



Special Report of the Public Defender of Georgia

Interim Report on the Investigation of the June 20-21 Events

Drawn up in accordance with article 21 (g) of the Organic Law of Georgia on the Public Defender of
Georgia

2020

Table of contents

1. Introduction	3
2. Legal standards for the use of force during dispersal of a rally	5
3. Key findings.....	8
4. Investigative and procedural activities	9
4.1. Requesting and examining video footage.....	9
4.2. Requesting documentation	10
4.3. Questioning	10
4.3.1. Questioning of citizens.....	11
4.3.2. Testimonies of low-ranking officers of the Ministry of Internal Affairs	11
4.3.3. Testimonies of high officials of the Ministry of Internal Affairs	15
4.4. Examinations	17
4.5. Use of rubber bullets.....	18
5. Cases separated from the main case	22
5.1. Episode of D.N.	23
5.2. G.K.'s episode	24
5.3. Episode of T.M. and M.G.	24
5.4. Other persons recognized as victims	25
6. Intervention of the Public Defender	26
7. Conclusion	31

1. Introduction

The events developed in front of the parliament building on the night of June 20-21, 2019 became the most important episode in the recent history of Georgia. The use of special equipment against people gathered on Rustaveli Avenue became an accompanying part of the country's political life and led to many months of continuous protests. The key issue relating to the events of June 20-21 is the legitimacy of the dispersal of the rally, which needs to be discussed in the legal context.

On June 21, the Public Defender publicly demanded an investigation into the disproportionate use of force against protesters, use of excessive force against detainees, violence against journalists and interference with their activities.¹ Representatives of the Public Defender's Office visited 116 persons under administrative detention (several of them 2 times) and applied to the Prosecutor's Office to respond to the alleged ill-treatment of 7 of them.²

2 agencies launched investigations at the same time - the Ministry of Internal Affairs launched an investigation into the offences committed by citizens and the Prosecutor General's Office launched an investigation into the legitimacy of actions of law enforcement agencies.

The Prosecutor General's Office offered the Public Defender to oversee the investigation.³ Representatives of the Public Defender's Office have visited the Prosecutor's Office 46 times to examine the case materials, including 3 episodes that have been separated from the main case as independent criminal cases (criminal proceedings were launched against certain law enforcement officials within the framework of these cases). The person with relevant authority had access to the materials containing state secrets and the recordings of two-way radios of law enforcement officials.

It is noteworthy that legislation does not provide for similar involvement of the Public Defender in the investigation. The Public Defender may have access to the case materials only after the final decision is made.⁴ Therefore, it should be positively evaluated that the Prosecutor's Office took into account the high public interest in the ongoing investigation and, as an exception, allowed the Public Defender to have access to the case materials. However, the Public Defender considers that access to the case materials should not rely on the good will of the Prosecutor's

¹ See < <https://bit.ly/2M2bpir> > [last accessed on March 7, 2020].

² More detainees spoke to the Public Defender's representatives about alleged mistreatment, however, as they refused that the above be responded, the Public Defender's Office was not authorized to address the investigative agency.

³ See the statement of the Prosecutor General's Office of Georgia of June 24, 2019 <https://bit.ly/32RW2j8> > [last accessed on March 7, 2020].

⁴ Article 18 (e) of the Organic Law of Georgia on the Public Defender of Georgia.

Office and that this right should be guaranteed by law. Unfortunately, the relevant legislative proposal of the Public Defender has not been endorsed by the Parliament.⁵ The low level of public trust in the Prosecutor's Office is also worth noting in this regard.⁶

It should be noted that even in the given case, the Public Defender's representatives have been denied access to the case materials several times, for various reasons. It is necessary to take into account that the investigative body objectively needed the case materials to carry out further actions. Therefore, it is natural that the representatives of the Public Defender did not have the opportunity to access full case materials on a daily basis. The Prosecutor's Office has granted the Public Defender's Office access to the case materials only four times since October 10, 2019;⁷ the last access was granted on February 3, 2020. The present special report of the Public Defender's Office is based on the analysis of the case materials examined under the above-mentioned circumstances.

As soon as the Public Defender got involved in the investigation process, she said⁸ that she would evaluate the investigation in accordance with international standards of effective investigation; the evaluation criteria would be the elements of independent investigation, timeliness, thoroughness, competence and involvement of victims; particular attention would be paid to the proper conduct of all necessary investigative/procedural activities.

According to the common practice of the European Court of Human Rights, the physical force used by law enforcement officers against a person, which is not caused by the action of that person, is a violation of the right enshrined in Article 3 of the European Convention on Human Rights (prohibition of torture) and therefore, the investigation into this case is being evaluated in terms of compliance with the Convention.⁹

On the basis of Order No 124 of the Public Defender, Consultative Council¹⁰ was established on July 8, 2019, which represents an advisory body. Members of the Council are representatives of non-governmental organizations, independent lawyers and activists. The aim of the Council is to ensure transparency in the examination of the mentioned criminal case, as well as to consult

⁵ On November 29, 2018, the Public Defender of Georgia addressed the Parliament of Georgia with a proposal N15-1/14789 and demanded access to the special category of criminal cases before the completion of investigation. Unfortunately, the Human Rights and Civil Integration Committee of the Parliament of Georgia, at its April 11 sitting, considered the legislative proposal submitted by the Public Defender of Georgia on amending the Organic Law of Georgia on the Public Defender of Georgia and rejected it.

⁶ *inter alia*, NDI survey, April 2019, <<https://bit.ly/3ay793q>> [last accessed on March 7, 2020]

⁷ 25 and 26 November, 2019, January 15 and February 3, 2020.

⁸ < <https://bit.ly/2vIhhHY> > [last accessed on March 7, 2020]

⁹ *inter alia*, Judgment of the European Court of Human Rights in the case of *İzci v. Turkey*, 23 July 2013.

¹⁰ See < <https://bit.ly/3cElvRI> > [last accessed on March 7, 2020]

the Public Defender when developing recommendations for the efficiency of the process. The Consultative Council held meetings on 17 July and 18 September 2019.

In the course of examining the investigation, the Public Defender of Georgia issued 5 proposals on conducting investigative activities and one proposal on the launch of criminal proceedings, which will be discussed in detail below.

The investigation into the alleged offences committed by the representatives of law enforcement agencies is still ongoing. As of March 2020, when the report was published, the Prosecutor's Office had failed to provide a complete systemic legal analysis of the developments of June 20-21. The Prosecutor's Office only focused on the offences committed by rank-and-file police officers, but failed to objectively or fully assess the responsibility of high officials. Unfortunately, the Public Defender's recommendations have not been fully endorsed and no necessary or important investigative actions have been carried out so far to identify the criminal actions of certain individuals (as of February 2020).

The present report is devoted to the evaluation of the investigation carried out by the Prosecutor's Office. The report evaluates the investigative activities that have been carried out and the circumstances that have been identified as a result. The report will touch upon the episodes separated from the case, the rights situation of specific victims and defendants, specific issues that should be the focus of the investigation in the future, as well as the involvement of the Public Defender in the investigation, within the framework of which she proposed conducting specific investigative activities and launching criminal prosecution.

2. Legal standards for the use of force during dispersal of a rally

Although the report does not intend to assess the legality and proportionality of the dispersal of the rally and focuses mainly on assessing the efficiency of the investigation, we think it reasonable to present a general legal analysis of the standard of the use of force during an assembly-demonstration, as this very process contained signs of crime on June 20-21. It is important to determine the preconditions and procedures for the use of force, the grounds and scope of individual responsibilities and the circle of responsible persons.

According to the legislative regulations, in order to ensure the fulfillment of functions assigned to the police, police officers shall be entitled to use coercive measures proportionately only if necessary, the intensity of which shall ensure the achievement of the legitimate aim.¹¹ The type and intensity of coercive measures shall be determined according to a specific situation, nature of the offence and individual characteristics of the offender. The damage must be minimal and proportionate.¹² It is prohibited to use a method that causes severe human mutilation, is

¹¹ Law of Georgia on Police, article 31, paragraph 1.

¹² Law of Georgia on Police, article 31, paragraph 4.

associated with unjustified risks or is prohibited by legislation of Georgia.¹³ Non-lethal weapons (including non-lethal shells) shall be used to repel an attack on a person, a police officer and/or a protected facility, to stop mass violation of public order, to arrest a person who has committed a crime or an action that poses a threat to the public, or to force him/her to leave the occupied territory.¹⁴

According to the regulatory subordinate act, the order on the use of non-lethal weapons (including non-lethal shells) shall be issued by the head of the unit participating in the operation, in agreement with the person responsible for the operation, with due respect for the risks involved and the principles of lawfulness and proportionality. And when the delay in the use of non-lethal weapons may pose a real threat to the life and/or health of a person, only the order of the head of the unit participating in the operation is enough.¹⁵ Representatives of law enforcement agencies participating in the operation of dispersal of an assembly/demonstration are obliged to follow the lawful instructions and orders of their immediate supervisors.¹⁶ Georgian legislation provides for the obligation of the police officer to notify his/her immediate supervisor and the prosecutor of the injury sustained by a person as a result of the use of special equipment.¹⁷ If the special equipment is used towards an indefinite circle of persons, the head of the unit shall notify his/her immediate supervisor and the prosecutor.¹⁸

In addition, the police officer is entitled to use coercive measures proportionately only if necessary, the intensity of which shall ensure the achievement of the legitimate aim.¹⁹ The damage must be minimal and proportionate.²⁰ In addition, it is prohibited to use non-lethal weapons and non-lethal shells against a person standing less than 20 meters away, as well as in life-threatening areas of the body, unless the delay poses a threat to the health and life of a

¹³ Law of Georgia on Police, article 31, paragraph 6.

¹⁴ Law of Georgia on Police, article 33, paragraph 3, subparagraph d.

¹⁵ Guidelines for the Conduct of the Employees of the Ministry of Internal Affairs of Georgia during Assemblies and Demonstrations (approved by Order No 1002 of the Minister of Internal Affairs of Georgia on December 30, 2015), article 8, paragraph 1, subparagraph d.

¹⁶ Order No 1002 of the Minister of Internal Affairs of Georgia of December 30, 2015 on Approval of Guidelines for the Conduct of the Employees of the Ministry of Internal Affairs of Georgia during Assemblies and Demonstrations, article 10, paragraph 1, subparagraph b.

¹⁷ Law of Georgia on Police, article 33, paragraph 4; Rules for the Possession and Use of Police Special Equipment approved by Order No 1006 of the Minister of Internal Affairs of Georgia on December 31, 2013, article 5, paragraph 1, subparagraph b.

¹⁸ Law of Georgia on Police, article 33, paragraph 5.

¹⁹ Law of Georgia on Police, article 31, paragraph 1.

²⁰ Law of Georgia on Police, article 31, paragraph 4.

person and/or group of persons or may have other severe consequences.²¹ The police are obliged to separate offenders from peaceful demonstrators and take preventive and response measures against them so that the peaceful assembly-demonstration does not stop.²²

According to the applied legislation, the Minister of Internal Affairs shall ensure the protection of legislation in the areas within the jurisdiction of the Ministry, supervise the performance of duties by the units, and oversee the decisions and activities of representatives of the Ministry.²³ The powers of the First Deputy Minister and the Deputies of the Minister are detailed in the Minister's order.²⁴

As for the Director of the Special Tasks Department, he is accountable to the Minister and the Deputy Minister in charge of supervising the operation, manages the activities of the Department and is responsible for the proper performance of duties assigned to the Department. He shall also supervise the proper performance of official duties by the staff of the Department.²⁵

According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 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.²⁶ Governments and law enforcement agencies shall give special attention to issues of human rights, alternatives to the use of force, including the peaceful settlement of conflicts, the understanding of crowd behavior, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms.²⁷ Governments shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.²⁸ Obedience

²¹ Order No 1002 of the Minister of Internal Affairs of Georgia of December 30, 2015 on Approval of Guidelines for the Conduct of the Employees of the Ministry of Internal Affairs of Georgia during Assemblies and Demonstrations, article 9, paragraph 1, subparagraph c.

²² Order No 1002 of the Minister of Internal Affairs of Georgia of December 30, 2015 on Approval of Guidelines for the Conduct of the Employees of the Ministry of Internal Affairs of Georgia during Assemblies and Demonstrations, article 4, article 2, subparagraphs b and c, article 3.

²³ Statute of the Ministry of Internal Affairs of Georgia, article 5, paragraph 25, subparagraphs c and d.

²⁴ Ibid. article 6, paragraph 4.

²⁵ Paragraph 2 of article 20, subparagraphs a and f of subparagraph 3, Order No 30 of the Minister of Internal Affairs of Georgia on Approval of the Statute of the Special Tasks Department of the Ministry of Internal Affairs of Georgia.

²⁶ Basic Principles of the United Nations on the Use of Force and Firearms by Law Enforcement Officials, August 27, 1990 - September 7, 1990, paragraph 3.

²⁷ Ibid. paragraph 20.

²⁸ Ibid. paragraph 24.

to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.²⁹

After making general legal analysis, it is important to assess the progress of the investigation. The next chapters of the report will concern both the factual circumstances established by the investigation and the shortcomings identified by the Public Defender's Office, with regard to which, the Public Defender addressed the Prosecutor General's Office with six proposals.

3. Key findings

The Public Defender's Office is aware that each criminal case has its individual investigative technique and tactics, and the persons responsible for the investigation choose the above in accordance with their own views and experience. However, failure to carry out necessary and important investigative activities within a reasonable time may not be justified by the scope of discretion of the investigative agency, as failure to comply with the components of timeliness and thoroughness may make the investigation ineffective. This is especially worth noting given that about 9 months have passed since the start of this investigation, which can really be considered enough time for the investigation to identify the circle of responsible persons, outline the clear contours of the scope of responsibility and persuade an objective observer that the aim is to find the truth of what happened and carry out a thorough investigation.

The analysis of the present case showed that:

- The investigation is focused only on identifying the criminal actions of individual law enforcement officers and assessing their individual roles
- The investigation is not aimed at making complete systemic legal analysis of the events of the night of June 20-21 and, consequently, at determining the scope of responsibility of high officials
- The investigation does not try to identify/rule out alleged offences resulting from the inaction of responsible officials during the dispersal of the rally
- The investigation is not critical when questioning high officials
- Most of the requested video recordings have not been examined (except for certain episodes)
- No recordings of handheld radios of middle-ranking officers of the Ministry have been obtained
- No examination of the recordings of handheld radios of high officials of the Ministry has been scheduled or conducted

²⁹ Ibid. paragraph 26.

- No information has been obtained about the telephone communication between the officials of the Ministry and the shooters.

4. Investigative and procedural activities

On June 22, 2019, the Investigation Department of the Prosecutor General's Office launched an investigation into criminal case No 074220619801 under Article 333 (3 (b)) of the Criminal Code of Georgia.³⁰ The aim of the investigation was to identify the abuse of power by the representatives of the Ministry of Internal Affairs of Georgia. Various activities have been conducted as part of the investigation.

4.1. Requesting and examining video footage

The footage spread by the media were examined at the initial stage of the investigation. Witnesses were involved in some of the cases. According to the examination document, some of the riot police officers targeted journalists despite them having identification badges and telling the officers that they were performing their duties. The document also describes cases, when citizens, who did not show any aggression, became the target of police officers. Some of the affected citizens have been identified and questioned.

The investigation also requested the recordings of the cameras installed in the buildings of institutions³¹ and private organizations located on Rustaveli Avenue and nearby streets,³² covering the period from 20:00 of June 20 to 09:00 of June 21.

In addition, the investigation obtained the recordings of police body cameras, video cameras installed in police vehicles, cameras installed in the buildings where detainees were taken to and cameras installed in the premises of the Ministry of Internal Affairs. Information was requested from broadcasting companies, news agencies and citizens' cell phones.

During the preparation of this report (February 2020), only part of the above video footage had been examined, which significantly hinders the investigation. These recordings most likely show the events not caught by the cameras of the media or citizens. Therefore, viewing the obtained video footage would make it possible to establish important circumstances.

³⁰ Abuse of power by violence.

³¹ Kostava and Melikishvili Avenues, Nikoladze, Akhvlediani and Chanturia Streets.

³² All the cameras installed in the parliament building, the Special Operations Center of the Ministry of Internal Affairs, Transport Service of the City Hall, administrative building of the Special State Protection Service.

4.2. Requesting documentation

The investigation obtained non-lethal weapons³³ and identical samples of the bullets³⁴ used on June 20-21 from the Ministry of Internal Affairs. The investigation also obtained the documents on the detention of citizens³⁵ and a complete list of the detainees, indicating the police officers who carried out the detention, as well as the detailed documents on the plan of security operation and the special units involved in the operation.³⁶

In addition, the Prosecutor's Office requested normative acts regulating the use of special equipment and force by the police when restricting the right to assembly-demonstration. The medical documentation of the injured persons, the bullets removed from the bodies of the mentioned persons and their clothes were requested from hospitals. Damaged clothes were obtained from several citizens as well.

In addition, information was requested about the ambulance crews working on June 20-21. Information about the persons performing their duties during the rally was also requested from the media. The non-governmental organizations and the Public Defender's Office provided full information obtained during the monitoring of rallies to the investigation.

In July, the investigation addressed various state agencies to find out whether their units were on duty on June 20-21. The above was confirmed by the Special State Protection Service, the State Security Service and the Investigation Service of the Ministry of Finance, however, they said they had not taken part in the planning of measures or the dispersal of the rally. Representatives of these agencies spoke about their specific functions during questioning, which will be discussed in detail in the chapter below.

4.3. Questioning

The investigation questioned 625 people,³⁷ including demonstrators, journalists, representatives of hospitals and law enforcement agencies. Both high officials and rank-and-

³³ 12 mm caliber „ataarms“ and „Leonardo“ guns, 38 mm caliber „ys100“ and „antiriot“ guns, 40 mm caliber „antiriot gun“.

³⁴ 5 types of bullets; 30 bullets of each type:

1. 12 mm caliber cartridge non-lethal defence 9 balls 12 cal sterling rubber buckshot by 70 mm;
2. 12 mm caliber cartridge sterling by turac non-lethal defense 1 balls 12 cal rubber slug 70 mm
3. 38 mm caliber cartridge of greenish colour;
4. 38 mm caliber cartridge of black colour with green cover;
5. 40-mm-caliber cartridge - gas.

³⁵ Personal examination documents drawn up in the temporary detention isolator, photographs, administrative detention and violation documents.

³⁶ The June 20-21 rally security plan and documentation, registry data, personification data on non-lethal weapons, documents on the special equipment given away and taken back, as well as information on the personnel of the units participating in the operation, identities of patrol crew members and the equipment of the units of the Ministry of Internal Affairs, who were on Rustaveli Avenue.

³⁷ As of February 3, 2020.

file police officers of the Ministry of Internal Affairs have been questioned.³⁸ Employees of the State Security Service, the Special State Protection Service and the Investigation Service of the Ministry of Finance have been questioned as well. One person was questioned in the court.

4.3.1. Questioning of citizens

Most of the citizens questioned at the initial stage of the investigation³⁹ had sustained injuries. Some of them claimed that police officers used rubber bullets by targeting them, including in the face area. They could not identify specific riot police officers as they had been wearing helmets, masks and did not have any identification sign. The questioned journalists also mentioned similar circumstances.

Most of the questioned individuals said that they had not broken the law. Despite the above, numerous citizens pointed out that the riot police, standing behind the police cordon in front of the Parliament, targeted them and used rubber bullets against them. It is noteworthy that some of the questioned individuals have injuries on the back side of their body. In addition, one of the persons poisoned by tear gas was a minor.

One of the individuals said that he was arrested in front of the police cordon and was taken to the yard of the Parliament, where he had to walk about 40 meters, during which police officers verbally and physically abused him. According to this person, one of the police officers kicked him from behind, as a result of which, he broke his rib.⁴⁰

Most of the citizens questioned in July and August indicated that they had left the area before the dispersal of the rally. Several of them indicated that they had suffered injuries by rubber bullets, including in the head and eye area. Respondents cannot identify the alleged shooters. They also reported cases of illegal detention and physical violence.

4.3.2. Testimonies of low-ranking officers of the Ministry of Internal Affairs

In mid-July 2020, the investigation started to question the officers of the Special Tasks Department of the Ministry of Internal Affairs and other law enforcement agencies, who were in the vicinity of the parliament on June 20-21.

- Conscripts of the Special Tasks Department of the Ministry of Internal Affairs

According to the questioning documents of individuals assigned to ensure security at the June 20-21 rally, large part of them were conscripts. They were equipped with so-called "robocop" and passive defense equipment (e.g. shields), but they did not have active special equipment

³⁸ The Minister, Deputies of the Minister, Directors of Departments, officials of patrol police and other territorial bodies.

³⁹ June-July 2020.

⁴⁰ This episode was separated from the case. See the details below.

(e.g. non-lethal weapons) or handheld radios. According to them, they received an order on June 20-21 to protect the perimeter of the parliament with a live chain and not to allow the intrusion of citizens into it. They substituted for the criminal police and patrol police officers deployed near the parliament entrance.

The questioned persons indicated that some of the protesters acted aggressively, violently pushing officers standing in the live chain, throwing stones, bottles and other items at them, grabbing their helmets and parts of the "robocop" and assaulting some of them. They pointed out that such an aggressive behavior lasted for about 2 hours, however, they had not received an order to detain the aggressive citizens.

The questioned persons said that the police units began to use special equipment⁴¹ against aggressive citizens after the live chain could no longer withstand the pressure from the citizens and they were 3 meters close to the parliament entrance. According to them, some of the officers sustained injuries as a result of the citizens' aggression, but no medical assistance was provided to them, except for the aid rendered by the ambulance doctors on the ground. Only one of them was hospitalized.

- Shooters of the Special Tasks Department of the Ministry of Internal Affairs

The investigation questioned the officers of the Special Tasks Department as well - those who used tear gas and/or rubber bullets on June 20-21 to disperse the protesters.

The persons who used guns on June 20-21, 2019, explain that they received the order on the use of tear gas, but the non-lethal shells was used by them only at their own discretion, without the relevant order from the leadership. According to them, they used non-lethal weapons according to the situation, because they had received general permission from the very beginning to be ready for any situation. In addition, they say that their commanders were also present during the use of non-lethal shells, however, they did not order to stop the use of rubber bullets. The testimonies contain virtually identical information in this regard.

The questioned persons did not initially specify, nor were they asked by the investigation, which legislative norms they used, or whether they were aware of the content of the procedure for using special equipment. Some of them, explained during the second questioning (following the proposal of the Public Defender) that they used special equipment in accordance with the Law on Police and the order of the Minister of Internal Affairs.

According to the heads of their units, they received an order from the Director of the Department to take equipment, including guns, through handheld radios. The order to use gas

⁴¹ Including pepper gas, tear gas and non-lethal rubber bullets.

was issued by the Director of the Department, while the order on the use of rubber bullets has not been issued and the officers used the bullets individually, according to the situation.

- Other officers of the Special Tasks Department of the Ministry of Internal Affairs

According to the testimonies of the officers of the Department, they had been standing in the police cordon and protecting the parliament building against the intrusion of aggressive protesters for about two hours. They explain that they were ordered not to use active special equipment against protesters, despite the fact that the protesters verbally and physically abused them, grabbed their special equipment, abducted them from the live chain and beat them. They point out that they did not use physical force against the aggressive protesters or detain them; they just physically did not allow them to enter the parliament building.

Officials of the territorial units of the Department say that they gave instructions to their subordinates before and after arriving at the operation site. Some of them provided the details of instructions given to the officers relating to the grounds and rules for the use of special equipment according to normative acts.

Almost every official specifically referred to the use of rubber shells. They pointed out that rubber bullets were used only in case of an imminent danger, based on the decision and assessment of circumstances by police officers individually. According to them, police officers are authorized and trained to do the above. At the same time, the officers had to be ready to act in a critical situation and they had received "general permission". That's why they were given guns and rubber bullets.

None of the questioned person has mentioned that the instructions approved by the order of the Minister oblige the police officer to use rubber shells on the basis of the permission of his superior.

According to the heads of territorial units and divisions, there was an order to use gas, but not rubber bullets. According to their testimonies, it became impossible to control aggressive citizens by 23:30, and the officers received instructions from their superiors to use gas shells. As for the rubber bullets, the officers used them to protect human life and health.

- Officers of other territorial/structural units

The investigation questioned several officers of the General Inspectorate of the Ministry of Internal Affairs, who said that they were at the rally in order to detect and respond to violations committed by the police and that they received injuries, due to which, they were hospitalized. They did not attend the use of rubber bullets, as they were moving around the parliament building, observing the actions of the police officers during the peaceful course of the rally.

One of them said that he called on citizens to calm down when they were verbally abusing the police officers guarding the parliament building without special equipment.

According to the testimonies of the representatives of territorial bodies⁴² and structural units⁴³ of the Ministry of Internal Affairs, they were instructed after about 13:00 on June 20 to arrive at the parliament building, maintain public order and prevent citizens from entering the building. According to them, they were deployed at the front door of the parliament building. All the police officers wore uniforms and they did not have special equipment. After protesters started to act aggressively and it became impossible to stop them, they were substituted by the officers of the Special Tasks Department of the Ministry of Internal Affairs, while the criminal police and patrol police officers were deployed in a row behind them.

Most of the questioned police officers indicate that after the use of tear gas, they moved to the parliament yard due to the lack of gas masks and that they did not witness the use of rubber bullets. According to them, they went from the parliament yard to Rustaveli Avenue at about 01:30-02:00, when the so-called box was being arranged by the officers of the Special Tasks Department. They have not witnessed any violence by the police against citizens and the police officers had physical contact with demonstrators only when it was necessary to arrest an aggressive demonstrator, during which, they used only proportional force.

The questioned persons said that no peaceful protesters had been arrested. They have not received any order/permission from their superiors to harm citizens and they have not given such an order to their subordinates either. According to them, the patrol police arrested 151 people, some of which were released after signing relevant documents. Only a few questioned officers identified themselves in the video recordings. According to the Chief of the Criminal Police Department, officers of the Department arrested 65 protesters under administrative law, the police was mainly repelling aggressive protesters and no illegal order has been issued.

Representatives (including heads) of the Facilities Protection Department of the Ministry of Internal Affairs say that they have not received an order from either the Minister or the Deputy Minister on the use of rubber bullets and that the use of rubber bullets became necessary after life and health was endangered, which made it unnecessary to get a special order or instruction on the use of rubber bullets.

According to the officers and the Head of the Security Police Department, the employees equipped with "robocop" were standing in the live chain, they did not have any non-lethal weapons and they were not in the so-called "box" either.

⁴² Tbilisi police and the regional departments and divisions.

⁴³ Patrol Police and Central Criminal Police Department.

According to the officers and the head of the SWAT team of the Investigation Service of the Ministry of Finance, they were present at the rally, but did not take part in the dispersal and only helped the police take two detainees to the police station.

According to the officers of the State Security Service, they were present at the rally for the purpose of performing their duties, but did not take part in the dispersal of the rally or the arrest of citizens.

According to the officers of the Special State Protection Service, one of the Departments of the Service is responsible for the protection of the parliament building. Officers of the Operative Department of the Service were present in the vicinity of the parliament and provided information to the leadership. The officers do not have information about the coordination with the Ministry of Internal Affairs, as they were receiving instructions from the Head of the Service.

The officers of the Special State Protection Service were initially in the vicinity of the parliament. After the officers of the Special Tasks Department were deployed in front of the parliament, the officers of the Special State Protection Service moved to the parliament building and yard. According to them, the Service does not have non-lethal weapons or the “robocop” equipment and they did not have them at the rally either. They say they have not taken part in the dispersal of the rally or detained anyone. It is noteworthy that several officers indicate that they arrived at the parliament area on their own initiative, without being called, and stayed in the yard of the parliament building till the morning.

4.3.3. Testimonies of high officials of the Ministry of Internal Affairs

The investigation questioned Minister of Internal Affairs Giorgi Gakharia and Deputies of the Minister of Internal Affairs, Kakhaber Sabanadze and Vladimer Bortsvadze. Later (following the proposal of the Public Defender), Deputy Minister Levan Kakava was questioned as well.

In their testimonies, the Minister and the Deputies of the Minister (Kakhaber Sabanadze and Vladimer Bortsvadze) explained that the Minister, in agreement with his Deputies, for the purpose of taking appropriate actions after considering the risks at the June 20-21 rally, approved a plan of measures to protect and restore public order in the parliament area, which was classified as confidential.

According to the testimonies, Giorgi Gakharia, Kakhaber Sabanadze and Vladimer Bortsvadze were present in the Palace of the Parliament of Georgia from 22:00 on June 20, 2019, in order to get information about the situation on the ground and to make relevant decisions. According to their testimonies, some of the protesters had been involved in violent actions against the officers of the Ministry of Internal Affairs at the parliament entrance for about two hours.

According to them, the police had been defending the parliament building and their own safety only with passive equipment for two hours. The use of active equipment started at about 00:00. The Minister and his Deputies say that the use of tear gas and water cannons has been ordered by them, but they have not ordered the use of rubber bullets.

According to the above-mentioned persons, as well as Levan Kakava, a decision was made to appoint Kakhaber Sabanadze as the head of the operation and the Deputies of the Minister of Internal Affairs - as persons responsible. The officers mobilized for the actions to be taken in the areas controlled by Levan Kakava - Security Police and LEPL Emergency Management Service - were subordinated to the Deputies of the Minister of Internal Affairs - Kakhaber Sabanadze and Vladimer Bortsvadze, who were present at the scene of developments, while he took over the logistics direction.

According to Levan Kakava, he was at work on Gulua Street on June 20-21 and watched the developments on TV. Accordingly, he does not have detailed information about the start, progress and completion of the operation. As far as he is aware, no specific order on the use of rubber bullets has been issued by the officials of the Ministry, however, the law enforcement officers had the right to use them and acted within the law.

According to the testimony of the Director of the Special Tasks Department,⁴⁴ he was in charge of maintaining public order in front of the parliament on June 20, referring to a plan that provided for the use of special equipment, including gas and rubber shells. According to him, he gave relevant instructions to his deputies and told them to properly instruct their subordinates. According to the instructions, officers had to be prepared for taking actions in any kind of situation and be fully equipped with passive and active special equipment.

According to the Director of the Special Tasks Department, he personally arrived at the parliament area at about 16:00 and held a meeting with the heads of units. He was instructed to deploy the police officers equipped with special equipment, *except for guns*, in the live chain, by Kakhaber Sabanadze. By that time, guns were under surveillance in the vehicles and they could be used only in cases of extreme necessity.

The Director says that he and other responsible persons were in the vicinity of the live chain. He gave instructions to the officers both by handheld radio and in person. He was receiving information from field commanders, and he personally arrived at the site, where he consulted the leadership by his handheld radio. He does not elaborate on what was agreed on or with whom during those consultations.

The Director of the Special Tasks Department pointed out that the Deputies of the Minister also went to the field several times and received information about the situation on the ground.

⁴⁴ As of 20-21 June.

According to him, at 22:30, when the life and health of police officers were threatened, he sent information to the Deputies by handheld radio and received an order, which was agreed with the Minister, to use gas. He transmitted the order to his subordinate commanders. Shooters were ordered to take guns and use gas.

According to him, he heard that some officers used rubber bullets on their own initiative, but does not remember from whom he heard the above. He indicates that the use of rubber shells has not been ordered. He personally did not attend the use of rubber shells, but he informed the leadership that officers used rubber bullets in accordance with law, in order to avoid danger. According to him, he informed the Minister and his Deputies about the use of rubber shells immediately, but he does not remember whether he did it personally or by handheld radio.

4.4. Examinations

On July 2, a forensic examination of 273 people was scheduled to determine the degree, localization and mechanism of infliction of damages, as well as the distance and direction of shooting.

Forensic examination of 45 citizens has been concluded since September 2019 (as of February 3, 2020), according to which, most of the injuries are light. The examination reports refer to the injuries in various areas of the body, including the head and face, as well as concussion, nasal fracture, closed head trauma, head and facial bone fractures, and frontal bone fracture. According to the reports, 2 people suffered severe, life-threatening damages.

The forensic examination reports were sent to the investigation in September. As a result, the investigation indicated that 3 citizens had suffered less serious damages and 14 citizens - mild damages, while 2 persons had not suffered any health damage.

According to the chemical examination report issued on September 2, the cartridges of the identical samples of non-lethal weapon bullets used on June 20-21, 2019, are made of synthetic rubber, which contain a large amount of softeners (plasticizers). The latter could not be identified due to the lack of relevant standard sample in the bureau's database.

Ballistic examination was scheduled on August 14 and foreign bodies removed from the bodies of 48 persons, non-lethal weapons, identical samples of bullets used on June 20-21, as well as bullet casings and shells taken from Rustaveli Avenue, were sent to the expert.

All the weapons and identical samples of cartridges used by the officers of the Ministry on Rustaveli Avenue on June 20-21, 2019 were obtained from the Ministry of Internal Affairs on the basis of a court order.

According to the ballistic examination, none of the cartridges showed any traces of remodeling. The examined weapons were 12 mm, 38 mm and 40 mm caliber traumatic, non-lethal, special smoothbore police weapons with limited damage effect.

After firing, it is impossible to identify the used shells with any particular casing, due to the lack of identification traces on them. The effective distance for accurately hitting the target is about 5 meters for orange rubber bullets. The chances of hitting the target decreases as the distance increases. In case of pellets, the radius of their scattering increases with distance.

4.5. Use of rubber bullets

The Minister, his Deputies and the Director of the Special Tasks Department said in their testimonies that the secret plan considered the use of gas and rubber bullets. Accordingly, the Director of the Department, in accordance with the instructions of the leadership of the Ministry, instructed commanders of the units to provide relevant instructions for their personnel.

According to the testimonies of the high officials of the Ministry, the Minister and his two Deputies were present in the parliament area from 22:00 on June 20. According to the Minister, his Deputies - Kakhaber Sabanadze and Vladimer Bortsvadze – were managing the operation on the ground, while he was in the parliament building and was making decisions relating to the use of water cannons and tear gas to disperse the rally, together with his Deputies. The Director of the Special Tasks Department was also in direct communication with the leadership of the Ministry.

According to the Minister and his above-mentioned Deputies, the police started to use active equipment at about 00:00. They say that the tear gas and water cannons were used by their order and with their consent, although they did not order the use of rubber bullets.⁴⁵ According to the Minister, after the use of tear gas, he was informed that the police used rubber bullets against the protesters and that he received the above information in a few minutes.

The recordings of police handheld radios are of special importance in relation to the use of rubber bullets. They are neutral evidence and their reliability is high. For the purpose of dispelling doubts about the authenticity of the content of recordings or their montage within the framework of case No 074220619801, the Public Defender of Georgia addressed the General Prosecutor's Office of Georgia with a proposal to conduct an examination on September 24, 2019. The proposal was based on the recordings accessed by the Deputy Public Defender at the Prosecutor's Office of Georgia. The reasoning below relies on the content of the recordings,

⁴⁵ It should be noted that some fragments in the two-way radio recordings are missing. No examination has been conducted in order to find the cause of the above or the trace of alleged editing.

and if there is a problem with their authenticity in the future, the actual circumstances may change accordingly.

Examination of the recordings of handheld radios of the Heads of the Ministry's Departments shows that the Minister did not give permission to the persons responsible for carrying out the operation to use rubber bullets during the dispersal of the rally. It is clear from the recordings, as well as the testimony of the Director of the Special Tasks Department, that the latter received an order only on the use of tear gas from the Deputies of the Minister, which was agreed with the Minister, and he conveyed the order to his subordinates, by ordering them to take guns and shoot gas shells.

The Director of the Special Tasks Department points out that during the dispersal of the rally, he was moving across the field and was receiving information both by his handheld radio and in person. He was informed about the use of rubber bullets by specific police officers through handheld radio. He points out that he immediately provided the above information to the Minister and the Deputies of the Minister.

It is noteworthy that the recordings of handheld radios obtained by the investigation do not prove the provision of information about the use of rubber bullets by the Director of the Special Tasks Department to the high officials. The recordings only make it clear that no permission has been issued by the Minister on the use of rubber bullets.

In particular, according to the recordings, the Minister ordered his Deputies and other subordinates (including the Director of the Special Tasks Department) at 23:36 on June 20 not to use rubber bullets during the dispersal of the rally. In contrast, according to the footage spread by TV stations, rubber bullets were fired shortly after 00:00.⁴⁶ Nevertheless, at 00:16, the Director of the Special Tasks Department reported to the leadership that guns were not being used.

According to the recordings, the order not to use rubber bullets was repeated at 00:36, which was not executed again.⁴⁷ The Director of the Special Tasks Department asked for additional

⁴⁶ According to the video footage of the live broadcast of the Public Broadcaster, the sound of gunfire can be heard at 00:03-00:05. The footage shows T. M. being injured by a rubber bullet at 00:07. The use of rubber bullets continued until 00:13. See: <<https://bit.ly/2vHLKWB>>. In addition, the video footage of the live broadcast of Rustavi 2 TV, which starts at 23:10 on June 20, 2019, and lasts for an hour and 44 minutes, shows that rubber bullets were used between 00:07 and 00:11, which then continued again. See: <<http://rustavi2.ge/ka/video/44038?v=2>>. [All the links were last accessed on March 7, 2020].

⁴⁷ The video footage of the live broadcast of the Public Broadcaster shows that rubber bullets were used at 00:23-00:26, 00:39-00:50, 00:54-00:58 and 01:00 - 01:02, as well as at 01:04, 01:23, 01:27-01:45, 01:48-01:56, 02:01, 02:17, 02:24, 02:28, 02:34, 02:58. See: <<https://bit.ly/2Isa3KI>>. In addition, the video footage of the live broadcast of Rustavi 2 TV, which starts at 23:10 on June 20, 2019, and lasts for an hour and 44 minutes, shows the use of

permission to shoot rubber bullets at 02:34. Kakhaber Sabanadze rejected the request and the receipt of the rejection was confirmed by the Director of the Special Tasks Department. Despite this, it is clear from the TV footage that the frequent use of rubber bullets was soon resumed.⁴⁸

According to the testimonies of the heads of divisions of the Special Tasks Department, the order of the Head of the Department to use non-lethal guns and tear gas was spread by handheld radios, but the order on the use of rubber bullets was not issued and the officers used the bullets individually. The Department officers also confirm that they received an order only on the use of tear gas and that they used rubber bullets individually, without any relevant order from the leadership.

According to shooters, the commanders, who were nearby during the use of non-lethal shells, did not issue an order to use rubber bullets or to stop using them. It is also not clear from the case materials whether the Director of the Special Tasks Department made a decision or took action to stop the illegal actions of shooters under his command.

According to the police officers' testimonies, at about 22:00, the situation escalated between police officers and citizens in the front row at the rally that had been ongoing peacefully for several hours. According to the testimonies of high officials, middle-ranking and rank-and-file officers of the Ministry of Internal Affairs, a decision was made to substitute the patrol police and criminal police officers with Special Task Force officers who had special equipment.

Employees of the Special Tasks Department indicate that a group of citizens grabbed their shields, batons, "robocop" equipment, threw various items, abducted and physically abused them. Nevertheless, until about 22:00-24:00, in accordance with the order received from the leadership of the Ministry, they protected themselves and the building only with passive special equipment (shield, helmet, "robocop", baton) and despite being attacked, they did not separate the aggressive group from peaceful protesters or stop their illegal actions.

According to the testimonies of the officers of the Department, the order on the dispersal of the rally and the use of tear gas was issued at about 00:00. The shooters equipped with non-lethal guns fired tear gas shells and rubber bullets. At 02:00, the officers started to arrange the so-called "box" at Freedom Square and started to move towards the building of the Philharmonic Concert Hall, during which the use of gas shells and rubber bullets continued.

rubber bullets at 00:22, 00:41, 00:47-00:49. See <<http://rustavi2.ge/ka/video/44038?v=2>>. [All the links were last accessed on March 7, 2020].

⁴⁸ The live footage of the Public Broadcaster shows the use of rubber bullets on Rustaveli Avenue at 03:05, 03:15, 03:21, 03:23, 03:29, 03:32, 03:55, 03:59, 04:04, 04:10, 04:15, 04:19, 04:30. See <<https://bit.ly/39txWh8>>. In addition, the video footage of the live broadcast of Rustavi 2 TV, which starts at 03:00 on June 20, 2019, and lasts for an hour and 47 minutes, shows the use of rubber bullets at 03:40. See:<<http://rustavi2.ge/ka/video/44043?v=2>> [All the links were last accessed on March 7, 2020].

According to the case materials, 3 types of non-lethal weapons were used by the officers of the Ministry of Internal Affairs during the dispersal of the rally of June 20-21, 2019:

- 12 mm caliber guns designed only for rubber bullets;
- 38 mm caliber guns designed for rubber and gas bullets;
- 40 mm caliber guns that could only fire gas shells.

In addition, during the dispersal of the rally, over a period of several hours - from about 00:00 to 04:30⁴⁹ - more than 100 officers of the Special Tasks Department and the Facilities Protection Department used 3 types of weapons, 5 types of bullets and shells. According to media reports, about 800 rubber bullets were fired.⁵⁰

As a result of the use of special equipment, dozens of citizens sustained various types of bodily injuries. In particular, medical documents on the injuries of 273 people were sent to the forensic examination bureau. The results received only relating to small part of them refer to injuries in various areas of the body, including the head and face area, as well as concussion, nasal fracture, closed head trauma, head and facial bone fractures, and frontal bone fractures. 2 people suffered severe, life-threatening damages.

Thus, according to the case materials, the high officials of the Ministry (the Minister and his Deputies) have not ordered the use of rubber bullets.⁵¹ It is clear from the recordings of the handheld radios of the Minister and his Deputies (which are included in the case) that they categorically ruled out the use of rubber bullets. Nevertheless, the officers of the Special Tasks Department, who were headed by the Director of the Department both officially and immediately on the ground, fired about 800 rubber bullets, and the Director of the Department did not resort to any means to prevent those actions. At the same time, he was obliged to carry

⁴⁹ According to the case materials, the use of active special equipment started at 00:00 on 21.06.2019, the use of non-lethal weapons can be seen in the live footage of TV channels : <<http://rustavi2.ge/ka/video/44042?v=2>> (the Kurieri live broadcast stats at 01:00, 21.06.2019 and lasts for an hour and 31 minutes, relevant episodes: 00:01:42, 00:28:13, 00:38:00, 00:47:22, 00:53:21, 00:57:43, 01:17:13)<<http://rustavi2.ge/ka/video/44043?v=2>> (the Kurieri live broadcast stats at 03:00, 21.06.2019 and lasts for an hour and 47 minutes, relevant episodes: 00:04:00, 00:06:33, 00:37:26) [All the links were last accessed on March 7, 2020]. The live footage of the Public Broadcaster shows the use of rubber bullets on Rustaveli Avenue at: 03:05, 03:15, 03:21, 03:23, 03:29, 03:32, 03:55, 03:59, 04:04, 04:10, 04:15, 04:19, 04:30. See: <<https://bit.ly/39txWh8>>. In addition, the footage of the live broadcast of Rustavi 2 TV, which starts at 03:00 on June 20, 2019, and lasts for an hour and 47 minutes, shows the use of rubber bullets at 03:40. See: <<http://rustavi2.ge/ka/video/44043?v=2>> [All the links were last accessed on March 7, 2020].

⁵⁰ Information is available at: <<https://bit.ly/2VNBjvl>> [last accessed on March 7, 2020]. The detailed information about the bullets used is available in the confidential part of the criminal case.

⁵¹ As already mentioned, some fragments are missing in the two-way radio recordings, and no examination has been conducted in order to find the cause of the above or the trace of alleged editing.

out the orders of his immediate superiors - the Minister and the Deputy Minister in charge of the operation.

It is noteworthy that the Minister and his Deputies point out in their testimonies that they soon learned about the use of rubber bullets, although they do not specify the time. Nevertheless, no action was taken to ensure the fulfillment of the order issued by them, especially given that the use of rubber bullets was not one-time or did not last for a short time. It is also worth noting that the investigation has not established the means of providing the above information to the Minister or his Deputies (personal verbal communication, handheld radio, cell phone, telecommunication, etc.). No other evidence (other than the general statement of the Director of the Special Tasks Department) prove the above circumstance either.

5. Cases separated from the main case

Three cases have been separated from the main criminal case (N074220619801). As a result of conducting investigative activities in the mentioned cases in July-August, necessary evidence was obtained for launching criminal prosecution against 3 police officers relating to abuse of citizens and unjustified use of non-lethal weapons. The Prosecutor's Office applied to the court to use the measure of pre-trial detention against three defendants. The court granted the motion in relation to one person (later the decision was changed and he was released on bail), while two others were released on bail.

The examination of the case materials did not reveal any circumstances that would justify the detention of these officers, as there was no specific threat that they would abscond or obstruct the administration of justice or the process of obtaining evidence, or that they would commit new offences.⁵² The motion of the Prosecutor's Office to use the measure of detention was presumably motivated by their caution against the expected negative public reaction in the event of the use of a lighter measure. We believe that the court's decision to use a non-custodial measure was justified. The only exception was the case, when the court used detention initially, although changed it later into bail due to the deterioration of the defendant's health. The case materials did not provide grounds for using detention against the mentioned person, as the evidence had already been obtained and there was no longer any danger of their destruction, nor was there any danger that the defendant would abscond, commit a new crime or obstruct the investigation. The only difference between the three cases was the fact that the latter enjoyed the right to remain silent. However, according to law, this may not be considered a precondition for the use of the measure of detention.⁵³

⁵² Criminal Procedure Code of Georgia, article. 205, part. 1.

⁵³ It should be noted that the court did not refer to this.

8 people have been identified as victims by the investigation. 4 of them are related to these three separated cases, while 4 others were granted the victim's status within the framework of the investigation into the major case.

5.1. Episode of D.N.

Criminal case No 074140719801 relating to the abuse of power by violence against D.N. was separated from the main case on July 14, 2019. On July 8, citizen D.N. was questioned as a witness. According to his testimony, during the arrest, at around 04:10, one of the police officers hit him in the face. He was taken to a group of riot police officers, where he was pushed to the ground, beaten and kicked. The officers also tried to take away his cell phone. Later, three persons tried to put him in his car, during which, one of the police officers strongly hit him first in the left jaw and then in the head. When being hit in the jaw, he hit the car door with his face and sustained damages in his nose and the lower side of his left lip.

According to the forensic examination report, D.N.'s injuries were the following: a mild health damage caused by a firm and blunt object, fracture of the right 11th rib, closed chest trauma and yellowish-bluish bruise of 6 cm diameter in the 9-10-11 intercostal area.

The investigation obtained information from D.N.'s cell phone. Detention materials were also obtained from the Ministry of Internal Affairs, according to which, D.N. was detained by criminal police officers. Secret investigative activities, search and seizure, examination of various video recordings and other activities were also carried out.

According to the testimony of one of the employees of the Ministry of Internal Affairs, G.D., he knows from L.I. that he could not help hitting one of the demonstrators in his head and face, as the latter was swearing at the police and resisted the officers who tried to put him in the car. The above information was confirmed by another officer as well.

On July 13, L.I. was questioned as a witness. He denied any wrongdoing against any person on June 20-21. He was arrested on the basis of the court order on July 15. He pleaded not guilty. D.N. was recognized as a victim. The measure of pre-trial detention was used against L.I.

On September 27, the motion of the defence was partially granted and the detention was replaced by bail (GEL 10,000). 2 new circumstances were named as a motive: full admission of guilt by the defendant and a commission's report on his health condition.⁵⁴

⁵⁴ Information is available at: < <http://tcc.gov.ge/ka/Decision/gancxadeba> > [last accessed on March 7, 2020].

5.2. G.K.'s episode

On August 29, criminal case No 074280819001 relating to the abuse of power by violence and use of weapons against G.K.⁵⁵ was separated from the main case. According to G.K.'s testimony, 2 police officers detained him without any grounds. The police were aggressive and tried to handcuff him. At that moment, the third police officer approached them and hit him in the head and face with handcuffs. Other police officers also saw the abuse, but did not respond to it. According to a witness, he cannot identify the police officers, as he could not see their faces.

Witness N.Sh. pointed out that the live footage of TV Pirveli showed the arrest of G.K. at 04:40:14 on June 21, 2019, during which he was hit with handcuffs. The investigation scheduled forensic examination, examined a number of video recordings and CCTV cameras, obtained various documents, conducted search-seizure and other investigative activities.

On August 24, the Ministry of Internal Affairs provided the investigation with the materials available to the General Inspectorate, in which police officers explain that their colleague, M.A., told them during non-working hours that he was the one who hit the detainee with handcuffs. They confirmed the above during questioning. The information was confirmed by M.A. as well, during questioning on August 27.

M.A. was charged on August 27. He pleaded fully guilty. G.K. was recognized as a victim. On August 8, the Prosecutor's Office applied to the court to use the measure of pre-trial detention, but the motion was rejected. The court ordered GEL 3,000 bail, which was later upheld by the Court of Appeal.

5.3. Episode of T.M. and M.G.

On July 16, 2019, criminal case No 074160719802 relating to the abuse of power by T.M. and M.G. by the use of weapon against G.E. was separated from the main case. According to the medical documentation, T.M. suffered a left thigh wound with damaged nerve, sensitive muscles of skin and tendon, while M.G. had an open left thigh wound.

On June 28, T.M. explained that he was filming the rally with his cell phone, namely how the police were using rubber bullets against protesters. According to his testimony, he was targeted and shot by a police officer standing about 2 meters away. He described the police officer and pointed out that 9 foreign bodies were removed from his body during the surgery.

On June 29, M.G. explained that he noticed a person in black uniform aiming at people walking down the stairs. According to the citizen, he blocked off the police officer with his body and did not allow him to shoot. However, another police officer sneaked up on him and pushed

⁵⁵ We saw the same person identified as G.K. (with one letter in the last name spelled differently) in the investigation materials.

him away by putting his hand around his waist, as a result of which, he felt pain in his left leg. The witness viewed footage and identified the episodes where he and T.M. were injured.

According to the forensic examination report, T.M. sustained a mild injury that damaged his health for a short time. The investigation conducted ballistic examination, covert investigative activities and search-seizure procedure, examined various footage and carried out other investigative activities. In addition, the investigation questioned witnesses, who provided information about T.M. and M.G.'s injuries.

On July 16, video footage was viewed together with G.E.. He identified himself in the footage, after which he was arrested. T.M. and M.G. were recognized as victims. On July 18, the motion of the Prosecutor's Office on the use of pre-trial detention as a measure of restraint was rejected. The defendant was released after paying bail on the same day. The Court of Appeal upheld the decision.

5.4. Other persons recognized as victims

In addition to the persons recognized as victims in the separated cases, 4 other persons were identified as victims in the main case.⁵⁶ They are: O.S., M.G., M.L. and G.S.

It is noteworthy that these persons were recognized as victims only after significant public pressure and protest, which was preceded by the court's refusal to do the above.⁵⁷ In addition, on December 9 and 18, the court rejected the appeal of 12 other persons claiming to be victims. The court indicated in the judgments that the forensic examination reports had not been provided, which was necessary to determine the degree and mechanism of sustaining injuries as a result of an offence. The court pointed out that it was necessary to determine in accordance with the probable cause standard whether an offence was committed and specifically what kind of offence caused the damage.

Although the above explanation of the court does not contradict the legislative requirements, it is necessary for the Prosecutor's Office to examine the video recordings in a short possible time, explore specific episodes and identify victims in order to ensure their utmost involvement and participation in the investigation. It is possible to grant victim's status to specific individuals as a result of viewing the video materials and identifying specific criminal episodes and affected citizens, including journalists, even before the establishment of the exact degree of damages by the forensic examination.

It is also important to note that despite the fact that M.G. was recognized as a victim, he could access only two volumes of the criminal case. Pursuant to the Criminal Procedure Code, it is possible to grant the victim access to the materials of a criminal case, if it does not contradict

⁵⁶ As of February 3, 2020.

⁵⁷ Information is available at: < <https://bit.ly/377intB> > [last accessed on March 7, 2020].

the interests of the investigation.⁵⁸ However, M.G. has not been provided with any information about the above. The Public Defender's Office also requested information about why M.G. had not been granted access to other materials of the criminal case, but the Prosecutor's Office did not explain the legal grounds for the above.⁵⁹

6. Intervention of the Public Defender

During examination of the case, the Public Defender addressed the Prosecutor General's Office with 6 proposals. 5 of the proposals were related to the priority of conducting specific investigative activities and one proposal concerned the launch of criminal proceedings against a specific person.⁶⁰

The aim of the 5 proposals (relating to investigative activities) was to conduct an effective and timely investigation, as well as to obtain important information about alleged offences of middle-ranking police officers and high officials.

As already mentioned, the persons affected during the dispersal of the rally on Rustaveli Avenue on June 20-21, 2019 and the officers of the Ministry of Internal Affairs of Georgia, who had been protecting the perimeter of the Parliament Palace with only passive equipment for about two hours after the start of turmoil in the front rows of demonstrators, in accordance with the relevant order, were questioned at the initial stage of the investigation.

Since the violation of legislation and commission of actions considered to be criminal under the Criminal Code of Georgia by the law enforcement officers during the dispersal of the rally on June 20-21, 2019 might have been caused by the actions or inaction of high-ranking officials of the Ministry of Internal Affairs of Georgia, the Public Defender of Georgia considered it necessary to address the investigation with a proposal to carry out certain investigative and procedural activities.

Proposal No 1 - On July 19, 2019, the Public Defender of Georgia addressed the Prosecutor's Office and requested the following:

- Obtain and examine in detail and timely the full documentation drawn up by the officials of the Ministry of Internal Affairs of Georgia before, during and after the dispersal of a rally on Rustaveli Avenue on June 20-21, 2019: including operative messages, orders, instructions, tasks, reports, registers, messages transmitted by technical means (including handheld radios);

⁵⁸ Article 57, subparagraph 2, Criminal Procedure Code of Georgia.

⁵⁹ Letters No 13/86194 of 9 December 2019 and No 13/88174 of 17 December 2019 of the Prosecutor General's Office of Georgia.

⁶⁰ Proposals were sent on the basis of article 21 (c) of the Organic Law of Georgia on the Public Defender of Georgia.

- Question/interrogate the high officials of the Ministry of Internal Affairs of Georgia, the subordinates of which carried out the dispersal of the rally on June 20-21, 2019, relating to the content, time and circumstances of the execution of each of their orders;
- Question/interrogate the high officials of the Ministry of Internal Affairs of Georgia, who were responsible for the observance of the requirements of law and implementation of police measures by the persons under their command during the dispersal of the rally, about the measures taken by them during the alleged use of excessive force by their subordinates against specific persons, which was broadcasted live by the media, in order to establish the content of active actions - issuance of orders and instructions - and their compliance with law on the one hand and the nature of alleged illegal actions caused by their inaction on the other hand;
- Conduct other investigative activities to establish the possible participation of the bodies responsible for the protection of public safety in the process of dispersing the rally on June 20-21 and their responsibility, in addition to the employees of the Ministry of Internal Affairs.

The examination of the case materials after the issuance of the proposal on July 19, 2019 revealed that the investigation had questioned the Minister of Internal Affairs of Georgia and his two Deputies, as well as some of the officers of the Ministry of Internal Affairs of Georgia, who used active special equipment during the dispersal of the rally on June 20-21. However, the investigation had not questioned another Deputy Minister, who was indicated in one of the documents relating to the operation. After examining the materials, the Public Defender of Georgia concluded that the questioning of the Minister and his Deputies, as well as the law enforcement officers, who used active special equipment, was not complete - it was not clear whether and by whom the order on the use of rubber shells was issued. In addition, it was not clear whether the officials in charge of the operation had information about the abuse of power by individual police officers by using non-lethal weapons, and whether they took any action to prevent those police officers from violating the law, if they had such information. In order to establish the mentioned circumstances, the Public Defender of Georgia addressed the investigation with another proposal.

Proposal No 2 - July 31, 2019:

- Question again Giorgi Gakharia, Minister of Internal Affairs of Georgia, Kakhaber Sabanadze, First Deputy Minister of Internal Affairs, and Vladimer Bortsvadze, Deputy Minister of Internal Affairs, about the measures taken by them, as persons responsible for the June 20-21 operation, to stop alleged abuse of power by police officers during the dispersal of the rally;

- Establish the circumstances and the scope of fulfilment and/or the consequences of non- fulfilment of the tasks provided for in the "Plan of Measures for the Protection and Restoration of Public Order in the Vicinity of the Parliament Building" approved by the Minister of Internal Affairs of Georgia, by Deputy Minister of Internal Affairs of Georgia Levan Kakava;
- Establish whether and by whom the order on the use of rubber bullets was issued on June 20-21, 2019;
- Obtain and examine complete documentation drawn up by the officers of the Ministry of Internal Affairs of Georgia on the injuries suffered by citizens as a result of the use of special equipment (in particular, whether any person reported the use of special equipment or injuries suffered by them to the Prosecutor's Office in accordance with the Law of Georgia on Police, or whether the officers of the Ministry of Internal Affairs drew up documents about the circumstances and consequences of their participation in the operation).
- Conduct other investigative activities indicated in the Public Defender's proposal of July 19, 2019.

The aim of the investigative activities referred to in the proposal No 2 was to establish whether the persons responsible for the operation fulfilled their duty to exercise proper control over the observance of the requirements of law by their subordinates.

As a result of further examination of the case materials, the Public Defender addressed the Prosecutor's Office with her third proposal, since questioning of the officers of the Special Tasks Department of the Ministry of Internal Affairs of Georgia generally established that the police officers had been instructed by their superiors to use special equipment in accordance with law.

Proposal No 3 - August 9, 2019:

- Question the high officials of the Special Tasks Department of the Ministry of Internal Affairs of Georgia, who, according to the testimonies of the officers questioned, gave instructions to their personnel before the start of the June 20-21 operation;
- Additionally question the officers of the Special Tasks Department of the Ministry of Internal Affairs of Georgia in detail about the content of the instruction received by them from their superiors;
- Question in detail the officers of the Special Tasks Department of the Ministry of Internal Affairs of Georgia, who were questioned later, about the instructions received/issued by them;

- Carry out other investigative activities indicated in the Public Defender's proposals of July 19, 2019 and July 31, 2019.

The investigative activities indicated in the proposal No 3 were aimed at establishing the following: whether detailed instructions were issued by persons responsible for the operation or by immediate supervisors with regard to the following: what type of special equipment were to be used and under what circumstances; in which case (what kind of danger) and for what purpose the rubber shells were to be used and whether it was necessary to get permission from the leadership for the above; what steps were to be taken in case citizens were injured as a result of the use of special equipment. The above would make it clear whether the officials responsible for the operation performed their obligation of controlling their subordinates' compliance with the requirements of law and prevented the abuse of power and violation of protesters' rights during the dispersal of the rally.

The further examination of the case materials by the Public Defender's Office of Georgia made it clear that apart from the officers of the Special Tasks Department of the Ministry of Internal Affairs of Georgia, other law enforcement agencies also participated in the June 20-21 operation, namely the Investigation Service of the Ministry of Finance, the Special State Protection Service of Georgia and the State Security Service of Georgia. For the purpose of establishing these persons' rights and responsibilities during the operation, as well as their actions, the Public Defender of Georgia addressed the Prosecutor General's Office with her fourth proposal.

Proposal No 4 - August 16, 2019:

- Question/interrogate the Head of the Special State Protection Service of Georgia about his functions, as well as the content, time and circumstances of execution of each of his orders by his personnel at the protest rally on June 20-21, 2019;
- Question/interrogate the officers of the Special State Protection Service of Georgia, the State Security Service of Georgia and the Investigation Service of the Ministry of Finance of Georgia, who were performing their duties at the rally on June 20-21, 2019, about their functions, role and measures taken to execute the order/instruction received by them;
- Obtain and examine all the documents drawn up by the officers of the Special State Protection Service of Georgia, the State Security Service of Georgia and the Investigation Service of the Ministry of Finance of Georgia when performing their duties at the protest rally on Rustaveli Avenue on June 20-21, 2019;
- Carry out other investigative activities indicated in the Public Defender's proposals of July 19, July 31 and August 9, 2019.

As of September 24, 2019, according to the case materials studied by the Public Defender's Office of Georgia, the investigation had obtained the recordings of the handheld radios of the Minister of Internal Affairs of Georgia and other high officials of the Ministry. However, the investigation had not obtained the recordings of the handheld radios of the officials using the radio frequency of rank-and-file officers, which could have established the content of the orders and instructions given to the officers during the dispersal of the rally, as well as the information provided to them by the persons who were on the site of the operation. In addition, some of the recordings of the handheld radios of high officials obtained by the investigation were faulty (some fragments were missing). Therefore, the Public Defender addressed the Prosecutor General's Office with her fifth proposal.

Proposal No 5 - September 24, 2019:

- Obtain the recordings of handheld radios of all law enforcement officials involved in the June 20-21 operation;
- Establish the reason for not obtaining the recordings of other handheld radios, whereas the existence of other handheld radios can be clearly heard in the recordings;
- Schedule and conduct examinations to establish the cause of defects in the recordings, covering the period when the use of special equipment was being decided (approximately from 21:50 on June 20 to 02:50 on June 21);
- Obtain the cell phones of the representatives of the Ministry of Internal Affairs of Georgia - the Minister, his Deputies (in charge of the operation), Directors of the Special Tasks Department and the Facilities Protection Department, representatives of divisions, departments and subdivisions and all shooters, and schedule an examination in order to obtain their social network correspondence and telephone messages;
- Question/interrogate the Deputy Head of the State Security Service of Georgia about his functions, as well as the content, time and circumstances of execution of his orders during the June 20-21 rally;
- View the footage of CCTV cameras installed in the vicinity of the entrance to the Palace of the Parliament of Georgia from Rustaveli Avenue, Kashueti Church and Tbilisi Marriott Hotel, in order to establish the circumstances of the use of rubber bullets;
- Carry out other investigative activities indicated in the Public Defender's proposals of July 19, 2019, July 31, 2019, August 9, 2019 and August 16, 2019.

As of January 9, 2020, as a result of examining the case materials, the Public Defender of Georgia stated that the case materials formed the basis for the probable cause standard for the launch of criminal prosecution against the Head of one of the Departments of the Ministry of Internal Affairs of Georgia for committing a crime under the Criminal Code of Georgia.

Accordingly, the Public Defender addressed the Prosecutor's Office with a proposal to launch criminal prosecution.

Proposal No 6 - January 9, 2020:

- Launch criminal prosecution against G.K., former Director of the Special Tasks Department of the Ministry of Internal Affairs of Georgia.

The examination of the case materials made it clear that the Director of the Special Tasks Department had the legal obligation to prevent the illegal actions of his subordinates (disproportionate use of special equipment) and had the capacity to do so. His unjustified failure to perform his obligation resulted in severe physical injuries of dozens of citizens.

In particular, G.K. was instructed from the high officials not to use rubber bullets. He was personally involved in the operation and according to him, he was informed of the use of rubber bullets. However, according to the case materials, he did not take any measure to prevent the above, and on the other hand, the case materials do not prove that he provided information to the Minister or his Deputies. Moreover, he provided incorrect information to the leadership. The recordings of handheld radios make it clear that he provided false information to the leadership about the non-use of guns (June 21, 00:16). Despite receiving the repeated warning on non-use of bullets through handheld radio (at 00:36), the shooting continued. Later, the Director of the Special Tasks Department asked for permission to use bullets, and despite the refusal of the immediate supervisor, Kakhaber Sabanadze (at 02:34), the frequent use of rubber bullets continued.

It is necessary but not enough to bring specific police officers to justice. The violation of citizens' rights during the dispersal of the rally requires a holistic approach. From the very beginning of the investigation, the Public Defender has been pointing out that in order to fulfill the obligation of effective investigation, it was important not only to establish the alleged abuse of power by the use of weapons or violence by certain police officers, but to ensure proper legal assessment of the necessity and proportionality of the restrictions on the right to freedom of assembly and adequate assessment of alleged criminal activities (action/inaction) in this process. Therefore, the purpose of the investigation should be not only to identify the guilt of lower echelons – rank-and-file police officers, but also to identify the high officials of the Ministry of Internal Affairs and other bodies, whose action or inaction resulted in serious damages to the health of many people.

7. Conclusion

Despite a number of investigative activities carried out by the Prosecutor's Office, the investigation into the events of June 20-21 is still far from establishing the truth. Despite the separation of 3 episodes, recognition of 8 persons as victims and filing charges against 3

persons, the investigation is still focused on the rank-and-file police officers and is not aimed at identifying the alleged criminal actions of high-ranking officials.

The investigation delays carrying out important and necessary investigative activities, while the investigative activities that have already been conducted cannot be termed as diligent (it is especially noteworthy that no specific or detailed questions were asked in relation to several important issues during the questioning of the high-ranking officials). Accordingly, at this stage, the investigation is faulty in terms of timeliness and thoroughness, which is a substantial impediment to the evaluation of the investigation as efficient.

According to the video footage mentioned above, during the use of non-lethal weapons, there had not been an instant or the kind of massive attack by protesters against police officers or other persons,⁶¹ which would endanger the life and/or health of a person, or which would make it possible to term the decision of several police officers to use non-lethal shells without the relevant order as a justified and proportionate measure of repelling an attack.

The use of non-lethal shells during the June 20-21 rally, in the absence of a relevant order, cannot be assessed as a proportionate measure given the number of shells (several hundreds) and shooters (several dozens), location (both directly in front of the parliament building and other parts of Rustaveli Avenue), duration (several hours) or the number of injured protesters, as well as the degree of their injuries.

Each of the police officers violated their obligation to use non-lethal shells during the dispersal of an assembly-demonstration only on the basis of an order from their superiors. The responsibility of persons who managed the operation on the ground and did not give proper instructions to their subordinates to use or stop using rubber bullets is also evident.

Accordingly, the Public Defender considers that in order to perform the obligation of carrying out an effective investigation, it is important not only to establish the alleged abuse of power by certain police officers by the use of weapons or violence, but also to assess the actions or inaction of those who were in charge of the operation. In order to establish/rule out the responsibility of these persons, it is necessary to conduct the investigative activities requested by the Public Defender within the shortest possible time.

As already mentioned, the Public Defender addressed the Prosecutor General's Office with 6 proposals. The proposals referred to the need of carrying out 21 specific activities. 20 of the requests were related to the investigative activities and one request was related to the launch of criminal prosecution. 11 out of the 21 requests have been granted, 3 of them have been

⁶¹ In the episodes following the use of non-lethal weapons.

implemented defectively and/or partially, while 7 requests, including the one relating to the launch of criminal prosecution, have not been implemented.

The following proposals of the Public Defender have been implemented:

1. Question/interrogate the high officials of the Ministry of Internal Affairs of Georgia, the subordinates of which carried out the dispersal of the rally on June 20-21, 2019, relating to the content, time and circumstances of execution of each order issued by them;
2. Conduct other investigative activities to establish the possible participation of the bodies responsible for the protection of public safety in the process of dispersing the rally on June 20-21 and their responsibility, in addition to the employees of the Ministry of Internal Affairs.
3. Establish the circumstances and the scope of fulfilment and/or the consequences of non- fulfilment of the tasks provided for in the "Plan of Measures for the Protection and Restoration of Public Order in the Vicinity of the Parliament Building" approved by the Minister of Internal Affairs of Georgia, by Deputy Minister of Internal Affairs of Georgia Levan Kakava;
4. Establish whether the order on the use of rubber bullets was issued on June 20-21, 2019 and by whom;
5. Obtain and examine complete documentation drawn up by the officers of the Ministry of Internal Affairs of Georgia on the injuries suffered by citizens as a result of the use of special equipment (in particular, whether any person reported the use of special equipment or injuries suffered by them to the Prosecutor's Office in accordance with the Law of Georgia on Police, or whether the officers of the Ministry of Internal Affairs drew up documents about the circumstances and consequences of their participation in the operation);
6. Question the high officials of the Special Tasks Department of the Ministry of Internal Affairs of Georgia, who, according to the testimonies of the officers questioned, gave instructions to their subordinates before the start of the June 20-21 operation;
7. Additionally question the officers of the Special Tasks Department of the Ministry of Internal Affairs of Georgia in detail about the content of the instructions received by them from their superiors;
8. Question in detail the officers of the Special Tasks Department of the Ministry of Internal Affairs of Georgia, who were questioned later, about the instructions received/issued by them;
9. Question/interrogate the Head of the Special State Protection Service of Georgia about his functions, as well as the content, time and circumstances of execution of each of his order by his personnel at the protest rally on June 20-21, 2019;

10. Question/interrogate the officers of the Special State Protection Service of Georgia, the State Security Service of Georgia and the Investigation Service of the Ministry of Finance of Georgia, who were performing their duties at the rally on June 20-21, 2019, about their functions, role and measures taken to execute the order/instruction received by them;
11. Obtain and examine all the documents drawn up by the officers of the Special State Protection Service of Georgia, the State Security Service of Georgia and the Investigation Service of the Ministry of Finance of Georgia when performing their duties at the protest rally on Rustaveli Avenue on June 20-21, 2019.

The following proposals have been implemented partly and/or defectively:

1. Obtain and examine in detail and timely the full documentation drawn up by the officials of the Ministry of Internal Affairs of Georgia before, during and after the dispersal of demonstration on Rustaveli Avenue on June 20-21, 2019: including operative messages, orders, instructions, tasks, reports, registers, messages transmitted by technical means (including the handheld radio);
2. Question/interrogate the officials of the Ministry of Internal Affairs of Georgia, who were responsible for the observance of the requirements of law and implementation of police measures by the persons under their command during the dispersal of the rally, about the measures taken by them during the alleged use of excessive force by their subordinates against specific persons, which was broadcasted live by the media, in order to establish the content of active actions - issuance of orders and instructions - and their compliance with law on the one hand and the nature of alleged illegal actions caused by their inaction on the other hand;
3. View the footage of CCTV cameras installed in the vicinity of the entrance to the Palace of the Parliament of Georgia from Rustaveli Avenue, Kashueti Church and Tbilisi Marriott Hotel, in order to establish the circumstances of the use of rubber bullets.

The following proposals have not been implemented

1. Question again Giorgi Gakharia, Minister of Internal Affairs of Georgia, Kakhaber Sabanadze, First Deputy Minister of Internal Affairs, and Vladimer Bortsvadze, Deputy Minister of Internal Affairs, about the measures taken by them, as persons responsible for the June 20-21 operation, to stop alleged abuse of power by police officers during the dispersal of the rally;
2. Obtain the recordings of handheld radios of all law enforcement agencies involved in the June 20-21 operation;
3. Establish the reason for not obtaining the recordings of other handheld radios, whereas the existence of other handheld radios can be clearly heard in the recordings;

4. Schedule and conduct examinations to establish the cause of defects in the recordings, covering the period when the use of special equipment was being decided (approximately from 21:50 on June 20 to 02:50 on June 21);
5. Obtain the cell phones of the representatives of the Ministry of Internal Affairs of Georgia - the Minister, his Deputies (in charge of the operation), Directors of the Special Tasks Department and the Facilities Protection Department, representatives of divisions, departments and subdivisions and all shooters, and schedule an examination in order to obtain their social network correspondence and telephone messages;
6. Question/interrogate the Deputy Head of the State Security Service of Georgia about his functions, as well as the content, time and circumstances of execution of his orders during the June 20-21 rally;
7. Launch criminal prosecution against G.K., former Director of the Special Tasks Department of the Ministry of Internal Affairs of Georgia.

At the same time, the Public Defender calls on the Prosecutor's Office to work closely and have a dialogue with victims in order to explain to them, in accordance with the procedural law, why they are not able to have access to full materials of the case, as well as to work intensively on the episodes of infliction of injuries to journalists along with other citizens and to grant them the victim's status.

The Public Defender's Office will continue to examine the criminal case materials and hopes that the Prosecutor's Office will ensure that the standard of effective investigation is met at the following stages.