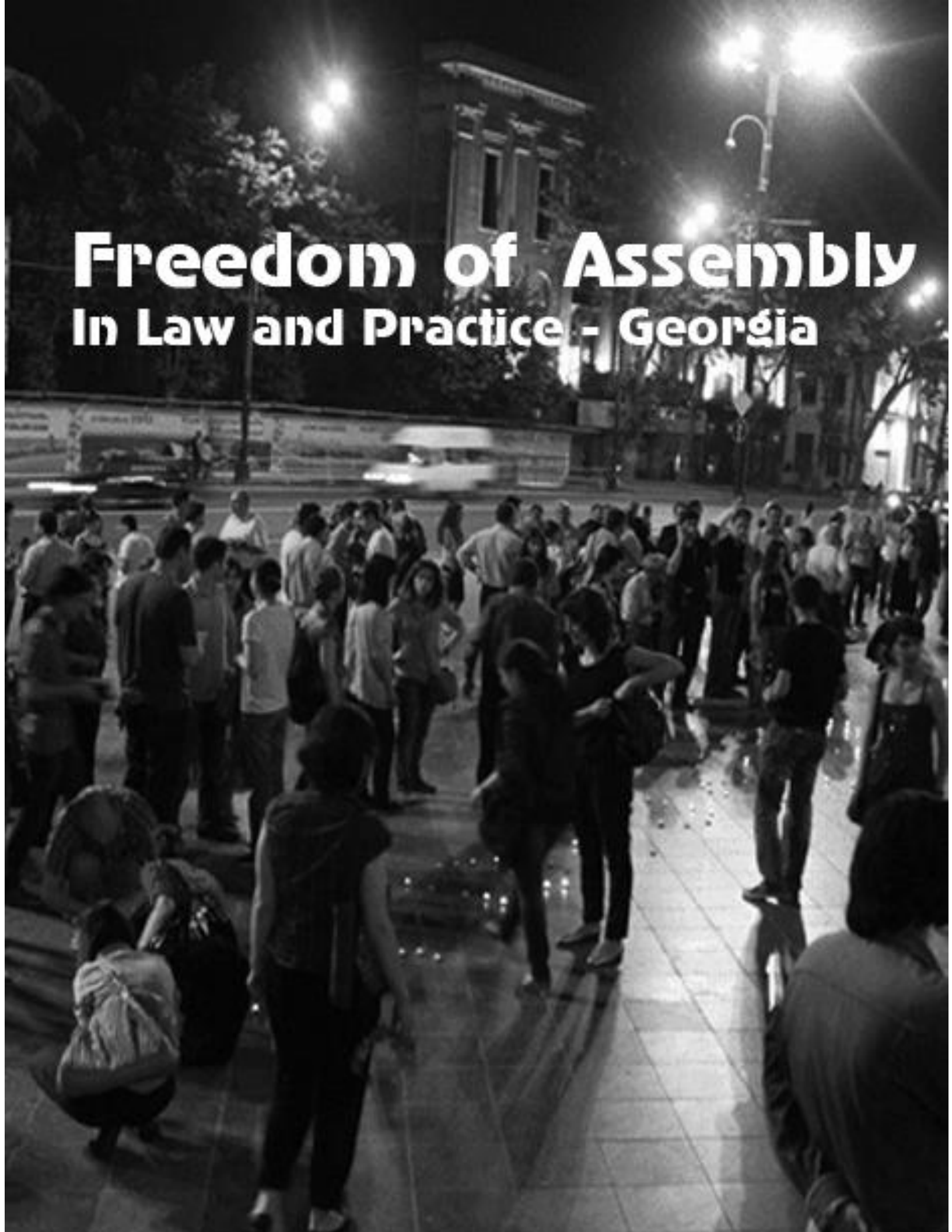


# Freedom of Assembly In Law and Practice - Georgia



# *Freedom of Assembly in Law and Practice - Georgia*

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The report represents summary of main aspects of the Freedom of Assembly legislation in Georgia and the most notable amendments since its first adoption in 1997. The report also reviews general trends observed in implementation of the law into practice in accordance with adopted amendments. The aim of the report is to illustrate a bigger picture and tendencies in both legal and practical paradigms without going into details. The objective is to provide comprehensive overview of state of affairs in the selected field in a relatively compact package.

#### ECHR - article 11

*„1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

*2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society 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. this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”*

#### ICCPR – article 21

*„The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. „*

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## **The Legislative Framework**

The freedom of peaceful assembly is guaranteed by the article 25 of the Georgian Constitution and further reinforced by the Law on Assembly and Manifestation adopted in 1997 (hereinafter “the law”).

The chapter reviews the existing legislative framework regulating the right to peaceful assembly. The main legislative act will be analyzed in order to determine the dynamics of the legal ability to exercise the right. The chapter will do so by introducing particular criteria and investigating their evolution through amendments.

The law was amended several times since its adoption with most significant changes introduced in 2009 (hereinafter the “new law”) as an answer to the mass protests and the political crisis in the country. The Parliament voted for amendments without waiting for the opinion from the Venice Commission, but made a commitment that to make further changes according to recommendations provided by the commission.

The comprehensive analysis of the draft law including amendments was carried out by the Venice Commission in October 2009.<sup>1</sup> The opinion was highly critical of the draft in many areas (the draft was already accepted by that time) and unfortunately it is still in force by the time of writing this report.

The new draft was submitted to the commission in March 2010, after the new law was reconsidered in the light of the recommendations provided in October 2009. Several key issues have been addressed but the parliament has not voted for the draft yet. The opinion was published on March 15 2010.<sup>2</sup>

In April 2011 the Constitutional Court of Georgia issued the decision on the joint constitutional appeal concerning several key clauses in the existing law. The court satisfied the constitutional complaint partially and deemed several clauses unconstitutional.<sup>3</sup>

As opinions on the old law, the amended law and the new draft have already been provided by the Venice Commission, the chapter will not summarize the existing legislation fully. It will focus on the dynamics of changes instead and conduct a comparative analysis.

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<sup>1</sup> Venice Commission CDL(2009)152 issued on October 1 2009.

<sup>2</sup> Venice Commission CDL-AD(2010)009 issued on March 15 2010

<sup>3</sup> The joint appeal was submitted by the Public Defender’s Office, the Georgian Young Lawyers Association, The Georgian Conservative Party and young human rights activists – Jaba Jishkariani and Dachi Tsaguria.

In this regard, several areas have been selected as determinants of the liberality of the law which became the subject to amendment since its first adoption. Examining them on the level of restrictiveness will provide us with the picture on how the framework has been changing and where it has been heading.

The key areas selected for the research are: a) rules on the prior notice; b) rules on using the public thoroughfare; c) the nature of restrictions for the law enforcement and other specialized institutions staff; d) responsibility of the organizers;

### ***Organizing the Assembly***

Spontaneous or organized events do not require the prior notice in Georgia if they are not using the public thoroughfare. The article 1 of the original law on assembly and manifestation stated that the prior notification was only required for assemblies falling under conditions of the article 1 paragraph 3 of the same law, implying holding assemblies in “*areas of movement of transport or people*”.<sup>4</sup> The notification had to be provided 5 days prior to the scheduled event and it did not require the permission.<sup>5</sup> This allowed the organizers to hold assemblies in desired places using the public thoroughfare even if it involved the blocking of the street.

Even though the notification needs no confirmation or acceptance, the relevant administrative body however has the right to reject the under article 14 of the original law.<sup>6</sup>

### ***Right to assemble for the law enforcement officials***

The article 25 of the Georgian Constitution guaranteeing the freedom of peaceful assembly makes exceptions for members of the armed forces, police and the security office. The same exception was included in the original text of the paragraph 1 of the Georgian Law on Assembly and Manifestation. According to December 2006 amendments however, the restriction was further extended to the staff of the Special Service Unit of the Ministry of Finance.

The clause seems to be overly restrictive, placing a blanket ban on the right to assemble for the abovementioned individuals, not making any relation of the imposed restriction to a proper operation of the relevant state institution. The paragraph 58 of the OSCE/ODIHR guidelines on

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<sup>4</sup> Article 5 paragraph 1 of the original Georgian law on assembly and manifestation.

<sup>5</sup> Article 8 paragraph 1 of the original Georgian law on assembly and manifestation.

<sup>6</sup> The relevant administrative body has the right not to allow the holding of the assembly if “there is evident data confirmed by the police according to which the constitutional order, health and lives of citizens are under direct threat. The decision in this regard is taken by the authorized representative”.

the freedom of peaceful assembly states that *"Legislation should therefore not restrict the freedom of assembly of the police or military personnel unless the reasons for restriction are directly connected with their service duties, and only to the extent absolutely necessary in light of considerations of professional duty. Restrictions should be imposed only where participation in an assembly would impugn the neutrality of police or military personnel in serving all sections of society."* The restriction in the law was criticized by the Venice commission in its opinion on the Draft Amendments to the Law on Assembly and Manifestation.<sup>7</sup> The restriction is still in force as the issue has not been addressed. Since the prohibition is also established constitutionally, relevant amendments both to the law and to the constitution are required.

### ***The ability to use public thoroughfare***

There are two blanket prohibitions in regards to the use of public space: first, it is prohibited to hold assemblies within 20 meters from entrances of certain buildings and second, the blocking of the public road is disallowed if it is not caused by the number of participants.

As mentioned above, the original law on assembly and manifestation did allow the use of public thoroughfare including the place of movement of traffic and people, if the prior notifications was submitted under circumstances in article 1 and further stipulated under articles 6-8 of the same law. Assemblies not using the aforementioned places did not require such notice.

Consequently the clause in the original law implied that in case of the prior notification (which did not require permission) assemblies could be held at any venue, including the use of the traffic road without restrictions. According to the only prohibition included in the article 11 of the original law the "deliberate blocking of the public transport" was disallowed.

The rules adopted in 2009 have altered the previously existing conditions. Novelties allowed the use of the public road only in case of the necessity caused by the number of participants and the road had to be freed as soon as the number of demonstrators again allowed to.

In regards to the constitutional lawsuit, the court did not satisfy the demands in this part and left the article 11.1 intact.

The Venice Commission criticized the clause making a reference to the OSCE Guidelines, stating that *"the participants in public assemblies have as much a claim to use such sites for a reasonable period as everyone else"*.<sup>8</sup>

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<sup>7</sup> the opinion available at [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)009-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.pdf)

<sup>8</sup> Venice Commission CDL(2009)152, paragraph 28

As a result, draft of the revised law, submitted to the Commission on the 1st of March 2010 contains the reformulated article 11 which allows the use of public thoroughfare but leaves the authorities the right to take the case by case decision to *“restore transport movement if the assembly can be held otherwise due to the number of people”*. Therefore according to the draft the decision on clearing the public thoroughfare will be made on case-by-case basis and only when the number of demonstrators allows to.

Another restriction contained in the law even prior to 2009 amendments prohibited assemblies inside the building of Georgian Parliament, residence of the President of Georgia, buildings of the Constitutional Court and Supreme Court of Georgia, courts, prosecutor’s office, police, penitentiary buildings, law enforcement bodies, military units and sites, railway stations, airports, hospitals, diplomatic missions and within 20-meter radius of their territory, buildings of governmental institutions, local government bodies, and companies, institutions and organizations of special regime or having armed guards. It was not allowed to block entrances of these facilities as well.<sup>9</sup>

In 2009 the article was reformulated. The prohibition from holding assemblies within the radius of the abovementioned buildings was narrowed down to 20 meters from their entrances only.

This still represents a blanket prohibition and does not take particular cases into account. The new draft addresses the issue by leaving room for case-by-case approach. According to the reformulated clause *“the State agency, where an assemblage or a manifestation is held may limit the distance of an assemblage or a manifestation, but not exceeding the 20 meters limit from the entrance of the building”*.<sup>10</sup>

The Constitutional Court decision of April 18 2011 annulled the general provision prohibiting assemblies in 20 meters from the entrances of buildings listed in article 9.

### ***Responsibility of the organizers***

The responsibility of the organizers is regulated by the article 13 paragraph 1 of the law stating that the assembly has to be terminated upon the request of the authorized representative of the state if the violations of articles 4.2 and 11 are observed.

It is also noteworthy that that the same article obliges the organizers not only to break up the assembly but also to *“take measures to drive the participants away”*.<sup>11</sup> It is not further clarified

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<sup>9</sup> Article 9 of the original Georgian Law on Assembly and Manifestation

<sup>10</sup> Article 9, paragraph 1 of the draft law on Assembly and Manifestation as provided to the Venice Commission.

<sup>11</sup> Article 13 paragraph 2 of the Georgian Law on Assembly and Manifestation



what measures the organizers should take. Does it imply only calling for the breaking up the assembly or doing something else in addition? The clause leaves some space for interpretation in terms of holding the organizers responsible should the manifestation become illegal.

The article was not touched through amendments but became the subject of the aforementioned appeal in the constitutional court. The court declared that the rule is disproportionate as it calls for the immediate termination of the assembly without providing the possibility to bring it back within the legal framework.

### ***Other legal provisions affecting the freedom of assembly***

Right to assembly can be also affected by other laws indirectly associated with the implementation of this right. These are the laws on police and the Law on Administrative Offences.

In general these laws are not directly linked to assemblies however in practice they can be applicable and have been abused by the police to affect demonstrations.

The law on administrative offences was amended. The maximum period of administrative detention was increased from 30 to 90 days. The term is extremely disproportional especially considering that the pretrial detention term according to the criminal code equals to 60 days.<sup>1213</sup>

The law on police received the list of special means which can be used in to maintain public order. "Specifically these are non-lethal weapons (including a non lethal grenade), rubber beats, pepper gas, tear gas, special acoustic devise, psychological sound device, a special device for destroying barricades and forceful stoppage of transport means, water cannons, armored vehicle and other special transportation means, special paint, service dog and horses, electroshock devices".

These amendments are alarming in light of the fact that they were introduced as a package, together with the amendments to the law on assembly and manifestation. And the lack of

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<sup>12</sup> Members of the South Caucasus Network of Human Rights Defenders carried out a lobbying mission to Geneva prior to the Universal Periodic Review of Georgia in UN. As a result the Austrian mission recommended Georgia to reduce the term of administrative detention. The recommendation however was rejected by Georgia. See the report of the working group on the Universal Periodic Review (UN 2011 p.24) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/118/21/PDF/G1111821.pdf?OpenElement>

<sup>13</sup> In May 2011 the 30 day administrative detention was used against two youth activist group leaders: Mr. Levan Chitadze and Mr. Vasil Balakhadze who were arrested without any grounds during a small demonstration. This sentence prevented both youth leaders to participate in scheduled May 21 opposition protests.

further legal acts or instructions on using these means raises question on proportionality of their application in particular cases.

### ***The new parliamentary initiative***

According to the April 18 2010 decision, Constitutional Court found the provisions which restricted holding assemblies and manifestations in 20 meter radius from the certain departments and administrative bodies unconstitutional. By the time of writing of this report however, the parliament started to discuss the new legal initiative bringing back the abolished clauses and introducing new restrictions and regulations:

The new draft law once again restricts assemblies and manifestations in 20 meter radius from the following buildings: Constitutional Court of Georgia, Common Courts, Office of Prosecutor, Prison and Detention departments and the law-enforcement bodies and also at the railway stations, airports and ports.

Besides, it will be prohibited to hold assemblies and manifestation in military departments and units and in 100 meter radius from their entrances.

Besides, new regulation will be adopted according to which it will be prohibited to block the highways and railway station. Blocking entrances of buildings already exists in the current law.

Also, the administrative body at the surroundings of which the manifestation is held is authorized to determine the place of assembly in 20 meter radius from the entrance.

According to the new amendments, persons without citizenship will once again be restricted to be responsible for the assemblies and manifestations.

The Georgian Constitutional Court abolished the restriction regarding the persons without citizenship on April 18th. However, according to the draft law of Parliamentary majority, this restriction will be reintroduced.

According to the draft law, alongside with assemblies and manifestations, it will be obligatory to protect rights of local residents and market dealers. The relevant body is obligated to keep balance between the freedom of assembly and rights of the individual who lives, works, trades or has business in the places where the assembly is taking place and these individuals must not be hindered to continue their work. The time and place of manifestation can be restricted for this purpose and the alternative places may be offered.

It will be prohibited to damage or abuse the historical, archeological, architectural or scientific buildings, monuments or memorials.

If the demonstrators have the items and materials that can endanger lives of other participants and this has mass-scale nature, the assembly or manifestation should be immediately stopped at the request of the authoritative body. The same restriction is imposed if the demonstrators have the lachrymatory, neural-paralytic and poisonous material or alcohol.

If the manifestation does not stop, the draft law singlehandedly states that “the law-enforcement bodies will apply international law and the measures envisaged by Georgian law to stop the assembly or manifestation.” The protest rally will be disrupted if the responsible individuals are unable to ensure the eradication of shortcomings in just 15 minutes after the warning.<sup>14</sup>

## **The Freedom of Assembly in practice**

The chapter will analyze the practical implementation of the right to peaceful assembly and discuss the state policy towards protests. Reviewing the trends observed during manifestations in 2007, 2009 and relatively small scale actions in 2010 and the beginning of 2011 unveils three stages of the state reaction to protests. They can be labeled as “open repression”, “covert repression” and “legalized repression”. The chapter will elaborate on these stages and discuss cases which provide justification for trends claimed in the report.

Assemblies have been the indivisible part of the Georgian post-Soviet life. The nature of these assemblies is mostly political and they represent protest actions against existing governing methods, particular policies or the government as a whole. As the social background remains extremely difficult in the country, witnessing a hundred thousand strong demonstration in Tbilisi is not something unbelievable either.

Two regime changes happened in the country since the independence and both have started with protests against the existing government. The 2003 protests resulted in a peaceful transition to power labeled as the Rose Revolution and the emergence of the United National Movement, the moderate right party as the ruling force.

The Georgian political environment has been changing ever since. Despite some successful efforts to modernize the country, the ruling party was pushing the political life towards more authoritarianism and the space for opposition was rapidly disappearing. The closing of the

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<sup>14</sup> humanrights.ge - <http://humanrights.ge/index.php?a=main&pid=13503&lang=eng>

political life for alternative opinion has taken the activity from its more traditional places (parliament, local municipalities) to the streets.

### ***Open Suppression***

The first stage labeled as the “open repression” covers the events of and prior to November 2007. At this stage the trust and legitimacy of the state authority is still high and the government is not avoiding the use of repressive means against mass demonstrations.

After several years into the post-Rose Revolution era the increasing sense of injustice has led to protest attitude within citizens. The November 2007 events were triggered by the arrest of the former minister of defense after his public statements on TV when he accused the government elite of widespread corruption and the abuse of power.

The mass protest action counting around 150 000 was dispersed in front of the parliament on 7<sup>th</sup> November using gas, special sound devices and other special means. Riot police forces, policemen and unidentified group of people in civilian cloths wearing masks brutally suppressed and dispersed the demonstration attacking everyone indistinguishably.

It is noteworthy that the special means used during that day were not in the list of the law on police and therefore were illegal by the time of usage.<sup>15</sup> After crackdown on the Rutaveli Avenue, the protesters gathered on Rike (riverside) the police forces attacked them there using firearms among other means.<sup>16</sup>

Several wounded protesters issued testimonies for Human Rights Centre which were documented in the 2007 report. Vakhtang Inasaridze and Nika Didishvili who both were wounded, claimed that they saw snipers who were firing at demonstrators.<sup>17</sup>

The November 2007 events received wide national and international criticism because of the excessive use of force and brutality with which the law enforcer’s actions were marked. The stage of the open suppression was short-lived for two main reasons. First was the transient character of events quickly culminating into large-scale demonstrations. Second was the reaction on both national and international levels: on the societal level the events showed that

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<sup>15</sup> Relevant amendments to the law on police, listing special means allowed were adopted in 2009.

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<sup>17</sup> Mr. Vakhtang Inasaridze and Mr. Nika Didishvili were wounded during the crackdown. The testimonies are documented in the Human Rights Centre report:

<http://humanrights.ge/admin/editor/uploads/pdf/Assessment%20November%20events.pdf>

the violence was similar to fuel in fire, further provoking citizens to protest, while internationally main actors condemned the excessive use of force.<sup>18</sup>

The punishment of the November 2007 protest action and the subsequent crackdown on the Imedi TV was the culmination of the open suppression. The reaction of the domestic and international societies strained the government to develop a more cautious and covert methods in fighting against political activities in the streets. Although direct attacks also happened in following years, the main trend was

### ***Covert Suppression***

The second stage of state attitude towards labeled as “covert suppression” lasted from 2008 to mid 2009, until the adoption of the new legislation affecting the freedom of assembly. Although large mass demonstrations were held in 2009 lasting for months, the law enforcers avoided open crackdowns and tried to suppress the assemblies stealthily.

In 2009 their commitment to freedom of assembly was once again called into question when stories of tens of cases of attacks and harassment of peaceful demonstrators started to emerge in the course of - at first sight well-handled by the authorities - spring-summer demonstrations in 2009. The political opposition and a part of the citizens accused President Saakashvili of authoritarian rule and of dragging Georgia in war with Russia the year before. To symbolize the lack of freedom in the country some protesters settled down in the tents in the middle of a central avenue in Tbilisi subsequently blocking Tbilisi’s main street throughout the summer.

Several days before April 9, which had been announced as a starting point for mass demonstrations, different opposition party members were detained on contested charges and sentenced to deprivation of liberty. On April 9 the central highways in the regions of Georgia were blocked to obstruct demonstrators from travelling to Tbilisi.<sup>86</sup> Arbitrary deprivation of drivers licenses were also reported to obstruct mini-buses drivers transporting people to the capital.<sup>87</sup>

Dozens of attacks and harassment of demonstrators committed by unidentified people have been documented in the course of demonstrations starting from April till July 2009. Such cases were taking place almost every day. All these cases had mainly similar patterns with a group of men, in some cases in masks, attacking participants of rallies, not immediately on the protest venues, but on the nearby streets, during the night time as a rule.

All attacks seem to follow the same pattern, to target specifically figures from the opposition or activists. Testimonies point to the lack of reaction from the police, who in some cases stands accused of turning a blind eye to the attacks.

The exceptions from this covert tactics were attacks on May 9 and Jun 15. These attacks however did not have a planned character and did not involve special riot police. Both these incidents seemed to represent spontaneous responses rather than planned suppressions by the special riot police squads.

On May 6, 2009 while allegedly establishing public order, police used plastic and rubber bullets against demonstrators, use of which was at that time prohibited by Georgian legislation. At first, the Ministry of Internal Affairs was denying the fact, but later acknowledged it. Reportedly police also used stones, debris of bricks and sticks.

According to official information, total of people, one journalist and six policemen among them asked for treatment in two hospitals of Tbilisi afterwards. Among those injured were several leaders and opposition supporters: Gia Maisashvili, Davit Gamkrelidze, Shalva Ogbaidze, Levan Gachechiladze and Gia Gachechiladze, as well as a correspondent of the Public Broadcasting-Salome Kokiashvili, a camera-man of the TV Company "Kavkasia"-Zaza Shukvani, a cameraman of the Rustavi 2 - Levan Kalandia; Nino Komakhidze-journalist of the newspaper "Versia" and Ana Khavtasi – photo-reporter. A Ministry of Internal Affairs investigation into allegations regarding the use of force by police officers concluded that police acted in accordance with the law. No one has been held accountable for use of prohibited weapons.<sup>19</sup>

On June 15, 2009 police, some in plain clothes and in masks, armed with batons attacked dozens of protesters from the youth pro-opposition groups, which were rallying outside the Tbilisi police headquarters on June 15. 96 Dozens of people were severely beaten, several journalists and cameramen were injured and their equipment was seized (but was later returned back). 39 people were arrested, five activists from the pro-opposition youth group were arrested and sent to prison for a month, the Tbilisi City Court fined others with GEL 400 and released.<sup>97</sup> A representative of the Public Defender's Office, Vakhtang Menabdzde, was beaten by police although he was wearing a special uniform with the "Public Defender" designation on it.<sup>20</sup>

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<sup>19</sup> Human Rights Centre annual report for 2009: Vanishing Rights. Available at [http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo\\_%20vanishing%20right-kdits.pdf](http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo_%20vanishing%20right-kdits.pdf)

<sup>20</sup> Human Rights Centre annual report for 2009: Vanishing Rights. Available at [http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo\\_%20vanishing%20right-kdits.pdf](http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo_%20vanishing%20right-kdits.pdf)

### ***Legalized suppression under the new legislation***

Legal amendments introduced in 2009 were motivated largely by long-lasting protests earlier that year. The goal of the initiative was to restrict the right to assemble in a way which would enable the state to intervene legally in case of similarly planned forms of protests (permanently blocking roads). As a result, blocking the street even for the reasonable time became impossible. The definition of the reasonable time was replaced instead by the number of participants, implying that the street can only be blocked when and for as long as the number of demonstrators makes it necessary.

The police had since intervened in a number of demonstrations regardless of their size and duration. The police reaction towards assemblies in 2010 and the first half of 2011 also saw cases of dispersal or suppression as a result of abuse of power.

Participants of a peaceful flash mob action held on the 14th of August 2011 on George W. Bush Street in Tbilisi were arrested by the police and charged. The action was organized by young poets, Irakli Kakabadze, Shota Gagarin and Alex Chigviladze. Participants demanded renaming the street after the name of the famous American poet and humanist, Walt Whitman and read poems by Whitman during the action.

Arrested poets were held in police cars for two and a half hours where they were allegedly subjected to verbal and physical abuse before being transferred to the nearby MIA building on a Kakheti freeway.<sup>21</sup>

The trial was held on the 15<sup>th</sup>, as the court had a day off on the 14th and the detainees spent one night in the detention cell. The court hearing was held behind closed doors with no access for media or even family members. The poets were charged with the violation of Article 173 of the General Administrative Code of Georgia, implying “willful disobedience to police”. However, the video material and witness statements were confirming that all participants peacefully followed the demands of the policemen. According to the attorney of the defendants, Anna Tsiklauri, the judge refused to view the above mentioned video footage and accept it as evidence. The court fined all three arrested with \$250, one tenth of annual median income in Georgia.<sup>22</sup>

“Disobedience to police” served as a ground for arrests of veterans, demonstrating on Freedom Square as well.

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<sup>21</sup>MIA denies the police mistreatment of activists

<http://www.civil.ge/eng/article.php?id=22606&search=kakabadze>

<sup>22</sup> Human Rights Centre annual report – Restricted Rights (2011; p42).

Veterans of the first war in Abkhazia and the 2008 conflict started to protest on Heroes' Square at the monument to heroes in late December. The demand was for the improvement of social protection for veterans. The action had been ongoing for over a week by the 3<sup>rd</sup> of January 2011 when police forces attacked the protesters and violently dispersed the demonstration. No violation of law had occurred from the side of the peaceful protesters before the crackdown. A woman was physically assaulted by a policeman during the attack. This fact was recorded on the camera and later the policeman was identified as Otar Gvenetadze. Gvenetadze was dismissed from police several days later.<sup>23</sup>

10 participants of the protest action were arrested. Their trial took place on January 10 at the Tbilisi City Court. No relatives of the detainees, journalists, NGO representatives or other interested individuals were allowed to attend the hearing. The detainees were charged with minor hooliganism and disobedience to the police officers' lawful requests.

On the 4<sup>th</sup> of January, the support action was organized at the same place but the police were prepared and did not allow participants onto Heroes Square, once again illegally restricting the right to peaceful assembly.<sup>24</sup>

As observed in both cases above, the main charge against demonstrators is the disobedience to the police. The disobedience itself is a violation and the citizens have to follow the police orders but such orders have to be lawful. In both cases the policemen were ordering the demonstrators to abandon the place hence stop the demonstration which is not a lawful order.

The new restrictions were effectively used against the demonstration in front of the Ministry of Correction and Legal Aid (penitentiary). The demonstration was organized by the "Resistance Movement", one of the opposition groups who were demanding the minister to meet prisoner's parents. The prior notification procedure was followed and the demonstrators which counted around 500 people blocked the street in front of the ministry. As soon as this happened the police started to force them towards the pavement arresting ten for and damaging the stage assembled by the organizers to address the demonstrators. The trials were ongoing till early morning. The arrested were accused of minor hooliganism and disobedience to police orders. Four were sanctioned to administrative detention and six were fined by 400 Georgian Lari.

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<sup>23</sup> <http://www.interpressnews.ge/en/justice/23827-otar-gvenetadze-who-physically-abused-eka-matiashvili-on-the-veterans-rally-dismissed.html>

<sup>24</sup> Human Rights Centre annual report – Restricted Rights (2011; p43).



## **May 2011 protests and the crackdown of 26th**

The Democratic Movement, led by the former chairman of the parliament, Ms. Nino Burjanadze, together with the “Public Assembly” uniting several distinguished representatives of the society have announced that their protest actions will start on May 21 and target the peaceful regime change. The prior notification for holding an assembly was made by the organizers to hold the assembly from 21<sup>st</sup> to 25<sup>th</sup> of May.

After gathering on a Freedom Square, the demonstrators moved to the Public Broadcaster and assembled there until May 25<sup>th</sup>.

Several incidents have occurred in following days. Particularly, on May 22<sup>nd</sup> the demonstrators attacked the police car near the place of assembly. They were beating the car with sticks damaging it heavily. The separate police units used force in return, firing rubber bullets at protesters. Several were injured.<sup>25</sup> The demonstrators alleged that the attack on the car was provoked by the attempt of the police officers to kidnap one of the participants of the assembly.

By midday 25<sup>th</sup> the rally started to move back towards the parliament. According to the organizers they were planning to prevent the “coward president” from holding a military related to the Independence Day.<sup>26</sup> The crackdown was expected after the midnight as the notification was no longer valid and the preparations for the military parade had to start very early in the morning.

It is also notable that part of the demonstrators was armed with beats and shields, some of them were wearing masks. Obviously they were planning to resist the police and prepared barricades around the place of assembly.

Even though the demonstration was no longer lawful in legal terms, the police forces acted in extremely violent way, used excessive force and as observation carried out by the Human Rights Centre Monitoring mission unveiled, planned the operation as a punishment, not as dispersal.

The police forces surrounded the demonstrators. They blocked all streets and alleys which could be potentially used by the protesters to escape. During the initial attack which started at about 00:10, the law enforcers used rubber bullets, water cannons, rubber beats and sirens. Rubber bullets were being fired from close distance and the force was used against all

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<sup>25</sup> <http://www.civil.ge/eng/article.php?id=23483&search=>

<sup>26</sup> <http://www.civil.ge/eng/article.php?id=23497&search=>

demonstrators regardless whether they resisted the law enforcers or not.<sup>27</sup> Part of demonstrators ran into the Rustaveli cinema seeking to escape punishment. The riot police squads followed them there and since it became difficult to distinguish the protesters from cinema visitors, they started to ask for ticket to let go. Human Rights Centre monitors witnessed how arrested citizens were being taken out of the movie theatre, some of them beaten. The exact list of detained persons remains unknown.<sup>28</sup> Human Rights Centre monitors observed the situation after the crackdown was over. Detained persons were being thrown down on the road in the rain with their hands and feet tied, they were being beaten and verbally assaulted by the policemen. According to various sources around 40 people were considered disappeared.<sup>29</sup> The public defender's office managed to find some of them in different detention facilities around Georgia.<sup>30</sup>

2 people have been officially reported dead after the attack. According to the official information one policeman and one protester were killed by the cortege of the leader of the opposition group, Ms. Nino Burjanadze who was trying to escape. 2 others were found the other day in the surrounding area but their link with the demonstration is under investigation.

The crackdown of 26<sup>th</sup> has clearly shown that even when the law enforcers were waiting for a legal basis for attacking the demonstration. Even when the part of demonstrators was attending the assembly being armed and aggressive, the police avoided to attack the protest action waiting for the perfect legal basis to do so.

## **Conclusion and Recommendations:**

There are several key issues in implementation of the right to peaceful assembly in Georgia both on legal and practical levels.

The legal framework is becoming increasingly narrow as the government tries to prevent future mass demonstrations and protect itself from possible escalations. On a legal level this results in constant amendments to the Georgian Law on Assembly and Manifestation at the expense of the possibility of citizens to fully exercise the right.

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<sup>27</sup> Maestro TV report from the crackdown:

[http://www.youtube.com/watch?v=1vPcOkHYaug&feature=player\\_embedded#at=46](http://www.youtube.com/watch?v=1vPcOkHYaug&feature=player_embedded#at=46)

<sup>28</sup> According to the MIA there were 90 detainees however the Public Defenders office published the list of 152 people.

<sup>29</sup> <http://www.civil.ge/eng/article.php?id=23544&search=>

<sup>30</sup> Many detainees were transferred to different detention facilities around the country which made it difficult to defend and even find them.

Recent developments show that the the legislative body led by the ruling party shows no respect to the decision of the Constitutional Court. Key individuals responsible for the Georgian legal policy openly expressed their dissatisfaction with the decision of the court and committed to reintroduced already void clauses.

On practice the picture is worse since the implementation of the already shrinking legal framework is becoming problematic. As cases from 2007; 2009 and 2010 show, the main issues are the excessive use of force and unlawful actions of the law enforcers aimed at dispersals. The covert suppression also remains one of the biggest issues not only because it is illegal but also because it is more difficult to monitor and report.

Taking the above mentioned into consideration, also referring to the recent violent dispersal of the opposition demonstration and proposed legislative amendments the South Caucasus Network of Human Rights Defenders finds essential to issue the following recommendations:

- *Respect the decision of the Constitutional Court of Georgia concerning articles in the law on assembly and manifestation and do not reintroduce the ban on holding assemblies within a 20 meter radius from entrances of particular buildings;*
- *Amend the law on Assembly and Manifestation of Georgia in order to grant the demonstrators the right to block the street for a reasonable time;*
- *Ensure that all detentions in relation to “disobedience to police orders” during manifestations are investigated effectively and that the police orders resulting in arrest are indeed lawful;*
- *Investigate promptly and effectively undoubted facts of inadequate planning of the dispersal operation as well as the disproportionate use of force during the dispersal of the manifestation on May 26 2011;*
- *Carry out prompt and fair investigation concerning allegations on beatings and inhuman treatment of detainees after their arrest and also inside of police stations;*
- *Investigate cases of fatalities effectively and bring perpetrators to justice;*
- *Guarantee the right to attorney for all detainees and investigate facts on denial of such right in a number of cases;*
- *Guarantee the right to a fair trial for all arrested during or in relation to May 26 events.*