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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**EXPLANATIONS
IN RESPECT OF THE LAW ON THE PROCEDURE OF
CONDUCTING GATHERINGS, MEETINGS, RALLIES AND
DEMONSTRATIONS
IN THE REPUBLIC OF ARMENIA,
in the light of the draft opinion of the
Venice Commission on that law (CDL(2004)27)**

By

Mr. Tigran TOROSSYAN
(Vice Speaker of the National Assembly of Armenia)

The Explanation is made on the basis of comments by Ms. Finola Flanagan and Mr. Giorgio Malinverni, members of the Venice Commission. This explanation is set forth in line with the paragraphs of the Draft Opinion.

Paragraphs 26-30. It is said in these paragraphs that the group of definitions is dangerous, as it regulates more restrictively than provided by the Convention.

The distinctions of the events are made for opposite purpose that is to select from the whole group those events, which would not be restricted even in the framework allowed by the Convention. It is done in Article 4, for areas not considered as places of general use. In the first part of this article it is said that in these places the events can be held without notification and limitation. Unfortunately, the Article is not formulated properly and it leads to confusion, that is to say, it is advisable to put a full stop after the words “or restrictions” and to edit the second part as follows: “Conducting of gatherings, rallies, assemblies and other events in areas not considered as places of general use, is forbidden by paragraph 3 of part 3, Article 9 and for the occasions set in subparagraphs a) and b) of part 2 of Article 9.”

Two groups of events held in places of public use are separated, which have less restrictions /limitations/ than provided by Convention. The first part of the Article 3 sets out that other events could be held without prior notification with due respect to public order and traffic rules. If such a violation is possible /it evaluates the organiser/, they should inform the police to provide security to the participants. That is why the second sentence of the first part of the Article sets order.

The third group represents non-mass public events, which are less restricted than the Convention permits. In this case there is no need for notification, there can be no organiser and the event is not regulated in any way. Of course the maximum number of such an event is conditional and is defined not for reasons of danger but to provide the possibility for police to take without prior notification quick preventive steps in cases of dangerous developments prescribed by the Convention.

Of course, it is possible not to do such groupings and to have one united group of restrictions in the framework of the Convention. In this case the law would be more simple and less lengthy. But we have preferred to have a little bit of volumetric law, but to take into consideration certain national peculiarities /rituals or other similar events/ on the one hand and to reduce the number of restrictions for other events than the Convention is allowing.

Paragraph 31. The law allows spontaneous gatherings, if they are not massive /the number of participants is less than 100/, as in this case there is no need for notification. /Article 10, paragraph 2/.

The law allows to have limited number of organisers and requires that at least one of them should be present. The experts are absolutely right mentioning that it does not have anything to do with the restrictions of the Convention. But when there is a possibility of danger for cases prescribed by the Convention, the law foresees not to stop the event immediately, but to alert the organiser /Article 14, part 1, paragraph 3/ to eliminate the danger. Naturally in the case that the danger is eliminated, the event will not be stopped. It means that the presence of the organiser provides that the restrictions prescribed by the Convention would be applied in extreme cases, when all possibilities are exhausted. I think it will give the possibility to evade every possible

whim of the representative of police. Consequently, the request of presence of at least one of organizers is not restricting the requests of the Convention but gives possibility to reduce them and contributes to a liberalized approach. Of course the Convention should not be commented upon in such a way, that an authorization should be received in advance. The law does not foresee such a thing. It requests to notify the Head of the Community, which is done for two purposes: The Head of the Community /Municipality/, by receiving the notification, together with police should provide conditions and ask the organiser if there are obstacles for conducting the event with regard to the restrictions provided by the Convention.

Paragraph 33. Agreeing principally to the remark of experts regarding the fact of going into details of the rights and duties of the participants of events, the fact is taken into consideration that there are many cases in practice that general formulations are commented by officials in arbitrary manner in prejudice of citizen. Consequently, one should make a choice between short and general formulations, which can be misused and more detailed formulations. Actually in case of Armenia, the last option seems more advisable, this will contribute to the accurate application of the law.

Paragraph 34. The restrictions of paragraph 3 of Article 9 are indeed connected with the place of the event, but it is done for security reasons. The prohibition of conducting of events in security zones of several institutions stipulated by /Article 9, point 3, sub point 1/. Obviously, there is a danger to the lives of the people, if the event is held in a building (endangered to destruction) /paragraph 3, sub point 2/ construction areas. As conduct of events should not affect the work of different structures, I think the requests of paragraph 3, sub point 2 c, d, e, are natural. The request of sub point f) is effective only during events held in cultural and sport complexes. The formulation of sub point 3 of the paragraph 3 is proceeding from the constitution. The last part “as well as in other causes prohibited by the law” can be deleted.

Paragraph 35. In Article 10 /paragraphs 2 and 3/ there is no restriction regarding infringement of traffic rules. It is said, that if there is no such danger /it is estimated by the organiser/, the events mentioned in these paragraphs can be conducted without notification /first part of paragraph 2/, and if there is such a threat, then they can notify and the police should regulate the traffic, in order that the event passes without any danger /second part of paragraph 2/. The same is with paragraph 3. Maybe there is confusion because of the translation.

Paragraph 36. Articles 11 and 12 indeed are very detailed and may be that is why they seem very bureaucratic. But those are detailed to avoid these bureaucratic long drawn – out proceedings and not to allow officials to do their comments to general formulations. At least at the first period of the application of law, until traditions are formed, such detailing is necessary. Otherwise there is a threat that the law will be used by officials to hinder and not to support the realization of the right provided by the Convention. There may be an impression by 1 paragraph of Article 13, that in case the documents of notification are not full, the event is automatically forbidden. Paragraph 5 of the Article 12 says that the organizers are informed of shortcomings of documents and time is given to correct them. Only after that the question to forbid the event can be raised.

Paragraph 37. Indeed the application of the principle of proportionality is very important for the realization of this right. That is why sub point 6 of paragraph 2 of Article 8 mentions about governing by main principles of administration. In the second chapter of the law on “Fundamental Principles of Administration and Administrative Jurisdiction” (Articles 4-12) as main principles of administration are mentioned legality (Article 4), prohibition of misuse of

formal requests, limitation of contemplative competences in the interests of protection of human rights and freedoms (Article 6), equal approach to similar factual circumstances (Article 7), proportionality (Article 8) and other. Concerning sub point 8 of paragraph 1 of Article 13, we should not forget that according to the Constitution of the Republic of Armenia, International Agreements and Conventions have superiority above the laws. Consequently, even in the case when, on the basis of sub point 8 of paragraph 1, Article 1, if any law defines other prohibited objectives, which are in contradiction with the European Convention on Fundamental Human Rights, these will lose their legal force. It is possible to consider the question of deleting the sub point 13-1- 8.

Paragraph 38. Indeed, Article 13-1-7 has been eliminated. The prohibition of conducting anti – gathering. The only limitation is that there is exact data on danger of confrontation between opposing parties. It is not a direct condition of Convention, but this confrontation is dangerous for the health of the people. If it is necessary, it is possible to amend sub point 7 by adding “which will be a threat to the health of the people”.

Paragraph 39. See in paragraph 31 the explanation regarding the absence of all organizers.

Paragraphs 40-45. The answers to these paragraphs are given in the explanations to paragraphs 26-29.

Paragraph 46. I think that given the explanations, it is possible to use milder formulations here: “The Venice Commission considers that for bringing completely in line with requests of Convention, the Armenian authorities should change it in accordance with above mentioned recommendations”.