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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

AND

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

JOINT OPINION

**ON THE LAW ON MASS EVENTS
OF THE REPUBLIC OF BELARUS**

**Adopted by the Venice Commission
at its 90th Plenary Session
(Venice, 16-17 March 2012)**

on the basis of comments by

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Mr BOGDAN AURESCU (Substitute Member, Romania)
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I. Introduction

1. By letter dated 15 December 2011, the President of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe requested the Venice Commission to provide an assessment of the compatibility with universal human rights standards of the amended “Law on Mass Events in the Republic of Belarus” (hereinafter, “the Law” or “the Law on Mass Events”), that entered into force on 27 November 2011.

2. The Venice Commission appointed Ms Herdís Thorgeirsdóttir (Member on behalf of Iceland) and Mr Bogdan Aurescu (Substitute Member on behalf of Romania) as rapporteurs. The Venice Commission invited the OSCE/ODIHR Advisory Panel on Freedom of Assembly to join the assessment of the Law. They used an unofficial translation of the Law (CDL-REF (2012)013).

3. The present opinion is limited in scope to the Law (No. 114-Z with amendments and supplementary acts) and the relevant provision from the Constitution of Belarus from where this freedom derives, as it does not examine any other pieces of legislation which may affect the exercise of the right to freedom of peaceful assembly in the Republic of Belarus (cf., Article 1 of the Law). Therefore, the Opinion should not be read as a comprehensive review of all the domestic legislative provisions which might impact upon the enjoyment of the right to freedom of peaceful assembly in the Republic of Belarus.

4. The OSCE/ODIHR and the Venice Commission note that the Opinion provided herein is without prejudice to any other opinions or recommendations that the OSCE/ODIHR or the Venice Commission may wish to make on the issues under consideration in the future.

5. The present Opinion was drawn up on the basis of the rapporteurs’ comments. It was adopted by the Venice Commission at its 90th Plenary Session (Venise, 16-17 March 2012). The Opinion was approved by the OSCE/ODIHR Expert Panel on Freedom of Assembly as a collective body and should not be interpreted as endorsing any comments on the Law made by individual Panel members in their personal capacities.

II. Background to the request

6. The Parliamentary Assembly of the Council of Europe (PACE) expressed its deep concern about the deteriorating situation of human rights and civil and political liberties in Belarus, in the aftermath of the presidential elections in December 2010, in Resolution 1790 (2011). In December 2011, the PACE’s Political Affairs Committee declared, during discussions based on a report by MP Andreas Herkel, that the authorities in Belarus are “deliberately turning their back on Europe and the values it holds”¹.

7. The PACE report on the situation in Belarus depicts a situation where police has used excessive force against demonstrators. A series of so-called “silent” protests which took place throughout the summer of 2011, in approximately 50 towns, were met with considerable resistance from authorities who responded by detaining citizens and sentencing hundreds of them to up to 15 days in prison. On 3 July 2011, Belarus Independence Day, a peaceful demonstration was brutally dispersed in Minsk and other cities, with hundreds of protesters being beaten and detained merely for clapping hands.

¹ Press release http://www.assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=7267

8. In the autumn of 2011, the Belarusian Parliament adopted a set of restrictive amendments to several legislative acts, including the Law on Mass Events. According to the PACE report, the amendments were voted on in an atmosphere of complete secrecy.

9. In November 2011, the Slonim District Executive Committee banned a picket of solidarity with imprisoned Viasna² leader Alex Bialiataski, referring to the absence of authorized locations for holding such events. Members of the Mahiliou regional branch of the Belarusian Leftist Party "Fair World" intended to hold a picket on 28 January 2012 in order to protest against the people's pauperization. Authorities refused to authorize the action. Salihrosk authorities banned two street events, a picket and a meeting scheduled for 21 January and 22 January respectively. The events were expected to draw public attention to proposed amendments to the Electoral Code ahead of the 2012 parliamentary election.

10. On 19 December 2011, a peaceful protest was held in Minsk in memory of the violent crackdown on peaceful demonstration after the presidential elections a year ago. This year, the rally again ended with brutal detentions and arrests.

11. In Resolution 1857(2012), of 25 January 2012³, PACE reiterated its concern about the continued repressive approach by Belarusian authorities towards dissidents, civil society activists and human rights defenders. It deplored recent legislative changes restricting freedom of expression, assembly and association and called upon the Belarusian authorities to guarantee freedom of assembly and put an end to the use of force to disperse protests and arrest demonstrators.

12. Upon invitation of the Venice Commission, the OSCE/ODIHR has joined the opinion contained herein, in view of its continued call for constructive engagement with the authorities of the Republic of Belarus on the need for implementation of their OSCE commitments in the field of the human dimension. In particular, the recommendations contained herein, should be viewed as offering the opportunity to engage in dialogue on necessary changes to the legislation, and its implementation, pertaining to the exercise of the freedom of assembly. The recommendations in this opinion shall serve to complement the work already undertaken on agreement between the Republic of Belarus and OSCE/ODIHR on the monitoring of trials by OSCE/ODIHR, of the individuals who were criminally charged in the aftermath following the elections on 19 December 2010. The mentioned trial monitoring exercise has resulted in the issuance of the Trial Monitoring Report for the Republic of Belarus, on 10 November 2011. While the scope of the aforementioned report focused solely on the question of fair trial commitments of the Republic of Belarus, the events leading to the said observed trials indicate that a review of the Law on Mass Events is also greatly needed. In this regard, the OSCE/ODIHR would like to mention that it continues to stand ready to provide assistance to the authorities of the Republic of Belarus in bringing their legislation into line with international standards and OSCE commitments.

III. Preliminary observations

13. This opinion of the Law is elaborated in the context of three previous opinions of the Venice Commission on related matters. The first opinion was on a Warning addressed by the Ministry of Justice to the Belarusian Association of Journalists (BAJ) on 13 January 2010 (CDL-AD(2010)053 rev), while a second opinion focused on a Warning addressed on 12 January 2011 by the Ministry of Justice to the Belarus Helsinki Committee (CDL-AD(2011)026. A third opinion was prepared on the compatibility with universal human rights standards of Article 193-1 of the Criminal Code of Belarus on the rights of non-registered associations in Belarus (CDL-AD(2011)06.

² Viasna is the biggest Human Rights group in Belarus

³ http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11400

14. In all of the above cases, the Venice Commission found the Republic of Belarus to be in breach of its legally binding obligations to respect and protect the fundamental civil and political rights of freedom of expression and association.

15. The Law is analysed not only from the angle of freedom of assembly, but also in conjunction with the related freedoms of expression and opinion. The impact of exercising these rights together is especially relevant in relation to political demonstrations and silent protests that have been taking place in Belarus. When a large number of citizens gathers together to protest or criticise authorities, their conduct constitutes the exercise of political speech, a form of expression which is duly consecrated in the jurisprudence of the European Court on Human Rights.⁴

16. Against this background, the Law is also scrutinized for its potential impact on intimidating and deterring publicly voiced dissent in the Republic of Belarus, an aspect of the fundamental right to freedom of assembly and expression. In this regard, it is worth mentioning that the Venice Commission concluded in its opinion on the compatibility with universal human rights standards of Article 193-1 of the Criminal Code of Belarus that “criminalising the legitimate social mobilisation of freedom of association, activities of human rights defenders albeit members of non-registered associations and social protest and criticism of political authorities with fines or imprison [. . .] is incompatible with a democratic society in which persons have the right to express their opinion as individuals and in association with others”.⁵

IV. The Law on Mass Events of the Republic of Belarus

17. The Law on Mass Events was enacted on 30 December 1997 and has since been amended on several occasions. Amendments were introduced on 4 January 2010 in the aftermath of the presidential elections. The last amendments to the Law, which are being reviewed here, were made on 27 November 2011. The new amendments were criticized, among other issues, for having been passed without proper consultation with civil society.⁶ Human rights organizations have criticized the amended legislation for *inter alia* tightening the rules for holding opposition rallies and for providing virtually unlimited opportunities for intelligence and law enforcement agencies to monitor mass events, as the organization of events over the internet is also regulated.⁷

18. Independent United Nations human rights experts who issued a joint statement in Geneva in November 2011 said that the amendments adopted could worsen the “current climate of fear and intimidation” in Belarus.⁸

V. Human rights standards on freedom of assembly and freedom of expression

19. The Law is assessed on the basis of international human rights instruments which are legally binding upon the Republic of Belarus, in particular the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”), which entered into force in the Republic of Belarus in 1973, and which in its Article 21 guarantees the right to peaceful assembly.

⁴ See Herdís Thorgeirsdóttir, *Journalism Worthy of the Name: Freedom within the Press and the Affirmative Side of Article 10 under the ECHR* (Brill 2005).

⁵ VC Opinion no 633/2011 (CDL-AD(2011)036) on the Compatibility with Universal Human Rights Standards of Article 193-1 of the Criminal Code on the Rights of Non-Registered Associations of the Republic of Belarus, par 114.

⁶ <http://www.un.org/apps/news/story.asp?NewsID=40510&Cr=rappporteur&Cr1=>

⁷ See article 8 of the law - <http://telegraf.by/en/2011/11/v-belarusi-vstupil-v-silu-zakon-ujestochayuschii-pravila-provedeniya-massovih-akcii>

⁸ UN News Centre, www.un.org/apps/news/stor.asp?NewsID=45010&Cr=rappporteur&Cr1=

20. As Belarus is a candidate country for membership of the Council of Europe and an associate member of the Venice Commission, the Law is also assessed on the basis of Articles 10 and 11 of the European Convention on Human Rights (hereinafter “the ECHR”) and its case law.⁹

21. Finally, the Law is also reviewed in light of the political commitments that the Republic of Belarus has made as a participating State of the Organisation for Security and Co-operation in Europe (OSCE) and on non-binding international instruments, including documents of a declarative or recommendatory nature, which have been developed to aid in the interpretation of relevant international treaties. The recommendations herein, thus bear extensive reference to the OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly (hereinafter, referred to as “the OSCE/ODIHR-Venice Commission Guidelines”)¹⁰.

A. Freedom of assembly in the ICCPR , ECHR and OSCE Commitments.

22. Article 21 of the ICCPR provides that “[t]he right to peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right, other than those in conformity with the law which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.

23. Article 11 of the ECHR reads that “1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

24. OSCE Commitments pertaining to freedom of peaceful assembly are stipulated in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990). This Document’s par 9(2) provides that “[e]veryone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.”

B. Further aspects of freedom of assembly

25. Both the ICCPR and the ECHR regard freedom of assembly as a fundamental right. Article 21 of the ICCPR, stating that the right to freedom of peaceful assembly shall be *recognized*, differs from Article 11 of the ECHR, according to which everyone *has the right* to freedom of assembly.

26. The freedom of assembly belongs to the group of political rights, which is primarily concerned with members of a political community (citizens) rather than with individuals as such.¹¹

⁹ VC Opinion no 633/2011 (CDL-AD(2011)036) on the Compatibility with Universal Human Rights Standards Of Article 193-1 of the Criminal Code on the Rights of Non-Registered Associations of the Republic of Belarus, par 111.

¹⁰ CDL-AD (2010)020 OSCE/ODIHR- Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)020-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)020-e.pdf)

¹¹ See discussion of Allan Rosas in UDHR, p. 431

27. The focus of freedom of assembly is on its democratic function, the process of participating in public meetings and demonstrations. The exercise of the right of freedom of assembly generally involves the holding and proliferation of opinions. The right to freedom of assembly is hence closely related to the other political rights of freedom of thought, conscience and freedom of opinion and expression. It is established case-law of the European Court of Human Rights that Article 11 of the ECHR must also be considered in the light of Articles 9 (on freedom of thought, conscience and religion) and 10 (on freedom of expression) of the ECHR. The Court has stated that “the protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 ECHR.”¹²

28. The freedom of opinion and expression exercised together with the freedom of assembly constitute “political speech”, which deserves the highest protection in the hierarchy of any kind of expression.¹³ These rights are the essential foundation of democratic society. States’ margin of appreciation to interfere with this freedom must be reviewed strictly.

29. The limitations provision in Article 21 of the ICCPR has been criticized for being “so broad that more than enough possibilities are available to suppress assemblies critical to the regime or threatening to the State.”¹⁴ It is however very clear in Article 21 ICCPR that interference with the right to freedom of assembly must not only be necessary to attain a certain purpose but also be “necessary in a democratic society”.

30. It is also important to stress that State Parties to the ICCPR are under a duty to take positive measures to guarantee the right to freedom of assembly. Under Article 21 of the ICCPR, this is not only a right to the negative freedom from State interference¹⁵, but also the State’s positive obligation to facilitate and protect peaceful assembly through putting “in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation”¹⁶.

31. It is established case law of the European Court of Human Rights that Article 11 of the ECHR involves a positive obligation on the part of the State, to protect assemblies, including facilitating and protecting counter-demonstrations¹⁷. If the protection provided by the authorities proves to be insufficient to enable a free exercise of the right to freedom of assembly, this amounts to a restriction which has to be reviewed for its justification based on Article 11 par 2.¹⁸ Moreover, the extensive jurisprudence of the European Court of Human Rights establishes important benchmarks, which further define permissible boundaries to the right to freedom of peaceful assembly and limits the restrictions that may be placed upon the exercise of this right. These benchmarks are widely accepted as reflecting European and international practice in this area.

32. Furthermore, OSCE Commitments pertaining to freedom of peaceful assembly provide that “[e]veryone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.”¹⁹

¹² Ezelin v. France judgment of 26 April 1991, A. 202, p. 20.

¹³ Herdís Thorgeirsdóttir, Journalism Worthy of the Name, Freedom within the Press and the Affirmative Side of Article 10 of the ECHR (Brill 2005).

¹⁴ Manfred Nowak, p. 371.

¹⁵ See Manfred Nowak, p. 376.

¹⁶ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 2.2.

¹⁷ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 4.4

¹⁸ Plattform ‘Ärzte für das Leben, judgement of 21 June 1988, A.139, p. 12. See also Van Dijk, p.590.

¹⁹ The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par 9(2).

C. The positive obligation of the Republic of Belarus to secure freedom of assembly

33. As stated by principle 2.2 of the OSCE/ODIHR- Venice Commission Guidelines on Freedom of Assembly, the state has a positive obligation to facilitate and protect peaceful assembly and thus *“it is the primary responsibility of the State to put in place mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation”*.

34. In view of the above, it is clear in international law that that States must not only refrain from interfering with or curtailing the enjoyment of human rights, but should also act to positively ensure enjoyment of fundamental rights and freedoms.

35. In light of this understanding, the Law on Mass Events should serve to facilitate assemblies and not impose obstacles to exercising fundamental rights. The Law must aim at the protection of this right first and foremost, albeit requiring public authorities to mitigate threats to public order by applying certain rules and limitations, but then only under the conditions listed in Article 21 par 2 of the ICCPR and Article 11 par 2 of the ECHR.

VI. Executive summary

36. Belarus is under the international obligation to respect and protect the fundamental rights to freedom of assembly and freedom of expression. The right to organize and participate in a peaceful assembly is a fundamental freedom and a cornerstone of the freedom to express political and other viewpoints in a democratic society. National legislation governing freedom of assembly should clearly articulate and bring to life the main principles applicable in the exercise of this right, that being: the presumption in favour of holding assemblies, the state's positive obligation to protect peaceful assembly, as well as principles of legality, proportionality, non-discrimination and good administration²⁰.

37. Unfortunately, the Law on Mass Events does not appear to reflect the above stated principles. The current regulation of freedom of assembly in the Republic of Belarus raises a number of serious concerns regarding its compliance with relevant international standards.

38. The Law on Mass Events is characterized by a detailed overregulation of the procedural aspects of holding assemblies. The Law creates a complicated procedure of compliance with a rigid and difficult authorization procedure, while at the same time leaving administrative authorities with a very wide discretion on how to apply the Law. This procedure does not reflect the positive obligation of the State to ensure and facilitate the exercise of freedom of peaceful assembly and freedom of expression. The Law also fails to envisage adequate mechanisms and procedures to ensure that these freedoms are practically enjoyed and not subject to undue bureaucratic regulation. Such overregulation is likely to restrict excessively the exercise of the freedom of assembly and of freedom of speech.

39. In particular, the definitions and scope of protection, the prohibition of spontaneous and simultaneous assemblies, as well as counter-demonstrations, the requirement of citizenship and other restrictions in the organisation or in the participations of a mass event, the wide discretion offered to authorities, the unlimited surveillance, the blanket restrictions and the liability of organisers and participants as foreseen in the Law do not meet international standards.

²⁰OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, pars 2.1-2.6.

40. Instead, the scope of the Law is deliberately restrictive. It does not provide sufficient information on the rights and responsibilities of organizers or participants; rather, it focuses on enumerating those actions of organizers which are forbidden. This Law does not refer to obligations or liabilities of the state or law enforcement bodies and does not elaborate sufficiently on the possibility of judicial review of appeals that may be filed against an administrative decision to ban or restrict an assembly.

41. The Law practically outlaws spontaneous assemblies and does not provide for the possibility to conduct simultaneous assemblies or counter-demonstrations. It does not permit organizers to announce assemblies in public beforehand, nor does it explicitly provide for a general rule for assemblies to be facilitated within "*sight and sound*" of their target audience, which would be preferable since the purpose of holding public assemblies is to convey a message to a particular person, group or organization.

42. The Law contains a number of restrictions on time and place of assemblies that are tantamount to blanket prohibitions. A number of its provisions may have a chilling effect on the exercise of the freedom by persons wishing to do so. This Law also unjustifiably places restrictions on who may be an organizer of an assembly.

43. In order to bring the Law into compliance with international standards numerous revisions ought to be made. It is important to note that improvements in the text of this Law would need to be followed by proper implementation of the Law, which includes awareness-raising measures and adequate training for competent authorities on application of the Law. The way in which this Law is interpreted and implemented is crucial in terms of its compliance with international human rights standards and for the protection of fundamental freedoms and rights.

44. In order to meet with International standards the following key recommendations are suggested:

- A. To include the key principle of a presumption in favour of holding assemblies, *inter alia* through abolishing the existing system of requiring a permit from States authorities for holding an assembly and replacing it with a system based on notification of an assembly;
- B. To revise all provisions in the Law that amount to blanket prohibitions, including the provisions pertaining to time and location of peaceful assembly and to safeguard in the Law the possibility of holding spontaneous assemblies, simultaneous assemblies and counter-demonstrations;
- C. To ensure that the definition of assemblies is clear and in accordance with international standards and does not work to the exclusion of certain types of assemblies;
- D. To ensure that all persons can exercise their right to freedom of assembly, in Belarus. The Law should allow for the exercise of the right by nationals and non-nationals, and all categories of people, including juveniles and migrants; all these categories should enjoy the right to freedom of peaceful assembly not only as participants, but also as organizers.
- E. To revise provisions restricting who may be an organiser of an assembly;
- F. To amend the Law so that the organization of large public assemblies is not limited only to registered organizations, which leads to the exclusion of unregistered associations or groups and individuals;

- G. To remove the restrictions on assemblies gathering more than 1,000 persons and remove the unfettered discretion of authorities to limit or prohibit assemblies based on time, date, place, weather conditions etc;
- H. To remove unreasonable and burdensome obligations (and ensuing sanctions) on the organisers, in particular those which are the exclusive responsibility of the State-organizers should not be held liable for damage and violations inflicted by others; organizers should be exempted from liability for failure to perform their responsibilities, provided that they have made all reasonable efforts to do so, or for unlawful actions or misbehaviour of concrete participants or third persons;
- I. To ensure that under the Law, every public space is seen as fit to host a public assembly; the prohibition of assemblies in the immediate vicinity of hazardous facilities may be limited only to those areas that are not accessible to the general public;
- J. To bring the provisions concerning the termination of assemblies in line with the legality and proportionality principle, as well as the principle of necessity in a democratic society, and to ensure that the only allowable reasons for prohibition or termination of an assembly, which is a measure of last resort to be only considered when a less restrictive response would not meet the purpose of safeguarding other relevant interests, are the imminent threat of using violence or the use of violence, which turns the assembly from peaceful into a non-peaceful one;
- K. To ensure that coercive measures are taken only against those individuals who violate public order, incite hatred or instigate violence, and not against the whole assembly;
- L. To ensure that political parties, trade unions and other organizations are not threatened by dissolution solely for not meeting requirements of this Law;

VII. Analysis of the compatibility of the Law on Mass Events to international standards

a. Title of the Law

45. The title of the Law should be modified to read “Law on *Freedom of Assembly*” or “Law on *Peaceful Assemblies*”. Indeed, even if the denomination of this right is “freedom of assembly” (as in Article 11 of ECHR), only freedom of peaceful assembly (as stressed in Article 21 of the ICCPR and in accordance with the OSCE/ODIHR- Venice Commission Guidelines²¹) is guaranteed and protected.

b. Definitions and scope of the Law (Articles 1-3)

46. Article 1 of the Law on Mass Events provides that the legislation of the Republic of Belarus on mass events consists of the Constitution of the Republic of Belarus, the present law and other legislative acts of the Republic of Belarus.

47. The Constitution of the Republic of Belarus, Article 35 states that “[t]he freedom to hold assemblies, meetings, street marches, demonstrations and pickets that do not disturb law and order or violate the rights of other citizens of the Republic of Belarus, shall be guaranteed by the State. The procedure for holding the above-mentioned events shall be determined by law.”

48. The scope of protection afforded by the Belarusian Constitution in the above provision is relatively narrow. The right to freedom of assembly in the Constitution is not formulated in

²¹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 1.3

such manner as to guarantee first and foremost this right as an essential cornerstone of a democratic society, but rather as recognizing assemblies and other forms of public gatherings within strict legal limits. Such a restrictive formulation of a fundamental right amounts to a limitation if measured by international standards.

49. Further, freedom of assembly, if regulated, shall be governed only by constitutional provisions and laws enacted by Parliament, which should be clear and accessible so that those involved are fully aware of their rights and duties. Article 1 of this Law refers to “other” laws applicable without specifying them. However, it would be essential for this provision to be more explicit in order to safeguard the requirement of foreseeability of laws and elimination of any room for potential abuse and violation of freedom to assembly through other legislative acts.

50. The right to organize and participate in a peaceful assembly is a fundamental freedom and a cornerstone of the freedom to express political and other viewpoints in a democratic society. National legislation governing freedom of assembly should clearly articulate the main principles based on which this right is exercised namely: the presumption in favour of holding assemblies, the state’s positive obligation to protect peaceful assembly, as well as principles of legality, proportionality, non-discrimination and good administration²². In its Preamble, this Law appears to be very restrictive as it guarantees protection on only to those assemblies that have been permitted by the state and wrongly superimposes the exercise of the right to freedom of assembly with a violation of legal order and the rights of others. Whilst this fundamental freedom may be subject to reasonable restrictions concerning time, place and manner²³ of an assembly, these may not interfere with the message communicated by the assembly, and if imposed, then only for a legitimate reason and always based on the principle of proportionality.

51. The Venice Commission and the OSCE/ODIHR have emphasized that “to be consistent with international standards, the law would need to provide *for a general definition of assembly*, supplementing it by definitions of individual types of public events only insofar as these require differential regulatory treatment (such as may be the case with static events, such as a rally or a picket, and dynamic ones, such as a procession).”²⁴

52. The Law should also include references to international treaties ratified by the Republic of Belarus comprising international and regional standards on freedom of assembly: ICCPR, the Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Rights of the Child, or the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States, to which Belarus is also a contracting party. In addition, as a candidate country to the Council of Europe, the Republic of Belarus, ought to be guided in legislating on this matter, by the ECHR and jurisprudence on Article 11 of the Convention.

53. Article 2 of this Law provides for the definitions of seven different types of assemblies (mass actions, other mass actions, gathering, meeting, street rally, demonstration and picketing), but does not provide any overarching definition for a peaceful assembly. The purpose of differentiating between these different types of assemblies is not clear, especially since the Law does not contain corresponding legal consequences for different forms of assemblies. Any definitions of individual types of assemblies or attempts to categorize them separately from a peaceful assembly risk violating Article 21 of the ICCPR as certain forms of

²² OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, pars 2.1-2.6.

²³ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, pars 3.4, 99-100

²⁴ ODIHR-VC Joint Opinion no. 487/2008 (CDL-AD(2008)025) on the Amendments to the Kyrgyz Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations; Venice Commission Opinion no. 532 / 2009 (CDL-AD(2009)035) on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria; ODIHR-VC Joint Opinion no 592/2010 (CDL-AD(2010)033) on the Draft Law on Assemblies of Ukraine; ODIHR-VC Joint Opinion no. 556/2009, (CDL-AD(2009)052), on the Order of Organizing and Conducting Peaceful Events of Ukraine.

assemblies may be - by mistake or intentionally - omitted and may thus become subject to prohibition. Additionally, the inclusion of pickets (which may be organized by one or a group of citizens) in the category of “mass” events, and the definition of “large scale damage”, remains to be clarified. The Venice Commission and the OSCE/ODIHR have emphasised that freedom of assembly – as elaborated in human rights case law – is viewed as a fundamental democratic right, which should not be interpreted restrictively and which covers all types of peaceful expressive gathering, whether public or private.²⁵

54. The definition of assembly provided for in Article 2 is so restrictive in its wording that it conflicts not only with the freedom of assembly, but also with the freedom of expression. The right to freedom of assembly read in conjunction with the right to freedom of expression also entails the right to “silent” protests, while the definition of assembly requires that people gather together for “collective discussion” and “resolving questions”. Such differentiation may result in arbitrary decisions in relation to which assemblies are permitted and are also difficult to apply in practice²⁶. It would be recommendable for the Law to provide a general definition of an assembly, possibly, only with a distinction between static and moving assemblies. The OSCE/ODIHR-Venice Commission Guidelines define an assembly as “the *intentional and temporary presence of a number of individuals in a public place for a common expressive purpose*”²⁷.

55. The European Court of Human Rights, in its case law on freedom of assembly, has stressed that any lawful restriction on the right to peaceful assembly must meet the proportionality principle which demands that a balance be struck between the requirements of the purposes listed in Article 11 par 2 and those of the free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places.

56. Article 3 determines the scope of protection with elaborate, narrow definitions, strictly defining the purpose and the content of the forthcoming event. The text of the law thereby not only ignores the political nature of this basic right but restricts it to an extent which is incompatible with the freedom to peaceful assembly in the democratic context. Thus, Article 3 par 2 lists certain types of assemblies that are not covered by the procedure laid down in this Law. These include, *inter alia*,: gatherings of employees, political parties, trade unions, religious and other organizations held indoors, picketing for collection of signatures in support of election candidates or gatherings organized by election candidates. While Article 3 does not specify which laws cover these types of assemblies, it is also not clear why such gatherings should be treated differently than others. Instead, it is recommended that all public assemblies should be governed by the same Law, and thus, there should not be separate laws for certain kinds of public gatherings.

57. Additionally, the scope of the law is also problematic in terms of the subjects whom the Law concerns. According to Article 2 of the Law, only citizens of the Republic of Belarus seem to be entitled to assemble. Article 3 par 1 nevertheless provides that the Law “shall be applicable to citizens of the Republic of Belarus, foreign citizens and stateless persons within the limits of their rights and freedoms provided for in the legislation of the Republic of Belarus.” If corroborated with Article 4 par 1 (which will be further analysed under section c hereafter), it results that foreign citizens and stateless persons may only participate in assemblies, but not organize them. According to the OSCE/ODIHR-Venice Commission Guidelines, not only citizens, but also foreign nationals and stateless persons may be

²⁵ ODIHR-VC Joint Opinion No. 525/2009 (CDL-AD(2009)034) on the Draft Law on Assemblies of the Kyrgyz Republic; ODIHR-VC Joint Opinion no. 487/2008 (CDL-AD(2008)025) on the Amendments to the Kyrgyz Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations, Venice Commission Opinion no. 532 / 2009 (CDL-AD(2009)035) on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, ODIHR-VC Joint Opinion no. 574/2010 (CDL-AD(2010)016) on the Act of Public Assembly of Sarajevo Canton, Venice Commission Opinion no 384/2006 (CDL-AD(2006)034) on the Law on Freedom of Assembly of Azerbaijan, Venice Commission Opinion (CDL-AD(2004)039) on the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia, ODIHR-VC Joint Opinion no. 385/2006 (CDL-AD(2006)033) on the Draft Law on Peaceful Assemblies of Ukraine.

²⁶ VC Opinion no. 384 / 2006 [CDL-AD(2006)034], on the Law on Freedom of Assembly of Azerbaijan, par 20.

²⁷ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, par 1.2

participants in, and organizers of an assembly²⁸. International human rights law requires that non-nationals have the right to peaceful assembly²⁹. Thus, the reference to “the limits of their rights and freedoms provided for in the legislation of the Republic of Belarus” must be clarified and aligned with international and European standards on the matter. Further, the definitions under Article 2 should be amended to include everybody, including foreign citizens and stateless persons.

58. Further to the above, the Venice Commission and the OSCE/ODIHR stress that everyone should have “*the freedom to organize and participate in public assemblies*”. The OSCE/ODIHR Guidelines state that it is important that the law extends freedom of assembly not only to citizens but that it also includes stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists³⁰. Illegal immigrants must also have the right to exercise their freedom of assembly³¹. Of note, is Article 16 of the ECHR which provides that “[n]othing in Articles 10, 11, and 14 [of the ECHR] shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.” The application of Article 16 should be confined to speech activities by non-nationals that directly burden national security. There is no reason to stop non-nationals from participating in an assembly that, for example, challenges domestic immigration laws or policies. The increase in transnational protest movements also underscores the importance of facilitating freedom of assembly for non-nationals³². The Law is therefore recommended to be amended accordingly.

c. Organisers of mass events (Article 4)

59. Article 4 par 1 allows only “citizens of the Republic of Belarus, permanently resident on its territory of 18 years of age and over and eligible to vote” to be organizers of an assembly of no more than 1000 people. For other assemblies, bigger in size, only parties, trade unions and “other organizations” may be organizers. Several aspects of this provision are problematic.

60. First, according to OSCE/ODIHR-Venice Commission Guidelines, children also have the right to organize assemblies (see Article 15 of the UN Convention on the Rights of the Child)³³. The prohibition for juveniles under the age of eighteen to be organisers is too restrictive. Such a restriction can be imposed only if it is evident that a juvenile will not be capable of fulfilling the requirements that the law imposes on an organizer³⁴. According to OSCE/ODIHR-Venice Commission Guidelines “*in light of the important responsibilities of the organizers of public assemblies ..., the law may set a minimum age for organizers, having due regard of the evolving capacity of the child... The law may also provide that minors may organize a public event only if their parents or legal guardians consent to their doing so.*”³⁵

61. Second, the condition “eligible to vote” may imply that persons without legal capacity cannot be organizers. This is not compatible with international standards on freedom of assembly, which provide that “*all individuals should ... be facilitated in the enjoyment of their*

²⁸ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 2.5.

²⁹ *Id.*, par. 55.

³⁰ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 55.

³¹ ODIHR-VC Joint Opinion no. 597/2010 (CDL-AD(2010)031) on the Public Assembly Act of the Republic of Serbia; ODIHR-VC Joint Opinion no. 556/2009, (CDL-AD(2009)052), on the Order of Organizing and Conducting Peaceful Events of Ukraine; CDL-AD(2010)050; ODIHR-VC Joint Opinion no. 525/2009 (CDL-AD(2009)034) on the Draft Law on Assemblies of the Kyrgyz Republic.

³² OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 55

³³ *Id.*, par. 2.5.

³⁴ OSCE/ODIHR-Venice Commission Joint Opinion no. 592/2010 [CDL-AD(2010)033] on the Draft Law on Peaceful Assemblies of Ukraine, par 28; *op cit* footnote 21, OSCE/ODIHR-Venice Commission Interim Joint Opinion no. 596/2010 [CDL-AD(2010)054] on the Draft Law on Assemblies of Armenia, issued on 22 December 2010.

³⁵ *Id.*, par. 58.

*freedom to peacefully assembly, irrespective of their legal capacity.*³⁶ It may also infer that stateless persons, juveniles and foreign citizens may not be organizers.

62. Third, it is unacceptable for the Law to limit the size of assemblies that may be organized by physical persons to less than 1000 people. This creates an excessive restriction to the exercise of the freedom of assembly and should be removed from the Law.

63. Article 4 par 1 limits the right to organize assemblies to citizens permanently residing in Belarus, thus explicitly excluding not only non-nationals, but also nationals living abroad. Also, requiring organizers to be vested with the right to vote cannot be considered a legitimate ground for restricting freedom of assembly. Article 4 par 1 also works to the exclusion of any organisations, trade unions, and political parties who are not duly registered, from exercising their assembly rights. This has particular significance in light of Article 193-1 of the Criminal Code of the Republic of Belarus, whereby unregistered associations, including the human rights organisations, cannot operate in Belarus.³⁷ Therefore, individuals belonging to such associations are effectively barred from exercising both their right to freedom of association, as well as freedom of assembly.

64. None of the above mentioned restrictions appear to be legitimate and thus not in compliance with Article 21 of the ICCPR, which permits limitations to the right to freedom of assembly only in individual cases where the national security, public safety and order, the protection of health or morals or the protection of the rights and freedoms of others override individual persons' right to assemble.

65. Article 4 par 2 provides that only political parties, trade unions and other organizations of the Republic of Belarus may be the organisers of large assemblies (where the number exceeds 1,000 participants). The political nature of the freedom of assembly is that demonstrations are a tool for those outside the established parties to call attention to their message, discontent or their criticism of authorities.³⁸ Under the Law, this will not be possible and is recommended to be removed.

66. According to Article 4 par 3, the person responsible for organizing an assembly on behalf of a party, a trade union or an organization has to "enter into a written undertaking that the event will be organized and held in accordance with the present Law." This is, on one hand, useless, if the "undertaking" has the purpose only to mention the intention of the organizers to follow, inasmuch as possible, the provisions of the Law on assemblies: the presumption is that the legal provisions in force in a certain country will be obeyed. On the other hand, if the "undertaking" has the purpose to attract the legal responsibility/liability of the organizers should *any* provision of the Law be breached, then this is likely to impose an excessive burden upon the organizers. In practice, this will not only discourage but also prove an insurmountable obstacle to the exercise of the freedom to assembly (see also section I below on the liability of organisers and participants and compensation). This provision is therefore recommended to be deleted and instead, the Law should make it clear that while organizers and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to ensure their assemblies are peaceful, they should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so³⁹. Moreover, if an assembly degenerates into serious public disorder, it is the responsibility of the state and not the organizers or the event stewards to limit the damage caused. In no circumstances should the organizers of lawful and peaceful assembly be held

³⁶ Id, par. 59.

³⁷ VC Opinion no 633/2011 (CDL-AD(2011)036) on the Compatibility with Universal Human Rights Standards Of Article 193-1 of the Criminal Code on the Rights of Non-Registered Associations of the Republic of Belarus.

³⁸ See discussion in D.J. Harris, M.O'Boyle and C. Warbrick, Law of the European Convention on Human Rights, Butterworths, 1995, p. 418.

³⁹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 118; see also id., par 197

liable for disruption caused to others⁴⁰ as it is the obligation of the State to ensure that law and order is maintained during a peaceful assembly.

67. In summation of the above, the Venice Commission and OSCE/ODIHR provide that “[p]roportionality requires the State to adopt the least intrusive means for achieving set objectives. The legitimate interest of the State is to guarantee general interests of the community and public order on the one hand, and to ensure the proper exercise of freedom of assembly on the other. To this effect, some positive measures are permissible in order to enable lawful demonstrations to proceed peacefully.”⁴¹

68. Similarly, Article 4 par 6 substantiates this chilling effect on potential organisers, as an organiser may receive an administrative fine if found in breach of the Law and shall be barred from organising or holding a mass event for one year following the levying of an administrative fine for such violation. Moreover, according to Article 15 of the Law may be held liable under other legislative acts of the Republic of Belarus including, presumably, the Criminal Code (see also the analysis under section i hereafter). This is clearly excessive: people acting as organizers or as participants may not be held responsible for any kind of – including minor – violation of the procedural aspects of an assembly, they cannot be held responsible for acts of other participants. Such a sanction represents a serious factor to discourage and/or prevent the exercise of freedom of assembly and it is recommended that it be removed from the text.

d. Application to hold a mass event (Article 5) and the prohibition of spontaneous assemblies

69. Article 5 of the Law makes it mandatory to submit a prior application to authorities on holding a mass event. Such an application shall be handed in no later than 15 days prior to the anticipated date for holding the assembly and shall entail detailed information on the purpose, type, place and source of funding of the mass event. Furthermore, the application must entail information on the route to be taken, means of transport, make, model registration number of the means of transport, surname, first name, patronymic (where applicable) and place of residence/stay of the person who will be driving the means of transport (where applicable) and so forth. The strict requirements of prior notice and detailed information found in this provision are not in congruity with international standards in several ways and should be revised.

70. First, requiring permission to hold an assembly is clearly against the general presumption in favor of holding assemblies. Such a presumption should be explicitly provided for in the Law: according to the OSCE/ODIHR-Venice Commission Guidelines, *“a permit requirement is more prone to abuse than a notification requirement, and may accord insufficient value to the fundamental freedom to assemble and the corresponding principle that everything not regulated by law should be presumed to be lawful. It is significant that, in a number of jurisdictions, permit procedures have been declared unconstitutional.”*⁴² The Venice Commission and the OSCE/ODIHR would hence recommend that the Law be changed so as to set forth only a notification of the intent to hold an assembly. Importantly, such notification should not be an obligation in all circumstances, since *“prior notification should ... only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of assembly...”*⁴³

71. Second, the fact that approval is always needed in order for an assembly to take place has the effect of banning spontaneous assemblies. The Venice Commission and the

⁴⁰ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 118; see also id., par 198

⁴¹ ODIHR-VC Joint Opinion no. 525/2009 (CDL-AD(2009)034) on the Draft Law on Assemblies of the Kyrgyz Republic.

⁴² OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 118; see also id., par 30.

⁴³ Id, Par. 4.1.

OSCE/ODIHR have stressed that the ability to respond peacefully and immediately (*spontaneously*) to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly: “Spontaneous events should be regarded as an expectable feature of a healthy democracy. As such the authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature.”⁴⁴

72. Spontaneous assemblies are by definition not notified in advance since they generally arise in response to an occurrence which could not have been reasonably anticipated.⁴⁵ It is essential to highlight that many assemblies which take place as an immediate response to an event carry a message that would be weakened if the legally established notification period were adhered to⁴⁶. Such “spontaneous assemblies” should thus be protected and facilitated by the authorities as long as they are peaceful in nature.⁴⁷ It should further be noted that the ECtHR has stated that “a decision to disband such assemblies ‘solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.’”⁴⁸

73. From the case-law of the ECtHR, it is thus clear that spontaneous events and counter-demonstrations enjoy protection under the Convention. A disruption incidental to the holding of an assembly will not render disorderly.⁴⁹ The ECtHR, provided that a peacefully organised demonstration that results in disorder by developments beyond the control of the organisers, for example through a violent counter-demonstration, does not for that reason fall outside the scope of Article 11 of the ECHR.⁵⁰

74. In fact, the authorities are under a positive duty to safeguard the freedom of the assembly of protestors. As the ECtHR stated in one of its landmark cases on the freedom of demonstrators and the positive obligation of authorities to protect such conduct, “[a] demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. Like Article 8, Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals.”⁵¹

75. The adjective “peaceful” restricts the scope of protection offered by Articles 21 par 1 of the ICCPR and Article 11 par 1 of the ECHR. Evidently, freedom of assembly may raise a number of problems for authorities where public meetings and marches are involved. These may pose threats to public order through disruption of communication, the prospect of confrontation with the police and the danger of violence. Therefore, a meeting planned with the object of causing disturbances will not be protected by Article 11.⁵²

⁴⁴ ODIHR-VC Joint Opinion no. 574/2010 (CDL-AD(2010)016) on the Act of Public Assembly of Sarajevo Canton.

⁴⁵ ODIHR-VC Joint Opinion no. 525/2009 (CDL-AD(2009)034) on the Draft Law on Assemblies of the Kyrgyz Republic; ODIHR-VC Joint Opinion no. 556/2009, (CDL-AD(2009)052), on the Order of Organizing and Conducting Peaceful Events of Ukraine; ODIHR-VC Joint Opinion no. 385/2006 (CDL-AD(2006)033) on the Draft Law on Peaceful Assemblies of Ukraine.

⁴⁶ The OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, stress that the ability to respond peacefully and immediately that is, spontaneously and without providing formal notification, to some events, news, incidents or other assembly is an essential element of freedom of assembly.

⁴⁷ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, pars 97-98

⁴⁸ See ECtHR judgement, *Bukta v. Hungary* (2007), pars 36

⁴⁹ Appl.8440/78, *Christians against Racism and Fascism v. the United Kingdom*, D&R21 (1989), p. 150

⁵⁰ Appl.8440/78, *Christians against Racism and Fascism v. the United Kingdom*, D&R21 (1989), p. 138 (149), Appl. 10126/82, *Plattform ‘Ärzte für das Leben’ v. Austria*, D&R 44 (1985), p. 65 (72).

⁵¹ See ECtHR case-law, *Plattform ‘Ärzte für das Leben’ v. Austria*, par 31.

⁵² Appl.8440/78, *Christians against Racism and Fascism v. the United Kingdom*, D&R21 (1989), p. 150.

76. Even though distinguishing between the motive and the eventual outcome may be difficult, ECHR case law shows that freedom of assembly is not interpreted restrictively. A non-violent sit-in blocking an entrance has in the past been determined as a peaceful assembly, meaning that interference with it required a justification under Article 11 par 2.⁵³

77. Not permitting peaceful spontaneous assemblies by granting the protection warranted only to planned assemblies has the effect of pre-censorship, as it assumes that only previously approved assemblies may carry a legitimate message. A spontaneous peaceful assembly which has the purpose of criticizing authorities is a form of political speech entitled to the same protection as spontaneous speech on the public forum. If people are prevented from joining a group of people that have gathered together to peacefully to protest, the event loses its validity as a public attempt trying to have an impact on authorities.

78. From a procedural point of view, the duty to submit a notification “no later than 15 days prior to the anticipated date” of the assembly, provided for in Article 5 par 4, is onerous. It should be changed to 3-5 days and should apply only “as a rule”, in order to be more flexible. An assembly cannot be forbidden only because a certain deadline to notify the intent to hold it was not met. As a matter of fact, according to the OSCE/ODIHR-Venice Commission Guidelines, “*it is not necessary under international human rights law for domestic legislation to require advance notification about an assembly.*”⁵⁴

79. In any case, the information required to be submitted in the process of application, as prescribed in Article 5, is excessively detailed and may not only discourage the organization of assemblies but also result in permission not being granted as the provisions of the last paragraph infer that notifications addressed to the competent authorities may be refused registration if all details provided for as to the content of the notification are not met. It is therefore recommended for this provision to be repealed and for any newly instituted system of notification to include only basic information on the organizers.

e. Procedure for examining the application (Article 6)

80. Article 6 provides that the authority examining the application to hold a mass event must notify the organiser(s) in writing on its decision no later than five days prior to the date on which the mass event is to be held. In a recent joint opinion of the OSCE/ODIHR and the Venice Commission, 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 countries⁵⁵. The period required for consideration of an application should be connected to the date of filing the application and not to the date of the planned event. Since the Law does not indicate a very detailed time framework, applications may be submitted months in advance. It is not clear why organizers should be notified about a possible negative decision of the state bodies just five days prior to the planned assembly, especially since this Law does not provide any guarantees ensuring that appeals against such decisions will be reviewed promptly by judicial organs, before the anticipated date of the event.

81. According to Article 6 of the Law, authorities appear to be granted unfettered discretion in prohibiting events based on date, time, number of participants, weather conditions, payment for services to uphold public order provided by internal affairs authorities and expenses linked to medical services and the cleaning up of the area following the mass event. The provision is in fact so wide, that the discretion of the authorities in deciding the prohibition of an assembly is almost beyond the capacity of the organizers to take measures to comply with the respective provision.

⁵³ Appl.8440/78, *Christians against Racism and Fascism v. the United Kingdom*, D&R21 (1989), p. 150.

⁵⁴ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 4.1.

⁵⁵ OSCE/ODIHR-Venice Commission Joint Opinion no 592/2010 (CDL-AD(2010)033) on the Law on Peaceful Assemblies of Ukraine, of 19 October 2010, pars 28, 46

82. Article 6 should therefore be removed from the text as it affronts the principle of the presumption in favour of holding assemblies. The prohibition of an assembly should be a measure of last resort.⁵⁶ Pursuant to the positive duties of the Republic of Belarus (see *above par***) to facilitate freedom of assembly, the legislation should entail that the costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities. As stated in the OSCE/ODIHR-Venice Commission Guidelines, the State must not levy any additional monetary charge for providing adequate policing⁵⁷. Furthermore, organisers of non-commercial public assemblies should not be required to obtain public liability insurance.⁵⁸

83. It is worth underlining that the cost of political demonstrations is the natural part of democracy.

84. Further, official power to change the time and location of an assembly must be limited to minimal possible changes and must be supported by evidence that the changes are narrowly tailored to impose the least possible burden on the assembly. Such changes must be subject to judicial review (by an independent and impartial court or tribunal) and the burden of proof should be on the authorities⁵⁹. Such time, place and manner restrictions might also legitimately be imposed with a view to preserving public order, however, the normal functioning of transport and organizations should not be treated separately from the rights and freedoms of others and public safety grounds. Where competing rights come into conflict, the authorities should carry out parallel scrutiny of the rights engaged giving priority to the right to assembly in those cases where freedom of assembly imposes only a temporary intrusion on the rights of others.

f. Appeal against a decision prohibiting the holding of a mass event (Article 7)

85. Article 7 provides for the possibility to appeal against a decision prohibiting an assembly in a judicial proceeding. This possibility is welcomed, but the respective procedure has to be regulated by the Law. According to the OSCE/ODIHR-Venice Commission Guidelines, “[t]he right to an effective remedy entails a right to appeal the substance of any restrictions or prohibitions on an assembly. An initial option of administrative review can both reduce the burden on courts and help build a more constructive relationship between the authorities and the public. However, where such a review fails to satisfy the applicant, there should be an appeal mechanism to an independent court. Appeals should take place in a prompt and timely manner so that any revisions to the authorities’ decision can be implemented without further detriment to the applicant’s rights. A final ruling, or at least relief through an injunction, should therefore be given prior to the notified date of the assembly.”⁶⁰

g. Preparation of a mass event (Article 8)

86. Article 8 provides that prior to receiving authorisation to hold the mass event, “the organiser(s) or other individuals shall not be entitled to announce the date, place and time of the event in the media, on the Internet global computer network or on other information networks or to produce and disseminate leaflets, placards and other materials for this purpose”.

87. The above not only interferes with freedom of assembly but also with the freedom of expression as protected under Article 19 of the ICCPR and Article 10 of the ECHR. Pre-publication censorship, as would appear to be the case here, is subject to close scrutiny for its necessity. It is clear that banning discussions on the event until formal authorisation is

⁵⁶ ODIHR-VC Joint Opinion No. 638/2011 (CDL-AD(2011)031) on the Draft Law on Peaceful Assembly of Ukraine.

⁵⁷ OSCE/ODIHR- Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 32

⁵⁸ *Id.*, pars 32, 198.

⁵⁹ *Id.*, par 135.

⁶⁰ OSCE/ODIHR-Venice Commission Guidelines on Peaceful Assembly, 2nd edition, par. 4.6.

given will inhibit attendance of the assembly.⁶¹ Organizers and individuals should not be deterred from discussing their intention to hold an assembly so long as they do not claim to have permission by the competent authorities where none exists.

88. The right to discuss the intention to organise a political demonstration falls under the category of political speech which renders Article 8 of the Law an unjustifiable interference with the freedom of expression and of speech. This ban on advance announcement of the assembly appears to be censorship. An advance announcement of an assembly that the government blocks can be remedied by an announcement by the organizers that there has been a cancellation or change, while the impact of a political demonstration is enhanced by the coverage it gets in the media, restrictions thereon, would have a negative effect on the full exercise of this right.

h. Place and time of mass event (Article 9)

89. Restrictions on peaceful assemblies are only permitted in case they are prescribed by law, proportionate and necessary in a democratic society⁶². An imposed restriction is justified only in case all three preconditions are met simultaneously and while restrictions may be imposed based on legitimate grounds, as demarcated by international standards, these should never be supplemented by additional grounds in domestic legislation nor should they be loosely interpreted by the authorities.⁶³

90. Article 9 provides for a large set of instances of blanket prohibitions as to the place and time of an assembly. According to the OSCE/ODIHR-Venice Commission Guidelines, *“the blanket application of legal restrictions – for example, banning all demonstrations during certain times, or from particular locations or public places which are suitable for holding assemblies – tend to be over-inclusive and will thus fail the proportionality test because no consideration has been given to the specific circumstances of each case. Legislative provisions which limit the holding of assemblies only to certain specified sites or routes (whether in central or remote locations) seriously undermine the communicative purpose of freedom of assembly, and should thus be regarded as a prima facie violation of the right.”*⁶⁴.

91. Additionally, the OSCE/ODIHR-Venice Commission Guidelines state that blanket legislative provisions, which ban assemblies at particular times or in particular locations, require much greater justification than restrictions on individual assemblies.⁶⁵ A pressing social need must be provided for any restriction. Similarly, Article 21 of the ICCPR states that “[n]o restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.

92. General restrictions on the place, time and manner of holding assemblies are far too restrictive and for the most part do not meet the test of the principle of proportionality, the state’s duty to protect peaceful assembly or the presumption in favour of holding assemblies. The text should be reviewed in order to allow for more flexibility and a case by case examination of the situation of a certain assembly, according to the proportionality principle. According to the OSCE/ODIHR-Venice Commission Guidelines, as far as the time factor is concerned, *“the regulation of assemblies ... at night time, should be handled on a case-by-case basis rather than being specified as a prohibited category of assemblies.”*⁶⁶ Thus, a blanket ban on time (namely, the prohibition of assemblies between 10 pm and 8 am), as foreseen in this article, is also disproportionate to the legitimate aims in Article 21 of the

⁶¹ See ECtHR case-law, *The Observer and Guardian v. the UK*, A 216 (1991).

⁶² See Article 11 par 2 of the ECHR and Article 21 of the ICCPR.

⁶³ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd addition, par 69.

⁶⁴ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 43

⁶⁵ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 102.

⁶⁶ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 43

ICCPR. Any restriction placed on time as well as location should pass the test of proportionality in each individual case.⁶⁷ The text should be reviewed in order to allow for more flexibility and a case by case examination of the situation of a certain assembly, according to the proportionality principle.

93. The organiser of the assembly has the right to decide which location fits best for the purpose of the assembly as this is the essence of such freedom.⁶⁸ All public places should be open and available for the purposes of holding an assembly.⁶⁹ Local authorities should not be empowered to designate places for assemblies, as currently the case under Article 6 par 5 of the Law. Neither should they be vested with the right to determine places where assemblies are prohibited. This blanket restriction should be removed from the Law and the issue should be regulated in a more differentiated manner by the Law. The only legitimate restriction on the place of an assembly may be near hazardous facilities that pose a threat to life or safety but only in cases where they are generally not accessible to the public. If the area near a hazardous facility is accessible to the public, then there appears to be no reason to exclude an assembly from taking place in that area⁷⁰.

94. Furthermore, the Venice Commission and the OSCE/ODIHR confirm the possibility for an organiser to use a privately-owned or rented space which is potentially accessible to everyone.⁷¹ It is recommended that the blanket ban on assemblies in the vicinity of the official residence of the President of the Republic of Belarus, the National Assembly and other public institutions listed in Article 9 of the Law, be deleted and the management of security be left to the relevant law enforcement authorities⁷². The location of an assembly is one of the key aspects of the freedom, together with the objectives pursued and the timing of an assembly, and the mentioned sites are very important places for peaceful, non-disruptive assemblies: the primary goal of an assembly is to convey a message and habitually, state bodies, including the Parliament and the President's office, are those to whom the message is addressed.

95. The last paragraph of this article prohibits the simultaneous holding of more than one assembly in the same place or on the same route. According to the OSCE/ODIHR-Venice Commission Guidelines, "*[w]here two or more unrelated assemblies are notified for the same place and time, each should be facilitated as best as possible. Prohibition of public assemblies solely on the basis that they are due to take place at the same time and location of another public assembly will likely be a disproportionate response where both can be reasonably accommodated.*"⁷³ When the second assembly is a counter-demonstration, its place and time may be changed only if there are grounds for the assumption that a conflict between the participants to the two assemblies may occur and sufficient policing resources to manage both meetings are lacking. Indeed, the OSCE/ODIHR-Venice Commission Guidelines state that "*related simultaneous assemblies should be facilitated so that they occur within sight and sound of their target insofar as this does not physically interfere with the other assembly*"⁷⁴.

⁶⁷ ODIHR-VC Joint Opinion no. 597/2010 (CDL-AD(2010)031) on the Public Assembly Act of the Republic of Serbia.

⁶⁸ ODIHR-VC Joint Opinion no. 597/2010 (CDL-AD(2010)031) on the Public Assembly Act of the Republic of Serbia; see also , ODIHR-VC Joint Opinion no 592/2010 (CDL-AD(2010)033) on the Draft Law on Assemblies of Ukraine.

⁶⁹ ODIHR-VC Joint Opinion no. 597/2010 (CDL-AD(2010)031) on the Public Assembly Act of the Republic of Serbia.

⁷⁰ ODIHR-VC Joint Opinion no. 487/2008 (CDL-AD(2008)025) on the Amendments to the Kyrgyz Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations, par 24.

⁷¹ ODIHR-VC Interim Joint Opinion no 596/2010 (CDL-AD(2010)049) on the Draft Law on Assemblies of the Republic of Armenia.

⁷² ODIHR-VC Joint Opinion no. 484/2008 (CDL-AD(2008)025_ on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic.

⁷³ Id, par 4.3

⁷⁴ Id, par 123.

96. Finally, the surveillance provided for in Article 9 par 4, according to which places for the holding of mass events and also underground train, rail, water and air transport facilities that may be used by participants in mass events may be equipped with fixed video surveillance devices and other security equipment, requires further comment.

97. The surveillance must be consistent with human rights standards, namely Article 17 of the ICCPR and Article 8 of the ECHR. The UN Human Rights Committee has indicated that privacy is a broad notion, which refers to the sphere of a person's life in which he or she can freely express his or her identity.⁷⁵ The Venice Commission has emphasized that: Whilst individuals have a reduced privacy expectation in public places, this does not mean that they waive those fundamental rights.⁷⁶

98. The Venice Commission has provided that people should be notified if they are being watched in public places, or else the surveillance system should be obvious. Such surveillance deserves additional scrutiny in the climate of political repression.⁷⁷ People subject to surveillance should have an effective remedy at their disposal if they believe that their rights have been infringed; they must also be informed of the remedy and how to use it. Personal data resulting from surveillance should be obtained and processed fairly and lawfully.⁷⁸

99. The surveillance provided for in Article 9 of the Law is amplified in Article 11 of the Law which permits authorities to "take photographs and make audio and video recordings of mass event participants". This goes further than simply deploying video systems in public places and may pave the way for individual harassment far exceeding any justifiable or legitimate restriction in congruity with international law. The above constitutes a deterrent not only for the participants of demonstrations but also has a chilling effect on political speech which is an essential condition for democracy in any country.

i. Procedure for holding mass events (Article 10)

100. Article 10 par 1 provides that speeches of participants shall be "held [at] certain times and in a fixed place in accordance with the purposes mentioned in the application". This provision implies a form of censorship over the message that is sought to be conveyed by participants and may thus amount to a limitation of the freedom of speech, which is regulated by Article 19 of the ICCPR and Article 10 of the ECHR, and is an essential element of freedom of assembly.

101. Article 10 par 2 provides that "[t]he holding of mass events shall be prohibited if they pursue the aim of war propaganda or extremist activity." In connection with these provisions of the law, 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 light of the requirement to balance the freedom of assembly against other human rights, including the prohibition of discrimination.

102. 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. The OSCE/ODIHR-Venice Commission Guidelines provide that "*[t]he touchstone must ... be the existence of an imminent threat of violence*"⁷⁹. Thus, calls for the violent overthrow of the constitutional order would be deemed

⁷⁵ See the dissenting opinion in the Human Rights Committee case, *Coeriel and Aurik v The Netherlands* (453/91).

⁷⁶ Venice Commission Opinion no 404/2006 (CDL-AD(2007)014) on Video Surveillance in Public Places by Public Authorities and the Protection of Human Rights, par 79.

⁷⁷ See COMMDH042(2011) Press release on the increasing repression in Belarus.

⁷⁸ Venice Commission Opinion no 404/2006 (CDL-AD(2007)014) on Video Surveillance in Public Places by Public Authorities and the Protection of Human Rights.

⁷⁹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 95.

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 law to be consistent with the OSCE/ODIHR-Venice Commission Guidelines, the text should include references to the “element of violence” requirement.

103. Article 10 par 3 also provides for the obligation of the organizers to “ensure compliance with the conditions and procedures for holding the mass event, the safety of citizens ...” and “to effect payment ... for public order services and expenses linked to the provision of medical services and the cleaning up of the area...” This obligation imposes an excessive burden on the organizers. The costs of providing adequate security and safety measures as well as medical services should be fully covered by the public authorities⁸⁰. State authorities should not impose any additional financial charge for the provision of adequate and appropriate policing or other public order services, nor medical and cleaning services. Citizens should not directly and additionally pay law enforcement bodies to fulfill their duties as this is the very purpose of taxation regulations. The responsibility to clean up after a public assembly should lie with the municipal authorities. Organizers should not be responsible for routine cleaning of the public space where the assembly was conducted. Such a requirement might be justified only if there remains excessive trash or other changes to the space due to special circumstances.

104. Article 10 par 7 sets forth the possibility for local executive and administrative authorities to “further regulate the procedure for holding mass events”. This provision does not comply with Article 21 of the ICCPR or Article 11 of the ECHR as “*any restrictions imposed must have a formal basis in law and be in conformity with the European Convention on Human Rights and other international instruments on human rights. ...*”⁸¹.

105. As a whole, the procedure for holding mass events listed in Article 10 is such as to frustrate the intention of the organisers of a mass event instead of encouraging it based on the presumption in favour of holding assemblies. The “freedom” aspect of holding an assembly is absent from this Article. Almost every detail must be organised in accordance within the restrictive scope, “specified time”, “designated place”, presence and duties of organisers who are burdened with law enforcement and costs. All these provisions should be revised in accordance with the three basic aforementioned principles; the presumption in favour of holding assemblies, the state’s duty to protect peaceful assemblies and the principle of proportionality.

j. Respect for public order (Article 11)

106. Article 11 of the Law on Mass Events imposes not only obligations on organisers but also on participants. This provision contains a long list of requirements ranging from not “hampering the movement of transport and pedestrians” to wearing insignia or weapons, to being “in a state of inebriation” or selling alcoholic beverages. In this context, it should be stressed once again, that it is the State that is primarily under the duty of securing freedom of peaceful assembly. Measures should be taken only against persons who violate public order, use hate speech or instigate violence but not against every participant of an assembly.⁸²

107. Furthermore, a number of restrictions contained in Article 11 are neither legitimate nor justifiable. For instance, according to this provision, an assembly should not “hamper the movement of means of transport and pedestrians”. Whereas, it should be stressed that any public assembly may occasionally impede traffic or free movement and should be tolerated unless it disproportionately affects national security, public order or the rights of others. The importance of the right to freedom of assembly is such that a mere inconvenience is not

⁸⁰ This was also stated in the ECtHR’s judgment in the case of *Balcik and Others v. Turkey*, no. 25/02, par 49

⁸¹ *Id.*, par. 2.3

⁸² Cf., ODIHR-VC Joint Opinion no. 597/2010 (CDL-AD(2010)031) on the Public Assembly Act of the Republic of Serbia..

sufficient to justify the displacement or prohibition of assemblies and should cover only cases involving an unreasonable and excessive interference⁸³.

108. Article 11 further provides that people may not protect their identity by wearing masks. Such prohibition is in violation of the right to freedom of expression and also the right to personal identity, a person's manner of appearance under Article 17 of the ICCPR and Article 8 of the ECHR respectively. As stated by the OSCE/ODIHR- Venice Commission Guidelines, *"The wearing of a mask for expressive purposes at a peaceful assembly should not be prohibited, so long as the mask or costume is not worn for the purpose of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct"*⁸⁴

109. In addition, the provisions according to which law enforcement officials can limit the number of participants to an assembly in view of the capacity of the place, which is a rather subjective assessment, are not admissible under international standards. Moreover, carrying out body searches, the inspection of items in their possession and not admitting participants to the place of assembly should not be permitted except where there is evidence that these measures are necessary to prevent serious disorder. The language of the law contains no limit on the power of authorities to engage in such activities. They should only be permissible pursuant to previous notice to organizers plus a court order following a court hearing on the lawful character of such measures given the particular circumstances and a demonstration of the necessity of such action. The burden of proof should be on the authorities.

110. Further, Article 11 par 2 bans setting up "tents or other temporal structures". Whether tents may be set up should be approached and assessed on a case-by-case basis since tents or other structure may be part of the message conveyed and construction of temporary structures should not lead to the unnecessary restriction of a peaceful assembly, especially if they do not impede significantly daily routine, for a long period. However a blanket prohibition as stipulated currently, should be repealed from the Law.

111. The last paragraph of Article 11 that "the procedure for organising interaction between the law enforcement agencies, the organisers of mass events and representatives of the community exercising their duty of upholding public order with regard to questions of upholding public order and ensuring public safety during the holding of mass events shall be determined by the Council of Ministers of the Republic of Belarus". This is potentially a useful provision, but it is unclear how it would work in practice. As emphasized in the OSCE/ODIHR – Venice Commission Guidelines, ensuring good lines of communication (between organisers and the authorities) can be important to minimize the risk of public disorder and indeed the need for intervention by the authorities⁸⁵. Nonetheless, the establishment of such channels of communication should never be used in a way that undermines the enjoyment of the right to freedom of assembly – for example, by providing a means for the authorities to effectively impose conditions on assemblies (avoiding the appropriate formal legal procedures).

k. Termination of a mass event (Article 12)

112. Article 12 provides for the possibility of terminating a mass event. The possibility to terminate a peaceful assembly should only be a measure of last resort. As long as assemblies remain peaceful, they should be facilitated by the authorities. Furthermore, as the Venice Commission and the OSCE/ODIHR have stated in other contexts, dispersal should not occur unless law enforcement officials have taken all reasonable measures to facilitate

⁸³OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 80; ODIHR-VC Joint Opinion no. 556/2009, (CDL-AD(2009)052), on the Order of Organizing and Conducting Peaceful Events of Ukraine, par. 51

⁸⁴OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition. par 98

⁸⁵ Id., par 152

and to protect the assembly from harm and there is an imminent threat of violence”.⁸⁶ Assemblies should be governed by prospective rules expressed in domestic police guidelines. Legislation should require that such guidelines be developed⁸⁷. Failure to comply with the notification requirement should not be a ground for halting an assembly, although it might properly be the basis for proportionate sanction afterwards.

113. Legislation should also provide for a clear demarcation between violent and non-violent demonstrators and those who are committing unlawful acts. That is to say that the entire assembly should not be terminated based on the acts of a group of persons. Indeed, the OSCE/ODIHR – Venice Commission Guidelines clearly point out that dispersal should not, therefore, result where small groups of participants in an assembly act in a violent manner. In such instances, action should be taken against those persons (see also: section on Liability and Compensation below). Similarly, if *agent provocateurs* infiltrate an otherwise peaceful assembly, the authorities should take appropriate action to remove the *agent provocateurs* rather than terminating or dispersing the assembly or declaring it to be unlawful. As mentioned above, the failure to apply for permission to hold an assembly or to follow a certain procedure should never by itself lead to the dispersal of an assembly.

I. Liability of organisers and participants and compensation (Articles 15 and 16)

114. According to the OSCE/ODIHR-Venice Commission Guidelines “*organizers of assemblies should not be held liable for their failure to perform their duties if they make reasonable efforts to do so, nor should organizers be held liable for the actions of non-participants or agents provocateurs*”⁸⁸. Likewise, organizers should not be liable for the actions of individual participants. Instead, individual liability should arise for any participant for committing an offence or failing to carry out the lawful directions of law enforcement officials.

115. Article 15 provides, in general and vague terms, that the liability of persons violating the procedure for organizing and/or holding an assembly shall be provided by “the laws of the Republic of Belarus”. The liability clause in Article 15 is too broad. Further, while this provision appears to refer to the liability of organizers and participants of assemblies, it is not clear whether it shall also apply to officials working for law enforcement bodies and the local executive bodies. The Venice Commission and the OSCE/ODIHR have recommended that liability for failure to adhere to any provision of such laws - as are being reviewed here - be clearly stated, that a maximum penalty be explicitly provided, and that in all cases stated penalties be strictly proportionate to the nature of the breach.⁸⁹ Such liability should be clearly set forth in detail by this Law, according to relevant international and European standards.

116. Further, Article 15 does not specify whether it envisages individual liability only for those offences that an individual has personally committed. The organizers of assemblies are so far not explicitly exempted from liability for failing to perform their responsibilities in cases where they have exhausted all reasonable efforts to do so, or for unlawful actions or misbehavior of concrete participants or third persons. On the contrary, the broad formulation of Article 15 could be interpreted as adopting the widest possible form of liability as it does not differentiate between peaceful and violent demonstrators. Authorities are likewise not

⁸⁶ Venice Commission Opinion no. 532 / 2009 (CDL-AD(2009)035) on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria; ODIHR-VC Joint Opinion no. 597/2010 (CDL-AD(2010)031) on the Public Assembly Act of the Republic of Serbia; ODIHR-VC Joint Opinion no. 574/2010 (CDL-AD(2010)016) on the Act of Public Assembly of Sarajevo Canton. See also Manfred Nowak, UN Covenant on Civil and Political Rights, Engel 1993, p. 382.

⁸⁷ See ODIHR-VC Joint Opinion no. 556/2009, (CDL-AD(2009)052), on the Order of Organizing and Conducting Peaceful Events of Ukraine, par 66.

⁸⁸ Id, par 5.6

⁸⁹ ODIHR-VC Joint Opinion no 592/2010 (CDL-AD(2010)033) on the Law on Peaceful Assemblies of Ukraine, of 19 October 2010, par 46.

bound to distinguish between those who remain peaceful and those who actually engage in violence or inflict damage to property; as a result, organizers may well be prosecuted for offenses committed by others without strong reliable evidence that they themselves were engaged in these violations⁹⁰.

117. Article 15 par 2 contains a serious threat of liquidation for political parties, trade unions and “other organizations” in case their authorized representatives failed to secure “the proper order of organization and (or) holding of the gathering, meeting, street rally, demonstration and picketing, that have caused damage of big amount or substantial harm to rights and legal interests of citizens, organizations or state or public interests [...]”. A single violation of this Law – even a minor or a “technical one” - will thus place an organization on the edge of dissolution. Such a provision is excessive, disproportionate and thus, in conflict with international law and standards. The dissolution of political parties or other organizations is the most extreme sanction available and should never be imposed unless such measure is proportionate and necessary in a democratic society. Rather, the dissolution of a political party should be used only as a last resort and through judicial procedures with proper guarantees ensuring a fair trial⁹¹. The enforced dissolution of a non-governmental organization should take place solely in cases of bankruptcy, prolonged inactivity or serious misconduct⁹², which would mean willful engagement in activities that are inconsistent with its objectives, i.e. an exceptional violation of the law specifically applicable to non-governmental organizations. None of the above requirements are reflected in Article 15 par 2. In order to ensure this provision’s compatibility with the right to free association under Article 22 ICCPR, it is recommended to repeal Article 15 par 2 and instead to narrowly define liability, permitting only the imposition of proportionate sanctions for a failure to fulfil properly construed responsibilities.

118. Article 16 of this Law provides that harm “caused by organizers and participants of the mass action to the state, citizens and organizations at the course of mass action, is subject to compensation in order established by legislation of the Republic of Belarus”. This provision is too broad and prone to potential abuse, as the requirement for compensation here does not appear to be limited to damage intentionally or negligently inflicted, nor is it imposed on the individual who actually inflicted that damage.

119. The Venice Commission and OSCE/ODIHR stand ready to provide further assistance, if needed, to the Belarussian authorities in amending the Law.

⁹⁰See OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 111; ECtHR case-law, *Ezelin v. France*, application no 11800/85, par 53.

⁹¹See the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, issued in 2011, par 17, Interpretative Notes pars 51-52

⁹²As an example of European practice in this field, see the Council of Europe’s Recommendation to member states CM/Rec(2007)14 on the legal status of non-governmental organizations in Europe, adopted by the Committee of Ministers on 10 October 2007, pars 44 and 74