



# **A PROTESTER'S GUIDE TO THE FREEDOM OF ASSEMBLY 2023**



**GEORGIAN  
YOUNG  
LAWYERS'  
ASSOCIATION**



# Table of Contents

<b>Introduction</b>	<b>3</b>
<b>I. Legal Framework and the Scope of the Freedom of Assembly in Georgia</b>	<b>5</b>
<b>II. Protected Scope</b>	<b>6</b>
2.1. THE RIGHT TO CHOOSE THE TIME AND PLACE FOR AN ASSEMBLY	6
2.2. THE RIGHT TO CHOOSE A FORM OF AN ASSEMBLY	9
2.3. FREEDOM OF ASSEMBLY ONLINE	10
2.4. CIVIL DISOBEDIENCE	11
2.5. SPONTANEOUS ASSEMBLIES	12
2.6. SIMULTANEOUS ASSEMBLIES AND COUNTER DEMONSTRATIONS	12
<b>III. Grounds for Restricting the Freedom of Assembly</b>	<b>15</b>
3.1. BALANCE BETWEEN THE RIGHTS AND THE PRINCIPLE OF PROPORTIONALITY	15
3.2. THE RIGHTS TO BLOCK TRAFFIC ROADWAYS	16
3.3. THE RIGHT TO SET UP A TENT	17
<b>IV. Procedural Aspects</b>	<b>17</b>
4.1. ADVANCE NOTICE FOR HOLDING ASSEMBLIES ON A TRAFFIC ROADWAY	18
4.2. OBLIGATIONS OF ORGANIZERS	19
4.3. APPEAL PROCEDURE AND THE COMPENSATION FOR DAMAGES	20
<b>V. Prohibition of Illegal Assemblies, Rights of Participants, and the Grounds for their Potential Liability</b>	<b>21</b>
5.1. RIGHTS WE DO NOT HAVE	21
5.2. PROCEEDINGS REGARDING ADMINISTRATIVE OFFENCES	23
5.3. THE USE OF SPECIAL MEANS FOR DISPERSING ASSEMBLIES	26
5.4. PROTECTING OURSELVES FROM SPECIAL MEANS	27
<b>Summary</b>	<b>30</b>
<b>Annexes</b>	<b>31</b>
ANNEX 1: ADVANCE NOTICE	31
ANNEX 2: CERTIFICATE OF AUTHORIZATION	32

# Introduction

The freedom of assembly and peaceful protest is a fundamental right in a democratic society, which is linked to the freedom of expression and allows persons to assemble, publicly express their opinions and have an impact on the social, economic, or political situation in the country. The exercise of freedom of assembly determines the level of democracy in a State, and its unlawful restriction puts the exercise of other rights at risk.

In order for the effective and lawful exercise of the freedom of assembly to be equally guaranteed for everyone, organizers and participants in the public assembly need to be informed on the essence of the freedom of assembly and demonstration, its scope, and the grounds for restriction.

This guide aims to raise awareness and provide organizers and participants of public assemblies with information regarding formal requirements of the domestic legislation; to inform on relevant practical issues, applicable restrictions, and the ways to protect oneself when special means are used by the police. The guide also addresses the rights and obligations of the Municipalities' Mayor's Offices during peaceful public assemblies and demonstrations.

## The Authors

**The Human Rights Center (HRC)** was established in 1996. It is aiming to promote human rights and fundamental liberties, as well as to contribute to peacebuilding efforts in Georgia. HRC carries out the following activities within the scope of its mandate: monitoring and documenting human rights violations in Georgia; lobbying and advocacy with national as well as international bodies regarding legislative initiatives; taking part in judicial proceedings concerning human rights violations while providing free legal aid and engaging in national and regional networks of human rights organizations. HRC contributes to the protection of human rights in Georgia, aims to ensure the protection of the right to a fair trial, and raises awareness on human rights issues. It also conducts monitoring of public assemblies and demonstrations taking place in Georgia and provides free legal aid to persons detained during assemblies with respect to criminal and administrative cases. **Regional offices of the HRC operate in Gori and Gurjaani. For free legal aid, contact: (+995 32) 237 69 50, (+995 32) 238 46 48; E-mail: [hrc@hrc.ge](mailto:hrc@hrc.ge)**

**Georgian Young Lawyers' Association (GYLA)** was established in 1994 and is one of the oldest active NGOs in Georgia. GYLA provides free legal aid to citizens of Georgia, foreign citizens, and stateless persons regarding, among others, the issues related to the exercise of freedom of assembly. Namely, it assists individuals interested in organizing public assemblies, monitors assemblies and demonstrations, and assigns a lawyer to represent unlawfully arrested persons before the Court. If damages are incurred during assemblies, GYLA represents an injured party in criminal and civil proceedings. Numerous persons remedied the violation of their rights before national and international courts with the support of GYLA. **Its regional offices operate in Kutaisi, Batumi, Ozurgeti, Zugdidi, Gori, Rustavi, Dusheti, and Telavi. For free legal consultation, contact: (+995 32) 99 50 76; E-mail: [legalaid@gyla.ge](mailto:legalaid@gyla.ge)**

**International Partnership for Human Rights – Tbilisi (IPHR)** is the Tbilisi branch of the organization established in Brussels in 2008. It was registered in Georgia in 2019 and, since then, has been functioning as a center for human rights to provide assistance to human rights defenders, lawyers, and civil activists subjected to persecution. IPHR aims to raise awareness regarding freedom of assembly in the South Caucasus and Central Asia through strategic litigation and advocacy. This publication was created with the support of the IPHR's project "Strengthening the Right to Protest in the Eurasia Region". **IPHR can be contacted at: [iphr@iphronline.org](mailto:iphr@iphronline.org)**

# I. Legal Framework and the Scope of the Freedom of Assembly in Georgia

## What is the freedom of assembly?

The Constitution of Georgia stipulates that everyone has the right to assemble publicly, unarmed, and without prior permission at the place of their choice – whether indoors or outdoors.<sup>1</sup> Therefore, an assembly can be held without the permission of State authorities. However, under certain circumstances, participants might have an obligation to notify the respective Mayor's Office regarding the assembly.

## What does the freedom of assembly protect?

The Law of Georgia on Assemblies and Demonstrations prescribes rules for the exercise of freedom of assembly so that the rights of others are not breached by holding an assembly (e. g. the freedom of movement, the right to carry out entrepreneurial activities, etc.). This law also provides for the grounds for restriction of the freedom of assembly.<sup>2</sup> On the other hand, the Law of Georgia on Police regulates the scope of action of police officers during public assemblies and sets forth general rules for the use of special means, binding upon the police officers, among others, in the course of dispersing assemblies.

An “assembly” is defined as a gathering of a group of citizens – whether indoors or outdoors, a meeting in public places to express solidarity or protest.<sup>3</sup> A “demonstration” is an assembly of citizens, mass public march, and street demonstration to express solidarity or protest, or march using posters, slogans, banners, and other visual means.<sup>4</sup> An assembly is an umbrella term and covers gatherings in different forms (physical gathering, an assembly in a public space, meeting, protest, demonstration, march, flash mob, and others). Therefore, a demonstration is one of the types of public assembly.

Within the scope of the aforesaid laws, the right to publicly and collectively express one's opinion is protected under the freedom of assembly.

## What can serve as a purpose of an assembly?

An objective of a public assembly might be the expression of a specific opinion – be it to demonstrate solidarity or protest. Generally, the law provides the participants in an assembly with a broad variety of choices to determine the form and content of the expression. However, this right might be subjected to restrictions.

**Note:** During an assembly – whether it is a meeting, protest, or demonstration – it is prohibited to call for the overthrow or change of the constitutional order of Georgia by force, for the encroachment of independence and territorial integrity of the country, as well as to call for actions that are intended to propagate war or violence and that incite national, regional, religious or social hostility and pose an obvious, direct and essential danger that the aforesaid actions will take place (See Chapter 5 for more details in this regard).

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1 Constitution of Georgia, Article 21.

2 Law of Georgia on Assemblies and Demonstrations.

3 Law of Georgia on Assemblies and Demonstrations, Article 3 (a).

4 Law of Georgia on Assemblies and Demonstrations, Article 3 (b).

## Can freedom of assembly be exercised by a single individual?

An assembly means the presence of at least two individuals at the same place. Therefore, for one's action to be protected under the freedom of assembly, at least two individuals must exercise the said right simultaneously. While an outdoor protest of a single individual is also protected, it falls within the scope of freedom of expression, rather than freedom of assembly.<sup>5</sup>

The Constitution Court of Georgia stated that “the freedom of assembly (demonstration) is linked to the possibility of expressing an opinion collectively, however, each participant in an assembly exercises this right individually”.<sup>6</sup> This also implies that the actions of every participant and the legality thereof should be assessed on a case-by-case basis. Regardless of the number of participants – be it tens or hundreds – the freedom of assembly is protected equally in all cases.

## Who can organize assemblies and demonstrations?

The Constitution of Georgia guarantees not only the right to participate in assemblies but also – the right to plan and organize them.<sup>7</sup> Anyone above the age of 18 – citizens of Georgia, stateless persons, or foreign citizens – can organize assemblies.<sup>8</sup> However, an assembly does not necessarily need to have an organizer, except for cases when the legal requirement to inform the Mayor's Office of the assembly is applicable. Such an obligation exists when a roadway is to be blocked during an assembly.

## II. Protected Scope

This chapter will discuss the scope of the freedom of assembly – including the form of assembly, the right to choose its place and time, the exercise of this right online, civil disobedience, and issues related to spontaneous assemblies.

### 2.1. The Right to Choose the Time and Place for an Assembly

#### WHERE CAN ASSEMBLIES BE HELD?

Choosing the place (or a route in case of marches) is one of the key elements of the freedom of assembly. It carries particular significance if a specific location/establishment is the target of the protest or has a symbolic meaning, or when expressing an opinion at this very place is the most effective way to reach the target audience.<sup>9</sup> A Mayor of the respective Municipality can only restrict the right to choose the

5 The Case of *Glukhin v. Russia* was concerning the display of a protest banner by one person in the street. Here the Court ruled that there was a breach of Article 10 (freedom of expression), rather than Article 11 (freedom of assembly) of the Convention. See: *Glukhin v. Russia*, no. 11519/20, 4 July 2023.

6 Political Union of the Citizens “Movement for United Georgia”, Political Union of the Citizens “Georgian Conservative Party”, *Citizens of Georgia – Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers’ Association, Citizens of Georgia - Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. Parliament of Georgia*, Judgment of the Constitutional Court of Georgia no. 2/482,483,487,502, 18 April 2011, §II-132.

7 T. Tughushi et al., *Human Rights and the Jurisprudence of the Constitutional Court of Georgia*, Tbilisi, 2003, p. 318.

8 Law of Georgia on Assemblies and Demonstrations, Article 5 (3).

9 Public Defender of Georgia, *Special Report on the Freedom of Assembly*, 2020, p. 23.

place and time of an assembly in cases of urgent necessity, and if this does not undermine the purpose of a given assembly.

**Note:** The restriction of the right to choose the place and time for an assembly by the Mayor might result in a breach of right if the place and time are directly linked to the purpose of the assembly.<sup>10</sup>

**Example:** A group of people wants to protest a bill adopted by Parliament. However, the Mayor's office decides to allow them to hold an assembly not on the day of the hearing, but rather – sometime later. Clearly, this will amount to such a restriction regarding the time of assembly that would deprive the protest of its meaning. An assembly will also be undermined if State authorities allow it at the desired time, however, not in front of the parliament building, but rather – in a different location, far from the parliament building.

## WHAT DOES “PUBLIC SPACE” MEAN?

The term “public space” encompasses parks, squares, streets, and roadways, as well as open spaces near the facilities of administrative bodies, which can be accessed by anyone equally.<sup>11</sup> It can also mean buildings that are physically suitable for an assembly and, at the same time, are accessible to the public, such as publicly owned stadiums located between residential buildings (which does not include stadiums that require a special permit upon entrance) or amphitheatres. State authorities should, to the best of their ability, enable the organizers and participants of assemblies to gather in public spaces of their choice.

## WHERE IS IT PROHIBITED TO HOLD AN ASSEMBLY?

In certain cases, the right to choose a place for an assembly might be restricted in order to avoid the obstruction of the operation of various institutions.<sup>12</sup> For instance, the Georgian legislation prohibits holding assemblies in the following buildings, as well as in the area within a radius of 20 meters from these buildings:

- a. buildings of the Prosecutor's Office, police, penitentiary institutions (prisons), and law enforcement bodies of Georgia;
- b. railway stations, airports, and ports.<sup>13</sup>

It is also prohibited to hold an assembly in external prohibited areas of penitentiary facilities and the territory within 20 meters radius from such areas;<sup>14</sup> in military units and facilities and on the territory within 100 meters radius from their entrances.<sup>15</sup>

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10 See: *Lashmankin and Others v. Russia*, no. 57818/009, §405, 7 February 2017.

11 OSCE/Office for Democratic Institutions and Human Rights, European Commission for Democracy through Law (Venice Commission), *Guidelines on Freedom of Peaceful Assembly*, 3rd edition, 2020, §61.

12 Special Report on the Freedom of Assembly supra n. 9, p. 16.

13 Law of Georgia on Assemblies and Demonstrations, Article 9 (1).

14 Ibid, Article 9 (11).

15 Ibid, Article 9 (2).



In addition, blocking the entrances of buildings, motorways, and railways shall be prohibited when assemblies or demonstrations are held<sup>16</sup> as well as the deliberate blocking of the traffic roadway unless this is required due to the number of participants of the assembly or demonstration.<sup>17</sup>

**Note:** It can be prohibited to hold assemblies within 20 meters radius of the Administration of the President, the Chancellery of the Government, Ministries (except the Ministry of Internal Affairs), Courts, Offices of City Assemblies or Mayors, other public institutions (except for the Prosecutor's Office, Police, prisons and military facilities) only if relevant public authorities demonstrate that holding an assembly will prevent their day-to-day operation. This is to be determined by each institution individually with respect to each assembly, on a case-by-case basis.

A certain protest demonstration within 20 meters radius of the parliament building might not create any obstacles for other people or the Parliament, whereas another assembly conducted within the same area might obstruct the day-to-day work of the Parliament. Therefore, in such cases, the Chairperson of the Parliament has the authority to request the participants obstructing the work of the legislative body to maintain the 20 meters distance from the parliament building.

The restriction to not hold assemblies within a 20 meters radius does not apply to the aforesaid public institutions. This means that participants might start to gather without observing the distance, but later – after receiving a substantiated decision regarding the necessity to hold an assembly outside the 20 meters radius – continue it while maintaining the indicated distance.<sup>18</sup>

**Note:** The right to choose the place or route of a peaceful assembly does not imply the right to trespass on private property or to intrude on State premises.

## **WHEN CAN A MAYOR RESTRICT THE TIME AND PLACE OF AN ASSEMBLY?**

The Mayor's Office is authorized to restrict the right to choose the time or place of an assembly when people residing or working near the place of an assembly are disrupted – but only if an assembly is to take place for a prolonged time. In such cases, the Mayor's Office shall propose to the participants to hold an assembly at a different location, where they will not interrupt the activities of others. During an assembly, such interruptions might be manifested e. g. in noise, the restriction of movement, etc. If a prolonged protest demonstration does not disturb others in their day-to-day life, the Mayor's Office does not have the authority to suggest holding an assembly at a different location. In addition, the Mayor's Office cannot impose limitations upon an assembly if it is to last for a short time.

## **HOW DOES THE LEGISLATION RESTRICT THE STATE WHEN PARTICIPANTS EXERCISE THEIR FREEDOM OF ASSEMBLY?**

The State is not only obliged to facilitate the exercise of the freedom of assembly in a form, at the time and place chosen by organizers and participants, but it should also abstain from creating arbitrary barriers for public assemblies and limiting access to public spaces. For instance, preventing speakers

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16 Ibid, Article 9 (3).

17 Ibid, Article 11 (2) (e).

18 Ibid, Article 112 (4).

from getting close to specific locations may constitute an indirect, although disproportionate restriction of the freedom of assembly - especially, if such places have a symbolic importance.<sup>19</sup>

Absolute, blanket restrictions must not be imposed upon the freedom of assembly. For instance, the State cannot prohibit all manifestations for a specific time, or in specific places (for instance, laws or bylaws prohibiting all assemblies in front of the parliament building shall not be adopted). An exception from this rule is only martial law or a state of emergency, which authorizes the President of Georgia to restrict the freedom of assembly on grounds of a presidential decree issued beforehand.<sup>20</sup>

## 2.2. The Right to Choose a Form of an Assembly

Freedom of assembly encompasses the right of everyone to assemble in order to react to important political, social, cultural, or economic developments taking place in the country. While the legislation does not contain strict regulations regarding the forms in which assemblies should be held, it sets forth rules on how this constitutional right should be exercised. This chapter will provide an overview of the restrictions applicable in this regard.

### HOW IMPORTANT IS IT FOR AN ASSEMBLY TO BE PEACEFUL?

Freedom of expression is protected as long as it is peaceful. Therefore, if organizers or participants in an assembly have violent intentions or call upon others to act unlawfully, the assembly will not be protected under the law.<sup>21</sup> Under such circumstances, state authorities might request the crowd to disperse. However, clear and reliable evidence must demonstrate that the assembly is, indeed, violent.<sup>22</sup> Merely the fact that participants in the assembly might openly express ideas that disturb or insult particular persons or a group of people does not form sufficient grounds for considering an assembly unlawful.<sup>23</sup>

### WHAT DOES THE VIOLENT NATURE OF AN ASSEMBLY IMPLY?

In the context of freedom of assembly, “violence” should be defined narrowly, although, as an exception, apart from purely physical violence, it also encompasses inhuman or degrading treatment or the intentional intimidation or harassment.<sup>24</sup> Statements provoking hatred and discrimination are deemed as incitement to violence. However, an assembly will not be violent if, out of all participants, only a small group or separate individuals – that are not organizers of an assembly – are engaged in violent actions. In such isolated cases of violence, the State must sanction the perpetrators individually and shall not decide to disperse the entire assembly of peaceful participants.<sup>25</sup>

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19 OSCE/Office for Democratic Institutions and Human Rights, European Commission for Democracy through Law (Venice Commission), Guidelines on Freedom of Peaceful Assembly, 2nd edition, 2010, §24.

20 Constitution of Georgia, Article 71 (4).

21 Guidelines on Freedom of Peaceful Assembly supra n. 19, §25.

22 Ibid.

23 See: *Handyside v. the United Kingdom*, no. 5493/72, §49, 7 December 1976, Series A no. 24; *Observer and Guardian v. The United Kingdom*, no. 13585/88, 26 November 1996, §59, Series A no. 216.

24 Guidelines on Freedom of Peaceful Assembly supra n. 19, §27.

25 Ibid, §159.

## 2.3. Freedom of Assembly Online

### CAN FREEDOM OF ASSEMBLY BE EXERCISED ONLINE?

Even though an assembly is perceived as an in-person gathering, it is recognized that human rights, including freedom of assembly, can also be exercised online.<sup>26</sup> Today, an overwhelming majority of public assemblies are planned and organized online. This allows mobilizing a large group of people and might play a key role in reacting to events such as the announcement of election results, counter demonstrations, or adoption of an antidemocratic law.

If a public assembly is planned through social networks and the time and place of the assembly are indicated on various websites, restricting access to these online resources will constitute an interference with the freedom of assembly, given that the organizers will have a limited possibility to undertake preparatory works.<sup>27</sup>

Furthermore, blocking a post from social networks because of its content, as well as subjecting its author to criminal liability or blocking a certain speaker from social networks by a State would amount to a violation of the freedom of expression – except for cases when the content or a person at hand goes beyond the scope of freedom of expression.

The right to access and freely use the Internet is guaranteed under the Constitution of Georgia.<sup>28</sup> Otherwise, in the era of technology, it would have been impossible to ensure the freedom of information, thought, and the press. Thus, in cases where someone's activities are being blocked on various online platforms, they are deprived of the ability to fully exercise their right to freely access the Internet, and, at the same time, their freedom of expression is restricted.

### HOW TO EXERCISE THE FREEDOM OF ASSEMBLY ONLINE?

Everyone has the right to choose any website, application, or online service to participate in the activities of various social groups and communities. Online protests, just like in-person gatherings, must be peaceful, meaning that statements made online shall not contain incitements to violence.

**Note:** If online protests block or obstruct services, or cause damage to others' property, their organizer(s) might be held liable.

### HOW SHOULD THE STATE PROTECT THE FREEDOM OF ASSEMBLY ONLINE?

The State shall respect the right to organize and plan online assemblies. Moreover, the said right is to be considered as an element of the peaceful assembly, held online, through various networks. An online assembly can take the form of a discussion, online campaign, etc.

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26 Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, A/HRC/31/66, §10, available at <https://shorturl.at/ipCX9> [accessed 18.07.2023].

27 The European Court of Human Rights considers this action of a State with regard to Article 11 (freedom of assembly) of the Convention.

28 Constitution of Georgia, Article 17.

Access to the Internet or social media cannot be restricted before or during an assembly. Furthermore, websites or social networks used for disseminating information regarding an assembly must not be blocked.

## **DO INTERNET PROVIDERS HAVE AN OBLIGATION TO PROTECT THE FREEDOM OF ASSEMBLY?<sup>29</sup>**

While States have the primary obligation to protect human rights, this obligation also extends to third parties – among others, to private internet service providers (“ISP”). These companies have to facilitate the creation of accessible spaces where freedom of expression and freedom of assembly can be exercised.

Through cooperation with ISPs, a State shall ensure that information or content that would usually be allowed and acceptable in a democratic society is not censored. Internet providers should also abstain from blocking speech that might “disturb or offend”<sup>30</sup> a particular segment of the population.

Unless a substantiated judgment of the Court is rendered, ordering ISPs to provide State authorities with the information made available to them by assembly participants is deemed unlawful.<sup>31</sup> While the data related to online communication can be stored for a certain period, such data shall be deleted after this time elapses. It can only be kept if the data is necessary for investigating serious crimes.<sup>32</sup>

## **2.4. Civil Disobedience**

### **WHAT IS CIVIL DISOBEDIENCE?**

Peaceful disobedience, also known as civil disobedience, is one of the forms of protest. It is aiming to accomplish economic, political, and social changes peacefully and unarmed. It is based on the belief that going on strikes, occupying public areas to express protest and symbolic actions aiming to limit anti-democratic actions of the Government can bring fundamental changes to the country. According to the special report of the Public Defender of Georgia, the term “peaceful” also encompasses actions that might disturb or insult others or temporarily obstruct the activities of other people.<sup>33</sup> Hence, sit-ins, blocking building entrances or roadways, boycotts, and strikes – regardless of the level of discomfort and public discontent they cause – fall within the scope of the right to protest. The same applies to art installations, human chains, and flash mobs.

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29 Content of posts published by a user on social networking platforms is regulated not by internet service provider companies, but by the administration of respective platforms. The Administration can delete posts that go against its own internal policies and block users that violate such regulations. Most of the social networking platforms popular in Georgia are subjected to the legislation of the United States of America. The Constitution of the USA does not oblige social network owners – private corporations – to protect freedom of speech or any other fundamental right. Therefore, it is impossible to take any action against internal policies that violate US standards regarding freedom of speech.

30 See: *Ezelin v. France*, 26 April 1991, Series A no. 202. See also: *Handyside v. the United Kingdom* supra n. 23, §49; *Observer and Guardian v. The United Kingdom* supra n. 23, §59.

31 Under Article 112 (1) of the Criminal Procedure Code of Georgia, “an investigative action that restricts private property, ownership or the inviolability of private life, shall be carried out under a court ruling upon motion of a party.

32 Council of Europe, Recommendation CM/Rec(2014)6 of the Committee of Ministers to Member States on a Guide to Human Rights for Internet Users, 16 April 2014, §§57-59.

33 Special Report on the Freedom of Assembly supra n. 9, p. 16.

**Note:** The breach of legal norms and disobedience to the lawful order of the police does not fall within the scope of the freedom of assembly.

## 2.5 Spontaneous Assemblies

### WHAT IS A SPONTANEOUS ASSEMBLY?

A spontaneous assembly is a gathering of people with respect to a specific, unexpected event, without any prior preparation – usually, to express protest. Such assemblies might start due to the news disseminated in the media or on the Internet. In general, people slowly start to gather at the same location, and their number increases afterward as a result of sharing information through various channels of communication (e.g., cellphone, SMS, the Internet, etc.). Such messages should not, as such, be regarded as prior planning of the assembly.

Most of the time, spontaneous demonstrations might be the only way out when the executive, legislative or judicial branch of the government makes unexpected and unjustified decisions regarding issues of social importance. In a healthy democracy, spontaneous assemblies are a frequent and natural reaction. They are regarded as one of the forms of public assemblies, given that a belated reaction might deprive the exercise of freedom of assembly of any meaning.

### CAN SPONTANEOUS ASSEMBLIES BE DISPERSED?

Even though the Georgian legislation does not envisage the concept of spontaneous assemblies, they are a frequent occurrence in the country. State authorities shall not disperse a spontaneous demonstration if it is being conducted peacefully. Spontaneous public assemblies cannot be dispersed even when they block the traffic roadway or obstruct movement. This does not apply to cases where holding an assembly is possible even without blocking the roadway.

**Note:** As a rule, when organizers plan an assembly several days in advance and anticipate that the participants will block the road or impede others' movement, it is necessary to notify the Mayor's Office in advance.

## 2.6. Simultaneous Assemblies and Counter Demonstrations

### WHAT ARE SIMULTANEOUS ASSEMBLIES AND COUNTER DEMONSTRATIONS?

Counter Demonstrations should be distinguished from simultaneous demonstrations. The former is defined as a peaceful assembly or a manifestation, which is held in parallel to another assembly with the objective of expressing an opinion in opposition to the said assembly.<sup>34</sup>

On the other hand, simultaneous assemblies refer to two different assemblies that are held at the same time and place and do not aim to express opposing opinions.<sup>35</sup>

34 Order #1002 of the Minister of Internal Affairs issued on 30 December 2015, Annex: Guidelines for the Conduct of the Employees of the Ministry of Internal Affairs During Assemblies and Demonstrations, Article 3 (c).

35 Ibid, Article 3 (d).

**Example:** One of the counter demonstrations that took place in Georgia was that of ultraconservative groups - characterized by violent and homophobic behavior – held at the same time and place where an assembly of the LGBTQ+ community members was announced. Such a counter demonstration took place on 5 July 2021, with the purpose of canceling the “Pride Parade”. During this counter demonstration, the members of ultraconservative groups attacked dozens of journalists, insulted them, inflicted physical harm upon them, and damaged their equipment.<sup>36</sup> This assembly is regarded as a counter demonstration, given that the ultraconservative groups were aiming to express a position different from that of the LGBTIQ+ community. However, the peaceful nature of expression was short-lived, as the counter demonstration escalated to physical violence, and thus the assembly became unlawful.

An example of simultaneous assemblies would be 3 different assemblies taking place at the same time in front of the Parliament building on 20 June 2023, organized, respectively, by supporters of Mikheil Saakashvili, miners from Chiatura, and father of Lazare Grigoriadis – Beka Grigoriadis.<sup>37</sup> These were simultaneous assemblies, given that they did not contradict each other in the content of the speech or objectives of an assembly, but rather – the organizers merely wished to hold them at the same place and at the same time. For instance, the supporters of the ex-President of Georgia, Mikheil Saakashvili, demanded to provide treatment for him abroad; Beka Grigoriadis – to release his son from detention, whereas the demand of the miners from Chiatura was to improve working conditions. As opposed to counter demonstrations, participants in these simultaneous assemblies did not aim to contradict each other.

## **WHAT OBLIGATIONS DOES A STATE HAVE DURING COUNTER DEMONSTRATIONS?**

A State is under the obligation to protect the freedom of two contradictory assemblies to the best of its abilities and make the holding of both assemblies possible.<sup>38</sup> If the majority of members of one of the assemblies is engaged in violent conduct, the Government must protect the peaceful assembly from counter-demonstrators,<sup>39</sup> take measures to prevent violence, or, at least, reduce its scale.<sup>40</sup> Law enforcement agents must react adequately to hate speech that creates an immediate threat of violence. Furthermore, state authorities must take past experience regarding such assemblies into account, whenever a threat of physical violence or confrontation exists.<sup>41</sup>

## **WHAT DID THE EUROPEAN COURT OF HUMAN RIGHTS RULE CONCERNING THE PRACTICE OF HOLDING COUNTER DEMONSTRATIONS IN GEORGIA?**

In its decision on the case of *Identoba and Others v. Georgia*, the European Court of Human Rights (the “ECtHR”) found a breach of the freedom of assembly with respect to persons who took part in an assembly on the International Day against Homophobia and Transphobia, on 17 May 2012. The case was concerning the attack of radical groups on members of the LGBTIQ+ community.

36 See: Social Justice Center, Legal Assessment of 5-6 July Events – Initial Analysis. 6 September 2021, available at: <https://shorturl.at/gEFK1> [accessed 28.07.2023].

37 Sandro Gvindadze, The Miners Expected More from Tbilisi. How Does the Capital See Their Protest, Radio Liberty, 21 June 2023, available at: <https://shorturl.at/iuEN8> [accessed 28.07.2023].

38 *Fáber v. Hungary*, no. 40721/08, §§ 40, 43, 24 July 2012.

39 *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, §115, 20 October 2005

40 Ibid.

41 Georgian Young Lawyers Association, Chronology and Legal Assessment of 5-6 July Events, 2021, p. 29.

The ECtHR noted that the Government of Georgia was aware that holding a peaceful march was planned on 17 May 2012, and was notified about it 9 days in advance. Nevertheless, this substantially long time has not been used to take preparatory measures. Given the aggressive attitude of a certain segment of the Georgian population, the Government knew, or must have known, that some confrontation would take place during the march organized by the movement “Identoba”. Hence, it was under an obligation to use all necessary measures to prevent physical violence. For instance, government officials should have made straightforward public statements regarding the responsibility to provide the LGBTIQ+ community with equal protection. In addition, warnings should have been made concerning relevant sanctions for potential breaches of the law. Moreover, the number of law enforcement officers mobilized on-site was not sufficient. It would have been reasonable for the Government to invoke more police force, including the special unit, to prevent physical violence.<sup>42</sup>

In its judgment on the case of *Women’s Initiatives Supporting Group and Others v. Georgia*, the ECtHR provided another important explanation with respect to the dispersal of the assembly on 17 May 2013. In this case, the Government argued that it had complied with its obligations, given that it had planned an evacuation scheme in advance and thus managed to protect the safety of the participants in the assembly. However, the Court rejected this argument, stating that “the dispersal of the LGBT demonstrators without giving them an opportunity to hold their public assembly cannot be counted [...] as fulfillment by the State of their positive obligation to provide adequate protection by hate-motivated attacks”.<sup>43</sup>

Therefore, merely placing participants in a peaceful assembly away from violent counter demonstrators does not protect the freedom of assembly. The State shall, to the best of its ability, ensure that a peaceful assembly or a demonstration be held in a format at the time and place as planned by the organizers.

Notably, the Georgian model of providing prior information requires submitting a notice instead of obtaining permission. Accordingly, no public body is authorized to prohibit the protesters from gathering and expressing their opinion as long as they act in accordance with the law.<sup>44</sup> Nevertheless, the Mayor’s Office is authorized to request a meeting with the organizer of the assembly alongside the trustee in order to recommend changing the time and/or place of the assembly if another assembly is planned at the time and place indicated in the notification. In such cases, priority should be given to a group that notified the authorities about holding the assembly. As for the group that submitted the notification thereafter – the Mayor’s Office should suggest they gather at a different location and/or time.<sup>45</sup>

**Note: On 5 November 2002, the Constitutional Court of Georgia announced Article 14 (1) of the Law on Assemblies and Demonstrations unconstitutional. The said provision authorized the Mayor’s Office to disallow holding an assembly in case the police possessed verified information that it would pose a danger to the constitutional order or the life or health of others. The Court stated that these circumstances were to be assessed by the judiciary, as opposed to the Mayor.<sup>46</sup> Hence, the Mayor’s Office cannot prohibit holding an assembly even if the participants might commit a criminal offense.**

42 *Identoba and Others v. Georgia*, no. 73235/12, §99, 12 May 2015.

43 *Women’s Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, §74, 16 March 2022.

44 *Georgian Young Lawyers’ Association, Zaal Tkeshelashvili, Nino Tkeshelashvili, Maia Sharikadze, Nino Basishvili, Vera Basishvili and Lela Gurashvili v. the Parliament of Georgia*, Judgment N2/2/180-183 of the Constitutional Court of Georgia, 5 November 2002, §6.

45 Law of Georgia on Assemblies and Demonstrations, Article 10 (1) (b).

46 Judgment N2/2/180-183 of the Constitutional Court of Georgia supra n. 44, §10.



# III. Grounds for Restricting the Freedom of Assembly

Freedom of assembly is not an absolute right, and it can be restricted. However, this can only be done to achieve legitimate aims set forth in the Constitution of Georgia and the Law of Georgia on Assemblies and Demonstrations.<sup>47</sup> Moreover, such a restriction must be prescribed by law, proportionate, and necessary in a democratic society. This chapter will provide an overview of the limits of the freedom of assembly.

## 3.1. Balance Between the Rights and the Principle of Proportionality

### WHEN CAN FREEDOM OF ASSEMBLY BE RESTRICTED?

The freedom of assembly can only be restricted to ensure national security, public safety, or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognized as confidential, or for ensuring the independence and impartiality of the judiciary. Otherwise, the restriction will not be justified if none of the aforesaid legitimate aims are at hand.

Aims:	Requirements
<ul style="list-style-type: none"><li>• To ensure national security or public safety</li><li>• To ensure territorial integrity</li><li>• To protect the rights of others</li><li>• To prevent the disclosure of confidential information</li><li>• To ensure the independence and impartiality of the judiciary</li></ul>	<ul style="list-style-type: none"><li>• Prescribed by law</li><li>• Necessary in a democratic society</li><li>• Non-discriminatory</li><li>• Proportionate</li><li>• The benefit protected by the restriction shall exceed the damage caused by such a restriction</li></ul>

If none of the requirements are met, or if the restriction does not serve at least one of the legitimate aims listed above, the interference will be deemed unlawful.

### HOW TO RESOLVE A CONFLICT BETWEEN THE RIGHTS?

While there is no hierarchy among human rights, one right can sometimes be restricted to protect the right(s) of others. Such cases are known as a “conflict between the rights” and require finding a fair balance between the two rights, whereby the necessity of a given restriction as well as its compatibility with a certain legitimate aim, are to be taken into account.

<sup>47</sup> Law of Georgia on Assemblies and Demonstrations, Article 2 (3).



One such classic example is a conflict between the freedom of movement on the one hand and the freedom of assembly on the other hand.

Let us consider the case of blocking roadways: here, one group of people is exercising their freedom of assembly, while those that had planned to use a roadway blocked during an assembly, are obstructed from exercising their freedom of movement. Note that both rights can be restricted in accordance with the law.

In all cases when an assembly is held on a roadway, the Mayor's Office of a respective Municipality shall consider the number of participants into account and reasonably assess whether their freedom of assembly can also be exercised without blocking the roadway. If only a small number of people participates in a given assembly, priority should be given to freedom of movement.

Moreover, the Mayor's Office must take measures to ensure the balance between the freedom of assembly and the rights of persons living, working, or engaging in entrepreneurial activities at the location where an assembly is held. In such cases, the Mayor's Office might offer organizers of the assembly an alternative of holding an assembly at a place from where they can reach the target audience while affecting the rights of others to a smaller extent. However, if an assembly is planned for a short period, the freedom of assembly cannot be restricted.<sup>48</sup>

## 3.2. The Rights to Block Traffic Roadways

### WHEN CAN PARTICIPANTS IN AN ASSEMBLY BLOCK A TRAFFIC ROADWAY?

The freedom of assembly does not in itself encompass the right to block traffic roadways. However, blocking a roadway might be necessary if the pavement does not provide sufficient space for a big number of participants. Whenever the number of participants does not require blocking a road, they should abstain from doing so.

**Note:** If, given the size of an assembly, it is unnecessary to block the roadway fully or partially, the Mayor's Office may request to unblock it. In each case, this will depend both – on the number of participants and the place of the assembly.

**Example:** If participants in an assembly can fit on the sidewalk in front of the Parliament building and they, nevertheless, block the traffic roadway on Rustaveli Avenue, the Tbilisi Mayor's Office will be authorized to prioritize the freedom of movement and restore the traffic movement. In case the Mayor's Office does not take this decision, the Government of Georgia will assume the authority to restore the traffic.<sup>49</sup>

### HOW SHOULD STATE AUTHORITIES ACT WHEN A TRAFFIC ROADWAY IS BLOCKED DUE TO A MASS ASSEMBLY?

In cases where blocking a traffic roadway is inevitable due to the number of participants in an assembly, the State is obligated to ensure participants' safety, determine alternative routes for the free movement of others, and provide medical emergency or fire and rescue services unimpededly.

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48 Law of Georgia on Assemblies and Demonstrations, Article 112 (4).

49 Law of Georgia on Assemblies and Demonstrations, Article 111 (1).

**Note:** Georgian legislation prohibits blocking traffic roadways by cars, various structures, and/or items unless this is not necessary, given the number of participants.

### 3.3. The Right to Set Up a Tent

#### CAN PARTICIPANTS OF AN ASSEMBLY SET UP A TENT IN PUBLIC SPACES?

When setting up a tent serves the purpose of engaging in political speech, it falls within the scope of the freedom of expression,<sup>50</sup> and hence, any restrictions imposed upon it must comply with the applicable requirements.<sup>51</sup>

The Chamber of Administrative Cases of the Tbilisi City Court ruled that preventing activists of Guerilla Gardening from setting up a tent in front of the Tbilisi Mayor's Office was unlawful.<sup>52</sup> Therefore, it ordered the Mayor's Office to allow the activist to do so.<sup>53</sup> Nevertheless, police officers frequently deprive organizers and participants of assemblies of the opportunity to set up their tents and even fine them for such attempts.<sup>54</sup>

**Example:** For several days, police officers had been preventing Beka Grigoriadis from setting up a tent in a square 20 meters away from the Parliament building.<sup>55</sup> In this regard, on trial held on 20 July 2023, representatives of the Ministry of Internal Affairs stated that setting up a tent would amount to an arbitrary alteration of the appearance of Tbilisi, which constitutes an administrative offense.<sup>56</sup> However, on the night of 3 July, police officers did not prevent him from setting up a tent to express his permanent protest.

**Note:** Setting up a tent in a square or other similar places – whenever it serves the purpose of political expression – allows activists to reach the authorities or a different target audience. Therefore, it falls within the scope of freedom of expression and cannot be restricted unless relevant grounds are at hand.

## IV. Procedural Aspects

This Chapter will review the issue of prior notification of the Mayor's Office, as well as the responsibilities of organizers and principles of an assembly or a demonstration, who shall ensure the lawfulness of an assembly. In addition, information regarding the compensation for damage incurred to participants during an assembly will be provided.

50 *Frumkin v. Russia*, no. 74568/12, §107, 5 January 2016.

51 European Convention of Human Rights, Article 10 (2); See: Constitution of Georgia, Article 17 (5).

52 Judgment N3/6463-16 of the Administrative Chamber of the Tbilisi City Court, 31 August 2016.

53 Georgian Young Lawyers' Association, Rights of Activists during Assemblies and Demonstrations, p. 1, available at: <https://shorturl.at/cfgM1> [accessed 28.07.2023]

54 See: TV Formula, A Fine for an Attempt to Set Up a Tent, 2 June 2023, 20:23 GMT+4, available at: <https://shorturl.at/ikptC> [accessed: 28.07.2023]

55 Human Rights Center, Monitoring Report regarding the Protest Demonstration of Beka Grigoriadis, available at: <https://shorturl.at/mqvGL> [accessed 28.07.2023]

56 Ibid. See: Code of Administrative Offenses of Georgia, Article 1501 (1).

## 4.1. Advance Notice for Holding Assemblies on a Traffic Roadway

### WHEN SHOULD ORGANIZERS SUBMIT AN ADVANCE NOTICE REGARDING THE ASSEMBLY TO THE MAYOR'S OFFICE?

If an assembly is expected to have such a number of participants and is likely to result in the need to occupy the traffic roadway, an advance notice has to be submitted to the Mayor's Office 5 days prior to holding an assembly.

Advance notice is unnecessary if an assembly is held on a traffic roadway where the traffic movement is blocked due to construction works or any other reason.

**Note:** In order for an assembly on a traffic roadway to be lawful, it is necessary to notify the Mayor's Office 5 days in advance.<sup>57</sup>

### WHO CAN BE AN INITIATOR OF AN ASSEMBLY?

An assembly must have an initiator, which is referred to as a "principal" under the Law on Assemblies and Demonstrations. This can be, among others, an individual, an enterprise, a political party, a non-governmental organization, a group of activists, and so on.

### WHAT DOES THE PROCESS OF PRIOR NOTIFICATION IMPLY?

An assembly should also have a trustee (representative), which is a person authorized by an initiator of the assembly or demonstration. A trustee has to submit a written advance notice to the Mayor's Office on behalf of the principal (see examples for the notice and the document certifying authorization in Annex 1 and Annex 2 respectively). Apart from a principal and a trustee, an assembly should also have an organizer, who might or might not be the same person as a trustee. In case an organizer and a trustee are not the same, the advance notice has to be signed both by a trustee and organizer(s).

### WHAT INFORMATION SHOULD BE PROVIDED TO THE MAYOR'S OFFICE?

- The form of the assembly or demonstration (whether the assembly will be static or whether a march is planned, whether speeches will be delivered during the meeting);
- The purpose of the assembly or demonstration (what are the demands of the participants, what are they expressing solidarity with, or what are they protesting);
- The place of the assembly or demonstration (the address of the demonstration – including any traffic roadways – shall be indicated, e.g.: Tbilisi, 8 Rustaveli Avenue, the area near the building of the Parliament of Georgia);

<sup>57</sup> The Georgian legislation does not envisage the possibility of holding public assemblies on a traffic roadway without submitting a notice to the Mayor's Office 5 days prior to the assembly (spontaneous demonstration). In its judgment N2/2/180-183 rendered on 5 November 2002, as well as in its recording notice N4/482,483,487,502 issued on 10 November 2010, the Constitutional Court of Georgia stated that the Constitution does not guarantee the right to hold a public assembly on a traffic roadway without prior notice. However, on 4 November 2022, the plenum issued a recording notice №3/12/1635 regarding the case of *Public Defender of Georgia v. Parliament of Georgia*, whereby the Court will once again adjudicate on whether the Constitution of Georgia guarantees the right to a spontaneous assembly.

- The route of the demonstration (in case of a march, the beginning and ending points shall be indicated, e.g.: from the Tbilisi Concert Hall to the building of the Parliament of Georgia, on a traffic roadway, through Kostava Avenue and Rustaveli Avenue);
- The time of beginning and ending of the assembly (e.g.: 25 June 2023, from 4:00 PM to 6:00 PM);
- Who initiated the assembly or a demonstration (political party, non-governmental organization, a group of activists, or others);
- Names, last names, addresses, and phone numbers of a trustee and organizer(s), alongside the date and time of the submission of the advance notice.

The notice should be submitted to the Chancellery of the Mayor's Office, where an employee of the Chancellery will indicate the time and date of the submission on a copy of the notice. The 5-day period before holding an assembly commences thereafter.

The notice should be accompanied by a document certifying authorization. This is a document whereby a representative of a political party, NGO, or other initiator of an assembly authorizes a third party to submit an advance notice to the Mayor's Office. This document should be written on the title page of the legal entity, and signed by a representative of the legal entity that initiated the assembly. In case several people are initiators of the assembly at the same time, the document certifying authorization can also be notarized. This document shall state that a specific person is authorized, as a trustee, to submit a notice about holding an assembly to the Mayor's Office.

## 4.2. Obligations of Organizers

### WHAT OBLIGATIONS DO ASSEMBLY ORGANIZERS HAVE?

An organizer is responsible for managing an assembly. They must undertake all reasonable measures to ensure that the participants do not breach the law during the assembly.

**Example:** If participants call for the overthrow of the constitutional order of Georgia, incite hostility, or make other similar statements, the organizers must condemn and cease their action. They should also ensure that the participants do not have explosive substances, firearms, or other prohibited items. Furthermore, if it is unnecessary to block the traffic roadway considering the number of participants in the assembly, the organizers must request that they move to a sidewalk. In addition, they should ensure that the roadways are not blocked by different structures. The organizers should also prevent the participants from blocking, damaging, or visually distorting buildings, memorials, or monuments of historical, archaeological, architectural, or scientific significance.

### CAN ORGANIZERS BE FINED FOR FAILING TO PERFORM THEIR OBLIGATIONS?

Yes, organizers of assemblies can be fined GEL 500 for non-compliance with their obligations set forth by the law. If the breach of these obligations recurs within the period of one year, the fine will increase up to GEL 5000.<sup>58</sup>

<sup>58</sup> Code of Administrative Offenses of Georgia, Article 1741 (1).

## 4.3. Appeal Procedure and the Compensation for Damages

### **CAN THE DECISION TO DISPERSE THE ASSEMBLY OR RESTRICT THE FREEDOM OF ASSEMBLY BE APPEALED?**

Yes, the decision to disperse an assembly or restrict the freedom of assembly can be appealed before the Court.

### **WHEN WILL THE COMPLAINT BE CONSIDERED?**

The authorities' decision to disperse an assembly or restrict it in any other way might be appealed before the Court. City (District) Courts, the Courts of Appeal, and the Supreme Court – each considers such a complaint within three days after its submission to determine the legality of the dispersal of an assembly or any other restriction imposed upon it.<sup>59</sup>

### **WHO CAN BRING A COMPLAINT BEFORE THE COURT?**

Organizers of an assembly can submit a complaint to assess the legality of the termination of an assembly or its restriction in any other form. In addition, judicial proceedings can be initiated by any other party that was injured as a result of an unlawful dispersal of an assembly or unlawful restriction of the freedom of assembly. Such injured parties can be individuals who were moved to a sidewalk from a roadway by the police through the use of force; persons who were exposed to special means during the dispersal of an assembly; participants who were arrested for giving a speech or holding a banner during an assembly; persons whose tents were seized during the protest demonstration.

### **WHO SHOULD COMPENSATE FOR DAMAGES INCURRED DURING AN ASSEMBLY, AND HOW?**

Any damage caused during an assembly or a demonstration shall be compensated.<sup>60</sup> If a public official breaches the law while performing his or her official duties – be it intentionally or by recklessness – then a State (a Municipality) which is the employer of this official, must compensate for the damage caused by their action.<sup>61</sup>

For instance, if an employer of the Ministry of Internal Affairs fires a rubber bullet from a close distance while targeting a person's face, thereby damaging their vision, this employer inflicts physical harm on them intentionally or recklessly. Medical costs, as well as moral damages, have to be compensated by the MIA. In such cases, the complaint must be submitted against the employer of the perpetrator – the Ministry of Foreign Affairs.

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59 Law of Georgia on Assemblies and Demonstrations, Article 13 (7).

60 Law of Georgia on Assemblies and Demonstrations, Article 15.

61 Civil Code of Georgia, Article 1005 (1).

**Example:** A peaceful participant of the 20-21 June 2019 protest demonstrations – who was helping other participants intoxicated by tear gas – was shot with a rubber bullet in the orbital part of the frontal bone and, as a result, she lost vision. She had to undergo several medical procedures. The medical expertise established that the physical harm inflicted upon this participant of an assembly amounted to a serious bodily injury and was dangerous for life.<sup>62</sup>

The participant brought a complaint against the Ministry of Foreign Affairs before the Tbilisi City Court, demanding compensation for material as well as moral damages. The Court granted the complaint in part: the MIA was ordered to pay GEL 30 000 in damages. In addition, for the harm caused to the claimant's general working ability, the Ministry was ordered to pay GEL 1 115 monthly, from 21 June 2020, throughout the lifetime of the claimant.<sup>63</sup>

### **TO WHAT EXTENT WILL THE ILLEGAL ADMINISTRATIVE DETENTION BE COMPENSATED?**

The illegal administrative detention of an assembly participant can form grounds for the compensation of moral damages. In this regard, it is necessary to file a complaint against the Ministry of Internal Affairs. The amount of compensation will depend on the duration of the illegal detention. According to the case law of the Supreme Court of Georgia, it varies between GEL 70 and GEL 150.<sup>64</sup>

## **V. Prohibition of Illegal Assemblies, Rights of Participants, and the Grounds for their Potential Liability**

This Chapter reviews the prohibitions applicable to the participants and organizers of public assemblies. Namely, information will be provided with respect to items prohibited during assemblies and actions that might be regarded as criminal or administrative offenses. In addition, it touches upon the rights of persons during administrative detention, possible grounds for invoking special means for dispersing assemblies, and the ways of protecting oneself in such cases.

### **5.1. Rights We Do Not Have**

#### **WHAT ITEMS ARE PROHIBITED DURING ASSEMBLIES?**

The Constitution of Georgia guarantees the right to assemble unarmed. The following items are prohibited during public assemblies (*See: p.24*).

The purpose of prohibiting these items and substances during assemblies is to protect the safety of participants and other persons, as well as to ensure the peaceful nature of the assembly. They are

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62 See: Georgian Young Lawyers' Association, Tbilisi City Court rendered a judgment, ordering the Ministry of Foreign Affairs to Compensate the Damage Caused to a Person Injured as a Result of the Events of 20-21 June 2019, available at: <https://shorturl.at/jpxT3> [accessed 28.07.2023]

63 Ibid.

64 Judgment N8b-222(j-20) of the Supreme Court of Georgia, 27 May 2021.

dangerous for the life and health of a person. In addition, some of the said items – such as radioactive substances – are removed from civil circulation, and carrying them constitutes a criminal offense.

<b>Prohibited Items and Substances</b>	
<ul style="list-style-type: none"> <li>• firearms</li> <li>• cold weapons</li> <li>• explosive, flammable, and radioactive substances</li> <li>• tear and nerve gasses and/or toxic substances</li> <li>• alcoholic drinks</li> </ul>	<ul style="list-style-type: none"> <li>• items or substances that are or may be used to injure the life and health of participants of the assembly or demonstration, or other persons;</li> </ul>

### **WHAT TYPE OF STATEMENTS ARE PROHIBITED DURING ASSEMBLIES?**

The Law on Assemblies and Demonstrations also sets forth restrictions concerning statements made during public assemblies. For instance, it is prohibited to call for the overthrow or change of the constitutional order of Georgia by force, for the encroachment of independence and territorial integrity of the country, as well as to call for actions that are intended to propagate war or violence and that incite national, regional, religious, or social hostility and pose a clear, direct and essential threat that these actions will take place.<sup>65</sup>

Notably, the “incitement to change the constitutional order of Georgia through violence or to overthrow the state power” constitutes a criminal offense envisaged under Article 317 of the Criminal Code. Hence, the Law on Assemblies and Demonstrations replicates the said provision. The sanction for the said offense is imprisonment for up to three years.

In addition, the Criminal Code criminalizes the public incitement to acts of violence to cause discord between certain groups based on their racial, religious, national, provincial, ethnic, social, political, linguistic, and/or other characteristics, provided that this poses a clear, direct and essential risk of acts of violence.<sup>66</sup>

### **WHEN CAN ONE BE HELD LIABLE FOR PUBLIC STATEMENTS MADE DURING AN ASSEMBLY?**

The aforesaid public statements will be regarded as crimes only when they create a clear, direct, and essential danger of violence. The existence of such a danger is to be proven by the Prosecutor’s Office “beyond a reasonable doubt” (standard of proof). Otherwise, the Court will render a judgment of acquittal.

Through establishing these requirements, the legislation aims to ensure a balance between the objective of crime prevention on one hand and the protection of freedom of expression on the other hand. In order to restrict the freedom of expression during public assembly, it is necessary that a given statement directly incites violence and that a high probability exists that such statements will clearly result in violence. To this end, the speaker’s influence over the participants might also be relevant.

<sup>65</sup> Law of Georgia on Assemblies and Demonstrations, Article 11 (1).

<sup>66</sup> Criminal Code of Georgia, Article 239<sup>1</sup>.



Whether the participants are subsequently willing to engage in violence is for the Prosecutor's Office to prove.

Similarly, in cases when an administrative offense report is filed, the State has to prove that an individual has indeed committed an administrative offense.

## 5.2. Proceedings Regarding Administrative Offences

In fact, participants in peaceful assemblies are most likely to be subjected to charges under the Code of Administrative Offences rather than criminal legislation. Therefore, it is important to know the grounds for potential administrative liability, the rights of persons held administratively liable, and some practical tips to consider concerning proceedings on cases of administrative offenses.

### WHAT ARE THE SANCTIONS PRESCRIBED FOR ADMINISTRATIVE OFFENSES?

Administrative arrests frequently occur during public assemblies. However, police officers can also file administrative offense reports – which they then send to the Court - without making an arrest. Afterward, a judge must determine whether the assembly participant has committed an administrative offense. If it is established that an offense has not been committed, the proceedings will be terminated. Otherwise, a fine or an administrative detention for up to 15 days will be imposed upon the offender. The fine might be within the range of GEL 500 - GEL 4 500, depending on the following circumstances: what was the offense committed, whether this offense has been committed for the first time, or whether it is a repeated offense (within one year), and whether circumstances mitigating or aggravating liability are at hand. A judge might rule that an action in question constitutes an administrative offense while at the same time considering it as a petty offense. In such cases, a verbal warning can be issued without imposing a fine or administrative detention upon the offender. This measure cannot be invoked if an offense is committed repeatedly.

### WHAT ARE THE MOST COMMON ADMINISTRATIVE CHARGES FOR ASSEMBLY PARTICIPANTS?

Police officers frequently charge participants in assemblies for non-compliance with a lawful demand of the law enforcement officer,<sup>67</sup> i. e. the refusal to comply with the lawful demand of the police officer or verbal abuse of and/or any other abusive act against such person.

Participants in assemblies are also frequently charged with disorderly conduct (hooliganism), which is defined as "swearing in public places, harassment of citizens or similar actions that disrupt public order and peace of citizens".<sup>68</sup> If none of the said actions are at hand, police officers are not authorized to detain the participant or file an administrative offense report for engaging in disorderly conduct.

It is possible that police officers illegally arrest participants for disorderly conduct or non-compliance with a lawful demand. As noted, only non-compliance with a lawful demand can form grounds for administrative liability. Hence, if the demand of a police officer is unlawful, arresting or filing an administrative offense report will, accordingly, be illegal as well and the Court shall terminate the proceedings.

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67 Code of Administrative Offenses of Georgia, Article 173.

68 Code of Administrative Offenses of Georgia, Article 166.



Furthermore, if law enforcement officers demand to terminate a peaceful assembly<sup>69</sup> and the participants refuse to comply with such a demand, the Court shall not consider this as an administrative offense, given that the demand that a peaceful assembly be terminated is unlawful.

As far as disorderly conduct goes – one of the examples of unsubstantiated arrests made on grounds of this charge was the arrest of activists gathered in front of the Parliament building on 2 June 2023, merely for holding empty papers.<sup>70</sup> Clearly, holding empty papers cannot be regarded as swearing in public places or any other action that falls under the definition of disorderly conduct.<sup>71</sup> Even if posters or banners are obscene, such speech will be protected under the freedom of expression.<sup>72</sup>

## WHEN CAN A PERSON BE ADMINISTRATIVELY ARRESTED?

The legislation provides an exhaustive list of aims that would justify an administrative arrest. These are:

- To prevent an administrative offense – when such prevention is impossible without less restrictive measures;
- To establish the identity of a citizen;
- To file an administrative offense report, if doing so is necessary but impossible on-site.
- To ensure the timely and proper consideration of the case regarding an administrative offense and ensure the execution of the relevant judgment.<sup>73</sup>

The said objectives determine the lawfulness of an administrative offense not only at the moment of arrest but also – throughout the entire period of detention. Therefore, the administrative arrest shall serve one of these aims from the moment of one's arrest until the moment of their release. Once this objective is achieved, the person must be released immediately.<sup>74</sup>

All persons subjected to administrative arrest must appear before the Court at the earliest convenience, no later than 24 hours after their arrest. This period can be extended upon the request of law enforcement bodies if it is necessary to gather evidence.

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69 For instance, during the 7-9 March 2023 protest demonstrations, participants were called upon to disperse. However, since the assembly, as such, was being held peacefully, there were no grounds for its termination. Therefore, given that the order was unlawful, police officers acted in breach of the law by arresting participants for non-compliance with a lawful order. Accordingly, the authorization to use special means for the dispersal was also unlawful by itself – even if the conduct of certain participants might have exceeded the scope of freedom of assembly, the assembly, taken as a whole, was being held peacefully.

70 Mikheil Gvazdabia, *The Police Seized Banners of Activists in Front of the Parliament and Arrested Some of Them*, 2 June 2023, Netgazeti, available at: <https://shorturl.at/NUV14> [accessed 19.07.2023]; See also: Radio Liberty, *The Police Arrested the Chairperson of GDI for Holding an Empty Paper in Front of the Parliament*, 3 June 2023, available at: <https://shorturl.at/hyIMY> [accessed 19.07.2023].

71 Freedom of expression protects, among others, statements that might be shocking, disturbing, or offensive to some other people. In this regard, see the decision of the European Court of Human Rights in the Case of *Nata Peradze and Others v. Georgia*, no. 5631/16, 15 December 2022, where the Court established that arresting a participant in an assembly for holding an “offensive” banner constituted a violation of the freedom of assembly (Article 11 of the Convention), read in the light of Article 10 of the Convention (freedom of expression).

72 *Peradze and Others v. Georgia*, no. 5631/16, §47, 15 December 2022.

73 Rights of Activists during Assemblies and Demonstrations supra n. 53, p. 2.

74 Ibid.

**Note:** When extending a 24-hour period for an administrative arrest, the arrestee should request a written explanation from law enforcement agents about the necessity of extending this time. In case such a justification is not provided, the arrest will be deemed illegal, and the arrestee shall be immediately released. If a person is illegally detained, they are entitled to request compensation<sup>75</sup> (on this in more detail, see Chapter 4.3.).

## WHAT RIGHTS DOES AN ARRESTEE HAVE?

Police officers frequently breach the procedural law regarding administrative arrests, which is why it is important for participants in assemblies to know their rights:

- In the event of an administrative arrest, the arresting officer shall inform the arrestee upon placing him/her under arrest, in a form that he/she understands:
  - a) of the administrative offense committed by him/her and the basis of the arrest;
  - b) of his/her right to a defense counsel;
  - c) of his/her right, if desired, to request that the fact of his/her arrest and his/her location be made known to a relative named by him/her, also to the administration at his/her place of work or study.
- Statements made by the arrestee before receiving the information provided in paragraph 1 of this article shall be inadmissible as evidence;
- The arresting officer shall immediately take the arrestee to the nearest police station or another law-enforcement body;
- An administrative arrest report shall be prepared on the administrative arrest, indicating the following information:
  - the date and place the report is prepared;
  - the position, first name, and last name of the official who prepared the report;
  - details on the arrestee's identity;
  - the time and basis of the arrest.
- The report shall be signed by the official who prepared the report and the arrestee. If the arrestee refuses to sign the report, this shall be indicated in the report.

**Note:** Sometimes, when ordering participants in assemblies to stop, police officers are not wearing a uniform. In such cases, the participants are allowed to ask them to present a document certifying their official authority to make sure that they are, indeed, talking to a law enforcement agent.<sup>76</sup> Before engaging in a conversation with a police officer, a participant in the assembly has the right to:

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75 Ibid, p. 3.

76 Rights of Activists during Assemblies and Demonstrations supra n. 53, p. 1.

- Ask about the identity of the police officer;
- Ask them to start recording if they have a body camera;
- Record the conversation (without relevant grounds and reasoning, police officers are not authorized to restrict the right to record).<sup>77</sup>

To provide information regarding the breach of law by the law enforcement officer, contact the hotline of the Public Defender's Office at 1481

## 5.3. The Use of Special Means for Dispersing Assemblies

The Georgian legislation envisages the possibility of invoking special means, among others, to disperse public assemblies that go beyond the freedom of assembly, as prescribed under the Constitution. However, this is the measure of last resort that shall be used only in cases of extreme necessity (as *ultima ratio*), and in compliance with the principle of proportionality.

### WHAT ARE THE "SPECIAL MEANS"?

The Law of Georgia on Police enumerates special means (both – passive and active) that the MIA has invoked a number of times to disperse public assemblies, such as tear gas, pepper spray, rubber bullets, water cannons, handcuffs, special batons.<sup>78</sup> Special means, as measures of coercion, shall be used by police officers only in the case of necessity and to the extent that shall ensure the achievement of legitimate objectives.<sup>79</sup> In addition, only those police officers who have undergone special training are authorized to use special means.<sup>80</sup>

Before resorting to special means, the police must give assembly participants reasonable time to comply with the lawful order (for instance, if grounds for termination of the assembly do not exist, the demand that the participants disperse will, in itself, be unlawful); except if the delay may cause encroachment on life and health of a person and/or of a police officer, or other severe consequences, or if such warning is unjustifiable or impossible in a given situation.<sup>81</sup>

### WHEN AND HOW MUST THE LAW ENFORCEMENT AGENTS RESORT TO SPECIAL MEANS?

The extent of a coercive measure shall be determined on a case-by-case basis, depending, among others, on the nature of an offense and the individual characteristics of the offender.<sup>82</sup> Moreover, police officers must, to the best of their ability, try to cause minimal and proportionate harm while carrying out a coercive measure.<sup>83</sup> They are also obliged to provide first aid to a person injured as a result of coercive

77 Ibid.

78 Law of Georgia on Police, Article 33 (3).

79 Ibid, Article 31 (1).

80 Ibid, Article 31 (2).

81 Ibid, Article 31 (3).

82 Ibid, Article 31 (4).

83 Ibid.

measures.<sup>84</sup> A police officer may not use means that can cause severe injury to a person, may pose an unjustifiable risk, or are prohibited by the legislation of Georgia.<sup>85</sup>

Special means are mostly invoked by the police when they receive an order and, respectively, authorization to do so. If an assembly becomes violent, or its participants are armed, law enforcement agents can, indeed, disperse the crowd by special means, while also adhering to the principle of proportionality. However, the violent or criminal behavior of individual participants shall not be equated with the content or the nature of an assembly. If elements of a potential crime are only identifiable in the actions of one or several participants, law enforcement agents have to approach them individually; the rest of the assembly shall not be dispersed, nor should its participants be subjected to the use of force in case they have not been engaged in unlawful conduct. Furthermore, not only the dispersal but even an order to terminate an assembly, when – regardless of actions of individual participants – an assembly is being held peacefully.

## 5.4. Protecting Ourselves from Special Means

Given that numerous occasions of the disproportionate use of special means have been reported in Georgia,<sup>86</sup> It is necessary for the assembly participants to carry items that will help them avoid, to the extent possible, physical harm and/or reduce pain. These are, for instance: first aid supplies, a mask, glasses providing protection from tear gas, water, etc. In case of contact with tear gas, it is necessary to rinse your eyes with water.<sup>87</sup> During an assembly, it is preferable to wear clothes that will cover your skin – e.g., a long-sleeve shirt – which might help prevent damage from poisonous agents. In addition, it is recommended to wear comfortable shoes, which will help you walk long distances or run if the need arises. Mobile phones should be charged, and participants are encouraged to carry power banks. Face ID should be turned off, and Airplane Mode should be used for security considerations.

### WHAT SPECIAL REGULATIONS APPLY TO JOURNALISTS DURING PUBLIC ASSEMBLIES?

Journalists, camera operators, bloggers, and other individuals willing to document the events with photos or videos have to follow security measures, among others, to prevent damaging their equipment. While unlawful interference with journalists' professional activities is a criminal offense,<sup>88</sup> However, on numerous occasions, police officers breach this provision, thereby violating international standards regarding the freedom of the press.

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84 Ibid, Article 31 (5).

85 Ibid, Article 31 (6).

86 See, e.g.: Human Rights Center, Joint Statement on the Dispersal of Protest Demonstrations by Police Forces in Georgia, 23 May 2023, <https://shorturl.at/gozY8> [accessed 19.07.2023].

87 Center for Disease Control and Prevention, Facts About Riot Control Agents - Interim Document, available at: <https://shorturl.at/vJQ26> [accessed 19.07.2023]; See also: Physicians for Human Rights, Preparing for, Protecting Against, and Treating Tear Gas and Other Chemical Irritant Exposure: A Protestor's Guide, 10 June 2020, available at: <https://shorturl.at/fmwF9> [accessed 19.07.2023]; See also Reporters Without Borders, Safety Tips for Journalists Covering Protests, available at: <https://shorturl.at/pxBIP> [accessed 19.07.2023]. For more information regarding the consequences of tear gas, see: Amnesty International, Tear Gas: An Investigation, available at: <https://shorturl.at/zRSU7> [accessed 19.07.2023].

88 Criminal Code of Georgia, Article 154.

To reduce the risk, representatives of the media need to have identifying signs, which will allow the police to distinguish them from participants of an assembly. This might be, for instance, a “PRESS” emblem. However, at the same time, it is noteworthy that identifying oneself as a journalist during some assemblies might be more dangerous than abstaining from the use of identifying emblems. In particular, as it has been mentioned in the context of counter demonstrations organized by ultraconservative violent groups, journalists might become a direct target of violence. Therefore, in every case, it is necessary to assess the risks and act in accordance with the existing circumstances.

In an ideal case scenario, to the extent possible, journalists make police officers aware in advance that they are on-site to report on the assembly and carry out journalistic activities. The ability to carry out such activities unimpeded also depends on the attitude as well as the willingness of police officers to cooperate since, under certain circumstances, journalists can be exposed to violence on behalf of the police. Clearly, such behavior is unjustified and directly contradicts the standards regarding the freedom of the press. Given that different standards of protection apply to journalists and participants during public assemblies, journalists should decide beforehand whether to be on-site as representatives of the media or as participants.<sup>89</sup>

Reporters Without Borders recommend that journalists take the necessary, specific steps to ensure their own safety.<sup>90</sup> For instance, to report on the assembly, it is always to show up on-site with a partner and maintain constant communication with colleagues, among others – to document facts in case an arrest takes place; in addition, it is important to identify different zones and mark potential “exits”, which will help journalists to not only leave the location but also to find their partners.<sup>91</sup> For cybersecurity considerations, it is preferable to have an extra mobile phone (with an empty memory) in case a personal phone is lost or seized by the police.<sup>92</sup> In case the police seize a phone and return it afterward, it is preferable that journalists do not use this phone to avoid the risks of surveillance or tracking one’s location.<sup>93</sup>

The assembly location or a demonstration must be studied in advance. Journalists should try to identify places from which they can take photos and videos; in addition, they shouldn’t be in the middle of the crowd. Most importantly, they should always keep an eye on the surroundings: pay attention to the events, as well as to different sounds (e. g. whether rubber bullets or other special means are used) and look around to be mindful of the ways to leave an assembly safely.<sup>94</sup>

## **IS PHOTO- OR VIDEO-DOCUMENTATION OF AN ASSEMBLY ALLOWED?**

Any participant can freely document the actions of the police during an assembly. Moreover, recorded video materials can be of utmost importance for the assessment of the legality of the use of force and special means by the police. Such recordings can also frequently prevent torture, inhumane and degrading treatment.

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89 OSCE Office of the Representative on Freedom of the Media, Special Report: Handling of the Media during Public Assemblies, 22 October 2020, available at: <https://shorturl.at/etxU6> [accessed 19.07.2023].

90 Reporters Without Borders, Safety Tips for Journalists Covering Protests, available at: <https://shorturl.at/gtTU9> [accessed 19.07.2023].

91 Ibid.

92 Ibid.

93 Ibid.

94 Ibid.

For cases regarding administrative offenses such as disorderly conduct or non-compliance with the lawful order of the police, video recordings documenting the process of arrest are decisive for determining whether a person was, indeed, disturbing the peace or public order during the arrest. Videos can also document the demands made by police officers, whether these demands were lawful, and whether an arrestee complied with them. Recordings are deemed reliable evidence by the Court, and a person can be acquitted on their basis, even if several police officers testify against him or her.

Moreover, video materials can serve as grounds for imposing disciplinary measures or administrative sanctions against a police officer. They are useful for demonstrating that a police officer has used force unlawfully, and compensation can also be awarded on these grounds.

Therefore, it is crucial to document the events taking place during an assembly with photos and video recordings.

## **HOW SHOULD PARTICIPANTS ACT IF THEY WITNESS VIOLENCE AGAINST OTHER PERSONS?**

Participants in assemblies and demonstrations are not allowed to act violently in response to the violent actions of the police. Even though an arrest might appear illegal, participants should not use force to obstruct police officers from arresting other protesters. Only Courts are authorized to assess the lawfulness of the actions of the police. Clearly, this does not mean that a participant is now allowed to help other participants escape violence, leave the place of an assembly, or provide first medical aid to injured demonstrators.

In addition, if an obvious criminal act occurs during an assembly (e. g. if a participant is stabbed with a knife), the criminal legislation allows for citizen's arrest for the purpose of bringing an offender before law enforcement authorities.<sup>95</sup> However, the extent of force required for this purpose shall not be exceeded.<sup>96</sup> Assembly participants can be held liable if they exceed force, or, if they physically assault a captured person before bringing him or her before the authorities.

Participants in assemblies should not fall for provocations. Police officers must remove a person from an assembly if he or she harasses or insults a participant or participants in the assembly. Assembly participants shall not use physical force against anyone who does not engage in clearly violent conduct.

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95 Criminal Code of Georgia, Article 29.

96 Ibid.

# Summary

- The freedom of assembly is protected. An assembly can only be dispersed if it assumes an unlawful nature. The violent conduct of a single or several participants is not indicative of the violent nature of an assembly. The State must approach the issue of its potential liability on a case-by-case basis.
- An assembly is violent if its organizers intend violence or if a significant number of participants act violently toward other persons. Public incitement to violence during an assembly is prohibited. Making such public statements constitutes a criminal offense if they create a clear, direct, and essential danger that violence will occur.
- If blocking a traffic roadway during an assembly can be anticipated, the Mayor's Office must be notified 5 days in advance. This obligation does not mean that the Mayor's Office can restrict the assembly, given that a permit-based system does not exist in Georgia. Notwithstanding the notice, participants in public assemblies do not have the right to block a traffic roadway if they can freely stay on a sidewalk.
- An assembly is spontaneous when the reason for the protest manifests itself unexpectedly, and the reaction must be immediate. In such cases, submitting an advance notice to the Mayor's Office and observing the 5-day period will subsequently deprive the protest of its meaning. Hence, terminating an assembly for the lack of advance notice does not comply with international standards regarding the freedom of assembly.
- Participants of peaceful assemblies must not be refused to gather and express solidarity or protest at the time and place indicated in the advance notice because of the counter demonstration that was announced after the former. In cases of simultaneous assemblies, priority shall be given to an assembly on which prior notice was submitted to the Mayor's Office first.
- If a counter demonstration is violent, the State has an obligation to protect the participants of a peaceful assembly. This obligation goes beyond the mere evacuation of participants.
- When dispersing an assembly, the State must use proportionate force. Special means can only be used as a last resort while ensuring adherence to proportionality.
- Documenting police actions with video recording during the dispersal of assemblies or administrative detentions is important insofar as they assist Courts in assessing the lawfulness of the actions of police officers.

# Annexes

## Annex 1: Advance Notice

To the Mayor of Tbilisi,

Mr. Kakha Kaladze

From Trustee of an assembly/demonstration,

Lela Kherkhadze

Address: 15 Kakhidze Street, Tbilisi

Tel: 588593015/

Organizer of an assembly/demonstration:

Giuli Chkheidze

Address: 19 Shatberashvili Street, Tbilisi

Tel: 588324783/

### NOTICE

(on holding a public assembly)

A non-commercial legal entity "Women for Peace" acts as a trustee of an assembly (see annexed a document certifying authorization to submit a notice to the Mayor's Office, signed by the Director of the organization, Nanuli Beridze).

"Women for Peace" plans to organize a march in Tbilisi, from the vicinity of the Tbilisi Concert Hall to the building of the Parliament of Georgia. Afterward, speeches will be given in front of the parliament building via megaphone. The march from the Tbilisi Concert Hall will commence on Rustaveli Avenue, on 25 June 2023, at 5:00 pm. The march will end on Rustaveli Avenue, on 25 June 2023, at 6:00 pm. The meeting will start on 25 June 2023, at 6:00 pm, on Rustaveli Avenue, in front of the building of the Parliament, and will end the same day at 8:00 pm. Approximately 2000 people will take part in the protest. During the march taking place on Merab Kostava Avenue and Rustaveli Avenue, from 5:00 pm to 6:00 pm on 25 June 2023, the traffic movement will be impeded, while the traffic roadway on Rustaveli Avenue will be blocked from 6:00 pm to 8:00 pm on 25 June 2023.

The purpose of an assembly scheduled to take place on 25 June 2023 is to protest the increasing cases of violence against women and domestic violence.

Please, provide an ambulance car at the time and place of the assembly/demonstration.

Respectfully yours,

Lela Kherkhadze \_\_\_\_\_  
Trustee

Giuli Chkheidze \_\_\_\_\_  
Organizer

Time and date of the submission of the notice: 17 June 2023, 1:45 PM.



## Annex 2: Certificate of Authorization

Women for Peace

To: the Mayor of Tbilisi,  
Mr. Kakha Kaladze

### Certificate of Authorization

This certificate is to authorize Lela Kherkhadze (ID: 02023425987) to submit, on behalf of a non-commercial legal entity "Women for Peace", advance notice to the Tbilisi Mayor's Office regarding an assembly and a demonstration scheduled for 25 June 2023 in Tbilisi, on Kostava Avenue and Rustaveli Avenue, organized upon the initiative of "Women for Peace". In addition, the said trustee is fully authorized to defend the interests of "Women for Peace" before the Tbilisi Mayor's Office with respect to holding an assembly/demonstration at hand.

Respectfully,

Nanuli Beridze

Non-commercial legal entity "Women for Peace"

Director

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16 June 2023