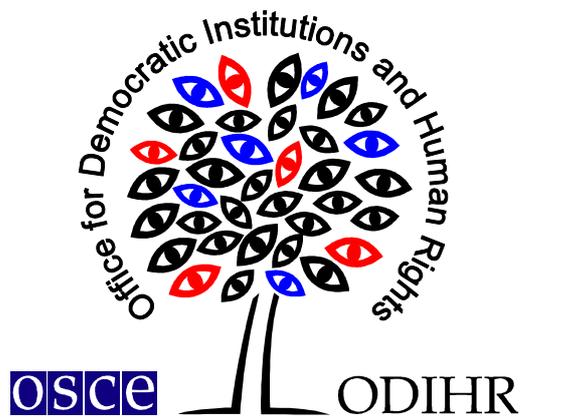


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COMMENT
ON THE LAW OF THE REPUBLIC OF AZERBAIJAN
ON FREEDOM OF ASSEMBLY

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1. INTRODUCTION

1. *The OSCE/ODIHR was requested by the OSCE Office in Baku on 28 September 2006 to review the extant Law of the Republic of Azerbaijan on Freedom of Assembly. A parallel review is being prepared by the Venice Commission, which draft opinion will be proposed for adoption at the Plenary Session on October 14, 2006.*
2. *The Comments have been prepared on the basis of the unofficial English translation of the Law on Freedom of Assembly as provided by the OSCE Office in Baku.*

2. SCOPE OF REVIEW

3. These Comments analyze the Law of the Republic of Azerbaijan on Freedom of Assembly (hereinafter referred to as the “Law”) and contains recommendations based on international and regional law, the relevant OSCE commitments¹, standards relating to the protection of human rights², evolving state practice and the general principles of law recognized by the community of nations. They also draw upon the OSCE/ODIHR Draft Guidelines for Drafting Laws Pertaining to Freedom of Assembly (2004) which demarcate a minimum baseline in relation to these standards, thereby establishing a threshold that must be met by national authorities in enacting legislation concerning the right to freedom of peaceful assembly³.
4. The OSCE/ODIHR would like to mention that these Comments have been coordinated with regard to their content with the draft Opinion of the Venice Commission of the Council of Europe. They do not equate to a comprehensive review, and are without prejudice to any further opinions or recommendations that the ODIHR may wish to make on the issue under consideration. The OSCE/ODIHR stands ready to provide further assistance on this matter if so requested.

3. EXECUTIVE OVERVIEW AND SUMMARY

5. The Law contains certain positive elements, among which an attempt to incorporate the principle of proportionality in the body of the Law and a provision permitting spontaneous assemblies. However, taken together, these elements do not outweigh the flaws observed in a large number of provisions. The declaration of intent and general principles enshrined in the Constitution of the Republic of Azerbaijan (hereinafter referred to as “the Constitution”) as well as the introductory Articles of the Law are jeopardized by the placing of emphasis

¹ Paragraph 9(2) of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) reaffirms that “Everyone 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.”

² Principally, the relevant standards contained in the European Convention on Human Rights and the International Covenant on Civil and Political Rights, and the jurisprudence of the European Court of Human Rights and the United Nations Human Rights Committee.

³ The Draft Guidelines are currently being consolidated through broad consultations with government experts, law practitioners, judges, police officers, and members of civic organizations from across the OSCE region. They are expected to be released in 2007.

throughout the Law on blanket prohibitions and restrictions related to the time and place of assemblies. These blanket prohibitions and restrictions do not all meet the requisite conditions that would justify any restrictions. In particular, the Law provides for a wide range of possible grounds for prohibition and termination, which do not all satisfy the requirement of clarity and legal certainty and are not properly linked to permissible reasons for restrictions. While the principle of proportionality is recognized in broad terms, it is not reflected in key provisions, whereas this would have been desirable to imply that a range of responses exist between facilitating an event as notified, without any restriction, and with prohibition only possible as a last resort measure. The Law creates unnecessary distinctions and typologies, while falling short of recognition of the responsibility of law enforcement officials to facilitate the conduct of assemblies and secure conditions permitting the exercise of the freedom of peaceful assembly. There is no express provision that would require that law enforcement officials use force only in last resort, in proportion to the aim pursued, and in a way that minimizes damage or injury. The Law does not address the issue of the liability of law enforcement officials, while the responsibilities or organizers and participants are described in terms which allow a broad interpretation and deny them the “reasonable excuse” defense. Furthermore, while spontaneous assemblies are in principle allowed – in contrast to the legislation in force in the vast majority of OSCE countries –, the lack of definition of the terms “spontaneous assembly” is likely to generate problems when it comes to implementation. Also, the Law contains provisions inhibiting the right to counter-demonstrations. Finally, it may be added that the Law sets out in too great detail the conditions for exercising the constitutionally guaranteed right of assembly.

6. How the scope of the law is defined and how it is interpreted and implemented ultimately constitute the test of its compliance with international human rights standards. In any country, experience shows that a law is not necessarily implemented as intended because it merely contains formally made rules. Closer attention is necessary with respect to the arrangements for implementation. These arrangements include those that can directly be addressed in the Law, but also those concerned with the capacity of the administrative structure, the resources that are required, the availability or provision of trained personnel, etc. In the present instance, it is essential that law enforcement officials be properly trained in techniques of crowd management that minimize the risk of harm to all concerned. Additionally, they should be fully aware of, and understand, their responsibility to facilitate as far as possible the holding of an assembly.

4. ANALYSIS AND RECOMMENDATIONS

4.1 General Observations

7. As a fundamental right, the right to freedom of peaceful assembly should, insofar as possible, be allowed to be exercised without regulation except where its exercise would pose a threat to public order and where necessity would demand state intervention. A legislative basis for any interference with the right is required by the European Convention on Human Rights (hereinafter referred to as “ECHR”). Therefore, whilst it is not essential to have a specific law on public events and assemblies, states may choose to have such a law. However, the law must be limited to setting out the legislative bases for permissible

interferences by state authorities. That any interference needs to be prescribed by law does not only mean that it must have a formal basis but that the scope of the restriction must be sufficiently precise so that it is possible for those potentially affected to foresee whether or not its requirements are likely to be breached by a particular course of conduct. Furthermore, regulations governing the holding of assemblies should not contain provisions which can be interpreted as stating that all that is not permitted is forbidden. Excessively detailed regulation should be avoided.

8. In countries where the option of developing special legislation on the matter was eventually chosen (as opposed to no regulation on the matter – as is still the case in some OSCE countries - or a wide array of different laws or provisions in different laws), it appears that the legal regulation of the freedom of peaceful assembly is a complex matter, which requires a wide range of issues (both procedural and substantive) to be considered so as to best facilitate the exercise of the right.
9. The formulation of the constitutional and international guarantee of freedom of peaceful assembly is generally in broad terms. Further guidance on the substantive requirements arising out of the relevant international instruments may be found in the following standards that have been systematically referred to in previous opinions by both the OSCE/ODIHR and the Venice Commission:
 - 1) The right to freedom of peaceful assembly is a fundamental right in a democratic society and one of the foundations of such a society, and thus, should not be interpreted restrictively. As such, as all other fundamental rights and freedoms, it is a constitutional matter par excellence, which should be governed in principle primarily by the Constitution.
 - 2) As such this right covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; an assembly must be “peaceful” if it is to be afforded the protection guaranteed in the international and regional instruments.
 - 3) The right to freedom of peaceful assembly is a “qualified” right. In certain circumstances, it is lawful for the state to interfere with the right. Article 11(2) ECHR expressly permits limitations provided they are “such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. The wide margin of appreciation afforded to the state in their interpretation of the limiting clauses does not equate to unlimited discretion.
 - 4) Subjection to an authorization procedure does not normally encroach upon the essence of the right. Such a procedure is in keeping with the requirements of Article 11(1), if only in order that the authorities may be in a position to ensure the peaceful nature of a meeting⁴. The notification procedure is however strongly

⁴ European Court of Human Rights, *Ziliberg v. Moldova* (2004).

recommended as more susceptible to ensure that the presumption always remains in favor of the holding of public assemblies.

- 5) The state has a positive obligation to actively protect peaceful and lawful assemblies. It may be required to intervene to secure conditions permitting the exercise of the freedom of assembly and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully. This involves arriving at a fair balance between the interests of those seeking to exercise the right of assembly and the general interests of the rest of the community.
- 6) All restrictions on the exercise of freedom of assembly must pass the test of proportionality – meaning that the least intrusive means of achieving an objective should always be preferred – and that includes the penalties that are imposed for breaching rules that regulate the holding of assemblies. The proportionality test implies that a range of responses exist and should be considered between facilitating an event without any restriction and prohibition or termination. There ought to be a presumption in favor of the holding of peaceful assemblies. In this regard, blanket restrictions because they preclude the consideration of the individual circumstances of each case run counter to the principle that restrictions be proportionate to the legitimate aim being pursued.

4.2 Analysis and Recommendations⁵ by Article

Article 2

10. The Law defines an assembly as a “*temporary gathering of some persons in a public place for certain purposes.*”⁶ The incorporation of clear definitions in domestic legislation is vital to ensuring that the law remains easy to understand and apply, and that regulation does not encroach upon activities that ought not to be regulated. The term “assembly” is not defined but rather presumed in international and regional law. Therefore, it must be interpreted in conformity with the customary, generally accepted meaning in national legal systems. The definition provided in Article 2(1) meets these basic requirements, however in order to distinguish between assembly participants and accidental bystanders, observers, media professionals and others present at an assembly at the time of the event, **it is recommended that the word “intentional” be added in the sentence cited above. This distinction may be essential in the context of the liability for participation in unlawful assemblies.**
11. As far as the typology of public assemblies is concerned, the Law abounds in unnecessary detail. More specifically, the Law introduces five separate categories of assemblies (a “gathering,” a “meeting,” a “demonstration,” a “street procession,” and a “picket”),⁷ out of

⁵ Recommendations are emphasized in bold characters in the text.

⁶ Law on Freedom of Assembly, Article 2(1).

⁷ Law on Freedom of Assembly, Article 2 (“Such an assembly can be in the following forms: 1) “Gathering” - it is an assembly of persons for a joint discussion of any question and for making decision on the issue; 2) “Meeting” - a mass event conducted for expressing common opinion of the assembled persons and/or to speak out with common slogan and to make demands; 3) “Demonstration” - it is an expression of an opinion of a group of persons on issues connected with social and national life; 4) “Street procession” - it is an expression of an opinion of a group of

which at least three (a “gathering,” a “meeting,” and a “demonstration”) are used in combination with one another rather than separately throughout the text of the Law – which implies they are subject to the same regulatory regime and are effectively treated as one category of public assemblies. **It is generally advisable that the distinction between categories of assembly be only drawn where a differential regulatory regime applies.**

12. Moreover, definitions of certain individual assembly types in the Law contain reference to the content of the message or claim that participants of an assembly seek to convey. For instance, the Law defines a “demonstration” as an “*expression of an opinion of a group of persons on issues connected with social and national life*” (Emphasis added). Likewise, a “street procession” is defined as “*an expression of an opinion of a group of persons moving on a certain route on issues connected with social and national life.*” The reference to “social and national life” creates the impression that ‘demonstrations’ and ‘street processions’ that would seek to convey a message on other issues than ‘issues connected with social and national life’ may not be judged admissible. It is important that such ambiguity be removed. The sentence introducing the typology (which contains the word “can”) suggests that other types of assembly are always possible. As a matter of principle, in accordance with the principle that everything which is not forbidden is allowed, any other types of assembly would not be subjected to the rules and regulations contained in the Law. If this Article purports to cover all possible types of assembly, the definitions would need to be broadened. In this regard, it is essential to keep in mind that the freedom of assembly covers not only static meetings, but also public processions⁸. That the content of the message or claim that can be pursued through ‘street processions’ be limited to messages or claims on issues connected with social and national life would pose a serious restriction on the exercise of the freedom of assembly. It would imply that the freedom can be fully exercised through static meetings only unless the assembly is considered a ‘picket’, in which case the same restriction that applies to processions (message or claim only on issues connected with social and national life’) would apply. Therefore, **it is recommended that the typology of assemblies as provided by the Law be revised so that no content restriction be placed on static assemblies and public processions alike. It might be worth considering adding to the general definition of “assembly” provided for in the introductory sentences of Article 2 some language that would make it clear that both static meetings and public processions are covered by the definition. Finally, for the sake of clarity, it is further recommended that only the term “assembly” be used throughout the text of the Law.**

Article 4

13. Article 4 provides that assemblies on private property and on closed premises “*designed for conducting public events*” are excluded from the remit of the Law.⁹ While the right to

persons moving on a certain route on issues connected with social and national life; 5) "Picket" - gathering in a certain place of a small group of persons participating in a demonstration expressing their opinion on issues connected with social and national life.”)

⁸ European Commission of Human Rights, *Christians Against Racism and Fascism* (1980); European Court Human Rights, *Plattform Ärzte* (1988), *Ezelin v. France* (1991).

⁹ *Id.*, Article 4(1) (“*Peaceful assemblies conducted in the following places shall not be regulated by the present Law: In places which are in private ownership of persons, are under rent or other type of lawful usage; In closed places especially designed for conducting public events.*”)

freedom of peaceful assembly has been held to cover both public and private meetings¹⁰, the use of private property for speech activities raises issues that are different from those raised by the use of public property. While private property capable of accommodating assemblies, meetings or gatherings may of course be used for such activities, the property owner may open his or her property to whomever he or she chooses, subject only to relevant health, safety and allowable land use laws. Therefore, it is appropriate and can only be welcome that assemblies on private property be exempted from any notification requirement as well as from all other requirements provided for in the law¹¹. Furthermore, it is generally recommended that the scope of assembly laws be limited to open-air public assemblies since indoor assemblies – meetings on premises – whether publicly or privately owned, raised different issues both substantively and procedurally from the open-air public assemblies. Therefore, these two exemptions are welcome.

14. The Law makes a similar exemption for weddings, funerals, festivals, mournings and religious events with, however, a notable reservation prohibiting the use of such gatherings as assembly fora.¹² Viewed against the backdrop of the extreme likelihood that at least some of these events may spontaneously grow into public assemblies within the remit of the Law,¹³ the reservation in question may be unnecessarily restrictive with regard to spontaneous assemblies as well as present serious implementation challenges. **It is therefore recommended that the provisions of Article 4(2) prohibiting “[u]sing wedding and funeral ceremonies, holiday and mourning events and religious ceremonies for organizing gatherings, meetings, demonstrations, street procession and pickets” be repealed and spontaneous assemblies during weddings, funerals, religious events and similar ceremonies be treated on a par with other spontaneous assemblies.**

Article 5 (in connection with Article 10)

15. The Law provides for a prior written notification as a requisite precondition for holding a public assembly.¹⁴ The notification has to be filed with the local executive body five days in advance of the planned event. A notification system as based on the notice of intent – as opposed to a prior authorization system – is the most advanced of all approaches to the regulation of public assemblies because it minimizes the likelihood of unnecessary regulatory burden and government censorship while also permitting appropriate regulatory action. Such

¹⁰ European Court of Human Rights, *Djavit An, v. Turkey* (Application no. 20652/92) Judgment of 20 February 2003, Final on 9 July 2003, at para 56. *Rassemblement Jurassien and Unité Jurassienne*, p. 119.

¹¹ It is noteworthy that in the context of assemblies on private property, some of the requirements set out in the law (for instance, the powers conferred under Article 14(1) upon police forces to check the place of an assembly before it takes place) would result in a breach of owners’ rights to private and family life or to peaceful enjoyment of their possessions.

¹² *Id.*, Article 4(2) (“*Using wedding and funeral ceremonies, holiday and mourning events and religious ceremonies for organizing gatherings, meetings, demonstrations, street procession and pickets shall be prohibited.*”) Note also the corresponding prohibition to hold “*assemblies of political content*” “*in places of worship, chapels and cemeteries*” (Article 9(4)). This prohibition will be discussed at a greater length under *Place, Time and Manner*.

¹³ For instance, funeral of a politician may often turn into a quasi-demonstration.

¹⁴ *Id.*, Article 5(1) (“*A person or persons organizing any assembly enumerated in Article 2 of the present Law have to notify in advance the relevant body of executive power in written. A notification has to be submitted 5 days prior to the day of convening the intended assembly.*”)

requirement has been interpreted by the U.N Human Rights Committee as a restriction falling within the ambit of the second part of Article 21 of the International Covenant on Civil and Political Rights (hereinafter referred to as “ICCPR”)¹⁵.

16. However, it is not the system that was chosen by the legislator in Azerbaijan as evidenced by Article 10, which stipulates that the regulatory authority shall provide its decision with regard to the notification not later than two days prior to the planned date of the assembly¹⁶. As indicated above, subjection to an authorization procedure does not automatically amount to encroachment upon the essence of the right. Such a procedure is in keeping with the requirements of Article 11(1), if only in order that the authorities may be in a position to ensure the peaceful nature of a meeting¹⁷. **The essence of the right to freedom of peaceful assembly would however be seriously undermined if Article 10 were not to further stipulate that in case where the regulatory authority has serious doubts about the peaceful intentions of event organizers or is concerned that the planned assembly is for a purportedly unlawful objective (in connection with Article 7, 8 and 9 of the Law), it may issue within two days prior to the holding of the assembly a decision indicating the nature and scope of the restrictive measures that are being considered in respect of the assembly in question. Article 10 should also indicate that should the regulatory authority fail to respond to a notification on time, the assembly can be held (i.e. no express prohibition means authorization by default).**
17. It is welcome that the Law exempts spontaneous assemblies from the notification requirement¹⁸. However, there is no clear indication in the text of the Law as to which assemblies shall be treated as exempt from the requirement of advance notice. The definition of ‘spontaneous assembly’ cannot be assumed as self-obvious and while a definition may still remain too abstract or generic to prevent risks of misinterpretation in daily practice, the latter risks can only be multiplied in the absence of any definition at all. The point of departure of such definition ought to be a reference to the possibility to respond immediately to an unexpected event when giving a prior notification is altogether impracticable. An example might be a large assembly in a public park in response to a victory by a local athletic team in an international competition. Another example would be a public assembly held to protest the unexpected action of a foreign government insulting the dignity of the nation. **It is recommended that the provisions of Article 5(4) be revised and expanded in light of the above mentioned considerations.**

¹⁵ U.N. Human Rights Committee, *Kivenmaa v. Finland*, Communication No. 412/1990, views dated 31 March 1994, Doc. CCPR/C/412/1990.

¹⁶ *Id.*, Article 10 (“*All the decisions of the relevant bodies of executive power about assemblies provided for in Articles 7-9 of the present Law must be brought to organizers of the event in written no later than 2 working days prior to the intended date of the event and these decisions shall be clear and grounded.*”) to be considered in conjunction with Article 14(1), item 2, which grants the police the right to “*suspend when necessary an assembly which did not have a written notification except assemblies provided for in part IV of Article 5 of the present Law*”.

¹⁷ See paragraph 9, item 4 and footnote 5.

¹⁸ *Id.*, Article 5(4) (“*For fortuitous assemblies submission of a written notification is not required. Fortuitous assemblies in accordance with the requirements specified in Article 7 and 8 of the present Law can be restricted or suspended.*”)

Article 6

18. The Law defines an “organizer” as a “*person who organized a peaceful assembly and whose name is mentioned in a written notification submitted to the relevant body of executive power.*”¹⁹ Legally capable persons of age 18 and older are afforded the right to organize assemblies.²⁰ The Law, however, imposes a content-based limitation with regard to foreign nationals and stateless persons, banning them from organizing assemblies “pursuing political goals.”²¹ The limitation imposed by the Law may be regarded as acceptable in light of Article 16 of the ECHR, which provides that “[n]othing in Article 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens”. However, it is noteworthy that the European Court of Human Rights has ruled that “*the fact that the applicant was an illegal immigrant [does not suffice] to justify a breach of her right to freedom of assembly*”²². This implies that aliens regardless of their status (legal or illegal, stateless persons, refugees, asylum seekers, tourists) should not be prevented from exercising their right to freedom of peaceful assembly. The above-mentioned Court decision does not make a distinction between “participants” and “organizers”, which would imply that such distinction is irrelevant. Furthermore, international law on this matter has evolved over time. The CCPR General Comment No 15 on the Position of Aliens under the Covenant stresses that “[a]liens receive the benefit of the right of peaceful assembly ... There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.”²³ This trend is further evidenced in the Council of Europe Parliamentary Assembly Recommendation on the Political Rights and Position of Aliens which recommends the development of “*proposals for the amendment of the European Convention for the Protection of Human Rights and Fundamental Freedoms in such a way as to exclude restrictions at present authorised by Article 16 with respect to political activity on the exercise by aliens of the freedoms guaranteed by Article 10 (freedom of expression) and Article 11 (freedom of association).*”²⁴

¹⁹ Law on Freedom of Assembly, Article 6(1).

²⁰ *Id.*, Article 6(2).

²¹ *Id.*, Article 6(3).

²² European Court of Human Rights, *Cissé v. France* (9 April 2002), paragraph 50.

²³ CCPR General Comment No 15 on the Position of Aliens under the Covenant: . 11/04/86, para 7. Fulltext version of the General Comment is available at <http://www1.umn.edu/humanrts/gencomm/hrcom15.htm> (last visited on October 5, 2006). Furthermore, the U.N. Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live similarly states “[s]ubject to such restrictions as are prescribed by law and which are necessary in a democratic society to protect national security, public safety, public order, public health or morals or the rights and freedoms of others, and which are consistent with the other rights recognized in the relevant international instruments and those set forth in this Declaration, aliens²³ shall enjoy ... [t]he right to peaceful assembly.” [U.N. Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, Article 5(2) - Fulltext version of the Declaration is available at http://www.unhchr.ch/html/menu3/b/o_nonnat.htm (last visited on October 9, 2006)].

²⁴ Council of Europe Parliamentary Assembly Recommendation 799 (1977) on the Political Rights and Position of Aliens. Fulltext version of the Recommendation is available at

In light of the above, **it is recommended that the provisions banning foreign nationals and stateless persons from the right to organize assemblies be repealed.**

19. By limiting the circle of potential organizers to fully capable persons of age 18 and older, the Law denies the right to organize to various groups of those without full legal capacity, institutionalized patients being one of them. This restriction is combined with a ban on assemblies on mental institution premises discussed below in connection with the analysis of Article 9. As far as the organization of public events is concerned, imposition of certain restrictions may be justified in the light of the organizers' responsibilities. Legally incapable people, however, should not be denied the right to organize assemblies altogether, since in many cases the issue that they would wish to raise is not likely to be raised by any other group²⁵. It is possible that the state make it a prerequisite to secure the consent of the incapable person's legal guardian. However, it may not be the best response where the institution is the legal guardian of the institutionalized patient, since such procedure would render it impossible for the patients to raise their concerns to the administration of the institution. Another option may be to extend to the legally incapable individuals the right to organize smaller scale events or to co-organize events with fully capable persons. **It is recommended that consideration be given to amending the Law so that to afford persons without full legal capacity the right to organize smaller scale events or to co-organize events with fully capable persons.**
20. Moreover, it is not clear why minors should be denied the right to organize assemblies altogether. Like adults, children also may have legitimate claims and interests. The right to peaceful assembly provides them with a means of expressing their views and claims. The Convention on the Rights of the Child requires State Parties to recognize the right of children to organize and participate in peaceful assemblies.²⁶ In light of the serious responsibilities of the organizers of public assemblies, however, the law may set a certain minimum age for the organizers, having due regard to the evolving capacity of the child. It may also provide that minors may organize a public event only if their parents or legal guardians consent to this. **It is therefore recommended that the provision preventing minors from organizing assemblies be reviewed with due regard to the evolving capacity of the child.**
21. As far as organizers' responsibilities are concerned, the Law requires that they or their representatives "*participate in assemblies in person. If it is impossible then organizers or*

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta77/EREC799.htm> (last visited on October 9, 2006).

²⁵ Principle 1(5), United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, United Nations General Assembly resolution 46/119: "[e]very person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in...the International Covenant on Civil and Political Rights, and in other relevant instruments."

²⁶ Article 15, Convention on the Rights of the Child ("1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly. 2. No restrictions may be placed on the exercise of these rights 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.") Fulltext version of the Convention is available at <http://www.ohchr.org/english/law/crc.htm> (last visited on October 9, 2006). The Convention was acceded to by Azerbaijan on Aug 13, 1992.

*their representatives have to inform the relevant body of executive power no later than 3 hours prior to the beginning of the event that they can not come to an assembly, and at the same time they have to inform the participants about it. In this case an assembly can not be held.*²⁷ This provision may have an impact on spontaneous events. If there is a call for mobilization but no overt organizer, this would allow the police to disperse a gathering. **It is recommended that “spontaneous assemblies” be excluded from the operation of Article 6(5) so that it refers only to assemblies which do have an organizer.**

22. Furthermore, the Law requires that they “*use all available means for ensuring that an event is conducted peacefully and in accordance with the law, pursuant to conditions stipulated in a written notification and applicable to an assembly.*”²⁸ **It is recommended that this provision be reviewed to clarify that that organizers’ responsibility should only extend as far as exercising due care to prevent interference with public order by the assembly participants. Organizers’ duties should not exceed the duty to cooperate with police and follow the law, while it is the responsibility of police to enforce the law.**
23. Finally, while the Law imposes the obligation to protect public order and safety during assemblies on the State, it also provides that “*with an aim to ensure the security of an assembly that went beyond security limits ensured by the government, organizers can request to attract additional police forces under the condition of paying for it.*”²⁹ This provision is problematic as it creates a risk of abuse by officials who may deliberately provide for a lower safety standard than objectively required under the given circumstances so that the assembly organizers would have to pay for additional services.
24. **It is recommended that the Law be amended to incorporate a complementary option allowing organizers to be assisted volunteers to act as stewards.** Stewards are persons, working in cooperation with the assembly organizers, whose responsibility it is to control the participants and to ensure that the imposed restrictions, if any, are complied with. Stewards do not substitute the police and it is still the police who bears overall responsibility for public order. However, efficient stewarding helps reduce the need for the police presence at public assemblies. This ultimately facilitates the negotiation process where the authorities may have concerns about public safety, and reduces the likelihood that an assembly be banned due to lack of resources to maintain public order and safety.

Article 8

25. Article 8(3) provides that “*Holding peaceful assembly with political goals shall be prohibited (...) during the period of preparation for international events of state importance determined by the decision of the relevant body of executive power and on days of holding them on the territory of cities and regions where they are conducted*”. This provision leaves a wide margin of discretion to the regulatory authority. The terms “international events of state importance” and “period of preparation” can be interpreted broadly, and the ground for prohibition afforded under this paragraph cannot be linked to any of the legitimate grounds

²⁷ Law on Freedom of Assembly, Article 6(5).

²⁸ *Id.*, Article 12(3).

²⁹ *Id.*, Article 12(8) (“*The government shall have the responsibility for ensuring the security of an assembly. However, with an aim to ensure the security of an assembly that went beyond security limits ensured by the government, organizers can request to attract additional police forces under the condition of paying for it.*”)

for restrictions listed under Article 11(2) of the ECHR and replicated in Article 7(1) of the Law. Prohibition is a measure of last resort, which may be taken only if there exist reasonable grounds supporting the concern that the assembly would present a threat to public order, and where a less restrictive response would not be possible. A threat to public order cannot be assumed or presupposed. Considering that Article 8(3) is expressly excluded from the scope of Article 8(6), which provides that prohibition is a measure of last resort, it can only be inferred that considerations of proportionality are purportedly excluded in this instance and any public assembly is to be prohibited on the sole ground of it being scheduled to take place during the period of preparation of an international event of state importance. **It is therefore recommended that this paragraph be repealed.**

26. Article 8(4) states that “*an assembly can be prohibited by an order of the relevant body of executive power in important cases in a democratic society observing restrictions provided for in part 1 of Article 7 of the present Law.*” Article 8(5) is similar in nature and scope, but pertains to ‘suspension’, while Article 8(3) further stipulates that “*prohibition or suspension of an assembly shall be considered as a measure of last resort and shall be applied only when restrictions provided for in Article 7 of the present Law are not sufficient*”. The language used in these provisions is ambiguous. It seems that the rationale behind these provisions is linked to the distinction made between ‘restrictions’ on the one hand and ‘prohibition’ and ‘suspension’ (or termination) on the other hand. Article 11(2) of the ECHR uses the term ‘restriction’ in a broad sense, which encompasses prohibition as a last resort measure. There is no need to establish such distinction in the Law, which carries with it the risk of misinterpretation and improper implementation. In particular, it is important that paragraphs 4 and 5 of Article 8 are not understood as providing further grounds for restrictions than those already stipulated under Article 7(1). **It is recommended that paragraphs 4 and 5 of Article 8 be subsumed under Article 7.**

Article 9

27. The Law provides for a number of restrictions as to possible assembly venues. In particular, the Law prohibits assemblies (other than public processions and pickets) “*1) in a radius of 300 meters around buildings of legislative, executive and judicial powers of the Republic of Azerbaijan; 2) on the territory where railway, oil and gas pipelines and electric wires of high tension pass; 3) in places allocated by relevant body of executive power for conducting special state events; 4) on the territory used for military purposes and in places located closer than 300 meters to the boundaries of these territories; 5) in institutions of confinement, on the territory of psychiatric medical institutions and in places located closer than 300 meters to the boundaries of these territories.*”³⁰
28. Such blanket restrictions are in principle problematic since their purpose could be satisfied by conducting a proper evaluation of the individual circumstances affecting the holding of an assembly and balancing competing interests. Paragraphs 3 and 4 of Article 7 provide useful language on the considerations that could provide guidance while assessing individual circumstances and determining the policing measures that may need to be taken. The risk of excessive interference with the right to freedom of peaceful assembly is even more acute

³⁰ *Id.*, Article 9(3).

when the scope of the blanket restrictions listed under Article 9(3) is not always clear enough to exclude broad interpretation.

29. It is not exactly clear what “*places ... for conducting special state events*” are. If these are locations where preparations for an upcoming event of special importance (e.g. a sports championship or a major festival) are underway, the restriction may be justified. However, if the Law implies locations where such “special events” are routinely held, regardless of whether or not the venue is being used at the point of time in question, then the restriction would be obviously disproportionate. **It is recommended that the Law clarify what is meant by “places ... for conducting special state events” and ensure that related restrictions on the place of assembly be necessary and proportionate.**
30. The prohibition to conduct assemblies on the premises of mental institutions and in their vicinity (closer than 300 meters) also poses a concern, since it deprives the institutionalized patients and any other persons concerned of the opportunity to have their collective voice heard by the administration of the institution. **It is recommended that this prohibition be repealed.**
31. Prohibitions of public assemblies near a dangerous object should be limited to those areas closed to the public, and presumably fenced in. If the area near a dangerous object is open to the public, there appears to be no reason to exclude an orderly public assembly in the same area. Therefore, **it is recommended that paragraphs 2 and 4 of Article 9(3) be reconsidered in light of this position.**
32. The provision of the Law requiring that the regulatory authority designate a “*special area for conducting gatherings, meetings and demonstrations in each city and region*”³¹ poses a more serious concern as incompatible with the very concept of the right to peacefully assemble as a fundamental freedom. It is assumed that all public spaces are open and available for the purpose of holding assemblies and the burden to justify any restrictions imposed is on the State. The ICCPR provides 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.”³² Banning or discouraging assemblies on sites other than those pre-approved by the authorities cannot be justified in light of the norms of international law governing freedom of assembly. Prohibition is a measure of last resort, which may be taken only if there exist reasonable grounds supporting the concern that the assembly would present a threat to public order, and where a less restrictive response would not be possible. The principle of proportionality requires a proper evaluation of the individual circumstances affecting the holding of an assembly. A threat to public order cannot be assumed or presupposed and instead needs to be subject to a case-by-case assessment taking into account the circumstances of the case under consideration. It ensues that blanket provisions which

³¹ *Id.*, Article 9(6) (“*Relevant bodies of executive power shall provide a special area for conducting gatherings, meetings and demonstrations in each city and region. A list of places designed for gatherings, meetings and demonstrations shall be published in a press and shall be brought to the population by other means. Organizers can choose one of the places designed for gatherings, meetings and demonstrations.*”)

³² ICCPR, Article 21. Full text version of the Covenant is available at <http://www.ohchr.org/english/law/ccpr.htm> (last visited on October 5, 2006).

ban assemblies in particular locations can only be regarded as disproportionate. **It is therefore strongly recommended that the provisions of Article 9(6) requiring that the regulatory authority designate a “special area for conducting gatherings, meetings and demonstrations in each city and region” be repealed.**

33. The Law bans “assemblies of political content” from “places of worship, chapels and cemeteries.”³³ This provision is problematic in two respects. First, content-based restrictions cannot be imposed on the exercise of the right to freedom of peaceful assembly. It is essential that the same standards be applied to all peaceful assemblies irrespective of their core message. The rights and freedoms of others, including the freedom of thought, conscience and religion, constitute one of the legitimate grounds that may justify under international law an interference with the right to freedom of peaceful assembly. However, none of these grounds can be used to justify restrictions based on the content of the message of a public assembly. Second, rather than declaring certain areas like places of worship, chapels and cemeteries to be improper sites for assemblies, restrictive measures (from limitation to prohibition) should be limited to those assemblies that will be disruptive of activities that regularly occur at the site. For example, a public assembly adjacent to or in a cemetery should not be prohibited unless it is disruptive of funerals taking place at the same time. Other circumstances relevant to the situation considered might also come into play, but any measure by the regulatory authority needs to be taken in consideration of these circumstances and thus cannot be anticipated in the Law *in abstracto*. The principle of proportionality requires a proper evaluation of the individual circumstances, but also of the measures that may need to be taken in the light of these circumstances. **Therefore, it is recommended that the blanket prohibition on assemblies in “places of worship, chapels and cemeteries” be repealed.**
34. The Law allows holding of assemblies only within narrow specified time limits (from 8:00 AM-7:00 PM in summer, and from 9:00 AM-5:00 PM in other seasons).³⁴ This is presumably intended to prevent possible inconvenience for the neighborhood residents, however, a blanket prohibition is again a disproportionate response. A more balanced approach would be on case-by-case basis, thus allowing assemblies to be held at or continue into nighttime where no inconvenience is likely to be caused to others (e.g. where the assembly is a silent night vigil or takes place in a park and is out of sight and sound for the closest area residents). A possible option may be to consider introducing a prohibition on the use of amplifiers and/or lighting and visual effects at assemblies taking place after regular hours.
35. As a rule and as an alternative to blanket restrictions or prohibitions contained in Article 8 and 8, **it may be worth considering a general provision - complementary to Article 7(3) and (4) - stating that a public assembly may be banned only if there exist reasonable grounds supporting the concern that the assembly would present a serious threat to public order, and where a less restrictive response would not be possible.** The notion of “public order” should be defined so that it cannot be used as a means of imposing content-based restrictions and permitting censorship. A possible definition would be to stipulate that expression be punished as a threat to public order only if a government can demonstrate that

³³ Law on Freedom of Assembly, Article 9(4).

³⁴ *Id.*, Article 9(8).

the expression is intended to incite imminent violence or is likely to incite such violence and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

36. The Law does not accommodate for simultaneous holding of public assemblies regardless of the practical feasibility of conducting more than one event at the same venue and time. The provisions of Article 9(2) stipulate that “[i]f another event is arranged at the place and time stipulated in a written notification of organizers of an assembly, a relevant body of executive power shall provide a possibility for organizers to determine another place and time.”³⁵ Simultaneous holding of public assemblies is not *a priori* impossible, and a blanket prohibition on simultaneous holding of events seems to be a disproportionate response to the risk of disruption. Moreover, differential regulation would be justified depending on whether or not the events are related to each other.
37. As far as unrelated public assemblies are concerned, a prohibition on their simultaneous holding is clearly out of proportion to the risk of disruption and the primary factor that should guide the decision-maker is the physical possibility to accommodate two events sharing the same venue and time given the capacity of the venue and the estimated number of participants.
38. As regards related public assemblies, two case scenarios are possible depending on whether the assemblies are concurring or dissenting. While it is relatively easy to provide a solution for concurring events (the decision here should be based on the assessment of the physical possibility in very much the same manner as for unrelated demonstrations), the answer for dissenting assemblies (often termed counter-demonstrations) is not that clear-cut.
39. While the ability to express a contrary opinion is an indispensable element of both freedom of expression and freedom of assembly, “*the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.*”³⁶ It is therefore pivotal to ensure that the legitimate objective of preventing the public assembly from being disrupted be balanced against the rights of counter-demonstrators. The recommended approach is to facilitate counter-demonstrations so that they occur within “sight and sound” of their target in so far as this does not prevent the other demonstration from taking place. In practical terms, this means that counter-demonstrations should be dealt with through the exercise of policing powers designed to facilitate expression of all points of view while simultaneously precluding one group from physically interfering or disrupting the communications of the other. It is important to note that “policing” is meant to imply a range of measures reasonably calculated to maintain public order, without burdening the communication of any group, to the extent possible under the circumstances.
- 40. It is recommended that the prohibition on simultaneous holding of public assemblies be lifted and the Law be amended so that to allow simultaneous events to occur within**

³⁵ *Id.*, Article 9(2) (“If another event is arranged at the place and time stipulated in a written notification of organizers of an assembly, a relevant body of executive power shall provide a possibility for organizers to determine another place and time. A written notification about the changed time and place shall be submitted to the relevant body of executive power no later than 3 days prior to a new date of an event.”)

³⁶ See European Court of Human Rights, *Plattform “Ärzte für das Leben” v. Austria*, Judgment of the Court, 21 June 1988, para 32.

“sight and sound” of their target in so far as this does not prevent the other demonstration from taking place.

41. The Law restricts the number of picketers to 50 persons and the volume of amplification to 10 watt. These restrictions do not seem to be justifiable in view of the applicable international standards, and **it is recommended that they be repealed.**
42. Finally, the Law requires that organizers of a street procession “*coordinate its route with the relevant body of executive power.*”³⁷ Since the exact scope of “coordination” is left undefined, this provision may be interpreted so as to provide the regulatory authority with an effective right to veto the route. **It is recommended that the provision in question be revised to clarify that the route shall be decided as a matter of negotiated compromise between the organizers and the regulatory authority.**

Article 11

43. Article 11 provides for a right to appeal decisions made on the basis of Articles 7 through 9³⁸. The time period for the consideration of the complaint by the court is three days, while the deadline for the response by the regulatory authority is two days before the planned assembly date. **It is recommended that the provisions of Article 11 be amended to reduce the time period for the consideration of the complaint by the court to two days so that the assembly may still be held on the planned date should the court overrule the prohibition.** The availability of judicial appeal against the prohibition decision is an essential safeguard against the possibility of abuse. **Therefore, it may be worth strengthening this provision by a requirement that courts give priority to appeals against restrictions on assemblies.**

Article 12

44. The Law does not define a “participant” of an assembly. This may present implementation problems since a clear-cut definition of who is participant of a public event helps ensure that accidental bystanders or persons present as observers, monitors or media professionals are not included and, consequently, not held liable for any breaches that may occur.
45. The drafter presumably tried to address this issue by introducing a provision requiring all participants to “*have clearly visible signs distinguishing them.*”³⁹ This solution⁴⁰ is, however, unduly burdensome for the participants and organizers alike, as well as presents an obstacle for those who may have not known about the assembly in advance and join it spontaneously. The latter is an important concern since it is a natural aim of any assembly to raise awareness of whatever cause it advocates and to garner support of the general public. **It is**

³⁷ Law on Freedom of Assembly, Article 9(7).

³⁸ *Id.*, Article 11 (“*All the decisions provided for in Article 7-9 of the present Law can be appealed in a relevant court. A complaint shall be considered by court within 3 days. Court decisions on these complaints can be appealed before superior courts.*”)

³⁹ Law on Freedom of Assembly, Article 12(4) (“*Participants of an assembly must have clearly visible signs distinguishing them.*”)

⁴⁰ Note that there may be a misunderstanding due to a translator’s error. The provision in question appears under Article 12 which deals with organizers rather than participants of assemblies, and may actually read as a requirement for organizers. Clarification of this issue would be welcome.

recommended that the Law adopt a definition of who is participant of a public assembly, as well as repeal the requirement that every participant wear clearly identifiable insignia.

46. Pursuant to Article 12, “*preparatory work on conducting peaceful assembly can not be restricted except in cases stipulated in Article 7 of the present Law.*” It is not clear why this provision is needed at all. There is no convincing reason why organizers should be prevented from preparing an assembly in anticipation of it taking place without restrictions. The presumption should always remain in favor of the holding of assemblies, and such presumption shall prevail even in a system where prior authorization is required. In the instance addressed by the Article in question, until the permission is denied, the regulatory authority have no right to impose restrictions on measures taken in preparation of an event in respect of which no decision has yet been made. What is not forbidden is permitted, and not vice-versa. **It is recommended that this provision be repealed.**

Article 13

47. Article 13(5) stipulates that “*a participant of a lawful assembly can not be later brought before responsibility for participation in such an assembly.*” Only participants who “violate the law” in the course of a lawful assembly can be held liable for their conduct. It might be worth considering expanding this provision in order to allow “reasonable excuse” defense in cases concerning violations of public assembly-related legislation. Participants in unlawful assemblies should be exempted from liability when they had no prior knowledge that the assembly had not been authorized. Likewise, if an authorized assembly turns out to be non-peaceful, individual participant who does not himself or herself commit any violent act cannot be prosecuted on the sole ground of participation in an illegal gathering⁴¹.
48. Under similar circumstances, organizers cannot be held responsible, if they made reasonable efforts to prevent spontaneous violence but the situation went out of their control. In no case should the law allow for holding organizers liable for any actions by third parties, which is especially important in the context of the state’s duty to protect lawful assembly. Holding organizers of an event liable would be a manifestly disproportionate response since this would imply that organizers are imputed responsibility for acts by individuals who were not part of the plans for the event and could not have been reasonably foreseen. In general, the defense of “reasonable excuse” is applicable where failure to comply was not willful but a matter of impossibility. **It is recommended that Article 13 be amended so as to allow the “reasonable excuse” defense for organizers and participants alike.**
49. Chapter IV of the Law places emphasis on the responsibilities of organizers and participants, while it grants extensive powers to law enforcement officials in connection with assemblies. The Law falls short of ascertaining the positive obligation of the state to actively protect peaceful and lawful assemblies. Under the Law, it should be required to secure conditions permitting the exercise of the freedom of assembly, and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully. This duty also implies that a lawful and peaceful assembly must be protected against all those who would unlawfully disrupt an assembly, including counter-demonstrators. **It is recommended that Article 1(2) be supplemented with an express provision in Chapter IV mandating law enforcement**

⁴¹ See European Court of Human Rights, *Ezelin v. France*, Judgment of the Court, 18 March 1991, para 50.

authorities to take all necessary measures to protect peaceful and lawful assemblies. Obviously, the duty to protect lawful and peaceful assemblies implies that the police be appropriately trained to handle the holding of such assemblies. This not only means that they should be skilled in techniques of crowd management that minimize the risk of harm to all concerned, but also that they should be fully aware of, and understand, their responsibility to facilitate as far as possible the holding of an assembly.

Article 14

50. Article 14(2) includes an item relating to the use of “*relevant force [by bodies of police] or the suspension of an assembly and dispersal of its participants.*” International standards give very specific and detailed guidance regarding the use of force in the context of dispersal of unlawful assemblies. The Basic Principles on the Use of Force and Firearms by Law Enforcement officials provide that “[i]n the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”⁴² They further stipulate that “[i]n the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.”⁴³ Principle 9 provides that “[l]aw enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.” **It is recommended that Article 14(2) be expanded to include the requirements stated above. Different approaches are possible, and it might be sufficient to add a reference to the relevant legislation addressing these matters.**
51. The provisions of Articles 14(2.4), 14(3) and 14(5) mention the use of “relevant” force. It is the general stance of international law that use of force must be exceptional rather than norm to disperse or manage assemblies, and any use of force must be strictly necessary and proportionate to the threat rather than “relevant.” **It is recommended that the provisions in question be reworded accordingly.**
52. Provisions of Article 14(4) and 14(6) that “[p]owers of bodies of police provided for in the legislation of the Republic of Azerbaijan are not limited to the present Law” may be misinterpreted to threaten the use of the military and potentially lethal force. **It is therefore recommended that they be revised to comply with the safeguards and restrictions provide for by the applicable international standards, most importantly the U.N. Code of Conduct for Law Enforcement Officials⁴⁴ and Basic Principles on Use of Force.⁴⁵**

⁴² Principle 13, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁴³ *Id.*, Principle 14.

⁴⁴ Fulltext version of the Code of Conduct is available at http://www.unhchr.ch/html/menu3/b/h_comp42.htm (last visited on October 9, 2006).

⁴⁵ Fulltext version of the Basic Principles is available at http://www.unhchr.ch/html/menu3/b/h_comp43.htm (last visited on October 9, 2006).

Article 16

53. Chapter V includes a final provision which stipulated that “[p]ersons that violated parts I-III of Article 8, parts III, V, VI and VII of Article 12 and part VI of Article 13 of the present law shall bear responsibility in accordance with the legislation of the Republic of Azerbaijan.”⁴⁶ Laws must be formulated with sufficient precision and be as inclusive as possible to enable everyone concerned to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. A mere and indiscriminate reference to the “legislation of the Republic of Azerbaijan” is likely to be intimidating and to discourage organization of a participation in any assembly. While there might be no need to specify these offences in a separate law, it is essential that the latter law contain express references to the relevant provisions of the relevant administrative and/or criminal legislation where the offences are defined and the penalties provided for. **It is therefore recommended that this Article be expanded to include such references.**
54. In the absence of information regarding the administrative and/or criminal provisions applicable to breaches of the present Law, it is obviously not possible to comment on these provisions. Nevertheless, it might be worth recalling that the principle of proportionality also applies to the imposition of any sanctions or penalties for breaches of the law. These should be strictly proportionate to the aim being pursued by the authorities. Furthermore, it is not clear whether Article 16 foresees liability of law enforcement officials for breaches of the law. **If not, it ought to be remedied, but again the relevant legislation and/or other instruments (including non-normative instruments such as a code of conduct) should be expressly referred to, and the general principle of liability of law enforcement officials should be stated in Chapter IV.**

[end of text]

⁴⁶ Article 16. ‘Responsibility for the violation of the present law’.