



Strasbourg, 8 April 2004
N° 290 / 2004

Restricted
CDL(2004)026
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS
ON THE DRAFT LAW
ON THE PROCEDURE OF CONDUCTING GATHERINGS,
MEETINGS, RALLIES AND DEMONSTRATIONS
IN THE REPUBLIC OF ARMENIA

by

Ms Finola FLANAGAN
(Member, Ireland)

General

1. This proposed law states at Article 1 that its purpose is to create conditions to allow citizens to exercise the right of peaceful assembly in order to express opinions and to receive and disseminate information in public places at the same time as securing public safety.

Preliminary comment

2. This draft law concerns the right of freedom of assembly protected by Article 11 of the European Convention on Human Rights. The broad parameters of the right of assembly are set out in brief so as to set the context in which limitations on the exercise of the right may be created and enforced.

3. The freedoms of assembly and expression (which is closely connected with the right to freedom of assembly) are fundamental rights in a democracy and the rights should not therefore be interpreted restrictively¹. The European Court of Human Rights has found² that the freedom to take part in peaceful assembly is so important that it cannot be restricted in any way so long as the persons in question have not committed any reprehensible acts.

4. The right of assembly covers all types of gathering including assemblies and meetings, demonstrations, marches and processions, whether public or private³ provided they are 'peaceful'. Where organisers or participants have violent intentions likely to result in violence or disorder there is no right to freedom of assembly⁴. However, incidental or sporadic violence or criminal acts committed by others in the assembly will not remove protection from an individual⁵ nor will the violent response of counter-demonstrators to an otherwise peaceful assembly⁶.

5. Article 11(2) is a 'qualified' right and the state is therefore entitled to justify what is a *prima facie* interference with the right. Article 11(2) expressly permits limitations on assemblies provided they are "*such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others*". Therefore restrictions may be allowed for the regulation of public order as a legitimate aim and the State is given a wide margin of appreciation in order to deal with disorder or crime or to protect the rights and freedoms of others. The right can be regulated in its exercise and a regime of prior authorisation of peaceful assemblies is not necessarily an infringement of the right. However, prohibition of an assembly must always be capable of justification having regard to

¹ *G v Germany* (1989) 60 DR 256, 263, EComm HR

² *Ezelin v France* 14 EHRR 362

³ *Rassemblement Jurassien Unité Jurassienne v Switzerland* (1979) 17 DR 93, 119, EComm HR

⁴ *Christians Against Racism and Fascism v United Kingdom* (1980) 21 DR 138

⁵ *Ezelin v France* (1991) 14 EHRR 362

⁶ *Christians Against Racism and Fascism v United Kingdom* (1980) 21 DR 138

the express terms of Article 11(2) as interpreted by the case law of the European Court of Human Rights⁷.

6. The state may be required to intervene to secure conditions permitting the exercise of the right to freedom of assembly and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully.⁸ This necessarily means that laws regulating assemblies must not in any circumstances create unjustifiable restrictions in relation to holding peaceful assemblies. Rather, the state must act in a manner calculated to allow the exercise of the freedom. This involves arriving at a fair balance between the interests of those seeking to exercise the right of assembly and the general interests of the rest of the community i.e. by applying the principle of proportionality.

The draft law – general

7. The draft law provides expressly for various rights connected with the rights of assembly and expression which are guaranteed by the Convention. Nonetheless, the effect of the law taken as a whole is severely to limit and subject to regulation by public authorities these classic freedoms. The general impression and effect of the law as a whole is of one which limits and interferes in an area which should, insofar as possible, be allowed to be exercised without regulation except where its exercise would pose a threat to public order and where necessity would demand state intervention. There is no sense that the effect of the draft law would be to facilitate and protect in a positive way the guaranteed freedom of assembly and the associated guaranteed freedom of expression. In addition, the complicated form of the draft law and imprecise definitions of key concepts would make it very difficult to know exactly to whom and to what event restrictions apply.

8. The draft law sets criteria by which various types of “public event” are distinguished one from the other. Some of these public events require notification and authorisation and some do not. A fundamental problem with the draft law is that the European Convention on Human Rights permits restrictions to be placed on the right of freedom of assembly only in the circumstances listed in Article 11(2). However the distinctions drawn between various types of assembly or “public event” in the draft law and pursuant to which restrictions are imposed, are not such as to provide a proper link to the permissible reasons for restrictions contained in Article 11. The dangers to national security or public safety, the likelihood of disorder or crime, danger to health or morals or the rights and freedoms of others may arise irrespective of whether, for example, a public event is for broadly political purposes or whether it is for cultural or religious purposes; whether it is organised for more or for fewer than a hundred participants; whether it is in a public or non-public place; whether it is organised by or participated in by citizens or non-citizens, whether it is “organised” or spontaneous. Nonetheless, it is those distinctions which govern the lawfulness of and circumstances in which public events may be held. Generally speaking, there is no overriding requirement in any given case that the restrictions have to be proportionate and for relevant and sufficient reasons. Therefore these distinctions would have the capacity to permit state authorities to restrict assemblies for reasons which are not permitted by the Convention and excessively restrict the right of assembly.

⁷ *Christians against Racism and Fascism v UK*

⁸ *Plattform ‘Ärzte für das Leben’ v Austria* (1988) 13 EHRR 204 para 34

9. The law is, in general, designed to regulate events of a broadly political character, held in public with distinct treatment, in certain circumstances, of events with more than (mass public event) and less than 100 participants (non-mass public event). However, threats to public order may equally arise in connection with small, non-political protest on private property. Such events should also be capable of proper control.

10. For these reasons, the draft law requires serious reconsideration with specific regard being had to the protection of the freedom of assembly as contained in Article 11 of the European Convention on Human Rights. Indeed it might not be necessary to have a detailed law dedicated to public events and assemblies leaving control of such events to general policing and rights in relation to them subject to the general law.

The draft law – scope and definition

11. The draft law is not easy to follow. This is so particularly because definitions of important terms are not contained in a single article but rather are confusingly spread amongst the Articles 1 – 4. Article 3 also refers to the Armenian Constitution which contains its own definitions. This lack of precision in relation to definitions of key concepts makes it very difficult to be sure of the scope and effect of the law as a whole. Because certain key concepts are ill-defined this will inevitably give rise to uncertainty as to the intent and scope of the draft law in this essential area of democratic activity. Subject to the fundamental difficulties identified in paragraphs 7 - 10, where restrictions are intended to be imposed by the draft law it is essential that they be formulated with sufficient precision to enable those affected to regulate their conduct and foresee the consequences that a given action will entail.⁹ Unfortunately, as elaborated below with some examples, it is unlikely that this would be possible.

“Public event”

12. This is the central definition of the entire law and subject to the comments above in paragraphs 7 - 10, and there should be as little doubt as possible as to what it covers. However, because of the numerous questions that arise as to its meaning there are serious difficulties in relation to the interpretation of the draft law as a whole.

13. In article 1 entitled “The Subject Matter and Objectives of the Law”, a “public event” is stated to be “gatherings, meetings, rallies (parades), or demonstrations (including sit-down strikes)...in areas of general public use...” In article 2 the scope of the law is stated to “cover public events organised in areas of general public use by citizens, foreign citizens, stateless persons (hereinafter referred to as citizens) or organisations or state or local self-government bodies in order to express their opinion on economic, social, political, religious or other needs, problems and issues, to seek, receive or disseminate information or ideas”. This definition has to be contrasted with the definition of an “other mass event” in article 2 which encompasses “celebrations, rituals, cultural or sport events” to which the draft law is intended in general not to apply. In article 4, the definitions article, “gathering or meeting or demonstration” is defined as a “public event organized at one place in order to express one’s opinion on economic, social, political, religious or other needs, problems and issues, to seek, receive or disseminate information or ideas”. By contrast, a “rally” is defined as “a public event conducted via moving from one place to another. Rallies can also be conducted via transportation.”

⁹ *Sunday Times v United Kingdom* (1979) 2EHRR 245 para 49

14. In practice, it would often be difficult to distinguish between a “public event” “to express...opinion on economic, social, political, religious or other needs, problems and issues, to seek, receive or disseminate information or ideas” on the one hand and “other mass events” organised to “conduct celebrations, rituals, cultural or sport events...” on the other. Cultural events, are frequently also expressions of opinion on social, political or other issues and they disseminate information and ideas. An assembly primarily coming within the definition of an “other mass event” might well have a combination or mixture of celebration or ritual with protest or an expression of opinion on a matter which would otherwise be within the definition of a “public event”.

15. Since the state is only entitled to interfere with the exercise of the right in accordance with strict conditions, such a lack of precision in the definition of the key concept of the draft law has the danger that it would allow for control, both arbitrary and in excess of what is permitted by the Convention, of the right of assembly by the public authority.

16. The law of the European Convention on Human Rights does not permit the rights of expression, assembly and association to be restricted to citizens only. The Convention guarantees the right to freedom of assembly to “every person”. It is not clear whether the draft law is designed to permit public events or other mass events organised by and participated in by non-citizens. Different indications are given on this question by the Articles 1- 4 and by subsequent articles (Articles 7, 9, 10).

17. It is not clear whether the draft law permits spontaneous assemblies since the law is stated to cover “public events organised in areas of general public use” (emphasis added). The European Convention on Human Rights could not be interpreted to require that all assemblies of one hundred or more within the meaning of “public event” require both advance notification and advance consent in order to be lawful.

18. Article 5 presupposes that an assembly or gathering will always have an “organiser” and provides that any mass public event without an organiser may not proceed or may be terminated. This limitation and regulation of mass public events would appear to apply in all circumstances where an organiser is absent and is not linked in any way to the reason in the Convention permitting restriction of the right of assembly. A peaceable demonstration not interfering with public order should not automatically be subject to such restrictions.

19. Article 6 imposes excessive responsibilities on the “organiser”. An organiser cannot be held responsible for everything that occurs at a gathering governed by the draft law. An organiser might not be in a position to terminate a public event which had got out of his or her control. Nor would the organiser necessarily be able to cause violations of the law to cease or ensure that property was not damaged or ensure access to private property.

20. Article 7 provides for a right of participation, arguably in unnecessary detail. The general obligation of participants “to comply with the requirements of public ethics” is one which is unlikely to fulfil the requirement of being adequately prescribed by law.

21. Article 9.3 appears to prohibit absolutely the conduct and organisation of public events of any size (mass or non-mass) in a list of locations which is so extensive as to amount to an excessive limitation on the right of assembly. No connection is required to be made between the prohibition of a public event on the one hand and its location and threats to security or public order as required by Article 11 of the Convention on the other. By way of example, a “gathering” of even two people with a protest banner would be prohibited on any bridge, at any airport or railway, near any “deteriorating building” or construction site, in the “working areas of state bodies” or within 500m of the “areas of establishment of special state significance”.

22. Article 9.3(e) also prohibits any public event at the same time as another mass public event. In effect, this prohibits any counter-demonstration, however limited, without its prohibition being connected to security or public order considerations.

23. Article 10 is presented as a permissive provision permitting the conduct of public events, whether mass or non-mass events, in areas of general public use. Nonetheless these public events are subject to the restrictions and procedural requirements already mentioned. Furthermore whilst expressly permitting public events “for the purpose of pre-election or referendum agitation” these are not permissible where they would violate, amongst other things, traffic regulations or where they would take place in a prohibited area referred to in Article 9 or are subject to the requirements of a consent to the event given in accordance with Article 11. It would be excessive that demonstrations about elections or referenda should be in all cases prohibited where they interfere with traffic regulations.

24. Articles 11 and 12 involve excessive bureaucracy surrounding the notification and discussion of notification prior to the granting of consent or prohibition of a mass public event. In addition to reasons for prohibition already mentioned, prohibition is automatic if “mandatory information and documents” are not provided. The onerous procedural requirements and mandatory time limits and the detailed requirements pursuant to Article 12 are such as would be likely to disincline many people from organising a public event. It would also necessarily interfere with the holding of spontaneous public events.

25. Article 13 provides for grounds for prohibition and are formulated in such a way, as taken together with the rest of the draft law, that there is inadequate capacity by the authorised body to allow events which would not pose security or public order difficulties even though they might be in breach of formal requirements.

26. Article 14 relates to termination of a public event and the circumstances in which this would be required are governed by other articles.

27. Article 15 provides for liability for violations of the provisions of the law and provides that organisers shall bear material liability for any damage caused. As has been previously mentioned, the organisers or participants may not be responsible or have control over such damage and should not bear responsibility for it in those circumstances.