

ANALYSIS

Law of Georgia “On Introducing Amendments to the Law of Georgia ‘On Assemblies and Manifestations’”

OCTOBER 8, 2023

Introduction

Upon request from local partners, the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-for-Profit Law (ECNL) conducted a comparative analysis of the Law of Georgia “*On Introducing Amendments to the Law of Georgia ‘On Assemblies and Manifestations’*” (hereinafter “the Law”²), and its compliance with the international law and European standards (hereinafter “Analysis”).³

According to the Law, participants of an assembly or a manifestation shall be prohibited from “*Install[ing] a temporary construction, if its installment threatens participants of [the] assembly or manifestation or other individuals, interferes with [the] protection of public order and security by the police, causes disruption of the normal functioning of an enterprise, institution or organization, and without its installment holding of an assembly or manifestation will not be fundamentally hindered and/or its installment is not related to holding of an assembly or manifestation.*”⁴

¹ The Law of Georgia “*On Assemblies and Manifestations*,” Parliament of Georgia, 12 June 1997, at <https://matsne.gov.ge/en/document/view/31678?publication=10>.

² The Law of Georgia “*On Introducing Amendments to the Law of Georgia ‘On Assemblies and Manifestations’*,” Parliament of Georgia, 5 October 2023, at <https://parliament.ge/media/news/parlamentma-shekrebebisad-manifestatsiebis-shesakheb-kanonshi-tsvlileba-mesame-mosmenit-miigho>. It is awaiting the approval of the President of Georgia.

³ ICNL and ECNL used the unofficial translation of the Law from Georgian into English and bring our apologies for any discrepancies in interpretation of the provisions of the Law caused by inaccurate transliteration and/or translation.

⁴ Subparagraph f) of Article 11(2) of Law of Georgia “*On Assemblies and Manifestations*,” as amended by the Law.

The Law envisages that the organizer of an assembly or a manifestation is obliged, within 15 minutes of being warned, to call on the participants of the assembly or manifestation and take all reasonable measures to take down the temporary construction and restore the movement of transport. After receiving a corresponding warning, an owner or a legal holder of the temporary construction or a participant of the assembly or manifestation shall immediately take down the temporary construction.⁵

“If the organizer fails to fulfill the obligations defined in paragraphs 2 and 3 of this Article [Article 13 of the Law of Georgia “On Assemblies and Manifestations,” as amended by the Law], or if the organizer fulfilled the obligations but failed to eliminate the violation within reasonable time, and if [the] owner or a legal holder of the temporary construction or a participant of the assembly or manifestation failed to take down the temporary construction within reasonable time, law-enforcement authorities will take measures under international law and Georgian legislation to eliminate the violation, unblock the roadway, restore traffic and/or take down the temporary construction.”⁶

The Analysis considers Georgia’s obligations under the key international human rights instruments, particularly the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Protection of Human Rights and Fundamental Freedoms (also referred to as the European Convention on Human Rights) (ECHR).⁷

Comparative Analysis

LIMITATIONS ON THE RIGHT TO PEACEFUL ASSEMBLY NEED TO BE PRESCRIBED BY LAW, NECESSARY, PROPORTIONATE, AND TO PURSUE A LEGITIMATE AIM

The right to freedom of peaceful assembly is not an absolute right and may be limited in certain cases. To claim a permissible restriction under Article 11 of the ECHR, it must meet narrowly defined criteria. According to the ECHR, a permissible restriction must meet all of the following requirements⁸:

- prescribed by law;
- necessary in a democratic society; and

⁵ Paragraph 3 of Article 13 of the Law of Georgia “On Assemblies and Manifestations,” as amended by the Law.

⁶ Paragraph 6 of Article 13 of the Law of Georgia “On Assemblies and Manifestations,” as amended by the Law.

⁷ International Covenant on Civil and Political Rights, 16 December 1966, United Nations, at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>; The Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, 4 November 1950, at https://www.echr.coe.int/documents/d/echr/Convention_ENG.

⁸ Article 21 of the ICCPR; Article 11 of the ECHR.

- in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (hereinafter referred to as “legitimate aims”).

Below, the European Court of Human Rights (ECoHR), the UN Human Rights Committee, the Organization for Security and Co-operation in Europe (OSCE), and the European Commission for Democracy Through Law (also referred to as the “Venice Commission”) are providing an interpretation of how these requirements must be applied in practice, as it relates to the Law’s provisions.⁹

1. PRESCRIBED BY LAW

For a restriction on the right to the freedom of peaceful assembly to be considered permissible, according to the UN Human Rights Committee’s General Comment No. 37 on the right of peaceful assembly (Article 21) (hereinafter referred to as “General Comment No. 37”¹⁰), “*the laws in question must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement.*”^[42]¹¹ “*The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it.*”^[40]¹²

The right to freedom of assembly and manifestation is guaranteed by the Constitution of Georgia.¹³ In particular, Article 21 of the Constitution states that:

*“1. Everyone, except those enlisted in the Defence Forces or bodies responsible for state and public security, shall have the right to assemble publicly and unarmed, without prior permission... 3. Authorities may terminate an assembly only if it assumes an unlawful character.”*¹⁴

⁹ European Court of Human Rights (ECoHR), at <https://www.echr.coe.int/>; UN Human Rights Committee, at <https://www.ohchr.org/en/treaty-bodies/ccpr#:~:text=The%20Human%20Rights%20Committee%20is.of%20law%2C%20policy%20and%20practice.;> OSCE, at <https://www.osce.org/>; Venice Commission, at https://www.venice.coe.int/WebForms/pages/?p=01_Presentation#:~:text=The%20European%20Commission%20for%20Democracy.advisory%20body%20on%20constitutional%20matters.

¹⁰ General Comment No. 37 (2020) on the right of peaceful assembly (Article 21), CCPR/C/GC/37 (hereinafter “General Comment No. 37”), UN Human Rights Committee, 17 September 2020, at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>.

¹¹ *Id.* Paragraph 39, General comment No. 37.

Paragraph 39 includes Footnote ^[42], which references *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.7; and general comment No. 34, para. 25.

¹² *Ibid.* Paragraph 36. Paragraph 36 includes Footnote ^[40], which references *Turchenyak et al. v. Belarus*, para. 7.4.

¹³ The Constitution of Georgia dated 24 August 1995, No 786-სს, at <https://matsne.gov.ge/en/document/view/30346?publication=36>.

¹⁴ *Id.* “Article 21 – Freedom of assembly.”

The Law does not meet the “*prescribed by law*” requirement because it contradicts the Georgian Constitution. Installing a temporary construction does not make an assembly “unlawful”, and a prohibition to install such a temporary construction potentially authorizes government authorities to use force and may lead to termination or interruption of an assembly, in contradiction of the Georgian Constitution.

Furthermore, the Law is not sufficiently precise since its vague definitions, specifically, the definition of sanctions for a violation of the Law as “[*taking*] *measures under international law and Georgian legislation*”, renders it impossible to understand the exact sanctions (specific measures) that will be applied in case of a violation of the requirement. Also, the Law’s reference to “*Georgian legislation*” does not provide for clarity as to whether such specific measures will be established in another law or through an implementing regulation and does not indicate the content of these measures.

Besides, the Law vaguely defines the limit of the authorized government official’s authority to decide when to prohibit the installation of a temporary construction, stating only that the installment of a temporary construction cannot be prohibited if it is essentially important to (or if, without its installment, it would “*fundamentally hinder*”) the assembly. However, this limit of authority does not sufficiently limit the risk of arbitrary interference of government authorities as the provision does not sufficiently define the meaning of “*fundamentally hinder*” and does not provide for additional clear safeguards. It is unclear of under what circumstances the “*fundamentally hinder*” criteria will apply. For example, it is unclear if the authorized government official may decide to prohibit construction if, from his/her perspective, he/she believes that the organizer or a participant of an assembly may still exercise their right to peaceful assembly without constructing a temporary construction, even if it is not the wish of the organizer or a participant. Although international law defines specific instances when a government may restrict the right to peaceful assembly, international law affords individuals the right to choose how to implement their right to peaceful assembly. “*As far as restrictions on the manner of peaceful assemblies are concerned, participants should be left to determine whether they want to use equipment such as posters, megaphones, musical instruments, or other technical means, such as projection equipment, to convey their message. Assemblies may entail the temporary erection of structures, including sound systems, to reach their audience or otherwise achieve their purpose.*”^[75]¹⁵

The Law contradicts the Georgian Constitution, is not “*sufficiently precise*,” allows for “*sweeping discretion on those charged with their enforcement*,” “*does not facilitate*”

¹⁵ *Id.* Paragraph 58. Paragraph 58 includes Footnote ^[75], which references ECoHR, *Frumkin v. Russia*, para. 107.

the implementation of the right to peaceful assembly and, therefore, does not meet the requirement of “*to be prescribed by law*”.

2A. NECESSARY IN A DEMOCRATIC SOCIETY

According to the Guidelines on Freedom of Peaceful Assembly (hereinafter “Guidelines on Freedom of Peaceful Assembly”¹⁶), jointly prepared by the OSCE and the Venice Commission, “*Any restrictions on the right to freedom of peaceful assembly, whether set out in law or applied in practice, must be both necessary in a democratic society to achieve a legitimate aim, and proportionate to such an aim. The least intrusive means of achieving a legitimate aim should always be given preference. ... Banning or prohibiting an assembly should always be a measure of last resort and should only be considered when a less restrictive response would not achieve the objective.*”¹⁷

The Explanatory Note to the Law references the official statement of the State Security Service of Georgia (SSSG), according to which an SSSG investigation yielded proof that a certain group of individuals operating within and outside of the Georgian territory is planning to destabilize the country in October-December 2023.¹⁸ According to the same statement, these individuals are planning to, among other things, create a so-called “tent city”, install barricades on the central avenues of Georgia and outside of strategic facilities, as well as occupy and block the buildings of state agencies. In addition, according to the information acquired during the investigation, these unnamed individuals are planning to activate explosives in the territory of the so-called “tent city”.¹⁹

If veritable, the international law protection of the freedom of peaceful assembly will not apply to this situation. Such “destabilizing” activities will not be recognized as “peaceful,” and instead, will invoke the grounds of the “*interests of national security*” and the protection of “*public safety*,” as legitimate aims to restrict such activity.²⁰ “*This threshold will only exceptionally be met by assemblies that are ‘peaceful.’ Moreover, where the very reason that national security has deteriorated is the*

¹⁶ The Guidelines on Freedom of Peaceful Assembly (Third Edition), CDL-AD(2019)017rev (hereinafter “Guidelines on Freedom of Peaceful Assembly”), adopted by the Venice Commission and OSCE/ODIHR, 15 July 2020, at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e).

¹⁷ *Id.* Paragraph 29 of the Guidelines on Freedom of Peaceful Assembly.

¹⁸ Official statement of the State Security Service of Georgia (SSSG), 18 September 2023, at: <https://ssg.gov.ge/news/873/saxelmtsifo-usafrtxoebis-samsaxuris-gancxadeba>.

¹⁹ “The Explanatory Note to the Draft Law | What is the ‘Tents Law’ GD is Rushing through the Parliament?” Civil Georgia, 5 October 2023, at <https://civil.ge/archives/561991>. See also Official Facebook page of the სახელმწიფო უსაფრთხოების სამსახური / State Security Service of Georgia, 2 October 2023, at <https://www.facebook.com/watch/?v=1328307768057148>.

²⁰ See Paragraphs 42 and 43, General Comment No. 37.

suppression of human rights, this cannot be used to justify further restrictions, including on the right of peaceful assembly.^[47]²¹

Georgia already has in place criminal and administrative laws to prevent and to counter presumed criminal activities which are not a “*peaceful assembly*.” Georgia’s Criminal Code, in particular, Part II “Crimes against the State,” seems to be relevant as a tool to address the presumed crimes described in the SSSG’s statement.²² The presumed crimes described in the SSSG’s statement most likely fall under the “serious” crimes. Under Article 18 of the Criminal Code, there is already a criminal liability for preparation for such crimes. Therefore, the presumed criminal activities outlined in the SSSG’s statement must not be subject to regulation of the Law of Georgia “*On Assemblies and Manifestations*,” as restrictive provisions in this law will inherently affect all peaceful assemblies, and not just criminal acts.

It is important to note that the existing Law of Georgia “*On Assemblies and Manifestations*” already clearly states that “*the decision [on restriction] referred to in this article shall be taken for each specific case, considering the current circumstances and public interest, according to Article 2(3) of this Law, so that the concept of the constitutional right to hold assemblies and manifestations is not neglected.*”²³ The government has not provided evidence as to why implementation of pre-existing provisions have not proved effective in addressing concerns relating to threats against participants and other aims for restrictions as stated in the Law.

Therefore, the Law imposes a broad prohibition on the installation of a temporary construction as a means to exercise the right to peaceful assembly and is therefore not necessary in a democratic society.

2B. NEED TO BE PROPORTIONATE TO THE RISK

Even if a legislative restriction has a legitimate aim, it must be proportionate to the aims to be achieved. “*Restrictions must ... be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient.*”^[43] *Such restrictions must be appropriate responses to a pressing social need, relating to one of the permissible grounds listed in article 21 [of the ICCPR]. They must also be the least intrusive among the measures that might serve the relevant protective function.*^[44] *Moreover, they must be proportionate, which requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right*

²¹ Paragraph 42, the General Comment No. 37. Paragraph 42 includes Footnote 47, which references: “[⁴⁷] Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex), para. 32.”

²² The Criminal Code of Georgia dated July 22, 1999 at <https://matsne.gov.ge/en/document/view/16426?publication=253>.

²³ *Id.* Article 9 of the Law of Georgia “On Assemblies and Manifestations”, Parliament of Georgia, 12 June 1997.

against the resultant benefit to one of the grounds for interfering!^[45] If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.”²⁴

As discussed in section “**2. Necessary in democratic society**”, the government has not demonstrated the necessity of the broad restriction on installing temporary constructions as part of exercising one’s right to peaceful assembly. The Law also does not establish sufficient limitation of the government’s authority to prohibit the installation of temporary constructions by stating that the prohibition may not be permitted if the assembly “*will not be fundamentally hindered and/or its installment is not related to holding an assembly or manifestation.*” In addition, the Law’s vague definition of sanctions for a violation of the Law, specifically “[*taking*] measures under international law and Georgian legislation”, renders it impossible to evaluate the proportionality of the indeterminate specific “*measures*” to what would be considered a “*violation*”. Also, the Law’s reference to “*Georgian legislation*” assumes that such “*measures*” might be established not in the Law, but through implementing regulations, which can and may include the use of force to terminate an assembly, which would be a disproportionate measure.

The Law also does not provide for an “*appropriate response[] to a pressing social need.*”²⁵ Georgian civil society organizations (CSOs), who are public watchdogs for the rule of law and human rights in Georgia, expressed deep concern that the Law will violate the freedom of peaceful assembly of the Georgian people.²⁶ The Georgia Human Rights Ombudsman commented on the Law stating that “*the presented project is an intense interference in the freedom of expression and assembly, which limits the expression of opinion by using temporary constructions, for example, a tent.*”²⁷

²⁴ *Id.* Paragraph 40 of the “General comment No. 37.

Paragraph 40 includes Footnotes ^[43], ^[44], and ^[45], which reference the following:

^[43] General comment No. 34, para. 34. (See “General comment No. 34 on Article 19: Freedoms of opinion and expression,” UN Human Rights Committee, 12 September 2011, at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and->)

^[44] *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.4.

^[45] *Ibid.*, paras. 7.4 and 7.6. See also OSCE and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 131.

²⁵ *Ibid.*

²⁶ “The Parliament should not adopt the draft law that imposes extreme restrictions on freedom of assembly and expression,” Transparency International Georgia, 5 October 2023, available at <https://transparency.ge/en/post/parliament-should-not-adopt-draft-law-imposes-extreme-restrictions-freedom-assembly-and->; “The growing trend of restricting civil rights continues with new legislative changes,” Georgian Young Lawyers’ Association (GYLA), 2 October 2023, at <https://gyla.ge/index.php/ge/post/samoqalago-uflebebis-shezghudvis-mzardi-tendencia-akhali-sakanonmdeblo-cvlilebebit-grdzeleba#sthash.UK7PHj81.ievOnKuk.dpbs>.

²⁷ “Ombudsman on changes in the law ‘On Assemblies and Manifestations’: There is intense interference in the freedom of expression and assembly,” Interpressnews, 4 October 2023, at <https://www.interpressnews.ge/en/article/127531-ombudsman-on-changes-in-the-law-on-assemblies-and-manifestations-there-is-intense-interference-in-the-freedom-of-expression-and-assembly->; “Public Defender’s Statement on Amendments Planned to be Made to the Law of Georgia on Assemblies and Demonstrations,”

In light of the concerns expressed by civil society, it would have been appropriate for the government and the drafters of the Law to hold an open dialogue with Georgian CSO representatives to search for the least restrictive measures, if any, to address the existing issue. ICNL and ECNL are also not aware if the drafters and/or the government conducted “*a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering,*” which would be necessary to demonstrate that the restriction is proportionate in compliance with the ICCPR.²⁸

Furthermore, as provided in General Comment No. 37, “*restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.*”²⁹ The Law will, however, cause a “*chilling effect*” and may discourage participation in assemblies given citizens’ concerns that exercising their right to peacefully assemble, including through installing temporary constructions, can be prohibited at the government’s discretion, and given the unknown severity of the penalties for exercising this right.

Further, General Comment No. 37 indicates that **restrictions “...should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned,”** whereas “**blanket restrictions on peaceful assemblies are presumptively disproportionate.**”³⁰ As of yet, no demonstrable evidence or analysis has been provided by the Georgian government to suggest that other, less restrictive measures have been applied to and/or failed to address similar instances of protesters constructing temporary constructions. Without such analysis, the Law contradicts international law as it imposes disproportional restrictive measures compared to the alleged risk.

3. PURSUE LEGITIMATE AIM

The Law provides the following justification for the restrictions on temporary constructions: the elimination of “*threats to participants of an assembly or manifestation or other individuals, interference with protection of public order and security by the police, and disruption of the normal functioning of an enterprise, institution, or organization.*”

Article 11 of the ECHR includes the following exclusive, closed list of legitimate aims for imposing these restrictions: “*in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for*

Ombudsman of Georgia, 4 October 2023, at <https://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-shekrebekisa-da-manifestatsiebis-shesakheb-sakartvelos-kanonshi-dagegmil-tsvlilebebtan-dakavshirebit>.

²⁸ *Id.* Paragraph 40, General comment No. 37.

²⁹ *Id.* Paragraph 36, General Comment No. 37.

³⁰ *Id.* Paragraph 38, General Comment No. 37.

*the protection of the rights and freedoms of others.*³¹ These legitimate aims are interpreted in detail in multiple decisions of the ECoHR and in the General Comment No. 37, amongst other international legal documents.

Yet, the Georgian government and drafters of the Law have not provided evidence of situations wherein the installation of a tent or other temporary construction during an assembly posed a “[*threat*] to [*the*] participants of an assembly or manifestation or other individuals,” or of instances wherein a temporary construction “[*interfered*] with protection of public order and security...”

Even if the Law, arguably, establishes what could be considered as a legitimate aim, the restriction does not meet the other key criteria needed for justification. Therefore, the Law’s justification for restrictions does not meet the international law requirements of being in pursuit of a legitimate aim.

Conclusion

As discussed above, any permissible restriction on the right to freedom of assembly must meet the three (3) criteria, including being prescribed by law; being necessary in a democratic society; as well as being in pursuit of a legitimate aim. As evinced by this Analysis, the Law clearly fails to meet all of the requirements.

If adopted, the Law will violate multiple Georgian commitments in the ECHR and the ICCPR, as well as Georgia’s obligations to guarantee the right of freedom of assembly.

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³¹ Paragraph 2, Article 11, ECHR, 4 November 1950, at https://www.echr.coe.int/documents/d/echr/Convention_ENG.