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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT OPINION
ON THE 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
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I. General Observations

1. The law “On Conducting Meetings, Assemblies, Rallies and Demonstrations” exists in the context of Articles 26 and 44 of the Constitution of the Republic of Armenia, and is supplemented by various provisions in the criminal and administrative law. The text of this law is intended to be the basis of the right of assembly and how the right is guaranteed and protected in national law. It is essential that the law meet the requirements of Article 11 of the European Convention.
2. It has been stated in earlier advice that, as a fundamental right, the right to assemble 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. A legislative basis for any interference with the right is required by the European Convention on Human Rights. Whilst it is not essential to have a specific law on public events and assemblies states may have such a law but it must be limited to setting out the legislative bases for permissible interferences by state authorities. Any system of notification for holding assemblies must not impair or prevent the lawful exercise of the right. The law as adopted and the proposed amendments set out in great detail the conditions for exercising the constitutionally guaranteed right of assembly. Specific criticisms have already been made but only some of these have been addressed in the proposed amendments.
3. Most recommendations which we had previously made have been taken up and are now reflected in the law.
4. The law continues however to be excessively detailed, with excessive differentiation between different categories of event in a manner which is not properly linked to permissible reasons for restrictions. This is so even though the bases for legitimate restriction as contained in the European Convention Article 11 are now set out in Article 1 of the law.
5. Blanket restrictions, such as those previously contained in Articles 9(3)(1) – 9(3)(3) precluded the consideration of the individual circumstances of each case and therefore ran counter to the principle that restrictions be proportionate to the legitimate aim being pursued. It is welcome that Articles 7(6) and 10(3), which contained similar blanket restrictions, have been removed from the Draft. We recommended that the provisions of Articles 9(3)(1) – 9(3)(3) also be deleted from the legislation given that local self-governance bodies retained the general discretion to impose restrictions on events where the legitimate aims in Article 11(2) of the European Convention on Human Rights are engaged.
6. Whilst Article 9(3) has now been amended to limit the absolute prohibition, and this is to be welcomed, nonetheless a discretion to prohibit has now been created in Article 9(4)(3) and (4) in circumstances where no such discretion should be afforded and in the absence of any suggestion that this should be done.
7. We would emphasize that how this law is interpreted and implemented will also be of great significance in terms of its compliance with international human rights standards. In this regard, the European Court of Human Rights has stated that the right to peaceful assembly should not be interpreted restrictively and any restrictions should be construed narrowly, and that in general, rights must be “practical and effective” not “theoretical or illusory.”

8. There have been reports by international and domestic non-government organizations that document past restrictions on people travelling to demonstrations, the rejection of applications to hold demonstrations on the basis of either insufficient or illegitimate grounds, and the use of excessive force by the police. These, together with recent reports concerning the policing of demonstrations relating to the A1+ Television Company, emphasize the need to clearly establish proportionality as the guiding principle in the regulation of public assemblies.

9. In light of the above, we would reiterate that it is vitally important that the government consult with local NGOs, civil society representatives and other relevant stakeholders after any reforms have been adopted. Such groups will clearly be affected by the legislation in different ways, and it is imperative that their experience and views be given serious consideration so that the legislation, and the procedures and working practices which develop around it, will work to the mutual benefit of all concerned. Such consultation can help foster a spirit of co-operation rather than confrontation, and can also improve understanding of the government's intentions in bringing forward these amendments.

10. As previously stated, given that any new legislation inevitably entails a process of 'bedding in' and fine tuning, it will be important to monitor the operation of the law. We would again recommend that some official means of monitoring the application of the law, and of collating relevant statistics, should be devised. A duty could be placed upon the bodies charged with its administration (principally local self-governance bodies) to "keep under review, and make such recommendations as they think fit to the Government concerning, the operation of this Law".

II. Analysis of the proposed amendments to the law "On Conducting Meetings, Assemblies, Rallies and Demonstrations"

Article 1

11. The law now includes the reasons for restrictions which are permitted by Article 11(2) of the Convention. Given that the Armenian legislature has pursued a policy of detailed regulation of the exercise of the right of assembly, the setting out in the law of the only circumstances in which restrictions are permissible in this manner is welcomed. The Joint Opinion also made a specific recommendation to improve the coherence of Article 1 and its adoption is welcomed.

Article 7

12. We welcome the removal from the Draft Law of Article 7(6), which provided for a blanket prohibition of events "in the proximity of healthcare, pre-school and education institutions in case such actions disrupt regular operation of those institutions."

Article 8

13. This article deals with the duties of Authorised Bodies and the Police in regulating events. The article provides that the actions of the Authorised Body and the Police must be guided by the Law of the Republic of Armenia "On Foundations of Administration and

Administrative proceedings”. It should be noted that the Venice Commission has not had access to this law or a translation of it.

Article 9

14. In our Joint Opinion we were deeply concerned about the necessity and proportionality of the blanket prohibitions contained in Article 9(3)(1) – (3) which prohibited, without the possibility of the exercise of any discretion by the authorities, the conduct of assemblies in a very wide range of public areas.

15. Article 9(3) has been redrafted to limit the absolute prohibition to “...places less than 150 metres away from military units, defense facilities, penitentiary institutions and pre-trial detention centres.”

16. The remaining areas are now listed in Article 9(4). While in the former draft these were formally the subject of absolute prohibition, now they would appear to be prohibitible at the discretion of the authorising body. Article 9(4) now commences as follows “Holding of a public event could (sic) be prohibited by the authorised body.” It is assumed that the “could” should be properly translated as “may”.

17. It is welcomed that this discretion to prohibit for security reasons only is provided for:

- in relation to the holding of events on bridges, in tunnels etc Article 9(4)(i);
- in the proper distance away considered necessary to police for security reasons from certain listed sensitive places Article 9(4)(ii); and
- in “cultural and sports complexes...in order not to disrupt normal course of these events.” Article 9(5).

Article 9(4) (iii)

18. However, since Article 11 protection is confined to ‘peaceful’ assemblies no discretion should be permitted, as would appear to be provided for in the current version of the law,

“If such events are aimed to overthrow forcibly the constitutional order, instigate national, racial or religious hatred, campaign for violence or war.”

These are not legitimate purposes for the exercise of freedom of assembly and no discretion should be allowed in relation to them.

Article 9(4)(iv)

19. Nor should any discretion be permitted in relation to unlawful interference with private property rights i.e.

“...areas not for general use, if the rights of its disposer, matron (sic) and user are violated”.

20. It is to be recalled that no previous opinions of the Venice Commission recommended that these latter two provisions be deleted or amended.

Article 10

21. The removal of Article 10(3) is welcome. Its removal means that excessive discretion given to the Government of Armenia permitting it to delineate areas where mass public events might be held is removed. Its removal also means that the same set of rules apply to assemblies relating to “election or referendum campaigns” as to other assemblies.

22. Whilst mass public events (involving more than 100 participants) continue to require written notification to the Authorities, Article 10 has now been amended to allow expressly for non-mass public events (involving less than 100 participants) to grow “spontaneously” into mass public events. This clarification, which was recommended, is welcomed. Previous opinions were particularly critical of the law’s failure to permit spontaneous demonstrations.

Article 11

23. The adoption of recommendations in our Joint Opinion that this article permit proving of identity by any document certifying identity is welcomed.

24. As recommended, Article 11(5) has been amended to make it the responsibility of the authorities rather than the organiser to send a copy of the notification to the police.

Article 12

25. Our recommendation to clarify the meaning of Article 12(6) has been adopted.

Article 13

26. We welcome the removal of the prohibition of mass public events where the event might result in traffic disruption. This prohibition had previously been criticised as excessive.

27. It is also welcome that Article 13(1)(6), which had been previously criticized for specifically prohibiting assemblies taking place at interstate highways, has been removed.

28. We also welcome the removal of the prohibition on counter-demonstrations contained in article 13(7). We had criticised in earlier opinions the prohibition on such demonstrations which should generally be allowed. Article 13(2), which provides for prohibition where “some other event that precludes convention of the event takes place on the mentioned date, time and location” should be clarified so as to ensure that this provision is not used to prohibit counter-demonstrations.

29. Article 13(4) currently requires the authorities to offer organisers an alternative date or time if an event is prohibited under 13(1)(2) and 13(1)(3). As we emphasized during discussions on 17 March, we suggested that the authorities and the organisers explore alternatives for allowing an event (such as requiring that a rally proceeds along one side of the road to allow for the passage of vehicular traffic) rather than imposing a simple and outright ban. A provision allowing for such flexibility has now been added to allow the

authorised body to offer “other conditions concerning the form of the event.” This is welcomed.

30. Against the general background of positive change in Article 13(4), we nevertheless have a concern as to the deletion of the requirement on the authorities to offer an alternative date within two days of that proposed by the organiser or for a different time, within 3 hours of that proposed by the organiser, as it was formerly envisaged. This deletion would allow for the possibility that a delay in the provision of an alternative date or time might be used as an effective prohibition if an assembly is designed to protest a specific activity or event. It is therefore recommended that the requirement on the authorities to offer an alternative within a set period of time be kept.

Article 14

31. In previous advices the fact that the law would not permit spontaneous demonstrations except for “non-mass” assemblies was the subject of particular criticism. This has been amended to prohibit termination of non-mass public events which develop spontaneously into mass public events. (See also Article 10.) This was recommended and is therefore to be welcomed.