EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TSAAVA AND OTHERS v. GEORGIA

(Applications nos. 13186/20 and 4 others)

JUDGMENT

Art 3 (procedural) • Ineffective criminal investigation, still ongoing for more than four and half years, into injuries sustained by demonstrators and journalists from rubber bullets fired by the police and from alleged ill-treatment during the dispersal of a demonstration in front of the Parliament building
Art 3 (substantive) • Art 10 • Art 11 • Court refrained from taking a decision in view of scope of ongoing investigation and need for further elucidation of factual elements at domestic level • Importance of principles of subsidiarity and shared responsibility
Art 46 • Execution of judgment • Individual measures indicated by the Court

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 May 2024

THIS CASE WAS REFERRED TO THE GRAND CHAMBER WHICH DELIVERED JUDGMENT IN THE CASE ON 11/12/2025

This judgment may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Tsaava and Others v. Georgia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Georges Ravarani, *President*,
Lado Chanturia,
Carlo Ranzoni,
María Elósegui,
Mattias Guyomar,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

five applications against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twenty-six Georgian nationals ("the applicants", whose personal information and other details are set out in the appended table);

the decision to give notice to the Georgian Government ("the Government") of the respective complaints under Articles 3, 10, 11 and 13 of the Convention and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 20 February and19 March 2024,

Delivers the following judgment, which was adopted on the last mentioned date:

INTRODUCTION

1. The present case concerns the allegedly excessive use of force by the police during the dispersal of a demonstration on 20-21 June 2019, and the allegation that no effective criminal investigation was carried out in this regard. All applicants relied, explicitly or in substance, on Article 3 and Article 13 of the Convention. Applicants in applications nos. 20175/21 and 39382/21 additionally complained of a violation of Article 11 of the Convention, while applicants in applications nos. 13186/20, 16757/20, 20129/21 and 39382/21 raised complaints under Article 10 of the Convention.

THE FACTS

2. The details of the applicants and their representatives are set out in the appended table.

3. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. DEMONSTRATION OF 20-21 JUNE 2019

A. Background

5. On 20 June 2019 a session of the Interparliamentary Assembly on Orthodoxy (IAO – an interparliamentary institution based in Athens, set up to foster relations between Christian Orthodox lawmakers) was held in the Parliament building. S.G. – a member of the Russian State Duma and, at the time of events, President of the General Assembly of the IAO – sat in the chair reserved for the Speaker of the Georgian Parliament and delivered a speech in the Russian language. This turn of events sparked widespread civic and political protest and was criticised as unacceptable (see *Melia v. Georgia*, no. 13668/21, §§ 6-8, 7 September 2023).

B. Initial phase of the demonstration

6. A number of civic activists started to gather at the entrance of the Parliament building immediately following the above developments. Some were allowed to enter the building with visitors' passes issued by opposition members of parliament. A demonstration to protest about the events of the day (see paragraph 5 above) was apparently announced in the afternoon. Individuals started gathering in front of the Parliament building soon afterwards. By 7 p.m. the demonstration had started and its participants – politicians, civic activists and ordinary citizens – occupied the entire space in front of the Parliament building and the avenue alongside it. According to media accounts, the demonstration was initially peaceful, with approximately 12,000 people gathered at the site.

7. Police formed a cordon above the stairs leading to the Parliament building, blocking access to the main entrance of the building. A number of ordinary policemen, riot police officers and other officers of the Special Assignments Department of the Ministry of Internal Affairs (MIA) were additionally stationed inside the yard of the Parliament building, behind the gate of the main entrance.

8. At about 8.53 p.m. a politician addressed the protesters and presented the main demand directed at the ruling party: the resignations of the Speaker of the Parliament, the Minister of the Interior and the Head of the State Security Service. Another demand voiced during the demonstration was for snap parliamentary elections and a transition to a system of proportional representation. The ruling party was given until the end of the day to comply with those demands. At 9 p.m. another politician addressed the protesters and stated that "civil disobedience" would be inevitable in the event of the authorities' failure to heed the protesters' demands. In a video-recording of a discussion among the opposition politicians, the phrase "A revolution is about to begin" is heard. It is unclear who uttered it.

9. At 9.09 p.m. one of the leaders of the opposition stated that if the demands of the demonstrators were not met within an hour, they would enter the Parliament building peacefully and stay there until the relevant officials resigned. Apparently, at 9.17 p.m. the same politician addressed the protesters again. He asked why it was that S.G. had had the right to sit in the seat of the Parliament's Speaker yet Georgian people could not even stand in the yard of that building. He stated that in the event the authorities failed to respond within ten minutes, "[they would] enter the yard of the Parliament building peacefully and very constructively, with raised hands". The speech was followed by cheers from the protesters located in the immediate vicinity.

C. First episode involving tensions

10. The events were filmed by different journalists, including those who provided uninterrupted live coverage of the demonstration and its subsequent dispersal. The facts relating to tensions at the demonstration are disputed by the parties. The summary below is primarily based on the media coverage of the events.

11. By 9.49 p.m. several hundred individuals who had gathered immediately below the stairs leading to the main entrance of the Parliament building started pushing their way towards the gate. They attempted to break the police cordon located just above the stairs. The footage of the events shows that several participants cried out that there was a risk of people in the crowd being crushed, and police officers shielded some journalists standing there, warning them against the risk of crushing.

12. Several protesters threw plastic bottles at the officers. Others started dismantling metal constructions which had been placed at the building's entrances to keep the protesters out. Multiple demonstrators managed to seize the police officers' protective shields and rubber batons and passed them back along the line of protestors. Several police officers were split off from the cordon by the demonstrators and led away, apparently in a calm manner. The video material relating to the incident shows the police telling the demonstrators to retreat and not push forward.

13. The police cordon was briefly broken, but it was reinforced by the riot police officers stationed inside the Parliament courtyard. They used batons and shields to contain the demonstrators.

14. Around 10 p.m. the Minister of Internal Affairs gave a brief interview to journalists as he was entering the Parliament building. According to him, the events unfolding there constituted an attempted storming of State institutions and the demonstrators had to obey the demands of the police or face consequences. At 10.07 p.m. the MIA circulated the following official statement via media outlets and its website: "The [MIA] calls on the demonstrators gathered in front of the Parliament building to stop [their] unlawful and violent actions, not yield to provocation, [and] comply with the

lawful request[s] of the police and leave the premises. Otherwise, the police will take necessary measures provided for by the law.”

15. Eventually, at approximately 10.30 p.m. the tension was somewhat defused and the riot police managed to push the demonstrators back to the bottom of the stairs.

16. During this incident involving tensions, the majority of the journalists gathered near the building were located behind the police cordon, and they appear to have left the area with the help of the police officers.

17. As is apparent from the material available in the case file, including reports by non-governmental organisations relating to the event in question, a large number of the demonstrators gathered in the area in front of the Parliament building, away from the stairs, may have been unaware of the developments at the Parliament’s main entrance.

D. Interim period

18. At 10.30 p.m. the mayor of Tbilisi issued a televised warning against escalating the circumstances on the ground. Around the same time, the Minister of Internal Affairs gave a brief interview to journalists located inside the Parliament building. He stated that even where there were justified grounds for protest, an assault on State institutions, including policemen and Parliament, was an unacceptable act and would entail strict consequences under the law. He called on citizens to respect the orders of the police officers who had been trying to uphold public order. Other leaders of the ruling party, including the Prime Minister, also condemned the demonstrators’ actions (via the media) and called on them to respect the law and avoid lawful sanctions.

19. Between approximately 10.30 and 11.22 p.m. the situation on the ground was somewhat tense but calmer, with some politicians making statements to condemn the earlier events of the day (see paragraph 5 above), criticising the ruling party. On several occasions during this period some individual participants in the demonstration attempted to push through the police cordon, asking to be let inside the Parliament building and/or courtyard. They were pushed back by officers who used shields and batons.

E. Second episode involving tensions and the dispersal of the demonstration

20. The situation at the demonstration escalated again from 11.22 p.m. onwards.

21. At 11.22 p.m. multiple individuals in the front rows of the demonstration restarted joint attempts at forcibly breaking through the police cordon.

22. Various accounts estimated that between 300 and 1000 individuals had attempted to forcibly break through the police cordon and had behaved in an aggressive manner.

23. The scuffle between the demonstrators gathered in the front rows and the officers forming the cordon on the stairs of the Parliament building continued until 11.55 p.m. and included incidents where police gear was taken away, various items (water bottles, but apparently stones as well) were thrown at the officers, and individual officers were split off from the cordon and led away. Some of these officers appear to have been physically assaulted. According to some journalists' reports, politicians gathered on the ground told the demonstrators not to use force against the police. Some protesters managed to overcome the police cordon and the metal constructions located in front of the Parliament building. People gathered in the middle and back rows of the demonstration appear to have been standing in a relatively calm manner.

24. At 11.55 p.m. the sounds of shooting were heard during the live broadcast of the events. Smoke started to rise on Rustaveli Avenue, with the journalists reporting that it had been tear gas or pepper spray. A large number of the demonstrators and journalists moved away towards the nearby Freedom Square, but individuals located in front of the police cordon stayed there. The shooting was not preceded by a warning.

25. At 12 midnight some demonstrators started returning to the area in front of the Parliament building. Tensions and scuffles around the police cordon continued. Water bottles and other items were thrown at the officers. Minutes later, additional tear gas projectiles were fired. Individuals in the middle and back rows started leaving the area. Paramedics helped those who felt unwell. While demonstrators located in front of the police cordon stayed there and continued with their attempts to break through it, the area in front of the Parliament building was largely cleared, with a few demonstrators attempting to return.

26. At 12.11 a.m. a journalist reporting on the events commented that rubber bullets were being shot. A moment later another journalist showed small rubber bullets he had apparently picked up from the ground. Around the same time several officers holding guns (apparently loaded with rubber bullets and/or tear gas projectiles) were seen being stationed on the top landing of the stairs leading to Parliament, behind the police cordon, overlooking the cordon and the demonstrators.

27. By 12.21 a.m. many demonstrators who had left for Freedom Square had returned to the area in front of the Parliament. Individuals in the front rows kept demanding to be let into the Parliament building. People gathered in the back rows appeared to stand calmly. By then, various demonstrators and police officers appear to have been injured. Soon thereafter more tear gas was fired and many demonstrators left again for Freedom Square. During this period tear gas and rubber bullets were shot simultaneously or in close

sequence. The live broadcast of the events showed injured individuals being helped by paramedics. The demonstrators kept returning to the protest site in front of the Parliament building. The sounds of shooting were heard, and there were signs of tear gas being fired every time this happened. All this time a small group of individuals remained in front of the police cordon and kept attempting to break through it, using the shields and batons previously seized from the police.

28. By 12.43 a.m. the area in front of the police cordon had been cleared of all demonstrators, and the officers moved several steps down the stairs.

29. At 12.45 a.m. the officers located above the stairs, behind the police cordon, fired certain projectiles towards the demonstrators who had been located further away from the area in question.

30. The demonstrators' attempts to return to the protest area continued. At 1.02 a.m. the majority returned, with some minutes of calm until another attempt to break through the police cordon was made and the police used tear gas. At 1.27 a.m., while the police attempted to disperse the demonstrators again, at least one officer was shown by journalists as he was loading his rifle and aiming at the crowd. His face was clearly identifiable. Some demonstrators were seen with blood stains. Around that same time the efforts to break through the police cordon became particularly intense in the front rows of the demonstration, and the sounds of shooting also intensified.

31. By 1.42 a.m. loud sirens could be heard and riot police, with a water cannon behind them, started moving from the Freedom Square area towards Rustaveli Avenue. They started clearing the area with the use of tear gas and the water cannon. At 1.47 a.m., while the water cannon and tear gas were being used, the reporters commented that rubber bullets were also being fired.

32. Once the protesters had receded, water cannons were used to lead them away from the Parliament building. Several protesters continued throwing different items at the riot police. Others attempted to return to the Rustaveli Avenue area with protective gear seized from the police officers.

33. A warning to disperse was sounded at 2.59 a.m., while tear gas and the water cannon were being used. The message transmitted via sound amplifying equipment was "please disperse, otherwise measures provided for by the law will be used in order to restore public order and peace. Please take children, women and the elderly away from the areas of unrest." The message was repeated several times, as the riot police proceeded to clear Rustaveli Avenue and the remaining demonstrators kept retreating while throwing various items at the police. Journalists kept filming and reporting on the events as they unfolded, mostly from the pavements of Rustaveli Avenue.

34. While retreating, some individuals engaged in acts of vandalism. The dispersal and the clashes continued until approximately 6.45 a.m. on 21 June 2019. In total, 342 individuals were arrested.

35. Over 200 individuals were injured during the events of 20-21 June 2019, including approximately eighty police officers and forty journalists. In

early March 2020 approximately fifteen individuals admitted to having committed violent acts against the police. They were convicted by means of plea-bargain agreements. Other individuals also appear to have been convicted in respect of the violent behaviour against the police.

II. APPLICANTS' INDIVIDUAL CIRCUMSTANCES

36. The applicants in applications nos. 13186/20, 16757/20 and 20129/21 were reporting on the demonstration in their capacity as journalists, camera operators and/or photographers.

37. At the material time, the eleventh applicant in application no. 20129/21 was wearing a badge showing that he was a journalist accredited by Parliament.

38. The applicants in applications nos. 20175/21 (except for the eighth applicant) and 39382/21 were participants in the demonstration. Medical and non-medical expenses (such as transportation and accommodation costs) related to the treatment (including outside Georgia) of injuries sustained during the demonstration were covered by the State.

A. Application no. 13186/20

1. Video material depicting the applicants' circumstances

39. On 10 and 11 March 2021 the investigation unit of the General Prosecutor's Office ("the GPO") assessed video material which it had obtained on different dates in July 2019. The resulting report described the applicants' behaviour and the moment when they had received their injuries in the following terms:

> "It has been established, on the basis of the analysis of the video file, that Merab Tsaava [the first applicant] was standing in front of the administrative building of the Georgian Parliament, on the pavement ... [He was] standing calmly and [was] not dangerous to the individuals located there. [He had] his hands directed towards the Parliament [building] and [was] presumably making a photo/video recording, at which moment ... his right hand [was] presumably hit with the so-called 'rubber bullet', following which he [went up] to the individuals located next to the fountain and within seconds it appeared that he [was] looking for something, [and then] he disappear[ed] from view. ...
>
> It has been established, on the basis of the analysis of the video file, that Beslan Kmuzov [the second applicant] was moving from the pavement towards the stairs of the administrative building of the Georgian Parliament ... [He was] holding [what was] presumably a tablet in his right hand, [w]ith his left hand held out, presumably in the direction of the law-enforcement officers stationed at the entrance of the ... Parliament building, addressing them[.] Beslan Kmuzov [was] moving calmly and [was not] dangerous to the individuals located [in that area]. [He was] standing facing the ... Parliament building when ... he [was] presumably hit in the head with the so-called 'rubber bullet', following which he join[ed] the mass of people [and] disappear[ed] from view. ..."

40. The reports did not specify the exact point in time during the events when the applicants were hit by rubber bullets.

2. Medical documents regarding the injuries received by the applicants

41. According to medical material obtained by the authorities in June and July 2019, the first applicant received an open wound to a finger and to his chest. The medical note also mentioned the "toxic effect of an unspecified substance". On 10 March 2021 the National Forensic Bureau (NFB) classified the wound on the finger as a minor bodily injury entailing a short-term deterioration in his health. The other injury was classified as a minor bodily injury entailing no deterioration in his health.

42. According to the medical material obtained by the authorities in June and July 2019, the second applicant sustained an open wound to the upper right side of the head, necessitating stitches. On 11 March 2021 the NFB found that this had constituted a minor bodily injury entailing a short-term deterioration in his health.

B. Application no. 16757/20

1. Video material depicting the applicant's circumstances

43. On 9 March 2021 the GPO assessed video material which it had obtained in June and July 2019. The applicant's behaviour and the moment when he had received an injury were described as follows:

> "It has been established, on the basis of the analysis of the video file, that Zaza Svanadze [was standing] in front of the administrative building of the Georgian Parliament ..., he [was] moving calmly and [did] not pose any danger, as is apparent from the video, he raised his hands in the air (and on the basis of his gesticulation, [it appears that] he attempted to call on the law-enforcement officials and the demonstrators to remain calm), at which moment he was hit in the area of the left thigh, presumably with the so-called 'rubber bullet'. He put his hand on his left leg and disappeared from view."

2. Medical documents regarding the injuries received by the applicant

44. According to the medical material obtained by the authorities in June and July 2019, the applicant sustained four open wounds to the inner left thigh and two open wounds to the inner right thigh. On 23 July 2020 the NFB found that this had constituted a minor bodily injury entailing no deterioration in his health.

C. Application no. 20129/21

1. Video and photo material depicting the applicants' circumstances

45. The first applicant: according to the GPO's report of 15 December 2022 concerning the examination of the video material available in respect of the first applicant, she was injured while standing on the right-hand side of the stairs leading to the Parliament's entrance. It was noted that at that time some demonstrators had been clashing with the police. According to the report in question, the applicant did not pose any threat to the law-enforcement officers or other individuals when she was injured.

46. The second applicant: the video material available in the domestic criminal case file showed her filming the events. The related report by the GPO of 2 September 2021 described a moment when the applicant had moved her left leg in an unusual manner and grabbed it suddenly. During the official examination of that video-recording, the applicant explained that her movements had been caused by a rubber bullet which had ricocheted hitting her shin.

47. The third applicant: while the applicant appeared in some videos from the demonstration, they do not appear to have depicted the moment she was injured.

48. The fourth and fifth applicants: the two applicants were reporting on the events of the demonstration together. The video material available in relation to them showed that the fourth applicant had filmed the moment when a rubber bullet had hit the fifth applicant and the latter had picked it up and shown it to the camera. The fifth applicant was then heard saying that the bullet had also hit the fourth applicant. The fourth applicant took photographs of herself with round bruises on her body.

49. The sixth applicant: An examination report produced by a prosecutor on 25 June 2019 in respect of some media coverage of the events noted that according to the material in question, the applicant had been injured by rubber bullets. The applicant also presented the authorities with photos of his back showing open wounds. He also submitted video material filmed by him from the area where other journalists had also been located, showing the tensions at the stairs of the Parliament building and what appears to be the shooting of rubber bullets. The video ends with the applicant screaming, apparently owing to pain. The material assessed by the GPO in 2019 and later on 28 February 2023 showed that the applicant had been standing near the stairs leading to the entrance of the Parliament building, taking photos and making video-recordings of the events, while wearing a press badge. He did not pose any threat to the law-enforcement officers or other demonstrators when he was injured, "presumably with a rubber bullet". He was located within several metres of the police cordon.

50. The seventh applicant: the video material available in respect of the seventh applicant showed him filming the events, including the shooting of

rubber bullets during the demonstration. At the end he was heard saying "something hit me."

51. The eighth applicant: a photo featuring the eighth applicant showed him with a round haematoma on the stomach. He also submitted video material showing one masked officer standing at the entrance of the Parliament building, while a scuffle was going on just below the entrance, aiming a rifle in the applicant's direction (it does not appear from the case file material that the officer shot at the applicant). The applicant was standing in an area where people were either standing calmly or walking away from the Parliament building.

52. The ninth applicant: in a video file uploaded by the ninth applicant online, he was heard saying "presumably they fired rubber bullets, because two have hit me personally". After the sound of shooting, he was also heard to say:

> "We are journalists, what are you doing? ... Despite the fact that I am showing you the T-shirt I am wearing [with the word Press printed on it], ... I was hit in the chest, just several minutes ago, [and] it can be said that I was shot on purpose. This was not a random shooting, because I will now show you that nobody was standing there [the ninth applicant turned the camera around to show that no people were standing at the memorial known as the 9 April Memorial], and I was standing there with a journalist from Netgazeti when they shot in my direction."

53. A report by the GPO dated 17 March 2021 regarding the video material available in respect of the tenth applicant noted the following:

> "It has been established, on the basis of the analysis of the video file, that ... presumably Ekaterine Abashidze [the tenth applicant] was standing at the stairs in front of the administrative building of the Georgian Parliament, [and] presumably [she] did not pose a danger to the individuals gathered there. She was presumably ... making a video-recording and/or taking photographs when her left hand was hit, presumably by the so-called 'rubber bullet."

Another recording was said to contain a statement by the tenth applicant, recorded after she had been injured:

> "I have also been hit by a bullet, I can show you ..., it is a stray bullet, but still."

54. The eleventh applicant: a video taken by the applicant and submitted to the GPO in 2019 shows that he was livestreaming the events via his mobile phone from the inner yard of the Parliament building, where riot police had been positioned. The sounds of shooting, possibly from guns containing rubber bullets and/or tear gas, could be heard coming from outside the area. The applicant was heard coughing. The video contains images of policemen moving around in the yard and the applicant's running commentary stating that journalists had been stationed outside the entrance when tear gas had been used by the police, and that he had been helped by a policeman and led into that yard. At that moment he was addressed by a male who cannot be seen on the video, who demanded to know his identity and asked what he was doing there. The applicant responded that he was a journalist, instructing the

said individual to look at his badge, at which moment it appears that a scuffle broke out, with the applicant yelling “What are you doing? I was live ...”, with the phone being lowered and movements suggesting that he was being pushed out of the inner yard. “Why are you breaking the equipment?” the applicant was heard shouting, and the same male voice was heard saying “What am I breaking? I will break it over you (დაგალეწავ)”. He was then heard shouting “Kick him out” and “Take him out” and telling the applicant to leave. The applicant was heard repeating that he was a journalist and that it had been a police officer who had let him inside. The scuffle lasted slightly over a minute.

2. Medical documents regarding the applicants

55. No medical documents were made available in respect of the ninth applicant. He refused to undergo a forensic examination by the NFB.

56. As regards the remaining applicants, the content of the available medical documents relating to them can be summarised as follows.

57. The first applicant: a medical certificate dated 21 June confirms that she was taken to hospital by paramedics. It describes the injuries she sustained as “a wound to the [top] part of the left shoulder” and “an open fracture of the left shoulder bone”. A discharge certificate indicates that the injuries necessitated a surgical intervention, and the first applicant was discharged from hospital two days later. An NFB report dated 27 January 2023 noted that the injuries in question were to be classified as grave and life-threatening. According to the NFB report, it could not be excluded that they might have been inflicted by some sort of projectile, but determining the type of weapon used to inflict the injury went beyond the NFB’s remit. On the basis of the documents presented for examination, the expert was unable to determine from what distance the shot in question had been fired.

58. The second applicant: according to the medical material from June 2019, and subsequently an NFB report dated 4 August 2021, the applicant received a bruise on her left shin inflicted by some blunt object, and it could have been received on the date indicated by the GPO (20-21 June 2019).

59. The third applicant: according to the medical material from June 2019, and subsequently an NFB report of 26 October 2021, the third applicant “suffered from the toxic effect of an unspecified substance”. It was also noted that she had had bruises on her right shin which must have been inflicted by some blunt object. The injuries were classified as minor, entailing no deterioration in her health.

60. The fourth applicant: according to a medical certificate issued on 21 June 2019, the fourth applicant suffered from the toxic effect of an unidentified substance and sustained bruises on her lower back and thigh. The NFB report obtained at some point in 2022 confirmed those findings.

61. The fifth applicant: on 6 July 2019 the NFB expert examined the applicant and did not find any signs of injuries. No other medical documents are available in relation to him.

62. The sixth applicant: the medical certificate dated 21 June 2019 diagnosed the applicant with eleven open wounds on his back and “one open wound on the left shoulder, inflicted by a rubber bullet”. The NFB report of 21 December 2022 concluded that each injury, taken in isolation, belonged to the category of minor injuries entailing no deterioration in his health. On the basis of the documents presented for examination, the expert was unable to determine from what distance the shot in question had been fired.

63. The seventh applicant: a medical note produced by paramedics on 21 June 2019 describes open wounds received by the applicant on his cheek and temple. An NFB report of 26 July 2021 found that these injuries could have been inflicted by some blunt object, potentially on the date indicated by the applicant, and that they were to be classified as minor injuries.

64. The eighth applicant: an NFB report of 19 August 2021 stated that on the basis of photographs taken by the applicant on 22 June 2019, he did not have a “mechanical injury”, but he had a pinkish area on his stomach.

65. The tenth applicant: medical documents of 21 June 2019 and an NFB report of 26 October 2021 described the applicant’s injury as “a superficial wound with burnt borders to the middle section of the upper left shoulder, measuring 1 centimetre in diameter, and a superficial wound measuring 1 centimetre in diameter to the middle (upper) section of the ... front part of the shoulder”. The NFB classified the injuries as minor, entailing “some or no” deterioration in her health. It was noted that it had been impossible to determine the possible cause of the injuries and when they had been sustained, because their description in the medical certificates was incomplete.

66. The eleventh applicant: on 21 June 2019 the applicant applied to the NFB to have his injuries recorded. It was established that he had sustained bruises on his right and left forearms, right shoulder, and between the shoulder blades. On 4 August 2021 the NFB found that the injuries recorded in respect of the eleventh applicant could have been inflicted by some blunt object, potentially on the date indicated by him, and that they were to be classified as minor injuries entailing no deterioration in his health.

D. Application no. 20175/21

67. All but the eighth applicant were demonstrators. The eighth applicant went to the site of the events to search for his brother-in-law, and he was injured soon thereafter.

68. All the applicants sustained injuries. The third, fifth and seventh applicants alleged that they had been physically ill-treated. The remaining applicants alleged that their injuries had been inflicted by rubber bullets.

69. The third, fifth and seventh applicants were arrested and charged with administrative offences of disorderly conduct and disobedience to lawful orders of the police. The third and seventh applicants were acquitted of the charges for lack of evidence. The fifth applicant was convicted as charged. It was established that he had been arrested at 5 a.m. on 21 June 2019 for swearing and disobeying a police order to leave the area. He was sentenced to three days' administrative detention.

1. Video and other material depicting the applicants' circumstances

70. The first applicant: an examination report produced by a prosecutor on 24 June 2019 in respect of some media coverage of the events noted that the first applicant appeared to have been injured by a rubber bullet. A report on an examination of the video material carried out with the applicant's participation noted the location where the applicant had been injured and the fact that at that moment he had posed no threat to anyone.

71. The second applicant: a photo of the applicant's injuries was made available at domestic level.

72. The third applicant: an examination report produced by a prosecutor on 14 November 2019 in respect of a video-recording noted that the applicant's wife had confirmed that the recording in question depicted the moment of the third applicant's arrest and ill-treatment. The report did not give any details of the ill-treatment described by the third applicant's wife.

73. The fourth applicant: one video-recording was identified at domestic level in 2019. It apparently showed the applicant after he had been injured.

74. The fifth applicant: a report produced by a prosecutor on 18 November 2022 noted that video and photo material depicting the applicant's arrest existed. It apparently showed the applicant lying handcuffed on the ground face down, and later being escorted to a police car.

75. The sixth applicant: a report produced by a prosecutor on 24 June 2019 in respect of some media coverage of the events noted that the sixth applicant had lost an eye during the events of 20-21 June 2019. A report produced on 6 November 2019 noted that the sixth applicant had been led away from near the left side of the stairs leading to the Parliament building, with a bleeding injury to her left eye which she had been covering with her hand.

76. The seventh applicant: an examination report produced by a prosecutor on 28 June 2019 in respect of a video-recording of the applicant's arrest noted that the applicant had explained that he had been ill-treated, apparently when the camera had been directed elsewhere.

77. The eighth applicant: video material featuring the eighth applicant appears to have been made available at domestic level. It is unclear what that material showed.

78. The ninth applicant: an examination report produced by a prosecutor on 24 June 2019 in respect of some media coverage of the events noted that

the ninth applicant had lost an eye during those events, without elaborating on the matter.

79. The tenth applicant: an official report produced on 28 December 2021 in respect of video and photo material noted that the applicant had actually been injured at 12.16 a.m., rather than at 1 a.m. as he had indicated. At one point, prior to being injured, he could be observed standing in front of the police cordon holding a shield which had apparently been seized from a police officer. It was noted that in one of the incidents caught on camera, the tenth applicant had been "actively resisting, with his hand movements" the police officers located on the stairs leading to the Parliament building. He had then turned around and gone down the stairs, "presumably owing to the effect of tear gas". In another video it appeared that the applicant had kicked a police officer's shield with his leg and waved his own shield in the direction of the officer. Photo material obtained from a witness showed that the applicant had been kneeling down either when he had apparently been injured or immediately thereafter.

80. The eleventh applicant: an official report produced on 25 June 2019 in respect of video material, with the eleventh applicant's participation, noted that the applicant had indicated to an investigator the segments in the video material in which he could be identified, and that they had confirmed the circumstances described in his witness statements produced at domestic level. An examination report of 17 November 2022 noted that the eleventh applicant had been standing in front of law-enforcement officers, near individuals who had been violent, but he had not posed any danger to the officers or other individuals. He had been hit in the back by a rubber bullet when he had leaned down to help an injured individual to his feet. He had been standing on the stairs leading to the Parliament's entrance. There had been approximately three metres between him and the first row of the police cordon. In another incident, the eleventh applicant could be seen suddenly putting his hand to the area of his right eye, and then being helped by two demonstrators and led away.

2. *Medical documents regarding the applicants*

81. The first applicant: a medical certificate of 27 June 2019 indicated that the applicant had been taken to hospital by paramedics at 4.42 a.m. on 21 July 2019, with an open wound in the area of his left eye, concussion and other traumatic injuries of the facial bones. The applicant had explained that he had been injured by a rubber bullet. The document indicated that the first applicant had undergone two operations and received inpatient care, and he had been discharged on the date when the certificate had been issued. It also noted that the injuries in question had meant that the applicant had been unable to work for a month. Numerous subsequent medical documents issued on various dates in 2019 and 2020 indicated that the applicant had undergone multiple surgical interventions and other treatment in respect of injuries

sustained on 21 June 2019, and that he had virtually lost his sight in the injured eye. An NFB report of 29 April 2021 classified the applicant's injuries as serious and life-threatening, on the basis of an assessment of the medical documents.

82. The second applicant: a medical certificate of 22 June 2019 indicated that the second applicant had been taken to hospital at 12.45 a.m. on 21 June 2019. He had been diagnosed with a broken jaw. The applicant had explained that he had been injured by a rubber bullet. The document indicated that the second applicant had undergone an operation and received inpatient care, and that he had been discharged on the date when the certificate had been issued.

83. The third applicant: a medical certificate of 21 June 2019 indicated that the third applicant had sustained superficial trauma to the chest wall. The applicant had explained that he had been injured as a result of physical ill-treatment by a police officer. He had been discharged on the same day.

84. The fourth applicant: a medical certificate of 21 June 2019 indicated that the fourth applicant had sustained an open wound in the area of his stomach, necessitating a surgical intervention. He had been discharged on the same day. An NFB report of 21 September 2021 noted that the injury could be categorised as a minor bodily injury entailing a short-term deterioration in his health.

85. The fifth applicant: a medical certificate of 23 June 2019 indicated that the fifth applicant had been admitted to hospital on that date. He had had pain in the right eye, redness and swelling. He had explained that the injury had been sustained at a demonstration ("presumably [inflicted] by a truncheon"). On 24 June 2019 the applicant returned to hospital, complaining of pain in the face and head area. Medical imaging revealed traumatic injury to the facial bones. A surgical intervention was recommended, but the applicant refused this.

86. The sixth applicant: medical certificates issued upon the sixth applicant's admission to hospital inpatient care at 1.53 a.m. on 21 June 2019, and in relation to her subsequent care, indicated that she had sustained injuries to her left eye and around the eye, resulting in open wounds, the rupture of the eyeball and fragmented fractures of the eye socket and nose. The applicant had explained that she had been injured by a rubber bullet at the demonstration of 20-21 June 2019. The sixth applicant underwent operations. Her left eyeball was eventually removed and an artificial one inserted. An NFB report of 8 November 2019 classified the applicant's injuries as grave, entailing the permanent loss of more than one-third of her ability to work.

87. The seventh applicant: a medical certificate of 21 June 2019 indicated that the seventh applicant had been diagnosed with closed trauma to the chest, superficial trauma to the scalp, and contusion on an eyelid and in the eye area. He had explained that the injury had been sustained as a result of being beaten at a demonstration. A medical certificate of 12 August 2019 indicated that the applicant had a linear fracture of the left eighth and ninth ribs.

88. The eighth applicant: a medical certificate of 21 June 2019 indicated that the eighth applicant had been diagnosed with an open wound to the cheek necessitating stitches. He had explained that he had received the wound after a foreign object had been shot at him at the demonstration.

89. The ninth applicant: medical certificates issued upon the ninth applicant's admission to hospital inpatient care at 1.12 a.m. on 21 June 2019, and in relation to his subsequent care, indicated that he had sustained injuries to his left eye and around the eye resulting in open wounds, rupture of the eyeball and fractures of the facial bones. He had explained that he had been injured by a foreign object at the demonstration of 20-21 June 2019. The ninth applicant underwent operations. His left eyeball was eventually removed and an artificial one inserted. An NFB report of 19 November 2019 concluded that the injuries had been grave, resulting in the permanent loss of 35% of the applicant's working capacity.

90. The tenth applicant: a medical certificate of 28 June 2019 indicated that the applicant had been admitted to hospital at 1.11 a.m. on 21 June 2019. He had been diagnosed with an open wound of the posterior chest wall. Three black round objects identified as "rubber bullets or rubber bullet fragments" had been retrieved from the wound. An NFB report of 26 October 2021 established that the applicant's injury should be categorised as a minor bodily injury entailing a short-term deterioration in his health, and that it might have been caused by impact from some type of projectile.

91. The eleventh applicant: a medical certificate of 21 June 2019 indicated that the eleventh applicant had been admitted to hospital at 4 a.m. on that date. He had been diagnosed with trauma to his right eyeball, superficial trauma to the face and, later on, a detached retina. Several surgical interventions and other procedures were carried out subsequently. The eleventh applicant's eyesight in the injured eye remained diminished. An NFB report of 9 June 2022 concluded that his injuries had been caused by trauma and could be classified as less severe but resulting in the permanent loss of 15-25% of his capacity to work.

E. Application no. 39382/21

1. Video and photo material depicting the applicant's circumstances

92. An examination report produced by a prosecutor on 24 June 2019 in respect of some media coverage of the events noted that according to the material in question, the applicant had sustained an arm injury caused by a rubber bullet. The video material submitted by the applicant at domestic level and before the Court revealed that he had been shot while filming the events on his mobile phone, in the right corner near the stairs leading to the Parliament building. At that moment some demonstrators located in the central area in front of the police cordon had been throwing items at the officers stationed there, while several officers had been standing above the

stairs, behind the police cordon, and shooting tear gas projectiles and/or rubber bullets.

2. *Medical documents regarding the applicant*

93. Medical documents dated 21 June and 1 July 2019 indicated that the applicant had been treated at 1.56 a.m. on 21 June 2019. He had had an open wound to the left lower shoulder, and a rubber bullet had been retrieved from there. An NFB report of 25 October 2021 noted that the injury sustained by the applicant had constituted a minor bodily injury entailing a short-term deterioration in his health.

III. CRIMINAL INVESTIGATION

A. Opening of the criminal investigation and granting of victim status

94. On 22 June 2019 the GPO opened an *ex officio* criminal investigation into the events of 20-21 June 2019. The decision to open the investigation referred to Article 333 of the Criminal Code (see paragraph 133 below) in the context of "the alleged exceeding, by means of violence or weapons, of the official authority of individual officers of the Ministry of Internal Affairs, during the dispersal of the participants in the assembly and demonstration held on Rustaveli Avenue" on 20-21 June 2019. The investigation covered all incidents which had taken place during the events in question.

95. On an unspecified date the investigation was extended to cover alleged unlawful interference with journalists' professional activities, an offence under Article 154 of the Criminal Code (ibid.).

96. All the applicants were questioned as part of the investigation in question in June and July 2019 (see paragraph 108 below).

97. On various dates in 2019 and 2020 the fifth, ninth and eleventh applicants in application no. 20129/21 and the third, fourth, seventh, eighth and tenth applicants in application no. 20175/21 lodged applications requesting that they be granted the procedural status of a victim as part of the ongoing criminal investigation. Their applications were rejected first by the prosecutor and subsequently by the domestic courts on the grounds that the investigation had not yet determined whether a criminal offence might have been committed against the relevant applicants. They were however informed that the investigation into the matter was ongoing. According to the case-file material, these applicants have not been granted victim status to date.

98. The remaining applicants were granted victim status on different dates in 2020-2023.

B. Involvement of the Public Defender's Office in the monitoring of the investigation

99. On 2 July 2019 the GPO authorised the Public Defender's Office (PDO) to monitor the ongoing criminal investigation and have full access to the material in the criminal case file.

100. On various dates in July 2019 the PDO made several recommendations for the GPO to follow. Among other things, the PDO stressed the importance of investigating the actions and omissions of mid- to high-level officials of the MIA in relation to the contested events, including as regards the supervision of the use of rubber bullets during the dispersal. Noting the statements of individual officers saying that they had been unaware of whether any individual had been hurt as a result of their use of rubber bullets, the PDO noted the importance of investigating whether any MIA officials had produced a report concerning the use of rubber bullets and their impact on various individuals. These and other recommendations were subsequently reiterated in public reports by the PDO (see also paragraph 170 below), and included exploring possible omissions of senior MIA personnel and a systemic legal analysis of the events (ibid.).

101. On 29 July 2021, in its correspondence with the Ministry of Justice, and apparently in respect of the recommendations made by the PDO (see the previous paragraph), the GPO noted the following:

> "On the basis of the material in the case file, the decision to use non-lethal projectiles was taken by individual police officers, [acting] independently. Additionally, the material does not confirm that the police officers used non-lethal projectiles in excess of their authority in absolutely all circumstances. There [were] individual, independent incidents when non-lethal projectiles were used. Accordingly, the link between [any possible omission of the former Director of the Special Assignments Department of the MIA] and the outcome [of such use of projectiles] must be determined in respect of [each] individual incident, taking into account the specific situation and factual circumstances.
>
> In addressing the question of criminal liability, the investigation must determine a specific incident where the immediate and direct link between the omission of the director and the exceeding of authority/outcome of a police officer's action is incontrovertibly proven. Failure to observe this will create a risk of an individual being held criminally liable for a specific action which he could not have foreseen and repressed, also taking into account the scope of the present police operation.
>
> However, it is to be noted that the investigation regarding the case is ongoing, [and] the obtaining/assessment of evidence and the above-noted position [are] not final. The position is based on the information available thus far, and depends on the final outcome of the investigation."

C. Retrieval of information from different non-governmental organisations

102. On 29 June and 1 July 2019 the GPO asked various non-governmental organisations to provide any information, documents or reports regarding the possible violation of human rights by law-enforcement officers during the dispersal of the demonstration. It appears that the information was obtained soon thereafter.

D. Requests made to the Ministry of Internal Affairs

103. On different dates in June and July 2019 the GPO asked the MIA – the authority in charge of securing public order during demonstrations – for information regarding: (a) the strategy and methods used to terminate the demonstration and the legal basis for such decisions; (b) the use of special means by the police officers involved in the process, and the type of weapons involved; and (c) the professional preparation and training of the officers. The GPO also applied to different State agencies for information regarding their employees' alleged participation in the events of 20-21 June 2019. The information requested was received at some point in 2019.

104. On 23 August 2019 the GPO asked the MIA whether any of the officers involved in the dispersal of the demonstration had informed their superiors of injuries inflicted on individuals. The MIA replied on the same day that the purpose of the obligation to inform superiors of any injuries inflicted on individuals as a result of the use of force had been to ensure that such acts were followed up by a proper investigation to determine if the officers had complied with the law. In this regard, the dispersal had been widely covered by the media, which had shown that both the law-enforcement personnel and the individuals present at the demonstration had suffered injuries. The superiors of officers who had used non-lethal force during the dispersal had become aware of such use of force on the ground. Additionally, senior officials of the MIA and the GPO had also become aware of such developments, leading to the GPO's opening of a criminal investigation. Accordingly, the purpose of the notification obligation provided for in Ministerial Order no. 1002 (see paragraph 149 below) had been complied with.

105. The investigating authorities also obtained various pieces of classified material, such as recordings from the portable radio equipment of middle and high-ranking MIA officials which had been made during the demonstration and its dispersal.

E. Examination of weapons and shells used to disperse the demonstration

106. On various dates in June 2019 the GPO commissioned ballistic and chemical forensic examinations regarding the weapons and ammunition used during the dispersal of the 20-21 June demonstration. The results of the examinations, obtained on different dates in September 2019, determined that the shells belonged to either "non-lethal" rubber bullets in the "category of non-combat material, aimed to be trauma-inducing with limited injurious effect", or "non-lethal" tear gas shells in the "category of non-combat material, with limited injurious effect". With respect to orange-coloured rubber bullets, it was noted that precision as regards hitting a target was diminished beyond a radius of five metres. As for the remaining types of rubber bullets, it was noted that they would spread out depending on the range of the shooting. It was stated that the shells presented to the experts had an overall range of fifty metres at most.

107. The GPO also obtained information from the manufacturers of the relevant projectiles. According to the documents provided, the projectiles were non-lethal.

F. Questioning of victims and witnesses

108. All the applicants were questioned in June and July 2019. They provided their account of the events and submitted video and photo material which they had obtained. Among other things, the first applicant in application no. 13186/20 noted that two police officers had aided him in his attempts to find his mobile phone, which he had dropped on the ground because of his injuries. The second applicant in application no. 20129/21 stated that she had been hit by a rubber bullet which had ricocheted, and that the protesters standing on the stairs had been the actual target. Several applicants stated that, in their opinion, the injuries which they had sustained could only have been inflicted by their having been directly targeted. Some applicants stated that they had seen police officers targeting individual demonstrators and/or journalists. None could identify any of the officers.

109. In total, 625 individuals were questioned in 2019.

110. Among other witnesses, the Minister of Internal Affairs gave statements, in July and November 2019, regarding the planning, management and supervision of the dispersal of the demonstration. He noted that the demonstration had initially been peaceful, but the situation on the ground had deteriorated following the statements made by some politicians and attempts by one aggressive group of individuals to storm the Parliament building. He noted that he had explained the unlawful nature of the developments in his statements, and the MIA had circulated warnings about the possible use of special means to disperse the demonstration in the event that violent actions

were committed. In view of those warnings, and due to the tense nature of the circumstances on the ground, it had not been possible to issue a warning to the demonstrators gathered there prior to starting to use the special means such as tear gas. Such a warning had, however, been issued prior to the use of the water cannon. As for the use of rubber bullets, no order to use them had been issued by any of the senior officials and the police must have acted in circumstances of *force majeure*, aiming to avert an immediate risk to the lives and health of police officers and/or other individuals, and all officers had been properly trained to use such equipment (the content of such training was not specified). He stated that no special authorisation to use rubber bullets was required in such situations, and in the circumstances of the massive breach of public order which had taken place, it had not been necessary to give a prior warning to the demonstrators and give them a reasonable period of time to leave the area. The Minister also stated that the police measures had been proportionate, slowly increasing in severity, and that the various means used to disperse the demonstration had been used only after the police had been deprived of most of their protective gear after hours of resisting the violence employed by a group of demonstrators. Therefore, around midnight he had decided to authorise the termination of the violent demonstration with the use of tear gas. He stated that the special means had not been used simultaneously in respect of the same group of people. In reply to a question from the prosecutor as to whether it had been possible to separate the group of individuals who had been inclined to aggression from the peaceful demonstrators, the Minister stated that this had not been feasible, given that the individuals concerned had occupied the space immediately adjacent to the police cordon located on the stairs of the Parliament building, and had been surrounded by other individuals. In the Minister's submission, the individuals gathered in front of the Parliament building had had every opportunity to leave the area once the dispersal had commenced, as no street had been blocked by the authorities. The Minister also noted that there had been efforts to negotiate with the leaders of the political parties who had been at the forefront of the demonstration, but they had failed to make any specific moves to de-escalate the situation. As the degree of violence had intensified, any negotiation attempts had become futile.

111. Other senior officials were also questioned about their role in the events and whether they had ordered or authorised the use of rubber bullets. Their account was similar to that given by the Minister (see the previous paragraph).

112. Individual officers involved in the dispersal of the demonstration stated that they had withstood several hours of repeated attempts by one part of the protesters to break the police cordon and storm the Parliament building. They stated that individuals in the front rows of the demonstration had acted aggressively, violently pushing the officers, throwing stones, bottles and other items at them, grabbing their helmets and pieces of defensive

equipment, and assaulting some of them. Some officers noted that the violent individuals had attempted to take away their non-lethal ammunition which, in case of the said individuals' success, would have been used against the officers. Others also noted that it had become impossible to use the batons to control the crowd as any such movement by them would have led to the breaking of the cordon. The dispersal had started only after the violent group of demonstrators had breached the three-metre perimeter around the entrance of the Parliament building and the police cordon had been unable to contain them any further. It was noted that at first only tear gas was used, as a measure of last resort and when it became clear to the officers that their life and health had become seriously endangered. The relevant officers noted that they had duly observed the rules on using tear gas projectiles in densely populated demonstrations by shooting them in the direction further away from the crowd. The immediate effect with the crowd receding only lasted a couple of minutes and, according to the officers, the aggressive part of the demonstrators started assaulting the officers stationed in the police cordon with even greater hostility.

113. As the use of tear gas yielded no lasting results and the violent behaviour of a number of individuals became particularly intense, the officers became compelled, in their submission, to use rubber bullets. In this respect, they noted that the decision to use rubber bullets had been taken individually, without there being an order for this, on the basis of the specific circumstances on the ground, namely when a real and imminent danger to the lives and health of officers and other individuals existed. Some officers specified that they had acted in accordance with the law as in such cases it had been unnecessary to obtain an order or an instruction on the use of rubber bullets. The relevant officers noted that they had received "general permission" before their deployment to be ready for any situation which could necessitate the use of special means, including rubber bullets. According to the officers, only those who had undergone specific training on the use of non-lethal ammunition had been given such equipment. Some also stated that their commanders had been present when non-lethal shells had been used and that there had been no order to stop shooting rubber bullets. The officers had not been aware of whether specific individuals had been injured by their use of tear gas projectiles or rubber bullets.

114. The officers who used special equipment during the dispersal of the demonstration also indicated that the allocation and use of non-lethal guns and projectiles had been subject to strict control. Namely, such equipment was recorded and kept at a special storage facility. Each time any of these means was allocated to an officer, and subsequently returned to the storage unit, an appropriate record was to be made with the relevant officer's signature. This procedure was also followed on 20-21 June 2019, both at the allocation and the return stages. Thus, alongside the non-lethal rifles, all

non-lethal projectiles which had not been used during the dispersal were counted and returned to the designated storage facility.

115. The officers in question also noted that they had not had a body camera with them and that their protective uniforms did not have insignia which could identify them personally. They also stated that many officers had worn protective helmets and it had been difficult to recognise each other.

116. A number of witnesses noted that the demonstration had not had any designated organisers, but some protesters located in the front rows of the demonstration had appeared to resort to violent behaviour after hearing speeches made there in the evening. A number of items, including pieces of metal, sticks and bottles, had been thrown at the officers standing in the police cordon, and protestors located in the front rows had become particularly violent just before the dispersal had started. Some individuals, including at least one applicant, mentioned that the use of rubber bullets had appeared to aggravate the demonstrators. A photographer (not an applicant in the present case) located in the front rows of the demonstration stated that individual officers in the police cordon had been shouting phrases like "What are you doing? Step back" as some of the protesters had been attempting to break through the cordon.

117. Several witnesses noted that it had been impossible to identify the shooters, as they had worn masks. Some indicated that tensions had started in response to the repeated attempts by a group of individuals to enter the Parliament building, while others noted that they had not been aware of this, as they had been standing away from the stairs leading to the building. Some individuals confessed to having attempted to break through the cordon even as the tear gas had been used. Others stated that they had not been violent, but had been injured nonetheless. Injuries were reported by individuals who had been standing relatively close to the stairs leading to Parliament and those who had been located further away from the area. Some witnesses and victims alleged that rubber bullets had been deliberately aimed at them, while others noted that such bullets had been shot indiscriminately at the crowd, without regard for whether the individuals shot at had been violent or not.

118. On 29 July 2021, in its correspondence with the Ministry of Justice, the GPO stated that "certain impediments existed in the process of identifying officers allegedly involved in criminal offences", apparently because of the constant rotation of the officers on the ground, the poor quality of the videos available and/or the shifting angles of the video-recordings. It was noted that efforts to address the issue were ongoing but were taking time, given the sheer amount of material to be analysed.

G. Obtaining video and other material

119. On 20 June 2019, forty minutes after the incident involving the eleventh applicant in application no. 20129/21 (see paragraph 54 above), the

applicant in question made a complaint to the General Inspectorate of the MIA and requested that the video material be obtained from the cameras positioned inside the yard of the Parliament building. It appears that no reply was received. No such material was obtained.

120. On various dates in June, July and November 2019 the GPO obtained different pieces of video and photo material from media organisations, the applicants and various agencies of the MIA depicting the events of 20-21 June 2019 (recordings from police body cameras, video cameras installed in police vehicles, cameras installed in the buildings where detainees had been taken, and cameras installed in the premises of the MIA). This material was examined, and relevant reports describing its content were produced on different dates in 2019 and 2021.

121. In June and July 2019 the GPO also inspected the scene of the incident, obtained information regarding the persons arrested during the demonstration, and identified the ambulances and emergency crews which had been on duty or called to Rustaveli Avenue on 20-21 June 2019.

H. Retrieval of medical documentation

122. On various dates in June and July 2019 the prosecution obtained a judicial warrant to retrieve, from various medical establishments, documents and other material (such as rubber bullets and bloodstained clothing) relating to 318 individuals, including the applicants, in relation to the events of 20-21 June 2019. The warrant was executed and the requested material was obtained within that same period.

I. Ordering of forensic medical examinations

123. On 2 July 2019 the GPO forwarded the medical documents obtained in respect of 337 individuals to the NFB, with a view to carrying out forensic medical examinations. The NFB was asked to determine the existence of any injuries, when and how they had been inflicted, and their gravity.

124. The resulting reports involving the majority of the applicants were received on different dates in 2019-2022. The NFB report regarding the first applicant in application no. 20129/21 was received on 27 January 2023.

125. The NFB reports involving the applicants and other individuals noted that determining the type of weapons used to inflict the injuries in question had been beyond the competence of the NFB. The reports also noted that the information available in the documents presented to the NFB had not been sufficient to determine from what distance shots had been fired or in what direction.

J. Officers charged as part of the criminal investigation

126. On 16-17 July and 27 August 2019 three officers of the Special Assignments Department of the MIA who had been engaged in restoring public order during the demonstration of 20-21 June 2019 were charged with the offence of exceeding official authority. L.I. was charged for allegedly using excessive force and physical violence against a demonstrator who had been arrested; G.E. for allegedly firing rubber bullets at two protesters at close range, unnecessarily; and M.A. for allegedly using physical violence against a demonstrator who had been arrested.

127. On an unspecified date in 2021 the criminal proceedings against the three individuals were terminated, as they accepted the application of an amnesty to their cases under the Amnesty Act of 7 September 2021 (see paragraph 154 below).

K. Disciplinary inquiry by the MIA

128. On 24 June 2019 the MIA suspended ten officers pending the outcome of the criminal investigation into the possible exceeding of authority during the dispersal of the demonstration of 20-21 June 2019. At some point in July 2019 the head of the Special Assignments Department was also suspended.

129. As appears from the material in the case file, at some point in 2019 the General Inspectorate of the MIA carried out an inquiry and disciplinary measures were taken against eleven employees. One was severely reprimanded, eight were reprimanded, and a formal notice was issued against two officers. The case file does not contain the relevant report. The identity of the relevant officers is unclear, as is the substance of the findings in respect of them. It is unclear whether these were the same officers as those who had been suspended on 24 June 2019 (see the preceding paragraph).

L. Current status of the investigation

130. The criminal investigation into the events of 20-21 June 2019 is ongoing.

IV. CIVIL-LAW PROCEEDINGS

131. On different dates in 2020 several applicants instituted civil-law proceedings against the MIA, claiming damages for the injuries they had sustained during the dispersal of the 20-21 June 2019 demonstration. Some sets of proceedings are still pending at first-instance level, while others have reached appellate stage with some of the applicants having obtained damages in relation to their injuries.

V. OTHER CIRCUMSTANCES

132. On 12 March 2020 the Government adopted special measures to counter the global outbreak of COVID-19. These measures included public institutions switching to a special remote working regime. The measures were lifted on 22 March 2022.

RELEVANT LEGAL FRAMEWORK

I. THE CRIMINAL CODE

133. The Criminal Code, in so far as relevant, provides as follows:

Article 154 (unlawful interference with a journalist's professional activities)

"1. Unlawful interference with a journalist's professional activities, that is, coercing a journalist into disseminating or not disseminating information, shall be punished by a fine or 120 to 140 hours of community service, or up to two years of corrective labour, or six months to two years of house arrest.

2. The same act committed using the threat of violence or an official position shall be punished by a fine or up to two years' imprisonment, with or without [the perpetrator] being deprived of the right to hold office or carry out activities for up to three years."

Article 333 (misuse of authority)

"1. Misuse of authority by a public official ... which substantially [and] adversely affects the rights of a natural person or legal entity, or the legal interests of society or of the State ..., shall be punishable by a fine or six months to two years of house arrest, or by up to three years' imprisonment, with up to three years' disqualification from holding public office ...

...

3. The offence specified in paragraphs 1 [and] 2 of this Article, when committed

(a) repeatedly;

(b) with the use of violence or a weapon; [and/or]

(c) by offending the personal dignity of the victim,

shall be punishable by five to eight years' imprisonment, with up to three years' disqualification from holding public office ..."

II. TERMINATION OF DEMONSTRATIONS AND THE USE OF FORCE

A. The Assemblies and Demonstrations Act

134. In accordance with section 11(1) of the Act, "when organising and holding an assembly or demonstration, it shall be prohibited to call for the overthrow of or a violent change in the constitutional order of Georgia, or for

encroachment on the independence or territorial integrity of the country, or to make any calls propagandising armed conflict or violence or inciting national, regional, religious or social hostility [which] create a clear, direct and real risk [of such actions being carried out]”. Section 11(2)(b) provides, among other things, that participants in a demonstration are prohibited from carrying any items which endanger or can be used to endanger the life or health of the participants in the demonstration or other individuals.

135. Section 13(1) of the Act provides that “[i]f the requirements of section 11(1) and (2)(a-c) of this Act are massively violated, the assembly or demonstration shall be terminated immediately at the request of an authorised representative. If the assembly or demonstration is not terminated, law-enforcement bodies shall take measures under international law and the legislation of Georgia to terminate the assembly or demonstration and disperse the participants”.

B. The Police Act

136. Under section 17(2)(i) of the Police Act, the police shall “ensure, in circumstances provided for under the laws of Georgia, the termination of an assembly or demonstration and the dispersal of the participants in [such events]”.

137. The use of force during such events is regulated as follows:

Article 30 - Coercive measures

“Coercive measures shall include the use, by the police, of physical force, special means and firearms in order to perform police functions.”

Article 31 - Right to use coercive measures

“1. To perform police functions, a police officer may use appropriate and proportionate coercive measures only where this is necessary, and to an extent which shall ensure the achievement of legitimate objectives.

2. A police officer shall be authorised to use firearms and special means only if he or she has undergone special training.

3. Before using physical force [and/or] special means and firearms, a police officer shall warn a person and give [him or her] a reasonable period of time to comply with the lawful order, except in situations where [such a] delay may pose a risk to the life and health of a person and/or a police officer, or other severe consequences, or if such a warning is unjustifiable or impossible in a given situation.

4. The type and intensity of a coercive measure shall be defined on the basis of a given situation, the nature of an offence and the individual particularities of an offender. Additionally, a police officer shall try to cause minimal and proportionate damage when resorting to a coercive measure.

5. A police officer shall be obliged to provide first aid to a person injured by coercive measures.

6. A police officer shall not use means that can cause a person severe injury, may pose an unjustifiable risk, or are prohibited by the laws of Georgia."

Article 33 - Use of special means

1. A police officer shall use passive and active special means to ensure public security and legal order.

2. Passive special means shall ensure the protection of the life and health of a police officer and/or a person being protected by a police officer. Passive special means are: bulletproof vests, helmets, riot shields, gas masks and other special protective equipment for the body.

3. Active special means disable, for a short period of time, an individual's resistance to a police officer and/or assist a police officer in performing police functions. Such special means are: handcuffs and other means of restraint, rubber batons, tear gas, pepper spray, sonic weapons, non-lethal weapons (including non-lethal projectiles), stun grenades, devices to stop vehicles by force, barrier demolition equipment, water cannons, armoured cars and other special transport vehicles, special paints, police dogs and horses, electroshock devices and nets. The above-mentioned special means shall be used in the following cases:

...

(c) Tear gas, pepper spray, sonic weapons and non-lethal weapons (including non-lethal projectiles) are used to repel an attack on a person, a police officer and/or a protected facility; to suppress a massive breach of legal order by a group; when detaining a person who has committed a crime or an act posing a threat to the public, or when forcing such a person to leave an occupied territory, vehicle or building that the person is using as a shelter; ...

(g) water cannons, armoured cars and other special transport [vehicles] are used to suppress mass violations of legal order; to repel a group attack on the State and/or public facilities; to stop a vehicle by force if the driver does not obey a police officer's demand to stop; to detain an armed offender; ...

4. A police officer shall inform [his or her] immediate superior and the [relevant] prosecutor about causing a person damage or wounding [him or her] as a result of using special means, apart from when it is impossible to inform the immediate superior and the prosecutor, [when this involves] exceptional difficulties, or [when this] impedes the performance of police functions.

5. If special equipment is used against an unspecified number of people, a senior leader [of the operation] shall inform his or her immediate superior and the prosecutor.

6. Rules concerning the storage, carrying and use of special means available to the police ... are defined by [legal instruments adopted by] the Minister [of Internal Affairs]."

C. Ministerial Order no. 1002 approving instructions for the conduct of MIA personnel during assemblies and demonstrations

138. Section 3 of Order no. 1002, in so far as relevant, provides the following definitions of terms:

"(h) A warning – a verbal warning [given] by technical means regarding the use of special measures, [and] given by the representatives of law-enforcement agencies to the participants in an assembly/demonstration;

(i) Special measures – the totality of measures provided for by the laws of Georgia [to be] used by the representatives of law-enforcement agencies to disperse an assembly/demonstration;

...

(k) Use of special means – the use of special means as defined by the Police Act ... and the laws of Georgia by the representatives of law-enforcement agencies towards the participants in an assembly/demonstration."

139. Under section 4(1), "assemblies/demonstrations may be terminated and dispersed by the representatives of law-enforcement agencies when the participants violate the rules set out in the law regarding the holding [of such events] and there are lawful grounds for dispersing [those events] as provided for in the law".

140. Under section 4(2), the representatives of law-enforcement agencies shall ensure

"(a) negotiation with the organisers of or participants [in an assembly or demonstration], in order to avoid, as much as possible, a forceful intervention and regulate the situation in a peaceful manner;

(b) that peaceful protesters are distinguished or separated from potential lawbreakers, in respect of whom measures provided for in the law can be applied;

(c) that individuals who [have] allegedly breached public order are separated [from the rest of the group] and removed from the area, so that their actions do not lead to the termination or dispersal of a peaceful assembly or demonstration;

...

(f) during the termination or dispersal of an assembly or demonstration, the peaceful exit of the participants on the basis of a pre-defined plan (as regards exits, corridors), in order to avoid unrest;

... "

141. Under section 4(4), "the use of physical force and/or special means by the representatives of law-enforcement agencies must be in conformity with the principle of proportionality [and must be employed] only in cases of absolute necessity, and to the minimum extent necessary in specific circumstances (the principle on the proportionate use of force)".

142. Section 4(6) provides as follows:

"The representatives of law-enforcement agencies are obliged to not impede the professional activities of journalists who are covering an assembly or demonstration [and] have insignia identifying them as such."

143. Section 5 provides for the authorities having an obligation to adopt a security action plan in respect of an assembly or demonstration.

144. Section 7 of Order no. 1002 provides that an authorised person shall give a warning to the participants in a demonstration before resorting to force

and the use of special means, and “give them a reasonable period of time (at least thirty minutes) to comply with the lawful instructions”. This obligation does not apply in circumstances where a delay may pose a danger to the life and/or health of an individual and/or a law-enforcement officer, or may result in other grave consequences, or if such a warning is unjustified or impossible in a given situation.

145. Section 8(1)(a) provides that a decision to use tear gas can be taken by an individual law-enforcement officer. Section 8(1)(d) provides that “an order to use non-lethal weapons, including non-lethal projectiles, shall be issued by the leader of the unit participating in the [dispersal] measure, with the consent of the supervisor”. In cases where a delay “can pose a real danger to the life and/or health of an individual, [such an order can be issued] by the leader of the unit [alone]”.

146. Section 9(1)(c) of Order no. 1002 prohibits “the use of non-lethal weapons and projectiles in respect of an individual [who is] less than twenty metres away, and in respect of the areas of the body [where an injury would] pose a threat to health and life (the head, neck, stomach, genitals), except in cases where a delay may result in the health and life of an individual or a group of individuals being damaged, or some other grave outcome”.

147. Under section 9(1)(p) of Order no. 1002, “it is prohibited [for a representative of a law-enforcement agency] to use water cannons, rubber bullets and tear gas in respect of the participants in an assembly or demonstration simultaneously, or in parallel to one another (ერთდროულად ან პარალელურ რეჟიმში)”.

148. Under section 9(2), “the use of force and special means [by those] without professional or special training shall be prohibited”.

149. Under section 10(1)(d), a law-enforcement officer participating in the dispersal of a demonstration should inform his or her immediate supervisor and a prosecutor of any injuries caused by the use of force or special means, unless this is impossible. Once the circumstance precluding such notification no longer persists, the officer should notify the relevant persons immediately.

D. Ministerial Order no. 1006 on the storage, carrying and use of special means available to the police

150. Order no. 1006, in section 2(2)(c) and (g), provides that the police can use the following special means: tear gas, pepper spray, sonic weapons, non-lethal weapons (including non-lethal projectiles), water cannons, armoured cars and other special transport vehicles.

151. Section 4 of Order no. 1006 regulates the use of special means by the police. It provides that any use of such means should be guided by the principle of necessity, if other means are considered to be ineffective to attain the relevant objectives. Under section 4(2), an officer should firstly issue a

warning about the potential use of special means and afford sufficient time for compliance with the lawful order, "except in circumstances where a delay may result in damage to the life and health of a citizen and/or [an officer], some other grave result, or if, in a given situation, it is impossible to issue a warning".

152. Section 4(4) of Order no. 1006 provides as follows:

> "Taking into account the principle of proportionality, the type of special means [used and] the intensity of the physical force [employed] are determined in a specific situation, depending on the nature of the breach of the law and its individual particularities."

153. Section 5 concerns the "results of the use of special means" and provides as follows:

> 1. After using special means, an individual authorised [to use force] is obliged to
>
> (a) ensure that individuals who have suffered harm as a result of the use of special means are provided with first aid;
>
> (b) immediately notify his or her supervisor and a prosecutor about the injury or damage caused to an individual as a result of the use of special means, and inform a family member of that individual (if this is feasible), except where [such notification] is impossible, poses particular difficulties or will impede the performance of police functions;
>
> (c) if special means are used in respect of an indeterminate group of individuals, the leader [of the operation] should inform [his or her] immediate supervisor and a prosecutor.
>
> 2. When topical and widely publicised issues in society are linked to the use of special means by authorised personnel, the MIA is obliged to disseminate information regarding the appropriateness and lawfulness of such use of special means, by means of the mass media."

III. THE AMNESTY ACT

154. The Amnesty Act of 7 September 2021 (see *Melia*, cited above, §§ 62 and 67) provides as follows:

> **Section 1**
>
> 1. All individuals who have committed a criminal offence relating to the events of 20-21 June 2019 ... and who do not refuse the application, by means of the procedure provided for in this Act, of the amnesty provided for in this section, shall be released from criminal liability and [any] sentence, [including] a suspended sentence.
>
> 2. The amnesty provided for in this section also applies to individuals who have ... attempted [to carry out such a] criminal offence or [who have been involved in] the preparation of [such an offence].
>
> 3. An individual to whom the amnesty ... is applied shall not have a criminal record. ..."

Section 2

"The amnesty provided for in section 1 of this Act shall not apply to criminal offences under Articles 117 [intentional infliction of serious harm to health] and 144^1-144^3 [torture, threat of torture, humiliating or inhuman treatment] of the Criminal Code."

Section 3

"...

3. If criminal proceedings have ended, the first-instance court which delivered the judgment may, after assessing the circumstances provided for in sections 1 and 2 of this Act, take a decision regarding the application of the amnesty ... by means of an oral hearing or written proceedings.

..."

Section 4

"1. Criminal proceedings shall continue in respect of an individual to whom the amnesty provided for in this Act is not applied. This individual shall exercise his or her right to a fair trial. ...

2. An individual who has been convicted at first instance shall have a right to withdraw, at any time and in writing, his or her [prior] written refusal to have the amnesty provided for by this Act applied to him or her.

3. If an individual withdraws, in writing, his or her refusal to have the amnesty provided for in this Act applied to him or her

...

(d) after the termination of the criminal proceedings against [him or her], the decision to release [him or her] from the [obligation to serve his or her] sentence ... shall be taken by the regional (city) court which delivered the initial judgment, by means of oral or written proceedings.

..."

OTHER MATERIAL

I. PLAN FOR MEASURES AIMED AT SAFEGUARDING AND RESTORING PUBLIC ORDER IN TBILISI

155. The Government provided the Court with a redacted copy of a classified document entitled "the Plan for measures aimed at safeguarding and restoring public order in Tbilisi" ("the Plan"). The document was approved by the Minister of Internal Affairs on 20 June 2019, at some point before the start of the demonstration at 7 p.m. on that day. Its content is summarised below.

156. The Plan indicated that its legal basis included the Constitution of Georgia, the Police Act, the Assemblies and Demonstrations Act, Ministerial Order no. 1002 on instructions for the conduct of MIA personnel during

assemblies and demonstrations, and Ministerial Order no. 1006 on the storage, carrying and use of special means available to the police.

157. The Plan noted citizens' "high degree of dissatisfaction" with the events preceding the demonstration (see paragraph 5 above), and referred to a "risk of escalation" on account of the number of individuals expected at the demonstration and the fact that opposition political parties were also planning to participate in it. The Plan noted that it was thus being adopted with a view to "determining the measures to be taken by the MIA in order to safeguard and, if necessary, restore public order". It provided that special means were to be used in the event of mass violations of public order by the demonstrators, with a view to putting an end to violent and aggressive unlawful acts, and restoring order and protecting, as much as possible, the lives and health of citizens. A section in the document entitled "additional instructions" specified that personnel present at the event were to be given "instructions", that in order to avoid incidents, any risks or dangers were to be "identified and reported or dealt with in a timely manner", and that groups with aggressive intentions were to be neutralised.

158. The identity of the leader of the police operation was redacted in the Plan. The number of officers to be mobilised was set at 5,110. In total, nineteen different agencies of the MIA were mobilised, including the Special Assignments Department (tasked with maintaining and, if necessary, restoring public order and security). According to the Plan, the Special Assignments Department was entitled "to use special means, if necessary, to ensure the implementation of measures aimed at restoring public order". The Security Police Department was tasked with preventing the invasion of the Parliament building, by using special means. The Facilities Protection Department was asked to "clear Rustaveli Avenue from the [area of] Freedom Square metro station towards First Republic Square, by using special means". The remaining agencies were also asked to ensure that their personnel were stationed where the events were taking place, according to needs and following any indications by the leaders of the police operation, with a view to "maintaining public order".

159. The Plan contained a list of special equipment commissioned for the police operation and provided that the personnel involved in the police operation were to be equipped with special means and weapons as provided for in section 33 of the Police Act and Ministerial Order no. 1006 on the storage, carrying and use of special means available to the police (see paragraphs 137 and 150 above).

160. Three pages of the section entitled "Assignments for the subordinate units in the event of a need to restore public order" were blank, apparently redacted. Pages four to six contained the following assignments:

> "Carrying out [officially designated] tasks during the restoration of public order[;]

> If necessary, supporting the movement of the main group [of officers] on Rustaveli Avenue by using special means ..., with the aim of preventing demonstrators from returning to Rustaveli Avenue and invading the Parliament building[;]
>
> Deploying [personnel] in the waiting area and, if necessary, [becoming] involved in measures aimed at restoring public order by using special means ...”

161. Sections regarding how the various agencies were to communicate with each other were redacted.

II. REPORTS REGARDING THE DEMONSTRATION OF 20-21 JUNE 2019

A. Special report by the Public Defender’s Office (PDO)

162. On 31 March 2020 the PDO published the “Interim report on the investigation into the events of 20-21 June”. It contained a summary of the investigation material, including in relation to the classified documents, and recommendations made by the PDO to ensure the effectiveness of the investigation.

163. According to the report, the investigating officials of the GPO had started to question officers of the Special Assignments Department of the MIA in mid-July 2019. The individuals who had been questioned had revealed that at the material time the Special Assignments Department had been comprised of (a) military conscripts whose function had been to secure the perimeter of the Parliament building via passive special means; (b) officers designated as shooters who had used tear gas and/or rubber bullets (the exact number of such individuals was not specified, but on one occasion it was referred to as “more than 100 officers”); and (c) other officers (also referred to as riot police) who had been stationed in the police cordon once tensions had arisen at the demonstration.

164. The report contained, among other things, a summary of statements given by the officers of the Special Assignments Department (see paragraphs 112-114 above). According to the report, the statements had contained “virtually identical information”, and only when questioned a second time (following the proposal by the PDO), the officers had explained that their use of special means had been regulated by the Police Act and the relevant Ministerial order concerning the use of such means.

165. As regards whether an official order regarding the use of rubber bullets had been issued, the report concluded as follows:

> “according to the case material, the high-level officials of the Ministry (the Minister and his deputies) did not order the use of rubber bullets. It is clear from the recordings from the handheld radios of the Minister and his deputies ... that they categorically ruled out the use of rubber bullets. Nevertheless, officers from the Special [Assignments] Department, who were led by the director of the department ... 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 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 statements that they soon learned about the use of rubber bullets, although they do not specify [when]. Nevertheless, no action was taken to ensure that the order issued by them was fulfilled, especially given that the use of rubber bullets was not [a] one-off [occurrence lasting] a short time ...”

166. As regards the weapons used during the dispersal, the report noted that three types of non-lethal weapons had been used during the dispersal: 12 mm-calibre guns designed only for rubber bullets; 38 mm-calibre guns designed for rubber and tear gas projectiles; and 40 mm-calibre guns that could only fire tear gas projectiles. According to the summary of the investigation material contained in the report, “[t]he effective distance for accurately hitting a target [was] about 5 metres for orange rubber bullets. The chances of hitting the target decrease[d] as the distance increase[d]. In the case of pellets, the [range] of their scattering increase[d] with distance”.

167. The PDO’s report noted that on 9 January 2020 it had recommended that “a criminal prosecution be launched against G.K., former Director of the Special [Assignments] Department of the Ministry of Internal Affairs of Georgia”. In particular, according to the report:

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

In particular, G.K. was instructed by high-level officials not to use rubber bullets. He was personally involved in the operation and, according to him, he was informed about the use of rubber bullets. However, according to the case material, he did not take any measure to prevent [such use], and on the other hand, the case material does not prove that he provided information to the Minister or his deputies. Moreover, he provided incorrect information to [those leading the operation]. The recordings from handheld radios make it clear that he provided false information to [them] about guns not being used ... Despite receiving repeated warning[s] through [his] handheld radio to not use bullets (at 12.36 a.m.), the shooting continued. Later, the Director of the Special [Assignments] Department asked for permission to use bullets, and despite the refusal of [his] immediate supervisor (at 2.34 a.m.), the frequent use of rubber bullets continued.”

168. The PDO’s report of 31 March 2020 concluded, among other things, that the criminal investigation had been focused “only on identifying the criminal actions of individual law-enforcement officers and assessing their individual roles”, and that it had “not aimed to make [a] complete systemic legal analysis of the events of the night of [20-21 June 2019], and consequently to determine the scope of responsibility of high-level officials”. It was stated that the ongoing investigation was not attempting to “identify or rule out alleged offences resulting from the inaction of officials who had been

in charge during the dispersal of the demonstration", and that it "was not critical when questioning high-level officials".

B. General report by the PDO

169. A report of 2 April 2020 by the PDO entitled "The Situation Regarding the Protection of Human Rights and Freedoms in Georgia in 2019" made several references to the events of 20-21 June 2019 and the related criminal investigation. The relevant parts of the section entitled "Cases involving the use of force against demonstration participants" provided as follows:

> "[A] protest gathering which started peacefully in front of the Parliament [building] on 20 June 2019 ended with the use of force and rather serious consequences. Within several hours of the demonstration beginning, the actions of some of the demonstrators went beyond the scope of a peaceful assembly and turned into an acute confrontation with officers ... In the end the police terminated the assembly by force, following which more than two hundred individuals were injured. The law-enforcement officers used, among other things, tear gas, rubber bullets and a water cannon against the participants in the demonstration.
>
> In the Public Defender's assessment, the force used during the termination of the 20-21 June assembly, especially the use of non-lethal projectiles, cannot be assessed as a proportionate ... measure, considering the absence of an order provided for in law, the number of shells [used] (several hundred) and [the number] of shooters [present] (several dozen), the area [in which the shooting took place] (immediately in front of the Parliament building and in other sections of Rustaveli Avenue), the duration [of the operation] (a period of several hours), the number of injured demonstrators and the extent of the injuries. ...
>
> As regards the warnings given by the [MIA] in respect of the participants in the assembly by means of the emergency statement disseminated publicly, and the calls [on the participants] made by the Minister ... and the mayor ... [which] were disseminated by the media, such measures do not ensure that the participants in a demonstration are fully informed and do not comply with the ... standard[s relating to] warning[s]. ..."

170. The relevant parts of the section entitled "Investigation into the events of 20-21 June" provided as follows:

> "Representatives of the [PDO] personally observed the events unfolding at the demonstration ... They met and talked to doctors, the administrative [teams] from clinics, and citizens injured during the dispersal of the demonstration. ...
>
> The PDO suggested [to the GPO] that the former Director of the Special Assignments Department of the MIA should be charged because it had been his legal obligation to prevent unlawful actions by [his] subordinates (the disproportionate use of special means) and, as revealed by the case material, he had been able to do so. Additionally, as the material obtained so far reveals, on several occasions he received direct orders not to use rubber bullets. ...
>
> On the basis of the video material available in the case file, at the time when the police resorted to the use of [non-lethal] weapons, no massive attack by the participants in the demonstration on the representatives of the police or on other individuals was imminent, and there had been [no such attack] to give the police officers grounds to decide to use

non-lethal shells without an order from the leader [of the police operation] and in order to protect their own lives and health (self-defence). By contrast, in accordance with the existing legislative framework, an order regarding the use of non-lethal weapons (including non-lethal projectiles) must be made by the leader of the unit participating in the [police operation] with the consent of a person responsible for the conduct of such an operation, taking into account the principles of lawfulness and proportionality and the [relevant] risks. When a delay may pose a real risk to a person's life and/or health, an order made by the leader of the unit shall suffice. ...

At the time the present report was published, the [GPO] had not managed to carry out a full systemic legal analysis of the events of the night of 20-21 June. ..."

C. Report by Human Rights Watch

171. In 2020 Human Rights Watch published its World Report for the year 2019. The relevant excerpt from that report reads as follows:

"On the night of June 20, riot police fired rubber bullets and used tear gas against thousands of protesters outside the parliament building in Tbilisi. The protest was sparked by the presence of a delegation from the Russian Duma in the parliament's plenary chamber, as part of the Inter-Parliamentary Assembly of Orthodoxy.

Some protesters repeatedly tried to break through the police cordon, grabbing and damaging some riot gear. Otherwise the crowd was largely nonviolent. While riot police showed restraint initially, around midnight, without prior warning, they opened fire on the crowd with tear gas and rubber bullets, chasing and arresting people who tried to gather.

Some 240 people, including 80 police officers and 32 journalists, sustained injuries and sought medical attention. Many civilians sustained rubber bullet injuries to the head, legs, and back; two people each lost an eye."

THE LAW

I. PRELIMINARY REMARK

172. In so far as applications nos. 20129/21 and 20175/21 are concerned, the parties referred to the applicants in a different order. The Court will use the sequence contained in the original applications, which is reflected in the appended table.

II. JOINDER OF THE APPLICATIONS

173. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

III. PRELIMINARY OBJECTIONS

A. The parties' submissions

1. The Government

174. The Government stated that the applicants had not exhausted domestic remedies. Namely, some of the applicants had not instituted civil-law proceedings to obtain damages from the MIA, and others had failed to duly pursue such proceedings. This had been, according to the Government, particularly necessary in respect of the complaints under Articles 10 and 11 of the Convention. Nor had the applicants applied to the General Inspectorate of the MIA, which could have conducted a disciplinary inquiry.

175. Additionally, the Government submitted that the applicants had failed to demonstrate why the criminal investigation had been ineffective at the time they had submitted their applications, rather than with respect to the subsequent developments. In the Government's submission, the criminal investigation in question – which had been tasked with assessing all aspects relevant to the termination of the demonstration – had been effective in respect of all the complaints raised as part of the present applications, which rendered the applications premature, on account of the ongoing nature of the investigation.

2. The applicants

176. The applicants stated that only a thorough and effective criminal investigation could serve as an effective remedy in respect of allegations of ill-treatment at the hands of State officials – conduct contrary to Article 3 of the Convention. Such an investigation having been duly opened, in the applicants' submission, they had not been required to institute civil-law or disciplinary proceedings against the MIA as well. As for the complaints under Articles 10 and 11 of the Convention, the criminal investigation had also covered issues relating to those provisions, absolving the applicants of the need to institute another set of proceedings.

177. As regards the allegedly premature nature of the applications, the applicants, relying on arguments raised in respect of the merits of their complaints under Article 3 of the Convention, submitted that the ongoing criminal investigation had been ineffective.

B. The Court's assessment

1. Civil-law and disciplinary proceedings

178. The Court reiterates that where acts that constitute serious offences are directed against a person's physical or mental integrity, only efficient

criminal-law mechanisms can ensure adequate protection and serve as a deterrent factor (see *Identoba and Others v. Georgia*, no. 73235/12, § 86, 12 May 2015).

179. In this context, the Court observes that the ongoing criminal investigation covers all incidents which took place during the contested events (see paragraphs 94-95 above and 196 below). While the present applicants did not submit formal criminal complaints at domestic level, they were all questioned in June and July 2019 (see paragraph 96 above). Therefore, the authorities were aware that ill-treatment might have occurred in their respect (see, for instance, *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007, and *Gjini v. Serbia*, no. 1128/16, §§ 93-94, 15 January 2019; compare and contrast *Shmorgunov and Others v. Ukraine,* nos. 15367/14 and 13 others, §§ 308-12, 21 January 2021).

180. What is more, the majority of the present applicants have been granted the procedural status of a victim in respect of the investigation in question (see paragraph 98 above). As for the remaining applicants, they explicitly requested that such a status be granted to them (see paragraph 97 above), thereby showing active interest in the investigation of the matter.

181. Accordingly, and the Government have not submitted arguments to the contrary, the ongoing criminal investigation covers the circumstances involving the present applicants.

182. In the light of the foregoing, and considering that the applicants' complaints under Article 3 of the Convention relate to the excessive use of force by the police during the dispersal of the demonstration and the complaints under Articles 10, 11 and 13 of the Convention refer to the same facts as those mentioned in relation to Article 3, the Court considers that there was no necessity for the applicants to seek any other remedial actions (see *Identoba and Others*, cited above, § 87).

183. This limb of the Government's objection regarding non-exhaustion of domestic remedies should accordingly be rejected.

2. *Criminal investigation*

184. As regards the objection relating to the premature nature of the applications on account of the ongoing criminal investigation, the Court accepts that at the time the applications were lodged it may have been too early to draw conclusions as to the effectiveness of the criminal investigation. However, the Court has consistently held that when examining a complaint, it can take into account facts which have occurred after the lodging of the application but are directly related to those covered by it (see *Shmorgunov and Others*, cited above, § 302). In the present case, the parties made detailed submissions referring to developments since the lodging of the applications, and the Government relied on documents and information relating to the ongoing investigation, which started more than four and a half years ago. The

Court is not therefore prevented from examining the effectiveness of the investigation with reference to events which occurred after the lodging of the applications.

185. More importantly, the Court considers that the Government's objection raises issues concerning the effectiveness of the ongoing criminal investigation which are closely linked to the merits of the complaint under the procedural limb of Article 3 of the Convention. This objection should therefore be joined to the merits of the applicants' complaints.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

186. The applicants complained that they had been injured as a result of the excessive use of force by the police during the dispersal of the demonstration of 20-21 June 2019, and that no effective criminal investigation had been carried out in this regard. With the exception of application no. 16757/20, all applicants relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

187. The applicant in application no. 16757/20 relied on Article 10 of the Convention and, among other things, complained of the excessive and unjustified use of rubber bullets to disperse the demonstration and the fact that he had received serious injuries in that process. He also complained that the criminal investigation into the matter had been ineffective. Considering that the submissions in relation to the latter complaint are similar to those made in respect of Article 3 of the Convention in the remaining applications, and being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), the Court considers that the applicant also relied, in substance, on Article 3 of the Convention.

A. Admissibility

1. *The parties' submissions*

188. The Government submitted that the ninth applicant in application no. 20129/21 had refused to have any medical examination to show that he had been injured during the events complained of. Accordingly, his complaint should be declared manifestly ill-founded.

189. The applicant in question submitted that he had not sought medical help because he had not had any open wounds. As for his refusal to undergo a forensic medical examination, he explained that the delay in getting an appointment for such an examination had meant that no signs of injuries would have been visible.

2. *The Court's assessment*

190. In so far as the ninth applicant in application no. 20129/21 is concerned, the Court notes that he did not present medical evidence to demonstrate that he had been injured during the events complained of. The Court does not consider that he was objectively prevented from doing so to substantiate his complaint. In such circumstances, a professional journalist's mere presence at the scene of the events in question, however tense the environment may have been on the ground, does not constitute a circumstance reaching the threshold of severity under Article 3 of the Convention. These considerations also apply to the complaints made by the fifth applicant in the same application (see paragraph 61 above). The Court therefore declares the complaint under Article 3 of the Convention, in so far as it was submitted by the fifth and the ninth applicants in application no. 20129/21, inadmissible.

191. As for the remaining applicants, the Government's objection regarding the premature nature of the applications on account of the ongoing nature of the criminal investigation has been joined to the merits of the complaint under the procedural limb of Article 3 of the Convention (see paragraph 185 above). The Court additionally notes that the applicants' complaints under that provision are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. This part of the applications must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicants

192. The applicants complained that they had been victims of the excessive use of force during the dispersal of the demonstration on 20-21 June 2019, in breach of their rights under the Convention. All the applicants – except the eleventh applicant in application no. 20129/21 and the third, fifth and seventh applicants in application no. 20175/21 (see paragraph 193 below) – stated that they had been injured as a result of the authorities' use of rubber bullets in violation of the applicable domestic regulations. Namely, they emphasised that the authorities had not issued an appropriate, audible warning prior to the dispersal; that the rubber bullets had been fired without official authorisation and had been used alongside other means used for the dispersal; that the rubber bullets had frequently been fired at close range and in many cases had been shot indiscriminately; and that in most instances, the firing of rubber bullets had resulted in injuries being caused to peaceful demonstrators and journalists, including the relevant applicants in the present case.

193. The eleventh applicant in application no. 20129/21 specified that he had been physically ill-treated in the courtyard of the Parliament building.

Namely, a police officer had kicked him when pushing him out of the courtyard. The third, fifth and seventh applicants in application no. 20175/21 specified that they had been physically ill-treated – beaten and hit by truncheons – by the police, despite the fact that they had not demonstrated any violent behaviour.

194. The applicants also submitted, with respect to the procedural aspect of Article 3 of the Convention, that the ongoing criminal investigation into the events had been ineffective. Namely, according to the applicants, the investigation had lacked thoroughness, on account of its failure to identify the persons responsible for the apparently unauthorised use of rubber bullets. Nor had the question of superior responsibility been addressed appropriately. The applicants also argued that the overall length of the investigation had not been justified. Additionally, they complained of the authorities' treatment of the question of their procedural status as victims and their access to the investigative procedure. Namely, they claimed that such status had been granted following significant delays (or not at all – see paragraph 97 above) and that the authorities had refused to grant them full access to the criminal case file, only presenting them with the material closely linked, in the authorities' opinion, to their respective cases.

195. Additionally, emphasising that no amnesty should be made available for conduct in breach of Article 3 of the Convention, the applicants in applications nos. 20129/21 and 20175/21 also stated that the enactment of the Amnesty Act of 7 September 2021 had rendered the ongoing criminal investigation ineffective. Namely, the subject matter of the investigation in question had fallen within the scope of the Act, and three officers charged with offences relating to the events of 20-21 June 2019 had already benefited from this (see paragraph 127 above). Considering that the authorities had failed to classify the alleged offences as ill-treatment as opposed to the exceeding of authority, the applicants argued that this had effectively enabled any individual who might be charged to benefit from the amnesty, undermining any prospects of accountability.

(b) The Government

196. The Government maintained that the ongoing criminal investigation had involved an examination of "every aspect of the termination of the demonstration, including its legal basis, planning and execution, the proportionality of the means and methods employed, and the individual complaints of persons affected by the [p]olice measures", and that it had been effective within the meaning of Article 3 of the Convention.

197. The Government emphasised that multiple investigative measures had been implemented as part of the ongoing criminal investigation (see paragraphs 94-125 above). They noted, by contrast, the complex nature of the investigation, on account of (i) the number of victims and witnesses; (ii) the sheer amount of video and other material to be assessed (explaining that, in

total, “more than 10 terabytes of electronic information [had been] obtained”); (iii) the fact that because cameras had been moving on the ground, multiple video-recordings from different sources had to be assessed with respect to each individual incident; (iv) limitations encountered by the various public institutions involved (including the GPO and the NFB) during the relevant period, on account of the public-health measures introduced in response to the global outbreak of the COVID-19 pandemic in 2020 (see paragraph 132 above) causing, among other things, the delay in the NFB reports being obtained; and (v) the difficulty in linking the actions of specific police officers to the applicants’ injuries, on account of the officers’ constant rotation and the shifting angles of cameras filming the events. Accordingly, the Government submitted that “the fact that possible perpetrators [had] not [been] identified ... to date [could] not automatically render the investigation ineffective”. They also stated that the question of the superior responsibility of senior officials could only be determined in each individual case, given the absence of any order to use rubber bullets.

198. As regards the procedural status of a victim, the Government submitted that the granting of such status depended on various elements, including the substance of the relevant NFB report regarding an applicant’s injuries. However, as regards the tenth applicant in application no. 20175/21, although such a report had been obtained, the video material available in respect (see paragraph 79 above) of that applicant had shown that he had engaged in violent actions against the police. According to the Government, those actions explained why he had not been granted the procedural status of a victim. As for the authorities’ refusal to grant the applicants access to the section of the case file which did not relate to their individual circumstances, the Government submitted that the criminal investigation had concerned many other individuals, and the file had included their personal data and classified documents. Consequently, giving all of the victims full access to the above-mentioned material would have involved legitimate security risks and other types of risks. This limitation had been counterbalanced by the fact that the authorities had actively cooperated with the PDO by granting it unrestricted access to the material in the case file, despite the absence of an obligation to do so, and by following its recommendations on a number of issues. The subsequent public report prepared by the PDO had explicitly referred to such material. In the Government’s submission, this had ensured the requisite standard of scrutiny of the criminal investigation.

199. The Government also submitted, as regards the Amnesty Act, that it did not apply to the offences of torture, threat of torture, and inhuman and degrading treatment, and was thus compliant with the Convention. In this regard, although the present criminal investigation had been ongoing with respect to Article 333 of the Criminal Code, the reclassification of offences was common practice at domestic level, even if there was insufficient evidence for such reclassification in the applicants’ cases at this stage of the

proceedings. According to the Government, this was also because the alleged perpetrators had not yet been identified in order to enable the authorities "to comprehensively assess all the subjective and objective elements of the conduct [in question] for its correct classification".

200. The Government added that making any submissions in respect of the substantive limb of Article 3 of the Convention would be speculative, given the ongoing nature of the criminal investigation. However, they stated, as part of their submissions in respect of the other provisions of the Convention relied on by the applicants, that the initially peaceful demonstration of 20 June 2019 had become violent, with some of the demonstrators attempting to violently storm the Parliament building. This development had thus necessitated the dispersal of the demonstration and the use of proportionate force in that process, given that the demonstrators had refused to comply with the orders of the police. The demonstrators and journalists had been given a warning before the implementation of the dispersal decision "either through verbal interaction or by means of official statements via different media outlets, as well as other platforms".

201. The Government stated that on the basis of the statements by the MIA officials and officers involved in terminating the demonstration, the investigation had revealed that the decision to use rubber bullets during the dispersal had been "made by individual police officers", on the basis of the Police Act, the applicable ministerial orders, and the Plan on measures aimed at safeguarding and restoring public order in Tbilisi (see paragraphs 136-153 and 155-161 above). It was noted that "the material in the case file [did] not suggest that the use of rubber bullets [had been] excessive in all cases". In this regard, the domestic legislation had allowed State agents to choose the form and extent of a coercive measure depending on the specific circumstances of each situation, and the investigating authorities had been determining whether the use of rubber bullets had been necessary and proportionate in each individual case.

2. *The Court's assessment*

202. The Court observes that the applicants' complaints concern both the substantive and procedural aspects of Article 3 of the Convention. It notes, in this regard, that the issue of the effectiveness of the criminal investigation has been joined to the merits of the applicants' complaint under the procedural limb of Article 3 of the Convention (see paragraph 185 above). Being sensitive to the subsidiary nature of its task, and recognising that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case, the Court considers it appropriate to firstly examine whether the applicants' complaints of ill-treatment were adequately investigated by the authorities (see *Shmorgunov and Others*, cited above, § 326).

(a) Compliance with the procedural aspect of Article 3 of the Convention

(i) General principles

203. The obligation to carry out an effective official investigation into arguable allegations of treatment infringing Article 3 suffered at the hands of State agents is well established in the Court's case-law (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 114-23, 28 September 2015; *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 316-26, ECHR 2014 (extracts); and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 182-85, ECHR 2012).

204. In order to be "effective", such an investigation, as the one under Article 2, must be adequate (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II, and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 172, 14 April 2015). This means that it must be capable of leading to the establishment of the facts and to a determination of whether the force used was or was not justified in the circumstances, and of identifying and – if appropriate – punishing those responsible (see, among other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, Reports 1998-VIII; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 301, ECHR 2011 (extracts); and *Mustafa Tunç and Fecire Tunç*, cited above, § 172).

205. The essential purpose of an investigation under Article 3 of the Convention is to secure the effective implementation of domestic laws prohibiting torture and inhuman or degrading treatment and punishment in cases involving State agents or bodies, and to ensure their accountability for ill-treatment occurring under their responsibility (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 358, 6 April 2004). The Convention only requires that there should be "an investigation capable of leading to the punishment of those responsible" (see *Egmez v. Cyprus*, no. 30873/96, § 70, ECHR 2000-XII). Nevertheless, the outcome of the investigations and of the ensuing criminal proceedings, including the sanction imposed as well as disciplinary measures taken, has been considered decisive. It is vital in ensuring that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the prohibition of ill-treatment are not undermined (see *Gäfgen v. Germany* [GC], no. 22978/05, § 121, ECHR 2010).

206. The Court has already held that the procedural obligation under Article 3 continues to apply in difficult security conditions. Even where events leading to a duty to investigate occur in the context of generalised violence and investigators are confronted with obstacles and constraints which compel the use of less effective measures of investigation or cause an investigation to be delayed, the fact remains that Article 3 requires that all reasonable steps must be taken to ensure that an effective and independent

investigation is conducted (see *Mocanu and Others*, § 319, and *Shmorgunov and Others*, § 330, both cited above).

207. Although this requirement is not an obligation of result, but that of means, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness (see *El-Masri*, cited above, § 183).

208. A requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Bouyid*, cited above, § 121).

209. The investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *El-Masri*, cited above, § 183).

210. For an investigation to be effective, the persons responsible for carrying it out must be independent from those investigated. This means not only a lack of hierarchical or institutional connection, but also a practical independence (see *Bouyid*, cited above, § 118). Whatever mode is employed, the authorities must act of their own motion and the victim should be able to participate effectively in the investigation (see *Bouyid*, cited above, § 122).

211. The criteria an investigation has to satisfy for the purposes of the procedural obligation under Articles 2 and 3 of the Convention (see, *mutatis mutandis*, *Ramsahai and Others*, cited above, §§ 323-346) are interrelated and each of them, taken separately, does not amount to an end in itself, as is the case in respect of the requirements for a fair trial under Article 6. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues must be assessed (see *Mustafa Tunç and Fecire Tunç*, cited above, § 225, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 171, 25 June 2019).

(ii) Application of these principles to the present case

212. Turning to the circumstances of the present case, the Court notes that the applicants' complaints can be divided into two categories. The majority of the applicants complained about injuries sustained as a result of the authorities' use of rubber bullets during the dispersal of the demonstration. As for the complaints made by the eleventh applicant in application no. 20129/21 and the third, fifth and seventh applicants in application no. 20175/21, they alleged that they had been physically ill-treated. The Court will address these two elements of the investigation in turn.

(α) Investigation into injuries caused by rubber bullets

213. At the outset, the Court observes that the Government did not dispute the fact that the injuries sustained by the relevant applicants had been caused by rubber bullets fired during the dispersal of the demonstration. In this regard, the nature and seriousness of the injuries caused by rubber bullets varied from minor to life-threatening. However, the Court cannot overlook the general risk to the lives and health of individuals posed by the improper use of such non-lethal ammunition (see *Kılıcı v. Turkey*, no. 32738/11, § 32, 27 November 2018). Accordingly, the Court finds that all the injuries suffered by the relevant applicants – which were duly documented – were sufficient to bring Article 3 of the Convention into play. The authorities were therefore obliged to carry out an effective investigation of their own motion.

214. In this regard, the Court emphasises that the authorities, promptly and on their own initiative, launched an official investigation into the dispersal of the demonstration and the use of force during that process (see paragraph 94 above). Notably, a number of significant investigative measures were also implemented swiftly (see paragraphs 99, 102-126 above). Additionally, the scope of the investigation was sufficiently broad within the meaning of Article 3 of the Convention, and involved an evaluation of the legal basis, planning and execution of the police operation (see paragraphs 94 and 196 above). The investigation also extended to all the individual circumstances of those affected by the police measures, including the applicants in the present case. Furthermore, it was handled by the GPO, which enjoyed full independence from those implicated in the relevant events.

215. The Court additionally commends the authorities' efforts to ensure public scrutiny and transparency in the investigation process, despite the classified status of the investigation, by giving the PDO full access to the case material and the opportunity to publish two public reports regarding its progress (see paragraphs 99 and 162-170 above).

216. Additionally, despite a certain delay, the majority of the applicants (see paragraph 98 above) were granted the procedural status of victims. While these applicants argued that they had not been granted access to all the investigation material (see paragraph 194 above), the Court considers that the authorities' decision to grant the PDO unlimited access to such material and the right to publish public reports (see paragraph 215 above) compensated for this limitation in the particular circumstances of the case. However, in so far as the fourth, eighth and tenth applicants in application no. 20175/21 are concerned, the Court was not presented with a convincing explanation, in the face of uncontested evidence demonstrating their injuries and the considerable passage of time, as to why these applicants may still be excluded from the investigation process.

217. In any case, the Court does not lose sight of the fact that the criminal investigation in respect of all the applicants has been ongoing for more than four and a half years and has not reached any conclusions. However, it needs

to be emphasised that the criteria which an investigation has to satisfy are interrelated, meaning that each criterion, taken separately, cannot be examined in isolation (for the relevant methodology, see paragraph 211 above). In the present case, the length of the investigation is to be considered alongside the criterion of thoroughness (including the authorities' diligence in pursuing obvious lines of inquiry, in view of the available evidence), with a view to determining the overall effectiveness of the investigation in question.

218. In this regard, the following three elements need to be highlighted before addressing the question of the authorities' diligence in investigating the circumstances involving the present applicants. Firstly, the Court agrees with the Government's submission that the ongoing criminal investigation is a complex one in terms of the sheer amount of material to be assessed and the scope of the issues to be addressed (see paragraph 197 above). Secondly, the difficult and delicate task of investigating the events of 20-21 June 2019 must have been complicated further by the authorities encountering the extraordinary challenges posed by the global pandemic and the containment measures this gave rise to (ibid.). Thirdly, on a more general level, the applicants' decision to lodge their complaints with the Court was, at the time, somewhat premature (two applications were lodged within less than a year after the opening of the investigation, two were lodged when the investigation had been ongoing for less than two years, and one was submitted just over two years after the opening of the criminal investigation – see the dates indicated in the appended table). As already noted above, while the Court is not prevented from examining the effectiveness of the investigation with reference to events which occurred after the lodging of the present applications (see paragraph 184 above), such an examination should take due note of the challenges faced by the investigation and its ongoing nature.

219. In the light of the foregoing considerations, the Court will address the following four elements to determine whether the authorities have been thorough and diligent in investigating the matter thus far.

220. Firstly, the investigation was to determine, among other things, whether any responsibility on the part of those in charge of planning the police operation had been engaged. However, insufficient attempts have been made so far to determine why, given the clearly anticipated risk that the situation on the ground would escalate (see paragraph 155 above), it was not possible to consider and take proper precautions to avoid a forceful intervention or minimise its intensity and impact, including, for instance, by giving meaningful advance warnings on the ground before resorting to the use of force to disperse the demonstration. Nor has the question of potential superior responsibility been given sufficient consideration, despite explicit recommendations by the Public Defender in 2019 and 2020 (see paragraphs 100, 167-168 and 170 above).

221. Secondly, while the PDO emphasised, as early as July 2019 and March 2020, the need for the investigating authorities to carry out a systemic analysis of the events (see paragraphs 100 and 168 above), no such analysis has been made so far. For instance, it was deemed superfluous for individual officers to make official reports regarding the extent of the force used by them (see paragraph 104 above). Nor does it appear that any official report was made containing a detailed timeline of the events, description of the planning and the implementation stages of the dispersal, and possibly any conclusions as regards the prevention of similar incidents from occurring in the future (see, for instance, *Zakharov and Varzhabetyan v. Russia*, nos. 35880/14 and 75926/17, § 50, 13 October 2020).

222. Thirdly, as regards the firing of rubber bullets by individual law-enforcement officers and their potential liability for inflicting injuries on peaceful individuals, including the relevant applicants, the Court cannot overlook the fact that other than the three officers who were granted amnesty (see paragraphs 126-127 above), not a single individual has been charged or treated as a suspect in relation to the events, despite the passage of more than four and a half years since the opening of the investigation and the collection of many pieces of evidence relating to the relevant events (see, for instance, *Shmorgunov and Others*, cited above, § 385). Additionally, as is apparent from the case material, only small groups of officers were stationed in shooting positions at any given time during the dispersal of the demonstration. It does not appear that the authorities determined – or drew any conclusions from – the timeline of their rotation or the extent of their individual use of force. What is more, despite the fact that only specific individuals had been authorised to use non-lethal weapons and ammunition during the dispersal and all such use had been duly recorded (see paragraph 114 above), enabling the narrowing down of the potential circle of suspects, no progress has been made in this respect. Nor was the exact location where each applicant was injured and his or her distance from possible shooters determined by means of an investigative experiment involving the applicants' participation.

223. It is true that the applicants could not identify the officers whose shots had resulted in their injuries. However, the Court takes into account that the majority of the officers who used rubber bullet rifles had their faces covered and were located in an elevated position, behind the police cordon, further away from the demonstrators. This may have rendered their identification by victims rather difficult. Indeed, even some of the officers could not recognise their colleagues (see paragraph 115 above). However, it was primarily for the authorities planning and implementing such a large-scale police operation to ensure that the identification of officers suspected of ill-treatment would not be rendered impossible (see, *mutatis mutandis*, *Dedovskiy and Others v. Russia*, no. 7178/03, § 91, ECHR 2008 (extracts), and *Shmorgunov and Others*, cited above, § 389). Namely, where the

competent national authorities deploy masked police officers to maintain law and order or to make an arrest, those officers should be required to visibly display some distinctive insignia, such as a warrant number. The display of such insignia would ensure their anonymity, while enabling their identification and questioning in the event of challenges to the manner in which the operation was conducted (see *Hentschel and Stark v. Germany*, no. 47274/15, § 91, 9 November 2017). In the present case, in the absence of such identifying insignia for the officers, the investigative measures open to the authorities to establish the identities of the persons responsible for the alleged use of excessive force causing ill-treatment became increasingly important (ibid., § 93; see also, for instance, *Lopez Martinez v. Spain* [Committee], no. 32897/16, § 38, 9 March 2021).

224. Fourthly, and lastly, no assessment was made as regards the forensic characteristics of the rubber bullet wounds sustained by the applicants (including in respect of the angle and trajectory of the projectiles). Although the experts commissioned to carry out the forensic medical examinations noted that an analysis of the types of weapons used to inflict the injuries was beyond their remit and that insufficient information had been presented to them to determine other aspects of the injuries (see paragraph 125 above), no other expert was commissioned to study the matter any further.

225. The Court does not find that the challenges indisputably encountered by the investigating authorities in the course of the ongoing criminal investigation (see paragraphs 197 and 218 above) justify the lack of adequate progress as regards the above-mentioned obvious lines of inquiry. Namely, key evidence regarding the events and injuries complained of was collected as early as June and July 2019 (see paragraphs 94-122 above) and the authorities needed to draw appropriate conclusions from it. Even accepting that this process was slowed down considerably by the outbreak of the global pandemic and the containment measures adopted in that regard, these challenges were resolved by March 2022 at the latest (see paragraph 132 above). The Government argued that the State forensic institution had also faced struggles in delivering the relevant forensic reports (see paragraph 197 above). However, even accepting that the extraordinary circumstances referred to by the Government could, to a certain extent, account for the delay of approximately two years which followed the sending of the requests to the State forensic institution, in some cases, the delay went beyond a period of three years (see paragraphs 57 and 62 above). At any rate, even where such reports were received promptly (see paragraphs 86 and 89 above), there was no progress in the investigation involving the relevant applicants.

226. In the light of the foregoing, the Court commends the authorities for opening a criminal investigation into the events of 20-21 June 2019 promptly and on their own initiative, and accepts that they have encountered certain objective challenges in analysing the material available to them in a timely manner as part of what has clearly been a complex criminal investigation.

However, it cannot find that the reasons advanced by the Government are sufficient to justify the failure to make a diligent effort to pursue key lines of inquiry, a situation which has continued for more than four and a half years (see paragraphs 220-224 above).

227. The foregoing considerations are sufficient for the Court to conclude that the ongoing criminal investigation has fallen short of the requirement of effectiveness within the meaning of the procedural aspect of Article 3 of the Convention. In such circumstances, it is not necessary for the Court to address the question of whether the enactment of the Amnesty Act, in and of itself, undermined the effectiveness of the investigation.

228. The Court therefore concludes that the Government's preliminary objection must be dismissed and that there has been a violation of the procedural aspect of Article 3 of the Convention.

(β) Investigation into the alleged physical ill-treatment

229. As to the complaints of physical ill-treatment by police officers raised by the eleventh applicant in application no. 20129/21 and the third, fifth and seventh applicants in application no. 20175/21, the Government did not contest that the injuries complained of may have been sustained during the relevant applicants' interaction with law-enforcement personnel. Considering the fact that the applicants submitted medical evidence in respect of such injuries (see paragraphs 66, 83, 85 and 87 above), their allegations also amounted to an arguable claim of ill-treatment triggering the procedural obligation under Article 3 of the Convention for the authorities to conduct an effective investigation.

230. In this regard, the Court reiterates that the authorities, which enjoyed full independence from those implicated in the relevant events, promptly and on their own initiative, did open a criminal investigation following the events of 20-21 June 2019 (see paragraph 214 above). Additionally, a number of investigative measures were implemented swiftly (ibid.). The authorities also ensured the transparency of the investigation process, despite its classified status, by granting the PDO full access to the case material and the opportunity to publish two public reports regarding its progress (see paragraph 215 above).

231. The Court also takes note of the fact that, despite a certain delay, the majority of the applicants (see paragraphs 98 and 216 above) were granted the procedural status of victims. However, according to the case file material, the eleventh applicant in application no. 20129/21 and the third and seventh applicants in application no. 20175/21 are still excluded from the investigation process. The Court was not presented with a convincing explanation for their exclusion, in the face of uncontested evidence demonstrating their injuries and the considerable passage of time.

232. More importantly, however, the investigation has been ongoing for more than four and a half years and has not reached any conclusions. In this

regard, as the applicants' complaints were not linked to the use of rubber bullets during the dispersal of the demonstration, many of the justifications advanced by the Government for such a delay (see paragraph 197 above) are not relevant. As for the challenges posed by the global pandemic, they were resolved by March 2022 at the latest (see paragraph 132 above). At any rate, as above, the Court will assess the effectiveness of the investigation, mainly with respect to the criterion of thoroughness (see paragraph 217 above).

233. Within this context, the Court observes that despite the initial period of intense investigative activity, and in so far as the present applicants' complaints are concerned, the authorities' efforts have not been sufficient to find out what happened and identify any possible suspects. For instance, although the eleventh applicant in application no. 20129/21 promptly requested after the incident that recordings from the video cameras located around the Parliament yard be obtained by the authorities (see paragraph 119 above), it is unclear why such material could not be obtained. Similarly, while the identity of the officers involved in the arrest and escorting of the third, fifth and seventh applicants in application no. 20175/21 was known to the authorities, it is unclear why no conclusions have been drawn in respect of their conduct during the contested events.

234. It is not for the Court to identify the specific measures the investigating authorities ought to have taken in respect of the present applicants' grievances. The foregoing considerations are sufficient, however, to conclude that the efforts undertaken by the authorities, for over four and a half years, have been insufficient to investigate in depth the circumstances that could have shed light on the injuries sustained by the present applicants.

235. The Court therefore concludes that there has been a violation of the procedural aspect of Article 3 of the Convention.

(iii) Conclusion concerning the procedural aspect of Article 3 of the Convention

236. In the light of the foregoing, the Court dismisses the Government's objection – raised in respect of the entirety of the applications (see paragraph 175 above) – that the applicants failed to exhaust effective domestic remedies on account of the ongoing nature of the criminal investigation, and finds that there has been a violation of the procedural aspect of Article 3 of the Convention.

(b) Compliance with the substantive aspect of Article 3 of the Convention

(i) General principles

237. The relevant general principles have been summarised in the case of *Shmorgunov and Others* (cited above), as follows:

> "359. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct

(see, among other authorities, *Labita*, cited above, § 119). In respect of a person who is deprived of his or her liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Bouyid*, cited above, §§ 100-01, and *Saribekyan and Balyan v. Azerbaijan*, no. 35746/11, § 81, 30 January 2020). In respect of recourse to physical force during an arrest, Article 3 does not prohibit the use of force for effecting a lawful arrest (see *Annenkov and Others v. Russia*, no. 31475/10, § 79, 25 July 2017). However, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). The burden to prove that this was the case rests on the Government (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Boris Kostadinov v. Bulgaria*, no. 61701/11, § 53, 21 January 2016).

360. In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court has generally applied the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX, and *Saribekyan and Balyan*, cited above, § 82).

361. The Court reiterates that it is free to assess not only the admissibility and relevance but also the probative value of each item of evidence before it. When assessing evidence it is not bound by formulae and adopts the conclusions supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions (see *Merabishvili* [*v. Georgia* [GC], no. 72508/13], § 315, [28 November 2017,] with further references). In this context, the conduct of the parties when evidence is being obtained may also be taken into account. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 586, 13 April 2017). The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Giuliani and Gaggio*, cited above, § 181, with further references). The Court further reiterates in this connection that, in all cases where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant's allegations (see *Mansuroğlu v. Turkey*, no. 43443/98, § 80, 26 February 2008, with further references). The Court has also noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. If the authorities then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn (see *Varnava and Others* [*v. Turkey* [GC], nos. 16064/90 and 8 others], § 184, [ECHR 2009], with further references). The Court's reliance on evidence obtained as a result of the domestic investigation and on the facts established within the domestic proceedings will largely depend on the quality of the domestic investigative process, its thoroughness and consistency (see *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 238, ECHR 2011 (extracts), with further references).

362. The Court also pointed out in the *El-Masri* judgment (cited above, § 155) that, although it recognised that it must be cautious in taking on the role of a first-instance

tribunal of fact where this was not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000), it had to apply a 'particularly thorough scrutiny' where allegations were made under Article 3 of the Convention (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010), even if certain domestic proceedings and investigations had already taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007). In other words, in such a context the Court is prepared to conduct a thorough examination of the findings of the national courts, where indeed there are such findings. In examining them it may take account of the quality of the domestic proceedings and any possible flaws in the decision-making process (see *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 83, 12 February 2009).

363. Ill-treatment prohibited by Article 3 of the Convention may take many different forms, ranging from torture, to inhuman or degrading treatment to treatment that humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (see, for instance, *Bouyid*, cited above, §§ 87-88). In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element, as recognised in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating (see, among other authorities, *Aktaş v. Turkey*, no. 24351/94, §§ 310-13, ECHR 2003-V (extracts), and *Saribekyan and Balyan*, cited above, § 83)."

(ii) Application of these principles to the present case

238. Turning to the circumstances of the present case, the Court observes – and this fact is not disputed by the parties – that on 20 June 2019 the demonstration in front of the Parliament building started as a peaceful civic and political protest. However, the situation on the ground started escalating once some of the demonstrators attempted to break through the police cordon to force their way into the Parliament building, and the authorities eventually terminated the demonstration by using force.

239. In this context, and in so far as the authorities' use of rubber bullets is concerned, the Government did not dispute the fact that the relevant applicants had been injured by rubber bullets. Nor did they dispute that these applicants, except for the tenth applicant in application no. 20175/21, had been peaceful throughout the events. As regards the allegations of physical ill-treatment by the eleventh applicant in application no. 20129/21 and the third, fifth and seventh applicants in application no. 20175/21, it was not disputed that they might have sustained the relevant injuries during the dispersal of the demonstration.

240. However, the Court cannot downplay the unusual turn of events at the demonstration and the chaotic events, including attacks on law-enforcement personnel while they were rightfully upholding public order, which ensued after several hundred demonstrators started their violent attempts to break through the police cordon and storm the Parliament building. The events indisputably posed a danger to public order when the authorities started to disperse the demonstration (compare and contrast *Balçık and Others v. Turkey*, no. 25/02, § 32, 29 November 2007). In this context, the Court has no doubt that the authorities could resort to force to restore public order. As regards the conduct of the individual police officers, given the sheer scale of the disorder on the ground and the fact that some demonstrators had become particularly violent, in the heat of the moment, individual officers must have been justified, in principle, in resorting to the use of rubber bullets to contain the violent demonstrators and avert an honestly perceived danger to their own lives or those of others (see, for instance, *Giuliani and Gaggio*, cited above, §§ 187-79).

241. Against this background, the Court reiterates that in assessing evidence, it adopts the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability of individuals but on Contracting States' responsibility under the Convention (see *El-Masri*, cited above, § 151). Within this context, in order to adequately assess the circumstances relating to the present applicants' complaints and the extent of State responsibility in this respect, the Court has to answer, among other questions, whether the individual applicants' injuries were an unintended consequence of the lawful and proportionate use of force against the backdrop of the chaotic events described above or the unjustified use of force in breach of the substantive aspect of Article 3 of the Convention.

242. In this respect, considering the multi-faceted nature of the applicants' complaint under the substantive limb of Article 3 of the Convention and the scope of the ongoing investigation (see paragraph 214 above), the Court considers that more factual elements have to be elucidated at domestic level. Indeed, regardless of the question relating to the legal framework regulating the use of rubber bullets at domestic level, the assessment of the necessity and proportionality of the use of force in the present circumstances is linked to the broader context of the events and goes beyond the material in the case file available to the Court. In this respect, the Court reiterates that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *Giuliani and Gaggio*, § 180, and *Mustafa Tunç and Fecire Tunç*, § 182, both cited above).

243. At any rate, the Court does not lose sight of the fact that the investigation, which has been found to be ineffective, is still ongoing. In this

regard, the Court emphasises that the finding relating to the ineffectiveness of the investigation is based on the authorities' lack of diligence thus far in pursuing certain key lines of inquiry, in circumstances where most of the evidential material has already been obtained by them in a manner which has not tainted its authenticity or reliability. In view of the above-mentioned nature of the violation found in respect of the procedural aspect of Article 3 of the Convention and the ongoing nature of the criminal investigation, the Court does not consider that the capacity of the investigation in question to assess the circumstances of the present case and draw appropriate conclusions has been irretrievably undermined. In such particular circumstances, it would firstly be for the domestic authorities, rather than the Court, to properly evaluate the vast amount of evidential material which they have already gathered.

244. The Court is not therefore called upon to decide on the merits of the applicants' complaints under the substantive limb of Article 3 of the Convention on the basis of the material submitted by the parties (compare and contrast *Disk and Kesk v. Turkey*, no. 38676/08, § 30, 27 November 2012) in the particular circumstances of the present case. In line with the spirit of shared responsibility on the part of States and the Court to ensure respect for Convention rights, it will firstly be for the domestic authorities to reach appropriate conclusions regarding the various issues raised by the present applications as part of the ongoing criminal investigation, within the scope of their obligation to comply with the Court's judgment (see paragraphs 258-263 below; compare *Kelly and Others v. the United Kingdom*, no. 30054/96, § 101, 4 May 2001; see also *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 165, 18 November 2021).

245. Accordingly, the Court considers that in the circumstances of this case, it would be inappropriate and contrary to its subsidiary role under the Convention (see, among other authorities, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 138, 27 November 2023), as enshrined in the Preamble to the Convention, to rely on the facts of the case, especially concerning individual responsibility, to determine the extent of the State responsibility. Such an exercise would duplicate the ongoing proceedings at domestic level, which are better placed and equipped to accomplish this task (see, for instance, *McShane v. the United Kingdom*, no. 43290/98, § 103, 28 May 2002). This finding is without prejudice to the potential liability of the State even in the absence of individual responsibility being established at domestic level.

246. In the light of the foregoing, and emphasising the importance of the principles of subsidiarity and shared responsibility, the Court refrains from taking a decision regarding the alleged responsibility of the State in respect of the substantive aspect of the applicants' complaints under Article 3 of the Convention.

V. ALLEGED VIOLATIONS OF ARTICLE 10 AND ARTICLE 11 OF THE CONVENTION

247. The applicants in applications nos. 13186/20, 16757/20, 20129/21 (except for the eleventh applicant – see paragraph 248 below) and 39382/21 complained that they had been deliberately targeted during the dispersal of the demonstration because of their status as journalists, or that, alternatively, the authorities' excessive use of force had interfered with their journalistic activities, in breach of Article 10 of the Convention.

248. The eleventh applicant in application no. 20129/21 complained that he had been removed from the internal yard of the Parliament building and that he had been physically ill-treated during that process.

249. The applicants in applications nos. 20175/21 (with the exception of the eighth applicant) and 39382/21 complained that the authorities had dispersed the demonstration without prior warning and by means of excessive force, in breach of Article 11 of the Convention.

250. However, the investigation into the applicants' complaints is ongoing and remains feasible (see paragraphs 243 above and 262-263 below). In this respect, the Court has refrained from taking a decision regarding the alleged responsibility of the State in respect of the substantive aspect of the applicants' complaints under Article 3 of the Convention (see paragraphs 244-246 above). Considering that the investigation in question also covers issues regarding the applicants' complaints under Article 10 and Article 11 of the Convention (see paragraph 182 above), this leads the Court to conclude that it should refrain from examining the admissibility and merits of the complaints under these provisions.

VI. ALLEGED VIOLATION OF ARTICLE 38 OF THE CONVENTION

251. The applicants in applications nos. 20129/21 and 20175/21 submitted that the Government had not complied with Article 38 of the Convention, on account of their failure to proactively communicate to the Court the fact that Parliament had passed an Amnesty Act on 7 September 2021. They also argued that the Government's submission of only a redacted version of the Plan concerning the demonstration of 20-21 June 2019 (see paragraph 155 above) had constituted a failure to furnish all necessary facilities to make possible a proper and effective examination of the applications.

252. The Government submitted that the passing of the Act had been public knowledge. As regards the submission of the Plan, it had been a confidential document and the redaction of the relevant parts had not deprived the Court of an opportunity to acquire crucial information relating to the case. Nor could this constitute a refusal by the Government to furnish information, given their readiness to cooperate with the Court.

253. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual application instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. A failure on a government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 202, ECHR 2013). The Court further notes that the obligation to furnish the evidence requested by the Court is binding on the respondent Government from the time such a request is made, whether this is when notice of an application is given or at a subsequent stage in the proceedings (see *Al Nashiri v. Poland*, no. 28761/11, § 364, 24 July 2014).

254. Turning to the circumstances of the present case, the Court notes that the passing of the Amnesty Act constituted public knowledge. As regards the Plan referred to by the applicants, it was submitted by the Government, albeit in a redacted form, and the Court was able to assess its substance with reference to the applicants' complaints.

255. Having regard to the above, the Court finds that the respondent State complied with the obligations under Article 38 of the Convention.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

256. Relying on Article 13 of the Convention, the applicants complained that no effective remedies had been available to them in respect of their complaints.

257. Considering its findings regarding the applicants' complaints under the relevant provisions, the Court considers that it is unnecessary to examine the admissibility and merits of the applicants' complaint under Article 13 of the Convention.

VIII. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 46 of the Convention

258. Article 46 of the Convention provides as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

1. General principles

259. Under Article 46 of the Convention, the High Contracting Parties undertake to abide by the final judgment of the Court in the cases to which they are parties, the Committee of Ministers being responsible for supervising the execution of the judgments. This means that when the Court finds a violation, the respondent State is legally bound not only to pay the interested parties the sums awarded in just satisfaction under Article 41, but also to adopt the necessary general and/or, where applicable, individual measures (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 209, ECHR 2012).

260. As the Court’s judgments are essentially declaratory in nature, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in order to discharge its legal obligation under Article 46 of the Convention, provided that those means are compatible with the conclusions contained in the Court’s judgment (ibid.). In certain particular situations, however, the Court may find it useful to indicate to the respondent State the type of measures that might be taken in order to put an end to the – often systemic – situation that gave rise to the finding of a violation (see, for example, *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV, and *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006). Even in such cases, however, it is the Committee of Ministers that has exclusive competence to evaluate the implementation of such measures under Article 46 § 2 of the Convention (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 405, 26 September 2023, with further references).

2. Application of these principles to the present case

261. In the instant case, the Court considers it necessary to indicate the individual measures required for the execution of the present judgment, without prejudice to the general measures required to prevent other similar violations in the future (see *Hirsi Jamaa and Others*, cited above, § 210).

262. It can be inferred from the Court’s case-law that the obligation of a Contracting State to conduct an effective investigation under Article 3 of the Convention persists as long as such an investigation remains feasible but has not been carried out or has not met the Convention standards (see, for instance, *Abu Zubaydah v. Lithuania*, no. 46454/11, § 682, 31 May 2018, with further references, and *Al Nashiri v. Romania*, no. 33234/12, § 740, 31 May 2018).

263. Turning to the circumstances of the present case, the Court considers that having regard in particular to the nature of the procedural violation of Article 3 found in the present case, the obligation incumbent on Georgia

under Article 46 inevitably requires that all necessary steps be taken without delay to reactivate the ongoing criminal investigation. The authorities are required to address, expressly or in substance, the various issues raised by the applicants' complaints before the Court under the substantive limb of Article 3, Article 10 and Article 11 of the Convention. Thereafter, in accordance with the applicable Convention principles (see paragraphs 203-211 above), the criminal investigation should be brought to a close as soon as possible once the circumstances and conditions under which the applicants sustained their injuries have been elucidated further, in so far as this proves to be feasible, so as to enable the identification and, where appropriate, punishment of those responsible (for a similar approach, see *Abu Zubaydah*, § 683, and *Al Nashiri*, § 742, both cited above). The Court notes that on the basis of the elements in the case file, there appear to be no insurmountable practical obstacles to the investigation being carried out in this manner to provide an appropriate remedy to the applicants. Should the respondent State fail to comply with this obligation, the applicants will be able to reapply to the Court.

264. It is not, however, for the Court to address to the respondent State detailed, prescriptive injunctions in this regard. It falls to the Committee of Ministers, acting under Article 46 of the Convention, to address the issue of what – in practical terms – may be required of the respondent Government by way of compliance with the present judgment (see *Abu Zubaydah*, cited above, § 683).

B. Article 41 of the Convention

265. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. Damage

266. The first, sixth, ninth and eleventh applicants in application no. 20175/21 submitted that they had almost completely lost their eyesight as a result of the events complained of, and submitted claims in respect of pecuniary damage on account of the resulting reduction in their working capacity. The damage was calculated on the basis of the amount they were last earning, multiplied by the number of years until they reached retirement age. They claimed the following amounts: 129,069.60 euros (EUR) (the first applicant); EUR 77,479.20 (the sixth applicant); EUR 81,764.64 (the ninth applicant); and EUR 258,926.88 (the eleventh applicant).

267. All the applicants submitted claims in respect of non-pecuniary damage in the following terms:

Application no. 13186/20: EUR 20,000 each;
Application no. 16757/20: EUR 10,000;
Application no. 20129/21:
EUR 10,000 each (the first and sixth applicants);
EUR 5,000 each (the remaining applicants);
Application no. 20175/21:
EUR 30,000 each (the first, sixth, ninth and eleventh applicants);
EUR 14,000 each (the fourth and tenth applicants);
EUR 10,000 (the seventh applicant);
EUR 9,000 each (the third and fifth applicants);
EUR 7,000 each (the second and eighth applicants);
Application no. 39382/21: EUR 25,000.

268. As regards the amounts claimed by the first, sixth, ninth and eleventh applicants in application no. 20175/21 in respect of pecuniary damage, the Government stated that all four applicants had also submitted such claims – for lower amounts – as part of the ongoing domestic civil-law proceedings instituted against the MIA. The Government submitted that the applicants had not properly explained how the amounts claimed in respect of pecuniary damage had been calculated, and in any event this was the subject of ongoing proceedings before domestic courts. The Court was thus asked to reject the applicants' claims in respect of pecuniary damage.

269. As for the applicants' claims in respect of non-pecuniary damage, the Government submitted that they were unsubstantiated and excessive.

270. The Court reiterates that when an applicant submits a claim in respect of pecuniary damage, there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention. In this context, the Court emphasises that it has not established a violation of the substantive aspect of Article 3 of the Convention (see paragraph 246 above). Accordingly, there is no call to make an award in respect of the pecuniary damage claimed by the respective applicants.

271. By contrast, the Court has found that the respondent State is liable under the procedural aspect of Article 3 of the Convention for failing to diligently pursue obvious lines of inquiry as part of the ongoing criminal investigation. The applicants must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the relevant circumstances of the case and various equitable considerations, the Court finds it appropriate to award, in respect of non-pecuniary damage, EUR 15,000 each to Mr Kurdovanidze, Ms Gomuri, Mr Sulashvili and Mr Chankseliani; EUR 5,000 each to Mr Tsaava, Mr Kmuzov, Mr Svanadze, Ms Baghashvili, Ms Nemsadze, Ms Vakhtangadze, Ms Khozrevanidze, Mr Koshkadze, Mr Muradov, Mr Tchumburidze, Ms Abashidze, Mr Diasamidze, Mr Shekiladze, Mr Pochkhidze, Mr Giorgadze, Mr Sharvashidze, Mr Didberashvili and

Mr Berikashvili; and EUR 1,800 each to Mr Khvadagiani and Mr Chikviladze.

2. *Costs and expenses*

272. Only the applicants in applications nos. 20129/21 and 20175/21 submitted claims under this head.

273. The applicants in application no. 20129/21 claimed a total of 6,225 pounds sterling (GBP) for costs and expenses incurred before the Court in relation to two of their lawyers based in London, and the applicants in application no. 20175/21 claimed a total of GBP 6,247.16 for costs and expenses incurred before the Court in relation to the same two lawyers. They requested that the sums be paid in euros, directly into their representatives' account.

274. In support of these claims, the applicants submitted agreements dated 1 March 2021 concluded with the European Human Rights Advocacy Centre (EHRAC – the organisation employing those lawyers). The documents contained undertakings by the applicants to pay the legal fees and expenses of EHRAC if those were awarded by the Court. They also indicated that the lawyers' hourly rate was GBP 150. The applicants also submitted a time sheet indicating how many hours each of the two lawyers had spent reviewing the material in respect of each application – 33.1 hours (Mr Collins) and 7.4 hours (Ms Gavron).

275. The Government submitted that the applicants had failed to demonstrate that the expenses claimed had been incurred. Additionally, they submitted that the claims were excessive, considering that the applicants had been provided with the services of Georgian lawyers and the need to additionally employ London-based lawyers had not been demonstrated. The Government invited the Court to either reject the claims or award a reasonable amount.

276. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicants submitted conditional fee agreements with respect to the two lawyers based in London. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,000 covering costs under all heads, plus any tax that may be chargeable to the applicants, to be paid directly into the bank account indicated by the applicants' representatives.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Decides*, unanimously, to join to the merits the preliminary objection concerning the exhaustion of domestic remedies on account of the ongoing criminal investigation and, having examined it, *dismisses* it;

3. *Declares*, unanimously, the complaints under Article 3 of the Convention submitted by the fifth and ninth applicants in application no. 20129/21 inadmissible, and the remaining applicants' complaints under Article 3 of the Convention admissible;

4. *Holds*, unanimously, that there has been a violation of the procedural aspect of Article 3 of the Convention in respect of the remaining applicants;

5. *Holds*, by six votes to one, that it refrains from taking a decision regarding the merits of the substantive aspect of Article 3;

6. *Holds*, by six votes to one, that it refrains from taking a decision regarding the admissibility and merits of the complaints under Article 10 and Article 11 of the Convention;

7. *Holds*, unanimously, that the respondent State complied with the obligations under Article 38 of the Convention;

8. *Holds*, unanimously, that there is no need to examine the complaint under Article 13 of the Convention;

9. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 15,000 (fifteen thousand euros) each, plus any tax that may be chargeable, to Mr Kurdovanidze, Ms Gomuri, Mr Sulashvili and Mr Chankseliani, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros) each, plus any tax that may be chargeable, to Mr Tsaava, Mr Kmuzov, Mr Svanadze, Ms Baghashvili, Ms Nemsadze, Ms Vakhtangadze, Ms Khozrevanidze, Mr Koshkadze, Mr Muradov, Mr Tchumburidze, Ms Abashidze, Mr Diasamidze, Mr Shekiladze, Mr Pochkhidze, Mr Giorgadze, Mr Sharvashidze, Mr Didberashvili and Mr Berikashvili, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;

(iii) EUR 1,800 (one thousand eight hundred euros) each, plus any tax that may be chargeable, to Mr Khvadagiani and Mr Chikviladze, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;

(iv) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicants, in respect of all costs and expenses, to be paid directly into the bank account indicated by the relevant representatives;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Dismisses*, by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Georges Ravarani President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Gnatovskyy is annexed to this judgment.

G.R.
V.S

PARTLY DISSENTING OPINION OF JUDGE GNATOVSKYY

INTRODUCTION

1. Regrettably, I am unable to agree with the present judgment as regards the approach taken by the majority to the merits of the substantive aspect of the complaint under Article 3 of the Convention and regarding the admissibility and merits of the complaints under Article 10 and Article 11. My respectful but profound disagreement with the crucial part of the judgment (see paragraphs 238-50 of the present judgment, and operative provisions 5 and 6) is first of all related to the unprecedented inclusion, in the operative provisions, of the formula whereby the Court "[h]olds ... that it refrains from taking a decision". Such an unorthodox choice by the majority and the chain of reasoning that led to it – no doubt inspired by such worthy considerations as "subsidiarity" and "shared responsibility" – pose fundamental questions about the role of the Court and the very nature of its function.

2. Furthermore, the judgment, while finding a violation of the respondent State's procedural obligation, re-examines, in a rather innovative way, the interplay between the substantive and procedural limbs of Article 3, effectively linking a State's international legal responsibility for the violation of its substantive obligations to the future outcome of an ongoing domestic criminal investigation. The judgment also links the Court's assessment of alleged violations of Articles 10 and 11 of the Convention to that same future outcome. The result, in my view, is not consistent with the Court's case-law and would seem to create more problems than it attempts to solve.

3. This separate opinion first addresses the reasons given for, and the potential effects of, the Court's decision to refrain from taking a decision on complaints under Article 34 of the Convention. In so doing, it explores the options available to the Court in situations where it finds it difficult to establish all the relevant facts of a case, due to deficiencies in the investigation carried out by the domestic authorities, and discusses the suitability of those options to the present case. Lastly, it addresses the approach, reflected in the present judgment, whereby the Court's decision on the international legal responsibility of a Contracting State for violations of the Convention is linked to the domestic finding of individual criminal responsibility.

I. THE DECISION TO REFRAIN FROM TAKING A DECISION

4. To explain my deep concerns about the solution chosen in the judgment, it seems necessary to briefly reproduce the chain of reasoning supported by the majority of the Chamber. In paragraph 241 of the judgment,

after reiterating that the Court's "role is not to rule on criminal guilt or civil liability of individuals but on Contracting States' responsibility under the Convention" – something I fully agree with – the present judgment nevertheless stipulates:

> "... [I]n order to adequately assess the circumstances relating to the present applicants' complaints and the extent of State responsibility in this respect, the Court has to answer, among other questions, whether the individual applicants' injuries were an unintended consequence of the lawful and proportionate use of force against the backdrop of the chaotic events described above or the unjustified use of force in breach of the substantive aspect of Article 3 of the Convention."

5. In paragraph 242 it goes on to say:

> "... [C]onsidering the multi-faceted nature of the applicants' complaint under the substantive limb of Article 3 of the Convention and the scope of the ongoing investigation ..., the Court considers that more factual elements have to be elucidated at domestic level. Indeed, ... the assessment of the necessity and proportionality of the use of force in the present circumstances is linked to the broader context of the events and goes beyond the material in the case file available to the Court."

6. In paragraph 243 the judgment explains that even if the domestic criminal investigation into the events has fallen short of the requirements of the procedural aspect of Article 3 (hence the finding of a violation in that respect), it is still, to put it simply, not a hopeless case and might ultimately shed more light on the circumstances of the events of August 2019. That, in turn, is understood as a reason not to make *any* ruling on the State's responsibility for the alleged violation of Article 3 of the Convention:

> "... [T]he Court emphasises that the finding relating to the ineffectiveness of the investigation is based on the authorities' lack of diligence thus far in pursuing certain key lines of inquiry, in circumstances where most of the evidential material has already been obtained by them in a manner which has not tainted its authenticity or reliability. ... [T]he Court does not consider that the capacity of the investigation in question to assess the circumstances of the present case and draw appropriate conclusions has been irretrievably undermined. In such particular circumstances, it would firstly be for the domestic authorities, rather than the Court, to properly evaluate the vast amount of evidential material which they have already gathered."

7. Continuing this line of reasoning, the judgment expresses the view that the Court was not "called upon to decide on the merits of the applicants' complaints under the substantive limb of Article 3 of the Convention on the basis of the material submitted by the parties" (see paragraph 244). Referring to "the spirit of shared responsibility" (ibid.) and the Court's subsidiary role under the Convention, the majority of the Chamber decided to defer to the future outcome of the ongoing proceedings at domestic level, in which the national courts were "better placed and equipped to accomplish [that] task" (see paragraph 245). The judgment then concludes that "the Court refrains from taking a decision regarding the alleged responsibility of the State in respect of the substantive aspect of the applicants' complaints under Article 3 of the Convention" (see paragraph 246).

8. The majority's treatment of the applicants' complaints under Articles 10 and 11 of the Convention is rather laconic. The judgment simply links them to the complaints under the substantive limb of Article 3 and concludes, without going into much detail, that the Court "should refrain from examining the admissibility and merits of the complaints under [those] provisions" (see paragraph 250).

9. Two additional aspects of the judgment, under Articles 41 and 46 of the Convention, are also noteworthy. In particular, with regard to Article 46 of the Convention, the judgment indicates individual measures required for its execution. The crucial part of paragraph 263 reads:

> "The authorities are required to address, expressly or in substance, the various issues raised by the applicants' complaints before the Court under the substantive limb of Article 3, Article 10 and Article 11 of the Convention. Thereafter, in accordance with the applicable Convention principles ..., the criminal investigation should be brought to a close as soon as possible once the circumstances and conditions under which the applicants sustained their injuries have been elucidated further, in so far as this proves to be feasible, so as to enable the identification and, where appropriate, punishment of those responsible ... The Court notes that on the basis of the elements in the case file, there appear to be no insurmountable practical obstacles to the investigation being carried out in this manner to provide an appropriate remedy to the applicants. Should the respondent State fail to comply with this obligation, the applicants will be able to reapply to the Court."

10. As regards Article 41, the judgment, having found a violation only of the procedural aspect of Article 3 and refrained from adjudicating on all the other complaints, then awards amounts of just satisfaction in respect of non-pecuniary damages which are considerably higher than is the Court's usual practice, "[h]aving regard to the relevant circumstances of the case and various equitable considerations" (see paragraph 271).

11. While fully acknowledging the intention of the Chamber majority to act in the spirit of shared responsibility and subsidiarity, I am convinced that the way chosen is both extremely problematic as a matter of principle and unsatisfactory in the specific circumstances of the present case.

12. Firstly, it should be noted that the choice not to take a decision on an admissible complaint (as in the present case for the complaint under the substantive aspect of Article 3), or on the admissibility and merits of other key complaints (as were the complaints under Articles 10 and 11), could hardly be viewed as compatible with the right to individual petition provided for by Article 34 of the Convention. It is fundamentally different from situations where the Court does not examine certain additional complaints made in applications, for example on the basis of the so-called "*Câmpeanu* formula" (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014), having held that it has in fact examined the main legal questions raised. Quite obviously, the unanswered legal questions constitute the very essence of the present case.

13. The novel solution chosen by the Court is also different from that in another, much rarer scenario, where the Court limits its review of the respondent State's compliance with Article 2 to examining only its procedural aspect and finds it "not necessary to examine" the substantive aspect (see *Aftanache v. Romania*, no. 999/19, § 73, 26 May 2020, and *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, §§ 165-66, 18 November 2021). I will return to the applicability of such a solution to the present case below (see paragraph 16 below). At this stage it is enough to note that here not only the resulting formula is different ("it is not necessary to examine" as opposed to "the Court refrains from taking a decision") but also the actual legal questions under the substantive aspect of Article 3, not to mention under Articles 10 and 11, are far from being the same.

14. Secondly, the decision – also spelled out in the operative provisions of the judgment – to refrain from taking a decision regarding the admissibility and merits of the complaints is without precedent in the Court's case-law. Even assuming that such a choice were not incompatible with the Court's role under the Convention, there is room to wonder, given its unusual nature and potentially ground-breaking consequences for the development of the case-law, if it were not rather for the Grand Chamber as opposed to a Chamber to introduce such a revolutionary innovation.

II. THE NEED TO ELUCIDATE MORE FACTUAL ELEMENTS AT DOMESTIC LEVEL

15. The present case is just the latest in a series of judgments where the Court has been faced with the need to answer the substantive complaint under Article 3 while finding that the respondent State has violated its procedural obligation of effective investigation. The three possible scenarios are well established in the case-law and described in legal opinion1. The first scenario concerns a situation in which all the relevant facts are clear enough for the Court to find a violation of the substantive aspect of Article 3 along with a breach of the procedural obligation, resulting in the finding of a "double violation". In the second scenario, while finding a violation of the procedural limb of Article 3 owing to a deficient investigation, the Court finds no violation of the substantive limb on the basis that the circumstances of the ill-treatment are not sufficiently clear (albeit the fault of the authorities) and the applicant has not put forward a sufficiently convincing case of ill-treatment (see *B.Ü. v. the Czech Republic*, no. 9264/15, §§ 127-28, 6 October 2022, and *Sládková v. the Czech Republic*, no. 15741/15, §§ 88-90, 10 November 2022). In the third scenario, the Court finds violations of the procedural and substantive aspects of Article 3, where the burden of proof lay

[1] See, for example, Kamber K, "Substantive and Procedural Criminal Law Protection of Human Rights in the Law of the European Convention on Human Rights", in *Human Rights Law Review* (2020) vol. 20(1), pp. 75-100.

with the State because of the operation of a factual presumption, placing the burden of proof on the Government and requiring it to explain how the treatment in issue had been sustained (see *Safi and Others v. Greece*, no. 5418/15, §§ 155-56, 7 July 2022, and *Shahzad v. Hungary (no. 2)*, no. 37967/18, §§ 72-80, 5 October 2023).

16. As mentioned in paragraph 13 above, in a few relatively recent Article 2 cases the Court also ruled that gross deficiencies in the domestic investigation did not allow it to examine the substantive complaint. For example, in *Aftanache v. Romania* (cited above, § 73), on account of such gross deficiencies the Court decided not to make a separate assessment of the State's compliance with the positive obligation to protect the applicant's life. Another scenario occurred in *M.H. and Others v. Croatia* (cited above, § 165), in which the Court considered that it was not in a position to reach any definitive findings under the Convention with regard to the alleged responsibility of the respondent State for the death of a child and *decided to confine its examination* to an assessment of whether the domestic investigation was in compliance with the relevant standards under the procedural limb of Article 2.

17. Neither of those two scenarios is sufficiently similar to that in the present case; nor was the Court's approach to them analogous. A decision by the Court to confine analysis only to the State's compliance with the procedural obligation, while holding itself unable to assess the substantive complaint, is rare but occasionally justified by the (very) particular circumstances of a case. After all, the concept of procedural obligations serves the purpose, *inter alia*, of enabling the Court to assess a Contracting Party's compliance with its obligations under the Convention when it has failed to provide the Court with the elements needed to assess the applicant's complaint on the merits.

18. In the matter at hand, the case file does, in my view, contain enough elements to allow the Court to answer the question of the State's international legal responsibility for its compliance with the Convention (or lack thereof) with regard to its treatment of the applicants. No difficulty arises as to whether the State was responsible for the use of force and, in particular, the firing of rubber bullets by police officers – regardless of the domestic discussion as to whether the officers' actions were the result of individual decisions or a command from their superiors (see paragraphs 100, 167-68, 170 and 200 of the judgment). Nothing prevented the Court from looking more deeply into the documents describing how the police operation in question had been carried out and whether the use of force had been necessary against the individual applicants. Moreover, the Court was in a sufficiently informed position to examine whether the interferences with the rights and freedoms under Article 10 and Article 11 were compliant with the Convention.

19. However, even if it is accepted, for the sake of argument, that the case file did not contain sufficiently established facts regarding the State's international responsibility (as opposed to individual criminal responsibility), the Court could have resorted to the existing options in its case-law and ruled on the complaint as described above – instead of refraining from taking any decision at all.

III. LINKING THE EXAMINATION OF "SOMEWHAT PREMATURE" COMPLAINTS TO THE OUTCOME OF AN ONGOING INVESTIGATION

20. It is certainly not completely novel for the Court to state that an ongoing investigation is still capable of elucidating further elements of the case. If it were to be assumed that the outcome of the criminal-law remedy could be considered as sufficiently rectifying the alleged violations of Articles 3, 10 and 11 (about which I would have certain doubts), the Court would be able to declare the related complaints premature. This is not, however, exactly the case.

21. The Government argued that the application had been premature (see paragraph 175 of the judgment). While the Court accepted that "at the time the applications [had been] lodged it [might] have been too early to draw conclusions as to the effectiveness of the criminal investigation", it held that, with the passage of time, it was no longer prevented from examining the effectiveness of the investigation with reference to events which had occurred after that point (see paragraphs 184-85). Furthermore, in paragraph 218 the judgment laments that "on a more general level, the applicants' decision to lodge their complaints with the Court was, at the time, somewhat premature (two applications were lodged within less than a year after the opening of the investigation, two were lodged when the investigation had been ongoing for less than two years, and one was submitted just over two years after the opening of the criminal investigation ...)". The judgment has therefore introduced another novelty into the case-law: the notion of a "somewhat premature application".

22. Consequently, the key complaints are not found inadmissible on the ground of being premature, but nor are they addressed. Instead, the judgment invites the applicants to *reapply* to the Court, should the respondent State fail to comply with the obligation to carry out an investigation and thereby provide an appropriate remedy to the applicants (see paragraph 263 of the judgment). In other words, the present judgment appears to require that the State carry out its procedural obligation in such a way as to provide an appropriate remedy to the applicants.

23. It is axiomatic, however, that the obligation of effective investigation is one of means and not result. Admittedly, sometimes the achievement of certain results, including as regards compensation to the victims, plays a role

in the Court's assessment of a State's compliance with a procedural obligation (see, for example, *Sabalić v. Croatia*, no. 50231/13, § 97, 14 January 2021). However, linking the Court's determination of a State's international responsibility for its compliance with substantive obligations under the Convention to the outcome of an investigation would appear to run counter to the very essence of the doctrine of positive obligations developed in the Court's case-law.

24. The deficiency of the solution chosen in the judgment is best illustrated by a hypothetical scenario in which the applicants reapply to the Court, as they were invited to do, claiming that the investigation already found to be ineffective by the Court has remained ineffective, and that they have not been able to receive adequate redress at the domestic level. Would the Court then re-examine the effectiveness of the investigation? Would it once again be able to conclude that the investigation was still not a completely hopeless case, and that the applicants should wait longer? One wonders whether such complicated argumentation was needed at all, when the Court simply had to do what was required of it: to rule on whether a State has complied with the Convention.

CONCLUSION

25. The present judgment provides rich food for thought – for the Court itself as well as for the outside world – about the role of the system of collective protection of human rights created by the Convention. The Court should strive to remain faithful to its purpose as defined by Article 19 of the Convention, namely to ensure the observance of engagements undertaken by the High Contracting Parties in the Convention and Protocols thereto, in a consistent and strong manner. I am far from convinced that by adopting such unusual solutions as it has in the present case the Court will be able to live up to what can reasonably be expected of it.

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	13186/20	Tsaava and Kmuzov v. Georgia	29/02/2020	**Merabi TSAAVA** 1985 Tbilisi Georgian **Beslan KMUZOV** 1975 Tbilisi Georgian	Ms N. Londaridze
2.	16757/20	Svanadze v. Georgia	20/04/2020	**Zaza SVANADZE** 1982 Tbilisi Georgian	Ms N. Londaridze
3.	20129/21	Baghashvili and Others v. Georgia	07/04/2021	**1. Tamar BAGHASHVILI (“the first applicant)** 1975 Tbilisi	Ms T. Oniani, of the Georgian Young Lawyers’ Association, based in Tbilisi;

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				Georgian **2. Gvantsa NEMSADZE (“the second applicant”)** 1990 Tbilisi Georgian **3. Ana VAKHTANGADZE (“the third applicant”)** 1995 Tbilisi Georgian **4. Nino KHOZREVANIDZE (“the fourth applicant”)** 1987 Tbilisi Georgian	Mr T. Collis and Ms J. Gavron of the European Human Rights Advocacy Centre (EHRAC), based in London

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				5. Kote GRIGALASHVILI ("the fifth applicant") 1990 Tbilisi Georgian **6. Guram MURADOV ("the sixth applicant")** 1986 Tbilisi Georgian **7. Tornike KOSHKADZE ("the seventh applicant")** 1987 Tbilisi Georgian **8. George TCHUMBURIDZE ("the eighth applicant")** 1972	

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				Tbilisi Georgian **9. Gela BOCHIKASHVILI** **(“the ninth applicant)** 1990 Tbilisi Georgian **10. Ekaterine ABASHIDZE** **(“the tenth applicant”)** 1996 Tbilisi Georgian **11. Giorgi DIASAMIDZE** **(“the eleventh applicant”)** 1993 Tbilisi Georgian	

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
4.	20175/21	Kurdovanidze and Others v. Georgia	07/04/2021	**1. David KURDOVANIDZE (“the first applicant”)** 1998 Tbilisi Georgian **2. David SHEKILADZE (“the second applicant”)** 1982 Tbilisi Georgian **3. Dimitri POCHKHIDZE (“the third applicant”)** 1979 Tbilisi Georgian **4. Irakli GIORGADZE (“the fourth applicant”)** 1998	Ms T. Oniani, of the Georgian Young Lawyers’ Association, based in Tbilisi; Mr T. Collis and Ms J. Gavron of the European Human Rights Advocacy Centre (EHRAC), based in London

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				Tbilisi Georgian **5. Irakli KHVADAGIANI (“the fifth applicant”)** 1988 Tbilisi Georgian **6. Maia GOMURI (“the sixth applicant”)** 2000 Tbilisi Georgian **7. Nikoloz SHARVASHIDZE (“the seventh applicant”)** 1986 Shalauri Village Georgian	

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				8. Teimuraz DIDBERASHVILI (“the eighth applicant”) 1974 Tbilisi Georgian **9. Giorgi SULASHVILI (“the ninth applicant”)** 1991 Tbilisi Georgian **10. Irakli CHIKVILADZE (“the tenth applicant”)** 1980 Tbilisi Georgian **11. Lekso CHANKSELIANI**	

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				("the eleventh applicant") 1985 Khoni Georgian	
5.	39382/21	Berikashvili v. Georgia	04/08/2021	**Vakhtangi BERIKASHVILI** 1989 Tbilisi Georgian	Nestan LONDARIDZE