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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT JOINT OPINION**  
**ON THE DRAFT LAW ON ASSEMBLIES**  
**OF THE KYRGIZ REPUBLIC**

**by**  
**THE VENICE COMMISSION**  
**and**  
**OSCE/ODIHR**

**On the basis of comments by**  
**OSCE/ODIHR Expert Panel on Freedom of Assembly**  
**Ms Finola FLANAGAN (Member, Ireland)**  
**Mr Bogdan AURESCU (Substitute Member, Romania)**

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res (2001)6 on access to Council of Europe documents.*

## **I. INTRODUCTION**

1. On January 15 2009, the OSCE/ODIHR was requested by the Ombudsman of the Kyrgyz Republic to review a new Draft Law on Assemblies that is under elaboration in the Ombudsman's Office.

2. This Draft Law is an initiative of the Ombudsman of the Kyrgyz Republic to improve the current Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations. This law was amended on 13 August 2008 despite criticism that the amendments failed to meet international standards on the protection of the freedom to peaceful assembly. Such standards were previously articulated in the OSCE/ODIHR-Venice Commission Joint Opinion no. 487/2008 [CDL-AD(2008)025], adopted on 12-13 June 2008.

3. The OSCE/ODHIR Expert Panel on Freedom of Assembly and the European Commission for Democracy through Law of the Council of Europe [Venice Commission] carried out the assessment jointly.

4. This Opinion has been prepared on the basis of an unofficial English translation of the Draft Law. It was sent to the authorities of the Kyrgyz Republic on 23 April 2009 and was endorsed by the Venice Commission at its... Plenary Session (Venice,.... 2009).

## **II. SCOPE OF REVIEW**

5. This Opinion analyzes the Draft Law of the Kyrgyz Republic on Assemblies (hereinafter referred to as "the Draft Law") in terms of its compatibility with relevant international and regional standards and OSCE Commitments, and in light of Article 25 of the Constitution of the Kyrgyz Republic which guarantees the right to assemble peacefully to citizens of the Republic.<sup>1</sup> The Opinion also draws upon relevant case law and international good practice relating to the regulation of public assemblies.

6. The Opinion was approved by the OSCE/ODIHR Expert Panel on Freedom of Assembly as a collective body and should not be interpreted as endorsing any prior comments on the Draft Law made by individual Panel members in their personal capacities.

7. This Opinion refers to standards which are legally binding upon the Kyrgyz Republic, in particular, the International Convention on Civil and Political Rights (ICCPR) which entered into force in the Kyrgyz Republic in 1995, and which guarantees the right to peaceful assembly.<sup>2</sup> Whilst not ratified by the Kyrgyz Republic, the Opinion also refers to the European Convention on Human Rights (ECHR) which guarantees the right to assemble in similar terms to the ICCPR.<sup>3</sup> Moreover, the extensive jurisprudence of the European Court of Human Rights

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<sup>1</sup> The Constitution, Article 25 reads that "[c]itizens of the Kyrgyz Republic shall have the right to assemble peacefully, without weapons and conduct political meetings, rallies, marches, demonstrations and pickets on condition of prior notification to state authorities or local self-government bodies. The procedure and conditions for conducting them shall be established by law."

<sup>2</sup> The full text of the ICCPR is available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (last visited on 12 February 2009). Article 21, in particular, reads: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

<sup>3</sup> The full text of the ECHR is available at <http://conventions.coe.int/treaty/EN/Treaties/html/005.htm> (last visited on 12 February 2009); Articles 11, in particular, reads: "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the

establishes important benchmarks which further define the boundaries of the right to freedom of peaceful assembly and limit the restrictions that may legitimately be placed upon its exercise. It is noteworthy that Article 2 of the draft Law refers to these international commitments as well as to generally recognized principles and norms of international law.

8. The Opinion also refers to non-binding international instruments including documents of a declarative or recommendatory nature which have been developed to aid interpretation of relevant international treaties. The Opinion makes extensive use of the OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly (hereinafter referred to as “the OSCE/ODIHR-Venice Commission Guidelines” or “the Guidelines”).<sup>4</sup>[http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)025-e.asp](http://www.venice.coe.int/docs/2008/CDL-AD(2008)025-e.asp) - [ftn1# ftn1](#)

9. The Opinion also takes into account OSCE commitments pertaining to freedom of peaceful assembly which provide that “[e]veryone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.”<sup>5</sup>

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

### III. EXECUTIVE SUMMARY

11. The Draft Law appears to seek to establish a legal framework which would permit the exercise of freedom of peaceful assembly in a manner compatible with international standards, and with the recommendations of the OSCE/ODIHR and the Venice Commission provided in their Joint Opinion no. 487/2008 [CDL-AD (2008)025] on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic. An opportunity to meet with representatives of the Ombudsman of the Kyrgyz Republic would be useful so that a fuller understanding could be gained of how the administrative and other systems provided for in this law will operate.

12. The Draft Law appears liberal in its approach and generally complies on its face with the international standards on freedom of peaceful assembly. The OSCE/ODIHR – Venice Commission Guidelines should be drawn upon in interpreting the application of the law.

13. Nonetheless, the Draft Law contains some potential for abuse and its practical implementation may also present difficulties. The Draft Law pays much attention to the responsibilities and limits on action to be taken by various state bodies, but the Draft Law does not apply to a number of categories of public assembly, and also allows for assemblies to be regulated by other unspecified laws.

14. Whilst specific provisions of the law are not necessarily objectionable having regard to the requirements of international standards, it must be said that the totality of the regulation is very specific and detailed – potentially to the extent that it imposes excessive burdens both on those who wish to exercise their right to assemble and on the authorities. Additionally, some

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*rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State”.*

<sup>4</sup> The Guidelines on Freedom of Peaceful Assembly have been prepared by the OSCE/ODIHR Panel of Experts on Freedom of Assembly. They were published in 2007 and endorsed by the Venice Commission in June 2008 (CDL(2008)062). The full text of the Guidelines is available at [http://www.osce.org/odihr/item\\_11\\_23835.html](http://www.osce.org/odihr/item_11_23835.html) (last visited on 12 February 2009).

<sup>5</sup> The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990), Paragraph 9(2)

references to the regulation of spontaneous assemblies in the Draft Law give rise to inconsistencies in the legislation. Nonetheless, these can be easily remedied.

15. Below follows a list of summary recommendations:

- a) It is recommended that the title explicitly states that the law refers to freedom of *peaceful* assemblies; [para. 16]
- b) It is recommended that the law should apply to all assemblies that take place in public space, regardless of their organiser or purpose; [para. 17-20]
- c) It is recommended that the definition of peaceful assembly be amended to clarify that the term 'public assemblies' refers only to *open-air* public assemblies; [para. 21-25]
- d) It is recommended that the law might also usefully mention the right of children, refugees, persons with a disability and others to organize or participate in public assemblies; [para. 26]
- e) It is recommended that the ban on assemblies in the immediate vicinity of hazardous facilities be limited to the areas closed to the public; [para. 27-30]
- f) It is recommended that the organisers of a public assembly be required to provide written notification of an assembly within a clearly articulated timeframe so as to facilitate the arrangements to be made by the state bodies. The form used to notify the authorities should also ensure that relevant details of the proposed event are set out in a clear manner; consequently, oral notification should be allowed solely in exceptional cases; [para. 31, 34]
- g) It is recommended that consideration be given to requiring 48-hours prior notification of a planned assembly in order to enable local authorities and other charged bodies to meet the requirements of this law; however, recognizing the state's positive duty to facilitate freedom of assembly, this should not be an absolute rule leading to prohibition of an assembly; [para. 32]
- h) It is recommended that, on the request of an assembly organiser, the authorities should give *immediate* written confirmation of receipt of notification; [para. 33-34]
- i) It is recommended that the clarity of provisions related to spontaneous assemblies be improved; [para. 35]
- j) It is recommended that law enforcement bodies display tolerance towards unlawful but peaceful assemblies by accommodating such events where possible; [para. 36-37]
- k) It is recommended not to permit participants to change the place, time and route of movement of a planned assembly as this could place an excessive burden on those authorities charged with providing due protection and security; [para. 38-39]
- l) It is recommended that a new clause be included in the law so as to provide a defence for participants charged with taking part in an unlawful assembly, whether planned or spontaneous, if they were unaware of the unlawful nature of the event; [para. 40]
- m) It is recommended that the executive-regulatory authority of local self-government should be required to complete only those parts of an Action Plan that are directly applicable to the notified event so as to remove the possibility of interfering in the exercise of the freedom; [para 43] It is recommended that law enforcement bodies be vested with the right to change the location or route of an assembly as it is taking place in order to respond to threats to the safety or security of the assembly participants; [para. 43]
- n) It is recommended that the law should specify what type of services should be paid for by organisers; [para. 44-45]
- o) It is recommended that liability for unlawful or excessive use of force by law enforcement bodies be established by this law; [para. 47-49]
- p) It is recommended that the requirement of prompt decision-making in relation to decisions to impose prior restrictions on an assembly should also apply to decisions of the appeals court. [para. 50-51]
- q) The government should consult on an on-going basis with civil society and other relevant stakeholders after the reforms have been adopted to ensure that the procedures work

to the correct effect so as to facilitate, in practice, the exercise of the freedom. Official monitoring and recording the operation of the law will also be necessary for this purpose. [para. 52]

#### IV. ANALYSIS AND RECOMMENDATIONS

##### 4.1 Title

16. The proposed title of the Draft Law rectifies the deficiencies in the title of the law currently in force.<sup>6</sup> The title of the current law raised concerns due to its vagueness, thus potentially falling outside the principle of legality which requires the law be clear, ascertainable and the consequences of its breach foreseeable. However, it is recommended the title of the Draft Law be amended to explicitly state that the law refers to freedom of *peaceful* assembly: an assembly must be 'peaceful' if it is to be afforded the protection guaranteed in international and regional instruments.

##### 4.2 Applicability of law

17. The Draft Law states that it does not apply to assemblies that are conducted at the initiative of public authorities or local self-government or by organizations, which the latter are members of.<sup>7</sup> It is not clear why such a potentially large group of people and organisations are excluded from the provisions of the Draft Law, especially as one of the purposes of the legislation is to reduce the potential for disruption of, or restrictions upon, the rights and freedoms of others (as well as to ensure equality, transparency and accountability). This provision compromises the principle of equality for all potential actors.

18. Furthermore, the Draft Law states that it is not applicable to those assemblies that are "*subject to regulation by other laws*"<sup>8</sup> without explicitly detailing what other laws assemblies may be subject to. Since the Draft Law is supposed to be a general law governing freedom of assembly, the possibility of assemblies being governed by other unspecified laws might create the potential for abuse. Besides this, the provision might appear to undermine the requirement of foreseeability of the law: how can an individual assess whether his/her organisation of, or participation in, an assembly is in compliance with the law, or determine what consequences might follow, if it is not clear precisely which laws govern public assemblies? Thus, specific and concrete references to "other laws" should be included in this article.

19. The Draft Law states that it does not apply to "*commercial, cultural/spectacular character and sporting events*".<sup>9</sup> It might be worth reconsidering this provision and not exclude such events from regulation of this law, where they involve an assembly conducted in a public space for a common expressive purpose. Narrowly framed exceptions in relation to particular classes of event, where the justification for such exceptions is clearly explained, would be preferable to the present all-encompassing exemption.

20. Additionally, the Draft law reads that "*[s]pecifics pertaining to assemblies conducted as part of election campaigns, preparation and conduct of a referendum that do not contradict this Law, may be provided for in respective laws.*"<sup>10</sup> A specific law should not be necessary to regulate assemblies in an election period. On the contrary, the general law on assemblies should cover assemblies associated with election campaigns, an integral part of which is the organisation of public events. Indeed, the exercise of the freedom to peacefully assemble

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<sup>6</sup> The present Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations entered into force on 13 August 2008.

<sup>7</sup> The Draft Law, Articles 1.2.1 and 1.2.2

<sup>8</sup> *Id.*, Article 1.2.3

<sup>9</sup> *Id.*, Article 1.2(4)

<sup>10</sup> *Id.*, Article 2.2

typically increases in the context of elections when opposing political parties, as well as other groups and organisations, wish to publicise their views.

### 4.3 Definitions

21. The Draft Law introduces the following definition of a public assembly: *“Peaceful assemblies are public arrangements with participation of citizens, conducted on the initiative of citizens or organizations, directed at attracting public attention and/or expressing opinion on some issues, that are of peaceful character (non-violent and unarmed), and do not pursue unlawful purposes.”*<sup>11</sup> This definition is welcome to the extent that it displays general characteristics shared by all public assemblies without reducing it to certain types of events.

22. Freedom of assembly – as elaborated in human rights case law – is viewed as a fundamental democratic right, which should not be interpreted restrictively and which covers all types of peaceful expressive gathering, whether public or private. The definition in the Draft Law also falls within the OSCE/ODIHR-Venice Commission Guidelines which define an assembly as *“the intentional and temporary presence of a number of individuals in a public place that is not a building or structure for a common expressive purpose.”*<sup>12</sup>

23. However, it is recommended that the definition of peaceful assembly be amended to clarify that the term ‘public assemblies’ refers only to *open-air* public assemblies.

24. The definitions of counter-assemblies and spontaneous assemblies, contained in Article 3 of the Draft Law are also welcomed.

25. The definitions at Article 3.8<sup>13</sup> and 3.9<sup>14</sup> appear circular and it is not clear why the definitions are necessary.

### 4.4 Enjoyment of freedom of peaceful assembly by non-nationals and other groups

26. The Draft Law explicitly states that non-nationals of the Kyrgyz Republic as well as stateless persons are free to organize and participate in public assemblies; although the Draft Law refers to “citizens” throughout the text, it states that this definition includes “nationals of the Kyrgyz Republic, foreign nationals or stateless persons.”<sup>15</sup> This provision is welcome and falls in line with the OSCE/ODIHR-Venice Commission Guidelines, which emphasize that *“[t]he freedom to organize and participate in public assemblies must be guaranteed [...] to both nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants, and tourists).”*<sup>16</sup> However, it would be advisable either to mention the rights of other groups, such as refugees, persons with disabilities or children, to organize or participate in a public assembly, or to exclude ambiguity and use the language of the ICCPR and refer to “everyone” in this regard and only make exclusions or simply list all categories of people enjoying this right<sup>17</sup>.

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<sup>11</sup> *Id.*, Article 3.1(1)

<sup>12</sup> OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, para. 13.

<sup>13</sup> The Draft Law, Article 3.8 reads that *“[l]ocal self-government are representative and executive/regulatory authorities of local self-government”*

<sup>14</sup> *Id.*, Article 3.9 reads that *“[l]ocal state administration is district and oblast (province) local state administration”*

<sup>15</sup> *Id.*, Article 2.1(5)

<sup>16</sup> OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, at p. 14.

<sup>17</sup> See in particular ECtHR judgment of 9 April 2002, *Cissé v. France*, at § 50, where the Court found that a breach of the right to freedom of peaceful assembly cannot be justified by reference to the fact that the applicant is an illegal immigrant; see also General Comment 15 by the UN Human Rights Committee under the ICCPR, at § 7: *“Aliens receive the benefit of the right of peaceful assembly and of freedom of association. (...) There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant”*. See also Venice Commission, Opinion on the law on freedom of assembly in Azerbaijan, CDL-AD(2006)034, §§ 29 -30.

#### 4.5 Restrictions on assembly venues

28. Another innovation of the Draft Law in comparison with the current Kyrgyz Law is the exclusion of blanket restrictions concerning prohibitions on carrying out assemblies in specific locations. The only specified restrictions are for the holding of assemblies near railway lines, spaces occupied by public authorities or local self-government if the assembly were to interrupt the work schedule of these agencies, and to places falling under a special regime of occupational safety or special safety rules, or places which could pose a threat to life and health.<sup>18</sup>

29. This provision appears to pass the test of proportionality. Proportionality is one of the key criteria that should guide the State when imposing restrictions, and which is sometimes not taken properly into account. Proportionality requires the State to adopt the least intrusive means for achieving set objectives. The legitimate interest of the State is to guarantee general interests of the community and public order on the one hand, and to ensure the proper exercise of freedom of assembly on the other. To this effect, some positive measures are permissible in order to enable lawful demonstrations to proceed peacefully. A notification procedure for a planned assembly can be seen as such a measure, providing that it is not used to impede the assembly or stop it from taking place. Moreover, the OSCE/ODIHR-Venice Commission Guidelines say that “[t]he principle of proportionality [...] requires that authorities not routinely impose restrictions that would fundamentally alter the character of an event, such as routing marches through outlying areas of a city. The blanket application of legal restrictions tends to be overly inclusive and thus fails the proportionality test because no consideration is given to the specific circumstances of the case in question.”<sup>111</sup>

30. However, as far as the prohibition of public assemblies near hazardous facilities is concerned [i.e. the ones that pose a threat to life or safety], any prohibition should be limited to those areas closed to the public, and presumably fenced in. If the area near a hazardous facility is open to the public, there appears to be no reason to exclude an orderly public assembly in the same area<sup>19</sup>.

31. In addition, the Draft Law imposes an obligation on public authorities and local self-government to provide assembly organizers and participants with information about spaces where assemblies are prohibited for the specified reasons.<sup>20</sup> The last provision seems to be excessive: since the Draft Law clearly lists the types of areas where assemblies may not take place, there should be no reason for public authorities to provide additional information on where assemblies are prohibited, providing these places have clear signs prohibiting assemblies under this law.

#### 4.6 Notification of planned assemblies

32. According to the Draft Law, notification of a peaceful assembly is normally required either orally or in writing no earlier than two weeks before the assembly date. Nonetheless, neither public authorities nor local self-government are vested with a right to prohibit or restrict an assembly due to a lack of notification<sup>21</sup>. Potentially, written notification would better facilitate the administration of all required procedures by the relevant state bodies, and would also ensure that the details of the proposed event are clearly set out in a way that avoids the potential for later misunderstanding though the requirements imposed on the authorities in relation to the 'action plan' will ensure that all necessary details are committed to writing. (However, note the

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<sup>18</sup> The Draft Law, Article 12.2

<sup>19</sup> OSCE/ODIHR-Venice Commission Joint Opinion no. 487/2008 [CDL-AD(2008)025], para. 25

<sup>20</sup> The Draft Law, Article 12.3

<sup>21</sup> The Draft Law, Article 11.2

reservations in relation to 'action plans' at paragraph 43 below.). In any event, it is possible to impose reasonable regulations on assemblies that are not notified.<sup>22</sup>

33. It is also recommended that the legislation should provide a more explicit timeframe for notification of a planned assembly. The Draft Law states that notification should be submitted no earlier than two weeks before the assembly date,<sup>23</sup> but the Draft Law does not, provide a minimum period of time for submitting notification. Providing that the Draft Law charges the local self-government with adopting “*rules on provision of additional guarantees of the right of peaceful assemblies in compliance with this Law*” and requires the authorities to “*generate and adopt a plan of actions to secure a planned peaceful assembly, notify the plan to internal affairs bodies and organizers of the planned peaceful assembly*”<sup>24</sup>, it would be advisable to require notification at least 48-hours prior to a planned assembly, in order to enable officials to prepare.

34. It is further recommended that Article 11.3 of the Draft Law be amended so as to require the authorities to give written confirmation that notification has been received *immediately* to the organisers.

35. The recommendations outlined above emphasize that the notification procedure is for the purpose of providing information to the authorities to enable the facilitation of the right to assemble, rather than creating a system where permission must be sought to conduct an assembly. This emphasizes that the freedom to assemble should be enjoyed by all, and anything not expressly forbidden in law should be presumed to be permissible.<sup>25</sup>

#### 4.7 Spontaneous Assemblies

36. Another positive aspect of the Draft Law are the provisions concerning spontaneous assembly. The Draft Law emphasises facilitating spontaneous events articulated in Article 3.3,<sup>26</sup> Article 9.1,<sup>27</sup> and Article 11.2<sup>28</sup>. Spontaneous assemblies by definition are not notified in advance since they generally arise in response to some occurrence which could not have been reasonably anticipated. On this subject, the OSCE/ODIHR-Venice Commission Guidelines note that “[t]he ability to respond peacefully and immediately (spontaneously) to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly. [...] As such, the authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature.”<sup>29</sup> Nonetheless, despite these provisions in the Draft Law which recognise

<sup>22</sup> See, for example, ECtHR judgment, *Zliberberg v Moldova* (Application no. 61821/00; Admissibility, 4 May 2004): ‘The Court considers that since States have the right to require authorisation, they must be able to apply sanctions to those who participate in demonstrations that do not comply with the requirement. The impossibility to impose such sanctions would render illusory the power of the State to require authorisation.’ Note, however, that we also recommend that the Draft Law include a defence for participants charged with taking part in an unlawful event where they were not aware that the assembly was unlawful.

<sup>23</sup> The Draft Law, Article 11.1. The Law then requires (in Article 4.3) that, “[u]pon receipt of information about a planned or ongoing assembly, bodies of local state administration and local self-government shall immediately notify regulatory authorities of the local self-government on the territory where the assembly is conducted.’

<sup>24</sup> *Id.*, Articles 5.2 and 5.4. As specified in Article 8: the Action Plan should “*envisage a list of measures to arrange for a peaceful assembly, provide for security and safety of peaceful assembly participants as well as other persons who occur in the peaceful assembly area, also a procedure for interaction of the executive-regulatory authority of local self-government with internal affairs bodies and with peaceful assembly organizers during the assembly*”

<sup>25</sup> OSCE/ODIHR-Venice Commission Joint Opinion no. 487/2008 [CDL-AD(2008)025], para. 95-96; OSCE/ODIHR-Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, Principle 1 (p.13).

<sup>26</sup> The Draft Law, Article 3.3 defines spontaneous assemblies as “*peaceful assemblies that were not preplanned, conducted solely on the initiative of citizens.*”

<sup>27</sup> *Id.*, Article 9.1 provides that local authorities “*shall send their employees to the place and route of the spontaneous peaceful assembly with the purpose of assessing the situation on-site and identifying measures to secure the spontaneous peaceful assembly.*”

<sup>28</sup> *Id.*, Article 11.2 states that “*Public Authorities and local self-government shall not have the right to prohibit or restrict the conduct of peaceful assemblies for lack of notification.*”

<sup>29</sup> OSCE/ODIHR-Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, p.15

the importance of spontaneous assemblies, there are other provisions in which detract from the clarity (see also para. 47 under “4.12 Assembly Termination” below):

1. Article 6.1 suggests that prior information would normally be received by the Internal Affairs Bodies in relation to spontaneous assemblies (in the same way as for planned events);
2. Similarly, Article 9.2 states that the Action Plan scheme which applies to planned assemblies should apply in the same manner to spontaneous assemblies. Clearly, however, in light of the definition in Article 3.3, there is no pre-planning and thus no advance information formally provided to the authorities in the case of spontaneous assemblies. As such, it is highly improbable that the measures envisaged by Article 8 (regarding Action Plans for planned assemblies) could be applied to spontaneous events;
3. Furthermore, with regard to Article 5.5,<sup>30</sup> it is not clear that requiring the authorities to ‘take measures to secure the conduct of spontaneous assemblies’ differs from ‘Measures to Secure Spontaneous Peaceful Assemblies’ in Article 9. This may be an omission in the translation into English of the Draft Law, but it would be helpful to further clarify what is meant by the phrase ‘secure the conduct of’. At the very least, it is recommended that the word ‘peaceful’ be inserted so as to read “measures to secure the peaceful conduct of ...”
4. Article 15.1.2 (Assembly Termination Procedure) refers to the ‘organizers’ of spontaneous assemblies. This may be anomalous since spontaneous events are often unorganized.

#### **4.8 Imposing restrictions during a spontaneous or planned Assembly**

37. Any assembly in a public place will cause a certain level of disruption to ordinary life (including disruption of traffic), and where participants do not engage in acts of violence it is important for the authorities to show tolerance towards peaceful assemblies, even if they are unlawful.<sup>31</sup>

38. In addition, it would be expedient to note that if an assembly is prohibited according to the law and the organisers refuse to follow the legal constraints, the law enforcement bodies should manage the assembly in such a way as to ensure the maintenance of public order. If appropriate, the organisers (or other individuals) may be prosecuted at a later stage. This is preferable to requiring the police to attempt to ‘terminate’ the assembly, with the risk of use of force and violence. It is especially important when an assembly is unlawful but peaceful, i.e. where participants do not engage in acts of violence<sup>32</sup>. In such a case, it is important for the authorities to exercise tolerance as any level of forceful intervention may be disproportionate.<sup>33</sup>

39. The Draft Law reasonably specifies that local authorities are authorised to change the time, place and route of peaceful spontaneous assemblies only in case a real threat is posed to its conduct or the safety of its participants or those in the neighbourhood.<sup>34</sup> They can do this only after notifying the organizers of the reasons for such a decision. However, it is recommended that the authorities also notify the participants of the reasons why such decision was made. It is also important to provide the organizers the possibility to challenge the decision of the local authorities before the appropriate authorities, including in court. A specific reference in this regard should be included in the law (equivalent to that already provided in

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<sup>30</sup> The Draft Law, Article 5.5 requires that executive-regulatory authorities of local self-government shall “take measures to secure the conduct of spontaneous assemblies.”

<sup>31</sup> See ECtHR case-law, *Oya Otoman v. Turkey*, paras. 38-42.

<sup>32</sup> See OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, para. 135, which says that “the touchstone [for restriction] must be the existence of an imminent threat of violence”

<sup>33</sup> See ECtHR case-law, *Balcik v. Turkey*, para. 47-53; see also OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, para. 137, which states that “[s]o long as assemblies remain peaceful, they should not be dispersed by law enforcement officials”, and para 140, which states that “if dispersal is deemed necessary, the assembly organizer and participants should be clearly and audibly informed prior to any police intervention”

<sup>34</sup> The Draft Law, Article 9.3

Article 14(4) of the Draft Law – allowing a court decision to prohibit an assembly to be appealed in a superior court).

40. Furthermore, it might be advisable to modify or delete Article 10.1(1) which states that the assembly participants have a right to change the place, time and route of movement, as this could present an excessive burden on the law-enforcement while providing protection of the assembly.

#### **4.9 Liability of participants in an unlawful assembly**

41. The Draft Law does not refer to any liability for participants in cases of assemblies which are not peaceful or which pursue illegitimate purposes. The OSCE/ODIHR-Venice Commission Guidelines propose that “[t]he law should also provide a defence for participants charged with taking part in an unlawful assembly if they were unaware of the unlawful nature of the event.”<sup>35</sup> Thus, it is recommended that the Draft Law be supplemented with a provision embedding an exemption from liability in such cases. The freedom to take part in a peaceful assembly is of such importance that a person should not be subjected to a sanction for participation in a demonstration which has not been prohibited so long as this person does not himself or herself intentionally commit any unlawful act.<sup>36</sup>

#### **4.10 Designation by the State of assembly locations**

42. It is positive that the Draft Law does not allow the State authorities to designate certain locations for holding assemblies, which also falls in line with the OSCE/ODIHR and Venice Commission recommendations.<sup>37</sup>

#### **4.11 Responsibilities of local authorities and law-enforcement bodies**

43. The Draft Law provides an extensive list of the responsibilities and obligations of local authorities, including law-enforcement bodies, to secure the right to freedom of peaceful assembly in practice. Most of these provisions are positive and welcome. The positive aspects include the requirement for local authorities to adopt rules on the provision of additional guarantees of the right of peaceful assemblies; to generate an action plan to secure a planned peaceful assembly along with notifying both the law-enforcement bodies and organizers of such a plan, and others<sup>38</sup>. Notwithstanding, many of the matters required to be addressed in the action plan may be irrelevant for many assemblies, and should therefore only be required to be completed where they are directly applicable to the notified event. In particular, the requirement to prepare and “action plan” of great detail for each and every notified assembly is very demanding for both the authorities and the organisers and potentially impossible. Many of the matters that are required to be addressed in the action plan would be irrelevant for many proposed assemblies and, as such, amount to an unwarranted interference in the freedom to organise and attend assemblies. One would imagine that any action plan would be unnecessary for small assemblies. The requirements for the action plan set out in Article 8.3 (1) appear to be required for all action plans. Article 8.3 (1) should read “*its developers may rather than its developers shall*” thus giving the authority the discretion to seek or not seek information etc as circumstances required.

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<sup>35</sup> OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, para. 98

<sup>36</sup> See ECHR case-law, *Ezelin v. France*, para.53.

<sup>37</sup> OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, para. 42

<sup>38</sup> The Draft Law, Article 5

44. It is also recommended that vesting law-enforcement bodies with the right to change the routes of movement during the peaceful assembly do so in response to threats to safety either to the participants or to the wider community.<sup>39</sup>

45. The Draft Law states that the authorities shall “*ensure provision of paid-for services and equipment requested by the assembly organizers in cases when these services are not provided free of charge pursuant to this Law*”<sup>40</sup>. It is necessary to specify in the law what type of services should be paid for by the organisers in order to ensure that they do not pay, for example, for the costs of maintaining public safety or directing traffic, as such costs should be covered by the state.

46. Another provision that requires clarification is the prohibition on the sale of alcoholic drinks in or in their close vicinity of places where an assembly is taking place for the period of the assembly<sup>41</sup>. It is not clear whether such a broad prohibition is either necessary or desirable or practical.

47. Another positive element of the Draft Law is the requirement to take measures against those persons who “*purposely violate public order, commit or instigate commitment of, unlawful actions that prevent achievement of the peaceful assembly purposes*” without terminating the assembly.<sup>42</sup>

#### **4.12 Assembly termination**

48. The Draft Law provides that the assembly may be terminated only in case of a relevant court decision. In a case where the court prohibits a planned assembly, the organisers shall be informed in writing by the local self-government and relevant law enforcement body<sup>43</sup>.

49. However, the Draft Law also provides that oral notification may be provided in case a spontaneous assembly is prohibited by a court. In such a case, the organizers and the participants shall be informed of the court’s decision and the notification should also “*specify time for its voluntary fulfillment*”<sup>44</sup>.

50. An assembly may be dispersed solely where the organizers or participants fail to follow the court’s decision. Even where an assembly may be dispersed the Draft Law explicitly says that “[t]he procedure of action of the internal affairs bodies shall not envisage use of physical force, including special methods of hand-to-hand fighting, means at hand, special means and arms, to ensure fulfillment of the court decision”<sup>45</sup>. This is a positive provision with regard to the principle of proportionality. International standards require that law enforcement officials should use force only as a last resort, in proportion to the aim pursued, and in a way that minimizes damage and injury<sup>46</sup>. To enhance this provision, a provision on liability for unlawful or excessive use of force by law enforcement bodies is recommended to be added to the Draft Law.

#### **4.13 Judicial review**

51. The Draft Law provides that the court alone is authorised to prohibit an assembly, whether it is planned or spontaneous. Moreover, the Draft Law notes that restrictions can be imposed exclusively “*in cases when the assembly purposes are unlawful, including war*

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<sup>39</sup> *Id.*, Article 7.2

<sup>40</sup> *Id.*, Article 5.7

<sup>41</sup> *Id.*, Article 5.9

<sup>42</sup> *Id.*, Article 13

<sup>43</sup> *Id.*, Article 15.1(1)

<sup>44</sup> *Id.*, Article 15.1(2)

<sup>45</sup> The Draft Law., Article 15.2

<sup>46</sup> See UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Par. 13 and 14 [http://www.unhcr.ch/html/menu3/b/h\\_comp43.htm](http://www.unhcr.ch/html/menu3/b/h_comp43.htm)

*propaganda, rousing of ethnic, racial or religious hatred, instigation to discrimination, hostility or violence, violation of territorial integrity, violation of public order, organization of mass riots.*<sup>47</sup>

This list falls within the legitimate permissible limitations and reflects international standards. It is also positive that the burden of proof for establishing the grounds upon which an assembly may be banned lies with the applicant (who wishes the assembly to be banned).

52. The Draft Law also provides that a decision prohibiting an assembly shall be made within 24 hours of an application being made and shall enter into force on the date of its adoption and may be appealed against in a court of superior jurisdiction<sup>48</sup>. Both provisions meet the recommendations contained in the previous OSCE/ODIHR-Venice Commission Opinion and are, therefore, welcome<sup>49</sup>. The Draft Law should also make clear that the requirement of prompt decision making also applies to the court of appeal. In this sense, a deadline may be included.

#### **4.14 Interpretation, implementation and monitoring**

53. The interpretation and implementation of this Draft Law, when enforced, will be of major significance in terms of its compliance with international human rights standards. In this regard, the European Court of Human Rights has stated that the right to peaceful assembly should not be interpreted restrictively and any restrictions should be construed narrowly, and that in general, rights must be “practical and effective” and not “theoretical or illusory”. The government should consult on an on-going basis with civil society and other relevant stakeholders after the reforms have been adopted to ensure that the procedures work to the correct effect so as to facilitate, in practice, the exercise of the freedom. Official monitoring and recording the operation of the law will also be necessary for this purpose. A duty could be placed on an official monitoring body to keep the law and its operation under review and make recommendations to the Government about it as necessary. The importance of the need for training of police and other authorities who will implement the law is to be emphasised.

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<sup>47</sup> *Id.*, Articles 14.1 and 14.2

<sup>48</sup> *Id.*, Articles 14.3 and 14.4.

<sup>49</sup> OSCE/ODIHR-Venice Commission Joint Opinion no. 487/2008 [CDL-AD(2008)025], para. 51-52