



PROHIBITED RIGHTS

LEGISLATIVE STANDARDS FOR THE USE OF
NON-PERMANENT STRUCTURES
AND TECHNICAL MEANS AND
PROBLEMS OF EXERCISING IN PRACTICE



AUTHOR: GIORGI TKEBUCHAVA

EDITORS: GIORGI KAKUBAVA
ALEKO TSKITISHVILI

INTRODUCTION

Freedom of peaceful assembly is one of the foundations of a democratic society. It promotes public and informed debate on the issues important to society, respect for human rights and the rule of law.

Unfortunately, as in previous years, the restriction by law enforcement officers on freedom of peaceful assembly of protesters and on placing non-permanent structures (including protest camps) remains a challenge in Georgia.¹ Recently, Human Rights Center (HRC) has identified several cases of restriction of the full realization of this right, which has a negative impact on the degree of democracy in the country.

The current Report is based on the reports prepared by HRC monitors. As a result of the observations and examinations of the protest rallies under the monitoring of HRC, a tendency was revealed that the erection of protest camps or other non-permanent constructions during the rally was restricted by the law enforcement bodies. In this regard, the rallies in front of the Parliament of Georgia on February 19-20, 2021 are noteworthy, when during the rallies, police officers did not allow the demonstrators to erect protest camps and arrested about 20 civil activists who were trying to erect the protest camps². It should be noted that these rallies took place on a wide sidewalk, did not impede the traffic, did not block the entrance to the building, and did not hinder the activities of public institutions. Thus, the rallies were fully protected by the freedom of assembly. Further, there is no norm in Georgian legislation prohibiting the use of protest camps, folding beds, banners and other non-permanent constructions during rallies and demonstrations on the territory for pedestrian traffic. Nevertheless, the representatives of the Ministry of Internal Affairs refer to Article 134.2 of the Code of Administrative Offenses of Georgia³, as a ground for restricting the right, meanwhile the prohibition of the use of protest camps, folding beds, banners and other non-permanent structures during demonstrations does not fall within the scope of regulation of Article 134 of the Code of Administrative Offenses.

Therefore, the cases under consideration are particularly important insofar as they relate to the extent to which the State restricts the freedom of assembly. The approach taken by the European Court of Human Rights (ECtHR) is noteworthy, according to which, in order to assess the legality of the restriction of rights, the representatives of the relevant body and the trial court must first assess to what extent in such cases the prohibition to erect a protest camp is provided for by Georgian legislation.

¹See: Results of Monitoring Protest Demonstrations - 2020, Human Rights Center. <https://bit.ly/2ORnzhz>.

²See: Statement of the Public Defender: <https://bit.ly/3qCTX5F>.

³See: Paragraph 2 of Article 134 of the Code of Administrative Offenses of Georgia: "Unauthorized connection of another road to a public motor way, unauthorized construction of any facility at a distance of less than 100 m from a road centerline or in the area adjoining a street, or violation of the conditions of a construction agreement, unauthorized placement of placards, banners, posters, billboards, non-standard road signs, unauthorized digging up of a road or non-compliance with the conditions of a works agreement, or acceptance for repair, without the relevant authorisation, of any vehicle damaged as a result of a traffic accident – **shall carry a fine of GEL 1 000 for a legal person or for a responsible natural person.** <https://bit.ly/3sED0YX>.

Further, the purpose of this document is to outline, through reviewing the scope of protection by the freedom of assembly and the standard of lawful restriction of the freedom, the key legal aspects that will help the relevant authorities to properly assess the issue.

METHODOLOGY

In preparing this analytical document, HRC analyzed the reports prepared by HRC monitors, the legislation regulating the freedom of assembly, and examined the current trends and challenges in terms of actual realization of the freedom; further, HRC reviewed the legal framework for police action and assessed the effectiveness and issues of the mechanisms enforcing the law; further, HRC analyzed the Case-law of the ECtHR-Judgments and Decisions and international standards.

SCOPE OF PROTECTION BY THE FREEDOM OF ASSEMBLY

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Freedom of assembly and demonstration is guaranteed by a number of international and regional acts, including Article 21 of the International Covenant on Civil and Political Rights⁴ and Article 11 of the European Convention on Human Rights⁵. Freedom of assembly and demonstration in Georgia is guaranteed by Article 21 of the Constitution of Georgia⁶.

The procedure of exercising this right is regulated by the Law of Georgia *on Assemblies and Demonstrations*⁷. Certain norms are also enshrined in the Code of Administrative Offenses⁸ and in the Law on Police⁹.

As one of the forms of expression, the right to peaceful assembly and demonstration is a fundamental and functional element of a democratic society, which forms the necessary basis for the protection of human rights and promotes the interests and aspirations of each of its members. Consequently, the opportunity to assemble (demonstrate in protest) to discuss issues important to the public is an integral part of democratic governance. The possibility to exercise the right in full and in equal terms determines the degree of openness and democracy of the society¹⁰.

The right to assembly and demonstration is not of an absolute nature. Restriction of this right, as well as of other forms of freedom of expression, is permissible only against the existence of legal grounds provided for by the Constitution, and for ensuring the exercise of other constitutional rights and principles.

The possibility to assemble and express opinion is specially protected by Article 21 of the Constitution of Georgia defining the right as a possibility to assemble in public, peacefully

⁴See: International Covenant on Civil and Political Rights, Article 21. <https://bit.ly/2OdpLQ1>.

⁵See: European Convention on Human Rights, Article 11. <https://bit.ly/2PhXkRD>.

⁶See: Constitution of Georgia, Article 21. <https://bit.ly/3b3AUfv>.

⁷See: Law of Georgia on Assemblies and Demonstrations. <https://bit.ly/3b5A2Hk>.

⁸See: Code of Administrative Offenses of Georgia. <https://bit.ly/3sED0YX>.

⁹See: Law of Georgia on Police. <https://bit.ly/3uK6y9t>.

¹⁰See: Article 22, ICCPR, and Article 11, ECHR. See also Dragan Golubovic, "Freedom of association in the case law of the European Court of Human Rights", 17(7-8) International Journal of Human Rights Vol. 17, No 7-8, 2013, pp. 758-771; Ashutosh Bhagwat, "Associational Speech", Yale Law Journal Vol. 120, No.5, 2011, pp.978-1277.

unarmed, and providing for one of the most important components of the right i.e. to assemble without prior notification and permission¹¹.

The scope of the right protected by Article 21 of the Constitution of Georgia includes the right to hold rallies (demonstrations) both of public political content and purpose due to political activities as well as of general importance or totally apolitical nature¹². Moreover, an assembly of individuals without any particular idea, not serving the purpose to share or disseminate an opinion, information¹³ and / or that has a violent character¹⁴, goes beyond the scope protected by the Constitution. The commitment to peaceful assembly reflects the so-called concept of “mutual loyalty” between the State and the citizen¹⁵: Active citizens who seek to participate in public life by holding rallies have a commitment to peace¹⁶; The State, in turn, plays an active role in maintaining the peacefulness of the assembly.

The autonomy of the assembly implies the right of the organizers of the assembly to self-determination, to choose the time, place, content and modalities (venue, time, form of the assembly, etc.) of the collective expression¹⁷. In turn, the right to choose the form of the assembly makes it possible to express a specific thought in different ways, verbally or non-verbally,¹⁸ using tools such as sound amplifiers, visual images, protest camps, and other non-permanent structures¹⁹.

According to the Constitutional Court of Georgia, an assembly (demonstration) is turned to a Constitutional right through the purpose and substance of the assembly, this makes a natural and essential connection between Article 24 and Article 25 [in the old version] of the Constitution. In this regard, Article 25 [Article 22 in the new version] of the Constitution that protects the collective opportunity for a group of people to express an opinion, is an extension of Article 24 [Article 21 in the new version] of the Constitution²⁰.

¹¹See: Judgment №2 / 482,483,487,502 of the Constitutional Court of Georgia of April 15, 2011, II, para. 25. <https://bit.ly/2OeQ8oL>.

¹²See: The Commentaries on the Constitution of Georgia Chapter Two- Citizenship of Georgia. Fundamental human rights and freedoms. P. 283. <https://bit.ly/3uHloO9>.

¹³See: Judgment №2 / 482,483,487,502 of the Constitutional Court of Georgia of April 15, 2011, II, para. 3. <https://bit.ly/2OeQ8oL>.

¹⁴See: Judgment of the Constitutional Court of Georgia №2/2/180-18 of 5 November 2002 in the case *Georgian Young Lawyers Association and Zaal Tkeshelashvili, Nino Tkeshelashvili, Maia Sharikadze, Nino Basishvili, Vera Basishvili and Lela Gurashvili v. the Parliament of Georgia*.

¹⁵For the concept see: St. Haak, Staatsangehörigkeit-Unionsbürgerschaft-Völkerrechtssubjektivität, § 205, Para. 2, Handbuch des Staatsrechts, Isensee/Kirchhof, X, 2012.

¹⁶ **Note: Commitment to peace** - the main expression of the principle of general obedience, the neglect of which will trigger a monopoly of the State on sanctions [force]).

¹⁷See: Judgment of the ECtHR from November 27, 1990 on the case *SÁSKA v. HUNGARY*, Para. 21.

¹⁸See: Judgment N 1/5/1271 of the Constitutional Court of Georgia from November 4, 2019 in the case *Besik Katamadze, Davit Mzhavanadze and Ilia Malazonia against the Parliament of Georgia* Para. 7. <https://bit.ly/3sDMVhu>.

¹⁹See EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), OSCE / ODIHR - VENICE COMMISSION GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY (2ND EDITION), 2010. <https://bit.ly/3sDxxlc>.

²⁰See The case № 1/3/421,422, November 10, 2009, *Citizens of Georgia Giorgi Kipiani and Avtandil Ungiadze v. the Parliament of Georgia*, <https://bit.ly/3bNOf2R>.

The ECtHR in its judgment of 15 October 2015 in the case *Kudrevičius and Others v. Lithuania*²¹ explained that the guarantees of Article 11 therefore apply to all gatherings except those where the organizers and participants have violent intentions, incite violence or otherwise reject the foundations of a democratic society; while in the case *Cisse v. France*²² the Court pointed out that in practice, the only type of events that did not qualify as “peaceful assemblies” were those in which the organizers and participants intended to use violence.

JUSTIFICATION OF INTERFERENCE WITH FREEDOM OF ASSEMBLY

The rights protected by Article 11 of the European Convention on Human Rights are subject to certain restrictions: there is a specific reservation in the article allowing the imposition of restrictions on the freedom of association of certain groups, including that of the police. Ensuring freedom of assembly is an important task for police officers, both in terms of meeting operative requirements and complying with international law. Beside the requirement for the police to refrain from unjustified interference, there may be situations in which they have a positive obligation to protect freedom of assembly and association from attacks by others including individuals. For example, in the case *Oya Ataman v Turkey* the ECtHR stated: "where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance."²³

Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it,²⁴ and "protection of freedom of assembly will not depend on the will and perception of the authorities - what deserves permission and what does not"²⁵. In addition, the Court found that "any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it."²⁶

In the event that law enforcement actions are aimed at prejudicing the freedom of assembly, a breach of this guarantee will most likely be identified. Peaceful demonstrators have been detained based on doubtful grounds in several cases heard by the European Court of Human Rights. For example, in the case *Hyde Park and Others in Moldova* several participants in the lawful protest were arrested for allegedly there were mistakes in the documents, or were pulled out for further examination of their identity documents. They were also found guilty

²¹See CASE OF KUDREVIČIUS AND OTHERS v. LITHUANIA (Application no. 37553/05), JUDGMENT, STRASBOURG, 15 October 2015; (Para. p. 92). <https://bit.ly/2NP1mlx>.

²²See CASE OF CISSE v. FRANCE (Application no. 51346/99) JUDGMENT STRASBOURG 9 April 2002, FINAL; (Para. p. 37). <https://bit.ly/3kxQRxz>.

²³See *Oya Ataman v. Turkey* (application no. 74552/01), 5.12.2006, §41 ¶¶ 42, ECHR.

²⁴See *Christian Democratic People's Party v Moldova*, 14.02.2006, §63, ECHR.

²⁵See *Hyde Park and others v Moldova*, 31.03.2009, §30, ECHR.

²⁶See *Faber v. Hungary* (40721/08), 24.10.2012, §37, ECHR.

of violating the municipal laws governing assemblies. The European Court found that the right to freedom of assembly had been violated²⁷.

It should also be noted that the European Court of Human Rights has taken a particularly strong stance regarding the restriction of demonstrations that involve the legitimate activities of political parties.

The restrictions provided for in Article 11.2 of the European Convention shall serve to protect the interests of a democratic society. It is true that protecting the interests of a democratic society is an essential precondition for restricting human rights, but it is not the only one. This means that, for the purposes of the Convention, the mere observance of the latter is not sufficient to justify a restriction by the State of the rights guaranteed under Article 11. The European Convention imperatively lays down the criteria which, if met, would make the restrictions of the right by a State compatible with the objectives of the Convention. ***In particular, the restriction of the right:*** 1) must be provided for by the national legislation of the country; 2) must be necessary in a democratic society; 3) there must be an urgent public need; 4) interference with a right must be proportionate to the legitimate aim pursued by it.

Accordingly, interference in the field protected by Article 11 of the European Convention must be assessed on a case-by-case basis and the intervention must have the above listed objectives in order to meet the criteria set out in Article 11.

The Constitutional Court of Georgia clarified in one of the cases that despite its importance, freedom of assembly is not guaranteed without restrictions, the disputed articles of the law guarantee freedom only in case of public safety and order, protection of constitutional rights and freedoms of other people, and at the same time subjecting the freedom to legislative restrictions. Thus, Article 25 (of the old version) of the Constitution takes into consideration the fact that the exercise of freedom of assembly requires special, namely, organizational, procedural and legal regulation due to contact with the outside world, in order to create real preconditions for the exercise of the freedom on the one hand, and to protect the interests of others on the other hand. The legislature may restrict the exercise of freedom of assembly only to protect legal goods of equal values and with strict adherence to the principle of proportionality. The need for restrictive interventions in the area of freedom of assembly may arise from the fact that the demonstrators harm the interests of third parties in exercising this right²⁸.

PAST EXPERIENCES

Rally: “We are defending freedom with protest camps”

In previous years, law enforcement authorities in Georgia also restricted protesters the possibility of erect non-permanent structures. This problem was especially acute during the rallies in support of Zaza Saralidze and Malkhaz Machalikashvili in front of the Parliament of Georgia. In particular, from September 10, 2018, the protester started a rally near the

²⁷See Hyde Park and others v Moldova, 31.03.2009, §5-6, ECHR.

²⁸See Case №2/2/180-183, November 5, 2002, *Georgian Young Lawyers Association, Zaal Tkeshelashvili, Lela Gurashvili and Others v. the Parliament of Georgia* <https://bit.ly/38n3YN6>.

Parliament's premises. They spent the nights on Rustaveli Avenue. Saralidze and Machalikashvili demanded an objective and thorough investigation into the killing of their children and the punishment of the perpetrators by the State.

According to the information disseminated by the media²⁹, on September 11, 2018, patrol police officers did not allow the protesters to erect protest camps in front of the Parliament building on the rally in support of Zaza Saralidze and Malkhaz Machalikashvili held in front of the Parliament explaining that it required a special permit. The incident was followed by a verbal confrontation between the police and the protesters³⁰. According to the representative of the Ministry of Internal Affairs (MIA), the rally was attended by allegedly drunk persons who were expressing aggression towards the law enforcement officers. MIA referred to the material of the tent and since the tent contained a metal structure, it was subsequently confiscated in order to avoid any controversy.

The Office of the Public Defender did not agree with such an interpretation by MIA, as according to the monitoring results, as well as media reports, it was evident that the aggression of the protesters was due to the restriction of the possibility of setting up a tent for them and there was no controversy before this restriction³¹. The Georgian government did not allow Zaza Saralidze and Malkhaz Machalikashvili to erect a camp during the protest, ignoring the requirements of the Georgian Constitution and legislation. It is important to note that the protesters wanted to set up a tent on the sidewalk, which would not have hindered / blocked the functioning of the Parliament building or hindered pedestrian traffic, all the same there was a gross interference by the police in the right to peaceful assembly. In particular, police officers uninstalled the tent construction and did not allow protesters to continue the protest in this manner.

On September 26, 2018, some information and video material were spread, according to which Zaza Saralidze was stopped by police officers on his way to the premises of Georgian Parliament without explanation and the tent was seized from his car³². After analyzing the information received from MIA regarding this issue³³, the Public Defender of Georgia held that in this case, the seizure of the tent had no legal basis and the Public Defender proposed to the Prosecutor General of Georgia to launch an investigation into a possible crime committed by law enforcement officers³⁴. Unfortunately, the Office of the General Prosecutor of Georgia did not agree with the proposal. In the same case, Zaza Saralidze and Malkhaz Machalikashvili filed a lawsuit with Tbilisi City Court, requesting that the decision (action) of September 26, 2018 banning them from setting up a tent be declared illegal³⁵.

²⁹See: More information: <https://bit.ly/2PCRxpU>.

³⁰See: More information: <https://bit.ly/2OdCRxg>.

³¹See: Statement of the Public Defender, September 12, 2018. <https://bit.ly/3btmj1h>.

³²See: Information and video footage in full: 1) <https://bit.ly/2T8rvH9>; 2) <https://bit.ly/2UCF1V3>.

³³ Letter of the Ministry of Internal Affairs of Georgia №2545596 dated October 17, 2018 to the Office of the Public Defender of Georgia.

³⁴ Proposal N15-1 / 13687 of the Public Defender of Georgia from October 29, 2018.

³⁵See: More information: <https://bit.ly/3sWnFmI>.

Regarding the issue, the Public Defender of Georgia³⁶ and NGOs³⁷ made repeatedly clear statements according to which the banning the protesters to install a non-permanent construction (tent) by MIA is a gross violation of the Constitution of Georgia and the current legislation and unjustified interference with the right to peaceful assembly.

On November 10, 2018, at 20:00, a rally in support of Saralidze and Machalikashvili was held in front of the Parliament of Georgia - "*We are protecting freedom with protest camps!*"³⁸ Despite strong police resistance, NGOs and civil society activists still managed to set up tents in front of the Parliament³⁹. And then they stayed in tents all night to protect so called temporary structures from removing by the police.

As a result of the rally, thanks to the efforts of human rights NGOs, more than 20 tents were set up in front of the premises of the Parliament; in the following days the protest continued in this form. In view of this fact, on December 3, 2018, Tbilisi City Court suspended the hearing of the above-mentioned claim, focusing however on the possibility of erecting non-permanent constructions (including tents) for holding assemblies, provided this does not contradict the current legislation⁴⁰.

ASSESSMENT OF RALLIES OF FEBRUARY 20-21, 2021

As confirmed by the reports from the media⁴¹, the protesters of the rally of February 20-21, 2021, planned to place a tent on the sidewalk, which would not cause the disruption in the function or blockage of the premises of the Parliament. However, police officers did not allow the protesters to erect the tent.

It is noteworthy that this is not the first time that the police does not allow the protesters to hold a peaceful assembly of their choice, and it has a systematic and continuous character. Further, MIA often refers to the requirement of Article 134.2 of the Code of Administrative Offenses of Georgia as a legal basis for restricting the right to place tents, banners, posters and other non-permanent facilities important for the exercise of the right to peaceful assembly and demonstration, banning the installment of certain facilities at a distance of less than 100 m from a road centerline or in the area adjoining a street. In the case of the exercise of freedom of assembly, it is of particular importance that special law ensure the effective exercise of this right. Thus, this special law should not be one-sidedly aimed only at restricting the right [to protect public safety and law and order], but must still remain as an effective guarantee to the extent possible for exercising the right to peaceful assembly along with protecting the interests of third parties⁴². There is a consensus in European countries on such a liberal concept focusing

³⁶ see.: Statements of the Public Defender: 1) <https://bit.ly/2OkFj6U>; 2) <https://bit.ly/2HDvgmK>.

<https://bit.ly/2HyQC4P>;

³⁷See: More information: <https://bit.ly/30zyQFT>.

³⁸See: More information: <https://bit.ly/3v9D1qb>.

³⁹See Video footage: <https://bit.ly/38pVlJA>

⁴⁰See More information: <https://bit.ly/3cbA13P>.

⁴¹See More information: <https://bit.ly/2NeHeaZ>.

⁴²See: Rainey/Wicks/Ovey, The ECHR, 519; Hartmann, B. J., in: Bonner-Kommentar, GG, Art. 8 Rn. 238; BVerfGE 84, 103, 109; ECHR, Frumkin v. Russia, no. 74568/12, 5 January 2016, § 97, § 129: „The Court considers that from any point of view the authorities in this case did not comply with even the minimum requirements in their duty

on the optimal exercise of freedom of assembly, notwithstanding the fact in these countries, like the regulation of other issues, the legal framework for the exercise of the right of assembly varies to certain extent across the countries⁴³.

These principles are based on the standard established by the practice of the ECtHR, which is especially important for Georgia: The European Convention is binding as an international legal obligation and also as a part of the domestic law, which has a high rank in the hierarchy of norms (Article 4.5 of the Constitution).

According to the assessment by HRC, the action of the police, not allowing the protesters to set up a tent at the gathering place, is an attempt to control the form of peaceful assembly grossly violating the very essence of the right to assembly guaranteed by the Georgian Constitution and the Law of Georgia *on Assemblies and Demonstrations*, as well as of the rights protected by international agreements and by the European Convention on Human Rights. MIA is obliged not to interfere with the assembly carried out in a form that is peaceful and chosen by the protesters. The right to choose the form, time and place of the rally is as much a part of the right of assembly as its contents and a tent may be a vital attribute for the continuation of the rally.

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According to the Constitutional Court of Georgia, "the possibility of exercise the right to assemblies and demonstrations in full and in equal terms determines the degree of openness and democracy of the society." The possibility of banning the placement of non-permanent facilities by the participants of the assembly or demonstration was considered by the Constitutional Court only in the context of blocking the traffic way in relation to the legitimate aim of protecting the rights of others. „[...] The Constitution of Georgia considers the restriction of this right to be permissible only if it has become unlawful. It should be emphasized that the current legislation of Georgia does not provide for the prohibition of non-permanent facilities, including the installment of tents, provided that it does not obstruct the traffic way. "44

The actions of the law enforcement officers at the rallies of February 20-21 are also against the practice established by the general courts. In particular, the judgment by Tbilisi City Court from August 31, 2016, ruled that the erection of a tent without prior consent falls within the right to peaceful assembly. The court clarified that *"the right to assembly and demonstration includes the right to choose the place, time, form and content of the assembly, which considers the possibility of placing temporary facilities"*⁴⁵.

to communicate with the assembly leaders, which was an essential part of their positive obligation to ensure the peaceful conduct of the assembly, to prevent disorder and to ensure the safety of all the citizens involved“.

⁴³See: OSCE / ODIHR-Venice Commission, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw 2010. <https://bit.ly/2O58QiJ>.

⁴⁴See: *Political Union of Citizens Movement for United Georgia, Political Union of Citizens Conservative Party of Georgia, Citizens of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dach'i Tsaguria and Jaba Jishkariani, Public Defender of Georgia v. the Parliament of Georgia*. 2011.

⁴⁵See: Judgment of the Administrative Cases Panel of Tbilisi City Court of 31 August 2016 in the case №3 / 6463-16.

According to OSCE / ODIHR guidelines, the erection of protest camps and other non-permanent constructions falls within the scope protected by the right to peaceful assembly⁴⁶. The Act banning the erection of protest camps and other structures in "the controlled areas" was deemed in one of the judgments against the United Kingdom to be contrary to the right to peaceful assembly protected under Article 11 of the European Convention on Human Rights as the erection acquired inseparable symbolic meaning from the message of the protest⁴⁷.

As the ECtHR has explained, that the only necessity of interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is "necessary in a democratic society". Further, the named requirement includes two conditions: 1. *There must be an acute public need for interference with the right*; 2. *Interference with the right must be proportionate to the legitimate aim pursued*⁴⁸. Further, according to the European Court, freedom of assembly is one of the pillars of a democratic society, with respect to which there are a number of exceptions that must be clearly and convincingly defined to determine the need for any restrictions. In assessing those circumstances, whether interference with the right can be considered "necessarily in a democratic society", States enjoy certain but not unlimited margin of appreciation⁴⁹.

Thus, on February 20-21, 2021, the restriction of the right to place tents, banners, posters and other non-permanent constructions important for assembly in the vicinity of the Parliament of Georgia within the scope of exercising the right to peaceful assembly and demonstration and the actions of law enforcers are not only illegal but they are also unconstitutional.

CONCLUSION

Examples from the recent past further exacerbate in Georgia the problem of state balance between freedom of assembly and public order and security, which increases the responsibility of the police to carry out this task on behalf of the State. It is unfortunate that protesters are still deprived of the opportunity to place non-permanent constructions (including protest camps) constituting an illegal restriction on freedom of assembly.

It is inadmissible for the State to restrict the exercise of freedom of assembly. It should also be noted that the possibility of erecting protest camps and other non-permanent structures during the rally is emphasized in the judgments by national courts and the ECtHR, as well as in the OSCE Guidelines on Freedom of Peaceful Assembly.

Moreover, the research revealed that there is no norm in Georgian legislation prohibiting the use of protest camps, folding beds, banners and other non-permanent constructions during rallies and demonstrations. Furthermore, since in the above-mentioned cases the problem of

⁴⁶See: Guidelines on Freedom of Peaceful Assembly, second edition, §18, Warsaw / Strasbourg 2010.

<https://bit.ly/3bpJ1C4>.

⁴⁷See: *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 (05 February 2009). <https://bit.ly/3bjcv4q>.

⁴⁸ see.: *United Communist Party of Turkey and Others v. Turkey* (para. 45).

⁴⁹ see.: *Kudrevičius and Others v. Lithuania* - 37553/05 Judgment, 26.11.2013 [Section II], § 142, ECHR.

blocking the entrances of the building and the road or obstructing the activities of the institution was not identified, the protesters acted within the law and their actions were fully protected by the freedom of assembly.

RECOMMENDATIONS:

- ✓ *MIA must respect the constitutional right to peaceful assembly guaranteed to citizens by the Constitution, which, in turn, may affect ongoing democratic political or public processes leading to the resignation of the Government or its members, or even to the change of the political system or form of government;*
- ✓ *Relevant agencies should investigate the facts of restriction of the right to peaceful assembly and take appropriate legal actions;*
- ✓ *It is necessary to upgrade the qualifications of law enforcement bodies to ensure the right to assembly and demonstration in order to properly fulfill a positive obligation.*
- ✓ *MIA should change the unlawful and arbitrary practice of restricting the erection of protest camps / other constructions during peaceful assemblies.*