

BRIEFER

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

OCTOBER 8, 2023

On October 5, 2023, the Parliament of Georgia adopted the Law of Georgia “*On Introducing Amendments to the Law of Georgia ‘On Assemblies and Manifestations’*” (“the Law”¹). The Law is awaiting the approval of the President of Georgia.

According to the Law’s Explanatory Note, the Law “*aims to create a legislative framework that will enable authorities to ensure safe conduct of assemblies and more effective realization of freedom of expression by striking a fair balance between human rights guaranteed by Constitution.*” The Law’s drafters proposed the Law in response to a statement of the State Security Service of Georgia (SSSG), according to which an SSSG investigation yielded information that a certain group of individuals operating within and outside of the Georgian territory is planning to destabilize and foment civil unrest in the country between October and December 2023.² The SSSG informed that this group is planning to detonate explosives in the so-called “tent city” to target law enforcement and the peaceful protesters, among other “illegal actions.”

¹ The Law of Georgia “On Introducing Amendments to the Law of Georgia ‘On Assemblies and Manifestations’,” Parliament of Georgia (“Parliament”), 5 October 2023, at <https://info.parliament.ge/file/1/BillReviewContent/340742>. See also, “The Parliament Adopted the Amendment to the Law ‘On Assemblies and Manifestations’ In the Third Reading,” Parliament, 5 October 2023, at <https://parliament.ge/media/news/parlamentma-shekrebibisa-da-manifestatsiebis-shesakheb-kanonshi-tsvlileba-mesame-mosmenit-miigho>. An unofficial translation into English of the Law has been used for the purpose of preparing this Briefer. It is possible that there might be some discrepancies in the use of terminology or interpretation of provisions of the Law.

² Official statement of the State Security Service of Georgia, 18 September 2023, at: <https://ssg.gov.ge/news/873/saxelmtsifo-usafrtxoebis-samsaxuris-gancxadeba>. See also, “The Committee of Legal Issues Considered the Amendment to the Law ‘On Assemblies and Manifestations’ in the First Reading,” Parliament, 3 October 2023, at <https://parliament.ge/media/news/iuridiul-sakitkhata-komitetma-shekrebibisa-da-manifestatsiebis-shesakheb-kanonshi-tsvlileba-pirveli-mosmenit-ganikhila>.

Georgian civil society organizations (CSOs) expressed deep concern that the Law will violate the freedom of peaceful assembly of the Georgian people.³ 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.*”⁴

The Law prohibits participants of an assembly 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.*”⁵ The Law envisages that the organizer of an assembly is obliged, within 15 minutes of being warned by law enforcement authorities, to call on the participants of the assembly and to take all reasonable measures to take down the temporary construction. After receiving a corresponding warning, an owner or a legal holder of the temporary construction or a participant of the assembly shall immediately take down the temporary construction.⁶ The organizers and participants of the assembly will be penalized if they fail to meet this obligation.⁷

At the request of the USAID Civil Society Engagement Program, 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 and its compliance with the international law and European standards (“Analysis”).

³ “The Parliament should not adopt the draft law that imposes extreme restrictions on freedom of assembly and expression,” Transparency International Georgia (TI-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-grdzeldeba#sthash.UK7PHj81.ievOnKuk.dpbs>.

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

⁵ Subparagraph f) of Article 11(2) of Law of Georgia “On Assemblies and Manifestations,” as proposed in the New Law.

⁶ Subparagraph f) of Article 11(2) of the Law of Georgia “On Assemblies and Manifestations,” as amended by the New Law.

⁷ Subparagraph b) paragraph 6 of article 13 of the Law of Georgia “On Assemblies and Manifestations,” as amended by in the New Law.

The Analysis concluded that, if adopted, the Law will violate multiple Georgian commitments in the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as well as Georgia's constitutional obligation to guarantee freedom of assembly.⁸

Any permissible restriction on the right to freedom of peaceful assembly must meet the three requirements, including (1) being prescribed by law; (2) being necessary in a democratic society and proportionate to the risk; as well as (3) being in pursuit of a legitimate aim.⁹ The Law fails to meet these requirements:

1. Prescribed by Law

The Law does not meet this requirement because it contradicts the Georgian Constitution. Installing a temporary construction does not make an assembly “*unlawful*” and prohibiting the installation of a temporary construction potentially authorizes government authorities to use force and may lead to the termination or interruption of an assembly, contradicting the Georgian Constitution. Besides, the Law's provisions are not “*sufficiently precise to allow members of society to decide how to regulate their conduct.*” 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 that will be applied in case of a violation of the requirement. Also, the Law's reference to “*Georgian legislation*” does not provide for a 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.*” Other Law provisions only vaguely define the limit of the government's authority to decide when to prohibit the installment of temporary constructions, despite the fact that international law affords individuals the right to choose how to implement their right to peaceful assembly.

2a. Necessary in a Democratic Society

The activities identified as a ground for adoption of the Law, based on the SSSG's investigation, cannot be considered as a ground for restriction of peaceful assembly “*necessary in a democratic society*”.¹⁰ Georgia already has in place criminal and

⁸ *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.

⁹ Article 21 of the ICCPR; Article 11 of the ECHR.

¹⁰ See Paragraph 29 of the Guidelines on Freedom of Peaceful Assembly (Third Edition), CDL-AD(2019)017rev, 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).

administrative laws to prevent and to counter presumed criminal activities which are not a “*peaceful assembly*.”¹¹ Besides, the existing Law of Georgia “*On Assemblies and Manifestations*” already authorizes the government officials in charge of implementation of the law to decide when to restrict assembly in “*each specific case, considering the current circumstances and public interest*,” in compliance with the constitutional right to hold assemblies. The government has not provided evidence as to why implementation of pre-existing provisions has not proven effective. In addition, the Law imposes a broad restriction on all assemblies, which is not “*necessary in a democratic society*.”

2b. Proportionate to Risk

The Law does not meet criteria of proportionality to risk as it sets insufficient limitations to the government’s authority to prohibit the installation of temporary constructions. 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 indetermined, specific “*measures*” to what would be considered a “*violation*.” Also, the Law’s reference to “*Georgian legislation*” assumes that such specific “*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.

In addition, the Law does not provide for an “*appropriate [response] to a pressing social need*,” especially in light of the concerns expressed by civil society.¹² Besides, to common knowledge, the government did not conduct “*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 prohibition is proportionate in compliance with the ICCPR.¹³

3. Pursue Legitimate Aim

While the Law establishes what could be considered a legitimate aim, pursuant to the ECHR’s 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 the protection of the rights and freedoms of*

¹¹ The Criminal Code of Georgia dated July 22, 1999 at <https://matsne.gov.ge/en/document/view/16426?publication=253>.

¹² *Id.* “The Parliament should not adopt the draft law that imposes extreme restrictions on freedom of assembly and expression,” TI-Georgia, 5 October 2023; “The growing trend of restricting civil rights continues with new legislative changes,” GYLA, 2 October 2023.

¹³ *Id.* Paragraph 40, General comment No. 37.

others”), as of yet, the Georgian government and drafters of the Law have not provided evidence of situations wherein the installation of a temporary construction 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.”

By failing to meet all three of the key criteria needed for the justification, the Law does not meet the international law requirements of being in pursuit of a legitimate aim.

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