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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT INTERIM JOINT OPINION
ON THE DRAFT LAW ON ASSEMBLIES
OF THE REPUBLIC OF ARMENIA

by

THE VENICE COMMISSION
and
OSCE/ODIHR

on the basis of comments by

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I. Introduction

1. By letter of 19 August 2010, Mr Armen Harutyunyan, the Human Rights Defender of Armenia, asked the Venice Commission to provide an expert assessment of the Draft Law on Assemblies of the Republic of Armenia (CDL(2010)117), jointly with the OSCE/ODIHR.
2. The Venice Commission and the OSCE/ODIHR have had the occasion to assess previous versions of this Law. Already in 2004, the Venice Commission adopted an opinion ([CDL-AD\(2004\)039](#)) on the then in force “Law on the Procedure of Conducting Meetings, Assemblies, Rallies and Demonstration of the Republic of Armenia”. It considered that the Law presented several substantial shortcomings, was excessively detailed with excessive differentiation between categories of event in a manner which was not properly linked to permissible reasons for restrictions. Between 2005 and 2008, the Armenian authorities prepared several series of amendments and addenda to this law, which were assessed by the Commission jointly with the OSCE/ODIHR (CDL-AD(2005)007, CDL-AD(2005)021 and CDL-AD(2005)035). In their last joint opinion, the Commission and the OSCE/ODIHR concluded that the amendments were generally positive and reflected the majority of the recommendations made before their adoption, although the Law continued to be excessively detailed.
3. Following the tensions surrounding presidential elections, on 17 March 2008, in the course of an extraordinary session, the Armenian parliament adopted in the first and second reading the new “Law on amending and supplementing the Republic of Armenia law on conducting meetings, assemblies, rallies and demonstrations”. In their joint opinion on this law (CDL-AD(2008)018), the Venice Commission and the OSCE/ODIHR Expert Panel on Freedom of Assembly stated that these amendments could not be acceptable, to the extent that they restricted further the right of assembly in a significant manner. In response to the opinion, the Armenian authorities prepared further amendments that were again assessed jointly by the Commission and the OSCE/ODIHR (CDL-AD(2008)020). These amendments were finally adopted in June 2008.
4. The Venice Commission and OSCE/ODIHR, aware of the possibility that the law, though good on paper, could present difficulties in practice, had drawn attention to the need to monitor the implementation of this law. They had expressed the view that the Ombudsman appeared to be in a good position to do this.
5. The Armenian Human Rights Defender prepared a new draft law on assembly in consultation with national and international experts and later submitted to the Venice Commission and OSCE/ODIHR for assessment. In early 2010 he issued an ad hoc report on the right to peaceful assembly in the Republic of Armenia.
6. On 8 November 2010, the draft law under consideration was posted on the website of the Human Rights Defender. A public round table organized by GTZ took place in Yerevan on 9 November 2010. It gathered representatives of national authorities, national and international experts (including a Venice Commission delegation and representatives of OSCE/ODIHR) and representatives of the civil society. The Draft Law on Assemblies (hereinafter: the Draft Law) was discussed extensively.
7. Further to this meeting, the Human Rights Defender of Armenia announced that the Draft Law will be modified to take into account the results of the November meeting and likely sent to the OSCE ODIHR and Venice Commission for assessment.
8. *The present opinion was prepared on the basis of the comments by Mrs Finola Flanagan, Mr Bogdan Aurescu and Mr David Goldberger and Mr Michael Hamilton of the OSCE/ODIHR Panel and in the light of the discussions which took place in Yerevan on 9 November. It was adopted by the Venice Commission at its Plenary Session (Venice,).*

II. Executive Summary

9. The Venice Commission and the OSCE/ODIHR welcome the new Draft Law on Assemblies of the Republic of Armenia (hereinafter, “the Draft Law”) under consideration, which is generally in accordance with international and European standards in this matter.

10. Nevertheless, the text contains a certain number of shortcomings that should be modified in order to achieve full clarity and compliance with the European Convention on Human Rights and the Venice Commission - OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, as revised in 2010 (hereinafter: the Guidelines). In this respect, the Venice Commission and OSCE/ODIHR make the following general recommendations:

A. In principle, every public space, whether ‘open air’ or not, should be seen fit to host an assembly; the prohibition of assembly in the immediate vicinity of high risk facilities should be limited to areas closed to the public;

B. Public events of a commercial nature should be excluded from the law and subject to separate regulations;

C. All provisions amounting to blanket prohibitions, including on location of a peaceful assembly and the organisers/participants in an assembly should be revised. The reasons for a ban of an assembly should include a reference to an “imminent threat of violence”;

D. The age limit of organisers should be lowered considerably and the requirement to obtain a written consent of parents or caregivers should not be mandatory in all cases;

E. It is important that the reference to the Authorised Body’s decision on notification of an assembly in the Draft Law does not imply a system of the issuance of permission instead of simple notification; the decision should be taken within a short time (72 hours under the current law) of the notification, not of the date planned for the assembly;

F. A notification period prior to the event should be reduced from seven to four working days;

G. The Draft Law should regulate in some more detail both administrative and judicial review procedure; these procedures should be established in such a manner so as to ensure that an Authorised Body’s decision is made available to organisers before the planned date of the assembly. A provision allowing for temporary injunctions could also be added;

H. The Draft Law should clearly define and limit “the use of special means” connected with keeping the peace and security during assemblies that can be taken by the police; it should also specify that officials can use force only as a last resort in proportion to the aim pursued, and in a way that minimizes damage and injury;

I. The Draft Law should clearly set out the liability and penalties for lack of adherence to the law.

11. It is also important that improvements in the text of the Law be coupled with progress made in its implementation, which may justify awareness-raising measures and adequate training for the competent authorities so as to avoid an overly restrictive reading of the Law. Indeed the way in which the Law is interpreted and implemented is of great significance in terms of its compliance with international human rights standards.

12. The Venice Commission and OSCE/ODIHR stand ready to continue to assist the Armenian authorities in this matter.

□□□. Analysis and specific recommendations

Title and general principles

13. It is recommended that the title of the Draft Law, currently “*Law on Assembly*”, be reformulated as “*Law on the freedom of assembly*”.

14. Articles 1, 4 and 5 contain an over-arching guarantee of freedom of assembly in accordance with Article 43 of the Constitution of the Republic of Armenia, as amended, (2005), (hereinafter, “the Constitution”) according to which restrictions to fundamental rights including the right to freedom of assembly may only be imposed in accordance with the law and in pursuit of legitimate aims and may not exceed the limits defined by international agreements. Equality is guaranteed. This guarantee is reinforced by Articles 7 §1 and 9 §1, which specify that not only citizens, but also foreigners or stateless persons have the right to organise and participate in assemblies.

15. The reference to “international treaties” is also welcomed. Concrete references to the international and European instruments on the matter (ICCPR, ECHR, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Framework Convention on National Minorities) would be useful. Alternatively, they could be mentioned in a Preamble of the law. Including a specific reference to article 11 of the European Convention on Human Rights would be particularly beneficial, either in Article 1 or in Article 5 (in the latter, a reference to para. 2 of article 11 ECHR would be welcomed). Such modification would help ensure that the exercise of the freedom of assembly is brought in conformity with the relevant international standards and the Constitution as interpreted in the light of article 11(2) ECHR.

16. Article 4 refers to the principle of the State’s obligation to protect assemblies. It is the primary responsibility of the State to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation.

17. Article 5 of the Draft Law refers to a Law on Fundamentals of Administration and Administrative Proceedings in requiring authorities to follow proportionality and administration principles. Without sight of this law it is not possible to comment on this Article.

Scope of application and definitions

18. The Venice Commission and the OSCE/ODIHR strongly welcomes a broad and general definition of “an assembly” given in Article 2 §1: It refers to “*the intentional and temporary peaceful and unarmed presence of two or more individuals, not limited to a distinct circle of individuals, in a public place that is not a building or structure for a common expressive purpose*” (Article). Such a broad definition that includes all types of gatherings, meetings, marches and demonstrations which are all public assemblies, meets the recommendations set out in the Guidelines. The reference to “procession” in Article 2 §2 should not be seen as limitative as to *static* forms of assembly like ‘flash mobs’, sit-ins, and pickets.

19. In relation to the definition of a “public place”, it should be noted that public spaces are not necessarily “open air”, so that this specification should be removed from Article 2 §3.

20. The Venice Commission and the OSCE/ODIHR further recalls that, in accordance with the Guidelines, also other facilities ordinarily accessible to the public that are buildings and structures (such as publicly owned auditoriums or stadiums) should be regarded as legitimate

sites for public assemblies¹. It would seem appropriate to remove the limitation regarding the organisation of assemblies in “a building or structure” from this provision.

21. In addition, the possibility for an organiser to use a privately-owned or privately-rented space which is potentially accessible to everyone (a private park, for example) for an assembly should be given – provided, of course, that the owner has consented to this. The Venice Commission and the OSCE ODIHR understand that this situation would be covered by other laws, notably on public order or policing. This situation should be clarified and possibly reconsidered.

22. Article 26 defines “spontaneous and urgent assemblies”. For the sake of clarity and coherence, it may be useful to include these two definitions under Article 2 on “Definitions”.

23. Article 3 excludes “*celebrations, rites and cultural and sports events*” from the scope of application of this law. This relaxing of the rules in relation to the sport events is to be welcomed; commercial events should also be excluded from the application of this law. It is important, nonetheless, that a common understanding of what events are excluded from the scope of the Draft Law be established between the authorities and the public so that the events not subject to regulation are precisely defined, and that the potential for conflicting interpretations is reduced. This provision should not be viewed as complete exclusion of celebrations, rites or cultural events: the Draft Law should cover them in those cases when these activities are held for expressive purposes. For instance, this Draft Law should be applicable to a religious mass held in a public park to celebrate Christmas, where participation was open to all even though it is a rite.

Restrictions on Freedom of Assembly

24. The legitimate grounds for restriction are now prescribed by combined Articles 6 and 18 of the Draft Law. Article 6 reproduces Article 43 of the Constitution of Armenia, and introduces general provision mirroring Article 11 § 2 ECHR setting out the need for restrictions to pursue a legitimate aim that is, “*the protection of state security or the public order, the prevention of crime, or the protection of public health and morals or the constitutional rights and freedoms of others*”. This is a highly commendable inclusion in the Draft Law.

25. Article 18 specifies that restriction can take a form of change of “*the time, venue or method of the assembly*” and introduces a requirement for restrictions to be proportionate to the competing interest justifying it. Paragraph 3 further develops the proportionality test by requiring that the limitations imposed may not “*distort the assembly purpose or isolate the assembly participants in time or space in a way that essentially reduces its significance and potential impact on the public audience targeted by the organisers, or in any other way result in de-facto prohibition of the assembly*”. This approach follows European standards and is to be welcomed as it now makes clear that any restriction must be linked to a permissible reason and pass the proportionality test.

26. The Draft Law also provides for the possibility of imposing limitations on an assembly in case of simultaneous and counter-assemblies, when an imminent clash between the participants of the two assemblies is present (Article 18 §4). Whilst the right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate, an “imminent danger of a clash” should not necessarily be a reason for prohibiting one of the assemblies from taking place at the same time and in the same vicinity. Emphasis should be placed on the state’s duty to protect and facilitate each event and the state should make available adequate policing resources to facilitate both to the extent possible within sight and sound of one another².

¹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, para. 21.

² *Id.*, section A – para 4.4.

27. In this regard, the Venice Commission recalls that the legitimate aims as provided for in the international and European instruments, the State Constitution and the relevant legislation, are not a licence to impose restrictions, and the onus rests squarely on the authorities to substantiate any justifications for the imposing of restrictions³.

Blanket prohibitions

28. Article 6 §2 bans the assemblies aimed at “*forcibly overthrowing the constitutional order, inciting ethnic, racial, or religious hatred, or advocating violence or war.*”⁴

29. According to the Guidelines⁵, whether a certain “behavior constitutes the intentional incitement of violence is inevitably a question which must be assessed on the particular circumstances”, that is on a case by case basis. In this regard, it is important to mention that events aimed to make public calls to war, to incite hatred towards racial, ethnic, religious or other groups, or for other manifestly bellicose purposes would be deemed unlawful and their prohibition would be justified in the light of the requirement to balance the freedom of assembly against other human rights, including the prohibition on discrimination.

30. There is, however, a fine line between the degree of restriction necessary to safeguard other human rights, and an encroachment on the freedom of assembly and expression. The test is the presence of the element of violence. According to the Guidelines, “The touchstone must ... be the existence of an imminent threat of violence”⁶. Thus, calls to violent overthrow of the constitutional order would be deemed anti-democratic and a sufficient ground for banning an assembly, whereas expressing an opinion that the constitutional order be changed through non-violent means would deserve protection extended by the law to free speech. In order for the Draft Law to be consistent with the Guidelines, the text should include the reference to the “element of violence” requirement.

31. The Guidelines also mention that “while expression should normally still be protected, even if it is hostile or insulting to other individuals, groups or particular sections of society”, advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law. Specific instances of hate speech “may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.”⁷ “Even then, resort to such speech by participants in an assembly does not of itself necessarily justify the dispersal of the event, and law enforcement officials should take measures (such as arrest) only against the particular individuals involved (either during or after the event).”⁸ Furthermore, advocacy of violence should not be prohibited when in abstract form: for example, a speech should not be prohibited because it advocates military action if, in the future, the nation is attacked. These standards should be taken into account when regulating the restriction (in fact banning) of an assembly as provided by Article 6 and the text may be supplemented to read “advocating *imminent* violence.”

32. Article 19 §3 of the Draft Law contains a blanket prohibition against organising assemblies “*at such a distance from the residence of the President of the Republic, the National Assembly, or the Government, or from courts, which threatens their natural activities*” as well as “*at such a distance from the Nuclear Power Station of Armenia, from the underground storage facility of natural gas and its support structures, or from the “Orbita 2” ground satellite station, which threatens their natural activities*”.

³ *Id.*, para. 70.

⁴ This prohibition is reiterated in Article 19 §1.1.

⁵ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, para 95.

⁶ *Id.*

⁷ *Id.*, para. 96; see also International Covenant for Civil and Political Rights, Article 20 §2

⁸ *Id.*

33. The terms of this provision are problematic. As a general rule, assemblies should be facilitated within “sight and sound” of their target audience and restrictions should not interfere with the message to be communicated. It is natural for assemblies to be held before important decision making bodies, such as the (premises of) Government, President, courts or Parliament. Only the element of imminent violence may justify banning an assembly. As pointed out in the Guidelines⁹: “blanket legislative provisions that ban assemblies at specific times or in particular locations require much greater justification than restrictions on individual assemblies. Given the impossibility of having regard to the specific circumstances of each particular case, the incorporation of such blanket provisions in legislation (and their application) may be found to be disproportionate unless a pressing social need can be demonstrated. As the European Court of Human Rights has stated^[2], “Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.”

34. It is unclear how the “*distance...which threatens...[the] natural activities...*” of the listed institutions in Article 19 §3 would be measured. Nor is it clear what degree of threat of disruption would validate prohibition which is the only restriction in this Article open to the Authorized Body. Whilst the assembly should not prohibit the institutions listed in the Article from functioning, the fact that it causes some inconvenience should not result in prohibition or indeed in any significant restriction. Assemblies are a legitimate use of public space. Such a lack of clarity can lend itself to arbitrary decision-making.

35. The principle of proportionality will not admit of a blanket prohibition from particular locations as is proposed in sub-paragraphs 3 and 4. Such restrictions are over-inclusive without permitting consideration to be given to the particular circumstance of each application. The places listed in Article 19 §1.3 will inevitably be the most popular places for assemblies because these are the very places where national power is exercised and which also have a high symbolic significance. Moving the assembly away from these places so that it does not take place within sight and sound of them will not meet the legitimate requirement of the organisers and participants to demonstrate to a particular audience. In principle the assemblies should be accommodated at the place chosen by the organisers.

36. Similar comments apply to the locations listed in Article 19 §1.4.

37. In the opinion of the Venice Commission and the OSCE/ODIHR, the general provision in Article 6 and Article 18 §3 provide a sufficient and proper basis for deciding upon restrictions on assemblies, including restrictions on the location of holding an assembly, on a case-by-case basis taking into account the specific circumstances.

38. Article 8 places a broad prohibition on the exercising of the right of assembly by persons serving in “*the Armed Forces, the police, national security or prosecution authorities, members of the constitutional court, and judges in cases prescribed by law*”. This means that off-duty, non-uniformed police may not participate in an assembly seeking, for instance, better pay or working conditions; or a judge in civilian clothes may not attend a public assembly to welcome a prominent figure visiting the city. While it is true that Article 11 §2 of the ECHR permits the imposition of “lawful restrictions” on the exercise of the right of freedom of assembly by members of the armed forces, of the police or of the administration of the State, these restrictions must nevertheless be imposed in each case in pursuance of a legitimate aim and in a proportional manner to assure that the participation is not inconsistent with the execution of their official duties.. The Guidelines, at paragraph 60 explain this as follows: “*Legislation should therefore not restrict the freedom of assembly of the police or military personnel unless the reasons for restriction are directly connected with their service duties, and only to the extent absolutely necessary in light of considerations of*

⁹ *Id.*, para. 83.

professional duty. Restrictions should be imposed only where participation in an assembly would impugn the neutrality of police or military personnel in serving all sections of society."

39. In this respect it should be noted that Article 29 of the Constitution provides for the possibility to impose "restrictions" on these categories through law. A blanket restriction, assuming it is one, would be in direct contradiction with this constitutional provision; at any rate, the "prohibition" to exercise freedom of assembly which is contained in Article 8 would be at variance with Article 29 of the Constitution to the extent that prohibition represents the most extreme form of restriction, while other, less drastic measures (such as the requirement not to wear a uniform) could be envisaged and would be constitutionally acceptable. In principle, Article 8 can be deleted with the understanding that each group of officials should be regulated by standards specially designed for this particular group, which precisely define proper and improper participation.

The Assembly organisers

40. According to the Draft Law, also juvenile persons under 18 years may act as organizers, which is highly appreciated. Nevertheless, there are certain restrictions that affect juvenile persons in this respect: they are only allowed to act as an organizer if they have obtained a written consent of their parents or caregivers. The Venice Commission and the OSCE/ODIHR wish to recall that children also have legitimate claims and interests that may sometimes differ from those of their parents or caregivers. Requiring a written consent for all under-18 year-olds for all assemblies covered by the Draft Law is a significant restriction and the age limit should be lowered considerably. The restriction should be imposed only if it is evident that the juvenile will not be capable of fulfilling the requirements that the law imposes on the organiser¹⁰. This comment also applies to the requirement of article 15 §3.

41. Article 9 §3 states that the "*assembly organiser is the assembly leader*". On examining the Draft Law through to its end, the "organiser" functions appear to be those of organising the assembly, particularly in relation to notification and dealings with the authorities in that regard. Once the assembly begins, the "leader" manages the assembly itself, communicates with participants and deals with police (Article 31). The organiser may assign leadership of the assembly to another person. To avoid confusion, it would be preferable if the "organiser" did not cease to be such at a certain point and thereupon become "leader". The organiser/leader should have one title throughout all his or her roles described in the Draft Law.

42. It would appear that Draft Law allows only one organiser or leader for an assembly. The organiser is the person or persons with primary responsibility for the assembly and this should not be compulsorily limited to a single individual. It may be practical to use the name of one organiser as a point of contact with the authorities. However, it is not essential for all of the responsibilities set out in the draft Law of the organiser and leader to reside in a single individual. In principle, it should be a matter for the organisers themselves as to who and how many they should be. If there are several organisers they need not be a legal entity, and could be a committee of individuals provided there is clarity as to who is involved in the organisation. It is noted that Article 15.8 possibly suggests that there may be more than one organiser. This should be clarified.

43. It is also to be pointed out that organisers of assemblies should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organisers should not be liable for the actions of individual participants nor for the actions of non-participants or *agents provocateurs*. Instead, individual liability should arise for any

¹⁰ See OSCE/ODIHR-Venice Commission Joint Opinion on the Law on Peaceful Assemblies of Ukraine (CDL-AD(2010)033), paragraph 28.

individual if he or she personally commits an offence or fails to carry out the lawful directions of law enforcement officials¹¹.

44. Article 31 §2 on rights and responsibilities of the “assembly leader” states that any stewards shall “*carry white signs (i.e. armbands). Other signs shall not be permitted.*” This appears to be unnecessarily prescriptive and might lead to situations where the status of a steward is challenged for failure to wear a ‘white sign’. It should also be clarified that the prohibition on “signs” being carried other than the white signs of stewards in this Article is not intended to prohibit participants from carrying banners etc of their choice¹².

45. It is essential that law enforcement functions are the responsibility of the police and not of the organisers, stewards or participants. Article 31 §1.3 creates a legal duty for the assembly leader to take measures to ensure proper conduct of the assembly and to prevent unlawful conduct of participants. The role of the assembly organiser is not akin to that of a law enforcement officer and the law can require only that s/he makes *reasonable efforts* to ensure the peaceful nature of the assembly by refraining from violence and appealing to assembly participants to refrain from violence. The obligation to differentiate peaceful between peaceful and non-peaceful (violent) participants, however, should always rest on the state.

Notification process

46. It is highly appreciated that neither assemblies of up to 100 participants nor spontaneous assemblies are subject to the notification regime (Article 10). It is good practice to require notification only when a substantial number of participants are expected, or not to require prior notification at all for certain types of assembly. It is recommended to enhance Article 24, which permits an organizer to proceed without a notice if s/he “*is of the opinion*” that there will be no more than 100 participants by adding “*believes in good faith*” as this indicates that the organiser is objective in his or her anticipated estimations.

47. Article 11 clearly and appropriately sets out that the purpose of notification is to enable the State to facilitate peaceful assembly (the term “natural” is unclear, at least in English, and should preferably be removed). The possibility of correcting formal errors in notification and notifying changes of data is in ease of organisers and a desirable feature of the system.

48. Article 13 provides for the notification to be transmitted “*no later than 7 and no earlier than 30 days prior to the assembly*”. The requirement that notification must be presented no later than seven days prior to the assembly is inordinately long. Such a lengthy period of notice will inevitably have the effect of significantly reducing the ability of people to respond with reasonable promptness to events about which they wish to assemble. There will be many occasions when people wish to assemble, say, within three, four, five or six days of an event but this will not be permissible. Assemblies which are wished to be held within these time-limits will not fall into the categories of spontaneous or urgent assemblies and, even if they did, they would then be subject to the six-hour maximum duration contained in Article 27. This inordinately long time would amount in certain circumstances, in effect, to a failure of the state to observe its positive obligation and facilitate the freedom of assembly. In a recent opinion adopted by the Venice Commission¹³, a notification period of five days prior to the event was deemed “unusually long” and this was reduced to four working days, though that too was considered long in comparison to some other countries.

¹¹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, Section A – para 5.7.

¹² In this regard, OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly state: “It is desirable that stewards be clearly identifiable (e.g., through the wearing of special bibs, jackets, badges or armbands)” (see paragraph 194).

¹³ See OSCE/ODIHR-Venice Commission Joint Opinion on the Law on Peaceful Assemblies of Ukraine (CDL-AD(2010)033).

49. Indeed, according to the Guidelines, “It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. In an open society, many types of assembly do not warrant any form of official regulation. Prior notification should only therefore be required where its purpose is to enable the State to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others. Any such legal provision should require an assembly organiser to submit a notice of intent rather than a request for permission.” It is thus strongly recommended to amend the Draft Law in this sense.

50. Also, the provision that the notification is to be transmitted “*no earlier than 30 days prior to the assembly*” seems unnecessary. The earlier the authorities know about the intention of holding an assembly, the better.

Notification requirements

51. Article 15 §1.2 requires the approximate time of the beginning and end of the assembly to be indicated in the notification. However, if an assembly continues past the anticipated length of time notified, reasonable extensions should be permitted. Such extensions should be permitted for considerable amounts of time, if the place of the assembly were suitable.

52. According to the Draft Law, the notification should specify “[t]he assembly purpose” (Article 15 §1.3). The obligation to supply this information must not amount to content-based restriction and should only be used to identify imminent threats of violence or other unlawful forms of speech or behaviour.

Logging of notifications

53. Article 16 provides for the logging of notifications in a special register, with copies being posted in the administrative buildings in a place accessible and visible for all. This is positive. In addition, it would seem appropriate to provide for the immediate posting of notifications on the website of the mayor’s office.

54. The requirement of a written “decision of the competent body” of an entity that organizes an assembly to be presented with the notice (Article 15 §2) may amount to an unnecessary burden: the entity may be an ad hoc unincorporated association, formed solely for the purpose of holding the assembly. Furthermore, the decision to hold the assembly may have been made by an informal consensus reached at a meeting without formal records. So long as an individual organizer has complied with the Draft Law and s/he can be held legally responsible for the activity and the filing of the notice should be sufficient.

55. The Draft Law requires a new notification whenever there is a change of date (Article 15 §5). The provision would be stronger if it permitted the filing of an amended notice unless the change is so drastic that it really represents a new application rather than a change which does not burden the approval process.

Deciding upon notification

56. The procedure concerning the consideration of the notification is generally appropriate. However, Article 17 §1, stating that “[t]he Authorized Body shall consider the notification and make a decision thereon...”, seems to indicate that permission is also required (this perception is reinforced by §4). This should be clarified in the law, as the requirement of permission might excessively restrict the freedom of assembly.

57. It should be provided that the decision should be taken within a short time (72 hours under the current law) of the notification, not of the date planned for the assembly. Article 17 §1 of the Draft Law requires that the authorized body make a decision on the notification “no later than 4 days prior to the assembly date.” This could lead to a situation in which an assembly which is

notified 30 days in advance, may be objected to solely 4 days prior to the planned assembly, providing very little time for organisers to seek judicial review. It is therefore recommended that Article 17 require a prompt response by the authorised body on any notice received and the timing of the decision should be pendant on the date the notice was filed, not on the date that the assembly is planned.

58. Article 17 §2 requires the Authorised Body to send information on all notified assemblies to the Police and the National Security Service. It is unclear what the role of the National Security Service is in relation to public assemblies as they are only referred to in this article. The norm in such situations is to inform the police and to seek their opinions of any concerns about the proposed assembly. Having the Authorised Body liaise with a single policing organisation may also simplify the process as the police may seek opinions from other agencies if they deem it appropriate.

59. The competent bodies are required to act promptly and the organiser has full rights to participate in any hearings that take place which are required if any limitations or a prohibition are being proposed. In this regard, the Guidelines state: “The officials responsible for taking decisions concerning the regulation of the right to freedom of assembly should be fully aware of, and understand their responsibilities in relation to, the human rights issues bearing upon their decisions. To this end, such officials should receive periodic training in relation to the implications of existing and emerging human rights case law. The regulatory authority must also be adequately staffed and resourced so as to enable it to effectively fulfil its obligations in a way that enhances co-operation between the organiser and authorities¹⁴.”

60. In this regard, the Venice Commission and the OSCE/ODIHR recommends to clarify the “Authorized body” in the more specific terms. Furthermore, the Draft Law should expressly require, in Article 17§4.2, that the “Authorized Body” do not determine the issues until after hearing all the parties. There should also be an express requirement that organisers may be legally represented, be informed of all evidence and call witnesses at the hearing. Where the Authorized Body decides to impose conditions or prohibit an assembly, its reasons should be provided promptly in writing. Finally, such a procedure should not be limited to an administrative body. It is recommended that the law provides for a judicial procedure, too.

61. Article 20 §1 requiring official acknowledgement of the notification of the assembly after other provisions of the proposed law are complied with can be enhanced further by requiring immediate issuance of confirmation of receipt of the notice, which will be useful for verification purposes.

62. Article 20 § 3 requiring the Authorised body to prohibit the assembly that falls within the grounds set out in Article 19 is problematic. For the reasons set out above (see paras. 25-29), this is too narrow a range of options, and there should be scope for conditions being imposed or for the notification of the assembly to be referred to the courts.

Remedies and judicial review

63. The provisions of the Draft Law related to remedies and judicial review are rather limited. According to Article 23 “*The act of the Authorized Body concerning conducting the assembly may be appealed in court within a three-day period of the decision coming into effect or of posting information about acknowledging the notification*”.

64. It is not clear if it is only the organisers who may appeal, or whether the police or other authorities may also do so. This should be specified in the Draft Law.

¹⁴ Paragraph 62.

65. Also, the Draft Law should be more detailed as to the procedure for appealing the decisions of the administrative body regarding an assembly. In this regard, the Venice Commission recalls that the right to an effective remedy entails a right to appeal the substance of any restrictions or prohibitions on an assembly. Appeals should be decided by courts in a prompt and timely manner so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights¹⁵. In addition, the Draft Law should establish clearly the remedies available to organisers in cases of improperly prohibited or dispersed assemblies. The prompt and thorough investigation of any suspected unlawful use of force by the police during assemblies, including dispersal of the assemblies, should also be ensured. The subsequent prosecution, if required, must also be safeguarded. The organisers must be entitled to be represented at the appeal if they so wish. They must also be entitled to be aware of and see all evidence to be adduced by the other side and to challenge it. The court should be expressly required to give a written judgment of its decision promptly and before the planned assembly (relief by way of injunction should otherwise be possible). Any restrictions imposed must be in accordance with the jurisprudence of the European Court of Human Rights and must be based on factual, concrete and objective grounds¹⁶.

Spontaneous Assemblies

66. The accommodation in the Draft Law for spontaneous and urgent assemblies is to be commended. Such assemblies are required to be permitted and are to be regarded as an expectable, rather than an exceptional, feature of a healthy democracy. (See Guidelines Section B, para 128.) Whether an assembly is "spontaneous" or "urgent" will depend on its own facts. In principle, so long as an assembly is peaceful in nature it should be permitted.

67. Article 27 introduces certain obligations that may be seen as either superfluous or excessive. For instance, the obligation of a *de facto* organizer of a spontaneous assembly to inform the authorized body as soon as possible: spontaneous assemblies do not have organizers, as a rule, and it is not clear which is the object of the information required.

68. As regards the limitation of the duration of spontaneous and urgent assemblies to six hours, it had already been adopted under the previous law as a compromise solution between the need to allow genuinely spontaneous assemblies and the need to ensure respect of the notification procedure when possible. The Venice Commission and the OSCE/ODIHR had found that this compromise was acceptable. They note however that this draft law (unlike the law currently in force) sets out the - very welcome - principle that a peaceful assembly, even if it is illegal, should not be dispersed. In application of this principle, a spontaneous assembly which would continue beyond six hours could not, in any case, be dispersed as long as it is peaceful. Under these circumstances, the six-hour limitation loses much of its practical value; it could thus be removed.

Powers of the Police during Assemblies

69. The state's positive duty to protect peaceful assembly requires that the police actively facilitate the assembly and protect those participating in it. This positive duty should be expressed in the Draft Law. According to Article 32 § 1.3, the police "*shall be obliged to remove from the assembly venue persons that disturb the natural course of the assembly*", while Article 31 § 1.3 provides that the assembly leader may request police officers to remove such citizens from the venue. The term '*natural course of the assembly*' is too vague to be reasonably interpreted by participants, organisers or the police with consistency. It also permits the leader to seek removal of provocative but non-disruptive counter-demonstrators. If this is intended to refer to any deviation from the terms of the assembly set out in the notification or subsequent

¹⁵ See OSCE/ODIHR-Venice Commission Joint Opinion on the Public Assembly Act of the Republic of Serbia (CDL-AD(2010)031).

¹⁶ See OSCE/ODIHR-Venice Commission Joint Opinion on the Law on Peaceful Assemblies of Ukraine (CDL-AD(2010)033).

decisions of the Authorised Body or a court, then it is worth noting a series of decisions by the European Court of Human Rights in relation to assemblies in Turkey (*Balcik and others*, 2007; *Oya Ataman*, 2007) and which emphasise the importance of protecting the right to freedom of assembly even if the assembly is not lawful and it causes or threatens to cause some level of disruption to the lives of others. The Court has also been highly critical of the use of force by the police in such situations, while attempts by police to deal with forms of disruption at assemblies often rely on the use of force, which in turn will often result in more public disorder than would have been the case had the police not intervened.

70. Measures taken by the police to ensure order, safety and security, including access to buildings etc and removing people that “disturb the natural course of the assembly” should be proportionate. Removal should be limited to those situations, in which the disturbance is genuinely disruptive. (and where removal will be less disruptive than leaving the disruptive person on the scene).

Terminating and Dispersal of the Assembly

71. Articles 33 and 34 of the Draft Law regulate the termination and dispersal of an assembly. Their provisions are generally appropriate. An isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution and not by termination of the assembly or dispersal of the crowd. So long as assemblies remain peaceful, they (including spontaneous assemblies) should not be dispersed by law enforcement officials and it is appropriate that termination be stated in the Draft law to be where there is no other possibility of preventing imminent threats.

72. As to the “use of special means” by the police when assembly participants do not disperse voluntarily (Article 33 § 3), the term “special means” should be better specified. If it refers to the use of force, this should be stated more clearly and there should also be a reference to the necessity and proportionality of any use of force.¹⁷ A reference to the other applicable laws would be appropriate.

73. In addition, the Venice Commission and the OSCE/ODIHR have in other opinions on freedom of assembly laws emphasised the need for training of law enforcement officials in the human rights standards relevant to freedom of assembly. The Guidelines also emphasise the need for training, awareness-raising and monitoring in relation to assemblies. A human rights approach to policing assemblies is necessary to protect the freedom fully especially when police may be placed in difficult and dangerous situations. They state: “The policing of assemblies must be guided by the human rights principles of legality, necessity, proportionality and non-discrimination and must adhere to applicable human rights standards. In particular, the State has a positive duty to take reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence. Law enforcement officials must also protect participants of a peaceful assembly from any person or group (including agents provocateurs and counter-demonstrators) that attempts to disrupt or inhibit it in any way.¹⁸” This approach will not be achieved without training and monitoring.

Final and Transitory provisions

74. Chapter 5 of the Draft Law is missing. It is assumed that this section will include sections dealing with potential offences that might be committed for failure to comply with elements of this law and the consequences of conviction for such offences. If this is not the case then there should be a section added which deals with such matters.

¹⁷ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, para. 171-178

¹⁸ *Id.*, Section A – para 5.3.