



Strasbourg, 14 September 2006

Opinion no. 385 / 2006

CDL(2006)063
Engl.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

ON PEACEFUL ASSEMBLIES

IN UKRAINE*

* Unofficial translation.

[Prepared by the Ministry of Justice of Ukraine]

Draft

DRAFT LAW
ON PEACEFUL ASSEMBLIES

This Law is aimed at securing the right to gather peacefully without arms, to hold gatherings, meetings, marches and demonstrations as guaranteed by the Constitution of Ukraine based on universal international law principle and norms.

Section I
GENERAL PROVISIONS

Article 1. Application of Law

1. The law regulates the activities related to organisation and holding of peaceful assemblies.
2. Procedure for organisation and holding of peaceful assemblies as set forth in this Law shall not apply to:
 - 1) gatherings of all or part of residents of a village (villages), a town or a city to solve local issues in accordance with the Law of Ukraine “On Local Self-Government in Ukraine”;
 - 2) gatherings of staff, meetings of statutory management body, citizens’ associations, meetings of voters with candidates for members of parliament and elected deputies;
 - 3) gatherings of individuals for rest, public entertainment events, sport events, weddings, folk festivals, funerals.

Article 2. Definition of Main Terms

In this Law the following terms are used as defined below:

- 1) peaceful assembly is a public peaceful event held without arms and open for everyone in the form of gathering, meeting, march or demonstration or any combination thereof. Objective of the event is free public expression of views, campaigning, support of views of others or protest against such views by the assembly participants as well as realisation of other rights and freedoms;
- 2) gathering is an assembly of people for collective discussion of any political, professions, social, community and other issues at a specially designated and arranged premise;
- 3) meeting is an assembly of people for public expression of public attitude to an urgent problem mostly of social and political nature. A meeting is held at an open place;

4) march is a large group of people walking along a route identified in advance on a pedestrian or a traffic area of the road, street, etc.;

5) demonstration is a peaceful assembly held in the form of a meeting and/or a march;

6) counter-demonstration is a peaceful assembly held at the same time and same place as another peaceful assembly in order to express different, including contrary, views to those expressed by such assembly.

Section II

PROCEDURE FOR ORGANISING AND HOLDING PEACEFUL ASSEMBLIES

Article 3. Organisers (Organiser) of Peaceful Assemblies

1. Organisers (organiser) of a peaceful assembly are individuals, associations of citizens or religious organizations that submit a notification of an assembly in accordance with the procedure provided for in this Law.

2. The following actors may not be organisers of a peaceful assembly, except for the cases provided for in paragraph 3 of this Article:

1) persons aged under eighteen;

2) persons recognised legally incapable or a dependent adult; and

3) associations of citizens subject to a decision on the suspension of the right to hold peaceful meetings adopted in accordance with the established procedure or subject to a temporary prohibition or a ban on its activities.

3. An individual having reached an age of fourteen may be an organiser of a peaceful meeting upon consent of his/her parents (adoptive parents) or caregivers. A dependent adult may be an organiser of a peaceful meeting upon consent of a caregiver. A person serving a term at places designed for execution of sentences may be a co-organiser of a peaceful assembly.

Article 4. Rights and Obligations of Organisers (Organiser) of Peaceful Assemblies

1. Organisers (organiser) of a peaceful assembly have the right to:

1) hold a peaceful assembly at places and time specified in a respective notification or changed in accordance with the proposal of an executive authority or a local self-government body;

2) carry out preparatory campaign to support the peaceful assembly in mass media, through dissemination of leaflets, posters, banners, slogans and in other forms not prohibited by law;

3) authorise participants of a peaceful assembly to perform management and logistic functions as well as functions of maintaining the order and security during the assembly;

4) organise collecting of donations, signatures under resolutions, demands and other individuals' petitions;

5) pitch tents, stages and other temporary constructions at the place of assembly;

6) demand from executive authorities or local self-government bodies and their authorised representatives protection of law and order during and immediately after a peaceful assembly;

7) suspend or stop a peaceful assembly if its participants or other persons commit illegal acts or infringe conditions of holding the peaceful assembly;

2. Organisers (organiser) of a peaceful assembly shall:

1) submit to an executive body or local self-government body notification of the peaceful assembly;

2) immediately inform an executive body or a local self-government body in writing about agreement with (rejection of) its proposal to change a place or time of a peaceful assembly mentioned in the notification;

3) ensure adherence to the conditions of holding the peaceful assembly mentioned in the notification or changed in accordance with the proposal of an executive body or a local self-government body;

4) require from participants of a peaceful assembly to respect public order and conditions of the peaceful assembly stated in the respective notification;

5) maintain public order and security of people during the peaceful assembly within their competence. In the cases provided for in this Law, this must be done together with an authorized representative of an executive authority or a local self-government body and an authorized representative of a law-enforcement body following their lawful demands. Order and security may be maintained by the individuals identified by the organiser who shall bear a special indication sign;

6) ensure protection of plants, buildings, premises, equipment, furniture, stuff and other property on the territory of a peaceful assembly; observe national sanitary norms and requirements.

Article 5. Peaceful Assembly Participants

1. Participants of a peaceful assembly may be nationals of Ukraine, foreigners or and stateless persons legally staying in Ukraine. No one may be forced to participate or not to participate in a peaceful assembly.

2. Participants of a peaceful assembly have the right to:

1) take part in a discussion and decision-making as well as other collective actions in accordance with the purpose of a peaceful assembly;

2) use various symbols during a peaceful assembly and publicly express their thoughts in other ways; use methods of campaigning not prohibited by law;

3) adopt and forward resolutions, demands and other petitions to the state authorities and local self-government bodies, associations of citizens, religious organisations and other institutions, enterprises or organisations;

4) protection from opponents of the peaceful assembly.

3. Participants of a peaceful assembly shall:

1) obey to lawful demands of organisers (organiser) of an assembly, their (his/her) authorised representatives and law-enforcement officers;

2) comply with requirements of Ukrainian laws, public order and conditions of holding the meeting.

4. Participants of a peaceful assembly may not have arms or specially produced or altered items that may be used to harm human life or health, incur material losses to state authorities, local self-government bodies, association of citizens, enterprises, institutions, organisations or individuals.

Article 6. Notification on Holding of a Peaceful Assembly and Timelines for Submission Thereof

1. A notification on holding of a peaceful assembly is submitted in writing by organisers (organiser) not later than five days prior to its beginning to:

1) respective executive authority of a village, town or city council (except for the cities of Kyiv and Sevastopol) – if a peaceful assembly is to be held on the territory of a village, town or city;

2) Kyiv or Sevastopol city state administration – if a peaceful assembly is to be held on the territory of the city of Kyiv or Sevastopol;

3) respective rayon state administration – if a peaceful assembly is to be held on the territory of rayon;

4) respective oblast state administration – if a peaceful assembly is to be held on the territory of two or more rayons in the oblast;

5) the Council of Ministers of the Autonomous Republic of Crimea – if a peaceful assembly is to be held on the territory of several rayons of the Autonomous Republic of Crimea.

2. In the event when a peaceful assembly is planned to follow a route covering the territory of several oblasts, the cities of Kyiv or Sevastopol as well as the territory of the Autonomous Republic of Crimea, the organisers (organiser) submit a written notification, within the timelines provided for in paragraph 1 of this Article, stating the route of a peaceful assembly

to respective oblast, Kyiv or Sevastopol city state administrations or the Council of Ministers of the Autonomous Republic of Crimea.

Article 7. Contents and Form of Notification on Holding a Peaceful Assembly

1. Notification on holding a peaceful assembly shall contain the following:

- 1) date of the assembly, time of the beginning and tentative duration of the assembly;
- 2) purpose and form of the assembly;
- 3) venue of the gathering or walking (driving) route of participants of the march or demonstration;
- 4) expected number of participants;
- 5) family names, first names and patronymics or title of organisers (organiser) of the assembly, their addresses and phone numbers;
- 6) date of submission of the notification.

2. Notification is submitted in a free form and shall be signed by the organisers (organiser) of a peaceful assembly and individuals authorised by the organisers (organisers) to perform management functions of organising and holding a peaceful assembly.

Article 8. Place and Time of a Peaceful Assembly

1. Peaceful assembly may be held in a specially designated or any other place suitable for this purpose except for places provided for in this Article.

2. Peaceful assembly shall not be held near dangerous objects defined as such by law, near hospitals, schools, nursery schools and in penitentiary institutions; Minimum distance to a dangerous object for a peaceful assembly is determined by the relevant executive body or local self-government body according to law and is marked on the territory.

3. During a peaceful assembly held near administrative buildings occupied by state authorities, diplomatic missions and consulates of other states accredited in Ukraine or local self-government bodies, a free access and passage to institutions and bodies, near which the meeting is held, shall be secured.

4. A peaceful assembly may be held at any time.

5. Noise caused by an assembly may not exceed the level established by sanitary norms. In settlements, loud songs and shouts, use of sound amplifiers and other sources of noise are forbidden from 10 P.M. till 8 A.M.

6. In the event when a notification on holding a peaceful assembly states the date and time of the assembly that coincide with the date and time of another assembly specified in an earlier submitted notification, organisers (organiser) may amend their notification upon suggestion of executive authority or local self-government body or submit a new notification with

changed place or time of the peaceful assembly. Upon demand of the organisers (organiser) of a peaceful assembly executive authority or local self-government body shall produce the notification that was submitted earlier, which entailed the proposal to change the date or time of the respective peaceful assembly.

Article 9. Preliminary Campaigning

1. Organisers (organiser) of a peaceful meeting and other persons have the right to an unimpeded preliminary campaigning to inform about the place, time and purpose of holding a peaceful meeting and other information related to its preparation and holding as well as to call upon individuals and their associations to participate in the event which is being prepared.
2. For the purposes of preliminary campaigning, organisers (organiser) may use mass media, oral appeals, leaflets, posters and announcements.
3. Any campaigning offending or humiliating human and citizen's honour and decency is prohibited.

Article 10. Financial and Technical Support of Peaceful Assembly

1. Material and technical support of a peaceful assembly is done provided by organisers (organiser) and participants of the meeting as well as at the expense of money and property gathered or donated for its holding.
2. Financing of a peaceful assembly by foreign states, foreign legal entities or by state-owned enterprises, institutions and organisations is prohibited.
3. Powers of participants of a peaceful assembly to provide financial and technical support of the meeting are to be verified in writing by the organisers (organiser) of a peaceful assembly.

Article 11. Responsibilities of Executive Authorities and Local Self-Government Bodies

1. An executive authority or a local self-government body shall:

- 1) register notification on holding a peaceful assembly stating the date and time of receipt;

- 2) inform the organisers (organiser) about impossibility to hold a peaceful assembly at the place or time indicated in a notification in its response that shall contain a justified proposal concerning the change of the date and time and be sent not later than two days prior to the assembly;

- 3) depending on the type of a peaceful assembly and number of its participants, designate its representative responsible for contacts with the organisers (organiser) to hold an assembly in accordance with this Law and inform the organisers (organiser) about this in advance;

- 4) notify law-enforcement body on the holding of assembly;

5) within its competence, together with the organisers (organiser) and authorised representative of law-enforcement authority, ensure public order and security of people during the meeting as well as emergency medical treatment should the need arise;

6) advise relevant state authorities of the purpose of a peaceful assembly which concerns them;

7) inform the organisers (organiser) of a peaceful assembly about submission of an application to court regarding prohibition or another restriction of the right to freedom of peaceful assembly provided there are grounds for this provided for in Article 19 of this Law, and in the event of a positive decision delivered by court inform the organisers (organiser) about its contents.

Article 12. Rights and Responsibilities of Authorised Representative of Executive Body or Local Self-Government Body

1. Authorised representative of executive body or local self-government body has the right to:

1) demand from the organisers (organiser) of a peaceful assembly to respect the established procedure and conditions for holding a meeting;

2) adopt decision on terminating a peaceful meeting on the grounds and pursuant to the procedure provided for in this Law.

2. Authorized representative of executive body or local self-government body shall:

1) be present during a peaceful assembly;

2) exercise control and take measures to ensure adherence to the procedure and conditions for holding a peaceful assembly;

3) together with the organisers (organiser) and authorised representative of law-enforcement body, ensure public order and security of people and observance of law during the assembly.

Article 13. Rights and Responsibilities of Authorised Representative of Law-Enforcement Body

1. Having received a notification on the peaceful assembly from executive authority of local self-government body, the head of law-enforcement body in the respective territory shall take necessary measures to ensure public order and security of people during the holding of an assembly.

2. Authorised representative of law-enforcement body has the right to demand from the organisers (organiser) of a peaceful assembly to adhere to the established procedure and conditions for holding a meeting and also to take other measures according to law.

3. An authorised representative of law-enforcement body shall:

1) facilitate, within his/her competence, the holding of a peaceful assembly in accordance with requirements established by law;

2) together with the organisers (organiser) and authorised representatives of executive authority or local self-government body, ensure public order and security of people and observance of law during the holding of an assembly.

Article 14. Grounds and Procedure for Terminating Peaceful Assembly

1. In the event of violation of public order during a peaceful assembly, if such a violation presents no threat to human life and health, an authorized representative of executive authority or local self-government body has the right to demand from the organisers (organiser) to eliminate such violation.

2. In the event when the violation mentioned in paragraph 1 of this Article was not eliminated, the authorised representative of executive authority or local self-government body has the right to terminate the peaceful assembly on the grounds and in accordance with the procedure provided for by this Law.

3. Grounds for terminating a peaceful assembly are:

1) actual threat to human life and health, to property of individuals or legal entities;

2) commitment of actions provided for in paragraph 1 of Article 19 of this Law.

4. If there are grounds for terminating a peaceful assembly an authorised representative of executive authority or local self-government body shall give a written instruction to the organisers (organiser) to terminate the assembly stating the grounds for its termination.

5. If the organisers (organiser) fail to comply with the instruction to terminate the assembly, police officers shall take necessary measures to terminate it, acting in accordance with the law.

Article 15. Compensation of Material Losses

Material losses incurred by the state, village, town or city communities, associations of citizens, enterprises, institutions, organisation or individuals during a peaceful assembly are to be compensated by the person who caused them in accordance with the procedure established by law.

Article 16. Responsibility for Violation of Procedure for Holding Peaceful Assembly

1. Failure to comply with lawful requirements of an authorised representative of executive authority or local self-government body, police officers or resistance demonstrated by the organisers (organiser) shall entail liability established by law.

2. The organisers (organiser) or other individuals who violated the established procedure for holding a peaceful meeting shall bear responsibility as provided for by law.

Section III
GUARANTEES OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLIES

Article 17. Guarantees of the Right to Hold Peaceful Assembly

1. Executive bodies and local self-government bodies have the duty to secure guarantees of the right to the freedom of peaceful assemblies, in particular to ensure security of people and public order during a peaceful assembly, including counter-demonstrations.
2. Organisers (organiser) of a peaceful assembly, state officials and other individuals have no right to prevent participants of a peaceful assembly from expressing their views in a way that does not infringe the public order and the procedure and conditions of holding an assembly.
3. State authority or local self-government body whom a peaceful assembly concerns shall consider the issues that were subject of the assembly, to make a decision in accordance with the procedure established by law and to inform the organisers (organiser) about this decision.

Article 18. Appeals against Decisions and Action (Inaction) Violating the Right to Holding Peaceful Assembly

Decisions, action or inaction of state authorities, local self-government bodies, public servants and officials violating the right to the freedom of peaceful assemblies may be appealed against in court in accordance with the procedure established by law.

Section IV
RESTRICTION OF THE RIGHT TO THE FREEDOM OF PEACEFUL ASSEMBLIES

Article 19. Circumstances Which May Allow Imposition of Restrictions on the Right to the Freedom of Peaceful Assemblies

1. Restrictions of the right to the freedom of peaceful assemblies may be imposed by court if such restrictions are necessary in a democratic society and only in the interests of national security and public order – to prevent riots or crimes, protection of public health or protection of rights and freedoms of other people.
2. The holding of a peaceful assembly may be denied by court also under the state of emergency or military law introduced in Ukraine or its certain territories.
3. The following may not be considered as grounds for restricting the right to the freedom of peaceful assemblies, except for cases provided for in paragraph 1 of this Article:
 - 1) absence of organisers (organiser) of a peaceful meeting in the event of a spontaneous peaceful assembly;
 - 2) fact of a counter-demonstration;

3) discussion of any issues during a peaceful assembly if such discussion does not violate provisions of Article 34 of the Constitution of Ukraine on restrictions to the right to the freedom of thought and free expression of views and beliefs.

Article 20. Restriction of the Right to the Freedom of Peaceful Assemblies

In the case when it is established that the purpose of holding the peaceful assembly runs contrary to the Constitution of Ukraine as well as under the state of emergency or military law, executive authority or local self-government body that received a notification of a peaceful assembly applies to court asking it to prohibit or take other measures to restrict the right to the freedom of peaceful assemblies and immediately informs the organisers (organiser) about it.

Section V FINAL PROVISIONS

1. This Law shall come into force in 30 days after publication.
2. Within three months after publication of this Law, the Cabinet of Ministers of Ukraine shall:
 - 1) prepare and submit to the Verkhovna Rada of Ukraine proposals on bringing Ukrainian legislation in accordance with this Law;
 - 2) ensure the bringing of normative legal acts of ministries and other central executive bodies in line with this Law.