorities and later on courts, which jeopardizes the impartiality of the investigation and trial. In *Allenet de Ribemont v. France* the ECHR noted that in that case some of the highest-ranking officers in the police referred to the applicant as one of the instigators of a murder and thus an accomplice in that murder, and that such comments violated the presumption of innocence in favor of the applicant, *as such declarations were*

<sup>247</sup> *Allenet de Ribemont v. France*, application #15175/89, judgment of 10 February 1995, § 41 and *Daktaras v. Lithuania*, application #42095/98, judgement of 10 October 2000, §§ 41-43

<sup>248</sup> *Allenet de Ribemont v. France*, § 38.

<sup>249</sup> *Khuzhin and Others v. Russia*, application #13470/02, judgment of 23 October 2008, § 94, სსსს *Butkevičius v. Lithuania*, application #48297/99, judgement 26 March 2002, § 49.

*made without any qualification or reservation. Furthermore, the ECHR noted that such declarations regarding the applicant's guilt encouraged the public to believe him guilty and prejudged the assessment of the facts by the competent judicial authority.*

## 6.2. Official Statements of MIA

**Alleged violations of the presumption of innocence were evident in the following three official statements released by the MIA on May 26 and the following several days:**

### 1. May 26 statement of the Interior Ministry

*„[...]Nino Burjanadze, together with her accompanying persons left the scene close to the Parliament. They left the place using their cars and driving with high speeds in the direction of Freedom Square. Two cars from Burjanadze's escort crashed into several pedestrians. One of these cars was driven by an assistant of Nino Burjanadze, Ivane Chighvinadze, and another by her party member Zakaria Zurashvili. During the accident, an employee of the Ministry of Internal Affairs, lieutenant Vladimer Masurashvili and citizen Nodar Tskhadadze were killed. Based on the preliminary examination, both men had multiple injuries that are common characteristics after accidents”<sup>250</sup>*

### 2. May 26 Statement of Shota Utiashvili, head of analytical department, Ministry of Interior Affairs of Georgia

*„[...] We have another victim, 54-year-old Nodar Tskhadadze, a former police officer, who died yesterday. Analysis of the crime scene and nature of the injuries inflicted confirm that he was allegedly killed by the infamous convoy and suffered injuries on the same place where the policeman did, i.e. rather far away from the operation scene, on Freedom Square...”<sup>251</sup>*

### 3. June 2, 2011 Statement of Shota Utiashvili, head of the analytical department, Ministry of Interior Affairs of Georgia (TV interview with Davit Paitchadze)

*„[...] We detained some of the drivers of the vehicles who hit a policemen and a peaceful citizen... the death of either of the individuals was in no way caused by the actions of the police. It is safe to conclude that generally, the operation was carried out in full compliance with standards”<sup>252</sup>*

## 6.3. Evaluation of Official Statements of MIA

Clearly, the police have an obligation to provide information about their activities to the public. Compliance with the principle of publicity and accountability in the work of the police is particularly important when a case or an event is of high public interest. The May 26 developments, particularly facts involving the deprivation of life related to the rally dispersal, were of high public interest. Therefore, the police had an obligation to keep the public adequately informed about the facts in a timely manner and provide it with information concerning the progress of investigation. However, authorities are obligated to provide the information to public without violating the principle of the presumption of innocence.

The first statement released by MIA implicates the drivers of Nino Burjanadze's convoy – Ivane Chighvinadze and Zakaria Zurashvili - in the killing of the two persons. The statement was made by the MIA in circumstances where Chighvinadze and Zurashvili had already been charged and there was no legally effective guilty verdict delivered by a court. Furthermore, the verdicts in the cases of deprivation of the life of Nodar Tskhadadze and Vladimer Masurashvili (dated August 16-17, 2011) confirm that Chighvinadze and Zurashvili were not convicted for the crimes.

<sup>250</sup> See <http://www.police.ge/index.php?m=8&date=2011.5.26&newsid=2505>

<sup>251</sup> See <http://www.1tv.ge/News-View.aspx?Location=22254&LangID=1>

<sup>252</sup> See <http://www.1tv.ge/Video-View.aspx?VID=5152&Loc=58&CatID=1&LangID=1>



Furthermore, it should also be noted that the May 26 statement of the MIA was not qualified or based on evidence obtained in compliance with the law. Furthermore, the statement was made without any qualification, due reasoning or reservation. More specifically, the statement did not contain any information about the evidence which allowed MIA to conclude that Vladimer Masurashvili and Nodar Tskhadadze died after they were hit by vehicles driven by Ivane Chigvinadze and Zakaria Zurashvili. The assertion in the statement that **based on the preliminary examination, both men had multiple injuries that are common characteristics after accidents**, did not constitute evidence that could definitively substantiate such conclusions in respect to the particular accused. To the contrary, the text demonstrates, by referring to preliminary examinations, that at the time the statement was made, the investigative authorities did not have the corresponding forensic findings determining the actual cause of death. Accordingly, the alleged fact that the victims sustained deadly injuries after they were hit by cars driven by Ivane Chigvinadze and Zakaria Zurashvili had not been adequately proved.

The statement by the MIA, which was specific and asserted that the concrete individuals had committed a crime, created a context for further statements made by MIA that also impugns violation of presumption of innocence in other statements of MIA.

The statements made by the head of the analytical department of the MIA, Shota Utiashvili underlined and reiterated the earlier statement that Nodar Tskhadadze “was allegedly killed by the infamous convoy” that also killed a policeman. The MIA used the word “alleged” to describe the case of deprivation of life of Nodar Tskhadadze, while in Masurashvili’s case it assertively notes that the policemen died after he was hit by convoy. At this time, the final verdict had not yet been delivered for any of the convoy drivers (some of the guilty verdicts against the convoy drivers were delivered on July 28-29, 2011 and others were delivered on August 16-17, 2011).

In his statement made on air on June 2 during the TV program Dialogue with Davit Paichadze, Shota Utiashvili assertively noted that police had detained some of the drivers who had hit a policeman and a peaceful citizen. Thus, in his statement an MIA official refers to the detained drivers as criminals without making any reservation or giving his reasoning. Furthermore, although the investigation into the cases of deceased persons was still ongoing, the MIA stated that none of the facts of deprivation of life were related to police actions. Clearly, such statements affected the impartiality and objectivity of investigation.

The statements regarding the death of Nodar Tskhadadze was made by MIA without publication of any evidence proving that Nodar Tskhadadze was hit by the convoy vehicles and it was *specifically* the accident that resulted in his death. Therefore, MIA’s statement failed to fulfill the requirement of qualification. Furthermore, it is clear that such statements have a negative impact on public opinion and the objectivity of the investigation and trial.

Ultimately, it is safe to conclude that all of the aforementioned statements to a certain extent imply that the statements made on May 26 and afterward violated the principle of presumption of innocence. Such statements made detainees look like convicts, without any qualification or reservation, before they were convicted by a legally effective verdict of the court. In *Allenet de Ribemont v. France*, similar in nature to the present facts, the ECHR found a violation of the presumption of innocence where such statements encouraged the public to believe in the culpability of the individual concerned before a court had evaluated and examined the facts related to the case.

It is difficult to determine what the aim of the statements which were released on May 26 and afterward was - formation of public opinion or exertion of influence on investigative authorities and court. Furthermore, it is difficult to conclude whether the aim has been fulfilled. However, the latter is not necessary to determine whether the illustrated examples involved violation of presumption of innocence.

## CHAPTER 7. INTERFERENCE WITH JOURNALISTIC REPORTING DURING THE DISPERSAL AND AFTERWARD

### Introduction

GYLA separately examined the cases of interference with journalistic reporting that occurred on May 26. By drawing attention to such violations, GYLA seeks to highlight the importance of media in crisis situations. This stems from the function of media to keep the public informed about ongoing developments by documenting and describing facts. Actions of law enforcement officials prevented journalists from carrying out the most important function that the public has assigned to media. Therefore, GYLA expresses its particular concern over acts that occurred against journalists. According to GYLA's information, different incidents occurred against 29 journalists (GYLA does not rule out other incidents about which the working group could not obtain information). GYLA also notes that in all cases contained in this report, law enforcement officials were able to differentiate journalists from assembly participants; nevertheless, the acts cited below occurred. Some of the journalists wore press vests and had certifying documents – so-called press cards, while others had press-cards only which they showed to law enforcement officers at the time of detentions but to no avail.

These cases can be categorized according to the following criteria:

### 7.1. Illegal Deprivation of Journalists' Liberty

On May 26 acts deprivations of journalists' liberty occurred when they were carrying out their official duties or were trying to leave the rally scene for safety reasons. According to GYLA's information, there were **nine**<sup>253</sup> verified cases when journalists were illegally deprived of their liberty, including two cases when they were released on Rustaveli Avenue soon after their detention and seven cases when journalists were released after they were conveyed to Tbilisi police headquarters.

On the night of May 25-26, during the dispersal, it was raining heavily. Therefore, most journalists were seeking shelter in Rustaveli Movie Theatre. As some of the law enforcement officers were carrying out the attack against rally participants from the Freedom Square area of Rustaveli Avenue, these journalists soon found themselves face to face with the police. Law enforcers ordered them to start relocating to the National Library. Afterward, the journalists tried to get back to Rustaveli Avenue through various streets to continue carrying out reporting. This is when they came face to face with the cordon of law enforcers, followed by the detention of some journalists. Malkhaz Okujava recalls: *“Special Forces Unit [...] approached us, we told them that we were journalists and they instructed us to start moving toward the library. We went down to Tabukashvili Street; from there we tried to get to Rustaveli Avenue from Kashueti Church; however, [it] was blocked by Special Forces Unit; then we tried to get to Marriott, where 6-7 officers of Special Forces started running after us (there were four of us, one of us started running in a different direction and they could not detain him). In parallel, they started firing rubber bullets at us. We had been running for several hundred meters before they caught us, and started beating and verbally insulting us, despite the fact that we were showing them our press cards, Malkhaz Chkadua was wearing*

<sup>253</sup> (1) Nino Kakhishvili (statement obtained by GYLA from the victim) – Netgazeti;

(2) Malkhaz Chkadua (statement obtained by GYLA from the victim) – Interpressnews;

(3) Ana Gabunia (statement obtained by GYLA from Tengo Okujava) – Expressnews;

(4) Tengo Okujava (statement obtained by GYLA from the victim) – Expressnews;

(5) Vladimer Astakpovich (<http://en.rsf.org/georgie-at-least-a-dozen-journalists-27-05-2011,40365.html>) – Ria Novosti

(6) Andrey Malishkin (<http://en.rsf.org/georgie-at-least-a-dozen-journalists-27-05-2011,40365.html>) – Ria Novosti

(7) Teimuraz Razmadze (<http://neotv.ge/?p=1004>) – Neo TV (internet magazine);

(8) Beka Sivsivadze, Giorgi Mamatsashvili – Asaval Dasavali weekly newspaper (letter sent from public defender to the chief prosecutor on May 30, 2011, #1882/04-09/0670-11/-662-11/0664-11, <http://www.palitratv.ge/akhali-ambebi/sazogadoeba/4994-zhurnalitebma-darbevis-dros-mdzime-dazianebebi-miighes.html>);

*a press vest. Afterward, all of us – Malkhaz Chkadua, Ana Gabunia and I were conveyed to premises of a recently opened police department at Tabukashvili Street (where we spent around 30 minutes), after that we were conveyed to the headquarters (after our detention they stopped physically abusing us). During the time of detention and afterward they did not clarify the reasons for our detention, nor when we were released. They took us to the headquarters by a minibus that did not have any sign indicating that it belonged to the police. [...] We spent around 2 hours there [...] After two hours we were taken to a separate room where they were drawing up our charges of detention. Again, I clarified that I was a journalist. Suddenly one of the police officers came out and asked which of us were journalists. I showed him the press card and told him that Malkhaz Chkadua was a journalist as well; after that we were released. [When I asked ] about Ana Gabunia, they said that they had released all women but later it turned out that they had her detained all night long<sup>254</sup> (same is confirmed by Malkhaz Chkadua).<sup>255</sup>*

Another group of journalists had remained in the rain moving from one place to another. Correspondingly, they found themselves at the epicenter of violence soon after the start of the dispersal. They were detained at Freedom Square when they were trying to flee the scene (Nino Kakhishvili, Beka Sivsivadze, Giorgi Mamatsashvili – the working group could not obtain information about the place of detention of other journalists). Nino Kakhishvili was nearby Chitadze Street at the start of dispersal. She tried to leave the territory to find shelter at a safer place but was overcome by the gas in the area and was taken to one of the ambulances at Freedom Square by law enforcement officers, where another policeman detained her. *Soon the police officer made me get out of [the ambulance], took me by the hand and had me walk to a yellow bus hastily. I showed him my press card and asked him to let me go. He said that they would find out who I was at the police department. [...] when we arrived at the police building, they had other detainees get out and told me to stay inside for a while. [...] in about 5 minutes they had me get out and took me to the foyer. [...] I asked one of the officers to try to find out quickly who I was and let me go. Soon one of the officers approached me, apologized, said that I should not have been there and let me go.<sup>256</sup>*

A letter from the public defender notes the following about Beka Sivsivadze and Giorgi Mamatsashvili: *both showed their press cards to Special Forces officers; nevertheless, they were taken to Freedom Square, where they were forced to lay on the ground and cuffed up. They took one press card with them and threw away another. Soon the police had them get on a bus together with other detainees when one of the persons identified them.<sup>257</sup> After that, they were released.*

According to a report by Reporters without Borders, law enforcement officers detained Vladimer Astakovich (for a night) and Andrei Malishkin (for five hours).<sup>258</sup> According to NeoTV, Teimuraz Razmadze was also detained and transferred to a police department.<sup>259</sup>

## **7.2. Inflicting Bodily Injuries to Journalists (by Means of Rubber Bullets among Others), and Physical and Verbal Abuse**

Acts of physical and verbal abuse against journalists, as well as the deliberate use of rubber bullets against them, which in some cases equaled a certain extent of ill-treatment occurred on May 26. Ill-treatment was caused by beatings or the firing of rubber bullets at journalists in a deliberate manner (it should be noted that this subchapter does not contain cases where journalists sustained injuries from a stray bullet or general gas residues. As such actions are not premeditated; GYLA does not view them beyond the general picture of excessive use of force or place under the category interference with jour-

<sup>254</sup> Statement obtained by GYLA from Tengis Okujava

<sup>255</sup> Statement obtained by GYLA from Malkhaz Chkadua

<sup>256</sup> Statement obtained by GYLA from Nino Kakhishvili

<sup>257</sup> Letter from public defender to the chief prosecutor, dated May 30, 2011, #1882/04-09/0670-11/-662-11/0664-11

<sup>258</sup> <http://en.rs.f.org/georgie-at-least-a-dozen-journalists-27-05-2011,40365.html>;

<sup>259</sup> <http://neotv.ge/?p=1004>;

nalistic reporting.) It should be underlined that the acts of violence described in this chapter affected in a similar manner most of the journalists who were victimized. According to the reports that we have, a total of **twenty-four** verified incidents occurred.<sup>260</sup> Most of the journalists were injured when they were trying to leave the epicenter of the developments and/or trying to capture the developments on camera.

Levan Katamadze recalls events from that night: *when the dispersal started, I was standing at the tribune; as a result, a mass of people pushed at us toward the [building of] Parliament. [...] As there were several other journalists with me, we showed our press cards to the Special Forces Unit and asked them to get us to a safe place. Instead I was beaten with a truncheon in response. After that I ran away. We had not yet left the stairs of the Parliament when my colleague Giorgi Vibliani (sando.ge) was hit with a truncheon several times by a Special Forces officer despite the fact that Giorgi was showing him his press card. Afterward, one of the law enforcement officers let us through and told us to go to Kashueti. [...] We were running toward Kashueti with our press cards in our hand, screaming that we were journalists. Nevertheless, they targeted us with rubber bullets. I was hit by three and my colleague was hit by 4. They were shooting at us from about 15-20 meters distance. We found ourselves at [Tbilisi] Marriott, where the situation was more stable, meaning that when we said we were journalists, they let us through. We left the rally scene for Rose Square. We could not get back as the police did not allow us to.*<sup>261</sup>

Journalists Beka Sivsivadze and Giorgi Mamatsashvili were shot by rubber bullets. A letter from the public defender to the general prosecutor's office of Georgia reads: *officers of Special Forces fired rubber bullets at them on Rustaveli Avenue. According to Giorgi Mamatsashvili, Beka Sivsivadze was hit by 38-39 bullets. Injuries that they sustained from rubber bullets are clearly evident. [They] were physically and verbally abused by Special Forces officers. Both of them showed their press cards to the officers of Special Forces*<sup>262</sup>



B. Sivsivadze's injuries

- <sup>260</sup> (1) Konstantine Stalinki (statement obtained by GYLA from the victim) – Netgazeti (internet publication);  
 (2) Zaira Mikatadze ([http://www.resonancedaily.com/index.php?id\\_rub=11&id\\_artc=6407](http://www.resonancedaily.com/index.php?id_rub=11&id_artc=6407)) – Rexionansi daily newspaper;  
 (3) Diana Khoperia (<http://medianews.ge/index.php/ka/content/74386/>) - Obiektivi;  
 (4) Journalist of Itv (internet television), two journalists (statement obtained by GYLA from Konstantine Stalinski);  
 (5) Nato Gogelia (<http://www.ick.ge/ka/rubrics/politics/6223-2011-05-25-20-44-26.html>) – Guria News (weekly regional newspaper);  
 (6) Davit Mchedlidze (statement obtained by GYLA from the victim) – Media.Ge (internet publication);  
 (7) Levan Katamadze and Giorgi Vibliani (statement obtained by GYLA from Levan Katamadze) - Sando.Ge (internet publication)  
 (8) Malkhaz Chkadua (statement obtained by GYLA from the victim) – interpressnews;  
 (9) Tengo Okujava (statement obtained by GYLA from the victim) – Interpressnews;  
 (10) Teimuraz Razmadze (<http://neotv.ge/?p=1004>) – NeoTV (internet magazine);  
 (11) Tamaz Kupreishvili (statement obtained by GYLA from the victim) – Netgazeti (internet publication);  
 (12) Darejan Paatashvili (statement obtained by GYLA from the victim) – Interpressnews;  
 (14) Giorgi Rokhashvili – (letter from public defender to the general prosecutor of Georgia) – First Caucasian;  
 (15) Sergo Gelashvili (letter from public defender to the general prosecutor) – First Caucasian;  
 (16) Dimitry Lebedev (<http://liberali.ge/26-maisi-gamodzieba>) – Comersant;  
 (17) Giorgi Edisherashvili (<http://neotv.ge/?p=1004>) – Neo TV (internet magazine);  
 (18) Beka Sivsivadze, Giorgi Mamatsashvili – Asaval Dasavali weekly newspaper (letter from public defender to the general prosecutor, dated May 30, 2011, <http://www.palitravt.ge/akhali-ambebi/sazogadoeba/4994-zhurnalitebma-darbevis-dros-mdzime-dazianebebi-miighes.html>);  
 (19) Gogita Kharebava (letter from public defender to the general prosecutor) – First Caucasian;  
 (20) Nestan Tsetskhladze (statement obtained by GYLA from the victim) – Netgazeti (internet publication);  
 (21) Ana Gabunia (statement obtained by GYLA from Tengo Okujava) – Expressnews;  
 (22) Telara Gelantia (statement obtained by GYLA from Tengo Okujava) – Pirweli;

<sup>261</sup> Statement obtained by GYLA from Levan Katamadze;

<sup>262</sup> Letter from public defender to the general prosecutor, dated May 30, 2011, #1882/04-09/0670-11/-662-11/0664-11;

Konstantine Stalinik describes the assault against him as follows: *Special Forces Unit personnel were slowly approaching parliament and moving toward us. I was standing together with one of the journalists, with our backs [to the police], covering the protesters. We were both wearing large PRESS signs on our backs; I was holding a camera in one hand and trying to record, and a press card in another, raising it as high as possible. Suddenly I felt that I was hit with a rubber bullet in my back. My colleague and I started shouting that we are journalists. At the same time, I am trying to turn back so that the Special Unit has a better view of my press card. Suddenly I felt a strong pain in my side, as I had been hit with a targeted rubber bullet fired from one of the Special Forces officers that had approached us. [...] Having realized that although he knows we are journalists he is still shooting at us, I try to cover my colleague and step toward the officer and repeat once more that I am a journalist and look him into his eyes. The distance between us is no more than 3-4- meters. When I shouted at him yet again that I was a journalists, he aims his gun at me and fires at me once more.*<sup>263</sup>



*K. Stalinski's injuries*

Tazo Kupreishvili recalls: *Having reached Freedom Square, I realized that I had been encircled by the Special Forces. I started shouting that I was a journalist, showing my badge to them. Suddenly, Special Forces officers started beating me. I was knocked down on the ground; around 10 people were beating me, and verbally insulting me. They were hitting me with their truncheons, kicking me. During all this time I had my camera on but they took it away from me and closed it. After that, they tried to take my photo camera away; I was trying to hold on to it. Suddenly, a person in a police uniform appeared and stopped the Special Forces officers who were beating me. He had them open the cordon and let me through. I put my photo camera by a tree, thinking that I would return to get it later but I couldn't. When I was walking through the cordon, I was pushed around from one policeman to another, Special Forces officers were beating from behind in the back of my head and swearing. I was injured on my forehead and started bleeding.*<sup>264</sup>

Davit Mchedlidze recalls the night of May 26 when he was physically abused: *as soon as they saw me, two policemen came up and while the first one was inspecting me, the other one started beating me with a stick and kicking me, he was also swearing at me. They did not take my photo camera away and I could capture a couple of images.*<sup>265</sup>

In certain cases such actions were followed by grave consequences. Konstantine Stalinski explains: *later I learned that two cameramen of ITV had been injured, one of them has a broken jaw and another had a broken leg.*<sup>266</sup> The working group contacted the internet television for the purpose of verifying the information. Although they confirmed that journalists had been injured, it would not allow us to contact them, as the journalists themselves were refusing. According to media reports, journalist Diana Khoperia has also been injured.<sup>267</sup> As she noted in a telephone conversation with GYLA, due to the head injury that she sustained, she had to get three stitches.

### **7.3. Seizing cameras or other recording equipments from journalists or damaging them, as well as deleting recordings and destroying memory cards**

In addition to the aforementioned violations, on May 26 law enforcement personnel also engaged in the seizing of professional equipments from journalists and destroying them. Reports confirm **nine** veri-

<sup>263</sup> Statement of Konstantine Stalinski obtained by GYLA;

<sup>264</sup> Statement of Tamaz Kupreishvili obtained by GYLA;

<sup>265</sup> Statement of Davit Mchedlidze obtained by GYLA;

<sup>266</sup> Statement of Konstantine Stalinski obtained by GYLA;

<sup>267</sup> <http://medianews.ge/index.php/ka/content/74386/>

fied cases (it is noteworthy that journalists never got their camera or recordings back);<sup>268</sup>

GYLA believes that such actions are particularly unacceptable as on the one hand, journalists' equipment allows officers to identify press members and thus they will no longer be able to justify their actions stating that they could not distinguish journalists from ordinary protesters, and on the other hand, seizure and destruction of recordings by some of the officers served the purpose of destroying evidence that proved the excessive use of force and was held by an individual journalist.

In his statement, Dato Mchedlidze notes: *as soon as Special Forces officers appeared, journalists moved to a sidewalk and started moving toward Purtseladze Street. [...] at Purtseladze Street we were faced by another Special Forces unit. They were taking cameras away from journalists and removing memory cards from cameras. I saw how they removed a memory card from one of the journalist's cameras and crushed it. They also took a camera away from my colleague Nato Gogeliam, who's with Guria News. We tried to explain that we were journalists and were showing them our badges, but it did not work.*<sup>269</sup>

A letter from the public defender to the prosecutor general notes the following: *"Giorgi Rakhviashvili with First Caucasian TV Company was physically abused and his camera was seized. [...] Sergo Gelashvili with First Caucasian TV Company was detained and his camera was seized. [...] He got his video camera back upon release; however, according to him, the rally dispersal footage had been deleted. Interpressnews reporter Darejan Paatashvili was physically abused and her flip camera was seized. [...] Tamaz Kupreishvili [...] was abused physically and his camera was taken away.*<sup>270</sup>

#### 7.4. Other interference with journalists' reporting, i.e. preventing journalists from recording the developments

In addition to the aforementioned cases, other types of interference with journalists' ability to report also occurred where the media was prohibited to record the developments. Reports cite two verified cases.<sup>271</sup>

A letter from the public defender of Georgia to the general prosecutor reads: *Gogita Kharebava with First Caucasian TV Company was physically abused and prohibited from video recording.*<sup>272</sup> The public defender's letter to the general prosecutor of Georgia also notes that *Davit Mchedlidze [...] was not allowed to cover.*<sup>273</sup> We estimate that these facts did not occur as isolated incidents but rather, similar facts also occurred in other cases as well.

<sup>268</sup> (1) Tazo Kupreishvili (statement obtained by GYLA from the victim) – Netgazeti;

(2) Darejan Paatashvili (statement obtained by GYLA from the victim) – Interpressnews;

(3) Nato Gogelia (statement obtained by GYLA from the victim – Guria News);

(4) Avtandil Surmava (<http://www.palitravt.ge/akhali-ambebi/sazogadoeba/5002-darbevisas-dazaralebultha-shoris-palitra-tvq-is-zhurnalistebic-aghmochndnen.html>) - Palitra TV (internet television);

(5) Giorgi Rokhashvili (letter from the public defender to the general prosecutor) – First Caucasian;

(6) Sergo Gelashvili letter from the public defender to the general prosecutor) – First Caucasian;

(7) Vladimir Vorsobini (<http://en.rsf.org/georgie-at-least-a-dozen-journalists-27-05-2011,40365.html>) – Komsomolskaya Pravda

(8) Dimitry Lebedev (<http://liberali.ge/26-maisi-gamodzieba>) – Commersant;

(9) Giorgi Edisherashvili (<http://neotv.ge/?p=1004>) – Neo TV (internet television);

<sup>269</sup> Statement of Davit Mchedlidze obtained by GYLA;

<sup>270</sup> Letter from public defender to the chief prosecutor, dated May 30, 2011, #1882/04-09/0670-11/-662-11/0664-11

<sup>271</sup> 1) Gogita Kharebava - (letter from the public defender to the general prosecutor) – First Caucasian;

(2) Davit Mchedlidze (letter from the public defender to the general prosecutor) – media.ge;

<sup>272</sup> Letter from the public defender to the general prosecutor, dated May 30, 2011, #1882/04-09/0670-11/-662-11/0664-11;

<sup>273</sup> Letter from the public defender to the general prosecutor, dated May 30, 2011, #1882/04-09/0670-11/-662-11/0664-11;

Furthermore, we would like to underline that despite the aforementioned cases, some of the journalists (mostly TV-journalists) performed their work without any obstacles; similarly, some law enforcers did not hinder journalists from working and moreover, they were trying to keep them safe from dangerous zones. In consideration of the reports, GYLA finds it hard to understand the logic and motives of this preferential treatment both in individual cases and in general.

## Findings

Article 24 of the Constitution of Georgia guarantees the freedom of expression, which entails journalists' right to freely obtain and impart information. Under Article 3.2c of Law of Georgia on Freedom of Speech and Expression, 2. Everyone shall [...] enjoy the right to freedom of expression that implies [...] Obtaining, receipt, creation, keeping, processing and dissemination of any kind of information and ideas. As for restrictions on the noted right, under Article 8.2 restrictions recognized and protected by the law should be directly intended at fulfillment of a legitimate aim and the actions carried out should be proportionate to this goal. In the given case, the noted stipulation was disregarded. Obstacles that journalists faced while covering the dispersal may not be justified in any way. Furthermore, journalists were subjected to ill-treatment, beatings and deprivation of their property.

Under Article 154 of the Criminal Code, illegal interference in the professional work of a journalist, i.e. coercion to disseminate or refrain from disseminating information, is a punishable action. According to the MIA, an examination has been launched into the facts surrounding these violations committed against journalists,<sup>274</sup> however, the public is still unaware of any concrete results of the investigation. With GYLA's assistance, victimized journalists applied to the MIA with a request for public information concerning whether legal responsibility was imposed on concrete individuals for interfering with journalists but the Ministry has not yet provided any information.

Based on the aforementioned, it is safe to conclude that during and following the May 26 assembly dispersal, journalists' right to free expression, liberty, property, and the right to protection from ill-treatment, and protection of individual honor and dignity was violated.

<sup>274</sup> See official website of the Interior Ministry: <http://police.ge/index.php?m=8&newsid=2649>

## CHAPTER 8. ALLEGED FACTS OF TORTURE AND INHUMANE TREATMENT OF PARTICIPANTS FOLLOWING THEIR DETENTION

### Introduction

Following the dispersal of the May 26 rally, officers of the Interior Ministry detained some of the rally participants. The majority were conveyed to Tbilisi headquarters in Dighomi. The working group members interviewed some of the detainees. Their statements reveal that detainees were *allegedly* subjected to inhumane treatment and torture by Interior Ministry officers at the police department.

### 8.1. Overview of applicable international standards

The prohibition of torture is an absolute human right. It is guaranteed both by the Constitution of Georgia as well as by international conventions for human rights protection. Under para. 2, Article 17 of the Constitution of Georgia, “Torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honor and dignity shall be impermissible”.<sup>275</sup> Article 3 of the European Convention on Human Rights stipulates that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.<sup>276</sup> Article 7 of the International Covenant on Civil and Political Rights provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>277</sup> The noted provisions are reinforced by court practice, recommendations of international organizations and other important tools for the protection of human rights, highlighting the importance of the prohibition of torture as a fundamental human right.

The ECHR has formed a rather important practice with regard to Article 3 of the Convention, which focuses on the prohibition of torture of detained persons by law enforcement officials. This is due to the fact that those who are deprived of their liberty, and therefore are under the full control of the authorities, are most vulnerable to and at risk of abuse of state power being wielded against them.<sup>278</sup>

According to the established practice, it should first be determined whether physical violence has been exerted against a person concerned; and afterward, it should be determined to what extent was the use of force was necessary.<sup>279</sup>

One of the most obvious physical indications of recourse to physical force will be visible signs of physical injuries or observable psychological trauma. Where a detainee shows signs of injuries, or ill-health, either upon release or at any stage during their detention, the burden will be on the detaining authorities to establish that the signs or symptoms are unrelated to the period or fact of detention. If the injuries were related to the period or fact of detention, and result from the use of physical force by the authorities, then the detaining authorities must establish that it was necessitated by the detainee’s own conduct and that only such force as was absolutely necessary was used.<sup>280</sup>

Para. 1 of Article 144<sup>1</sup> of the Criminal Code of Georgia provides for legal responsibility for acts of torture. The noted paragraph stipulates that torture, i.e. subjecting a person, his/her close relatives or financially or otherwise dependent persons to such conditions, such treatment or punishment which

<sup>275</sup> Constitution of Georgia, Article 17;

<sup>276</sup> Article 3 of the European Convention on Human Rights.

<sup>277</sup> Article 7 of the International Covenant on Civil and Political Rights;

<sup>278</sup> Aisling Reidy, *The Prohibition of Torture, A Guide to the Implementation of Article 3 of the European Convention on Human Rights*, 2003, p.23.

<sup>279</sup> *Ribitsch v. Austria*, December 4, 1995, §34; *Tekin v. Turkey*, June 9, 1998, §§52 and 53; *Assenov and others v. Bulgaria*, October 28, 1998, §94.

<sup>280</sup> *Tomasi v. France*, August 27, 1992, §§108-111; *Ribitsch v. Austria*, December 4, 1995, §34; *Aksoy v. Turkey*, December 18, 1996, §61.



by their nature, intensity or duration cause severe physical or mental pain or suffering, and have the purpose to obtain information, evidence or a confession, to intimidate, coerce or punish a person for an act s/he or a third party committed or is/are suspected of having committed is punishable by imprisonment of five to 10 years and/or a fine. Para. 2 of the same Article stipulates that the same act committed by an official or a person equated to an official or by abuse of official power is considered as aggravating circumstances.<sup>281</sup>

## 8.2. Statements of witnesses that imply facts of torture and ill-treatment of individuals held at police departments

Following the dispersal, participants were conveyed to Tbilisi police headquarters. Several of them were not beaten, but they recall how detainees were subjected to violence and cruel treatment.<sup>282</sup> Participant Andrey Gora declared: *“following the detention I was held at Dighomi headquarters. I personally was not beaten as I was already beat up severely. They were verbally assaulting me and beating other persons who were together with me [at the police department]”*.<sup>283</sup>

One of the participants Giorgi Obgaidze noted the following in his statement: *“we were transported to police department in Dighomi by yellow micro buses. After we got off, we were taken in the hall of the first floor of the department. There were around 100-150 people in the hall. Periodically Special Forces officers came out from the elevator, beating detainees with their hands”*.<sup>284</sup> Gia Burjanadze’s statement also reveals that rally participants were subjected to torture and dealt with in a severe manner at the Tbilisi headquarters of the police: *“it was dawn when we arrived at Tbilisi headquarters [of the police]. We were taken in from the central entrance and there were groups of 10-12 rally participants standing against the wall by the elevators in the foyer. A total of 100-120 people had been detained. I saw Soso Jachviani, Lasha Amirejibi, Sandro Donadze and others there. Most of them had been beaten. I was not forced to stand among them but was taken to the fifth floor by persons in civilian clothes. I saw members of Nino Burjanadze’s security on the fifth floor who had been beaten and handcuffed. Afterward, I was taken to a corridor where there were offices. I had to stand in the corridor. I heard screams and squalls from those rooms. There was a wide area where I was standing. There were bloody clothes, bandages, cotton pads, disposable medical gloves thrown on the ground. I saw Murman Dumbadze escorted by two men. His face was bleeding. I saw a man with pliers and scissors entering a room. From the office where Murman Dumbadze was taken out a thin man in civilian clothes came out. He took off bloody rubber gloves and threw them away together with cotton pads. The he put on new gloves and got back to his office. I was taken to another room. There I was asked to sit down but could not as I was wet. They brought in a policeman and told me that he was my detainer. They said that I was to be taken to administrative court, and the policeman from Vake-Saburtalo department was to be my detainer. They drew up a protocol of violation that I signed. At 11 am together with my “detainer” policeman and two other individuals I was conveyed to Tbilisi City Court. I was taken down to a basement of the court where I had an opportunity to take off my wet clothes for the first time. I spent 10-20 minutes alone there. One of the patrol officers asked me if he could bring in several other detainees. They brought in four young men, severely beaten. I asked them what had happened. I told a man with a beard that he looked familiar. It turned out that he was my next door neighbor but I could not recognize him as his face was deformed”*.

## 8.3. Individual cases of inhumane treatment of detainees

In the process of evaluation of cases of inhumane treatment of detainees we were guided by statements of victims and witnesses, as well as medical documents, video materials and other evidentiary circum-

<sup>281</sup> Criminal Code of Georgia, Article 144<sup>1</sup>.

<sup>282</sup> Also see: <http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1380>

<sup>283</sup> Andrey Gora (statement obtained by GYLA from the victim);

<sup>284</sup> Giorgi Obgaidze (statement obtained by GYLA from the victim);

stances that were directly and/or indirectly implying facts of ill-treatment or alleged torture of concrete individuals. Below we discuss several individual cases of inhumane treatment at police departments.

### 8.3.1. Case of Murman Dumbadze

In his statement, rally participant Murman Dumbadze noted that he was “conveyed to Tbilisi headquarters in Dighomi by a black SUV. I had to stay in a separate room on the fifth floor until morning. Throughout all this time, I was systematically beaten by several persons. I was lying on the ground, with my hands cuffed. I was kicked, beaten by hands, a white cane. The only place where they did not hit me was my face. I was taken to a smaller room in the morning, to the 7<sup>th</sup> floor I presume, where I was beaten by 4-5 policemen continuously for 3-4 minutes. One of them beat me with rubber gloves in my ears. Later I was taken to an adjacent room, where there were several policemen and several officials dressed in civilian uniforms. They prohibited the policemen from beating and torturing me. After that, he ordered the policemen to get me to him and inflicted severe damage to me by hitting me with his foot. I suffered a broken nose and lost a great amount of blood – 300-400 grams. One of the policemen dragged me to the bathroom and washed the blood off of my face. Afterwards, at around 10:30, I was taken to court. Policemen in the bus continued beating me.

*My head, nose, ribs, limbs, and eye had been injured. I got medical assistance after GYLA lawyers arrived. During the next couple of days I was visited by a doctor several times. He examined me in details. I got some painkillers. The doctor diagnosed me with general bruising. I requested medical examination of internal organs but they refused to provide the examination. All of my injuries and wounds had been caused by the cruel beating at the Tbilisi police headquarters.”<sup>285</sup>*

The fact of Murman Dumbadze’s torture at Tbilisi headquarters is also confirmed by several circumstances in addition to his own statement. Footage recorded by Euronews and Radio Liberty show officers of Interior Ministry taking Murman Dumbadze out from Rustaveli Movie Theatre and toward Freedom Square.<sup>286</sup> At that time there are no signs of visible injuries on his body. After he was conveyed to Telavi isolator, GYLA lawyer Marekh Mgaloblishvili met with him. She noted that Dumbadze was severely beaten and there were visible injuries all over his body.

The fact of inflicting bodily injuries to Murman Dumbadze is also confirmed by the protocol of external examination of the detainee at the temporary detention isolator. He had a wound on his nose, a cut on his head, bruises on both feet and on his left shoulder blade. Following the initial examination, due to his difficult condition the detainee was provided with first aid three times.

### 8.3.2. Case of Bidzina Gegidze

Participant Bidzina Gegidze was detained on May 26 at dawn. He was conveyed to Tbilisi police headquarters in Dighomi. In his statement Bidzina Gegidze clarified: “we came to the headquarters, where I saw a line of people standing, around 500 people. Men equipped with truncheons walked past them, spitting at them, physically and verbally assaulting them. ... Gia Gachechiladze and I were taken to the 6<sup>th</sup> floor. ... Before they took us in the elevator, I saw a lot of my friends on the first floor who had been beaten, they were beating people there. After we got off the elevator on the 6<sup>th</sup> floor, we had to wait in the foyer. People dressed in civilian uniforms came both from the right and left sides. They told us that we were dirt bags, we did not appreciate Misha, we did not like policemen [that] Misha had been sent by God. ... One of them even said that we would not get away with murder of a boy. ... I was taken by one of the officers to the 7<sup>th</sup> floor, where one person was wearing a white shirt, military pants and combat boots. He started beating

<sup>285</sup> Murman Dumbadze (statement obtained by GYLA from the victim);

<sup>286</sup> Euronews footage, see: <http://www.youtube.com/watch?v=kwMAM9kAOAo&NR=1>, (last updated on July 25, 2011); Radio Liberty video footage, see <http://www.youtube.com/watch?v=T6IIpgNfjVU&feature=related>, (last updated on July 25, 2011).

*me. I fell down. As soon as I got up, they knocked me down. I was hit with a heavy item, by hands, feet. I was hit in my ear with something and I lost consciousness. The beating continued in several stages: first, they had me get up, and then they rested for a minute and continued beating me afterwards. It continued for 20 minutes. ... I was also beaten on my injured foot. They took me from the office to the foyer, where there were up to 40 detainees. The man wearing a white coat addressed these people by referring to me and saying that it was all my fault and I was the one to be held responsible. I was looking at the detainees in their faces but I could recognize any one of them. They kicked me before the detainees and took me downstairs.”*

### 8.3.3. Case of Nika Samkharadze

In his statement assembly participant Nika Samkharadze noted the following: *“following our detention, we were transported to Tbilisi headquarters in Dighomi by a yellow bus. After we arrived at the department, we were ordered to stand on the stairs in groups. MIA representatives had a list with names, surnames and photos. They called out names, looking for the person concerned in the group. As soon as they find out my identity, that I was Nika Samkharadze, they started beating me. At first they beat me around my eyes; they were beating me with canes and kicking me. The beating continued for 5-6 hours. I was attacked verbally as well. I could not see what was going on around me, as my eyes had been injured as a result of the beating. ... They did not beat me in the isolator, as I was already severely beaten but they were beating other detainees.”<sup>287</sup>* The fact of Nika Samkharadze’s beating is confirmed by the protocol of external examination. According to the protocol, Nika Samkharadze displayed bruising in his facial area and excoriations.

### Findings

These acts of beatings and cruel treatment of detainees following their conveyance to the police department are confirmed by the statements of a number of detainees and other relevant evidence. Throughout the noted period, detainees were under the effective control of the police, and therefore, the use of force against them was unjustified and was allegedly intended to punish and inflict suffering on them. In view of the extent/intensity of suffering, such treatment can be deemed as ill-treatment or alleged torture in all individual cases. Clearly, it requires effective and timely investigation, followed by prosecution.

<sup>287</sup> Nika Samkharadze (statement obtained by GYLA from the victim);

## CHAPTER 9. ANALYSIS OF CASES OF ALLEGEDLY MISSING PARTICIPANTS FOLLOWING MAY 26

### Introduction

In the process of preparation of the report, in addition to other human rights violations and practices, GYLA also addressed cases of protesters who allegedly went missing following the May 26 assembly. According to the reports, the May 26 dispersal resulted in mass detentions of participants; initially, the whereabouts of these detainees remained unknown for their family members and the public. Following May 26, family members and relatives of protesters actively contacted GYLA, seeking help in determining the whereabouts of their detained relatives. In the process, GYLA, other NGOs and the public defender drew up and circulated the list of *allegedly* missing persons.

GYLA, other NGOs and the public defender actively sought information about individuals whose whereabouts remained unknown. GYLA lawyers monitored all temporary detention isolators, including throughout the regions in pursuit of this goal. Following the dispersal, they stayed up all night outside TDIs, trying to find out information about whereabouts of individual participants and to meet with them; however, lawyers could not obtain requested information from TDI administrations and they were not allowed to enter TDIs.

In consideration of the situation, we suspected that we were dealing with the disappearance of persons. In compliance with international law, *“enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.*<sup>288</sup> However, these suspicions were soon dispelled, as on May 27, 2011, the MIA released the list of detained individuals (total of 105).<sup>289</sup> On May 28, 2011, the public defender also published lists of detained persons, according to temporary detention isolators where they were held.<sup>290</sup> However, 50 persons still remained missing. Soon thereafter (4-5 days after the dispersal) the whereabouts of all individuals who had been missing were determined.

Further analysis of the situation demonstrated that suspicions about the disappearance of rally participants stemmed from the following factual circumstances, *including* 1. Mass detention of participants was carried out by the police without giving detainees an opportunity to inform their family about their detention. 2. Lawyers faced difficulties in visiting detainees at temporary detention isolators as detainees were transferred from one isolator to another in an intense and chaotic way, which made it difficult to find an individual detainee. 3. Rally participants who were not detained or were soon released (from courtroom), were trying to hide for safety reasons and initially their whereabouts remained unknown.

### **9.1. Restriction of the right to have the fact of detention notified to a family member or a third party of his choice during detention**

According to the European Committee for Prevention of Torture (CPT), an individual detained by the police is entitled to 3 fundamental rights:

- the right to have the fact of his detention notified to a third party of his choice (family member, friend, consulate);
- the right of access to a lawyer;
- the right to request medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities)

<sup>288</sup> International Convention for the Protection of All Persons from Enforced Disappearance, Part I, Article 2;

<sup>289</sup> Can be found at the official MIA website: <http://police.ge/index.php?m=8&newsid=2515>

<sup>290</sup> <http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1380>

These are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons, **which should apply from the very outset of deprivation of liberty**, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.).<sup>291</sup>

Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made **promptly available to their relatives and lawyer(s) or other persons of confidence**.<sup>292</sup>

As most of the rally participants were detained on the grounds of commissions of administrative offences, procedural guarantees envisaged by criminal procedure law no longer applied to them but rather, they were subject to the Code of Administrative Offences of Georgia. This Code includes one of the fundamental rights (to have family, or a third party of his choice, notified about the detention immediately) in an obscure and inadequate manner. Specifically, under Article 245 of the Code of Administrative Offences of Georgia, **at request of a person detained for commission of administrative offence, his whereabouts shall be informed to his relatives, administration, according to his workplace or educational institution**. This norm fails to specify the time for realization of the noted right, whereas according to internationally recognized standards, immediate realization is of principal importance. As for the regulations of the work of TDIs of the Interior Ministry, which are governed by a single normative act,<sup>293</sup> they do not deal with the benefit of the noted right by an individual detained on administrative charges.

These legislative deficiencies resulted in the failure of the authorities to inform family members and relatives of detained participants of the May 26 assembly about the facts of their detention in a timely manner, which, in its turn gave the impression that these individuals had disappeared. One of the detainees during the May 26 rally dispersal, Nika Samkharadze, notes: *after the court sentenced me to administrative imprisonment, I was placed in Dighomi Temporary Detention Isolator, where later I was transferred to Gardabani TDI where I spent 5 days unconscious. My family was notified about the fact of my detention five days after my detention (May 26)*.<sup>294</sup> Nika Samkharadze's lawyer and family were not notified until after the detainee regained consciousness. Before that, they were unaware of his whereabouts and health condition. According to the statement given to GYLA by Alexandre Devdariani, no one informed his family of his detention after he was transferred to Dighomi police department.<sup>295</sup> Another detained participant Besik Tabatadze notes in his statement that he was transported to Dighomi police department at around 1 am. He could contact his family members by means of a doctor's telephone only after the ambulance arrived, at around 7 am.<sup>296</sup> In his statement, rally participant Giorgi Obgaidze recalls: *at the department I asked for a meeting with my attorney, as well as requested for my family to be informed about my whereabouts but I never received a response*.<sup>297</sup> The families of Zurab Kikilashvili and Lasha Javakhishvili were informed only with the assistance of GYLA lawyers.<sup>298</sup> Andrey Gora was also unable to contact his family,<sup>299</sup> neither was Murman Dumbadze who managed to get in touch with his family members only at the trial.<sup>300</sup>

<sup>291</sup> <http://www.cpt.coe.int/en/documents/eng-standards.pdf> - CPT standards, extract from the 2<sup>nd</sup> General Report [CPT/inf (92) 3], para. 36;

<sup>292</sup> <http://www2.ohchr.org/english/law/executions.htm> - Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Prevention, para. 6.

<sup>293</sup> Order N108 of the Ministry of Interior Affairs of Georgia, dated February 1, 2010.

<sup>294</sup> Nika Samkharadze, statement obtained by GYLA;

<sup>295</sup> Alexandre Devdariani's statement to GYLA;

<sup>296</sup> Statement of Besik Tabatadze to GYLA

<sup>297</sup> Statement of Giorgi Obgaidze to GYLA;

<sup>298</sup> Statement of Zurab Kikilashvili and Lasha Javakhishvili to GYLA;

<sup>299</sup> Statement of Andrey Gora to GYLA;

<sup>300</sup> Statement of Murman Dumbadze to GYLA;

Regrettably, relatives of detainees received information about the facts of their detentions belatedly, through public defender representatives or GYLA lawyers.

## 9.2. Restriction of the right of access to a lawyer during detention and the first stage of imprisonment

According to standards established by the European Committee for the Prevention of Torture, the right of access to a lawyer is one of the fundamental rights of a person detained by the police, which should be realized immediately upon detention.

The CPT clarifies that Access to a lawyer for persons in police custody should include the right to contact and to be visited by the lawyer (in both cases under conditions guaranteeing the confidentiality of their discussions) as well as, in principle, the right for the person concerned to have the lawyer present during interrogation.<sup>301</sup>

The CPT underlines that in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.<sup>302</sup>

The CPT has also emphasized that the right of access to a lawyer should be enjoyed not only by criminal suspects but also by anyone who is under a legal obligation to be present - and stay at - a police establishment, e.g. as a “witness” or other individual [such as an administrative offender, for instance].<sup>303</sup>

As we have already noted, most of the May 26 participants were detained on grounds of administrative violations and therefore, they were not entitled to the guarantees envisaged by the Code of Administrative Offences. The legal rights of these individuals were regulated by the Code of Administrative Offences and the Order of the Ministry of Interior Affairs N108, dated February 1, 2010, which due to its obscurity and deficiencies, clearly fails to provide internationally recognized safeguards for individuals deprived of liberty.

Persons detained following the May 26 dispersal were conveyed to the TDIs of the Interior Ministry, where GYLA lawyers were on alert all night long, though they were not allowed to meet with the detainees. Our lawyers waited until 7 am; afterward, the officials of the Ministry started conveying detainees to the court building.<sup>304</sup>

Therefore, we would like to underline that persons participating in the May 26 rally did not have access to attorneys and consequently, they were unable to protect their interests while under the full control of the police. Hence, in addition to their failure to comply with international standards, law enforcement officers violated rights guaranteed by the Constitution of Georgia - ***an arrested or detained person ... may request for the assistance of a defender upon his/her arrest or detention, the request shall be met.***<sup>305</sup>

<sup>301</sup> <http://www.cpt.coe.int/en/documents/eng-standards.pdf> - CPT standards, extract from the 2<sup>nd</sup> General Report [CPT/inf (92) 3], para. 38;

<sup>302</sup> <http://www.cpt.coe.int/en/documents/eng-standards.pdf> - CPT standards, extract from the 6<sup>th</sup> General Report [CPT/inf (96) 21], para. 15;

<sup>303</sup> <http://www.cpt.coe.int/en/documents/eng-standards.pdf> - CPT standards, extract from the 12<sup>th</sup> General Report [CPT/inf (2002) 15], para. 41;

<sup>304</sup> Reports of GYLA lawyers;

<sup>305</sup> Constitution of Georgia, para. 5, Article 18;

One of the detainees, Giorgi Obgaidze recalls: *while at the [police] department, I requested a meeting with an attorney, [...], but they did not respond to [my request].*<sup>306</sup>

Detainee Lasha Javakhishvili also requested an attorney; however his access to the right was refused.<sup>307</sup>

Participant of the May 26 assembly Murman Dumbadze was able to contact his lawyer only at the trial.<sup>308</sup>

One of the detained journalists, Ana Gabunia, who was soon released from the police department notes: *“during and following the detention, throughout the time I was detained, I was not able to use a telephone; they did not even mention an attorney. No one informed me about my rights.”*<sup>309</sup>

In addition to the immediate outset of the deprivation of liberty, the right of access to a lawyer was also restricted during throughout the entire term of detention as detainees were frequently transferred between isolators all over the country, a process during which, their family members and lawyers were not informed of the relocations in a timely manner. GYLA lawyers, for example, managed to find the detainees under their legal protection only after a several-days long search.<sup>310</sup>

### 9.3. Frequent relocation of employees to different temporary detention isolators

Most of the detainees noted that they frequently had to move from one temporary isolator to another throughout Georgia.<sup>311</sup> Such facts of relocation were particularly frequent at the outset of detention. It is noteworthy that neither detainees themselves nor their family members were notified of relocations beforehand, which further complicated the process of searching for detainees while keeping their families in a state of an information vacuum; it also reinforced suspicions about disappearances of detainees in the early days of their detention.

### Findings

It is safe to conclude that there were no missing or disappeared persons following the dispersal of the May 26 assembly; however, individual cases of human rights violations and wrongful practices encouraged the initial impressions that disappearances had occurred. More specifically, people detained following the dispersal that were conveyed to police departments, and afterward to the Interior Ministry’s TDIs, had their rights to contact and notify the fact of their detention or whereabouts to a family member restricted. Furthermore, detainees were frequently relocated from one TDI to other, both at the outset of their detention and afterwards, without keeping their relatives or attorneys informed. It left their family members with no information whatsoever about their relatives, which caused anxiety and apprehension. Additionally, difficulties in determining the whereabouts of detainees restricted their access to attorneys and the effective realization of their right to defense.

<sup>306</sup> Statement of Giorgi Obgaidze to GYLA;

<sup>307</sup> Statement of Lasha Javakhishvili to GYLA;

<sup>308</sup> Statement of Murman Dumbadze to GYLA;

<sup>309</sup> Statement of Ana Gabunia to GYLA;

<sup>310</sup> Reports of GYLA lawyers;

<sup>311</sup> Reports of GYLA lawyers from the regional offices of Ozurgeti, Kutaisi and Telavi;

## CHAPTER 10. GENERAL OVERVIEW OF TRIALS OF INDIVIDUALS DETAINED FOLLOWING THE RALLY DISPERSAL

GYLA lawyers faced serious obstacles in terms of obtaining information about detained persons. Furthermore, initially they were not allowed to provide legal defense. At the beginning the office of the courts refused to provide information about whether persons detained during the assembly had been taken to court. Lawyers were able to meet detainees for the first time immediately before the trial, and even then, only in the courtrooms. None of GYLA lawyers had an opportunity to meet with their beneficiaries outside courtrooms to strategize defense. Lawyers were given 15 minutes prior to the trial for familiarizing themselves with case materials.

Clearly, where the law obliges a court to examine such cases within one day, and furthermore, given that on May 26, 2011, Tbilisi City Court had to examine up to 90 administrative cases, the court was under an obligation to work under extremely stressful conditions in order to fulfill the statutory time frame. Although we consider that the court had to act in such a hasty manner due to the stipulation of the Code of Administrative Offences, we would like to highlight that time constraints do not justify diminishing the importance of the right to defense, as under para 3b, Article 6 of the European Convention on Human Rights, everyone has the right to have adequate time and facilities for the preparation of his defense. In addition, some detainees had sustained visible physical injuries. Judges usually failed to take appropriate responsive actions – i.e., they did not take interest in the circumstances under which the injuries were inflicted. Defense counsels were the only ones who referred to facts of riot police inflicting injuries on the defendants but these statements were disregarded by court, contrary to Article 3 of the European Convention under which the judiciary authority examining a case has an obligation to find out the circumstances in which a detainee sustained injuries.

The only evidence in these administrative cases that guided the court was statements of police officers; regrettably, the court did not take interest in any additional evidence. Frequently, for example, the court did not seek to establish what specific actions by the detainees constituted malicious disobedience to police orders.

For instance, one of the defendants, who declined assistance of a counselor, was asked by a judge whether he acknowledged the factual circumstances indicated by the police. This question was preceded by a statement of a police officer who had drawn up a protocol containing the following template style language: the defendant disobeyed to lawful order of the police and therefore, he was detained. The police did not state anything about concrete actions undertaken by the police, concrete orders of the law enforcement officer or concrete actions by the defendant which constituted disobedience in the given case. Therefore, the question of the judge whether the defendant agreed with the factual circumstances cited by the policeman was peculiar, as the policemen did not indicate any factual circumstances at the trial. The defendant's answer was in the affirmative, which was sufficient for the judge to sentence him to 30 days of administrative imprisonment.

All individuals detained during the dispersal were charged under Article 173 of the Code of Administrative Offences. This provision prescribes liability for disobedience to lawful orders of the police. It provides for a fine in the amount of 400 GEL or administrative imprisonment for a maximum of 90 days.

In many case, the protocols drawn up by police officers and submitted to court, which constituted important evidence in these cases, were absolutely identical. The only difference being the identity of detained individuals. Further, the statements of the police were frequently obscure. For instance, the statement of a police officer in the case of Leri Bitsadze was as follows: "the person concerned was acting violently. The police ordered him to terminate such actions but the defendant disobeyed and therefore, he was detained." This statement was typical of other trials as well. In the given case, Judge Giorgi Tkavadze took on the responsibility of specifying factual circumstances. Independently from defense counsel, Judge Tkavadze determined from the police that Leri Bitzadze was at an unlawful rally (as resulting from the fact that the participants were not allowed to block traffic and the term of notification had expired) and the police demanded the dispersal of the protesters and the de-blocking of the road. Leri Bitsadze, as one of the participants of the rally, disobeyed these orders; therefore, he was detained



and charged with an administrative offence. The thing is that the police did not mention a word about an unlawful rally, however the judge referred to this issue.

The judge did not even examine the fact that the defendant could not have fulfilled the lawful order of the police in regards to the dispersal – all exits had been blocked.

There were individual cases of differentiated treatment of detainees: specifically, persons detained at the outset, who confessed to having committed a violation, were sentenced to imprisonment (mostly 30 days of imprisonment), while later cases of identical circumstances fine was prescribed as a sanction.

The aforementioned circumstances clearly indicate that people were unable to exercise their right to a fair trial in compliance with the principle of the adversarial nature of legal proceedings (as follows from Article 6 of the European Convention). A trial characteristic necessary to adequately ensure the protection of human rights.

## CHAPTER 11. EVALUATION OF THE PRISON CONDITIONS AT TEMPORARY DETENTION ISOLATORS

### Introduction

Following the dispersal of the rally held at Rustaveli Avenue on May 26, 2011, Tbilisi City Court examined 172 cases of administrative offences, including 170 cases where individuals concerned were convicted under Article 173 of the Code of Administrative Offences and 2 cases where individuals concerned with convicted under Articles 173-174 of the Code of Administrative Offences.<sup>312</sup> The court resorted to fines against 75 individuals and sentenced 97 people to administrative imprisonment.<sup>313</sup>

Those who were sentenced to administrative imprisonment by Tbilisi City Court were held at various isolators throughout Georgia.

GYLA believes that the treatment of individuals held at temporary detention isolators was not uniform, and, in a number of cases, the acts of inhumane treatment contained in this Chapter of the Report were evident.

#### 11. 1. Detainees were deprived of communication with their relatives and attorneys

These deprivations were particularly pressing during the first few days following the May 26 detentions.

Such violations are illustrated in statements of persons detained on May 26, 2011. Giorgi Obgaidze recalls that his family was never notified that he was held in an isolator.<sup>314</sup> Lasha Javakhishvili states it was GYLA who informed his family that he was held in an isolator.<sup>315</sup> The statement of Andrey Gora says that police did not inform his family of his detention. In the cases of both Lasha Javakhishvili and Andrey Gora, family members were informed by GYLA of the detentions and the fact that the detainees were held in an isolator.<sup>316</sup> The statement of Zurab Kikilashvili, a prisoner held in Telavi temporary detention isolator, was essentially the same, indicating that it was GYLA who informed his family of the fact of the detention.<sup>317</sup>

Public defenders highlighted obstacles in realizing the right to a defense and communication with lawyers in the cases of persons detained on May 26, 2011. On May 27, 2011, the public defender released its recommendation to the Interior Minister in which, in addition to other recommendations regarding the May 26 detentions, it also notes that *it is necessary to give detainees an opportunity to contact their family members and lawyers.*<sup>318</sup>

A similar statement was released by GYLA on May 27, 2011, saying that GYLA lawyers did not have access to isolators to visit their beneficiaries.<sup>319</sup>

The situation was further complicated by a lack of information about the whereabouts of persons detained on May 26. We would like to make reference to the recommendation of the public defender to

<sup>312</sup> Tbilisi City Court Correspondence, #15-684-11.1882, dated June 15, 2011.

<sup>313</sup> Tbilisi City Court Correspondence #15-684-11.1882, dated June 19, 2011.

<sup>314</sup> Statement of Giorgi Obgaidze, dated 07.07.2011

<sup>315</sup> Statement of Lasha Javakhishvili, dated 23.06.2011

<sup>316</sup> Statement of Andrey Gora, dated 23.06.2011

<sup>317</sup> Statement of Zurab Kikalishvili, dated 23.06.2011

<sup>318</sup> <http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1379> public defender's recommendation to the Interior Minister

<sup>319</sup> [http://gyla.ge/index.php?option=com\\_content&view=article&id=921%3A2011-05-27-13-36-56&catid=1%3Alatest-news&Itemid=177&lang=ka](http://gyla.ge/index.php?option=com_content&view=article&id=921%3A2011-05-27-13-36-56&catid=1%3Alatest-news&Itemid=177&lang=ka)

the Interior Minister, saying that as of May 27, the *whereabouts of dozens of individuals remain unknown. Investigators have contacted families of detainees to notify of detentions and whereabouts of detainees in a few cases only.*<sup>320</sup>

In view of such treatment of persons detained on May 26, 2011, it is safe to conclude that the right guaranteed by the Constitution of Georgia had been curtailed.<sup>321</sup> GYLA would also like to point out violation of important rights granted to detainees by the Committee for the Prevention of Torture, including the right to have the fact of detention notified to the third party of a detainee's choice (a family member, a friend, and consulate) and the right of access to attorney.

### 11. 2. Ill-treatment at temporary detention isolators

GYLA would like to note that persons detained on May 26, 2011, who were detained in administrative imprisonment and placed by the Interior Ministry at temporary detention isolators throughout Georgia, were subjected to unequal treatment.

Order N108 of the Minister of Interior Affairs of Georgia, dated February 1, 2010, approved typical regulations for temporary detention isolators, internal rules of isolators and additional instructions regulating work of isolators. Under Article 4 of the regulations, isolators should offer sanitary and hygienic conditions and conditions in general that are compatible with human dignity and honor as well as ensure personal inviolability and the ability to protect one's interests.<sup>322</sup>

To this end, in addition to other obligations, prison administrations are also tasked with

- ensuring compliance of sleeping conditions in cells of detainees with health requirements;
- ensuring detainee's right to receive food and clothes at his own expense;
- ensuring access to medical care.<sup>323</sup>

Information provided to GYLA by its lawyers from its regional offices concerning the first few days of administrative imprisonment following the May 26, 2011 detentions should also be highlighted; *e.g. prisoner at Telavi isolator Kakha Buachidze, suffering from diabetes, was provided with his medicine by his family members on May 31, while according to another prisoner at Telavi isolator Tamaz Lataria, also suffering from diabetes, had no one to provide him with insulin injection. The administration of the isolator says that it is unable to provide prisoners with insulin.*

Lack of food and medical care, as well as access to relatives and lawyers, was particularly pressing for administrative detainees in the early days of detention.

In his statement to GYLA, Lasha Javakhishvili recalls: *"a cell in Telavi isolator is around 10 sq.m., where there were 4 of us. Lighting and ventilation were okay. Food [was provided] at the expense of our families. I did not have any personal (hygienic) items. I did not get to shower even once throughout the twenty-nine days. Sometimes we were allowed to walk outside for 15-20 minutes."*<sup>324</sup>

Another detainee at Telavi temporary detention isolator, Zurab Kikilashvili, recalls the following in his statement: *"there were 10 persons in a 10sq.m. space. The lighting was mediocre, ventilation was okay. The cell had a small window. Food was provided by family members. We did not have any personal hygiene*

<sup>320</sup> <http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1379> public defender's recommendation to the Interior Minister

<sup>321</sup> Constitution of Georgia, para 3, Article 42;

<sup>322</sup> Para 1, Article 4 of the Order N108 of the Minister of Interior Affairs of Georgia, dated February 1, 2010.

<sup>323</sup> Subparagraphs "a", "e", "g", Para 2, Article 4 of the Order N108 of the Minister of Interior Affairs of Georgia, dated February 1, 2010;

<sup>324</sup> Statement of Lasha Javakhishvili, dated 23.06.2011

*products, no shower; the water was always running, periodically we were allowed to take walks.*<sup>325</sup>

Andrey Gora, who was sentenced to administrative imprisonment, was held at a TDI. When describing the isolator, he notes: *“the area of Telavi isolator was around 18 sq.m. There were four of us. Lighting was okay, ventilation was okay, food was mostly sent by relatives, the administration did not provide us with any food. We did not have any personal hygiene products. We did not have a shower throughout the twenty-nine days. Sometimes they allowed us to take a walk for 20-30 minutes.*”<sup>326</sup>

Murman Dumbadze, who was held at Telavi TDI, recalls in his statement to GYLA: *“there were four of us in a cell of 7-8 sq.m. They relocated us once. Lighting was average; ventilation worked except during the nighttime. We did not have anything to eat for the first three days. After that, food was provided to us by our family members. We used toothpaste and a toothbrush for several days; there was no shower and we were periodically allowed to take walks.*”<sup>327</sup>

According to Zurab Gongadze, the temporary detention isolator cell where he was held was 12 sq.m. and there were four people held in it. Lighting was average; air-conditioning was working except during the nighttime. The cell had a small window. Food was provided by family members. Prisoners did not have soap and water; there was no shower. During imprisonment they were allowed to take a walk only a couple of times.<sup>328</sup>

When talking about Marneuli TDI where he was placed in, Giorgi Obgaidze notes: *“there were six of us on a 16 sq.m. area from the second day I was taken in to the very last day. Before that, there were four of us on a 8 sq.m. area. There was artificial lighting, one yellow bulb; the cell was ventilated for an hour a day. The ceiling was 2 meters high. We received bread and unwashed cucumbers for the first ten days from the isolator. After that, our relatives provided us with limited assorted food and items of personal care (soaps, toothbrushes, etc.). I took a shower on the 29<sup>th</sup> day of my detention. We were not allowed to take a walk throughout the 30 days.*”<sup>329</sup>

Statements obtained by GYLA from the aforementioned individuals detained on May 26, 2011, demonstrate that most of the persons sentenced to administrative sentences were held in isolators with less than 4 square meters to themselves.

With regard to the noted cases, GYLA would like to refer to the ECHR’s judgment in *Mkhitarjan v Georgia* (Armenian court sentenced Mkhitarjan to 10 days of administrative imprisonment for malicious disobedience), where the Court found a violation of the right to be protected from inhumane and degrading treatment (Article 3 of the Convention). The Court found a violation where an administrative prisoner had to spend his first two days on a 0.75 sq.m. area in a police department; on the third day he was transferred to a cell with an area of 1,8 sq.m. This was considerably less than minimum requirements of 4 sq.m. provided for by the CPT standard and 2.5 sq.m. provided for by national legislation. The applicant was never taken outside the cell. The prisoner allegedly received water unfit for consumption and he was fed once a day. The noted conditions resulted in a violation of Article 3 of the Convention by the Armenian authorities against Mkhitarjan.

GYLA would also like to highlight deficiencies in the provision of medical care at TDIs to persons sentenced to administrative imprisonment following the May 26 detentions.

The CAT grants detainees the right to request a medical examination by a doctor of their choice (in addition to any medical examination carried out by a doctor called by the police authorities). Furthermore, under regulations in temporary detention isolators in Georgia, approved by the order of the Ministry of Interior Affairs of Georgia N108, dated February 1, 2010, provision of medical service at isolators is one

<sup>325</sup> Statement of Zurab Kikilashvili, dated 23.06.2011

<sup>326</sup> Statement of Andrey Gora, dated 23.06.2011

<sup>327</sup> Statement of Murman Dumbadze, dated 23.06.2011

<sup>328</sup> Statement of Zurab Gongadze, dated 23.06.2011

<sup>329</sup> Statement of Giorgi Obgaidze, dated 07.07.2011

of the key obligations of isolator administrations.<sup>330</sup> Under the additional instructions regulating the work of isolators, approved by the same order, in the event of a deterioration in the health of a detained person during his tenure in the isolator, a person on duty at the isolator is obligated to call medical personnel immediately and record provided medical assistance in a log, as well as ensure transfer of the detainee to a stationary facility if needed, accompanied by escort.<sup>331</sup>

According to the reports, administrative detainees Murman Dumbadze and Giorgi Obgaidze faced difficulties in terms of receiving medical service at isolators.

Murman Obgaidze recalls in his statement: *"I had my head, nose, ribs, limbs and eye injured. They provided medical assistance only after GYLA lawyers arrived. A doctor visited me a couple of times during the next few days. He examined me thoroughly. I received painkillers. The doctor diagnosed me with general bruising. Syndrome of pain. Although I was requesting medical examination of internal organs and my eye, they did not do it."*<sup>332</sup>

In his statement to GYLA, Giorgi Obgaidze notes: *"I had my rib, back and foot injured. I requested doctor's appointment but they refused."*<sup>333</sup>

### 11.3. Transfer of Prisoners from One Temporary Detention Isolator to Another

It is difficult for GYLA to estimate exact number of prisoners who were sentenced to administrative imprisonment following the May 26, 2011 detentions and who were transferred from one TDI to another in the course of serving their prison time.

This transfer of prisoners from one TDI to another further complicated detainees' access to another important right – the right to defense. Furthermore, in the early days of the detentions that occurred on May 26, 2011, prisoners were taken from one isolator to another without informing their family members, which produced the so-called "disappeared persons" list.

Acts of persons sentenced to administrative imprisonment being transferred from one isolator to another was also highlighted by the public defender, who noted the following in his recommendation to the Interior Minister of Georgia, dated May 27, 2011: *"On May 26 representatives of the public defender visited persons held at Tbilisi N2, Mtskheta and Kaspi temporary detention isolators. Later it appeared that persons held at Tbilisi N2 TDI were later the same day transferred to other isolators. Correspondingly, lawyers were unable to visit them. The office of public defender currently continues the monitoring of other isolators; however as the May 26 practice demonstrates, persons sentenced to administrative imprisonment may well be relocated again"*<sup>334</sup>

Upon questioning by one of GYLA's lawyers as to whether they had been relocated, Zurab Gongadze who had been sentenced to administrative imprisonment responded: *"following the trial I spent one day in Tbilisi TDI. Afterward, I was relocated to Telavi"*<sup>335</sup>

Responses of prisoners serving administrative terms – Murman Dumbadze and Zurab Kikalishvili – were practically similar. Murman Dumbadze noted: *"I was temporarily held at Tbilisi isolator. Later I*

<sup>330</sup> Para. 2g, Article 4 of the Order of the Ministry of Interior Affairs of Georgia N108, dated February 1, 2010

<sup>331</sup> Para. 4, Article 5 of the additional instructions for regulation of the work of isolators, Order of the Ministry of Interior Affairs of Georgia N108, dated February 1, 2010

<sup>332</sup> Statement of Murman Dumbadze, dated 23.06.2011

<sup>333</sup> Statement of Giorgi Obgaidze, dated 07.07.2011

<sup>334</sup> <http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1379> – Public Defender's recommendation to the Interior Minister of Georgia

<sup>335</sup> Statement of Zurab Gongadze, dated 23.06.2011

was relocated to Telavi TDI”.<sup>336</sup> According to Zurab Kikilashvili, initially he was held in Tbilisi TDI for 4-5 hours. Later he was relocated to Telavi temporary detention isolator.<sup>337</sup>

According to Giorgi Obgaidze’s statement, “we had to spend around 6-5 hours in Tbilisi isolator. After that, we were relocated to an unknown place. The next day we found out that it was Marneuli TDI”.<sup>338</sup>

According to two more prisoners, Andrey Gora and Lasha Javakhishvili, after they were sentenced to administrative imprisonment, they were first taken to Dighomi and later to Telavi TDI.<sup>339</sup>

### Findings

Based on the aforementioned, Georgian Young Lawyers’ Association concludes that persons sentenced to administrative imprisonment were held in poor conditions at temporary detention isolators within the Ministry of Interior Affairs, which, in addition to individual cases of ill-treatment of individuals, was also caused by legal deficiencies as the law does not provide for procedural and material guarantees for persons sentenced to administrative imprisonment. GYLA believes that the legal deficiencies should be addressed by the state. Individual cases of ill-treatment of persons detained in relation to the May 26 assembly dispersal require effective and objective investigation by law enforcement authorities.

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<sup>336</sup> Statement of Murman Dumbadze, dated 23.06.2011

<sup>337</sup> Statement of Zurab Kikilashvili, dated 23.06.2011

<sup>338</sup> Statement of Giorgi Obgaidze, dated 07.07.2011

<sup>339</sup> Statements of Andrey Gora and Zurab Kikilashvili

## Conclusion

As the factual circumstances and corresponding legal assessments contained in this Report have demonstrated, serious human rights violations occurred in relation to the developments of the May 26, 2011 assembly dispersal. The police planned and carried out the dispersal without allowing participants to disperse voluntarily and used clearly disproportionate force against them. The assembly dispersal, in terms of both planning and the operation itself, was carried out without effective prevention for risks to the health and lives of participants as well as the police. Consequently, 5 deaths occurred in relation to the developments of the assembly dispersal.

The process of identifying human rights violations and evaluating the decisions and actions of the authorities in the process of the dispersal was complicated by the fact that despite multiple requests, the state refused to provide public information on issues of essential importance. The Interior Ministry did not publicize substantive facts pertinent to the preparation and implementation of the dispersal operation, *including* whether the police had left any exits open for assembly participants. In this regard, GYLA requested relevant evidence from the Interior Ministry. Furthermore, the MIA refused to make information about the amount and types of special means used during the dispersal.

Despite high public interest in the cases involving losses of life in connection with the assembly dispersal, the investigation did not publicize any substantive evidence in the noted cases that would have dispelled suspicions and addressed the questions that the public had. With regard to the given cases, the reality is that public has no access to information on how and under what conditions the lives of noted individuals were deprived or to any means to substantiating credible and sound evidence. The fact that the investigation fails to fulfill the requirements of accountability and transparency further reinforces suspicions about the findings of the investigation.

In view of the scale and extent of the human rights violations that occurred during the assembly dispersal and its subsequent events, the State has an obligation to ensure an effective and independent investigation of the noted facts. The investigation should aim at prosecuting all officials who exceeded their competence or abused their authority in the process of discharging their official powers. In this regard, GYLA also believes that high-ranking officials who planned the operation and led its execution should be held liable.

The police used clearly disproportionate force against participants even when they were under the effective control of the police and did not put up any resistance. Such facts formed a trend and were massively observed during the dispersal. Furthermore, serious cases of inhumane treatment against detained participants occurred at police departments and later at detention isolators. All of the aforementioned facts should be investigated by the state in a timely and due manner.

However, the state's response to the facts of human rights violations during and in relation to the May 26, 2011 dispersal was inadequate and unjust. According to reports, as of now, there are no ongoing criminal prosecutions against MIA officials for violations of human rights during and in relation to the dispersal. In this regard, the MIA limited itself to imposing disciplinary liability on several of its employees, which we deem as an inadequate and insufficient response from the state. It should be noted that despite GYLA's applications and high public interest in the issue, the MIA refused to make public the identity of officials held liable or any concrete violations that served as grounds for their liability (see annex #5).

Prosecution of these individuals is important for accountability of the state in the public eye and for preventing human rights violation by the police in the future. Nevertheless, the requirement of effective investigation was disregarded in the given case.

In addition to the aforementioned, GYLA believes that in order to prevent similar human rights violations in the future it is important for the state to carry out general measures (including legislative and administrative measures). In this regard, conditions and regulations for use of special means by the police, due procedural guarantees for administrative prisoners and regulation of imprisonment condi-

tions are of particular importance. The significance and pressing nature of these issues was revealed during our evaluation of human rights violations during and in relation with May 26 developments.

GYLA remains hopeful that the legal opinion presented in this report will be taken into consideration by the State in the process of planning and implementing similar operations in the future, and will result in regulations for police practice and future legislation that would minimize the risks of inflicting damage to an individual's health through the use of force by the police.

Facts of human rights violations committed during and following the assembly dispersal require due and effective investigation. GYLA once again addresses the office of the prosecutor concerning the facts of human rights violation and demands their effective investigation. To this end, GYLA is ready (in consideration of interests of individuals concerned) to submit to the office of the prosecutor all factual circumstances and evidentiary information that it has about individual cases.





27.07.11

**ქალაქ თბილისის მერია**  
**TBILISI CITY HALL**



№ 11/83604-7

-19- 07 2011

საქართველოს ახალგაზრდა  
იურისტთა ასოციაციის  
თავმჯდომარეს  
ქალბატონ თამარ ზეგოშვილს

ქალბატონო თამარ,

ქობილისის მერიაში 2011 წლის 5 იელისს შემოსული თქვენი განცხადების გ.04/142-11 (11/83604) პასუხად გაცნობებთ, რომ არარეგისტრირებულ კაეშირ „წარმომადგენლობითი სახალხო კრების“ მიერ შეკრებისა და მანიფესტაციის ნატარების თაობაზე შემოსული გაფრთხილების თანახმად, შეკრებისა და მანიფესტაციის გამართვა დაგეგმილი იყო 2011 წლის 21 მაისიდან-2011 წლის 25 მაისის ნათელით.

„შეკრებისა და მანიფესტაციების შესახებ“ საქართველოს კანონის მე-11 მუხლის 1-ლი პუნქტის თანახმად, შეკრება ან მანიფესტაცია ტარდება გაფრთხილებაში აღნიშნულ დროსა და ადგილას, მასში მითითებული მიზნებისა და სვლაგზების შესაბამისად. ამავე მუხლის მე-2 პუნქტის შესაბამისად კი, შეკრების ან მანიფესტაციის ორგანიზაციისა და ჩატარებისათვის პასუხისმგებელი პირები და მონაწილენი მოვალენი არიან დაიცვან საქართველოს კანონმდებლობით დადგენილი მოთხოვნები და შესარულონ გაფრთხილებით ნაკისრი ვალდებულებანი.

ამისთან, „შეკრებისა და მანიფესტაციების შესახებ“ საქართველოს კანონის მე-11 მუხლის მე-4 პუნქტის შესაბამისად, ხელისუფლება უფლებამოსილია შეწყვიტოს შეკრება ან მანიფესტაციები, რომელაც კანონის მოთხოვნათა დარღვევით იმართება, ხოლო ამავე კანონის მე-13 მუხლის 1-ლი პუნქტის მიხედვით, შეკრება ან მანიფესტაცია უნდა შეწყდეს დაუყოვნებლივ, ადგილობრივი თვითმმართველობის ორგანოს უფლებამოსილი წარმომადგენლის მოთხოვნისთანავე. „შეკრებისა და მანიფესტაციების შესახებ“ საქართველოს კანონის მოთხოვნათა დარღვევის შემთხვევაში.

დამატებით გაცნობებთ, რომ „პოლიციის შესახებ“ საქართველოს კანონის მე-9 მუხლის 1-ლი პუნქტის „ე“ ქვეპუნქტის შესაბამისად, პოლიცია საკუთარი ვალდებულებების შესრულების მიზნით, უფლებამოსილია აღკვეთოს უკანონო მიტიგი.

პატივისცემით,

საჯარო ინფორმაციის გაცემის  
უზრუნველყოფაზე პასუხისმგებელი პირი

ოთარ ტატალაშვილი



საქართველო, ქ.თბილისი, ცაგარელის ქ. N64ა TSAGARELI st. N64a, TBILISI, GEORGIA  
ტელ: +995 (32) 18 40 36, 18 40 37 Tel.: +995 (32) 18 40 36, 18 40 37

ქალაქ თბილისის მერიას

არარეგისტრირებულ კავშირ

“წარმომდგენლობითი სახალხო კრების”

მის: ცაგარელის ქ. #64ა, ტელ: 184036\_37

გაფრთხილება

(მანიფესტაციის მოწყობის თაობაზე)

მოგმართავთ “შეკრებებისა და მანიფესტაციების შესახებ” საქართველოს კანონით გათვალისწინებული პროცედურების დაცვით და გაცნობებით, რომ 2011 წლის 21 მაისს იგეგმება არარეგისტრირებულ კავშირ “სახალხო კრების” მიერ ორგანიზებული მანიფესტაცია.

გაწვდით “შეკრებებისა და მანიფესტაციების შესახებ” საქართველოს კანონის მე-8 მუხლით დადგენილ ყველა აუცილებელ მონაცემს.

მანიფესტაციის მიზანი: პროტესტის გამოხატვა საქართველოს ხელისუფლების მიერ გამოხრდილებულ უკანონო ქმედებებზე.

მანიფესტაციის ფორმა: დემონსტრაცია, მასობრივი საუბრო გამოსვლა, ქუჩაში მსვლელობა პროტესტის გამოხატვის მიზნით.

ჩატარების ადგილი: მანიფესტაცია იქცება ერთდროულად შემდეგ ადგილებში: თავისუფლების მოედანი, გმირთა მოედანი, ვარდების მოედანი, ფილარმონიის მიმდებარე ტერიტორია, ავლაზრის მეტროსადგურის მიმდებარე ტერიტორია, პარლამენტის მიმდებარე ტერიტორია, პრეზიდენტის რეზიდენციის მიმდებარე ტერიტორია, ტელევიზიის მიმდებარე ტერიტორია.

შეკრება: სასტუმრო ქორთიარდ მარიოტის მიმდებარე ტერიტორია.

დაწყების თარიღი: 2011 წლის 21 მაისი

დამთავრების თარიღი: 2011 წლის 25 მაისი

შეკრების დრო: 24 საათი, ცოცხლდღიურად

მონაწილეთა სავარაუდო რაოდენობა: 60000 ადამიანი

შეკრების და მანიფესტაციის მარშრუტებელი: არარეგისტრირებულ კავშირ “წარმომდგენლობითი სახალხო კრება”, წარმოდგენილი მისი თავცდომარის წინა გაფრინდაშვილის სახით.

შეკრების და მანიფესტაციის რწმუნებული: ალექსანდრე დონაძე, პირადი #01008003873, მის: ფალიშვილის ქ. #21, ტელ: 899 620406.

შეკრების და მანიფესტაციის ორგანიზატორი: ირაკლი ბათიაშვილი #01008013199, მის: ჭავჭავაძის გამზ.#11, ტელ: 899 941111

გაფრთხილების შეტანის დრო და თარიღი 2011 წლის 13 მაისი, \_\_\_\_ სთ.

შეკრების და მანიფესტაციის რწმუნებული:

ალექსანდრე დონაძე

შეკრების და მანიფესტაციის ორგანიზატორი:

ირაკლი ბათიაშვილი

სასწრაფო სამედიცინო დახმარების სამსახურს გაგზავნა შესაბამისი შეტყობინება.

13.05.2011



## თბილისის საქალაქო სასამართლო

№15-684-11-1882

19 ივნისი 2011 წელი

ქალბატონ თამარ ჩუგოშვილს  
საქართველოს ახალგაზრდა იურისტთა  
ასოციაციის თავმჯდომარეს  
მის: თბილისი, ჯ.კახიძის ქ. №15

ქალბატონო თამარ,

თქვენი 2011 წლის 13 ივნისის №გ-04/127-11 განცხადების (რომელიც ჩვენთან რეგისტრირებულია 2011 წლის 13 ივნისს, სარეგისტრაციო ნომრით 15-684) პასუხად, გაცნობებთ, რომ 2011 წლის 26 მაისს თბილისში თავისუფლების მოედანზე გამართული აქციის დაშლის შედეგად თბილისის საქალაქო სასამართლოში განხილული იქნა 172 (ას სამოცდათორმეტი) პირის ადმინისტრაციული სამართალდარღვევის საქმე. მათგან 170 (ას სამოცდაათი) პირი სამართალდამრღვევად ცნობილ იქნა ადმინისტრაციულ სამართალდარღვევათა კოდექსის 173-ე მუხლით; ხოლო 2 (ორი) პირი ადმინისტრაციულ სამართალდამრღვევად ცნობილი იქნა ადმინისტრაციულ სამართალდარღვევათა კოდექსის 173-174-ე მუხლებით. ასევე გაცნობებთ, რომ 75 (სამოცდათხუთმეტი) პირის მიმართ გამოყენებული იქნა ადმინისტრაციული სახდელი ჯარიმის სახით, ხოლო 97 (ოთხმოცდაჩვიდმეტი) პირს შეუფარდა ადმინისტრაციული პატიმრობა.

ამასთან განვიმარტავთ, რომ საქართველოს ახალგაზრდა იურისტთა ასოციაციიდან შემოსულ ანალოგური შინაარსის განცხადებაზე თბილისის საქალაქო სასამართლოს ადმინისტრაციულ საქმეთა კოლეგიის მიერ 2011 წლის 10 ივნისის გაცემულ იქნა შესაბამისი პასუხი.

რაც შეეხება თქვენს მოთხოვნას, სამართალდამცავი ორგანოების მიერ დაკავებულ ადამიანთაგან რამდენმა აღიარა სასამართლოს წინაშე სამართალდარღვევის ფაქტი, გაცნობებთ, რომ აღნიშნული ინფორმაცია სასამართლოს მიერ არ არის დამუშავებული და შესაბამისად მოკლებულნი ვართ შესაძლებლობას მოგაწოდოთ თქვენს მიერ მოთხოვნილი ინფორმაცია.

პატივისცემით.

ალექსანდრე წულაძე  
ადმინისტრაციულ საქმეთა კოლეგიის  
ბიუროს უფროსის მ/შემსრულებელი



## საქართველოს შინაგან საქმეთა სამინისტრო

№ 1113306

„DL“ 09 2011

საქართველოს ახალგაზრდა იურისტთა ასოციაციის

თავმჯდომარეს

ქალბატონ თამარ ჩუგოშვილს

ქალბატონო თამარ,

საქართველოს შინაგან საქმეთა სამინისტროს 2011 წლის 10 აგვისტოს №677 ბრძანების საფუძველზე გაცნობებთ:

1. 2011 წლის 26 მაისს, ქ. თბილისში, რუსთაველის გამზირზე უკანონო აქციის დაშლის დროს გადაღებას აწარმოებდა შს სამინისტროს ორი ოპერატორი, მათ არ ჰქონდათ მითითება გადაღება ეწარმოებინათ ერთი კონკრეტული ადგილიდან, ისინი დამოუკიდებლად გადაადგილდებოდნენ მეტრო თავისუფლების მოედნის მიმდებარე ტერიტორიაზე;
2. შს სამინისტროს გარდა იმ მასალისა, რომლებიც გამოქვეყნდა მასობრივი ინფორმაციის საშუალებით ანდა დავითო სისხლის სამართლის საქმეს არ გააჩნია სხვა ვიდეო მასალა, ვინაიდან არ ხდებოდა გადაღებული ვიდეომასალის არქივირება;
3. აქციის დაშლის გეგმა და შსს თანამშრომელთა განლაგება არ წარმოადგენს საჯარო ინფორმაციას;
4. ჩვენი ინფორმაციით 2011 წლის 26 მაისს, ქ. თბილისში, რუსთაველის გამზირზე უკანონო აქციაში მონაწილეობას იღებდა 800-1200 პირი;
5. 2011 წლის 26 მაისის დამს ქ. თბილისში რუსთაველის გამზირზე იმყოფებოდა შს სამინისტროს 5000 თანამშრომელი, აქედან უკანონო მიტინგის დამსაში მონაწილეობა მიიღო 1000 თანამშრომელმა, ხოლო დანარჩენი აქციის დაშლის შემდეგ ალღუმის ჩატარებასთან დაკავშირებით უზრუნველყოფდა აღნიშნული ტერიტორიის დაცვას;
6. უკანონო აქციის დაშლის დროს მონაწილეობას ღებულობდა მხოლოდ შინაგან საქმეთა სამინისტროს შესაბამისი დანაყოფები.
7. შერიის თანამშრომელმა სამინისტროს თანამშრომლებთან ერთად საჯაროდ გააფრთხილა მიტინგის მონაწილეები, რომ მიტინგი გაგრძელების შემთხვევაში იქნებოდა უკანონო და განხორციელდებოდა კანონით გათვალისწინებული ღონისძიებები.
8. სპეციალური საშუალებების გამოყენებას პოლიციელს ასწავლიან პოლიციის აკადემიაში.
9. 2011 წლის 26 მაისის დამს ქ. თბილისში რუსთაველის გამზირზე უკანონო მიტინგის დაშლისას გამოყენებულ იქნა კანონით გათვალისწინებული საშუალებები: რეზინის ტყვიები, ცრემლსადენი გაზი და წყალსატყორცნი.
10. 2011 წლის 26 მაისის დამს ქ. თბილისში რუსთაველის გამზირზე უკანონო მიტინგის დაშლისას დაკავებულ და შემდგომ სასამართლოს მიერ პატიმრობა შეფარდებულ პირთა ქვეყნის მასშტაბით სხვადასხვა იზოლატორებში გადაყვანა განპირობებული იქნა ობიექტური მიზეზებიდან გამომდინარე, ვინაიდან ქ. თბილისის დროებითი მოთავსების იზოლატორში არ იყო შესაბამისი ადგილები.

პატივისცემით,

ზვიად თავართქილაძე

ადმინისტრაციის უფროსის მოადგილე



საქართველოს შინაგან საქმეთა სამინისტრო  
MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

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საქართველოს ახალგაზრდა იურისტთა ასოციაციის

აღმასრულებელ დირექტორს

ქალბატონ ეკატერინე ფოფხაძეს

ქალბატონო ეკატერინე,

თქვენი 2011 წლის 21 ოქტომბრის გ-04/235-11 განცხადების პასუხად გაცნობებთ, რომ ვინაიდან შინაგან საქმეთა სამინისტროს თანამშრომელთა მიმართ გენერალური ინსპექციის მიერ წარმოებული დისციპლინური წარმოების მასალები და მასზე მიღებული გადაწყვეტილებები წარმოადგენს საიდუმლოს, შესაბამისად, მოკლებულნი ვართ შესაძლებლობას შოგაწოდოთ თქვენს მიერ მოთხოვილი ინფორმაცია.

ამასთან, გაცნობებთ, რომ შსს სხვა თანამშრომელთა მიმართ დისციპლინური წესდების დარღვევის ფაქტზე მოკვლევა არ მიმდინარეობს.

პატივისცემით,

*Z. Asis Tsap*

ზვიად თავართქილაძე

ადმინისტრაციის უფროსის მოადგილე