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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT JOINT OPINION

**ON THE AMENDMENTS TO THE LAW ON THE RIGHT OF CITIZENS
TO ASSEMBLE PEACEABLY, WITHOUT WEAPONS, TO FREELY
HOLD RALLIES AND DEMONSTRATIONS**

OF THE KYRGYZ REPUBLIC

**BY THE VENICE COMMISSION
AND
OSCE/ODIHR**

On the basis of comments by

***OSCE/ODIHR Expert Panel on Freedom of Assembly
Ms Finola FLANAGAN (Member, Ireland)***

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I. INTRODUCTION

1. On June 2, 2008, the OSCE/ODIHR was requested by the Speaker of Kyrgyzstan's legislature (the Zhogorku Kenesh) through the OSCE Center in Bishkek to review the draft amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations. The amendments were passed by the Zhogorku Kenesh on June 13.
2. The OSCE/PDHIR Expert Panel on Freedom of Assembly and the Venice Commission carried out the assessment jointly. Ms Flanagan was appointed as Rapporteur.
3. This Opinion was prepared based on an unofficial English translation of the Amendments, it was sent to the authorities of Kyrgyzstan on 27 June 2008. It was subsequently endorsed by the Venice Commission at its ... Plenary Session (Venice, ...).

II. SCOPE OF REVIEW

4. The Opinion analyzes the amendments (hereinafter referred to as "Amendments") to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations (hereinafter referred to as "the Law") in terms of their compatibility with relevant international and regional standards and OSCE Commitments. The Opinion also examines the Amendments in light of both relevant case law and international good practice relating to the regulation of public assemblies.
5. In addition to standards which are legally binding upon the Kyrgyz Republic, this opinion also refers to non-binding international instruments including documents of a declarative or recommendatory nature which have been developed for the purpose of interpreting the relevant provisions of international treaties. The Opinion makes extensive use of the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (hereinafter referred to as "the OSCE/ODIHR Guidelines" or "the Guidelines").¹ The Kyrgyz Republic has not ratified the European Convention on Human Rights which sets in an international standard in relation to the guarantee of freedom of peaceful assembly and the restrictions that may be placed on the exercise of the right. It is to be noted that the International Convention on Civil and Political Rights entered into force in the Kyrgyz Republic in 1995 and this convention guarantees the right to peaceful assembly in similar terms to the ECHR and creates binding legal obligations for the Republic.
6. Article 25 of the Constitution of the Kyrgyz Republic guarantees the right to assemble peacefully to citizens of the Republic.
7. The OSCE/ODIHR notes that the opinion provided herein is without prejudice to any other opinions or recommendations that the OSCE/ODIHR may wish to make on the issues under consideration.

III. INTERNATIONAL STANDARDS ON FREEDOM OF ASSEMBLY

8. The international and European standards on the right to freedom of assembly, which mainly derive from the International Covenant on Civil and Political Rights (hereinafter referred

¹ The Guidelines on Freedom of Peaceful Assembly have been prepared by the OSCE/ODIHR Panel of Experts on the Freedom of Assembly. They have been published in 2007. Full text of the Guidelines is available at http://www.osce.org/odihr/item_11_23835.html (last visited on 6 June 2008).

to as “ICCPR”)² and the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “ECHR”)³ together with the corresponding case-law, have been presented and discussed in various opinions of the Venice Commission. These standards can be summarized as follows:

- *The freedom of assembly is a fundamental democratic right and should not be interpreted restrictively.*
- *It covers all types of gathering, whether public or private provided they are “peaceful”.*
- *It is a “qualified” right and the state may justify what is a prima facie interference with the right. Article 11(2) ECHR expressly permits limitations 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”. 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.*
- *A regime of prior authorization of peaceful assemblies is not necessarily an infringement of the right but this must not affect the right as such.*
- *The state may be required to intervene to secure conditions permitting the exercise of the freedom of assembly and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully. 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 exercise of fundamental rights and freedoms is a constitutional matter par excellence and, as such, should be governed in principle primarily by the Constitution.*
- *Fundamental rights should, insofar as possible, be allowed to be exercised without regulation, except where their exercise would pose a threat to public order and where necessity would demand state intervention. A legislative basis for any interference with fundamental rights such as the right of peaceful assembly is required by the Convention. The relevant regulation, in other words, should focus on what is forbidden rather than on what is allowed: it should be clear that all that is not forbidden is permissible, and not vice-versa.*
- *Accordingly, it is not indispensable for a State to enact a specific law on public events and assemblies, as control of such events may be left to general policing and the rights in relation to them may be subject to the general administrative law.*
- *Laws specifically devoted to the right of freedom of assembly, if they are enacted, should be limited to setting out the legislative bases for permissible interferences by State authorities and regulating the system of permits without unnecessary details.*

9. The Law concerns the right to freedom of assembly protected, inter alia, by Article 11 of the ECHR and Article 21 of the ICCPR.

IV. EXECUTIVE SUMMARY

10. The Amendments raise a number of serious concerns and present a setback from the standard espoused in the Law before amendment. The law does not currently reproduce the international standards of permissible limitations of the right of assembly. Particular concerns relate to the blanket restrictions on the place and time of assemblies, which in turn expose a larger problem of inadequate compliance with the core principle of proportionality. The Law does not provide for a genuine notification procedure due to the absence of an express provision allowing the assembly to proceed in the event of failure on the part of the regulatory authority to present timely and well-founded objections. The law does not reflect the positive obligation on the State to secure conditions permitting the exercise of the freedom of

² Full text of the Covenant is available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (last visited on June 26, 2008).

³ Full text of the Convention is available at <http://conventions.coe.int/treaty/EN/Treaties/html/005.htm> (last visited on June 26, 2008).

assembly. There is no provision for spontaneous assemblies which are undoubtedly guaranteed by Article 11 ECHR. Moreover, vagueness and redundancy of certain provisions present a serious problem.

11. Below follows a detailed list of recommendations:

High priority recommendations

a) It is recommended that permissible limitations on exercise of the right of freedom of assembly be included in the legislation in a form that reflects more exactly the international standards in particular Article 11(2) ECHR. [*Article 1*]

b) It is recommended that the positive obligation of the state to secure conditions permitting the exercise of freedom of assembly should be clear from the legislation; [*Article 1*]

c) It is recommended that the blanket restrictions on assemblies in specified locations be replaced with the requirement that assembly notifications be assessed on a case-by-case basis and restrictions, if any be applied in compliance with the proportionality principle, ban being the measure of last resort. [*Article 4(1)*]

d) It is recommended that the ban on assemblies in the immediate vicinity of hazardous facilities be limited to the areas closed to the public. [*Article 4(1)(1)*]

e) It is therefore recommended that the blanket ban on assemblies in the vicinity of government institutions and courts be deleted, and the management of security risks be left to the relevant law enforcement bodies. [*Article 4(1)(3)*]

f) It is recommended that the organizer be permitted to supplement the information submitted in the notification document in the event that this is necessary. The organizer should be entitled to remedy any flaws in the information submitted.

g) It is recommended that the blanket ban on assemblies after 8 PM and before 9 AM be removed and the possibility be left to the regulatory authority to impose manner restrictions to prevent interference with the rights of others. [*Article 5*]

h) It is strongly recommended that the Law include an express provision allowing for the organizers, in the absence of timely presented objections by the authorities to the notification, to proceed with the planned assembly in accordance with the terms notified and without restriction. [*Articles 6-8*]

i) Although there are no clearly established standards as to the length of the notification period, the deadlines for organizers to submit a notification 12 days prior to the event and for the regulatory authority to consider the notification within 6 days appear to be unnecessarily long and difficult to justify. It is recommended that the legislator consider reducing the notification as well as the decision making period. [*Article 6*]

j) It is recommended that the Law be revised to provide for an exception from the requirement of prior notification where giving prior notification is impracticable. [*Article 6*]

k) It is recommended that the reference to cleaning up after the event be deleted. [*Article 7*]

l) It is strongly recommended that the Law do not provide for right for the authorities to designate assembly locations. [*Articles 9 and 11*]

m) It is recommended that the provisions of the Law concerning termination and dispersal of assemblies be amended to improve compliance with the proportionality principle. *[Article 9; also Article 8 of the Law before amendment]*

Additional recommendations

a) It is recommended that the title of the Law be revised to eliminate the redundancies.

b) It is recommended that the Law provide for a general definition of assembly. *[Article 1(1)]⁴*

c) It is recommended that the blanket restriction on assemblies close to educational or public health institutions be removed. However, due to legitimate fears of disturbance of medical care and educational process, reasonable regulation of time, place and matter is permissible so as to prevent assemblies and other speech activities that materially interfere with the activities in such buildings. *[Article 4(1)(6)]*

d) It is recommended that the Law be revised to guarantee freedom to organize and participate in assemblies to non-nationals. *[Article 6; also other articles referring to “citizens”]*

e) It is recommended that the requirement for the organizers to notify of cancellation of the assembly no later than 24 hours prior to the intended assembly start time be removed or changed to a requirement to notify of cancellation as early as possible. *[Article 7]*

f) It is recommended that the scope of powers and rights of the State representative replace the right to “participate” in an assembly with the right to be present. *[Article 9]*

g) It is recommended that the Law make it clear that the requirement of prompt decision making applies to the appeals court as well. *[Article 10]*

V. ANALYSIS AND RECOMMENDATIONS

5.1 Title

12. The Amendments leave the title of the 2002 Law unchanged. However, the title as it stands now raises concerns as pleonastic and vague, and at odds with the principle of legality, which requires that the law be clear, ascertainable and the consequences of a breach foreseeable.

13. First, the inclusion of the phrase “without weapons” immediately following the word “peaceably” is undesirable creating an impression that there exist modalities of peaceful assemblies that do not preclude carrying weapons.

14. Second, the inclusion of the phrase “to freely hold rallies and demonstrations” may be interpreted to imply that “rallies and demonstrations” are not included under the general notion of assemblies, or else that they do not need to be peaceful as it is required of other assemblies.

15. In view of the above, it is recommended that the title of the Law be revised to eliminate the redundancies. The legislator may wish to consider modifying the title to refer simply to the freedom of assembling peaceably.

⁴ The references enclosed in brackets indicate articles of the extant Law the recommendation refers to, rather than articles of the Draft.

5.2 Definitions

16. The Amendments modify Article 2 of the extant Law to introduce a definition of “public assembly,” which is defined as *“open, peaceful, unarmed action that is accessible to everyone and is conducted in the form of a rally, demonstration, manifestation, street procession, picket, hunger strike or as a combination of these forms, and that is organized at the initiative of citizens of the Kyrgyz republic, political parties, civil society or religious organizations.”*⁵

17. The definition in question presents a number of concerns. First, it defines a public assembly through the sum of as yet undefined subtypes of public assembly such as rallies, pickets, processions etc.. This approach is problematic in that it fails to crystallize a set of general characteristics shared by all public assemblies, thus distorting the essence of freedom of assembly as a fundamental element of a functioning democracy by reducing it to the right to organize certain narrowly defined types of events. To be consistent with international standards, the law would need to provide for a general definition of an assembly, supplementing it by definitions of individual types of public events only insofar as these require differential regulatory treatment (such as may be the case with static events, such as a rally or a picket, and dynamic ones, such as a procession). As a general guidance, the drafters may wish to use the OSCE/ODIHR Guidelines which define an assembly as *“the intentional and temporary presence of a number of individuals in a public place that is not a building or structure for a common expressive purpose.”*⁶

5.3 Scope of application

18. The Amendments expressly exclude private property from the scope of the application of the Law, which is a welcome point.⁷

5.4 Enjoyment of freedom of peaceful assembly by non-nationals

19. It is not clear from the Amendments whether non-nationals are free to organize and participate in public assemblies. The Amendments use the word “citizens” throughout,⁸ however, they do not specify whether that term limits the authority to organize an assembly and give notice of the assembly to persons who are nationals of the Kyrgyz Republic.

20. The OSCE/ODIHR Guidelines emphasize that *“[t]he freedom to organize and participate in public assemblies must be guaranteed [...] to both nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants, and tourists).”*⁹ It is therefore recommended that the Law be revised to guarantee freedom to organize and participate in assemblies to non-nationals.

5.5 Restrictions on assembly venues

⁵ Amendments, Article 1(1).

⁶ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, at p. 13.

⁷ Amendments, Article 3 (*“Citizens of the Kyrgyz Republic shall have the right to conduct public events without notification of bodies of local state administration or local self-government: 1) on territories specially allotted by a decision of bodies of local self-government; 2) upon permission of owner or his authorized person irrespective of ownership form: - in enclosed spaces; - on land territory of legal entities and individuals.”*)

⁸ For example, see *id.*, Article 6 (*“Notifications on conducting a public event can be submitted by political parties, public, trade union or other organizations, citizens on whose behalf their representatives act.”*) (Emphasis added.)

⁹ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, at p. 14.

21. The Amendments prohibit holding assemblies “(1) in areas closer than 50 meters to hazardous facilities and other facilities requiring observation of heightened operational safety rules; (2) in areas closer than 30 meters to highways of international or national significance, grade-separated interchanges, railroads and railroad precincts, oil or gas pipelines, high-tension power lines; (3) in areas closer than 30 meters to the residences of the President of the Kyrgyz Republic and the Prime Minister of the Kyrgyz Republic, the buildings of the Zhogorku Kenesh of the Kyrgyz Republic and the Cabinet of the Kyrgyz Republic, the buildings of the courts of the Kyrgyz Republic, or facilities of penitentiary institutions; (4) in areas closer than 30 meters to military installations of the Armed Forces of the Kyrgyz Republic, other military installations of the Kyrgyz Republic and their bodies; (5) border areas, unless special permission by the authorized bodies of the Border Guard; (6) immediate territory of historical or cultural monuments; by the decision of a court of the Kyrgyz Republic exclusively on the below-listed grounds related to substantial interference with human and citizens’ rights: probability of completely blocked passage to residential and work facilities, educational institutions, public facilities in absence of a possibility of a detour; impossibility of a temporary detour on public transportation routes or temporary road closure; the intended assembly venue being at a distance of less than 50 meters from secondary schools or preschool institutions or hospitals.”¹⁰

22. Blanket restrictions such as a ban on assemblies in specified locations are in principle problematic since they are not in line with the principle of proportionality which requires that the least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference. Blanket prohibitions such as are contained in the law do not take into account the fact that, in order to have a meaningful impact, demonstrations often need to be conducted in certain specific areas in order to attract attention. The OSCE/ODIHR Guidelines note that “[t]he principle of proportionality thus requires that authorities not routinely impose restrictions that would fundamentally alter the character of an event, such as routing marches through outlying areas of a city. The blanket application of legal restrictions tends to be overly inclusive and thus fails the proportionality test because no consideration is given to the specific circumstances of the case in question.”¹¹

23. The purpose of the blanket restrictions in question could be satisfied by conducting a proper evaluation of the individual circumstances affecting the holding of an assembly and balancing competing interests. Proper restrictions on the use of public places are based on whether the assembly will actually interfere with or disrupt the designated use of a location. For example, an assembly in the lobby of a public building interferes with the designated purpose of the lobby by substantially obstructing access to the building, while the same assembly outside of the building on the sidewalk or street does not interfere because pedestrians and users of the building can easily avoid the assembly, or walk around it, if they choose. The mere possibility of an assembly causing inconvenience does not provide a justification for prohibiting it. Inconvenience, of itself, is not a ground for prohibition and, in particular, mere disruption of traffic (Article 4(6)). It is essential that there is adequate capacity by the authorizing body or the court in question to follow the principle of proportionality and allow events which would not pose security or public order difficulties or which would not unduly interfere with the rights of other persons. Furthermore, in view of the positive obligation on the state to ensure that the right of freedom of assembly can be exercised, the state may be required to intervene to facilitate peaceful assemblies.

24. The risk of excessive interference with the right to freedom of peaceful assembly is further exacerbated by the draft provisions in question being not always sufficiently clear to exclude broad interpretation. It is, for instance, not clear what facilities should be included under “other facilities requiring observation of heightened operational safety rules” or

¹⁰ Amendments, Article 1(3) (Article 4(1) of the Law).

¹¹ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, at p. 14.

“immediate territory of historical or cultural monuments.” In particular, since the latter provision does not specify that the property be officially designated as a historical or cultural monument, it creates a risk of overly broad interpretation by the decision making authority and does not rule out the possibility of abuse such as, for instance, declaring the whole downtown area a “historical monument” thus precluding assemblies in what would be a generally preferred location.

25. As far as the prohibition of public assemblies near hazardous facilities is concerned, the ban should be limited to those areas closed to the public, and presumably fenced in. If the area near a hazardous facility is open to the public, there appears to be no reason to exclude an orderly public assembly in the same area. Therefore, it is recommended that the amendments to Article 4(1)(1) of the Law be reconsidered in light of this position.

26. The prohibition on assemblies in the immediate vicinity of *“the residences of the President of the Kyrgyz Republic and the Prime Minister of the Kyrgyz Republic, the buildings of the Zhogorku Kenesh of the Kyrgyz Republic and the Cabinet of the Kyrgyz Republic, the buildings of the courts of the Kyrgyz Republic”* poses a particular concern, since governmental institutions top the list of preferred assembly locations in almost any State, and areas surrounding them are appropriate for public speech. Instead of blanket bans, the restrictions should be imposed on a case-by-case basis and be based on the particular characteristics of each assembly. It is understandable that heightened security may often be required to prevent outbreaks of violence during assemblies at these locations, however, this a policing rather than a regulatory issue, and the relevant law enforcement bodies should be empowered to make decisions concerning the security measures to be put in place. It is therefore recommended that the blanket ban on assemblies in the vicinity of government institutions and courts be deleted, and the management of security risks be left to the relevant law enforcement bodies.

27. Likewise, the ban on assemblies next to educational institutions or hospitals is not justified and would pose serious problems where the target audience of the assembly is the administration of the school or the hospital. While it is welcome that the Draft leaves a certain margin of discretion to the court to decide on the permissibility of such assemblies, the requirement of a 50 meters distance is unnecessarily rigid and still constitutes a blanket restriction. While it would be legitimate to require that assemblies in the immediate vicinity of educational or public health institutions not hinder free movement of persons, create noise levels above the acceptable (e.g. restrictions on the use of amplifiers would be justified) or otherwise disrupt the activities of the institution, banning all assemblies in such areas would be a manifestly disproportionate response.

28. It is therefore recommended that the blanket restriction on assemblies close to educational or public health institutions be removed. However, due to legitimate fears of disturbance of medical care and educational process, reasonable regulation of time, place and manner is permissible so as to prevent assemblies and other speech activities that materially interfere with the activities in such buildings. It is recommended that such regulation be permitted on a case by case basis.

5.6 Restrictions on assembly times

29. The Amendments restrict the times at which assemblies can be held, making it illegal to continue with an assembly into the night.¹² A blanket ban on assemblies after certain hours is a disproportionate response to the risk of interference with the legitimate enjoyment of the rights of others, and it would be indeed preferable to deal with it through restrictions on the

¹² Amendments, Article 5 (*“A public event shall be conducted in the period from 9:00 hours to 20:00 hours of the same day, local time. Organizers and participants of a public event are prohibited from putting up yurts, tents and other constructions intended for long-time presence in the place of the public event.”*)

manner in which an assembly is conducted (such as the use of sound amplifiers or lighting).¹³ Moreover, in the case of industrial and similar disputes it is quite reasonable to commence an assembly before 9 AM and there is no reason to prohibit an early start to an assembly. It is recommended that the blanket ban on assemblies after 8 PM and before 9 AM be removed and the possibility be left to the regulatory authority to impose manner restrictions to prevent interference with the rights of others.

5.7 Notification of assembly

30. The Amendments require filing of an assembly notification with the regulatory authority 12 days prior to the intended assembly date,¹⁴ and introduce a deadline of 6 days before the event for the regulatory authority to review the notification and give their response.¹⁵ The Amendments require organizers to notify of cancellation of the assembly no later than 24 hours prior to the intended assembly start time.¹⁶

31. Article 7 requires detailed particulars to be included by the organizers in the notification to be submitted. It is not clear what the consequences are if all the required details are not included. There should be specific provision to allow an organizer to supplement information given or fix any flaws in the notification without prejudice to the notification.

32. Requiring a response to the notification 6 days before the assembly may create problems in some cases. For example, planning of a large assembly often starts many weeks before the event is to occur. If notice is given to proper authorities 30 days before the event, the responses should be within days after the notice is given. Waiting until 6 days before will limit the time to negotiate or take appropriate legal action. There is also need to curb the possibility of abuse such as delay in responding until the last possible time to try to undermine assembly planning. It is recommended that the legislator consider imposing a requirement of a 48 or 72 hour response after the notice has been submitted.

33. The Amendments do not expressly provide for the right of the organizers to proceed with the assembly in the event of a failure on the part of the regulatory authority to furnish a response by the deadline. The absence of such provision transforms the procedure into permission rather than notification-based. The language in Article 8 that requires that the regulatory authority notify the applicant "*about the absence of objections to conducting the public event*" only makes the pro-permit position of the Law more entrenched, as according to a genuine notification-based procedure the regulatory authority would only need to present objections, if any, while in the absence of objections the organizers would be presumed free to proceed with the assembly as planned.

¹³ See OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, at p. 45 ("*An example of manner restrictions might relate to the use of sound-amplification equipment or lighting and visual effects. In this case, regulation may be appropriate because of the location or time of day for which the assembly is proposed.*")

¹⁴ Amendments, Article 6 ("*Notification on conducting a public event shall be sent to local state administration or bodies of local self-government in the area of conducting the event 12 days prior to conducting the public event. Local state administration or a body of local self-government are obliged to give a written response to the notification in the form of consent or motivated refusal for conducting the public event and to submit to court an application for prohibiting the said event or changing the conditions of its conduct. notifications on conducting a public event can be submitted by political parties, public, trade union or other organizations, citizens on whose behalf their representatives act.*")

¹⁵ *Id.*, Article 8 ("*Local state administration or a body of local self-government shall consider the notification and notify the authorized person in writing about the absence of objections to conducting the public event no later than 6 days prior to the time of the event, and shall provide necessary conditions for conducting the public event, as well as take action to ensure public order.*")

¹⁶ *Id.*, Article 7 ("*Should public event organizers make a decision to cancel the event or to conduct it at a later time, authorized persons shall notify local state administration or bodies of local self-government in writing no later than 24 hours prior to conducting the public event.*")

34. The right to proceed in the absence of a well-founded objection by the authorities is a corollary of the presumption in favor of holding assemblies¹⁷ and is indeed central to the enjoyment of freedom of assembly. The OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly require that “[i]f the authorities do not promptly present any objections to a notification, the organizers of a public assembly should be able to proceed with the planned activity in accordance with the terms notified and without restriction.”¹⁸

35. It is strongly recommended that the Amendments include an express provision allowing for the organizers, in the absence of timely presented objections by the authorities to the notification, to proceed with the planned assembly in accordance with the terms notified and without restriction.

36. Furthermore, although there are no clearly established standards as to the length of the notification period, the deadlines for organizers to submit a notification 12 days prior to the event and for the regulatory authority to consider the notification within 6 days appear to be unnecessarily long and difficult to justify. It is recommended that the legislator consider reducing the notification as well as the decision making period.

37. The requirement that organizers notify of cancellation no less than 24 hours prior to event may be impractical as well as creates a potential for subsequent punishment for anyone who fails to do so. It is recommended that the requirement of 24 hours notice be removed or changed to a requirement to notify of cancellation as early as possible.

38. In addition, the requirement that the notification include “*logistics and other provisions ... including clean-up of the place of conduct upon its completion*”¹⁹ implies that clean-up is the responsibility of the organizer and is contrary to the internationally accepted practice. The OSCE/ODIHR Guidelines take an unequivocal stance that the responsibility for clean-up should not be imposed on the assembly organizers: “*the responsibility to clean up after an event will normally lie with the municipal authorities. Unreasonable or prohibitive clean-up costs should not be imposed on an assembly organizer. This is particularly the case where nonprofit assemblies are concerned. However, the mere existence of commercial sponsorship of an event should not be used by the authorities as an excuse to impose unreasonable clean-up costs.*”²⁰ It is recommended that the reference in Article 7 to cleaning up after the event be deleted.

39. Finally, there is no scope for spontaneous assemblies anywhere in the law. The only possibility to assemble without notification under the current law is the provision in Article 3 waiving the notification requirement with regard to assemblies in specially designated places.²¹

¹⁷ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, at p. 13 (“*Principle 1. Presumption in favour of holding assemblies. As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden in law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of the freedom should be clearly and explicitly established in law.*”)

¹⁸ *Id.*, at p. 15.

¹⁹ Amendments, Article 7 (“*The notification shall include: - last and first names, patronymic of the citizen (for physical persons) or authorized person on behalf of an organization, indicating passport data, name of the organization (for legal entities); - purpose, form, place of the event, marching routes, supposed number of participants, date, time of beginning and closing of the event; - logistics and other provisions for conducting the public event, including clean-up of the place of conduct upon its completion; - signature of the citizen, authorized persons, and date of notification submission.*”) (Emphasis added.)

²⁰ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, at p. 29.

²¹ See Section 5.8 of the Opinion for further discussion.

This is, however, not sufficient, since the assembly venue can be of pivotal importance as a factor enabling effective communication of the assembly message.

40. The OSCE/ODIHR Guidelines note that “[t]he ability to respond peacefully and immediately (spontaneously) to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly. Spontaneous events should be regarded as an expectable (rather than exceptional) feature of a healthy democracy. As such, the authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature.”²² They further expand on the procedural aspects of the issue specifying that “[t]he law should explicitly provide for an exception from the requirement of prior notification where giving prior notification is impracticable. The law should also provide a defence for participants charged with taking part in an unlawful assembly if they were unaware of the unlawful nature of the event. Furthermore, if there are reasonable grounds for non-compliance with the notification requirement, then no liability or sanctions should adhere.”²³

41. In view of the above, it is recommended that the Law be revised to provide for an exception from the requirement of prior notification where giving prior notification is impracticable.

5.8 Designation by the State of assembly locations

42. The Amendments allow the State authorities to designate certain locations for holding assemblies.²⁴ Allowing the State to designate assembly locations poses a grave concern as incompatible with the very concept of the right to peaceably assemble as a fundamental freedom. It is assumed that all public spaces are open and available for the purpose of holding assemblies and the burden of justification for any restrictions imposed is on the State. If the intention of the drafter was to provide for the possibility of creating spaces where assemblies can be held without notification, as stipulated by Article 3 of the Amendments,²⁵ then Article 9 should make it clear that it is the right to designate notification-free assembly places that the authorities have, rather than the right to designate assembly locations in general. The reference in Article 11 to “decisions of bodies of local self-government that identify special places for organizing and conducting assemblies, meetings and demonstrations” should be deleted altogether.

43. It is strongly recommended that the Law do not provide for right for the authorities to designate assembly locations.

5.9 Role of the State representative

44. The Amendments allow the regulatory authority to appoint a representative “with the purpose of participating in, providing information about issues that have been the reasons for, conducting the public event, to public authorities and bodies of local self-government to which

²² OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, at p. 50.

²³ *Id.*

²⁴ Amendments, Article 9 (“Local state administration or a body of local self-government shall have the right to: - identify certain territories allotted by a decision of bodies of local self-government specially for conducting public events.”) Also Article 11 (“Public events shall be conducted in conformity with the purposes, in the established terms and in the agreed place as stated in the notification, and subject to decisions of bodies of local self-government that identify special places for organizing and conducting assemblies, meetings and demonstrations.”)

²⁵ *Id.*, Article 3 (“Citizens of the Kyrgyz Republic shall have the right to conduct public events without notification of bodies of local state administration or local self-government: 1) on territories specially allotted by a decision of bodies of local self-government.”)

*the issues apply.*²⁶ While it is certainly welcome that there should be a focal point at the regulatory authority with whom assembly organizers may directly negotiate, this representative should have a clearly delineated scope of powers and rights, which should never include “participation” in the assembly. As evident from the very definition of an assembly, a participant is someone who is present at the assembly location intentionally for an expressive purpose he or she shares with other participants. As the State representative is likely to represent other interests than the assembly organizers and participants, the right to “participate” would amount to an interference with the rights of assembly organizers, and should be replaced with the right to be present at the assembly.

5.10 Assembly termination and dispersal

45. The Amendments give the regulatory authority discretion to “discontinue the conduct of public events on the basis of provisions of this Law.”²⁷ The Law allows termination of an assembly where “1) *either organizer (organizers) or participants of public arrangement have violated requirements of [the] Law; 2) there is a real threat to life, health and safety of citizens, as well as property of legal entities and individuals; 3) there is a call by speakers to a violent change of the constitutional order.*” It further allows to disperse the event where calls for dispersal have been ignored. The use of force or special means is allowed only “*if participants act violently towards details of militia that ensure law and order; to suppress violations of public order, mass disorders and activities disturbing the work of traffic, communication, enterprises, institutions and organizations; and to release illegally occupied buildings, premises, constructions, vehicles, and lands.*”²⁸ The Amendments do not modify any of these provisions.

46. While the prohibition on the use of force and special means in non-violent scenarios, as well as the requirement to provide prior warnings are certainly welcome, the provisions concerning the termination and dispersal of assemblies still do not fully reflect the proportionality principle and are in need of modification.

47. The blanket possibility to order termination of an event wherever “*either organizer (organizers) or participants of public arrangement have violated requirements of [the] Law*” is manifestly disproportionate as it fails to take into account the specific circumstances of each particular case, ultimately allowing to terminate a peaceful assembly on the grounds of any breach of the law however minor that may be. The OSCE/ODIHR Guidelines state that “*[i]f the organizer fails or refuses to comply with any requisite preconditions for the holding of an assembly (including valid notice requirements, and necessary and proportionate restrictions based on legally prescribed grounds), they might face prosecution. However, such assemblies should still be accommodated by law enforcement authorities as far as is possible. If a small*

²⁶ *Id.*, Article 9.

²⁷ *Id.* (“*Local state administration or a body of local self-government shall have the right to: [...] - discontinue the conduct of public events on the basis of provisions of this Law.*”)

²⁸ Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations, Article 8 (before amendment) (“*Assemblies of citizens, meetings, demonstrations, manifestations, vigil in any form shall be stopped at the request of representatives of bodies of local state administration or local self-government if: 1) either organizer (organizers) or participants of public arrangement have violated requirements of this Law; 2) there is a real threat to life, health and safety of citizens, as well as property of legal entities and individuals; 3) there is a call by speakers to a violent change of the constitutional order. If claims to stop the public arrangement is ignored, the responsible representative of bodies of local state administration or local self-government, and bodies of internal affairs shall take measures to stop the mass action in accordance with the current legislation and draw up proper documentation of violations of the legislation of the Kyrgyz Republic. Use of physical force and special facilities to stop public arrangements shall be allowed only if participants act violently towards details of militia that ensure law and order; to suppress violations of public order, mass disorders and activities disturbing the work of traffic, communication, enterprises, institutions and organizations; and to release illegally occupied buildings, premises, constructions, vehicles, and lands.*”)

*assembly is scheduled to take place and, on the day of the event, it turns into a significantly larger assembly because of an unexpectedly high turnout, the assembly should be accommodated by law enforcement authorities and should be treated as being lawful so long as it remains peaceful.*²⁹

48. Moreover, the Law allows termination of an assembly where “*there is a call by speakers to a violent change of the constitutional order.*” While it would be a certainly justified response to terminate an assembly when it changes from non-violent to violent, the making of unlawful statements by individual speakers does not itself make an assembly violent and therefore does not constitute a sufficient ground for termination. The Guidelines note that “*the making of unlawful statements by participants in an assembly (whether verbal or written) does not of itself turn an otherwise peaceful assembly into a non-peaceful assembly, and any intervention should again arrest the particular individuals involved rather than dispersing the entire event.*”³⁰

49. The test here should be that of imminent threat of violence, which means that if a speaker at the assembly calls, for instance, for unlawful means to change the constitutional order under circumstances in which there is no substantial likelihood that participants will immediately engage in the unlawful conduct that the speaker proposes, no action should be taken to terminate the assembly. If the law allows, action against the speaker can be taken later, without risking the safety of the participation in the assembly and the law enforcement personnel due to a premature, forcible termination of the assembly.

50. It is recommended that the provisions of the Law concerning termination and dispersal of assemblies be amended to improve compliance with the proportionality principle.

5.11 Judicial review

51. The Amendments provide for prompt access to the courts in the event a permit is denied,³¹ which is welcome. However, the right to appeal in the last sentence is not clearly covered by the requirement of prompt decision making.

52. It is recommended that the Law make it clear that the requirement of prompt decision making applies to the appeals court as well.

²⁹ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, at p. 61.

³⁰ *Id.*, at p. 62.

³¹ Amendments, Article 10 (“*Application of local state administration or a body of local self-government for prohibiting a public event or changing the conditions of its conduct shall be presented to court no later than 6 days prior to its conduct and shall be considered by court within a 3-day period in the order established by the legislation of the Kyrgyz Republic. The court prohibition for conducting the public event is subject to appeal in the order established by the procedural law.*”)