

# FREEDOM OF ASSEMBLY IN GEORGIA

*The foregoing information was collected and prepared by  
Shorena Megrelishvili, ECNL's intern,  
who provided research assistance to ICNL Freedom of Assembly thematic portal.*

**INTRODUCTION:** Freedom of Assembly is one of the constitutional freedoms in Georgia guaranteed by the Article 25 Constitution of Georgia, international agreements, as well as by other legislative acts. It represents one of the cornerstones of every democratic society and is of even more importance for Georgia – a transitional democracy. The armed forces, police forces, and employees of the special and paramilitary institutions are not entitled this right.

The basic legislative framework on Freedom of Assembly is established by the Law of Georgia on Assembly and Manifestations (1997), which has been amended several times. As an answer to mass protests and the political crisis in the country, the most significant changes were introduced in 2009 which have clarified the responsibility of the organizers and the ability of the state to intervene into the course of assemblies, while the latest 2012 amendment has enabled aliens to become organizers of an assembly.

Law of Georgia on Assembly and Manifestations (1997) (hereinafter “the Law”) follows the international standards and regulates the implementation of the right to assemble provided by the Georgian Constitution. It shares the liberal approach set in international agreements by defining the procedure of notification and allows the citizens to assemble without prior notice if assembly or manifestation is not held at the transport movement place or does not hinder the transport movement. It restricts this right if the restriction is directly intended for the fulfillment of values protected by Article 24, paragraph 4 of the Constitution of Georgia, such as:

- *state security;*
- *territorial integrity or public safety;*
- *prevention of crime;*
- *protection of the rights and dignity of others;*
- *prevention of the disclosure of information;*
- *independence and impartiality of justice;*

The right to assemble may be restricted if the restriction is also prescribed by law, necessary in a democratic society, non-discriminative, proportionally restrictive, and the good protected by the restriction exceeds the damage caused by it. It is noteworthy that the law also introduces the

## Article 25

*“Everyone has a right to assemble publicly and unarmed, indoors or outdoors.”*

definition of “discussion of the alternative place for the assembly”, as well as “the proportionality of restriction” - the most effective and the least preventive restriction for the protection of values described by Article 24 (4) of the Constitution of Georgia.

**DEFINITION:** The definition of “assembly” is provided by the Law, which asserts that “the assembly is a meeting of a group of citizens indoors or outdoors; or meeting in the public place with the aim to express solidarity or protest.” The Law differentiates “the assembly” from “the manifestation”, defining the manifestation as “the demonstration of citizens, mass public gatherings, the march in the street with the aim to express solidarity or protest, or the march with posters, slogans, or any other visual materials.”

**NOTIFICATION:** Georgia follows the international standards and practices the notification procedure for the assembly to take place. Article 5 (1) of the Law establishes the obligation of prior notification of the authorities if an assembly or manifestation is held at the transport movement place or hinders transport movement. Regulations include:

- A notification on organizing and holding an assembly or a manifestation should be submitted to a local self-government’s executive body at least 5 days prior to a scheduled date of the event;
- The notice should be signed by the organizer and responsible figures and include the character, aim, place, start and end times, date and approximate number of the participants of an assembly;
- The notice must include the names of the principal and other responsible persons, their addresses, phone numbers and date of the submission of the notification;
- If necessary, the document indicating the need for an ambulance during the assembly, should be attached to the notice;
- The local government body should confirm the date and the time of the submission of the notification;
- The officials of the local government body are obliged to provide organizers of an assembly with the information about laws and regulations and warn them about the possible liability if the regulations are not followed;
- The local government body is authorized to reconsider the time and place of the scheduled assembly in order to secure the social order and functioning of the state and public bodies, enterprises, organizations and transport. In this case, it should within three days discuss the change of the location and time with the organizers if:
  - An assembly prevents the normal functioning of the enterprises, firms and organizations;
  - Another assembly was scheduled at the same time and place earlier.

**SPONTANEOUS ASSEMBLIES:** The Law does not list any specific article(s) about “the spontaneous assemblies”, however the fact that assemblies don’t require prior notification as long as they are not held at the transport movement place or do not hinder transport movement can be understood as a regulation on spontaneous assemblies. As mentioned before, spontaneous assembling may be restricted if the restriction is directly intended for the fulfillment of values

protected by Article 24, paragraph 4 of the constitution of Georgia, as well as is prescribed by law, necessary in a democratic society, non-discriminative, proportionally restrictive, and the good protected by the restriction exceeds the damage caused by it.

**ORGANIZERS:** Article 3 of the Law provides different definitions of the organizers of an assembly. It introduces the notion of “a principal” as someone who is initiator of an assembly, “an agent” – as a trusted representative of the principal and an “organizer” – appointed person in order to organize, arrange and lead an assembly. Before 2012, organizers were not allowed to be aliens but this was changed by the 2012 amendment. The other remaining restriction for the organizers of an assembly is that the organizer should not be a person who is under 18.

**RIGHTS AND OBLIGATIONS OF THE ORGANIZERS:** The Law describes rights and obligations of the organizers of an assembly. The organizers are able to hold an assembly without prior notification as long as they don't hinder the transport movement. They also have a right to appeal the decision of the government to terminate the assembly/manifestation in the court within three working days. The Law obliges the organizers to hold an assembly or manifestation at the place and time indicated in the notification, in accordance with route and purposes specified therein. Participants and persons responsible for organizing and holding an assembly or manifestation should comply with the requirements under the Law and obligations assumed in the notification.

**RESTRICTIONS ON ASSEMBLY:** Even though the Law has introduced the notification procedure and allows spontaneous assemblies, it also provides multiple restrictions for the assemblies to be held. Article 9 of the Law prohibits holding an Assembly or a manifestation inside or within 20 meters from the entrance of the following buildings:

- Prosecutor's Office, Police stations, penitentiary and temporary detention facilities and law enforcement bodies;
- Railway stations, airports and ports.

It is prohibited holding an Assembly or a manifestation inside or within 100 meters from the entrance of military units, as well as blocking railways, highways or entrances of buildings.

Article 11 of the Law stipulates different restrictions for the organizer. Namely, it's prohibited:

- to promote overthrowing or forcefully changing the constitutional order, terminating the independence of the country or violation of the territorial integrity;
- to make a vocation which can be considered as a propaganda for war and violence and incites national, racial, religious or social hatred and creates obvious, direct and substantial danger to an action under this paragraph;
- to carry firearms, explosives, radioactive substance or guns or any kinds of poisoning substances or items which might endanger the lives of the participants of an assembly;
- to have alcohol;
- to intentionally hinder the movement of transport;
- to damage and /or mutilate the buildings and monuments of historical, archaeological, architectural and / or scientific significance during the gatherings or demonstrations;

- the law also introduces the “proportionality of a restriction” – the restriction in line with the values protected by Article 24, paragraph 4 of the constitution of Georgia, if it is the most effective and the least restrictive for the achievement of the aim. Application of the stricter norms shall take place only when it is otherwise impossible to achieve the values protected by Article 24, paragraph 4 of the constitution of Georgia.“

In order to avoid blocking of the building and hindering institution’s activities, the administrative body or the court where an assembly or a manifestation is held is entitled to impose restrictions on the place, but should not exceed the 20 meters from the entrance of the building.

If the movement of the transport is partially or fully blocked by the participants, the local government body is authorized to resume the functioning of the transport by unblocking the road, if holding an assembly is possible in other way. This decision is otherwise forbidden, if the number of participants requires blocking the road.

According to the Article 14, the local government body is authorized not to allow holding an assembly, if there is the police-provided evidence which shows that as a result of the assembly constitutional order and lives and health of citizens will be endangered. The decision may be appealed by the organizers within 2 days.

**LIABILITY OF THE ORGANIZERS:** If the regulations prescribed by the Law are violated, the organizers of an assembly may become liable. Therefore, participants and persons responsible for organizing and holding an assembly or manifestation should comply with the requirements under the Law and obligations assumed in the notification. Article 13 stipulates that in case the paragraphs of Article 11 (mentioned above) are violated, an organizer is obliged to warn the participants to follow the regulation within 15 minutes. In case the road is intentionally blocked, an organizer, within 15 minutes, must warn the participants and use every rational action in order to unblock the transport movement. If failing to do so, the organizer(s) will be charged according to the Georgian legislation.

**FREEDOM OF ASSEMBLY IN PRACTICE:** Through observing the implementation practice of the freedom of assembly, it’s possible to explore the existing strengths and weaknesses in the legislation. The definite strengths of the legislation include the liberal approach of the law discussed previously which enables demonstrators to assemble without prior notice and the prior notification procedure which proves to be one of the less problematic areas both in the Law and in practice. In the report, issued by Human Rights Center (HRIDC) covering the monitoring period from January 1 2011 to June 30 2011, some statistics on the prior notification is provided, according to which in most of the cases Georgian citizens don’t experience any hurdles in regards with the public assembly as the procedure of notification defined in the Georgian legislation is quite liberal. Even though there still are some remaining restrictions which have not been amended in previous years (for ex. the restrictive rule on using public roads during assemblies), other restrictions have already been clarified and redefined by 2011 amendments. These amendments followed the May 26, 2011 crackdown and further clarified the responsibility of the organizers and the ability of the state to intervene into the course of assemblies. In the following part of the paper three different events will be described which are the examples of the

implementation practice of the freedom of assembly in Georgia and show the existing flaws in the legal system.

**May 26, 2011 - Crackdown of the Opposition's Demonstration** In May 2011, around 10,000 people demonstrated in central Tbilisi against the government, demanding the president's resignation. About half of the people gathered on the steps of parliament were masked men armed with metal poles or heavy sticks, while others were unarmed and peaceful. On May 25, the authorities told the protestors they would have to move at midnight to make way for May 26 Independence Day celebrations. The demonstrators refused and 2,000 riot police officers moved in, breaking up the crowd with tear gas, water cannon and rubber bullets within about 30 minutes. During the crackdown a policeman and one other person died, while 28 protesters and nine policemen were injured. (BBC 2011)

The crackdown fuels discussion on two issues: legality of the demonstration and also legality of the decision to use force against the protestors. According to both Georgian and international norms it is essential that an assembly is peaceful in nature, otherwise it is no longer protected by international and local mechanisms. Since some protestors held sticks and self-made shields, it may be argued that the demonstration was not peaceful, however the majority of the people were not equipped and showed no signs of aggression, which can be interpreted as a sign of peacefulness. According to OSCE Guidelines the police should differentiate between peaceful and non-peaceful demonstrators and not treat the crowd as homogenous. It should not have been difficult for police forces to differentiate these two groups and treat them respectively.

The main concern over the lawfulness of the May 26 demonstration is the prior notification which was submitted on the 21<sup>st</sup>, according to which the demonstration should not have lasted later than May 25. Under locally and internationally defined standards the assembly should disperse voluntarily after the end of the notified period. Continuation of the event after the indicated term makes it formally unlawful by definition. However, the OSCE Guidelines assert that the unlawful assembly should not be automatically subjected to police intervention provided that it is peaceful. Dispersal of a peaceful assembly solely because of the notification procedure violation can be considered as a disproportionate act. The Guidelines suggest that the authorities should give the demonstrators a reasonable time to comply with the law. Since the police intervention started only after 10-15 minutes from the formal expiration of the prior notification it can be potentially argued that the time provided to the demonstrators could not be enough. On the other hand the declared goal of the demonstrators was to prevent the authorities from holding the military parade dedicated to the independence day of Georgia on May 26. The organizers were openly referring to this goal before the police intervention and also during the previous day. This circumstance has the potential to undermine the meaning of providing reasonable time.

Regardless the fact that some protestors may not have been peaceful, as well as the refusal of the protestors to disperse voluntarily, the actions of the riot police were disproportionate and make the usage of force questionable.

**May 17, 2012 - Attack on the LGBT Activists** On May 17, 2013, Identoba, a Georgian non-governmental organization, which promotes and protects the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons in Georgia, organized a peaceful march in the center of the capital

to celebrate International Day against Homophobia and Transphobia. After having notified the Tbilisi City Hall and the Old Tbilisi Police Department of the Ministry about the planned peaceful demonstration on 17 May 2012, Identoba, in the light of a foreseeable protest from those opposed to the LGBT community in Georgia, specifically requested that the authorities provide protection from possible violence. The request was acknowledged and Identoba was promised that the police would be mobilized to secure the participants.

On May 17<sup>th</sup>, the peaceful demonstration grew into the clashes between the participants of the demonstration and the members of the Orthodox Parents' Union and members of the Georgian Orthodox Church ("the counter-demonstrators"). The counter-demonstrators claimed that nobody had the right to hold a Gay Pride Parade and to promote "perversion", as it was against moral values. They blocked the way for the march, made a human chain and encircled the demonstrators in a way that made it impossible for them to pass. The latter became subject to offensive hate speech, and threats of physical assault from the counter-demonstrators. At that moment, the police patrol cars distanced themselves from the scene without any prior notification. The demonstrators, feeling threatened, telephoned the police, alerting them of the danger. While waiting for the arrival of the patrol police, participants could see other law enforcement officers present at the site, who did not intervene.

The aggression escalated in about 20 minutes, when the counter-demonstrators grabbed the banners of the activists, tore them apart and physically assaulted the demonstrators. The police then separated the opposing parties by standing between them and instead of protecting the demonstrators, arrested 4 of them. The arrested participants were detained for a short period of time, asked offensive questions regarding their sexual orientation and released without any explanation after giving them a warning not to participate in similar marches again.

Even though Identoba's board filed complaints to the Ministry of the Interior and the Chief Public Prosecutor's Office concerning the violent acts committed by the Orthodox Parents' Union and representatives of the Georgian Orthodox Church and the inaction of the police on the day of the demonstration, the response of the Deputy-Director of the Patrol Police Department of the Ministry of the Interior stated that as there had been no signs of illegality in the actions of the police during the demonstration, there was no need for launching an investigation. Only two of the counter-demonstrators had been arrested for transgression under 166 of the Code of Administrative Offences – obstruction to creation of political, public or religious union and interference in their activities – and fined 100 GEL (some 45 Euros) each.

May 17, 2012 assembly shows no protection of the participants from the verbal and physical attacks perpetrated by the counter-demonstrators which resulted in the disruption of their demonstration of 17 May 2012 and inefficient investigation of the allegations of ill-treatment from the police's side.

**May 17, 2013 – Another attack on the LGBT Activists in Tbilisi** On May 17, 2013 clashes broke out during a rally to mark the international day against homophobia in Tbilisi. This was the second consecutive year that police in Tbilisi failed to protect LGBTI activists from violent attacks by Orthodox groups. Georgian LGBTI activists were assembling in the capital's Pushkin Park for a peaceful rally to mark the International Day against Homophobia and Transphobia (IDAHO) when the event was cut short by a throng of angry counter-protesters reported to number in the thousands. Police were forced to evacuate activists by bus as protesters from Georgia's influential Orthodox Church charged after them hurling stones. (The Guardian 2012) Amnesty International has reported that the police had “failed to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) activists as thousands of people violently attacked a Pride event” which was “an ineffective response to organized and violent homophobia.” The ensuing violence resulted in 17 people being injured – 12 of whom were hospitalized, including three policemen and a journalist.

Amnesty International has encouraged Georgian policy to investigate and bring to justice those who broke the law. There were apparent scenes, which depicted the attempts of lynching persons but no arrests have been made. It was clear that the violence was to be expected, however the police still turned out to be unprepared to ensure that LGBTI activists could exercise their right to freedom of assembly and expression.

Identoba has stated that “the State has not taken steps to protect LGBT people from discrimination or prevent discrimination” and that “the authorities have not, on a single occasion enforced legislation passed in 2012 that allows the State to prosecute hate crimes as separate offenses.”(Identoba 2013) The Public Defender of Georgia also commented on the events of 17 May with an official statement. The statement admits that despite the fact that the Ministry of Internal Affairs was informed in advance about the aforementioned peaceful rally, and the police officers were mobilized in the centre of the events, the police cordon could not stop the attack. As a result of the attack and violence against the LGBT activists in 2013, Identoba has decided not to hold any kind of manifestation on May 17, 2014. In the statement which was made about 2 weeks before the event, Identoba announced that considering last years' experience, this year it had decided not to do any private or public action” (Identoba 2014). This decision is deeply concerning in regards with the freedom of assembly in Georgia. It's everyone's Constitutional right to assemble publicly, therefore inability of the LGBT activists to freely and publicly promote LGBT rights may be considered as a weakness of democracy in Georgia. The described events show that even though the citizens are free to exercise the right to assemble without prior notice and mainly without any constraints, there still are occasions when demonstrators are unprotected from the violence and choose to abstain from assembling because of the presumed attack.

According to the OSCE guidelines of Freedom of Peaceful Assembly, the main goal of the police in regards to assemblies is the protection of a peaceful exercise of the right. The mentioned events reveal the failure of the police to guarantee the physical protection of the demonstrators as well as the use of force against the demonstrators when not necessary. While international agreements encourage the policy to use mediation and negotiation in the contested situations, during May 26 crackdown Georgian police forces have clearly unnecessarily used forces against the protestors. As for the May 17 events in 2012 and 2013, the Georgian police officers have clearly done little to protect the demonstrators from the violence. They have often showed an inconsistency in their approaches to assemblies. Besides the ill-treatment of demonstrators during

assemblies, verbal and physical abuse of already detained protestors has taken place from the side of the police. Such cases were observed during the dispersal of the May 26 demonstration and also other events.

The analysis of the latest amendments shows that these amendments coincide with particular political protests or other events in terms of their timing and could potentially represent response action of the state authority aimed at preventing the emergence of similar circumstances in future. Outstandingly, the 2009 amendment package consisted of amendments to both Assembly and Manifestation and Police laws. The former restricted the use of public thoroughfare making it available only when the number of demonstrators made it impossible to hold the assembly elsewhere. The later incorporated the list of special means and non-lethal weapons available to law enforcers for maintaining public order.

The continued attacks and violence against LGBT groups in Georgia, as well as indifference from the side of police and overuse of police forces against the demonstrators remain uninvestigated and problematic issues highlighting the flaws in the current legislation as well as the need for further amendments.

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