

**PROTEST IN TRANSITION:
THE LEGAL REGULATION OF FREEDOM OF ASSEMBLY
IN GEORGIA AND ARMENIA**

by Nino Tsukhishvili

LL.M.SHORT THESIS
COURSE: Freedom of Assembly
PROFESSOR: Michael James Hamilton
Central European University
1051 Budapest, Nador utca 9
Hungary

© Central European University March 29, 2012

ACKNOWLEDGEMENT

I would like to thank to my supervisor, Michael Hamilton, for his guidance, encouragement and support for the whole period of the thesis writing process. It was a great pleasure for me to develop this research under his supervision and share his experience in this sphere.

I would like to show my regards to all of those who support me, especially, to the writing instructor, Robin Bellers.

Abstract

Regulation of the right to assembly presents a crucial issue for states in a period of transition because they should challenge the negative influence of transitional features on the protection of the right to assembly and provide sufficient legislative framework in the light of nondemocratic legal inheritance. This thesis considers the role of the freedom of assembly in transitional states and evaluates the influence of the transitional features on the effective enjoyment of the right to protest from the perspective of Georgia and Armenia. Illustrated by analysis of legislative problems in Georgian and Armenian laws concerning freedom of assembly, this thesis suggests a discussion about the protection of specific forms of assemblies, including both spontaneous and simultaneous demonstrations and evaluates prior restrictions on the right to assembly for the purpose to regulate public space. Finally, the thesis provides suggestions to improve protection of the right to assembly in a transitional state such as Georgia or Armenia.

Contents

Contents.....	iv
INTRODUCTION.....	5
Chapter 1. Characteristics of transition and their influence on the enjoyment of freedom of assembly	9
1.1 The role of the freedom of assembly in the states of a democratic transition	10
1.1.1 General overview	10
1.1.2 The role of freedom of assembly in the light of democratic transition of Georgia and Armenia.....	14
1.2 Features of a democratic transition and their reflection on the enjoyment of the right to assembly	17
1.2.1 Fragile legislative framework	17
1.2.2 Declaration of a state of emergency and derogations from the right to assembly in a period o transition	23
1. 2. 3 Protest policing strategy in a period of transition	27
Chapter 2. Legislative regulation of the freedom of assembly in Georgia and Armenia.....	35
2.1 Regulation of spontaneous and simultaneous assemblies in Georgia and Armenia.....	38
2.1.1 Spontaneous assemblies.....	38
2.1.2 Simultaneous assemblies	41
2.2 Prior restrictions on the right to assembly: regulation of public space for demonstrations in Georgia and Armenia	44
2.2.1 General overview	44
2.2.2 Analysis of prior restrictions in Georgia and Armenia.....	46
CONCLUSION	53
BIBLIOGRAPHY	56

INTRODUCTION

The following thesis will discuss the challenges of freedom of assembly in transitional democracies and will suggest sufficient solutions for legal regulation problems of the right to protest in transitional states from the perspective of Georgian, Armenian and ECHR's jurisdictions.

The problem deals with the legality and compliance of restrictions imposed on the right to protest in a period of transition with the essence and the spirit of the right to freedom of assembly. The right to assembly has held a special and central place in the functioning of popular democracy¹ and its value is especially increased in a period of transition, because, on the one hand, social movements contribute to the process of transition from authoritarian systems to democracies² and, on the other hand, political protests reflect a lack of democratic values and support the democratization process in the state.³ Nevertheless, in transitional states, the right to assembly is affected not only by generally recognized restrictions,⁴ but also by the transitional values such as the stability of the government institutions, the protection of the life of the nation, the restoration of the rule of law and other principles, which are essentially significant for the existence of new democracies.⁵ The specific characteristics and

¹ David Smilnov, *Free to protest constitutional power and street demonstration: the power of assembled people-the right to assembly and political representation*, ed. Andras Sajo (Utrecht, the Netherlands, Eleven International Publishing, c2009), 87

² Anthony Oberschall, "Social movements and the transition to democracy", *Journal of Democratization* 7:3, (2000), 26

³ Daniel Guerin, Francois Perty and Jean Crete, "Tolerance, protest and democratic transition: survey evidence from 13 post-communist countries", *European Journal of Political Research* 43; (2004) 371-395, 371

⁴ According to article 11(2) of the ECHR: "No restrictions shall be placed on the exercise of these rights other than such as prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others;"

According to article 21 of the CCPR: "No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

⁵ Michael Hamilton, "Freedom of assembly, consequential Harms and the rule of law: liberty-limiting principles in the context of Transition," *Oxford Journal of legal studies*, Vol. 27, No 1 (2007), 77

goals of transition require a different approach for legal regulation of the right to protest compared to states with stable democracies.⁶ This raises a problem of fair balance between the limitations of the right to assembly and the requirements of the transitional values, which may negatively influence on the effective enjoyment of the right in practice. Nowadays, this problem is especially common for Georgia and Armenia, because both states are in a period of democratic transition, their legislations are characterized by the large amount of restrictions imposed on the right to assembly due to the transitional reasons and both states have a problem ensuring a fair balance between the restrictions and the protected right in practice.⁷ These states have been chosen on the basis of their post-communist experience in regulating freedom of assembly and their similar political situations in a period of transition.

In order to demonstrate the influence of the transition process on the exercise of the freedom of assembly, the first chapter will define the role of the freedom of assembly in transitional states and consider the impact of specific transitional characteristics on the exercise of the right. With regard to this point, the first chapter will provide theoretical analysis of the role of right to assembly in the transitional process, also discuss such transitional features as the fragile legislative framework,⁸ declaration of a state of emergency and derogations from the human rights for the protection of new democracies⁹, state policing strategy for controlling

⁶ Ibid, 76

⁷ Venice Commission CDL-AD(2010)009, Opinion no.547/2009, adopted 12-13 March, 2010; para 25, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)009-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.asp)
 Venice Commission CDL-AD(2010)049, Opinion no. 596/2010, adopted 17-18 December 2010, para 32-33, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)049-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)049-e.pdf)

United Nations Special Reporter on the rights to freedom of peaceful assembly and association at the conclusion of his visit to the Republic of Georgia, statement, Tbilisi, 13 February, 2012, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11816&LangID=E>

⁸Yash Ghai, "The rule of law in the transition of societies: the African experience", *Journal of African Law*, Vol.35, No 1/2, (1991), 16

⁹ Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Report on the protection of human rights in emergency situations*; By Holger Haibach, Germany, Group of the European People's Part, Doc # 11858, 9 April, 2009, ph 61

demonstrations in practice¹⁰ and evaluate their influence on the enjoyment of the right. In order to make the discussion more evident, the first chapter will pay attention to the reflection of these theoretical attitudes in the Georgian and Armenian reality and summarize their experience. Furthermore, the first Chapter will find and analyze common problems of Georgia and Armenia as a result of the influence of transitional characteristics on the right to assembly.

The second chapter will discuss legal problems of the freedom of assembly in two dimensions in the light of the Georgian and Armenian jurisdiction: the first concerns to the recognition and protection of specific types of assemblies, especially spontaneous and simultaneous demonstrations and the second relates to prior restrictions imposed on the right to assembly regulating public space for the purpose of the protest. Prior restrictions will be discussed in the light of Nicholas Blomley's argument concerning the pedestrianism which argues how to regulate the public space between the private and public usage and somehow justify the restrictions on demonstrations on some public places.¹¹ In the process of the analyzing legal problems of the right, the Georgian and Armenian jurisdiction will be compared with the standards of the ECHR. The second chapter will highlight the common legal problems of the regulation of the freedom of assembly and evaluate their compliance with the European standards.

The conclusion aims at suggesting solutions for the legal regulation problems of the freedom of assembly in the context of a democratic transition and providing more effective protection of the right to protest in Georgia and Armenia.

¹⁰Donatella D. Porta, *Policing protest, the control of mass demonstrations in western democracies: Police knowledge and protest policing: some reflections on the Italian case*, ed Donatella D. Porta and Herbert Reiter..Volume 6, chapter 10(Minneapolis: University of Minnesota Press,)1998, 228

¹¹ Nockolas Blomley, *Rights of passage, sidewalks and the regulation of public flow*, (Rutledge, Taylor and Francis Group, a Glasshouse book) , 2010

The thesis will be important and useful not only for Georgia and Armenia, but also for other states in the process of a democratic transition to regulate freedom of assembly under the influence of transitional characteristics. Besides this, it will be helpful for those states which have prior restrictions on public demonstrations in their legislations and have to determine a proper balance between individual and public interests. It could be interesting for members of the Council of Europe to find out the main problems and reasons for failure of effective protection of the right to assembly in Georgia and Armenia, as active members of this institution. Furthermore, there is little research made in this particular field relating to these two jurisdictions. There are monitoring reports concerning the regulation of the freedom of assembly in Georgia and Armenia¹², but they present policy reports and do not have a scientific nature. This thesis fills this gap.

¹²The Helsinki Committee of Armenia, *Report on Monitoring of the freedom of peaceful assembly in Armenia*, report, (Armenia, “Asoghic” printing house, 2009);
The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012)

Chapter 1. Characteristics of transition and their influence on the enjoyment of freedom of assembly

Introduction

The purpose of the First Chapter is to discuss the role of the freedom of assembly in a democratic transition and evaluate the influence of specific features of transitional states on the regulation of the right to assembly in the light of the Georgian and Armenian transitional process.

Democratic transition is a very long and dynamic process of transformation from non-democratic governance to democratic values, which at the same time are characterized both by rapid successful reforms and improvements in some spheres and unforeseen failures to establish democratic values in other.¹³ These successful steps and democratic problems interact with each other and create a specific legal, social and political environment, which is only found in a state in transition. The transitional environment requires a different approach to regulate legal relationships between state and individuals compared to states with stable democracies.¹⁴ This specific environment of a democratic transition can be defined as an attempt of the state both to protect civil liberties and achieve transitionnal goals such as stability of the government, the restoration of the rule of law etc. These transitional challenges directly effect the regulation of freedom of assembly, because the right to protest always was a mechanism of democratic changes in the center of the transitional process¹⁵ and enjoyment of this right by civil society sometimes is understood by the government as opposition to the transitional goals of the state.

¹³ Michael Hamilton, "Freedom of assembly, consequential Harms and the rule of law: liberty-limiting principles in the context of Transition," *Oxford Journal of legal studies*, Vol. 27, No 1 (2007), 77

¹⁴ Yash Ghai, "The rule of law in the transition of societies: the African experience", *Journal of African Law*, Vol.35, No 1/2, (1991), 17

¹⁵ Anthony Oberschall, "Social movements and the transition to democracy" , *Journal of Democratization*, 7:3,(2000), 26

Since the collapse of the Soviet Union, the former member states faced the process of a democratic transition,¹⁶ but the democratization process was not very quick and successful in all of these states. At the beginning, semi-autocratic and partial democratic political systems were formed in most Eastern European states, including Georgia and Armenia.¹⁷ Starting in 2000, the process of democratic transition was exercised by way of “colored revolutions” in some post-communist states and social movements achieved nonviolent regime changes in Serbia in 2000, in Georgia in 2003 (the Rose Revolution), in Ukraine in 2004-2005 (the Orange revolution) and in Kyrgyzstan in 2005 (the Tulip Revolution).¹⁸ There was also an attempt in Armenia in 2008 to change the system in time for presidential election, but the Armenian regime survived.¹⁹ In these countries, the political situation in the state and process of democratic transition is significantly reflected in the regulation of the freedom of assembly and enjoyment of this right in practice.

1.1 The role of the freedom of assembly in the states of a democratic transition

1.1.1 General overview

The role of the freedom of assembly is found in the active participation in the process of a democratic transition of the state. Democratization is a continual process and requires permanent participations and improvements by the actors of the civil society,²⁰ which is effectively exercised by expressing opinions and protest about the democratic problems in assemblies and demonstrations. The ECHR underlined that democracy is “the only political

¹⁶ Michael McFaul, “Transitions from post-communism,” *Journal of Democracy*, Volume 16, Number 3, (July, 2005), 5

¹⁷ Ibid, pg 9

¹⁸ Nicklaus Laverty, “the problem of lasting change: Civil society and colored revolutions in Georgia and Ukraine”, *Heldref Publications*, (2008), 143

¹⁹ Steve Hess, “Protests, parties and presidential succession, Competing theories of color Revolutions in Armenia and Kyrgyzstan,” *Problems of Post-Communism*, Vol. 57, No 1, (2010), 30

²⁰ Nicklaus Laverty, “the problem of lasting change: Civil society and colored revolutions in Georgia and Ukraine”, *Heldref Publications*, (2008), 144

model contemplated by the ECHR and the only one compatible with it”²¹ and recognized the right of assembly as a foundation of a democratic society with the right to freedom of expression.²² The right to protest is very important to democracy, because, on the one hand, it supports the transition from authoritarian or semi-authoritarian system to democratic regime and plays a significant role in the democratization process. Furthermore, the effective enjoyment of the right to assembly is crucial for the establishment of such democratic principles as plurality of views, citizen participation, political tolerance, equality, accountability and transparency, responsibility and control of the abuse of the power by the state.

Firstly, I will discuss the role of the right to assembly in changing authoritarian political systems and moving regimes to democratic values. It is historically confirmed that social movement and democracy has a close interdependence and cooperation with each other and all types of social movements established more democracy in each state. Oberschall applied the *theory of collective action* with social movements in the process of a democratic transition and argued how the popular movements contributed to the transitional process after the overthrow of communist regimes in Eastern Europe.²³ He explains that in accordance with this theory, the social movements against authoritarian regimes based on macro (containing dissatisfaction, ideology, capacity to act collectively and political opportunity) and micro levels (containing participation in opposition activities such as demonstrations; protests and etc) are necessary conditions to react to the authoritarian regimes.²⁴ The existence of these

²¹ *Christian Democratic People's Party v Moldova*, App no 28793/02, ECHR Judgment 14 February, 2006, 62-63;

United Communist Party of Turkey and others v Turkey, App no 133/1996/752/951, ECHR Judgment 30 January, 1998, 45

²² *Stankov and the United Macedonian Organization (ILINDEN) v Bulgaria*, App no 29221/95 and 29225/95, ECHR Judgment 2 October, 2001, ph 85-86

²³ Anthony Oberschall, “Social movements and the transition to democracy”, *Democratization* 7:3, (2000)

26. There are described different examples of social movements concerning abolishing slavery, establishing free election and gender equality, also other civil rights movements; pg 25-45

²⁴ *Ibid* pg 27-28

conditions supports the social activists to make changes in the regime for the benefit of democracy. The role of the right to assembly in this process is demonstrated on the micro level in active actions against authoritarian regimes, such as above mentioned demonstrations and numerous forms of protests.

The contribution of social movements to change autocratic or semi-autocratic regimes is clearly confirmed in the process of the formation of democratic regimes after the collapse of the Soviet Union.²⁵ Nevertheless, the ways and means of social movements were different, such as: electoral victories in the three Baltic States, Hungary, Poland, Slovenia, East Germany and Czechoslovakia; non-violent revolutions in Serbia, Georgia, Ukraine and Kyrgyzstan, but the results were the same: social movements managed to change the system and it was achieved by the active enjoyment of the right to assembly by the population.²⁶

Secondly, the right to assembly plays an important role in the democratization process of a transitional state. Social movements and political protests do not stop after transitional regimes are formed in the state and they continue active exercising in parallel to democratization.²⁷ The democratization process means to establish fair and free elections, provide effective protection of human rights and rule of law, guarantee independent and impartial judiciary, ensure accountability and transparency of political and governmental institutions and the absence of state control over civil society.²⁸ During the transitional period, people participate in demonstrations to protest the lack of democratic values or “slow pace of democratization” in the country²⁹ and require changes in the government policy for improvements. The contribution of exercising the right to assembly in the democratization

²⁵ Michael McFaul, “Transitions from post-communism,” *Journal of Democracy*, Volume 16, Number 3, July 2005, 5

²⁶ Ibid, pg 10

²⁷ Daniel Guerin, Francois Perty and Jean Crete, “Tolerance, protest and democratic transition: survey evidence from 13 post-communist countries”, *European Journal of Political Research* 43; (2004) 371

²⁸ Anthony Oberschall, “ Social movements and the transition to democracy” , *Democratization* 7:3, (2000) 26

²⁹ Daniel Guerin, Francois Perty and Jean Crete, “Tolerance, protest and democratic transition: survey evidence from 13 post-communist countries”, *European Journal of Political Research* 43; (2004), 372

process depends on the level of the tolerance from the state to receive critical public opinions about the state policy and political decisions made by government institutions.

The tolerance is reflected in legislative regulation of the right to assembly and governments' action during the enjoyment of the right in practice. To evaluate the degree of the contribution of the right to protest in democratization, the public sphere concept should apply to the level of the tolerance taken by the state.³⁰ Habermas defined a public sphere as existed area between the government and civil society, where individuals can participate in a critical debate about political issues and establish public opinion for influence on state policy.³¹ The larger the public sphere exists, the higher the level of tolerance is achieved in the state, which positively affects the contribution of the popular participation in the democratization process.

The question of tolerance is especially important in transitional countries. Generally, the political regimes founded on protest and social movement should be more tolerant to ongoing public demonstrations and social activities, because they know the value of the citizen's participation in the democratization process. In practice, political intolerance is much more characteristic in transitional countries than stable democracies, which was confirmed by the research of the relationship between political tolerance and political protest in thirteen East and Central European Countries, including Georgia and Armenia.³² As a result, the right to assembly can significantly contribute to the democratization process by active citizen participation in the political debate, but the level of the contribution of the right depends on the tolerance expressed by the government.

³⁰ Nicklaus Laverty, "the problem of lasting change: Civil society and colored revolutions in Georgia and Ukraine", *Heldref Publications*, (2008), 145

³¹ Jurgen Habermas, "Structural Transformation of the Public Sphere: An inquiry into a category of Bourgeois Society," *Cambridge MA:MIT Press*, (1989)

³² Daniel Guerin, Francois Perty and Jean Crete, "Tolerance, protest and democratic transition: survey evidence from 13 post-communist countries", *European Journal of Political Research* 43; (2004), 376 These thirteen countries are: Armenia, Belarus, Croatia, Estonia, Georgia, Latvia, Lithuania, Moldova, Poland, Russia, Slovenia, the Ukraine and Serbia.

1.1.2 The role of freedom of assembly in the light of democratic transition of Georgia and Armenia

Historically, the role of social movements was very important for a transitional period in Georgia and Armenia. The political life of these countries is characterized by numerous protests to change the political systems and establish democratic values in the states. Sometimes, these social movements were successful in achieving their purposes, but in most cases, the right to assembly was limited by transitional reasons such as protection of the constitutional order and preservation of the state government.

Georgia and Armenia have a huge experience concerning the enjoyment of the right to assembly as a mechanism to change a political regime and to support a democratization process. Comparison of their experience will show us the level of the tolerance and protection of the right in these states. In Georgia, the right to assembly was frequently used by civil society to participate in changing a political regime. The first wave of changing political regime was exercised in September 1991 in Georgia, when mass demonstrations started against the first president, Zviad Gamsakhurdia's government. As a result of a struggle between the government forces and protestors, Gamsakhurdia's government left the office on January 6, 1992 and the former leader of the Georgian Soviet Republic, Eduard Shevardnadze governed Parliament, then he was elected as a president of the country two times in 1995 and again in 2000.³³ The second wave of demonstrations was started in 2003, which achieved a change in the semi-authoritarian political regime of Eduard Shevardnadze by the way of non-violent Rose Revolution.³⁴ The opposition groups tried to do the same against Mikheil Saakashvili's government, but mass demonstrations were dismissed by the state by the use of

³³ The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012), 8

³⁴ Michael McFaul, "Transitions from post-communism," *Journal of Democracy*, Volume 16, Number 3, (July 2005) 7

force on 7th of November, 2007.³⁵ There were other attempts to change the political regime, but the demonstrations were dissolved by the use of forces on the 9th of April and 26th of May in 2011.³⁶ The latest interferences in mass demonstrations show that the state policy was to limit or violate the right to assembly, because of its importance and capacity to change the political system for democratization and decrease the level of tolerance for the demonstrations.

In Armenia, the mass demonstration was also used to change a political system. In February, 2008, after the presidential election, opposition groups organized mass demonstrations to require fair results of the election and change the political system. In spite of the well-organized and strong social movements, the government responded with violence and allowed the ruling party to stay in power.³⁷ As a result, the right to freedom of assembly was limited by the transitional reason such as the protection of the state government institutions.

To compare the experience of the both of these states, it is sufficient that political tolerance plays a huge role in the effective contribution of the right to assembly in a transitional process. During the first attempts in political changes, there were different characteristics of political tolerance in Georgia and Armenia, which affected the results of the mass demonstrations in 2003 in Georgia and in 2008 in Armenia. McFaul highlights the specific characteristics of democratic transition and the role of the assembly in Georgia and argues that the Rose Revolution was different from other western transitions in four respects: the ground for changes was a fraudulent national election, the new governors tried to protect the existing democratic constitution and did not change the constitutional rules, the purpose was to hold sovereign authority and the revolution ended without mass violation, which was the

³⁵ The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012), 10

³⁶ Georgian Young Lawyers' Association, *Report 26 May, 2011, Analysis of Human Rights violations during and related to the dispersal of the May 26 Assembly*, Tbilisi, Georgia, (2011)

³⁷ Steve Hess, "Protests, parties and presidential succession, Competing theories of color Revolutions in Armenia and Kyrgyzstan," *Problems of Post-Communism*, Vol. 57, No 1, (2010), 32

result of political tolerance of the government to demonstrators.³⁸ Hess evaluates the reasons of failure of mass demonstrations to change political regime in Armenia in 2008 and concludes that it failed because it faced a strong, unified authoritarian regime with strong security forces and clearly defined successor difference from Georgia.³⁹ Comparing the Georgian experience of mass demonstrations received after the Rose Revolution to the Armenian experience, more similarities are found in state policy to control demonstrations than before. After the Rose Revolution, the Georgian policy to tolerate mass demonstrations becomes lower and generally the huge mass demonstrations are ended with the use of force by the government.⁴⁰ According to Laurence Broers, the Rose Revolution may represent the transition from “democracy without democrats” to “democrats without democracy”.⁴¹

As a result of comparing experience of Georgia and Armenia concerning the tolerance to political protests, nowadays the similar strict state policy and low level of tolerance to the enjoyment to the right to assembly exist in these countries. The state governments are not sufficiently tolerant to a political protest which is confirmed by the state actions during the public demonstrations. The low level of tolerance negatively effects the contribution of the freedom of assembly to the democratization process and on the continuity of this process itself.

³⁸ Michael McFaul, “Transitions from post-communism,” *Journal of Democracy*, Volume 16, Number 3, (July 2005), 6

³⁹ Steve Hess, “Protests, parties and presidential succession, Competing theories of color Revolutions in Armenia and Kyrgyzstan,” *Problems of Post-Communism*, Vol. 57, No 1, (2010), 38

⁴⁰ The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012), 10-11

⁴¹ Laurence Broers, “After the Revolution: civil society and the challenges of consolidating democracy in Georgia,” *Central Asian Survey*, 24(3), (September 2005), 346

1.2 Features of a democratic transition and their reflection on the enjoyment of the right to assembly

Transition is characterized by the specific features which are reflected in the protection and regulation of the human rights in new democracies, including the right to assembly. I will pay attention to the following transitional features such as the fragile legislative framework,⁴² derogations from the human rights in the time of emergency during a period of transition⁴³ and state policing strategy of controlling demonstrations in practice.⁴⁴ These transitional characteristics will be evaluated in the light of their influence on the enjoyment of the right to assembly and Georgian and Armenian experience will be discussed in this context.

1.2.1 Fragile legislative framework

1.2.1.1 General overview

For transitional states, law plays an important role in regulating social, political and economic changes and presents a proper instrument to establish a new legal order.⁴⁵ To achieve establishment of democratic values in a state of transition, law should ensure to correct its past mistakes, provide its legitimacy in the present and create grounds for a more fair future.⁴⁶ Ghai discussed the role of the law in different political systems and underlined that in a transitional society, it is more important to pay attention to what kind of law is made by the

⁴² Yash Ghai, "The rule of law in the transition of societies: the African experience", *Journal of African Law*, Vol.35, No 1/2, (1991),16

⁴³ Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Report on the protection of human rights in emergency situations*; By Mr Holger Haibach, Germany, Group of the European People's Part, Doc # 11858,(9 April, 2009), 61

⁴⁴

Donatella D. Porta, *Policing protest, the control of mass demonstrations in western democracies: Police knowledge and protest policing: some reflections on the Italian case*, ed Donatella D. Porta and Herbert Reiter..Volume 6, chapter 10(Minneapolis: University of Minnesota Press,)1998, 22

⁴⁵ Yash Ghai, "The rule of law in the transition of societies: the African experience", *Journal of African Law*, Vol.35, No 1/2, (1991),10

⁴⁶ Michael Hamilton, "Freedom of assembly, consequential Harms and the rule of law: liberty-limiting principles in the context of Transition," *Oxford Journal of legal studies*, Vol. 27, No 1 (2007),77

state and what the price is which society have to pay for reliance on the law.⁴⁷ He explains that the effective functioning of the law to change the system depends on several factors, such as the method of the transfer of political power and the aim of the transitional government.⁴⁸ These factors are reflected in the law-making process, the content of the law and its interpretation by the authority bodies in practice.

The existence of the law concerning the freedom of assembly is crucial for the protection and regulation of this right in a process of transition, because this right is often used for achieving political purposes by opposition groups or expressing public opinions by the representatives of civil society. In accordance with the active role of this right in a transitional process, it requires clear and certain regulations, important guarantees and sufficient procedures for its effective enjoyment to avoid the manipulation of the right by the government. The content of the law concerning the freedom of assembly shows a degree of tolerance of the state to the public demonstrations⁴⁹ and it should ensure to reflect the essence of the right without huge interference.

In a period of transition, a fragile legislative framework is a common feature for new democracies, which means that the law is characterized by frequent changes and numerous amendments to answer to transitional challenges and the evaluation in the political situation.⁵⁰

The main challenge is to evaluate what the purpose of the frequent amendments is: to improve the establishments of democratic values or to increase the power of the state and limit the enjoyment of human rights. In general, a rapid change of the law creates a problem of effective implementation of the law in practice and confirms that the state has an undefined policy to regulate specific issues. Fragile legislative regulations negatively affect the law

⁴⁷Yash Ghai, "The rule of law in the transition of societies: the African experience", *Journal of African Law*, Vol.35, No 1/2, (1991), 17

⁴⁸ Ibid, pg 19

⁴⁹ Ibid, pg 17

⁵⁰ Ibid, pg 16

when comparing with two main requirements established by the ECHR for the quality of the law: accessible to the person and foreseeable to its affects.⁵¹ The fragile legislation may be justified under the transitional circumstances if the amendments support the democratization process in the state and improve the enjoyment of the human rights in practice. The unexpected and frequent changing to the legislative environment may be very harmful for the enjoyment of human rights, if the amendments aim at increasing state control over exercising human rights and restricting them.

As a result, I can conclude that the fragile legislative framework, as a feature of transition may have a positive or negative effect on the regulation of human rights, including the right to assembly, but it depends on the state legislative policy, the content of the amendments and its interpretation by the authorities.

1.2.1.2 The influence of the fragile legislative framework on the regulation of the right to assembly in Georgia and Armenia

The fragile legislative framework of the right to assembly affects on the regulation of the right to assembly in Georgia and Armenia. Analyzing the state legislative policy and the content of the amendments in these countries, it should be discussed whether it has positive or negative influence on the effective enjoyment of the right.

Firstly, I will discuss the influence of the fragile legislative framework on the exercise of the right to assembly in Georgia. The freedom of peaceful assembly is guaranteed by Article 25 of the Constitution of Georgia.⁵² The detailed regulation of this right is provided by the law on Assembly and Manifestation, which was adopted in 1997 and was amended several times

⁵¹ Amann v. Switzerland, App no. 27798/95, ECHR Judgment of 16 February 2000; 50

⁵² Article 25 of the Constitution of Georgia states: "1. Everyone, except members of the armed forces and Ministry of Internal Affairs, has the right to public assembly without arms either indoors and outdoors without prior permission. 2."The necessity of prior notification of the authorities may be established by law in the case where a public assembly or manifestation is held on a public thoroughfare. 3. Only the authorities shall have the right to break up a public assembly or manifestation in case it assumes an illegal character."

since its adoption. The first most important amendments were made in 2009 as a response to mass political demonstrations in the country without waiting for the requested opinion from the Venice Commission.⁵³ Evaluating these amendments, the Venice Commission mentioned that they were done very rapidly to address the specific conditions in the state and they criticized restrictions on the possibility to block roads during assembly.⁵⁴ The Venice Commission interpreted that “the legislation adopted as a response to a specific incident is often inadequately devised in regard to police, poorly drafted and has unintended consequences”.⁵⁵ Considering the recommendations, a new draft was presented to the Commission in March 2010, the Commission remained critical of the unchanged blanket prohibitions in the law on using public roads.⁵⁶ The Parliament of Georgia adopted the draft of the law without further changes in 2011.⁵⁷ The numerous norms of the law were appealed to the Constitutional Court of Georgia and the Court declared several norms unconstitutional in April, 2011, most important was a ban assembling within 20 meters of a large number of public administration buildings defined in the law.⁵⁸ The last amendments were adopted in the law in June, 2011, which reintroduced some of the norms abolished by the Constitutional Court in a modified form.⁵⁹

Legislative policy of Georgia concerning the regulation of freedom of assembly shows that the frequent amendments to the law aim to answer the continual political protests in the country and limit the enjoyment of the right to assembly by imposing unnecessary

⁵³ The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012),12

⁵⁴ Venice Commission CDL (2009)152, opinion no 547/2009, adopted October 1 2009; (para 6); Available [http://www.venice.coe.int/docs/2009/CDL\(2009\)152-e.asp](http://www.venice.coe.int/docs/2009/CDL(2009)152-e.asp)

⁵⁵ Ibid, para 6

⁵⁶ Venice Commission CDL-AD(2010)009, Opinion no.547/2009, adopted 12-13 March, 2010; para 25, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)009-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.asp)

⁵⁷ The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012),12

⁵⁸ The decision of the Constitutional Court of Georgia, App 2/482,483,487,502, 18 April, 2011; Available only in Georgian at http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=640&action=show

⁵⁹ The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012),13

restrictions.⁶⁰ The Parliament of Georgia did not take into account either the recommendations of the Venice Commission or the decision of the Constitutional Court to abolish the blanket prohibitions on using public space during the demonstrations and they are still in force in a different manner. The Georgian experience of the fragile legislative regulations shows that numerous amendments to the law have a negative effect on the regulation of freedom of assembly. The detailed analysis of the legislative problems will be discussed in the second chapter, but the general policy shows that frequent legislative changes negatively reflect on the enjoyment of the right in practice.

Secondly, I will discuss the legislative framework concerning the freedom of assembly in Armenia. The Constitution of Armenia recognizes that “everyone shall have the right to freedom of peaceful and unarmed assemblies”⁶¹ and states that “restrictions on exercising these rights by the employees in the armed forces, police, national security, prosecutor’s office, bodies as well as judges and members of the Constitutional Court may be prescribed only by the law.”⁶² The right to assembly was regulated by the law on conducting meetings, rallies, demonstrations and processions,⁶³ which changed several times and, generally, the recommendations of the Venice commissions were considered in the changing process. The most problematic amendments were made to answer to the mass demonstrations after the presidential election in 2008 and seriously undermine the holding of assembly,⁶⁴ because it allows security forces to disperse public assemblies before they develop into mass

⁶⁰ Ibid, pg 12-13

⁶¹ Constitution of Republic of Armenia, article 29(1), <http://www.parliament.am/legislation.php?sel=show&ID=1&lang=eng#2>

⁶² Constitution of Republic of Armenia, article 29(2), <http://www.parliament.am/legislation.php?sel=show&ID=1&lang=eng#2>

⁶³ The law of Republic of Armenia on conducting meetings, rallies, demonstrations and processions, <http://legislationline.org/topics/country/45/topic/15>

⁶⁴ The Helsinki Committee of Armenia, *Report on Monitoring of the freedom of peaceful assembly in Armenia*, report, (Armenia, “Asoghic” printing house, 2009); 20

demonstrations.⁶⁵ In 2011, the Parliament of Armenia adopted a new law on freedom of assemblies,⁶⁶ which was made with the active cooperation of the Venice Commission. In accordance with the last comments of the Venice Commission, the law had problems with existing blanket prohibitions and regulations of the public space.⁶⁷

Analyzing the legislative politics of Armenia relating to the freedom of assembly, the effect of the fragile legislative framework was characterized by positive and negative aspects. The rapid amendments which considered the recommendations of the Venice Commission should be appreciated positively, because their aim was to improve the enjoyment of the right. Nevertheless, the amendments which were adopted as an answer to the mass political protests in the country should be evaluated negatively because they restrict the use of public space for demonstrations and influence the effective enjoyment of the right. These problems of the law should be discussed in detail in the second chapter, but the influence of the fragile legislative framework is not obvious for the enjoyment of the right and mostly depends on the changing political situation in the country.

As a result, I can conclude that the influence of the fragile legislative framework on the regulation of assembly in Georgia and Armenia is characterized by the huge dependence on changing political situations in these countries and the will of the government to impose more control over the demonstrations. These circumstances result in imposing restrictions on the effective enjoyment of the right, by the way of frequent and rapid amendments to the law.

⁶⁵ Steve Hess, *Protests, parties and presidential succession, Competing theories of color Revolutions in Armenia and Kyrgyzstan*, Problems of Post-Communism, Vol.57, No 1, (2010), pp 28-39,pg 32

⁶⁶ The law of Republic of Armenia on Freedom of assemblies; <http://legislationline.org/topics/country/45/topic/15>

⁶⁷Venice Commission CDL-AD(2010)049, Opinion no. 596/2010, adopted 17-18 December 2010, available at [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)049-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)049-e.pdf)

1.2.2 Declaration of a state of emergency and derogations from the right to assembly in a period of transition

1.2.2.1 General overview

In a period of transition, the state governments sometimes declare a state of emergency and derogates from several human rights to protect the existence of a new democracy.⁶⁸ The circumstances for declaring emergency must “affect the whole population and constitute a threat to the organized life of the community of which the state is composed.”⁶⁹ The role of the state of emergency increases in transitional societies, because it supports the government in returning to a normal situation in the country⁷⁰ and preserves such transitional values as the stability of the government institutions, the protection of the life of the nation, the restoration of the rule of law and other principles, which are important for a transitional state.⁷¹ Generally, an emergency situation should be declared in exceptional circumstances and must be used as a means of last resort,⁷² because it entitles the state to interfere into the human rights and freedoms in a more strict way than in ordinary time.⁷³

The right to assembly may be derogated in the time of emergency, but the derogation should comply with the international standards of the protection of human rights.⁷⁴ In general, *the OSCE Guidelines on Freedom of Peaceful Assembly* define that “the presumption of freedom of assembly should be maintained as far as possible even during an emergency situation and

⁶⁸ The Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Report on the protection of human rights in emergency situations*; By Holger Haibach, Germany, Group of the European People’s Part, Doc # 11858, 9 April, 2009, para 61

⁶⁹ *Lawless v Ireland*, App. NO 332/57, ECHR Judgment of 1 July, 1961, Para 28

⁷⁰ Jean Allain, “Derogation from the European Convention of Human Rights in the light of “other obligations under international law,” *European Human Rights Law Review*, (2005), No 5; 481

⁷¹ Michael Hamilton, “Freedom of assembly, consequential Harms and the rule of law: liberty-limiting principles in the context of Transition,” *Oxford Journal of legal studies*, Vol. 27, No 1 (2007), 77

⁷² *Ibid*, pg 1

⁷³ Nicolas A.J. Croquet, “The European Court of Human Rights’ norm-creation and norm-limiting processes: resolving a normative tension;” *Columbia Journal of European Law* 307, No 17 (2011), 22

⁷⁴ Article 4 of the ICCPR; Article 15 of the ECHR

that any restrictions thereof be instituted lawfully.”⁷⁵ Article 15 of the ECHR defines procedural and substantive obligations for the state to derogate the human rights.⁷⁶ The procedural commitments mean to notify the Secretary General of the Council of Europe about the measures adopted in the time of emergency⁷⁷. The substantive obligations relate to the compliance with the following requirements of the article: it should be exercised “in time of war or other public emergency threatening the life of the nation”, should be “strictly required by the exigencies of the situation”, should not be inconsistent with the State’s international law obligations and should not affect the exercise of the non-derogable rights defined by this article.⁷⁸ The ECHR granted the state a wide margin of appreciation to define “both the presence of such an emergency and the nature and scope of derogations necessary to avert it,”⁷⁹ but underlined that this power is not unlimited and “the court is responsible for ensuring the observance of the states’ engagements.”⁸⁰ These standards extend to the derogation of the right to assembly.

1.2.2.2 The influence of the emergency situations on the regulation of the right to assembly in Georgia and Armenia

Declaration of a state of emergency as a transitional feature and its characteristic to derogate the right to assembly influences the effective enjoyment of the right in a period of transition. The question which arises is what kind of measures the state should take and how far the state can be permitted to go in regulating the assemblies during the emergency situations. In the

⁷⁵ OSCE/ODIHR, OSCE Guidelines on Freedom of Peaceful Assembly , First Edition, (Warsaw 2007), 21,28

⁷⁶ Jean Allain, “Derogation from the European Convention of Human Rights in the light of “other obligations under international law,” *European Human Rights Law Review*, No 5,(2005) 483

⁷⁷ Article 15(3) of the ECHR

⁷⁸ Article 15 (2) of the ECHR: the right to life (regarding the resulting death from lawful acts of war); prohibition on torture; prohibition of slavery; no punishment without law

⁷⁹ Ireland v UK, Application no 5310/71, ECHR Judgment of 18 January, 1978, Para 207

⁸⁰ Ibid, para 207

case of Georgia and Armenia, as parties of the ECHR, it should be evaluated in the light of its requirements.

Emergency situations were declared on the 7 November, 2007 in Georgia⁸¹ after the five days of mass demonstrations requesting the resignation of Georgian President Mikheil Saakashvili⁸² and on 1 March, 2008 in Armenia⁸³ after protesting the results of the presidential election and violent clashes between the police and demonstrators.⁸⁴ In both cases, the goals of declaring a state of emergency were to achieve the protection of transitional values. In Georgia, the reasons for declaration of a state of emergency were “saving the life of the nation, necessity to avoid further disturbances in the country, restoration the rule of law and effective functioning of the government institutions”⁸⁵ and in Armenia “prevention of the threat of danger to the constitutional order and protection of the right and legal interests of the population.”⁸⁶ Both states decided to derogate the right of assembly during the period of the state of emergency in accordance with their Constitutions and notified the Secretary General of the Council of Europe as ruled by the ECHR.⁸⁷

The crucial issue which is connected to the protection of the right to assembly during the emergency situation is the degree of the use of force against the demonstrators by the state

⁸¹ The President of Georgia, Order on the Declaration of the state of Emergency on the Entire Territory of Georgia, No. 621, 7 November 2007, Tbilisi; Minister for Foreign Affairs of Georgia, Note Verbal #7/229-06 of the to the Secretariat General of the Council of Europe, 9 November, 2007

⁸²Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Report on the protection of human rights in emergency situations*; By Mr Holger Haibach, Germany, Group of the European People’s Part, Doc # 11858, 9 April, 2009, para 2

⁸³ The President of the Republic of Armenia, Decree on Declaration of the State of Emergency in Yerevan, 1 March, 2008; The Minister for Foreign Affairs of Armenia, Note Verbal #14/02627 to the Secretariat General of the Council of Europe, 2 March, 2008

⁸⁴ Steve Hess, “Protests, parties and presidential succession, Competing theories of color Revolutions in Armenia and Kyrgyzstan,” *Problems of Post-Communism*, Vol. 57, No 1, (2010), 32

⁸⁵ The Minister for Foreign Affairs of Georgia, Note Verbal #7/229-06 to the Secretariat General of the Council of Europe, 9 November, 2007

⁸⁶ The Minister for Foreign Affairs of Armenia, Note Verbal #14/02627 to the Secretariat General of the Council of Europe, 2 March, 2008

⁸⁷ The President of Georgia, Decree on measures to be undertaken in connection with Declaration of the States of Emergency on the Entire Territory of Georgia; #1, 7 November 2007, Tbilisi; The President of the Republic of Armenia, Decree on Declaration of the State of Emergency in Yerevan, 1 March, 2008

and its compliance with the ECHR's standards in respect to the right to life and the prohibition of torture. The case law of the Court has a clear position on this issue, which states that force used to dismiss demonstrators should be "no more than absolutely necessary"⁸⁸ and the use of weapons must be proportionate to force exerted by the protestors.⁸⁹ In Armenia, the police dispersed demonstrations by using "violent attacks chasing protestors with tanks, tear gas, beatings, detainments and very heavy and indiscriminate shooting, for more than an hour."⁹⁰ As a result of the dispersal, eight protestors were killed and 130 protestors were injured.⁹¹ After the special mission to Armenia to assess the consequences of the emergency situation, the Council of Europe Commissioner on Human Rights, Thomas Hammarberg, indicated excessive use of force in the operation of police forces and the violations of the obligations under Article 2 (the right to life) and Article 3 (prohibition of torture) of the ECHR for the whole period of the emergency.⁹² In Georgia, the police used violent force to disperse the mass demonstration on 7 November, 2007 by means of water cannons, batons, rubber bullets and tear gas.⁹³ The UN High Commissioner for Human rights, Louise Arbour, evaluated the state actions as a "disproportionate use of force, including against Georgia's Public Defender, the detention of opposition leaders and the beating of demonstrators."⁹⁴ He underlined that Georgia has an obligation under the International Covenant on Civil and Political Rights to ensure that the right to life and

⁸⁸ McCann and others v the UK, Application No. 18984/91, ECHR Judgment of 27 September, 1995, 148

⁸⁹ Gulec v Turkey, App. no 23818/94, ECHR Chamber Judgment of 27 of July, 1998, Para 70-71

⁹⁰ Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Report on the protection of human rights in emergency situations*; By Mr Holger Haibach, Germany, Group of the European People's Part, Doc # 11858, 9 April, 2009, para 18

⁹¹ Ibid ph 18, also see Steve Hess, "Protests, parties and presidential succession, Competing theories of color Revolutions in Armenia and Kyrgyzstan," *Problems of Post-Communism*, Vol. 57, No 1, (2010), 32

⁹² Commissioner for Human Rights of the Council of Europe; *Report: Special Mission to Armenia By Thomas Hammarberg*, CommHR(2008); 20 March, 2008, <https://wcd.coe.int/ViewDoc.jsp?id=1265025>

⁹³ The Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Report on the protection of human rights in emergency situations*; By Mr Holger Haibach, Germany, Group of the European People's Part, Doc # 11858, 9 April, 2009, para 21

⁹⁴ Stephanie Nebehay, "UN Rights Boss Rebukes Georgia for Use of Force", Reuters, 08.11.2007;

prohibitions on arbitrary detention and torture and it "cannot be suspended, even in times of emergency", which was not be carried out by the state.⁹⁵

After analyzing the results of the emergency situations on the enjoyment of the right to assembly in both countries, Georgia and Armenia could not manage to provide the protection of the right to assembly in the time of emergency and did not ensure compliance with the international obligations with respect to the protection of the right to life and prohibition of torture. This is why the influence of this transitional feature should be evaluated negatively on the enjoyment of the right to assembly in the light of the Georgian and Armenian experience.

1. 2. 3 Protest policing strategy in a period of transition

1.2.3.1 General overview

Protest policing strategy could be considered as one of the features of a transitional democracy because it plays an important role in regulating the right to assembly and control of demonstrations in a period of transition and its formation is influenced by the political system of the state, especially the existing “political opportunity structure” in the country.⁹⁶

Transitional democracies are characterized by the volatile political opportunity structure, which means that various actors of politics define their own opinions how to regulate protest and it creates two different groups of policy: “law-and-order coalition” and “civil rights coalition.”⁹⁷ In a transitional democracy, the specific role of the police is reflected in uniting these two conflicting challenges, because its aim is, on the one hand, to preserve a public

⁹⁵ Ibid

⁹⁶ Donatella D. Porta and Herbert Reiter, *Policing protest, the control of mass demonstrations in western democracies: The policing of protest in western democracies*, ed Donatella D. Porta and Herbert Reiter..Volume 6, chapter 10(Minneapolis: University of Minnesota Press,)1998, 9

⁹⁷ Ibid, pg 9

order and, on the other hand, to protect the right to assembly.⁹⁸ This double function requires the police to make a strategy which provides ensuring a balance between these goals and acting without damaging one of them.

During a period of transition, the police have a huge discretionary power to evaluate the situation in the demonstrations and act in accordance to their policing strategy on the basis of the legal regulations. In the process of consolidating democracy, policing style should be changed from using “escalated force” to “negotiated management”,⁹⁹ but this process requires significant changes in the police knowledge and organization and continues for a long time.¹⁰⁰

Donatella Della Porta defined that the protest policing strategy should be based on three important principles, “to avoid coercive intervention, to negotiate with demonstrators and using the system of information gathering.”¹⁰¹ She determined four police strategies of controlling public order: “cooperation, negotiation, ritualistic standoff and total control”,¹⁰² which answers the question whether police strategy complies with requirements of democracy or not.

To evaluate the protest policing strategy of the state in the light of the requirements of democracy, the compliance of the existed legislative framework with international standards and the practical reflection of the police strategy should be considered. Protest policing strategy in practice is reflected in the scale of police presence during the demonstrations, the frequency of interference in the demonstrations, their decisions to use force and the severity

⁹⁸ Donatella D. Porta, *Policing protest, the control of mass demonstrations in western democracies: Police knowledge and protest policing: some reflections on the Italian case*, ed Donatella D. Porta and Herbert Reiter..Volume 6, chapter 10(Minneapolis: University of Minnesota Press,)1998, 228

⁹⁹ Donatella D. Porta, *Policing protest, the control of mass demonstrations in western democracies: Police knowledge and protest policing: some reflections on the Italian case*, ed Donatella D. Porta and Herbert Reiter..Volume 6, chapter 10(Minneapolis: University of Minnesota Press, 1998), 20-21

¹⁰⁰ Oscar Jaime-Jimenez and Fernando Reinares, *Policing protest, the control of mass demonstrations in western democracies: The policing of social protest in Spain: from dictatorship to democracy*, volume 6, Chapter 7 (University of Minnesota press, 1998),pg 185

¹⁰¹ Donatella D. Porta, *Policing protest, the control of mass demonstrations in western democracies: Police knowledge and protest policing: some reflections on the Italian case*, ed Donatella D. Porta and Herbert Reiter..Volume 6, chapter 10(Minneapolis: University of Minnesota Press,)1998, 236-240

¹⁰² Ibid, pg 231-236

of the used special means against the demonstrators. The OSCE guidelines on Freedom of Peaceful Assembly defines that police officers are expected to use negotiation and mediation in contested situations and to avoid the escalation of conflict, especially the use force.¹⁰³ In the case of the necessity to use of force, the standard of the ECHR concerning the dispersal of the demonstrations establishes that the police operation should be planned in a way which minimizes risks to the health of demonstrators.¹⁰⁴

As a conclusion, protest policing strategy shows the style of the state to control demonstrations and reflects the degree of the protection of the right to assembly in a period of transition.

1.2.3.2 Protest policing strategy in Georgia and Armenia

Protest policing strategy should be analyzed on the basis of the legislation relating to the regulation of the protest and the actions of the police officers during the demonstrations in the experience of Georgia and Armenia. Firstly, I will make a review of the legislative framework, which creates the legal grounds for making a protest policing strategy in these countries and then discuss some practical examples from the actions of Georgian and Armenian police forces during the mass demonstrations.

The Georgian law on Assembly and Manifestation defines the grounds for state intervention to eradicate violations during demonstrations¹⁰⁵ and underlines that in the case of intervention, the law enforcement institutions will use means in accordance with international standards and Georgian legislation.¹⁰⁶ After the 2009 amendments, the Law on Police increased the list of special means which police can use to preserve public order: “Specifically

¹⁰³OSCE Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, paragraph 5.4.

¹⁰⁴ Muradova v Azerbaijan, Application #22684/05, Judgment of 2 April, 2009, Para 113

¹⁰⁵ Article 13 (1) of the Georgian Law on Assembly and Manifestation

¹⁰⁶ Article 13 (6) of the Georgian Law on Assembly and Manifestation

there are no-lethal weapons (including a non-lethal grenade), rubber batons, pepper gas, tear gas, special sonic device, sonic device with psychological impact (siren), a special device for destroying barricades and for forceful stoppage of transport, water cannons, armored vehicle and other special transportation means, special paint, service dog and horses, electroshock devices.”¹⁰⁷ The law on Administrative offences is not directly connected to demonstrations and policing strategy, but it effect on the right to assembly in practice, when the police officers arrested participants of demonstrations.¹⁰⁸ The law on Administrative offences was also amended in 2009, which defined that the maximum period of administrative detention was increased from 30 to 90 days.¹⁰⁹

Analyzing the purpose of the main regulations of the Georgian legislation, it does not have a sufficient legal base to establish protest policing strategy compliance with international standards. Georgian legislative framework does not provide a proper balance between the two main functions of the police in a democratic society¹¹⁰ and the police should have to be more oriented to protect public order than the rights of the demonstrators. The grounds for this conclusion are found in norms legalizing police intervention in a public protest after the expiry of 15 minutes which the organizers have to apply all reasonable actions to eradicate violations during the demonstrations,¹¹¹ which is a very short time to achieve this purpose; a harsh and long list of special means which the police can use in the process of preserving

¹⁰⁷ Article 12 (a) of the Georgian Law on Police, http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=3704

¹⁰⁸ The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012), 29

¹⁰⁹ Article 32 (1) of the Law on Administrative Offences; available at http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=2271

According to the Criminal Code of Georgia, the maximum pre-trial detention term is 60 days, that's why, this period seems disproportionate.

¹¹⁰ To preserve a public order and to protect the human rights

¹¹¹ Article 13(4) of the Georgian Law on Freedom of Assembly and Manifestation

public order and severe administrative offences for violation order during the demonstrations.¹¹²

As for the Armenian legislative framework, the law on Freedom of Assemblies defines the grounds and procedure for terminating the assembly and states that “the police may terminate the assembly if there is no other possibility of preventing disproportionate restrictions of the constitutional rights of the other persons or of the public interest.”¹¹³ After two warning by the police, the assembly should not be terminated voluntary in a reasonable time, the police can disperse the assembly and use the special means defined in the Republic of Armenia Law on Police.¹¹⁴ The Law on Police listed the special means which the police can use to “prevent mass riots and illegitimate group acts dissolving the work of the transport, communications and other organizations.”¹¹⁵ rubber clubs, tear gas, light and vocal means distracting attention, devices for dissembling obstacles, means for forcible stopping of vehicles, water cannons and armored cars.¹¹⁶ To compare with Georgian legislation, Armenian laws are similar, especially in the context of the process of the intervention in public demonstrations and usage of a long list of special means by the police.

After analyzing the legislative framework of these countries, it gives a very little legal base to change protest policing strategy from the use of force to negotiation system and does not give a possibility for the police being more oriented to the protection of the protestors than the preservation of public order.

¹¹² See e.g. The United Nations Special Rapporteur, Statement on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the Republic of Georgia; available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11816&LangID=E>

¹¹³ Article 33(1) of the Republic of Armenia Law on Freedom of Assembly

¹¹⁴ Article 33(3) of the Republic of Armenia Law on Freedom of Assembly

¹¹⁵ Article 31(7) of the Republic of Armenian Law on Police

¹¹⁶ Article 31 of the Republic of Armenian Law on Police; accessible at <http://www.parliament.am/legislation.php?sel=show&ID=1271&lang=eng>

To understand the whole picture of state protest policing strategy, it is important to look through how the police officers act during the demonstrations and what kind of decisions they make in Georgia and Armenia. The Georgian protest policing strategy will be evaluated on the basis of the latest monitoring results concerning the protest policing strategy in practice published by the Human Rights Center in 2012. The Human Rights Center organized a monitoring process on freedom of assembly from January 1 till June 30, 2011 and monitored 75 assemblies.¹¹⁷ Monitors identified four different types of police presence during the demonstrations: security police, patrol police, policemen in civilian clothing and riot police.¹¹⁸ As for the rate of physical intervention, according to the report, it was used in 9 cases out of 50 assemblies and use of force was exercised two times.¹¹⁹

To evaluate the degree of the use of force and means used by the police, I will discuss the dispersal of a public demonstration which happened on 26 May, 2011. The dispersal of the demonstration on 26 May was exercised by riot police, who were well equipped and armed and they blocked both sides of Rustaveli Avenue in a way that demonstrators could not leave the territory.¹²⁰ The number of peaceful demonstrators was 1500-1800.¹²¹ During the attack, firstly, the police used gas grenade launchers and water cannons together with the continuous sound of siren and then started to use rubber bullets from a close distance.¹²² Force was used against all demonstrations without any discrimination and numerous numbers protestors were detained.¹²³ The Human Rights Center concluded that during the dispersal the use of force

¹¹⁷ The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012), 6

¹¹⁸ Ibid, pg 30-32, in accordance to statistical data, patrol police were present on 39 occasions, civilians – on 18 cases and riot police appeared once.

¹¹⁹¹¹⁹ Veterans' hunger strikes on Freedom Square in 3rd January, 2011; public assembly demonstration on May 26

¹²⁰ The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012), 55

¹²¹ Ibid, pg 56

¹²² Ibid, pg 58

¹²³ Ibid, pg 59;

was not justified. Georgian Young Lawyers' Association prepared a special report on the events of 26th May and evaluated the police actions as excessive and disproportionate.¹²⁴

In Armenia, the state policing strategy will be evaluated on the basis of the latest monitoring results concerning the policing in practice published by the Helsinki Committee of Armenia in 2009. The Helsinki Committee divided its monitoring in two phases: from September 2008 to 31 March 2009 and the period before and after the Yerevan City Council election during April-June 2009.¹²⁵ Totally, the Committee monitored 100 demonstrations,¹²⁶ where the presence of the police was confirmed more than 90 percent of the observed demonstrations.¹²⁷ The police interfered into the process of the demonstration in 42 cases, but they used force against demonstrators in 24 demonstrations.¹²⁸ In the cases of use of force, the report indicates that the police used force in respect of the demonstrators and it has a form of battering, rude pushing around and other similar acts which were not sustained.¹²⁹ As an example, I will discuss the interference of the police in a demonstration on 1th March, 2009, which was dedicated to the events of the same date one year ago.¹³⁰ The problems of the police strategy were the excessive number of policemen during the demonstration and restriction of access to some places for demonstrators,¹³¹ but the bilateral negotiations were used successfully during the demonstration to prevent use of force and preserving public order.¹³²

¹²⁴Georgian Young Lawyers' Association, *Report 26 May, 2011, Analysis of Human Rights violations during and related to the dispersal of the May 26 Assembly*, Tbilisi, Georgia, (2011), 57-70

¹²⁵ The Helsinki Committee of Armenia, *Report on Monitoring of the freedom of peaceful assembly in Armenia*, report,(Armenia, "Asoghic" printing house, 2009);54

¹²⁶Ibid, pg 38; pg 62. In the first phase, 88 demonstrations were observed and in the second phase- 22 demonstrations

¹²⁷ Ibid, pg 38, pg, 62. In the first phase, the police were presented during 92 percent of demonstrations, in the second phase -91 percent.

¹²⁸ Ibid, pg 41 and page 65.

¹²⁹ Ibid, pg 41 and page 65

¹³⁰ Ibid, pg 48-54

¹³¹ Ibid, pg 54

¹³² Ibid, pg 54

Comparing actions of the police officers during the demonstrations in Georgia and Armenia, the similarities are found in an active police presence during the protests and frequent unnecessary interferences in demonstrations to protect public order. The degree of the use of force and severity of specific means used by Georgian and Armenian policemen during the demonstrations is significantly different. Analysis of the results of the monitoring reports shows that the Armenian police forces use more proportional means to control unlawful actions during the demonstrators than Georgian and they sometimes use a negotiation with demonstrators.

Generally, the protest policing strategy reflected in legislation and in practice needs important changes to achieve compliance with the European standards in both countries. It should be done by the implementation of the European standards into the national legislations and attempt to change professional knowledge of police officers by sufficient trainings. It should support to provide a balance between the preservation of public order and the protection of human rights in exercising the protest policing strategy in practice.

Analyzing the transitional features and its influence on the right to assembly, they have the negative influence on the protection and regulation of the right to protest in Georgia and Armenia and they should overcome the negative sides of transitional characteristics to improve the protection of the right to assembly in these countries.

Chapter 2. Legislative regulation of the freedom of assembly in Georgia and Armenia

Introduction

The purpose of the Second Chapter is to discuss legislative problems of the freedom of assembly in Georgia and Armenia, which concern, on the one hand, the recognition and protection of specific types of assemblies, especially spontaneous and simultaneous demonstrations and, on the other hand, justifications of the prior restrictions imposed on the right to assembly regulating public space for the purpose of the protest. Analysis of the legislative problems of Georgia and Armenia will be exercised in the light of the case law of the ECHR.

In a period of transition, sufficient legislative regulation of the freedom of assembly provides protection of the right in practice and creates a basis for a reasonable interpretation of the norms by the law enforcement authorities and courts. The ECHR recognized that a transitional country needs some time to establish a legislative framework¹³³, but emphasized the importance of the legislative regulation of the right to assembly, as one of the fundamental rights for a democracy, in a short time from starting a period of transition.¹³⁴

After the declaration of independence on 9 April, 1991, Georgia adopted a law on Freedom of assemblies and manifestation on June 12, 1997. This period should be estimated as a reasonable time to regulate this issue under the political circumstances for first years of transition. Armenia declared independence on 23 August, 1990 and the Armenian Parliament adopted a law regulating the procedure for holding assemblies, rallies, street processions and demonstrations on 28 April, 2004. During this time, the state applied the Decree of the Chairmanship of the Supreme Soviet of the USSR on “Rules for Organizing and Holding of

¹³³ Ibid, para 43

¹³⁴ Mkrtchyan v Armenia, App. No. 6563/03, Decision of the ECHR of 11 January, 2007, para 43

Assemblies, Rallies, Street Processions and Demonstrations in the USSR” of 28 July 1988 to the whole territory of the Republic of Armenia. The ECHR discussed the length of a period to regulate the right to protest in Armenia and estimated that the freedom of assembly “was not prescribed by law” during this time, because the application of the USSR rule was not a reasonable decision for a transitional country for almost 15 years.¹³⁵

Effective regulation of the right to assembly is not provided only by the existence of the legislative framework in the country. The level of protection of the right to assembly differs in different jurisdictions and depends on the content of the legislation. David Mead defined four main factors which influence the degree of protection of the right to assembly: cultural difference as an acceptable level of protest, different level of deference to political institutions, differences in the political mainstreaming of protest and institutional responsiveness to dissent.”¹³⁶ These factors are very important because they create an environment for legislative regulation of the right to assembly in the country and effects on its interpretation in practice.

In a period of transition, legislative regulation is characterized by different problems which arise from transitional features and which have a negative effect on the exercise of the right to assembly.¹³⁷ Generally, the main problems of the legislation concerning human rights relate to the absence of sufficient guarantees to recognize the right in the legislation and the presence of unnecessary and disproportionate interferences on the enjoyment of the right by the law.¹³⁸ In the case of freedom of assembly, the first problem relates to the recognition and

¹³⁵ Ibid, para 43

¹³⁶ David Mead, *The new law on peaceful protest, Rights and Regulations in the Human Rights Act Era: Strasburg case law on the right to peaceful protest*, Chapter 3,(Hart Publishing, Oxford and Portland, Oregon, 2010), 60

¹³⁷ Yash Ghai, “The rule of law in the transition of societies: the African experience”, *Journal of African Law*, Vol.35, No 1/2, (1991), 16

¹³⁸ David Mead, *The new law on peaceful protest, Rights and Regulations in the Human Rights Act Era: Strasburg case law on the right to peaceful protest*, Chapter 3,(Hart Publishing, Oxford and Portland, Oregon, 2010),

regulation of all types of assemblies, including spontaneous and simultaneous ones and the second may cover the following interferences in the right: permit or notification requirements, prior restrictions imposed on the right, dispersal or dissolution of the demonstrations, any kind of criminal, administrative or civil sanctions for the demonstrators etc..¹³⁹ David Mead made a difference between direct and indirect interferences in the right to assembly by the way of legislative regulations¹⁴⁰ and interpreted that the existence of the legislative problems confirms the failure of the state to meet its positive obligation to facilitate the effective regulation of the right.¹⁴¹

Domestic legislation has to answer these challenges and the implementation of the international instruments in domestic law would support the state in this process. OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly* states that “domestic law should be drafted, interpreted and implemented in conformity with relevant international and regional jurisprudence and good practice.”¹⁴² The main problems of the Georgian and Armenian legislation concerning the regulation of the freedom of assembly will be discussed in the light of these two types of legislative problems and will be estimated in conformity with the ECHR standards.

¹³⁹Orsolya Salat, *Free to protest constitutional power and street demonstrations: New Trends in the Assembly and Protest Jurisprudence of the European Court of Human Rights*, ed. Andras Sajó. ((Utrecht, the Netherlands, Eleven International Publishing, c2009), 114

¹⁴⁰ David Mead, *The new law on peaceful protest, Rights and Regulations in the Human Rights Act Era: Strasbourg case law on the right to peaceful protest*, Chapter 3,(Hart Publishing, Oxford and Portland, Oregon, 2010), 71

¹⁴¹ Ibid, pg 70

¹⁴²OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Second Edition, Warsaw/Strasbourg, 2010, para 12

2.1 Regulation of spontaneous and simultaneous assemblies in Georgia and Armenia

Spontaneous and simultaneous assemblies are specific types of assemblies which are exercised under special circumstances and conditions. National legislation should guarantee specific forms of assemblies, because they have own purposes, which could not be achieved in other ways.

The general definition of assembly established by the Georgian¹⁴³ and Armenian legislation¹⁴⁴ complies with the definition of assembly for the purpose of the OSCE Guidelines on Freedom of Peaceful Assembly¹⁴⁵ and considers all important elements which provide the recognition of the right to protest in domestic law. The regulation of the specific forms of assemblies, such as spontaneous and simultaneous assemblies, differs from each other in Georgian and Armenian legislation and has some problems in compliance with European standards.

2.1.1 Spontaneous assemblies

The issue of holding a spontaneous assembly arises when the organizer could not manage to meet the deadline for a prior notification and exercising of the right to assembly depends on an immediate response to some events by the demonstrators.¹⁴⁶ Spontaneous assemblies form a special category in freedom of assembly literature and they are worth protecting because

¹⁴³ Article 3 (a) of the Georgian Law on Freedom of Assembly and Manifestation defines, that “An assembly means a gathering of a group of citizens indoors or outdoors or a public meeting to express solidarity or protest”

¹⁴⁴ Article 2(1) of Armenian Law on Freedom of Assemblies defines, that “An assembly is a temporary peaceful and unarmed presence of two or more individuals in any location for the purpose of formulating and expressing common opinions on issues of public interest.

¹⁴⁵ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly stated: „An Assembly means the intentional and temporary presence of a number of individuals in a public place for a common expressive opinions”

¹⁴⁶ Adam Bodnar, *Free to protest constitutional power and street demonstration: Shaping the freedom of Assembly: Counter-productive effects of the Polish road towards illiberal democracy*, ed. Andras Sajó (Utrecht, the Netherlands, Eleven International Publishing, c2009),18

they are presumably prompted by some important events.¹⁴⁷ The importance of holding spontaneous demonstrations is recognized by the ECHR in cases *Butka and others v Hungary*¹⁴⁸ and *Eva Molnar v Hungary*.¹⁴⁹ The ECHR underlined that “the lack of a prior notification should not become a ground to disperse a demonstration by the authority”¹⁵⁰ and clarified that “the right to hold spontaneous events may override the obligation to give prior notification in special circumstances”.¹⁵¹ These special circumstances exist “if an immediate response to a current event is warranted in the form of a demonstration and delay would have rendered that response obsolete.”¹⁵² The ECHR defined that the positive obligation of the state to facilitate an effective enjoyment of the right to assembly applies to spontaneous demonstrations if they are peaceful in nature.¹⁵³ OSCE Guidelines on Freedom of Peaceful Assembly states that the national law could guarantee spontaneous assemblies in two ways: making an exception from a prior-notification procedure where advance notice is not practicable or defining a short period for presenting a notification that the organizer could manage to notify as soon as possible.¹⁵⁴

Georgian law on assembly and manifestation does not regulate spontaneous assemblies and it is not clear whether demonstrators can protest without maintaining a notification procedure in special circumstances or not. The Georgian law on assembly and manifestation does not determine any specific exception from the notification procedure for spontaneous assemblies¹⁵⁵ and the notification period is at least 5 days prior to a scheduled date of the

¹⁴⁷Orsolya Salat, *Free to protest constitutional power and street demonstrations: New Trends in the Assembly and Protest Jurisprudence of the European Court of Human Rights*, ed. Andras Sajó. (Utrecht, the Netherlands, Eleven International Publishing, c2009),121

¹⁴⁸ *Butka and others v Hungary*; App. no 25691/04, Judgment of the ECHR of 17 July, 2007

¹⁴⁹ *Eva Molnar v Hungary*; App. no 10346/05, Judgment of the ECHR of 7 October, 2008

¹⁵⁰ *Butka and others v Hungary*; App no 25691/04, Judgment of the ECHR of 17 July, 2007, para 36

¹⁵¹ *Eva Molnar v Hungary*; App no 10346/05, Judgment of the ECHR of 7 October, 2008, para 38

¹⁵² *Ibid*, para 38

¹⁵³ *Ataman v Turkey*, Application No 46252/93, Judgment of the ECHR of 27 April, 2006, para 41, para 43

¹⁵⁴ OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Second Edition, Warsaw/Strasbourg, 2010, para 128

¹⁵⁵ Article 8 of the Georgian Law on Assembly and Manifestation

event,¹⁵⁶ which is a long time for exercising a spontaneous assembly in practice. The only exception which is made by the law in the notification procedure relates to reducing a prior notification area and states that “a prior notification is only required in cases where assemblies are held in areas of movement of traffic or people.”¹⁵⁷ This exception allows holding any type of assemblies, including spontaneous ones on these places, where the notification is not required, but it does not relate to these cases where the notification is necessary and the organizer could not meet the legally established deadline defined by the legislation. The main idea of spontaneous assemblies is that the law should provide for an exception from the requirement where the law requires an advanced notification and presenting a prior notice is impracticable under their special circumstances.¹⁵⁸ The Georgian law does not mention the guarantee of holding a spontaneous assembly and existing regulations do not give such a possibility for demonstrators. This approach is not in conformity with the ECHR’s standards, which recognizes the right of spontaneous demonstrations and needs improvements in this context.

The Armenian law on Freedom of Assemblies regulates the exercise of spontaneous assemblies¹⁵⁹ and states a special exception from the notification procedure for them.¹⁶⁰ It should be evaluated positively that the law defined a spontaneous assembly¹⁶¹ in compliance with the definition of spontaneous assemblies established by OSCE Guidelines on Freedom of Peaceful Assembly.¹⁶² In spite of the positive sides of the Armenian Law, it defined the time for holding spontaneous assemblies and reduced it to a maximum 6 hours, which is not

¹⁵⁶ Article 8 (1) of the Georgian Law on Assembly and Manifestation

¹⁵⁷ Article 5 (1) of the Georgian law on assembly and manifestation

¹⁵⁸ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, para 4.2.

¹⁵⁹ Article 26 and Article 27 of the Armenian law on freedom of assemblies

¹⁶⁰ Article 9 of the Armenian law on freedom of assemblies

¹⁶¹ Article 26 of the Armenian law on Freedom of Assembly: “A spontaneous assembly is the one that is conducted with the aim of reacting to an event immediately.”

¹⁶² OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, para 126: “A spontaneous assembly is generally organized in response to some occurrence, incident, other assembly or speech, where the organizer is unable to meet the legal deadline for prior notification”

sufficient guarantee to exercise the right effectively. In accordance to the ECHR case law and OSCE Guidelines on Freedom of Peaceful Assembly, the authorities should always protect and facilitate any spontaneous assemblies so long as it is peaceful in nature.¹⁶³

Comparing Georgian and Armenian legislation concerning to the recognition and protection of spontaneous assemblies, Georgian law has more problems in this respect than the Armenian. Georgian law has to take an example from Armenian regulations to establish a spontaneous assembly as an exception from a notification procedure and make its definition clear, but both states have problems to exercise their positive obligations to facilitate its effective enjoyment in practice and not imposing unnecessary restrictions on them because of its specific nature.

2.1.2 Simultaneous assemblies

The issue of holding a simultaneous assembly arises when the organizers of two or more unrelated assemblies or counter-demonstrations submit notifications to public authorities concerning organizing public meetings in the same place and at the same time. In the case of counter-demonstrations, the purpose of participants is to express their disagreement with the views expressed at another assembly. The case law of the ECHR underlines the importance of simultaneous assemblies for an effective enjoyment of the right to protest and clarifies that the state should provide enjoyment of simultaneous assemblies in the same place and at the time “if they can be accommodating together.”¹⁶⁴ OSCE Guidelines on Freedom of Peaceful Assembly concerning the regulation of simultaneous assemblies emphasizes that it should be a disproportionate response to prohibit conducting public demonstrations in the same place

¹⁶³ See *Butka and others v Hungary*; App. No 25691/04, Judgment of the ECHR of 17 July, 2007, para 36 and *Ataman v Turkey*, Application No 46252/93, Judgment of the ECHR of 27 April, 2006, para 41, para 43; OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, para 4.2

¹⁶⁴ *Hyde Park and others v Moldova*, App no 6991/08 and 15084/-8; Judgment of ECHR, 14 September, 2010, para 26

and at the same time if they can be exercised together without any problems.¹⁶⁵ The counter-demonstrations may create more problems in practice than unrelated simultaneous assemblies, because the possible risk of attack is higher between the counter-demonstrators.¹⁶⁶ The ECHR recognized a counter-demonstration as one of the effective ways for social groups to demonstrate their opinions on highly controversial issues¹⁶⁷ and underlined the positive obligation of the state to act “with restraint as regards any interference with the rights of the counter-demonstrators.”¹⁶⁸ Ensuring a proper balance between the interests of the counter-demonstrators, the Venice Commission defined that the state should protect the principle of proportionality in the decision-making process and should assess among other factors, “the history of previous demonstrations and counter-demonstrations between the same groups and the records of violent or non-violent action done by these two groups.”¹⁶⁹ In these cases when simultaneous assemblies are not possible to exercise together, OSCE Guidelines suggest that the national law should provide a dialogue to demonstrators to find a mutually satisfactory resolution and if it is not achieved to provide allocation of different events to particular locations in a non-discriminatory way.¹⁷⁰

The Georgian law on Assemblies and Manifestation regulates the exercise of simultaneous assemblies and defines that “the competent authority shall recommend the organizers to change the place and time of the event when another event (notified earlier) is arranged in the same place and at the same time indicated in the notification.”¹⁷¹ The recommendation

¹⁶⁵ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, para 122

¹⁶⁶ Adam Bodnar, *Free to protest constitutional power and street demonstration: Shaping the freedom of Assembly: Counter-productive effects of the Polish road towards illiberal democracy*, ed. Andras Sajo (Utrecht, the Netherlands, Eleven International Publishing, c2009), 180

¹⁶⁷ Platform Ärzte Für Das Leben v Austria; Application No 10126/82, EComHR Admissibility decision, 17 October 1985, para 6

¹⁶⁸ Ibid, para 11

¹⁶⁹ The Venice Commission, CDL-AD (2005)040, Study no. 332/2005, adopted 21-22 October, 2005), para 22, [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)040-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)040-e.asp)

¹⁷⁰ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, para 122

¹⁷¹ Article 10 (1) of the Georgian law on Assembly and Manifestation

concerning to change the place and time of simultaneous assemblies based only on the fact of the coincidence of the events and give advantages to the demonstrations with earlier notification, which excludes the possibility to exercise simultaneous assemblies together. Concerning the regulation of simultaneous assemblies, the Venice Commission advised Georgia to add further conditions to this provision such as: practical, objective impossibility for both events to take place simultaneously and the lack of sufficient policing recourses to manage both meetings in case of a conflict between counter-demonstrators.¹⁷² These recommendations are not considered by the Georgian legislators and the Georgian law does not provide effective protection of simultaneous assemblies, which should be in compliance with European standards.

The Armenian law on Freedom of assembly provides effective legislative regulation of spontaneous assemblies and states that “conducting another assembly, including a counter-assembly is per se not a ground for imposing limitations on the assembly, unless there is an imminent danger of clash between demonstrators”.¹⁷³ If it is not possible to accommodate simultaneous assemblies together, the Armenian law regulates assemblies in accordance to a method of “first come, first served” and restrict an assembly notified later. OSCE/ODIHR Guidelines suggest states hold a ballot to determine which assembly should be held in the location provided in the notification, because it avoids the possibility to block access to other events intentionally by abusing such a rule.¹⁷⁴ Generally, the Armenian law should be evaluated positively in this context, but the regulation will be improved in establishing a ballot mechanism in a decision-making process to impose restrictions on one of the simultaneous assemblies.

¹⁷² The Venice Commission CDL-AD(2010)009, Opinion no.547/2009, adopted 12-13 March, 2010; para 25, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)009-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.asp)

¹⁷³ Article 18(5) of Armenian Law on Freedom of Assembly

¹⁷⁴ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, para 122

Comparison of Georgian and Armenian law shows that Armenian legislation provides more guarantees and protection for exercising simultaneous assemblies than the Georgian one. Georgian legislators need to take into consideration the best practice of Armenia and recommendations of the Venice Commission to improve its legislation in this context.

As a conclusion, Georgian and Armenian legislation has problems in effective regulation of spontaneous and simultaneous assemblies, which should be solved to implement the best international standards into the laws regulating the freedom of assembly and manifestations.

2.2 Prior restrictions on the right to assembly: regulation of public space for demonstrations in Georgia and Armenia

2.2.1 General overview

Assemblies are a legal use of public space and the degree of disruption for using them depends on the number of the demonstrators, the form and nature of assembly and other factors, which influence the rights of other members of society.¹⁷⁵ Public space may be used by everyone for their purposes in the way that it should not disturb the interests of other users. Blomley presented a new theoretical approach to the study of public space, which is focused on the purpose of the sidewalks and pays attention to the interests of pedestrians in the light of holding demonstrations in public places.¹⁷⁶ He made a distinction between the understanding of the purposes of public space from the perspective of “civic humanist” and followers of pedestrianism, and argued that the usage of public space for the purpose of public expression is the disruption of the space for pedestrianism.¹⁷⁷ Blomley discusses the necessity to regulate the usage of public space to balance public and private interests and considered that the

¹⁷⁵ Roger N. Douglas, *Dealing with demonstrations: the law of public protest and its enforcement*, (Sydney, The Federation Press, 2004) , 7

¹⁷⁶ Nockolas Blomley, *Rights of passage, sidewalks and the regulation of public flow*, (Rutledge, Taylor and Francis Group, a Glasshouse book, 2010)

¹⁷⁷ Ibid, 11-12

restrictions on public demonstrations may be justified from the interests of pedestrians to use sidewalks without huge disturbances by protestors.¹⁷⁸ OSCE/ODIHR Guidelines underlined the duty of the public authority to strike a proper balance between the important freedom to peaceful assembly and the competing rights of those who live, work, shop, trade and carry on business in the locality affected by the assembly.¹⁷⁹

Prior restrictions are usually imposed on public events to prevent harm to third parties,¹⁸⁰ which may be reflected in traffic jams or other negative consequences to other individuals in practice.¹⁸¹ The specific nature of prior restrictions creates an imminent danger for unlawful interference in the earliest stage of exercising the right and sometimes may result in canceling the right to assembly completely. Prior restriction concerning restricting demonstrations at a particular place presents a blanket legislative provision, which covers generally all circumstances. OSEC/ODIHR Guidelines states that “blanket legislative provisions that ban assemblies at specific times or in particular locations require much greater justification than restrictions on individual assemblies, because it does not give a possibility to consider specific circumstances of each case”.¹⁸² The ECHR, concerning the prior restrictions, decided that “sweeping measures of a preventive nature to suppress freedom of assembly... do a disservice to democracy and often even endanger it”¹⁸³ and emphasized that “the state authority should give a proper ground to justify the prior restrictions”.¹⁸⁴ The justification of prior restrictions

¹⁷⁸ Ibid, 73-75

¹⁷⁹ OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, pg 28, para 80

¹⁸⁰ Michael Hamilton, “Freedom of assembly, consequential Harms and the rule of law: liberty-limiting principles in the context of Transition,” *Oxford Journal of legal studies*, Vol. 27, No 1 (2007)78

¹⁸¹ Adam Bodnar, *Free to protest constitutional power and street demonstration: Shaping the freedom of Assembly: Counter-productive effects of the Polish road towards illiberal democracy*, ed. Andras Sajó (Utrecht, the Netherlands, Eleven International Publishing, c2009),181

¹⁸² OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, pg 28, para 102

¹⁸³ Stankov and Ilinden v Bulgaria, Application No 29225/95 and 29221/95, Judgment of ECHR, 10 February, 2001, para 97

¹⁸⁴ Guneri and others v Turkey, App. No. 42853/98, 43609/98 and 44291/98, Decision of 12 July 2005, para 79

should be discussed in the light of principle of the proportionality to prevent damage to the essence of the right and avoid making the right to assembly meaningless.¹⁸⁵

2.2.2 Analysis of prior restrictions in Georgia and Armenia

The most crucial and problematic part of Georgian and Armenian legislation relates to regulation of public space for holding a demonstration. The regulation of public space is exercised by imposing prior restrictions on the right to assembly in both countries. The aim of prior restrictions is to define some public places where demonstrators are not permitted or are able to assemble after submitting a notification to public authorities.

I will discuss two types of prior restrictions: prohibition of public assemblies in front of some buildings listed by Georgian and Armenian laws and restrictions against blocking traffic and public thoroughfare.

2.2.2.1 Prohibition of public assemblies in front of some buildings

Prohibition of public assemblies in front of some buildings defined by law is one of the forms to regulate public space for demonstrations in Georgia and Armenia. Georgian law on assembly and manifestation prohibits holding a demonstration inside and within 20 meters around the entrance to the Prosecutor's office, the police (all police stations), penitentiaries, temporary detention facilities and law-enforcement bodies; railways, airports and ports.¹⁸⁶

The law also prohibits holding an assembly inside and within 100 meters from the entrance of military units.¹⁸⁷ Georgian law goes further and confers a power on all administrative

¹⁸⁵ Adam Bodnar, *Free to protest constitutional power and street demonstration: Shaping the freedom of Assembly: Counter-productive effects of the Polish road towards illiberal democracy*, ed. Andras Sajó (Utrecht, the Netherlands, Eleven International Publishing, c2009), 181

¹⁸⁶ Article 9 (1) of Georgian law on assembly and manifestation

¹⁸⁷ Article 9 (2) of Georgian law on assembly and manifestation

authorities and courts where the assembly is taking place to impose restrictions on assemblies within an area extending to a maximum of 20 meters from the entrance.¹⁸⁸

Armenian law on Freedom of assemblies prohibits conducting an assembly at such a distance from the residence of the President of the Republic, the seats of the National Assembly, the Government, the courts or correctional facilities, which threatens their natural activities.¹⁸⁹

The Venice Commission negatively estimated this type of restriction in both cases, because they prohibit assemblies without permitting consideration to the particular circumstances of each case and recommended Georgia and Armenia change the legislation in this context.¹⁹⁰ In the case of Georgia, the Venice Commission defined that the authority should decide the necessity of prohibition to hold a demonstration on a case-by-case basis in relation to these buildings, because it would provide a proper balance between the need for these institutions to function and the individual right to assembly.¹⁹¹ The Venice Commission notes that the identification of the entrance to railway stations, airports and ports will be very problematic in many cases, which possibly excludes assemblies in very large areas where people may want to demonstrate.¹⁹² The Venice Commission mentioned that the prohibition to hold an assembly within 100 meters from the entrance of military units may not be problematic, but required to make an explanation of what comes from the definition “military units”.¹⁹³ As for a discretionary power of the administrative authorities and courts, the Venice Commission

¹⁸⁸ Article 9 (4) and Article 9(5) of Georgian law on assembly and manifestation

¹⁸⁹ Article 19 (3) of Armenian law on freedom of assembly

¹⁹⁰ The Venice Commission CDL-AD(2010)009, Opinion no.547/2009, adopted 12-13 March, 2010; para 8-9, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)009-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.asp)

The Venice Commission CDL-AD(2010)049, Opinion no. 596/2010, adopted 17-18 December 2010, para 32-33, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)049-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)049-e.pdf)

¹⁹¹ The Venice Commission CDL-AD(2010)009, Opinion no.547/2009, adopted 12-13 March, 2010; para 22, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)009-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.asp)

¹⁹² Ibid, para18

¹⁹³ Ibid, para 26

underlines that restrictions on the exercise of the right to assemble should only be imposed by the competent executive authority or by the law-enforcement agency and not other organs.¹⁹⁴

These problematic issues are currently in force in Georgian legislation and the parliament of Georgia did not take into account these recommendations to improve the legislative framework. Furthermore, the Constitutional Court of Georgia declared it unconstitutional to impose the restriction of 20 meters radius from some buildings, but the Parliament of Georgia made a new amendment to modify an unconstitutional provision and adopted again 20 meters radius restriction on reducing list of buildings, which contradicts the main idea of the Constitutional Court's decision to prohibit 20 meters radius as a regulatory mechanism.¹⁹⁵

Georgian law is problematic because it negatively influenced the ability to express opinions and communicating directly to the recipient the message by the demonstrators, because it defined the distance from these buildings as a blanket prohibition. Sometimes it is impossible to conduct an assembly because these buildings are situated on narrow streets and there are also other prohibitions, for example prohibition against blocking the streets, which creates a ground to completely cancel the right. The huge discretionary power of administrative organs and courts regulating assemblies in front of their buildings increases the possibility of the arbitrary decision-making process, because they are not competent executive bodies in accordance with Georgian legislation¹⁹⁶ and the possible risk of frequent and unnecessary restrictions of the right to assembly is higher.

Armenian law on Freedom of Assembly concerning the restrictions to hold a meeting in front of the listed buildings was also critically assessed by the Venice Commission, because the list

¹⁹⁴ The Venice Commission CDL-AD(2010)009, Opinion no.547/2009, adopted 12-13 March, 2010; para 23, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)009-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.asp)

¹⁹⁵ The Constitutional Court of Georgia, App 2/482,483,487,502, Decision of 18 April, 2011; Available only in Georgian http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=640&action=show

¹⁹⁶ Georgian law on assembly and manifestation states that local government body is a competent authority to make all kind of decisions concerning the regulation of assemblies.

contains places where the national power is exercised and which are the most popular places for assemblies because of their high symbolic significance.¹⁹⁷ This restriction influenced negatively the exercise of the right, because it directly damaged the “sight and sound” of their target audience and interfere with the message to be communicated. The Commission underlined a lack of clarity of this provision, because it did not explain how the reasonable distance would be evaluated and what degree of threat of disruption would be sufficient to validate the prohibition, which creates a danger of arbitrary decision-making.¹⁹⁸ Compared to Georgian legislation, it has the same problems concerning prohibitions of assemblies: the blanket bans on the list of buildings and the risk of arbitrary decision-making process.

2.2.2.2. Restrictions of public assemblies against blocking the traffic and public thoroughfare

Restrictions of public assemblies against blocking traffic and the public thoroughfare are another form to regulate public space for demonstrations in Georgia and Armenia. Georgian law on assemblies and manifestations grants to local self-government body a power to make a decision against blocking the traffic and public thoroughfare if the assembly may be held in another way because of the number of demonstrators.¹⁹⁹ Georgian law defines that “the number of demonstrators” is a necessary precondition to block the traffic and the demonstrators should show that it is impossible to hold an assembly without blocking the traffic.

Armenian law does not define specifically the restrictions against blocking the streets, but it has general restrictions on assemblies when the time, venue and method of assembly present disproportionate restrictions of the constitutional rights of other persons or of the public

¹⁹⁷ The Venice Commission CDL-AD(2010)049, Opinion no. 596/2010, adopted 17-18 December 2010, para35, available at [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)049-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)049-e.pdf)

¹⁹⁸ Ibid, para 34

¹⁹⁹ Article 11¹(1) of the Georgian law on assembly and manifestation

interest.²⁰⁰ In accordance to the law, proportionality is not ensured if “the limitations distort the assembly purpose or isolate the assembly participants in a space in a way that reduces its significance and potential impact on the public audience or in any other way result in de-facto prohibition of the assembly.”²⁰¹

The provision of the Georgian law is not clear, because it does not state who measures the number of demonstrators and what criteria will be used for assessment of necessary numbers in this process. This norm was appealed to the Constitutional Court of Georgia and the Court held its constitutionality. Constitutional Court of Georgia argued that this provision provides a balance between the rights of demonstrators to hold assembly in the form of blocking traffic and the right of others of movement and preserving public order.²⁰² The Court underlined that blocking the street by the demonstrators without any conditions contradicts the requirements of the law on Road Traffic Law, as a *lex specialis* to assembly’s law.²⁰³

This regulation and interpretation of the law is not in the compliance with the Constitution of Georgia and the standards of the ECHR. Article 25 of the Constitution of Georgia guarantees assemblies on a public thoroughfare and the prior notification to the authorities is the only pre-condition to hold an assembly.²⁰⁴ The Georgian constitution guarantees that the demonstrators have the right to choose a place, time, manner and form of an assembly without any restrictions except maintaining a notification procedure.²⁰⁵ Kublashvili argued that the

²⁰⁰ Article 18 (1) of the Armenian law on freedom of assemblies

²⁰¹ Article 18(3) of the Armenian Law on freedom of assemblies

²⁰² The Constitutional Court of Georgia, App 2/482,483,487,502, Decision 18 April, 2011; para 32-34, Available only in Georgian at http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=640&action=show

²⁰³ See for example, The Constitutional Court of Poland, Judgments in the matter No K 21/05 (18 January, 2006 (English translation): “The Road traffic Law may not be regarded as *lex specialis* to the Assemblies law (requiring only notification and creating the possibility of banning demonstration, if it is contrary to the law), because such an approach would in fact mean consenting to the “factual derogative effect” upon the Assemblies law”

²⁰⁴ Article 25(2) of the Constitution of Georgia: “The necessity of prior notification of the authorities may be established by law in the case where a public assembly or manifestation is held on a public thoroughfare.”

²⁰⁵ Levan Izoria, Konstantine Korkelia, Konstantine Kublashvili and Giorgi Khubua, *Comments of the Constitution of Georgia: Human rights and fundamental freedoms* (Tbilisi, Meridiani, 2005)

state authorities are obliged to receive a notification and make all measures to provide the movement of transports and people by suggesting alternative ways.²⁰⁶ He highlighted that the public authority should not impose prior bans on assemblies to prevent the traffic problems.²⁰⁷ As a conclusion, the legislative regulation and decision of the Constitutional Court in this matter is not in conformity with the requirements of the Constitution of Georgia. As for the compliance with the standards of the ECHR, Article 11 covers a wide range of gatherings including meetings taking place on streets or public thoroughfares and blocking the traffic is one of the recognized forms expressing the protest.²⁰⁸ The Court defined that freedom of assembly is a right to hold meetings at a time and place of one's choosing²⁰⁹ and the minimum number of protestors is not required. The Court underlined that the assemblies in public places always caused some level of minor disturbances to public order, but the public authorities should show a certain degree of tolerance towards peaceful gatherings.²¹⁰ OSCE/ODIHR Guidelines defined that temporary disruption of vehicular or pedestrian traffic is not, itself, a reason to justify prior limitations.²¹¹ Analyzing the case law of the ECHR shows that the Court does not permit such prior restrictions on the right to assembly which prohibit holding assemblies on public thoroughfares on the basis of a number of the protestors.

Armenian law is not very problematic in this context, because it suggests a very strong proportionality test for imposing time, place and method restrictions on exercising the right to assembly. The Venice Commission positively evaluated the proportionality test of Armenian law concerning imposing limitations on time, venue and method of assemblies because “it

²⁰⁶ Konstantine Kublashvili, *Fundamental rights*, (Tbilisi, Publishing by Jisiai, 2003), 305

²⁰⁷ Ibid, 305

²⁰⁸ *Rassemblement Jurassien et Unite Jurassienne v Switzerland*, App no 8191/78 (1979) 17 DR 93,119; *Christians against Racism and Fascism v United Kingdom*, App no 8440/78; (198)21 DR 138,

²⁰⁹ *Stankov and Ilinden v Bulgaria*, Application No 29225/95 and 29221/95, Judgment of ECHR, 10 February, 2001, para 109

²¹⁰ *Ataman V Turkey*, App No 74552/01, Judgment of 5 December, 2006, para 41-42

²¹¹ OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Second Edition, Warsaw/Strasbourg, 2010, pg 28, para 80

represents a sufficient and proper basis for deciding upon restrictions by a case-by-case basis and taking into account the specific circumstances.”²¹² Comparing Georgian and Armenian restrictions concerning this matter, Armenian regulation provides better protection of the right to assembly than the Georgian.

As a conclusion, Georgian and Armenian legislations have important problems in regulating public space by imposing prior restrictions on the right to assembly and needs to change the legislation in compliance with the European standards.

²¹² The Venice Commission CDL-AD(2010)049, Opinion no. 596/2010, adopted 17-18 December 2010, para 34, available at [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)049-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)049-e.pdf)

CONCLUSION

After analyzing the problems of transitional states concerning the regulation of freedom of assembly, the following conclusion is found.

The discussion concerning understanding the role of the freedom of assembly in a transition highlights two main purposes of the right: as a mechanism to change a political regime from authoritarian to democratic and as a tool of civil society to participate in the process of democratization. It is very problematic to achieve these purposes in Georgia and Armenia because their governments have a low level of tolerance to critical opinions and the active participation of the civil society is left without considerations by the government in the democratization process of these countries.

The influence of three specific features of a transition on the effective enjoyment of the right to assembly is evaluated negatively in the cases of Georgia and Armenia. The fragile legislative framework has a negative influence on the right to assembly, because the laws are amended as an answer to changing political situations in these countries, the content of the amendments is restrictive for enjoyment of the right to assembly and the interpretation of these regulations by public authorities is very excessive. Derogation from the right to assembly had a negative influence, because the states used excessive force against the demonstrators and could not respect with the international obligations to protect the right to life and prohibition of torture in the time of emergency. The legislative framework and practical implementation of state protest policing strategy do not provide a proper balance between the preservation of public order and the protection of the right to assembly.

The legislative problems of the Georgian and Armenian laws regulating freedom of assembly underlines two important dimensions: absence of the sufficient guarantees for protection of spontaneous and simultaneous assemblies in legislation and imposition of prior restrictions on

demonstrations by law for the purpose of regulating public space. Comparing the Georgian and Armenian legislation in the first dimensions shows that the protection of spontaneous assemblies is better provided in Armenia than Georgia, but both states fail to exercise their positive obligations to facilitate its protection in the states and legislation needs improvement. As for the simultaneous assemblies, Armenian law is a good example for regulation of this type of assemblies, which should be considered by the Georgian legislators.

Georgian and Armenian laws have problems with imposing two types of prior restrictions: prohibition of public assemblies in front of some buildings listed by laws and restrictions against blocking traffic and public thoroughfare. The first type of restrictions is problematic because they have a blanket nature and do not give the possibility to estimate by the public authority on a case-by-case basis in both countries. The second type of restriction is especially problematic in Georgia, because its regulation is not in conformity with the Constitution of Georgia and the standards of the ECHR.

Improvement of the protection of the right to assembly in transitional states should be achieved by establishment of tolerance in a state policy to public demonstrations. Georgia and Armenia should aim to overcome negative sides of transitional features and orientate on the positive outcomes from them. This means that they should provide solid legislative framework concerning the right to assembly and if frequent legislative amendments are necessary, they should aim to improve the protection of the right. In the time of emergency, the state should ensure that derogation from the right to assembly does not damage the essence of the right itself and act in compliance with international standards. Furthermore, Georgia and Armenia should change the protest policing strategy from escalated forces to the negotiation system and aim to create police forces which will orientate on the protection of the rights of demonstrators.

The Georgian and Armenian legislations need important changes to solve the above-mentioned legislative problems. They should consider recommendations of the Venice Commission concerning the regulation of freedom of assemblies in these countries and implement standards of ECHR in their legislations. The Parliament of Georgia should also pay attention to the best practice of Armenian law as a transitional product of Armenian legislators and fit them with the transitional circumstances of Georgia.

This improvement should be achieved by sufficient changes in the political, legal and administrative culture and result in the effective enjoyment of the right to assembly within and after the period of transition in Georgia and Armenia.

BIBLIOGRAPHY

Books:

Blomley, Nockolas, *Rights of Passage, sidewalks and the regulation of public flow*,
(Rutledge, Taylor and Francis Group, a GlassHouse book, 2010)

Bodnar, Adam, *Free to protest constitutional power and street demonstration: Shaping the
freedom of Assembly: Counter-productive effects of the Polish road towards
illiberal democracy*, ed. Andras Sajo (Utrecht, the Netherlands, Eleven
International Publishing, c2009)

Douglas, Roger N., *Dealing with demonstrations: the law of public protest and its
enforcement*, (Sydney, The Federation Press, 2004)

Izoria, Levan; Korkelia, Konstantine Konstantine; Kublashvili, Konstantine and Khubua,
Giorgi *Comments of the Constitution of Georgia: Human rights and
fundamental freedoms* (Tbilisi, Meridiani, 2005)

Kublashvili, Konstantine, *Fundamental rights*, (Tbilisi, Jisiai, 2003)

Mead, David, *The new law on peaceful protest, Rights and Regulations in the Human Rights
Act Era*, (Hart Publishing, Oxford and Portland, Oregon, 2010)

OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, First Edition, (Warsaw 2007)

OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Second Edition,
(Warsaw/Strasburg, 2010)

Porta, Donatella D. *Policing protest, the control of mass demonstrations in western
democracies: Police knowledge and protest policing: some reflections on the
Italian case*, ed Donatella D. Porta and Herbert Reiter..Volume 6, chapter 10
(Minneapolis: University of Minnesota Press, 1998)

Porta, Donatella D. *Policing protest, the control of mass demonstrations in western
democracies: Police knowledge and protest policing: some reflections on the*

Italian case, ed Donatella D. Porta and Herbert Reiter..Volume 6, chapter 10
(Minneapolis: University of Minnesota Press, 1998)

Salat, Orsolya, *Free to protest constitutional power and street demonstrations: New Trends in the Assembly and Protest Jurisprudence of the European Court of Human Rights*, ed. Andras Sajó. ((Utrecht, the Netherlands, Eleven International Publishing, c2009)

Smilnov, David *Free to protest constitutional power and street demonstration: the power of assembled people- the right to assembly and political representation*, ed. Andras Sajó (Utrecht, the Netherlands, Eleven International Publishing, c2009)

Journals:

Allain, Jean, “Derogation from the European Convention of Human Rights in the light of “other obligations under international law,” *European Human Rights Law Review*, (2005), No 5, pp 480-498

Broers, Laurence, “After the Revolution: civil society and the challenges of consolidating democracy in Georgia,” *Central Asian Survey*, 24(3), (September 2005), pp 333-350

Croquet, Nicolas A.J. “The European Court of Human Rights’ norm-creation and norm-limiting processes: resolving a normative tension;” *Columbia Journal of European Law* 307, No 17 (2011), pp 1-64

Ghai, Yash, ”The rule of law in the transition of societies: the African experience”, *Journal of African Law*, Vol.35, No 1/2, (1991), pp 8-20

Guerin, Daniel; Perty, Francois and Crete, Jean, “Tolerance, protest and democratic transition: survey evidence from 13 post-communist countries”, *European Journal of Political Research* 43; (2004), pp 371-395

Habermas, Jurgen, “Structural Transformation of the Public Sphere: An inquiry into a category of Bourgeois Society,” *Cambridge MA:MIT Press*, (1989)

Hamilton, Michael, "Freedom of assembly, consequential Harms and the rule of law: liberty-limiting principles in the context of Transition," *Oxford Journal of legal studies*, Vol. 27, No 1 (2007), pp 75-100

Hess, Steve, "Protests, parties and presidential succession, Competing theories of color Revolutions in Armenia and Kyrgyzstan," *Problems of Post-Communism*, Vol. 57, No 1, (2010), pp 28-39

Laverty, Nicklaus, "The problem of lasting change: Civil society and colored revolutions in Georgia and Ukraine", *Heldref Publications*, (2008), pp 143- 161

McFaul, Michael, "Transitions from post-communism," *Journal of Democracy*, Volume 16, Number 3, (July 2005), pp 5-19

Oberschall, Anthony, "Social movements and the transition to democracy", *Democratization* 7:3, (2000), pp 25-45

Reports:

Georgian Young Lawyers' Association, *Report 26 May, 2011, Analysis of Human Rights violations during and related to the dispersal of the May 26 Assembly*, Tbilisi, Georgia, (2011)

The Commissioner for Human Rights of the Council of Europe; *Report: Special Mission to Armenia By Thomas Hammarberg*, CommHR, (20 March, 2008) available at <https://wcd.coe.int/ViewDoc.jsp?id=1265025>

The Helsinki Committee of Armenia, *Report on Monitoring of the freedom of peaceful assembly in Armenia*, report,(Armenia, Asoghic Printing House, 2009);

The Human Rights Center, *Report on Monitoring of the peaceful assembly in Georgia, Legislation and practice*, (Tbilisi, 2012),

The Parliamentary Assembly, Committee on Legal Affairs and Human Rights, *Report on the protection of human rights in emergency situations*; By Holger Haibach, Germany, Group of the European People's Part, Doc # 11858, (9 April, 2009)

The United Nations, Statement Special Reporter on the rights to freedom of peaceful assembly and association at the conclusion of his visit to the Republic of Georgia, Tbilisi, 13 February, 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11816&LangID=E>

The Venice Commission CDL (2009)152, opinion no 547/2009, adopted October 1 2009; Available at [http://www.venice.coe.int/docs/2009/CDL\(2009\)152-e.asp](http://www.venice.coe.int/docs/2009/CDL(2009)152-e.asp)

The Venice Commission CDL-AD (2010)009, Opinion no.547/2009, adopted 12-13 March, 2010; available at [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)009-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.asp)

The Venice Commission CDL-AD (2010)049, Opinion no. 596/2010, adopted 17-18 December 2010, available at [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)049-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)049-e.pdf)

The Venice Commission, CDL-AD (2005)040, Study no. 332/2005, adopted 21-22 October, 2005), [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)040-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)040-e.asp)

Official documents:

The Minister for Foreign Affairs of Armenia, Note Verbal #14/02627 to the Secretariat General of the Council of Europe, 2 March, 2008

The Minister for Foreign Affairs of Georgia, Note Verbal #7/229-06 of the to the Secretariat General of the Council of Europe, 9 November, 2007

The President of Georgia, Decree on measures to be undertaken in connection with Declaration of the States of Emergency on the Entire Territory of Georgia; #1, 7 November 2007, Tbilisi;

The President of Georgia, Order on the Declaration of the state of Emergency on the Entire Territory of Georgia, No. 621, 7 November 2007, Tbilisi;

The President of the Republic of Armenia, Decree on Declaration of the State of Emergency
in Yerevan, 1 March, 2008;

Cases:

Amann v. Switzerland, App. no. 27798/95, ECHR Judgment of 16 February 2000;

Ataman v Turkey, Application No 46252/93, ECHR Judgment, 27 April, 2006

Butka and others v Hungary; App. no 25691/04, Judgment of the ECHR of 17 July, 2007

Christian Democratic People's Party v Moldova, App. no. 28793/02, ECHR Judgment 14
February, 2006

Christians against Racism and Fascism v United Kingdom, App. no 8440/78; (198)21 DR
138,

Eva Molnar v Hungary; App. no 10346/05, Judgment of the ECHR of 7 October, 2008

Gulec v Turkey, App. no 23818/94, ECHR Chamber Judgment of 27 of July, 1998,

Guneri and others v Turkey, App. no. 42853/98, 43609/98 and 44291/98, Decision of 12 July
2005, para 79

Hyde Park and others v Moldova, App. no 6991/08 and 15084/-8; ECHR Judgment, 14
September, 2010

Ireland v UK, Application no 5310/71, ECHR Judgment, 18 January, 1978

Lawless v Ireland, App. no 332/57, ECHR Judgment of 1 July, 1961,

McCann and others v the UK, App. no. 18984/91, ECHR Judgment of 27 September, 1995

Mkrtchyan v Armenia, App. no. 6563/03, Decision of the ECHR of 11 January, 2007

Muradova v Azerbaijan, App. no 22684/05, ECHR Judgment, 2 April, 2009,

Platform Arzte Fur Das Leben v Austria; App. no 10126/82, EComHR Admissibility
decision, 17 October 1985

Rassemblement Jurassien et Unite Jurassienne v Sweatzerland, App. no 8191/78 (1979) 17
DR 93,119;

Stankov and Ilinden v Bulgaria, App. no 29225/95 and 29221/95, ECHR Judgment, 10 February, 2001

The Constitutional Court of Georgia, App 2/482,483,487,502, Decision 18 April, 2011;

Available only in Georgian at
http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=640&action=show

United Communist Party of Turkey and others v Turkey, App. no 133/1996/752/951, ECHR Judgment 30 January, 1998

Internet sources:

<http://constcourt.ge>

<http://echr.coe.int/echr/en/hudoc>

<http://legislationline.org>

<http://parliament.am>

<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

<http://www.parliament.ge>

<http://www.venice.coe.int>

<https://wcd.coe.int>

Other sources:

Stephanie Nebehay, “UN Rights Boss Rebukes Georgia for Use of Force”, Reuters, 08.11.2007;