Strasbourg, 8 February 2005

Restricted
CDL(2005)018
Engl. only

Opinion no. 290 / 2004

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT OPINION ON THE DRAFT LAW MAKING AMENDMENTS AND ADDENDA TO THE LAW ON CONDUCTING MEETINGS, ASSEMBLIES, RALLIES AND DEMONSTRATIONS OF THE REPUBLIC OF ARMENIA

on the basis of comments by

Ms Finola FLANAGAN (Member, Ireland)
Mr Giorgio MALINVERNI (Member, Switzerland)

I. Introduction

1. Upon the request of the Armenian authorities, the Venice Commission adopted, at its 60th Plenary Session (Venice 8-9 October 2004), an opinion (CDL-AD(2004)039) on the "Law on the Procedure of Conducting Meetings, Assemblies, Rallies and Demonstration of the Republic of Armenia" (CDL(2004)42).

2. In its Resolution 1405(2004) of October 2004, the Parliamentary Assembly of the Council of Europe called for the Armenian authorities "to introduce amendment, no later than March 2005, on the law on demonstrations and public assemblies to bring it into compliance with Council of Europe standards to ensure freedom of assembly in practice".

3. In December 2004, Mr T. Torosyan, vice-speaker of the Armenian National Assembly, requested the Venice Commission to carry out an expert assessment of the draft law "making amendments and addenda to the law on the procedure of conducting gatherings, meetings, rallies and demonstrations in the Republic of Armenia" (CDL(2005)019 and CDL(2005)017).

4. Ms Finola Flanagan and Mr Giorgio Malinverni were appointed to act as rapporteurs.

5. The present opinion, which was drawn up on the basis of their comments, was adopted by the Venice Commission at its … Plenary Session (Venice, … 2005).

II. Background

6. In October 2004, the Venice Commission adopted an opinion (CDL-AD(2004)039) on the law on the procedure of Conducting Meetings, Assemblies, Rallies and Demonstration of the Republic of Armenia (CDL(2004)042). This law had already been adopted by the Armenian National Assembly on 28 April 2004. The opinion of the Venice Commission was to the effect that the Armenian law did not correspond to the general requirement that laws specifically devoted to the right of assembly should be limited to setting out the legislative basis for permissible interferences by state authorities and to regulating the system of permits without unnecessary details. Rather, the law as adopted set out with excessive detail the conditions for exercising the constitutionally guaranteed right of assembly. The law was considered to differentiate between categories of event in a manner which was not properly linked to permissible reasons for restrictions.

7. The law as adopted on 28 April 2004 contained some improvements taking into account some comments made by the rapporteurs in respect of an earlier draft version of the law (CDL(2004)022). Certain further amendments and addenda to the draft law of 28 April 2004 are now proposed by the Armenian authorities and commented on below.

III. Analysis of the proposed amendments

8. The proposed amending law contains 11 articles which are commented on article by article. It would be helpful to have a commentary on or explanation from the Armenian authorities on each proposed amendment since the intended effect is not always clear. In particular, it is not always clear whether a proposed amendment is intended to make a substantive change to the effect of a provision or whether it is simply a technical drafting change.

Article 1 - repealing Articles 3 and 4

9. The repeal would not appear to bring about any change to the rules regarding "other events in places of general use" or to the rules regarding "conducting meetings, assemblies, rallies and other events in areas not considered places of general use". These two Articles would appear to be replaced by a new provision in Article 5 which maintains the same rule as heretofore.

Article 2 - amending Article 5

10. The proposed amendment does not appear to bring about any substantive change. The alterations are purely of a drafting nature.

Article 3 - amending Article 6

11. This proposes a repeal of the requirement that the organiser "assume other statutory duties stipulated for organisers of public events". It is not clear that the repeal of this requirement reduces the duties of organisers since it is presumed that "other statutory duties" would continue to apply even in the absence of this provision. An explanation from the Armenian Authorities of what is intended by this repeal would be helpful.

12. The effect of the repeal of the express requirement that an organiser be present throughout the conduct of a public event is also unclear; it is not apparent whether the repeal is intended to remove the requirement that the organiser be present. It would not appear to be possible for an organiser to perform certain other duties contained in Article 6 if he or she were not present. An explanation from the Armenian authorities of the implications of the repeal proposed here would be helpful.

Article 4 - Amending Article 7

13. This appears to be a technical drafting amendment not intended to affect the rights and duties of participants in the public event.

Article 5 – amending Article 8

14. The amendments proposed here would appear to be of technical drafting character only and do not alter the substance of the law.

Article 6 – amending Article 9

15. Article 9 prohibits the conduct of public events in the circumstances listed. Article 9, paragraph 3, sub-paragraph 1, is improved by the proposed amendment. The amended provision would provide that public events are prohibited "[on] bridges, in tunnels, underground areas, hazardous buildings, construction areas *if the public security, health of participants and others are endangered*…" (emphasis added). In the opinion adopted by the Commission at its 60th Session the Law of April 28th 2004 was criticised because though the Armenian Authorities explained that certain areas were prohibited for "security reasons" this was not stated in the law itself and the prohibition was not therefore expressly linked to a permissible reason for restriction of a guaranteed right. Whilst the provision is improved by the proposed amendment, nonetheless, the remainder of Article 9 paragraph 3 still contains an extensive list of restrictions not necessarily connected with threats to security or public order. Despite the amendment in

relation to the restrictions in Article 9 paragraph 3 sub-paragraph 1, the Venice Commission's earlier opinion therefore remains valid in relation to the rest of Article 9 paragraph 3.

Article 7 – amending Article 10

16. It is not clear what is the intention of the proposed amendment involving the requirement to notify a proposed public event in certain circumstances. Whilst the amendment could be interpreted as relaxing the requirement to notify in relation to non-mass public events, it is not absolutely clear that it does so since non-mass public events which would "disrupt the public order" will continue to require notification. If a disruption of traffic would be considered in Armenian law to amount to a disruption of public order, then the amendment would not appear to relax the law at all.

Article 8 – amending Article 11

17. Some of these amendments reduce somewhat the details required in the notification procedure for a mass public event and are, to that extent, desirable. Others are technical redrafting amendments which would not appear to affect the substance of the law. However, the general criticism regarding "excessive bureaucracy surrounding the notification" remains.

Article 9 – amending Article 12

18. It is not clear whether the amendment proposed means that a failure to submit a notification to the relevant head of the community can be rectified.

Article 10 – amending Article 13

19. The removal of Article 13, paragraph 1, paragraph 8 is to be welcomed. The requirement that a mass public event would be prohibited where "the event pursue[d] unlawful goals and objectives" is removed. The provision was considered too vague to be acceptable.

20. The removal of the words "should there be such a possibility" from Article 13 paragraph 4 is to be welcomed and imposes on the authorities the obligation to offer the organisers another date for their event. While this is welcomed the comments about the restrictive nature of the requirements around holding events remain. The right to counter-demonstrate should only be limited in connection with genuine security or public order consideration.

Article 11 – amending Article 14

21. It is not clear how the proposed amendments fit in with the possible earlier requirement that organisers be present throughout an event.

IV. Conclusions

22. Certain of the proposed amendments respond to specific criticisms made in the earlier opinion of the Commission. They are therefore to be welcomed.

23. Generally, however, the draft law under consideration does not make the significant change to the law as adopted on 28 April 2004 which would be required in order to bring the law into conformity with the requirements of the European Convention on Human Rights. The

fundamental deficiencies and difficulties identified in the Venice Commission's Opinion adopted at its 60th Plenary Session remain.

24. In particular, the Commission wishes to underline that

- there is still no overriding requirement in any given case that the restrictions have to be proportionate and for relevant and sufficient reasons; the authorities should instead be in the position to allow events which would not pose security or public order difficulties or would not risk violating other persons' rights, even though they might be in breach of formal requirements;
- there is no room for spontaneous assemblies, except "non-mass" ones, while spontaneous assemblies are undoubtedly guaranteed under Article 11 of the Convention;
- the rights to counter-demonstrate should be generally allowed, unless at risk of violating security or public order;
- limitations on the venues for conducting public events remain unreasonably strict;
- the procedural requirements and mandatory time limits and the detailed requirements in order for a mass public event to be authorised remain so onerous as to be likely to disincline many people from organising a public event.

25. In addition, the Commission has received information that certain amendments to the Criminal Code and to the Code of Administrative violations were passed by the Armenian National Assembly on 24 December 2004 and signed by the President into law on 18 January 2005.

26. In particular, criminal liability has been introduced for the "*Organization and holding of illegal public event or other such events and public calls for involving participation in those events"* (fine of 200 to 300 minimal salaries or arrest up to two months), for "*calls for disobedience to the decisions discontinuing an illegal public event"* (fine in the amount of 300 to 500 minimal salaries or detention up to three months) and for the "*Organization of group activities violating public order and active participation in such activities"* ("in the event of the absence of graver criminal elements (…) fine in the amount of 400 to 800 minimal salaries").

27. Furthermore, non-compliance with decisions on discontinuing public events as set forth in the law "On Conducting Meetings, Rallies, Processions and Demonstrations" is now punished with a fine amounting to 50 to 100 minimal salaries.

28. In this respect, the Commission considers that the need to establish criminal liability, and even imprisonment, for the mere organisation of illegal demonstrations is questionable.

29. It is unclear, first of all, what is an "illegal" public event, as no such definition appears to be contained in the criminal code or in any other legal text. One might wonder, for example, if spontaneous demonstrations are "illegal". In addition, also the organisation of "other such events" may lead to the imposition of a sentence, when it is unclear what is covered by this definition. It is therefore highly doubtful that these new provisions comply with the principle of legality, which in criminal law is fundamental and prohibits the arbitrary application of the law.

30. In the Commission's opinion, it would be appropriate to provide for criminal liability in the event that the persons who take part in an "illegal" demonstration use violence or cause physical harm to third persons, but not in the event of merely organizing such demonstration.

31. The draft law on making amendments and addenda to the law on the Procedure of Conducting Meetings, Assemblies, Rallies and Demonstration of the Republic of Armenia does not guarantee the right to assembly and the right to freedom of expression in Armenia as required by the ECHR and its jurisprudence.

32. In addition, taking into account the criticism by the Venice Commission of the Armenian law, the amendments to the Armenian criminal code and code of administrative violations would prohibit and make illegal and subject to criminal and administrative sanction the organization and holding of demonstrations which should, in fact, be permitted. The amendments to the Criminal Code and Code of Administrative Violations therefore further impinge on rights of assembly and freedom of expression.

33. The Commission wishes to reiterate the importance for Armenia of protecting and guaranteeing these fundamental rights, particularly in the context of the upcoming constitutional reforms. It remains at the disposal of the Armenian authorities in this respect and invites them to pursue the legislative work in this field.