



**OPINION ON THE DRAFT LAW OF THE REPUBLIC OF  
ARMENIA ON THE PROCEDURE OF CONDUCTING  
GATHERINGS, MEETINGS, RALLIES AND  
DEMONSTRATIONS**

**ORGANISATION FOR SECURITY AND CO-OPERATION IN  
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OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN  
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**EXPERT JEREMY McBRIDE**

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# **OPINION ON THE DRAFT LAW OF THE REPUBLIC OF ARMENIA ON THE PROCEDURE OF CONDUCTING GATHERINGS, MEETINGS, RALLIES AND DEMONSTRATIONS**

## **Introduction**

1. This opinion is concerned with the draft law of the Republic of Armenia on the Procedure of Conducting Gatherings, Meetings, Rallies and Demonstrations which is to be considered by the Deputies of the Parliament in April 2004. It has been prepared at the request of the Office of Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe. The opinion examines first the articles concerned with the draft law's subject and scope, then turns to those dealing with rights and obligations and the regulation of public and deals finally with those relating to liability and final provisions. In all cases it reviews the compatibility of these articles with international standards, concluding with a summary of the provisions appearing to require some attention and an overall assessment of the compatibility of the draft law with those standards.

2. The examination of the draft law is primarily directed to the issue of compliance with the right to freedom of assembly which is guaranteed in Article 26 of the Constitution of the Republic of Armenia, as well as a number of international instruments to which Armenia has committed itself to secure, namely, Article 20 of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights (hereafter International Covenant), Article 5(d)(ix) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 15 of the Convention on the Rights of the Child, Article 11 of the European Convention on Human Rights (hereafter European Convention) and Paragraph 9.2 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990. However, it is important to bear in mind that freedom of assembly can be a particular manifestation of freedom of expression<sup>1</sup> and of religion<sup>2</sup> which are also guaranteed by the foregoing instruments so that the draft law must also be in compliance with them. Furthermore interference with freedom of assembly is likely to have particular implications for rights such as those to liberty and security of the person<sup>3</sup> and to respect for private life<sup>4</sup> so that these may also be relevant for an examination of the draft law. In addition the regime governing freedom of assembly such as is found in the draft law, or a related body of law, also needs to make provision for securing effective remedies in respect of violations that are alleged to have occurred and which have in fact occurred<sup>5</sup>.

3. The formulation of the constitutional and international guarantee of freedom of assembly in the previously cited instruments is generally in similar broad terms, all of which underline the fundamental contribution made by freedom of assembly towards the maintenance of a democratic society. However, only the European Convention and the International Covenant give any real indication of the legitimate considerations that might be invoked to restrict the exercise of this freedom. Moreover it is the case law of the European

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<sup>1</sup> Article 19 of the International Covenant and Article 10 of the European Convention.

<sup>2</sup> Article 18 of the International Covenant and Article 9 of the European Convention

<sup>3</sup> Article 9 of the International Covenant and Article 5 of the European Convention

<sup>4</sup> Article 17 of the International Covenant and Article 8 of the European Convention

<sup>5</sup> Article 2(3) of the International Covenant and Article 13 of the European Convention

Court of Human Rights and the United Human Rights Committee, the two bodies respectively charged with interpreting these two instruments<sup>6</sup>, that affords a real guide to the substantive requirements of freedom of assembly and which must be taken into account in evaluating the provisions of the draft law. It is clear from the rulings of these two bodies that the international guarantee of freedom of assembly covers a wide range of gatherings, whether static or in motion and whether held on private or public property, including in the case of the latter streets and highways<sup>7</sup>. Moreover the rights of the participants and the organisers should be recognised as distinct ones<sup>8</sup>. There is no right to hold assemblies in a particular place but it can be expected, subject to legitimate regulatory concerns being observed, that public places are available for this purpose and - although this is likely to be very exceptional - it cannot be entirely excluded that it should be possible for persons to assemble on private property where this performs some form of public function<sup>9</sup>. Certainly there can be no limitation on the holding of an assembly that is not consistent with prescribed objectives<sup>10</sup> and where regulatory concerns prevent it from being held in a particular place a suitable alternative should be available<sup>11</sup>. The means of communicating the message at an assembly should be peaceful as the guarantee does not cover a violent activity<sup>12</sup> but inconvenience to others should not be equated with a demonstration ceasing to be peaceful and some such inconvenience must be expected<sup>13</sup> although this should not be excessive<sup>14</sup> and persistent obstruction of others is also not acceptable<sup>15</sup>. There is a duty to protect demonstrators from being disrupted by others but the expression of a contrary view does not of itself amount to disruption and should not be suppressed on that account. The extent of the protection that must be provided may be affected by the policing resources available, so that on occasion it may not be possible to demand that an unpopular meeting be allowed to proceed<sup>16</sup> and it may be reasonable to remove the focus for particular disorder<sup>17</sup>. All restrictions on the exercise of freedom of assembly must pass the test of proportionality<sup>18</sup> - 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<sup>19</sup>. The process of regulation can involve a requirement of advance notification

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<sup>6</sup> As well as the case law of the former European Commission of Human Rights as regards the European Convention.

<sup>7</sup> See Appl 8191/78, *Rassemblement Jurassien Unité Jurassienne v Switzerland*, 17 DR 93 (1979) and Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980) and Appl 33689/96, *Anderson v United Kingdom*, 91 DR 79 (1997).

<sup>8</sup> Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980).

<sup>9</sup> *Appleby v United Kingdom*, Judgment of the Court, 6 May 2003 and Appl 33689/96, *Anderson v United Kingdom*, 91 DR 79 (1997).

<sup>10</sup> National security, public order, (*ordre public*), public safety, the protection of public health and morals and the protection of the rights and freedoms of others in the case of both the European Convention and the International Covenant. The European Convention also cites the prevention of crime and expressly authorises restrictions on the exercise of this freedom by members of the armed forces, the police and the administration of the State but these are probably implied in those expressly found in the International Covenant.

<sup>11</sup> Appl 25522/94, *Rai, Almond and "Negotiate Now" v United Kingdom*, 81 DR 146 (1995).

<sup>12</sup> Appl 19601/92, *Çiraklar v Turkey*, 80 DR 46 (1995).

<sup>13</sup> Appl 13079/87, *G v Federal Republic of Germany*, (1989) 60 DR 256.

<sup>14</sup> *The Gypsy Council v United Kingdom*, Judgment of the Court, 14 May 2002 (Admissibility)

<sup>15</sup> *Nicol and Selvanayagam v United Kingdom*, Judgment of the Court, 11 January 2001 (Admissibility).

<sup>16</sup> *Plattform 'Ärzte für das Leben v Austria*, Judgment of the Court, 21 June 1988.

<sup>17</sup> *Chorherr v Austria*, Judgment of the Court 25 August 1993.

<sup>18</sup> Appl 8191/78, *Rassemblement Jurassien Unité Jurassienne v Switzerland*, 17 DR 93 (1979).

<sup>19</sup> *Ezelin v France*, Judgment of the Court, 26 April 1991, Appl 9278/81 and 9415/81, *G and E v Norway*, 35 DR 30 (1983) and Appl 13079/87, *G v Federal Republic of Germany*, (1989) 60 DR 256.

of an event occurring<sup>20</sup>, a requirement of permission for it to take place<sup>21</sup> and the imposition of conditions as to the manner, time or place but the acceptability of these techniques will depend on them not being such that their design or actual operation leads to the holding of an assembly being unjustifiably frustrated<sup>22</sup>. Appropriate regulation is only going to be regarded as occurring where decision-making is based on the individual circumstances of the case so that a blanket application of rules and reliance on mere supposition is unlikely to be acceptable<sup>23</sup>. The application of restrictions should not entail differential treatment between similar activities without a rational and objective justification<sup>24</sup>. A complete ban on an assembly or assemblies taking place may be justified in particular circumstances but substantial evidence of the need for this – which should be based on the inability to prevent serious disorder by less stringent measures - will be required<sup>25</sup>. Although arrest or dispersal of an assembly may sometimes be a proportionate response to a breach of the law<sup>26</sup> and the risk to public order<sup>27</sup>, this must always respect international standards governing use of force, including the need to investigate deaths and injuries that may occur<sup>28</sup>. All decision-making must be subject to effective and prompt judicial control to ensure that freedom of assembly is not improperly obstructed<sup>29</sup>.

4. However, it needs to be emphasised that the existence of a legitimate purpose is not a sufficient basis for interfering with freedom of assembly. It is also essential that the interference be prescribed by law<sup>30</sup> and this not only means that they 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<sup>31</sup>, although this not preclude the use of discretionary powers and indeed this – if sufficiently structured – are likely to facilitate decision-making based on the individual circumstances of a case.<sup>32</sup> This is considerable significance for both the language used in legislation and the way in which the legislation is organised; if individual terms are too vague or the framework as a whole suffers from a lack of coherence it will not be possible to regard the restrictions which it is supposed to authorise as being sufficiently prescribed by law as to justify their imposition. It is, therefore, in the interest of achieving effective and appropriate regulation of assemblies that the laws concerned are drafted so as to meet these requirements.

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<sup>20</sup> Comm No 412.1990, *Kivenmaa v Finland*, Views of 31 March 1994 (six hours' notice).

<sup>21</sup> Appl 19601/92, *Çiraklar v Turkey*, 80 DR 46 (1995).

<sup>22</sup> Appl 25522/94, *Rai, Almond and "Negotiate Now" v United Kingdom*, 81 DR 146 (1995).

<sup>23</sup> *Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, Judgment of the Court, 2 October 2001 and Comm 628/1995, *Park v Korea*, Views 20 October 1998.

<sup>24</sup> Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980).

<sup>25</sup> See Appl 8191/78, *Rassemblement Jurassien Unité Jurassienne v Switzerland*, 17 DR 93 (1979) and Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980) and *Selvanayagam v United Kingdom*, Judgment of the Court, 12 December 2002 (Admissibility).

<sup>26</sup> Appl 19601/92, *Çiraklar v Turkey*, 80 DR 46 (1995) and *Selvanayagam v United Kingdom*, Judgment of the Court, 12 December 2002 (Admissibility).

<sup>27</sup> *Cisse v France*, Judgment of the Court, 9 April 2002, *Steel v United Kingdom*, Judgment of the Court, 23 September 1998 Appl 9415/81, *G and E v Norway*, 35 DR 30 (1983) and *Nicol and Selvanayagam v United Kingdom*, Judgment of the Court, 11 January 2001 (Admissibility).

<sup>28</sup> *Gülec v Turkey*, Judgment of the Court, 27 July 1998.

<sup>29</sup> Appl 8440/78, *Christians against Racism and Fascism v United Kingdom*, 21 DR 138 (1980).

<sup>30</sup> Comm No 412.1990, *Kivenmaa v Finland*, Views of 31 March 1994.

<sup>31</sup> *Steel v United Kingdom*, Judgment of the Court, 23 September 1998 and *Hashman and Harrup v United Kingdom*, Judgment of the Court, 25 November 1999.

<sup>32</sup> App 25522/94, *Rai, Almond and "Negotiate Now" v United Kingdom*, 81 DR 146 (1995).

5. The enjoyment of freedom of assembly and the safeguarding of the legitimate interests with which that freedom's exercise can often collide undoubtedly both depend upon the law being framed in a way that respects the considerations discussed in the preceding two paragraphs. However, the manner in which a law is applied is generally going to be much more significant for the realisation of these goals in practice. Although it is essential to concentrate first on getting the law right, it is even more important to ensure that those responsible for its implementation fully appreciate the significance of freedom of assembly for a democratic society and are properly trained and equipped to give effect to the law in an appropriate manner. In the absence of these it is unlikely that the requirements of international standards will actually be fulfilled.

## **Subject Matter and Scope**

### *Article 1*

6. The formulation of the statement in the first clause of the subject matter and objectives being pursued by the draft law, namely, the creation of the conditions for the realisation of the constitutional right to freedom of assembly and the safeguarding of a number of interests, is clear and almost entirely appropriate. However, the reference to the constitutional guarantee, although an understandable point of departure, could be a source of confusion for those charged with applying the law since this only extends to the enjoyment of freedom of assembly by 'citizens' in the narrow sense of that term<sup>33</sup>. It will be seen that Article 2 actually seeks to define the term 'citizens' – which is used throughout the law's provisions – in a way that encompasses foreign citizens and stateless persons – and it might be thought that this would render the narrower ambit of the constitutional provision of no particular significance. Unfortunately the formulation used in Article 2 leaves it unclear as to whether foreign citizens and stateless persons can participate in assemblies, as opposed to being able to organise them (see para 9). International standards, although sometimes accepting that greater restrictions on the exercise of freedom of assembly can be placed on non-citizens than citizens, do not admit that there can be a general prohibition on the enjoyment of freedom of assembly by non-citizens<sup>34</sup>. It is, of course, unlikely that such a prohibition is the intention of the draft law, particularly given the stipulation in Article 3 that international agreements should prevail over its provisions (see para 16), but there is certainly a need for the position to be clarified in case it might be thought that non-citizens cannot rely on the provisions of the draft law. The modification required in the case of Article 2 is discussed further below (see para 9) but in the case of Article 1 it would be desirable for it to be stated explicitly that the law is seeking to realise the right to freedom of assembly of non-citizens as well as citizens; even if the deficiencies in the definition provision are remedied, its location subsequent to the present provision cannot prevent a misleading impression from being formed as to the scope of the draft law. In any event it should be noted that the content of the draft law actually goes beyond the constitutional guarantee in another respect - in that it regulates assemblies organised by state and local government bodies - so that explicit confirmation that fulfilment of the guarantee is only a partial objective would be appropriate in this regard as well.

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<sup>33</sup> It is not unusual for the term for which the word 'citizen' is used in translations into English from another language actually to be one which is intended to embrace all natural persons and not just those who have the citizenship of the State in which the law concerned is promulgated. However, that does not appear to be the position with the term used in the original version of Article 26 of the Constitution of Armenia as those who were responsible for translating the whole instrument into English have used the term 'everyone' where a right or freedom was being guaranteed to all natural persons.

<sup>34</sup> ECHR Art 16; see *Piermont v France*, Judgment of the Court, 27 April 1995.

7. Although the general statement of objectives provides a helpful orientation for the provisions that will follow, their elaboration in the second clause seems to be unnecessary and undesirable. This is because there is an overlap with Article 2 (in which the scope of the law is more fully defined) and the introduction of certain definitional elements ('open', 'public event' and 'sit-down strikes'), as well as the use of alternative terms ('parades' as an apparent alternative to 'rallies'<sup>35</sup>). This all has the potential for making the draft law less comprehensible than is appropriate for a measure of such fundamental importance for a democratic society. Certainly it would be clearer if all definitional matters were included in a single provision designated for this purpose, which immediately followed Article 1 so that there was then no need to try and define terms on their introduction into provisions located before it. This would entail adding the definition of 'open', 'public event' and 'sit-down strike' to what is currently Article 4 (on which see further paras 17-20) and placing that modified provision before the present Article 2. Insofar as there is felt to be any value in using 'parades' with 'rallies'<sup>36</sup>, this ought to be done throughout the provisions of the draft law so that no uncertainty can arise as to what is covered when reference is made to 'rallies'. It would then be sufficient for the second clause of Article 1 to state that 'This law defines the legal framework and procedure for organising and conducting such gatherings, meetings, rallies (parades) and demonstrations, the limitations to which those may be subjected and the rights and responsibilities of participants, as well as state and local self-government bodies'<sup>37</sup>. There is no real need to mention again that the draft law is only concerned with 'peaceful, unarmed' events as that point was made sufficiently clear in paragraph 1. Nor should any reference be made to the applicability of the draft law's provisions to 'areas of general public use' as it is evident from Article 2(3) and (4) that at least some of those provisions also govern events held 'in areas considered not of general public use' (see paras 14 and 15).

#### *Article 2*

8. The purpose of this article is the entirely appropriate one of establishing what is and what is not covered by the requirements of the draft law. As has already been indicated, its clarity would undoubtedly be much enhanced by being preceded by the article with definitions of the key terms being used in it. Moreover, as with the second clause of Article 1 (see para 7), the provision is slightly misleading in that the scope of the draft law is not just concerned with 'public events organised in areas of general public use' since, as subsequent provisions make clear it may cover events that are not public ones as defined by the draft law (see para 12) and the provisions of this article also deal with events in 'areas considered not of general public use' (see para 14). There is clearly a need for clearer and more accurate drafting for this provision. However, there are four other matters in this provision which also need to be addressed. The first relates to the persons who are entitled to participate in any of the events which the draft law is intended to cover, the second involves the organisations which are entitled to organise them, the third is concerned with the way in which certain objectives are specified as material for determining whether or not the provisions are applicable, the fourth arises from the fact that it is not entirely complete in its statement of

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<sup>35</sup> This may be a matter of translation but in English parades and rallies are not alternatives as the former is a moving protest and the latter is a static gathering.

<sup>36</sup> It is not clear whether the use of the term 'march' in some provisions is just a different word being used in the translation of the Armenian word for one or other of these or is in fact a completely new term.

<sup>37</sup> The last phrase in this sentence (beginning 'and the rights ...') is not really necessary as it is implicit in the first two phrases.

the exemption from the notification requirement and the fifth involves the formulation of the concluding prohibition.

9. Paragraph 1 provides that the draft law's provisions apply to certain events organised either by various private and public entities or by 'citizens, foreign citizens, stateless persons (hereinafter referred to as citizens)' However, this formulation is open to misconstruction in two respects which would be incompatible with the internationally guaranteed freedom of assembly. Firstly, at least in the English text, the qualification ('hereinafter referred to as citizens') could be viewed as only referring to 'stateless person'. Secondly it might be thought that the definition relates only to the use of 'citizen' for the purpose of the provisions dealing with organising but not participating in the events. Although it is very doubtful that in either case this is what is actually intended and it may be that the original Armenian text does not generate such uncertainties, such a construction could be adopted by those wishing to restrict a particular exercise of freedom of assembly and it might take some time before the matter could be satisfactorily resolved. It would, therefore, be desirable for this part of the provision to be moved to the article concerned with definitions (see paras 17-20) – where it would be more appropriately located – and reformulated so as to define the term 'citizen' in all provisions of the draft law as always including not only citizens of the Republic of Armenia but also foreign citizens and stateless persons.

10. It is unusual for state and local self-government bodies to be expressly identified in a measure such as the draft law as ones authorised to organise events of the kind covered by the draft law, not least because of the regulatory role generally conferred on those bodies. However, this is not inherently problematic and indeed, apart from some concern as to how the regulatory function will be performed in situations where these bodies are the organisers, has the merit of subjecting the events organised by them to the same set of rules that are applicable to everyone else. Nonetheless there is a need for some clarification as to what is meant by the term 'organisations'. In the light of the specific reference to 'state or local self-government bodies', it is presumably intended that the organisations in question will be non-governmental in character but there is a need to establish whether they are restricted to ones which have legal personality or they also embrace ones that are either designed to be more informal or have not yet obtained the approval needed to obtain such personality. The exclusion of the two latter types of entity would not be problematic if there was no obstacle to assemblies being organised by them by virtue of the entitled recognised by the draft law as vesting in individual citizens. However, if this is not possible, such a restriction on their capacity is likely to be regarded as, in principle, an unjustified interference with the internationally guaranteed freedom of assembly<sup>38</sup>.

11. In the definition of the events covered by the draft law, paragraph 1 identifies certain objects as being the basis on which they are to be organised. These are fairly broad and, given the open-ended nature of the phrase 'other needs, problems and issues', ought probably to be regarded in principle as non-exhaustive. This is important as it would be incompatible with freedom of assembly for it to be held impossible to organise an assembly because its object does not come within those listed – eg, the aim is to protest about environmental dangers - where that object is not itself incompatible with democracy and the rule of law<sup>39</sup>. Nevertheless it would be preferable if the clause were restricted to the purpose

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<sup>38</sup> See *Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, Judgment of the Court, 2 October 2001 and 94 DR 68 (1998).

<sup>39</sup> See *Refah Partisi (The Welfare Party) v Turkey*, Judgment of the Court, 13 February 2003.

of expressing opinion and seeking, receiving or disseminating information or ideas so as to avoid any possible misconstruction impeding a legitimate exercise of the right to freedom of assembly.

12. Moreover there is a need for greater clarity in the objects specified in paragraph 2 as these are the basis for determining whether or not the regulatory controls envisaged for a particular mass event will be limited to public order and traffic rules and a power of prohibition or will also entail a need to obtain the prior consent from the head of the relevant community or the Mayor of Yerevan, with the latter consent only being needed if the intention is for the celebrations, rituals, cultural or sports events to be held in certain defined places as opposed to areas of general public use. Certainly it is possible that at least some of what are described as ‘celebrations, rituals, cultural or sport events’ could at the same time be a vehicle for the expression of an opinion on any of the matters referred to in the first paragraph and that the view of someone that they are organising or participating in the former events may not be shared by law enforcement and other public officials. As a consequence the scope of what is subject to the lighter form of regulation ought to be formulated in a more precise manner. However, it is possible that this differential treatment in the regulation of mass events might also be regarded as discrimination for which there is no rational and objective justification and thus contrary to Article 26 of the International Covenant on Civil and Political Rights and, when taken with the guarantee of freedom of assembly, of Article 14 of the European Convention on Human Rights. It is undoubtedly the case that many ‘celebrations, rituals, cultural or sport events’ are unlikely to give rise to any concerns about the maintenance of public order but some could be controversial and others might be problematic simply because of the numbers involved. In these circumstances it is not evident why prior notice or authorisation<sup>40</sup> is not required merely because the purpose does not involve the expression of an opinion or the seeking, receiving and disseminating of information or ideas. Insofar as no compelling justification for the differential treatment can be advanced, this should not be retained in the draft law. It should also be noted that there is no explanation as to why ‘celebrations, rituals, cultural or sports events’ are automatically designated as ‘other mass events’ when the definition of ‘mass public event’ in Article 4(3) entails the participation of at least 100 persons and there is no necessary reason why that number should attend celebrations, etc. There is obviously a need for some clarification in this provision or in the article dealing with definitions.

13. There should also be concern at the way in which this article’s provisions exempt some events from the notification/authorisation requirement but others are found in Article 10 (see para 46). There is clearly a need for a more coherent presentation on this point and the organisation of the draft law needs to be re-examined to achieve this.

14. The indication that the notification/authorisation requirement is inapplicable to gatherings on what is taken to be private property – the concept of ‘place of general public use’ is not entirely clear (see para 18) and this must also affect its negative – and the fact that it will be the rights of the owner or user that determine the ability to do this is a welcome and appropriate mitigation of the regulatory control. However, the qualification on this freedom by subjecting it to the provisions in Articles 9 and 13 on the limitations for conducting public events and the prohibition on conducting a mass public event is only acceptable insofar as the concerns relating to those provisions are adequately addressed (see paras 38-44 and 59-70)<sup>41</sup>.

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<sup>40</sup> As to the compatibility of either of these with freedom of assembly see paras 45-58.

<sup>41</sup> It is perhaps strange that the provisions on termination are not also made applicable to them.



Furthermore the fact that no notification/authorisation is required for events on private property only further strengthens the impression that the requirement for some but not all mass events is unjustifiably discriminatory.

15. The stipulation in the fourth paragraph regarding the prohibition and termination of ‘Public or other mass events’ is presumably intended to refer to those organised or conducted in violation of paragraphs 2 and 3 rather than the third and fourth ones. The actual acceptability of these consequences for breach of the requirements of the draft law is considered further below (see paras 59-74). However, it should be noted that the present article does not actually stipulate anything about public events other than ‘celebrations, rituals, cultural or sports events’ requiring notification/authorisation and this gives the impression that public events other than these and whether or not mass ones do require such notification/authorisation. However, as Article 10(1) makes clear (see para 46), notification/authorisation is not needed for non-mass public events and so contradictory impressions are being given by different parts of the draft law. There is clearly a need for some clarification and greater coherence in this regard.

#### *Article 3*

16. The stipulation in paragraph 1 of the sources of law for the regulation of public events is in itself unproblematic, although it should be noted that it is incomplete in that it refers only to ‘public events’ and, as has been seen (para 8), the draft law is slightly more wide-ranging in its concerns. Moreover it might actually be seen as having a positive value in that it would appear to be establishing an exhaustive list of the legal provisions that can be invoked to regulate public events – and thus might be seen as promoting legal certainty but there are in fact important exclusions such as the Code on Administrative Violations of the Republic of Armenia from December 6, 1985 and legislation dealing with police powers. In any event it might have been more appropriate for the provision to have been included in Article 1 rather than be located after the provision setting out the scope of the law. This is equally true of paragraph 2 which establishes a hierarchical superiority for the provisions of ‘international agreements’ – which are taken to mean treaties rather than other international undertakings such as made within the context of membership of the OSCE – over those of the draft law. Welcome though this is in principle, its potential value should not be overestimated as this will be very much dependent upon both the level of knowledge that administrators, courts and individuals have as to the requirements of those agreements and their actual willingness either to apply or invoke them. Furthermore the occasion for those requirements prevailing is most likely to be one where an inconsistent practice or decision has been challenged and, while this may still be a comforting safeguard against the possibility of ignoring the right to freedom of assembly and associated rights, all these rights are much more likely to be respected in practice if the day-to-day activities of those responsible for regulation are themselves governed by well-formulated rules.

#### *Article 4*

17. It has already been noted that the provisions in Article 4 dealing with the definition of the terms used in the draft law are both incomplete (see para 7) and poorly located (see para 9). In addition it has been seen that the definition of ‘public event’ by reference to its purpose is potentially problematic (see para 11) and that occasionally there is potentially confusing use of the word ‘parade’ as an apparent alternative to ‘rally (see para 7), with only the latter actually being defined. There are, however, a number of potential problems with the individual definitions found in this article. Firstly in paragraph 1 several terms are used when only one is needed; as with the coupling of parade and rally, the

employment of a multiplicity of terms – all of which in English at least have slightly different connotations - for a single type of activity is likely to cause confusion, all the more so when yet another term, ‘public event’ is used for a collective description of them. Secondly it would be desirable to clarify whether or not the use of transportation to bring persons to a public event is intended to come within the definition of ‘rallies’, given that it is stated in paragraph 2 that these ‘can also be conducted via transportation’. Such a broad reach would pose serious difficulties for the organisation of protest action, particularly as the starting point of individual groups may not be known sufficiently far in advance for the purpose of notification/authorisation (see paras 45-50). It would be more appropriate from a regulatory point of view if something were only to be regarded as a rally conducted via transportation where there had first been an assembly together of the various means of transportation being used for this purpose.

18. Thirdly there is some scope for uncertainty in the definition in paragraph 5 of ‘place of general public use’ as the reference to this being ‘open space considered state or municipal property’ as the word ‘considered’ – assuming that this is a fair rendition of the Armenian text - leaves too much room for argument as to how a particular place is to be regarded, particularly if there is a dispute over ownership, and it would be preferable if ‘considered’ were replaced by ‘owned by’. In addition more precision would be appropriate for the requirement that the open space be one in respect of which there is ‘free access to or presence on which is neither prohibited nor restricted’; although it may be clear which spaces are ones to which presence is prohibited, it would need to be clarified that there are indeed a significant number of spaces to which presence is not restricted if there is to be any prospect of freedom of assembly being generally enjoyed since the mere existence of rules governing the time or period in which presence is possible would be sufficient to constitute a restriction and thus exclude the space from the definition of ‘place of general public use’.

19. Fourthly the definition of participant in paragraph 7 by reference to someone who ‘purports to express his/her opinion’ in addition to coming to or being present at the place of the public event begs the question as to what evidence will constitute such an expression; does it entail actual words of support or opposition or will gestures be sufficient and what about someone who is present but is expressionless? Clarification is essential as there is a risk that someone who is merely present could find him or herself regarded as a ‘participant’ notwithstanding the accidental nature of his or her presence or his or her role as an observer (whether or not as part of the media) and this may be particularly significant when it comes to offences and dispersal. Moreover it is not clear what ‘having come to’ adds to being ‘present’ and indeed the use of the two terms could make it harder to establish that someone is a participant.

20. The definition in paragraph 6 of an organiser is clear enough but the restriction of this in the case of ‘citizens’ to those who are ‘fully capable’ is discussed further below (see para 39).

## **Rights and Obligations**

### *Article 5*

21. There is an appropriately explicit statement in paragraph 1 as to who is competent to organise and conduct a public event, although it would be preferable also to state that this is subject to the limitations in Article 9, which are discussed further below (see paras 38-44).

Although it should not strictly be required where rights are being recognised in a law, there is also some educational value in the statement in the third paragraph that ‘state or local government bodies shall not be entitled to hinder or interfere in the implementation of public events ... with the exception of the cases prescribed by this law’. However, the fact that this restriction is also made applicable to ‘citizens and organisations’ is potentially problematic since this may make legitimate forms of counter-demonstration impractical, particularly when read in the scope of the power to require persons to leave public events which is discussed further below (see para 36). It is, of course, appropriate to prevent a public event from being disrupted and the present provision would not be problematic if the draft law also included an explicit recognition of the rights of counter-demonstrators (see further paras 26, 41 and 43).

22. The specification in paragraphs 4 and 5 of the head of an organisation’s executive body and the head of state or local self-government bodies or their delegates as the organiser is in itself unproblematic. Furthermore there is welcome provision in paragraph six for the changing of such an organiser prior to the public event taking place since, although this may not be a problem in most instances, there is certainly a possibility of an organiser being taken ill or being unable to be present for pressing family or personal reasons (such as a death or serious illness) and, pursuant to paragraph eight, without any change being possible an event could not then take place or would be terminated (see para 23). However, while the five-hour deadline is probably not one that will cause difficulties in most cases, it would be desirable for there to be more flexibility as problems can arise at the last minute and the nature of an organisation is such that it is likely to have more than one suitable person to take on the organiser’s role. Moreover, although it is clearly helpful to have a procedure for substitution where the problem of attendance is known about in advance of the event taking place, the possibility of either making a change or the identification of deputies who could take on the organiser’s role should he or she no longer be able to act ought also to exist even once an event gets under way, not least because it could facilitate the achievement of the legitimate concerns reflected in the draft law’s provisions regarding the maintenance of public order. Although the ability to change the organiser is most likely to be needed in the case of events undertaken by organisations and state or local self-government bodies, it is conceivable that it may also be needed in the case of those organised by citizens. However, as Article 11(1) envisages the possibility of several citizens being indicated in the notification (see para 51), there does not appear to be any need for a provision allowing the organiser to be changed and so the prohibition in paragraph seven on there being any change should not be problematic.

23. Although the requirement in paragraph 8 that an organiser be present at the start and throughout an event is not, subject to the foregoing concerns being met, otherwise problematic in principle, there may be a need to clarify what is the understanding of being ‘present’ given the serious consequence of termination where this is not observed. It would certainly be unreasonable if an organiser was not regarded as present if he or she went into a building or a side street adjacent to the event for a short period of time in connection with the event itself (such as to collect leaflets or to deal with problems that may have arisen). Moreover some events, rallies or parades in particular, may spread over a large area and it would not be possible to be present in every part at the same time. It may be that there is an established practice which meets those concerns but, insofar as there is not, it would be necessary to use greater precision in the formulation of this requirement. Furthermore, although it might be reasonable in principle to expect an event without its organiser present to come to an end, the acceptability of this provision also needs to be viewed in the light of the legitimate interests of spontaneity in holding a protest on the part of those who might

have been participants in an event which is lacking an organiser and this is considered further below (see para 48).

#### *Article 6*

24. It is undoubtedly helpful for a law dealing with the exercise of freedom of assembly to seek, as Article 6 does, to set out as clearly as possible the rights and obligations of those involved in organising them. This is especially true of the duty to provide certain relevant information to those who will be taking part in an event. Although this goal is in many respects achieved, there are still some matters that require further attention, both as regards the rights and the obligations.

25. There are five issues of concern arising paragraph 1's specification of rights. Firstly, it may be correct that an organiser can propose the venue for an event, it cannot really be accurate to state as it does in paragraph one that this is something that he or she can 'determine' as this is subject to the notification/authorisation requirement. The acceptability of the latter control is discussed further below (see para 53) but, whatever view is taken of that, it is undesirable to give a misleading impression in this way as those who act upon it could subsequently find themselves facing serious criminal penalties (as to which see para 76). It is acknowledged that there is some mitigation of the tendency to create such an impression but it would be preferable for it to be stated that the organiser can propose the venue where it is subject to authorisation/notification. However, it is entirely appropriate for the organiser to determine the procedure of the event.

26. Secondly, while it is appropriate for an organiser to be able to bring his or her event to an end, the stipulation to this effect in the first paragraph must be read in the light of the comments regarding spontaneous protest (see para 23). Thirdly a similar qualification is appropriate with regard to the power given to request the removal by law enforcement officers of participants 'violating the procedure of the event, public order or legislative provisions'. In this instance the problem is not that such removal might not sometimes be compatible with the international guarantee of freedom of assembly but that this is a power which could sometimes be used to stifle legitimate protest action within an event. The problem is not with the power itself but the absence of adequate recognition in the draft law of the legitimacy which counter-demonstrators may have and this considered further below (see paras 41 and 43).

27. Fourthly, it is entirely appropriate to allow organisers to be assisted by 'volunteers' who can act as stewards in the course of an event but it would be necessary for such persons to have some education on the limits of their powers and some training as to the use of these, as well as a briefing before an event takes place.

28. Fifthly, although it is helpful for it to be made clear that an organiser has the authority to publicise an event and to solicit participation in it, there is a need to clarify whether such a stipulation of authority – which ought to be regarded as inherent in being an organiser, as well as an incident of both freedom of expression and assembly – entails the innuendo that other persons are not so entitled and run the risk of committing the offence of improper organisation (see para 76). Such a conclusion would clearly be incompatible with the two freedoms just mentioned and, insofar as that is the consequence of this provision it would be essential for it to be undone.

29. Although there is no objection in holding an organiser responsible for non-compliance with the requirements of the draft law and other relevant legislation within his or her control, it is possible that the terms of the obligation in paragraph 2(a), (d), (g) and (h) also entail responsibility for the conduct of others – ‘ensure the fulfilment of other conditions’, ‘ensure the observance of the provisions of legislation, public order and public ethics by the participants of the public event’ and ‘ensure the observance of the provisions of legislation, public order and public ethics by the participants of the public event’, ‘ensure the integrity of the property, trees, bushes and green areas in the place of the public event’ and ‘ensure free access to buildings, constructions or other working areas of state or local self-government bodies, organisations, as well as residential houses or apartments or other areas located in or adjacent to the area of the public event’ - when he or she may not be in a position to control them. These duties, whose underlying objectives are entirely legitimate, might be contrasted with those in paragraph 2(f) were the organiser has the option of taking a step within his control – termination – where he or she is unable to stop violations of the provisions of the draft law. Insofar as the general law governing liability does not admit a defence that a failure of compliance could not reasonably have been addressed in the preparations for an event it would undoubtedly be regarded as an unreasonable interference with freedom of assembly.

30. Furthermore the requirement of attendance at the place of an event seems to be framed in absolute terms and this would be unacceptable if it is not mitigated by the ability to invoke a defence under the general law of reasonable excuse (such as his or her illness or the need to seek refuge from violence directed at him or her). Moreover there is a need to clarify what is understood by the term ‘public ethics’ in the context of the duty of observing and ensuring observance thereof in paragraph 2(d). Insofar as this refers to an established body of criminal law there should be no problem of compliance with either the international guarantee of freedom of assembly or the international prohibition on retrospective penalties. However, if there is no certainty as to the scope of this concept then the obligation will be regarded as unacceptably imprecise and thus contrary to the rights just mentioned. In addition there is also a need either to clarify whether reasonable excuse is a defence to the obligation in paragraph 2(f) ‘not to hinder the lawful actions of competent state or local bodies or officials or, in the event that it is not, to include such a defence as otherwise this would be a disproportionate burden and thus incompatible with freedom of assembly.

#### *Article 7*

31. As with organisers, it is certainly useful for a law dealing with the exercise of freedom of assembly to endeavour to set out the rights and obligations of those who take part in them. The clear statements in paragraphs 1 and 2 regarding the right of participation, the right to cease to participate and the right not to be obliged to take part in public events reflect the requirements of the international guarantee of freedom of assembly and are obviously welcome. This is also true of the recognition in paragraph 3 of the right ‘to possess or to carry banners, posters and other didactic materials, as well as to use microphones. However, the last of the items in this list are only of any value if they can be used with an amplification system and loudspeakers and there is a need to clarify that this is also authorised by the use of that word. In addition it would be helpful to clarify whether the rights of participants are also exercisable by the organisers as otherwise there would be no authorisation for the latter to use an amplification system and that will clearly be vital if speakers are to be heard in the larger gatherings, as well as essential for efforts to fulfil obligations regarding the control and direction of participants.

32. Furthermore, although the second part of the paragraph understandably reflects an understandable wish to balance the competing interests of demonstrators and of those who live and work in the vicinity, the concepts used in the prohibitions – other than the one involving specified hours during the night – are rather vague and could be used to stifle most protests. Certainly it would be desirable to have a clearer idea as to what constitutes a residential area given that homes may be adjacent or intermingled with public buildings and business enterprises. Moreover the concept ‘surroundings of health organisations and institutions for children’ is far too vague both as to what is covered – does it include pharmacies and the offices of doctors - and the distance that must exist between them and the place where an event is being held. The absolute nature of the exclusion from the ‘surroundings’ of these institutions is also objectionable in that it may well be that a hospital or an educational facility needs to be the focus of a particular protest and the present provision could prevent the communication of the message considered important by those taking part. It is, of course, entirely understandable to be concerned about the disturbance, and possibly even fear, that patients and children might suffer from a demonstration that is too proximate but it would be more appropriate to deal with this by specifying that it should be held at a specified distance from the main entrance (*cf* paragraph 9(3)(c), see further paras 41 and 42) and only at specified times.

33. The recognition of the right to ‘photograph, videotape or audiotape’ public events undoubtedly reflects the right to gather information protected as part of freedom of expression and, without seeking to detract from this right, it only needs to be recalled that the use made of what is recorded would need to take account of the interests protected by the right to respect for private life.

34. The obligations on participants, unlike some of the related ones imposed on organisers (see para 29), relate to matters within their control and are thus not problematic in this regard. However, the concern previously expressed about the concept of ‘public ethics’ (see para 30) is equally applicable to the obligation in paragraph 7(b). Moreover, there is a need to clarify whether there is a ‘reasonable excuse’ defence for failing to comply with the obligations as such non-compliance may not wilful but a matter of physical impossibility given either the numbers present or the uncooperative stance taken by some participants. In the absence of such a defence the imposition of penalties for non-compliance would be a disproportionate interference with freedom of assembly and the draft law should be accordingly amended.

#### *Article 8*

35. Although there is obviously a need to set out the regulatory role to be played by public authorities in respect of activities covered by the draft law, it is perhaps a little strange to head this paragraph ‘Rights and Obligations’ because there are no actual rights mentioned in the substantive provisions and because the international guarantee of assembly does not envisage any rights but only interests which such authorities have a responsibility to protect. This may seem just a matter of semantics but inappropriate language can influence the way in which legal provisions are implemented in practice. The location of this paragraph is also a little odd since a considerable part of it is devoted to the handling of mass public events after the notification procedure governed by Articles 10-12 or after a failure to observe this. The overall coherence of the draft law would be enhanced by placing the provisions in Article 8 after the latter articles.

36. The responsibilities of the authorised body set out in the first paragraph are generally unexceptional but it seems inappropriate – as is envisaged by paragraph 1(e) - for the representative of a politician to have any role in the termination of public events. This is something which ought more properly to be a matter for law enforcement officials and this is a matter considered further below (see para 73). It should also be noted that at least the English translation refers to the representative having this responsibility in respect of ‘public events’ when the other provisions of this paragraph are only concerned with the narrower category of ‘mass public events’. Insofar as the exclusion of the word ‘mass’ from paragraph 1(e) is not an oversight in translation, it would be appropriate for it to be introduced as, regardless of the view taken of the role of political representatives in terminating mass public events, there is no other provision in the draft law which involves them in regulating public events that are not mass ones.

37. There is nothing problematic with the responsibilities listed in the second paragraph for law enforcement bodies; the real problems for compliance with the requirements of the international guarantee of freedom of assembly and other human rights will be the manner in which they are discharged in particular cases and the need for appropriate training has already been noted (see para 5). However, although it will be very helpful for organisers to have notice of an appointed representative (paragraph 2(a)) and to have that person present (paragraph 2(b)), it seems sensible to make provision for the substitution of the representative as there could always be situations in which the person originally appointed cannot act. Furthermore, while it is highly desirable to preclude provocative displays by law enforcement personnel, there is a need to clarify what the effect is of paragraph 2(g) as regards the demonstration of ‘arms, ammunitions, special coercive devices’. Is this just designed to preclude the possibility of intimidation through such demonstration in circumstances where there is no imminent threat to public order or does it go beyond that and actually restrict or prevent the use of such weapons for the purpose of dispersal? The latter does not seem likely (on the use of force see para 74) but there is a need to clarify what exactly is meant by ‘demonstrate’ – would it include the stationing of water cannon in a street adjacent to where an event is being held – so that compliance can be fairly monitored.

#### *Article 9*

38. It would be more appropriate for exclusions in paragraphs 1 and 2 from the right to organise public events and to take part in them to be located in the articles dealing with those rights (ie, Articles 5 and 6; see paras 21-30) rather than in the first two paragraphs of an article that is principally concerned with the substantive conduct of those events. The restriction on the capacity of ‘citizens in pre-trial detention’ to organise public events is unobjectionable insofar as it relates to the formal role envisaged by the draft law for an organiser as those in detention are obviously not going to be in a position to fulfil the legitimate responsibilities which it requires them to discharge. However, this does not mean that a person in pre-trial detention should not be able to have any input into the holding of a demonstration as the only restrictions that may be imposed on someone in prison are those consistent with the requirements of imprisonment<sup>42</sup>. It should, therefore, be clarified that this provision is directed only to the formal organisational role.

39. The absolute bar on persons with ‘limited capacity’ – whether that means children or persons with mental impairment – organising ‘public events’ is likely to be considered

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<sup>42</sup> *Golder v United Kingdom*, Judgment of the Court, 21 February 1975.

incompatible with the international guarantee of freedom of assembly, which is specifically reiterated in the case of children by the Convention on the Rights of the Child<sup>43</sup>. It may well be that it would be appropriate to prevent persons of limited capacity from taking on the major responsibilities that would be entailed by the numbers taking part in a ‘mass public event’ but the present restriction would affect even gatherings of even just a handful of persons and this would be a disproportionate response to concerns about public order. This is particularly so as persons with limited capacity might be the only ones who wish to protest and no one else may be interested in taking up the organisational responsibilities on their behalf so that protest thus becomes impossible. It might be reasonable to set restrictions on the size of events that can be organised by persons of limited capacity and, in the case of younger children, to require the approval of those with parental responsibility, but a complete bar on organisation is not acceptable.

40. The bar on officers in the police, national security services and criminal executive service and military servants organising or participating in public events is not required by international standards but may well be regarded as a permissible restriction to which they can be subjected on account of their specific responsibilities for public order and the need to maintain public confidence in the political neutrality of these arms of government<sup>44</sup>. However, such a view is only likely to be taken where there are still avenues open to the persons affected to express their views on matters of concern to them and it will, therefore, be necessary to clarify what possibilities for this do exist and in particular what are the exceptions ‘of cases foreseen by law’ to which paragraph 2 refers in the case of officers in the police and national security services.

41. Although it is inevitable that there will be places or times when it would be inappropriate for a public event take place, the restrictions imposed in paragraph 3 are extensive and at times unduly vague. In addition they preclude the possibility of any counter-demonstration regardless of the public order context. It is undoubtedly legitimate to have regard to considerations of safety – both that of those participating in public events and that of members of the public generally – in determining whether there are places in which such events should not be permitted. It is thus unlikely that any objection could reasonably be taken to the places listed in paragraph 3(a) or, in principle, to the first three listed in paragraph 3(b). However, the notion ‘areas of deteriorating buildings’ is too vague for it to be clear at what point the prohibition is effective and indeed whether it is unnecessarily wide. This restriction could be particularly significant in the context of protests connected with the protection of sites important for the national heritage but it could equally be the case that an old building located near the site of a proposed event could be used as a pretext for moving it to somewhere less likely to attract attention even though its age does not mean that it is in danger of collapse. There is a need, therefore, to be more precise both about the concept of ‘deteriorating’ – the existence of a real likelihood of collapse would probably be an appropriate test - and the notion of ‘areas, with in the latter case the specification of a specific distance related to safety considerations, as seems to have been done in respect of the places listed in paragraph 9(3)(c), being a more satisfactory approach.

42. Similarly there is a need to clarify both the basis on which the places can, as indicated in paragraph 3(d), be established as ‘establishments of special state significance’ and why the area of exclusion involves a distance of 500 metres when only 100 metres is

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<sup>43</sup> Article 15.

<sup>44</sup> *Rekvényi v Hungary*, Judgment of the Court, 20 May 1999.



needed for military units, defence establishments and areas of pre-trial detention. Certainly the establishment of areas of special state significance would need to be governed by criteria that are both objectively verifiable and consistent with the international guarantee of freedom of assembly as otherwise it would be possible to prevent public events for unacceptable reasons, such as to avoid possible embarrassment or to gain a political advantage. Yet, even if such criteria do exist and designation is thus not a matter of governmental whim, cogent reasons would be required to justify the location of public events so far away from them.

43. The prohibition in paragraph 3(e) on organising or conducting non-mass or other public events in the place where an authorised mass public event or another mass event 'is being or is due to be conducted' is problematic in two respects. Thus in the first place there is question of the point of time the prohibition comes into force is insufficiently precise; something can be 'due' hours, days and even weeks or months prior to the event actually taking place and all of these could be disproportionate, depending on the actual circumstances of the case, since there will not necessarily be any possibility of the already authorised or planned event being impeded in any way. Undoubtedly there could be circumstances where the holding of a 'second' event could mean that preparations for the 'first' one cannot be undertaken or it cannot get under way because its 'space' is occupied but it ought to be possible to measure this in more concrete terms than is done in the present provision; it is unlikely that an interval of more than two or three hours between the end of the 'second' and the start of the 'first' would be necessary. Such a limitation could certainly be imposed on the holding of two mass events in the same place because of the potential risks for public safety and public order but it is doubtful whether such a lengthy period would be needed where the second event was not a mass one. This problem appears as if it might be remedied as far as mass events are concerned in Article 13(1)(2) as it refers to another one 'being conducted on the specified day, time and place' to be found in the notification but there is still a need to harmonise the two provisions and to deal with the holding of non-mass events. Moreover in the case of the latter events there is a second objection, namely, that the provision effectively precludes a counter-demonstration from being held in response to an event intended to promote a particular point of view. Although there may be a need to ensure that counter-demonstrators do not prevent an assembly from taking place<sup>45</sup>, the ability to express a contrary opinion is an indispensable element of both freedom of expression and assembly and a total prohibition on such a possibility is a disproportionate interference with these freedoms. A more appropriate response would be to deal with counter-demonstrations through the exercise of policing powers according to the particular circumstances, including the police resources available. This aspect of the prohibition should, therefore, be deleted.

44. A prohibition such as in paragraph 3(f) on organising or conducting events 'aiming to forcibly overthrow the constitutional order, to provoke ethnic, racial, religious hatred, to propagate violence and war, as well as to fulfil other purposes prohibited by law' is consistent with the well-established view that human rights cannot be used for anti-democratic purposes<sup>46</sup> and that the requirements of rights other than that of assembly – such as human dignity and the prohibition on discrimination – necessitate limiting rights to freedom of expression, assembly and association for these reasons<sup>47</sup>. However, where this prohibition is invoked it should always be recognised that advocacy of a change in the

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<sup>45</sup> *Plattform 'Ärzte für das Leben v Austria*, Judgment of the Court, 21 June 1988.

<sup>46</sup> *Refah Partisi (The Welfare Party) v Turkey*, Judgment of the Court, 13 February 2003

<sup>47</sup> *Jersild v Denmark*, Judgment of the Court, 23 September 1994. See also the obligation under the International Convention on the Elimination of All Forms of Racial Discrimination to proscribe incitement to racial hatred and racial discrimination.

constitution or the law is not to be equated with intent to overthrow the constitutional order by force or to break the law<sup>48</sup> and that pointing out problems between groups in society does not amount to incitement to hatred<sup>49</sup>. An appreciation of these distinctions will, therefore, be especially important for those involved in the implementation of the draft law.

## **Regulating Public Events**

### *Article 10*

45. The first clause of paragraph 1 purports to identify the places where public events can take place but, while its apparent breadth – which depends on the actual scope of the prohibited places already considered (see paras 41-43) – is welcome in principle, this is another instance of poor organisation undermining the overall clarity of the draft law; the issue of location in the case of ‘other mass events’ and ‘public events’ has after all previously been addressed in Article 2 (see para 12). The second clause of this paragraph then turns to the location of ‘non-mass public events’ but creates confusion as to whether the places concerned are the same as those for public events or the ones specified are an additional category. This confusion arises because the first clause has referred to ‘any place, with the exception of areas prohibited by law’ and the second clause refers to them being held ‘in areas of general public use’, the difficulties in the precision of the latter concept having already been addressed (see para 18). It may be that the former is meant to embrace both the latter and the ‘areas considered not of general public use’ to which reference is made in Article 2(3) but this clearly needs to be clarified and it would be highly desirable from the perspective of legal certainty to deal with all issues relating to permissible locations for all the events with which the draft law is concerned to be dealt with in a single article. It should, in any event, be noted that it is singularly inappropriate to deal with the matter of location in an article entitled ‘The Procedure of Conducting Public Events’.

46. The difficulty referred in the previous paragraph arises from an attempt to identify which events are subject to a notification/authorisation requirement and the combined effect of paragraphs 1 and 2 and Article 2(2) is to exempt from this requirement non-mass public events, ‘other mass events’ and ‘mass public events’ being held ‘for the purpose of pre-election or referendum agitation’. These exemptions are on the one hand welcome – even if it is open to doubt that there could be a pressing need which would justify the need for advance notification, let alone authorisation, of small-scale events – but on the other they point to an inconsistency of treatment of mass events, all of which as has already been noted (see para 12) could generate public order problems that it might be possible to forestall or address through some form of advance notice (not necessarily also entailing authorisation) might help. There is nothing in the terms of the draft law providing a rational and objective justification for the more onerous treatment of public events that do not fall into any of the three categories just mentioned so that, even if a notification requirement might not be objectionable in principle, it is hard to see the present one – leaving aside the issue of authorisation – surviving a challenge that the present one is a violation of the international guarantee of freedom of assembly when read with the guarantee against discrimination.

47. The statement in paragraph 2 that ‘mass public events in areas of general public use may only be conducted after informing the authorised bodies ...’ is misleading as it gives

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<sup>48</sup> *The Socialist Party v Turkey*, Judgment of the Court, 25 May 1998 and Appl 7525/76, *X v United Kingdom*, 11 DR 117 (1978).

<sup>49</sup> *Incal v Turkey*, Judgment of the Court, 9 June 1998.

the impression that notification is all that is required when in fact there is also an approval process (see para 53-58). Although it is questionable whether the latter is justifiable in its present form, it is inappropriate for a provision to be formulated in such a way and, in the event that authorisation continues to be needed, there should be an explicit reference to the provisions in Article 12 dealing with this process.

48. The requirement that notification be in writing is generally not going to be regarded as objectionable but its absolute character when taken with the minimum requirement of three days' notice is likely to mean that it will be seen as a disproportionate interference with freedom of assembly. This is not because such a period might not reasonably be set as a standard that should normally be observed but because its total inflexibility – underlined by the specification in paragraph 4 that a notification not submitted within this deadline will not be regarded as having been submitted and cannot be discussed - means that it will be impossible to organise protest action in respect of a matter that has suddenly arisen and in respect of which the passing of three days would inevitably render a later protest entirely pointless. Moreover the present formulation is also likely to entail inadvertent breaches of the requirement, such as where a protest action in one part of a business's premises becomes a parade or rally when the participants cross a public road to other part of its premises; the participants may not have the intention of organising a public event but that is the consequence of crossing the road and if there are more than 100 persons participating it will be a mass public event for which notice should have been given more than three days prior to their action, notwithstanding that the protest only arose because of precipitate action taken by the business's management<sup>50</sup>.

49. Although some persons might wish to organise a public event quite a considerable time in advance, the specification of twenty days as the maximum advance notice that can be given is unlikely to be seen as problematic; the legitimate purpose of notice is to put the authorities in a position to deal with difficulties that might arise from protest action and these might not be foreseeable if this is considered a significant time before the event in question is due to take place. Moreover a period of twenty days as the outer limit for giving notice is also one which still allows alternative arrangements to be put forward if the original proposals as seen as giving rise to difficulties. In such circumstances a failure to allow a longer period of notice is unlikely to be seen as frustrating a legitimate exercise of the right to freedom of assembly.

50. It should be noted that some events, namely, rallies and parades will require notification to several community heads because of the proposal to pass through a number of different communities. This is not problematic in itself as each head may have different concerns that need to be addressed. However, it will undoubtedly cause difficulties at the authorisation stage and these are considered further below (see para 58).

#### *Article 11*

51. Insofar as a notification requirement is acceptable, the general character of the information being requested in paragraphs 1 and 2 is appropriate. However, the need for the authenticity of signatures to be verified by a notary (paragraph 1(1)) seems unduly bureaucratic and will certainly impose additional financial costs on those who organise mass public events. Although it may be important to be sure that a purported organiser is who he

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<sup>50</sup> Cf the six-hour period considered acceptable in Comm No 412.1990, *Kivenmaa v Finland*, Views of 31 March 1994.

or she claims to be, the need for such a process ought to be unnecessary in many instances as the persons will be well-known to the authorities. Furthermore, where this is not the case, the need for authentication ought to be rendered unnecessary as a result of the introduction of identity documents – which can perform a similar authentication to that of the seal in the case of organisations (paragraph 3) - and it should not, therefore, be retained in the draft law<sup>51</sup>. It should be emphasised that there is a need for particular scrutiny of the way in which decisions are reached as to a notification satisfying the formalities for submission as this could easily be used as a vehicle for preventing proposals for an event even getting to the stage of consideration on its merits. It is, therefore, very appropriate that paragraph 4 requires that, in the event of a deficiency, the authorised body should inform the organisers of the deficiencies. However, this provision seems only to envisage an oral communication – ‘during the discussion of the notification’ – and effective judicial control is only likely to be feasible if the specification is in a written form, as is the case with a prohibition decision (see para 68). Furthermore it should be made clear that all the deficiencies in a particular notification must be identified at the same time so that there is no possibility of an existing deficiency only being pointed out after one previously identified had been corrected. In the absence of such a requirement it would be possible for the process of notification to be unduly delayed and the holding of a mass public event to be frustrated.

52. It should be noted that there is no explicit provision in Article 11 for the notification to refer to a delegate having been appointed as organiser instead of the head of an organisation’s executive body; see para 52 This is also the case with regard to delegates for the head of state or local self-government bodies.

#### *Article 12*

53. Although becoming evident from other provisions, those dealing with discussion of a notification make it clear that this process is actually not about the giving of information but the securing of approval. Moreover the format envisaged in paragraph 1 appears very much as if a case needs to be made for the holding of an event rather than the process being one where it is presumed that the event can be held and the only need is to establish whether there are obstacles in the way of this which cannot be overcome. This approach, which is also apparent in the provisions dealing with prohibition (see paras 59-70), is inconsistent with the international guarantee of freedom of assembly and it would be appropriate for the provisions in this article to be recast so that a presumption in favour of holding public events is more clearly established.

54. The proposed procedure is ostensibly fair but there is no express obligation on the part of the authorised body to alert the organiser to any concerns that it might have about the risks or problems that could be posed by the holding of the proposed event. This is clearly essential if the organiser is to be in a position to address and possibly allay the concerns that exist. Such disclosure is not precluded by the terms of paragraph 1 but it is dependent upon a choice being made by the authorised body and it would be more appropriate if these were clearly specified and the organiser then given sufficient time to explain why they are unjustified or how they could be resolved. Although there is some scope for such an approach to be followed in the provision for postponing the discussion, this is unlikely to be helpful without the disclosure suggested and it is something that ought to be specifically provided for in the draft law.

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<sup>51</sup> It should be noted that there is no requirement that the signatures of the heads of an organisation be authenticated when accompanying the organisation’s seal.

55. The provision for publicising the decision following a discussion of a notification is generally welcome but it should be noted that the following article envisages the use of the post where this is a prohibition which could result in inappropriate delay (see para 68). There is a need to harmonise the two provisions and to ensure that the communication of the decision is in practice speedy.

56. Leaving aside the concerns previously noted about the need to allow for the holding of spontaneous forms of protest (see paras 41 and 43), the arrangements envisaged for determining whether authorisation will be granted for a public event do demonstrate an appropriate awareness of the need for such a matter to be handled with despatch.

57. The deadline set for reaching a decision is made much more realistic by the provision in paragraph 2 for effective authorisation if proceedings are not concluded within the specified time for discussion plus three hours, with only a limited further delay permitted where other notifications are being discussed. However, it should be appreciated that this does not lead to any formal confirmation that the public event is authorised and there could be practical difficulties in persuading law enforcement officials that authorisation has been obtained by default. It would be much more in keeping with the presumption that assemblies are to be regarded as permissible if consideration were given to an approach that public events would be authorised on receipt of a notification – subject to the concerns expressed elsewhere as to the length of period required (see para 23) – unless there was considered to be a need to discuss them, which might arise where serious disorder, serious damage to property, serious disruption to the life of the community and serious intimidation of others were apprehended. It would be easy to advise law enforcement officials of such events and there would then be no risk of misunderstanding as to the legal status of an event, as well as a more positive approach to regulation.

58. As has been noted (see para 50), Article 10 requires that notification be given to all of the communities concerned where a rally or parade is to be held in circumstances that involve passage through several of them. However Article 12 does not specifically address the authorisation process in such cases and, in the absence of any provision to the contrary, it is to be presumed from this silence that authorisation must also be obtained from each community. This is not objectionable in principle but could be problematic in practice as the timing arrangements could prevent the organisers from attending all the discussions that would need to be held. It would be appropriate, therefore, to consider introducing into the draft law an option in such cases of a joint discussion of the affected communities being held so that no one's interests are prejudiced.

#### *Article 13*

59. There are undoubtedly circumstances consistent with the international guarantee of freedom of assembly in which it would be appropriate to prohibit the holding of an event, either in absolute terms or in the form of either a postponement in time or a relocation of its venue. Postponement in all these senses can be found in the provisions of Article 13 but it is not the case that all the circumstances invoked would actually be regarded as justifiable by reference to international standards.

60. Thus it has already been seen that it is questionable that authorisation should be a general requirement for the holding of public events (see para 53) and, insofar as that is the case, the automatic prohibition in paragraph 1(1) which results from a failure to include

‘mandatory information and documents’ could in the particular circumstances of a case be seen as a disproportionate response. However, given the existence of an opportunity to rectify a notification (Article 11(4) provides, as has been seen (para 51) for the specification of deficiencies and paragraph 4 of this article makes provision for the organisers to ask for two hours so that they can ‘present relevant information and documents’), this would probably only be the case of an unduly rigid insistence on technical correctness or where a notification is given less than three days before the event – as has been suggested should be possible (see para 48) – and so there is no possibility of correcting errors of no practical significance for the performance of the legitimate regulatory function. In such cases it is certainly possible that the imposition of a sanction for continuing with an event which is technically prohibited could be seen as disproportionate and there will be a need to exercise wisely the discretion to bring proceedings against the persons concerned (see para 76).

61. It may be that the holding of two events in the same place at the same time could pose insuperable difficulties for policing but the automatic prohibition on this account found in paragraph 1(2) is unacceptable as there is no provision for considering whether there is such a difficulty which renders prohibition essential. Certainly two separate protests in a large public square on unrelated matters in which one hundred or so participants are expected should not be expected to give rise to any difficulties that a suitably trained body of police could not resolve without public order or convenience being affected. This ground of prohibition should, therefore, become one that is conditional on there being reasonable grounds to believe that there is a risk of serious disorder and that there is no possibility of dealing with this through policing or adjustments to the proposed arrangements for the event (see further para 70).

62. In the light of the observations in the preceding paragraph it should be clear that the ground for prohibition in paragraph 1(3) regarding the threat to public order is insufficiently strict; the use of ‘may’ indicates that the present ground focuses only on possibilities rather than a real risk. This ground should, therefore, be rephrased in the manner suggested and indeed this and preceding ground could be combined as the simultaneous holding of two events is just an instance on the circumstances in which it might reasonably be concluded that there was a real risk of serious disorder.

63. There is nothing objectionable in principle to prohibition in an absolute sense being imposed where the venue is not one where events are permitted under the law. However, as has already been seen (see paras 41-43), there are instances in the draft law of exclusions from holding events being overbroad and the acceptability of the ground in paragraph 1(4) is thus subject to the concerns previously expressed being satisfactorily addressed.

64. The comments made in the preceding paragraph are equally applicable to the provision in paragraph 1(5) for a prohibition to be imposed where the organisers ‘do not have the right to make a request for conducting it’; as has been seen (para 39), not all the exclusions from being an organiser are consistent with international standards and so this restriction is only acceptable insofar as concerns already raised have been adequately addressed. Moreover it would be desirable for it to be clarified whether or not it is intended to apply if only some of the proposed organisers are incompetent or requires all of them to be disqualified from acting. Only the latter would be acceptable since there is nothing in the draft law, let alone the general practice of freedom of assembly, which necessitates more than

one person being available as an organiser. Insofar as this is not the intention of the draft law there would clearly need to be an appropriate modification to it.

65. It is without question legitimate to take into account the impact on traffic and pedestrians of a parade or rally but the provision in paragraph 1(6) for one to be prohibited if it ‘will paralyse the traffic of the given residential area or international highways’ is unacceptable because it does not set any evidential basis for this being concluded – is it just a matter of belief or are there reasonable grounds for reaching this view – and it does not give any indication of how extensive or how prolonged a paralysis is required. It is an inevitable incident of the different facets of public and social life that a particular activity can cause some inconvenience to others wishing to do something different but recognition of the inherent value of the former, particularly in a matter so important for democracy as public protest, means that this is a price that others can be expected to pay so long as the inconvenience is not excessive. It is on this basis that roads often temporarily closed to secure the safe passage of political leaders or to enable state visitors to be appropriately welcomed. The crucial question, therefore, is not whether there will be paralysis but how extensive and how prolonged it will be and that prohibition should only be permitted where there is a well-founded basis for the belief that a parade or rally will have a significant impact on the ability of others to pursue their activities; it is unlikely that a delay that is unlikely to exceed half-an-hour would be an unreasonable one to expect others to tolerate. There is a need for this provision to be modified accordingly.

66. The absence of a requirement that a belief be sufficiently well-founded also afflicts the prohibition in paragraph 1(7) as this applies to the possibility that ‘a confrontation may be unavoidable’ if two events are held at the same time in the ‘neighbouring area or within the immediate proximity’. In addition to the possibility of a confrontation being no more than speculative, the provision fails to require consideration to be given to its actual scale – a scuffle between a couple of persons with opposing views is clearly different from a riot involving several hundred persons – and to the capacity of the police and other law enforcement bodies to keep the two groups under control. As it stands the provision echoes the general lack of sympathy evident in the draft law for counter-protest (see paras 41 and 43) and fails to recognise that policing activities are an aspect of the positive obligation to secure freedom of assembly. It would be better if this issue were dealt with in the general power suggested above (see para 61) for dealing with potential public order problems with appropriate attention paid to the need for an objective basis for acting and a proportionate response to problems for which the perception is well-founded.

67. While it is very encouraging to find the list of prohibited grounds concluded by a statement in paragraph 1 that these are exhaustive, the challenge will be, apart from reducing and reformulating this list, to ensure that the grounds retained are strictly construed so that freedom of assembly is not unduly constrained.

68. It is entirely appropriate for there to be a requirement, as there is in paragraph 2, for a prohibition decision to be reasoned. However, the specification as alternatives of this decision being given to the organisers or posted to them is problematic, particularly as the provision seems to leave the choice of means to the authorised body. Certainly the posting of the decision may result in a delay in its receipt and, even if this is only a day or two, this could be significant since the effect may be that a judicial challenge to the prohibition will be rendered difficult or even pointless because of the proposed timing of the event. It would be more appropriate for the decision to be given to the organisers unless they are not present

(although they are more likely to be available given the prescribed period for taking such a decision (see paras 56 and 57)) and the decision only to be posted to them if they are not actually present.

69. The availability of judicial control of prohibition decisions is an important against the possibility of abuse and its timely exercise is recognised as being essential where the enjoyment of freedom of assembly is subject to this form of control. It is, therefore, entirely appropriate for paragraph 3 to provide for such control and to require that a challenge to a prohibition decision be heard within a day. However, the effectiveness of such control in practice ought to be clarified. In the first place are similar deadlines for hearing a case observed and what sort of period is likely to elapse both before there is an actual ruling and before that ruling is published, since the latter is according to the draft law the moment when a finding of invalidity takes effect? If the practice points to more than a day elapsing before the whole process is completed it is unlikely that judicial control is a real safeguard. Secondly, even if the timing of decisions is not problematic, would the court which can hear and determine the case base its decision on the constitutional and international guarantees of freedom of assembly, including in particular the case law of the European Court of Human Rights and the United Nations Human Rights Committee? If this is not the case then the review is unlikely to be able to take account of all the relevant considerations and thus could result in unacceptable restrictions not being set aside. Although both of these are not matters that can be directly addressed in the draft law, they are relevant to assessing whether enough has been done to provide a safeguard against abuse. The problem of delay could, for example, be rectified by a provision that a challenge to a prohibition decision would be effective if it is not heard, determined and published within a day of it being instituted. Moreover difficulties in ensuring that relevant considerations are taken into account in the exercise of judicial control will be lessened, if not eliminated by greater precision in the language of the draft law and by improving the coherence of its organisation.

70. Paragraph 4 imposes an obligation on the authorised body in cases where prohibition arises out of concern for public order and the movement of traffic, as well as where there is a proposal for the event to be held in a prohibited place, to suggest alternative venues and times. Such an obligation does indicate an appreciation of the responsibility that states have to facilitate freedom of assembly and not just to regulate it and is thus welcome. Nonetheless, although the alternatives are appropriately constrained by rules about time (including a recognition that two public events might take place within two hours of each other (*cf* paras 41 and 61) and the setting of a maximum two day delay on that proposed) and places (both as regards suitability and distance), the approach is still insufficient to establish a suitable methodology for the regulation of events. This is because the very starting point is one of prohibition rather than of using prohibition as a last resort; as has been indicated already (see paras 41 and 43), the assumption continually conveyed is that counter-protest is a problem that can only be managed by prohibition when it would be more appropriate to begin by asking what evidence there is of a problem, then (if there is one) turn to the issue of whether it can be handled with the law enforcement resources available or by making alternative arrangements such as are found in paragraph 4 and finally resort to prohibition as a last resort. In all instances there needs to be decisions taken on the basis of the particular case rather than the application of general rules. A recasting of this article in this manner would be more likely to secure the freedom of assembly required by international standards. As it stands the approach in paragraph 4 is no more than a faltering step in the right direction and the absence of a sufficiently positive attitude to assemblies is reflected in the insistence in the final clause that a fresh notification be submitted after the organisers have already



accepted the alternatives proposed by the authorised body. Apart from the appearance of requiring the whole notification process to be restarted again, with the possibility of it not being accepted, the exercise is unduly formalistic given the agreement that was supposed to have been reached in the discussions between the authorised body and the organisers. A recasting of the article along the lines suggested would inevitably engender a more favourable attitude to the holding of public events and reduce the risk of undue restrictions being imposed.

#### *Article 14*

71. It is inevitable that there will be occasions in which the termination of an event will be an appropriate response to the circumstances in which it is being held and there is, therefore, nothing exceptional in provision being made for such an eventuality in the draft law. Furthermore the grounds set out in paragraph 1 are in general terms, namely, illegality (whether as a result of the absence of a notification, a breach of a prohibition or non-compliance with the law or, in the case of a rally, the approved route) and the existence of a threat to life, health, safety and property. However, this is subject to the concerns already raised about the scope of the power of prohibition (see paras 59-70) and the view that the test of the threat to public order and related matters is unsatisfactory because it does not require a well-founded belief and does not involve a threat of sufficient gravity. In the absence of these being addressed the use of the termination power is likely to be inconsistent with international standards. Moreover it is important that the power of termination is discretionary as it is probable that its use in some cases will be a disproportionate response to shortcomings on the part of organisers and those who take part in events. In this connection it is, therefore, helpful that in the case of violations of the law or deviations from the approved route there is a requirement that a warning first be given so that efforts to bring the activity back into compliance with the relevant obligations can be attempted. However, it is unlikely that all shortcomings, even if repeated by some participants after the warning, would merit the termination of the event; in many instances it would probably be sufficient to use available powers of arrest in respect of just the individuals concerned. The need for proportionality in practice underlines yet again the importance of appropriate training for those involved in policing public protest.

72. The process of termination seems unproblematic, with first a 'request' which in reality is an instruction since, as paragraph 3 makes clear, it obliges the organisers 'to announce its termination and to take measures for the termination of the public event'. Only after there is a failure to comply with this request (or where the organiser is not present to receive it) is compulsory termination possible. Moreover this cannot be undertaken without two warnings given with a microphone (presumably assisted by an amplification system; see para 31) so that there should be no misapprehension as to what is required. However, the draft law does not specify any period that must elapse before compulsory termination is implemented and this would be desirable as otherwise it will be hard to judge whether such action is taken notwithstanding the existence of genuine efforts by the participants to bring the event to an end.

73. It seems inappropriate for the representative of the authorised body present at an event to be empowered to terminate it since there is likely to be more confidence in what is essentially a policing function being performed by reference to objective considerations by law enforcement officials than the delegate of a political authority. It would, therefore, be desirable for this aspect of the power of termination to be deleted.

74. Neither this article nor the draft law indicates what measures might be taken to effect compulsory termination – paragraph 4 refers merely to ‘the procedure specified and manner prescribed by law’ – but it is essential that this is proportionate to the situation and in particular does not give rise to the risk of loss of life or treatment that is inhuman or degrading. This may not be a matter that should be dealt with in the draft law but there is a need to clarify the scope of the powers involved so that the power in the present law does not open the door to conduct which is incompatible with international standards.

## **Liability**

### *Article 15*

75. The unambiguous statement in paragraph 1 that there is a duty on the part of the State or the community for damage caused by an unlawful termination or prohibition of a public event, together with that of administrative or criminal liability for officials who unlawfully impede, interfere in or terminate such an event, undoubtedly go a considerable way to fulfilling the requirement of an effective remedy where the right to freedom of assembly is violated, with the other significant element being effective judicial scrutiny (see para 69). However, it will be important to establish what arrangements exist in practice for investigating allegations that there has been impropriety in the handling of a public event as it is well-recognised that a failure to investigate promptly and thoroughly will render ostensibly valuable remedies quite pointless. Moreover it ought to be clarified whether or not there is any limit to the matters (would it cover the costs of publicising the event, the transportation costs for speakers and participants and non-pecuniary damage suffered through the interference with this fundamental freedom) or amounts for which compensation can be obtained under Armenian law so that there is no doubt as to the adequacy of any awards that might be made in the event of an interference with freedom of assembly being shown to be unlawful. The duty to pay compensation is specified only in respect of the organisers but it should not be overlooked that the participants also have the right to freedom of assembly and it ought to be clarified whether there is any basis on which they could also seek recompense for losses that they might suffer. In most instances these are unlikely to be significant but it would be appropriate for their interests also to be respected in the draft law if there is no provision elsewhere dealing with this. It should, in any event, be clarified that there is appropriate civil and criminal liability in place with regard to unlawful use of force in the policing and termination of any public event.

76. There is nothing objectionable in principle in the imposition of criminal and other liability on organisers of, and participants in, public events, as is envisaged by paragraph 2. This is, however, subject to the appropriateness of the requirements on which liability is based being compatible with the right to freedom of assembly and at various points it has been noted that this is not the case with provisions of the draft law. The acceptability of paragraph 2 is thus dependent on the concerns just referred to being adequately addressed. Furthermore, even where some liability may be justified, the proposed penalties for the infractions which will be introduced by amendment to Article 180.1 of the Code on Administrative Violations of the Republic of Armenia from December 6, 1985 seem to be excessive, at least as regards the minimum point. As has been noted (see para 3), the acceptability of restrictions on freedom of assembly will always be dependent on the proportionality of the restriction involved and this will include the extent of any penalty imposed where the objective behind it is otherwise legitimate. In many instances non-compliance with particular aspects of the draft law’s requirements will not be major matters

and it would, therefore, be inappropriate for the court to have no choice but to impose a high penalty. At present the range of possible penalties has too high a starting point and these should thus be considerably reduced so that an appropriate exercise of discretion based on all the circumstances of a particular case is open to the judge dealing with it. Furthermore, although the infractions of the draft law are dealt with under the Code of Administrative Violations, it is probable that the penalties would be sufficient for them to be regarded as ‘criminal’ for the purpose of international guarantees of a fair hearing. As a consequence it ought to be clarified that the proceedings for the determination of any liability is in full compliance with the requirements of these guarantees otherwise there would be a violation of them. It should be added that such compliance would in any event be required under the international guarantee of freedom of assembly as this might be the only forum in which the organiser or participant of a public event would have an effective opportunity to challenge the imposition of a restriction on the exercise of freedom of assembly which, as has been seen (see para 69) is an essential condition for the acceptability of imposing restrictions on it.

77. The specification in paragraph 3 that ‘the organisers or participants of a public event shall bear material liability foreseen by law for having caused any damage to other persons’ is something in respect of which further clarification is essential. Insofar as it entails liability to compensate damage which they have directly caused it is unlikely to be problematic, although there is still a need for a ‘reasonable excuse’ defence as the immediate act causing the damage may have been the inevitable consequence of the acts of others; property could, for instance, be damaged or destroyed by being knocked over by one participant but this only occurred because he was pushed by other participants. Moreover it would be entirely disproportionate to hold the organisers responsible for the damage caused by participants simply on account of the fact that they arranged for the event to be held. It may be that liability could arise for a failure to organise volunteers appropriately in order to keep a crowd under control but it would be wholly wrong to impute responsibility to them for the acts of participants which were never part of the plans for the event. In addition attempts to impose any sort of liability would need to take account of the impact on crowd behaviour of any change in policing tactics which may have rendered previous organisational arrangements irrelevant. There is, therefore, a need to ensure that the principles governing liability are consistent with the international guarantee of freedom of expression.

## **Final Provisions**

### *Article 16*

78. The repeal of existing legislation covering the same ground is clearly not problematic in itself, particularly if it is less compatible with international standards. However, there is no indication as to when the draft law will enter into force. This may, of course, be something that will be added at a later stage of drafting or that is governed by more general rules relating to the legislative process. Either approach is acceptable but it is obviously important that there be no uncertainty as to when the new legislation takes effect.

## **Summary of modifications required**

79. It is suggested that the following provisions, or elements thereof, should be deleted:

Article 1(2) – reference to ‘peaceful, unarmed events’ (para 7);

Article 2(1) – substantive objectives of public events (para 11);  
Articles 8(1) and 14(2) – role of authorised body in termination of public events (paras 36 and 73); and  
Article 9(3) – ban on two events at the same time (para 43).

80. In additions modifications are needed for the following:

Article 1(1) – make explicit that non-citizens benefit from all the draft law’s provisions and that the latter are only partially concerned with fulfilling the constitutional guarantee (para 6);

Article 1(2) transfer definitional elements to the current Article 4 and abbreviate statement of objectives (para 7);

Article 2(1) – improve the accuracy of its drafting and transfer the definition of ‘citizens’ to Article 4 (paras 8, 9);

Articles 2(2) and (3) and 10 – unite exemptions form notification/authorisation (insofar as this is retained) (paras 13 and 45);

Articles 2(3) and 4 – the meaning of ‘places of general public use’ (paras 14 and 18);

Article 4 relocate immediately after Article 1 with all definitional elements and avoid unnecessary use of alternative terms (paras 7 and 17);

Article 5 – establish that ‘hinder’ does not preclude peaceful counter-demonstrations and extend scope for substituting an organiser (paras 21 and 22);

Articles 5(8) and 10(2) – introduce some scope for spontaneous protest (paras 23 and 48);

Article 6(1) – replace ‘determine’ by a more accurate term, establish inapplicability of removal power to peaceful counter-protest, introduce training requirement for ‘volunteers’ (paras 25, 26 and 27);

Article 6(2) – moderate responsibility of organisers (paras 29 and 30);

Article 8 – make heading reflect contents of article and relocate provisions after current Articles 10-12 (para 35);

Article 8(2) – introduce provision for substitution of representative (para 37);

Article 9(1) and (2) – relocate to Articles 5 and 6 and moderate bar on remand prisoners and persons with ‘limited capacity’ (paras 38 and 39);

Article 9(3) – improve the precision of restrictions (paras 41 and 42) and facilitate counter-demonstrations (para 43);

Article 10(1) and (2) – moderate authorisation and notification requirements (paras 46-48);

Article 11 – add provision for notification of delegates (para 53);

Article 11(1) – moderate requirements for authentication (para 51);

Article 11(4) – add requirement for deficiencies in notification to be specified in writing and that all deficiencies are identified at the same time (para 51);

Article 12 – establish presumption in favour of holding public events, requirement to alert organisers to possible concerns and procedure for dealing with events affecting several communities (paras 53, 57 and 58);

Article 12 (1) – harmonise communication arrangements with those in Article 13 (2) (para 55);

Article 13 –introduce requirement to consider alternatives to prohibition as first element of this article and moderate automatic prohibitions (paras 59-66 and 70);

Article 13(2) – provide for decision normally to be given to organisers (para 68); and

Article 15(2) – moderate starting point of penalties (para 76).

81. Furthermore some clarification is required with respect to the following: Article 2(1) – whether ‘organisations’ includes unregistered bodies and, if not, how these can organise public events (para 10);  
 Article 2(2) – scope of exempted activities and justification for exemption (para 12);  
 Article 2(4) – whether this refers to paragraphs 2 and 3 rather than 3 and 4 and extent of applicability to non-mass events (para 15);  
 Article 3 – meaning of ‘international agreements (para 16);  
 Article 4 – meaning of ‘transportation’ in connection with rallies and definition of ‘participant’ (paras 17 and 19);  
 Article 5(8) – meaning of being ‘present’ (para 23);  
 Article 6(1) – whether persons other than organisers can publicise events and, if not, establish such a possibility (para 28);  
 Articles 6(2) and 7(7) – meaning of ‘public ethics’ (paras 30 and 34);  
 Article 7(3)) – inclusion of amplification systems in reference to ‘microphones’ and circumstances in which their use, and that of shouting and scansion, is prohibited (paras 31 and 32);  
 Article 7(7) – whether there is a ‘reasonable excuse’ defence and, if not, establish one (para 34);  
 Article 8(1) – whether or not sub-paragraph should refer to ‘mass’ public events (para 36);  
 Article 8(2) – meaning of ‘arms, ammunition, special coercive devices’ and ‘demonstrate’ (para 37);  
 Article 9(2) – alternative avenues of protest for officers of police and national security services (para 40);  
 Article 10(1) – definition of venues for events (para 45);  
 Article 10(2) – clarify when notification also entails authorisation (para 47);  
 Article 13(3) – time within which judicial control will be exercised and ability of courts to consider international case law (para 69);  
 Article 14(4) - inclusion of amplification systems in reference to ‘microphones’ and period within which termination must be effected (para 72);  
 Article 14(4) – measures that can be used to effect termination (para 74);  
 Article 15(1) – arrangements for investigating impropriety in handling of a public event and ability of participants to obtain compensation (para 75);  
 Article 15(3) – scope of liability of organisers (para 77); and  
 Article 16 – entry into force of draft law (para 78).

82. Finally there is a need to ensure consistent use of terminology (paras 7 and 17).

## **Conclusion**

83. This law is clearly endeavouring to establish a legal framework for the exercise of freedom assembly which is compatible with international standards, with the regulatory arrangements addressing many legitimate concerns. However, the draft law suffers in a number of places from inconsistency and a lack of clarity in the terminology being used and poor organisation of provisions which affects its overall coherence. Moreover the underlying attitude seen in the law is not entirely sympathetic to demonstrations, with the sense being

conveyed that these need to be justified rather than that the burden should be on those who would subject them to regulatory controls. There is clearly a need for the law ultimately adopted to reflect a strong presumption that demonstrations are a legitimate activity and indeed are an essential characteristic of a healthy democracy. Without this the manner in which provisions are applied, even if not technically incompatible with international standards, will undoubtedly result in them being breached. There are a number of matters on which clarification is needed, which may result in further elaboration in the draft law proving necessary. There are also a few elements of provisions that should be deleted and many more where some modification is essential.

Jeremy McBride  
4 April 2004