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URGENT OPINION ON THE AMENDMENTS TO THE LAW ON ASSEMBLIES AND DEMONSTRATIONS, THE CODE OF ADMINISTRATIVE OFFENCES AND THE CRIMINAL CODE OF GEORGIA (AS ADOPTED ON 6 FEBRUARY 2025)

GEORGIA

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The Urgent Opinion was also prepared in consultation with Ms. Gina Romero, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, as part of the *Framework for Joint Action for the protection and promotion of civic space*.

Based on an unofficial English translation of the Amendments provided by the Public Defender of Georgia.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The rights to freedom of peaceful assembly and freedom of expression have been recognized as one of the foundations of a democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs can voice their opinions, gather and interact peacefully with one another.

States have a positive obligation to respect, protect and facilitate the exercise of these rights, without discrimination. Effective protection of the rights to freedom of peaceful assembly and freedom of expression can help foster a culture of open democracy, enable non-violent participation in public affairs, and invigorate dialogue on issues of public interest. Any restriction on the right to freedom of peaceful assembly must meet the strict three-part test under international human rights law, namely that it must be provided by law, serve to protect one of the legitimate aims exhaustively recognized under international law and be necessary and proportionate to reach this aim. In addition, any restrictions must be non-discriminatory. The state's positive duty to facilitate peaceful assembly should be reflected in the legislative framework and relevant practices, and when considering restrictions to reconcile this right with the rights of others or broader public interests, the state should prioritize facilitation over unnecessary or disproportionate limitations.

The Amendments under review were submitted to the Parliament on 3 February 2025, adopted through an accelerated procedure on 6 February 2025, and promulgated by the newly parliament-elected President the same day, in the absence of any inclusive consultative process. They introduce a number of new restrictions to the exercise of the rights to freedom of peaceful assembly and freedom of expression, as well as harsher criminal and administrative penalties, including lengthier detention along with substantially increased fines. Recognizing the important impact the recently introduced amendments may have on the exercise of the right to freedom of peaceful assembly, ODIHR welcomes the request of the Public Defender of Georgia to review them.

Several of these amendments raise serious concerns about their compliance with international human rights standards, particularly Article 21 of the ICCPR and Article 11 of the ECHR. Some of these new legislative provisions, including the requirement of immediate notification for spontaneous assemblies, general prohibition of holding assemblies inside closed spaces or buildings without the owner's prior written agreement, the prohibition to erect temporary structures or blanket prohibition to cover one's face with masks or by other means, as well as severe administrative or criminal sanctions, should be removed or reconsidered entirely. It should also be noted that a disproportionate penalty can also be in itself sufficient to constitute a violation of the right to freedom of peaceful assembly. Other proposed grounds for prohibiting assemblies should be re-assessed or at the very least, more carefully and narrowly circumscribed to ensure that they are

clearly defined as well as strictly necessary and proportionate and do not unduly impact the exercise of the right to freedom of peaceful assembly.

Moreover, the imposition of administrative detention contemplated by the Amendments as a sanction in case of violation of the Law on Assemblies and Demonstrations should be repealed. In addition, the amount of the fines imposed for administrative offences for violations of the Law on Assemblies and Demonstrations should be substantially reduced, especially with respect to minor violations, to ensure they are proportionate to the harms being prosecuted and do not create a chilling effect.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to ensure compliance with international human rights standards:

A. On the definition of "organizer" and related responsibilities:

   1. To clarify and more strictly circumscribe the definition of an "organizer" in the Law on Assemblies and Demonstrations, removing unclear wording referring to "any person who leads or otherwise organizes the event", while revising the Law to acknowledge that not all assemblies or demonstrations may have identifiable "organizers" or "responsible persons"; [paras. 36-37]
   2. To remove any obligations for "organizers" or "responsible persons" that are incumbent upon the authorities, such as the provision of medical assistance, the maintenance of public safety, security and order, traffic management, or the prevention of crime, while removing any liability of "organizers" for the behaviours of others; [paras. 38-39]

B. To repeal the notification requirement for spontaneous assemblies, or at the very least, introduce the possibility of merely informing the local or police authorities of a spontaneous assembly, when it has clearly identified (and narrowly defined) "organizer(s)"; should a notification obligation be retained for cases where spontaneous assemblies have clearly identifiable "organizer(s)", the notification requirements should remain minimal, simple and not unduly burdensome, while ensuring that non-compliance alone does not trigger imposition of any sanctions nor offer grounds to disperse a peaceful assembly or justify the use of force, or the criminalization or arrest of organizers and/or participants; [paras. 49-53]

C. On the restrictions on location:

   1. To remove the general prohibition of holding assemblies inside closed spaces or buildings without the owner's prior written agreement when those spaces/buildings are suitable for assemblies and ordinarily open to the public, while ensuring instead a case-by-case assessment balancing the competing rights and interests and ensuring the effective exercise of the right to freedom of peaceful assembly; [para. 55]
   2. To more narrowly define the grounds for prohibiting assemblies under Article 9 (3) of the Law and reconsider certain of the grounds for restricting

the holding of assemblies in certain locations, while ensuring that the Law is formulated in a way that ensures some degree of disruption being tolerated, including with respect to the temporarily blocking of entrances to buildings, highways, as well as bridges, overpasses, or key transportation hubs and that participants will have had sufficiently long time/opportunity to peacefully manifest their views; [para. 61]

D. On the restrictions on the modalities and manner of an assembly:

1. To reconsider entirely the prohibition against erection of temporary structures and instead ensure a case-by-case assessment, balancing the competing rights and interests while ensuring the effective exercise of the right to freedom of peaceful assembly; [para. 65]
2. To provide that an assembly may be dispersed by law enforcement authorities only when the assembly is no longer peaceful (going beyond individual acts of violence by a few) or when there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by less interfering, more proportionate measures; [para. 68]
3. To reconsider entirely the blanket ban on covering the face by masks or any other means, while specifying instead the limited circumstances where prohibition or removal of masks may be strictly justified, for instance in case of demonstrable evidence of imminent violence or when the conduct of a given organizer or participant creates probable cause for arrest and the face covering prevents their identification; [para. 70]

E. To remove entirely from Articles 9 (6) and 14 (1) the prohibition of assemblies that allegedly promote "*affiliation with neither biological sex, affiliation with a gender different from one's biological sex, sexual relationships between persons of the same biological sex, or incest*" as per Georgia's Law on Family Values and the Protection of Minors; [paras. 72-75]

F. On the penalties and sanctions:

1. To remove the imposition of administrative detention introduced by the Amendments as a sanction in case of violation of the Law on Assemblies and Demonstrations; [para. 93]
2. To review and substantially reduce the amount of the fines imposed for administrative offences under Article 174^1 of the CAO for violations of the Law on Assemblies and Demonstrations, especially with respect to minor violations, to ensure they are proportionate to the harm they may cause; [para. 95]
3. To revise Article 209 of the CAO to ensure that any administrative detention and high level administrative fines may only be decided by a court of law. [para. 97]

These and additional recommendations are included throughout the text of this Urgent Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 5 February 2025, the Public Defender of Georgia requested the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to provide an urgent legal opinion on the (then draft) Amendments to the Code of Administrative Offences, the Law on Assemblies and Demonstrations, the Criminal Code, the Law on the Police and Other Laws of Georgia (hereinafter "the February Amendments"). The proposed amendments were submitted to Parliament on 3 February 2025, and adopted by the Parliament in accelerated procedure and promulgated by the President of Georgia on 6 February 2025.
2. On 7 February 2025, ODIHR responded to this request, confirming the Office's readiness to prepare an urgent legal analysis on the compliance of the Amendments with international human rights standards and OSCE human dimension commitments.
3. Given the evolving situation and the resulting urgency, ODIHR decided to prepare an Urgent Opinion, which focuses on the most concerning issues, primarily those relating to the exercise of the right to freedom of peaceful assembly. This Urgent Opinion does not provide a detailed analysis of all the provisions of the February Amendments. A more comprehensive and detailed analysis may follow, that may re-assess some of the findings and recommendations contained in the Urgent Opinion and offer a final, more comprehensive assessment of the compliance of the February Amendments with international human rights standards and OSCE human dimension commitments. The absence of comments on certain provisions of the February Amendments should not be interpreted as an endorsement of these provisions.
4. As some of the Amendments are in substance the same or very similar to the draft amendments ODIHR reviewed in 2023,[1] the present legal analysis should be read together with the *ODIHR Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code of Georgia*.[2]
5. This Urgent Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[3]

II. SCOPE OF THE URGENT OPINION

6. The scope of this Urgent Opinion covers only the February Amendments submitted for review. Thus limited, the Urgent Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the exercise of the rights to freedom of peaceful assembly and freedom of expression in Georgia.

1 In particular Article 1 (5) (b) of the Law of Georgia On Amendments to the Law of Georgia on Assemblies and Demonstrations, amending Article 11 (2) of the Law on Assemblies and Demonstrations (regarding the placement of temporary structures), and Article 1 (8) amending Article 13 of the Law on Assemblies and Demonstrations (regarding the termination of assemblies).

2 OSCE/ODIHR, *Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code of Georgia*, 6 November 2023.

3 In particular, CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, para. 9.2; and Charter of Paris for a New Europe (1990).

7. The Urgent Opinion raises key issues and provides indications of areas of concern and is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments.

8. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[4] (hereinafter "CEDAW") and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[5] and commitments to mainstream gender into OSCE activities, programmes and projects, the Urgent Opinion integrates, as appropriate, gender and diversity perspectives.

9. This Urgent Opinion is based on an unofficial English translation of the Amendments provided by the office of the Public Defender of Georgia. Errors from translation may result. Should the Urgent Opinion be translated in another language, the English version shall prevail.

10. In view of the above, ODIHR would like to stress that this Urgent Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Georgia in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

11. The rights to freedom of peaceful assembly and freedom of expression have been recognized as an integral part of the foundations of a democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs should be able to voice their opinions, gather and interact peacefully with one another. The right to freedom of peaceful assembly can also help give voice to minority opinion and bring visibility to marginalized and under-represented groups. States have a positive obligation to respect, protect and facilitate the exercise of these rights, without discrimination. Effective protection of the rights to freedom of peaceful assembly and freedom of expression can help foster a culture of open democracy, enable non-violent participation in public affairs, and invigorate dialogue on issues of public interest. Public assemblies can also help ensure the accountability of corporate entities, public bodies and government officials and thus promote good governance in accordance with the rule of law.

1.1. The Right to Freedom of Peaceful Assembly

12. The right to freedom of peaceful assembly is enshrined in Article 20 (1) of the Universal Declaration on Human Rights (UDHR),[6] Article 21 of the International Covenant on Civil and Political Rights (ICCPR),[7] Article 11 of the European Convention on Human

4 *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Georgia acceded to the Convention on 26 October 1994.
5 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
6 *Universal Declaration on Human Rights* (UDHR), adopted by General Assembly resolution 217 A on 10 December 1948.
7 *International Covenant on Civil and Political Rights* (ICCPR), adopted by UN General Assembly Resolution 2200A (XXI) on 16 December 1966. Georgia acceded to the ICCPR on 3 May 1994.

Rights (ECHR),[8] Article 15 of the Convention on the Rights of the Child (CRC),[9] Articles 1 and 21 of the UN Convention on the Rights of Persons with Disabilities[10] and Article 12 of the EU Charter of Fundamental Rights.

13. The jurisprudence of the UN Human Rights Committee (UN HRC) as well as its General Comment No. 37 on Article 21 of the ICCPR[11] also offer authoritative interpretation of the nature and scope of the right to freedom of peaceful assembly. The various reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association provide further useful recommendations.[12] The case law of the European Court of Human Rights (ECtHR) provides additional guidance for Council of Europe Member States on how to ensure that their laws and policies comply with key aspects of Article 11 of the ECHR.[13]

14. OSCE participating States committed to respect the right to freedom of peaceful assembly as stated in the 1990 Copenhagen Document.[14] Further OSCE commitments regarding the right to peaceful assembly also include the 1990 Charter of Paris for a New Europe[15] and the Helsinki 2008 Statement from the Ministerial Council.[16]

15. ODIHR and its Panel of Experts[17] in consultation with the Council of Europe's European Commission for Democracy through Law (Venice Commission) have also developed joint *Guidelines on Freedom of Peaceful Assembly* (hereinafter "the Guidelines"),[18] which are based on international and regional treaties, case-law and other documents related to the protection of human rights as well as the practice in other democratic countries adhering to the rule of law. These Guidelines provide useful guidance for developing and implementing national legislation on the right to freedom of peaceful assembly in accordance with international standards and OSCE human dimension commitments.

16. The right to freedom of peaceful assembly complements and intersects with other civil and political rights, including the right to freedom of expression (Article 19 of the ICCPR and Article 10 of the ECHR), the right to freedom of association (Article 22 of the ICCPR and Article 11 of the ECHR), the right to participate in public affairs (Article 25 (a) of the ICCPR) and the right to vote (Article 25 (b) of the ICCPR and Article 3 of Protocol No. 1 to the ECHR). Moreover, the right to freedom of peaceful assembly may overlap with the right to manifest one's religion or belief in community with others.[19] Recognizing the interrelation and interdependence of these different rights is vital to

8 *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 11, signed on 4 November 1950, entered into force on 3 September 1953. . Georgia ratified the ECHR on 20 May 1999.

9 *UN Convention on the Rights of the Child* (CRC), adopted by General Assembly resolution 44/25 of 20 November 1989. Georgia acceded to the CRC on 2 June 1994.

10 *Convention on the Rights of Persons with Disabilities* (CRPD), adopted by General Assembly resolution 61/106 of 13 December 2006. Georgia ratified the CRPD on 13 March 2014.

11 UN Human Rights Committee (UN HRC), *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, CCPR/C/GC/37, 17 September 2020.

12 All the reports are available here. See in particular UN Human Rights Council, *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*, A/HRC/31/66, 4 February 2016 (Joint Report of UN Special Rapporteurs (2016)).

13 See the *Caselaw Guide on Article 11 of the ECHR*, prepared by the Registry of the European Court of Human Rights (ECtHR) (updated 29 February 2024).

14 CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, para. 9.2, whereby OSCE participating States reaffirmed that *"(9.2) everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standard*"; and Charter of Paris for a New Europe (1990), where they affirmed that "*without discrimination, every individual has the right to (…) freedom of association and peaceful assembly*".

15 Adopted by the meeting of heads of state or government of the CSCE, 21 November 1990 (preamble).

16 Adopted by the sixteenth Helsinki Ministerial Meeting on 4 and 5 December 2008 (p. 5).

17 See <ODIHR Panel of Experts on Freedom of Assembly and Association>.

18 See *Guidelines on Freedom of Peaceful Assembly*, ODIHR-Venice Commission, 3rd ed., adopted at the Venice Commission Session on 21-22 June 2019, and further edited as of 15 July 2020.

19 See e.g., ECtHR, *Barankevich v. Russia*, no. 10519/03, 26 July 2007.

ensuring that the right to freedom of peaceful assembly is afforded practical and effective protection.

17. Freedom of peaceful assembly should be enjoyed, as far as possible, without (or with minimal) regulation,[20] unless there is a need for special protection. Moreover, states have a positive duty to respect, protect and facilitate the exercise of the right to freedom of peaceful assembly and this duty should be reflected in the legislative framework and relevant law enforcement and other regulations and practices.[21] States must promote an enabling environment for the exercise of the right to peaceful assembly without discrimination, and should regulation be considered necessary,[22] put in place a legal and institutional framework within which the right can be exercised effectively.[23] This also means that public authorities are required to remove all unnecessary legal and practical obstacles to the exercise of the right to freedom of peaceful assembly.[24]

1.2. The Right to Freedom of Expression

18. The right to freedom of opinion and expression is enshrined in Article 19 of the UDHR[25] and is guaranteed by Article 19 of the ICCPR,[26] Article 10 of the ECHR and Article 11 of the EU Charter of Fundamental Rights.[27] The jurisprudence of the UN HRC as well as its General Comment No. 34 on Article 19 of the ICCPR also offer authoritative interpretation of the nature and scope of the right to freedom of expression and access to information.[28] The ECtHR case-law further serves as an important reference point, particularly for assessing the necessity and proportionality of restrictions to freedom of expression.

19. At the OSCE level, a number of commitments proclaim the right of everyone to freedom of expression and to receive and impart information, as well as the right of the media to collect, report and disseminate information, news and opinion, underlining the essential role of independent and pluralistic media.[29]

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20 *Guidelines on Freedom of Peaceful Assembly*, paras. 21 and 76. UN HRC, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, paras. 8 and 23 (no unwarranted interference). However, the measures taken by the authorities and interfering with the right to freedom of assembly should always have a legal basis under domestic law and the law should be accessible to the persons concerned and formulated with sufficient precision (see ECtHR, *Vyerentsov v. Ukraine*, no. 20372/11, 11 April 2013, para. 52).

21 See *Guidelines on Freedom of Peaceful Assembly*, para. 22.

22 In line with the principle of necessity to legislate, whereby state intervention by legislation should only take place where state action is necessary and other, non-legislative interventions are not feasible or unlikely to have a successful outcome, see ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (16 January 2024), Principle 4.

23 UN HRC, *General comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, para. 24. T

24 *Guidelines on Freedom of Peaceful Assembly*, para. 76.

25 See the *Universal Declaration on Human Rights* (UDHR), adopted by General Assembly resolution 217 A on 10 December 1948.

26 Article 19 of the ICCPR provides that "everyone shall have the right to hold opinions without interference" and that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

27 Charter of Fundamental Rights of the European Union (EU), OJ C 326, 26 October 2012.

28 See UN HRC, General Comment No. 34 on Article 19 of the ICCPR, CCPR/C/GC/34, para. 11, where the UN HRC further elaborates that "*[f]reedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights*" and protects "*even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20."*

29 See in particular OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 5 June-29 July 1990), which states that "*[t]his right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards."* The OSCE participating States also reaffirmed "*the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinion*" in OSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, (Moscow, 3 October 1991). Moreover, in 1994, the OSCE participating States reaffirmed that "*freedom of expression is a fundamental human right and a basic component of a democratic society*" committing to "*take as their guiding principle that they will safeguard this right*" and emphasizing in this respect, that "*independent and pluralistic media are essential to a free and open society and accountable systems of government*"; see OSCE, CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era (Budapest, 21 December 1994), para. 36.

1.3 Restrictions on the Rights to Freedom of Peaceful Assembly and Expression

20. Any restriction on the rights to freedom of peaceful assembly and expression must be compatible with the strict three-part test set out in, respectively, Article 21 of the ICCPR and Article 11 (2) of the ECHR, and Article 19 (3) of the ICCPR and Article 10 (2) of the ECHR. This test requires any restriction to be provided by law (requirement of legality), to be in pursuit of one or more of the legitimate aims listed exhaustively in the respective treaty/convention,[30] to be necessary in a democratic society and to respect the principle of proportionality (which *inter alia* presupposes that any imposed restriction should represent the least intrusive measure possible among those effective enough to achieve the designated objective). In addition, the restriction must be non-discriminatory (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR and Protocol 12 to the ECHR[31]).

21. The grounds for restrictions listed in international instruments should not be supplemented by additional grounds in domestic legislation and should be narrowly interpreted by the authorities.[32] Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific aim being pursued (Article 18 of the ECHR).

22. The requirement that any restrictions on assemblies be 'prescribed by law' not only requires that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question.[33] While acknowledging that absolute precision is not possible and that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice,[34] laws must be sufficiently clear and precise to enable an individual to assess whether or not his or her conduct would be in breach of the law and to foresee the likely consequences of any such breach.[35] This also means that the law must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted and applied.[36]

23. The test of 'necessary in a democratic society' means that any restriction imposed on the rights of peaceful assembly and expression, whether set out in law or applied in practice,

30 For Article 21 ICCPR, these are national security, public safety, public order (*ordre public*) or the prevention of disorder or crime. For Article 11 (2) of the ECHR, the aims are: the protection of public health or morals, and the protection of the rights and freedoms of others. For Article 19 (3) ICCPR: *(a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals*"; For Article 10(2) ECHR: "*in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*"

31 Georgia ratified the Protocol no. 12 to the ECHR on 15 June 2001 and it entered into force on 1 April 2005.

32 *Guidelines on Freedom of Peaceful Assembly*, paras. 28 and 130.

33 *Guidelines on Freedom of Peaceful Assembly*, para. 98.

34 See, for example, ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015, para. 109. See also ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 131, where the Court underlined that: "*A norm could not be regarded as a "law" unless it was formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needed to be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences that a given action could entail. However, the Court went on to state that these consequences did not need to be foreseeable with absolute certainty, as experience showed that to be unattainable.*"

35 See, for example, ECtHR, *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, 25 November 1999; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, 12 January 2010; *Kudrevičius and Others v Lithuania* [GC], no. 37553/05, 15 October 2015. See also *Guidelines on Freedom of Peaceful Assembly*, para. 23; UN HRC, General comment No. 34 on Article 19 of the ICCPR, CCPR/C/GC/34, para. 25. See also ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, no. 6538/74, paras. 48-49; and *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 131.

36 See e.g., Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, para. 58. In addition, see ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, no. 6538/74, where the Court ruled that "*the law must be formulated with sufficient precision to enable the citizen to regulate his conduct," by being able to foresee what is reasonable and what type of consequences an action may cause.*"

must meet a "pressing social need",[37] be proportionate to the legitimate aim pursued and the reasons justifying it must be relevant and sufficient.[38] The requirement to meet a "pressing social need" also means that a restriction must be considered imperative, rather than merely 'reasonable' or 'expedient'.[39] The means used should be proportionate to the aim pursued, which also means that where a wide range of interventions may be suitable, the least restrictive or invasive means must always be used.[40] In addition, restrictions must not impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.[41] In particular, any restriction in the manner of assembly should not render the effective communication of the message of the assembly difficult or even impossible.[42] As the UN HRC emphasized, proportionality "*requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering. If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.*"[43]

24. In addition, restrictions must not be discriminatory, either directly or indirectly.[44] Restrictions must not unjustifiably target specific types of assemblies, particularly those used for political expression or opposition or those conveying a specific message or promoting the rights of certain marginalized or under-represented groups.[45]

25. Based on the foregoing, blanket legal restrictions would generally fail the proportionality test because they do not differentiate between different ways of exercising the right to freedom of peaceful assembly and preclude any consideration of the specific circumstances of each case.[46] In addition, any restrictions on assemblies should not be based on the content of the message(s) that they seek to communicate.[47] Moreover, broad powers of the public authorities and law enforcement to prohibit or disperse assemblies would not comply with the strict requirements for restrictions as underlined above.

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37 This means that a restriction must be considered imperative, rather than merely 'reasonable' or 'expedient': ECtHR, *Chassagnou v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, 29 April 1999. "Necessary" is not synonymous with "indispensable", neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable"; see ECtHR, *The Sunday Times v. the United Kingdom (No. 1),* no. 6538/74*,* para. 59.

38 See, for example, ECtHR, *Taranenko v. Russia*, no. 19554/05, 15 May 2014. In relation to freedom of expression, see, for example, ECtHR, *Janowski v. Poland* [GC], no. 25716/94, 21 January 1999, paras. 31 and 35.

39 *Guidelines on Freedom of Peaceful Assembly*, para. 131.

40 *Guidelines on Freedom of Peaceful Assembly*, para. 131. See e.g., ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 273.

41 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21),* para. 36.

42 *Guidelines on Freedom of Peaceful Assembly*, para. 148.

43 *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21),* para. 40.

44 Georgia ratified the Protocol no. 12 to the ECHR on 15 June 2001 and it entered into force on 1 April 2005.

45 *Guidelines on Freedom of Peaceful Assembly*, para. 102.

46 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 133. See also UN HRC, *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21),* para. 38, which states that *"[b]lanket restrictions on peaceful assemblies are presumptively disproportionate*"; Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, (Funding of associations and holding of peaceful assemblies), A/HRC/23/39, 24 April 2013, para. 63: "…*blanket bans, are intrinsically disproportionate and discriminatory measures as they impact all citizens willing to exercise their right to freedom of peacefully assembly*"; and Joint Report of UN Special Rapporteurs (2016), A/HRC/31/66, para. 30.

47 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 133. See also ECtHR, *Primov v. Russia*, no. 17391/06, 12 June 2014, para. 137: "*The Government should not have the power to ban a demonstration because they consider that the demonstrators' 'message' is wrong. It is especially so where the main target of criticism is the very same authority which has the power to authorise or deny the public gathering, as in the case at hand. Content-based restrictions on the freedom of assembly should be subjected to the most serious scrutiny by this Court*". See also UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21),* para. 48, which underlines that "*[c]entral to the realization of the right is the requirement that any restrictions, in principle, be content neutral, and thus not be related to the message conveyed by the assembly. 57 A contrary approach defeats the very purpose of peaceful assemblies*"; and UN HRC Views, *Nikolai Alekseev v. Russian Federation*, U.N. Doc. CCPR/C/109/D/1873/2009, 2 December 2013, para. 9.6, which stated that the restriction imposed on a person's right to organize a public assembly *on a specific subject* is "*one of the most serious interferences with the freedom of peaceful assembly*".

2. Background

26. The right to freedom of peaceful assembly is guaranteed by Article 21 of the Constitution of Georgia.[48] The existing Law on Assemblies and Demonstrations was adopted in 1997.[49] During the past years, several sets of amendments to the Law introducing new restrictions to the exercise of the right to freedom of peaceful were introduced and/or adopted. In October 2023, ODIHR was requested to review proposed amendments aiming to prohibit assembly organizers and participants from erecting temporary constructions when these would pose a threat to assembly participants or other persons, interfere with the protection of public order and security by the police, disrupt the normal functioning of an enterprise, institution or organization or be deemed unnecessary or unrelated to the organization of the assembly.[50] At the time, ODIHR concluded that the proposed amendments "*would not fulfil the strict requirements under international law when restricting the right to freedom of peaceful assembly*" and that "*their adoption should not be pursued*". While such amendments were not adopted at the time, the same provisions have been included in the Amendments adopted on 6 February 2025, under review.

27. On 17 September 2024, the Parliament adopted a legislative package consisting of the Law of Georgia on Family Values and the Protection of Minors and eighteen amendments to existing laws, including to the Law on Assemblies and Demonstrations.[51]

28. The latest two processes of amending the Law on Assemblies and Demonstrations along with related criminal and administrative laws, began following the parliamentary elections on 26 October 2024[52] and the protests that ensued. On 13 December 2024, the Parliament adopted further restrictions, including new prohibitions of the possession of pyrotechnic items (amended Article 11 (2) (a) of the Law), of devices with a laser beam or sharp light beam, the use of which may interfere with the activities of state officials or the proper functioning of technical equipment at their disposal (new Article 11 (2) (a^1) of the Law) and a complete ban on covering the face with a mask or any other means (new Article 11 (2) (a^2) of the Law).[53]

29. The Amendments under review were submitted to the Parliament on 3 February 2025, and adopted in accelerated procedure on 6 February 2025, and promulgated by the newly

48 Article 21 of the Constitution of Georgia provides "*1. Everyone, except those enlisted in the Defence Forces or bodies responsible for state and public security, shall have the right to assemble publicly and unarmed, without prior permission. 2. The law may establish the necessity of prior notification of authorities if an assembly is held on a public thoroughfare. 3. Authorities may terminate an assembly only if it assumes an unlawful character*."

49 See Law of Georgia on Assemblies and Demonstrations.

50 See OSCE/ODIHR, *Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code of Georgia*, 6 November 2023.

51 See <Law on Amendments to the Law of Georgia on Assemblies and Demonstrations> of 17 September 2024, published on 3 October 2024, introducing a new paragraph 6 under Article 9 which states: "*It shall be inadmissible to publicly gather and/or to conduct demonstrations aimed at attributing a person to any biological sex and/or attributing it to a different gender from his/her biological sex, or to promote incest relations expressed on the basis of sexual orientation between the representatives of the same biological sex. For the purposes of this paragraph, the term "promotion" shall be interpreted in accordance with the Law of Georgia on Family Values and Protection of Minors*", as well as introducing new grounds of terminating an assembly on this basis (new Article 13 (8)) or for not allowing an assembly to take place (amended Article 14 (1)). See also Venice Commission, *Georgia - Opinion on the draft constitutional law on Protecting Family Values and Minors*, CDL-AD(2024)021-e, adopted by the Venice Commission at its 139th Plenary Session (Venice, 21-22 June 2024).

52 See OSCE/ODIHR, *Georgia – Parliamentary Elections of 26 October 2025 - ODIHR Election Observation Mission Final Report*, 20 December 2024; see also OSCE/ODIHR, Statement of 20 December 2024, which underlines that *"[t]he elections took place amidst serious concerns about the impact of recently adopted legislation on fundamental freedoms and civil society, steps to diminish the independence of institutions involved in the election process, and pressure on voters, which combined with election day practices compromised the ability of some voters to cast their vote without fear of retribution. In its assessment of post-election developments and complaints, ODIHR found that cases were not considered sufficiently, limiting legal remedies, and the forcible suppression of protests and numerous arrests caused grave concerns about compliance with international commitments to freedom of peaceful assembly."*

53 See <Law on Amendments to the Law of Georgia on Assemblies and Demonstrations> adopted on 13 December 2024, published on 29 December 2024.

parliament-elected President the same day. The adoption of the Amendments was not preceded by public consultations and opposition parties did not participate in the elaboration of either set of amendments. The Amendments should be read against the backdrop of the concerns raised by several international and regional organizations and bodies, along with national observers and other stakeholders.[54]

3. Amendments to the Law on Assemblies and Demonstrations

30. The February Amendments introduce several significant changes to the Law of Georgia on Assemblies and Demonstrations. Among others, they provide a new definition and regulation pertaining to "spontaneous assembly or demonstration" (new Articles 3 (b^1) and 8 (1^1)), a new definition of an "organizer" (amended Article 3 (e)), prohibit assemblies inside closed spaces or buildings without the owner's prior written consent (new Article 9 (1^2)), introduce new prohibitions on conducting assemblies that result in blocking bridges, tunnels, overpasses, and transport hubs that cause significant harm to the operations of enterprises, institutions or organizations or significantly disrupting traffic flow (revised Article 9 (3)), or those that intentionally create obstacles to the movement of people – in addition to those creating obstacles to the movement of vehicles already contemplated in Article 11 (2) (e). This is in addition to the amendments related to the erection of temporary constructions, mentioned above (new Article 11 (2) (f) and amended Article 13 (3)). The Amendments also prohibit the participation in an assembly or demonstration that was terminated in accordance with Article 13(1) of the Law (new Article 11 (2) (g)).

31. Further, the Amendments considerably broaden the range of grounds allowing for the dispersal of participants to assemblies/demonstrations in case of mass violations of the prohibitions provided in the Law (amended Article 13 (1)) and transfer a number of prerogatives initially within the scope of powers of the municipality to the Ministry of Internal Affairs of Georgia.

32. As further elaborated below, several of these amendments raise serious concerns about their compliance with international human rights standards, particularly Article 21 of the ICCPR and Article 11 of the ECHR. These concerns persist notwithstanding the putative safeguards in the Law on Assemblies and Demonstrations – in particular, Article 2 (3) which expressly provides that any restrictions imposed must be compatible with the Constitution of Georgia, be non-discriminatory, and be prescribed by law, necessary in a democratic society, and proportionate (such that the benefit of the restriction exceeds the damage caused by the restriction).[55]

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54 See e.g., Venice Commission, *Urgent Opinion on amendments to the Code of administrative offences and the Law on assemblies and demonstrations of Georgia*, CDL-PI(2025)004-e, 3 March 2025. See also European Parliament resolution on Georgia's worsening democratic crisis following the recent parliamentary elections and alleged electoral fraud (2024/2933(RSP)); CoE Commissioner for Human Rights Statement of 4 December 2024; Joint Statement of 28 January 2025 of UN Special Rapporteurs on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on extrajudicial summary or arbitrary executions; on the Rights to Freedom of Peaceful Assembly and of Association; on the situation of human rights defenders; on the right to freedom of opinion and expression, on the independence of judges and lawyers; EU Statement by High Representative/Vice-President Kaja Kallas and Commissioner for enlargement Marta Kos on the situation in Georgia (7 February 2025). See also ODIHR statement of 20 December 2024. See also the various statements of the Public Defender of Georgia and national stakeholders and non-governmental organizations.

55 A number of other provisions in the Law on Assemblies and Demonstrations also appear, on their face, to underscore the need for strong protection of the right of peaceful assembly: for example, Articles 9(4) and 9(5) (restrictions on assemblies in the vicinity of buildings) emphasize the need to ensure *"… that the constitutional right to assembly and manifestation is not undermined*." Also, Article 111(3) notes that decisions on road reopening will be "*on a case-by-case basis*, based on public interest and circumstances in accordance with Article 2(3)". Article 12(1) further emphasizes that "*executive bodies of local self-government shall be obliged to ensure appropriate conditions for organising and holding assemblies or demonstrations and specify alternative traffic routes*" and that *"[s]tate institutions, officials and citizens may not obstruct the organisation and holding of assemblies or demonstrations under the procedures defined in this Law, as well as the expression of opinions by citizens."*

33. The Explanatory Note to the [then] Draft Amendments refers to the need to regulate differently "spontaneous assemblies" as required following the decision of the Constitutional Court of 14 December 2023, which held unconstitutional the normative content of Article 8 (1) of the Law requiring a five days prior notification of assemblies, as it would relate to spontaneous assemblies.[56] The Explanatory Note further elaborates that *"[t]he purpose of the proposed draft law is to create a legislative framework that provides relevant state authorities with better opportunities to ensure the safe conduct of assemblies and the more effective realization of the right to freedom of expression by maintaining a fair balance between various constitutional rights*". At the same time, there is no proper impact assessment to justify the need for the Amendments (see also Sub-Section 6 on the process of adopting the Amendments).

3.1. Definition of "organizer" and Related Responsibilities

34. The Amendments provide a new definition of "organizer" defined as "*the initiator of an assembly or manifestation, as well as any person who leads or otherwise organizes the event*" (new Article 3 (e)) and specify that a "responsible person" is the "organizer" of the assembly or manifestation (new Article 3 (f)). However, the definition of "organizer" is both overbroad and unclear and may lead to divergent and arbitrary interpretation by the authorities.

35. The term "any person who leads" may be understood broadly in various ways, including persons being particularly outspoken during an assembly but without having any organizational role, suddenly being attributed the label of a "responsible person". In addition, a person "otherwise organizing the assembly" potentially captures a wide range of people affiliated with the assembly, including, for example, those mobilizing resources, making preparations to travel to an event, and/or sharing or informing about a forthcoming assembly, however, having no overall organizational responsibility. These protected activities are integral to making the exercise of the right of peaceful assembly meaningful,[57] and should not result in an individual being defined in law as an "organizer."

36. The broad definition is especially problematic since being an "organizer" or "responsible person" triggers a number of obligations and potential liabilities in case of non-compliance, notably the administrative fines contemplated in the Code of Administrative Offences which are generally two to three times higher for "organizer(s)" (see Sub-Section 4 *infra*). Such uncertainties concerning the applicable legal framework do not allow individuals to assess whether or not one's conduct would be in breach of the law and to foresee the likely consequences of any such breach, which is at odds with the principle of legal certainty and foreseeability.[58] This may also ultimately create a chilling effect on those willing to take part in planned or unplanned/spontaneous assemblies. **It is recommended to clarify and more strictly circumscribe the definition of an**

56 See Constitutional Court of Georgia, *The Public Defender of Georgia v. the Parliament of Georgia*, Decision No. 3/3/1635, 14 December 2023. In its judgment, the Constitutional Court recognized that, because of the existence of a prior notification requirement in all cases where the carriageway may be blocked or traffic interrupted, individuals might refrain from participating in spontaneous assemblies for fear of breaking the law. The Court further recognized that the only alternative for someone wishing to respond within the law to a current or unforeseen event would be to hold a notified gathering in an undesirable place or at an undesirable time. The Constitutional Court thus rejected the government's argument that the existing law adequately protected spontaneous assemblies. It also observed that neither the fact that no organizer of a spontaneous assembly had been prosecuted under the existing law, nor that the Minister of Internal Affairs of Georgia could, by order, release organizers of spontaneous assemblies from their obligation to notify, provided sufficient protection for spontaneous assemblies. The Constitutional Court thus required that Article 8 (1) of the Law on Assemblies and Demonstrations be amended to provide express protection for spontaneous assemblies.

57 *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 33.

58 See *Guidelines on Freedom of Peaceful Assembly*, para. 98.

"organizer" in the Law on Assemblies and Demonstrations, while removing unclear wording referring to "*any person who leads or otherwise organizes the event*".[59]

37. More generally, for any type of assembly, the Law places the responsibility on the "organizer" or "responsible person", including the duty to provide notification and any required information (Articles 5 and Article 8 of the Law). While many assemblies have designated organizers, some assemblies, especially spontaneous or informally planned gatherings may lack an identifiable "organizer", especially with the rise of social media-driven assemblies. The absence of an organizer does not diminish the protection afforded by the right to freedom of assembly to all expressive gatherings. According to the Guidelines, public authorities should facilitate all assemblies, regardless of whether they have a formal organizer.[60] **The Law should be amended to acknowledge that not all assemblies or demonstrations may have identifiable "organizers" or "responsible persons".**

38. Amended Article 8 (3) of the Law on Assemblies and Demonstrations provides that a responsible person is also obliged to "specify how emergency medical assistance will be provided *by the responsible person* during the assembly or manifestation", the "responsible person" also being the "organizer" as newly defined in new Article 3 (e). The prior wording was only mentioning that the notification should indicate how emergency medical care would be provided during the course of the assembly/demonstration. It is worth recalling that an organizer should not be responsible for emergency medical assistance, as this falls under the competence of relevant state institutions. It is a duty of state authorities to "*ensure that appropriate medical provision is available and accessible to all participants in public assemblies, as well as to non-participants who might be in the vicinity, and to police officers*."[61]

39. Finally, several provisions of the Law introduce obligations on the "organizer" to take measures to eliminate violations of the law committed by assembly participants.[62] While organizers may provide assistance, states retain primary responsibility for the protection of public safety, security and public order, have a positive obligation to provide adequately resourced policing arrangements and intervene when necessary.[63] Moreover, organizers should not be held liable for the failure to perform their responsibilities in cases where they are not individually responsible, e.g., where property damage or disorder, or violent acts are caused by assembly participants or onlookers acting independently.[64] Such provisions should be reconsidered. **The Law should be amended to remove any obligations for "organizers" or "responsible persons" that are incumbent upon the authorities, such as the provision of medical assistance, the maintenance of public safety, security and order, traffic management, or the prevention of crime, while removing any liability of "organizers" for the behaviours of others**.

59 See also Venice Commission, *Urgent Opinion on amendments to the Code of administrative offences and the Law on assemblies and demonstrations of Georgia*, CDL-PI(2025)004-e, 3 March 2025, para. 39.
60 See *Guidelines on Freedom of Peaceful Assembly*, para. 170.
61 See *Guidelines on Freedom of Peaceful Assembly*, paras. 214-216.
62 See e.g., amended Article 13 (2) and (3) of the Law on Assemblies and Demonstrations.
63 See *Guidelines on Freedom of Peaceful Assembly*, paras. 138 and 165, and references therein.
64 *Guidelines on Freedom of Peaceful Assembly*, para. 224. See also Joint report of the UN Special Rapporteur (2016), A/HRC/31/66, para. 26: "*While organizers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.*"

RECOMMENDATION A.

1. To clarify and more strictly circumscribe the definition of an "organizer" in the Law on Assemblies and Demonstrations, removing unclear wording referring to "any person who leads or otherwise organizes the event", while revising the Law to acknowledge that not all assemblies or demonstrations may have identifiable "organizers" or "responsible persons".
2. To remove any obligations for "organizers" or "responsible persons" that are incumbent upon the authorities, such as the provision of medical assistance, the maintenance of public safety, security and order, traffic management, or the prevention of crime, while removing any liability of "organizers" for the behaviours of others.

3.2. Spontaneous Assemblies and Demonstrations

40. A wide range of different public gatherings fall within the protective scope of the right to freedom of peaceful assembly, including spontaneous assemblies and those that cause disruption to movement and/or economic activity.[65] The presumption in favour of (peaceful) assemblies includes an obligation of tolerance and restraint towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed.[66] As underlined in the ODIHR-Venice Commission Guidelines, *"[t]he need to protect spontaneous assemblies as an expected (rather than exceptional) feature of a healthy democracy has been recognized in numerous domestic laws and court decisions, […] and should be facilitated and protected in the same way as assemblies that are planned in advance*."[67]

3.2.1. Definition of "spontaneous assemblies"

41. New Article 3 (b^1) of the Law on Assemblies and Demonstrations introduces a definition of "spontaneous assemblies" as gatherings that arise "*without prior planning and immediately due to a significant public event that could not have been foreseen*".

42. While international instruments do not specify how "spontaneous assemblies" should be defined in domestic law, it has been recognized that the category of spontaneous assemblies should encompass both spontaneous assemblies that are planned and those that are unplanned.[68] The absence of "planning", "organization" or "co-ordination" should not be a necessary condition for an assembly to be categorized as "spontaneous". Rather, as the Constitutional Court itself noted, being able to respond in a timely and instantaneous way is what is often critical to having an effective right to protest.[69] Such

65 UN HRC, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, paras. 6-7, 14.

66 *Guidelines on Freedom of Peaceful Assembly*, para. 21. See also UN HRC, *General comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)*, para. 44.

67 See *Guidelines on Freedom of Peaceful Assembly*, para. 79. See also Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, 21 May 2012, para. 91 recommends that, "*[s]pontaneous assemblies should be recognized in law, and exempted from prior notification*."

68 *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, para. 14 states: "*spontaneous assemblies, which are typically direct responses to current events, whether coordinated or not, are equally protected under article 21. Counterdemonstrations occur when one assembly takes place to express opposition to another. Both assemblies can fall within the scope of the protection of article 21.*" See also, for example, ECtHR, *Barseghyan v. Armenia*, no. 17804/09, 21 September 2021, para 53. In this case, the government alleged that the assembly had not been spontaneous because it had been planned and announced one day in advance (see paras. 42 and 43). The ECtHR emphasized that it was incumbent on the authorities to examine the question of whether the assembly could fall within the category of 'spontaneous' gatherings and that the authorities had failed to support their contention that it was not spontaneous with objective evidence.

69 Citing, for example, its previous ruling in *Besik Katamadze, Davit Mzhavanadze and Ilia Malazonia v. the Parliament of Georgia*, Decision No. 1/5/1271 of 4 July 2019.

assemblies are generally a time critical response to emerging developments or events, such that it would not be possible to comply with the established notification procedure and timeframe.[70] It is these characteristics (instantaneity and timely relevance) that any exemption from notification for spontaneous assemblies ought to protect – irrespective of the level of planning or co-ordination that might be involved. In any case, according to the *Guidelines*, public authorities should facilitate all peaceful assemblies, regardless of whether they have a formal organizer.[71]

43. While it is commendable that the Law recognizes *unplanned* spontaneous assemblies, and no longer subjects these to the strict 5-day prior notification timeframe (though see the further comments on the notification requirement in Sub-Section 3.1.2 *infra*), the inclusion in the definition of the reference to "without prior planning" may be ambiguous. It should not be interpreted as meaning that any form of prior *ad hoc* organization, co-ordination or planning of a spontaneous assembly will prevent the said assembly from being qualified as spontaneous and thereby from being exempted from the 5-day notification requirement. This definitional limitation could potentially significantly reduce the legal protection afforded to spontaneous assemblies. This means that the concerns that motivated the complaint to the Constitutional Court in the first place – particularly the chilling effect of potential liability on those who might wish to take part in spontaneous assemblies – will persist despite the amendment to the Law.

44. In addition, other elements of the definition may also be problematic. The wording – "due to a *significant* public event *that could not have been foreseen*" – establishes an unduly limited definition of spontaneous assemblies. Spontaneous assemblies should not be restricted to reactions to a "*significant* public event" but should rather encompass all spontaneous gatherings in response to current events,[72] whether, for example, these are political, economic, social, cultural, or environmental, including counter-demonstrations.[73] While acknowledging that laws are inevitably couched in broad terms and may not attain absolute precision (see para. 22 *supra*), the 'significance' and 'foreseeability' of the event may be open to different interpretations and thus could be used to deny that an assembly is "spontaneous" under the Law, insisting on compliance with the mandatory 5-day notification timeframe.

45. **It is recommended that the definition be broadened and clarified to avoid potential arbitrary and restrictive interpretation, removing the words "without prior planning" so as to recognize that spontaneous assemblies may be both planned and unplanned, while also removing the criterion requiring a spontaneous assembly be in response to a '*significant*' public event.** In addition, **the wording of the Law should be amended to reflect more clearly the fact that some assemblies may not have "organizer(s)" at all.**

3.2.2. Notification Requirement for Spontaneous Assemblies

46. Newly introduced Article 8 (1^1) of the Law requires that in the case of "spontaneous assembly", a notice be submitted to the municipality's executive body "*immediately, within a reasonable period, after the responsible person becomes aware of the organization or occurrence of the spontaneous event*." In the Explanatory Note, the

70 See e.g., ECtHR, *Lashmankin and others v. Russia*, nos. 57818/09 and 14 others, 7 February 2017, para. 454, where the Court held that there may be "*special circumstances calling for an immediate response to a current event in the form of a spontaneous assembly and justifying a derogation from the strict application of the notification time-limits*".
71 See *Guidelines on Freedom of Peaceful Assembly*, para.170.
72 See, UN HRC, *General Comment No. 37 (2020)* on the right of peaceful assembly (article 21), para. 14; and ODIHR *Urgent Opinion* on the Law on Assemblies of the Republic of Moldova (2023), para. 21.
73 See ODIHR *Urgent Opinion* on the Law on Assemblies of the Republic of Moldova (2023), para. 21.

authorities clarify that "*the emergence of an objective possibility to notify the competent state authority creates an obligation to use this opportunity and, consequently, a duty to notify the authorities. Thus, the first paragraph of Article 21 of the Constitution of Georgia does not imply a complete exemption of the organizers of spontaneous gatherings from the obligation to notify the authorities. Accordingly, the state has the right to establish an obligation to provide prior notification to the relevant authorities regarding any disruption to traffic from the moment when such an opportunity becomes objectively available to the organizers of the gathering.*"

47. At the outset, it should be noted that any notice requirement for any assembly is a *de facto* interference with the right to freedom of peaceful assembly, and as such should be prescribed by law, pursue a legitimate aim, be necessary and proportionate, and non-discriminatory.[74] This analytical starting point was recognized by the Constitutional Court and informed its reasoning. Still, recognizing that the rights and freedoms of third parties might be engaged by the holding of a spontaneous assembly, the Constitutional Court also held that some form of notification requirement for spontaneous assemblies could, in certain circumstances, be proportionate and compatible with the constitutional protection of the right of peaceful assembly.[75]

48. However, in practice, notification requirements for spontaneous assemblies may be impossible and impractical to comply with in the circumstances, especially in times of crises, and thus should not automatically lead to defining such assemblies as illegal.[76] As recommended in the Guidelines, "*spontaneous assemblies should, by their very nature, be exempted from any notification requirements*".[77] Similarly, the UN HRC has observed that "*[n]otification must not be required for spontaneous assemblies for which there is not enough time to provide notice*."[78]

49. While the reference to "*within a reasonable period, after the responsible person becomes aware of the organization or occurrence of the spontaneous event"* fails to take into account the specificities of such gatherings. For one, it assumes that there will always be a "responsible person", meaning an "organizer" (see further comments on the new definition of "organizer" introduced by the Amendments in Sub-Section 3.6. *infra*), and overlooks the very short timeframe in which spontaneous assemblies may occur, even when there is an organizer. Furthermore, even if there is a clearly defined "organizer" of a spontaneous assembly, due to the specific nature of such assemblies, it may be impossible to satisfy the notification requirements elaborated in Article 8 (2) of the Law.[79] In addition, the reference to notification "*immediately, within a reasonable period*" may appear contradictory since the mention of 'immediate' would seem to preclude any alternative 'reasonable period'. While the provisions may suggest some flexibility and that a short delay due to certain procedural, logistical, or practical constraints may be acceptable, the provision could be subject to varying interpretation, potentially granting authorities broad discretion to interpret this temporal requirement, which may lead to inconsistent application in practice.

74 See *Guidelines on Freedom of Peaceful Assembly*, para. 25.
75 The Public Defender of Georgia, as the claimant in the case, also accepted the possibility of imposing some notification requirement in relation to certain spontaneous assemblies where prior notification might yet be feasible.
76 ODIHR *Urgent Opinion* on the Law on Assemblies of the Republic of Moldova (2023), para. 44.
77 See *Guidelines on Freedom of Peaceful Assembly*, para. 114. See also Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, 21 May 2012, para. 91 recommends that, "*[s]pontaneous assemblies should be recognized in law, and exempted from prior notification*."
78 UN HRC, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, para. 72.
79 i.e., on the "*form, purpose, location, route, starting time, ending time, date, and estimated number of participants of the assembly or manifestation*".

50. Moreover, the new provision provides that *"[t]he municipality may establish different forms and procedures for such notifications"*. Leaving to the local authorities the responsibility to define the notification forms and requirements for spontaneous assemblies is problematic on several fronts. First, this means that such requirements may potentially substantially diverge depending on the municipalities. Second, leaving the determination of the form and content of the notification to sub-legal acts without further specification fails to ensure that the process remains simple and does not become unduly burdensome. Ultimately, it should be recalled that "*[i]nternational standards do not require the advance notification of assemblies"* and the purpose of notice should be "*to better ensure the peaceful nature of an assembly and to put in place arrangements to facilitate the event*".[80]

51. Furthermore, the notification procedure "*should not be onerous or overly bureaucratic and the information required should be minimal*".[81] In this respect, it is necessary to take into account the specific nature of spontaneous gatherings and to recognize that certain types of information (such as the time, duration, location/itinerary, indicative number of participants) may not always be known or knowable in advance, including by the organizer(s) (if indeed the event is organized). In this light, it is recommended to more clearly distinguish the prior notification requirements and procedure for ordinary assemblies, from any procedural requirements that may be contemplated for spontaneous assemblies, which should be proportionate to the objective of facilitating such spontaneous assemblies. Hence, a mere information of the local authorities or the local police unit should be sufficient for that purpose, without formalistic procedure or requirements.[82]

52. In addition, the duty to facilitate assemblies without advance notification or that deviate from the terms of notification implies that the authorities must take reasonable and appropriate measures to facilitate such spontaneous assemblies as long as they are peaceful in intent and execution.[83] The ECtHR has stated that "*a decision to disband assemblies solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction of freedom of peaceful assembly*."[84] When spontaneous assemblies are causing disruption to the circulation of the traffic or a certain disturbance to public order, the Court would generally look at whether the demonstrators have had a sufficiently long time to express their views – meaning that there should not be prompt dispersal of spontaneous assemblies – and whether the police showed the necessary tolerance towards the demonstration, although they had had no prior knowledge of the event.[85] As further underlined by the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, "*[n]otification must not be required for spontaneous assemblies, for which there is not enough time to provide notice and which is often the case during crises. Lack of notification alone never constitutes grounds to disperse an assembly or justify*

80 See *Guidelines on Freedom of Peaceful Assembly*, para. 113.
81 *Ibid. Guidelines on Freedom of Peaceful Assembly*, paras. 25 and 119, and references therein.
82 See e.g., in **Armenia**, the clear distinction between the prior notification of the municipality for ordinary assemblies from the case of a spontaneous assembly that has an organizer, who must "inform" the local police unit (see Article 27 (1) of the Law on Freedom of Assembly of the Republic of Armenia).
83 See *Guidelines on Freedom of Peaceful Assembly*, para. 114 and references therein.
84 See ECtHR, *Bukta and Others v. Hungary*, no. 25691/04, 17 July 2007, para. 36.
85 See ECtHR, *Éva Molnár v. Hungary*, no. 10346/05, 7 October 2008, paras. 42-44.

the use of force, the criminalization or arrest of protesters. States remain obligated to facilitate such assemblies and protect the participants."[86]

53. In light of the foregoing, **it is recommended to repeal the notification requirement for spontaneous assemblies, or at the very least, introduce the possibility of merely informing the local or police authorities of a spontaneous assembly, when it has clearly identified (and narrowly defined) "organizers". Should a notification obligation be nevertheless retained – only for cases where spontaneous assemblies have clearly identifiable "organizer(s)", the notification requirements should take into account the specific nature of spontaneous assemblies, and remain minimal, simple and not unduly burdensome.**[87] **Non-compliance alone should not trigger the imposition of any sanctions nor offer grounds to disperse a peaceful assembly or justify the use of force, or the criminalization or arrest of organizers and/or participants.**

RECOMMENDATION B.

To repeal the notification requirement for spontaneous assemblies, or at the very least, introduce the possibility of merely informing the local or police authorities of a spontaneous assembly, when it has clearly identified (and narrowly defined) "organizers"; or should a notification obligation be nevertheless retained – only for cases where spontaneous assemblies have clearly identifiable "organizer(s)", the notification requirements should remain minimal, simple and not unduly burdensome, while ensuring that non-compliance alone does not trigger the imposition of any sanctions nor offer grounds to disperse a peaceful assembly or justify the use of force, or the criminalization or arrest of organizers and/or participants.

3.3. Restrictions on Location

54. New restrictions on assembly locations prohibit gatherings inside closed spaces or buildings without the owner's prior written consent (Article 9 (1^2)). The protection of the rights and freedoms of others is listed under Article 21 of the ICCPR and Article 11 (2) of the ECHR as one of the potential legitimate aims for restricting the right to freedom of peaceful assembly. Notwithstanding the fact that the protective scope of right to freedom of peaceful assembly extends to assemblies on private property,[88] and that the right confers a freedom to choose the location or route of an assembly, the right of peaceful assembly does not bestow an automatic right of entry to private property (or even to all publicly owned property not ordinarily accessible to the public, such as government offices or ministries).[89] At the same time, the ability of individuals and groups to exercise the right to freedom of assembly must remain practical and effective.[90]

86 See *Report of the Special Rapporteur* on the rights to freedom of peaceful assembly and of association, A/HRC/50/42, 6 May 2022. See also UN HRC, *General comment No. 37 (2020)*, paras. 70−73. See also ECtHR, *Bukta and Others v. Hungary*, no. 25691/04, 17 July 2007, where the ECtHR considered that in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly, para. 36.

87 See also Venice Commission, *Urgent Opinion on amendments to the Code of administrative offences and the Law on assemblies and demonstrations of Georgia*, CDL-PI(2025)004-e, 3 March 2025, para. 38.

88 UN HRC, *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 6: *"Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof."*

89 See *Guidelines on Freedom of Peaceful Assembly*, para. 64 and references cited therein.

90 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 64 and references cited therein.

In addition, the Guidelines underline that "*[b]uildings and structures that are physically suitable for assemblies (meaning capable of accommodating the anticipated number of participants) and that are ordinarily open to the public – such as publicly owned auditoriums, stadiums or open areas in public buildings – may also be regarded as legitimate locations for assemblies*".[91] Hence, closed spaces or private buildings that are suitable for assemblies and ordinarily open to the public should *a priori* constitute legitimate locations for assemblies,[92] irrespective of the owner's prior consent. Indeed, some degree of disruption must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning.[93] Moreover, balancing the right to assemble and the rights of others should always aim at ensuring that assemblies may proceed, unless they impose unnecessary and disproportionate burdens on others.[94]

55. Furthermore, Article 9 (1^2) could extend not only to private homes or buildings but also closed spaces or other buildings, which may have been privatised, but are ordinarily open to the public, such as shopping centres, theatres or universities. In this regard, the Guidelines provide that prohibiting assemblies in privately-owned spaces open to the public "*could seriously inhibit the rights to freedom of speech and assembly by precluding access to an intended audience"*.[95] The Guidelines further note that "*where the owner of a space capable of accommodating an assembly does not give permission for an assembly and where the bar on access to property has the effect of preventing any effective exercise of freedom of expression or assembly, or where it destroys the essence of such rights, the state may have a positive obligation to ensure access to such a privately-owned place for the purposes of holding an assembly*."[96] In cases where people are prevented from holding assemblies in privately owned places, the rights of the property owner must be balanced against the competing right to freedom of peaceful assembly.[97] The latter should prevail where there is no adequate alternative public space that would allow an assembly to take place in sight and sound of its intended audience and if the owner's right to enjoyment of his or her private property will not be significantly disrupted. In addition, the requirement that the consent be in writing also appears overly formalistic. **Therefore, it is recommended to remove the general prohibition of holding assemblies inside closed spaces or buildings without the owner's prior written agreement when those spaces/buildings are suitable for assemblies and ordinarily open to the public. Instead, a case-by-case assessment should be carried out, balancing the competing rights and interests while ensuring the effective exercise of the right to freedom of peaceful assembly.**

56. In addition to previous prohibitions to block entrances to buildings, highways and railways, newly amended Article 9 (3) of the Law introduces new prohibitions to block bridges, tunnels, overpasses, or key transportation hubs defined by the municipality if such obstruction would cause significant harm to the operations of enterprises, institutions, or organizations, or significantly disrupt traffic flow. Moreover, an

91 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 61.
92 UN HRC, *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, para. 55, which underlines that "*peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets*".
93 See ECtHR, *Moreno Gómez v. Spain*, no. 4143/02, 16 November 2004, paras. 60-62; and *Chumak v. Ukraine*, no. 44529/09, 6 March 2018. See also *Guidelines on Freedom of Peaceful Assembly*, para. 143 and references cited therein.
94 See *Guidelines on Freedom of Peaceful Assembly*, paras. 83 and 143, and references cited therein.
95 See *Guidelines on Freedom of Peaceful Assembly*, para. 83.
96 See *Guidelines on Freedom of Peaceful Assembly*, para. 83. In the case of ECtHR, *Appleby and Others v. the United Kingdom*, no. 44306/98, 6 May 2003, paras. 39, 47 and 52, concerning freedom of expression in a privately owned shopping centre, the Court stated that the effective exercise of freedom of expression, "may require positive measures of protection, even in the sphere of relations between individuals", citing *Özgür Gündem v. Turkey*, no. 23144/93, 16 March 2000, paras. 42-46, and *Fuentes Bobo v. Spain*, no. 39293/98, 29 February 2000 (only in French), at para. 38.
97 See *Guidelines on Freedom of Peaceful Assembly*, para. 83.

administrative body may impose restrictions on assemblies near its building to prevent obstruction and operational disruptions; these restrictions may limit the proximity of the assembly or manifestation to the building but shall not exceed 20 meters and should be decided on a case-by-case basis, considering circumstances and public interest in accordance with Article 2 (3) of the Law, ensuring that the constitutional right to assembly and demonstration is not undermined (amended Article 9 (4)).

57. A core component of the right to freedom of peaceful assembly is the ability of the assembly participants to choose the place where they can best communicate their message to their desired audience.[98] The freedom to choose the location of the assembly is a key aspect of the exercise of this right, and states have the duty to facilitate assemblies at the organizer's preferred location and within 'sight and sound' of the intended audience unless compelling reasons (that conform with the permissible justifications for imposing limitations under Article 21 ICCPR or Article 11(2) ECHR) necessitate a change of venue.[99] The venue may indeed be paramount for the message of the assembly to reach the target audience. In addition, given the importance of freedom of peaceful assembly in a democratic society, assemblies should be regarded as an *equally legitimate use of public space* as other, more routine uses of such space, such as commercial activity or pedestrian and vehicular traffic.[100] In any case, also taking into account the above considerations, any restrictions with respect to the location of an assembly must comply with the strict test of legality, legitimacy, necessity and proportionality as well as non-discrimination provided under international instruments (see Sub-Section 1.3 *supra*).

58. Blanket legal restrictions banning all assemblies in specified locations or public places *that are suitable for holding assemblies* are problematic since they do not differentiate between different ways of exercising the right to freedom of assembly and preclude any consideration of the specific circumstances of each assembly.[101] While prohibiting assemblies in certain locations, such as, in close vicinity of or on railway tracks or in tunnels, in police stations or in penitentiary facilities or in close vicinity to those institutions (as defined by the current law) may be justified based on safety and/or security considerations, general prohibition in some other locations, which are in principle suitable for holding assemblies, is intrinsically not in line with the principle of proportionality which requires that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference.[102] For example, prohibition of an assembly that may block the "entrance to buildings" or if the obstruction caused by an assembly "would cause significant harm to the operations of enterprises, institutions, or organizations or would significantly disrupt traffic", as

98 See *Guidelines on Freedom of Peaceful Assembly*, para. 147. See also, for example, UN HRC, *Turchenyak et al. v. Belarus*, CCPR/C/108/D/1948/2010 and Corr.1, 24 July 2013, para. 7.4: "*The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience*." See also e.g., ECtHR, *Sáska v. Hungary*, no. 58050/08, 27 November 2012, para. 21. See also *ODIHR Urgent Interim Opinion on Article I of the Draft Act on "Some Measures to Improve the Security Situation in the Slovak Republic"*, 25 June 2024, para. 25.

99 See *Guidelines on Freedom of Peaceful Assembly*, para. 82.

100 *Ibid. Guidelines on Freedom of Peaceful Assembly*, paras. 22 and 62.

101 See Guidelines on Freedom of Peaceful Assembly, para. 133. See also UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly* (Article 21), para. 38, which states that *"[b]lanket restrictions on peaceful assemblies are presumptively disproportionate"*; 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, A/HRC/31/66, of 4 February 2016, para. 30: "*To this end, blanket bans, including bans on the exercise of the right in specific places […], are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly*"; and Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (Funding of associations and holding of peaceful assemblies), A/HRC/23/39, 24 April 2013, para. 63: "*…blanket bans, are intrinsically disproportionate and discriminatory measures as they impact all citizens willing to exercise their right to freedom of peaceful assembly*".

102 See *Guidelines on Freedom of Peaceful Assembly*, paras. 133 and 145. See also UN HRC, General Comment No. 37 (2020) on the right of peaceful assembly (Article 21), para. 56, which provides: "*The designation of the perimeters of places such as courts, parliaments, sites of historical significance or other official buildings as areas where assemblies may not take place should generally be avoided, inter alia, because these are public spaces. Any restrictions on assemblies in and around such places must be specifically justified and narrowly circumscribed.*"

provided by the Amendments, may lead to unjustified and overboard limitation to the right to freedom of peaceful assembly. In addition, an assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only after the organizers/participants have had sufficient time and opportunity to manifest their views and only if the disruption is "*serious and sustained*".[103] This high cumulative threshold means that dispersal is not justified where disruption is serious (but not also sustained) or sustained (but not also serious).

59. Additionally, blanket bans on certain location may interfere significantly with the ability to hold assemblies within sight and sound of the intended audience, which as mentioned above is a fundamental aspect of the right to freedom of peaceful assembly. As emphasized in the Guidelines, *"[r]estrictions which impose bans on the time or location of assemblies as a rule, and then allowing exceptions to this rule, invert the relationship between freedom and restrictions by turning the right to freedom of peaceful assembly into a privilege*."[104] In its General Comment No. 37, the UN HRC has also underlined that "*assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions must be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions*".[105] The ECtHR has often reiterated that a demonstration in a public place "*may cause a certain level of disruption to ordinary life*",[106] considering that mere potential disruptions to traffic and public transport would not suffice to justify a prohibition, unless they impose unnecessary and disproportionate burdens on others.[107]

60. When balancing the right of others against the competing right to freedom of peaceful assembly, the latter should prevail where there is no adequate alternative public space that would allow an assembly to take place in 'sight and sound' of its intended audience and if this does not impose unnecessary and disproportionate burdens on other or the owner's right to enjoyment of his or her private property will not be significantly disrupted.[108] Neither temporary disruption of vehicular or pedestrian traffic, nor opposition to an assembly, are of themselves legitimate reasons to impose restrictions on an assembly.[109]

61. In light of the above, **grounds for prohibiting assemblies under Article 9 (3) should be more narrowly defined, and restrictions on holding assemblies in certain locations be reconsidered. The Law should be formulated in a way that ensures that some degree of disruption is tolerated, including the temporarily blocking of entrances to buildings, highways, as well as bridges, overpasses, or key**

103 UN HRC, General Comment No. 37 (2020) on the right of peaceful assembly (Article 21), para. 85.
104 *Ibid.* *Guidelines on Freedom of Peaceful Assembly*, para. 133; and Joint Report of the Special Rapporteurs (2016), A/HRC/31/66, para. 21.
105 UN HRC, General Comment No. 37 (2020) on the right of peaceful assembly (Article 21), para. 47.
106 See e.g., ECtHR, *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, 18 December 2007, para. 43; *Körtvélyessy v. Hungary*, no. 7871/10, 5 April 2016, para. 28. See also *Guidelines on Freedom of Peaceful Assembly*, para. 48.
107 See *Guidelines on Freedom of Peaceful Assembly*, paras. 143 and references therein. For instance, In *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Osterreich* (C-112/00, judgment of 12 June 2003), the Court of Justice of the European Union (hereinafter "CJEU") held that allowing a demonstration which blocked the Brenner Motorway between Germany and Italy for almost 30 hours was *not* a disproportionate restriction on the free movement of goods under Article 28 EC Treaty. This was for three reasons: (1) the disruption was a relatively short duration and on an isolated occasion; (2) measures had been taken to limit the disruption caused; (3) excessive restrictions on the demonstration could have deprived the demonstrators of their rights to expression and assembly, and indeed possibly caused greater disruption.
108 *Ibid.* *Guidelines on Freedom of Peaceful Assembly*, para. 83. *General Comment No. 37 (2020) on the right of peaceful assembly (article 21)*, paras. 6, 57; ECtHR, *Annenkov v. Russia*, App. 31475/10, 25 July 2017, para. 122: *"… this right covers both private "assemblies" and "assemblies" in public places …*"
109 *Ibid.* *Guidelines on Freedom of Peaceful Assembly*, para. 143.

transportation hubs and that participants will have had sufficiently long time/opportunity to peacefully manifest their views, and that the authorities will strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those of others, only intervening when the disruption caused is serious and sustained.

62. Article 11^1 (1) grants the Ministry of Internal Affairs (hereinafter "MIA") – as opposed to the local authority in the previous version, the authority to reopen roadways if an assembly partially or fully blocks traffic, provided that the gathering can take place in an alternative manner given the number of participants. Paragraph 3 specifies that the MIA adopts such decisions on a case-by-case basis, based on public interest and circumstances and in accordance with Article 2 (3) of the Law.[110] Paragraph 5 of Article 11^1 further provides that if road blockage is necessary due to the number of participants, the MIA must ensure their safety and designate an alternative traffic route.

63. As part of their duty to facilitate the exercise of the right to freedom of peaceful assembly, state authorities should provide adequate security and safety measures, including traffic and crowd management and first-aid services.[111] Importantly, an assembly can still be considered "peaceful" even if it is deemed "unlawful" under domestic law. The definition of "peaceful" also encompasses actions that may temporarily hinder, impede, or obstruct third parties, including temporary road blockages or traffic disruption.[112] **The MIA's decision to reopen roads based solely on the number of participants or the availability of an alternative route, as outlined in Article 11^1, is not fully congruent with these principles and should be amended. Such decisions should not be made automatically, they should take into account the right of peaceful assembly and the potential impact on participants' ability to exercise this right effectively.** Overall, the Law should provide sufficient guidance and offer more clearly defined criteria in order to justify restrictions on the right to peaceful assembly. As a rule, authorities should prioritize the reorientation of traffic instead of the redirection of an assembly and only if the disruption caused by an assembly is serious and sustained and cannot be mitigated otherwise, should its redirection to an alternative route be considered.

RECOMMENDATION C.

1. To remove the general prohibition of holding assemblies inside closed spaces or buildings without the owner's prior written agreement when those spaces/buildings are suitable for assemblies and ordinarily open to the public, while ensuring instead a case-by-case assessment balancing the competing rights and interests and ensuring the effective exercise of the right to freedom of peaceful assembly.
2. To more narrowly define the grounds for prohibiting assemblies under Article 9 (3) of the Law and reconsider restricting the holding of assemblies in certain locations, while ensuring that the Law is formulated

110 Article 2 (3) of the Law on Assemblies and Demonstrations states: "*3. The restriction of the rights recognized and protected by this Law shall: a) aim at achieving the interests protected by Article 17(5) of the Constitution of Georgia; b) be provided for by law; c) necessary in a democratic society; d) non-discriminatory; e) proportionally restrictive; f) such that the interest protected by the restriction exceeds the damage caused by the restriction.*"

111 See *Guidelines on Freedom of Peaceful Assembly*, para. 83.

112 The ECtHR has often reiterated that a demonstration in a public place "may cause a certain level of disruption to ordinary life"; see for example *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, 18 December 2007, para. 43. See also the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, A/HRC/32/36/Add.2, 15 June 2016, para. 28, stating that: "*The reasons that police rely on to ban or find assemblies unlawful, such as obstruction of traffic, disturbance of daily lives of citizens, high noise levels, and later notification of a simultaneous assembly, do not meet the criteria set out in article 21 of the ICCPR to justify limitations on assemblies. […]*"

in a way that ensures some degree of disruption being tolerated, including with respect to the temporarily blocking of entrances to buildings, highways, as well as bridges, overpasses, or key transportation hubs and that participants will have had sufficiently long time/opportunity to peacefully manifest their views.

3.4. Restrictions on the Modalities and Manner of Assembly

64. The Amendments prohibit the installation of temporary structures at assemblies, if such "*installation poses a threat to the participants of the assembly or manifestation, or to other individuals, obstructs the police from maintaining public order and safety, hinders the normal functioning of an enterprise, institution, or organization, is not essential for holding the assembly or manifestation, or is unrelated to the purpose of conducting the assembly or manifestation*" (Article 11 (2) (f)).

65. ODIHR already analysed the same provision in its *2023 Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code of Georgia* and hereby refers back to the main findings and recommendations contained therein. In particular, ODIHR concluded that "*by introducing in the law broad and vaguely framed grounds for prohibition to erect temporary constructions during assemblies, thereby failing to differentiate between different ways of exercising the right to freedom of peaceful assembly and precluding any consideration of the specific circumstances of each assembly, the proposed restrictions would prima facie be disproportionate.*"[113] ODIHR also noted that, requiring, during a given assembly, the dismantling of a specific temporary construction that presents an imminent threat to the health or life of assembly participants or other persons, or that prevents the police from protecting public order, would be less restrictive than an outright prohibition and potential confiscation, and concluded that *"the Draft Amendments would not fulfil the strict requirements under international law when restricting the right to freedom of peaceful assembly. Consequently, their adoption should not be pursued.*"[114]

66. The amended Article 11^2 states that the MIA "*is obligated to maintain a balance between the freedom of assembly or demonstration and the rights of individuals who live, work, or conduct business activities in the areas where the assembly or demonstration is taking place. These individuals must not be hindered in continuing their activities.*" International and regional human rights standards recognize that assemblies may impact the rights and freedoms of others, including those who live, work, trade and carry on business in the same locality. However, balancing the right to peacefully assemble and the rights of others must always aim at ensuring that assemblies may proceed, unless they impose unnecessary and disproportionate burdens on others.[115] As underlined above, some degree of disruption with respect to one's rights must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning.[116] The UN HRC specifically underlined that *"[p]rivate entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right [to freedom of peaceful assembly]*".[117] Similarly, the ECtHR has often reiterated that a demonstration in

113 OSCE/ODIHR, *Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code of Georgia*, 6 November 2023, Executive Summary.
114 *Ibid.*
115 *Guidelines on Freedom of Peaceful Assembly*, para. 143.
116 *Ibid.*
117 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 31.

a public place "*may cause a certain level of disruption to ordinary life*".[118] Neither temporary disruption of vehicular or pedestrian traffic, nor opposition to an assembly, are of themselves legitimate reasons to impose restrictions on an assembly.[119] Where demonstrators do not engage in acts of violence, public authorities must show a certain degree of tolerance towards peaceful gatherings so that the freedom of assembly guaranteed by international instruments is not to be deprived of all substance.[120]

67. Article 13 (1) provides that if an assembly involves "mass violations" of the requirements of Article 11 (1) and (2) (a-c) of the Law, the gathering or manifestation shall be terminated immediately, upon the request of the MIA. If participants do not comply, law enforcement is authorized to disperse the gathering. For non-mass violations, organizers are given 15 minutes to address the issue after receiving a warning (Article 13 (2)), and if violations involve blocking traffic or erecting temporary structures, organizers must take action within the same time frame to restore traffic flow and dismantle structures. If organizers or participants fail to comply within a reasonable time, law enforcement can step in to enforce the rules. Lastly, if an assembly is deemed unlawful under Article 9 (6), law enforcement agencies will take measures to address the violation, reopen traffic lanes, restore traffic movement, and/or dismantle the temporary structure in accordance with international law and Georgian legislation (Article 13 (6)).

68. As already noted by ODIHR, these provisions give law enforcement authorities the power to forcibly disrupt and disperse a peaceful assembly on the ground of obstruction to a roadway or vehicular traffic by a temporary construction.[121] Under international law, an interference with an assembly involving its disruption or dispersal should be a measure of last resort, and not be permissible unless the assembly is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures.[122] Only in exceptional cases may an assembly be dispersed, when this is deemed necessary and proportionate in the interests of national security, public order or health, depending on the size, location and circumstances of an assembly.[123] The ECtHR has also made clear that a decision to disperse an assembly must be justified by relevant and sufficient reasons[124] and the non-compliance of the assembly with the formal requirements for holding it is not sufficient for its dispersal.[125] An interference with an assembly involving its disruption, dispersal or the arrest of participants can only be justified on specific and stated substantive grounds, such as serious risks provided for by law[126] and only after the participants had been given sufficient opportunity to manifest their views.[127] In all cases, the law

118 See e.g., ECtHR, *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, 18 December 2007, para. 43; *Körtvélyessy v. Hungary*, no. 7871/10, 5 April 2016, para. 28. See also Guidelines on Freedom of Peaceful Assembly, para. 48.

119 See *Guidelines on Freedom of Peaceful Assembly*, para. 143.

120 See ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015; *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006; *Bukta and Others v. Hungary*, no. 25691/04, 17 July 2007.

121 See ODIHR *Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code of Georgia*, para.53.

122 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para.85; *Guidelines on Freedom of Peaceful Assembly*, para.179.

123 *Guidelines on Freedom of Peaceful Assembly*, para. 179. See also UN HRC, General comment No. 37 (2020) on the right of peaceful assembly (Article 21), para. 85.

124 ECtHR, *Ibrahimov and Others v. Azerbaijan*, nos. 69234/11, 69252/11 and 69335/11, 11 February 2016; *Laguna Guzman v. Spain*, no. 41462/17, 6 October 2020.

125 ECtHR Article 11 Guide, para. 83.

126 See ECtHR, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018.

127 See ECtHR, *Éva Molnár v. Hungary*, no. 10346/05, 7 October 2008.

enforcement rules on use of force that should be compliant with international human rights standards must be strictly followed.[128]

69. **In light of the foregoing, the term "mass violations" as mentioned in Article 13 (1), combined with the phrase "reasonable time" in Article 13 (6) of the Law, is both overly broad and vague, posing the risk of subjective and inconsistent application, further infringing on the right to peacefully assemble, while at the same time giving a high discretion to law enforcement without legal redress and due process.**

70. It is noted that the December 2024 Amendments introduced a blanket ban on "covering the face with a mask or any other means" (new Article 11 (2) (a^2)). According to the February 2025 Amendments, this now constitutes an additional ground for the MIA to request the immediate termination of the assembly in case of "mass violation" (amended Article 13 (1) of the Law, see also additional comments on the powers of the MIA in Sub-Section 3.5 *infra*). As underlined in the Guidelines, "*no blanket or routine restrictions on the wearing of masks and face-coverings*".[129] The wearing of masks and face coverings at assemblies for expressive purposes is a form of communication protected by the rights to freedom of speech and assembly.[130] The wearing of masks or other face coverings at a peaceful assembly should not be prohibited where there is no demonstrable evidence of imminent violence.[131] In addition, an individual should not be required to remove a mask unless his/her conduct creates probable cause for arrest and the face covering prevents their identification.[132] In addition, the wording referring to the covering of the face by "any other means" is unduly vague and broad, and fails to comply with the principles of legal certainty and foreseeability. Consequently, **the blanket ban on covering the face by masks or any other means should be reconsidered entirely, while specifying instead the limited circumstances where prohibition or removal of masks may be strictly justified, for instance in case of demonstrable evidence of imminent violence or when the conduct of a given organizer or participant creates probable cause for arrest and the face covering prevents their identification**.

RECOMMENDATION D.

1. To reconsider entirely the prohibition against erection of temporary structures and instead ensure a case-by-case assessment, balancing the competing rights and interests while ensuring the effective exercise of the right to freedom of peaceful assembly.
2. To provide that an assembly may be dispersed by law enforcement authorities only when the assembly is no longer peaceful (going beyond individual acts of violence by a few) or when there is clear evidence of an

128 See *Guidelines on Freedom of Peaceful Assembly*, paras. 181-188. See also UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 85.
129 See *Guidelines on Freedom of Peaceful Assembly*, para. 153.
130 *Ibid.* para. 153, and references cited therein. See also UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 60.
131 *Ibid.* para. 153, and references cited therein. See also UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 60, which states that *"[t]he anonymity of participants should be allowed unless their conduct presents reasonable grounds for arrest, or there are other similarly compelling reasons, such as the fact that the face covering forms part of a symbol that is, exceptionally, restricted for the reasons referred to above […]. The use of disguises should not in itself be deemed to signify violent intent."*
132 See, for example, the Polish Constitutional Court judgment of 10 July 2004 (Kp 1/04); *Ku Klux Klan v. Kerik*, 356 F.3d 197 (2d Cir. 2004) (upholds an anti-mask statute where use of masks had no expressive value); *Ryan v. Cnty. of DuPage*, 45 F.3d 1090 (7th Cir. 1995) upholds the prohibition of the use of masks where the mask implied intimidation). However, see *City of Dayton v. Esrati*, 125 Ohio App. 3d 60, 707 N.E.2d 1140 (1997) (overturning a conviction for wearing a "ninja" mask at a government commission meeting because the prosecution was based on the purely expressive nature of the conduct).

imminent threat of serious violence that cannot be reasonably addressed by less interfering, more proportionate measures.

3. To reconsider entirely the blanket ban on covering the face by masks or any other means, while specifying instead the limited circumstances where prohibition or removal of masks may be strictly justified, for instance in case of demonstrable evidence of imminent violence or when the conduct of a given organizer or participant creates probable cause for arrest and the face covering prevents their identification.

3.5. Content-based Restrictions

71. According to Article 14 (1) of the Law on Assemblies and Demonstrations in its wording following the adoption of the February 2025 Amendments, the MIA (instead of the municipal authorities as provided previously) can prohibit assemblies if there is clear evidence, verified by the police, that suggests the event is likely aimed at promoting "*affiliation with neither biological sex, affiliation with a gender different from one's biological sex, sexual relationships between persons of the same biological sex, or incest*", as per Georgia's Law on Family Values and the Protection of Minors. This is linked to the new ground for prohibiting assemblies introduced by the amendments adopted on 17 September 2024 (see Article 9 (6) of the Law).

72. This ground for banning or prohibiting an assembly based on the alleged content raises serious concerns in terms of compliance with the strict test of legitimacy, legality, necessity and proportionality, and non-discrimination. At the outset, it should be recalled that banning or prohibiting an assembly should always be a measure of last resort and should only be considered when a less restrictive response would not achieve the goal.[133] In this respect, any restrictions on assemblies should not be based on the content of the message(s) that they seek to communicate within the limit of Article 19 of the ICCPR and Article 10 of the ECHR and content-based restrictions should be subject to the most serious scrutiny.[134] In addition, the general principle that human rights shall be enjoyed without discrimination lies at the core of the interpretation of human rights standards. Article 26 of the ICCPR and both Article 14 of the ECHR and Protocol 12 to the ECHR require that states secure the enjoyment of the human rights recognized in these treaties to all individuals within their jurisdiction, without discrimination on any ground.[135] This principle "*ensures the fair and proper treatment of minorities and avoids any abuse of a*

133 See *Guidelines on Freedom of Peaceful Assembly*, para. 29. See also UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 37, which emphasizes that "*[t]he prohibition of a specific assembly can be considered only as a measure of last resort. Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures. States should also consider allowing an assembly to take place and deciding afterwards whether measures should be taken regarding possible transgressions during the event, rather than imposing prior restraints in an attempt to eliminate all risks*".

134 See *Guidelines on Freedom of Peaceful Assembly*, paras. 30 and 149. See also UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 48, which provides: "*Central to the realization of the right is the requirement that any restrictions, in principle, be content neutral, and thus not be related to the message conveyed by the assembly*"; and ECtHR, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018, para. 136; and *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, 21 October 2010, para. 81, which provides "*it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were this so, a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention*".

135 See *Guidelines on Freedom of Peaceful Assembly*, para. 101 and references cited therein. See further UN HRC, *General Comment No. 18: Non-Discrimination*, 10 November 1989; and UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 25, which underlines in particular that "*States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of […] sexual orientation or gender identity, or other status*".

dominant position".[136] Discrimination against organizers and/or participants in an assembly – whether grounded in law or in practice – and based on grounds such as sex, sexual orientation, gender, gender identity, health conditions, or any other status should be prohibited. The protection against discrimination also extends to cases where individuals are targeted not because of their identity, but because they actively lobby for the rights of those most at risk of discrimination, and/or because of the message being conveyed during an assembly.[137] In tackling stereotypes and challenging patterns of inequality, it is important to recognize that discrimination is often suffered on more than one ground at the same time.[138]

73. Consequently, legislation prohibiting assemblies and other forms of public expression simply because they support or raise awareness of the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people constitute discriminatory restrictions and should be repealed, as they violate international standards.[139] The UN HRC has specifically recognized that "*the laws banning the promotion among minors of non-traditional sexual relations […] have exacerbated negative stereotypes of individuals on the grounds of sexual orientation and gender identity and represent a disproportionate restriction of their rights under the Covenant, and it has called for the repeal of such laws*".[140] With respect to a legislative ban on 'promotion of homosexuality or non-traditional sexual relations' to protect minors, the ECtHR specifically considered that such ban "*does not serve to advance the legitimate aims of protection of morals […] health or the rights of others, […] [and that] by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society*".[141] ODIHR would also like to recall the 2024 Venice Commission *Opinion on the Draft Constitutional Law on Protecting Family Values and Minors*, which noted that "*by adopting the draft Constitutional Law the authorities would risk reinforcing stigma and prejudice and encouraging homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society*."[142]

136 See *Guidelines on Freedom of Peaceful Assembly*, para. 101 and references cited therein. See in particular, ECtHR, *Identoba and Others v. Georgia*, no. 73235/12, 12 May 2015, para. 93.

137 See *Guidelines on Freedom of Peaceful Assembly*, para. 102 and references cited therein.

138 See *Guidelines on Freedom of Peaceful Assembly*, para. 102. See UN HRC, *Savolaynen v the Russian Federation*, CCPR/C/135/D2830/2016, views adopted 19 July 2022, para. 7.18 . See also ECtHR, *Bayev and Others v. Russia*, nos. 67667/09 and 2 others, 20 June 2017, para. 66. The Court has also held that the chilling effect of a legislative provision or policy may in itself constitute an interference with freedom of expression, see ECtHR, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, 27 September 1999, para. 127. See too, Office of the United Nations High Commissioner for Human Rights, *"Report on Discrimination and Violence against Individuals Based on their Sexual Orientation and Gender Identity*", A/HRC/29/23, 4 May 2015, paras. 48 and 79 (b). See also Venice Commission, *"Opinion on the Issue of the Prohibition of so-called "Propaganda of homosexuality" in the light of Recent Legislation in some Council of Europe Member States"*, adopted by the Venice Commission at its 95th Plenary Session (14-15 June 2013); and Report of the UN Special Rapporteur (2014), UN Doc. A/HRC/26/29, paras. 27-28 and 30-31.

139 See *Guidelines on Freedom of Peaceful Assembly*, para. 106 and references cited therein; and UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 46, which specifically provides that *"[r]estrictions based on th[e] ground [of protection of "morals"] may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity"*. Article 26 of the ICCPR, Article 14 of the ECHR and Protocol 12 to the ECHR prohibiting any form of discrimination have been interpreted to include 'sexual orientation' and 'gender identity' in the list of protected grounds'. See e.g., with respect to the prohibition of discrimination under the ICCPR, UN HRC, *Toonen v. Australia*, CCPR/C/50/D/488/1992, para. 8.7; and UN HRC, *Young v Australia*, CCPR/C/78/D/941/2000, para. 10.4; UN HRC, *Savolaynen v the Russian Federation*, CCPR/C/135/D2830/2016, views adopted 19 July 2022, para. 10; and under the ICESCR, see Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights* (Art. 2, par 2), UN Doc E/C.12/GC/20, 2009, para. 32. The case law of the ECtHR has clarified that the prohibition of discrimination also extends to "sexual orientation" and "gender identity", see e.g., ECtHR, *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, 21 December 1999, para. 28; and *Identoba and Others v. Georgia*, no. 73235/12, 12 May 2015, para. 96. Discrimination on the ground of "sexual orientation" is explicitly prohibited in some regional legally binding instruments, see e.g., Article 4(3) of the CoE Istanbul Convention, Article 10 of the Treaty on the Functioning of the European Union, Article 21 of the Charter of Fundamental Rights of the European Union, Employment Equality Directive and Directive concerning the status of long term residents.

140 See UN HRC, *Savolaynen v the Russian Federation*, CCPR/C/135/D2830/2016, views adopted 19 July 2022, para. 7.18 .

141 See ECtHR, *Bayev and Others v. Russia*, nos. 67667/09 and 2 others, 20 June 2017, para. 83; and *Macatė v. Lithuania* [GC], no. 61435/19, 23 January 2023, para. 202.

142 See the *Venice Commission Opinion on the Draft Law on Family Values and the Protection of Minors (2024)*, para 83.

74. The mere fact that the content or manner of an assembly may annoy, offend, shock, or disturb others, or cause temporary disruptions to daily life or affect the aesthetic appearance of a public space, does not, in itself, constitute a disruption of public order[143] and should not serve as a ground for prohibition.

75. **In light of the foregoing, the provisions allowing for the prohibition of assemblies allegedly promoting "*affiliation with neither biological sex, affiliation with a gender different from one's biological sex, sexual relationships between persons of the same biological sex, or incest*" as per Georgia's Law on Family Values and the Protection of Minors, should be removed entirely.**

> **RECOMMENDATION E.**
>
> To remove entirely from Articles 9 (6) and 14 (1) the prohibition of assemblies that allegedly promote "*affiliation with neither biological sex, affiliation with a gender different from one's biological sex, sexual relationships between persons of the same biological sex, or incest*" as per Georgia's Law on Family Values and the Protection of Minors.

3.6. Excessive Powers Granted to the Minister of Internal Affairs and to Law-Enforcement

76. The Amendments transfer a number of prerogatives initially falling within the competence of the municipalities to the MIA.[144] It may be questionable whether a central executive body would really be in the position to take into account all the relevant local circumstances in order to balance the competing rights and interests while ensuring the effective exercise of the right to freedom of peaceful assembly, on a case-by-case basis.

77. More generally, the amendments to the Law of Georgia on Assemblies and Demonstrations grant significant and potentially excessive powers to the MIA, including the authority to immediately halt assemblies or demonstrations without a court order in case of "mass violation" of the requirements of Article 11 (1) and (2) (a)-(c) (Article 13 (1)), or prohibit gatherings in case the assembly or demonstration poses an "immediate threat to the constitutional order, as well as to the life and health of citizens" or based on the above-mentioned content-based restrictions (Article 14 (1)). As per Article 13 (1), if the assembly or demonstration is not terminated, law enforcement agencies shall take measures to stop the assembly or demonstration and disperse its participants, in accordance with international law and Georgian legislation.

78. Under international law, an interference with an assembly involving its disruption or dispersal should be a measure of last resort.[145] Dispersal should not be permissible unless the assembly is no longer peaceful, when there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures

143 See *Guidelines on Freedom of Peaceful Assembly*, para. 139.

144 See amended Articles 111 (on opening of roadway and restoration of traffic), 112 (on the obligation to maintain a balance between the freedom of assembly or demonstration and the rights of individuals who live, work, or conduct business activities in the areas where the assembly or demonstration is taking place, 13 (power to request immediate interruption of assemblies in case of mass violation of Article 11(1) and (2)(a-c) of the Law or to issue warning in case of non-mass violation in such cases and others) and 14 (power to prohibit the holding of an assembly which allegedly constitutes an "immediate threat to the constitutional order, as well as to the life and health of citizens" or "is likely aimed at promoting affiliation with neither biological sex, affiliation with a gender different from one's biological sex, sexual relationships between persons of the same biological sex, or incest").

145 *Guidelines on Freedom of Peaceful Assembly*, para. 179. UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 85.

(such as targeted arrests[146] or the prosecution of individual demonstrators after the assembly),[147] or where an assembly would otherwise be unlawful because it violates applicable criminal law and constitutes a serious violation of the rights of others, under circumstances in which prosecutions of demonstrators after the assembly is not a safer and more practicable alternative.[148] Only in exceptional cases may an assembly be dispersed, when this is deemed necessary and proportionate in the interests of public order or health, depending on the size, location and circumstances of an assembly.[149] The ECtHR has made clear that a decision to disperse an assembly must be justified by relevant and sufficient reasons[150] and the non-compliance of the assembly with the formal requirements for holding it is not sufficient for its dispersal.[151] An interference with an assembly involving its disruption, dispersal or the arrest of participants can only be justified on specific and stated substantive grounds, such as serious risks provided for by law[152] and only after the participants had been given sufficient opportunity to manifest their views.[153] In all cases, the law enforcement rules on use of force that should be compliant with international human rights standards must be strictly followed.

79. However, as noted in paragraph 58 *supra*, an assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is "serious and sustained".[154] This high cumulative threshold means that dispersal is not justified where disruption is serious (but not also sustained) or sustained (but not also serious). Any actions by law enforcement personnel to intervene and disperse an assembly, or use force should always be applied with restraint. Where an assembly occurs in violation of applicable laws, but is otherwise peaceful, the police response should be guided by non-intervention or the de-escalation of tensions through voluntary dialogue, persuasion and negotiation.[155]

80. Certain of the grounds for immediate halting/dispersal or prohibition listed in Articles 13 and 14 appear unduly broad and vague, which may lead to arbitrary interpretation and application in practice. For instance, it is unclear what the term "mass violation" in Article 13 (1) or "clear evidence verified by the police [that an assembly would pose an immediate threat to the constitutional order]" would imply. Also, certain of the recently introduced grounds based on which immediate halting may be decided would not reach the high threshold of seriousness that may justify dispersal. For instance, immediate dispersal in case of so-called "mass violation" of Article 11 (2)(a^2) of the Law which prohibits the covering of the face with masks or other means – during an assembly that otherwise remains peaceful, would be excessive and disproportionate.

81. Overall, these provisions could infringe upon the right to assemble and protest by giving law enforcement broad discretion to intervene, dissolve protests, and potentially impose penalties for minor violations (see also Sub-Sections 4 and 5 on amendments to the Criminal Code and Code of Administrative Offences).

146 *Guidelines on Freedom of Peaceful Assembly*, para. 179. UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 85.
147 *Guidelines on Freedom of Peaceful Assembly*, para. 179.
148 *Ibid.*
149 *Guidelines on Freedom of Peaceful Assembly*, para. 179. See also UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 85.
150 ECtHR, *Ibrahimov and Others v. Azerbaijan*, nos. 69234/11, 69252/11 and 69335/11, 11 February 2016; *Laguna Guzman v. Spain*, no. 41462/17, 6 October 2020.
151 ECtHR Article 11 Guide, para. 83.
152 See ECtHR, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018.
153 See ECtHR, *Éva Molnar v. Hungary*, no. 10346/05, 7 October 2008.
154 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 85 (emphasis added)
155 See *Guidelines on Freedom of Peaceful Assembly*, para. 176. See also OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies*, 2016, p. 30.

82. Additionally, newly introduced Article 11 (2) (g) prohibits assembly participants from participating in an assembly or demonstration that has been terminated at the MIA's request as per Article 13 (1) of the Law. As per the amendments to the Code of Administrative Offences, violation of this provision is subject to a fine of GEL 5,000 (approximately 1,700 EUR) or administrative detention for a term of up to 60 days – which is among the most serious penalties imposed by the Code (see also comments on the proportionality of sanctions/penalties in Sub-Section 5.1 *infra*).

83. Given the concerns raised above regarding the grounds based on which the MIA may request the immediate halting of an assembly (Article 13 (1) of the Law), prohibiting participation in such terminated assemblies – based on the assumption that the assembly was validly terminated by the MIA, without judicial control or confirmation by a court, would appear unjustified and disproportionate. It is worth recalling that participation in a peaceful assembly, even if unauthorized, should never be treated as a serious offence that leads to severe penalties.[156] Participants in a peaceful assembly should not be subject to criminal sanctions[157] or deprivation of liberty merely for participating in an assembly.[158] Hence, **the newly introduced Article 11 (2) (g) prohibiting assembly participants from participating in an assembly or demonstration that has been terminated at the MIA's request as per Article 13 (1) of the Law should be reconsidered entirely.**

4. Amendments to the Code of Administrative Offences

84. The Explanatory note on the amendments to the CAO refers to the ECtHR case of *Makarashvili and Others v. Georgia*, claiming that the particular form of protest involved (sitting in the road leading to Parliament while obstructing the police in the process of clearing the road), "unequivocally constitute a violation of public order that goes beyond the scope of minor disorder". It is worth noting that the ECtHR did not make such an unequivocal or categorical statement about such forms of protest. Instead, the Court emphasized that "*the question of whether a gathering falls within the autonomous concept of "peaceful assembly*" set out in Article 11 (1) of the ECHR is independent of the question of whether that gathering was conducted in accordance with a procedure provided by the domestic law.[159] Moreover, while recognizing that "*the effective functioning of Parliament is a value of key importance for a democratic society*", the ECtHR specifically emphasized that "*in the circumstances of the present case, a gathering of politicians, civil activists, and ordinary citizens contesting the progress of legislative reforms aimed at enhancing the democratic processes in the country, even if it used an obstructive form of protest, should not necessarily be regarded constituting a rejection of the foundations of a democratic society"* and thus should not be excluded from the scope of Article 11.[160] Rather than unequivocally holding that certain forms of demonstration would invariably constitute a violation of public order, the Court instead

156 See *Guidelines on Freedom of Peaceful Assembly*, para. 176. See also ECtHR, *Gün and Others v. Turkey*, no. 8029/07, 18 June 2013 (only in French), para. 83; and *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, 17 May 2011, para. 43.
157 *Ibid. Akgöl and Göl v. Turkey*, para. 43.
158 See ECtHR, *Gün and Others v. Turkey*, no. 8029/07, 18 June 2013, para. 83.
159 ECtHR, *Makarashvili and Others v. Georgia*, nos. 23158/20, 31365/20, 32525/20, 1 September 2022, para. 91.
160 ECtHR, *Makarashvili and Others v. Georgia*, nos. 23158/20, 31365/20, 32525/20, 1 September 2022, paras. 79-80, where the Court notes: "*Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover a demonstration where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see Kudrevičius and Others, cited above, § 92). 80. Even if there is a real risk that a public demonstration might result in disorder as a result of developments outside the control of those organising it, such a demonstration does not as such fall outside the scope of paragraph 1 of Article 11, and any restriction placed thereon must be in conformity with the terms of paragraph 2 of that provision.*"

conceded that the authorities had a margin of appreciation and that their actions in this particular case (in relation to two of the three applicants) could not be regarded as manifestly arbitrary or unreasonable, not least because the protesters had been able to hold a demonstration without notification.[161]

4.1. Increased Sanctions for Administrative Offences and Non-Compliance with the Law on Assemblies and Manifestations

85. The newly amended Article 32 of the Code of Administrative Offence (CAO) introduces a new maximum length of detention for administrative offences up to 60 days, instead of 15 days previously. The Amendments also increased the amount of the fine and the length of detention for several administrative offences, including petty hooliganism (amended Article 166 CAO),[162] disobedience to the lawful order or demand of a law enforcement officer (amended Article 173 CAO),[163] violation of the rules for organizing and holding an assembly or demonstration and other provisions of the Law on Assemblies and Manifestations (amended Article 174[1] CAO). Amendments to Article 35 of the CAO also extend the list of aggravating circumstances, in particular to include not only where an individual has been penalized under the Code for a similar offence within a one-year period, but also where an individual has been given a verbal warning under the Code within the past year.

86. Any sanction or punishment should be based on a law that complies with the principle of legality and foreseeability of legislation, and that is sufficiently clear.[164] Where criminal or administrative sanctions are imposed on organizers or participants of a peaceful assembly for their unlawful conduct, such sanctions must be necessary, proportionate, non-discriminatory in nature and must not be based on ambiguous or overbroad offences.[165] Further, the nature and severity of penalties – including those imposed for conduct involving a degree of disturbance of public order[166] – is a relevant factor when assessing the necessity and proportionality of particular restrictions.[167] Unnecessary or disproportionately harsh sanctions for behaviour during assemblies could inhibit the holding of such events and have a chilling effect that may prevent participants from attending.[168] The Guidelines make clear that penalties for minor offences that do not threaten to cause or result in significant harm to public order or to the rights and freedoms of others should accordingly be low and the same as minor offences unrelated to assemblies.[169]

161 ECtHR, *Makarashvili and Others v. Georgia*, nos. 23158/20, 31365/20, 32525/20, 1 September 2022, para. 103.
162 Fine ranging from GEL 500 to GEL 3,000 or administrative detention for a term of up to 20 days (instead of a fine of up to GEL 1,000 and up to 15 days of administrative detention provided previously).
163 Fine ranging from GEL 2,000 to GEL 5,000 or administrative detention for a term of up to 60 days (instead of a fine of up to GEL 3,000 and up to 15 days of administrative detention provided previously).
164 *Guidelines on Freedom of Peaceful Assembly*, para. 221.
165 *Guidelines on Freedom of Peaceful Assembly*, para. 222; UN HRC, General comment No. 37 (2020) on the right of peaceful assembly (Article 21), para. 67.
166 See e.g., ECtHR, *Ekrem Can and Others v. Turkey*, no. 10613/10, 8 March 2022.
167 For example, ECtHR, *Peradze and Others v. Georgia*, no. 5631/16, 15 December 2022, para. 35: "*The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference in relation to the aim pursued. Where the sanctions imposed on the demonstrators are criminal in nature, they require particular justification. A peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction, and notably to deprivation of liberty. Thus, the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence …*". Similarly, ECtHR, *Kotov v. Russia*, nos. 49282/19 and 50346/19, 26 November 2024, para. 58; and ECtHR, *Chernega and Others v. Ukraine*, no. 74768/10, 18 June 2019, para. 221.
168 *Guidelines on Freedom of Peaceful Assembly*, para. 222.
169 *Ibid.*

87. Peaceful protesters should not, in principle, be rendered subject to the threat of a criminal sanction, [170] and especially to custodial sentences/deprivation of liberty.[171] In *Chkhartishvili v. Georgia* (2023), which involved participants throwing objects (dried beans) at police officers and a refusal to follow a police order leading to such participants being sentenced to eight days' administrative detention as per Article 173 of the CAO, the ECtHR emphasized that the conduct in question was neither violent (it did not cause any injuries to the police officers and could hardly be aimed at causing physical harm to them) nor was it sufficiently serious to justify the imposition of a custodial term.[172]

88. The amendments to Article 32 of the CAO quadruple the maximum duration of possible administrative detention that may be imposed for administrative offences, raising it to 60 days instead of 15 days previously. This new maximum now applies to ten administrative offences that are directly or indirectly linked to the exercise of the right to freedom of peaceful assembly.[173] Although Article 32 of the CAO provides that administrative detention should only be applied in exceptional cases, the changes introduced by the Amendments appear to normalize the use of such penalties, primarily in cases involving potential misbehaviours that may committed in the context of exercising one's right to freedom of peaceful assembly. This marks a sharp departure from the approach that used to be reflected in the previous versions of the CAO where the maximum of 15 days administrative detention was reserved for a limited set of offences, not necessarily linked to the holding of assemblies or demonstrations, save for the blocking a courthouse entrance, or holding assemblies at the place of residence of a judge or in common courts of Georgia (former Article 174^1 (3)) and violations of Articles 9, 11 and 11^1 of the Law on Assemblies and Demonstrations.[174] By significantly increasing detention periods and expanding their application, the Amendments thereby somewhat distort the overall coherence of the CAO's systems of gradation of administrative sanctions, which is intended to ensure that penalties remain proportionate to the harm they may cause.

89. As underlined in the Guidelines, unnecessary or disproportionately harsh sanctions for behaviour during assemblies could inhibit the holding of such events and have a chilling effect that may prevent participants from attending.[175] Such sanctions could thus

170 For example, ECtHR, *Akgöl and Göl v. Turkey*, nos. 28495/96 and 28516/06, 17 May 2011, para. 43; ECtHR, *Gün and Others v. Turkey*, no. 8029/07, 18 June 2013, para. 83; ECtHR, *Ekrem Can and Others v. Turkey*, no. 10613/10, 8 March 2022, para. 92; ECtHR, *Chkhartishvili v. Georgia*, no. 31349/20, 11 May 2023, para. 60.

171 E.g. ECtHR, *Murat Vural v. Turkey*, no. 9540/07, 21 October 2014, para. 66; ECtHR, *Mariya Alekhina and others v. Russia*, no. 38004/12, 17 July 2018, para. 228. ECtHR, *Taranenko v. Russia*, 19554/05, 15 May 2014, para. 87; ECtHR, *Kudrevičius v. Lithuania*, no. 37553/05, 15 October 2015 [GC], para. 146.

172 ECtHR, *Chkhartishvili v. Georgia*, no. 31349/20, 11 May 2023, paras. 57-60.

173 Repeated commission of petty hooliganism (amended Article 166(2)), repeated commission of vandalism (amended Article 166^2 (2)), disobedience to the lawful order or demand of several law enforcement office-holders (amended Article 173 (1)) or verbal abuse, swearing, persistent insults and/or other offensive actions against such law enforcement office-holders (amended Article 173 (2)) and repeated commission of such administrative offences (amended Article 173 (3)), verbal abuse, swearing, persistent insults and/or other offensive actions against various listed state-political officials (new Article 173^{16}), and for four types of violation of the rules for organizing and holding an assembly or demonstration (amended Article 174^1 (3), (4), (6) and (9)).

174 See e.g., Failure to pay the fine for the failure to appear before the military conscription commission with the intention of evading military service or for the failure to appear when called for military reserve service with the intention of evading military reserve service, as a stand alone penalty (Article 1971 and Article 1973); Leaving the scene of a road accident or not complying with a police officer's/traffic controller's demand to stop the vehicle, when this resulted in the creation of an accident situation or interruption of traffic (Article 123(4) as an alternative to a fine of GEL 500), Repeated operation of a vehicle without a driving license during one year (Article 121), as an alternative to a fine of GEL 1,500; for the repeated misuse of the single emergency (rescue) service call number '112' during one year (Article 17415), as an alternative to a fine of GEL 1,500. For the "Illegal manufacturing, purchase, storage, transportation, transfer and/or use of a small quantity of narcotic drugs" (Article 45), the provision specifies that administrative detention of up to 15 days should be applied *only in exceptional cases*, if the application of the fine of GEL 500 is considered insufficient after taking into account the circumstances of the case and the person of the offender; similarly, for the "Performing or servicing foreign exchange transactions without a licence" or "Unreasonable refusal by the employee of a foreign exchange institution to exchange foreign currency into national currency" (Article 178 (1) and (2) respectively), the provision specifies that the administrative detention of up to 15 days could be applied but only *"if the application of the fine seems insufficient after taking into account the circumstances of the case and the person of the offender*".

175 See *Guidelines on Freedom of Peaceful Assembly*, para. 222 and references therein.

constitute an indirect violation of the freedom of peaceful assembly.[176] Penalties for minor offences that do not threaten to cause or result in significant harm to public order or to the rights and freedoms of others should accordingly be low and the same as minor offences unrelated to assemblies. In cases involving minor administrative violations, it may be inappropriate to impose any sanction or penalty at all on assembly participants and organizers.[177]

90. Furthermore, "*[t]he enforcement of notification requirements must not become an end in itself.*"[178] This implies that notification requirements must not be enforced unless enforcement is itself strictly necessary and proportionate to achieve one or more of the legitimate aims for which notification requirements may be introduced. An assembly organizer should not therefore face penalties (let alone criminal prosecution) merely because a technical breach of the notification requirement has been identified. Indeed, the threshold for justifying the imposition of any penalty for non-notification is especially high in circumstances where the authorities have in any case been able to respond in ways that achieve a proportionate balance between competing interests. As emphasized by the UN HRC, "*[f]ailure to notify the authorities must not in itself be used as a basis for arresting the participants or organizers, or for imposing undue sanctions.*"[179]

91. Any penalty must not be excessive. A disproportionately large fine or the imposition of administrative detention raises particular concerns. The UN HRC has emphasized that administrative detention, where criminal prosecution is not contemplated, presents severe risks of arbitrary deprivation of liberty.[180] The ECtHR has also made clear that it will examine with particular scrutiny all cases where sanctions imposed by national authorities for non-violent conduct involve a prison sentence.[181] Such types of penalties raise due-process concerns, and may have a chilling effect more broadly on the exercise of the right to freedom of peaceful assembly.[182] A disproportionate penalty can also be in itself sufficient to constitute a violation of the right to freedom of peaceful assembly.

92. The arrest and/or detention of participants during an assembly (for committing administrative, criminal or other offences) should meet a high threshold of probable cause in each individual case and particularly in cases involving mere administrative offences.[183] Even short periods of detention will directly affect participants' right to assemble, their liberty of movement (Article 12 of the ICCPR and Article 2 of Protocol 4, ECHR), and may amount to a deprivation of liberty under Article 9 of the ICCPR and Article 5 of the ECHR (the right to liberty and security of person).[184] Detention should thus be used only if there is a pressing need to prevent the commission of serious criminal offences and where an arrest is absolutely necessary (e.g., due to violent behaviour).[185] States should ensure that protesters are not detained simply for expressing disagreement

176 See e.g., ECtHR, *Gün and Others v. Turkey*, no. 8029/07, 18 June 2013, paras. 82-84; see also UN HRC, General comment No. 37 (2020) on the right of peaceful assembly (Article 21), para. 67.
177 See ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015, para. 149: "*At the same time, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion*", citing ECtHR, *Ezelin v. France*, no. 11800/85, 26 April 1991, para. 53. The Court has held that this is true also when the demonstration results in damage or other disorder (see *Taranenko v. Russia*, no. 19554/05, 15 May 2014, para. 88).
178 See UN HRC, *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 70.
179 *Ibid. General Comment No. 37 (2020) on the right of peaceful assembly (Article 21),* para. 71.
180 See UN HRC, *General Comment No. 35 (2014) on liberty and security of person*, CCPR/C/GC/35, 16 December 2014, para. 15.
181 See ECtHR, *Peradze and Others v. Georgia*, no. 5631/16, 15 December 2022, para. 35.
182 Joint Report of UN Special Rapporteurs (2016), A/HRC/31/66, para.48.
183 See *Guidelines on Freedom of Peaceful Assembly*, para. 220 and references therein.
184 See further, UN HRC, *General Comment No. 35 (2014) on liberty and security of person*, CCPR/C/GC/35, 16 December 2014; *Brega and Others v. Moldova*, Application No 61485, 24 January 2012, paras. 37-44.
185 See *Guidelines on Freedom of Peaceful Assembly*, para. 220 and references therein.

with police actions during an assembly.[186] The UN HRC has stated that *"[a]rrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including [in cases involving] freedom of assembly*."[187]

93. In light of the foregoing, it is recommended **to remove the imposition of administrative detention introduced by the Amendments as a sanction in case of violation of the Law on Assemblies and Demonstrations.**[188] In particular, the possibility to impose up to 60 days of administrative detention introduced by the Amendments as a penalty for petty hooliganism, violation of the rules for organizing and holding an assembly or demonstration, or disobedience to the lawful order or demand of a law enforcement officer, when such actions are peaceful and non-violent, would constitute disproportionate interference in individuals' right to freedom of peaceful assembly, as well as right to liberty.

94. In addition, the Amendments to the CAO have significantly increased administrative fines, in some cases by a factor of ten, alongside the substantial increase in the length of administrative detention. "Organizers" are particularly affected, facing fines two to three times higher than those imposed on assembly participants. In particular, the newly amended version of Article 174^1 of the Code of Administrative Offences imposes significantly higher fines on both participants and organizers of peaceful assemblies for violating a very broad range of administrative offences under Articles 5, 8, 9, 11 or 11^1 of the Law on Assemblies and Demonstrations. The blocking of the entrance of a court, the holding of an assembly in a court or at the residence of a judge is now punishable by a fine of GEL 5,000 (approximately € 1,700) or a detention of up to 60 days (Article 174^1 (4) of the Code of Administrative Offences), as opposed to a detention of up to 15 days before. The sanctions provided in Article 174^1 (5) of the Code for violations of Article 9, Article 11 (except for subparagraphs (a^1), (a^2) and (g) of Article 11 (2) and Article 11^1 of the Law range from confiscation of property intended to be used for the commission of an administrative offence plus a fine up to GEL 5,000 (approximately € 1,700, as opposed to GEL 500 (€ 170) in the previous law) or even GEL 10,000 (€ 3,400) in case of repeated commission of the offence, and GEL 20,000 for the organizer(s), or up to 60 days of administrative detention.

95. Compared to the average monthly salary[189] of € 707, such heavy fines are likely to have a chilling effect on those seeking to exercise their right to freedom of peaceful assembly. Moreover, they appear comparatively much higher than those contemplated in the CAO for minor offences unrelated to assemblies. **Therefore, it is recommended that the amount of the fines imposed for administrative offences under Article 174^1 of the CAO, be reviewed and substantially reduced to ensure compliance with the principle of proportionality, especially with respect to minor violations.**[190]

96. Amended Article of 209 (2^1) of the CAO provides a list of administrative offences, which shall be considered directly by an authorized person of the MIA and for which an administrative penalty may be imposed on the spot if the relevant administrative offence does not require an administrative inquiry. This includes the offences provided for in

186 *Ibid. Guidelines on Freedom of Peaceful Assembly*, para. 220 and references therein.
187 UN HRC, *General Comment No. 35 (2014) on liberty and security of person*, CCPR/C/GC/35, 16 December 2014, para. 17.
188 Venice Commission, *Urgent Opinion on amendments to the Code of administrative offences and the Law on assemblies and demonstrations of Georgia*, CDL-PI(2025)004-e, 3 March 2025, para. 47.
189 According to the National Statistics Office of Georgia, during quarter III of 2024, the average monthly salary amounted to GEL 2056.7 (approx. € 707).
190 Venice Commission, *Urgent Opinion on amendments to the Code of administrative offences and the Law on assemblies and demonstrations of Georgia*, CDL-PI(2025)004-e, 3 March 2025, para. 56.

parts 1, 2, 5 and 7 of Article 174[1] of the CAO[191] related to the rules for organizing or holding assemblies or demonstrations and thus are addressed specifically in this Urgent Opinion.

97. In this respect, it is noted that Article 32 (1) of the CAO specifies that *"[a]dministrative detention shall be imposed on a person by a court*". At the same time, amended Article 209 (1) implies that administrative detention provided under Article 174[1] (5) and (7) could be decided directly by internal affairs bodies of Georgia or even by authorized representatives of the MIA (Article 209 (2[1])) in case no administrative inquiry is required. This is highly problematic. First, if administrative detention is not decided by a court but by executive authorities, this runs the risk of leading to mass arrests, which are frequently considered to be arbitrary under international human rights law and contrary to the presumption of innocence.[192] In any case, prompt judicial supervision of the lawfulness of the administrative detention, in accordance with Article 9 (4) of the ICCPR and Article 5 (4) of the ECHR should be ensured. In this respect, where a person is detained under the second limb of Article 5 (1) (c) of the ECHR outside the context of criminal proceedings, the period needed between a person's arrest for preventive purposes and the person's prompt appearance before a judge should be shorter than in the case of pre-trial detention in criminal proceedings, and should be a matter of hours rather than days.[193] Apart from that and bearing in mind that in some cases, the CAO also provides for disproportionately high amount of the admirative fines, which may reach up to GEL 15,000 (approximately € 5,000), it would be appropriate for courts, rather than MIA officials, to consider and impose the penalties. In light of the foregoing, **Article 209 should be revised to ensure that any administrative detention may only be decided by a court of law, as also provided in Article 32 (1) of the CAO. High level fines should similarly be decided by a court of law rather than by MIA officials or law enforcement officers.**

RECOMMENDATION F.

1. To remove the imposition of administrative detention introduced by the Amendments as a sanction in case of violation of the Law on Assemblies and Demonstrations.
2. To review and substantially reduce the amount of the fines imposed for administrative offences under Article 174[1] of the CAO for violations of the Law on Assemblies and Demonstrations, especially with respect to minor violations, to ensure they are proportionate to the harm they may cause.
3. To revise Article 209 of the CAO to ensure that any administrative detention and high level administrative fines may only be decided by a court of law.

191 i.e., violation of the rules for organizing and holding an assembly or demonstration, as provided for in Articles 5 and 8 of the Law subject to a fine of GEL 2,000 (Article 1741 (1)), or a fine of GEL 5,000 if committed by an "organizer" (Article 1741 (2)); violation of Articles 9 (prohibition to hold assemblies in certain location), 11 (except for subparagraphs "a1", "a2" and "g" of Article 11 (2) – listing prohibited behaviours for assembly participants) and 111 of the Law (on the blocking of roadways) subject to a fine of GEL 5,000 (GEL 20,000 for organizers) or administrative detention for a term of up to 15 days (20 days for organizers) and confiscation of items used for the commission of the offense (Article 1741 (5)), and violation of Article 11 (2) "a1" and "a2" of the Law (Article 1741 (7)) subject to a fie of GEL 2,000 and administrative detention for a term of up to 7 days and confiscation of items used for the commission of the offense.

192 See *Guidelines on Freedom of Peaceful Assembly*, para. 218 and references therein.

193 See ECtHR, *S., v. and A. v. Denmark* [GC], nos. 35553/12, 36678/12 and 36711/12, 22 October 2018, paras. 133-134.

4.2. Insults Against State Officials

98. The Amendments introduce new offences of "verbal abuse, swearing, persistent insults and/or other offensive actions" against certain law enforcement officials (amended Article 173 (2)) as well as certain Georgian state-political official (newly introduced Article 173[16]). Such new offences are punishable by a fine of GEL 2,000 to GEL 5,000 or up to 60 days of detention (amended Article 173 (2)) or GEL 1,500 to GEL 4,000 or up to 45 days of detention. GEL 1,500 to GEL 4,000 or administrative detention for a term of up to 45 days (Article 173[16]) respectively.

99. The requirement of legality of restrictions to freedom of expression (see Sub-Section 1.2 above) means that the law concerned must be precise, certain and foreseeable, and must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted and applied.[194] While acknowledging that it may not be possible to attain absolute precision (see para. 22 *supra*), any offences - even administrative ones - and the relevant penalties must be clearly and precisely defined by law, meaning that an individual, either by himself/herself or with the assistance of a legal counsel, should know from the wording of the relevant provision which acts and omissions will make him/her criminally liable and what penalty he or she will face as a consequence.[195]

100. Any vaguely or broadly framed restrictive provisions open the possibility for misinterpretation and arbitrary application by public authorities, subsequently having a chilling effect on the exercise of fundamental rights. A chilling effect may arise, in the words of the ECtHR, "*where a person engages in 'self-censorship', due to a fear of disproportionate sanctions or a fear of prosecution under overbroad laws. This chilling effect works to the detriment of society as a whole.*"[196]

101. **In this regard, the mere reference to '*verbal abuse, swearing, persistent insults, and/or other offensive actions*' without providing any description or definition of the meaning, nor indicating the constitutive elements of the offence appears excessively broad and subjective and could be applied and interpreted in an arbitrary manner. Therefore, in their current form, Articles 173[16] and 173 (2) of the Code of Administrative Offence are not compliant with the requirement of legality and foreseeability of restrictions to the right to freedom of expression.**

102. The ECtHR has acknowledged that insulting expressions can cause "*emotional disturbance*" and affect a person's "*psychological well-being, dignity and moral integrity*" and, therefore, can interfere with the right to respect for private life protected under Article 8 of the ECHR.[197] However, for insults to engage such a right, the Court expects the expression at stake to meet a certain threshold of severity.[198] In deciding on such cases, a balance must be struck between the competing rights to freedom of expression on the one hand, and the rights to honour and reputation on the other.

194 See e.g., Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, para. 58. In addition, see ECtHR, *The Sunday Times v. the United Kingdom* (No. 1), no. 6538/74, where the Court ruled that "*the law must be formulated with sufficient precision to enable the citizen to regulate his conduct*," by being able to foresee what is reasonable and what type of consequences an action may cause."

195 See e.g., ECtHR, *Rohlena v. the Czech Republic* [GC], no. 59552, 27 January 2015, paras. 78-79. See also UN HRC, *General Comment No. 29* on States of Emergency (Article 4 of the ICCPR), CCPR/C/21/Rev.1/Add. 11 (2001), para. 7.

196 See the Council of Europe, Study on the Case on Freedom of Expression and Defamation, p. 24.

197 See ECtHR, *F.O. v. Croatia*, no. 29555/13, 22 April 2021, para. 60.

198 See ECtHR, *Denisov v. Ukraine*, no. 76639/11, 25 September 2018, para. 112, also quoting consolidated case-law such as *A. v. Norway*, no. 28070/06, 9 April 2009, paras. 63-64; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, 21 September 2010, paras. 40 and 44; *Delfi AS v. Estonia*, no. 64569/09, 2015, para. 136; *Bédat v. Switzerland*, no. 56925/08, para. 72. As a matter of example, Section 1 of the United Kingdom's Defamation Act 2013 reads as follows: 'A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.'

103. In addition, it must be emphasized that someone who is active in the public domain must have a higher tolerance of criticism and the limits of acceptable criticism are wider with regard to politicians and state officials acting in their public capacity.[199] In this respect, the ECtHR has specifically recognized that "*being a part of the security forces of the State, the police should display a particularly high degree of tolerance to offensive speech, unless such inflammatory speech is likely to provoke imminent unlawful actions in respect of their personnel and to expose them to a real risk of physical violence*", noting that *"[i]t has only been in a very sensitive context of tension, armed conflict and the fight against terrorism or deadly prison riots that the Court has found that the relevant statements were likely to encourage violence capable of putting members of security forces at risk and thus accepted that the interference with such statements was justified*".[200] As also noted by the UN HRC, the mere fact that the expression is considered to be insulting to a public figure is not sufficient to justify restriction or penalties.[201]

104. In light of the foregoing, **the offences provided in Articles 173[16] and 173 (2) of the Code of Administrative Offence should be reconsidered due to their potential chilling effect on freedom of expression, or should at a minimum, be amended to provide a more precise definition of the constitutive elements of the offences and to ensure that it only applies when the expression meets a certain threshold of severity.**

RECOMMENDATION G.

To reconsider the new offences provided in Articles 173[16] and 173 (2) of the Code of Administrative Offence or, at a minimum, provide a more precise definition of the constitutive elements of the offences and specify that it only applies when the expression meets a certain threshold of severity.

5. Amendments to the Criminal Code

105. The amendments to the Criminal Code, which were submitted for review, introduce stricter penalties for incitement to violence,[202] threats or violence against public officials, [203] and attacks on police officers,[204] among others. More specifically, a new Note was introduced under Article 222 of the Criminal Code, which defines criminal penalties for "seizure or blockage of a broadcasting or communications organization or of a facility of strategic or special importance", specifying that the list of such strategic facilities is decided by government ordinance. Further provisions establish criminal liability for threats or violence against public officials, including high-ranking officials and their families (new Article 353²). Threats of violence against them are punishable by a fine or

199 See International Mandate-Holders on Freedom of Expression, *2023 Joint Declaration on Media Freedom and Democracy*, which specifically provides that: "*Politicians and public officials should demonstrate high levels of tolerance towards critical journalistic reporting bearing in mind that critical scrutiny of those in positions of power is a legitimate function of the media in democracy."* See also e.g., ECtHR, *Karman v. Russia*, no. 29372/02, 14 December 2006, para. 36; and ECtHR, *Jerusalem v. Austria*, no. 26958/95, 27 February 2001.

200 See ECtHR, *Savva Terentyev v. Russia*, no. 10692/09, 28 August 2018, para. 77.

201 See the UN HRC, *General comment No. 34* to Article 19 of the ICCPR, CCPR/C/GC/34, para. 38.

202 Article 239¹ of the Criminal Code as amended in February 2025 now envisages, in addition to a fine or community service ranging from 200 to 400 hours previously, the possibility of imprisonment for up to three years.

203 Article 353 of the Criminal Code as amended in February 2025 increases the contemplated penalties for "resistance" (now subject to a fine, house arrest for up to two years, or imprisonment for two to six years – compared to a fine or house arrest for a term of six months to two years, or by imprisonment for a term of two to five years previously; and if committed in a group or repeatedly, five to eight years imprisonment (instead of four to seven years previously)). Repeated offenses under this article or Article 353¹ will now be considered as constituting an aggravating circumstance.

204 Article 353¹ of the Criminal Code as amended in February 2025 introduces stricter penalties for attacks on police officers, with imprisonment ranging from five to eight years, and if the attack results in harm to an officer's health, the sentence increases to eight to twelve years.

up to three years in prison, while aggravated threats, including those committed in a group, repeatedly, in the presence of a minor, or using explosives or other dangerous means, carry a prison sentence of two to six years. Physical attacks result in imprisonment of four to seven years, and if committed under aggravating circumstances, including the use of explosives or in the presence of a minor, the penalty increases to five to twelve years. In essence, these amendments significantly increase legal consequences for offenses against law enforcement and public officials.

106. Overly broad or ill-defined definitions of criminal offences may facilitate arbitrary application of criminal law and procedures, which, along with disproportionate sanctions, may have undue consequences for the enjoyment of rights, including the rights to freedom of expression and freedom of peaceful assembly and of association. In this respect, the amendments to Article 222 of the Criminal Code allowing the list of strategic facilities to be changed or expanded by government ordinances, would be at odds with the principles of legal certainty, foreseeability and specificity of criminal law.

107. While incitement to violence, attacks on police officers, and threats or violence against public officials is entirely unacceptable and may warrant substantial penalties, the amendments raise some concerns. First, the necessity of introducing a new offence under new Article 353^2 of the Criminal Code (threats or violence against public officials) may be questionable, given that Article 151 of the Criminal Code already criminalizes threats, providing a narrower understanding of the constitutive elements of the criminal offence. The fact that these criminal provisions somewhat overlap or potentially duplicate one another, may lead to legal uncertainty as it may be difficult for an individual to clearly distinguish between conduct that may be subject to Article 151 of the Criminal Code or to the higher penalties contemplated under new Article 353^2 of the Criminal Code. Moreover, international standards require that criminal sanctions be proportionate to the offence committed. The amendments increase penalties for the aforementioned offences without redefining their *actus reus* and *mens rea*. It remains unclear why the new sanctions are considered more proportionate to the offences than those previously provided in the Criminal Code. Perhaps most importantly, the amendments treat all aggravating factors equally, regardless of their severity or consequences. Under the amendments, committing an offence in the presence of a minor or in group is given the same weight as committing the offence using explosives. **Such disproportionate sanctions and aggravating factors can have a chilling effect on the exercise of rights, including the right to freedom of expression and freedom of peaceful assembly.**

108. In light of the foregoing, **increasing the severity of punishment appears to be disproportionate and may in addition have a chilling effect on the exercise of the right to freedom peaceful assembly, and should be reconsidered entirely**.

6. Recommendations Related to the Process of Preparing and Adopting the Amendments

109. The Draft Amendments were submitted by a group of Members of Parliament on 3 February 2024 and were adopted pursuant to an accelerated procedure, with the three readings leading to the adoption of the Amendments on 6 February and promulgation by the President of the republic on the same day. All amendments enter into force upon publication.

110. Reasons given in the Explanatory Notes for the adoption of these amendments vary. For example, they mention the objective of *"creat[ing] a legislative framework that provides*

relevant state authorities with better opportunities to ensure the safe conduct of assemblies and the more effective realization of the right to freedom of expression by maintaining a fair balance between various constitutional rights." At the same time, the Explanatory Note attached to the amendments to the Criminal Code note that *"[c]hallenges within society require adequate responses from the state. [...]. In this regard, the Criminal Code considers crimes that, by their nature, pose a significant threat to society and require a strict approach"*. However, in light of what is stated under the justification, some questions may be raised as to the genuine necessity to legislate in this case. Indeed, the Amendments are not based on any in-depth and comprehensive impact assessment, while the process of the adoption of the Amendments was marked by lack of meaningful consultations with those potentially affected, civil society and the wider public. The reasons adduced by national authorities to justify the Amendments are generally not relevant and sufficient, failing to demonstrate why the existing legal framework is insufficient and/or ineffective.

111. Moreover, numerous, frequent and piecemeal amendments to legislation as is the case here may raise doubts as to whether there is any thorough and coherent policy underpinning the reform process, in addition to creating legal uncertainty. As underlined in the *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (2024), overly frequent amendments to laws, often due to lack of planning and prior research into policy topics, undermine the stability of the legislative framework and legal certainty in general, and should be avoided.[205]

112. Article 117 of the Rules of Procedure of the Parliament of Georgia provides for such an accelerated procedure.[206] Pursuant to Article 117 (3) of the Rules of Procedure, a decision on the use of the accelerated procedure shall be made by the Parliamentary Bureau, on the basis of a written substantiated request of the initiator of the draft law. The provision however does not provide for precisely and narrowly defined circumstances when the use of such a procedure may be invoked.

113. As underlined in *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (2024), accelerated legislative procedure "*should be used rarely and only in exceptional cases of genuine urgency to pass a specific law, as the process entails a lack of legislative planning and less or no time for in-depth consultations on draft laws, nor for adequate parliamentary scrutiny*."[207] The Guidelines further underline that *"[t]he legal framework should define precisely and narrowly the circumstances in which fast-track procedures may be applied and should require proper justification*" and *"[a]ccelerated lawmaking procedures should only be possible if they are based on a formal request submitted in accordance with the relevant legislation*".[208] They should not be applied to introduce important and/or wide-ranging reforms, such as legislation significantly impacting the exercise of human rights and fundamental freedoms.[209] In any case, laws passed by accelerated procedures should be subjected to special oversight and should ideally contain a review clause.[210] It would recommended **to more precisely define in the Rules of Procedure the strictly limited circumstances when fast-track procedures may be used, or should not be used, while ensuring that a special oversight mechanism is in place**.

205 ODIHR, Guidelines on Democratic Lawmaking for Better Laws (16 January 2024), Principle 9.
206 See Rules of Procedure of the Parliament of Georgia | სსიპ "საქართველოს საკანონმდებლო მაცნე" (matsne.gov.ge).
207 See ODIHR, Guidelines on Democratic Lawmaking for Better Laws (16 January 2024), Principle 11.
208 *Ibid.* Principle 11.
209 *Ibid.* Principle 11.
210 *Ibid.* Principle 11.

114. More generally, OSCE participating States have committed to ensure that legislation will be *"adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability"* (1990 Copenhagen Document, para. 5.8).[211] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives"* (1991 Moscow Document, para. 18.1).[212] The Venice Commission's Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.[213] The Guidelines on Freedom of Peaceful Assembly underline the importance of ensuring a consultative approach to the drafting of legislation and related regulations pertaining to the right to freedom of peaceful assembly, to ensure that the needs and perspectives of all persons or groups are taken into consideration, including those responsible for or affected by its implementation, as well as other interested individuals and groups (including local human rights organizations).[214] Such consultations should be an integral part of the legislative drafting process, and need to be open, transparent, meaningful and inclusive. In particular, sufficient and appropriate outreach activities should ensure the involvement of interested parties from various groups (particularly those facing particular challenges in the exercise of their rights to freedom of peaceful assembly) representing different and opposing views (including those that may be critical of the proposals made). The authorities responsible for organizing consultations should respond to proposals made by stakeholders, in particular where these proposals are not incorporated into the relevant draft law or policy (in this case, the authorities should explain why).[215]

115. **The accelerated legislative procedure should not be used to amend the legislation impacting the fundamental rights, and should it be nevertheless used, special oversight should be in place, including a review clause.**

116. **Such important amendments should have been subjected to inclusive, extensive and effective consultations, including with civil society, and ensuring the involvement of interested parties from various, diverse groups representing different and opposing views, offering equal opportunities for women and men, for persons with disabilities, and persons from under-represented or marginalized groups to participate. According to the principles stated above, such consultations should have taken place in a timely manner, at all stages of the law-making process, including before Parliament. More generally, as an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Laws and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the revised Law, once adopted**.[216]

[END OF TEXT]

211 See 1990 OSCE Copenhagen Document, para. 5.8.
212 See 1991 OSCE Moscow Document, para. 18.1,
213 See Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, Part II.A.5.
214 See Guidelines on Freedom of Peaceful Assembly, para. 99.
215 *Ibid.* para.99
216 See e.g., OECD, International Practices on Ex Post Evaluation (2010).