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COMMENT

ON DRAFT AMENDMENTS TO THE LAW ON CONDUCTING MEETINGS, ASSEMBLIES, RALLIES AND DEMONSTRATIONS OF THE REPUBLIC OF ARMENIA AND TO RELATED PROVISIONS OF THE CRIMINAL CODE

Pursuant to discussions in Yerevan on 17 March 2005 and amendments made to
the Draft in the 1st reading

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I. Introduction

1. *A meeting was held in Yerevan on 17 March 2005, in which the Vice-President of the National Assembly (Mr. Tigran Torosyan), the Minister of Justice (Mr. David Harutyunyan), representatives of the Venice Commission (Ms. Finola Flanagan and Ms. Simona Granata), OSCE/ODIHR experts (Mr. Neil Jarman and Mr. Michael Hamilton) and representatives of the OSCE/ODIHR (Mr. Denis Petit and Ms. Irina Urumova) participated. This meeting aimed at discussing several issues concerning the compliance of the Law "On Conducting Meetings, Assemblies, Rallies and Demonstrations" as well as related provisions of the Criminal Code and the Code of Administrative Violations with international human rights standards.*

The discussions took into account previous opinions on the legislation in question from ODIHR and the Venice Commission. They were detailed and far-reaching and allowed for clause-by-clause consideration of the Law and the recent related amendments to both Codes.

As a result of this meeting, the Armenian authorities have drafted a law amending the Law "On Conducting Meetings, Assemblies, Rallies and Demonstrations", and have proposed certain amendments to the Criminal Code.

The draft amendments passed their 1st reading in the National Assembly on 19 May 2005. This Comment relates to the text of the draft amendments as they passed the 1st reading.

2. *In some important respects, the changes proposed mark an improvement over the initial version of the proposed amendments. That said, the protracted nature of the discussions, and the need for revised amendments to be drafted and subsequently translated into English, inevitably meant that a number of important points could not be finalized during the meeting of 17 March. Satisfactory conclusion, therefore, was not reached in respect of every issue. However, it shall be acknowledged that some of the recommendations contained in an earlier opinion dated 20 May of this year have been taken into consideration in the draft amendments as adopted in the first reading.*
3. *For the most part, the present opinion reiterates the comments made in earlier advice. It has been updated to take into account the latest changes effected in the draft amendments as adopted in the first reading. That said, it concentrates on the newly revised amendments which had not been previously proposed and commented on in earlier opinions, including those issues which we believe remain outstanding. As stated previously, the wording of some of the amendments appears unclear. This may be due to the quality of their translation into English. We have commented below where we are unsure as to the precise meaning intended.*

II. Executive Summary¹

¹ The Executive Summary was drafted by the OSCE/ODIHR for its own purposes and does not feature in the joint opinion as published by the Venice Commission.

4. In some important respects, the changes proposed mark a significant improvement over the initial version of the proposed amendments. Furthermore, some of the recommendations contained in an earlier opinion dated 20 May of this year have been taken into consideration in the draft amendments as adopted in the first reading.
5. Nevertheless, the law still presents certain shortcomings that have already been emphasized in previous advice. It continues to be excessively detailed with excessive differentiation between different categories of events in a manner which is not properly linked to permissible reasons for restrictions.
6. Furthermore, blanket restrictions, such as those contained in Articles 9(3)(1) – 9(3)(3) preclude the consideration of the individual circumstances of each case and therefore run counter to the principle that restrictions be proportionate to the legitimate aim being pursued.
7. In light of the above mentioned concerns, as well as others outlined herein, this comment presents recommendations for further changes to the law which may be summarised as follows:
 - 6.1. It is recommended that the provisions referred to in paragraph 5 above be deleted from the legislation given that local self-governance bodies retain the general discretion to impose restrictions on events where the legitimate aims in Article 11(2) of the European Convention on Human Rights are engaged.
 - 6.2. It is proposed to establish clearly proportionality as the guiding principle in the regulation of public assemblies.
 - 6.3. It is recommended as vitally important that the government consult with local NGOs, civil society representatives and other relevant stakeholders both before finalizing amendments to the law and also after any reforms have been adopted.
 - 6.4. It is proposed for some official means of monitoring the application of the law, and of collating relevant statistics, be devised. In this regard, it has been proposed below to insert into the law a clause which places a duty upon those bodies charged with its administration (principally local self-governance bodies) to “keep under review, and make such recommendations as they think fit to the Government concerning, the operation of this Law”.
 - 6.5. It is highly recommended that the specific analysis and proposals contained therein, on Articles 1, 7, 9, 10, 11, 12, 13 and 14 be taken into consideration.
 - 6.6. It is recommended that Article 225 of the Criminal Code be redrafted to read “Organisation and holding of a public event that violates the requirements of the law”.

III. General Observations

8. The law “On Conducting Meetings, Assemblies, Rallies and Demonstrations” exists in the context of Articles 26² and 44³ of the Constitution of the Republic of Armenia, and is supplemented by various provisions in the criminal and administrative law. The law must meet the requirements of Article 11 of the European Convention. The text of this law is intended to be the basis of the right of assembly and how the right is guaranteed and protected in national law. The law must meet the required standards.
9. It has been stated in earlier advice that, as a fundamental right, the right to assemble 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. Whilst it is not essential to have a specific law on public events and assemblies states may have such a law but it must be limited to setting out the legislative bases for permissible interferences by state authorities. Any system of notification for holding assemblies must not impair or prevent the lawful exercise of the right. The law as adopted and the proposed amendments set out in great detail the conditions for exercising the constitutionally guaranteed right of assembly. Specific criticisms have already been made but only some of these have been addressed in the proposed amendments.
10. The law still presents substantial shortcomings as detailed in previous advice. It continues to be excessively detailed with excessive differentiation between different categories of event in a manner which is not properly linked to permissible reasons for restrictions. This is so even though the bases for legitimate restriction as contained in the European Convention Article 11 are set out in Article 1 of the law.
11. Blanket restrictions, such as those contained in Articles 9(3)(1) – 9(3)(3) preclude the consideration of the individual circumstances of each case and therefore run counter to the principle that restrictions be proportionate to the legitimate aim being pursued. It is welcome that Articles 7(6) and 10(3), which contained similar blanket restrictions, have been removed from the Draft. We recommend that the provisions of Articles 9(3)(1) – 9(3)(3) as well be deleted from the legislation given that local self-governance bodies retain the general discretion to impose restrictions on events where the legitimate aims in Article 11(2) of the European Convention on Human Rights are engaged.

² Article 26 reads as follows: “*Citizens are entitled to hold peaceful and unarmed meetings, rallies, demonstrations and processions.*” [Constitution of the Republic of Armenia, 5 July 1995], *unofficial translation*

³ Article 44 reads as follows: “*The fundamental human and civil rights and freedoms established under **Articles 23 through 27** of the Constitution may only be restricted by law, if necessary for the protection of state and public security, public order, public health and morality, and the rights, freedoms, honor and reputation of others.*” [Constitution of the Republic of Armenia, 5 July 1995, *unofficial translation*].

12. We would emphasize that how this law is interpreted and implemented will also be of great significance in terms of its compliance with international human rights standards. In this regard, the European Court of Human Rights has stated that the right to peaceful assembly should not be interpreted restrictively and any restrictions should be construed narrowly, and that in general, rights must be “practical and effective” not “theoretical or illusory.”
13. There have been reports by international and domestic non-government organizations⁴ that document past restrictions on people travelling to demonstrations, the rejection of applications to hold demonstrations on the basis of either insufficient or illegitimate grounds, and the use of excessive force by the police. These, together with recent reports concerning the policing of demonstrations relating to the A1+ Television Company,⁵ emphasize the need to clearly establish proportionality as the guiding principle in the regulation of public assemblies.
14. In light of the above, it is vitally important that the government consult with local NGOs, civil society representatives and other relevant stakeholders both before finalizing amendments to the law and also after any reforms have been adopted. Such groups will clearly be affected by the legislation in different ways, and it is imperative that their experience and views be given serious consideration so that the legislation, and the procedures and working practices which develop around it, will work to the mutual benefit of all concerned.⁶ Such consultation can help foster a spirit of co-operation rather than confrontation, and can also improve understanding of the government’s intentions in bringing forward these amendments.
15. Given that any new legislation inevitably entails a process of ‘bedding in’ and fine tuning, it will be important to monitor the operation of the law. In this regard, it would be beneficial to insert into the law a clause which places a duty upon those bodies charged with its administration (principally local self-governance bodies) to “keep under review, and make such recommendations as they think fit to the Government concerning, the operation of this Law”. We recommend that some official means of monitoring the application of the law, and of collating relevant statistics, should be devised.

IV. Analysis of the proposed amendments to the law “On Conducting Meetings, Assemblies, Rallies and Demonstrations”

Article 1

⁴ For instance, Human Rights Watch [*Cycle of Repression: Human Rights Violations in Armenia. Human Rights Watch Briefing Paper*, May 2004, <http://www.hrw.org/backgrounder/eca/armenia/0504/armenia-election.pdf>], Helsinki Association [*Annual Report on Human Rights in Armenia for the Year of 2004 prepared by Helsinki Association*, Yerevan 2005, pp.14-17] and Partnership for Open Society [<http://www.csi.am/eng/index.php?goto=news&id=59>].

⁵ <http://www.hra.am/old/eng/index1.php?goto=news&id=1938>
<http://www.hra.am/old/eng/index1.php?goto=news&id=1939>
<http://www.hra.am/old/eng/index1.php?goto=news&id=1943>

⁶ See also our comments in relation to Article 9(3)(2) below.

The proposal is to include in the law the reasons for restriction which are permitted by Article 11(2) of the Convention. Given that the Armenian legislature has pursued a policy of detailed regulation of the exercise of the right of assembly, the setting out in the law of the only circumstances in which restrictions are permissible in this manner is welcomed. Though, in order to improve its coherence, we would suggest that the article be altered to read:

1.1 The objective of this law is to create the necessary conditions for citizens of the Republic of Armenia, foreign citizens, stateless persons (hereafter referred to as citizens) and legal persons to exercise their constitutional right to conduct peaceful, weaponless meetings, assemblies, rallies and demonstrations.

1.2 The exercise of this right is not subject to any restriction except in cases prescribed by the Law and which 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 and morals, or for the protection of the rights and freedoms of others. This article does not prevent the imposition of lawful restrictions on the exercise of police and state administrations.

1.3 This law regulates relations pertinent to conducting peaceful meetings, assemblies, rallies (processions) or demonstrations (including pickets), as well as other events.

Article 7

It is commendable that the provisions of Article 7(6), which provided for a blanket prohibition of events “in the proximity of healthcare, pre-school and education institutions in case such actions disrupt regular operation of those institutions” have been removed from the Draft.

Article 9

The necessity and proportionality of the blanket prohibitions contained in Article 9(3) remains a serious concern.

In the course of the discussions held in March 2005 in Yerevan, our attention was drawn to a Decree, which serves as a basis for drafting this particular provision. Obviously, more precise information would be needed in respect of that particular Decree, however it appears from Article 44⁷ that the right to freedom of assembly may only be restricted – under limitatively enumerated grounds laid down in that same Article - by law, not by Decree. Obviously, Article 9(3) reflects a will to remedy that shortcoming.

That said, we are not satisfied that the prohibitions contained in this Article are linked to a permissible reason for restriction. This provision undermines the fundamental presumption (as provided for in Article 1) that the right to freedom of peaceful assembly is guaranteed to everyone who has the intention of organising a peaceful demonstration. International best practice is clear that participants in public events must be able to communicate their message effectively. Jurisprudence arising from the First Amendment to the US Constitution⁸, for example, holds that the organizer

⁷ See note 3 above.

⁸ See for example Gora, J., Goldberger, D., Stern, G., and Halperin, M. (1991) *The Rights To Protest: The Basic ACLU Guide to Free Expression*. Southern Illinois University Press, Carbondale and Edwardsville.

must be afforded an alternative forum that is both accessible and situated in an area where the intended audience is expected to pass. Thus, in assessing the proportionality of restrictions, a court is likely to consider the speaker's intended audience and the extent to which the notified location contributes to the speaker's message.

It is welcome that Article 9(3)(4), which afforded much too broad a discretion and contained the potential for the imposition of unnecessary and disproportionate restriction, has been deleted. It is also welcome that Article 9(3)(3) has been edited to remove the reference to "areas or units of special, utmost important significance." However, it is still questionable whether the list given in Article 9(3)(3) is reasonable,

We recommend that the provisions in Articles 9(3)(1) – 9(3)(3) be deleted entirely given that Article 13 already contains adequate provision for restrictions to be imposed in any situation where, for example, there is a present and real danger to life or the well-being of persons.

Furthermore, Article 13(3) provides that any prohibition of a mass public event may be appealed in court and it will ultimately be for the court to rule upon the proportionality of any restriction on the facts of the specific case. Article 9, however, effectively excludes the right of appeal in certain circumstances by arbitrarily prohibiting all events from specific locations on a statutory basis (as reiterated by Article 13(1)(4)).

Article 10

The removal of Article 10(3) is welcome both from the viewpoint of limiting the discretion in the application of the law and from that of making the same set of rules applicable to assemblies relating to "election or referendum campaigns."

Article 11

The amendment to Article 11(2) in relation to stateless persons is welcome. It may, however, introduce an unintended anomaly in that citizens who do not hold a current passport – or who have lost their passport – would not be able to satisfy this provision as currently worded. A possible solution would be for Article 11(1)(2) simply to require that notification include any document certifying the identity of the organizer.

Article 11(5) also requires further clarification. We believe that this article should state that it is the responsibility of the authorities (not the organiser) to send a copy of the notification to the police.

Article 12

Article 12(6) states that:

In the result of consideration of the notification, in the absence of the circumstances referred to in Article 13, the notification about a mass public event is taken into consideration.

Again, it is possible that our concerns arise from the translation of this provision, but it is unclear what precisely the sentence means. It should, perhaps, state that in the absence of the circumstances referred to in Article 13, the event will be facilitated according to the terms of the submitted notification.

Article 13

We welcome the removal of the prohibition of mass public events where the event might result in traffic disruption. This prohibition had previously been criticised as excessive.

It is also welcome that Article 13(1)(6), which had been previously criticized for providing unequal treatment to assemblies taking place in the highways, has been removed.

We also welcome the removal of the prohibition on counter-demonstrations contained in article 13(7). We had criticised in earlier opinions the prohibition on such demonstrations which should generally be allowed. Article 13(2), which provides for prohibition where “some other event that precludes convention of the event takes place on the mentioned date, time and location” should be clarified so as to ensure that this provision is not used to prohibit counter-demonstrations.

Article 13(4) currently requires the authorities to offer organisers an alternative date or time if an event is prohibited under 13(1)(2) and 13(1)(3). As we emphasized during discussions on 17 March, we believe that the authorities and the organisers should explore alternatives for allowing an event (such as requiring that a rally proceeds along one side of the road to allow for the passage of vehicular traffic) rather than imposing a simple and outright ban. One way of allowing for this in the legislation would be to include reference to ‘manner’ in Article 13(4) in addition to the ‘time’ and ‘place’ restrictions already referred to. One possible draft of Article 13(4) would therefore be:

Should the authorized body find that there are grounds to restrict a mass public event pursuant to points 2, 3 or 6 of para. 1 of this Article, the authorized body shall offer to the organizer other dates (in the place and at the time specified in the notification) or other hours (in the place and on the date specified in the notification) or shall impose other proportionate conditions upon the manner of the event (on the same date, at the same time and in the same place specified in the notification).

Article 14

In previous advices the fact that the law would not permit spontaneous demonstrations except for “non-mass” assemblies was the subject of particular criticism. The new Article 14(1)(1) would appear indirectly to allow spontaneous mass public events to continue where they evolve out of non-mass public events because the police are not given the discretion to stop them. However, it is not at all clear that spontaneous events are in general permitted and the law continues to be unsatisfactory in this regard. We would recommend an addition be made to Article 10 specifying the contexts under which spontaneous mass demonstrations would be regarded as lawful.

V. Analysis of the proposed amendments to the Criminal Code

We note the changes that have been proposed to Article 225 of the Criminal Code. However, whilst the term ‘illegal public event’ has been removed from the sub-clauses 225.1 and 225.2, it remains in the text of the main clause. The reservations that we expressed in the previous draft opinions therefore remain. We would

recommend that Article 225 be redrafted to read ‘Organisation and holding of a public event that violates the requests of the law’.

We welcome the deletion of the proposed new Article 258 of the Criminal Code.

[E nd of Text]