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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

JOINT OPINION

ON THE DRAFT LAW AMENDING AND SUPPLEMENTING THE LAW ON CONDUCTING MEETINGS, ASSEMBLIES, RALLIES AND DEMONSTRATIONS

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. The Law on conducting meetings, assemblies, rallies and demonstrations was amended on 4 October 2005, following extensive consultation with the Council of Europe Venice Commission and with the OSCE/ODIHR, and has been in force since then.

2. It was amended on 17 March 2008 after a period of protests and demonstrations that followed the presidential elections of 19 February 2008. In the course of an extraordinary session, the Armenian parliament adopted in first and second reading the "Law on Amending and Supplementing the Republic of Armenia Law on Conducting Meetings, Assemblies, Rallies and Demonstrations". This law was promulgated by the President of the Republic and entered into force on 19 March 2008.

3. By a letter of 21 March 2008, Mr Tigran Torossyan, Speaker of the Armenian parliament, requested the opinion of the Venice Commission on the amendments of 17 March 2008.

4. The Venice Commission and the OSCE/ODIHR Expert Panel on the Freedom of Assembly prepared an opinion on 28 March 2008, which was sent to Mr Torossyan on the same day (CDL-AD(2008)018).

5. In response to the opinion, Mr Torossyan invited the Venice Commission and the OSCE/ODIHR to Yerevan to discuss the opinion with representatives of the Armenian authorities. This meeting took place on 15 and 16 April 2008 and concluded with the drafting of a memorandum outlining the amendments that it was envisaged would be drafted by the Armenian authorities to the law on conducting meetings, assemblies, rallies and demonstrations.

6. On 25 April 2008, Mr Torossyan submitted to the Venice Commission and the OSCE/ODIHR the draft law on amending and supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations (CDL(2008)051), hereinafter "the draft amendments"). The law as it would result from these amendments appears in document CDL(2008)049).

7. The draft Law on amending and supplementing the law on conducting meetings, assemblies, rallies and demonstrations of the Republic of Armenia was adopted by the Armenian National Assembly in first reading in May 2008.

8. On 9 June, the Speaker of the National Assembly submitted certain proposals for amendment of the draft law (CDL(2008)078) in view of its discussion by the National Assembly and adoption in second reading, scheduled for 10 and 11 June 2008.

9. The amendments were finally adopted by the National Assembly in second reading on 11 June 2008.

10. This opinion sets out the assessment by the Venice Commission and the OSCE/ODIHR of these draft amendments. It was endorsed by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008).

II. General observations

11. The Venice Commission and ODIHR have worked extensively with the authorities of Armenia in relation to its law on meetings, assemblies, rallies and demonstrations since 2005. In the assessment of the amendments passed on 17 March 2008, the Venice Commission and ODIHR stated that they did not consider the changes "to be acceptable, to the extent that they restrict further the right of assembly in a significant fashion".

12. The opportunity to meet with representatives of the Armenian authorities to discuss the amendments was extremely positive and the draft amendments address the main concerns.

13. The Venice Commission and ODIHR would reiterate however that in their opinion on the law passed on 4 October 2005, which is contained in CDL-AD(2005)035, they recommended (in paragraph 16) that some official means of monitoring the application of the law and of collating relative statistics should be devised. This monitoring appears to be crucial. The Human Rights Defender of Armenia would seem to be an appropriate institution to exercise this role.

III. Analysis of the proposed amendments

A. Amendments Relating To Spontaneous Assemblies

14. Four of the proposed changes to the legislation relate to the regulation of spontaneous assemblies and these will be discussed together. The two amendments that relate to the definition and notification of spontaneous assemblies will be considered first and the two amendments that relate to the duration and management of spontaneous assemblies will be considered thereafter. The remainder of the amendments will then be considered in numerical order.

Addition to Article 2

15. The amendments contain an addition to Article 2 of the law on rallies with the inclusion of a definition of a spontaneous assembly to the list of main concepts associated with the legislation. The definition, which states that a spontaneous assembly is "*a peaceful public event, which and has the need to respond immediately to a specific phenomenon or happening and has not been announced before that phenomenon or happening*", fully meets the recommendations for spontaneous assemblies as set out in the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (hereinafter referred to as "Guidelines")[1].

16. This definition also extends the general recognition of spontaneous assemblies within the law, as under the previous legislation only spontaneous assemblies that grew from non-mass events were recognized as legitimate acts. These amendments and additions to the legislation are therefore to be welcomed.

17. In relation in particular to the possibility of *announcing* a spontaneous assembly, the Venice Commission and ODIHR recall that, in order for an assembly to be genuinely a "spontaneous" one, there must be a close temporal relationship between the event ("phenomenon or happening") which stimulates the assembly and the assembly itself.

[1] OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, paragraphs 97 and 98.

18. This, however, does not preclude the possibility of people communicating, whether by phone or even over the radio, in order to mobilise protesters; indeed, any event requires there to be some level of communication among participants (friends, colleagues etc).

19. The definition in Article 2 clarifies that an assembly cannot be deemed to be spontaneous if it was "announced" prior to the phenomenon or happening which (allegedly) stimulated it. This is obvious: if, at the moment of the announcement of an assembly, a certain phenomenon or happening had not yet occurred, it cannot be claimed that it is that phenomenon or happening which stimulated the assembly. In such a case, the assembly cannot be alleged to be a spontaneous one, not requiring notification.

20. The new sentence does not affect the possibility of "announcing" the assembly after the phenomenon or happening. **It is therefore undisputed that it is possible under the law to "announce" the spontaneous assembly after the phenomenon or happening, in order to mobilise participants.**

Amendment to Article 10.1

21. The proposed change in the definition of a spontaneous assembly is reflected in the rewording of Article 10.1 which will now read: "With the exception of spontaneous public events, mass public events may be conducted only after notifying the authorised body in writing". Under the previous law, all assemblies of more than 100 persons were required to notify the authorities and it was assumed that spontaneous assemblies could only occur as small events of fewer than 100 persons. Further, non-notified assemblies with more than 100 participants would be considered as *forbidden* and could be terminated by the police. This amendment clarifies that spontaneous assemblies of any size will be enabled to take place without providing notification to the authorities.

22. The extension to a general recognition of the legitimacy of peaceful spontaneous assemblies is to be applauded as it is generally accepted that on occasions assemblies will need to be held at short notice in response to a pressing social need. However it should be noted that, in the revised law, the right to organise a spontaneous assembly is not unlimited and organizing a *spontaneous assembly* should not to be considered as a means to by-pass the requirement to provide notification of assemblies to the authorities.

New Article 9.6

23. The new text of Article 9.6 imposes some restrictions on spontaneous assemblies in so far as they "may not last for more than six hours" (from the moment they gather more than 100 persons and therefore become "mass" events) and any subsequent events *on the same issue* will not be deemed spontaneous and "must be conducted in accordance with the notification procedure". These restrictions appear proportionate within the context of a spontaneous assembly, which is defined as a "need to respond immediately to a specific phenomenon or event". Six hours appear as a reasonable time to register an opinion through a public assembly and is also sufficient time for interested parties to mobilize on an issue. It is also reasonable and appropriate to expect people to follow the formal notification process if they wish to continue to demonstrate about an issue on an ongoing basis. The notion of "on the same issue" could present potential difficulties, if it were to be interpreted in too restrictive a fashion, as it should be possible for other persons to demonstrate spontaneously in relation to the same event (but as an immediate response to it).

24. The monitoring of the implementation of the law should ensure that this restrictive interpretation be avoided.

Addition to Article 14.1

25. The changes to Article 14.1 provide for the police to have the authority to terminate a spontaneous public assembly after the six-hour time period has expired, in accordance with the framework set out for terminating other public assemblies that are either unlawful or have been prohibited. This addition is acceptable within the context of the other amendments to the regulation of spontaneous assemblies.

26. However, the Venice Commission and OSCE/ODIHR would note that the Guidelines state *"So long as assemblies remain peaceful, they should not be dispersed by law enforcement officials"*[2] and *"If dispersal is deemed necessary, the assembly organizer and participants should be clearly and audibly informed prior to any police intervention."*[3] It has been noted in other jurisdictions that an important element of developing a culture in which assemblies are facilitated and respect is developed between those participating in an assembly and the police is the overall quality of the policing operation and the degree of understanding of, and respect for, human rights evidenced by the police on the ground. Consideration should therefore be given to reviewing the training needs of police officers and other officials with responsibility for issues related to freedom of assembly.

B. Amendments to Article 9.4.iii

27. In their previous opinion, the Venice Commission and ODIHR raised a number of concerns about the amended Article 9.4 (iii)[4]. The new amendments have made some changes to the text of this clause and will require that any threat to national security etc "creates imminent danger of violence or a real threat" to national security etc. This amendment is in line with the Venice Commission's and ODIHR's recommendation and is therefore to be commended.

28. The Venice Commission and OSCE/ODIHR also suggested modifying the words "or other crimes", in a manner which mirrors Article 14 § 1.v and § 3.2 of the law on rallies.

29. In response to this suggestion, the words [real threat to …] "life and health of persons" and [real threat to …] "cause a substantial material harm to the state, community, physical or legal persons" were added in the amendments.

30. The Venice Commission and OSCE/ODIHR note that both these grounds for prohibition are indeed contained in Article 14 of the law on rallies. The new formulation of Article 9.4.iii of the law on rallies is therefore preferable to the one which was contained in the draft law of April 2008: these proposals are therefore to be welcomed.

31. The amendment of 17 March 2008 in Article 9.4 (iii) relating to the procedure for verifying the reliability of information also raised serious concerns. The amendments now provide for the Police or National Security Service to issue "a *justified* official opinion" for data concerning forcible overthrowing of the constitutional order, threats of violence, threats to health and morality or to encroachments on some of the constitutional rights and freedoms of others to "considered credible" and therefore that the assembly may be prohibited.

[2] *Id.* at paragraph 137.
[3] *Id,* at paragraph 140.
[4] CDL(2008)036, paragraphs 10-14.

32. The Venice Commission and ODIHR had previously expressed concern that no "justified and clear explanation of the grounds whereby the mass event is prohibited" would be required. This change in the wording aims to address this concern.

33. In the discussions between the Armenian authorities and the Venice Commission and ODIHR in Yerevan, it was also indicated that any "*justified* official opinion", would be in writing and copies of this would be made available to the event organizers, within the terms of the procedures set out in Article 12. The event organizers would also have the opportunity to challenge any "*justified* official opinion" before the authorized body, and subsequently if there was an appeal made to a court on any restrictions. **Whilst this is not made explicit in the legislation, it is implicit within the wider text and in particular in the wording of Articles 13.2 and 13.3. The monitoring of the application of the law should confirm this.**

34. The view expressed in the previous opinion (at paragraph 18) must be re-iterated, that a high standard of proof must be satisfied in order for a risk to be deemed sufficiently serious to justify restrictions. In this regard, as the Guidelines state, *"restrictions imposed on the basis of the possibility of minor incidents of violence are likely to be disproportionate, and any isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution rather than prior restraint."* [5] Furthermore, *"a hypothetical risk of public disorder" is not a sufficient basis for restricting an assembly*[6]*, and "[t]he burden of proof should be on the regulatory authority to show that the restrictions imposed are reasonable in the circumstances."* [7]

35. Finally, it must be noted that the Guidelines refer on a number of occasions to the need to allow for a decision to be appealed to an independent tribunal or court before the notified date of the event.[8] Importantly, the Guidelines state that "*[t]his should be a de novo review, empowered to quash the contested decision and to remit the case for a new ruling."*[9] In relation to the restriction of events already underway, the Guidelines further provide: "*In such circumstances, it would be appropriate for other civil authorities (such as a prosecutor's office) to have an oversight role in relation to the policing operation, and the police should be accountable to an independent body. In the same way that reasons must be adduced to demonstrate the need for prior restrictions, any restrictions imposed in the course of an assembly must be equally rigorously justified. Mere suspicions will not suffice, and the reasons must be both relevant and sufficient."*[10]

C. Repeal of Article 9.6

36. In the opinion on the amendments of 17 March 2008, the Venice Commission and ODIHR recommended the repeal of Article 9.6 which stated *"[in] cases where mass public events has turned into mass disorder that has lead to human casualties, then, in order to prevent new crimes, if other means of prevention have been exhausted, the authorised body may temporarily prohibit the conducting of mass public events until discovering the crime circumstances and the persons that committed crimes."*

37. This provision has now been deleted, which is to be welcomed.

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[5] OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, paragraph 63.
[6] *Idem.*
[7] *Id.*, at paragraph 108.
[8] *Id.*, at paragraphs103 -111.
[9] *Id.*, at paragraph 110.
[10] *Id.*, at paragraph 85.

D. Amendments to Article 12.8

38. The legislation, as amended on 17 March 2008, required an extension of the time limit for notification of 5 working days rather than 3. The Venice Commission and ODIHR noted in their opinion (at paragraph 33) that "while no international standards exist on the issue of timeframes for notification there should be proven justifications for lengthening the existing domestic standard. Any move to introduce longer deadlines should be firmly rooted in an assessment of the operation of the Law".

39. The amendments under consideration have not addressed the extension of the time limit for notification, which therefore remains in the law and represents a step backwards in respect of the law as it was prior to the amendments of 17 March 2008. The Venice Commission and ODIHR however consider that it is not at variance with European standards.

40. The amendments instead provide some further clarification of the timeframe for the duration of the decision making process. It is now required that any restriction imposed on a notified assembly must be conveyed to the event organizers "within 72 hours of receiving the notification". This has two consequences:

- First, it ensures that event organizers have at least 48 hours to appeal against any restrictions that might be imposed; and
- Second, if the authorities do not notify the event organizers within 72 hours of the notification being submitted, then the event may take place as outlined in the notification document.

41. This amendment is therefore to be welcomed.

42. In paragraph 14 § 3.2 of the law on rallies, at the end of the penultimate sentence, the words: "by indicating the legal grounds for the request to terminate" have been added. In the opinion of the Venice Commission and OSCE/ODIHR, this addition is acceptable, in that it clarifies the responsibilities of the police.

IV. Conclusions

43. The amendments adopted on 11 June 2008 to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations largely address the concerns that were raised by the Council of Europe Venice Commission and the OSCE/ODIHR in relation to the amendments introduced on 17 March 2008.

44. The amendments do not address the time-limit for prior notification of an event, which has been extended as a result of the amendments of 17 March 2008. In this respect, in comparison with the situation prior to 17 March which established a higher standard than the minimum threshold required by the European standards, the law will represent a step backwards, the new amendments notwithstanding.

45. The Law on Conducting Meetings, Assemblies, Rallies and Demonstrations as results from the amendments under consideration is generally in conformity with the applicable European standards.

46. It must be stressed however that the quality of any law is as much in how it is applied as how it is drafted. The Venice Commission and ODIHR therefore reiterate that it is essential that the application of the law be monitored and relevant statistics be collated. The Human Rights Defender of Armenia would appear to be in the position to carry out this crucial activity effectively.