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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT OPINION
ON THE DRAFT AMENDMENTS
TO THE LAW ON FREEDOM OF ASSEMBLY
OF AZERBAIJAN

On the basis of comments by

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I. Introduction

1. *On 13-14 October 2006, the Venice Commission, at the request of the Presidential Administration of Azerbaijan, adopted an opinion on the law on freedom of assembly of 1998 (CDL-AD(2006)034).*
2. *Two meetings were held, in Strasbourg on 6-7 December 2006 and in Paris on 21 June 2007, during which Mr Shahin Alyev, Head of Department of Legislation and Legal Expertise of the Office of the President; Mr Fuad Alesgerov, Head of Department of Co-ordination, Law Enforcement Agency, Presidential Administration; and Mr Chingiz Asgarov, Head of the Human Rights Protection Unit, Presidential Administration and Ms Finola Flanagan and Mr Bogdan Aurescu on behalf of the Venice Commission as well as Mr Andreas Busch, Legal Officer of the OSCE Mission in Baku discussed on how to improve the law. A set of proposed amendments to the 1998 law was subsequently sent to the Venice Commission.*
3. *In the course of a third meeting, which was held in Baku on 21 November 2007, further improvements to the law were discussed by Messrs Alesgerov and Asgarov on behalf of the Presidential Administration, Mr Aurescu on behalf of the Venice Commission and Mr Busch on behalf of the OSCE. As a result, a new set of proposed amendments (CDL(2007)113) was sent to the Venice Commission for assessment.*
4. *The present opinion, which refers to the latest set of proposed amendments, was adopted by the Venice Commission at its ... Plenary Session (Venice, ...).*

II. Analysis of the Draft Law

5. The present opinion will focus on the latest improvements to the law, while the comments on the reasoning of the suggested modifications can be found in the opinion of October 2006.

Article 1

6. A reference to the relevant international treaties to which the Republic of Azerbaijan is a party has been added, in line with the recommendation made by the Venice Commission. This is very important as it will clarify the essential requirement and help ensure that the exercise of the freedom of assembly will be brought in conformity with Article 11(2) ECHR.
7. In addition to the reference to the Constitution of Azerbaijan, it would be preferable if this article also included an express reference to the Constitutional Law on Regulation of the Exercise of Human Rights and Freedoms.

Article 2

8. This provision rightly emphasises more clearly the need to ensure the exercise of the freedom of assembly in compliance with the relevant international treaties (see related comments under Article 1 above).

Article 3

9. It is positive that this provision now only contains a definition of the notion of "assembly", which can take different forms such as gatherings, meetings, demonstrations, street processions, pickets. Rigid definitions of these sub-categories cannot be formulated in an exhaustive manner and are likely to result in arbitrary decisions, without such differentiation being relevant for considering the validity of a restriction placed on the holding of an assembly.

10. The element of the “intention” to participate has been duly added, which will ensure that accidental bystanders or observers be included in the definition of “participant” and, as a consequence, be held liable for any breach that may occur¹.

11. The Venice Commission welcomes that the purpose of an assembly is no longer defined in this provision. The phrase “*for certain purposes*”, which has now been removed, was indeed unnecessary and had the potential to limit improperly the type of assemblies permitted. As stated in the Opinion of the Commission adopted in October 2006 the right of assembly covers all types of gathering.²

12. Regarding the limitation of the notion of “assembly” to gatherings of persons “in a public place”, the Venice Commission refers to its earlier comments on the need to interpret the legislation so as not to prohibit (peaceful) spontaneous assemblies held on private property.

Article 4

13. At the beginning of the first paragraph, the words “without prejudice to the right to hold assemblies on private property” have been added, following a suggestion by the Venice Commission.

14. Article 4 paragraph II no longer automatically prohibits the use of wedding and funeral ceremonies, holiday and mourning events and religious ceremonies for the holding of an assembly. This is a welcome development given that their blanket ban was neither linked to a permissible reason for restriction under Article 11(2) ECHR, nor in line with the principle of proportionality. Any restriction in this field should meet the general requirements stemming from the ECHR, as expressed in Articles 7 and 8.

Article 5

15. This article provides for a system of notification, which is in itself admissible so long as it is only meant to help the authorities cope more easily with the practical problems involved by the holding of an assembly. The requirements of such system must not be too cumbersome, lest they should encourage the authorities to restrict or suspend an assembly too easily. The European Court of Human Right has recently warned against a legal obligation to comply with excessive administrative requirements, including the obligation to submit a traffic organisation plan, as this was likely to violate the principle of proportionality and to be understood as a system based on permission rather than registration.³

16. The Venice Commission therefore welcomes that the requirements of Article 5 have now been eased, by adding a flexibility clause which explicitly provides the organisers with the possibility to remedy any shortcoming in their notification form at any time prior to the day of convening the intended assembly, and with the possibility of notifying the intention to organise an assembly in lesser time than the five-day notice, which is required “as a rule” and whose non-respect can now be justified. It is indeed important that assemblies can be held with a presumption of legality so as to avoid any chilling effect on organisers and participants.⁴

¹ See OSCE/ODIHR Guidelines for drafting laws pertaining to the freedom of assembly, endorsed by the Venice Commission (hereinafter “Guidelines”), CDL(2005)048, § 6.2.

² See CDL-AD(2006)034, §§ 8 and 18.

³ See ECtHR judgment of 3 May 2007, *Baczowski and others v. Poland*, §§ 39, 43 and 71.

⁴ *Ibidem*, § 67; see also Guidelines, § 25.

17. Co-ordination of the time and venue of an assembly with the authorities is only required “in order to allow [such authorities] to make the necessary arrangements”.

Article 6

18. The new version of this provision addresses the concerns raised by the Venice Commission in its previous opinion. It would be preferable, however, to specify that the obligation for the organisers of the assembly to be present does not apply to spontaneous assemblies.

Article 7

19. The reformulation of Article 7 paragraph I along the lines of Article 11(2) ECHR, together with the new order of the paragraphs, makes it much clearer that any restriction must be linked to a permissible reason and pass the proportionality test.

Article 8

20. It is positive that the Draft Law provides that the holding of peaceful assemblies of political content during events of state importance “can be prohibited” instead of “shall be prohibited”⁵ and that this is only possible during the event itself and no longer during its entire period of preparation. The importance for demonstrators to hold an assembly on a specific day indeed needs to be fully taken into consideration by the authorities as was recently underlined by the European Court of Human Rights.⁶ Furthermore, the explicit reference to the admissibility of restrictions as expressed in Article 7 should help ensure that the authorities will stop making too wide a use of this general provision.

21. The term “relevant body of executive power” continues to be used in various provisions of the Law – including Articles 8 paragraphs V and VI - with neither further precision nor cross-references to other legislation. In this respect, reference can be made to earlier comments of the Venice Commission.⁷

22. In paragraph VII, a reference has been added to the Law on State Emergency of 1994, whose Article 30 provides for the need to respect the notification procedure foreseen in Article 15 ECHR before any derogations from human rights can be made.

Article 9

23. This provision introduces tangible improvements. The Venice Commission welcomes in particular that the right to counter-assembly has been strengthened in paragraph II, including by stressing the positive obligation resting on the state authorities to facilitate its exercise. The necessity for counter-demonstrators to find an alternative location should however only be limited to “exceptional cases”, when the risk of violence is “serious” and the police authorities can not handle the situation.

24. It is also positive that expressions such as “shall be prohibited” and “shall not be held” have been replaced in paragraphs III and IV by “can be prohibited” and “can be restricted”.⁸ An

⁵ Strictly, in English the word “can” should be “may” but it is presumed that the appropriate permissive word is used in the original version in Azerbaijani language.

⁶ See ECtHR judgment of 12 April 2007, *Zeleni Balkani v. Bulgaria*, § 40.

⁷ See CDL-AD(2007)034, § 35.

⁸ See footnote 5 above.

explicit reference to the admissibility of restrictions as expressed in Article 7 has been added to reinforce the need to pay attention to the proportionality test on a case by case basis.

25. Paragraph III of Article 9 has been significantly improved. It does not concern pickets, but it should not concern street processions either. It no longer concerns *any* state building, which could have had the effect of virtually excluding the centre of Baku. It now lists exhaustively, in subparagraph 1, the places of legislative power and the judiciary where certain types of assembly can be prohibited. For organs of executive power, however, the term “central” should be added: indeed, only some ministries will be concerned, and not all other state buildings. A similar exhaustive list could be included in subparagraph 3 of the same paragraph referring to “places allocated by relevant body of executive power for conducting special state events”.

26. The list referred to in paragraph VI contains the places which are *proposed*, not *designed*, for assemblies. In addition, this list can be changed. This means without ambiguity that the holding of an assembly in a venue not explicitly mentioned in the list is not necessarily prohibited as the list cannot be exhaustive.

27. More flexibility has been introduced as regards the time at which assemblies can be held (paragraph VIII).

Articles 10-11

28. The new version of these provisions addresses the concerns raised by the Venice Commission in its previous opinion. It will now be necessary to add that court judgments reviewing decisions taken under Article 7 and 8 of this law to the list of immediately enforceable decisions, contained in the code of civil procedure.

29. It is logical to infer from Article 10 that failure by the authorities to comply with the three-day deadline for deciding upon an assembly should result in the assembly being possible without any special arrangement or modification to its time and venue being necessary.

Article 12

30. The new version of this provision addresses some concerns raised by the Venice Commission in its previous opinion, in particular in that it has removed the obligation for the organisers to bear the costs of additional police forces to ensure the security of an assembly.

31. The obligation for organisers to wear clearly visible signs does not apply to spontaneous assemblies.

Article 13

32. The new version of this provision addresses some concerns raised by the Venice Commission in its precedent opinion; in particular, it now sets out clearly that participants cannot be held liable for their sole participation in an assembly when they had no prior knowledge that this assembly was or would become violent.

Article 14

33. The new version of this provision addresses the concerns raised by the Venice Commission in its previous opinion. It has now been duly specified that changes in the time and venue of an assembly do not result in its suspension if they can be duly justified.

Article 16

34. With regard to the responsibility of police officers for unlawful offences, the introduction of a cross-reference to the Law on Police is to be welcomed.

III. Conclusions

35. The Venice Commission commends the commitment shown by the Azerbaijani authorities to remedy the shortcomings of the Law on Freedom of Assembly of 1998, currently in force, following the suggestions made by the Commission in its Opinion of October 2006 and in consultation with the rapporteurs and the OSCE Mission in Baku, as well as with ODIHR.

36. Significant improvements have been proposed. If these proposals are adopted by parliament in this form, the law will meet European standards.

37. Due implementation of the law will then be crucial. The law must be applied and interpreted by the administrative authorities, the courts reviewing their decisions and the police in a manner which respects the standards which have inspired it. They must show a presumption in favour of assemblies. This will require extensive discussions, including with the civil society, and specific training.

38. The Venice Commission stands ready to assist the Azerbaijani authorities in this process.