

## **May 12 events**

(A Large-scale Police Operation in Tbilisi Night Clubs)

Human Rights Education and Monitoring Center (EMC)

Georgian Young Lawyers' Association (GYLA)

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# Executive Summary

## Introduction

On May 12, 2018 a large-scale police operation was carried out in Tbilisi, which considering its form, extent of used police force and consequences, was particularly intensive. Starting from 01 a.m., police force simultaneously raided two nightclubs in Tbilisi – Bassiani and Café Gallery and started to conduct investigative measures. Soon after the raid on the clubs, the Ministry of Internal Affairs (MIA) made a public statement, that search conducted in the clubs was based on a court order. Police operation started when the guests had already gathered to attend events planned in the clubs.

Heavy police force participated in the May 12 police operation, among others masked special force officers armed with firearms, whose appearance on the premises of clubs caused fear, sense of insecurity and confusion. Despite the fact that serious and extensive violations of rights did not take place inside the clubs, sudden appearance of heavily armed police forces inside the premises was indicative of the state's demonstration of repressive force. This view is supported by the context, which existed before May 12 police operation, which had caused acute politicization of the drug overdose cases and contributed to discretization campaign directed to groups supporting drug policy reform, in a way, creating basis for the repressive steps taken by the state.

Immediately after the start of an operation, police made the guests gathered at the scene leave the club premises, they moved to the outside of the clubs, to the adjacent areas. Dissemination of information about the police operation in the media and social networks triggered a spontaneous protest rally in the areas adjacent to the clubs. Participants of the rally protested against the decision of the police, to hold an operation of this form and scale and expressed solidarity towards the nightclubs.

Heavy police force was mobilized outside the club. Shortly, large crowd of citizens joined the spontaneous protest rally near the club Bassiani. Persons gathered at the scene tried to clarify the situation, to self-organize and express their protest. However, police force mobilized at the scene prevented free expression of protest. Police with police cordons tried to detach participants of the protest artificially not to allow their organization. Compared to the inside of the club, outside the clubs police was blatantly provoking and aggressive towards participants of the protest.

On May 12, police detained more than 40 peaceful citizens for administrative offences. Citizens were mainly detained for the offences of hooliganism and/or disobedience to lawful instructions of a police officer. Among the detainees were co-founders of the club Bassiani, activists of White Noise Movement and potential leaders of the protest. Detentions of protest participants on most occasions were selective and arbitrary; On the other hand, police strategy to keep all potential leaders away from the protest became apparent. As a rule, police did not explain basis for detentions, it was difficult to ascertain the whereabouts of the detainees and defense counsels could not timely meet with them.

In parallel to detentions, police made a decision to disperse a peaceful protest rally held near the club Bassiani, when the spontaneous rally was not in any way violent and maintained a peaceful form.

Police started to clear the pedestrian area from protest participants using physical force without notifying them of the decision to do so or explaining legal or factual basis for it. Such police action caused further escalation of the situation and represented a serious violation of the right to peaceful assembly.

May 12 events constituted an exceptionally large-scale police operation in the recent years. The context, nature of the police operation, time, scale of the police force used and its intensity pointed to the decision of demonstrating force and repressive state apparatus.

It needs to be considered, that despite the extent of police operation, it did not detain anyone inside the clubs. Inside the clubs, police urged the guests to voluntarily relinquish drugs (if they had it), which itself ruled out revelation of facts of illegal possession or sale of drugs.

Furthermore, on May 12, the Public Defender of Georgia informed the public, that the police during the 2 hours prior to the raid on the clubs had already detained 8 persons for illegal sale of drugs. All of them had been detained before the police started to raid the clubs. Accordingly, a number of questions were raised, namely what was the basis for raiding the clubs with such a large-scale force and at this specific time, if the police did not raid the clubs for detaining concrete persons. Despite the long parliamentary report of the Minister of Internal Affairs and a number of public statements by Ministry representatives spread in the media, the authorities' answer to this question has not been unambiguous and clear.

Police operation conducted on May 12, detention of tens of persons in the clubs and police aggressive action triggered mass protest. According to available information, the Public Defender of Georgia is studying the issue of legality of actions taken inside and outside the clubs on May 12. Incidents, for obtaining legal remedy, have been reported to the MIA General Inspection and the Chief Prosecutor's Office.

With this report, Human Rights Education and Monitoring Center (EMC) and Georgian Young Lawyers' Association (GYLA) present legal assessment of legality and proportionality of investigative measures carried out, the use of force by the police and detentions on May 12. On the one hand, it is important, that the presented report becomes the basis for objective and fair assessment of rights violations on May 12 and in relation to those events, and for appropriate response to those. On the other hand, it is necessary that the Ministry of Internal Affairs shares substantiated criticism regarding the May 12 police operation and plans police reform process.

## Methodology

The present document offers an assessment of the police operation carried out in the two nightclubs of Tbilisi and the events, which unfolded outside the clubs on May 12. Namely, the report will assess the grounds and reasons for the search conducted in the clubs, as well as legality of dispersal of a protest rally outside the club Bassiani and administrative detentions of protest participants. The assessments in the report will be limited to events of May 12 and the document will not focus on the events, which took place in Tbilisi during the next few days and were related to large-scale police measures on May 12.

As for the instruments used during the work on the report – assessments and conclusions of the research team are based on comprehensive analysis of information received from various sources. The authors of the report used the method of checking and comparing information and the report encompasses those issues, which were identically presented by several sources. Accordingly, the report did not include certain facts, which may have pointed to violations by law-enforcement officials, however, the authors of the report, considering restricted mandate, could not check and verify this information.

The conclusions in the report are based on information obtained from the following sources:

- **Public information** – For preparation of the report related to May 12 police operation, the research team requested public information from the Ministry of Internal Affairs, to reconstruct in fullest detail possible the facts about the police force and police divisions deployed, number of police officers participating in the operation, public officials responsible for the operation. Public information was also requested from the Public Defender's Office, so the research team would have complete information about the detained protest participants and the administrative offence cases against them. In addition, public statements of the Ministry representatives in different formats were analyzed (TV shows, Ministry press conferences and the Minister's report in the Parliament of Georgia);
- **Study of administrative offence case files** – For the purposes of the research, 15 persons detained for administrative offences on May 12 were interviewed. From among the interviewed persons, 5 were employees of the club Bassiani. In the research process, administrative detention

and offence protocols of the 11 interviewed detainees, also first instance court decisions in 4 cases were also studied<sup>1</sup>.

- **Individual statements** - the research team interviewed 38 persons participating in May 12 events individually, among those the detained persons, representatives of the club Bassiani and persons participating in protest rallies. Statements and the corroborating information allowed the authors of the report to reconstruct May 12 events in fullest detail possible;
- **Media Monitoring** – As a number of media outlets broadcast May 12 events live, media reports were significant sources of information. For this purpose, research team fully analyzed relevant media materials;
- **Analysis of legislation and relevant standards** – In the framework of the research, relevant constitutional and international standards, jurisprudence of the Constitutional Court and European Court of Human Rights, as well as the case law of national courts were also comprehensively analyzed. For the research purposes, relevant domestic research documents, which examines actions of the law-enforcement officers during assemblies and demonstrations, were also secondarily analyzed.

Information requested from the Ministry of Internal Affairs regarding the May 12 police operation was essential for the research document. Despite the fact, that the Ministry answered the correspondence of the authors and provided certain information to the research team, the Ministry did not publish information in relation to issues of essential nature and crucial importance. Namely, the Ministry fully closed information regarding the facts, concretely which public official was responsible for the police operation carried out; which MIA divisions and how many employees participated in the May 12 police operation; what is the applicable procedure for the Ministry's decision to use special task force in a police operation; how many persons were detained by the police related to May 12 events.

The fact that administrative proceedings against some of the persons detained on May 12 are not finalized in the common courts of Georgia, yet, has to be seen as an obstacle for the research purposes. In these circumstances, the research team was devoid of the possibility to comprehensively assess particular cases, evidence in the case files and the quality of substantiation of the cases.

Initially, authors of the research document also intended to reflect alleged facts of obstruction to journalistic activities, which was discussed by representatives of several media outlets after the May 12 events. However, as journalists have not properly used avenues of legal redress, authors of the research could not collect necessary information, analyze it and reconstruct the events, which was necessary for preparation of the legal assessment.

Authors of the research document express gratitude towards those persons, who provided statements and significant information to the authors. The authors hope that the Ministry of Internal Affairs and other authorities will pay appropriate attention to the assessments in the report and will take appropriate steps in response to the concerns described below.

## **Core Findings and Recommendations**

May 12 police operation, considering its timing, forms and intensity, was an exceptionally large-scale police operation in the recent years. Simultaneous appearance of heavy police force, including the armed special force, caused feelings of fear and insecurity among persons present at the scene and was perceived as the state demonstration of repressive force.

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<sup>1</sup> At the point of publishing the report, the court proceedings against persons charged with administrative offences is not finalized;

Search measures in the clubs was followed by a spontaneous protest rally, during which the police detained more than 40 protest participants for administrative offences. The police, with the use of force, made other participants leave the areas adjacent to Bassiani and prevented the participants' enjoyment of their right to peaceful assembly.

In the presented report, substantiation of the search decisions conducted in the clubs, proportionality of the police force used for the investigative measure and issues of interference with the right to peaceful assembly, as well as administrative detentions will be assessed.

**In the framework of the research, the following core findings were identified:**

- On May 10, 2018, Tbilisi City Court issued a search warrant for conducting the investigative measure in the nightclubs. Despite the fact that based on the court order the police had the possibility to conduct the investigative measure, which extensively restricted constitutional rights, the court order regarding the investigative measure did not specify which object/item would be searched for and seized based on the permission granted to the police to enter clubs, which is one of the requisites for such court order;
- In the court order regarding the investigative measure, the grounds for conducting search in each nightclub is not supported based on reasonable doubt standard. The reasoning in the court order is abstract and general;
- It remains unclear what was the reason for police raids on the clubs during the night of May 12, when already before police entered the clubs, 8 persons had been arrested for alleged drug sales;
- The purposes of the police operation is even more vague in view of the MIA confirmation, that the police did not enter clubs for detaining concrete persons and that they publicly urged the guests there to "drop" drugs and they would not face any sanctions;
- If the police had the intention to discover drugs on the club premises, then it remains unclear, why the police did not search the clubs when there were no concrete events planned in the club, moreover, considering that the police obtained search warrant from the court on May 10;
- On May 12, search was carried out in the both clubs during the nighttime. The legislation permits conduct of search in the nighttime only in the case of urgent necessity. Despite this, the search protocol does not indicate the state of urgent necessity;
- During the search, representatives of the club Bassiani were not given the possibility to be present throughout the investigative measure. Approximately after an hour when the investigative measure started, law-enforcement officers offered club representatives to attend the investigative measures, which they refused to do;
- The search protocol of the club Bassiani indicates that 10 police officers participated in the investigative measure. However, the protocol does not explain the role of tens of police officers (including the special task force officers), who were also present inside the club. The search protocol also states that the investigative measure in the club premises started on May 12, at 2:40 a.m., despite the fact, that the police entered the club around 1 a.m. The search protocol does not indicate what was happening in the club premises for almost two hours;
- The issue of using special force in the search process is problematic. Involvement of special force in the May 12 police operation may be assessed as a demonstration of force and a disproportionate measure, in view of the fact that there was no information about an armed person, or potential resistance inside the club;
- The legal basis related to activities of special force is secret, which rules out proper examination of this issue and represents a significant obstacle to the accountability of the authorities;

- In contradiction to the statement of the MIA, that personal search of guests were not conducted in the club premises, several persons present in the club Bassiani state in their interviews that the police searched 3 persons at the scene, however, this action is not reflected in any of the legal documents;
- Police was aggressive towards participants of spontaneous protest gathered in the areas adjacent to club Bassiani. Massive police force mobilized outside the club prevented the participants' enjoyment of their right to peaceful assembly.
- Police separated protest participants into two parts artificially and pushed them to different pedestrian areas of the street. Next, police, using physical force, started to clear the pedestrian area from protest participants and made them move to areas adjacent to Tsereteli Street, to the upper streets. With this action, police effectively dispersed the spontaneous protest rally, which was peaceful. Police did not warn protest participants and did not give them reasonable time for leaving the territory peacefully. With these actions, police violated protesters' constitutional right to peaceful assembly;
- Police was provoking and aggressive in the areas adjacent to club Bassiani. Police did not try to have peaceful communication with citizens or to deescalate the situation;
- Law enforcement officials detained more than 40 persons in the areas adjacent to club Bassiani for administrative offences, among others potential leaders and organizers of the rally. Police use of large-scale detentions appeared arbitrary and aimed at neutralizing the protest mood.
- Part of the detainees indicated that the police used disproportionate force. Administrative detention protocols document physical injuries of 5 persons. Particularly severe is the condition of one of the detainees, whose medical documents record fracture of left shoulder;
- None of the persons interviewed for the research purposes were informed about the alleged administrative offence and grounds for detention. Neither were they explained their rights, including the right to counsel;
- Majority of the interviewed persons were delayed in police cars. Only minority of the detainees stated that after the detention they were transferred to temporary detention centers. Based on the statements, other interviewed persons resided near the detention center premises for 5-6 hours;
- Administrative detention protocols were drawn up approximately 2-3 hours after the detentions. The statements collected for the research purposes revealed that only 3 detainees were handed administrative detention protocols;
- Analysis of administrative detention protocols show that the indicated official grounds for detention was breach of public order, noise, disturbance to citizens, aggression, swearing and disobedience to law enforcement representatives;
- In certain cases, police officers who presented allegations against concrete persons for commission of administrative offences in court, did not themselves participate in the arrest and did not personally witness commission of alleged administrative offences;
- Court decisions against 4 persons is superficial and is based on information reflected in administrative detention and administrative offence protocols presented by law enforcement officials;
- The court does not define one of the most important aspects of the offence of minor hooliganism – "breach of public order";

- In cases related to disobedience to lawful police instructions of police officers, the court does not assess whether the police instruction itself was lawful;
- Absence of standard of proof in administrative offences code, gives law enforcement officials the possibility to observe only formal and not essential requirements while presenting evidence.

**Considering the problems identified in the report, the research team addresses the state bodies with the following recommendations, that:**

- The prosecutor's office starts investigation related to alleged facts of unlawful personal searches conducted inside the club Bassiani on May 12;
- The prosecutor's office also starts investigation related to alleged facts of unlawful detentions of protest participants and exceeding of power by police officers on May 12;
- The MIA General Inspection thoroughly studies the episode of dispersal of spontaneous rally adjacent to the club Bassiani on May 12. It has to be ascertained in the course of investigation, who was responsible for the decision regarding dispersal of the rally and what were the concrete instructions given to law-enforcement officials related to managing the protest on May 12;
- The judiciary pays due regard to reviewing legality of the search based on a higher standard, among others, quality of substantiation has to be raised. The court has to be particularly critical in relation to time frames, during which investigative authorities are given the possibility to carry out concrete investigative measures, as well as in relation to the circle of physical and legal persons, whose constitutional rights may be restricted by specific investigative measures;
- The Parliament of Georgia carries out fundamental reform of the administrative offences code and establishes fair trial guarantees for judicial proceedings;
- The Ministry of Internal Affairs publishes legislative acts regulating the activities of special task force;
- The Ministry of Internal Affairs observes requirements of the Law on Assemblies and Manifestations and refrains from arbitrary and unsubstantiated use of administrative detentions, as well as prevention of peaceful enjoyment of the freedom of assembly in this way;
- The Ministry of Internal Affairs provides further training for its employees related to management of peaceful assembly, communication with protest organizers and citizens;
- The Ministry of Internal Affairs and the Prosecutor's office publish results of the ongoing investigation related to fatal drug overdose cases and present additional information to the public regarding outcomes of the mass police operation on May 12;
- For ending political manipulations with the drug policy issues, the Parliament renders a political decision to carry out reforms timely within short terms and supports the draft bill prepared through a broad consensus, which has been initiated in the parliament already for a year.