

Human Rights Centre (HRIDC)
Assessment of the November Events in Georgia

Assessment of the November events

This paper represents the assessment of the events taking place in Georgia since November 2, 2007. In particular article examines compatibility of the actions taken by the Government of Georgia with respect of Constitution of the country and the international obligations undertaken by it. Events provided herewith are clear demonstration of the fact that Government of Georgia by dispersing demonstrators with use of excessive force, by taking off the air two TV stations, Imedi TV and Caucasia and by destroying the property of Imedi TV after forcefully entering it's office, has violated several fundamental rights guaranteed by Georgian Constitution and International treaties that Georgia has ratified. These rights include:

- The right to freedom of expression
- Freedom of assembly and manifestation
- The right to property

Description of the events

On November 2, 2007 Georgian people came out in the streets under the leadership of the United Opposition. Opposition parties have established the Public National Council, which includes among others the following political parties: Republican Party; Political Movement Tavisupleba (Freedom); Labour Party, Chven Tviton (By Ourselves); Conservative Party; Party Saqartvelos Gza (Georgia's Way); Party Ertiani Saqartvelosatvis (For United Georgia); National Forum; Kartuli Dasi, etc. The manifestation was organised in compliance with the requirements of the "Georgian Law on Assemblage and Manifestations". In particular, opposition representatives had filed an official notification to the Tbilisi City Municipality. Notification contained the form, purpose, place,

starting date and expected number of participants. Peaceful demonstrations in Tbilisi had been going for several days in front of the Parliament.

The requests of the United Opposition to the government were the following:

1. Parliamentary elections should be held according to the original and legal constitutional timeframe – that is, in Spring, 2008;
2. For the majoritarian election system, district mandates should be distributed on the basis of votes received by each candidate (i.e. a true single mandate voting system) and not the present undemocratic majoritarian system;
3. Elections should be carried out by an election administration that is based on political parity;
4. Political prisoners should be released and for this purpose a state commission should be created that enjoys public trust and support.

Since government refused to engage into discussion with the leaders of the demonstrators, some opposition leaders went on a hunger strike.

The number of demonstrators reached hundreds of thousands of people. The political demands of demonstrators did not contradict to the constitution and legislation of Georgia. The demands did not contain any calls for forcefully overthrowing the government. It posed no threat to the national sovereignty and territorial integrity of the country. Also, the opposition did not call for incitement of any conflict, racism or national and religious conflicts among people. After government showed little interest in meeting the demands set forth by the demonstrators, request for the resignation of the president was added to the initial demands.

The government did not intend to start a dialogue. Finally the government dispersed the peaceful demonstration and President Mikhail Saakashvili announced a state of emergency in Georgia for 15 days.

The Human Rights Centre (HRIDC) considers that the means which were utilized by the government were unacceptable and ineffective. Moreover, they increased tensions.

The Human Rights Centre (HRIDC) considers that the government breached national legislation by the following actions:

Zugdidi dispersal

On October 28, during the Zugdidi demonstration, which was followed by demonstrations in Tbilisi, law enforcement officials attacked some of the opposition leaders, in particular MPs Bejan Gunava and Bidzina Gujabidze. Despite that the attack of MPs constitutes crime, only some of those who attacked the MPs have been sentenced to administrative imprisonment and fined GEL 400. It is worth to mention that activists, supporting the opposition, have previously been convicted to administrative imprisonment for distributing posters around Tbilisi¹.

Preventing demonstrators to come to the capital

On November 1, people arriving from all over Georgia encountered serious obstacles: the government seized cars and the keys of those cars, car registration papers, blocked motor ways and slashed tires of cars. Some drivers were assaulted. For instance: roads coming into Tbilisi and the Chakvi Tunnel were blocked for mini buses coming from Batumi. The tires of Kutaisi and Zugdidi mini buses had been damaged beforehand. They took the car registration papers from drivers. They did not allow buses from Tbilisi to go to Kakheti in order to prevent them from bringing people to parliament. (This information was broadcasted by TV-companies Imedi, Rustavi 2, Mze and other media sources.)

Okruashvili being forced to leave the country

Former Defence Minister Irakli Okruashvili, who publicly accused the government of corruption, was forced to leave the country as he intended to attend the demonstration on November 2. Recently, Irakli Okruashvili gave an interview to TV Imedi from Germany and confirmed this. In addition to this he stated that his family is still in fear of persecution while remaining in Georgia.

Government starts persecuting the demonstrators

Since November 2 some demonstrators have been maltreated. Special brigades were formed to persecute the participants of demonstration. Law enforcement officials attacked and abused people who were detected far from the demonstration area.

During the night of November 5, a group of people armed with clubs attacked a mini bus standing in front of parliament in which demonstrators from Batumi were sleeping. The attackers physically abused people in the bus and also damaged the bus. (Information agency Media News).

¹ Unless otherwise noted, based on information of the Human Rights Center (HRIDC), and its online magazine www.HumanRights.ge

On November 2, Rati Maisuradze, the young leader of the Labor Party, and Koba Chitanava, the director of the board of Sokhumi University, were attacked. They were badly injured. Data Akhalaia, the former head of the Constitutional Security Department, has allegedly participated in this attack. Rati Maisuraze was pushed in the boot of Akhalaia's car and was kidnapped. (TV-companies: Imedi, Rustavi 2, Mze).

On November 5, vice-colonel of police Giorgi Gotsiridze brought poisoned wine for the demonstrators in front of parliament which caused the intoxication of over 30 people. The injured people were urgently taken to hospital. (Imedi, Rustavi, 2 Mze, Medianews, Inter Press News and other agencies).

On November 5, the Regional and Criminal Police of Ozurgeti dispersed the demonstration aimed to support the United Opposition. (Rezonansi, November 6th).

November 7 – The government against people

On November 7 at midnight, the police dispersed the people in front of parliament as well as people participating in a hunger strike and arrested some of them, including Goga Khaindrava, one of the leaders of United Opposition. The police seized cameras and recording materials from journalists. (Imedi, Rustavi 2, Mze, etc.).

By 1:00 PM, the Special Task Force attacked peaceful demonstrators and dispersed them. They used water cannons, tear gas and clubs; as a result ordinary people, as well as several opposition leaders, were badly injured. The dispersing of the demonstration was broadcasted live by all Georgian TV-companies. This fact was highlighted by all leading TV-companies in the world as well as newspapers and press agencies (BBC, CNN, EURONEWS, etc.).

After the dispersal of the demonstration in front of the Parliament, the demonstration relocated to Rike, a large square. (The demonstrators chose Rike, because the first demonstration was dispersed on the ground of blocking traffic). Without any warning, the Special Forces attacked the protestors on Rike. Special Forces again used water cannons, tear gas, rubber bullets and clubs. People fled immediately when they saw the approaching Special Forces, although the riot police kept chasing them.

Use of excessive amounts of tear gas, that according to the experts in the field exceeded the amount that could have been used and the use of rubber bullets, which is not permitted by the Georgian legislation is a clear demonstration of the disproportionate use of force.

At the same time some of the representatives of the “National Movement” organized an alternative demonstration on the Rustaveli Avenue, where among others, special task force units also took part. According to the various sources, those representatives of the law enforcement agencies that took part in the illegal dispersal, instead of punishment got additions to their salaries that varied from 500 to 2000 GEL as a form of incentive.

Some of the results of the brutal clash

According to the Ministry of Internal Affairs, 21 people were arrested after the dispersals, but some of them were released on a fine.

According to the Ministry of Health approximately 600 people have been hospitalized in Tbilisi. Some of them remain under the treatment.

Some of the opposition leaders were brutally beaten during the demonstration. Koba Davitasvili, the leader of People’s Party, has announced on Public Broadcasting, that he was attacked by 7 people, who were dressed in civil clothing. He was kidnapped and taken to Gori hospital. Another opposition leader, Levan Gachechiladze, was also beaten.

Cruel way of preventing the demonstrations in Batumi

On November 8, students of Batumi State University were in their class rooms when tear gas was released into the class rooms during lectures. Allegedly, students who were not aware of the fact that the state of emergency was declared on the whole territory of the country were planning to make a demonstration. Injured students were taken from the university building by emergency medical personnel. Among them was 22 year-old Tamta Badjelidze, who is five months pregnant. There were hundreds of policemen surrounding the university, waiting for further orders. According to Davit Berdia, the head of Adjara’s Main Department of Ministry of Internal Affairs, all necessary means will be used.

The Government against media

On November 7, approximately at 9 o’clock, Special Forces, without warning or without following formal procedure, went to the independent TV-company Imedi. They ordered journalists and other employees to leave the building and damaged significant part of equipment. After this, The Imedi TV and Radio were taken off the air. (This event was covered by TV-companies Mze, Rustavi 2,

Public Broadcasting). TV Imedi is one of the most popular media-company in Georgia, were the members of the opposition parties had the opportunity to express their opinions publicly. Radio Imedi was taken of the air at the same tame as TV Imedi without justification.

On the same day, TV Company Caucasia was shut down. The director of the Caucasia, Davit Akubardia, stated that one person offered him millions for him to stop broadcasting. When he refused, the government shut down his TV Company.

In addition government ordered Georgian cable TV broadcasters not to broadcast some of the foreign TV channels, which among others included: BBC, Euronews and CNN and some of the Russian channels.

During the demonstration many journalist from different newspapers and TV-companies were fiscally assaulted by the police. In addition, police stopped a mini bus driving from Tbilisi to Batumi; four journalists were on their way to a seminar. Police prevented them from continuing their way to the capital for three hours without any basis or explanation.

The attacks on TV companies and banning broadcasting represents a violation of the Constitution of Georgia, the Law on the Freedom of Speech and Expression, article 10, freedom of expression, and article 14, prohibition of discrimination, of the European Convention on Human Rights and Fundamental Freedoms.

The response of the international community on the November events

Recent developments in Georgia have met with the firm response form the international community. Most of the officials and representatives of foreign countries, institutions and organizations issued the statement that condemned the imposition of Emergency Rule and expressed their big concern about the action undertaken by government that directly caused the limitation of fundamental human rights. “The imposition of Emergency Rule, and the closure of media outlets in Georgia, a Partner with which the Alliance has an Intensified Dialogue, are of particular concern and not in line with Euro-Atlantic values,” Jaap de Hoop-Scheffer, the NATO Secretary General, said in a statement on November 8. “NATO is following closely and with concern events in Georgia. I have asked NATO's Special Representative for the Caucasus, Ambassador Robert Simmons, to express to the Georgian Foreign Minister the Alliance's view that all parties must exercise restraint, avoid violence and act within the legal framework”.

The OSCE Chairman-in-Office, Spanish Foreign Minister Miguel Angel Moratinos in his statement urged to remain calm, avoid excesses and engage in constructive dialogue. "I hope the Georgian authorities and the opposition will do their utmost to prevent a deterioration of the situation". He also emphasized that a solution to a situation of this nature can only be found through dialogue based on democratic principles. According to that, the OSCE welcomed President Mikheil Saakashvili's decision to call an early presidential election. "This should help to reduce tensions," Minister Moratinos said. He has also sent a special envoy, Josep Borrell Fontelles, to Georgia to call for the lifting of the state of emergency. He was supposed to listen and speak to all sides during his visit to Tbilisi and to call for a peaceful and democratic dialogue and the lifting of the state of emergency.

Miklos Haraszti, the OSCE Representative on Freedom of the Media, expressed concern about the suspension of the work of Imedi TV, Georgia's most watched independent broadcaster and Caucasia TV, which broadcasts in Tbilisi. "While introducing a state of emergency may be in accordance with the country's Constitution, the media also must be able to fulfil their constitutional vocation of informing society about events in the country. Pluralism of broadcasting is essential for a democracy. I urge Georgia's authorities to allow the resumption of Imedi and Caucasia television stations." He also condemned the violence against journalists during a rally in Tbilisi. "The disturbing reports of journalists falling victim to violence during a political rally on 7 November are worrying. I urge the authorities to show restraint in dealing with journalists during political demonstrations and avoiding interference with coverage of public events in the media. Deliberate attempts to confiscate, damage or break journalists' equipment in order to silence reporting are criminal offences and those responsible should be held accountable in accordance to the requirements of Georgian law" said Haraszti.

Also the Secretary General of Council of Europe, Terry Davis, admitted that he is "very concerned about the situation in Georgia. Freedom of assembly is guaranteed by the European Convention on Human Rights, and the authorities must make sure that any restrictions are justified and proportionate. The priority for all sides now must be to show restraint, avoid provocations and avoid being provoked". What is more, the Parliamentary Assembly of the Council of Europe (PACE) decided to send two rapporteurs, Matyas Eorsi and Kastriot Islami on snap visit to Georgia, from Friday 9 to Sunday 11 November, to assess the situation on the spot. They have met with high-ranking government officials, members of the parliamentary majority and opposition, media representatives and ambassadors. Unfortunately Recent events have damaged Georgia's reputation as "championship of democratic reforms in the region," Matyas Eorsi, a rapporteur from the Parliamentary Assembly of the Council of Europe (PACE), said on November 10 in Tbilisi. The

last time Eorsi was in Georgia was this September. “You remember how enthusiastic we were [in September] about progresses Georgia had achieved,” he said. “Contrary to what we saw in mid-September, now we see that the country has been upset by events which we believe has damaged Georgia’s reputation as champion of democratic reforms in the region,” Eorsi stated at the news conference in Tbilisi. “I have been visiting Georgia since 92 and all the time I come to Georgia I start to say how happy I am to be back to Georgia. This is not the case today.” “Police violence against peaceful demonstrations, shutting down private broadcasting stations and clamping down information dissemination is unacceptable in any circumstances in a democratic system,” he said. “We believe that it is interest of whole Georgia to lift state of emergency in the closest time possible.” PACE co-rapporteurs have urged both the authorities and opposition to immediately resume talks and find a compromise on all the disputed issues.

EU foreign policy chief, Javier Solana also decided to send his special representative for South Caucasus, Peter Semneby, to Tbilisi. Solana said in a statement that Peter Semneby planned meeting with the both opposition and the authorities. “I am concerned about the latest developments in Georgia. Political differences should be resolved within the democratic institutions. All sides should therefore resume the dialogue and refrain from actions that contribute to tensions. This is the best way out of the crisis. I have transmitted this message to President Saakashvili and to the Georgian opposition.”

The state of emergency imposed in Georgia “seem to be quite far-reaching” in contrast to the challenges posed by the November 7 unrest in Tbilisi, Peter Semneby, the EU special envoy, said at a news conference in Tbilisi. The Georgian leadership has claimed that the country was facing a threat to constitutional order, which compelled it to declare a state of emergency. The unrest was, according to the authorities, part of a planned attempt by “the radical political opposition,” supported by Russian intelligence services and financed by business tycoon Badri Patarkatsishvili, to destabilize the country and overthrow the government. “I do not want to go too far into this and I do not want to go into the issue of whether there was any serious threat to the state and so on, at least as long as I have not seen solid evidence,” Semneby said. He said that in the short term, recent developments in Georgia had “obviously been a distraction from the normal agenda of relations between Georgia and the European Union.” “But I do not want to speculate on the long-term effect,” Semneby said. “I would rather say that if presidential elections are carried out successfully, there should not be any lasting damage to these relations.”

The U.S. Department of State declared in a statement of November 8 that it welcomed the Georgian authorities’ decision to hold early presidential elections and a referendum on timing of

parliamentary elections. “At the same time, we continue to urge the Government of Georgia to lift the state of emergency and restore all media broadcasts. These are necessary steps to restore the democratic conditions for the election and referendum. We call on all parties to maintain calm, respect the rule of law, and address their differences through serious discussions to strengthen Georgia’s democratic political system. These discussions should take place in a spirit of compromise and in support of Georgia’s sovereignty, independence, territorial integrity, and commitment to human rights.”

Gela Bezhushvili, the Georgian Foreign Minister, held a phone conversation with his German counterpart, Frank-Walter Steinmeier, to discuss the recent developments in Georgia on November 9.

On November 8 the German Foreign Minister declared the following: “I am concerned about the escalation of the situation in Georgia, most particularly the imposition of a state of emergency yesterday evening and the closure of several TV and radio networks.

The UK Foreign Office expressed its concerns about the fact that a state of emergency had been declared in Georgia, particularly the restrictions on the media. “We hope that these will be lifted as soon as possible,” it said in a statement. “We encourage all parties to behave in a peaceful, democratic manner and to immediately engage in a constructive dialogue. We urge all parties involved to exercise restraint and refrain from using language and actions that could escalate the situation.”

The statement of the Foreign Ministry of France reads as follows: “The violence against the opposition and the violations of freedom of the press and individual freedoms are unacceptable. We call on the political forces involved to show restraint and calm. We invite the Georgian authorities to launch a dialogue with the opposition to restore the democratic process in that country. It is up to the Georgian political forces alone to find a peaceful solution to the present situation. We also call on Tbilisi to avoid any escalation with Moscow.”

International NGO community was greatly agitated about human rights violations. “Even in a time of crisis, Georgians have a right to protest peacefully without being beaten by the police,” said Holly Cartner, Europe and Central Asia director at Human Rights Watch. “Firing rubber bullets at peaceful demonstrators is a complete abuse of the use of force. The government does not have a carte blanche to restrict fundamental freedoms just because it is in crisis.” The organization issued also a brief report on the police intervention. A Human Rights Watch representative witnessed how riot police chased and beat fleeing protestors as they ran into the yard of a nearby church and into

nearby streets. The protestors offered no resistance and called on each other not to resist in order not to provoke harsher retaliation from the police.

Extracts from Georgian legislation

The right to freedom of expression

Constitution

Article 19

1. Everyone has the right to freedom of speech, thought, conscience, religion and belief.
2. The persecution of a person on the account of his/her speech, thought, religion or belief as well as the compulsion to express his/her opinion about them shall be impermissible.
3. The restriction of the freedoms enumerated in the present Article shall be impermissible unless their manifestation infringes upon the rights of others.

Article 24

1. Everyone has the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or by any other means.
2. Mass media shall be free. The censorship shall be impermissible.
3. Neither the state nor particular individuals shall have the right to monopolize mass media or means of dissemination of information.
4. The exercise of the rights enumerated in the first and second paragraphs of the present Article may be restricted by law on such conditions which are necessary in a democratic society in the interests of ensuring state security, territorial integrity or public safety, for preventing of crime, for the protection of the rights and dignity of others, for prevention of the disclosure of information acknowledged as confidential or for ensuring the independence and impartiality of justice.

Article 41

1. Every citizen of Georgia shall have the right to become acquainted, in accordance with a procedure prescribed by law, with the information about him/her stored in state institutions as well as official documents existing there unless they contain state, professional or commercial secret.
2. The information existing on official papers pertaining to individual's health, his/her finances or other private matters, shall not be accessible to any one without the consent of the individual in

question except in the cases determined by law, when it is necessary for ensuring the state security or public safety, for the protection of health, rights and freedoms of others.

The law of Georgia on Freedom of Speech and Expression

Article 2. Interpretation of the Law

The interpretation of this Law shall be made in accordance with the Constitution of Georgia, the international commitments undertaken by Georgia, including the European Convention on Human Rights and Freedoms and case law of the European Court of Human Rights.

Article 3. Freedom of speech and expression

1. The State recognizes and protects the freedom of expression as an inherent and supreme human value. In the course of discharge of the authority, people and the State are bound by these rights and freedoms as by directly applicable law.

2. Everyone except for administrative agencies enjoy the right to freedom of expression that implies the following: a) Absolute freedom of opinion; b) Freedom of political speech and debates; c) Obtaining, receipt, creation, keeping, processing and dissemination of any kind of information and ideas; d) Prohibition of censorship, editorial independence and pluralism of the media, the right of a journalist to keep confidential the source of information and make editorial decisions based on his own conscience; e) Academic freedom of learning, teaching and research; f) Freedom of art, mastery and inventions; g) The right to speak any language, use any alphabet; h) The right to charity; i) The right to whistle blow and protection of the whistleblowers; j) freedom from coercion, freedom to express opinions on religion, belief, conscience, ethnical, cultural and social belonging, origin, family, property and social position as well as all the facts that may become a ground for restriction of his rights and freedoms.

Article 8. Grounds for restriction of the freedom of speech and expression

1. Any restriction of the rights recognized and protected by this Law can be established only if it is introduced by a clear and foreseeable, narrowly tailored law, and good protected by the restriction exceeds the damage caused by the restriction.

2. Restrictions recognized and protected by this Law shall be: a) directly intended at fulfillment of a legitimate aim; b) Critically necessary in a democratic society; c) Non-discriminative; d) Proportionally restricted.

Freedom of Assembly and Manifestation

Constitution

Article 25

1. Everyone except members of the armed forces, of the police and of the security office has the right to public assembly without arms either indoors or outdoors without prior permission.
2. The necessity of prior notification of the authorities may be established by law in the case where a public assembly or manifestation is held on a public thoroughfare.
3. Only the authorities shall have the right to break up a public assembly or manifestation in case it assumes an illegal character

Law of Georgia on Assemblage and Manifestations

Article 1 (3)

This Law establishes the obligation to notify the authorities in advance if the assembly or manifestation will be held in public thoroughfare.

Article 4 (2)

In organizing or holding an assemblage or manifestation, it is prohibited to call for subversion or forced change of the constitutional order of Georgia, infringement on independence or violation of territorial integrity of the country, which constitute propaganda of war and violence and trigger a national, ethnical, religious or social confrontation.

Article 5

{...}, in order to organize and hold an assemblage or manifestation, trustees of political parties, associations, companies, institutions, organizations or a group of citizens must submit a prior notification to a local governance body according to the place of holding the planned action. A notification shall be signed by the trustee and the organizer, persons responsible for organizing and holding an assemblage or manifestation.

Article 8.

(1) A notification on organizing and holding an assemblage or manifestation shall be submitted to a local governance body at least 5 days prior to a scheduled date of the event. (2) A notification shall include: a) Form, purpose, place, route, beginning and end, date, and possible number of

participants of an assembly or manifestation; b) The Principal's identity; c) Identity, address and phone number of responsible persons as well as a date and time when the notification is submitted.

Article 11

(1) An assemblage or manifestation should be held in place and time indicated in the notification, in accordance with route and purposes specified therein. (2) Participants and persons responsible for organizing and holding an assemblage or manifestation shall comply with requirements under this Law and obligations assumed by the notification. Participants of assemblages and manifestations shall not: a) have arms, explosives, inflammables, tear gas, radioactive, paralyzing and poisonous substances or alcoholic beverages with them; b) deliberately hinder the work of public transport. (4) The authorities may halt the assemblage or manifestation if the latter is being conducted with violations of law. (15.05.98, # 1392)

Article 13

(1) Where there is a mass violation of Articles 4(2) and 11 of this Law, an assemblage or manifestation shall be halted immediately at the request of an authorized representative of a local governance body. (2) Where circumstances referred to in paragraph 1 of this Article are the case, responsible persons shall break up an assemblage or manifestation and take measures to drive the participants away. Participants of the assemblage or manifestation must leave the assemblage or manifestation immediately at the request of responsible persons or an authorized representative.

Article 15

Damage inflicted to the State, an organization or a citizen during an assemblage or manifestation shall be reimbursed in accordance with rules established by law.

The right to property

Constitution

Article 21 (1) The property {...} shall be recognized and guaranteed. The abrogation of the universal right to property, of the right to acquire, alienate and inherit property shall be impermissible. (2) The restriction of the rights referred to in the first paragraph shall be permissible for the purpose pressing social need in the cases determined by law and in accordance with a procedure established law. (3) Deprivation of property for the purpose of the pressing social need shall be permissible in the circumstances as expressly determined by law, under a court decision or

in the case of the urgent necessity determined by the Organic Law and only with appropriate compensation.

State of Emergency November 7-16

Constitution

Article 46 (1) In case of a state emergency or martial law, the President of Georgia shall be authorized to restrict the rights and freedoms enumerated in Articles 18, 20, 21, 22, 24, 25, 30, 33 and 41 of the Constitution either throughout the whole country or a certain part thereof. The President shall be obliged to submit the decision to the Parliament for approval within 48 hours. (2) In case of introduction of a state of emergency or martial law throughout the whole territory of the state, elections of the President of Georgia, the Parliament of Georgia or other representative bodies of Georgia shall be held upon the cancellation of the state. In case of introduction of a state of emergency in a certain part of the state the Parliament of Georgia shall adopt a decision on holding the elections throughout the other territories of the state.

Article 73 (1) The President of Georgia shall: (h) in the case of war or mass disorder, infringement upon the territorial integrity of the country, coup d'etat, armed insurrection, ecological disasters, epidemics or in other cases, when state bodies are unable to normally exercise their Constitutional powers, shall declare a state of emergency throughout the whole territory of the country or a certain part thereof and submit this decision to the Parliament within 48 hours for approval. In the case of a state of emergency issue the decrees having the force of law, which shall remain in force until the end of the state of emergency, shall take emergency measures. The decrees shall be submitted to the Parliament when it is assembled. Emergency authorities shall apply only to the territory where the state of emergency is declared for the reasons mentioned in the present paragraph.

Decision of the President of Georgia on the Declaration of the State of Emergency No 621

The decision of the President on the declaration of the state of emergency was based on: the actual and imminent threat of forceful attempt to overthrow the government, mass disobedience to the legitimate request of the law enforcement representatives (wording of the decision of the president).²

² Decision of the President of Georgia on the Declaration of the State of Emergency on the Whole Territory of Georgia, Decision No 621, November 7, 2007, Tbilisi

Based on the Presidential Decree that specified the Decision, the exercise of the following constitutional rights had been restricted:

- The right to freedom of expression (Article 24)
- The right to free assembly and demonstration (Article 25)
- The right to strike (Article 33)³

In addition Presidential Decree restricted the free receiving and dissemination of both written and verbal information by TV/Radio broadcasters. Nevertheless, this restriction did not apply to the Public Broadcasting.

Assessment of the November events in the light of Georgia's international obligations

Restriction of the freedom of expression

Freedom of speech and expression constitutes one of the essential foundations of democratic society, one of the basic conditions for its progress and for the development of every man.⁴ This right includes the freedom to hold opinions and to receive and impart information and ideas without interference of the state. The *Handyside* Case of the European Court of Human Rights stated that:

"The right to receive and impart information is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the State or any other sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".

Nevertheless, certain restrictions are expressly allowed on the freedom of expression under international law. The situations in which the restrictions may be justifiable include the need to protect important public interests such as – national security, territorial integrity, freedom from crime and disorder, health and morality and the authority and impartiality of the judiciary, also other individual rights such as the right to privacy and reputation. In any case, every “formality”,

³ Decree of the President of Georgia on the Measures to be Implemented in relation to the Declaration of the State of Emergency on the Whole Territory of Georgia, No 1, November 7, 2007, Tbilisi, Article 1 (a)

⁴ *Handyside v the United Kingdom*, Judgment of 1976

“condition”, “restriction” or “penalty” imposed in this sphere must be proportional to the legitimate aim pursued.⁵ In addition, according to the principle of legality, any limitation to the right of freedom of expression can only be carried out in accordance to the procedure prescribed by the domestic law. As the European Court expressed it in the *Sunday Times Case* – the law upon which the government bases a limitation to the right must be adequately accessible: the citizens must be able to have an indication that is adequate in the circumstances of the legal rules in a given case. Secondly, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct. Thus, in order for a particular state action or enactment to be considered to be “in accordance with law” under the convention, it must be both accessible and foreseeable.⁶ The European Court went further in the *Malone Case* by declaring that:

“It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference”.

In case a state is in a position to meet the requirements of the principle of legality the test of “necessity in a democratic society” needs to be passed. In order to determine whether the restriction was “necessary in a democratic society”, two criteria need to be fulfilled: first the state has to prove that the aim of the restriction imposed, is itself legitimate and second, authorities also need to prove that the means of restricting the right to freedom of expression is “proportionate to the legitimate aim pursued”.

The actions of the Government of Georgia discussed above are in contradiction to the requirements of the Constitution of Georgia and the obligations undertaken by it due to the following reasons:

Limitations carried out against two broadcasting stations, Imedi TV and Caucasia, do not meet the requirements of the principle of legality of the limitations. Both TV stations were taken off the air before the declaration of the state of emergency without following formal procedure prescribed by the Georgian legislation. None of the stations received any formal explanation prior to shutting down the broadcasting. The cancellation of the broadcasting licence of Imedi TV was done post factum. The judgment of the national court that suspended Imedi’s license is dated November the 7th. However, according to the logic of the events, which is clearly described in the report of the

⁵ Ibid.

⁶ *Sunday Times v the United Kingdom*, Judgment of 1979

Public Defender of Georgia related to the suspension of the license and initiation of the criminal case against Imedi TV as a legal entity, the judgment of the court and the decisions of the Commission on Regulation of Broadcasting has actually been delivered a few days later. Therefore, the Georgian government is trying to use the post factum national court decision to give a legal justification for shutting down the broadcasting of Imedi TV. Nevertheless, even after the suspension of the state of emergency, there is no formal explanation as for taking Caucasia off the air. Therefore, it is evident that the Georgian government went far beyond the scope set by Georgian legislation and international law by not following the formal procedure concerning limiting or suspending the broadcasting of Imedi TV and Caucasia.

The context of limitations and the methods used by the Government are sufficient to declare that the requirement of proportionality has not been met in the case of shutting down Imedi TV and Caucasia. The actual taking off the air, and the initiation of a criminal case with respect to Imedi TV, can be considered as respectively the least and the most extreme forms of limitation of the right. Prior to the suspension of the broadcasting the Government did not attempt to explain to the administration of both TV stations what exactly constituted as an illegal act in their work and did not give a notice on the content regulation. By shutting down Imedi and Caucasia, the Government of Georgia not only deprived these two broadcasting companies the right to impart information and ideas without interference, but the act also deprived the Georgian public of the possibility to receive information on crucial political debates and events. Therefore, it can be argued that the limitations with respect to Imedi and Caucasia do not meet the requirement of “necessary in a democratic society”.

Restriction on the freedom of assembly and association

The right to freedom of peaceful assembly is considered to be one of the foundations of a democratic society and it is therefore not to be interpreted restrictively. The rights cover not only static meetings, but public processions as well. Moreover, it is considered to be a freedom which can be exercised not only by individual participants of such demonstrations, but also by those organising it. Authorities do not only have the negative obligation not to interfere, but also the positive obligation to take all necessary measures to guarantee the free exercise of the rights. A demonstration may annoy or give offence to the persons opposed to the ideas or claims that it is seeking to promote. The participants of the demonstration must, however, be able to hold the demonstration without fearing they will be subjected to physical violence by their opponents; such

a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community.⁷

Similar to the right to freedom of expression the rights to freedom of assembly and association are subject to certain limitations. However, these limitations need to be prescribed by law and necessary in a democratic society. The grounds for restriction include: national security or public safety, protection of health or morals and protection of the rights and freedoms of others.

Article 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990), stipulates that:

law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. Article 5 goes in more detail stating that: whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life.

Another document that deals with the proportionality of the use of force by government officials is: the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly (1979).

Article 3 of the Code stipulates that:

law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of a crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

Dispersal of the peaceful demonstration by using excessive force, that was not necessary for any of the above-mentioned purposes, is a clear example of a grave breach of the rights to assembly and

⁷ Platform “Arzte fur das Leben” v Austria, Judgment of 1988

association. The demonstration that started on November 2, was held in accordance with the requirements of Georgian legislation. The Tbilisi Municipality received a notification from the organizers of the demonstration prior to the demonstration. Apart from the end date, the notification contains all necessary requirements set by article 8 of the Georgian “Law on Assemblage and Manifestations”. In addition, requests of the demonstrators did not represent a call for subversion or forced change of the constitutional order of Georgia, infringement on independence or violation of territorial integrity of the country, which constitute propaganda of war and violence and trigger a national, ethnic, religious or social confrontation (Article 4.2. of the “Law on Assemblage and Manifestations”).

The use of excessive force that was documented and witnessed by the media, among others includes:

- *Fierce beating of the demonstrators. Individual demonstrators were severely beaten by several (usually four to five) law enforcement officials;*
- *After the dispersal of demonstrations in front of the Parliament building, on Rike and near the office of Imedi TV as well, dispersed demonstrators were followed by special task force representatives after actually leaving the scene of the demonstrations. Demonstrators were captured and beaten in small dark streets and entrances of nearby buildings;*
- *Some law enforcement officials deployed for the dispersal and who were most active, did not wear any uniform or identification mark. The only symbol which made them different from the crowd was black masks;*

One fact that needs to be noted is that approximately 400 demonstrators were subjected to administrative process for taking part in the “illegal demonstration”. The majority of those people were fined 400 GEL.

Stemming from the above, the dispersal of the peaceful demonstration by using excessive force was not necessary in a democratic society. The true reason behind the violent dispersal was to instil fear in the demonstrators and the public at large.

Obligation to respect the right to property and the Imedi Case

According to Article 1 of the Protocol No. 1 of the European Convention on Human Rights and Fundamental freedoms:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws at it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

In order for an interference with property to be permissible, it must not only serve a legitimate aim in the public interest, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realized. A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

When the actual act of seizing a (or deprivation of) property takes place, compensation is implicitly required. For example in the case of *James v. the United Kingdom*, European Court observed that:

As far as Article 1 [of Protocol No. 1] is concerned, the protection of the right to property it affords would be largely illusory and ineffective in the absence of any equivalent compensation. Clearly, compensation terms are material to the assessment whether the contested legislation respects a fair balance between the various interests at stake and, notably, whether it does not impose a disproportionate burden on the applicant...

In any case the amount of compensation should at least be reasonably related to the value of the property.

Almost one month after the forceful entry of the office of Imedi TV station by Georgian Special Forces, the material damage has not yet been calculated. What is known to the Georgian public is that a criminal case has been initiated against the company as a legal person, which was followed by a suspension of the broadcasting license. Whatever the outcome will be, the damage caused by the forceful entry into the TV company, the damage needs to be compensated by the state. In order for compensation to take place, Imedi TV representatives first need to be granted an opportunity to

calculate the material damage and secondly, they need to have the possibility to apply to a national court and claim compensation.

In addition to this, there are many question marks regarding the legality of the actions of the Governments with respect of the suspension of the Badri Patarkatsishvili's property rights and business interests. Under no circumstances can the taking of the property for the political purposes be accepted.

.....

The Human Rights Centre (HRIDC) demands an independent and fair investigation of the above-mentioned facts.

The Human Rights Centre (HRIDC) requires punishing all those responsible of violating the Criminal Code of Georgia.

The Human Rights Centre (HRIDC) demands immediate compensation of the material damage caused by the destruction of the property of Imedi TV.