



Strasbourg, 2 December 2010

Opinion no. 602/2010

CDL (2010)132
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON PEACEFUL ASSEMBLIES
OF THE KYRGYZ REPUBLIC

THE LAW OF THE KYRGYZ REPUBLIC ON PEACEFUL ASSEMBLIES

CHAPTER 1. GENERAL PROVISIONS

ARTICLE 1 Subject of regulation of the present Law

1. The present Law shall regulate social relations which are linked to the implementation of the right of each person to peaceful assembly.
2. The provisions of the present law in terms of ensuring the right of each person to peaceful assembly are equally applicable to the following public events:
 - 1) The ones which are organized by the organs of state power, local self-governance bodies and / or organizations in which organs of state power or local self-governance bodies are participants or the establishment of which was agreed with the organs of state power and local self-governance bodies;
 - 2) The ones aimed at meeting religious needs of citizens;
 - 3) The ones which are conducted within the frame of election campaigns, preparation and conducting the referendum.

ARTICLE 2 Legislation governing holding of assemblies

1. In ensuring the right to peaceful assembly the organs of state power and local self governance bodies shall be guided by the Constitution of the Kyrgyz Republic, the present law, international human rights treaties to which the Kyrgyz Republic is a party and which have duly come into force as well as universally recognized principles and norms of the international law.
2. The adoption of sub-statutory normative legal acts which limit the right to peaceful assembly is prohibited.

ARTICLE 3 Definitions

For the purpose of the present Law, the terms listed below shall have the following meaning:

- 1) Assemblies are public events with the participation of citizens conducted at the initiative of citizens and organizations for the purpose of attracting attention of organs of state power and local self governance as well as public attention, including the expression of opinion on certain issues;
- 2) Peaceful assemblies are assemblies which are non-violent and unarmed in their nature and which do not pursue illegal purposes;
- 3) Counter-assemblies are assemblies which have the main goal of expressing opinion which differs from the opinion of participants in another (main) assembly which is held simultaneously on the given territory;
- 4) Simultaneous assemblies are assemblies which are conducted simultaneously with another assembly on a given territory and which are aimed at expressing the opinion different to the opinion of the participants in another assembly;
- 5) Citizens are citizens of the Kyrgyz Republic, foreign citizens and stateless persons;
- 6) Notification on conducting an assembly is prior notice of the organizers of the planned assembly to the local self governance bodies and local public administration;
- 7) Ensuring the holding of peaceful assemblies means measures undertaken by the organs of state power and local self governance bodies to organize holding of peaceful assemblies, protect and guarantee security of participants;

- 8) Organizers of planned assembly are organizations and / or citizens who initiated the holding of a planned assembly. In case a planned assembly at the initiative of citizens is held, then the representation of citizens is assumed and does not require proof;
- 9) Participants in assemblies are citizens who organize an assembly and / or participate in it. One citizen may act as participant in an assembly;
- 10) Use of force is use of physical force, special facilities, arms or other specialized equipment.

ARTICLE 4 Planned and spontaneous assemblies

1. Spontaneous assemblies are not planned and are held at the initiative of citizens.
2. Planned assemblies are organized and held at the initiative of organizations. Citizens have the right to plan holding of peaceful assemblies.
3. Planned and spontaneous assemblies which are conducted separately or alongside with peaceful assemblies and other public events should be non-violent and unarmed in their nature and should not pursue illegal purposes.

ARTICLE 5 Public events organized by state power organs and local self governance bodies

Public events which are organized by state power organs and local self governance bodies and / or organizations to which state power organs and local self governance bodies are parties or the creation of which was agreed with state power organs and local self governance bodies:

- 1) Should not be held with illegal purposes, including for the purpose of expressing opinion which differs to the opinion of participants of other public event which is held simultaneously on a given territory;
- 2) Are planned beforehand and the related costs are envisaged in the relevant budgets;
- 3) Are held with mandatory prior notification in writing to be made not earlier than within two weeks period and not later than 48 hours before the time of the event with the agreement of the relevant local self governance body.

ARTICLE 6 Other public events

Public events which are aimed at satisfying religious needs of citizens, public events within the framework of electoral campaigns, preparation and holding a referendum, which are held separately from or alongside with peaceful assemblies or other public events, should be peaceful (nonviolent and unarmed) in their nature as well as should not pursue illegal objectives.

CHAPTER 2. ENSURING THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLIES

ARTICLE 7 Obligations to ensure the right to freedom of peaceful assemblies

1. State power organs and local self governance bodies are obliged to respect and promote the right to freedom of peaceful assemblies without whatsoever differentiation on the basis of race, ethnic background, gender, language, belief, age, political and other convictions, social background, proprietary status, birth as well as any other circumstance.
2. Participation in assembly is voluntary. Persons, who coerce to the participation in an assembly or illegally prevent from participation therein, shall be liable in accordance with the law.

3. State power organs and local self governance bodies upon receipt of information on planned or on-going assembly, including the spontaneous one, should promptly notify thereon relevant executive organs of local self governance.
4. Officials of state power organs and local self governance bodies to whom the appeals of the participants and organizers of assemblies are directed, should personally meet the citizens, review their demands in essence, make necessary decisions in accordance with legislation and inform interested parties about them.
5. In conducting measures to ensure holding of peaceful assemblies, state power organs and local self governance bodies shall not have the right to:
 - 1) Make a judgment on appropriateness of holding peaceful assemblies;
 - 2) Support any of the parties in case of holding counter-assemblies;
 - 3) Specify time, venue and routes of movement of the peaceful assembly;
 - 4) Ban or impose restrictions in respect of venue, time and routes of movement of peaceful assemble except for cases envisaged in the present law;
 - 5) Impede the achievement of goals of a peaceful assembly except for cases envisaged in the present law;
 - 6) Conduct photographing or video filming of assemblies in order to collect information on individual assembly participants, systematically process such recordings and permanently store them in case such actions violate the right of inviolability of private life.

ARTICLE 8 Obligations of local self governance bodies

The bodies of local self governance:

- 1) Shall promptly notify internal affairs agencies on the territory of holding the assembly as well as other interested state power organs and local self governance bodies on the receipt of information on planned or on-going assembly, including a spontaneous assembly;
- 2) In cooperation with internal affairs agencies as well as other organs of state power develop and implement measures to ensure holding of peaceful assemblies;
- 3) Interact with organizers and participants in assemblies in ensuring holding of peaceful assemblies;
- 4) Ensure the receipt of notification on holding assemblies;
- 5) Organize as necessary the operation of communal and other services (emergency medical aid, firefighting service, rescue service etc.);
- 6) Impose restrictions on sales of alcoholic drinks at the venues of assemblies with the number of participants exceeding one thousand people as well as in immediate proximity to such venue during the period of holding an assembly;
- 7) Communicate the issues which were the cause of assembly to relevant state power organs to which such issues were addressed;
- 8) Collect and analyze information on detected problems in ensuring holding of peaceful assembly, including the handling of complaints received from participants and organizers of the assembly in respect of improper ensuring of the right to freedom of peaceful assembly;
- 9) Perform other obligations envisaged in the present law.

ARTICLE 9 Obligations of the internal affairs agencies

1. Internal affairs agencies shall:

- 1) Immediately notify local self governance bodies as well as other interested agencies of state power on receipt of information on planned or on-going assembly including spontaneous assembly;
 - 2) Assist local self governance bodies in implementing measures for organization of holding peaceful assemblies as well as solving other issues related to ensuring holding of assemblies;
 - 3) Interact as necessary with other organs of state power and local self governance bodies on issues related to ensuring holding of public events;
 - 4) Interact with the organizers and participants in assemblies on issues related to ensuring holding of peaceful assemblies as well as other issues linked to holding assemblies;
 - 5) Demonstrate respectful attitude towards the participants in peaceful assemblies;
 - 6) Ensure unfettered performance of the media;
 - 7) Upon demand of the organizers and participants remove from the venue of the peaceful assembly persons who commit or incite the commitment of illegal actions which prevent the achievement of the goals of peaceful assembly;
 - 8) Inform upon request of participants on measures undertaken to ensure holding of peaceful assembly as well as other issues related to holding assemblies;
 - 9) Ensure protection of participants in peaceful assemblies and other persons on the territory of peaceful assembly, as well as their property from unlawful encroachment;
 - 10) Provide assistance in offering medical aid as well as safe evacuation from the venue of holding a peaceful assembly;
 - 11) Ensure access of communal and other services to the territory where a peaceful assembly is held;
 - 12) Ensure as necessary procedures of cordoning, accompanying of participants in a peaceful assembly, blocking or changing the route of transport as well as installing road signs;
 - 13) Assist in providing any type of lawful aid both to the participants in the peaceful assembly as well as other persons on the territory of holding a peaceful assembly;
 - 14) Take measures on preventing clashes between the participants in one assembly with the participants in counter- and simultaneous assemblies, as well as provocations of frustration as well as other conflict situations in the course of the assembly;
 - 15) Perform other obligations envisaged in the present law.
2. In case of counter-assembly the internal affairs agencies shall ensure and define safe distance between the participants in the main assembly and counter-assembly within the zone of mutual visibility and audibility.
3. In case of simultaneous assemblies the internal affairs agencies shall ensure and define safe distance between the participants in these assemblies.

ARTICLE 10 Limitation on activity of internal affairs agencies

In implementing measures related to the organization of peaceful assemblies, protection and ensuring security of participants, internal affairs agencies are not allowed to do the following:

- 1) Define time, venue and routes of movement of a peaceful assembly;
- 2) Impose restrictions in terms of time, venue and routes of movement of a peaceful assembly except for the cases envisaged in the present law;
- 3) Take part in a peaceful assembly in the capacity of participant;

- 4) Prevent organizers, their representatives and participants in peaceful assemblies from performing lawful actions;
- 5) Prevent the activity of the media;
- 6) Make a judgment on appropriateness of holding peaceful assemblies;
- 7) Support any of the parties in case of holding counter-assemblies;
- 8) Remove or hide the insignia of internal affairs agency officer, except for the cases envisaged in the law, prevent the participants and other persons from reading such insignia;
- 9) Refuse to produce their identification card of the officer of internal affairs agency to the participants in the assembly;
- 10) Take decision on prohibition of holding assemblies;
- 11) Prevent the achievement of the goals of a peaceful assembly;
- 12) Prevent the participants in the assemblies as well as other persons from photographing or video filming of assemblies as well as actions of state power organs and local self governance bodies during the assemblies.

ARTICLE 11 Measures to ensure the holding a peaceful assembly

1. Measures to ensure the holding of peaceful assemblies, including necessary procedures of cordoning and accompanying the participants in a peaceful assembly, blocking or changing the transport routes, installation of road signs as well as other measures of road safety, operation of communal and other services (emergency medical aid, firefighting service, rescue service, service of sanitary cleaning of territory and other services) are implemented by state power organs and self governance bodies on a pro-bono basis.
2. Measures on ensuring the holding of peaceful assemblies envisage:
 - 1) Registration of information on the purpose of a peaceful assembly, form or combination of various forms of peaceful assemblies, venue and date of the assembly, route of movement of the participants, start and end time of the peaceful assembly, expected number of participants, use of loudspeakers or other facilities during the public event;
 - 2) Inspection of venue of peaceful assemblies to ensure protection and security of the participants in a peaceful assembly as well as other persons on the territory of holding a peaceful assembly; access of communal and other services to ensure the holding peaceful assemblies, as well as available possibility of safe evacuation;
 - 3) Organizational measures to determine the necessity of procedures of cordoning and accompanying the participants in a peaceful assembly, blocking and changing the routes of transport, installation of road signs;
 - 4) Evaluation of dangerous factors, taking additional measures to ensure security of participants in a peaceful assembly, including, without limitation, installation of metal detectors, fences, the necessity to change time, venue and / or route of movement of the participants in a peaceful assembly;
 - 5) Defining necessary resources and facilities to ensure the holding of a peaceful assembly;
 - 6) Analysis of information on other assemblies to be held at the same time and the same territory; comparison of information received, elaboration of necessary measures (imposition on restrictions on time, venue and / or route of movement of participants etc.) for the purpose of preventing conflict situations which may impede on holding and achievement of goals of peaceful assemblies, specifically with the participants of counter-assemblies, parallel and spontaneous assemblies;
 - 7) Analysis of other measures.
3. Implementation of measures to ensure holding of peaceful assemblies should not create obstacles which impede or significantly frustrate the preparation or holding of a peaceful assembly.

4. Executive bodies of local self governance and internal affairs agencies shall document and conduct follow-up analysis of detected problems, examination of actions of their staff in taking measures on ensuring holding of peaceful assemblies. The organizers of assemblies are invited to participate in meetings dedicated to such issues.
5. Executive bodies of local self governance and internal affairs agencies shall notify in advance citizens who do not intend to participate in the assembly on measures related to blocking and changing the routes of transport as well as other necessary information.

ARTICLE 12 Rights of participants and organizers of a peaceful assembly

During holding of peaceful assemblies the organizers and participants have the right to:

- 1) Obtain information on measures undertaken by state power agencies and local self governance bodies in terms of ensuring holding of peaceful assemblies;
- 2) Obtain information on officials of state power agencies and local self governance bodies participating in ensuring the holding of peaceful assembly – including full name, position, rank, place of work, contact telephone number;
- 3) Have unrestricted contacts with the representatives of the media;
- 4) Use loudspeakers in the course of holding a peaceful assembly without exceeding the permissible level of sound pressure and noise levels;
- 5) Use various facilities for the advocacy and forms of attracting the attention of state power agencies, local self governance bodies and the public, including the expression of opinion on whatever issues, collection of signatures provided such actions are peaceful (non-violent and unarmed) in their nature and do not pursue illegal goals;
- 6) Accept and forward to state power agencies and local self governance bodies submissions, statements, complaints as well as other forms of appeal;
- 7) Hold assemblies in any form, including in the form of rallies, processions, pickets, demonstrations as well as various combinations thereof;
- 8) Conduct photographing or video filming of the assembly, actions of state power agencies and local self governance bodies during the assembly;
- 9) Request protection from internal affairs agencies in case of illegal encroachment of other persons as well as request from the staff of internal affairs agencies to provide other kind of assistance during holding of a peaceful assembly;
- 10) Request additional measures of ensuring protection and security of the participants in the peaceful assembly, safeguarding of property of participants and organizers of peaceful assembly;
- 11) Request the delivery of medical aid and assistance in safe evacuation from the venue of a peaceful assembly;
- 12) Request from the internal affairs agencies that they remove from the venue of a peaceful assembly persons who commit or incite the commitment of illegal actions which prevent the achievement of goals of a peaceful assembly;
- 13) Perform any other actions which are not prohibited or limited by law.

ARTICLE 13 Notification of holding a peaceful assembly

1. In order to ensure the holding of a peaceful assembly any person has the right to notify the local self governance bodies and local public administration.
2. The organizers should furnish a written notice on holding a peaceful assembly not earlier than two weeks' period and not later than 48 hours before the time of the assembly. The notice may be furnished in the form of a letter, cable, telephone message by way of postal, facsimile or electronic message as well as other communication facility or otherwise.

3. The notice may include the following information: on the organizer (title of the organization or full name of a citizen) and its/his/hers contact details (location of the organization and/or address of a citizen, telephone number), the venue and / or the route of movement, date and time of beginning and end of the assembly, its goals, expected number of participants, use of loudspeakers or other facilities during the holding of a peaceful meeting. The organizer of a peaceful meeting has the right to include other information in the notice as well as attach other documents thereto.
4. The notice may be also delivered orally.
5. State power organs and local self governance bodies do not have the right to ban or impose restrictions on holding peaceful assemblies as well as deny due ensuring thereof due to absence of notice or delay in furnishing such notice as well as non-observance of requirements towards the content of the notice. The organizers and participants in peaceful assemblies shall not be liable for the absence of notification on holding a peaceful assembly, non-compliance with the form of such notice, its contents and deadlines for the delivery.
6. Persons who send the notice on a peaceful assembly may request and local self governance bodies as well as organs of local public administration are obliged to issue a written confirmation of receipt of such notice on the same day.
7. Written receipt issued by local self governance body or organ of local public administration should contain the name of local self governance body or organ of local public administration, full name and signature of an official who received the notice as well as the date and time of receiving the notice.

ARTICLE 14 Venue of a peaceful assembly

1. Peaceful assemblies may be held on the entire territory of the Kyrgyz Republic, as well as in premises and on territories upon agreement of a title holder.
2. Relations in terms of providing premises and territories for holding public events are subject to provisions of the civil legislation.

CHAPTER 3. BAN, RESTRICTIONS AND TERMINATION OF AN ASSEMBLY

ARTICLE 15 Measures undertaken by internal affairs agencies in respect of individual transgressors

In case of detecting persons who violate public order, commit or incite to commitment of illegal actions, prevent the achievement of the goals of a peaceful assembly, the internal affairs agencies should take necessary measures in respect of such persons in accordance with the law without terminating the assembly.

ARTICLE 16 Procedure of making a decision on banning or restriction of an assembly

1. An assembly may be restricted in time, venue of holding or route of movement or may be banned by a court in case there are reasons envisaged in the present law.
2. On-going assembly, including a spontaneous one, as well as assembly with a notice furnished with the violation of 48 hours' period before the time of its holding, may be restricted in time, venue of holding or route of movement or may be banned by local self governance bodies, local public administration or internal affairs agencies in case there are

reasons envisaged in the present law. The legality and relevance of such decisions shall be examined by a court, the organ which have taken such a decision should apply to court within 24 hours since the decision is taken. The organizers of an assembly also have the right to apply to court with an appeal in respect of a decision to ban or restrict an assembly.

3. Any doubts in respect of availability of reasons for the ban and restriction of an assembly shall be interpreted in favor of the implementation of the right to hold a peaceful assembly.
4. The application of ban or restriction of an assembly should be reviewed by court within 24 hours since such application was submitted.
5. The burden of proof in court in respect of reasons for ban or restriction of an assembly rests with the applicant.
6. The verdict of the court of the first instance becomes effective since its pronouncement.
7. The decision of the court of the first instance on ban or restriction of an assembly may be appealed against in court of higher jurisdiction. Appeals in respect of a decision of a court on ban or restriction of an assembly shall be reviewed by courts of higher jurisdiction within 24 hours since they are submitted. The verdict of a court of higher jurisdiction becomes effective since the moment of its pronouncement.
8. In case decision is made on ban or restriction, local self governance bodies, local public administrations or internal affairs agencies shall immediately inform the organizers and participants orally and in writing, providing in case or request of the organizers a copy of the court verdict.

ARTICLE 17 Reasons to ban or restrict an assembly

1. A decision on restricting an assembly in time, venue of holding or route of movement is made for the period of circumstances which pose a real threat to the security of the participants in the assembly. The state power agencies and local self governance bodies should inform the organizers and participants in an assembly on the reasons for introducing the restrictions for an assembly.
2. The decision to ban an assembly may be taken in case the assembly pursues illegal purposes, including election campaigning, propaganda on issues of the referendum outside the established timeframe for the election campaign and propaganda on referendum issues; war propaganda; statements in favor of ethnic, racial or religious hatred, gender or other social supremacy representing the incitement to discrimination, hostility and violence; appeals to the violation of territorial integrity of the state or public order.

ARTICLE 18 Procedures of restriction and termination of an assembly

1. An assembly, in respect of which a decision was made on its ban, shall be subject to termination.
2. A decision on restriction in time, venue or routes of movement of an assembly, shall not relieve the state power agencies and local self governance bodies from their obligation to ensure the holding of peaceful assembly.
3. Measures on restriction and termination of an assembly are implemented by a joint concerted efforts of state power agencies and local self government bodies with prior notification of people on the territory of holding an assembly; giving reasonable time to leave

the venue of the assembly in case of its ban and change the venue, time or route of movement in case of its restriction.

4. In implementing measures on restriction and termination of an assembly preference is given to actions and means which exclude the use of force.
5. Participation of Armed Forces of the Kyrgyz Republic in the measures on restriction and termination of assemblies is prohibited.

ARTICLE 19 Use of force during the termination of an assembly

1. Termination of an assembly with the use of force is an extreme measure.
2. Use of force in terminating an assembly may be applied in cases and within the limits determined by the circumstances.
3. In evacuation from the venue of an assembly use of force is prohibited in respect of persons who have no possibility to abandon the venue of the assembly.
4. Use of force of cruel and degrading nature including the application of special martial arts, available means at hand, special means and arms is prohibited, in case the assembly with illegal purposes does not resort to violence and use of arms.
5. Termination of an assembly in case of emergence of mass disorder which requires urgent actions shall be performed in case of events, envisaged in the law of the Kyrgyz Republic "On internal affairs organs of the Kyrgyz Republic".

ARTICLE 20 Liability

1. State power organs and local self governance bodies as well as officials thereof shall bear liability for illegal or incommensurate use of force as well as for inflicting material or moral damage resulting from non-observance or improper observance of provisions of the present law.
2. Organizers of assemblies should make efforts to ensure the observance of provisions of law as well as peaceful nature of assemblies. Organizers of assemblies shall not be liable for illegal actions of individual participants in the assembly or other persons. Organizers of peaceful assemblies shall not be liable for damage caused by other participants in the assembly.
3. Any participant in an assembly who is culpable of committing an offence, including non-compliance with lawful demand of an officer of internal affairs agency of other law enforcement bodies shall bear personal liability.
4. Participants in an assembly who did not commit violent actions and who did not envisage illegal goals, shall not be brought to account for having participated in an assembly which was deprived of its peaceful nature or which has lost its peaceful intentions or legal objectives.

CHAPTER 4. FINAL PROVISIONS

ARTICLE 21 Entry into force

1. The present law shall enter into force since the day of its publication.
2. The following laws shall lose their force and effect since the date of entry into force of the present law:
 - The law of the Kyrgyz Republic "On the right of citizens to assemble peacefully, without arms and freely conduct rallies and demonstrations" (Erkin-Too newspaper # 56 dated July 26, 2002);
 - The law of the Kyrgyz Republic "On introduction of changes and amendments to the law of the Kyrgyz Republic 'On the right of citizens to assemble peacefully, without arms and freely conduct rallies and demonstrations' (Erkin-Too newspaper # 59-60 dated August 12, 2008).
3. The Government of the Kyrgyz Republic shall do the following within 3 months' period:
 - 1) Align its normative legal acts with the present law;
 - 2) Submit proposals to the Jogorku Kenesh in terms of aligning the legislation with the present law.